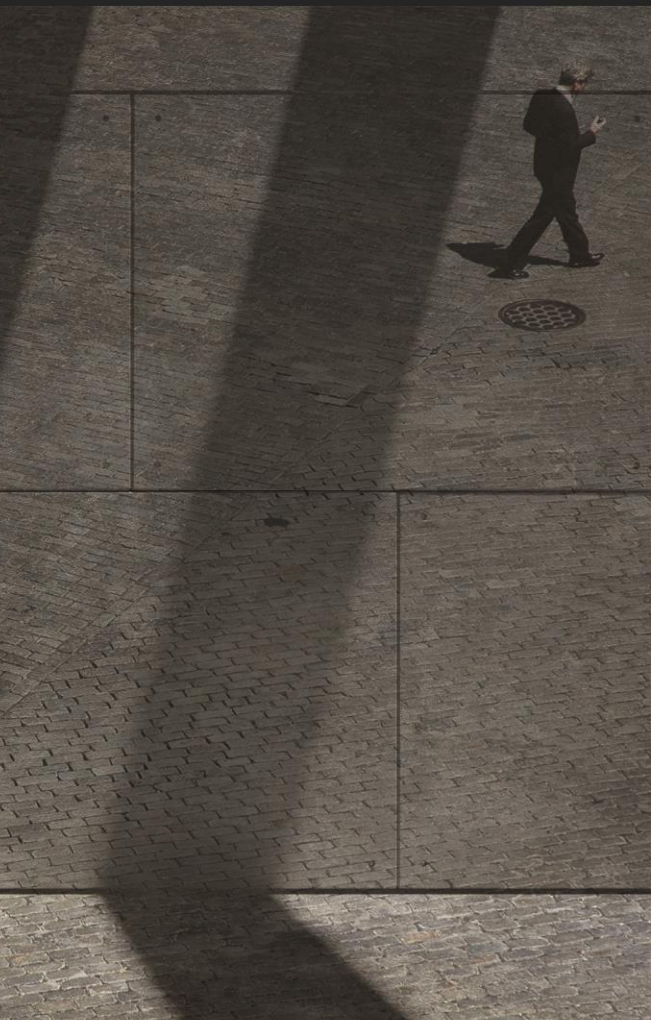




IMPLEMENTING THE OECD ANTI BRIBERY CONVENTION

PHASE 4 REPORT:
Mexico



This Phase 4 Report on Mexico by the OECD Working Group on Bribery evaluates and makes recommendations on Mexico'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 OECD Working Group on Bribery on 10 October 2018.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability, and international cooperation, as well as covering unresolved issues from prior reports.

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

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EXECUTIVE SUMMARY

The Phase 4 Report by the OECD Working Group on Bribery in International Business Transactions (WGB) evaluates and makes recommendations on Mexico's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) and related OECD anti-bribery instruments. The report examines Mexico's implementation of these instruments since its Phase 3 evaluation in October 2011, including positive achievements and challenges that remain. The evaluation process demonstrated that Mexico has initiated a number of significant anti-corruption reforms since Phase 3, which once fully functional could have a positive impact on the implementation of the Convention, particularly enforcement. The Mexican officials were cooperative and collaborative throughout the evaluation process, and expressed a strong interest in input from the WGB to help drive reform.

Reform areas initiated since Phase 3, pursuant to a constitutional amendment in 2015, include the nomination of the Special Anti-Corruption Prosecutor, and the appointment of judges to the Federal Court of Administrative Justice. In the weeks leading up to the evaluation by the WGB, the Anti-Bribery Protocol was adopted. Mexico has high expectations that these reforms will strengthen implementation of the Convention, but to date they have not become fully operational. The WGB recommends that Mexico urgently complete the steps needed for its anti-corruption reforms to become fully operational, including the appointment of the Special Anti-Corruption Prosecutor, and the appointment of the Attorney General pursuant to the new constitutional mechanism for enhancing the independence of this office.

Since Phase 3, enforcement of Mexico's foreign bribery offence has only nominally increased, with four ongoing investigations (one temporarily archived while waiting for MLA) compared to two at the time of the Phase 3 evaluation. The WGB considers the absence of prosecutions of foreign bribery by Mexico more than nineteen years after Mexico's foreign bribery offence came into force a cause for significant concern, especially given the export driven nature of the Mexican economy, and because its exports include high-risk sectors for corruption, such as extractives, manufacturing and agricultural products. The focus of the Phase 4 report is therefore on identifying ways to significantly enhancing Mexico's enforcement of its foreign bribery offence.

In order to strengthen foreign bribery enforcement, the WGB targets as a matter of priority the need to ensure adequate human and financial resources for the Special Prosecutor's Office for Corruption-related Offences (FEMDHC), once it becomes operational, and in the interim, the immediate need to ensure adequate resources for investigating and prosecuting foreign bribery cases, particularly the four that are ongoing. Further recommendations by the WGB to strengthen enforcement include ways to enhance the detection of foreign bribery cases, including through the capacity to detect bribe payments concealed as allowable expenses for tax purposes, and measures to increase the effectiveness of the Anti-Money Laundering (AML) system for the purpose of detecting the proceeds of foreign bribery. The WGB also recommends that Mexico urgently enact legislation to protect from disciplinary action public and private sector employees that report in good faith and on reasonable grounds suspected acts of foreign bribery to the competent authorities, and clarification of the reporting obligations of accountants and auditors that discover indications of foreign bribery. Moreover, the WGB makes a number of recommendations to further strengthen the newly reformed corporate liability regime in the criminal law, including to make it apply to SOEs responsible for foreign bribery, and clarify the criteria for triggering such liability, such as when the organisation fails to exercise due controls. The WGB will also closely follow-up the application of a new administrative corporate liability regime to assess its impact on combating foreign bribery.

This report also identifies progress on implementing the WGB's recommendations from Phase 3, and further positive achievements. Mexico has now fully implemented recommendations including to amend the foreign bribery offence so that it applies to cases involving third party beneficiaries, make corporate liability for foreign bribery independent of the liability of the individual perpetrator(s), increase the maximum sanctions for accounting offences, and make bribes non tax deductible. In addition, two positive achievements particularly stand out. The first is the Federal Judiciary Council's (CJF) new judicial statistical collection, which provides comprehensive information about foreign bribery enforcement in Mexico, and could help drive more effective enforcement. The second is the introduction of successor liability into Mexico's criminal corporate liability framework, which is also notable for its coverage of a large range of forms of corporate restructuring.

The report and its recommendations reflect the findings of experts from Brazil and Slovenia, and was adopted by the WGB on 10 October 2018. The report is based on findings by the Evaluation Team during its on-site to Mexico City in May 2018, which involved meetings with a range of relevant stakeholders across the public and private sectors, and civil society. It also reflects legislation, data, and other materials provided by Mexico in response to the Phase 4 Questionnaire, and independent research by the Evaluation Team. Mexico will submit a report to the WGB in two years on the implementation of all recommendations and its enforcement efforts.

INTRODUCTION

1. In October 2018, the Working Group on Bribery in International Business Transactions (WGB) completed its fourth evaluation of Mexico’s implementation of the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2009 Recommendation of Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation), and related anti-bribery instruments.

Previous evaluations of Mexico by Working Group on Bribery

2. Monitoring implementation of the Convention, the 2009 Recommendation, and related instruments, is conducted through successive phases, according to agreed-upon principles. The monitoring process is compulsory for all parties to the Convention, and on-sites are mandatory in Phases 2, 3 and 4. On-sites involve meetings with the relevant law enforcement and government authorities, as well as civil society and the private sector. The monitoring reports, which are systematically published on the OECD website, include recommendations to the evaluated country. These reports are adopted by the WGB on a ‘consensus minus one’ basis, which means that the evaluated party may voice its views and opinions but cannot block adoption of the final report and recommendations.

Box 1. Previous Working Group on Bribery Evaluations of Mexico	
2014:	Follow-up to Phase 3 report
2011:	Phase 3 report
2007:	Follow-up on Phase 2 report
2004:	Phase 2 report
2000:	Phase 1 report

3. The Phase 3 evaluation of Mexico took place in 2011, with a two year written follow-up report adopted in 2014. By the end of the Phase 3 review cycle, Mexico had fully implemented four recommendations, partially implemented ten, and not implemented eight.¹

Phase 4 process and on-site visit

4. Phase 4 focuses on three cross-cutting themes – detection, enforcement of the evaluated party’s foreign bribery offence, and corporate liability for the offence. Additionally, it addresses the party’s progress on previously unimplemented Phase 3 recommendations, and issues raised by changes to the party’s legal and/or institutional frameworks for combating foreign bribery, as well as any new issues that come to the WGB’s attention. Phase 4 considers each party’s unique situation, resulting in a report and recommendations that address the specific challenges and achievements of each party in a more targeted manner than previous phases. This means that issues that were not problematic or were resolved by the end of Phase 3 may not be reflected in the Phase 4 report.

5. The Phase 4 Evaluation Team for Mexico was composed of lead examiners from Brazil and Slovenia, and members of the OECD Anti-Corruption Division.² Pursuant to the Phase 4 procedures,³

¹ See Annex 1 for a list of Mexico’s Phase 3 Recommendations and the WGB’s assessment of their implementation at the end of the Phase 3 review cycle.

² Brazil was represented by: Elizabeth Cristina Marques Cosmo, Office of the Comptroller General; Marcelo Ribeiro de Oliveira, Federal Prosecution Service; Ricardo Wagner Araújo, Office of the Comptroller General; and João Carlos Figueiredo, Office of the Comptroller General. Slovenia was represented by Gregor Pirjevec, Senior European and International Relations Advisor, Commission for the Prevention of Corruption; Jure Škrbec, Senior European and International Relations Officer at the Commission for the Prevention of Corruption; Peter Jenko, Deputy Director-General of Financial Administration; and Ciril Kersmanc, Judge. The Secretariat was represented by three colleagues

after receiving Mexico's responses to the Phase 4 Questionnaire, which included supplementary, country-specific questions, the Evaluation Team conducted an on-site to Mexico on 16-18 May 2018. The entire on-site was conducted in Mexico City, and teleconferences were held with local authorities from the Attorney's Office of the State of Mexico and the Attorney's Office of the State of Veracruz. Twenty panels were conducted, including two with civil society and two with the private sector, and the opening and closing sessions. Other panels covered issues including anti-money laundering measures for detecting and investigating foreign bribery, detection by local law enforcement authorities, two panels involved the federal investigative and prosecution authorities, and panels were conducted with representatives of state-owned enterprises, the tax administration, the new National Anti-Corruption System, and government contracting bodies.⁴

6. All the sessions were well organised and attended, except the first session with civil society, which commenced shortly after the opening session and was interrupted by an earthquake. Evacuation of the entire city and the stoppage of traffic likely impacted on attendance at this session. Government and law enforcement officials were forthcoming in all the sessions, and responded openly to all questions, including with regards to sensitive issues that arose during meetings with the private sector and civil society. Likewise, meetings with non-government stakeholders were very open, and the participants felt free to discuss without hesitation their most serious and sensitive concerns about the implementation of the Convention by Mexico. One major non-government organisation that met with the Evaluation Team provided the Team with a paper copy of a shadow review that it performed on Mexico's implementation of the Convention.

7. The Evaluation Team credits the Ministry of Public Administration, Ministry of Foreign Affairs and the Federal Prosecutor's Office for jointly coordinating the evaluation, for their close cooperation with the Evaluation Team in organising the panels, and for making every possible effort to ensure that all relevant interlocutors were present. For instance, they agreed to a last minute request to hold a parallel civil society panel on the last day to provide another opportunity for stakeholders to meet with the Evaluation Team following the earthquake. They also agreed to an unplanned request by the Evaluation Team to convene an extra panel with the Federal Prosecutor's Office, Bancomext, the Financial Intelligence Unit, and the Ministry of Public Administration, regarding potential foreign bribery cases that may have been detected by Bancomext.

8. The Evaluation Team notes that following the on-site, it was necessary to send the Mexican authorities a large number of follow-up questions to clarify information obtained during the on-site. The Mexican authorities diligently responded to the best of their ability, but due to the quantity of information requested, it was not possible to prepare the Phase 4 report according to the previously agreed-upon schedule. Nevertheless, the Mexican authorities were flexible regarding the new scheduling, and the report was ultimately completed on time. Mexico was highly constructive and collaborative before, during and after the on-site. The tone of this approach was confirmed by the Mexican high level officials who made opening remarks at the start of the on-site. For instance, the Executive Director of the Mexican Agency for International Development Cooperation (AMEXCID) stated that the WGB's previous recommendations had led to important institutional changes that also helped Mexico with its fight against domestic bribery. He emphasised that Mexico is very receptive to the WGB's recommendations, and cited the significant efforts made by civil society for reform based on its recommendations. The Convention has been one of the most important policy areas of his career, and he

from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs: Christine Uriarte, Senior Legal Analyst; Claire Leger, Legal Analyst; and Mark de Barros, Legal Analyst. Kathryn Gordon, Senior Economist, provided input on Mexico's economic indicators and foreign bribery risks.

³ The Phase 4 procedures are provided in [OECD Anti-Bribery Convention: Phase 4 Monitoring Guide](#)

⁴ See Annex 2 for the list of participants at the on-site.

believes that robust implementation of the Convention is necessary to provide a clear message to investors and companies that foreign bribery is not tolerated. The Undersecretary of Public Administration stated that the Phase 4 evaluation is very important to Mexico, because it will help the authorities focus their efforts on the remaining implementation challenges, and make improvements on actions already taken. Throughout the on-site, when addressing criticisms from civil society and the private sector, in particular regarding how the Mexican authorities respond to indications of corruption, the Mexican government participants were very receptive to the need for reform.

9. In addition, during the opening session at the on-site, the Undersecretary of Public Administration and the Coordinator of International Affairs and Attachés Office of the Federal Prosecutor's Office (PGR) highlighted several areas of anti-corruption reform that have taken place since Phase 3, and which could have a positive impact on combating foreign bribery. These areas stem from a constitutional amendment in 2015 that modified how the Mexican State addresses corruption and administrative offences. The amendment resulted in the law that established the National Anti-Corruption Commission, a body tasked with preventing, investigating and punishing corruption, as well as six other secondary laws that were published in July 2016. The first three are new: 1) General Law of Administrative Responsibilities (GLAR); 2) Federal Court of Administrative Justice Organic Law; and 3) Law on Audit and Accountability of the Federation. The following three laws have been reformed: 1) Federal Public Administration Organic Law; 2) Federal Prosecutor's Office Organic Law, and 3) Federal Penal Code (CPF).

10. To date, prosecutions of corruption offences are conducted by the Specialised Investigation Unit for Crimes committed by Public Officials and against the Administration of Justice (SIU), pending nomination of the Special Anti-Corruption Prosecutor by the Senate. In addition, the Senate has still not confirmed the appointment of judges to the Federal Court of Administrative Justice (TFJA). Another important area of reform, the Anti-Bribery Protocol, will enhance law enforcement coordination between Mexican government agencies and foreign authorities. These reform initiatives, including provisional laws in place during the transition phase, are discussed more fully later in the report where relevant, particularly in relation to GLAR and amendments to the CPF, which provide new administrative and criminal sanctions, respectively, for natural and legal persons for corruption.

Mexico's relevant economic indicators and foreign bribery risks

11. Mexico is now the world's 11th largest economy (in terms of GDP measured at purchasing power parity). The country has gone through tremendous structural changes over the past three decades. From an oil-dependent economy up to the early 1990s to a booming manufacturing centre in the aftermath of NAFTA in the mid-1990s, Mexico is increasingly becoming an international trade hub. While its proximity to the United States export market continues to offer Mexican industries a competitive advantage, Mexico has also strategically boosted free trade more broadly, signing twelve agreements with 46 countries. Mexico is now a top global exporter of cars and flat screen televisions, among other products⁵.

12. Despite these successes, Mexico's economic potential has been hindered by significant challenges such as weak rule of law and persistent levels of corruption and crime. For example, Mexico is ranked by Transparency International as having the highest corruption perception of all OECD members (Figure 2). In addition, although Mexico now ranks as an 'upper middle income' country⁶ and

⁵ This paragraph is an extract from the 'Assessment and Recommendations' section of [Overview of the OECD Economic Survey of Mexico 2017](#) (page 14).

⁶ This is based on the [World Bank ranking](#), which uses the '[World Bank Atlas method](#)' to rank countries by income class.

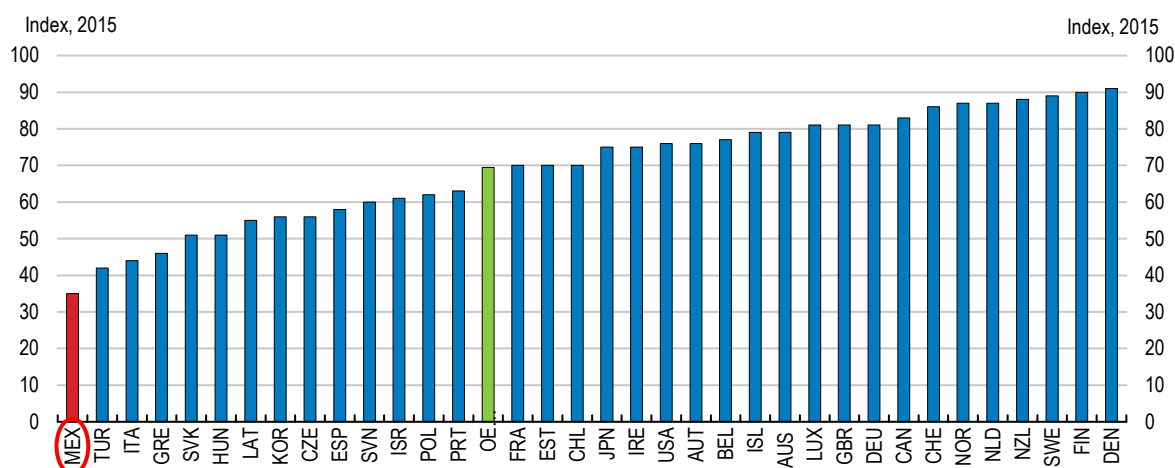
boasts a total GDP that is well above the WGB average (Figure 2), its economic growth has not been inclusive enough to achieve better living conditions for many of the country's 128 million citizens⁷.

13. To address these problems, the current government has rolled out major structural reforms since 2012, including reforms to the criminal justice system⁸. Further reforms are expected to bring high growth dividends -- the 2017 OECD Economic Survey of Mexico states that additional reforms to the judicial system could add a half a percentage point to annual growth rates after 5 years⁹.

14. The policy environment is otherwise fairly supportive of business -- Mexico ranks 49 out of 190 countries in the World Bank's 'Ease of Doing Business' index¹⁰ and 31 out of 137 economies in the World Economic Forum's 2018 Global Competitiveness ranking.

15. Mexico is very open to foreign trade and investment and Mexico is now the world's 8th largest exporter¹¹. Overall, its total exports place it well above the WGB average (Figure 2). Principal destinations for merchandise trade exports are: the United States (80%), the European Union (5.7%), Canada (2.8%), China (1.6%), Japan (1%) and other (9%). Manufacturing exports represent 82% of total exports of non-agricultural products, of which automobile-related products account for about 27% and 'petroleum oil, crude' about 5%. Exports of commercial services are dominated by tourism (79.2%), but services exports are small relative to merchandise exports¹².

Figure 1. Mexico has the highest corruption perceptions among OECD countries



Source: OECD Better Life Index - Edition 2016 Database, Transparency International. This figure is reproduced from [Overview of the OECD Economic Survey of Mexico 2017](#) (page 45).

⁷ See [Overview of the OECD Economic Survey of Mexico 2017](#) (page 10).

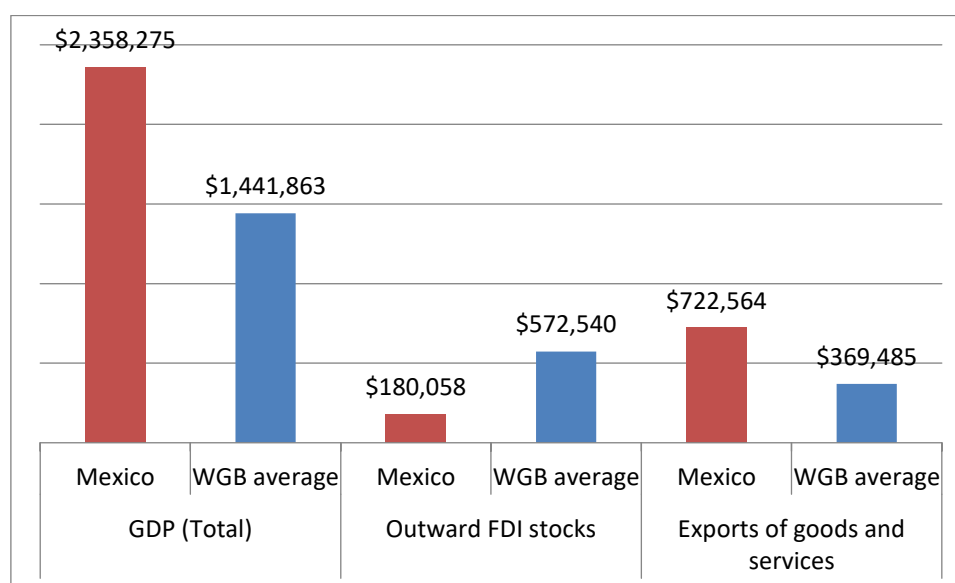
⁸ See [Overview of the OECD Economic Survey of Mexico 2017](#) (page 45).

⁹ [Overview of the OECD Economic Survey of Mexico 2017](#) (page 15).

¹⁰ See the World Bank's '[Doing Business 2018. Economy Profile for Mexico](#)'.

¹¹ This ranking is for merchandise exports excluding intra-EU trade. Mexico ranks 13th overall for merchandise exports including intra-EU trade. See the [WTO's 2017 Mexican Trade Profile](#).

¹² The statistics on the destinations and product composition of Mexican exports are taken from the [WTO's most recent Trade Profile for Mexico](#).

Figure 2. Mexico's economic data compared to WGB averages

Notes: GDP and FDI stocks data are for 2017 or most recent. Trade statistics are for 2016.

Source: [OECD Statistics](#). A few missing data points taken from [UNCTADStat](#).

16. Thus, overall, Mexico's export profile involves rather high exposure to risks that are typical of exports of manufactured and petroleum products (e.g., customs and procurement). More broadly, Mexico's growing prominence as a hub in the international trading system means that its enforcement capacity is likely to become an increasingly important component of broader international enforcement capacity for foreign bribery.

17. Mexico's role as an outward investor, while growing, is still quite small. Outward investment stocks are only above one-third of the WGB average (Figure 3). The outward stock of FDI was 18% of GDP, as compared to a world average of 40%. Consequently, Mexico's exposure to corruption risks involving outward foreign investment (e.g., corruption risks related to market entry) are expected to be minor relative to its export-related exposures.

18. Another important feature of the Mexican economy is the presence of two major state production companies, both in the energy sector. The first is the Federal Electricity Commission (CFE), which has nine subsidiary units, and the second is Mexican Oil (PEMEX), which has seven subsidiary production companies with the following activities: cogeneration and services, permex ethylene, exploration and production, fertilisers, drilling, and industrial transformation.

19. Through law enforcement and other measures, the Mexican authorities are making substantial efforts to deter transnational organised criminal activities, which pose a potential risk of foreign bribery. More recently, transnational criminal organisations have begun to diversify and are beginning to invest in legitimate business interests.

Overview of foreign bribery enforcement

20. Mexico has not prosecuted a case of foreign bribery since 1999, when the Mexican foreign bribery offence came into force. Following the end of Mexico's Phase 3 review cycle in June 2014, it concluded one case – an investigation of a legal person in 2015 that did not lead to prosecution. An investigation that was ongoing at the time of Phase 3, which was opened in 2013, is currently ongoing, although temporarily archived while waiting for a response to an MLA request. In 2018, three

investigations were opened against legal persons, which are still in progress.¹³ Thus, at present, Mexico has four ongoing investigations (with one temporarily archived while waiting for MLA)¹⁴. Only the strictest minimum of information about these cases is provided in this report, where relevant, to protect due process interests and the rights of the accused persons. The four investigations since Phase 3 have involved a variety of sectors, all of which are normally considered at high risk for corruption. So far, the participation of an SOE has not been detected in any of these cases.

21. In addition, a Mexican company is reportedly under investigation in another party to the Convention for foreign bribery and a second company is under investigation in a non-party to the Convention for bribery of the investigating country's officials. These investigations involve sectors normally considered at high risk for corruption. They were reportedly opened following Mexico's Phase 3 review cycle. These cases are not currently under investigation by the Mexican authorities.

Commentary

The lead examiners believe that the absence of a prosecution of the bribery of foreign public officials in the more than nineteen years since Mexico's foreign bribery offence came into force is cause for significant concern, especially given the export driven nature of the Mexican economy. In addition, Mexican exports include high-risk sectors for corruption, such as extractives, manufacturing and agricultural products. As a result, this report focuses on identifying ways to significantly enhance Mexico's framework for enforcement.

Moreover, the lead examiners note that since Phase 3, Mexico has initiated major reform in areas that could impact positively on the implementation of the Convention, in particular enforcement. Since these reforms include the nomination of the Special Anti-Corruption Prosecutor, the appointment of judges to the Federal Court of Administrative Justice, and adoption of the Anti-Bribery Protocol, the lead examiners recommend that, at the time of the two year written follow-up to the Phase 4 report, the WGB consider the status of the reforms and whether a Phase 4bis to assess implementation would be appropriate.

¹³ The Mexican authorities explain that that pursuant to Article 211 CNPP, there are two main phases of investigation. The Complementary Investigation Phase includes the formulation of the imputation and the complementary investigation. The Intermediate Phase is initiated by the presentation of the indictment, and involves the evidentiary discovery, the carrying out of evidentiary agreements, and the opening of the trial.

¹⁴ The Mexican authorities state that when a case is temporarily archived, it has been closed administratively while waiting for MLA.

A. DETECTION OF THE FOREIGN BRIBERY OFFENCE

A1. Overview of relevant outstanding Phase 3 Recommendations and New Issues

22. At the end of Mexico's Phase 3 review cycle in 2014, Mexico had not fully implemented WGB recommendations regarding detection of foreign bribery through the following means: anti-money laundering (AML), accounting and auditing, tax, and whistleblowing.¹⁵ This part of the report assesses progress in the foregoing areas. It also assesses detection by Bancomext (Mexico's Official Export Credit Support Agency), local state-level law enforcement authorities, incoming MLA requests, and the media. Since all four investigations opened after Phase 3 were detected through one single means – allegations from the media compiled by the OECD Secretariat – this section of the report focuses on how Mexico can more proactively detect foreign bribery cases through independent law enforcement measures.

A2. Domestic authorities

a. *Obligation of all public officials to report all instances of corruption*

23. In Mexico, all public officials have a duty to report before the Public Prosecutor and to the investigative authorities, respectively, all suspicion of crimes, including foreign bribery, and administrative violations, of which they may become aware in the performance of their duties (Article 222, CNPP and Article 49(II), GLAR). In addition to these legal obligations, the code of conduct of PGR contains a commitment to report all forms of corruption and conflicts of interest. Several trainings have been provided to PGR officials and to Attachés and Heads of PGR's Liaison Offices abroad¹⁶ regarding this obligation. In addition, a circular dated 12 May 2018 was sent to 80 Embassies and 67 Consulates to invite them to report to AMEXCID suspicions of foreign bribery involving Mexican public officials and companies. To make their reports, public officials can use general channels accessible to all citizens provided by the Mexican authorities [See A.4.b) of this report]. However, none of the cases that led to investigation since Phase 3 were detected through such reporting. This raises questions about the level of awareness of public officials of their duty to report instances of foreign bribery [Also see A.4.b) of this report].

Commentary

The lead examiners recommend that the Mexican authorities intensify their efforts to raise awareness of all public officials of their obligation to report instances of foreign bribery that they detect in the course of carrying out their duties.

b. *Export Credit*

24. In Phase 3, the WGB recommended that Mexico ensure that Bancomext stipulate its debarment policy in writing in a specific section of its lending or guarantee contract; extend the anti-corruption declaration in its credit agreement to cover foreign bribery that occurs both before and after the agreement is signed; train its staff on the policies on and procedures for debarment, reporting foreign bribery, and detecting foreign bribery; and require clients to provide further details of agents' commissions and fees [Recommendation 16(b)]. The WGB praised Bancomext for its debarment policy, but assessed that the effectiveness of the policy had not been demonstrated in practice. The WGB was concerned that the anti-

¹⁵ To streamline this report, the discussion on whistleblowing in the public sector is covered together with whistleblowing in the private sector under A.4.b.

¹⁶ The training "Basic Course on the New Code of Conduct" took place from 7-15 February, 2017 and reached 392 public officials of the PGR.

corruption declaration in Bancomext's credit agreement did not explicitly cover foreign bribery that occurs before and after the agreement is signed. Furthermore, the WGB noted that Bancomext staff had not been trained on foreign bribery-related issues, including debarment and reporting, and did not review suspicious agent fees or commissions. At the end of Mexico's Phase 3 Review cycle, Recommendation 16(b) was assessed as partially implemented because, although Bancomext amended its contracts to provide for termination in cases of foreign bribery before or after the agreement's execution, it had not taken steps to do the following: provide its debarment policy in a specific section of the lending or guarantee contract; or train its staff to focus on foreign bribery.

25. In 2016, Bancomext provided MXN 225.44 billion (approximately USD 12.01 billion or EUR 10.31 billion)¹⁷ in private sector financing, a 19.5% increase over 2015, and supported 4 605 companies, 90.8% of which were SMEs. It focuses its financing mainly in the following strategic sectors: tourism, industrial infrastructure, energy, transportation and logistics, electronics, automotive and mining.¹⁸ As Bancomext underwrites the commercial and political risks of overseas investments in high risk sectors for corruption, often where traditional financial institutions will not accept the risks, it is well-placed to detect instances of the bribery of foreign public officials by its applicant and client companies. However, to date, no case of the bribery of foreign public officials that has progressed to the investigation stage has been detected by Bancomext.

26. Since Phase 3, Mexico has taken steps to implement Phase 3 Recommendation 16(b). Bancomext includes in every credit agreement a clause on early expiration and advanced expiration that applies to foreign bribery during the entire duration of the loan. It now also verifies whether an applicant is on the debarment list of various other financing institutions, including the World Bank, and in the event that an applicant does not pass ordinary due diligence measures, it must undergo a strengthened due diligence process that is conducted by the Communication and Control Committee. Mexico does not indicate that training activities have been conducted by Bancomext on the policies on and procedures for debarment, detecting and reporting foreign bribery.

27. During the on-site, the Evaluation Team met with representatives of Bancomext's directorates of Internal Investigations and Government Normativity. The Bancomext officials disclosed that since the completion of Mexico's Phase 3 review cycle, their attention had been called to seven potential foreign bribery cases. So far Bancomext has referred one of these potential cases to FIU, a second one to Bancomext's Internal Control Office, four are under assessment, and one company withdrew its credit application, which led Bancomext to decide not to pursue an assessment. The Evaluation Team learned about these potential cases at almost the end of the on-site, and reconvened FIU and PGR to determine what had happened to these cases in the reporting line. The team also wanted to understand the following: why one of the cases were reported to FIU instead of PGR, which is the entity responsible for foreign bribery law enforcement, what happened to the second case, why four cases are still under assessment by Bancomext, and why it did not take further steps regarding the company that withdrew its application.

28. Bancomext explained that pursuant to its legal framework, it reports directly to FIU possible unusual activities by an applicant or client company related to money laundering, terrorism, or terrorism financing. Bancomext explained further that FIU is the entity that may take further actions to investigate possible crimes. FIU clarified that it is only authorised by law to receive suspicious transactions reports (STRs) regarding money laundering, terrorism and terrorist financing.

29. Regarding the potential foreign bribery case referred to FIU, Bancomext made a '24 hour report', which means that it had reasonable grounds to suspect that the client or transaction could be part of a

¹⁷ Currency conversions throughout this report were calculated on 28 August 2017.

¹⁸ [Bancomext](#)

money laundering scheme. FIU analysed the report, and cooperated with PGR in the investigation, at the end of which it was determined that the money laundering scheme related to tax crimes. FIU states that it identifies predicate offences for money laundering, and that PGR, when assessing a referral of money laundering from FIU, could determine foreign bribery or other crimes, with the support of the intelligence developed by FIU.

30. Regarding the potential foreign bribery case that was referred internally, Bancomext's Internal Control Office carried out an examination of the information and gathered additional information to investigate a possible administrative infraction under GLAR. Following the on-site, the Mexican authorities informed the Evaluation Team that these potential cases had been put aside by Bancomext.

31. Following the on-site, the Mexican authorities further clarified that where potential foreign bribery is detected, its Compliance Officer,¹⁹ depending on the nature of the case, would either report it internally to the Internal Control Office²⁰ or externally to the federal authorities. An Interagency Work Committee is currently establishing channels of communication between government departments and entities. In addition, the Directorate of Projects-Making in Anti-Corruption Matters of the Ministry of Public Administration (SFP) informed at the on-site that it was drafting an Anti-Bribery Protocol (discussed throughout this report) that would clarify the reporting channels, including that Bancomext should report foreign bribery directly to PGR [The Protocol is discussed throughout this report, and was adopted following the on-site – see discussion under B.3.b iv.]. However, now that the Protocol has been published, the Evaluation Team has verified that it does not include such a clarification.

Commentary

The lead examiners assess that Phase 3 Recommendation 16(b) remains only partially implemented, primarily due to Bancomext's policy of reporting elements that may constitute foreign bribery to FIU rather than PGR, even when money laundering is not suspected, and the continuing need for training activities on the policies on and procedures for debarment, detecting and reporting foreign bribery. The lead examiners recommend that, as a matter of priority, Mexico clarify that Bancomext report credible suspicions of the bribery of foreign public officials directly to PGR. This recommendation is not intended to affect any FATF recommendations regarding the obligation of financial institutions to refer STR's to FIU where foreign bribery is a predicate offence to money laundering. The lead examiners also recommend that Bancomext train its staff on the policies on and procedures for debarment, reporting foreign bribery, and detecting foreign bribery.

c. Tax information

32. One effective tool for detecting the bribery of foreign public officials is through tax audits by a country's tax administration. Due to the significant amount of funds used as bribe payments, particularly to obtain large government contracts in sectors such infrastructure, taxpayers may be tempted to disguise bribe payments as allowable expenses for the purpose of obtaining tax deductions. However, to date, the Mexican tax system has not detected a case of foreign bribery that has resulted in an investigation.

33. During the on-site, the Evaluation Team met with representatives of the Tax Administration Service (SAT) and Fiscal Prosecutor's Office (PFF) concerning the detection and reporting of bribe payments by SAT. Representatives of SAT stated that their options are limited when they detect a deduction for an expense that they suspect is a bribe payment, because they can only assess whether a

¹⁹ The Compliance Officer determines the viability of a client by looking at debarment lists, analysing and tracking press releases related to the client, and/or opening an internal complaints channel.

²⁰ The Communications and Control Committee would evaluate the risks and mitigation aspects of the case.

fiscal crime has been committed. Where a fiscal crime is detected, there is an obligation to report it to PFF. On the other hand, SAT is bound by absolute secrecy regarding the information received from taxpayers, with a few exceptions in addition to fiscal crimes, including judicial processes for child support, and funds from money laundering or terrorism. Bribery does not constitute an exception to the secrecy obligation. However, the Mexican authorities state that if a bribe payment were deducted as an allowable expense, a fiscal crime would have been committed, thus the secrecy obligation would not apply. In such a case, SAT would be obligated to communicate the matter to PFF. In turn, PFF would be required to present a formal complaint to PGR describing the facts that constitute the fiscal crime derived from the deduction. PGR would then be able to prosecute both the fiscal crime and the foreign bribery offence.

34. However, it might not always be the case that the exception to the secrecy obligation applies when SAT detects foreign bribery. Companies do not always try to claim deductions for bribe payments, including by disguising them as allowable expenses. SAT might detect foreign bribery in such cases through normal procedures for detecting fiscal crimes, just as it might detect fraud or theft. In such cases, since the secrecy obligation would apply, SAT could only share information in two circumstances. First, when a request is received from a law enforcement authority, such as PGR, in writing, and the request states the legal grounds and justification for the request, and the requesting authority undertakes to only use the information for the purposes stated in the request. PGR cannot specify the crime that is the basis for the request, due to Article 218 CNPP, which prohibits such disclosure during investigations. It is not clear whether this prohibition is due to a restriction in the law. But as a result of the prohibition, SAT does not know whether the information is requested to further a foreign bribery investigation. This methodology raises the question: How is it possible for SAT to provide effective information about a crime when PGR is not able to disclose the crime for which it is seeking information? SAT confirms that it has received requests for information from PGR, but due to the confidential nature of PGR's investigations, it could not determine if these requests were related to foreign bribery. PGR on the other hand confirms that, through its Special Unit for Offences Committed Abroad (UEDE), it has indeed requested information from SAT in the course of foreign bribery investigations.

35. Second, where an SAT auditor detects the signs of any crime, s/he is obligated to report it to PGR pursuant to Article 222(2) of CNPP, in accordance with the requirements under Article 223.21 The auditor can only suggest that the acts detected constitute a crime including foreign bribery, but is not obliged or capable to determine officially the nature of the crime. SAT does not indicate that it has provided information to PGR about foreign bribery investigations in the absence of a formal request from PGR. The Evaluation Team wonders whether there might be confusion on how to reconcile the secrecy obligation regarding tax payer information with the obligation to spontaneously report crimes pursuant to Article 222(2) CNPP.

36. Moreover, the Evaluation Team has not received indications that PFF has reported to PGR foreign bribery suspicions that it has detected in law enforcement actions regarding fiscal crimes

Commentary

The lead examiners recommend that PGR continue to proactively request information from SAT regarding taxpayers under investigation for the bribery of foreign public officials, to determine whether bribes in such cases have been

²¹ Article 222 of CNPP states that “those who, in the exercise of public functions, are aware of the probable existence of a fact that the law indicates as a crime, are obliged to report it immediately to the Public Prosecutor”. Under article 223 of CNPP a report to the law enforcement authorities by an SAT tax auditor must consist of the following: 1. Name and address of the person filing the report, unless made through an anonymous report; 2, details of the reported facts, including time, place and situation; and 3. names of the presumed accountable parties and possible witnesses.

claimed as tax deductions, as such information could provide important evidence in proving foreign bribery. In order to facilitate such requests, the lead examiners recommend that Mexico find a way that is appropriate and feasible in its legal system to permit PGR to inform SAT when the information sought relates to foreign bribery. In addition, the lead examiners urgently recommend that SAT proactively detect the types of expenses deemed to constitute bribe payments concealed as allowable expenses for tax purposes, and report them to PGR without delay. In order to facilitate such reporting, the lead examiners also recommend that Mexico clarify the discrepancy between the obligation of secrecy regarding tax information with the obligation to report suspicions of crime pursuant to Article 222(2) CNPP. The lead examiners further recommend that PFF report without delay to PGR suspicions of bribery related to fiscal offences under investigation.

d. ODA Procurement

37. Parties to the Convention must now be assessed for compliance with the 2016 Recommendation of the Council for Development Actors on Managing Risks of Corruption. Issues regarding compliance with the new recommendation, including the detection and reporting of foreign bribery, are assessed under D.1.3. of this report.

e. Investigations of procurement offences at local level

38. At the on-site, the Evaluation Team obtained the perspectives of local law enforcement authorities through discussions with the Attorney's Office of the State of Mexico, and the Attorney's Office of the State of Veracruz. The local authorities have jurisdiction over cases involving corruption and fraud at the local state and municipal levels. Because companies that participate in local public procurement contracting might also participate in foreign public procurement contracting, the local law enforcement authorities could detect foreign bribery when investigating a company for illegal public procurement activities at the local level. However, at the time of the on-site, the state authorities with which the Evaluation Team met were not alert to this potential. Following the on-site, the Mexican authorities informed the Evaluation Team that steps had since been taken to provide training to the state prosecutors' offices on the detection of foreign bribery. For instance, the National Conference on Law Enforcement has agreed to include in its agenda information about the crime of foreign bribery and Mexico's obligations under the Convention. Additionally, the Coordination of International Affairs and Legal Attachés Offices of the Legal Deputy Attorney's Office and of International Affairs has agreed to hold workshops with the state attorneys' and public prosecutors' offices so that they are able to contribute within their competence to the prevention and detection of foreign bribery.

Commentary

Given that local state law enforcement authorities have jurisdiction over illegal activities regarding public procurement at the local level, the lead examiners believe that state law enforcement authorities need to be alert to the potential to detect foreign bribery in the course of investigating a company for illegal public procurement activities at the local level, and encourage them to report such cases directly to PGR. The lead examiners welcome that Mexico has begun to take steps in this regard, and recommend following up the effectiveness of these measures.

f. Anti-Money Laundering System

39. By the end of Mexico's Phase 3 review cycle, it had partially implemented the WGB's Recommendation 8 to develop foreign bribery-related Anti-Money Laundering (AML) measures, including typologies, and on reporting such cases to the law enforcement authorities. In Phase 3,

Mexico's AML measures had not resulted in any foreign bribery investigations. Important legislative and awareness-training measures were taken by the end of Phase 3, but it was not possible to assess Recommendation 8 as fully implemented because of the continued absence of typologies on money laundering predicated on foreign bribery.

40. Mexico's AML measures have still not resulted in any foreign bribery investigations. Between the end of Mexico's Phase 3 review cycle in 2014 and 2017, of the thirteen cases of money laundering with elements of corruption sent by FIU to PGR for investigation, none involved foreign bribery. In January 2018, just four months before the on-site, the Financial Action Task Force (FATF) published a mutual evaluation report on Mexico stating that Mexico is "confronted with a significant risk of money laundering (ML) stemming principally from activities most often associated with transnational criminal organisations, such as drug trafficking, extortion, corruption and tax evasion". The FATF mutual evaluation also observed that "the financial sector, especially the core FIs, demonstrates a good understanding of the primary ML threats from transnational criminal organisations and associated criminal activities, although the recognition of corruption as a main threat is uneven".

41. At the on-site, the Evaluation Team met with representatives of FIU, the Ministry of Finance and Public Credit, the National Banking and Securities Commission (CNBV), PGR, and PFF, to discuss potential challenges to detecting foreign bribery through Mexico's AML/CFT system. The Evaluation Team found that awareness of corruption, including foreign bribery as a predicate offence, may have increased since the FATF mutual evaluation. For instance, the National Money Laundering Risk Assessment will be updated in June 2019, and a special aspect of the update will concern foreign bribery. FIU acknowledged that more guidance is needed on identifying foreign bribery as a predicate offence. FIU also acknowledged that the lack of guidance on foreign bribery could impact on how effectively financial institutions and designated non-financial businesses and professions (DNFBPs) are able to identify and report money laundering transactions where foreign bribery is the predicate offence. CNBV is preparing new guidance on identifying corruption as a predicate offence, in the form of best practices found in international groups, but does not believe that typologies are necessary.

42. One of the largest Mexican financial institutions stated that there are only around 50 banks in Mexico, which makes communication and coordination with the government very easy. However, a representative of the financial institution did not believe that reports are necessarily generating investigations, adding that it does not receive feedback from FIU regarding its reports. Another major financial institution stated that feedback would be particularly useful when it has been requested to freeze a client's assets in the course of a money laundering enforcement action. FIU explains that it provides feedback to financial institutions regarding, for instance, compliance with their STR obligations; however, providing feedback on individual STRs would interfere with ongoing investigations. PGR indicates that it would provide feedback to FIU regarding referrals where foreign bribery is the predicate offence.

Commentary

The lead examiners believe that the awareness of foreign bribery as a predicate offence has been strengthened since Phase 3, but they assess that Recommendation 8 is still only partially implemented because Mexico has still not developed typologies on foreign bribery for use in the AML system. The lead examiners welcome that CNBV is preparing guidance on identifying corruption as a predicate offence based on best practices in international groups. They consider that such guidance might be a satisfactory substitute for foreign bribery typologies, but cannot assess this recommendation as fully implemented until the guidance is disseminated and they are able to evaluate its effectiveness in practice. The lead examiners therefore recommend that Mexico disseminate the guidance as a matter of priority,

and that the WGB follow-up whether it is effective in practice at the time of the Phase 4 two-year written follow-up report.

In addition, the lead examiners recommend that when providing feedback to financial institutions and DNFPIs on compliance with their STR obligations, FIU include general feedback on STRs where foreign bribery is the predicate offence. The FIU could consider developing specific foreign bribery indicators for this purpose, to ensure that all reporting entities understand when and how to file an STR on a transaction involving foreign bribery as a predicate offence, and provide feedback on the use of these indicator.

The lead examiners welcome that the National Money Laundering Risk Assessment will be updated in 2019 to reflect foreign bribery as a predicate offence for money laundering in the chapter on corruption, and recommend that the WGB follow-up on how this is done in practice.

g. Foreign representations

43. In Phase 3, Mexico did not receive any recommendations from the WGB to improve the detection of foreign bribery by its foreign representations, including embassy personnel. However, in view that all four investigations opened since Phase 3 were detected through cases from the media compiled by the OECD Secretariat, it is evident that foreign representations could be much more proactive in canvassing media reports in the countries in which they are situated and reporting them to PGR. This issue is also addressed under A.4.c) of this report.

A.3. Foreign authorities

44. Incoming MLA requests about the bribery of a state's public officials can be an effective source of information for the purpose of detecting foreign bribery by the requested state. However, none of the four investigations opened since Phase 3 was detected in this manner. In addition, during the on-site, representatives of PGR did not provide consistent information about whether they would systematically consider the possibility of initiating investigations of foreign bribery brought to their attention through MLA requests. Following the on-site, PGR informed the Evaluation Team that where an MLA request reveals facts that probably constitute an offence under Mexican law, the General Directorate of International Procedures (DGPI) automatically sends the request to the competent Mexican investigative authority. PGR also confirms that this has happened in practice, citing examples where the competent Mexican authorities have been informed by DGPI of possible crimes of money laundering and bribery.

Commentary

The lead examiners recommend that Mexico take measures to ensure that personnel in charge of dealing with incoming MLA requests within PGR consistently consider the possibility of submitting information to the investigative authorities about foreign bribery brought to their attention by the requesting State, in order for said authority to assess whether to initiate an investigation. .

A.4. The private sector and other non-government sources

a. Accounting and auditing profession

45. In Phase 3, the WGB recommended that Mexico: (i) encourage the auditing profession to develop courses on foreign bribery generally and how to best detect the foreign bribery offence; and (ii) take necessary measures, including amending legislation, to clarify that the reporting obligation overrides any

professional obligations towards clients (Recommendation 11). At the time of Phase 3, the only relevant reporting obligation was a general one on all individuals (private citizens, etc.) to report criminal activity to the competent authorities, pursuant to Article 116 of the CNPP.²² At the end of the Phase 3 review cycle, Recommendation 11 was assessed as not implemented because Mexico did not take additional efforts to engage with the audit profession, and it had not amended its legislation to clearly provide that the reporting obligation overrides any professional obligation.

46. Paragraph X.B. (iii) of the 2009 Recommendation states that Member countries should ‘require’ external auditors to report indications of suspected acts of foreign bribery that they discover to management, and, as, appropriate, to corporate monitoring bodies. Additionally, Paragraph X.B. (v) states that Member countries should ‘consider requiring’ the external auditor to report such acts of bribery to the “competent authorities independent of the company, such as the law enforcement or regulatory authorities”. In March 2018, MPA published Terms of Reference for External Audits of the States and Financial Accounting and Budgetary Information. The Terms of Reference require external auditors to conduct their audits in accordance with the standards set by International Standards on Auditing (ISA) 230, 240, 250, 315 and 330, and to report fraud and similar violations to the General Directorate of External Auditors (DAGE) or to the internal control body of the entity being audited.²³ The Terms of Reference, however, only apply to audits of public and governmental entities, and there is uncertainty as to whether they are mandatory.

47. At the on-site, representatives from auditing and accounting firms as well as the Mexican Institute of Public Accountants (IMCP) stated that they understood their obligation to carry out their work in accordance with all ISAs. However, none of the four cases to be investigated since Phase 3 were detected through reports from external auditors. Indeed, external auditors at the on-site believed that their primary role was not to detect corruption, and that such activity would be better dealt with through corporate whistleblower programs and robust internal controls.

48. According to the Mexican authorities, pursuant to the IMCP Code of Ethics [section 140.7 b) II] accountants ‘may’ disclose confidential information where it pertains to violations of the law. In addition, in 2017, SAT in coordination with ICMP provided on-line courses on bribery that emphasised that the duty of confidentiality does not apply when unlawful activity is involved. IMCP has also organised two workshops on foreign bribery that covered this issue. Nevertheless, all auditing and accounting representatives at the on-site – including IMCP -- believed that the principle of confidentiality prohibited them from reporting suspicions of foreign bribery directly to law enforcement authorities.²⁴ One participant stated that requiring external auditors to do so would have a detrimental effect on the quality of the services they provide and would result in many external auditors simply turning a blind eye to major inconsistencies or suspicions they discover during their auditing activity. On the other hand, the auditing profession did not state that the principle of confidentiality prevents them from reporting foreign bribery suspicions directly to management and, as appropriate, directly to corporate monitoring bodies, as per Paragraph X.B.(iii) of the 2009 Recommendation and consistent with ISA 240.²⁵

²² This obligation is now enshrined in Article 222 CNPP: “Any person who is aware that an act that is likely to constitute a crime has been committed is required to report it to the Public Prosecutor’s Office and, in case of urgency, to any police officer.”

²³ Secretaría de la Función Pública (SFP), *Términos de Referencia para Auditorías Externas de los Estados e Información Financiera Contable y Presupuestaria* (March 2018), paras. 22-23.

²⁴ Participants instead stated that it is for the management of board of directors of the audited entity to determine the best way to deal with such suspicions and carry out their own inquiry, deciding only afterwards whether the allegation should be reported to the competent authorities.

²⁵ ISA 240 states that an auditor may report wrongful conduct directly to the client or communicate it to regulatory and enforcement authorities.

Commentary

The lead examiners welcome the additional engagement between Mexico and the accounting and auditing profession on detecting and preventing foreign bribery through auditing measures. They also welcome the publication by MPA of Terms of Reference for External Audits of the States and Financial Accounting and Budgetary Information. However, because the Terms of Reference only apply to audits of public and governmental entities, the lead examiners assess Recommendation 11 as only partly implemented. They therefore recommend that Mexico take appropriate measures to clarify that, in compliance with Paragraph X.B. (iii) of the 2009 Recommendation, the external auditor who discovers indications of a suspected act of bribery of a foreign public official report this discovery to management and, as appropriate, corporate monitoring bodies. In addition, the lead examiners recommend that Mexico take further measures to ensure that the auditing profession is aware of this requirement.

b. Whistleblowers²⁶

49. In Phase 3 (Recommendation 15), the WGB recommended that Mexico enact specific legislation to ensure that public and private sector employees, and auditors who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities, are protected from discriminatory or disciplinary action. At the end of the Phase 3 evaluation cycle for Mexico, a decree on whistleblowing was to be submitted to Congress. However, since specific legislation was not in force at that time, Recommendation 15 was assessed as not implemented.

i. Legislative framework and Guidelines for companies on private sector whistleblowing

50. Whistleblowers are potentially one of the most important sources of detection of foreign bribery cases. However, none of the investigations opened since Phase 3 were detected through whistleblower reports. Mexico has still not adopted specific legislation on whistleblower protections. Rather, Mexico relies upon a suite of provisions²⁷ mainly dealing with witness protection in the framework of criminal proceedings. These provisions do not provide for specific remedies for victims of retaliation in the workplace, or for sanctions against those who retaliate [Issues regarding fears of retaliation when reporting suspicions of foreign bribery to the relevant law enforcement agencies are discussed under B.3.f) i of this report.]. The Mexican authorities acknowledge that a draft bill entitled Federal Law for the Protection of Whistleblowers and Informants of Acts of Corruption was not published despite hopes in this regard at the end of Phase 3.

51. The absence of specific whistleblower legislation creates a lacunae all the more serious because pursuant to the new provisions on the liability of legal persons for foreign bribery under CNPP and

²⁶ To streamline this report, the discussion on whistleblowers here covers whistleblowing in the private and public sectors.

²⁷ Article 13 of the Federal Law for Protection to Persons who are Involved in Criminal Process provide protection for people at risk due to their direct or indirect participation in a criminal procedure related to serious crimes or when an international treaty expressly establishes the obligation to provide such protection; Article 16, Federal Law Of Protection For Persons Involved In Criminal Procedure, Chapter Xiii; Article 41, Article 42, International Cooperation For The Protection Of Persons; Article 30, Article 67, Law For The Protection Of Human Rights Defenders And Journalists; Articles 137 and 367 CNPP.

GLAR, the existence of whistleblower protections and reporting channels mitigates responsibility [See discussion under C.2.b) ii and C.2.b.iii about the consequences of a failure to comply with due controls within the organisation.].²⁸ The Business Integrity Programme Model, published by MPA, clarifies that to comply with GLAR, a company's integrity policies should provide confidential reporting channels, guarantee the follow-up and resolution of complaints, and protect the rights of reporting persons. Many participants at the on-site from the public and private sectors and civil society highlighted that a consistent legislative framework for whistleblower protection was essential to encourage whistleblowers to speak up and report violations. Indeed, they were unsure how potential whistleblowers could be guaranteed effective protections through company whistleblower programs in the absence of a supporting legislative framework that would protect them in the event of violations of company rules.

ii. *Easily accessible channels to report to the authorities*

52. The 2009 Recommendation states that Member countries should ensure that easily accessible channels are in place to report suspected acts of foreign bribery to law enforcement authorities, in accordance with member countries' legal principles (Paragraph IX i). The Business Integrity Programme Model recommends that "in order to break the cycle of corruption and impunity, companies and public entities and agencies should help disseminate knowledge about where and how to report or denounce a possible act linked to corruption". The Mexican authorities provide several reporting channels to citizens. The Centre for Complaint and Citizen Attention (CEDAC) of PGR, created in 2003, allows all citizens to make reports and complaints about any offence within the competence of PGR in person, in writing, by phone, e-mail or through social network channels²⁹. CEDAC compiles, assesses and monitors the reports and the complaints. The second reporting channel of PGR, the Citizen Support System, known as VISITEL, has been available since January 2018. It provides a channel for reports about suspicious administrative or criminal violations committed by public officials in the performance of their duties. Reports to VISITEL can be anonymous, and made by e-mail or phone. In addition, reports and complaints about allegations of administrative offences committed by federal public officials can also be filed at the General Directorate of Complaints and Investigations of MPA, through the Comprehensive System of Citizen Complaints (SIDECE)³⁰. Most of the participants at the on-site from the private sector and civil society were unaware of these reporting channels.

Commentary

The lead examiners assess Phase 3 Recommendation 15 as not implemented because specific legislation on whistleblower protections in the public and private spheres has still not been enacted. The lead examiners consider that the need for such legislation is now even more pressing than in Phase 3, given that companies are implicitly being encouraged to provide whistleblower channels and protections through compliance measures for the purpose of mitigating responsibility for foreign bribery under CNPP and GLAR. In addition, several government reporting channels have been established, which also implicitly encourage reporting. The lead examiners therefore recommend that Mexico urgently enact specific legislation to protect from discriminatory or disciplinary action public and private sector

²⁸ See section C.2.b)ii. and C.2.c)iii. When determining the administrative responsibility of the legal persons under the article 25 of GLAR and when determining whether a company has failed "to comply with due control in their organisation" under Article 421 of the CNPP on the liability of legal persons. (i.e., "an adequate system allowing to report both within the organisation and towards the competent authorities, as well as disciplinary processes and specific consequences regarding those who act in a manner contrary to internal norms or Mexican legislation").

²⁹ <https://www.gob.mx/pgr/acciones-y-programas/centro-de-denuncia-y-atencion-ciudadana-cedac-25530>

³⁰ <https://www.gob.mx/tramites/ficha/queja-o-denuncia-contra-servidores-publicos-federales/SFP54>

employees that report in good faith and on reasonable grounds suspected acts of foreign bribery to the competent authorities, and raise awareness of this measure.

c. Media

53. The WGB compiles allegations of the bribery of foreign public officials in international media sources. The compilation is limited to French and English, the official languages of the OECD, plus the languages in which the OECD Secretariat staff involved in this task have knowledge, including Spanish and Russian. The Mexican authorities state that the foreign bribery cases that have been under investigation since 2014, the end of the Phase 3 review cycle, were detected through this compilation of media allegations. Mexico did not detect any of these cases independently through media reports, or through any other means.

Commentary

The lead examiners consider that a basic and cost effective source of allegations of the bribery of foreign public officials is the international media. They therefore recommend that Mexico urgently adopt appropriate measures for this purpose, such as by tasking embassies with tracking and, where needed, translating local media reports that contain allegations of foreign bribery by Mexican companies and individuals and referring them to PGR through the relevant channels.

B. ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE

B.1. Overview of Outstanding Phase 3 Recommendations and New Enforcement Issues

54. At the end of Mexico's Phase 3 review cycle in 2014, Mexico had not fully implemented WGB recommendations regarding the enforcement of the foreign bribery and related offences in the following areas: application of the foreign bribery offence to bribes transferred directly to third parties; compilation of statistics on foreign bribery enforcement; and priority and level of resources for foreign bribery enforcement. Mexico had also not fully implemented Phase 3 recommendations on sanctions in the following areas: foreign bribery where the offender does not have a net income at the time of the offence, and sanctions for books and records offences. This part of the report assesses progress in these areas, as well as the following: institutional and legislative changes since Phase 3; coordination between law enforcement authorities; judicial training; international legal assistance; and independence of the law enforcement authorities. Since Recommendation 6(a) to give greater priority to the criminal enforcement of the foreign bribery offence, and take steps to ensure that the law enforcement authorities seriously investigate all allegations of foreign bribery, is an overarching question, a commentary in this regard is provided at the end of this part of the report.

B.2. Legal issue regarding effectiveness of foreign bribery offence

55. In Phase 3, the WGB recommended that Mexico amend Article 222bis of the CPF to cover bribes offered, promised or given to a third party beneficiary regardless if s/he is determined by a foreign public official (Recommendation 1). At that time Article 222bis covered bribes offered, promised or given "to a foreign public official or a third party determined by him". Participants in the Phase 3 on-site were divided about whether the case was covered where a bribe was transferred directly to a third party with the direction or acquiescence of the foreign public official. By the end of Mexico's Phase 3 review cycle, a draft amendment to Article 222bis had been submitted to Congress (March 2014), but had not been adopted. As a result, the WGB assessed Recommendation 1 as not implemented.

56. The amendment to Article 222bis was adopted in March 2015, and now covers bribes offered, promised or given to a foreign public official "for his or her benefit or that of a third party". This formulation corresponds to the formulation for Mexico's domestic bribery offence. However, jurisprudence has not yet been generated showing that under this formulation, in practice the case is covered where the bribe is transferred directly to a third party according to the direction or acquiescence of the foreign public official.

Commentary

The lead examiners assess that Recommendation 1 is now fully implemented. However, given the importance of the coverage of the foreign bribery offences in respect of third parties, the lead examiners recommend following up implementation of the amendment to Article 222bis, to verify whether in practice the case is covered where a bribe is transferred directly to a third party, according to the direction or acquiescence of the foreign public official.

B.3. Law enforcement resources and expertise

a. Foreign bribery enforcement results

i. New judicial statistical collection and publication'

57. In Phase 3, the WGB recommended that Mexico maintain statistics on the number of investigations, prosecutions, convictions and sanctions of natural and legal persons for the offences of domestic bribery, foreign bribery, and false accounting (Recommendation 10). At the stage of the Phase 3 two-year written follow-up report, the WGB found that statistics on the number of prosecutions, convictions and sanctions in bribery cases were unavailable. Mexico could not provide enforcement statistics on the main false accounting offences, and incomplete data was provided on domestic bribery cases. Finally, it was not possible to assess the adequacy of sanctions in practice for domestic bribery because Mexico could not provide statistics on the actual fines imposed. Overall, the WGB found the statistics provided by Mexico during the written follow-up report to be incomplete. As a result, Recommendation 10 was considered as partially implemented at the end of the Phase 3 review cycle.

58. Since Phase 3, PGR created a Basic Statistic Module that allows general information about a case to be included and updated over time. The General Direction of Judicial Statistics of the Federal Judiciary Council (CJF) provided statistics on the number of investigations, prosecutions, convictions and sanctions for natural and legal persons for the offences of domestic bribery, foreign bribery, and false accounting, which are presented in Annex 4 to this report. The methodology developed by CJF includes both natural and legal persons.

Commentary

The lead examiners welcome the steps taken by Mexico regarding its new judicial statistical collection and publication, and therefore now consider Phase 3 Recommendation 10 as fully implemented. They also consider that the comprehensiveness of the compilation prepared by CJF a positive achievement, which could help drive more effective enforcement of the foreign bribery offence.

ii. Foreign bribery enforcement results since Phase 3

Investigations of foreign bribery in specific cases

59. As stated in the Introduction to this report, to date Mexico has not prosecuted a case of the bribery of foreign public officials. Since Phase 3, it has had one investigation of a legal person in 2015, which is no longer in progress and did not lead to prosecution, and three investigations are ongoing against legal persons.

60. As described in Part A of this report on Detection, all four foreign bribery investigations initiated since Phase 3 were detected through the OECD Secretariat's compilation of allegations of the bribery of foreign public officials in international media sources. None of these cases was detected independently by the Mexican authorities through investigative techniques, intelligence gathering, interagency coordination, and media sources or otherwise. In Part A of this report, the lead examiners recommend that Mexico urgently designate resources for the purpose of independently detecting foreign bribery cases through international media sources. They also make various recommendations to proactively detect foreign bribery cases through measures including: Official Export Credit Support, tax audits by SAT, the local state law enforcement authorities, and the AML system.

61. Within one week of the 'notitia criminalis' (a notice conveyed to the Mexican prosecution authorities that a crime is alleged to have occurred the investigations initiated since Phase 3 were opened,

and background information was sought on the alleged perpetrators. Within just over two weeks, international legal assistance requests were sent to the foreign public officials' countries. The countries that have not responded to the requests for legal assistance have been reminded at least once. In one investigation, which was initiated in 2013, the case is temporarily archived while waiting for MLA. Of the three ongoing investigations opened in 2018, one has been suspended while waiting for the response to its request for legal assistance. In the other two, one in which the response to the request for legal assistance has not yet been received, the Evaluation Team is convinced that proactive investigation steps are being conducted in Mexico. However, the exact nature of these steps cannot be disclosed in this report as the investigations are ongoing.

Commentary

The lead examiners believe that the Mexican authorities are conducting proactive investigative measures in two of the four ongoing investigations (of which one has been temporarily archived while waiting for MLA, and one has been suspended while waiting for MLA). The lead examiners cannot determine whether sufficiently proactive investigative steps were taken in the fourth investigation that was concluded without prosecution in 2015. The lead examiners recommend following up the four ongoing cases and any other new investigations at the time of Mexico's Phase 4 two-year written follow-up report, in order to continue to assess whether sufficiently proactive investigative measures are being taken.

Investigations of foreign bribery in general

62. Since it is not possible for Mexico to disclose confidential information about specific investigations, the Evaluation Team discussed more generally with the law enforcement authorities how they investigate foreign bribery cases. During the on-site, representatives of PGR and other law enforcement bodies in Mexico stated that they carry out pro-active techniques to investigate foreign bribery. Representatives of PGR and MPA stated that they have concluded information-sharing agreements and memoranda of understanding with the fiscal authorities (SAT, etc.) in order to gain access to important sources of intelligence (e.g., taxpayer declarations and asset declarations of public officials). Article 131(ix) CNPP provides PGR with the authority to request reports and documents from other authorities for the purpose of evidence collection. Additionally, Article 215 CNPP provides that individuals and public officials who do not provide information requested by PGR may be fined. During the on-site, PGR did not elaborate on how often such requests for information have been made or whether they yielded actionable leads. PGR stated that its UEDE subdivision regularly collects information on foreign bribery allegations from overseas attachés and diplomatic missions.

63. Since Phase 3 and the introduction of administrative liability of both legal and natural persons [See B.3.b) iii and C.2.c) of this report for more information.], MPA has also been provided with some investigative authority to help it carry out its administrative enforcement mandate. Specifically, MPA provides advice when requested and also contributes to the investigations carried out by Internal Control Bodies (OIC) and Units of Liabilities of the Productive Enterprises of the State (UREPE). MPA defines the lines of investigation, in coordination with the requesting area.

64. The Evaluation Team is uncertain about the extent to which the abovementioned investigative techniques and capabilities are actually employed by Mexican law enforcement authorities. The low levels of detection and enforcement in Mexico might result from infrequent application of available investigative measures. During the on-site, however, representatives of MPA and PGR often referred to a tool that may help remedy this issue: a forthcoming (and now adopted) Anti-Bribery Protocol [See also B.3.b) iv] that MPA had been developing since October 2017. Mexico stated that the Protocol will

“provide new ways to detect and investigate foreign bribery” (The Protocol is discussed throughout this report.).

65. PGR has a significant number of investigative tools at its disposal. As stated above, and in the Phase 3 Report,³¹ it has ample authority to request documents from different law enforcement and financial entities (CNBV, Ministry of Finance and Public Credit, etc.). Prosecutors also have the power to apply to the courts for a warrant to enter and search premises [CFPP, Articles 2(iii) and 61-69; CNPP, Articles 252 and 282-289], to interview witnesses in conjunction with the Federal Ministerial Police [CNPP, Article 132(x); LPF, Article 8(xxiii)], seize and obtain evidence and carry out wiretapping (CNPP, Articles 251-252). While some of these investigative techniques require judicial authorisation, many do not (See Article 251 CNPP, which includes controlled deliveries, witness interviews, inspection of vehicles, and undercover operations.) and can be applied directly by PGR and the police. Article 131(vii) CNPP provides that the Federal Ministerial Police shall assist the agent of the Public Prosecutor in carrying out investigative acts for the purpose of clarifying the facts of the crime and analysing evidence that is obtained, thereby strengthening the overall investigative capacity available to PGR, and more importantly, SIU.

Commentary

The lead examiners assess that Mexico has at its disposal adequate tools to conduct thorough investigations of foreign bribery cases, and recommend that Mexico apply the full range of its tools when appropriate and feasible, including while waiting for responses to MLA requests from abroad.

iii. Enforcement of books and records offences

66. The detection of foreign bribery through books and records is discussed under A.4a) of this report. This part of the report discusses Mexico’s implementation of Phase 3 Recommendation 9, which recommends that Mexico amend its legislation to increase the maximum sanctions available for false accounting offences related to the bribery of foreign public officials. It was assessed as not implemented at the end of the Phase 3 review cycle. In Phase 3, the WGB assessed that the maximum fines for failing to issue or issuing tax receipts with false information under the Federal Tax Code (CFF) [MXN 69 000 (USD 3676 or EUR 3156)], and the fines for failing to keep accounts and making inaccurate accounting entries under the Commercial Code [MXN 4270 to 10 670 (USD 227 to 568. or EUR 195 to 488)], were not effective, proportionate and dissuasive, and therefore did not comply with Article 8.2 of the Convention.

67. Since Phase 3, Mexico has increased the sanctions under Article 83 of CFF for certain violations, including failing to maintain proper accounting books, making incomplete or inaccurate entries, and failing to issue or issuing tax receipts with false information. The new maximum fine for these violations is MXN 75 890. This increase is so minimal, that, in fact, it represents a decrease when adjusted for inflation (EUR 3260 compared to EUR 3993 at the time of Phase 3). Article 83 CFF applies to natural

³¹ In addition, see paragraph 52 of the Phase 3 Report on Mexico, which states that the Mexican authorities do not have difficulties obtaining bank information pursuant to Article 117 of the Credit Institutions Act. Paragraph 53 of the Phase 3 Report further states that Article 141bis CNPP permits a judge to issue an order to freeze a bank account upon a prosecutor’s request. Article 181 CNPP and Article 40 CPF allow a judge to order the seizure of instruments, objects and the proceeds of crime.

and legal persons, and in practice, between 2015 and 2017, sanctions were imposed on 50 natural persons and 39 legal persons.

68. On the other hand, Mexico has made significant progress increasing the sanctions for books and records offences under Article 111 CFF and Article 243 CPF, which both provide for criminal liability for various offences, including falsification of tax documents, duplicating accounting records, and hiding, altering or destroying accounting records, and counterfeiting. The length of prison sentences under Article 111 CFF ranges from three months to three years, and under 243 CPF from four to eight years, and 200 to 300 fine days. Under Article 243 CPF, the sanctions are more substantial for public documents (six months to five years imprisonment, and 180 to 360 fine days). The Mexican authorities explain that Article 111 CFF may be applied to legal persons, but not Article 243 CPF. Between 2015 and 2017, 139 sanctions were imposed under Article 111 CFF, and 46 were imposed under Article 243 CPF. And between 2015 and 2017, more than 65% and 56% of the sanctions under Article 111 CFF and Article 243 CPF, respectively, were imposed on the legal representatives of legal persons.

69. Information is not available on whether any of the sanctions under Articles 83 CFF, 111 CFF or 243 CPF have been imposed for the commission of these books and records offences for the purpose of bribing foreign public officials or hiding such bribery.

Commentary

The lead examiners assess that Mexico has fully implemented Recommendation 9 by increasing the sanctions for books and records offences under CFF and CPF. However, the lead examiners recommend following up the sanctions for these offences, to determine whether, in practice, they are effective, proportionate and dissuasive, as required by the Convention.

iv. Confiscation upon conviction for foreign bribery

70. The use of confiscation as a sanction upon conviction for the bribery of foreign public officials is discussed under C.2.b) vii of this report.

v. Sanctions for foreign bribery in the absence of information about net income

71. In Phase 3, the WGB noted that pecuniary sanctions for offenders were based on the offender's net daily income at the time of the offence, but that the sanctions for foreign bribery applicable under Article 29 CPF for offenders with no identifiable income would be determined based on the statutory minimum wage. Because such a calculation did not take into account an offender's means to pay a larger fine or other similar factors that would allow for adequate sanctions to be imposed, the WGB recommended that Mexico establish a system allowing a court to impose an appropriate pecuniary fine where an offender did not have a net income at the time of the offence or where the net income could not be ascertained (Recommendation 4). By the end of the Phase 3 review cycle, Mexico had only partially implemented Recommendation 4. Although the 2012 Federal Law on Public Procurement allowed the Court to consider various circumstances in the case (e.g., seriousness of the conduct, economic status of the accused, background and participation of the accused), Mexico had not addressed the issue under CPF.

72. Since Phase 3, Article 29 CPF has been amended to allow offenders to carry out community service instead of paying a fine if unable to pay the fine or can only pay a portion of the amount. Pursuant to Article 422 CNPP, additional penalties may be imposed on a legal person, including forfeiture of instruments, objects or proceeds of crime, publication of the sentence, suspension of activities and dissolution. In addition, Mexico states that general principles governing penalties – including Article 22 CPEUM - stipulate that all sanctions must be proportional to and consistent with the

nature of the offence and the conduct of the accused. CJF considers that the pecuniary sanctions under Article 29 CPF are effective, proportionate and dissuasive, as required by Article 3 of the Convention, because when net income is not determined the judicial authority has the power to apply a pecuniary sanction based on the minimum wage. But, the Evaluation Team underlines that the situation still remains that offenders with no identifiable income would only be subject to a fine the equivalent of the daily minimum wage in the place where the crime was committed. In addition, Mexico has not provided any case law or statistics that would shed further light on the actual pecuniary sanctions imposed for domestic bribery where the convicted person's net income at the time was not ascertainable. Article 3 of the Convention provides that bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties.

Commentary

The lead examiners assess that Phase 3 Recommendation 4 remains only partially implemented, and thus recommend that as a matter of priority, Mexico establish a system allowing a court to impose penalties for foreign bribery that are effective, proportionate and dissuasive where an offender did not have a net income at the time of the offence or where the net income could not be ascertained.

b. Institutional changes since Phase 3

73. Mexico has undertaken important anti-corruption reforms since its Phase 3 Written Follow-Up Report in 2014. The most significant changes include the establishment of a National Anti-Corruption System (NACS), the enactment of the General Law on Administrative Responsibility (GLAR) applicable to public servants, legal persons, and other natural persons,³² and the establishment of a technically autonomous anti-corruption prosecutorial body within PGR known as the Special Prosecutor's Office for Corruption-Related Offences (FEMDHC).

i. National Anti-Corruption System

74. NACS is the result of the Pact for Mexico,³³ and was established in May 2015, pursuant to constitutional reform. NACS is overseen by MPA and has several objectives, including to: (i) serve as a coordination body between authorities of all government levels (federal, state, local) involved in the prevention, detection and punishment of corruption (both administrative and criminal offences); (ii) ensure the uniformity, harmony and integration of policies, programmes, and mandates of government bodies involved in the fight against corruption; (iii) ensure the proper management of public funds and resources through enhanced audits at the state and federal levels; and, (iv) reform the administrative liability regime applicable to natural and legal persons for certain acts of corruption. NACS also increased the level of administrative sanctions for natural³⁴ and legal persons³⁵ who commit acts of corruption under GLAR. During the on-site, representatives of MPA and PGR stated that NACS increases integrity and transparency by allowing citizens to monitor how local and state entities spend public funds, requiring civil servants to publicly declare all assets and possible conflicts of interest, and also allowing citizens to participate in the process through a Citizen Participation Committee.

³² <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA.pdf>

³³ <http://www.as-coa.org/articles/explainer-what-pacto-por-m%C3%A9xico>

³⁴ With regard to natural persons, Article 81(I) GLAR allows for the imposition of fines up to twice the amount of the benefit obtained (or up to approximately USD 597 000), preclusion from participating in public procurements and projects (for a maximum of eight years) and liability for any damages incurred by any affected public entities or governments.

³⁵ With regard to legal persons, Article 81(II) GLAR allows for the imposition of fines up to twice the benefit obtained, or up to approximately USD 5 970 000. The provision allows for sanctions such as debarment (preclusion from public procurement for a period of up to 10 years), damages, suspension (up to 3 years), and dissolution.

75. The Mexican authorities stated that PGR prosecutors are allowed to request necessary information and evidence from other entities such as SAT and CNBV. These requests can be carried out under procedures established by CNPP and GLAR. However, during the on-site, coordination between these entities on foreign bribery cases (both for the purpose of detection and enforcement of foreign bribery) still appeared to be lacking. (See discussion in this report under A. Detection.) This issue was also highlighted in FATF's recent Mutual Evaluation Report on Mexico.³⁶ Additionally, private sector representatives who attended the on-site stated that Mexican authorities have not done enough to raise awareness generally about the new system and that several states have yet to set up their NACS bodies. Civil society organisations echoed these sentiments, highlighting the lack of enforcement of relevant anti-corruption laws and a significant need for awareness-raising regarding the laws and the role they can play in fighting corruption.

76. The Mexican government stated that eventually coordination will be enhanced by the mechanism established by the Coordination Committee of the NACS. To move this process along, MPA was drafting an Anti-Bribery Protocol (The Protocol is discussed throughout this report.), which it explained would establish mechanisms to optimise the coordination and exchange of information among the authorities in charge of preventing, detecting, investigating, and sanctioning foreign bribery. Following the on-site, the Protocol was adopted [See discussion under B.3.b iv.] In addition, the International Affairs and Legal Attachés Offices (CAIA) of the Legal Deputy General's Office have agreed to analyse whether the collaboration agreement between PGR, the Attorney General of Military Justice and the Attorney General's Offices of the Federal Entities provides an adequate legal framework to effectively coordinate between themselves in foreign bribery cases.

77. Furthermore, only two-thirds of the state-level NACS bodies/systems were working at the time of the on-site visit. The process still needs significant time until NACS is complete and fully functional. To address this situation, Mexico is working with the United Nations Office of Drugs and Crime (UNODC) to improve the coordination process at the state level, based on Mexico's peer-review on implementation of the United Nations Convention against Corruption (UNCAC).

ii. *Creation of Special Anti-Corruption Prosecutor*

78. The Special Prosecutor's Office for Corruption-Related Offences (FEMDHC)³⁷ was established in March 2014 pursuant to Agreement A/011/14 of the Attorney General, which was later amended by Agreement A/029/17 of the Attorney General. FEMDHC acts as an administrative wing of PGR, and is to be headed by an independent and autonomous Special Anti-Corruption Prosecutor. However, four years after being established, FEMDHC has not yet become operational. This is because Article 1 of Agreement will only enter into force once a Special Anti-Corruption Prosecutor is appointed by the Mexican Senate to lead the office. The failure to appoint a Special Anti-Corruption Prosecutor has garnered negative attention both in and outside of Mexico.³⁸ It has also resulted in high levels of frustration in Mexico, even prompting members of the Accompaniment Committee³⁹ in charge of proposing candidates for the Special Anti-Corruption Prosecutor post, to resign from their roles. In

³⁶ [Financial Action Task Force - Mexico Mutual Evaluation Report](#) (January 2018, paras. 16-17, 115).

³⁷ See [Agreement A/011/14 of the Attorney General](#), later amended by [Agreement A/029/17 of the Attorney General](#).

³⁸ See New York Times (2 December 2017), "Mexico's Government is Blocking its Own Anti-Corruption drive, Commissioners Say" (<https://www.nytimes.com/2017/12/02/world/americas/mexico-corruption-commission.html>); *Milenio Política* (20 April 2018), "Preocupante que no haya fiscales: Claudia Corichi" (http://www.milenio.com/politica/claudia-corichi-fiscales-general-anticorrupcion_0_1160884160.html);

³⁹ Network for Integrity, Mexico's National Anti-Corruption System (8 March 2017), available at <http://www.networkforintegrity.org/mexicos-national-anti-corruption-system/> (The Citizen Participation Committee is made up of five private individuals appointed by the Senate who, among other things, liaise with non-governmental organisations for purposes of promoting the SNA and ensuring its proper functioning).

leaving their posts, the Committee members cited the Senate's inactivity and unwillingness to appoint someone to the role.⁴⁰

iii. *Establishment of an Administrative Liability Regime for Acts of Corruption and the Creation of a Special Administrative Court*

79. In July 2016, Mexico enacted or reformed several pieces of secondary legislation implementing NACS.⁴¹ The most important for the purposes of this evaluation is GLAR, which establishes the framework for holding natural and legal persons liable for non-serious and serious administrative violations, including corruption. However, the Evaluation Team is not convinced that GLAR would apply to foreign bribery in an effective manner (See discussion under C.2.c of this report including Mexico's point of view.). Moreover, the enforcement body responsible for imposing administrative liability on public servants and private entities for serious violations (including corruption)⁴² is a special chamber of the Federal Court of Administrative Justice (TFJA). However, TFJA will only begin operating once three magistrates have been appointed by Mexico's President and subsequently confirmed by a majority vote in the Senate. During the on-site, a representative of TFJA stated that the President had submitted the names of several candidates to the Senate in April 2017, but the Senate had taken no action. Mexico stated that a procedural agreement (Agreement SS/10/2017) provides for the functioning of a 'Thirteenth Chamber' while the confirmation of the TFJA's magistrates takes place. The Thirteenth Chamber has not yet issued a finding of serious administrative liability.

iv. *Creation of an Anti-Bribery Protocol by the Ministry of Public Administration*⁴³

80. Before and during the on-site, MPA representatives stated that they were in the process of preparing an Anti-Bribery Protocol, which is discussed throughout this report. The Protocol's aim would be to "optimise the mechanisms to deter, detect, investigate and sanction foreign bribery in all of its forms, and to enhance coordination between federal authorities in investigative matters." Representatives from PGR and MPA stated that they have met on several occasions to agree on the "content as well as procedural and methodological requirements for the drafting of the Protocol" and that other entities have been involved in the process.⁴⁴ In March 2018, PGR and MPA held a workshop with international experts from the United States, the United Kingdom, and France, in order to learn from their respective experiences on foreign bribery cases and to incorporate international best practices into the Protocol.⁴⁵

81. Following the on-site, the final version of the Protocol was presented to the Coordinating Committee of NACS during its Third Ordinary Session 2018, which was held on 13 September 2018. An

⁴⁰ See: Radio Formula (12 July 2017), "Renuncia comité ciudadano porque Senado no designo a fiscal anticorrupción" (<http://www.radioformula.com.mx/notas.asp?Idn=698078&idFC=2017>).

⁴¹ Four pieces of new legislation include: (1) General Law of the National Anti-Corruption System; (2) General Law of Administrative Responsibilities; (3) Federal Court of Administrative Justice Organic Law, and (4) the Mexican Federation's Accounting and Taxation Law. Legislation that was reviewed includes: (1) Federal Public Administration Organic Law; (2) Federal Prosecutor's Office Organic Law, and (3) Federal Penal Code.

⁴² Non-serious offences generally relate to the day-to-day activities of public officials, while serious offences include offences such as bribery, influence peddling, fraud, misappropriation of public resources or funds, and so forth.

⁴³ The full name is: 'Anti-Bribery Protocol: Protocol to Deter, Identify, Investigate and Penalize International Bribery'.

⁴⁴ According to Mexico's written submissions, such institutions include the Ministry of Foreign Affairs, the Ministry of Economy, the Tax Administration Service, the Financial Intelligence Unit, the Office of the Federal Tax Prosecutor, the National Banking and Securities Commission, and the National Foreign Commerce Bank. The lead examiners did not meet with all of the representatives of these institutions to confirm the extent to which they participated in the drafting of the Anti-Bribery Protocol.

⁴⁵ See: El Diario 24 Horas (21 March 2018), "México, EU, Francia y Reino Unido alistan protocolo contra cohecho" (<http://www.24-horas.mx/2018/03/21/mexico-eu-francia-reino-unido-alistan-protocolo-contra-cohecho/>).

English translation of the Protocol was sent to the Evaluation Team on 2 October 2018. The Mexican authorities report that the Protocol was unanimously adopted by the Coordinating Committee, and approved its use for the detection, investigation, prosecution and sanctioning of international bribery. The Mexican authorities explain further that the Protocol provides guidance for the law enforcement authorities on international bribery, including typologies, and how to coordinate and share information between the relevant authorities. The Coordinating Committee's Session also recommended the use of cooperation agreements for the exchange of information and training programmes on the Protocol by the relevant authorities.

82. Since the Evaluation Team received the English translation of the Protocol one week before Mexico's evaluation by the WGB, it did not have adequate time to thoroughly review and assess its contents. The Protocol is 120 pages, including annexes. It provides background information on the legal system for combating international bribery, including the offences of 'active' and 'passive' international bribery. It also provides procedures on the prevention, detection, and investigation of international bribery. It describes the authorities involved in, and procedures for, international cooperation. On a quick review, it covers many of the areas of detection that the Evaluation Team commented on under Part A of this Report. It also provides detailed information for law enforcement authorities on how to investigate specific bribery methodologies and build a case for prosecution. The methodologies cover modes of payment, use of intermediaries, including multiple intermediaries, and how to determine if a particular advantage was 'undue' pursuant to the Convention. In addition, the Protocol provides a table that indicates all the relevant information that may be held by each relevant domestic authority, for the purpose of building a case, including, SAT, FIU, CNBV, MFA, Secretariat of Economy, and Secretariat of Civil Service.

Commentary

The lead examiners commend Mexico for launching the following four significant actions, which should have an important impact on combating foreign bribery: 1) National Anti-Corruption System (NACS); 2) Special Anti-Corruption Prosecutor; 3) Administrative Liability Regime for Corruption Acts and a Special Administrative Court; and 4) Anti-Bribery Protocol. However, NACS still needs significant time to be fully functional, the Special Anti-Corruption Prosecutor's Office has not become operational four years after being established, the Special Administrative Court for enforcing GLAR has not become operational and the Anti-Bribery Protocol was adopted only in September 2018. The lead examiners therefor recommend that Mexico urgently complete the steps needed for all the components of the new system to become fully functional. In addition, as already stated in the Introduction to this report, the lead examiners recommend that, at the time of the two year written Phase 4 report, the WGB consider the status of reforms and whether a Phase 4bis to assess implementation would be appropriate.

c. Level and specialisation of resources

83. In Phase 3, the WGB recommended that Mexico take further steps to ensure that adequate human and financial resources are devoted to investigating and prosecuting foreign bribery, including by providing SPOCC prosecutors and SIU investigators with adequate training in foreign bribery and complex financial investigations [Recommendation 6(b)]. At the time of Phase 3, the Special Prosecutor's Office for the Combat against Corruption within the Federal Public Service (SPOCC),⁴⁶ which was attached to the Specialised Investigation Unit of Crimes Perpetrated by Public Officials and

⁴⁶ Created through Agreement no. A/107/04 of the Attorney General.

against the Administration of Justice (SIU),⁴⁷ was responsible for investigating and prosecuting foreign bribery cases.⁴⁸ The WGB found that SPOCC and SIU did not have sufficient human and financial resources to handle their caseload, in part because they were not just responsible for foreign bribery cases.⁴⁹ The WGB also highlighted that SPOCC and SIU might have been hampered by a lack of experience and expertise, particularly in criminal corporate and financial investigations. At the conclusion of the Phase 3 review cycle, the WGB assessed Recommendation 6(b) as partially implemented. PGR had provided bribery-related training to SPOCC, SIU and the General Direction of Extradition. In addition, a decree entered into force in March 2014, which replaced PGR with the Office of the Attorney General of the Republic (FGR) and a new SPOCC with increased staff. However, Mexico was not able to provide information on the new FGR's available financial and human resources, who would head the body, and when it would be operational.

i. Investigation and prosecution

84. Since Phase 3, PGR has undergone some significant structural changes with respect to its units responsible for investigating foreign bribery offences. The most notable change occurred in early 2014, when PGR disbanded SPOCC and replaced it with FEMDHC⁵⁰ According to Agreement A/011/14 of the Attorney General, once it is operational, FEMDHC will have jurisdiction over federal corruption crimes as well as any other criminal offences committed by public servants in the exercise of their functions (e.g., embezzlement, illicit enrichment, abuse of power, intimidation, influence peddling, and acts committed against the administration of justice).⁵¹ FEMDHC will also have its own specialised investigation unit, which is also the SIU. According to Article 5 of the Transitory Provision in Agreement A/011/14, all of the SIU's resources (human, material, financial) are to be transferred to FEMDHC.⁵² FEMDHC will have the authority to require federal, state and municipal entities to provide it with information in the context of its investigations. Requested authorities may not refuse FEMDHC's requests for information even on grounds of fiduciary or bank secrecy.

85. Mexico states that PGR's Special Unit for Offences Committed Abroad (UEDE) plays an important role in the fight against foreign bribery. Specifically, UEDE, which is part of PGR's Deputy Attorney General and International Affairs,⁵³ is empowered to deal with the crimes referred to in Article 4 CPF⁵⁴ which includes foreign bribery. UEDE receives information involving criminal allegations from PGR's liaison offices abroad as well as legal attachés and regional attachés of overseas Mexican diplomatic missions.

⁴⁷ SIU will be part of FEMDHC.

⁴⁸ See [Phase 3 Report](#) – Mexico, para. 40 (“SPOCC and SIU are responsible for foreign bribery cases that are technically complex, occur in more than one state, or involve over roughly MXN 1 million (approximately EUR 45 737 or USD 53 259) in bribes. Foreign bribery cases that do not meet these criteria are handled by the PGR’s 32 sub-national offices in the Mexican states and the Mexico City Federal District.”).

⁴⁹ Phase 3 Report – Mexico, para. 46 (SIU is “responsible for investigating any crime – not just corruption – committed by a public official. As a result, its caseload in recent years has included non-economic crimes, such as violent and sexual offences.”).

⁵⁰ See [Agreement A/011/14 of the Attorney General](#), later amended by [Agreement A/029/17 of the Attorney General](#).

⁵¹ See Articles 212-227 CPF. However, Article 21 of the PGR's Organic Law and PGR Resolution A/029/17 provide for one exception: FEMDHC does not have jurisdiction to prosecute corruption offences committed by the PGR's own public servants (the entity responsible for investigating such offences is the *Visitaduría General* of the PGR).

⁵² “5º - *Los recursos humanos, materiales y financieros con los que cuenta la Unidad Especializada en Investigación de Delitos Cometidos por Servidores Públicos y contra la Administración de Justicia serán transferidos a la Fiscalía Especializada en materia de Delitos relacionados con Hechos de Corrupción.*”

⁵³ *Subprocuraduría Jurídica y de asuntos internacionales*.

⁵⁴ All crimes committed in foreign territory by a Mexican against Mexicans or against foreigners, or by a foreigner against Mexicans.

86. As stated above, four years since its establishment by Agreement of the Attorney General, FEMDHC has not become operational.⁵⁵ In the meantime, FEMDHC's predecessor, SPOCC, has been disbanded; however, the Mexican authorities explain that its work continues to be carried out by SIU (described above). Representatives of PGR stated that PGR is giving timely attention and follow-up to the crime of foreign bribery and other federal corruption offenses by actively assisting SIU. Therefore, this new, albeit temporary, arrangement means that SIU has been serving as the primary body responsible for enforcement of the foreign bribery offence since 2014, and will continue to do so until FEMDHC finally becomes operational.

87. Data provided by the Mexican authorities show that SIU's budget has increased steadily since 2014. At the time of writing, the approved budget of SIU for 2018 was MXN 37 476 097 (approximately EUR 1 577 569). As of 10 September 2018, SIU had a total staff of 95 public officials, which include 39 PGR agents, nine ministerial officials that assist the agents of the PGR, and 47 administrative public officials. During the on-site, an SIU representative stated that SIU is in dire need of more resources and support, including additional prosecutors. This was echoed by representatives of Mexican civil society. The resource levels have decreased since Phase 3, when SIU had 109 staff (44 investigators and 65 administrative support positions).

88. Mexico states that among SIU and UEDE staff, 55 public officials are in charge of investigating foreign bribery. PGR does not provide a specific roadmap for its foreign bribery investigation strategy for the transition period during which FEMDHC is not in operation and SPOCC is no longer active. Moreover, until 2017, there was a steady and sharp decline in the number of preliminary inquiries and investigations opened by SIU since 2014: 379 in 2014, 291 in 2015, 265 in 2016, and 355 in 2017.

ii. Expertise and training

89. During the on-site, several representatives of the private sector and civil society raised significant concerns regarding the expertise of PGR and other enforcement entities to investigate and prosecute foreign bribery. In particular, they highlighted that criminal cases are often poorly investigated and presented in court, resulting in low levels of enforcement and an inability to deter criminal activity.

90. Mexico provides the following examples of relevant training activities that have been provided since Phase 3: (i) trainings for SIU officials on the new accusatory criminal system in Mexico and relevant reforms of the Federal Law for Protection of Persons in Criminal Proceedings (March 2017); (ii) training on how to use the backlog prevention programme for preliminary inquiries (which allows for the filtering or archiving of certain types of inquiries) and avoiding procedural obstacles such as statutes of limitations issues; (iii) training on investigative techniques relating to foreign bribery and corruption offences generally offered by representatives of the United States Department of Justice and the Federal Bureau of Investigation (August 2016 and November 2016); (v) general training offered by PGR on the fight against corruption; (vi) training conducted by the Office of the Inspector General of the NACS (September and October 2017); and, (vii) a training on International Best Practices and their Application in Mexico [Intelligence, Investigation, and Prosecution in Cases of Corruption, which was offered by the United Kingdom's Embassy in Mexico and the International Governance & Risk Institute, and featured lectures from attorneys from the United Kingdom's Serious Fraud Office (2-4 May 2017)].

91. It is clear from the above that investigative and prosecutorial entities in Mexico have had access to awareness-raising and training opportunities relating to foreign bribery. However, some of the training sessions do not directly relate to foreign bribery investigations and prosecutions, while others consist of capacity-building efforts that other countries have carried out. While such training opportunities are

⁵⁵ The first transitory provision in Agreement A/011/14 of the Attorney General provides that: "The present agreement will enter into force on the date that the Chamber of Senators confirms the appointment of the Head of the Special Prosecutor's Office for Corruption-related Offences [...]".

welcome, relying on other parties to the Convention to provide training may not be sustainable in the long-run, and might not effectively address specific features of the Mexican legal system.

Commentary

The lead examiners believe that SIU does not employ sufficient human and financial resources to effectively handle foreign bribery cases involving complex financial investigations. It is considered that the extremely low level of resources have likely contributed to the low level of foreign bribery enforcement activity in Mexico. The lead examiners therefore assess that Recommendation 6(b) continues to be partially implemented, and recommend that as a matter of priority, Mexico take concrete steps to ensure adequate human and financial resources for FEMDHC once the Prosecutor is appointed, including sustainable and targeted training activities for its public officials, in order to investigate and prosecute foreign bribery cases. In addition, the lead examiners recommend that Mexico take immediate steps to ensure adequate human and financial resources for investigating and prosecuting foreign bribery cases during the interim while waiting for FEMDHC to become operational, and in particular for the four ongoing investigations.

iii. **Judiciary**

92. Mexico states that the Federal Judiciary Council (CJF) recently updated its training programmes for federal and state judges in Mexico. Foreign bribery is one of the primary focuses of the new CJF training programme, which will include courses on the criminal justice system that will cover several topics including: Mexico's new accusatory penal system, the right of individuals to seek specific constitutional protections, and the foreign bribery offence. Additional courses include an introduction to NACS and an online course for judges on general principles pertaining to asset seizure and confiscation.⁵⁶ Additionally, the National Institute of Criminal Sciences (INACIPE) offers a training course entitled the Criminal Liability of Companies.⁵⁷ Following the on-site, CJF informed the Evaluation Team that as part of this year's training programme, it will deliver via the Federal Judiciary Institute a seminar on foreign bribery over four sessions. The seminar, with a total of ten hours, will be addressed to members of the CJF, and will include the following topics: domestic and international bribery offences, criminal liability of legal persons, and the Anti-Bribery Protocol.

Commentary

The lead examiners commend Mexico for updating training programmes for judges to include foreign bribery as one of the primary focuses, and recommend that training programmes address new developments regarding the criminal liability of legal persons.

d. **Coordination between Law Enforcement Authorities**

93. In Part A. of this report on Detection, the report discusses coordination between the law enforcement authorities and government authorities with the following responsibilities: Official Export Credit Support, tax administration, local state law enforcement authorities, and AML. This part of the

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<https://www.ijf.cjf.gob.mx/cursososp/2018/Mayo/Fondo%20de%20apoyo/Convocatoria%20Curso%20Fondo%20Administraci%C3%B3n%20v20181505%201735.pdf>

⁵⁷ Information about the course can be found at:

http://www.inacipe.gob.mx/econtinua/terceratem/sabatinos/Responsabilidad_Empresas.php

report discusses additional issues regarding transnational criminal organisations and financial investigations.

i. Transnational criminal organisations

94. The Evaluation Team considers it important that PGR and the law enforcement authorities responsible for investigating and prosecuting transnational criminal organisations in Mexico coordinate effectively. As discussed in the Introduction to this report, transnational criminal organisations are increasingly engaging in export activities in sectors such as iron ore and agricultural products. The Mexican authorities point out that implementation of the Convention does not pertain to organised crime as a main offence. They also have found little evidence showing a correlation between foreign bribery and organised crime. Moreover, pursuant to Article 2 of the Mexican Organised Crime Law, foreign bribery is not included in the list of ‘organised crime’ related offences. Nevertheless, the Evaluation Team believes that the authorities responsible for detecting and investigating organised crime should be aware of the potential links between organised crime and foreign bribery, to ensure that foreign bribery cases involving such links are effectively detected.

ii. Financial investigations

95. As discussed under A.2.c) of this Report, if PFF receives information about a tax deduction that constitutes a bribe to a foreign public official, it would immediately present a formal complaint to PGR. Similarly, if a money laundering case involving foreign bribery were brought to the attention of PFF, it would be obliged to communicate this fact to PGR as quickly as possible. The Mexican authorities also referred to the Action Protocol on Parallel Financial Investigations (January 2018). The guidance in the Action Protocol is indeed helpful, and encourages close coordination between the two law enforcement bodies. However, it focuses on the need to carry out a financial investigation in relation to crimes that generate resources, including the bribery of foreign public officials. Thus the emphasis is on the obligation for PGR to refer foreign bribery cases to PFF to carry out a financial investigation, but the Protocol does not put the same onus on PFF to refer cases involving foreign bribery to PGR.

Commentary

The lead examiners recommend that Mexico take appropriate and feasible steps within its legal system to: 1) ensure that the law enforcement authorities responsible for investigating and prosecuting transnational criminal organisations are aware of the potential links between organised crime and foreign bribery; and 2) clarify the obligation for PFF to coordinate and share information with PGR regarding financial investigations that involve the proceeds of foreign bribery.

e. International cooperation: Practical use of MLA in foreign bribery investigations

96. In Phase 3, the WGB recommended that Mexico continue to improve the level and speed of its responsiveness to mutual legal assistance (MLA) requests involving foreign bribery-related cases (Recommendation 7). At the time of the Phase 3 Written Follow-Up, Mexico had adopted an e-mail system for transmitting MLA requests, and trained prosecutors on international cooperation. At the end of the Phase 3 Review cycle, Recommendation 7 was assessed as fully implemented. However, MLA has been identified as a horizontal issue for Phase 4, and is addressed systematically in all Phase 4 reports, as it is integral to the effective implementation of the Convention.

i. Managing MLA requests

97. In Mexico, MLA requests are governed by the National Code of Criminal Procedure (CNPP)⁵⁸. The Directorate of International Legal Assistance (DAJI), which is part of the Directorate General of International Procedures (DGPI) within the PGR, is responsible for receiving, forwarding and overseeing the processing and progress of international legal assistance requests. This unit is staffed by one director, twenty-four lawyers, and thirteen administrative assistants.⁵⁹ The Mexican authorities are currently implementing the Justici@.Net System to systematize all legal assistance procedures and processes through case management system.

98. In line with Phase 4 procedures, WGB member countries were invited to share their experiences in international cooperation with the Mexican authorities and indicate the main challenges encountered. Responses were received from ten parties to the Convention. In summary, several countries underlined the good practice of the Mexican authorities in providing direct and informal communication. Four of the parties that responded stated that Mexico's response time to requests is relatively slow. One party stated that Mexico sometimes provides short notice when it interviews witness pursuant to an MLA request, making it difficult for the prosecutors and investigators from the requesting party to participate in the interviews. A few parties have experienced difficulty in obtaining all the information requested, and one party highlighted a specific case where it had difficulties obtaining a response to an MLA request dealing with the administrative liability of a legal person.

ii. Statistics on incoming requests

99. Between January 2014 and November 2017, PGR received three MLA requests concerning the offence of foreign bribery. All of these requests were from parties to the Convention. To date, two of the requests have been completed, and concerned legal persons (regarding banking information, data and documentation). The authorities indicated that the average response time to these requests was eight to nine months, but could vary depending on the nature or the complexity of the measures sought.

iii. International and regional cooperation networks

100. In August 2017, PGR held the Summit of Attorneys General and Public Prosecutors of Latin America to discuss issues relating to transnational organized crime, international cooperation and the fight against corruption. In addition, in cooperation with the Foreign and Commonwealth Office of the United Kingdom, PGR, and the International Governance and Risk Institute (GovRisk), PGR held a seminar in March 2018 on the Detection and Investigation of Foreign Bribery. Experts from the Serious Fraud Office of the UK, the United States Department of Justice, the Financial Crimes Prosecutor's Office of France, as well as experts from Argentina and Brazil, participated in this seminar.

Commentary

In view of the issues raised by several respondents to a survey by the WGB of members' experience obtaining MLA from Mexico, the lead examiners recommend following up at the time of Mexico's Phase 4 two-year written follow-up report, whether Mexico provides MLA as required by Article 9.1 of the Convention.

f. Article 5 considerations

101. Article 5 of the Convention states that foreign bribery investigations and prosecutions "shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved". Commentary 27 on Article 5 provides that Article 5 "recognises as well that, in order to protect the independence of prosecution, such

⁵⁸ Title XI International Legal Assistance in Criminal Matters (Articles 433-455 of the CNPP).

⁵⁹ FATF, Mexico MER 2018.

discretion is to be exercised on the basis of professional motives and is not to be subject to improper influence by concerns of a political nature”. The 2009 Recommendation further clarifies that “complaints of bribery of foreign public officials should be seriously investigated and credible allegations assessed by competent authorities”. This part of the report addresses two related issues: 1) claims by the Mexican private sector and civil society about the level of trust in the law enforcement authorities; and 2) civil society concerns about the independence of PGR.

i. Trust in law enforcement authorities

102. At the on-site, a major MNE in the automotive industry with substantial operations in Mexico stated that insiders in the offices of the prosecution authorities leak information to the media in some cases, which has had a negative impact on the level of trust that Mexican society has in law enforcement authorities. A major Mexican business association stated that citizens fear retaliation from governmental entities that receive allegations, including through illicit conduct, but they did not provide evidence to support this assertion. The representative of the same business association explained that as a result, citizens are less confident about reporting suspicions of crimes to some authorities. The Evaluation Team notes that articles have been published regarding leaks by the law enforcement authorities to suspected persons and to the media that have resulted in serious harm to individuals and have jeopardized the proper conduct of investigations. The Mexican authorities highlight that these are not related to foreign bribery, but concern enforcement actions against transnational criminal organisations. The lead examiners consider that it is possible that such leaks could have a negative impact on trust in law enforcement authorities and on reporting crimes in general, including foreign bribery, and that the comments by the aforementioned private sector participants at the on-site likely reflect such a generalised fear.

103. The Attorney’s Office of the State of Mexico acknowledged that the media often obtains information it should not have been able to access in the first place, and stated that it looks forward to strengthening its staff. The Attorney’s Office of Veracruz also acknowledged the problem, and explained that the law enforcement authorities are obliged to treat as confidential information received from citizens concerning allegations. PGR acknowledged that its procedures do not match today’s reality, and that this is in part due to the legacy of the previous inquisitorial system of justice. Different profiles are needed for prosecutors in the current system. Since last year, PGR has been reviewing all its procedures and created an advisory committee for this purpose, with the goal of strengthening the rule of law. In partnership with the Inter-American Development Bank (IDB), PGR is developing a management model for the services it provides. One of the main findings in an assessment that it delivered to IDB was the lack of alignment in the internal processes of PGR. In an effort to address such shortcomings, PGR is standardising its processes to reduce the discretion of the public prosecutors and increase overall transparency. PGR is also strengthening staff, by creating a career plan for officials at the Criminal Investigation Agency, including police, forensics and intelligence units.

ii. Independence of law enforcement authorities

104. A major civil society organisation claims that the new Office of the Attorney General of the Republic, created under the constitutional reforms of 2014, was not granted sufficient autonomy, because the Attorney General’s appointment still requires executive approval and the President can remove the Attorney General from office.⁶⁰ Similar concerns were raised in meetings with the private sector. The civil society organisation stated that this problem would be difficult to resolve without changing the

⁶⁰ This claim was made by the civil society organisation at the on-site and in a shadow report on Mexico that it prepared for the purpose of this evaluation.

Constitution.⁶¹ It believes that this would be a first step in reform, but that it would not necessarily entirely solve the problem.

105. In response, the Mexican authorities state that the new mechanism for appointing the Attorney General will help address issues of the independence of the authorities tasked with investigating and prosecuting foreign bribery cases. [See the discussion under B.3.c) regarding the delay in appointing the Attorney General.] Under the new mechanism, the Senate first constitutes a list of ten contenders, and from this list the President chooses three candidates. The Senate selects the Attorney General by a qualified majority vote. In addition, even though under the amendment the President retains the power to remove the Attorney General, the Senate may object to the dismissal by another qualified majority vote, which would result in the Attorney General being reinstated.

Commentary

The lead examiners consider that citizens' lack of trust in the law enforcement system in Mexico is likely the most serious challenge to Mexico's effective implementation of the Convention. They consider that by acknowledging this challenge, Mexico has already taken a major step in rectifying the underlying causes. The lead examiners also believe that PGR's review of its procedures and resulting reforms, and the eventual appointment of the Attorney General should help address the issues of trust in and independence of the law enforcement authorities in foreign bribery investigations and prosecutions. They therefore recommend that the Mexican authorities implement the relevant reforms without delay, and that the WGB follow-up implementation of the reforms at the time of Mexico's Phase 4 two-year written follow-up review.

In addition, the lead examiners' assess that Recommendation 6(a) remains partially implemented, as overall that Mexico is giving insufficient priority to foreign bribery enforcement. This assessment is mainly based on the very low level of enforcement to date, and the long delay in making institutional changes, including making the following operational: 1) National Anti-Corruption System (NACS); 2) Special Anti-Corruption Prosecutor; and 3) Administrative Liability Regime for Corruption Crimes and Special Administrative Court. In addition, as mentioned in the Commentary under B.3.c)ii of this report, it is considered that the extremely low level of resources have likely contributed to the low level of foreign bribery enforcement activity in Mexico to date. In the Commentary in the Introduction, the lead examiners have already recommended that, at the time of the two-year written Phase 4 report, the WGB consider the status of reforms and whether a Phase 4bis to assess implementation would be appropriate. Under B.3.b)iv of this report, they also recommend that Mexico urgently complete the steps needed for all the components of the new system to become fully functional. The lead examiners consider that the foregoing recommendations adequately address the need for Mexico to increase priority of foreign bribery enforcement.

⁶¹ Prior to the 2014 Constitutional reform, the AG was feely appointed and removed by the President, and although the Senate had to ratify the appointment, it could not oppose the removal of the AG.

C. RESPONSIBILITY OF LEGAL PERSONS

C.1. Summary of outstanding and new issues

106. In Phase 3, Mexico was recommended to amend its Federal Penal Code (CPF) without delay so that: 1) liability may be imposed without the prior identification or conviction of the relevant natural person(s), and without proof that the bribery was committed with the means of the legal persons [Recommendation 3(a)]; 2) state-owned and state-controlled enterprises can be sanctioned for foreign bribery other than by dissolution of the legal person [Recommendation 3(b)]; and 3) companies incorporated or headquartered in Mexico can be liable for foreign bribery [Recommendation 3(c)]. At the end of the Phase 3 review cycle, Recommendations 3(a) and (b) were assessed by the WGB as not implemented, and Recommendation 3(c) was assessed as partially implemented. In Phase 3, Mexico was also recommended to enact appropriate legislation without delay to provide for confiscation of property of equivalent value and confiscation against legal persons, and ensure that the bribe, proceeds of bribery or their equivalent value are routinely confiscated in practice (Recommendation 5). At the end of Phase 3, Recommendation 5 was assessed as partially implemented. Moreover, Recommendation 12 on corporate compliance measures was also assessed as partially implemented. This part of the report discusses progress on these outstanding Phase 3 recommendations, as well as changes in the legislative framework for the liability of legal persons through amendments to CNPP and the establishment of an administrative corporate liability regime under GLAR. It also addresses the following issues: 1) the requirement in Article 11 CPF that the bribery is committed for ‘such purpose’; and 2) successor liability.

C.2. Corporate liability

a. Background

107. In Mexico, corporate liability for foreign bribery is now both criminal and administrative in nature. Criminal corporate liability has been foreseen under Article 11 CPF since the Phase 1 evaluation. However, Article 11bis was added as part of the June 2016 reform of the CPF, and establishes various categories of sanctions that may be imposed upon legal persons for certain offences, including foreign bribery. Additionally, Articles 421 and 422 CNPP were amended to provide for the autonomous liability of legal and natural persons for foreign bribery, and to allow legal persons to be held liable for criminal offences when they fail to comply with due controls in their organisations. These amendments will be discussed in more detail below.

108. Since Phase 3, Mexico has also introduced corporate administrative liability. The new legislation – known as the General Law on Administrative Responsibilities (GLAR) – was enacted in July 2017, and provides for administrative liability of public officials as well as private natural and legal persons for ‘serious’ and ‘non-serious’ administrative offences. The GLAR regime is enforced by MPA, and GLAR Articles 4 and 24-25 explicitly provide for corporate liability. Whether an offence is considered ‘non-serious’ or ‘serious’ depends on the gravity of the wrongdoing involved, with the latter category of offences bringing harsher sanctions. GLAR covers active domestic bribery (Article 66), passive domestic bribery (Article 52), and ‘collusion in international business transactions’ (Article 70), all of which are considered ‘serious’ administrative offences. MPA and the respective ‘victim’ authority engage in initial fact-gathering and submit a report of alleged administrative liability (IPRA) to an administrative panel. The body competent to oversee administrative proceedings involving serious offences under GLAR is

the Federal Court of Administrative Justice (TFJA),⁶² which may impose sanctions for ‘serious’ administrative violations against public officials, private citizens, and legal persons. However, as discussed above [See B.3.b) iii of this report.], TFJA is not yet operational.

b. New criminal corporate liability

i. Autonomous liability

109. At the end of Phase 3, Recommendation 3(a) to provide for the autonomous liability of legal persons was assessed as not implemented because draft legislation before the Mexican Congress that would eliminate this requirement had not yet been enacted.

110. Mexico states that since Phase 3 it has introduced complete autonomous criminal liability for legal persons in foreign bribery cases. Specifically, the Mexican authorities explain that newly amended Article 421 CNPP provides that the Public Prosecutor’s Office has the authority to prosecute a legal person regardless if a criminal action may be taken against the natural person(s) involved in the crime. The Mexican authorities explain further that there is no requirement that a procedure has been commenced or a conviction obtained against a natural person to determine the legal person’s responsibility.

Commentary

The lead examiners assess that, with regards to the autonomous criminal liability of legal persons, Phase 3 Recommendation 3(a) appears to have been fully implemented. Given the importance of the autonomous liability of legal persons to the effectiveness of such liability for foreign bribery, the lead examiners recommend following up whether in practice the Mexican authorities are able to convict legal persons of foreign bribery in the absence of a prosecution or conviction against the natural perpetrator(s).

ii. Failure to comply with due controls within the organisation

111. Since Phase 3, Mexico introduced a new mode of criminal liability for legal persons under the first paragraph of the newly amended Article 421 CNPP, which stipulates that “[l]egal persons shall be criminally liable for crimes committed on their behalf, by themselves, in their interest/benefit or with the means provided by them, when it has been determined that the legal person failed to exercise or comply with due controls within its organisation.”⁶³ Case law on the operation of this provision was not available at the time of writing, and Mexico had not yet provided training or guidance to its enforcement entities on how to apply and interpret the provision. During the on-site, representatives of the private sector (ranging from large MNEs and large national companies to business associations that represent SMEs) stated that they had not received guidance or tools that would help them to implement measures and actions to ensure compliance with Article 421 CNPP.

112. A PGR representative stated that prosecutors would apply the standards relating to internal controls and compliance programmes found in existing anti-money laundering legislation and the newly enacted administrative liability regime established in GLAR (e.g., Article 25). In 2017, MPA’s Unit on Ethics, Public Integrity, and Prevention of Conflicts of Interest produced the Business Integrity Program

⁶² The newly established TFJA was formerly the *Tribunal Federal de Justicia Fiscal y Administrativa*. The TFJA was created pursuant to the Organic Law of the Federal Court of Administrative Justice of 18 July 2016 and the GLAR. Chapter XI of the Organic Law establishes that the TFJA shall have five Chambers specialised in matters relating to administrative responsibility (including the offence of foreign bribery).

⁶³ Emphasis added.

Model for companies on how to implement corporate integrity programmes pursuant to GLAR.⁶⁴ However, the majority of companies at the on-site were unaware of the Model, or that it constituted the standard against which their compliance system would be measured for the purpose of applying Article 421 CNPP.

113. Moreover, given the structure of Article 421 CNPP, it appears that the onus would be on the prosecution to prove that a company failed to comply with due controls within the organisation. This was supported at the on-site by a PGR representative. This would be problematic because the requirement for the prosecution to prove such a failure is not in line with Annex 1, Paragraph B to the 2009 Recommendation, which provides good practice on implementing Article 2 of the Convention on the liability of legal persons. Paragraph B.b) of the Annex states specifically that the case should be covered when “a person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to implement adequate internal controls, ethics and compliance programmes or measures”. But this case should be covered in addition to the following two cases: 1) a person with the highest managerial authority bribes a foreign public official; and 2) a person with the highest level managerial authority directs or authorises a lower level person to bribe a foreign public official. The three different cases should be covered independently of each other, and it should not be necessary to prove a failure to implement due controls when the bribery is committed by a person with the highest level managerial authority, or when s/he directs a lower level person to bribe.

114. In response, the Mexican authorities explain that pursuant to Article 421 CNPP, there is a presumption that the defendant legal person has failed to comply with due controls; thus the onus of proof is reversed so that the legal person must prove that it did not fail in this respect. The Mexican authorities explain that in respect of certain offences, such as money laundering (Article 400bis CPF) and trafficking in contraband (Article 103 CFF), the court has interpreted there to be a reversal of the onus of proof.⁶⁵

Commentary

The lead examiners recommend that Mexico find a way that is appropriate and feasible in its legal system to clarify that the standards relating to internal controls and compliance programmes in Article 25 GLAR apply when proving that a legal person failed to exercise or comply with due controls within its organisation under Article 421 CNPP. In addition, they recommend that Mexico proactively raise awareness of the standard among the private sector, including business associations that represent SMEs.

The lead examiners also recommend following up whether in practice pursuant to Article 421 CNPP the prosecution does not have to prove that there has been a failure to comply with due controls when either a person with the highest

⁶⁴ The guidelines on implementing corporate integrity programmes pursuant to Article 25 GLAR state that a compliance program should consist of at least the following seven elements: 1) A clear and complete organisational manual; 2) A code of conduct that is published and made know to every person in the organisation; 3) Adequate and effective controls, monitoring and auditing systems; 4) Adequate whistleblowing systems for internal reports and for allowing reporting to authorities, as well as a disciplinary process for those who violate company whistleblower policies; 5) Adequate training on ethics; 6) Human resources policies to avoid hiring employees who pose a risk; and 7) Mechanisms to ensure transparency and the disclosure of conflicts of interest.

⁶⁵ The court interpreted there to be a reversal of the onus of proof for the money laundering offence in the following decision: 1a./J.71/2014 (9a). The same interpretation was made regarding the offence of trafficking in contraband in the following decisions: 1a./J.54/2013 (10a), 1a./J.55/2013 (10a); and 1a./J.56/2013 (10a).

managerial authority bribes a foreign public official or a person with the highest level managerial authority directs or authorises a lower level person to bribe a foreign public official.

iii. *Requirement that bribery is committed with ‘means’ of the legal person and for ‘such purpose’*

The ‘means’ of the legal person

115. In Phase 3, the Working Group highlighted its concern about the wording in Article 11 CPF that requires bribery to be committed “with the means of the legal person.”⁶⁶ Although this concern did not lead to a recommendation, the WGB believed that Article 11 CPF might require proof that the legal person used its own resources and also knew that its resources would be used to bribe a foreign public official. Such an interpretation might lead to a loophole in coverage in cases involving bribery by related third parties, such as foreign subsidiaries and joint venture partners, when they use their own resources to bribe. Coverage of such cases is emphasised in Paragraph B of Annex I to the 2009 Recommendation, which states 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 officials on its behalf”.

116. Since Phase 3, substantially similar language has been added to newly amended Article 421 CNPP. However, the requirements in Article 11 CPF are cumulative, whereas the wording under Article 421 CNPP appears to be more alternative, providing that legal persons may be held criminally liable for crimes committed either: (i) on their behalf; (ii) by themselves; (iii) in their interest; or (iv) with the means provided by them.

117. During the on-site, representatives of PGR stated that actors who could trigger the liability of legal persons under Article 11 CPF and Article 421 CNPP would include third parties, such as consultants, business partners, or any other individuals ‘related’ to the legal person. One PGR representative stated at the on-site that ‘means of the legal person’ refers to anything of a material or economic nature that the legal person gives to an individual in order for that person to engage in bribery. However, none of the participants were able to confirm that a legal person could not avoid liability by using another legal person to bribe a foreign public official on its behalf using its own means (e.g., a foreign subsidiary uses its own means to bribe a foreign public official on behalf of the parent company).

118. Following the on-site, the Mexican authorities explained that the law does not provide a potential loophole when a legal person uses another legal person to bribe on its behalf using its own means. They stated that the legal person that acts as an intermediary can be convicted as a ‘co-author’. However, this position does not address the potential loophole regarding the ‘author’ of the foreign bribery offence – i.e., the first legal person that uses the second legal person to bribe on its behalf, which pursuant to the 2009 Recommendation, should not be able to avoid responsibility by using an intermediary to bribe on its own behalf.

‘For such purpose’

119. Article 11 CPF also stipulates that such ‘means’ must be provided by the legal person ‘for such purpose’. This standard would appear to require that a legal person provides the means for the specific purpose of bribing a foreign public official. During the on-site, PGR representatives stated that this legal test sets a high evidentiary bar for Mexican prosecutors. Moreover, it does not appear in line with the third bullet point of Paragraph B.b) of Annex I of the 2009 Recommendation, which states that a party’s legal person liability should cover the case where “a person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to

⁶⁶ Phase 3 Report, para. 25

supervise him/her”. In such a case, the highest level managerial authority would not necessarily know that bribery was intended with the means of the legal person.

120. In response, following the on-site, the Mexican authorities stated that a legal person is responsible when the highest level managerial authority fails to prevent a lower level person from committing foreign bribery, and that the requirement that the ‘means’ be provided by the legal person for ‘such purpose’ does not provide a loophole. They further stated that since the high level managerial authority represents the legal person, the lack of due controls to prevent foreign bribery has an impact on the responsibility of the legal person.

Commentary

Given the absence of case law at this stage on the interpretation of the requirements under Article 11 CPF that foreign bribery is committed with the ‘means’ of the legal person and ‘for such purpose’, the lead examiners recommend following up this provision to verify that in practice it does not result in a loophole when a legal person uses another legal person to bribe on its behalf, or when a person with the highest level managerial authority fails to prevent a lower level person from bribing.

iv. *Need for uniformity among Article 11 CPF and Article 421 CNPP*

121. Article 11 CPF and Article 421 CNPP both provide for the criminal liability of legal persons for foreign bribery. Article 11 CPF requires the following elements for a legal person to be held criminally liable for the offence of foreign bribery: (i) a member or representative of the legal person must commit the offence; (ii) using the means that the legal person provides him or her; (iii) for the purpose of committing the specific offence; and (iv) said offence must have been committed in either (1) the legal person’s name, (2) under its protection, or (3) for its benefit. The newly amended Article 421 CNPP provides that a legal person may be held criminally liable for offences that are: (i) committed either (1) in its name, (2) on its behalf, (3) for its benefit, or (4) by means that it has provided; and, (ii) when it has been determined that there was also a failure of the legal person to exercise or comply with due controls within its organisation.

122. The two provisions differ in important respects. For example, Article 11 CPF takes a cumulative approach, requiring that all the requirements are satisfied for liability to be triggered; whereas liability under Article 421 CNPP is triggered if only one of the requirements is satisfied. Such an absence of harmonisation across the two provisions is undesirable, as it could result in completely different outcomes for identical fact situations. In addition, the court may be inclined to rectify any discrepancy between the two provisions in favour of the accused.

123. Lastly, the confusion regarding the interaction between Article 11 CPF and Article 421 CNPP is compounded by Article 222bis CPF, which establishes the substantive foreign bribery offence. Article 222bis explicitly refers to Article 11 CPF – not Article 421 CNPP – as a basis for corporate liability in Mexico, and lists certain factors that judges should consider when imposing sanctions on legal persons.

Commentary

The lead examiners also recommend that Mexico consolidate and harmonise Article 11 CPF and Article 421 CNPP, taking into account the recommendations above concerning the interpretation of certain elements in Article 11 CPF. In addition, they recommend that Article 222bis be amended to clarify that the consolidated provision is the basis for the criminal liability of legal persons for foreign bribery.

v. *Non-application to SOEs*

124. At the end of the Phase 3 review cycle, the WGB assessed as not implemented its recommendation that Mexico amend CPF without delay so that state-owned and state controlled

companies can be sanctioned for foreign bribery other than by dissolution of the legal person [Recommendation 3(b)], because Mexico had not taken any action to respond to Recommendation 3(b). The importance of SOEs to the Mexican economy is discussed in the Introduction to this report.

125. In Phase 3, Mexico stated that because SOEs are of strategic importance to the national economy and the country's overall development, pursuant to the Constitution, they could not be subject to a legal regime that could result in their dissolution. Mexico maintains the same position in Phase 4; thus measures have still not been taken to address Phase 3 Recommendation 3(b). In addition, SOEs are explicitly excluded from the scope of application of the new criminal⁶⁷ and administrative⁶⁸ liability regimes.

126. Pursuant to the Mexican Constitution⁶⁹, the Mexican State owns the organisations and companies⁷⁰ that are required to effectively and exclusively manage strategic areas⁷¹ and priority activities⁷² of the State. As a result, Mexico considers that the property of the State is unseizable, inalienable and imprescriptible,⁷³ in order to ensure that the State will always maintain ownership and control of strategic sectors and priority activities for the national economy. Mexico explains that applying the liability of legal person regimes to SOEs would put the country's economic sovereignty at risk and would therefore violate the Mexican Constitution. However, Article 2 of the Convention, which provides for the liability of legal persons for foreign bribery, does not make a distinction between SOEs and other legal persons.⁷⁴

Commentary

The lead examiners assess that Phase 3 Recommendation 3(b) is still not implemented, as no progress on making SOEs responsible for the bribery of foreign public officials has been made since Phase 3. The lead examiners therefore recommend that Mexico urgently take appropriate and feasible steps within its legal system to make SOEs responsible for foreign bribery.

⁶⁷ Under the newly amended Article 421 CNP relating to prosecution and autonomous criminal liability, "the Public Prosecutor may prosecute legal entities, except for State institutions [...]." In addition, Article 11 of the Federal Penal Code (CPF) provides that: "When a member or representative of a legal person, or of a partnership, corporation, or enterprise of any kind, with the exception of State institutions, commits an offence with the means provided for that purpose by the same entities ..."

⁶⁸ SOEs are also excluded from the scope of application of the GLAR, which only applies to private legal entities. Section XVII, GLAR.

⁶⁹ Article 25, paragraph 4; and Article 28, paragraph 5 of the CPEUM.

⁷⁰ The Political Constitution of the United Mexican States (CPEUM) in its article 90, provides that the Federal Public Administration is centralized or *paraestatal* according to the corresponding organic law issued by Congress. In this order of ideas, the Official Gazette of the Federation (DOF) publishes the list of enterprises that are *paraestatales*, state-owned or state-controlled, amongst others (last publication is from August 15, 2016).

⁷¹ Indicated in referred Article 28, paragraph 4, of the CPEUM.

⁷² Strategic and priority areas: post services, telegraph and radiotelegraphy; satellite communication and railways; radioactive minerals and nuclear power generation; the planning and control of the national electrical system, and of the public service of transmission and distribution of electrical energy; the exploration and extraction of oil and other hydrocarbons; as well as other activities expressly indicated by the laws issued by the Congress of the Union. See Articles 27, paragraphs 6 and 7, and 28, paragraph 4, of the CPEUM.

⁷³ See Articles 27, paragraphs 6 and 7, and 28, paragraph 4, of the CPEUM. Article 4, paragraph 4 of the General Law of National Assets disposes that "*The movable and immovable property owned by federal institutions with their own legal personality and assets to which the Political Constitution of the United States of Mexico grants them autonomy, they cannot be seized and are imprescriptible...*"

⁷⁴ Article 2 of the Convention states that "each party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

vi. *Nationality jurisdiction*

127. At the end of the Phase 3 review cycle, the WGB assessed as partially implemented the recommendation that Mexico amend CPF without delay so that companies incorporated or headquartered in Mexico can be liable for foreign bribery [Recommendation 3(c)]. The Mexican authorities stated that nationality jurisdiction applied to Mexican legal persons who committed foreign bribery wholly abroad. However, no specific provision in Mexican law explicitly provided such jurisdiction. Indeed, the Mexican authorities state that the legal basis for such jurisdiction is Article 4 CPF, which establishes Mexican jurisdiction over crimes committed in a foreign territory by a Mexican against Mexicans or against foreigners, or by a foreigner against Mexicans. Mexico states that this provision applies to Mexican natural persons as well as legal persons, as Mexican law does not differentiate between natural and legal persons regarding extra-territorial jurisdiction. However, Mexico has not produced jurisprudence or other evidence to support its position.

Commentary

The lead examiners assess that Recommendation 3(c) remains partially implemented as steps have not been taken to amend the CPF. However, in view of Mexico's position, they recommend following up whether in practice, pursuant to Article 4 CPF, Mexico is able to effectively apply jurisdiction to Mexican companies that bribe foreign public officials wholly abroad.

vii. *Confiscation measures in practice*

128. At the end of the Phase 3 review cycle, the WGB assessed as partially implemented Recommendation 5 that Mexico enact appropriate legislation without delay to provide as a sanction on conviction for foreign bribery the confiscation of property of equivalent value (i.e., when the foreign bribery proceeds are not available for confiscation) and confiscation against legal persons, and ensure that the bribe, the proceeds of bribery, or their equivalent are routinely confiscated in practice. The WGB was concerned that in the event that the proceeds of foreign bribery were no longer available for confiscation, a comparable remedy was not available. Pursuant to Article 3(3) of the Convention, each party must provide for the confiscation of the bribe and the proceeds of foreign bribery, or confiscation of property the value of which corresponds to such proceeds, or monetary sanctions of comparable effect.

129. Several positive developments have occurred since Phase 3. Firstly, Article 40 CPF and Article 249 CNPP have been amended to provide that, where property that represents the proceeds, instruments or objects of the criminal act have disappeared or cannot be located, due to the fault of the accused, the Prosecutor's Office shall decree or request that the competent jurisdictional body freeze, seize, or confiscate property of the accused that is equal in value upon conviction. The Mexican authorities confirm that Article 40 CPF and Article 249 CNPP provide for value based confiscation as a sanction on conviction as well as precautionary seizure.⁷⁵

130. Additionally, Section II of newly amended Article 422 CNPP provides for the confiscation of instruments, objects or proceeds of crime, as a sanction for legal persons on conviction.⁷⁶ However, in the event that such instruments, etc., are no longer available for confiscation, the provision does not

⁷⁵ According to the Mexican authorities, precautionary seizure is decreed during the procedural phases prior to the issuance of a final decision regarding the responsibility of the accused. Once a conviction has been obtained, the Public Prosecutor requests the court to order as a sanction the forfeiture of the objects, products or instruments of the criminal act that were seized.

⁷⁶ *Por su parte el artículo 422 CNPP establece que a las personas jurídicas, con personalidad propia, se podrá aplicar una sanción de decomiso de instrumentos, objetos o productos del delito.*

provide for confiscation of the property the value of which corresponds to that of such proceeds, or monetary sanctions of comparable effect.

131. In addition, it appears that confiscation continues to be imposed rather infrequently as a sanction on conviction. Mexican judges at the on-site stated that they regularly order confiscation upon conviction.⁷⁷ Following the on-site, the CJF provided data showing that in the period from 1 January 2001 to 11 May 2018, out of 1842 domestic bribery cases, confiscation was imposed in 509.

132. The rarity of confiscation measures in practice appears to be attributable in part to the need for enforcement authorities to prioritise parallel financial investigations to trace, freeze and ultimately confiscate assets – an issue also highlighted by the FATF in its Mutual Evaluation Report on Mexico issued in January 2018.⁷⁸ As a result, there is a low level of awareness among both prosecutorial and judicial authorities of the utility and importance of confiscation. However, PGR foresees that the Protocol on Parallel Financial Investigations, issued in January 2018, raises awareness on this matter.

Commentary

The lead examiners assess that Phase 3 Recommendation 5 continues to be partially implemented. Important progress has been made, as Article 40 CPF now provides for value based confiscation as a sanction on conviction, and Section II of newly amended Article 422 CNPP now provides for the confiscation of instruments, objects or proceeds of crime, as a sanction for legal persons on conviction. However, since the lead examiners have not been able to interpret data provided on confiscation in domestic bribery cases, at this stage it is not possible to assess this recommendation as fully implemented. The lead examiners therefore recommend that Mexico routinely confiscate the bribe and the proceeds of foreign bribery on conviction for foreign bribery.

Successor liability

133. Newly amended CNPP provides for successor liability for legal persons for the foreign bribery offence. Specifically, Article 421 CNPP states that criminal responsibility will still attach in cases where a legal person modifies its structure, merges with or is absorbed by another entity, or is otherwise split into separate entities. According to CNPP, the sanction applicable to successor entities should take into consideration the nature and extent of the relationship of the new entity with the predecessor entity. Lastly, newly amended Article 421 CNPP provides that a legal person's liability will not be extinguished upon its dissolution where its original economic activity is continued and the identity of its original clients, providers, and employees remains substantially the same.

134. This amendment is a positive development. While neither the Convention nor the 2009 Recommendation explicitly address successor liability, the issue is nonetheless of growing significance. Additionally, as a policy matter, approaches that allow a legal person to start with a blank slate following a corporate reorganisation or transaction would indeed undermine the effectiveness of a member country's legal person liability regime for foreign bribery and defeat the objectives of the Convention.

⁷⁷ In Phase 3, Mexico provided statistics in 2011 which demonstrated that, since 2005, 102 items had been *seized* in forty-one bribery investigations, and that only 14 of these investigations had been concluded, resulting in one item being confiscated. See Phase 3 Report on Mexico, para. 38.

⁷⁸ [Financial Action Task Force - Mexico Mutual Evaluation Report](#) (January 2018), paras. 193-94 (In addition to a failure to prioritise asset tracing and confiscation measures, the PGR has not developed a strategy to prioritise investigations in order to follow the money, and take actions to locate and restrain illegal assets that might be subject to confiscation).

Commentary

The lead examiners commend Mexico for introducing a successor liability provision into its corporate liability legal framework, and note its coverage of a large range of forms of corporate restructuring. They consider this to be a positive achievement for Mexico.

c. New administrative corporate liability

135. The Mexican authorities affirm that Articles 66 and 70 GLAR provide for the administrative liability of legal persons for the offence of foreign bribery.⁷⁹ However, Article 66 addresses active bribery of domestic public officials⁸⁰ and the offence defined under Article 70 is actually ‘collusion’ in international business transactions.⁸¹ Although in some cases the bribery of foreign public officials may involve collusion, as defined in GLAR, this would not amount to liability for the bribery of foreign public officials, as defined in Article 1 of the Convention.⁸² During the on-site, the Mexican authorities were confident that case law would demonstrate that, in practice, the new administrative corporate liability defined in GLAR applies to foreign bribery offences.

136. Following the on-site, the Mexican authorities provided further information to support their position that the ‘collusion’ offence in GLAR covers the bribery of foreign public officials. They stated that ‘collusion’ may be committed in respect of international transactions, and is understood to involve acts and procedures related to the following: contracting, execution and enforcement of contracts in the matter of acquisitions, leases, services of any nature, public works and services, the acts and procedures related to the granting and extension of permits or concessions, as well and any other authorisation or procedure related to such transactions, carried out by any public body or organisations of a foreign state, or involving the participation of a foreign public official, and in which a Mexican natural or legal person participates directly or indirectly. The Evaluation Team remains skeptical about whether ‘collusion’ would cover foreign bribery in every case, given that ‘collusion’ by definition requires an agreement or compact between two or more persons to defraud or gain an unfair advantage over a third party. In particular, the Evaluation Team is concerned that ‘collusion’ does not cover the offering, promising or giving of a bribe to a foreign public official where an agreement has not been struck between the briber and foreign public official.

137. In addition, following the on-site, the Mexican authorities provided extensive information about the process for determining ‘non-serious’ and ‘serious’ administrative liability under GLAR. In

⁷⁹ See for example the response of the Mexican authorities under question 6:

English version: “In respect to administrative liability of legal persons, article 3, section XVII of the General Law of Administrative Responsibility (GLAR) states that the faults of private individuals are actions of private individuals or legal persons linked to serious administrative errors referred to in Chapters III and IV of the Third heading of the LGRA, whose punishment is competence of the Court under the terms of the same Law. In this regard, it is important to mention that **Articles 66 and 70, of Chapter III**, refer to **bribery** and **foreign bribery**, respectively”.

Spanish version: « Al respecto, es importante mencionar que los **artículos 66 y 70, pertenecientes al Capítulo III**, se refieren a los delitos de **cohecho** y **cohecho a servidores públicos extranjeros**, respectivamente. »

⁸⁰ Defined as individuals who hold a job, position or commission in the public entities, at federal and local level, in accordance with the provisions of article 108 of the Political Constitution of the United Mexican States

⁸¹ “Artículo 66. Incurrirá en **soborno** el particular que prometa, ofrezca o entregue cualquier beneficio etc.”. “Artículo 70. Incurrirá en **colusión** el particular que ejecute con uno o más sujetos particulares etc.”. Collusion is usually defined as “A secret agreement between parties, in the public and/or private sector, to conspire to commit actions aimed to deceive or commit fraud with the objective of illicit financial gain”.

⁸² It is well understood that GLAR covers administrative offences and the *mens rea* requirement when establishing an administrative offence would differ from the one required to establish a criminal offence; however other main elements defining foreign bribery are lacking.

summary, complaints received by MPA about alleged administrative offences committed by natural or legal persons are registered and processed through the Comprehensive System for Citizen Complaints (SIDECE).⁸³ An investigation is conducted by the relevant internal controls bodies in accordance with articles 69 and 99, of section III of the Internal Regulation of MPA. MPA has the power to request information or documentation from any natural or legal person, and request that the administrative units of MPA verify, inspect and audit the information, as well as any other type of operation. ‘Serious administrative offences’, which include ‘collusion in international business transactions’, are processed under the same procedure for ‘non-serious administrative offences’, until the conclusion of the initial hearing,⁸⁴ at which time the original files are sent to the TFJA within three working days. Once the Tribunal decides that a matter falls within its competence, the relevant parties are notified, and an agreement of admission of evidence is dictated within fifteen working days. The parties have five working days after submission of the evidence to enter arguments. Following this period, the Tribunal formally declares the investigation closed and summons the parties to hear the resolution. Resolutions can be challenged through an appeal according to the Tribunal’s organic laws.

138. The Evaluation Team asked the Mexican authorities to clarify how administrative liability under GLAR would interact with liability under the criminal justice system, once TFJP is operational. Mexico explained that essentially, when a complaint received by MPA possibly constitutes a criminal offence, and the complaint is supported by appropriate information, it will be referred to PGR. This would seem to imply that “collusion in international business” that constitutes foreign bribery, would always be referred to PGR since it is a criminal offence. This statement adds to the confusion about the application of GLAR to foreign bribery creates uncertainty, including with regard to potential sanctions. The system of criminal fines for legal persons under Articles 222bis and 11 of CPF is based on fine days (See discussion on page 15 of the [Phase 3 Report on Mexico](#), and discussion in this Report on ‘net income’ under B.3.a.v.), while under Article 81(II) GLAR, legal persons are liable to fines up to twice the benefit obtained, or up to approximately USD 5 970 000. The provision allows for sanctions such as debarment (preclusion from public procurement for a period of up to 10 years), damages, suspension (up to 3 years), and dissolution. In addition, the system under GLAR utilises relatively informal administrative procedures, compared to the criminal system which provides for coercive investigative measures. It is therefore unclear whether the system under GLAR would facilitate the collection and analysis of complex evidence, including financial information from foreign jurisdictions.

Commentary

The lead examiners assess that there is considerable confusion about how or whether GLAR would apply to foreign bribery. They therefore recommend following up on the application of the new administrative corporate liability regime under GLAR and how it interacts with liability under the criminal system to determine whether: 1) the offence of ‘collusion’ in international business transactions under GLAR only applies to foreign bribery where an agreement has not been struck between the briber and the foreign public official; 2) cases of foreign bribery are routinely referred to PGR since

⁸³ SIDECE is the technological tool that integrates a central federal database to capture and record complaints of alleged administrative offences, constituting the means of storage, consultation, administration and control of information on the complaints.

⁸⁴ Once the IPRA is assessed as an administrative offence, the alleged offender is summoned to appear at an ‘initial hearing’ as well as relevant third parties. The suspect provides a written or oral statement, and third parties may also give evidence. At the conclusion of the hearing, the conducting authority must issue an agreement of evidence admission, in which the ‘relief of evidence’ is ordered. Once the relief has been completed, the conducting authority summons the suspect and third parties to hear the resolution.

they constitute criminal offences; 3) if not all cases of foreign bribery are referred to PGR, how this impacts on the effectiveness of investigations, given the profound differences between the procedures under GLAR and the criminal system ; and 4) if not all cases of foreign bribery are referred to PGR, how this impacts on sanctions, given that those under GLAR are based on the benefit obtained, and also include debarment, damages, suspension and dissolution, while under the criminal system fines are based on 'fine. Moreover, in light of the potential significance of the use of the administrative corporate liability regime in foreign bribery cases, the lead examiners recommend that this issue be given significant attention at the time of Mexico's Phase 4 two-year written follow-up report.

C.3. Engagement with the private sector

139. In Phase 3, the WGB recommended that Mexico continue to promote corporate compliance measures, with emphasis on Mexican companies, including SMEs that are active internationally but are not subject to the United States Foreign Corrupt Practices Acts (FCPA) jurisdiction, and that Mexico measure the impact of these efforts (Recommendation 12). At the end of the Phase 3 review cycle, Recommendation 12 was assessed as partially implemented. Mexico had created a database of Mexican enterprises, including SMEs, and the National Institute for Entrepreneurs (INADEM) had carried out awareness-raising activities. However, Mexico's efforts had not addressed corruption-specific compliance issues.

140. During the on-site, the Evaluation Team met with representatives of thirteen large companies with transnational operations, one SOE, and two business organisations representing SMEs with international operations. Several of them underlined that Mexican companies are facing high foreign bribery risks. Since Phase 3, the Mexican authorities report that ProMéxico conducted a series of awareness raising measures.⁸⁵ For instance, ProMéxico published the Convention on its website, produced an awareness-raising video about foreign bribery and the importance of compliance measures in international trade, with the support of the Secretariat of Economy⁸⁶. ProMéxico also held training courses for SMEs with cross-border business, which was organised with the support of the Mexican Business Council for Foreign Trade, Investment and Technology (COMCE). Lastly, ProMéxico updated its Choose to Export Guide to reflect the WGB's Phase 3 recommendations.

141. The Business Integrity Programme Model developed by MPA could potentially serve as an important tool for raising the awareness of companies of effective compliance measures for preventing and detecting foreign bribery. This is especially the case because PGR states that the Model provides the standard against which it would determine whether companies have complied with 'due controls in their organisation' pursuant to the corporate criminal foreign bribery offence defined in Article 421 CNPP. MPA organised an event for the launch of the Model in June 2017, and it was further disseminated to 160 companies by e-mail and published on a website designed by the Ministry of Economy and MPA⁸⁷. Most of the companies at the on-site were aware of the newly established corporate liability regimes. However, the majority of them were unaware of the Model's existence and that it provides the standard for applying Article 421 CNPP. In addition, many of the companies shared significant concerns about the

⁸⁵ Proméxico is the Federal Government Agency in charge of coordinating strategies aimed at strengthening Mexico's participation in the international economy and supporting the export process of companies established in Mexico and coordinating actions aimed at attracting investment.

⁸⁶ <http://www.economia.gob.mx/files/gobmx/anticorrupcion.html>

⁸⁷ <https://www.gob.mx/tuempresa?tab=Opera>

lack of guidance provided by the authorities on the practical implementation of the new corporate liability regimes. [See also C.2.b) ii. of this report].

142. Mexico did not provide information on the number of companies that have benefited from the awareness-raising activities carried out by Mexican authorities. In the absence of supporting data, and in view of the low level of awareness at the on-site of the Business Integrity Programme Model, which is arguably the most important tool for raising the awareness of Mexican companies of effective compliance measures for combating foreign bribery, the Evaluation Team is not persuaded that the Mexican government has made sufficient efforts to engage with the private sector on the foreign bribery offence. Indeed, MNEs at the on-site were taking steps on their own to establish compliance programmes, but primarily in order to address enforcement risks they faced abroad, particularly in the United States and United Kingdom. They did not perceive a risk of enforcement in Mexico. In addition, several representatives of large companies shared significant concerns about the lack of awareness of SMEs of foreign bribery risks, the need for compliance measures to address those risks, and the new corporate liability regimes. Inadequate compliance measures among SMEs makes it difficult for them to enter value chains, and in particular, affects home grown Mexican SMEs struggling to compete with larger companies, including MNEs.

Commentary

The lead examiners welcome the initiative taken by the Mexican authorities to publish the Business Integrity Programme Model on effective compliance with GLAR. They also note that Mexico has taken certain awareness raising initiatives since Phase 3 that target the Convention. However, in view of the low level of awareness of the Model and the new corporate liability regimes, and, in particular, the critical need for such awareness among Mexican SMEs, the lead examiners recommend that Mexico significantly increase its engagement with the private sector, including business associations that represent SMEs, for the purpose of raising their awareness (on a regular and consistent basis) of the new corporate liability regimes for foreign bribery, and effective compliance measures for complying with those regimes.

D. OTHER ISSUES

D.1. Summary of other issues

143. In addition to the issues under Parts A, B and C of this report, which are a mixture of horizontal issues that the WGB deemed of sufficient importance to address in all Parties' Phase 4 reports and vertical issues specifically relevant to Mexico, this part of the report addresses the following other issues: 1) the non-tax deductibility of bribes to foreign public officials; and 2) measures for managing foreign bribery risks in development cooperation. The first issue relates to a Phase 3 WGB recommendation that was not fully implemented at the end of the Phase 3 review cycle and the second relates to a Phase 3 follow-up issue, as well as how Mexico implements the 2016 Recommendation of the Council for Development Cooperation Actors on Managing the Risk of Corruption.

D.2. Non Tax Deductibility of Bribes to Foreign Public Officials

144. In Phase 3, the WGB recommended that Mexico clarify explicitly by law or by any other binding means that bribes to foreign public officials are not deductible for any tax purposes, and verify that a taxpayer who has been found to have committed foreign bribery has not obtained a tax deduction for bribe payments [Recommendation 13(a)]. At the time of Phase 3, contrary to the 2009 Tax Recommendation, Mexican tax legislation did not explicitly prohibit tax deductions for bribes to foreign public officials. The WGB noted that bribe payments could conceivably be disguised as certain types of deductible expenses, and that the Mexican authorities did not have in place a system for verifying that taxpayers found to have committed bribery did not claim deductions for bribe payments. At the time of the Phase 3 two-year written follow-up report, Mexico stated that on 23 July 2012, SAT adopted a 'Normative Criterion' on the non tax deductibility of bribes to foreign public officials, which stated that bribes to foreign public officials are not deductible for tax purposes. Mexico explained that the Normative Criterion was legally binding, but the WGB was not completely convinced of its effectiveness because Mexico was unable to demonstrate that SAT would verify in practice whether a taxpayer found to have committed foreign bribery had claimed a tax deduction for bribe payments. At the end of the Phase 3 review cycle, Recommendation 13(a) was therefore assessed as only partially implemented.

145. Article 25 of the Income Tax Law (LISR) provides a list of expenses that *are* tax deductible. The Mexican authorities state that, since bribes to foreign public officials are not included in the list, they cannot be tax deductible. In addition, Normative Criterion 24/ISR/N, which has been in force since January 2015, states that gifts to public officials are not deductible for the purposes of income tax. The Mexican authorities explain that this is in line with Article 28 of LISR, which states that gifts, entertainment and other expenses of a similar nature are not tax deductible.⁸⁸ It includes direct references to Articles 222 and 222*bis* of CPF, adding that "any conduct carried out by a taxpayer that is listed in said provisions will be considered a violation of public order."⁸⁹ SAT states that tax returns for companies found to have committed foreign bribery would be re-examined to determine whether tax deductions were taken for bribe payments. However, a system for communicating such information to PGR does not appear to be in place, and in the absence of practice in this regard, it is not possible to assess that, in compliance with the 2009 Tax Recommendation, Mexico's efforts to make bribes to foreign public officials non tax deductible are indeed effective.

⁸⁸ Normative Criterion 24/ISR/N - Donations to Public Servants are not deductible under the ISR.

⁸⁹ *Ibid.* para. 4.

Commentary

The lead examiners assess that Phase 3 Recommendation 13(a) has been fully implemented. However, given the importance that the non tax deductibility of bribe payments can play in preventing and detecting foreign bribery, the lead examiners recommend following-up whether, in practice, measures taken by Mexico through Articles 25 and 28 of LISR and Normative Criterion 24/ISR/N, explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner, as recommended by Paragraph I.(i) of the 2009 Tax Recommendation.

D.3. Measures for Managing Foreign Bribery Risks in Development Cooperation

a. Background

146. In Phase 3, the WGB recommended that Mexico amend its legislation to make debarment available as a sanction in all cases of foreign bribery in the context of international business, and extend its blacklist to cover enterprises determined under Mexican law to have committed foreign bribery [Recommendation 16(a)]. At the time of Phase 3, debarment from public procurement against legal persons was an available sanction for domestic but not foreign bribery. Draft legislation for this purpose had been before Congress since 2010.

147. At the end of the Phase 3 review cycle, progress had not been made on Recommendation 16(a). Moreover, in Phase 3 the WGB recommended following up anti-corruption measures in Mexico's Programme of International Development Cooperation (PROCID), as specific anti-corruption measures had not yet been developed in Mexico's emerging PROCID programme. Due to the adoption of the 2016 Recommendation of the Council for Development Cooperation Actors on Managing the Risk of Corruption (Recommendation on Managing the Risk of Corruption), which includes provisions on these and additional relevant issues, progress on Phase 3 Recommendation 16(a) and the recommendation for follow-up are addressed in this report in the context of the new Recommendation on Managing the Risk of Corruption.

148. In 2016, Mexico's international development cooperation reached USD 207.06 million.⁹⁰ Mexico's development cooperation is rooted in the tradition of South-South cooperation, while its priority partner countries are located in Latin America and the Caribbean, with a special focus on Central America. Priority sectors for its bilateral development cooperation are public administration, agriculture, environmental protection, disaster relief, statistics, education, science and technology, and health.⁹¹ On 6 April 2011, Mexico enacted the Law of International Development Cooperation (LCID), which demonstrates Mexico's dual role in development cooperation as both a provider of such cooperation in the South-South context while remaining a recipient of Official Development Assistance (ODA). LCID established PROCID and the Mexican Agency for International Development (AMEXCID) to manage cooperation projects funded or cofunded by Mexico. The Ministry of Foreign Affairs (MFA) has overall responsibility for Mexico's development cooperation, which is co-ordinated by AMEXCID but implemented through public institutions and their partners.⁹²

⁹⁰ Government of Mexico, 2016.

⁹¹ OECD, Development Cooperation Report 2017.

⁹² OECD, Development Cooperation Report 2017

b. *Debarment as sanction for foreign bribery*

149. Similar to the WGB's Phase 3 Recommendation 16(a) to Mexico regarding debarment, pursuant to Paragraph 8.iii) of the Recommendation on Managing the Risk of Corruption, Adherents should have in place a system for managing risks of and responding to actual instances of corruption that includes a sanctioning regime that is effective, proportionate and dissuasive. In Mexico, criminal sanctions for foreign bribery under Article 212(3) CPF, which was added as part of the July 2016 reform of the CPF, include an additional sanction of debarment from "taking part in acquisitions, leasing, services or public works...for twenty years". However, as confirmed by the Mexican authorities, this provision only applies to natural persons. The new administrative liability under GLAR, which applies to natural and legal persons, provides for the administrative sanction of temporary disqualification from participating in acquisitions, leases, services and public works (Article 81.II.b. GLAR). However, as discussed under C.2.c) of this report, since GLAR applies to 'collusion' in international business transactions, and not specifically the bribery of foreign public officials, it is unclear how effective this new regime would be at sanctioning natural and legal persons through debarment for foreign bribery.

c. *Debarment lists*

150. Similar to the part of the WGB's Phase 3 Recommendation 16(a) on blacklisting, Paragraph 8.v) of the Recommendation on Managing the Risk of Corruption provides that an Adherent's system for managing risks of and responding to actual instances of corruption should 'allow for sharing information on corruption events, investigations, findings and/or sanctions, such as debarment lists, within the limits of confidentiality [...].' Currently, only sanctions against natural persons are registered in the Comprehensive System of Administrative Responsibilities, and sanctions against legal persons are registered in the System of Administrative Procedures of Sanctions to Suppliers and Contractors. However, the Mexican authorities do not indicate that these measures cover enterprises that are sanctioned for foreign bribery under Article 222 CPF. The Mexican authorities indicate that they publish the sanctions applied by multilateral development banks in the Official Gazette of the Federation and register them in the System of Administrative Procedures of Sanctions to Suppliers and Contractors.

151. The Mexican authorities explain that pursuant to Article 27 of GLAR, sanctions against public or private individuals for serious acts under GLAR will be registered in the National System of Public Servants and Individuals. Thus it would appear that public servants and private individuals found responsible under GLAR for 'collusion' will be registered in the System as it is considered a 'serious' act. The Mexican authorities do not indicate whether legal persons found responsible for 'collusion' would be registered. [Also see discussion under C.2.c) of this report regarding the application of GLAR to 'collusion'.]

d. *Mechanisms for reporting foreign bribery*

152. Paragraph 7.i) of the Recommendation on Managing the Risk of Corruption provides that an Adherent's system for managing risks and responding to actual instances of corruption should also include a 'reporting and whistleblowing mechanism' that applies for 'all public officials involved in development cooperation...who report in good faith and on reasonable grounds suspicion of acts of corruption.' The Mexican authorities state that all staff members working for AMEXCID in any capacity are required to report to PGR suspicions of foreign bribery that they discover during the performance of their duties (Article 222 CPF). AMEXCID has not introduced internal reporting mechanisms, but rather relies on the general channels provided by the Mexican authorities [See A.4.b) of this report.]. So far, no foreign bribery case has been reported by AMEXCID's staff.

Commentary

The lead examiners assess that Phase 3 Recommendation 16(a) is now partially implemented – natural persons may be subject to the additional sanction of debarment for foreign bribery in relation to ODA public procurement contracting. Natural and legal persons may be debarred from ODA contracting for foreign bribery under GLAR, but only where there has been ‘collusion in international business transactions’. Furthermore, no progress has been made on implementing the part of Phase 3 Recommendation 16(a) on blacklisting. This assessment also relates to Paragraph 8 of the Recommendation on Managing the Risk of Corruption on a sanctioning regime for corruption in ODA procurement. In addition, Mexico states that all AMEXCID staff members are required under CPF to report suspicions of foreign bribery of which they become aware in carrying out their duties. However, no such report has yet been made. This finding also relates to Paragraph 7 of the Recommendation on Managing the Risk of Corruption. The lead examiners therefore recommend that the Working Group follow-up further progress on increasing the effectiveness of Mexico’s sanctioning and reporting regime for managing risks of and responding to actual instances of foreign bribery in development cooperation.

CONCLUSION: RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

153. The Working Group considers that the absence of prosecutions of foreign bribery by Mexico more than nineteen years after Mexico's foreign bribery offence came into force is a significant cause for concern, especially given the export driven nature of the Mexican economy. In addition, Mexican exports include high-risk sectors for corruption, such as extractives, manufacturing and agricultural products. Mexico currently has four ongoing investigations (with one temporarily archived while waiting for MLA). Overall, the Working Group assesses that Mexico needs to give more priority to foreign bribery enforcement. As a result, the main focus of this Phase 4 Report is to identify ways to significantly enhance Mexico's enforcement of its foreign bribery offence.

154. Mexico closely cooperated with the Working Group throughout the evaluation process, in particular by making every possible effort to ensure that all relevant interlocutors were present at the on-site, and diligently responding to a large number of requests for information following the on-site. In addition, Mexico was highly constructive and collaborative throughout, acknowledged the value of previous Working Group recommendations, and expressed a strong interest in continuing reform. The Undersecretary of Public Administration stated at the on-site that the Phase 4 evaluation is very important to Mexico because it will help the authorities focus their efforts on remaining implementation challenges, and make improvements on actions already taken.

155. Regarding outstanding Phase 3 Recommendations, Mexico has **now fully implemented** the following recommendations: 1 regarding third party beneficiaries, 3(a) on the autonomous liability of legal persons, 9 on the maximum sanctions for accounting offences, 10 on law enforcement statistics, and 13(a) on the non tax deductibility of bribe payments. The following recommendations are **now partly implemented**: 11 on the reporting obligations of the accounting and auditing profession, and 16(a) regarding debarment as a sanction for foreign bribery and the use of blacklists. The following recommendations **remain partly implemented**: 3(c) on the liability of companies incorporated or headquartered in Mexico, 4 on sanctions when the offender does not have a net income or the net income cannot be ascertained, 5 on confiscation, 6(a) to give greater priority to foreign bribery enforcement, 6(b) regarding human and financial resources for foreign bribery enforcement, 8 on AML measures, and 16(b) on Bancomext's foreign bribery policies. The following recommendations remain **not implemented**: 3(b) on the liability of SOEs for foreign bribery, and 15 on whistleblower protection.

156. Since Phase 3, Mexico has initiated major reform in areas that could impact positively on the implementation of the Convention, particularly enforcement, including the nomination of the Special Anti-Corruption Prosecutor, the appointment of judges to the Federal Court of Administrative Justice, and adoption of the Anti-Bribery Protocol. These reforms stem from a constitutional amendment in 2015 that modified how Mexico addresses corruption and administrative offences. However, since these reforms had not become operational at the time of Mexico's evaluation, except for the Anti-Bribery Protocol, which was adopted in the weeks prior to the evaluation, it has not been possible to assess their impact on implementation of the Convention. Given the significance of these initiatives and their potential impact on combating foreign bribery, at the time of Mexico's two-year written follow-up to the Phase 4 report, the Working Group will consider the status of the reforms, and whether a Phase 4*bis* to assess their implementation would be appropriate.

157. In conclusion, based on the findings in this report, the Working Group identifies positive achievements in Part I below and makes recommendations in Part II below. The Working Group will follow-up on issues identified in Part III below. The Working Group invites Mexico to submit a written report on the implementation of these recommendations and issues for follow-up in two years (October 2020). At the time of its two-year report, the Working Group also invites Mexico to provide non-confidential information about its foreign bribery enforcement actions and its practice providing MLA to other parties of the Convention on foreign bribery cases.

I. Positive Achievements

158. Throughout this report, the Working Group has identified areas in which Mexico has made important progress implementing the Convention, and significant areas of reform that are still not operational, but could have a positive impact on foreign bribery law enforcement. In addition, to these areas, two achievements that are already fully functional particularly stand out. The first is CJF's new judicial statistical collection, which provides comprehensive information about foreign bribery enforcement in Mexico, and could help drive more effective enforcement of the foreign bribery offence. The second is the introduction of successor liability into Mexico's criminal corporate liability legal framework, which is also notable for its coverage of a large range of forms of corporate restructuring.

II. Recommendations of the Working Group to Mexico

1. Regarding the **detection of foreign bribery in the governmental sector**, the Working Group recommends that Mexico:
 - a. Intensify efforts to raise awareness of all public officials of their obligation to report instances of foreign bribery that they detect in the course of carrying out their duties [2009 Anti-Bribery Recommendation III.i; IX.ii].
 - b. As a matter of priority ensure that Bancomext, Mexico's Official Export Credit Support agency:
 - i. report elements that may constitute the bribery of foreign public officials directly to PGR. This recommendation is not intended to affect any FATF recommendations regarding the obligation of financial institutions to refer STRs to FIU where foreign bribery is a predicate offence to money laundering [2006 Export Credit Recommendation]; and
 - ii. Train its staff on the policies on and procedures for debarment, and detecting and reporting foreign bribery [2009 Anti-Bribery Recommendation XII.ii].
 - c. Enhance its capacity to detect bribe payments to foreign public officials concealed as allowable expenses for tax purposes through the following measures:
 - i. PGR continue to proactively request information from SAT regarding taxpayers under investigation for foreign bribery, to determine whether bribes in such cases have been claimed as tax deductions, and to facilitate such requests, find a way that is appropriate and feasible in its legal system to permit PGR to inform SAT when the information sought relates to foreign bribery [2009 Tax Recommendation I.ii];
 - ii. SAT proactively detect the types of expenses deemed to constitute bribe payments concealed as allowable expenses for tax purposes, and report them without delay, and to facilitate such reporting, clarify the discrepancy between the obligation of secrecy regarding tax information with the obligation to report suspicions of crime pursuant to Article 222(2) CNPP [2009 Tax Recommendation II; 2009 Anti-Bribery Recommendation VIII.i]; and
 - iii. PFF report without delay to PGR suspicions of bribery related to fiscal offences under investigation [2009 Anti-Bribery Recommendation VIII.i].

- d. Enhance its capacity to detect foreign bribery through its AML/CFT system through the following measures:
 - i. As a matter of priority CNBV disseminate guidance on identifying corruption as a predicate offence [Convention, Article 7; 2009 Anti-Bribery Recommendation III.i]; and
 - ii. FIU include general feedback on STRs where foreign bribery is the predicate offence, when providing feedback to financial institutions and DNFPBs on compliance with their STR obligations [Convention, Article 7].
 - e. Ensure that personnel in charge of dealing with incoming MLA requests within PGR consistently consider the possibility of submitting information to the investigative authority, about foreign bribery brought to their attention by the requesting state, in order for said authority to assess whether to initiate an investigation [Convention, Article 5].
2. Regarding the **detection of foreign bribery in the non-governmental sector**, the Working Group recommends that Mexico:
- a. Clarify that, in compliance with Paragraph X.B. (iii) of the 2009 Recommendation, the external auditor who discovers indications of a suspected act of bribery of a foreign public official report this discovery to management, and, as appropriate, corporate monitoring bodies, and take further measures to ensure that the auditing profession is aware of this requirement [2009 Anti-Bribery Recommendation X.B.iii].
 - b. Urgently enact specific legislation to protect from discriminatory or disciplinary action public and private sector employees that report in good faith and on reasonable grounds suspected acts of foreign bribery to the competent authorities, and raise awareness of this measure [2009 Anti-Bribery Recommendation IX.iii].
 - c. Urgently take relevant measures to detect allegations of foreign bribery in the international media by tasking embassies with tracking and, where needed, translating local media reports that contain allegations of foreign bribery by Mexican companies and individuals and referring them to PGR through the relevant channels [2009 Anti-Bribery Recommendation Annex I.D].
3. Regarding the **investigation and prosecution of foreign bribery**, the Working Group recommends that Mexico:
- a. Apply the full range of its investigative tools when appropriate and feasible, including while waiting for responses to MLA requests [Convention Article 5; 2009 Anti-Bribery Recommendation XIII and Annex I.D].
 - b. As a matter of priority, establish a system allowing courts to impose penalties for foreign bribery that are effective, proportionate and dissuasive where an offender did not have a net income or where the net income could not be ascertained at the time of the offence [Convention Article 3].
 - c. Urgently complete the steps needed for the following anti-corruption reforms to become fully functional: 1) NACS; 2) Special Anti-Corruption Prosecutor; and 3) Administrative Liability Regime for Corruption Crimes and a Special Administrative Court; and 4) Anti-Bribery Protocol [Convention Article 5; 2009 Anti-Bribery Recommendation Annex I.D].

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- d. As a matter of priority, take concrete steps to ensure adequate human and financial resources for FEMDHC once the Special Anti-Corruption Prosecutor is appointed, including sustainable and targeted training activities for its public officials, in order to investigate and prosecute foreign bribery cases, and while waiting for FEMDHC to become operational, take immediate steps to ensure adequate human and financial resources for investigating and prosecuting foreign bribery cases, in particular for the four ongoing investigations [Convention Article 5; 2009 Anti-Bribery Recommendation Annex I.D].
 - e. Include developments regarding the criminal liability of legal persons in new training programmes for judges on foreign bribery [Convention Article 2].
 - f. Ensure that law enforcement authorities responsible for investigating transnational criminal organisations are aware of the potential links between organised crime and foreign bribery, and clarify the obligation for PFF to coordinate and share information with PGR regarding financial investigations that involve the proceeds of foreign bribery [2009 Anti-Bribery Recommendation III.i].
 - g. To help address issues of trust in and independence of the law enforcement authorities in foreign bribery investigations and prosecutions, without further delay implement reforms pursuant to PGR's review of its procedures, and appoint the Attorney General pursuant to the new constitutional mechanism [Convention, Article 5].
4. Regarding the **liability of legal persons**, the Working Group recommends that Mexico:
- a. Find a way that is appropriate and feasible in its legal system to clarify that the standards regarding internal controls and compliance programmes in Article 25 of GLAR apply when proving that a legal person failed to exercise or comply with due controls within its organisation under Article 421 CNPP, and raise awareness of these standards among the private sector, including business associations that represent SMEs [2009 Anti-Bribery Recommendation III.i, X.C and Annex I.B].
 - b. Consolidate and harmonise Article 11 CPF and Article 421 CNPP regarding the criteria for triggering the liability of legal persons for foreign bribery, and clarify that the consolidated provision is the basis for the criminal liability of legal persons for foreign bribery [Convention Article 2].
 - c. Urgently take appropriate and feasible steps in its legal system to make SOEs responsible for foreign bribery [Convention Article 2].
 - d. Routinely confiscate the bribe and the proceeds of foreign bribery on conviction for foreign bribery [Convention Article 3].
 - e. Significantly increase its engagement with the private sector, including business associations that represent SMEs, for the purpose of raising awareness on a regular and consistent basis of the new corporate liability regimes for foreign bribery, and effective compliance measures for complying with those regimes [2009 Recommendation III.i, X.C and Annex I.B].

III. Follow-up Issues

5. The Working Group will follow-up:

- a. The effectiveness of steps taken by Mexico to make local state law enforcement authorities alert to the potential to detect foreign bribery in the course of investigating companies for illegal public procurement activities at the local level, and encourage them to report such cases directly to PGR.
- b. How the National Money Laundering Risk Assessment is updated in 2019 to reflect foreign bribery as a predicate offence for money laundering.
- c. Implementation of the amendment to Article 222*bis* to verify whether in practice the case is covered where a bribe is transferred directly to a third party, according to the direction or acquiescence of the foreign public official.
- d. The four ongoing cases and any new investigations to continue assessing whether sufficiently proactive investigative measures are taken.
- e. Whether Mexico provides MLA as required by Article 9.1 of the Convention.
- f. The application of books and records offences under CFF and CPF including to legal persons to determine whether in practice, they are effective, proportionate and dissuasive, as required by the Convention.
- g. Whether in practice the Mexican authorities are able to convict legal persons of foreign bribery in the absence of a prosecution or conviction against the natural perpetrator(s).
- h. Whether in practice pursuant to Article 421 CNPP the prosecution does not have to prove that there has been a failure to comply with due controls when either a person with the highest managerial authority bribes a foreign public official or a person with the highest level managerial authority directs or authorises a lower level person to bribe a foreign public official.
- i. Whether in practice the requirements under Article 11 CPF that foreign bribery is committed with the ‘means’ of the legal person and ‘for such purpose’ do not result in practice in a loophole when a legal person uses another legal person to bribe on its behalf, or when a person with the highest managerial authority fails to prevent a lower level person from bribing.
- j. Whether in practice, pursuant to Article 4 CPF, Mexico is able to effectively apply jurisdiction to Mexican companies that bribe foreign public officials wholly abroad.
- k. Application of the new administrative corporate liability regime under GLAR and how it interacts with liability under the criminal system, to determine whether: 1) the offence of ‘collusion’ in international business transactions under GLAR only applies to foreign bribery where an agreement has been struck between the briber and foreign public official; 2) cases of foreign bribery are routinely referred to PGR since they constitute criminal offences; 3) if not all cases of foreign bribery are referred to PGR, how this impacts on the effectiveness of investigations, given the profound differences between the procedures under the criminal system and GLAR; and 4) if not all cases of foreign bribery are referred to PGR, how this impacts on sanctions, given that those under GLAR are based on the benefit obtained, and also include

debarment, damages, suspension and dissolution, while under the criminal system fines are based on ‘fine days’. Given the importance of these issues, the Working Group recommends giving them significant attention at the time of Mexico’s Phase 4 two-year written follow-up report.

- l. Whether in practice, measures taken by Mexico through Articles 25 and 28 of the Income Tax Law and Normative Criterion 24/1SR/N, explicitly disallow the tax deductibility of bribes to foreign public officials in an effective manner.
- m. Further progress on increasing the effectiveness of Mexico’s sanctioning and reporting regime for managing risks and responding to actual instances of foreign bribery in development cooperation.

ANNEX 1: PHASE 3 WGB RECOMMENDATIONS TO MEXICO AND ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN 2014

Recommendations of the Working Group in Phase 3

*Progress at time of two year written follow-up in December 2014**

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery		
1.	Regarding the offence of foreign bribery, the Working Group recommends that Mexico amend Article 222bis to cover bribes given, offered or promised to a third party beneficiary regardless of whether the beneficiary is determined by a foreign public official (Convention, Article 1(1)).	<i>Not implemented</i>
2.	Regarding territorial jurisdiction and the statute of limitations in cases where a bribe is given or sent to a foreign public official in Mexico after it is offered or promised abroad, the Working Group recommends that Mexico review and undertake the necessary changes to rectify any shortcomings. (Convention, Articles 4 and 6).	<i>Not implemented</i>
3.	Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Mexico amend its Federal Penal Code without delay so that:	
	a. liability may be imposed without the prior identification or conviction of the relevant natural person(s), and without proof that the bribery was committed with the means of the legal person (Convention Article 2);	<i>Not implemented</i>
	b. state-owned and state-controlled enterprises can be sanctioned for foreign bribery other than by dissolution of the legal person (Convention Article 2);	<i>Not implemented</i>
	c. companies incorporated or headquartered in Mexico can be liable for foreign bribery (Convention Article 2).	<i>Partially implemented</i>
4.	Regarding sanctions for foreign bribery, the Working Group recommends that Mexico, in cases where an offender does not have a net income at the time of the offence or where the net income cannot be ascertained, establish a system allowing a court to impose an appropriate fine after the court gives detailed reasons on why the net income cannot be determined (Convention, Article 3(1) and (2)).	<i>Partially implemented</i>
5.	Regarding confiscation, the Working Group recommends that Mexico enact appropriate legislation without delay to provide for confiscation of property of equivalent value and confiscation against legal persons, and ensure that the bribe, the proceeds of bribery or their equivalent are routinely confiscated in practice (Convention, Article 3(3)).	<i>Partially implemented</i>
6.	Regarding the investigation and prosecution of the foreign bribery offence, the Working Group recommends that Mexico:	
	a. give greater priority to the criminal enforcement of its bribery laws, and take steps to ensure that its criminal law enforcement authorities seriously investigate all allegations of foreign bribery (Convention, Article 5);	<i>Partially implemented</i>

* The right-hand column sets out the findings of the Working Group on Bribery on Mexico's written follow-up report to Phase 3, considered by the Working Group in December 2014.

	b. take further steps to ensure that adequate human and financial resources are devoted to investigating and prosecuting bribery of foreign public officials, including by providing SPOCC prosecutors and SIU investigators with adequate training in foreign bribery and complex financial investigations (Convention, Article 5);	<i>Partially implemented</i>
	c. make special investigative techniques available in foreign bribery cases (Convention, Article 5).	<i>Fully implemented</i>
7.	Regarding mutual legal assistance (MLA), the Working Group recommends that Mexico continue to improve the level and speed of its responsiveness to MLA requests involving foreign bribery-related cases.	<i>Fully implemented</i>
8.	Regarding money laundering, the Working Group recommends that Mexico develop bribery-related AML measures, including typologies on the laundering of bribes and the proceeds of bribery; train CNBV officials and reporting entities on money laundering predicated on bribery; and train UIF officials on detecting and reporting bribery-related money laundering cases, and on reporting such cases to law enforcement authorities (2009 Anti-Bribery Recommendation IX(i) and (ii)).	<i>Partially implemented</i>
9.	Regarding false accounting offences, the Working Group recommends that Mexico amend its legislation to increase the maximum sanctions available (Convention, Article 8(2)).	<i>Not implemented</i>
10.	Regarding statistics, the Working Group recommends that Mexico maintain statistics on the number of investigations, prosecutions, convictions and sanctions of natural and legal persons for the offences of domestic bribery, foreign bribery, and false accounting (Convention, Articles 3, 5 and 8).	<i>Partially implemented</i>
<i>Recommendations for ensuring effective prevention and detection of foreign bribery</i>		
11.	Regarding accounting and auditing, the Working Group recommends that Mexico encourage the auditing profession to develop courses on foreign bribery; detect foreign bribery; and take the necessary measures, including amendment of CFPP Article 116 and other relevant legislation, to clarify that the reporting obligation in this article overrides any professional obligations of an auditor towards his/her client (2009 Anti-Bribery Recommendation X(B)(i) and (v)).	<i>Not implemented</i>
12.	Regarding corporate compliance, internal controls and ethics programmes, the Working Group recommends that Mexico continue to promote corporate compliance measures, with emphasis on Mexican companies, including SMEs, that are active internationally but are not subject to FCPA jurisdiction, and that Mexico measure the impact of these efforts (2009 Anti-Bribery Recommendation X(C)(i) and (ii)).	<i>Partially implemented</i>
13.	Regarding tax measures to combat foreign bribery, the Working Group recommends that Mexico:	
	a. clarify explicitly by law or by any other binding means that bribes to foreign public officials are not deductible for any tax purposes, and verify that a taxpayer who has been found to have committed domestic or foreign bribery has not claimed a tax deduction for bribe payments (2009 Anti-Bribery Recommendation VIII(i)).	<i>Partially implemented</i>
	b. improve detection of domestic and foreign bribery cases by analysing why the Strategies for Identifying National and International Bribery have not led to the detection of cases; continuing its regular training programmes for tax auditors and examiners; and including bribery in risk assessments and audits (2009 Anti-Bribery Recommendation VIII(i)).	<i>Fully implemented</i>
14.	Regarding awareness raising, the Working Group recommends that Mexican foreign embassies and export promotion agencies assist and inform internationally	<i>Fully implemented</i>

	active Mexican businesses to combat foreign bribery (2009 Anti-Bribery Recommendation X(C)(i); Annex II).	
15.	Regarding whistleblower protection, the Working Group recommends that Mexico enact specific legislation to ensure that public and private sector employees, and auditors who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary action, and raise awareness of this measure (2009 Recommendation IX(iii), X(B)(i) and (v)).	<i>Not implemented</i>
16.	Regarding public advantages, the Working Group recommends that Mexico:	
	a. amend its legislation to make debarment available as a sanction in all cases of foreign bribery in the context of international business, and extend its blacklist to cover enterprises that are determined under Mexican law to have committed foreign bribery (Convention, Article 3(4); 2009 Anti-Bribery Recommendation XI(i)).	<i>Not implemented</i>
	b. ensure that Bancomext stipulate its debarment policy in writing in a specific section of its lending or guarantee contract; extend the anti-corruption declaration in its credit agreement to cover foreign bribery that occurs both before and after the agreement is signed; train its staff on the policies on and procedures for debarment, reporting foreign bribery, and detecting foreign bribery; and require clients to provide further details of agent commissions and fees (2009 Anti-Bribery Recommendation XII(ii)).	<i>Partially implemented</i>

ANNEX 2: LIST OF PARTICIPANTS AT THE PHASE 4 ON-SITE VISIT

From the Mexican government, ministries, and other bodies:

- Attorney's Office of the State of Mexico
- Attorney's Office of the State of Veracruz
- Bancomext (Mexican Export Credit Agency)
- Directorate of International Legal Assistance
- Federal Audit Office
- Federal Electric Commission
- Federal Judicial Council
- Federal Court of Administrative Justice (representative of provisional body)
- Financial Intelligence Unit
- Fiscal Prosecutor's Office
- Mexican Agency for International Development
- Ministry of Economy
- Ministry of Finance and Public Credit
- Ministry of Foreign Affairs
- Ministry of Public Administration
- National Institute of Statistics and Geography
- National Banking and Securities Commission
- Office of the Attorney General
- Tax Administration Service
- Special Unit for Offences Committed Abroad
- Specialised Investigation Unit for Crimes committed by Public Officials and against the Administration of Justice

From the private sector and business associations:

- 2 representatives from Mexican business, industry, or sectoral associations
- 7 representatives from the manufacturing and engineering sectors
- 1 representative from the pharmaceutical and life sciences sector
- 2 representatives from the automobile manufacturing sector
- 1 representative from the telecommunications sector
- 3 representatives from the energy sector
- 3 representatives from the financial sector

From civil society, legal practitioners, compliance, tax and auditing professionals:

- 5 representatives from Mexican non-governmental organisations
- 1 representative from academia
- 1 representative from the Citizen Participation Committee (part of the National Anti-Corruption System)
- 1 representative from the media
- 9 representatives from the legal and compliance professionals
- 3 representatives from the accounting profession
- 4 representatives from the auditing profession

ANNEX 3: LIST OF ABBREVIATIONS, TERMS, AND ACRONYMS

AMEXCID	Mexican Agency for International Development
AML	Anti-Money Laundering
CAIA	International Affairs and Legal Attachés Offices
CEDAC	Centre for Complaint and Citizen Attention (<i>Centro de Denuncia y Atención Ciudadana</i>)
CJF	Federal Judiciary Council
CPF	Federal Penal Code
CNBV	National Banking and Securities Commission
CNPP	National Code of Criminal Procedure
CPEUM	Political Constitution of the United Mexican States
DAGE	General Directorate of External Auditors
DAJI	Directorate of International Legal Assistance
DGPI	Directorate General of International Procedures
EUR	Euro (currency)
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FEMDHC	Special Prosecutor's Office for Corruption-related Offences
FGR	Attorney General of the Republic (new Office of the Attorney General)
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
IDB	Inter-American Development Bank
IMCP	Mexican Institute of Public Accountants
IPRA	Report of Alleged Administrative Liability
ISA	International Standards on Auditing
LICD	Law of International Cooperation for Development
MER	Mutual evaluation report (FATF)
MFA	Ministry of Foreign Affairs
MLA	Mutual legal assistance
MNE	Multi-national enterprise
MPA	Ministry of Public Administration
MXN	Mexican peso
NACS	National Anti-Corruption System
ODA	Official development assistance
OECD	Organisation for Economic Cooperation and Development
PGR	Federal Prosecutor's Office (<i>Procuraduría General de la República</i>)
PROCID	International Programme for Development Cooperation
SAT	Tax Administration Service
SIU	Specialised Investigation Unit for Crimes committed by Public Officials and against the Administration of Justice
SME	Small- and medium-sized enterprise
SPOCC	Special Prosecutor's Office for the Combat against Corruption in the Federal Public Service (defunct)

STR	Suspicious transaction report
TFJA	Federal Court of Administrative Justice
UEDE	Special Unit for Offences Committed Abroad
USD	United States dollar
WGB	Working Group on Bribery in International Business Transactions

ANNEX 4: STATISTICS ON THE NUMBER OF INVESTIGATIONS, PROSECUTIONS, CONVICTIONS AND SANCTIONS OF NATURAL AND LEGAL PERSONS FOR THE OFFENCES OF DOMESTIC BRIBERY, FOREIGN BRIBERY, AND FALSE ACCOUNTING

TOTAL OF REGISTERED INDIVIDUALS IN THE DISTRICT COURTS AT THE NATIONAL LEVEL, FOR THE CRIMES OF BRIBERY OF FOREIGN PUBLIC SERVANTS TO FOREIGN PUBLIC SERVANTS AND FALSE ACCOUNTING				
FROM JANUARY 01, 2001 TO MAY 11, 2018				
CHART 1				
YEAR	Bribery offense, foreseen and sanctioned by Article 222 of the Federal Penal Code	Bribery of foreign public servants, foreseen and sanctioned in Article 222 <i>bis</i> of the Federal Penal Code	False accounting, Article 111 of the Fiscal Code of the Federation, sections II, III and IV	Total
2001	335	0	0	335
2002	327	0	3	330
2003	460	0	10	470
2004	526	0	7	533
2005	456	0	15	471
2006	305	0	8	313
2007	232	0	15	247
2008	280	0	57	337
2009	333	0	77	410
2010	253	4	85	342
2011	333	1	113	447
2012	384	0	110	494
2013	293	0	207	500
2014	303	0	104	407
2015	227	0	33	260
2016	135	0	44	179
2017	49	0	3	52
2018	4	0	0	4
Grand total	5,235	5	891	6,131

Source: Comprehensive File Tracking System, information gathered by the General Direction of Judicial Statistics of the Federal Judiciary Council, from January 1, 2001 to May 11, 2018, figures that may vary according to the capture and modifications made by the personnel of the jurisdictional bodies.

TOTAL OF REGISTERED INDIVIDUALS IN THE FEDERAL CRIMINAL JUSTICE CENTERS AT THE NATIONAL LEVEL, FOR BRIBERY CRIMES, BRIBERY OF FOREIGN PUBLIC SERVANTS AND FALSE ACCOUNTING				
FROM JANUARY 01, 2014 TO MAY 11, 2018				
CHART 2				
YEAR	Bribery offense, foreseen and sanctioned by Article 222 of the Federal Penal Code	Bribery of foreign public servants, foreseen and sanctioned in Article 222 <i>bis</i> of the Federal Penal Code	False accounting, Article 111 of the Fiscal Code of the Federation, sections II, III and IV	Total
2014	0	0	0	0
2015	2	1	0	3
2016	46	4	0	50
2017	77	0	14	91
2018	17	0	4	21
Grand Total	142	5	18	165

Source: Comprehensive File Tracking System, information gathered by the General Direction of Judicial Statistics of the Federal Judiciary Council, in the period from January 1, 2014 to May 11, 2018, figures that may vary according to the capture and modifications made by the personnel of the jurisdictional bodies.

TOTAL OF JUDGEMENTS AGAINST PERSONS RELATED TO CRIMINAL CAUSES PROCESSED IN DISTRICT COURTS AT NATIONAL LEVEL, FOR BRIBERY CRIMES, BRIBERY OF FOREIGN PUBLIC SERVANTS AND FALSE ACCOUNTING				
FROM JANUARY 01, 2001 TO MAY 11, 2018				
CHART 3				
Type of judgements or resolutions that are definitive	Bribery offense, foreseen and sanctioned by Article 222 of the Federal Penal Code	Bribery of foreign public servants, foreseen and sanctioned in Article 222 <i>bis</i> of the Federal Penal Code	False accounting, article 111 of the Fiscal Code of the Federation, sections II, III and IV	Total
Conviction	1,842	0	127	1,969

Acquittal	315	0	35	350
Grand total	2,157	0	162	2,319

Source: Comprehensive File Tracking System, information gathered by the General Direction of Judicial Statistics of the Federal Judiciary Council, from January 1, 2001 to May 11, 2018, figures that may vary according to the capture and modifications made by the personnel of the jurisdictional bodies.

TOTAL OF DETERMINED SENTENCES IN ABBREVIABLE PROCEDURE AND ORAL JUDGMENT AGAINST PERSONS LINKED TO THE CRIMINAL CAUSES PROCESSED IN THE FEDERAL CRIMINAL JUSTICE CENTERS AT THE NATIONAL LEVEL, FOR BRIBERY CRIMES, BRIBERY TO FOREIGN PUBLIC SERVANTS AND FALSE ACCOUNTING				
FROM JANUARY 01, 2001 TO MAY 11, 2018				
CHART 4				
Type of judgements or resolutions that are definitive	Bribery offense, foreseen and sanctioned by Article 222 of the Federal Penal Code	Bribery of foreign public servants, foreseen and sanctioned in Article 222 <i>bis</i> of the Federal Penal Code	False accounting, Article 111 of the Fiscal Code of the Federation, sections II, III and IV	Total
Conviction	35	0	1	36
Acquittal	4	0	0	4
Grand total	39	0	1	40

Source: Comprehensive File Tracking System, information gathered by the General Direction of Judicial Statistics of the Federal Judiciary Council, from January 1, 2001 to May 11, 2018, figures that may vary according to the capture and modifications made by the personnel of the jurisdictional bodies.