



ICELAND: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

January 2013

This report, submitted by Iceland, provides information on the progress made by Iceland in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 7 January 2013.

The Phase 3 report evaluated Iceland's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of Findings

1. The Working Group is concerned that Iceland has taken limited steps to implement the Anti-Bribery Convention since its Phase 3 evaluation in December 2010. Iceland has not taken any steps to implement many of the Working Group's Phase 3 Recommendations. There continues to be no foreign bribery enforcement actions in Iceland; the Icelandic authorities have not been aware of any allegations of foreign bribery committed by Icelandic individuals or companies.

2. In September 2012, a Bill was submitted to the Icelandic Parliament that would increase the maximum sanctions for active foreign bribery under Section 109 of the General Penal Code (GPC) from three years' to four years' imprisonment. While this increase would be welcomed, the maximum sanctions would remain well below those for passive foreign bribery (six years). The Bill is not yet law; therefore Recommendation 2(a) is not implemented. The Bill would make administrative sanctions (*e.g.* withdrawal of a licence or debarment) under GPC Section 68 available against both natural and legal persons. Recommendation 2(b) is thus implemented because Iceland has considered introducing this legislative amendment.

3. The Bill before Parliament would also amend the private sector bribery offence in GPC Section 264a to expressly cover bribery of managers and employees of state-owned enterprises (SOEs). The explanatory notes accompanying the Bill would state that the amendment is meant to address the Working Group's Phase 3 Recommendation on this issue. This alleviates, to a degree, concerns that the amended offence would only cover employees of Icelandic and not foreign SOEs. The Working Group should monitor this issue in a future evaluation if the provision is enacted. Of greater concern is that the bribery of SOE employees would be subject to a lower maximum punishment (three years' imprisonment) than bribery of other foreign public officials (four years). The Convention does not consider bribery of SOE officials to be of lesser gravity. A maximum punishment of three years' imprisonment is also insufficient (see above). The Working Group also considers that bribery of employees of foreign SOEs should be criminalised as part of a Party's foreign bribery offence and not an offence of private sector bribery. The Bill is not yet law. Recommendation 1 is therefore not implemented.

4. Regarding confiscation, the Office of the Special Prosecutor (OSP) has held two 80-hour training seminars and a third is expected soon. Each seminar devotes one day to criminal procedure and a half day to confiscation (though not specific to bribery cases). The courses were attended by new staff at the Office of the Special Prosecutor, lawyers, police officers and specialists. Iceland also states that the OSP has "attached considerable property abroad" in its investigations, though more precise information was not provided. Iceland has not specifically encouraged prosecutors to request confiscation in foreign bribery cases. Recommendation 3 is thus partially implemented.

5. Regarding investigation and prosecution, the OSP subsumed the Economic Crime Unit (ECU) in June 2011. The new OSP has approximately 100 staff and a budget of ISK 1 325.4 million (approx. EUR 8 million or USD 10 million) in 2012. The OSP is not divided into divisions and hence there is no special unit responsible for foreign bribery. This reorganisation is sufficient to implement Recommendation 4(a). However, a committee appointed by the Minister of the Interior will prepare proposals on the future

structure for investigating and prosecuting economic crimes for Parliament's consideration before 1 January 2013. The Working Group should revisit this issue in its future evaluations of Iceland. Recommendation 4(b) is not implemented since specialised training on foreign bribery for law enforcement has yet to be provided. Special investigative techniques (e.g. wiretapping) continue to be available in foreign bribery cases only if there is a "valuable public and private interest" in their use. Recommendation 4(c) is therefore not implemented.

6. Iceland has not taken any steps to raise awareness of foreign bribery or the Convention. The Ministry of the Interior has committed to writing other relevant Ministries (including the Overseas Business Development Department in the Ministry of Foreign Affairs) to urge them to take action. Awareness-raising efforts should address instructions to the authorities for reporting suspicions of foreign bribery. Iceland has not promoted the Good Practice Guidance on Internal Controls, Ethics and Compliance set out in Annex II to the 2009 Anti-Bribery Recommendation. The Ministry of Industries and Innovation has stated its intention to do so. There has not been training or awareness-raising among auditors, though the Ministry of Industries and Innovation plans to address this matter. Recommendation 5(a)-(c) are not implemented.

7. Regarding reporting suspicions of foreign bribery, Iceland adopted a Code of Ethics for Staff in Government Offices in May 2012. The Code provides that government staff should report "morally reprehensible or illegal activity in the workplace [...] to her/his next senior in line who has no personal interest at stake, or to other appropriate parties". A Code of Ethics for Ministers adopted in March 2011 requires a Minister to react to staff reports about breaches of ethical codes of conduct or illegal activities in his/her Ministry or the area of the Ministry's responsibilities. Both Codes cover foreign bribery committed by another public official, but whether they cover foreign bribery by private individuals is unclear. Reporting to law enforcement officials is not guaranteed, and whether the reporting obligation is binding, and the consequences for non-reporting, is unclear. No other measures were put in place to facilitate reporting of foreign bribery by public officials, especially those posted abroad. The Ministry of Finance and Economic Affairs and the Tax Authorities did not have time to develop reporting guidelines for tax officials. Recommendation 6(a) and (b) are not implemented.

8. Iceland also did not adopt any measures to protect whistleblowers that would apply to foreign bribery cases. The Code of Ethics for Staff in Government Offices state that, "No member of staff may suffer for having indicated an infringement of this Code, or for seeking their rights if they feel they are being offended against." But as noted above, it is unclear whether the Code covers reporting of foreign bribery committed by private individuals. It also does not provide a comprehensive scheme of protection. For example, it does not specify reporting channels, means of redress for whistleblowers, and the types of protection available. The Icelandic authorities have not taken any measures regarding whistleblower protection in the private sector, though Parliamentarians have introduced a Bill on the subject into the legislature. Recommendation 7 is not implemented.

9. Recommendations 8, 10 and 11 are also not implemented since Iceland has not taken any action. Measures to raise awareness of foreign bribery as a predicate offence for money laundering are only being planned. ICEIDA, Iceland's official development agency, will consider the Working Group's Recommendation when it reviews its code of conduct in 2013. Existing anti-corruption clauses in ICEIDA's contracts do not provide for both preventive and punitive measures such as the termination of contracts and/or legal action. The Ministry of Finance and Economic Affairs has not had time to implement the Recommendation relating to public procurement. It has committed to raising awareness of foreign bribery and its legal consequences, such as debarment from public procurement. The Internal Revenue Directorate and the Ministry of Finance have disseminated the OECD Bribery Awareness Handbook for Tax Examiners to its officials but not taxpayers. They also have not trained officials on the Handbook. Recommendation 9 is therefore partially implemented.

10. Finally, the Working Group will continue to monitor Follow-up Issues 12(a)-(e) since there have not been foreign bribery cases or other relevant developments since the Phase 3 evaluation.

Conclusions of the Working Group

11. Based on these findings, the Working Group concludes that Iceland has implemented Recommendations 2(b) and 4; and partially implemented Recommendations 3 and 9. The remaining Recommendations are not implemented. Follow-up Issues 12(a)-(e) remain outstanding. Given the low level of implementation, Iceland is invited to report to the Working Group on its implementation of all outstanding Recommendations by June 2013. The Working Group will consider whether to take further steps at this time.

WRITTEN FOLLOW-UP TO PHASE 3 REPORT - ICELAND

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 3 Evaluation Procedure [[DAF/INV/BR\(2008\)25/FINAL](#), paragraphs 55–67].

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Please submit completed answers to the Secretariat on or before **12 November 2012**.

Name of country: Iceland
Date of approval of Phase 3 evaluation report: 15 December 2010
Date of information: 26 November 2012

PART I: RECOMMENDATIONS FOR ACTION

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

Text of recommendation:

1. Regarding the **foreign bribery offence**, the Working Group recommends that Iceland explicitly cover bribery of officials employed by state-owned and state-controlled companies, and specifically consider this recommendation in drafting its new Bill amending the foreign bribery offence in Iceland's General Penal Code (GPC) [Convention, Article 1; Phase 2 Report, recommendation 9].¹

Action taken as of the date of the follow-up report to implement this recommendation:

This recommendation was specifically considered when the bill was drafted with a proposed amendment to Article 264a. The recommendation concerns Article 109 but Article 264a is a provision that specifically addresses bribery regarding employees of companies. With the proposed change it also covers employees in state-owned and state-controlled companies. The provision is not limited by its

¹ The [OECD anti-bribery instruments](#) (OECD Anti-Bribery Convention, the 2009 Anti-Bribery Recommendation, the 2009 Tax Recommendation, the 2006 Export Credit Recommendation and 1996 DAC Recommendation) can be downloaded from the OECD website: www.oecd.org/daf/nocorruption.

wording, or by the explanatory report, to employees of Icelandic companies. It can therefore be applied regarding bribery of employees of foreign companies when jurisdictional requirements are fulfilled. It is stated in the explanatory report attached to the bill that this change is intended to comply with the recommendation by the OECD WGB. This ensures that the provision will be interpreted to conform with the Convention.

The draft bill amending the GPC was submitted to the parliament in September 2012. It has gone through the first reading and to the General Affairs Committee. The Ministry anticipates it going through parliament this year.

The draft bill amending the penal code proposes a change to the bribery offence in Article 264a of the GPC, adding “including enterprises partly or totally publicly owned” to the phrase “business enterprise” in paragraphs 1 and 2 of the provision. Additionally the draft bill suggests raising the imprisonment sanctions from up to 2 years imprisonment to up to 3 years.

The amended provision will read (changes underlined):

Art. 264 a. Any person who gives, promises or offers the manager of a business enterprise, including enterprises partly or totally publicly owned, or a person who does work on behalf of the enterprise, a gift or other undue advantage, for himself or others, in order to have him act, or refrain from acting, in a way that is at variance with his professional duties, shall be punished by up to 3 years’ imprisonment, or by a fine if there are extenuating circumstances.

If the manager of a business enterprise, including enterprises partly or totally publicly owned, or a person who does work on behalf of the enterprise, demands, accepts, or accepts the promise of, a gift or other undue advantage, for himself or others, and proceeds to act, or to refrain from acting, in a way that is at variance with his professional duties, he shall be punished by up to 3 years’ imprisonment, or by a fine if there are extenuating circumstances.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. Regarding **sanctions** for foreign bribery, the Working Group recommends that Iceland:

a) Raise imprisonment sanctions against natural persons for foreign bribery, as provided under section 109 of the GPC, to ensure that they are effective, proportionate and dissuasive [Convention, Article 3.1].

Action taken as of the date of the follow-up report to implement this recommendation:

A draft bill amending the GPC was submitted to the parliament in September 2012. It has gone through the first reading and to the General Affairs Committee. The Ministry anticipates it going through parliament this year.

The draft bill amending the penal code proposes that imprisonment sanctions against natural persons for foreign bribery, as provided under Article 109 of the GPC be raised from up to 3 years imprisonment to up to 4 years imprisonment.

The Permanent Committee on Penal Law explains in the explanatory report attached to the bill the reasoning for increasing the maximum sanctions for Article 109. The committee reasons that this will

further ensure that the sanctions are effective, proportionate and dissuasive, and that they have also considered the internal consistency of the sanctions of the GPC. Therefore they did not have reason to increase the sanctions for Article 109 up to 6 years as for the passive bribery of public officials, as it is thought to be a more serious offence due to those involved in the offence.

If no action has been taken to implement recommendation 2 a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. Regarding **sanctions** for foreign bribery, the Working Group recommends that Iceland:

b) Consider the imposition of additional administrative sanctions for legal persons, similar to those applicable to individuals [Convention, Article 3.4].

Action taken as of the date of the follow-up report to implement this recommendation:

A draft bill amending the GPC was submitted to the parliament in September 2012. It has gone through the first reading and to the General Affairs Committee. The Ministry anticipates it going through parliament this year.

The draft bill amending the penal code proposes changes to Article 19d and Article 68(2) of the GPC in order to allow for the imposition of additional administrative sanctions for legal persons. The amended provisions will read (changes underlined):

Art. 19 d. *If the requirements set forth in the provisions of this chapter are met a legal person may be made criminally liable for violations against this Act of law and may be deprived of rights under paragraph 2 of article 68.*

Art. 68 *In case a civil servant commits an offence he/she may, in a criminal litigation against him/her, be deprived of authority to exercise his/her public functions if he/she is no longer deemed worthy or suited.*

A person convicted of an offence may, in criminal litigation against him/her, be deprived of authority he/she has acquired to pursue an occupation for which an official licence, authorization, appointment or examination is required, provided the offence indicates that there is considerable danger that the guilty person will commit an offence in his/her position or occupation. In case of a grave offence a person can also be deprived of the aforementioned right if he/she is no longer considered worthy of pursuing the occupation or enjoying the rights.

A person may be deprived of the rights referred to in para. 2 for a specified period of up to five years or for life. The same shall apply to legal persons, however a permanent deprivation of rights will only be considered in instances where there is a grave offence.

Special provisions in Law providing for deprivation of rights referred to in para. 1 and 2 shall remain in effect.

Deprivation of rights is counted as of the point in time provided for in a Judgment and, at the latest as of the time Judgment is served.

In case an Icelandic citizen or a person resident in this Country is deprived of rights abroad by a Judgment rendered on account of a punishable act, the prosecution authorities may initiate criminal

litigation against him/her for deprivation of rights. The same applies if a person has been sentenced abroad, even if deprivation of rights has not been ordered. Decision on the above deprivation of rights is subject to Icelandic Law.

If no action has been taken to implement recommendation 2 b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. Regarding **confiscation of the bribe and proceeds of foreign bribery**, the Working Group recommends that Iceland provide training to its prosecutors on the new confiscation regime introduced in 2009, and encourage them to request confiscation in foreign bribery cases, where appropriate [Convention, Article 3.2; 2009 Recommendation III.(i)].

Action taken as of the date of the follow-up report to implement this recommendation:

The Office of the Special Prosecutor has held 2 training seminars for its staff and is planning a 3rd seminar to be held soon. Amongst the subjects that have especially been covered is the confiscation regime. The seminars have covered the Icelandic provisions, international cooperation and the relevant international instruments.

The first seminar was held 6-17 September 2010, about 80 hours.

The attendees were first of foremost new staff at the Office of the Special Prosecutor, lawyers, police officers and specialists.

Translated extract from the agenda:

Objective

At the end of the seminar the students shall have greater understanding of the legal tasks and duties of the Office of the Special Prosecutor and the Economic Crimes Department of the National Commissioner of Police; they will learn about the legal provisions, procedures and other important matters that will make it possible to work at investigating serious economic crimes.

Subjects – Course description

The main subjects covered are:

- *The preparation and organization of an investigation*
- *Criminal procedural law*
- *Penal law with emphasis on intent, fraud, fraudulent settlement, embezzlement, abuse of position, money laundering and concealment.*
- *Sectorial law offences such as offences against the Act on private limited companies, Act on auditing, Act on annual accounts, etc.*
- *Documentation, set up and finish of data*
- *Operation- and investigation plans*

- *Police law*
- *Interrogations and the set up of interrogation reports*
- *I-Base database*
- *Government communication*

There will also be discussions about corruption offences and their investigation. There will be discussions on case-studies, etc.

As regards the time taken for confiscation, a whole day was devoted to criminal procedural law and a quarter of a day to police law and criminal procedural law. Half a day was devoted to confiscation specifically.

The second seminar was held in 4-15 April 2011. One whole day was devoted to criminal procedural law and half a day was devoted specifically to confiscation.

In addition, the Office of the Special Prosecutor has attached considerable property abroad in its investigations. Confiscation is therefore always considered and applied when appropriate.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. Regarding the **investigation and prosecution of foreign bribery**, the Working Group recommends that Iceland:

a) Promptly and seriously proceed with its ongoing reflection on the structure and resource allocation for fighting economic and financial crime in Iceland, to ensure that there are sufficient resources for and effective coordination of the different law enforcement authorities for the investigation and prosecution of economic and financial crimes, including foreign bribery [2009 Recommendation III.(ii) and V.].

Action taken as of the date of the follow-up report to implement this recommendation:

On 1 February 2009 the office of the Special Prosecutor was established in accordance with Act No. 135/2008.² The main objective of the Special Prosecutor is to investigate suspicions of criminal actions in the period preceding, in connection with or in the wake of the collapse of the Icelandic banks, whether this is connected to activities of financial undertakings, other legal entities or individuals, and, as the case may be, follow up on these investigations by bringing charges in court against those concerned. The authorisations granted to the office to investigate and lay charges cover economic violations, gainful offences and taxation infringements, including offences which have been investigated by the Directorate of Tax Investigations in Iceland, the Icelandic Competition Authority and the Icelandic Financial Supervisory Authority where criminal charges have been laid.

In June 2011, the Parliament passed Act No. 82/2011 amending Act No. 135/2008. The main change was

² English translation of the Act: <http://www.serstakursaksoknari.is/english/laws-and-regulations/>

that the Office of the Special Prosecutor and the Department of Economic Crime of the National Commissioner of the Icelandic Police were to be merged on 1 September 2011. Both institutions had built up expertise and specialization in this field and their merge was therefore a logical step towards a more effective stance against economical and financial crimes.

The budget for the year 2012 is 1 325.4 million ISK and the staff size is approximately 100 in November 2012.

The Special Prosecutor's office is not divided into divisions and therefore there is no special unit responsible for foreign bribery cases.

The Office of the Special Prosecutor was established in February 2009 and according to Act No. 135/2008 the Special Prosecutor will investigate suspicions of criminal actions in the period preceding, in connection with or in the wake of the collapse of the Icelandic banks, whether this is connected to activities of financial undertakings, other legal entities or individuals, and, as the case may be, follow up on these investigations by bringing charges in court against those concerned. The Special Prosecutors' office is the central unit for investigation and prosecution of economic crime after the merger of the Office of the Special Prosecutor and the Department of Economic Crime of the National Commissioner of the Icelandic Police in September 2011.

According to Article 7 and the interim provision of Act No. 135/2008, the Minister of the Interior (former Minister of Justice) shall propose to the Parliament the future structure of investigation and prosecution of economic crimes before 1 January 2013. The interim provision states that the Minister of the Interior shall appoint a committee of specialists to propose recommendations for this future arrangement. The committee shall, e.g., look towards the organization of investigations of economic crimes in the other Nordic states. The committee was appointed by the Minister on 16 January 2012. Mr. Sigurður Tómas Magnússon, professor of law, is chairman of the committee and the other two members are Ms. Bryndís Kristjánsdóttir, Directorate of Tax Investigations in Iceland, and Ms. Valgerður Rún Benediktsdóttir, Director at the Ministry of Industries and Innovation. The committee is expected to deliver its report with recommendations in December 2012.

If no action has been taken to implement recommendation 4 a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. Regarding the **investigation and prosecution of foreign bribery**, the Working Group recommends that Iceland:

b) Promptly provide specialised training to law enforcement authorities, including the police, prosecutors and judges, on the investigation and prosecution of foreign bribery [2009 Recommendation III.(ii) and V.].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 4 b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or

the reasons why no action will be taken:

The Office of the Special Prosecutor is planning a training seminar to be held soon for its staff, investigators and prosecutors. Among the subjects covered will be the provisions on bribery, including the foreign bribery offence.

Text of recommendation:

4. Regarding the **investigation and prosecution of foreign bribery**, the Working Group recommends that Iceland:

c) Make available, where appropriate, special investigative means, such as interception of communications, video surveillance and undercover operations, in foreign bribery investigations [2009 Recommendation III.(ii) and V].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 4 c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Iceland has available, where appropriate, special investigative means in foreign bribery investigations according to the Code of Criminal Procedure. They require judge's orders due to the nature of such investigative means and their infringement on the constitutional right to privacy. The conditions for allowing such measures is that there is reason to believe that vital information for the investigation of a case can be obtained by such measures, and additionally the investigation has to concern a crime with a maximum sentence of at least 8 years or rich public or private interests justify their application.

If an investigation of a foreign bribery offence requires, for example, wire-tapping, the judge will need to decide on the application of such investigative means with a test based on important public or private interests. The judge will therefore evaluate the relationship between the importance of the information to the investigation and the importance of the right to privacy in view of all circumstances.

Such special investigative measures have been used in investigations of economic crime in Iceland, namely wire-tapping. There have been discussions in the society and the media, and worries, whether the conditions for allowing such measures are stringent enough. There is political will to further strengthen and clarify the conditions for applying such investigative measures.

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation:

5. Regarding **awareness-raising**, the Working Group recommends that Iceland:

a) Seriously step up its awareness-raising activities with regard to the private sector, in particular through its Overseas Business Development Department within the Ministry of Foreign Affairs and through Icelandic missions abroad. These should include information on steps to be taken by Icelandic companies confronted with bribe solicitation, and clear instructions on the authorities to whom

suspicious of foreign bribery should be reported [2009 Recommendation III.(i)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 5 a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The Overseas Business Development Department within the Ministry of Foreign Affairs reports that it has not taken action to raise awareness. The Ministry of the Interior will send a letter re-iterating the recommendations and guidance on awareness-raising on steps to be taken by companies confronted with solicitation.

Text of recommendation:

5. Regarding **awareness-raising**, the Working Group recommends that Iceland:

b) Promote the Good Practice Guidance on Internal Controls, Ethics and Compliance, set out in Annex II to the 2009 Anti-Bribery Recommendation, to Icelandic companies, business organisations and professional associations [2009 Recommendation III.(i) and Annex II].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 5 b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

This recommendation is still under consideration.

The Ministry of Industries and Innovation is planning to undertake a special awareness-raising effort in order to promote the Good Practice Guidance on Internal Controls, Ethics and Compliance, set out in Annex II to the 2009 Anti-Bribery Recommendation to Icelandic companies, business organisation and professional association through the Icelandic Chamber of Commerce and the Confederation of Icelandic Employers.

The Ministry intends to make the Guidance available on its webpage.

As reported in the Phase 2 follow up report in May 2006 the Icelandic Chamber of Commerce, the Icelandic Stock Exchange and the Confederation of Icelandic Employers have adopted guidelines rules on corporate governance and they have encouraged companies to establish their own rules on corporate governance in line with the guidelines. The fourth edition of the guidelines was published in March 2012.

Text of recommendation:

5. Regarding **awareness-raising**, the Working Group recommends that Iceland:

c) Concerning auditors, undertake awareness-raising measures with regard to, and promptly provide training on, (i) their reporting obligations to the management of the company, and to law enforcement authorities; (ii) the sanctions for failure to report; and (iii) red flags to detect foreign bribery [2009 Recommendation III.(i) and X.B.(iii) and (v); Phase 2 Report, recommendation 7].

Action taken as of the date of the follow-up report to implement this recommendation:

This recommendation is still under consideration.

The Ministry of Industries and Innovation is planning to undertake an awareness-raising effort through the Institute of State Authorized Public Accountants and request cooperation from the Institute to provide training.

The Institute of State Authorized Public Accountants has adopted a Code of Ethics for Professional Accountants based on the code of ethics issued by the International Federation of Accountants in June 2005, revised in July 2009. The Minister of Industries and Innovations has approved the code of ethics. The revised edition came into effect on 1 January 2011.

If no action has been taken to implement recommendation 5 c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

6. Regarding **detection and reporting of foreign bribery**, the Working Group recommends that Iceland:

a) Ensure that appropriate measures are in place to facilitate reporting by public officials, in particular those posted abroad, to law enforcement authorities of suspected acts of foreign bribery detected in the course of their work, and raise awareness of the existence of these reporting channels [2009 Recommendation IX.(ii)].

Action taken as of the date of the follow-up report to implement this recommendation:

In 2010 amendments were made to the Act on the Government Offices of Iceland providing a legal basis for Codes of Conduct. Chapter VI of the Act concerns ethical norms in the operation of the Icelandic Government Offices. According to art. 24, the Prime Minister sets ethical codes for the personnel of the Government Offices. The Government agrees on an ethical code for Ministers. The ethical codes shall be made public and accessible. According to art. 25 a Coordination Committee on Ethical Norms for the Government Offices shall be established by the Prime Minister. Amongst the assignments for the Coordination Committee is advising the Government on actions to avoid conflict of interests and corruption, and to make sure that reactions to breaches of the codes of ethics are coordinated. The committee shall consult regularly with the parliament Ombudsman and the National Audit Office.

The Codes of Ethics are to be considered in connection with the general code of conduct for state employees, cf. the second paragraph of Article 15 of Act No. 70/1996, on the Rights and Duties of Public Employees, and with any other codes of conduct that might be relevant, cf. the authorisation in

the third sentence of the first paragraph of Article 24 of Act No. 115/2011, to elaborate codes of conduct in each ministry. Furthermore, this Code of Conduct is meant to reflect certain core values of civil service, such as integrity, impartiality and efficiency.

The Code of Ethics for Ministers in the Government nr. 360/2011, was published in March 2011. Ministers are responsible for complying with the code. If in doubt they can seek advice with the Coordination Committee, and the Parliament Ombudsman may receive complaints of breaches of the code of ethics. Art. 7 of the Code of Ethics for Ministers requires Ministers to react to indications made by staff about breaches of ethical codes of conduct or illegal activities in his/her Ministry or in the area of the Ministry's responsibilities. The Minister shall take care that staff that reports such activities will not suffer for it.

A Code of Ethics for the government and the public administration was prepared by a Committee appointed by the Prime Minister's Office and adopted in May 2012. Article 5 of the Code states that should a member of staff become aware of any morally reprehensible or illegal activity in the workplace, s/he shall give an indication of this to her/his next senior in line who has no personal interest at stake, or to other appropriate parties. No member of staff may suffer for having indicated an infringement of the Code, or for seeking their rights if they feel they are being offended against.

The Code of Ethics has been published in the Official Gazette and distributed amongst Government Personnel. The Prime Minister's Office's School of Public Administration holds seminars on the aforementioned Code of Ethics for the Government Offices personnel. Additionally, the School of Public Administration offers a one day course for new personnel at the Government Offices, one of the subjects discussed in the course are ethical norms for personnel working in Ministries.

English translation to be found here, <http://eng.forsaetisraduneyti.is/ministry/code-of-conduct/>

If no action has been taken to implement recommendation 6 a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

6. Regarding **detection and reporting of foreign bribery**, the Working Group recommends that Iceland:

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

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 6 b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The Ministry of Finance and Economic Affairs and the Tax Authorities regret to report that they have not found time to start work establishing clearer guidelines for tax inspectors concerning their obligation

to report cases of suspected foreign bribery to law enforcement authorities.

Text of recommendation:

7. Regarding **whistleblower protection**, the Working Group recommends that Iceland ensure that appropriate measures are in place to protect from discriminatory or disciplinary action both public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery, and take steps to raise awareness of these mechanisms [2009 Recommendation IX.(iii)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The Ministry of Welfare has not reported on plans to adopt whistleblowing protection mechanisms for the private sector.

Appropriate measures are in place to protect from discriminatory or disciplinary action public employees who report in good faith, see para 73 of the phase 3 report. In addition to the information provided there, it can be reported, as laid out in the reply to recommendation 6a, that the Code of Conduct for government and public administration has been adopted and published and awareness of the Code is high. The Code specifies that no member of staff may suffer for having indicated an infringement of the Code, nor for seeking their rights if they feel they are being offended against. The Code of Ethics for Ministers states that the Minister shall take care that staff that report breaches of morals or unlawful activities will not suffer for it.

Text of recommendation:

8. Regarding **detection through anti money laundering systems**, the Working Group recommends that Iceland take all necessary measures to ensure that all stakeholders involved in fighting money laundering be adequately made aware that bribery of foreign public officials is a predicate offence to money laundering [Convention, Article 7; 2009 Recommendation III.(i)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

This recommendation is still under consideration.

The Ministry of Industries and Innovation is planning in cooperation with the Ministry of the Interior to take measures to ensure that stakeholders involved in fighting money laundering be adequately made

aware that bribery of foreign public officials is a predicate offence to money laundering.

Text of recommendation:

9. Regarding **tax measures for combating foreign bribery**, the Working Group recommends that Iceland proceed with its intention to disseminate and provide training on the OECD Bribery Awareness Handbook for Tax Examiners to tax inspectors, and extend such dissemination to relevant taxpayers [2009 Recommendation III.(i); 2009 Tax Recommendation].

Action taken as of the date of the follow-up report to implement this recommendation:

The OECD Bribery Awareness Handbook has been disseminated to all staff at the Directorate of Internal Revenue. It was posted on the internal website of the Directorate and introduced to all staff by email.

If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

A decision has not been made whether a training seminar will be held, such training would require specialists coming to Iceland from abroad and due to the economic situation and budget restrictions this will not be possible in the near future.

Text of recommendation:

10. Regarding **official development assistance**, the Working Group recommends that Iceland's official development agency (i) systematically require anti-corruption provisions in bilateral aid-funded procurement that include both preventive and punitive measures (such as termination of contracts or other civil or criminal actions, where applicable), and (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.(vi) and XI.(ii); 1996 DAC Recommendation].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

ICEIDA does take the recommendations from the OECD Working Group on Bribery very seriously and has been determined to implement them in an effective manner.

The issues raised by the report have been extensively discussed internally, e.g. at directors meetings, and measures for action evaluated. Anti-corruption clauses have already been incorporated in contracts when appropriate and a review of ICEIDA's Code of Conduct with reference to the recommendations will take place next year.

Text of recommendation:

11. Regarding **public procurement**, the Working Group recommends that Iceland (i) develop measures to raise awareness and provide notification to applicants on the foreign bribery offence and the legal consequences under Icelandic law; and (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.(vi) and XI.(i)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 11, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The Ministry of Finance and Economic Affairs have not had time to start work on implementing the recommendation. The Ministry will however inform those involved in public procurement of the recommendation and encourage them to provide information on the bribery offence and the legal consequences in the procurement documents.

The Ministry intends to look into how to implement part (ii) of the recommendation.

PART II: FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

a) The interpretation of the foreign bribery offence under Icelandic law, to ensure that it covers bribery through intermediaries, and the offering, promising or giving of both pecuniary and non-pecuniary advantages.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No case law.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

b) The application in practice of the corporate liability regime for foreign bribery, notably to ensure that a legal person cannot avoid responsibility for foreign bribery by using intermediaries, including related

legal persons.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No case law.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

c) Whether sanctions for foreign bribery are sufficiently effective, proportionate and dissuasive in practice.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No case law.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

d) The application in practice of the recently amended anti money laundering legislation and its effect on enforcement of money laundering offences predicated on economic crime.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There is a recent conviction for money laundering predicated on fraud at the District Court of Reykjanes.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

e) Whether Iceland's Export Credit Guarantee Department, "Tryggingardeild Utflutnings" (TRU), if and when its practice develops in the granting of officially supported export credits, takes steps to adhere to the OECD Council Recommendation on Bribery and Officially Supported Export Credits.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The TRU fully intends to adhere to the OECD Council Recommendation on Bribery and Officially

Supported Export Credits if and when it handles a new case.

ANNEX

Unofficial translation

Icelandic Penal Code with proposed changes 2012, the proposed changes are underlined

Art. 6 Penalties shall also be imposed in accordance with the Icelandic Penal Code on account of the following offences, even if these have been committed outside the Icelandic State and irrespective of who the offender is:-

18. For conduct specified in an Agreement in the field of Criminal Law on Corruption of 27 January 1999 and in an additional protocol to that agreement from 15 May 2003.

Chapter II A. Criminal Liability of Legal Persons

Art. 19 a. A legal person shall be ordered to pay a fine if this is provided for by Law.

Art. 19 b. Provisions of Law on the criminal liability of legal persons shall, subject to any limitations provided for therein, apply to any entity who while not being a natural person is capable of enjoying rights and bearing duties under Icelandic Law, including public limited liability Companies, private limited liability Companies, Companies with mixed liability of owners, European Interest Groupings, partnership Companies, co-operative societies, public associations, independent foundations, administrative authorities, institutes and Municipalities.

Art. 19 c. Subject to provisions in Law, a legal person can only be made criminally liable if its spokesman, employee or other person acting on its behalf has committed a criminal and unlawful act in the course of its business. Penalties shall be imposed even if the identity of this legal person has not been established. Administrative authorities can only be made criminally liable if a criminal and an unlawful act has been committed in the course of an operation deemed comparable to the operations of private entities.

Art. 19 d. If the requirements set forth in the provisions of this chapter are met a legal person may be made criminally liable for violations against this Act of law and may be deprived of rights under paragraph 2 of article 68.

Art. 68 In case a civil servant commits an offence he/she may, in a criminal litigation against him/her, be deprived of authority to exercise his/her public functions if he/she is no longer deemed worthy or suited.

A person convicted of an offence may, in criminal litigation against him/her, be deprived of authority he/she has acquired to pursue an occupation for which an official licence, authorization, appointment or examination is required, provided the offence indicates that there is considerable danger that the guilty person will commit an offence in his/her position or occupation. In case of a grave offence a person can also be deprived of the aforementioned right if he/she is no longer considered worthy of pursuing the occupation or enjoying the rights.

A person may be deprived of the rights referred to in para. 2 for a specified period of up to five years or for life. The same shall apply to legal persons, however a permanent deprivation of rights will only be considered in instances where there is a grave offence.

Special provisions in Law providing for deprivation of rights referred to in para. 1 and 2 shall remain in effect.

Deprivation of rights is counted as of the point in time provided for in a Judgment and, at the latest as of the time Judgment is served.

In case an Icelandic citizen or a person resident in this Country is deprived of rights abroad by a Judgment rendered on account of a punishable act, the prosecution authorities may initiate criminal litigation against him/her for deprivation of rights. The same applies if a person has been sentenced abroad, even if deprivation of rights has not been ordered. Decision on the above deprivation of rights is subject to Icelandic Law.

Art. 109 Any person who gives, promises or offers a public official, Member of Parliament or arbitrator a gift or other undue advantage, for the official himself or other persons, in order to have him act or refrain from acting in connection with his official duties, shall be imprisoned for up to 4 years, or be fined if there are extenuating circumstances.

The same punishment shall apply to any person who adopts such conduct towards a foreign public official, an official of an international organisation, a member of the assembly of such an organisation or the public legislative assembly of a foreign state, a judge who is a member of an international court, or an employee of such a court, in order to have him act or refrain from acting in connection with his official duties.

The same punishment shall be imposed on anyone who adopts such conduct towards a foreign public servant, foreign member of a jury, foreign arbitrator, a person who is a member of a representative assembly dealing with administrative matters, an official of an international organisation, a person who is a member of the general assembly of such an organisation or a person who is a member of a public legislative assembly of a foreign state, a judge who sits on an international panel of law, or an employee of such a court of law for the purpose of inducing that person to do something or let something undone that is connected with his or her official duties.

Furthermore, the same punishment shall apply to any person who asserts or confirms that he is able to exert an improper influence on the decision-making of any person referred to in the first or second paragraph of this Article and who demands, accepts, or accepts the promise of, a gift or other undue advantage, for himself or others, irrespective of whether the influence is exerted and whether it leads to the intended result.

Art. 128 If a public official, Member of Parliament or arbitrator demands, accepts or accepts the promise of, a gift or other undue advantage, for himself or others, in connection with the execution of his work, he shall be punished ... ¹⁾ by up to 6 years' imprisonment, or by a fine if there are extenuating circumstances.

The same punishment shall be imposed on a foreign public servant, foreign member of a jury, foreign arbitrator, a person who is a member of a foreign representative assembly which deals with administrative matters, an employee of an international organisation, a person a person who is a member of the general assembly of such an organisation or a person who is a member of a public legislative assembly of a foreign state, a judge who sits on an international court of law, or an employee of such a court of law, who demands, receives, or extracts a promise for him-/herself or others any benefit that he/she has no claim on in connection with the execution of his/her work.

Art. 264 a. Any person who gives, promises or offers the manager of a business enterprise, including enterprises partly or totally publicly owned, or a person who does work on behalf of the enterprise, a gift or other undue advantage, for himself or others, in order to have him act, or refrain from acting, in a way that is at variance with his professional duties, shall be punished by up to 3 years' imprisonment, or by a fine if there are extenuating circumstances.

If the manager of a business enterprise, including enterprises partly or totally publicly owned, or a person who does work on behalf of the enterprise, demands, accepts, or accepts the promise of, a gift or other undue advantage, for himself or others, and proceeds to act, or to refrain from acting, in a way that is at variance with his professional duties, he shall be punished by up to 3 years' imprisonment, or by a fine if there are extenuating circumstances.

UNOFFICIAL TRANSLATION

**A BILL FOR AN ACT
AMENDING THE PENAL CODE, NO. 19 OF 12. FEBRUARY 1940,
AS AMENDED (ACTS OF BRIBERY)**

**(SUBMITTED TO THE ALTHINGI AT ITS 140TH LEGISLATIVE SESSION 2011-2012.)
(SUBMITTED TO THE ALTHINGI AT ITS 141TH LEGISLATIVE SESSION 2012-2013.)**

ARTICLE 1

The following addition shall be made to subparagraph 18 of Article 6: and in an additional protocol to that agreement from 15 May 2003.

ARTICLE 2

The following addition shall be made to item d of Article 19 of the Act: deprivation of rights under paragraph 2 of article 68.

ARTICLE 3

The following addition shall be made to paragraph 3 of Article 68 of the Act in the form of a new sentence with the following wording: The same shall apply to legal persons, however a permanent deprivation of rights will only be considered in instances where there is a grave offence.

ARTICLE 4

The following amendments are made to Article 109 of the Act:

- a. The words “public servant” in paragraph 1 are followed by Member of Parliament or arbitrator.
- b. The words “3 years” in paragraph 1 are replaced by: 4 years.
- c. Paragraph 2 shall have the following wording:

The same punishment shall be imposed on anyone who adopts such conduct towards a foreign public servant, foreign member of a jury, foreign arbitrator, a person who is a member of a representative assembly dealing with administrative matters, an official of an international organisation, a person who is a member of the general assembly of such an organisation or a person who is a member of a public legislative assembly of a foreign state, a judge who sits on an international panel of law, or an employee of such a court of law for the purpose of inducing that person to do something or let something undone that is connected with his or her official duties.

ARTICLE 5

The following amendments are made to Article 128 of the Act:

- a. The words “public servant” in paragraph 1 are followed by: Member of Parliament or arbitrator.
- b. Paragraph 2 shall have the following wording:

The same punishment shall be imposed on a foreign public servant, foreign member of a jury, foreign arbitrator, a person who is a member of a foreign representative assembly which deals with administrative

matters, an employee of an international organisation, a person a person who is a member of the general assembly of such an organisation or a person who is a member of a public legislative assembly of a foreign state, a judge who sits on an international court of law, or an employee of such a court of law, who demands, receives, or extracts a promise for him-/herself or others any benefit that he/she has no claim on in connection with the execution of his/her work.

ARTICLE 6

The following amendments will be made with respect to item a. of Article 264 of the Act:

- a. The words "business enterprise" in paragraphs 1 and 2 are followed by: including enterprises partly or totally publicly owned.
- b. The words "2 years" in paragraphs 1 and 2 will be replaced by: 3 years.

ARTICLE 7

This Act of Law shall enter into force immediately.