



PHASE 1 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN COSTA RICA

June 2017

This Phase 1 Report on Costa Rica by the OECD Working Group on Bribery evaluates and makes recommendations on Costa Rica's implementation and application of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 16 June 2017.

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

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A. Implementation of the Convention

Formal Issues

1. On 24 September 2013, Costa Rica formally applied to become a member of the OECD Working Group on Bribery in International Business Transactions (“the Working Group”) and to accede to the [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) (“the Convention”). On 9 April 2015, the OECD Council opened OECD accession discussions with Costa Rica. Costa Rica’s Roadmap for Accession to the OECD, which sets out the terms, conditions, and process for accession to the OECD, provides that Costa Rica should commit to full compliance with the requirements of the Convention [[C\(2015\)93/FINAL](#)]. On 29 July 2016, the OECD Council agreed to invite Costa Rica to join the Working Group [[C\(2016\)109](#)]. This was formalised through an exchange of letters concluded on 12 September 2016. On 11 May 2017, Costa Rica completed the internal procedures for the entry into force of the Convention, and on 24 May 2017 it deposited its Instrument of Accession to the Convention with the OECD.
2. The present report has been prepared for the purpose of the [Phase 1 evaluation](#) of Costa Rica. Costa Rica will be further assessed for the purposes of OECD accession in accordance with the procedure agreed by the OECD Members of the Working Group.

The Convention and the Costa Rican Legal System

3. According to the Costa Rican legal system, treaties must be approved by Congress. This requires the submission of a Bill which, once approved by Congress, must be signed by the President and gazetted. The Bill ratifying the Convention was adopted by the Costa Rican Congress on 11 May 2017, signed by the President and published in the Official Gazette on 15 May 2017.

1. Article 1: The Offence of Bribery of Foreign Public Officials

4. Article 1 of the Convention requires member states to criminalise foreign bribery. Costa Rica criminalises the bribery of foreign public officials through article 55 of Law 8 422, Law Against Corruption and Illicit Enrichment in the Civil Service (LAC) (enacted in 2004).

Article 55, Law Against Corruption and Illicit Enrichment in the Civil Service

A prison term of between two and eight years shall apply to anyone who offers, promises or gives, directly or through an intermediary, to an official of another state, irrespective of the level of government or public agency or company in which he is employed, or to an officer or representative of an international organisation or entity, directly or indirectly, any payment, gift, or undue advantage, be it for the official or for another natural or legal person, for that official, in the use of his position, to make, delay, or omit to perform any action or to unduly bring to bear the influence derived from his position with respect to any other official. The punishment shall be between three and ten years if the bribe is given for the official to perform an action contrary to his duties. The same punishment shall apply to anyone who requests, accepts, or receives such a gift, reward, or benefit.”

As amended by Law 9389 of 16 August 2016.

1.1 The Elements of the Offence

1.1.1 Any person

5. Natural persons are subject to criminal liability for the offence of foreign bribery under article 55 LAC. Legal persons are subject to administrative liability under article 44bis LAC (see discussion under **Section A.2 below**).

1.1.2 Intentionally

6. Article 55 does not expressly refer to the *mens rea* element of the offence. However, Costa Rica explains that, pursuant to article 30 of the Criminal Code, the crime of foreign bribery requires direct intent (*dolo*). Direct intent requires an individual to either intend or desire the result of his or her actions (first degree); or understand that the result is a necessary consequence of his or her actions, regardless of whether this result is intended or desired (second degree).¹

7. Costa Rica advises that due to the covert nature of bribes, direct intent is ordinarily inferred through circumstantial evidence. With respect to foreign bribery, a firm belief that a bribe is being provided to a public official would be sufficient to establish direct intent. Indirect intent (such as recklessness or wilful blindness) is not expressly contemplated in the legislation.² In a bilateral exchange with Costa Rica, officials were asked to consider a hypothetical scenario where an individual (“principle”) pays EUR 1 million to a consultant to obtain a contract from a foreign government in a corruption prone country. The principle does not ask the consultant how the money is used or what specifically the consultant did to obtain the contract. Costa Rica advised that in such circumstances, one could deduce with certainty that the consultant’s fee included a bribe payment. Costa Rica explains that, generally speaking, determination of the principle’s direct intent (and thus liability under article 55) would require consideration of a wider set of circumstances. For example, the tasks assigned to the consultant, his or her fee, and any other factors that may indicate that the money included a bribe payment, even if not mentioned explicitly. Costa Rica advised that the same considerations apply where a principle offender pays a bribe through a reckless or wilfully blind intermediary. The application of the intent element of Costa Rica’s foreign bribery offence should be monitored closely during Phase 2.

1.1.3 To offer, promise or give

8. Article 55, as amended by law 9389 which entered into force in September 2016, covers the ‘offer’, ‘promise’ and ‘gift’ of a bribe. Costa Rica further cited jurisprudence establishing that the terms ‘offer’ and ‘give’ apply whether or not a bribe is solicited by a public official, and regardless of whether the official actually accepts the bribe. Case law also provides that the terms capture both present and future offers, promises, and gifts (i.e. it does not matter whether the bribe payment is made before or after the public official performs the relevant act). It is unclear whether the situation where the bribe did not reach the public official is covered, and this will be followed up in Phase 2.

1.1.4 Any undue pecuniary or other advantage

9. Article 55 applies to anyone who offers or gives any “payment, gift, or undue advantage”. Costa Rica explains that this applies to *all* bribes, independent of their nature. While this *prima facie* meets the

¹ Ruling 2014-2374, Criminal Appeals Court of the Second Judicial Circuit of San Jose, (10 December 2014).

² The Working Group on Bribery has not systematically considered countries’ coverage of indirect intent. Several Working Group on Bribery countries appear to have foreign bribery offences which do not cover cases of indirect intent.

standard in Article 1(1) of the Convention, which defines a bribe as “any undue pecuniary or other advantage,” there is no jurisprudence on this point. Thus the interpretation of this provision, in particular, what constitutes an ‘undue advantage’ should be reviewed in the course of Costa Rica’s Phase 2 report.

1.1.5 Whether directly or through intermediaries

10. The requirement in Convention Article 1(1) that the advantage be offered “directly or through intermediaries” appears to be covered through the inclusion of the terms “directly or indirectly” in article 55 LAC. Costa Rica advises that this language was not called into question in a Supreme Court case where the defendant received a bribe through his wife, rather than directly. As outlined in Section A.1.1.2 above, to hold the intermediary liable, he or she must either intend the result of his/her actions or understand that the result is a necessary consequence. The application of this requirement will need to be closely monitored in Phase 2 to ensure it does not act as a barrier to the effective enforcement of bribes paid through intermediaries.

1.1.6 To a foreign public official

11. Article 55 LAC applies to officials “of another state irrespective of the level of government or public agency or company in which he is employed”. While ‘state’ is not defined, Costa Rica advises that, in line with Commentary 18 to the Convention, it extends to any organised foreign area or entity. Article 2 LAC provides a very broad definition of ‘official’ that includes “any person who works for the organs and entities of the public administration, both state and non-state” and “persons working for public entities entrusted with tasks subject to common law”. Costa Rica confirms that this captures members of the judiciary and persons working for state owned enterprises. Officials and representatives of international organisations are also included in article 55.

1.1.7 For that official or for a third party

12. Article 55 LAC applies to bribes paid to a foreign public official, “be it for the official or for another person.” Costa Rica explains that this includes instances in which the advantage is not intended for the official, but for a third party. It further explains that while no link is required between the official and the third party, the official must somehow be aware of who is receiving the undue advantage.

1.1.8 In order that the official act or refrain from acting in relation to the performance of official duties

13. Article 55 LAC applies to bribes paid to induce an official “in the use of his position, to make, delay or omit to perform any action”. Costa Rica explains that this is meant to cover scenarios where an official makes, delays, or omits to perform *any* action within his or her official duties or executes an act contrary to his or her official duties. In addition, article 55 also covers situations where the bribe is paid in order for the official “to unduly bring to bear the influence derived from his position with respect to any other official.” Article 55 further expressly provides for aggravated bribery where the bribe is made to induce the official to “perform an action contrary to his duties.”

1.1.9/1.1.10 In order to obtain or retain business or other improper advantage in the conduct of international business

14. Costa Rica’s foreign bribery offence does not require that the bribe be paid with the motive of obtaining or retaining business or other improper advantage in the conduct of international business (Convention, Art. 1(1)).

1.2 Complicity

15. Article 1(2) of the Convention requires Parties to establish as a criminal offence “complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official.”

16. In Costa Rica, participatory acts are covered by article 47 of the Criminal Code which provides that accomplices are those “that provide to the author or authors, any assistance or cooperation for the commission of the offence.” Costa Rica confirms that this applies to foreign bribery. While it has no case law on complicity with respect to foreign bribery, Costa Rica provided an excerpt from a Court of Appeal judgment outlining the broad range of acts captured by article 47, including providing “any assistance “, “help or aid” to the perpetrator in order to “reinforce, facilitate or make possible the commission of the offence”. Incitement is covered under article 46.

1.3 Attempt and Conspiracy

17. Article 1(2) of the Convention requires Parties to criminalise attempt and conspiracy to commit foreign bribery to the same extent as domestic bribery.

18. Attempt is covered by article 24 of the Criminal Code and applies to both domestic and foreign bribery. Article 24 provides that “there is an attempt when the execution of a crime is initiated by acts directly aimed at its commission and this does not occur for reasons independent of the agent.” Costa Rica has no jurisprudence on attempted bribery (domestic or foreign). Conspiracy as a general ancillary offence is not anticipated under Costa Rican law and does not apply to any criminal offences, including domestic and foreign bribery.

1.4 Defences

19. Costa Rican law does not prescribe a specific defence for the crime of foreign bribery under Article 55. Costa Rica further clarifies that there are no specific defences that would apply to domestic bribery. Defences of general application will be reviewed in Phase 2 to ensure they do not prevent effective implementation of the Convention.

2. Article 2: Responsibility of Legal Persons

20. Article 2 of the Convention requires each Party to “take such measures as may be necessary [...] to establish liability of legal persons for the bribery of a foreign public official”.

21. Costa Rican Law establishes administrative (and not criminal) liability for legal persons for foreign bribery. Administrative liability is set out in article 44bis LAC, introduced by article 2(b) of Law 8630 of 17 January 2008. Article 44bis and related legislation set out various sanctions that can be imposed on legal persons, including monetary fines, closure, suspension or cancellation of a business, loss of tax benefits, and debarment from public procurement procedures (discussed further under Section A.3 on sanctions).

Article 44bis, paragraphs 1 and 2 LAC³

In those cases provided by paragraph m) of Article 38 and Article 55 of this Law, and in Articles 340 to 345bis of the Criminal Code, when the payment, gift or undue advantage is given, promised, or offered by a director, administrator, manager, agent or employee of a legal person, in relation to the exercise of the functions of the position or using goods or means of that legal person, the legal person will be fined twenty to one-thousand basic salary, notwithstanding and independently of the criminal and civil responsibilities that are applicable and the administrative responsibility of the public official, pursuant to this and other applicable laws.

If the payment, gift or undue advantage is related to an administrative contracting procedure, the legal person that is responsible will be assessed the above fine or up to ten percent (10%) of the amount of the offer or of the contract, whichever is greater; in addition, they will be disqualified as provided by paragraph (c) of Article 100 of Law No. 7 494, Administrative Contracting.

22. Law 7 594, Code of Criminal Procedure (CCP) also establishes a framework for civil proceedings against legal and natural persons (see discussion under Section A.3.5 on additional sanctions).

2.1 *Legal Entities Subject to Liability*

23. Article 44bis refers broadly to the liability of “legal persons” but does not include a definition. Article 33 of the Civil Code (Law 63) provides that “the existence of legal persons comes from the law or an agreement under the rule of law” and should thus be understood as any entity recognised by law. Under Costa Rica’s legal system, all legal persons must undergo registration and be listed in the National Register, including state owned enterprises, general and limited partnerships, companies (including limited liability companies), foundations, non-profit organisations, professional societies, and civil and sports associations. Costa Rica further explains that subsidiaries of foreign companies must also be registered to be able to legally operate in Costa Rica.

24. Trusts and other unregistered entities (e.g. unregistered charities) are not legal persons and thus cannot be held liable for foreign bribery under article 44bis.⁴ The extent to which Costa Rican businesses operate as unregistered entities (e.g. commercial trusts) should thus be examined during Phase 2.

2.2 *Standard of Liability*

2.2.1 *Level of authority of the natural person*

25. Parties to the Convention are required to meet the standard of corporate liability for foreign bribery as specified in the [2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions](#) (2009 Anti-Bribery Recommendation).⁵ To hold a legal person liable under article 44bis LAC, foreign bribery must have been committed by a “director, administrator, manager, agent or employee of a legal person.” Costa Rica advises that while ‘employee’ is

³ See Annex 2 – Excerpts of relevant Legislation for the full article 44bis LAC.

⁴ The Working Group on Bribery has not systematically assessed the extent to which countries’ corporate liability laws extend to unincorporated entities. A recent stocktaking exercise of Working Group on Bribery Phase 1-3 monitoring reports found that no conclusion could be drawn on the liability of unincorporated entities for foreign bribery in 18 countries.

⁵ 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions [[C\(2009\)159/REV1/FINAL](#)].

not defined in article 44bis, the definition is intentionally broad and intended to capture individuals at all levels of an organisation.

2.2.2 *Scope of authority of natural person*

26. Article 44bis LAC provides that a natural person must have paid the bribe “in relation to the exercise of the functions of the position.” Costa Rica explains that the person does not have to be acting in strict compliance with their functions, so long as the bribe is made “in relation to their functions as an employee.”⁶ Alternatively the natural person can pay the bribe “using goods or means of that legal person” (art. 44bis, LAC). There is currently no case law on the interpretation of these phrases. This should thus be followed up in the course of Costa Rica’s Phase 2 evaluation.

2.2.3 *Onus of proof*

27. Under Article 39 of the Constitution, the presumption of innocence applies to administrative proceedings. Pursuant to article 214(2) of Law 6227, General Law of Public Administration, to hold a company liable the state must demonstrate the facts of the case in an exhaustive, faithful and complete manner. Costa Rica cited a judgment of the First Chamber of the Supreme Court that provides that in administrative proceedings, the state has a duty to “demonstrate and justify the concurrence of all the constituent elements of the offence.”

2.2.4 *Bribes paid through intermediaries*

28. Annex I.C of the 2009 Recommendation states that a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to commit foreign bribery. Article 44bis LAC directly links to the foreign bribery offence set out in article 55 LAC. As outlined in Section A.1 above, this provision contemplates bribes paid directly or indirectly (and thus through intermediaries). Costa Rica confirms that this includes bribes paid through related legal persons, although there is no case law as of yet to confirm this. This will need to be further discussed in Phase 2.

2.3 *Proceedings against Legal Persons*

29. Parties to the Convention are required to ensure that the conviction or prosecution of a natural person is not a precondition to the liability of a legal person for foreign bribery (2009 Anti-Bribery Recommendation Annex I.B).

30. Article 44bis LAC provides that legal persons will be fined “independently of the criminal and civil penalties that are applicable and the administrative responsibility of the public official.” While it is clear that a prosecution or conviction of a foreign public official is not necessary to proceed against the legal person, on the other hand, the provision is silent on whether proceedings against legal persons may take place regardless of whether the natural person or persons who perpetrated the offence (i.e. the active briber(s)) are prosecuted or convicted). Costa Rica considers that the prosecution or conviction of a natural person is not a prerequisite to engaging proceedings against the legal person, as article 44bis specifies liability of legal persons applies “independently of the criminal and civil responsibilities that are applicable”, which Costa Rica interprets as addressing the criminal penalties applicable to the natural person. Nevertheless, in the absence of an explicit legislative basis or case law in support of this interpretation, this would need to be clarified in future legislation or through jurisprudence.

⁶ Similar language has been discussed in the Working Group on Bribery’s reports on Denmark, Japan, South Africa, and the United States. These countries did not receive recommendations in relation to this language.

31. Costa Rica has yet to hold a company liable for a corruption offence or any other economic crime. It is currently drafting a Bill to strengthen its corporate liability regime for foreign bribery, but is unable to provide further details while the text is still under consideration. Costa Rica expects the Bill to be introduced before Congress by end 2017, but it is unknown when discussions on the Bill will be finalised. Costa Rica's Phase 2 evaluation should closely examine this Bill (also see Section A.5 below).

3. Article 3: Sanctions

3.1 *Principal Penalties for Bribery of a Domestic and Foreign Public Official*

32. Article 3 of the Convention requires that foreign bribery is punishable by "effective, proportionate and dissuasive" criminal penalties that are comparable to those applicable to domestic bribery. The issue of confiscation is considered in Section A.3.3 below.

3.1.1 *Penalties for natural persons*

33. Under Article 55 LAC, the applicable criminal sanction for natural persons for foreign bribery is a term of imprisonment between two and eight years. In the case of aggravated foreign bribery (where the bribe is paid to induce the official "to perform an act contrary to his duties"), the available sentence is between three and ten years imprisonment. In addition to a term of imprisonment, individuals may be disqualified from holding public office for one to ten years (art. 59 LAC). The same penalties apply to individuals who incite, aid, abet, or attempt to commit foreign bribery. However, the penalty may be lowered by the Court, based on the sentencing guidelines for judges set out in article 71 of the Criminal Code. These sanctions are equivalent to those available for domestic bribery offences.

34. Costa Rica does not have criminal fines for natural persons for foreign bribery. Criminal fines are equally unavailable for domestic bribery (under the LAC) and general fraud offences. In several major domestic corruption cases imprisonment sanctions have been short or suspended. For example, in one case former senior political officials were accused of accepting bribes from a foreign country. The officials were convicted of bribery, embezzlement, and fraud, and sentenced to five years' imprisonment; however, all sentences were reduced and suspended on appeal. Statistics provided by Costa Rica indicate that between 2009 and 2014, the average sentence for domestic bribery was two to three years' imprisonment. Of the 19 convictions during this time period, 11 (58%) resulted in conditional sentences. Given this, and the lack of criminal fines, the Working Group expresses its concerns and will follow up on sanctions imposed in practice during Costa Rica's Phase 2 evaluation to ensure they are sufficiently "effective, proportionate and dissuasive" (Convention Article 3). The WGB encourages Costa Rica to consider this issue in the development of current legislation to enhance the foreign bribery offence.

3.1.2 *Penalties for legal persons*

35. Article 3(2) of the Convention requires that in the event that criminal responsibility does not apply to legal persons, State Parties must ensure that legal persons are subject to "effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions". Article 44bis(1) LAC sets out administrative sanctions for legal persons ranging from 20-1000 times Costa Rica's 'basic salary'. The Superior Council of the Judiciary sets this amount at CRC 424 200 (approx. EUR 691) meaning the fines will total CRC 8 484 000 - CRC 424 200 000 (approx. EUR 14 120 - EUR 706 000). These are among the lowest maximum fines for legal persons among Parties to the Convention.

36. If the bribe was offered or paid in relation to a public procurement process, including a foreign procurement process, the legal person is subject to whichever is greater out of the above fine or 10% of the offer or contract *in addition* to mandatory disqualification from public procurement procedures within

Costa Rica for a period of ten years (art. 44bis(2) LAC and art.100(c) of Law 7 494 on Administrative Contracting).

37. As outlined above, a technical team is currently drafting a bill to enhance Costa Rica's corporate liability regime for foreign bribery. As part of this review, it is analysing the sanctions available for legal persons under article 44bis LAC and considering the possibility of increasing the level of fines. Given the Working Group's serious concerns, Costa Rica is encouraged to prioritise this endeavour to ensure its fines for legal persons are effective, proportionate and dissuasive. The current Bill under preparation on corporate liability could usefully address this concern.

3.2. *Penalties and Mutual Legal Assistance /Extradition*

38. Convention Article 3(1) states that, in the case of natural persons, sanctions for foreign bribery should include deprivation of liberty sufficient to enable effective mutual legal assistance (MLA) and extradition. Costa Rica's ability to seek and provide MLA in criminal matters depends on the requirements set out in the international or bilateral treaty relied upon for the request. Costa Rica is not currently Party to any treaty that requires the criminal act to be punishable by more than two years' imprisonment for MLA to be provided (the minimum penalty for natural persons for foreign bribery). In the absence of an international treaty with a requesting country, Costa Rica can provide international cooperation on the basis of reciprocity. No minimum term of imprisonment is required to provide mutual legal assistance on the basis of reciprocity.

39. Costa Rica's sanctions for foreign bribery are also sufficient for seeking and responding to extradition requests. Costa Rica can provide extradition on the basis of an applicable treaty and is not currently Party to any treaty that requires a term of imprisonment of more than two years' imprisonment in order to extradite. In the absence of an extradition treaty with the requesting country, the request for extradition is analysed based on the requirements established in Costa Rica's Law on Extradition. Article 3(e) of Law 4 795 on Extradition states that Costa Rica will not provide extradition for offences carrying less than a one year term of imprisonment (and thus does not impact extradition for foreign bribery).

3.3 *Seizure and Confiscation*

40. Convention Article 3(3) requires each Party to take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.

41. Asset recovery in Costa Rica is the responsibility of the Public Prosecution Service (PPS), which carries out this task in cooperation with the Police. Costa Rica's legislative framework on asset recovery offers several legal routes.

3.3.1 *Seizure and confiscation under the Criminal Code and CCP*

42. The most common method of seizure and confiscation is under article 198 CCP and article 110 of the Criminal Code which permit the seizure and confiscation of both the bribe and the proceeds of bribe payments. Costa Rica explains that pursuant to a decision by the Supreme Court, the Public Prosecution Service (PPS) can seize money under article 198 CCP prior to indictment and without a formal court order (whereas the seizure of objects or documents will require judicial consent).⁷ In order to seize money on this

⁷ Ruling 2004-1422, Third Chamber of the Supreme Court (17 December 2004).

basis, the PPS must establish a link between the money and the commission of an offence (for example, through a suspicious transaction report).

43. Costa Rica informs that under these provisions it is able to seize and confiscate assets that have been transformed (i.e. converted into other assets) or transferred to a third party. However, contrary to Article 3(3) of the Convention, where such assets cannot be traced, it is unable to seize or confiscate property of an equivalent value, which raises the Working Group's concern. Costa Rica's ability to effectively trace and confiscate the bribe and bribe proceeds should thus be examined closely during its Phase 2 evaluation.

44. Confiscation under article 110 of the Criminal Code is applied on criminal conviction and must be declared at sentencing. This form of confiscation can therefore only be applied in the context of a trial against a natural person for foreign bribery, although the confiscations measures may be pronounced against both natural and legal persons. Again, this raises the Working Group's concern that Costa Rica cannot confiscate the proceeds of bribery in the hands of legal persons, without the conviction of a natural person, as required by Article 3(3) of the Convention. The current Bill under preparation on corporate liability could usefully address this concern.

3.3.2 *Seizure and confiscation under the Law on Organised Crime*

45. In addition to the Criminal Code, seizure and confiscation can also take place pursuant to Law 8 754 on Organised Crime:

- Article 25 provides for the seizure and confiscation of all “real property, personal property, money, instruments, equipment, securities and financial proceeds” used or arising from the commission of organised crime. Organised crime is defined as a “structured group of two or more people that exists during a certain period of time and whose members act together to commit one or more criminal offence” (see article 1). As foreign bribery often involves multiple stakeholders, this could prove a useful tool in some foreign bribery cases. As with seizure under the CCP, it may take place before any formal charges are filed (provided the prosecution can show the probable source of the assets). Confiscation is applied upon conviction, meaning the measures cannot be applied independent of a criminal prosecution against a natural person. The Act expressly contemplates confiscation from legal persons where this can be linked to the conviction of a natural person.
- Article 20 also allows the State to seize and confiscate assets whose legal origin has “no apparent legal cause”. Costa Rica explains that this requires a judicial declaration that the assets are the proceeds of ‘illegal activities’ or of ‘illicit origin’ but would not require proof that assets were the proceeds of foreign bribery. These measures can be applied in the absence of a criminal conviction and independent of administrative proceedings. Article 20 could thus theoretically be used to seize and confiscate the bribe and proceeds of foreign bribery from both legal and natural persons. The procedure is initiated when either the General Comptroller of the Republic, the Ministry of Finance, the Costa Rican Drug Institute, or the Public Prosecution Service (PPS) files a complaint with the Treasury Civil Court. Upon receipt of a complaint, the Court issues a preventive injunction against the property, freezes all financial products, and provides the accused 20 days to respond to the plaintiff and file evidence. An arraignment is then held where both sides can present their evidence and a decision is made on whether to issue a declaration. The MOJ, the agency responsible for proceedings against legal persons for foreign bribery (see Section A.5.1), is not permitted to file a complaint under article 20 of Law 8 754 against Organised Crime. They would therefore be reliant on the complaint being filed on their behalf, by another agency. This may create problems in practice and should be followed up in Phase 2.

46. Finally, Costa Rica has a Bill before Congress⁸ which aims to establish a judicial procedure for the confiscation of goods that show an ‘unjustified asset growth.’ It is unclear how this would apply to legal persons in active foreign bribery cases. This should be examined in the course of Costa Rica’s Phase 2 evaluation.

3.4 Additional Civil and Administrative Sanctions

47. Convention Article 3(4) requires each Party to consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for foreign bribery.

Civil compensation

48. Pursuant to article 103 of the Criminal Code natural persons are subject to additional civil financial penalties for damages including restitution and compensation for damage caused. Civil compensation can also be ordered against both natural and legal persons under article 37 CCP. Finally, damages for social harm (compensation for harm to collective interests) may be ordered under article 38 CCP. All of these additional civil sanctions apply to legal and natural persons and there is no limitation on the amount of compensation or damages the court can award. Civil suits for social damages filed in connection with two previous domestic bribery cases resulted in monetary sanctions of approximately USD 19 million (approx. EUR 17 million).

49. Costa Rica explains that civil compensation depends on the filing of a civil claim for damages by a victim, which can be filed either alongside or independent of criminal proceedings. Where a civil claim is filed in conjunction with a criminal proceeding, the criminal courts (responsible for criminal proceedings) can also hear the civil suit against natural *and* legal persons. Administrative courts, on the other hand, are not competent to hear civil claims. Therefore, civil proceedings against legal persons for foreign bribery take place independent of administrative proceedings, in either the civil court or a related criminal proceeding against a natural person. Civil suits are premised on, *inter alia*, the existence of damage suffered by a victim, a causal element between the offence and the damage suffered, and a civil suit being filed by a private party. Costa Rica clarifies that the State is entitled to file a civil claim when economic damage is caused, or due to social harm, as a result of the commission of an act of corruption. It is uncertain whether a foreign State would be able to file such a claim in the case of a foreign bribery offence, as there is no precedence for such an occurrence. As noted by the Working Group in earlier country evaluations, the use of civil compensation in foreign bribery cases appears unlikely due, notably, to the possible challenge in demonstrating and quantifying damages.⁹

Debarment from public procurement

50. Under article 100 of Law 7 494 on Administrative Contracting as referred to under article 44bis(2) LAC, both natural and legal persons are subject to ten years mandatory debarment from public procurement procedures only where a bribe is paid in relation to such a procedure. Costa Rica advises that this applies to both domestic and foreign public procurement procedures. As there is no case law on this point, this should be followed up in the course of Costa Rica’s Phase 2 evaluation.

Additional administrative sanctions

51. Finally, article 44bis(4) LAC sets out additional administrative sanctions that the MOJ may, depending on the severity of the offence, apply to legal persons irrespective of whether the bribe was paid

⁸ Bill 19 571, Ley de Extinción de Dominio.

⁹ Cf. Colombia Phase 1 report, para. 69.

in the context of a public procurement process. These include the closure of the business and its subsidiaries or suspension of business activities for up to five years, cancellation of concessions or operating permits, and loss of tax benefits or exemptions. These measures are available in addition to the penalties set out in articles 44bis(1) and (2) LAC.

4. Article 4: Jurisdiction

4.1 Territorial Jurisdiction

52. Convention Article 4(1) requires each Party to “take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.” Commentary 25 clarifies that “an extensive physical connection to the bribery act is not required.”

53. Article 4 of the Criminal Code provides that Costa Rica has jurisdiction over offences committed within its national territory, which includes its territorial sea and airspace, as well as Costa Rican ships and aircrafts. Article 20 of the Criminal Code further provides that an offence is committed in the place where it was developed (in whole or in part) and also the place where it occurred or should have occurred. Finally, article 6 provides jurisdiction for offences committed abroad, where the offence ‘produces, or may produce results, in whole or in part, in the national territory’ Costa Rican authorities assert that these provisions ensure that it has jurisdiction over foreign bribery where any part of the offence takes place within its territory and cites case law on this point¹⁰

4.2 Nationality Jurisdiction

54. Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles (Convention Article 4(2)).

55. Article 6(4) of the Criminal Code provides that Costa Rica has jurisdiction over offences “committed by a Costa Rican citizen”. This applies only to Costa Rican citizens, meaning Costa Rica will not have jurisdiction over Costa Rican *residents* who commit foreign bribery abroad. Costa Rican legal doctrine also provides that Costa Rica only has jurisdiction over citizens where the underlying conduct is criminalised in the country where it occurred (i.e. dual criminality is required). These requirements are consistent with the jurisdictional principles applied to other offences. In terms of legal persons, Costa Rica states that it has jurisdiction over all legal persons “domiciled” within Costa Rica. The legislative basis for this statement is not clear. It is also unclear whether dual criminality applies to legal persons. The legal basis and its practical application should be examined in Phase 2.

4.3 Consultation Procedures

56. When more than one Party has jurisdiction over an alleged offence described in the Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution (Convention 4(3)).

57. Costa Rica advises that where this situation arises, the PPS will consult with the other Parties to determine the most appropriate jurisdiction to investigate and prosecute. Costa Rica has a number of channels through which consultation may be conducted. These include formal mutual legal assistance, which Costa Rica may provide on the basis of a treaty or reciprocity (discussed further under Section A.9

¹⁰ Ruling 2014-1847, Third Chamber of the Supreme Court.

below). Costa Rica can also spontaneously transmit information relevant to criminal investigations in another country, and is able to communicate with authorities in other jurisdictions to coordinate the opening of an investigation. Subject to the approval of the Attorney-General, the PPS can also form joint investigative teams with foreign law enforcement authorities in transnational investigations (see arts. 22, 62, & 65 CCP).

4.4 Review of Basis of Jurisdiction

58. Convention Article 4(4) requires each Party to review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, to take remedial steps. Costa Rica states that it has not undertaken a review of its basis for jurisdiction as its law in this regard is clear and does not pose any challenges in practice.

5. Article 5: Enforcement

59. Article 5 of the Convention provides that the investigation and prosecution of foreign bribery must be “subject to the applicable rules and principles of each Party.”

5.1 Rules and Principles Regarding Investigations and Prosecutions

60. In Costa Rica, there are different processes and proceedings for foreign bribery proceedings against natural and legal persons. Criminal proceedings against natural persons are governed by the CCP while administrative proceedings against legal persons are governed by Law 6 227, General Law of Public Administration.

5.1.1 Proceedings against Natural Persons

61. The investigation and prosecution of natural persons for foreign bribery is the responsibility of prosecutors from the Public Prosecution Service (*Ministerio Público*; “PPS”), which forms part of the judicial branch of government (art. 2, Law 7 442, Organisational Law of the PPS and Arts. 16 and 32, CCP). Within the PPS, corruption is investigated and prosecuted by a specialised unit, the Integrity, Transparency and Anti-Corruption Unit (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*; “FAPTA”). Under the Memorandum of Assistant Prosecutor of FAPTA, 01-2011, a case will be the responsibility of FAPTA where (i) the perpetrator is “white collar” and well-placed to combat the prosecution; (ii) the crime was organised or complex and involved the exercise of a public function; and (iii) the crime caused general damage or public concern. The Memorandum further includes a list of offences for which FAPTA has sole competence, which includes the foreign bribery offences in article 55 LAC. Costa Rica’s Phase 2 evaluation will follow up on this and evaluate how investigators and prosecutors are made aware of FAPTA’s responsibility for foreign bribery.

62. The PPS is supported by the Judicial Investigation Body (OIJ), which acts as the judicial police and performs investigative actions upon the direction of the PPS. In foreign bribery cases, this function will be performed by officers from the OIJ’s Anti-Corruption Unit.

63. A criminal investigation may be opened where the PPS “has knowledge of a crime” (art. 298 CCP). Costa Rica confirms that this is a low threshold and there are no minimum requirements to open an investigation; it is up to the discretion of the lead prosecutor. Investigations may be opened on the basis of a complaint or an incoming mutual legal assistance (MLA) request, as well as anonymous or unsourced information such as media reports. This has occurred in practice with a newspaper article forming the basis of one of Costa Rica’s major corruption cases. The public may make complaints to the PPS or the OIJ. If a complaint of foreign bribery is received by the PPS, it will assess the allegation and

decide whether to open an investigation. If a complaint is received by the OIJ, it is required to forward the complaint to the PPS for the purpose of opening an investigation (arts. 278 and 283 CCP). However, Costa Rica explains that the OIJ may undertake a preliminary investigation to verify the report prior to informing the PPS. There is a risk that this could lead to allegations being prematurely dismissed by the OIJ prior to consultation with the PPS. This should be followed up in Costa Rica's Phase 2 evaluation.

64. Upon opening a foreign bribery investigation, a 'supervising prosecutor' from FAPTA will be appointed to lead the investigation. In general, the supervising prosecutor will be appointed on the basis of a roster. However, the Assistant Prosecutor or Prosecutor General has the ability to appoint a specific prosecutor where warranted in light of the complexity or urgency of the case or the need for specific skills, experience, or knowledge. The supervising prosecutor will lead the investigation and instruct the OIJ to undertake necessary investigative actions (art. 283 CCP). Any investigative action undertaken by the OIJ must be reported to the supervising prosecutor (art. 288 CCP). These actions may include search and seizure of evidence (arts. 193, 194 and 286 CCP), questioning witnesses (art. 286 CCP), interception of communications (art. 201 CCP), the appointment of experts to analyse evidence (art. 213 CCP), and access to financial information (Art. 1 Law on Search, Seizure and Examination of Private Documents and Intercepting Communications). Coercive measures such as search and seizure and interception require judicial approval (art. 277 CCP).

65. At the completion of the investigation, the supervising prosecutor must evaluate the evidence, and decide whether to proceed to indictment or terminate the investigation (arts. 297 and 303 CCP). The investigation will be terminated where the supervising prosecutor considers that no offence has been committed, the offence was not committed by the accused, a justification or defence applies, the statute of limitations has expired, or where the evidence is insufficient and there is no possibility of obtaining additional evidence (Art. 311 CCP). The investigation or prosecution may also be terminated where the accused provides vital aid to the PPS in the investigation or prosecution of another person in the same case, provided the accused's culpability is less than that of the other natural or legal person prosecuted. Costa Rica's Phase 2 evaluation should explore how this system could be used in foreign bribery cases. The decision to terminate an investigation is subject to judicial approval by a judge of the Criminal Court (arts. 299 and 301 CCP).

66. Costa Rica has received some criticism for its slow judicial process with criminal cases taking an average of one year to proceed from indictment to trial.¹¹ The efficiency of Costa Rica's criminal process should be followed up in Phase 2.

5.1.2 *Proceedings against Legal Persons*

67. Proceedings against legal persons are conducted by the Ministry of Justice (MOJ) (art. 44bis LAC) pursuant to the procedure set out in Law 6 227, General Law of Public Administration (GLPA). Investigations would be conducted by the MOJ Legal Department, which is composed of lawyers with experience in criminal and administrative law. The Department is an administrative section of the Ministry and is not responsible for the investigation or sanctioning of any offence, other than foreign bribery. This creates a risk that the Department's staff will not be adequately equipped to undertake investigations. To compensate for this lack of experience, the Department is able to seek and receive advice from the PPS through the Public Ethics Prosecutor (art. 44bis LAC). It is unclear what experience the Public Ethics Prosecutor has in foreign bribery cases, and the FAPTA may be a more appropriate source of information and guidance for the MOJ Legal Department. Given the complexity of foreign bribery cases and the need

¹¹ ICR News, "[Slow justice: Costa Rica's criminal courts backlogged as far as 2017](#)" (8 August 2014); QCOSTARICA "[Why is the Costa Rica judicial process so slow compared to Nicaragua?](#)" (8 July 2016).

for specialised investigative expertise, the expertise of the MOJ Legal Department and its capacity to investigate foreign bribery should be closely examined during Costa Rica's Phase 2 evaluation.

68. The MOJ Legal Department is responsible for deciding whether to open an investigation. The Department will open an investigation where it has information which (i) suggests that foreign bribery has been committed and, (ii) allows the identification of the legal person involved. Costa Rica confirms that an investigation can be opened independent of any criminal investigation into a natural person. According to the GLPA, proceedings may be commenced on the basis of a complaint or on the initiative of the MOJ (art. 284). Costa Rica clarifies that in the absence of a complaint, the MOJ Legal Department would commence an investigation "by decision of the Minister of Justice". The involvement of the Minister of Justice in this process raises independence concerns which are discussed in Section 5.2 below.

69. In the course of an investigation, the MOJ Legal Department can "order and practice all the measures of inquiry necessary to determine the truth of the facts in the proceedings" (art. 297 GLPA). This includes obtaining witness testimony (art. 304 GLPA), seeking expert evidence (art. 302 GLPA), and ordering the production of objects or documents (art. 305 GLPA). However, the Department does not have full access to coercive investigative measures such as search and seizure, interception, and access to financial information, nor is the Department able to make MLA requests. Costa Rica explains that in these cases the Department would seek assistance from the OIJ which has access to coercive measures (art. 4, Law 6 227, Organisation Law of the Judicial Investigation Service; art. 286 CPC). Support from the PPS would also be required for the MOJ to seek MLA. This will require a high degree of clarity and cooperation which should be explored in Costa Rica's Phase 2 evaluation. These difficulties also highlight the unsuitability of the MOJ to conduct investigations into legal persons for foreign bribery.

70. Investigations into legal persons are initiated by the MOJ through a preliminary investigation. There is no time limit for conducting this preliminary investigation (other than that imposed by the statute of limitations), during which the MOJ will collect the necessary elements to decide whether to formally open "ordinary administrative proceedings" against the legal person. Similarly, once such proceedings have been opened, there is no time limit to reach the final hearing (other than the statute of limitations). Nevertheless, under article 340 of GLPA, ordinary administrative proceedings against a legal person may be terminated prior to a final ruling if the proceedings have not progressed for six months, solely as a result of the inaction of the MOJ. Costa Rica confirms that this would require a period of inactivity from the MOJ Legal Department and would not include a situation where another entity or jurisdiction was at fault, e.g. where there was a delay in receiving a response to a MLA request. Moreover, expiration is a punishable procedural offence for the MOJ officials at fault (art. 340 GLPA). The proceedings may also be terminated where there is insufficient evidence to establish liability. If sufficient evidence is obtained, an oral hearing is held (art. 309 GLPA). During this hearing, the MOJ Legal Department presents the evidence to the company's representatives, and the company presents any defence or exculpatory evidence (art. 220 GLPA). A 'Director Body', comprised of technical staff from within the MOJ Legal Department, presides over the hearing. This may create a conflict of interest given the Department's role in the investigation; this should be followed up in Phase 2. Based on the results of the hearing, the Director Body will prepare a Technical Opinion which is presented to the Minister of Justice. The Minister then makes the final decision on liability and sanction. Pursuant to Article 49 of the Constitution, the Minister's decision on liability may be judicially reviewed by the Administrative Appeals Court.

71. As noted above, there are concerns about the capability and capacity of the MOJ Legal Department to undertake foreign bribery investigations. The existence of entirely separate processes for natural and legal persons may also result in an overlap in investigative work; the PPS and MOJ may both be undertaking investigations in respect of the same case (with the PPS focusing on the natural persons and the MOJ on the legal persons), resulting in each agency separately carrying out the same investigative measures (e.g. interviewing the same witnesses). This raises questions in terms of efficiency. The

separation of responsibilities also creates a risk that allegations are overlooked or that relevant evidence is not shared. These concerns are heightened by Costa Rica's statement that while the PPS can alert the MOJ to an allegation against a legal person, the two agencies are not able to freely share evidence and the PPS is prohibited from sharing information during the pre-trial stage of proceedings. These concerns raise serious doubts about the efficacy of Costa Rica's current system for investigating and sanctioning legal persons. If the current division of responsibility between the PPS and MOJ is to succeed, Costa Rica will need to put in place systems to ensure systematic cooperation, coordination and information-sharing between these two agencies. The practical coordination and cooperation between agencies should be closely monitored in future evaluations to ensure Costa Rica's enforcement framework is effective and efficient.

72. Costa Rica is currently working on a bill that would allow administrative procedures against legal persons for foreign bribery to be processed through the judicial system. The Bill was unable to be shared with the evaluation team, but Costa Rica explains that it would give the PPS responsibility for investigating and sanctioning legal persons as well as natural persons. This proposal would allay some of the concerns raised above by ensuring the necessary experience and expertise are available in cases involving legal persons and that investigators have access to the full range of investigative tools.

5.2 National Economic Interest, Potential Effect upon Relations with another State, and Identity of the Natural or Legal Person Involved

73. Article 5 of the Convention requires each Party to ensure that foreign bribery investigations and prosecutions are not influenced by "considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved".

5.2.2 Proceedings against Natural Persons

74. The PPS enjoys statutory guarantees of "full functional independence in the exercise of its legal and regulatory powers and functions and, consequently, may not be impelled or interfered with by any authority other than the courts of justice in its sphere of responsibility" (art. 3, Law 7 442, Organisational Law of the PPS). Prosecutors at the PPS are entitled to tenure and may only be removed with just cause, including forcible downsizing, transfer, a breach of their obligations, or where dismissal is "for the good of the public service" (art. 44, Law 5 155, Judicial Service Statute). The PPS is headed by the Prosecutor General who is elected by an absolute majority of the Full Court (the judiciary's management body, comprised of 22 judges) with no involvement from Congress or the Executive (art. 22, Law 7 442, Organisational Law of the PPS).

75. As the judicial police, the OIJ are entirely independent of the Executive. They operate under the purview of the Supreme Court and are governed by Law 5 524, the Organisational Law of the Judicial Investigation Service. The law states that OIJ staff (both officers and administrative staff) must be of "irreproachable conduct" (art. 12) and sets out rules on conflicts of interest (art. 15). Staff can be terminated only if an administrative procedure proves that a disciplinary offence has been committed and termination is warranted.

76. The independence of the Judiciary is also established in statute; the CCP states that State bodies cannot, for any reason, interfere in the prosecution of cases (art. 5, CCP). Judges are also required to report any attempted interference to the Supreme Court (art. 5, CCP).

77. In practice, the PPS, OIJ, and the Judiciary appear to be able to act with relative independence.¹² In 2014, concerns emerged about organised criminal groups infiltrating the Costa Rican court system

¹² A comparative study of judicial corruption in Central America found that Costa Rica had the lowest level of judicial corruption in the region (Due Process of Law Foundation, "[Evaluation of Judicial Corruption in](#)

following the arrest of a Police Chief and a judge for corruption. In response, the Costa Rican Supreme Court's Investigatory Commission proposed the establishment of a specialised court to handle cases involving organised crime and the introduction of mechanisms to report judicial malfeasance. This proposal was adopted by the Government and resulted in the presentation of a Bill to Congress (Bill of Law for the Creation of a Jurisdiction Specialising in Organised Crime).¹³ In mid-2015, the Bill was expanded to further strengthen judicial and prosecutorial independence by requiring annual assessments of judicial personnel, including judges and prosecutors.¹⁴ The Bill has been before Congress since April 2016.

5.2.3 *Proceedings against Legal Persons*

78. Officials at the MOJ do not have the same statutory guarantees of independence as prosecutors at the PPS, and the administrative process lacks some of the checks and balances that apply in the investigative process (e.g. judicial oversight of the termination of an investigation). Nonetheless, some legislative safeguards are in place; the administrative corporate liability process cannot be stopped unjustifiably (art. 329 GLAP) and must result in a final resolution which is judicially reviewable by the administrative courts (Art. 49, Constitution). The adequacy of the safeguards should be followed up in Phase 2. The involvement of the Minister of Justice in the administrative process against legal persons may also raise independence concerns and create a risk of political interference in cases which are politically or economically sensitive. This too should be followed up in Phase 2. As noted above, Costa Rica is currently considering legislative reforms which would give the PPS responsibility over the administrative investigation and sanctioning of legal persons. This proposal would address the independence concerns related to the MOJ's involvement in actions against legal persons.

6. **Article 6: Statute of Limitations**

79. Article 6 of the Convention requires that any statute of limitations that applies to the foreign bribery offence must allow an adequate period of time for investigation and prosecution.

6.1 *Statute of Limitations for Natural Persons*

80. Costa Rican law has two distinct limitation periods applicable to foreign bribery. The first is in article 31 CCP, which sets out the limitation period between the commission of the offence and the date the court's judgment becomes final. This equates to 8 years for foreign bribery and 10 years for aggravated foreign bribery (art. 32 CCP). Costa Rica provides that a judgment is not final until all appeals have been exhausted (noting that a judgment automatically becomes final 15 days after it is issued unless it is appealed within this timeframe).¹⁵ Articles 33 CCP and 62 LAC provide that this limitation period will be interrupted and restarted upon indictment, preliminary hearing, decision on trial date, delays sought by the defence, and the issuance of a judgment (even if not final). Finally, article 34 CCP provides that the limitation period can also be suspended for various reasons including a defendant's absence, foreign extradition proceedings, and where a trial is suspended to negotiate a plea bargain. Outstanding requests for mutual legal assistance have no impact on the limitation period. Following suspension, the limitation period will continue from where it left off.

[Central America and Panama and the Mechanisms to Combat it](#) (2007), pgs. 23-24); Bruce M. Wilson and Evelyn Villarreal Fernández, "[Costa Rica's long, incomplete struggle against corruption](#)" (2015).

¹³ InSight Crime, "[Costa Rica Plans Organized Crime Court to Halt Corruption](#)" (28 November 2014).

¹⁴ The Tico Times, "[Costa Rican judicial reform bill would create specialized drug courts](#)" (25 June 2015).

¹⁵ Ruling 1050-98, Third Chamber of the Supreme Court (6 November 1998).

81. Article 84 of the Criminal Code sets out a different ‘penalty limitation period.’ This period commences with the final binding judgment of the court, the revocation of probation, cancellation of a conditional sentence (for failure to comply), or the end of another prison term (where the prison sentence for foreign bribery is to be served consecutively with another sentence). The penalty limitation period ends with the commencement of the prison sentence and is calculated as the term of the sentence, plus one third (though it must be a minimum of 3 years and cannot exceed 25 years). Thus for foreign bribery it would range from 3 years to 10 years and 8 months depending on the sentence. Article 87 of the Criminal Code provides that the penalty limitation period will be interrupted where the defendant is absent or commits a new crime before the limitation period lapses (for example, if the defendant reoffends or disappears whilst on bail).

6.2 Statute of Limitations for Legal Persons

82. Pursuant to article 71 of Law 7428, Organisational Law of the Comptroller General of the Republic, as referred to under article 44bis LAC, the statute of limitations for legal persons for foreign bribery is 5 years. Where the legal person allegedly responsible for the offence is identified at the outset of the investigation, the limitation period runs from the commission of the offence. Where the legal person cannot be identified, authorities will open a preliminary investigation and the limitation period will commence when it reports this investigation to the Ministry of Justice. The limitation period is interrupted with continuous effect when the legal person is notified of the start of an administrative proceeding. Finally, article 71 provides that failure to commence proceedings on a timely basis, or allowing the statute of limitations to lapse without just cause, constitutes gross negligence. Costa Rica has not explained the consequences of this. Phase 2 will need to clarify how the interruption period works in practice and when the limitation period ends.

7. Article 7: Money Laundering

7.1 Money Laundering Offence

83. Article 7 of the Convention provides that, if a Party has made bribery of its own public officials a predicate offence for the purpose of the application of its money laundering legislation, it shall do so on the same terms for foreign bribery, without regard to the place where the bribery occurred.

84. Costa Rica’s money laundering offence is set out in article 69 of Law 8 204 on Narcotic, Psychotropic Substances, Drugs of Unauthorized Use, Related Activities, Money Laundering and Financing of Terrorism (MLFT). It applies to anyone who, “purchases, converts or transfers...conceals or hides the true nature, origin, location, destination, movements or rights” of goods of economic interest knowing that they originate from a crime that is able to be punished with four or more years’ imprisonment. As imprisonment for foreign bribery ranges from two to eight years, it constitutes a predicate offence for money laundering. Money laundering carries a penalty of 8 to 20 years’ imprisonment, or 10 to 20 years when the proceeds are laundered for the purpose of financing terrorism. Costa Rica’s money laundering offence does not apply to legal persons.

85. Costa Rica’s money laundering offence will only apply if dual criminality exists for the predicate offence. This is contrary to Article 7 of the Convention as Costa Rica can only prosecute money laundering predicated on foreign bribery, if foreign bribery is also a crime in the jurisdiction where the act took place.

7.2 Money Laundering Prevention, Detection and Reporting

86. MLFT sets out a framework for money laundering prevention, detection, and reporting by financial institutions. Articles 123-126 MLFT establish the functions and scope of the Financial Intelligence Unit (FIU) which is responsible for requesting, collecting, and analysing suspicious transaction reports and forms submitted by financial institutions and their relevant supervisory bodies. Other Government bodies (such as SUGEF) are responsible for supervising and ensuring that financial institutions comply with the MLFT and corresponding regulations issued by the National Council for Supervision of the Financial System (CONASSIF). Each supervising authority has the power to impose sanctions for non-compliance on reporting entities within its supervision and the CONASSIF can suspend or revoke their authorisation.

87. Article 25 MLFT imposes a range of record keeping and customer due diligence requirements on financial institutions and establishes a prohibition on the maintenance of anonymous and numbered accounts, and accounts under false names. Article 15 places an obligation on financial institutions to establish a policy for the identification of national and foreign politically exposed persons (PEPs) including additional customer due diligence measures. This does not however, extend to senior officials of international organisations, close associates, and family members of PEPs (other than spouses).¹⁶ The MLFT was amended by Law 9 449 of May 2017 to extend money laundering reporting obligations under article 15 to reporting entities such as casinos and certain other designated non-financial business professionals.

88. Article 25 MLFT also places an obligation on financial institutions to submit suspicious transaction reports (STRs). In response to recommendations by GAFILAT,¹⁷ law 9 387 amended article 25 in August 2016, clarifying that reports should be submitted directly to the FIU. Reporting entities are also required to report, among other things, cash transactions of USD 10 000 (approx. EUR 8 970) or more and cross border transfers of the same amount. Sanctions for non-compliance with the reporting requirements range from 1-2% of the financial institutions equity. The electronic tool used for STR reporting automatically creates statistics of cases entered.

89. Article 123 MLFT provides that the FIU is responsible for analysing suspicious transaction reports, and communicating the results of its analysis to the OIJ. The OIJ may then undertake a preliminary investigation, or report the allegation directly to the FAPTA unit within the PPS for investigation and prosecution. The FIU may also disclose information to judges, national and foreign police forces, counterpart FIUs and administrative and judicial authorities of other countries competent on that matter (art. 24). Information is exchanged via a secure online communication platform called “FIU Director.”¹⁸

8. Article 8: Accounting and Auditing

8.1 Accounting and Auditing Requirements

90. Article 8 of the Convention requires that within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, each Party prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies

¹⁶ Ibid 130-140.

¹⁷ See discussion at on pg. 146 of GAFILAT’s [2015 Mutual Evaluation Report of the Republic of Costa Rica](#)

¹⁸ Ibid.

subject to those laws and regulations for the purpose of bribing foreign public officials or of hiding such bribery. The Convention also requires that each Party provide for effective, proportionate and dissuasive penalties in relation to such omissions and falsifications.

91. Costa Rican legislation does not provide for a general false accounting offence applicable to companies in conformity with Article 8 of the Convention. Instead, existing false accounting offences apply in limited circumstances: offences in the Tax Code apply where false accounting is committed for the purposes of tax fraud (to obtain a patrimonial benefit for one's self or for a third party), and offences in the MLFT apply solely to financial institutions. The Commercial Code requires all companies (including sole traders and limited liability companies) to maintain accurate books and records (art. 251). This obligation extends to foreign companies operating in Costa Rica (art. 5). However, a breach of this obligation will only constitute an offence where it is committed for the purpose of altering or avoiding tax obligations; in this case, the perpetrator can be liable to an administrative fine (arts. 81 and 84, Tax Code) or criminal fine and imprisonment from five to ten years. The goal of Article 8 of the Convention is to prohibit false accounting committed "for the purpose of bribing foreign public officials or of hiding such bribery". This may not always have tax implications. Under its current legal framework, Costa Rica would not be capable of sanctioning the conduct described under Article 8.

8.2 External Auditing and Internal Company Controls

92. The 2009 Anti-Bribery Recommendation recommends that Parties take the steps necessary to ensure that laws, rules or practices on external audits, and internal controls, ethics and compliance are fully used to prevent and detect foreign bribery, according to the Party's jurisdictional and other basic legal principles and taking into account, where appropriate, the individual circumstances of a company, including its size, type, legal structure and geographical and industrial sector of operation (Recommendation X).

93. In terms of auditing, companies are only required to submit to external auditing if requested by the Tax administration. Under resolution DGT-R-46-2014 of October 31 of 2014 (modified by DGT-R-026-2015 of August 18 of 2015), confirmed by article 104 of the Tax Code, the Tax administration may require "Large National Taxpayers"¹⁹ and "Large Territorial Companies"²⁰ to submit financial statements audited by an independent Certified Public Accountant. Costa Rica explains that the Tax administration selects the companies based on objective selection criteria to determine which tax payers have actions that may be considered fiscal risks (possible evaders). However, the purpose of the 2009 Anti-Bribery Recommendation X.B. is to ensure adequate external audit requirements are in place so that foreign bribery or related false accounting may be detected more broadly in this context. By acting as an external check on company accounts, external auditors are an important method for deterring and detecting foreign bribery.

¹⁹ Large National Taxpayers (in Spanish: *Grandes Contribuyentes Nacionales*) are those who meet at least one of the following criteria: (i) the company's average rate of tax collection for the three previous tax periods equals or exceeds CRC 250 million (approximately USD 495 000); (ii) the average gross income of the three previous tax periods equals or exceeds CRC 40 billion (approximately USD 80 million); (iii) the average total assets equals or exceeds CRC 40 billion (approximately USD 80 million); (iv) entities that are of a fiscal interest for the tax authorities and which are regulated by law by the administrative authorities responsible for overseeing financial entities (i.e., the Financial Entities General Superintendence, a.k.a. SUGEF), securities (i.e., the Securities General Superintendence, a.k.a. SUGEVAL) and pensions (i.e., the Pensions Superintendence, a.k.a. SUPEN).

²⁰ Large Territorial Companies (in Spanish: *Grandes Empresas Territoriales*) are those who meet at least one of the following criteria: (i) the company's average rate of tax collection of the three previous tax periods equals or exceeds CRC 80 million (approximately USD 160 000); (ii) the average gross income of the three previous tax periods equals or exceeds CRC 20 billion (approximately USD 40 million); (iii) the average total assets equals or exceeds CRC 20 billion (approximately USD 40 million).

A lack of any general requirement for companies to submit to external audit may therefore seriously hamper Costa Rica's ability to prevent and detect foreign bribery, in contravention of the 2009 Anti-Bribery Recommendation X.B.

94. Accounting and auditing standards in Costa Rica are set by the Institute of Certified Public Accountants which adopted the International Financial Reporting Standards (IFRS) in 2000. IFRS were adopted as the mandatory accounting framework for preparation of financial statements for public and private companies since 2001. Banks and financial institutions are required to prepare financial statements in accordance with the accounting framework established by the financial regulators (Superintendencia de Entidades Financieras / SUGEF), which differs from IFRS.

95. Where an external auditor *is* engaged by a company, they are required to apply the International Standards on Auditing (ISAs) which were adopted by the Institute of Certified Public Accountants in 2005. External auditors are therefore required to apply ISA 240 and ISA 250. Under ISA 240, auditors are required to take steps to detect material misstatements in the financial accounts due to fraud, and report these misstatements to company management. Similarly, under ISA 250, auditors are required to make efforts to detect material misstatements due to non-compliance with relevant laws and regulations. Where any non-compliance is suspected, auditors must report concerns to management. Costa Rica confirms that foreign bribery would qualify as a 'material misstatement' for the purpose of both ISA 240 and 250. Costa Rica also notes that pursuant to money laundering regulations, auditors are required to report suspicions of money laundering predicated on foreign bribery to the FIU (art 67 MLFT, art. 55 LAC).

96. Auditors are governed by the Professional Ethics Code of the Costa Rican Federation of Public Accountants. The Code requires auditors to be independent in fact and appearance and prescribes a rotational policy of five years (Chapter III, art. 11).

9. Article 9: Mutual Legal Assistance

9.1 Laws, Treaties and Arrangements Enabling MLA

97. Article 9 of the Convention requires each Party, to the fullest extent possible under its laws and relevant treaties and arrangements, to provide prompt and effective MLA to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the Convention, and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person.

9.1.1 Criminal Matters

98. Costa Rica can make and receive MLA requests in criminal matters on the basis of a treaty or reciprocity. Costa Rica has concluded bilateral MLA treaties with Argentina, Chile, Colombia, the Dominican Republic, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, and the United States. It has also entered into a range of multilateral MLA treaties including the Central American Mutual Legal Assistance Treaty on Criminal Matters and the Inter-American Convention on Mutual Assistance on Criminal Matters. In addition, it is a member of various international cooperation networks, such as the Ibero-American Network for International Legal Cooperation, the Central American and Caribbean Council of Public Prosecutors, and the Ibero-American Association of Public Prosecutions.

99. Letters rogatory on the basis of reciprocity must be submitted through diplomatic channels, should be authenticated and translated into Spanish, and are handled by the PPS. MLA requests must be submitted to Costa Rica's central authority for the convention or treaty. The central authority for receiving

MLA requests in relation to all treaties is the Office of Technical Assistance and International Relations within the PPS.

100. Once the request is received, it will be executed by prosecutors at the PPS. All powers and investigative techniques available for domestic criminal investigations can be provided in response to an MLA request, including obtaining evidence from individuals, search and seizure, the production of documents, and the service of documents. Costa Rica notes that in addition to formal MLA, it will spontaneously transmit information relevant to criminal investigations in another country.

101. Costa Rica provided data showing it had provided MLA in 11 corruption cases over the past 5 years. The requests were responded to and assistance provided within an average of 7 months.

9.1.2 Non-Criminal Matters

102. Costa Rica can make and receive MLA requests in non-criminal matters through letters rogatory (i.e. a formal court-to-court request). Such requests are handled by the PPS under the Civil Procedure Code. While letters rogatory allow some assistance to be provided (e.g. the taking of evidence or service of documents), they do not permit Costa Rica to provide the full range of assistance available in criminal cases. For example, a letters rogatory request would not permit Costa Rica to undertake coercive measures such as search and seizure, intercepting communications, or obtaining financial information. This renders Costa Rica incapable of requesting or providing the full range of MLA in the context of administrative proceedings against legal persons, including in its own investigations into legal persons. Costa Rica confirms that assistance has not been provided in respect of an investigation into legal persons. This will seriously inhibit Costa Rica's ability to obtain necessary evidence in cases against legal persons, as well as its ability to provide MLA to countries which do not have criminal liability for legal persons.

9.2 Dual Criminality for MLA

103. Article 9(2) of the Convention states that where a Party makes MLA conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of the Convention.

104. In Costa Rica, dual criminality is not required in order for Costa Rica to grant MLA except where the MLA request includes coercive measures that must be authorised by a judge under Costa Rican law. In this case, dual criminality is interpreted broadly and will be considered fulfilled regardless of the wording or categorisation of the offence.²¹

9.3 Bank Secrecy

105. Article 9(3) of the Convention states that a Party shall not decline to render MLA within the scope of the Convention on the ground of bank secrecy.

106. To provide bank information in response to an MLA request, the requesting country must meet the same requirements that apply to Costa Rican authorities seeking such information. No additional limitations are imposed. Costa Rica explains that case law has determined that bank secrecy is part of the right to privacy, so the request must contain "necessary information to justify lifting bank secrecy". Under Costa Rican law, a Judge may issue an order to lift bank secrecy where the requested evidence may be "indispensable" to determining whether a crime has been committed (art. 2, Law 7 425 on Search, Seizure and Examination of Private Documents and Intercepting Communications). On paper, this appears to be a

²¹ Constitutional Court of the Supreme Court, Ruling 5, No. 2002-7006 (12 July 2002).

high threshold. Costa Rica's Phase 2 evaluation should explore whether authorities experience practical difficulties meeting this threshold and obtaining court orders for access to financial information.

10. Article 10: Extradition

107. Article 10(1) of the Convention obliges Parties to include bribery of a foreign public official as an extraditable offence under their laws and the treaties between them. Article 10(2) states that where a Party that cannot extradite without an extradition treaty receives a request for extradition from a Party with which it has no such treaty, it "may consider the Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official".

10.1 Legal Basis for Extradition for Foreign Bribery

108. Extradition in Costa Rica is governed by treaty or, where there is no relevant treaty, Law 4 795 on Extradition. Costa Rica has entered bilateral extradition treaties with Belgium, China, Colombia, Italy, Mexico, Nicaragua, Panama, Peru, Spain and the United States. It is also a Party to regional extradition treaties covering South and Central America, and the Inter-American Extradition Convention.

109. Extradition requests must be submitted through diplomatic channels to the Ministry of Foreign Affairs and Culture. The request must identify the accused and contain an arrest warrant or proof of conviction; certified documents containing "reasonable evidence" of guilt; and a certified copy of the legal provisions containing the relevant offence (art. 9, Law on Extradition). Where the documentation is insufficient, Costa Rica may request additional documentation to supplement the request (art. 9, Law on Extradition). The final decision on extradition is taken by the competent Criminal Court (art. 5, Law on Extradition). Extradition will be denied where the individual has already been tried for the offence in Costa Rica; where the conduct is not a crime under Costa Rican law; where the statute of limitations (under Costa Rican law) has expired; where the person is a Costa Rican national (see below); or where the offence is political in nature (art 3(b), Law on Extradition; Constitution, art. 31).

110. The Law on Extradition also provides for an expedited procedure for all offences, whereby a preliminary extradition request can be sent without full documentation (art. 10). The preliminary request need comprise only an arrest warrant for the accused and a commitment to providing a full request at a later date. The requesting country must then provide a full request within 10 days of the arrest of the accused.

10.2 Extradition of Nationals

111. Article 10(3) of the Convention requires each Party to take any measures necessary to ensure either that it can extradite or prosecute its nationals for foreign bribery. A Party that declines a request to extradite a person for foreign bribery solely on the ground of nationality must submit the case to its competent authorities for the purpose of prosecution.

112. Costa Rican nationals are not subject to extradition (Constitution, Art. 32). The Law on Extradition provides that where extradition is refused on the basis of nationality, such cases "shall be judged by the domestic courts" (art. 3(a)). Costa Rica explains that this implies an obligation to carry out criminal proceedings. However, there can be an exception where bilateral treaties may specifically provide that an investigation be opened only on demand of the requesting country. Costa Rica reports that, to their knowledge, such a provision has been inserted in three bilateral treaties with three other Convention countries, and that this is out of "respect of the sovereignty of the requesting party, which conducts the investigation, has the possession of the evidence and could not agree to proceed with the judgment in Costa Rica." This issue should be followed up in Phase 2 to confirm such provisions are not overly used.

10.3 *Dual Criminality for Extradition*

113. Article 10(4) of the Convention states that extradition for foreign bribery is subject to the conditions set out in the domestic law, applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of foreign bribery offence defined in Article 1 of the Convention.

114. Under Costa Rican law, dual criminality is required for the purpose of extradition. Article 3(d) of the Law on Extradition provides that extradition will not be granted where “the accused action is not considered an offence under Costa Rican law”. The courts in Costa Rica have ruled that the dual criminality requirement is to be interpreted broadly, and will be considered fulfilled provided the underlying conduct is criminalised in both countries, and regardless of whether both countries place the crime within the same category of offence or designate the offence by the same terminology.

11. **Article 11: Responsible Authorities**

115. Article 11 of the Convention requires Parties to notify the OECD Secretary-General of the authorities responsible for making and receiving requests for consultation, extradition and MLA, and which shall serve as the channel of communication for these matters.

116. Costa Rica has designated the Technical Consulting and International Relations Office of the PPS as the competent authority for the purposes of Convention Articles 4(3) (on consultation), 9 (on MLA) and 10 (on extradition).

B. IMPLEMENTATION OF THE 2009 ANTI-BRIBERY RECOMMENDATION

117. Consistent with previous Working Group practice, this Report addresses only Recommendation VIII on the tax deductibility of bribes from the 2009 Anti-Bribery Recommendation.

1. **Tax Deductibility**

118. Recommendation VIII of the 2009 Anti-Bribery Recommendation recommends “that Member countries explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner”.²²

119. Costa Rica’s Law 7 092 on Income Tax does not explicitly disallow tax deductions for bribery. Article 8(b) lists as allowable deductions “all pay, additional pay, salaries, bonuses, gratuities, royalties, year-end bonuses, gifts, and any other remuneration for individual services actually rendered, provided they are in order and the withholdings and taxes contained in Title II of this Law have been applied”. Given the broad scope of allowable deductions, tax authorities will need to be well-trained in order to effectively detect bribery. This should be followed up in Phase 2.

²² See also [2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions](#).

120. The Law on Income Tax is supplemented by regulations. Article 12 of the Regulations lists additional deductible expenses, including remuneration, taxes, and insurance premiums. Article 12(n) of the Regulations includes an explicit prohibition on the tax deductibility of bribes.

Article 12(n), Regulations to the Law on Income Tax

In no case shall bribes to public officials or private employees in order to expedite or facilitate a transaction at a transnational or national level be deductible from gross income payments of taxpayers or companies.

121. Costa Rica confirms that the provision covers bribes to all public officials, including foreign public officials. The provision is binding on both tax inspectors and tax payers. However, it should be noted that “expediting or facilitating a transaction” may not cover all possible bribe payments made to foreign public officials, and this will need to be followed up in Phase 2. In Phase 2, the Working Group on Bribery should also follow up on tax inspectors’ awareness of article 12 of the Regulations and their understanding of how article 12 interacts with article 8(b) of the Law on Income Tax.

EVALUATION OF COSTA RICA

General Comments

122. The Working Group considers that Costa Rica's legislation conforms to the standards of the Convention, subject to the issues noted below. These issues, along with the practical application of other legislative provisions identified in the report, should be followed up during Costa Rica's [Phase 2 evaluation](#).

Specific Issues

Foreign bribery offence

123. Given the lack of clarity on some elements of the foreign bribery offence under Costa Rica's law, the Working Group will follow up in Phase 2, in particular as concerns the application of the intent element, including as it applies to bribery through intermediaries, and the interpretation of "undue advantage".

Sanctions for foreign bribery for natural and legal persons

124. Costa Rica does not have criminal fines for natural persons for foreign bribery and prison sentences in domestic corruption cases tend to be short or suspended. This raises a risk that the sanctions imposed on natural persons for foreign bribery may not be sufficiently "effective, proportionate, and dissuasive" in practice.

125. Costa Rica's fines for legal persons are among the lowest in the Working Group on Bribery. While other administrative and civil sanctions are available, it is unclear if these will be regularly relied upon in sentencing. If fines are treated as the primary sanction, they are unlikely to be sufficiently "effective, proportionate and dissuasive."

126. Costa Rica's framework for confiscation of the proceeds of bribery currently does not allow for confiscation of the proceeds of bribery in the hands of legal persons without prior conviction of a natural person in a criminal trial. In addition, the current provisions for confiscation of property of equivalent value may pose problems in situations where the direct proceeds of foreign bribery are difficult to trace.

127. In light of the above concerns, Costa Rica should urgently amend its legislation to ensure it can impose proportionate, effective and dissuasive sanctions on both natural and legal persons. Legislative changes should also allow for the seizure and confiscation of the bribe and proceeds of foreign bribery, or property the value of which corresponds to that of such proceeds, from both natural and legal persons, or that monetary sanctions of comparable effect are applicable.

Enforcement of Foreign Bribery

128. Proceedings against natural and legal persons for foreign bribery are conducted by two different agencies; the PPS and the MOJ. This raises several concerns. First, the MOJ is not responsible for investigating or sanctioning legal persons for any other offence, and may therefore be inadequately

equipped to undertake foreign bribery investigations. Second, this framework risks creating investigative overlap and may result in allegations being overlooked. Costa Rica needs to put in place a clear and effective system for ensuring systematic cooperation, coordination, and information-sharing in foreign bribery cases. Costa Rica's current proposal to give the PPS responsibility for investigating and sanctioning legal persons as well as natural persons may allay these concerns. This will need to be followed up in Phase 2.

National Economic Interest, Potential Effect upon Relations with another State, and Identity of the Natural or Legal Person Involved

129. The involvement of the MOJ in proceedings against legal persons also raises independence concerns. While there are some legislative and procedural safeguards in place, MOJ officials do not have the same statutory guarantees of independence as prosecutors at the PPS. Moreover, the involvement of the Minister of Justice in the administrative process against legal persons creates a risk of political interference in cases which are politically or economically sensitive, contrary to Article 5 of the Convention. The proposal to move proceedings against legal persons to the criminal system (therefore granting the PPS responsibility for such proceedings) would address these concerns.

Money Laundering

130. Contrary to Article 7 of the Convention, Costa Rica can only prosecute money laundering predicated on active foreign bribery where this is also a crime in the jurisdiction where the crime took place (i.e. there must be dual criminality for the predicate offence to money laundering). To comply with the Convention, Costa Rica should enact legislation to criminalise money laundering predicated on foreign bribery, "without regard to the place where the bribery occurred", as provided in Article 7 of the Convention.

Accounting and Auditing

131. Costa Rica does not have a general false accounting offence or offences criminalising the conduct described in Article 8 of the Convention. While its companies are required to maintain accurate books and records, failure to do so is an offence only if committed by a financial institution or for the purpose of avoiding tax obligations. To comply with the Convention, Costa Rica should enact legislation to criminalise the conduct described in Article 8 of the Convention.

132. Costa Rica's accounting and auditing framework may also be inadequate for the purpose of Recommendation X.B of the 2009 Anti-Bribery Recommendation. Costa Rican companies are not systematically obliged to submit to an external audit, regardless of their size or whether they are listed on the Costa Rican stock exchange. Costa Rica should take steps to ensure its external audit requirements are sufficient to prevent and detect foreign bribery.

Mutual Legal Assistance in Non-Criminal Matters

133. Costa Rica can seek and provide mutual legal assistance in non-criminal matters only through letters rogatory. This does not permit Costa Rica to obtain or provide the full range of assistance available in criminal cases, and therefore prevents Costa Rica meeting its obligation under Article 9 of the Convention to provide "prompt and effective legal assistance" including in non-criminal proceedings. Costa Rica should enact measures to ensure it is able to provide the full range of assistance in non-criminal matters in conformity with requirements under the Convention.

Non-Tax Deductibility of Bribes

134. Costa Rica has introduced a provision in its tax legislation to include an explicit prohibition on the tax deductibility of bribes. However, the wording of the tax provision uses different terminology from the foreign bribery offence in the LAC, and may thus not cover all possible bribe payments made to foreign public officials. This will need to be followed up in Phase 2.

Annex 1 List of Abbreviations and Acronyms

2009 Anti-Bribery Recommendation.....	2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions
CCP.....	Criminal Procedure Code
CDD.....	Customer due diligence
CONASSIF.....	National Council for Supervision of the Financial System
Convention.....	Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
CRC.....	Costa Rican colón
EUR.....	Euros
FIU.....	Financial intelligence unit
GLPA.....	Law 6 222, General Law of Public Administration
IFRS.....	International Financial Reporting Standards
ISA.....	International Standards on Accounting
LAC.....	Law 8422, Law Against Corruption and Illicit Enrichment in the Civil Service
MLA.....	Mutual legal assistance
MLFT.....	Law 8 204 on Narcotic, Psychotropic Substances, Drugs of Unauthorized Use, Related Activities, Money Laundering and Financing of Terrorism
MOJ.....	Ministry of Justice
OECD.....	Organisation for Economic Cooperation and Development
PEPs.....	Politically exposed persons
PPS.....	Public Prosecution Service
STR.....	Suspicious transaction report
SUGEF.....	General Superintendence of Financial Entities
USD.....	United States' dollars
Working Group on Bribery....	OECD Working Group on Bribery in International Business Transactions

Annex 2 Excerpts of Relevant Legislation

LAW 8 422, LAW AGAINST CORRUPTION AND ILLICIT ENRICHMENT IN THE CIVIL SERVICE

Definition of Public Official

Article 2 - Public official

For the purposes of this Act, public official shall be any person that renders services within the organisms and entities of public administration, state or otherwise, on behalf thereof, and acting as a part of its organization, as a result of an act of investiture, and regardless of the imperative, representative, paid, permanent or public nature of said activity. The terms official, servant and public employee will be equivalent for the purposes of this Act.

The provisions of this Act shall apply to de facto officials and to people who work for public companies, regardless of the form they take, and for public entities in charge of performing services ruled by common law; likewise, they shall apply to agents, administrators, managers and legal representatives of legal persons who guard, manage or exploit funds, property or services belonging to the public administration, under any title of property or possession, or any form of appointment to service.

Foreign Bribery Offence

Article 55 - Transnational bribery

A prison term of between two and eight years shall apply to anyone who offers, promises or gives, directly or through an intermediary, to an official of another state, irrespective of the level of government or public agency or company in which he is employed, or to an officer or representative of an international organisation or entity, directly or indirectly, any payment, gift, or undue advantage, be it for the official or for another natural or legal person, for that official, in the use of his position, to make, delay, or omit to perform any action or to unduly bring to bear the influence derived from his position with respect to any other official. The punishment shall be between three and ten years if the bribe is given for the official to perform an action contrary to his duties. - The same punishment shall apply to anyone who requests, accepts, or receives such a gift, reward, or benefit.”

Corporate Liability

Article 44bis - Administrative sanctions to legal persons

In those cases provided by paragraph m) of Article 38 and Article 55 of this Law, and in Articles 340 to 345bis of the Criminal Code, when the payment, gift or undue advantage is given, promised, or offered by a director, administrator, manager, agent or employee of a legal person, in relation to the exercise of the functions of the position or using goods or means of that legal person, the legal person will be fined twenty to one-thousand basic salary, notwithstanding and independently of the criminal and civil responsibilities that are applicable and the administrative responsibility of the public official, pursuant to this and other applicable laws.

If the payment, gift or undue advantage is related to an administrative contracting procedure, the legal person that is responsible will be assessed the above fine or up to ten percent (10%) of the amount of the offer or of the contract, whichever is greater; in addition, they will be disqualified as provided by paragraph (c) of Article 100 of Law No. 7 494, Administrative Contracting.

Without prejudice to the authority of the Comptroller General of the Republic, each ministry or institution that forms part of the Public Administration, centralized or decentralized, is competent to begin the administrative procedure or to impose the sanctions provided by this Article, on behalf of the Comptroller or that institution, or to the institution to which the official that has been given, offered or promised the payment, gift or undue advantage belongs, pursuant to applicable regulations. In cases where Article 55 of this Law applies, the Ministry of Justice shall have jurisdiction, with the advice of the Attorney General's Office, as appropriate.

In those cases in which the competent public institution for the imposition of the sanctions provided in this Article claims regulatory jurisdiction pursuant to law over the responsible legal person, the penalty provided for in the first and second paragraphs may be applied, depending on the severity of the offense, and without regard to the other competencies of the respective institution, any of the following sanctions:

- a) Closure of the business, its subsidiaries, or locations or the temporary establishment for a period not to exceed five years;
- b) Suspension of the activities of the business for a maximum period of five years;

- c) Cancellation of the concession or the operating permit of the business;
- d) Loss of the tax benefits or the exemptions granted to the business.

For the imposition of the penalties provided by this Article, the ordinary procedure provided for in the General Law of the Public Administration must be followed, and due process must be respected. With respect to prescription, Article 71 of the Organic Law of the Comptroller General of the Republic, No. 7248, shall apply.

The final decision issued shall declare the corresponding responsibility and the amount [of the fine]. The certification of the final resolution shall be available against the person responsible.

If causes for abstention or recusal with respect to any official that should intervene or decide in a proceeding based on this Article, the relevant laws of the General Law of the Public Administration shall apply.

The internal audits of public institutions shall ensure that adequate procedures are established for the proper compliance with the provisions of this Article, without regard to the functions of the Comptroller General of the Republic.

Statute of Limitations [UNOFFICIAL TRANSLATION]

Article 62 - Limitation of criminal responsibility.

Criminal prosecution for crimes against the duties of public office and those provided in this Act, shall prescribe the manner prescribed by applicable law; however, the following rules shall govern:

- a) Once interrupted the limitation period, the time limits specified in Article 31 of the Criminal Procedure Code will again run for another term without any reduction.
- b) In addition to the grounds provided for in Article 33 of the Criminal Procedure Code, criminal proceedings may be interrupted by the declaration of illegality of the administrative act or omission function, or by the annulment of administrative acts and contracts that relate to the corresponding offense, whether the statement is produced in judicial or administrative

LAW 4 573, CRIMINAL CODE

Jurisdiction

Article 4 - Territoriality

Costa Rican criminal law will be applied to any party committing a punishable event in the territory of the Republic, except for the exceptions established in any international treaties, conventions, and rules accepted by Costa Rica. For the purposes of this provision, the territory of the Republic will be understood to include the territorial sea, the airspace above the territory of the Republic and the continental shelf, in addition to the natural or geographic territory. National territory will also include Costa Rican ships and aircraft.

Article 6 - Possibility of initiating criminal proceedings for offenses committed abroad

Proceedings may be initiated for offenses committed abroad and in such case, Costa Rican law may be applied where they

- 1) All or part of the results occur in the national territory;
- 2) The punishable events have been committed by parties in the service of Costa Rica or they had not been brought to trial in the place where the event occurred by virtue of diplomatic or functional immunity;
- 3) The punishable events are perpetrated against a Costa Rican citizen or said citizen's rights;
- 4) They have been committed by a Costa Rican citizen.

(Added to the preceding section by Article 1, point 2., paragraph a) of the Law on Strengthening Legislation Against Terrorism, No. 8719 dated March 4, 2009.)

Article 20 - Punishable Event Place

An event will be considered to have been committed:

- a) In the place where all or part of the criminal activity by the perpetrators or participants took place; and
- b) In the place where the results were or should have been produced.

In crimes by omission, the event will be held to have taken place where the act of omission must have taken place.

Ancillary Offences

Article 24 - When Any Exist

An attempted offense occurs when a crime begins to be executed through actions directly meant to consummate the offense and the offense does not occur due to causes that are beyond the criminal agent's control. The pertinent penalty will not be applied to the attempted offense when it is absolutely impossible to consummate the crime.

(Text modified by Constitutional Chamber Ruling No. 1588-98 issued at 4:27 pm. on March 10, 1998.)

Intent

Article 30 - There Will Be No Penalty If No Guilt Is Assigned.

Nobody may be sanctioned by an event that is expressly classified in the law if no malice, guilt, or premeditation is involved.

Article 47 - Accomplices

Anybody who provides aid to or cooperates with the perpetrator of a punishable event will be held to be an accomplice.

Statute of Limitations

Article 84 - Penalty Statute of Limitations

The statute of limitations for the penalty ends:

- 1) In a period of time equal to the penalty plus one-third and may not exceed twenty-five years or be less than three years in prison, deportation, or interdiction of rights is involved;
- 2) In three years for fine days levied as a consequence of the crimes;
- 3) In one year when dealing with breaches.

Article 87 - Interruption of the Current Statute of Limitations.

The statute of limitations for a penalty is interrupted, without taking into account the time that has already passed, when the prisoner commits, has committed, or has shown a new crime committed prior to the end of the statute of limitations.

Confiscation

Article 110 - Confiscation

A crime will cause the State to confiscate the instruments used to commit the crime, and the items or valuables arising from the crime, or that may constitute a benefit to the perpetrator derived from the crime, except for the right to them that the plaintiff or third parties may have.

This provision excludes any vehicles involved in committing the events that are classified in Article 254 bis (*) of the Criminal Code.

LAW 63, CIVIL CODE [UNOFFICIAL TRANSLATION]

Definition of Legal Persons

Article 33

The existence of legal persons comes from the law or agreement according to the law
The state is a full juridical person.

LAW 8 754 ON ORGANISED CRIME

Seizure and Confiscation of Assets

Article 20 - Cause of heritage

The Comptroller General of the Republic, the Ministry of Finance, the ICD or the Public Prosecution Office may denounce, before the Civil Court in Summary Affairs, about the increase of capital without apparent lawful cause, with a retrospective of up to ten years from any government official or private persons, either natural or legal right.

Having received the complaint, the court shall hear the person concerned for a period of twenty business days to answer and evacuate the test; in the same resolution ordered as a precautionary measure, the seizure of property, its registration immobilization and all kinds of financial products. Against the injunction will fit only appeal without suspensive effect, which must be filed within twenty-four hours before the Appellate Administrative Court, which resolved without further ado and with priority over any other matter.

Article 25 - Confiscation

All personal property, real estate, money, instruments, equipment, securities and financial products used in or coming from the commission of the crimes provided for in this Law will be preventively confiscated by the competent authority that hears the cause. The same will apply to financial products belonging to companies related to the events.

LAW 7 494, ON ADMINISTRATIVE CONTRACTING

Debarment from Public Procurement Procedures

Article 100 - Sanction of Disqualification

The Administration or the Comptroller General of the Republic will ban from participation in administrative procurement procedures for a period of two to ten years, depending on the seriousness of the violation, those natural or juridical entities who commit the behaviors described below:

(Thus was the preceding paragraph amended by the sole article of Law 8439 of April 13, 2005.)

...

- c) Providing gifts, directly or through another person, to the employees involved in an administrative procurement procedure. In this case, the disqualification shall be for the maximum established period of time.

(Thus was the preceding section amended by the sole article of Law 8439 of April 13, 2005.)

LAW 7 594, CODE OF CRIMINAL PROCEDURE

Independence [UNOFFICIAL TRANSLATION]

Article 5 - Independence

The Judiciary is subject only to the Constitution, international law and Community force in Costa Rica and the law.

In its role as judge, judges are independent of all members of the branches of government.

For no reason, other State bodies may claim the prosecution of cases, and the reopening of completed by a final decision; Nor may interfere with the development of the procedure. They must comply with and enforce the provisions of the judges, as resolved. In case of interference in the exercise of its function, the judge must inform the Supreme Court about the events that affect their independence. When the interference comes from the full Court, the report should be known by the Legislative Assembly.

Statute of Limitations

Article 31 - Statute of limitations for the criminal action

If the criminal prosecution has not been initiated, the criminal action shall prescribe:

- a) After a period equal to the maximum term of sentence, in crimes punishable by imprisonment; it cannot exceed ten years or be less than three, except in crimes committed against under age people, in which case the prescription shall start after the victim has reached the age of majority.
- b) After two years, in crimes punishable only with non-custodial sentences and in offences or contraventions.

Article 32 - Computation of the statute of limitations

The limitation period for criminal proceedings shall be regulated by the main penalty provided for by the law and shall commence, for perpetrated offences, from the day of consummation; for attempt, from the day when the last act has been executed; and, for continuing or permanent offences, from the day the continuation ceased.

The statute of limitations shall commence, be suspended or interrupted individually, for each subject participating in the crime. In the event of combined judgment of several crimes, the respective penal actions resulting from them shall prescribe separately in the period established for each.

Article 34 - Suspension of the statute of limitations

The computation of the statute of limitation shall be suspended:

- a) When under a constitutional or legal provision, the criminal action cannot be promoted or prosecuted. This provision shall not apply when the incident cannot be prosecuted due to a lack of private instance.
- b) In offences committed by civil servants in the exercise of his duties or on occasion of them, while still carrying out their public function and proceedings have not started against them.
- c) In offences regarding the constitutional system, when the institutional order has been broken up, until it is reestablished.
- d) For the duration of foreign extradition proceeding.
- e) When the exercise of the criminal action has been suspended under a plea bargain or due to the suspension of the trial period and while these suspensions continue.
- f) Due to defendant's absentia. In this case, the term of suspension shall not exceed a time equal to that of the prescription of the legal action; once this expires, that term shall continue to run.

Once the cause for suspension ends, the limitation period shall continue.

Investigative Methods [UNOFFICIAL TRANSLATION]

Article 201 - Interception and seizure of communications and correspondence

In connection with the interception and abduction of communications and correspondence, it will be as provided in the special law that Article 24 of the Constitution refers.

Article 213 - Expertise

It may be ordered when an expert to discover or evaluate a test element, necessary any special knowledge in science, art or technique.

Article 286 - Powers

The judicial police shall have the following powers:

- a) Receive complaints.
- b) Ensure that the body and traces of the crime are preserved.
- c) If there is a danger that any delay would jeopardize the success of research, to record the state of the people, things and places, through inspections, drawings, photographs, surveys technicians and other operations to advise adequate investigation.
- d) Carry out raids and searches, with the formalities and limitations set forth in this Code.
- e) Order, if necessary, the closure of the premises in which evidence is supposed to have committed a crime.
- f) Interviewing witnesses presumably useful to discover the truth.
- g) Quote, apprehend and incomunicar the suspect in cases and manner authorized by this Code.
- h) Interviewing and identify the accused respecting the guarantees established in the Constitution and laws.

Termination of Proceedings [UNOFFICIAL TRANSLATION]

Article 311 - Dismissal

The dismissal apply when:

- a) The act in question was not performed or was not committed by the imputed.
- b) The fact is not suitable to a criminal offense.
- c) There a justification or innocence.
- d) The criminal action is extinguished.
- e) Despite the uncertainty, there is no reasonably possibility of incorporating new evidence and no basis for reasonably require opening proceedings.

LAW 7 428, ORGANISATIONAL LAW OF THE COMPTROLLER GENERAL OF THE REPUBLIC

Statute of Limitations for Legal Persons

Article 71- Statute of Limitations for Disciplinary Responsibility

The administrative responsibility of the public official for the infractions contained in this Law and in the higher-level control and audit laws has a statute of limitations in accordance with the following rules:

- a) In those cases in which the irregular offense is notorious, the statute of limitations for the responsibility is five-years from the occurrence of the offense.
- b) In those cases in which the irregular offense is not notorious – understood to be an offense requiring investigation or an audit study to report its possible irregularity – the statute of limitations for responsibility is five-years from the date on which the report on the investigation or the respective audit is submitted to the hierarchical superior or competent official to start the respective proceeding.

The statute of limitations is interrupted, with continuous effect, when the one allegedly responsible for the offense is notified that of the start of an administrative proceeding.

When the perpetrator of the offense is the superior level official, the term will start to run as of the date of termination of services with the entity, the company or the respective body. It will be considered gross negligence of a competent official responsible for starting the penalizing proceeding, when it does not begin this proceeding on a timely basis or lets the statute of limitations for the responsibility of the offender lapse without just cause.

LAW 6 222, GENERAL LAW OF PUBLIC ADMINISTRATION

Initiation of Proceedings [UNOFFICIAL TRANSLATION]

Article 284

The procedure may be initiated ex officio or ex parte, or only at the request part when so unequivocally expressed or provided by law.

Investigative Methods [UNOFFICIAL TRANSLATION]

Article 305

Third parties will be required to display the objects or documents and papers needed for the test of facts, as well as allowing access to their possessions, within respect for constitutional rights.

Termination of Proceedings [UNOFFICIAL TRANSLATION]

Article 340

- 1) When the procedure is paralizare for more than six months under reasons attributable to interested party who has promoted, will result in the expiry and send the proceedings to order file, unless it be the case referred to in the final paragraph of Article 339.
- 2) There shall be no lapse when the person concerned has stopped managing been under operated the positive or negative silence, or when the file is ready for resolution end, except, in this case, which has not been stamped paper presented forewarned about the government body.

LAW 8 204 ON NARCOTIC, PSYCHOTROPIC SUBSTANCES, DRUGS OF UNAUTHORIZED USE, RELATED ACTIVITIES, MONEY LAUNDERING AND FINANCING OF TERRORISM

Politically Exposed Persons

Article 15

This Law shall also apply to whoever performs the following activities, among others:

- a) Systematic or substantial operations of money transfers and exchanges through instruments such as checks, money orders, bank drafts, or others.
- b) Systematic or substantial operations of issuance, sale, rescue or transfer of traveller's checks or postal order.
- c) Substantial systematic transfer of funds, through any means.
- d) Administration of trust funds or any type of administration of resources by persons, natural or legal, other than financial intermediaries.
- e) Remittances of money from one country to another.

Natural or legal persons participating in the activities listed above, and who are not supervised by any Superintendency in the country, must register with SUGEF, without this meaning an authorisation to operate; they must also accept to be supervised by such Superintendency in matters of money laundering and actions that may serve to fund terrorist activities or organisations, under this Law. Registration will be granted by the Consejo Nacional de Supervisión del Sistema Financiero (National Council for the Supervision of the Financial System), prior approval of that Superintendency once the applicable legal and regulatory provisions are fulfilled. National municipalities may not issue or renovate permits for such activities in the event the abovementioned registration is not fulfilled.

SUGEF, SUGEVAL, SUPEN, and SUGESE, as may correspond, shall prevent the operation, in Costa Rican territory, of natural or legal persons, regardless of legal domicile or place of business, who regularly, and under any title, undertake activities such as those mentioned in this Article without authorisation.

When in opinion of the Superintendent there are reasons for a natural or legal person to undertake any activity mentioned in this Article, the Superintendency shall have, with respect to the alleged offenders, the same powers of inspection as correspond under this law, with respect to the institutions subject to the provisions of this title, regarding money laundering and financing of terrorism.

(As amended by Article 2°, paragraph 1., subparagraph b) of the Law on Strengthening Anti-Terrorism Legislation, N°8719 dated 04 March 2009).

Article 25

In the event the transactions described in the previous Article constitute illegal activities or related thereto are considered suspicious, including transaction resulting from transfers from and to third countries, the institutions must immediately and confidentially inform the corresponding supervision and oversight body, which will immediately

forward this to the Unidad de Inteligencia Financiera (Financial Intelligence Unit - UIf) of the Instituto Costarricense sobre Drogas.

Such actions shall not give rise to criminal, civil, administrative or other liability to the reporting entities or officers that have acted in good faith.

(As amended by Article 2°, paragraph 1., subparagraph b) of the Law on Strengthening Anti-Terrorism Legislation, N°8719 dated 04 March 2009).

Money Laundering Offence

Article 69

The following shall be sentenced with eight (8) to twenty (20) years of imprisonment:

- a) Anyone who purchases, converts or transfers goods of economic interest, knowing that they are originated by a crime that, within its range of penalties, may be sentenced with four (4) years of imprisonment or more, or performs any other act to conceal or hide the illicit origin, or to help the individual who participated in the infringements to evade the legal consequences of his/her acts.
- b) Anyone who conceals or hides the true nature, origin, location, destination, movements or rights on the goods, or the ownership thereof, knowing that they are originate, directly or indirectly, from a crime that, within its range of penalties, may be sentenced with four (4) years of imprisonment or more.

The penalty shall be from ten (10) to twenty (20) years of imprisonment, when the goods of economic interest are originated by any of the offenses related to the illicit traffic of narcotic drugs, psychotropic substances, money laundering, diversion of precursors, essential chemical substances and related offenses, conduct criminalised as terrorist according to the current legislation or when the purpose is the financing of terrorist acts and terrorist organizations.

Responsibilities of FIU [UNOFFICIAL TRANSLATION]

Article 123

The FIU, the Costa Rican Drug Institute, solicit, collect and analyze reports, forms and reports of suspicious transactions from supervisory bodies and institutions mentioned in Articles 14, 15 and 15a of this Law, in order to centralize and analyze this information to investigate the activities of money laundering or terrorist financing. This research will be communicated to the Public Prosecutor for the appropriate.

At the request of the FIU, the Costa Rican Drug Institute shall be obliged to provide all information required for the investigation of activities and crimes covered by this Act, agencies and state institutions and, in particular, Ministry of Finance, the Central Bank of Costa Rica, the public Registry and public oversight agencies, and entities mentioned in articles 14, 15 and 15a of this Law.

In addition, the FIU will work to locate, and track the assets of economic interest obtained in the crimes under this Act. The Public Prosecutor ordered the simultaneous or subsequent to the investigation financial investigation for crimes identified.

LAW 3 284, COMMERCIAL CODE [UNOFFICIAL TRANSLATION]

Books and Records Obligations

Art 251 Commercial Code

Without prejudice to the records that the tax legislation requires any natural or legal person, traders are required to bring their accounting and financial records means to know, easy, clear and precise, its business operations and its economic situation and without these they must be legalized by any entity. By making this reference to ledgers Code also means the use of computer systems for keeping accounting.

LAW 4 795 ON EXTRADITION

Prohibitions on Extradition

Article 3

Extradition shall not be offered or granted:

- a) When at the time of committing the punishable act, the respondent was Costa Rican by birth or naturalisation. In such cases, the respondent shall be tried in national courts. In the event such respondent has spent part of the sentence or the security measure abroad, this shall be deducted by the judge.

- b) When the request for extradition is on occasion of crimes committed by individuals being tried or convicted in Costa Rica for the same events, or when, as result of the ongoing proceedings referred to herein, such individuals are acquitted, pardoned or have served their sentence.
- c) When the respondent is being tried or has been sentenced for an offense or negligent offense occurred in the Republic prior to receipt of the request for surrender. In the event the individual is acquitted or the sentence imposed has extinguished, extradition may be ordered.
- d) When the alleged act was not a crime, under the Costa Rican law, or if so, the criminal action or sentence has prescribed.
- e) When the sentence imposed for the alleged acts, if considered temporary or final by the judge or tribunal of the State requesting extradition, is less than one year of imprisonment, or that the preventive detention or imprisonment of the defendant is authorized or agreed, in the event a final ruling has not yet been issued. This must be a term of imprisonment.
- f) When the crime was not committed in the territory of the Claimant State, or did not have effects therein.
- g) When the crime is political or, albeit common, was related to a political crime, pursuant to the Costa Rican laws.
- h) When the individual is the author of a common crime, if the extradition request is based on political reasons.
- i) When the offense that leads to request extradition is penalized with imprisonment, except when the Requesting State pledges to impose the immediately lower sentence. In the event of uncertainty, the accused will be tried by national courts based on the documentation submitted.
- j) When the accused needs to appear before a special court or tribunal in the Requesting State; and
- k) When the accused is protected under the status of asylee.

(Through Resolution N° 6780 dated on 22 November 1994, the Constitutional Chamber ruled that the judicial interpretation given to subparagraph a) of Article 3 of the Extradition Law, in the sense of granting the extradition of a naturalised Costa Rican after committing the punishable act that results in the claim, is unconstitutional, "...interpreting that such possibility would apply solely when the extraditable person loses the Costa Rican nationality...")

CONSTITUTION OF THE REPUBLIC OF COSTA RICA

Prohibition on the Extradition of Nationals

Constitution Art 32

No Costa Rican may be compelled to abandon the national territory.

LAW 7 092 ON INCOME TAX

Deductible Expenses

Article 8(b) - Deductible expenses

All pay, additional pay, salaries, bonuses, gratuities, royalties, year-end bonuses, gifts, and any other remuneration for individual services actually rendered, provided they are in order and the withholdings and taxes contained in Title II of this Law have been applied."

REGULATIONS ON INCOME TAX

Prohibition on Tax Deductibility

Article 12

[...]

(n) In no case shall bribes to public officials or private employees in order to expedite or facilitate a transaction at a transnational or national level be deductible from gross income payments of taxpayers or companies.