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STATUS REPORT OF THE REPUBLIC OF LITHUANIA
UNDER THE
BALTIC ANTI-CORRUPTION INITIATIVE

This is the final status report as submitted by the Lithuanian Ministry of Justice in March 2002. The draft report was discussed at the “Review Meeting of the Status Reports on Legal and Institutional Measures to Fight Corruption”, held in Tallinn on 26-27 February 2002. The assessment established by the reviews on the basis of the draft report and discussions with the Lithuanian experts during the Tallinn meeting is enclosed.

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ASSESSMENT OF LITHUANIA'S ANTI-CORRUPTION MEASURES AS DESCRIBED IN THE STATUS REPORT ESTABLISHED UNDER THE BALTIC ANTI-CORRUPTION INITIATIVE (BACI)

The examiners commend the Lithuanian experts for their co-operation. In general, especially after the amendments to the Penal Code, the Lithuanian legislation seems to be on a very satisfactory level, giving good tools to the authorities to effectively combat corruption in the Republic of Lithuania. A lot of different state institutions have been established to address corruption. In addition, the resources and organisation of the law enforcement authorities seem to have capacity to challenge corruption. However, there exists a few issues to which the examiners have given special attention.

I. LEGAL FRAMEWORK TO FIGHT CORRUPTION

A. PREVENTIVE MEASURES

Fiscal Treatment of Bribes

The relevant tax laws do not expressly deny the tax deductibility of bribes. It is not sufficient to not allow the deductibility of expenses declared as bribe. Indeed, entrepreneurs often hide such expenses behind deductions for a “commission of intermediary” or “consulting services”. The Lithuanian authorities are therefore recommended to establish a clear prohibition against the tax deduction of bribes and provide tax officials with the authority and power to investigate suspicious transactions.

Corporate Accounting and Auditing Standards

There is a need to clarify whether there is an obligation under the legislation for entities to have their final accounts audited. If no such obligation exists, the effective detection of bribery offences may be hampered, especially given that every person in Lithuania is obliged to report crimes to the authorities.

B. REPRESSIVE MEASURES

Criminal Legislation on Corruption

Elements of the Offence

The amended Penal Code does not include a definition of “bribe”. The Lithuanian experts state that the lack of a definition does not cause any problems in practice, but it would, nevertheless, be advisable to include a precise definition in the legislation in order to ensure its correct interpretation.

Article 290 of the amended Penal Code includes definitions of public officials and public servants. The concept as such is very broad and conforms to the standards set in different international instruments. However, in the definition domestic and foreign public officials have been placed on the same level in every respect. This may, at least in theory, sometimes lead to odd situations. It is reminded that the absence of an autonomous definition, which is contrary to the OECD Convention, could be an obstacle to covering the bribery of officials of states with different legal structures.

II INSTITUTIONAL FRAMEWORK TO FIGHT CORRUPTION

The examiners welcome the decision of the Lithuanian authorities to establish a co-ordinative council, which would be chaired by the highest ranking official and involve all responsible institutions, including the private sector and non-government organisations. The main aim of the council would be the monitoring of the elaboration and implementation of the approved National Anti-Corruption Strategy.

International experiences should be taken into account when designing enforcement strategies. Training in financial investigation is considered a key element in the combating of serious profit motivated crime, and thus the examiners strongly recommend the Lithuanian authorities to take steps for the improvement of skills in this regard.

STATUS REPORT ON LEGAL AND INSTITUTIONAL MEASURES TO FIGHT CORRUPTION

I. LEGAL FRAMEWORK TO FIGHT CORRUPTION

A. Corruption preventive measures

Anti-Corruption Legislation

For the prevention of corruption Lithuania adopted all the main anticorruption laws and the laws the specific provisions of which are directed to the fight against corruption.

One of the main recent developments in the anti-corruption legislative framework was the adoption of the National Anti-Corruption Programme by the Parliament on 17 January 2002. The Programme is a comprehensive document that consists of two instruments: the National Anti-Corruption Strategy and the Action Plan (the latter sets the deadlines and identifies institutions in charge of specific anti-corruption measures). The Programme offers a three-pronged approach in fighting corruption: prevention (1), investigation of corruption related offences (2) and anti-corruption education of the public and their support (3).

The Programme targets the corruption-prone sectors and offers remedy measures for the political corruption, administrative corruption (including public administration, tax and customs, public procurement and privatisation, health care, law enforcement).

It has been envisaged up until 2007 but it is not a static document and may be reviewed, if necessary, every two years.

Anticorruption provisions and preconditions for the elimination of corruption are stipulated in various other anticorruption laws:

The *Law on Declaration of the Property and Income of Residents*, which establishes declaration of property and income, based on taxes and other obligatory payments to the state, became effective on 1 January 1996.

Pursuant to the provisions of the above-mentioned Law, there is an obligation imposed upon a range of persons to declare their property and income on an annual basis. Mandatory declaration of property and income is laid down for :

1. Candidates for the Presidency of the Republic of Lithuania, members of Seimas, the Prime Minister and Ministers, members of municipal councils and members of their families,
2. Public servants who have been appointed to their duties and members of their families.
3. Politicians who have vacated their post and public servants who have been removed from their duties, other persons indicated in the Annexes of the present Law, members of their families.

The person obligated to declare his property and income, who avoids filing a declaration of property and income, is late in filing, or has not filed it at all or has submitted false data, is held administratively and criminally liable.

On 19 June 1997, the Seimas (Parliament) of the Republic of Lithuania adopted the *Law on Prevention of Money Laundering*. The Law prescribes the measures of prevention of money laundering and state institutions responsible for the implementation of the measures of prevention of money laundering.

On 26 June 1997, the Seimas of the Republic of Lithuania adopted the *Law on the Accounting for the Lawful Acquisition of Personal Property or for the Origin of Income*. The Law prescribes that persons, suspected or charged with having committed a serious crime for profit, have to provide an accounting for the lawful acquisition of their property and for the origin of income. Nears of kin or family members and other persons, linked with the accused or suspect, will also have to provide an accounting for the lawful acquisition of their property and for the origin of income.

On 1 July 1997, the Seimas of the Republic of Lithuania adopted the *Law on Organised Crime Prevention*. The Law regulates the application of preventive measures in respect of persons and organised associations, which by their actions pose a threat to public security or create conditions for the emergence and development of social and economic preconditions of organised crime.

On 2 July 1997, the Seimas of the Republic of Lithuania adopted the *Law on the Adjustment of Public and Private Interests in the Public Service*. The Law regulates the adjustment of private interests of persons employed in the public service and public interests of the community, ensuring that holders of public office should make decisions solely in terms of the public interests, securing the impartiality of the decisions being taken and preventing the emergence and spread of corruption in the public service. Pursuant to the above mentioned Law, the Seimas passed Resolution No VIII – 1332 as of 23 September 1999, confirming the *Chief Institutional Ethics Commission*. The Commission deals with the failures of high-ranking government officials to adjust their public and private interests in the public sector.

On 22 May 1997, the Seimas of the Republic of Lithuania adopted the *Law on Operational Activities*. The law sets forth the legal principles of operational activities against serious crimes, State institutions authorised to perform operational activities and their competence, rights and duties, methods and means of secret operational activities, their principles and procedure, and the oversight, supervision and funding of the said activities. It should be mentioned that on 20 January 2000 an amendment to the above mentioned law was adopted abolishing the immunity of the highest ranking officials (with the exception of the President) subsequently allowing to apply means of secret operational activities in respect of the above mentioned officials.

On 12 January 1999, the Seimas of the Republic of Lithuania adopted the *Law on Financing of Political Parties and Political Organisations* which aims at avoiding political corruption as well as ensuring lawfulness and transparency of funds used by political parties and organisations.

On 3 June 1999, the Seimas of the Republic of Lithuania adopted the *Law on Public Procurement*, which regulates the procedure for the procuring of goods, works and services by government institutions, municipal institutions, their enterprises, agencies or organisations, the Bank of Lithuania, etc.

On 17 June 1999, the Seimas of the Republic of Lithuania adopted the *Law on Public Administration*. The Law defines the subjects of public administration of the Republic of Lithuania, the principles of

their activities, establishes the grounds of regulating the administration and for the provision of public services and inside administration of institutions.

On 8 July 1999, the Seimas of the Republic of Lithuania adopted the *Law on Public Service*. The law establishes the basic principles of public service, the status of a public servant and legal grounds for managing public service.

On 2 May 2000, the Seimas of the Republic of Lithuania adopted the *Law on Special Investigations Service*. The above-mentioned Law establishes the Special Investigations Service as an independent, non-political agency, investigating corruption offences and reporting to the Seimas of the Republic of Lithuania and the President of the Republic.

On 26 September 2000, the Seimas of the Republic of Lithuania adopted the new *Criminal Code of the Republic of Lithuania*. The provisions of the above mentioned Code, which will come into force after the new Code of Criminal Procedure is adopted, cover criminal liability for corruption in the state and private sector; prescribes stricter responsibility in case a civil servant or a person of equivalent status has acted in a manner which contravenes his official duties; establishes criminal liability for trading in influence; provides for criminal liability of a legal person for corruption; extends the concept of a civil servant that also encompasses civil servants of international public organisations, foreign states, etc.

On 7 June 2000, the *Law on Lobbyist Activity* was adopted. The law regulates the issues of possible influence on the state politicians and civil servants and limits the lobbyist activity the aim of which is to exert influence in order to amend, pass or refrain from passing new legislation. The Chief Official Ethics Commission sees to it that the requirements of the law and legality of the lobbyist activity are adhered to.

On 10 May 2001, the Seimas of the Republic of Lithuania adopted the Resolution *On the Fight Against Corruption* which said, among other things, that the possibilities of preventing corruption were not fully exploited. The Resolution suggested that an analysis of the effectiveness of anti-corruption legislation should be carried out, which would include, if necessary, development of relevant laws. These gaps are believed to be closed by a newly developed law on the prevention of corruption which is currently pending with the Parliament and is expected to be adopted in the spring session this year.

The main objective of the law is to establish the key principles of corruption prevention in the public and private sectors, corruption prevention measures, their legal basis, as well as subjects involved in preventing corruption and the powers granted thereto.

1. Ethics in the public service

The Law on Civil Service sets forth rights, duties and main principles of the civil service as well as the provisions for the prevention of corruption.

According to the above mentioned law following persons shall not be eligible for the Civil Service:

- 1) those convicted of major crimes or crimes against the Civil Service;
- 2) those who, pursuant to this Law, have been dismissed from the Civil Service for misconduct in office unless 10 years have elapsed since the dismissal.

Several restrictions on employment and activities were established by the above-mentioned law. An official is restricted from working in a position in which he would be related by a close relative or by marriage to the immediate superior if in their service together one of the officials would be in direct subordination to the other or have to be in a supervisory position over the other; from holding a second job, while in public service, with the exception of cases provided for by law.

The law also sets forth the activities which are incompatible with the civil service. Civil servants cannot be members of the management bodies of enterprises, non-profit organisations, enter into contracts on behalf of the institution or an agency where the civil servant is employed with personal enterprises, represent the interests of their country or foreign enterprises.

Article 22. Activities Incompatible with the Civil Service

Civil servants shall not:

1) be members of the management bodies of enterprises, non-profit organisations, with the exception of cases, when they are members of the management bodies of enterprises, non-profit organisations by the authorisation of the state or municipal institution nor must they receive remuneration for their work in the management bodies of these enterprises and non-profit organisations, with the exception of cases provided by the law;

2) enter into contracts on behalf of the institution or an agency at where the civil servant is employed with personal enterprises, partnerships whose owners, general or limited partners they or persons referred to in paragraph 20, Article 2 of this Law are, with public companies where they or persons referred to in paragraph 20, Article 2 of this Law have shares or under a letter of attorney manage another person's shares;

3) represent the interests of their country or foreign enterprises, other institutions or agencies or travel abroad at the expense of enterprises;

4) work as an employee, advisor, expert or consultant in private institutions or enterprise, get a salary other than set out by this Law, except a salary for work in commissions of elections of all levels and referendums and under contracts with election and referendum commissions as well as for work in management bodies of enterprises and non-profit organisations if this is provided by law, for scientific and pedagogical work at scientific, educational establishments and training centers of civil servants, for work in groups and commissions involved in preparation of legal acts provided this work is not specified in the job description, also for works which are the object of copyright under the Law on Copyright and Related Rights;

5) strike if the career civil servant in public administration holds the position of head of a department of an institution or an agency or a higher position or if this is prohibited by laws or statutes;

6) be members of political parties or political organisations, trade or other unions, participate in political activities if this is prohibited by laws or statutes;

7) hold more than one position in the Public Service, with the exception of those of lecturers and scientific workers or scholars in institutions of higher education.

The above mentioned Law is not be applicable to:

- 1) *state politicians,*
- 2) *judges of the Constitutional Court, the Supreme Court of Lithuania, other courts, and prosecutors investigators and interrogators;*
- 3) *the Chairman of the Board of the Bank of Lithuania, his deputies, and members of the Board the State Controller*
- 4) *heads of state institutions appointed by the Seimas or the President of the Republic of Lithuania (Director General and Deputy Director General of the State Security Department, Director and Deputy Director of the Special Investigations Service, the State Controller and Deputy State Controller, the Seimas Ombudsmen, the Equal Opportunities Ombudsman, the Controller for the protection of the rights of the child), and other officials of state institutions appointed by the Seimas or the President of the Republic of Lithuania;*
- 5) *chairmen of state (regular) commissions and councils (the Central Electoral Commission, the Chief Ethics Commission, the Lithuanian Securities Commission, the State Price and Energy control Commission, the Competition Council), chairmen, deputy chairmen and members of other state (regular) commissions and councils, also officials and their deputies of commissions or councils established by special laws and members appointed by the Seimas, the Seimas Chairperson or the President of the Republic of Lithuania;*
- 6) *servicemen in the professional military service;*
- 7) *the employees of state and municipal enterprises;*
- 8) *the personnel of Lithuanian diplomatic missions or consular institutions who are performing economic and technical functions and are not Lithuanian nationals;*
- 9) *employees of public institutions.*

According to the Law, an official shall without delay notify his superior about tasks or instructions which are illegal in his judgement. An official also has a right to refuse to carry out a task or an instruction if, in their opinion, the task or the instruction is in breach of the law or a Government decision. An official must report the matter in writing to his superior, and carry out the task or the instruction only if he is directed to do so in writing. In this case responsibility for the consequences of carrying out an illegal task or an instruction shall lie not with the official who has carried out the task or the instruction but with the superior who has given the task or the instruction. In no way should a task or an instruction be carried out if such an act would constitute a criminal or administrative offence, while the official could be aware or had to be aware of the criminal nature of such behaviour. Responsibility for the consequences of carrying out such a task or an instruction shall lie not only with the official but also with his superior who has given the task or the instruction. In a like manner no task or instruction must be carried out if the behaviour which this entails on the part of the civil servant is degrading to the human dignity.

The *Law on Courts* establishes that a person may be designated as a judge only if he/she has an impeccable reputation. According to the Law a person cannot be considered as having an impeccable reputation if he/she was convicted of an intentional crime, despite the expiration of the conviction; he/she was convicted of a negligent crime and the conviction has not expired; he/she was dismissed from his/her office on the basis of the decision of the Court of Honour of Judges; his/her conduct or activities are not in line with rules of judges' professional ethics. In order to guarantee independence of judges, the Law on one hand prescribes prohibition of the interference of government authorities

and institutions, members of the Seimas and other officers, political parties and public organisations or individuals with the work of judges and on the other hand establishes depoliticisation of judges. Moreover, it is foreseen that a judge may not hold any other elected or appointed post, be employed in business, commercial or any other private organisations or enterprises. He may receive no other salary except the salary of a judge and a compensation for educational or research activities.

The Law on Prosecutor's Office establishes the same provisions concerning limitations on outside employment of prosecutors. The *Statute on Service in Prosecutor's Office of the Republic of Lithuania* prescribes that a person cannot be recruited to the service in prosecutor's office if he/she was convicted of an intentional crime; if he/she worked in the system of courts, the Ministry of Internal Affairs or the State Security Department, and was dismissed from office for the activities that discredit the name of official. A person may not be recruited to the prosecutor's office, in which he/she would be related by close relative or by marriage in direct subordination or supervisory position.

Similar provisions aiming at prevention of corruption are established in other legal acts regulating service in state institutions (the *Statute of Prison Department*, *Statute on Service in Customs*, *Law on State Security Department*, etc.).

2. Public procurement and public subsidies, licences, or other public advantages

The Law on Public Procurement, which regulates the procedure for the procuring of goods, works and services by government institutions, municipal institutions, their enterprises, agencies or organisations with the funds of the State Budget, municipal budgets, the budget of the State Social Insurance Fund, the budget of the Compulsory Health Insurance Fund and other resources of the state funds:

Article 1. The Objective of this Law

1) the procedure of procurement by state and local authorities, public undertakings (including those specified in subparagraph 3 hereof), offices or organisations of products or services the value whereof during the financial year is not less than LTL 75 000 or of public works the value whereof is not less than LTL 300 000, executed with the resources of the State Budget, municipal budgets, the budgets of the State Social Insurance Fund and the Compulsory Health Insurance Fund and other state money funds, also resources received in the name of the State as charity or any other financial support, when the charity donor does not specify the purpose for which it should be used, also with funds received as loans on behalf of the State or loans received with State guarantee, unless the loan use agreements provide for other terms and conditions for the use of the loans;

2) procurement by the Bank of Lithuania, with the funds of the Bank of Lithuania, of products or services the value whereof during the financial year is not less than LTL 75 000 or of public works the value whereof is not less than LTL 300 000;

3) procurement of products or services the value whereof during the financial year is not less than LTL 1.8m or public works the value whereof is not less than LTL 1m, when the contracting authorities are state or municipality controlled undertakings or branches of undertakings that are on the list approved by the Government, operating in the water, energy, transport and telecommunications sectors as well as undertakings which have had the special or exclusive right of operation in the sphere granted to them by the state or municipality, irrespective of the types of undertakings of forms of their ownership when such procurement is financed with the funds of the above undertakings.

Article 2. Definitions

"Public procurement" (hereinafter referred to as procurement) means the acquisition of products, works or services (including lease of property) carried out in the manner prescribed by this Law by contracting authorities specified in paragraph 1 of Article 1 and paid for on demand or by installments.

"Works" means any works associated with the construction (assemblage, building), reconstruction, removal, demolition, repairs or renovation of structures as well as research, design or other services incidental to the works which are the object of procurement.

"Services" means any object of procurement, except for products and works, as well as services related to products, where the value of the services exceeds the value of products.

Contracting authorities means the state or local authorities, public undertakings, offices or organisations specified in paragraph 1 of Article 1 as well as the Bank of Lithuania.

"Products" means raw materials, products, equipment and other objects of every kind and description, as well as services incidental to the supply of the products if the value of those services does not exceed that of the products themselves.

The Law sets forth five methods of procurement, four of which are competitive.

Information on all public tenders is public and accessible to all interested persons and companies. Information on public procurement is published in the Official Gazette. In the cases when public procurement is advertised on an international scale, information on participation in the procurement procedure must be published in a popular publication with international circulation or a specialised publication. The Public Procurement Office also publishes information concerning the intended procurement on Internet.

Procurement decisions are made public. Information on the awarded procurement contracts and later on the performance of the procurement contracts is published in the special supplement at the Official Gazette.

There exists a procedure to request review of procurement decisions. If a supplier/contractor believes that during the procurement procedures his lawful interests were violated, he has the right to file a claim to the contracting authority. If the results of the examination of the claim do not satisfy the supplier/contractor he has the right to file a complaint to the Public Procurement Office. These complaints are examined by an independent commission.

An unfavorable decision can be reviewed in court. The supplier/contractor and the contracting authority have the right to appeal to court against the actions of the Public Procurement Office and the decisions of the independent commission. The Criminal Code of the Republic of Lithuania (Article 321³) provides for criminal liability for violating public procurement procedures (sanction – deprivation at liberty for up to two years or a fine). Liability for violation of public procurement procedures is also established in the Code of Administrative Offences (sanction – fine).

3. State audit

The most relevant laws regulating the use of public finances and prevention of the unlawful use of public finances are the Law on State Control; the Law on Public Procurement; the Law on the Adjustment of Public and Private Interests in the Public Service; the Resolution on Approving the Programme of Creating the System of Internal Control and Internal Audit of the Public Sector.

The *Law on State Control* stipulates that the Republic's Government, ministries and other state institutions must within 5 working days present to the State Control the standard acts which regulate the accounting, distribution, use and control of financial and material resources which have been passed by the above bodies but are not subject to publication in the Official Gazette.

The State Control supervises the lawfulness and efficiency of State property management and use, the State Budget performance, the observance of financial discipline by the State institutions and gives recommendations for ensuring financial discipline.

When performing its functions, the State Control shall control:

- 1) the State Budget performance;
- 2) the implementation of state programmes financed from the State Budget;
- 3) economic and financial activities of the Seimas (Parliament) Office, institutions accountable to the Seimas (Parliament), divisions providing services to the Seimas (Parliament);
- 4) economic and financial activities of the Office of the President of the Republic and divisions providing services to the President;
- 5) economic and financial activities of the Constitutional Court;
- 6) the lawfulness of the management and use of State-owned assets in the Bank of Lithuania;
- 7) economic and financial activities of courts, bailiff's offices, prosecutor's offices and the police;
- 8) economic and financial activities of the Government's Office, ministries, Government institutions and other institutions financed from the State Budget;
- 9) economic and financial activities of state institutions of the Republic of Lithuania operating in other states;
- 10) whether the loans received from the State Budget and other State subsidies are used for the purpose and efficiently in the enterprises, institutions and organisations; the economic and financial condition of the economic entities the guarantor of loans or contractual obligations whereof is the State;
- 11) whether local authorities, religious, public organisations are using the funds received from the State Budget for the purpose and efficiently;
- 12) the obtaining, distribution, use and repayment by commercial banks and enterprises, institutions and organisations of all types of credit obtained on behalf of the State as well as the credit taken with the Government guarantee;

The use of public finances

The use of public finances and prevention of the unlawful use of public finances is under the supervision of the State Control. The State Control supervises the lawfulness and efficiency of State property management and use, the State budget performance, the observance of financial discipline by the State institutions and gives recommendations for ensuring financial discipline (more detailed information on this issue see page 9 "State audit").

Internal audit of State institutions and enterprises

Following the adoption of Resolution of the Government as of 7 February 2000 No. 127 on Internal Audit of State institutions and enterprises, Internal Audit Services of State Institutions were established within all ministries and administrations of area heads. The Internal Audit Service in state institutions and enterprises (hereinafter referred to as state institutions) is established provided that the number of employees exceeds 300, including employees of subordinate state institutions or state institutions reckoned within their field of regulation. The Internal Audit Service of a state institution is a structural subdivision of the state institution.

This resolution approved regulations of the Internal Audit Service of a state institution regulating goals, objectives, functions, rights, organisation of work, duties and responsibilities of employees of the Internal Audit Service of a state institution or enterprise (hereinafter referred to as a state institution). In the implementation of the goals set out in this resolution, the Service inspects and assesses the sufficiency and effectiveness of the internal control system of the state institution being audited, its subordinate state institutions or state institutions reckoned within its field of regulation; also the Service inspects and assesses whether the activities are conducted in a responsible way, in accordance with laws and other legal acts, whether the information about financial and other activities is reliable and thorough, whether the goals and objectives set are achievable. The Service also provides impartial and objective information about this and the possible risk of activities to the head of the state institution; inspects and assesses administration of funds received from EU institutions or special funds in the state institution and its subordinate state institutions or state institutions reckoned within its field of regulation.

4. Access to information

Citizens of the Republic of Lithuania have the right of access to the information of state and local government institutions, which is defined by the *Law of the Republic of Lithuania on the Right to Obtain Information from State and Local Government Institutions*, enacted in 2000, and the *Law of the Republic of Lithuania on Provision of Information to the Public*, enacted in 1996.

The laws specify the subjects having the right to have access to information, the kinds of supplied information, the procedure for accessing information, the kinds of information access to which is denied, the right of the applicant to appeal the decision of the supplier of information when the information is incomplete or incorrect or access to it is denied.

The law provides that every person has the right to get public information on the activities of the state and local government institutions as well as information the institutions possess with respect to the person involved. These institutions must inform the public about their activities, functions, structure and issues they deal with. The information has to be accessible and free to everybody.

The above laws provide that information is denied if:

- it is a state, official, commercial or bank secret;
- the provision of the information may harm the state security, defense and foreign policy interests;
- the denial of the information would prevent serious violations on law;
- the provision of the information would violate rights and lawful interests of other persons.

In cases when access to information is denied, the applicant receives a written explanation of the reason for the denial and the possibility to appeal the decision. The applicant has the right to appeal the decision to the administrative disputes commission. The applicant can further appeal the decision of the administrative disputes commission to the administrative court.

5. Fiscal treatment of bribes

The laws of the Republic of Lithuania do not allow any tax deductibility of bribes.

6. Money laundering

The Law on Prevention of Money Laundering prescribes the measures of prevention of money laundering and state institutions responsible for the implementation of the measures of prevention of money laundering.

The preventive regime is underpinned by identification and reporting obligations. Basic customer identification and record keeping requirements are in place for credit and financial institutions when *monetary operations* are conducted above 50,000 Litas¹. It is recommended that credit and financial institutions should be clearly obliged to verify the identity of both registered and beneficial owners of corporate accounts and identify company directors as envisaged by the FATF Recommendations, and the EC Directive. The Lithuanian authorities should satisfy themselves that after the October 1998 amendments to Act VIII-275 all financial institutions are keeping all the transaction records required for evidential purposes in both cash and non-cash transactions for 5 years at least. Guidance should be given to credit and financial institutions on identification and record keeping requirements involving fund transfers by electronic payment systems. Clear guidance should also be given to all relevant bodies on the retention of copy documents on customer identification for at least 5 years after the account is closed.

Under Article 8 of Act VIII-275 credit and financial institutions, notaries, and persons authorized to perform notarial acts are obliged to identify the customer where they *suspect* that monetary operations may be related to money laundering (irrespective of the amount of money involved) and communicate such information to the Tax Police without delay. Under Article 12 of Act VIII-275, credit and financial institutions, notaries, or persons authorized to perform notarial acts, as well as being obliged to identify the customer if monetary operations involve a sum in excess of 50,000 Litas, are obliged to report the identification data to the Tax Police. This threshold is lowered to 20,000 Litas (US \$ 5,000)

¹ This is equivalent to US \$ 12,500.

where the monetary cash operation involves a single exchange of one currency into another or to 10,000 Litas (US \$ 2,500) where the monetary operation involves an insurance premium.

Article 318 of the Criminal Code prescribes criminal liability for a disclosure of a bank secret, and Article 31 of the Law on Commercial Banks governs the keeping of a bank secret, however, paragraph 2 of the aforementioned Article envisages that documents and information which are considered a bank secret shall, upon the request of authorities, be provided under the procedure prescribed by law of the Republic of Lithuania, which is set forth in Article 75 of the Code of Criminal Procedure "Collection and Production of Evidence". This Article stipulates that "an interrogator, investigator, prosecutor and the court shall have the right to request enterprises, institutions, officials and citizens to produce items and documents. All citizens, enterprises, institutions and organisations shall comply with these requests". Thus, banking secrecy does not constitute any obstacle for judicial or law enforcement authorities to gather evidence.

7. Corporate Accounting and Auditing Standards

General principles

The *Law on the Principles of Accounting* regulates the general accounting principles of property and ownership, as well as of the results of economic activity and performance of economic subjects.

According to the Law, all business and financial transactions shall be confirmed by accounting documents. Business transactions which cannot be confirmed by documents shall be confirmed by accounting documents for other transactions related to the said transactions.

It is obligatory to record all completed business transactions in accounting documents. Accounting documents are drawn up during business transaction or immediately after its completion.

The individuals who draw up and sign the documents shall be responsible for their timely and accurate preparation, the exactness of the information included therein, and their legitimacy.

Annual financial statements of enterprises are submitted and made available to the public in accordance with the procedure established by the Government.

Prior to submission to administration bodies, financial statements are considered and approved in accordance with the procedure set forth in the by-laws of enterprises.

Prior to submission for approval the financial statement, it may be submitted for auditing. The head or owner of an enterprise is responsible for the submission of an incorrect financial report, even if it has been checked and approved by an auditor.

In June 15, 1999 the Seimas adopted the *Law on Audit*, which regulates conduct of audit, the procedure for granting the name of an auditor, professional activities of audit enterprises and certified auditors (rights, duties and responsibilities), as well as supervision of these activities, setting up, activities and management of the Chamber of Auditors.

Accounting offences

The criminal liability and proportionate sanctions for accounting offences is provided in the chapter “Crimes against Finance” of the Criminal Code:

- 1) Article 322 prescribes liability for negligent management of accounts or failure to keep accounting documents where this makes it impossible to ascertain, in full or in part, financial position of the enterprise or evaluate its property (sanction – imprisonment for a term of up to 1 year or correctional labour and a fine, or without a fine, or only a fine);
- 2) Article 323 prescribes liability for fraudulent management of accounts or forgery, concealing or destroying of accounting records where this makes it impossible to ascertain, in full or in part, financial position of the enterprise or evaluate its property (sanction – imprisonment for a term of up to 3 years and a fine, or without a fine, or correctional labour for a term of up to 2 years, or only a fine);
- 3) Article 324 prescribes liability for recording of knowingly false data in the income statement or other documents about his income and their filing with the State Tax Inspectorate (sanction – imprisonment for a term of up to 4 years, or correctional labour for a period of up to 2 years, or only a fine; if such acts are committed repeatedly, the sanction shall be imprisonment for a term of up to 5 years).
- 4) Article 313 of the current Criminal Code (Chapter “Crimes against Economy”) prescribes criminal liability for giving false information concerning the commercial, economic, financial activities of the enterprise or its assets on behalf of the enterprise in a report, official statement or publication intended for the general public as well as for producing a false report by an independent auditor concerning the correctness of the financial statement of the enterprise and by doing so misleading a state institution, a creditor, stockholder, another enterprise or an individual which results in major financial consequences; the aforementioned acts are punished by imprisonment for a term of up to 3 years and a fine or only by a fine.
- 5) The Code of Administrative Offences provides for administrative liability for infringement in accountancy field if financial consequences are of minor extent (sanction – fine, amount of the fine depends on the concrete administrative offence).
- 6) The Law on Tax Administration also provides for administrative liability for malicious infringements of the laws on taxation including fraudulent management of bookkeeping, etc.

8. Private sector initiatives and civil society involvement

On 4 September 2001, the Government approved the National Anti-Corruption Strategy containing measures that should be implemented during a long-term period – 7-10 years. The main objective of the Strategy is to reduce the level of corruption to the point where it no longer undermines social, economic and democratic development. The Strategy includes the following main elements – corruption prevention, investigation and enforcement, public education and support. The three elements should be implemented in parallel, without giving priority to any of them. The Strategy also establishes provisions for increasing the effectiveness of investigation of corruption, the involvement of society in combating corruption, the development of anti-corruption teaching programmes.

As a follow-up, the National Anti-Corruption Programme was developed which included the aforementioned Strategy and the Action Plan, expanding on specific anti-corruption measures and pointing out implementing authorities.

The Programme was adopted by the Parliament on 17 January 2002 (see above, p. 3).

All active political parties also analyse corruption problems of the country in their programs. The Seimas regularly hears reports of legal institutions and other institutions (e.g. the Custom Department) and passes resolutions obligating the executive to implement respective anticorruption measures. The anticorruption measures occupy an exceptionally important place in the Government programme. The President analyses the situation in respect of corruption in every of his annual addresses. All this is broadly covered by media.

The media covers every significant case of uncovered corruption. Often the media itself exposes corrupted officials and investigates the spread of corruption within various institutions. The Lithuanian media enjoys broad freedoms and it is not censored. In 1999, a sociological survey revealed that 73.8 percent of interviewed businessmen pointed out that the media is the institution deserving the biggest praise in combating corruption. Other respondents also gave the media the first place.

In 2000, a chapter of Transparency International (TI) was opened in Lithuania. The chapter actively participates in TV and radio programs and organises sociological surveys the materials of which are published.

Public organisations, scientific institutions, state institutions organise conferences and seminars on anticorruption problems. It is also may be mentioned that in March 2001, the World Bank presented the report *Anticorruption in Transition: A Contribution to the Policy Debate*. According to this report, the administrative corruption index and the state capture index, Lithuania belongs to the "medium-medium" category.

B. Repressive Measures

1. Criminal legislation on corruption

First of all it should be mentioned that seeking to ratify the Criminal Law Convention on Corruption of the Council of Europe, the Criminal Code of the Republic of Lithuania (hereinafter referred to as the Criminal Code) was supplemented and amended on 25 January 2002 (amendments and supplements came into force on 13 February 2002). These amendments lay down a new definition of the civil servant, international judicial authorities, extend the concept of a civil servant that also encompasses civil servants of international public organizations and foreign states; incur criminal responsibility for passive and active corruption and trading in influence in respect of national and foreign public officials; provides for criminal liability of a legal person for corruption and money laundering.

The Criminal Code distinguishes active and passive forms of corruption embracing corruption acts both in private and public sectors.

Corruption related acts are reckoned among crimes to the public service and embrace:

- Taking a bribe and trading in influence (Article 282);
- Subornation (Article 284); and
- Office abuse (Article 285).

It is also worthwhile noting that analogous provisions, regulating corruption offences, are stipulated in the *new Criminal Code* adopted in September 2000 by the Seimas of the Republic of Lithuania (not valid yet). The new Criminal Code prescribes a more lenient penal policy; therefore, respectively, the sanctions for crimes and misdemeanours are more lenient.

A. Elements of the offence

a.1. The prohibited acts

Criminal Code

Taking a bribe (passive corruption) is defined as “a civil servant, an official or a person of equivalent status who directly or indirectly in his own interest or in the interests of others accepted, promised or made an agreement to accept a bribe, required or provoked to give it in exchange for lawful or unlawful acts or omissions in the discharge of his authority”.

Trading in influence is defined as “any person who, by using his social position, office, powers, family relations, acquaintances or any other kind of possible influence on a state or municipal institution or agency, an international public organisation, or on a person or an official holding office therein or a person of equivalent status, promised to exert influence for a bribe on a respective institution or agency or organisation, a public servant or a person of equivalent status in exchange for their lawful or unlawful acts or omissions”.

Subornation (active corruption) is defined as “any person who either directly or indirectly offers or proposes or promises to give or has given a bribe to a civil servant, an official or a person of equivalent status in exchange for wished lawful acts or omissions in the discharge of his authority, or to an intermediary with a view to obtaining the same results”.

Subjects of the above-mentioned crimes are public servants and/or officials. Article 290 of the Criminal Code contains the definition of a public official and a public servant that is applied in respect of public officials of the Republic of Lithuania, to foreign public officials, members of foreign public assemblies, other international public organisations.

Office abuse is defined as intentional abuse of position by a public official or a civil servant in the interest contrary of his position, if such activities were of personal gain or interest, or caused substantial damage to the state interests or other persons.

The Criminal Code also provides for other kinds of crimes to the public service that are related to corruption, viz.:

- Exceeding official powers (Article 287);
- Failure to perform official duties (Article 288);
- Official forgery (Article 289).

(The texts of the respective provisions of the above mentioned articles are contained in Annex II).

Attempt and conspiracy

Attempt and conspiracy are provided by Article 16 of the Criminal Code:

Article 16. Liability for preparation and attempt to commit a crime

Preparation to commit a crime is the obtaining or adjusting of instruments or means to commit a crime or any other intentional action which creates possibility of the crime to be committed.

An attempt to commit a crime is an intentional act the purpose of which is to commit a crime, if the crime was not accomplished by reason not depending on the will of the offender.

The punishment for preparation and attempt to commit a crime is to be assessed pursuant to the respective law, which prescribes the responsibility for that crime. When imposing a penalty for the crime committed, the court shall regard the nature and degree of the dangerousness of the offence committed, the degree of accomplishment of the intended criminal act and the reasons for which the criminal act was not accomplished.

In case of preparation or attempt, the perpetrator and other participants shall be responsible for complicity in the preparation of the crime or an attempt to commit the crime.

Complicity

Article 18 of the Criminal Code defines the term "complicity" as "the intentional involvement in the joint commission of a crime by two or more persons". Even though the Criminal Code does not directly indicate so, the case-law of the Supreme Court of Lithuania requires that an accomplice should be a natural person, who is legally capable and who has attained the age when criminal responsibility is possible. The Criminal Code specifies that participants of the crime shall include "a perpetrator (and a joint perpetrator), an organiser, an instigator and an accomplice. The perpetrator (joint perpetrator) is a person who actually commits a crime. The organiser is a person who organises the commission of a crime or commands the crime commission. The instigator is a person who incites another person to commit a crime. The accomplice is a person who aids, counsels, commands another in the commission of a crime, or who provides means or removes obstacles, or who protects or shields other accomplices, or who promises in advance to harbour the offender, or to hide the instruments or means of a crime, the traces of the act or the goods acquired by criminal means, or who promises in advance to sell the goods produced or acquired in the course of the crime.

a.1.1 elements of active and passive corruption

The elements of "taking a bribe" stipulated in the Article 282 of the Criminal Code are as follows:

accepting, promising or making an agreement to accept a bribe, requiring or provoking to give a bribe, trading in influence.

The elements of "Subornation" stipulated in the new Article 284 of the Criminal Code are as follows: offering, proposing or promising to give or having given a bribe.

a.1.2 any person

Article 282 part 1, 2 and 3 presume only a special subject - a civil servant, official or a person of equivalent status. Part 5 and Article 284 applies to a "person"- it means any natural or legal person. Thus, Articles 282 and 284 apply to legal persons as well.

a.1.3. intentionally

The offence (active and passive corruption or trading in influence) of a public official should be committed intentionally. A crime shall be considered committed intentionally if the person who has committed the crime was aware of the dangerous nature of his act or omission, foresaw the dangerous consequences to the society and desired them to occur.

a.1.4. to offer, promise or give

Article 284 - Subornation (giving a bribe) covers "offering, promising or giving": "Any person who <...> offers or proposes or promises to give or has given a bribe to a civil servant, official or a person of equivalent status <...>".

a.2. The nature of the bribe

According to the wording of Article 284 of the Criminal Code the term "bribe" is to be understood and interpreted in the broader sense i.e. it covers pecuniary or any other advantage.

a.3. The expected behaviour of the public official

The wording of Article 282 of the Criminal Code covers the situation when a bribe is to be accepted by a civil servant, official or a person of equivalent status in order that he or she acts or refrains from acting in relation to the performance of official duties:

"in exchange of lawful or unlawful act or omission in the discharge of his authority".

The wording of Article 284 of the Criminal Code covers the situation when a bribe is to be given to a civil servant, official or a person of equivalent status in order that he or she acts or refrains from acting in relation to the performance of official duties:

" any person who either directly or indirectly offers <.... > or has given a bribe to a civil servant, official or a person of equivalent status in exchange of wished lawful or unlawful acts or omissions in the discharge of his authority <...>".

a.4. The concept of an official

Subjects of the above-mentioned crimes are public servants and/or officials, or persons of equivalent status. Article 290 of the Criminal Code contains the definition of a civil servant and official that is applied in respect of public officials of the Republic of Lithuania, foreign public officials, members of foreign public assemblies, other international public organisations.

Article 290. Definition

According to the provisions of this Code, a civil servant and an official is a person, working in the civil service- the politicians of the state, civil servants of public administration pursuant to the Law on Civil Service, as well as other persons who when working at state or municipal authorities or institutions, judicial law enforcement, state control and supervision institutions or at institutions equivalent to them, perform the functions of representatives of the state or have administrative powers, as well as official candidates to the duties mentioned;

Persons having respective powers at foreign state institutions, international public organisations or international judicial authorities, as well as official candidates to the duties mentioned shall be considered as equivalent to civil servant and an official;

Moreover, persons working at any state, non-governmental or private institution or engaging in professional activities and having the relevant powers of public administration, except persons who provide economic or technical functions shall also be considered as equivalent to a civil servant and an official.

a.5. Intervention of third persons in the corrupted transaction

Bribes given directly or through intermediaries are covered by part 1 of Article 284:

"Any person who either *directly or indirectly* offers or proposes or promises to give or has given a bribe to a civil servant or a person of equivalent status <...> or to an intermediary ". (Complicity issues are discussed in greater detail in "a.1").

B. Defences

Article 284 of the Criminal Code stipulates that a person shall be released from criminal liability for suborning, if he has been required or provoked to give it, and if he has offered, promised or given a bribe, law enforcement institutions being aware thereof.

C. Liability for active and passive bribery

Laws of the Republic of Lithuania provide for administrative (incurred for violation of tax laws) and civil responsibility of legal persons.

The Criminal Code stipulates responsibility of legal persons. Article 11¹ of the Criminal Code stipulates that a legal person shall be liable for the Taking of a bribe and trading in influence (Article 282), Subornation (Article 284) and Money Laundering (Article 326).

Paragraph 2 of the above-mentioned Article stipulates that a legal person shall be liable for the criminal act committed by a natural person, if the criminal act has been committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, has the right of

- - a power of representation of the legal person, or
- - an authority to take decisions on behalf of the legal person, or
- - an authority to exercise control within the legal person.

A legal person can be held liable for the criminal act where the lack of supervision or control by the above mentioned person provided for in Paragraph 2 of this Article made possible the commission of the criminal act for the benefit of that legal person by a natural person under its authority.

D. Sanctions

Pursuant to the Criminal Code the following sanctions are set down for active and passive bribery and trading in influence by domestic public officials as well as foreign public officials:

For passive corruption (Article 282): in exchange of lawful act or omission in the discharge of his authority- by deprivation of liberty up to 5 years with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to five years or by a fine with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to 3 years;

in exchange of unlawful act or omission in the discharge of his authority - by deprivation of liberty up to 7 years with the deprivation of the right to do hold a certain position, do a certain job or perform specific activities for a term of up to 5 years or by a fine with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to 3 years;

in exchange of lawful or unlawful act or omission in the discharge of his authority (taking a bribe of high value) -

by deprivation of liberty from 3 to 10 years with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to 5 years;

For trading in influence- by deprivation of liberty up to 5 years or a fine.

For active corruption (Article 284): in exchange of wished lawful acts or omissions in the discharge of his authority, or to an intermediary with a view to obtaining the same results - by deprivation of liberty up to 3 years or by correctional works up to 2 years or by a fine;

in exchange of wished unlawful acts or omissions in the discharge of his authority, or to an intermediary with a view to obtaining the same results -by deprivation of liberty up to 5 years or by correctional works up to 2 years or by a fine;

in exchange of wished lawful or unlawful acts or omissions in the discharge of his authority, or to an intermediary with a view to obtaining the same results (giving a bribe of a high value) - by deprivation of liberty up to 6 years or by a fine.

The Criminal Code, Article 22(1) prescribes the punishments for legal persons. Thus, in respect of legal persons that committed criminal acts the following sanctions could be applied:

- 1) a fine;
- 2) confiscation of the property;
- 3) limitation of the activities of the legal person;
- 4) discontinuation of the legal person.

Seizure and Confiscation of the bribe and its proceeds

Instruments or means of a crime, as well as money or other material valuables acquired through a criminal act, shall be confiscated under the procedure prescribed in Article 93 of the Code of Criminal Procedure. This Article sets forth that:

- 1) instruments and means of a crime, which belong to the accused, shall be confiscated and handed over to respective organisations or destroyed;*
- 2) money and other valuables received or acquired through a criminal act, provided that their owners have not been identified, shall upon the court judgment be transferred to the state revenue and other articles shall be handed back to their legitimate owners or be given over into the possession of the state if their owners have not been identified. In case of a dispute as to the ownership of these articles, it shall be resolved under the civil procedure;*
- 3) articles, which are banned from circulation, shall have to be given over to respective organisations or destroyed;*
- 4) documents, which are material evidence, shall remain appended to the case-file for the entire period of its safekeeping or shall be given over to other relevant enterprises, institutions, organisations or individuals upon their request;*
- 5) articles of no value and not fit for using are to be destroyed or if respective enterprises, organisations or individuals request - may be given over to them;*
- 6) instruments and means used for smuggling, as well as money and other valuables received or acquired through this crime, shall be confiscated regardless of their owners.*

Confiscation of the property as an additional punishment obligatorily imposed by the court for the commission of a crime stipulated by Article 35 of the Criminal Code (this list of crimes includes criminal association; fraud on aggravating circumstances; misappropriation of funds and embezzlement of funds on aggravating circumstances; passive corruption; active corruption on aggravating circumstances; abuse of office on aggravating circumstances; false statements about the activities of an enterprise; passive corruption in a private sector; abuse of power in a private sector; money laundering; counterfeiting; fraudulent management of accounting, etc.). The confiscation of property consist of compulsory uncompensated seizure of property that is possessed by right of ownership by the accused or of property passed on to other persons, in case it has been acquired as the result of a criminal act.

When property is confiscated, priority shall be given to the satisfaction of the claims of the victim.

Moreover, Article 25 of the Code of Criminal Procedure defines sequestration of property as coercive temporary restriction of the title to the property or of individual composite parts of the title to property – managing, use or disposition, which is applied in accordance and under conditions stipulated by law in order to secure a civil claim, possible confiscation of property or recovery of the fine.

Article 195. Sequestration of property.

In attempt to secure a civil action, as well as possible confiscation of property, the investigator must sequester the property of the suspect, the accused or the natural person who is materially responsible under the law for the actions of the mentioned above, as well as the property of other persons who appear to hold the property which has been acquired in a criminal manner. The property may be sequestered either together with seizure or search or separately.

Property of the natural person may be sequestered:

(1) in attempt to secure possible confiscation of property in the cases provided for by Article 35 of the Criminal Code;

(2) in attempt to secure a civil action when there are substantial grounds to prosecute a legal person as civil respondent at a criminal case.

The property sequestration shall be effected upon a reasoned decision in accordance with the regulations set out in Article 195-2.

The property subject to sequestration shall be listed in accordance with the provisions set out in Articles 189, 191, 197 and 198 of this Code if it is passed for preservation or administration of other persons as well as when movable property not subject to registering in the Property Register is being sequestered.

Items which are necessary for the suspect or the accused, as well as for the members of their families and the persons who are supported by them, shall not be subject to sequestration according to the list established by the laws of the Republic of Lithuania.

Having passed a decision to sequester property, an official shall take measures to prevent the causing damage on the property as a result of its sequestration, and to resolve the question of storing, managing and use of the property sequestered.

In case the property is sequestered with full restriction of ownership rights (by prohibiting to dispose, use or manage it), the property subject to sequestration may be taken from his owner. The sequestered property may be passed for preservation to state or municipal institutions, or to apartment maintenance organisations, or to another person after obtaining their signature as to notification of their responsibility for embezzlement, transfer or concealment of the said property.

In the property owned by joint ownership right is subject to sequestration, only the portion of the property of a person upon whom restriction of ownership rights has been imposed, may be sequestered. If his share in joint ownership is not determined, all property may be temporarily sequestered until the share of that person in joint ownership is determined.

Upon sequestration of a deposit in a bank or another credit institution, a person the deposit of whom is sequestered shall be prohibited from disposing of the deposit of the amount specified in a decision.

In case goods, raw materials, semi-products or products are subject to sequestration, the manager of property shall have the right to change the composition of this property, provided that their total value will not decrease in its value, unless the decision specifies otherwise.

Property sequestration is repealed upon the decision of the investigator provided the said measure becomes unnecessary.

Civil Penalties and Administrative Sanctions

The Code of Administrative Offences distinguishes between principal and additional penalties. The principal penalties are a fine, admonition, and administrative arrest. Whereas, confiscation, deprivation of a specific right or suspension from work (duties) may be applicable as either a principal or additional penalty. One principal penalty or one principal and one additional penalty may be imposed for one administrative offence.

The amount of the fine that might be imposed for the administrative offence depends on the specific administrative offence: for violating the Law on the Adjustment of Public and Private Interests in the Public Service the amount of the fine may vary between 500 LT and 1,000 LT (if committed repeatedly – between 1,000 LT and 2,000 LT or suspension from work (duties)), for infringement of accountancy rules – between 100 LT and 200 LT, for negligent book-keeping – between 3,000 LT and 5,000 LT (if committed repeatedly – between 5,000 LT and 10,000 LT), for deceptive book-keeping – between 10,000 LT and 20,000 LT (if committed repeatedly – between 20,000 LT and 40,000 LT), for infringement of procedures for submitting the reports on accountancy matters – between 500 LT and 1,000 LT (if the same acts committed with the aim to evade paying taxes – between 2,000 LT and 5,000 LT), for infringement of public procurement procedures – between 500 LT and 1,000 LT, for infringement of legal acts regulating prevention of money laundering – between 1,000 LT and 2,000 LT, etc.

E. Jurisdiction

Territorial jurisdiction

The issues of jurisdiction are governed by the Criminal Code. Article 4 of the Criminal Code prescribes that any person who commits criminal acts within the territory of the State of Lithuania shall be liable under the criminal laws of the Republic of Lithuania. The territory of Lithuania is conceived as all the land territory and the underground within the state borders, as well as the territorial waters and the air space above these.

The place of commission of a criminal act is the place in which the person acted or could have acted or had to act, or the place in which the consequences covered in the criminal law occurred. The place of commission of a criminal act by an accomplice shall be the place where the criminal act was committed or, if the accomplice operated elsewhere, the place where he carried out his activity.

A single criminal act committed both within the territory of the State of Lithuania and abroad shall be considered as having been committed within the territory of the Republic of Lithuania if it was commenced or completed, or forestalled in the territory of the Republic of Lithuania.

Any person who commits criminal acts on aircraft, sea and river vessels flying the flag of the Republic of Lithuania or carrying its distinctive symbols while being outside the territory of the Republic of Lithuania, shall also be liable under the criminal laws of the Republic of Lithuania.

Nationality and other extraterritorial jurisdiction

Article 6 of the Criminal Code prescribes that citizens of the Republic of Lithuania and permanent residents of Lithuania without citizenship shall be held liable for crimes committed abroad under the

criminal laws of the Republic of Lithuania. This rule applies to all crimes stipulated in the Criminal Code.

Other persons who commit a crime abroad may be prosecuted under the criminal laws of the Republic of Lithuania if the committed act is recognised as a crime and is punishable under the laws of the place of commission of the crime and of the Republic of Lithuania. If a person who commits a criminal act abroad is being prosecuted under the criminal laws of the Republic of Lithuania and the crime incurs different punishment in each country, the offender shall be imposed the punishment provided for in the more lenient law.

A person who commits a crime abroad shall not be held criminally liable, if he

- 1) has fully served the sentence imposed by the court abroad;
- 2) has been acquitted or relieved from criminal liability by an effective judgement of a foreign court, or no punishment has been imposed by reason of the statute of limitations or other legal grounds which are provided for in that country.

Review of the Current Basis for Jurisdiction

The issues of jurisdiction will be governed by the new Criminal Code in the future. The new Criminal Code provides for the principle of territoriality and stipulates that any person who commits criminal acts within the territory of the State of Lithuania shall be liable under the criminal laws of the Republic of Lithuania.

The new Criminal Code recognises the active personality principle and stipulates that citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for crimes committed abroad under the criminal laws of the Republic of Lithuania. Conditions of implementation of this principle remain the same as are at present.

The new Criminal Code also provides for the passive personality principle according to which aliens who do not have a permanent residence in the Republic of Lithuania shall be liable for punishment under the criminal laws of the Republic of Lithuania if they commit very serious crimes abroad which are directed against the State of Lithuania.

The new Criminal Code specifies the conditions for the prosecution for crimes committed abroad and stipulates that any person who commits a crime abroad may be prosecuted under the criminal laws of the Republic of Lithuania provided that the committed act is recognised as a crime and is punishable under the laws of the place of commission of the crime and of the Republic of Lithuania. In the case of a person who commits a criminal act abroad being prosecuted in both the Republic of Lithuania and another country and receiving different punishment in each country, the law which carries the more lenient punishment shall be applied.

The new Criminal Code recognises the principle of universal jurisdiction only for very serious crimes: genocide, crimes against humanity, war crimes, trafficking in persons, buying or selling a child, counterfeiting of money, money laundering, act of terrorism, hijacking of an aircraft, taking of hostages, unlawful handling of radioactive materials and crimes related to narcotic or powerful drugs or controlled substances. The new Criminal Code provides that persons who commit the above mentioned crimes, specified in international agreements, abroad shall be criminally liable under the criminal laws of the Republic of Lithuania regardless of their citizenship, their place of residence, the

place of commission of the crime, or the punishability of the committed act under the laws of the place where the crime was committed.

F. Statute of limitation

Article 49 of the Criminal Code, which regulates the statute of limitation for criminal prosecution, stipulates that a person cannot be criminally prosecuted if a certain term has expired from the date of committing the crime.

The period of limitation is 5 years for the following criminal acts:

- Bribery in exchange for lawful acts or omissions (Art 282, part 1);
- Trading in influence (Art 282, part 4)
- Subornation in exchange for lawful or unlawful acts or omissions (Art 284, part 1 and 2);

The period of limitation is 10 years for:

- Bribery in exchange for unlawful acts or omission (Art 282, part 2);
- Bribery of the high value in exchange for lawful or unlawful acts or omission (Art 282, part 3)
- Subornation of the high value in exchange for lawful or unlawful acts or omission (Art 284, part 3)

2. Money laundering legislation related to corruption

Money laundering was made the subject of a separate criminal offence and is within the category of serious crimes within Lithuania (willful acts which pose a substantial public threat and which are set out in Article 8 of the Criminal Code).

Article 326 of the Criminal Code provides for liability for money laundering:

Article 326. Money Laundering

Any person who carries out financial operations with money acquired in a criminal way, or uses such money in economic or commercial activity for the purposes of concealing or legitimising these proceeds (money laundering), shall be punished by imprisonment for a term from 3 to 7 years with deprivation of the right to hold a certain position, work in a specific job or engage in a certain activity for a term from 3 to 5 years.

Money laundering committed repeatedly or by a group of persons upon prior arrangement, shall be punishable by imprisonment for a term from 5 to 8 years and deprivation of the right to hold a certain position, work in a specific job or engage in a certain activity for a term from 3 to 5 years.

The elements of the above mentioned offence are described as:

- Conducting of transactions with money acquired in criminal ways, or
- Usage of money acquired in criminal ways in commercial or economic activities for the purposes of concealing or legitimising these proceeds (money laundering).

It should be mentioned that there is no enumerated or list approach to predicate offences. The predicate offence can be any criminal act.

Legal persons are criminally liable for money laundering.

Pursuant to the Law on the Prevention of Money Laundering, all the credit institutions (banks, credit unions and other institutions functioning under the licence issued by the Bank of Lithuania), also financial institutions (meaning insurance companies and insurance brokers, investment companies of variable capital, managing enterprises and depositories of investment companies, brokerage firms, investment management and consulting firms; pawn-broker shops and post offices) are obliged, if they suspect that monetary transactions carried out therein by a customer may be related to money laundering they must establish identity of the customer and communicate, without delay, but not later than within 3 work days from the day on which the transaction was documented, the information about the transaction to the Fiscal Police, irrespective of the sum of the transaction.

When there is suspicion that monetary transactions in which their customers are engaged may be related to money laundering, notaries and persons authorised to conduct notarial operations must submit, without delay, but not later than within 3 working days after the day on which the transaction was documented, proof of identity of the customer and information to the Fiscal Police irrespective of the amount of money received or paid by the customer during the transaction.

Credit and financial institutions conducting monetary transactions, must file reports to the Fiscal Police about the customer's identity and the information about the transaction if a single transaction or several connected monetary transactions in which the customer is engaged involve a sum in excess of 50,000 Litas (appr. 12,500 USD) or its equivalent in a foreign currency.

II. INSTITUTIONAL FRAMEWORK TO FIGHT CORRUPTION

1. Enforcement Rules (Investigation and Prosecution)

The Code of Criminal Procedure prescribes that criminal proceedings are instituted by an investigator, prosecutor or court (judge) on the basis of an oral or written application of individuals, the reports of state institutions or officials, or legal persons when the offender admits that he or she has committed a crime and when the investigator, prosecutor or judge had directly discovered the crime.

All applications and reports about crime have to be investigated in the course of three or ten days and a procedural decision either to institute criminal proceedings or to refuse this had to be adopted. Once criminal proceedings have been initiated, the case is transferred for pre-trial investigation.

In the course of pre-trial investigation, evidence is collected and charges are brought against an offender. Evidence can be collected only in accordance with the procedure and by methods established by law.

The pre-trial phase of the criminal procedure has a rather inquisitorial character, although defendants may have quite a few opportunities to ask for the securing of evidence, and are always aided by legal counsel from the moment of their apprehension or of their first inquiry.

The pre-trial phase is completed when the investigator has drawn up a bill of indictment and has given the defendant access to the case file. The defendant has the right, together with his or her legal counsel, to gain access to the case file without having the time thereto restricted. When the defendant and his or her legal counsel have had access to the case file, the file and the bill of indictment is submitted to the prosecutor. The prosecutor must no later than within five days either approve or draw up a new bill of indictment and refer the case to the court. (The prosecutor can also refer the case back for additional investigation).

The court has to decide, no later than within 15 days after the receipt of the case in the court, on whether or not to bring the defendant before the court. The court has further to decide, no later than within 15 days after the accused has been brought before the court, whether or not to start hearing the case.

2. Institutional Resources

Institutions involved in the prevention, detection and repression of corruption at the national and at decentralised level are the Special Investigations Service; Public Prosecutors; Police and Courts.

The Special Investigations Service (SIS)

On 18 February 1997, a specialised unit, the Special Investigations Service (SIS) was established as a part of the Ministry of Internal Affairs by Government Resolution No 135. The SIS was formed as the main agency responsible for fighting corruption and civil service offences. On 2 May 2000, with a view to strengthening anti-corruption efforts, the Lithuanian Parliament, Seimas, adopted a law on the Special Investigations Service and thus reorganised the SIS, a body accountable to the Government, to an agency accountable to the President and the Seimas. The Law on the SIS, which has come into effect since 1 June 2000, provides for the independence of both the SIS as an agency and its investigations.

The main functions of the SIS are the following:

- to carry out operational activities in detecting and preventing crimes involving corruption;
- to conduct an inquiry and preliminary investigation;
- to collect, store, analyse and sum up information about corruption and related social and economic phenomena;
- to prepare and implement corruption prevention measures;
- to report to the President of the Republic and the Seimas on the results of the activity of the Service's and to submit its proposal on how to make the activities more effective.

In performing some of their functions, the SIS officers have the right to carry out all operational activities provided for by the Code of Criminal Procedure and the Law on Operational Activity. In certain cases, the activities must be sanctioned by a prosecutor or a judge.

The system of public prosecution

The Prosecutor General's Office established the Department of Organised Crime and Corruption Investigation. Five largest Lithuanian cities have Corresponding divisions in County prosecutor's offices.

The above mentioned department and the aforementioned divisions have the following powers: they commence and conduct criminal prosecution against organised crime and corruption related crimes; supervise the activities of interrogation and pre-trial investigation bodies of this specialisation; conduct pre-trial investigation in criminal cases of this category; back the state accusation in the courts of the Republic of Lithuania; investigate relevant criminal cases; co-ordinate the actions of interrogation and pre-trial investigation in respect of organised crime and corruption related crimes.

The Department of Organised Crime and Corruption Investigation is headed by the Chief Prosecutor of the Department. The Department of Organised Crime and Corruption Investigation is under the competence of the Prosecutor General and the Deputy Prosecutor General supervising the activities of the Department. Divisions of Organised Crime and Corruption Investigation of County Prosecutor's Offices respectively come under the competence of the aforementioned officials as well as under the competence of County Chief Prosecutors and Chief Prosecutor of the Department of Organised Crime and Corruption Investigation.

At the very end it is necessary to add that Prosecutor's Offices are independent institutions accountable to the Seimas. Prosecutor's Offices are comprised of the General Prosecutor's Office and territorial units. The Department of the Investigations of Organised Crime and Corruption is functioning within the General Prosecutor's Office and Divisions for the Investigation of Organised Crime and Corruption are functioning within the regional prosecutor's offices.

These units control pre-trial investigation carried out by the SIS officers, carry the investigation in more significant cases and later represent the state in criminal cases before court, control execution of sentences and carry out preventive measures.

Prosecutors of the units for the investigation of organised crime and corruption while investigating crimes involving corruption have full prosecutor's powers provided for in the Code of Criminal Procedure.

The State Control

The State Control (State Audit Institution - SAI) is the supreme State institution of control accountable to the Seimas (Parliament) of the Republic of Lithuania. The SAI is guided by the Constitution and laws of the Republic of Lithuania, international treaties and agreements to which Lithuania is a party, other legal acts. Having passed the Law on State Control in 1995 and having amended it in 1998, the development of the organizational structure of the SAI is being continued as well as the adoption of new methods of the activities based on international practice.

The Chief Official Ethics Commission

The Chief Official Ethics Commission is an independent office financed from the state budget, accountable to the Seimas and having its own secretariat.

The Commission controls the way civil servants adhere to the Law on the Adjustment of Public and Private Interests in the Public Service and the Law on Lobbyist Activity. The Commission may undertake an investigation of the violation of the above laws and may ask the court to cancel or annul corruption transactions.

While performing the investigation, the Commission has the right to access information and to receive explanations from all enterprises, offices and institutions.

The Anticorruption Commission

On 16 October 2001 the Seimas adopted the Anticorruption Law and approved the new composition of the Anticorruption Commission which was established in the Seimas instead of the Commission for the Investigation of Economic Crimes. The Anticorruption Commission analyses crimes involving corruption, hears reports of certain institutions on their fight against corruption and submits proposals to the institutions, the Government and the Seimas. The Commission drafts decisions of the Seimas on controlling and restricting these crimes.

The Commission has the right to access to information of all enterprises, offices and institutions as well as to invite the present and former state officials to give explanations.

The Tax Police Department

It is also worthwhile noting that on 4 February 1997 the Tax Police Department under the Ministry of the Interior was established in order to ensure the protection of public finance.

The General Inspectors Division

In 1998, the General Inspectors Division was established at the Ministry of Internal Affairs. The General Inspector is directly subordinate and accountable to the Ministry of Internal Affairs. The Division of the General Inspector consists of five members of the staff.

One of the tasks of the General Inspectors Division is to ensure legality of the activity and work discipline of the employees of the Ministry and other institutions under the Ministry.

When performing their functions the employees of the Division have the right to interview other members of the staff, to receive their explanations, to instruct the heads of the Ministry of Internal Affairs and other institutions subordinate to it to carry out official inspections, etc.

The Internal Investigation Service

In 1998, the Internal Investigation Service was established in the Police Department. The Service is directly subordinate and accountable to the Chief Deputy Commissar General of the Police

Department. The head of the Service is appointed and dismissed from office by the Commissar General of the Police Department.

The Internal Investigation Service controls whether the police officers and civil servants carry out their duties legally and imposes sanctions on those who violated the legality requirements.

The Service may access documents of the police office, to call for interview police officers, civil servants and other persons to set their explanations, to receive information related to the issues under investigations and to compile information data.

The Immunity Service

The Immunity Service is functioning within the State Security Department. The Service is directly subordinate to the Director General of the Department. One of the functions of the Service is to detect facts of possible corruption within the Department and to prevent it.

The Immunity Group

In 2000, the Immunity Group was established in the Customs Department. The functions of the staff of this group relate to the examination of the candidates to the service in the customs offices, collection of information on the activity of customs officers, investigation of violations by the officers, controlling of the adjustment of their public and private interests.

Institutional co-operation

On February 2001, the Prosecutor General of the Republic of Lithuania, Police Commissar General, Director General of the State Security Department of the Republic of Lithuania, Director of the Special Investigations Service, Chief Commissar of the Taxation Police Department under the Ministry of the Interior of the Republic of Lithuania, Chief of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, Director of the VIP Protection Department under the Ministry of the Interior of the Republic of Lithuania, Director of the Second Operational Services Department under the Ministry of National Defence of the Republic of Lithuania, Director of the Customs Department under the Ministry of Finance of the Republic of Lithuania signed the Agreement on Co-operation of Subjects of Operational Activities and Co-ordination of Operational Activities.

The Agreement makes uniform the procedure of co-operation in organising and executing operational activities, preventing and detecting crimes that are planned, are committed or have been committed, disclosing criminal associations, pursuing absconding or missing persons, ensuring protection of witnesses or victims from criminal influence as well as conducting other operations.

Institutions co-operate in exchanging and transmitting information within the limits of their competence, executing joint operations by officials of several institutions, co-ordinating operations in respect of protection of secret information and otherwise.

The aforementioned activities of the contracting parties in the process of investigating specific criminal acts are co-ordinated and supervised by the Prosecutor General of the Republic of Lithuania or the Deputy Prosecutor General authorised by the Prosecutor General.

In general, the main function of the co-ordinator is discharged by the Prosecutor's Office, which pursuant to Articles 24, 45, 141 and 160 of the Code of Criminal Procedure of the Republic of Lithuania supervises the activities of interrogation and pre-trial bodies with a view to ensuring accurate and uniform implementation of Lithuanian laws. A prosecutor is obligated to resort to all possible measures in order to eliminate any violation of laws. Depending on the specific investigation situation, on the basis of Article 149 of the Code of Criminal Procedure joint investigation teams are established from officials of several institutions.

Besides that, state and law enforcement bodies, non-governmental organisations, and the academia closely co-operate in implementing the National Anti-Corruption Programme (adopted in January 2002). The responsibility for the control and provision of technical assistance lies with the Government, Special Investigations Service and other relevant bodies (please find enclosed a diagram of implementing bodies in Annex 3).

3. The detection of bribery offences

There is no special system or programme protecting known informants of corruption related offences, however there are a few laws of general nature assigned to the protection of witnesses and victims, which could be applied in these cases.

Firstly, the Law on the Protection of Participants in Criminal Proceedings and Operational Activities, Officials of Justice and Law Enforcement Institutions against Criminal Effect envisages that the measures of protection against criminal effect may be applied to:

- 1) participants in operational activities;
- 2) persons participating in criminal proceedings: witnesses, victims, experts, legal counsels, suspects, the accused, defendants, sentenced persons;
- 3) officials of justice and law enforcement institutions: judges, prosecutors, investigators, bailiffs;
- 4) relatives of the persons listed in the sub-paragraphs 1-3: parents, stepparents, children, stepchildren, brothers and sisters, grandparents, grandchildren and spouses.

Measures of protection against criminal effect may be applied to persons provided that in investigation or examination of criminal cases for grave crimes there is a reasonable ground to believe that:

- 1) the life or health of the persons is threatened;
- 2) the property of the persons may be destroyed or damaged;
- 3) constitutional rights and freedoms of the persons are threatened.

Persons and their relatives may be subject to the protective measures against criminal effect if they have actively co-operated with officials of justice and law enforcement institutions, assisted in the detection of crimes or provided the officials of justice or law enforcement institutions with other valuable information.

Measures of protection against criminal effect may be imposed and applied in the execution of operational activities, in the course of pre-trial investigation of a criminal case, trial of a criminal case, as well as in the course of conducting operational activities or hearing of a criminal case.

The types of the protective measures against criminal effect shall be the following:

- 1) physical protection of a person and his property;
- 2) a person's temporary transfer to a safe place;
- 3) special order for the provision of personal data contained in passport departments and other official information funds;
- 4) relocation of a person's residential, working or study place;
- 5) changing of a person's record and biographical data;
- 6) plastic surgery for changing a person's appearance'
- 7) issuance to a person of firearms and other special means of protection.

The other legal act that should be mentioned is the Code of Criminal Procedure. Article 156¹ of this Code prescribes that "in case of serious crimes a prosecutor as well as an investigator with the authorisation of a prosecutor shall be entitled to keep the surname and other identifying data of a witness or a victim secret with a view to ensuring that person's safety. The actions of investigation with these persons shall be carried out in accordance with general rules of this Code, provided that no one but the prosecutor or investigator could get to know the identifying data of the witness or victim, who has taken part in the investigation."

It should be noted that the protective measures provided for in the above-mentioned laws could be applied only in case of serious crimes and when a person (and/or his relatives) may be seriously endangered. Meanwhile, only passive corruption is recognised as a serious crime under Article 8¹ of the Criminal Code.

The third legal act is the Law on Operational Activities. This Law prescribes that the subject of operational activities (the State Security Department, Special Investigations Service, Police, Customs) must guarantee confidentiality and anonymity of persons (including known informants) who cooperate with these institutions. Information obtained from these persons may be disclosed during court proceedings only upon prior authorisation by the Prosecutor General or the Deputy Prosecutor General designated by him.

A person, who is making an allegation is willing to remain anonymous may submit an anonymous report to law enforcement institutions or officials. Law enforcement institutions or officials must examine anonymous reports also and adopt a procedural decision either to institute criminal proceedings (or to refuse to do so) or to draw up a record on an administrative offence. It should be noted that most of the law enforcement institutions (the Police, Customs, State Tax Inspectorate, Special Investigations Service, etc.) have the so-called "trust line" that enables to report by phone any alleged breach of law anonymously.

There might be situations when a person, who is making an allegation indicates data identifying him but wants to remain anonymous or the allegation to be regarded as confidential.

4. International aspects of enforcement

Mutual legal assistance

The issues of mutual assistance in criminal matters are governed by the Code of Criminal Procedure. Under the Code of Criminal Procedure, mutual assistance in criminal matters is possible if an international agreement to which the Republic of Lithuania is a party exists.

Conditions and exceptions of mutual assistance in criminal matters are laid down by international agreements to which the Republic of Lithuania is a party.

The Republic of Lithuania ratified the following Conventions governing procedures for judicial co-operation and mutual assistance:

- European Convention on Extradition (24) + Protocols;
- European Convention on Mutual Assistance in Criminal Matters (30)+ Protocol;
- European Convention on the International Validity of Criminal Judgements (70);
- European Convention on the Transfer of Proceedings in Criminal Matters (73);
- European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (141);
- European Criminal Law Convention on Corruption (174);
- United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (156);

Lithuania has also concluded bilateral agreements on mutual legal assistance with Estonia, Latvia, Moldova, Poland, Belarus, the Ukraine, the Russian Federation, Kazakhstan, Uzbekistan, Azerbaijan, the United States of America and China.

On the basis of these acts and agreements of mutual legal assistance Lithuania will provide assistance to foreign states in the stage of preliminary investigation and judicial proceedings of criminal matters. Mutual assistance takes the form of performance of particular procedural acts, procurement of evidence, seizing of property, forwarding of writs of summons, etc. on the basis of request.

The admissibility of evidence

The Code of Criminal Procedure does not classify the evidence according to the place where it has been obtained to the evidence obtained abroad and in Lithuania, therefore, the use of all evidence (both obtained abroad and in Lithuania) in the courts of Lithuania is the same. The rules of the use of evidence are prescribed by the Code of Criminal Procedure.

The Code of Criminal Procedure lays down no special rules for the admissibility of evidence depending on the way in which such evidence has been obtained, however the Lithuanian doctrine of criminal procedure requires that the evidence be gathered lawfully, pursuant to the rules applicable in the country where it is taken. Thus, if the evidence was obtained in conformity with the rules

applicable in the country where it was taken, no problems should arise. This rule would possibly be applied if the evidence was lawfully obtained abroad pursuant to the rules, contradicting the laws of the Republic of Lithuania (except for violations of essential standards of Lithuanian constitutional law, for example, in case of taking statements of the accused or witness by means of violence, etc.). It is noteworthy that the European Convention on Mutual Assistance in Criminal Matters as well as Lithuanian bilateral agreements on Mutual Assistance in Civil and Criminal Matters envisage a possibility to request the state, in which the evidence has to be taken, to comply with appropriate procedures for the taking of this evidence.

In case the evidence was obtained in breach of the rules applicable in the country where the evidence has been obtained, the case-law would presumably follow the same rules as on the evidence obtained in Lithuania in breach of the rules relating thereto.

Dual criminality

According to the Law on the Ratification of the European Convention on Mutual Assistance in Criminal Matters of 1959 and Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1978, the following reservations were made:

"In respect of Article 2 of the Convention, the Republic of Lithuania reserves the right not to comply with a request insofar as it concerns:

- a) an offence which is not qualified as a "crime" and punishable as such under Lithuanian law;
- b) an offence in respect of which criminal proceedings have been instituted in the Republic of Lithuania or in a third State;
- c) an offence in respect of which the judicial authorities of the Republic of Lithuania either refused to institute, or discontinued criminal proceedings."

Extradition

Legal basis for extradition

As it was mentioned earlier legal basis for extradition in Lithuania is an international agreement i.e. extradition is possible only when there is an international agreement of the Republic of Lithuania.

Practical issues of extradition are governed by the Criminal Code and the Code of Criminal Procedure.

Extradition procedure

A request for extradition to another state (active extradition) is submitted in the cases and under the procedure provided for in an international agreement of the Republic of Lithuania through the Prosecutor General's Office or through the Ministry of Justice. A person extradited by a foreign state cannot, pursuant to Article 22¹ of the Code of Criminal Procedure be proceeded against and sentenced as well as surrendered to a third state for the crime he had committed prior to his extradition and for

which his extradition has not been granted, unless there is a consent thereto of the foreign state which extradited the person.

A request for extradition from another state (passive extradition) is submitted to the Prosecutor General's Office, Ministry of Justice or through the diplomatic channels. Extradition requests received in the Ministry of Justice or through the diplomatic channels shall be forwarded to the Prosecutor General's Office which shall check whether the requests are in compliance with the requirements of the international agreement of the Republic of Lithuania (if necessary, the Prosecutor General's Office may ask the Requesting State to furnish supplementary information).

The question of extradition is decided by the Prosecutor General's Office. If the grounds provided for in an international agreement exist, the prosecutor of the above referred Prosecutor's Office submits an application to the Vilnius Regional Court. The judge must within a period of five days hold a hearing to which the person to be extradited, his defence counsel and prosecutor are called. In case the person to be extradited (his defence counsel) or prosecutor do not agree with the judge's decision, they are entitled to appeal within a period of seven days to the Court of Appeal of Lithuania. The judge of this court must examine the appeal and adopt a respective decision during 14 days. This decision is final and not subject to appeal under the cassation procedure. An appeal of the person to be extradited or his defence counsel suspends the process of extradition.

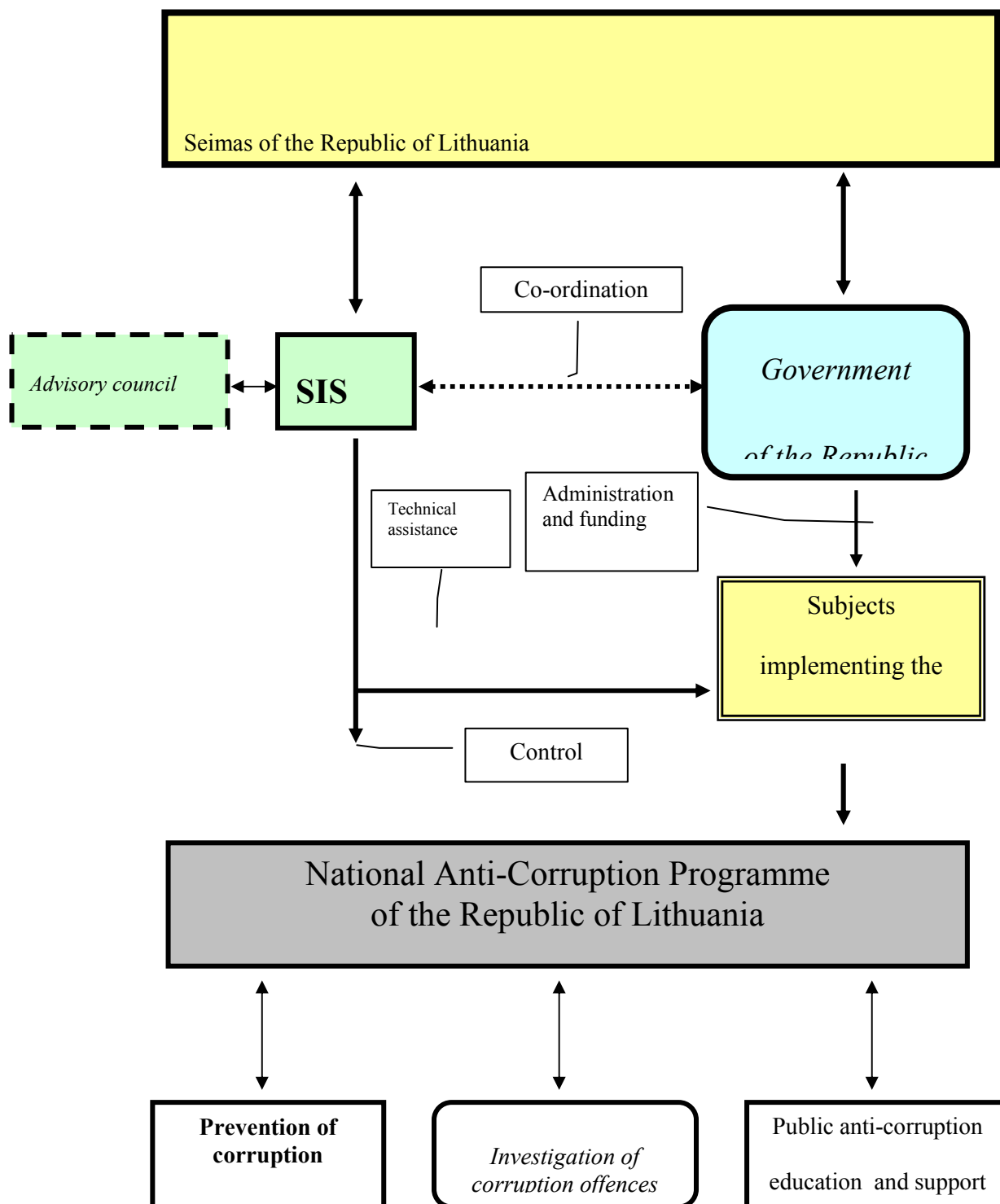
The arrest of persons sought is applied in accordance with the grounds provided for in international agreements of the Republic of Lithuania, and the procedure for imposing detention and appealing against it is laid down in the Code of Criminal Procedure.

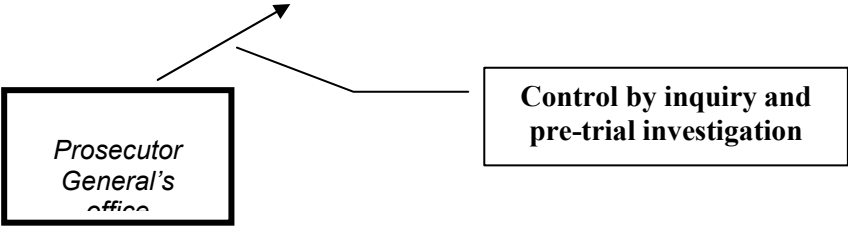
Extradition of nationals

Article 13 of the Constitution of the Republic of Lithuania states that it shall be prohibited to extradite a citizen of the Republic of Lithuania to another State unless an international treaty whereto the Republic of Lithuania is a party establishes otherwise. Thus, Lithuanian citizens may be extradited to another State if it is foreseen in an international agreement. If the person cannot be extradited, he shall be prosecuted under the Lithuanian criminal laws.

It is noteworthy that in the new Criminal Code the article dealing with the extradition does not contain, among other conditions prohibiting extradition, a prohibition with respect to citizenship. It means, that the citizen of the Republic of Lithuania, for the crimes committed in Lithuania or abroad, could be extradited to a foreign country or handed over to the International Criminal Court on the basis of an international agreement.

**A DIAGRAM OF BODIES IMPLEMENTING
 THE NATIONAL ANTI-CORRUPTION PROGRAMME**





Annex II

Article 282. Taking a bribe

A civil servant, an official or a person of equivalent status who directly or indirectly in his own interest or in the interests of others accepted, promised or made an agreement to accept a bribe, required or provoked to give it in exchange for lawful acts or omissions in the discharge of his authority,

shall be punished by deprivation of liberty up to 5 years with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to 5 years or a fine with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to 3 years.

A civil servant, an official or a person of equivalent status who directly or indirectly in his own interest or in the interests of others accepted, promised or made an agreement to accept a bribe, required or provoked to give it in exchange for unlawful acts or omissions in the discharge of his authority,

shall be punished by deprivation of liberty up to 7 years with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to 5 years or a fine with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to 3 years.

A civil servant, an official or a person of equivalent status who directly or indirectly in his own interest or in the interests of others accepted, promised or made an agreement to accept a bribe of a high value required or provoked to give it in exchange for lawful or unlawful acts or omissions in the discharge of his authority,

shall be punished by deprivation of liberty from 3 to 10 years with the deprivation of the right to hold a certain position, do a certain job or perform specific activities for a term of up to 5 years.

Any person who, by using his social position, office, powers, family relations, acquaintances or any other kind of possible influence on a state or municipal institution or agency, an international public organisation, or on a person or an official holding office therein or a person of equivalent status, promised to exert influence for a bribe on a respective institution or agency or organisation, a public servant or a person of equivalent status in exchange for their lawful or unlawful acts or omissions shall be punished by deprivation of liberty up to 5 years or a fine.

Article 284. Subornation

Any person who either directly or indirectly offers or proposes or promises to give or has given a bribe to a civil servant, an official or a person of equivalent status in exchange for wished lawful acts or omissions in the discharge of his authority, or to an intermediary with a view to obtaining the same results

shall be punished by deprivation of liberty up to 3 years or by correctional works up to 2 years or by a fine.

Any person who either directly or indirectly offers or proposes or promises to give or has given a bribe to a civil servant, an official or a person of equivalent status in exchange for wished unlawful acts or omissions in the discharge of his authority, or to an intermediary with a view to obtaining the same results shall be punished by deprivation of liberty up to 5 years or by correctional works up to 2 years or by a fine.

Any person who either directly or indirectly offers or proposes or promises to give or has given a bribe of the high value to a civil servant, an official or a person of equivalent status in exchange for wished lawful or unlawful acts or omissions in the discharge of his authority, or to an intermediary with a view to obtaining the same results shall be punished by deprivation of liberty up to 6 years or by a fine.

A person shall be released from criminal liability for suborning, if he has been required or provoked to give it, and if he has offered or proposed or promised or given a bribe, law enforcement institutions being aware thereof.

Article 285. Office Abuse

Intentional abuse of position by a public official or a civil servant in the interests contrary of his position, if such activities were of personal gain or interest, or caused substantial damage to the state interests or other persons – shall be punishable by deprivation of liberty for up to four years and a fine, or by a fine and a prohibition to hold a certain position, perform a specific job or be engaged in specific activities for up to five

Intentional abuse of position by a public official or a civil servant in the interests contrary of his position, if such activities were of personal gain and caused substantial damage to the state interests or other persons – shall be punishable by deprivation of liberty from three to five years and a prohibition to hold a certain position, perform a specific job or be engaged in specific activities for up to five years.

Article 287. Exceeding of official powers

A public official or a civil servant who for personal gain or for personal interest exceeds his official authority or causes substantial damage to the interests of the state or to other persons, shall be punished by imprisonment for up to 5 years and a fine or by a fine and deprivation of the right to hold a certain position or to work in a certain job or engage in certain activities for up to 5 years.

A public official or civil servant who for personal gain exceeds his official powers and causes substantial damage to the interests of the state or to other persons,

shall be punished by imprisonment from 3 to 6 years and deprivation of the right to hold a certain position, to perform a certain job or to be engaged in certain activities for up to 5 years.

Article 288. Failure to perform official duties

A public official or a civil servant who fails to perform his official duties or who performs his official duties improperly due to carelessness and causes substantial damage to the interests of the state or to other persons,

shall be punished by imprisonment for up to 4 years or a fine with deprivation of the right to hold a certain position, to perform a certain job or to be engaged in certain activities for up to 5 years or without deprivation of the right to hold a certain position, to perform a certain job or to be engaged in certain activities.

Article 289. Forging of an official document

A public official or civil servant who includes knowingly false information into an official document, draws up or issues a forged document, or endorses a knowingly forged document with a stamp (seal) and (or) signature, or forges an official document in any other way, shall be punished by imprisonment for up to 4 years or a fine with deprivation of the right to hold a certain position, to perform a certain job or to be engaged in certain activities for up to 5 years or without deprivation of the right to hold a certain position, to perform a certain job or to be engaged in certain activities.

The same acts committed in respect of a customs declaration, a document attesting payment of a large amount of duty or any other official document of special importance or the same acts that caused substantial damage to the interests of the state,

shall be punished by imprisonment from 3 to 6 years with deprivation of the right to hold a certain position, to perform a certain job or to be engaged in certain activities for up to 5 years.