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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

**LITHUANIA PHASE 1 REPORT**

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**TABLE OF CONTENTS**

A. IMPLEMENTATION OF THE CONVENTION .....	4
Formal Issues .....	4
The Convention and the Lithuanian Legal System.....	4
1. Article 1: The Offence of Bribery of Foreign Public Officials.....	4
1.1 The Elements of the Offence .....	4
1.2 Complicity .....	9
1.3 Attempt and Conspiracy .....	9
1.4 Defences .....	9
2. Article 2: Responsibility of Legal Persons .....	10
2.1 Legal Entities Subject to Liability .....	11
2.2 Standard of Liability.....	11
2.3 Proceedings against Legal Persons.....	14
3. Article 3: Sanctions.....	14
3.1 Principal Penalties for Bribery of a Domestic and Foreign Public Official .....	15
3.2 /3.3 Penalties and Mutual Legal Assistance / Penalties and Extradition .....	17
3.4 Seizure and Confiscation .....	18
3.5 Additional Civil and Administrative Sanctions.....	19
4. Article 4: Jurisdiction .....	20
4.1 Territorial Jurisdiction .....	20
4.2 Nationality Jurisdiction.....	20
4.3 Consultation Procedures .....	21
4.4 Review of Basis of Jurisdiction .....	21
5. Article 5: Enforcement .....	21
5.1 Rules and Principles Regarding Investigations and Prosecutions .....	21
5.2 Investigation time-limit .....	24
5.3 National Economic Interest, Potential Effect upon Relations with another State, and Identity of the Natural or Legal Person Involved.....	24
6. Article 6: Statute of Limitations .....	25
7. Article 7: Money Laundering .....	25
7.1 Money Laundering Offence.....	25
7.2 Money Laundering Prevention, Detection, and Reporting .....	26
8. Article 8: Accounting .....	27
8.1 Accounting and Auditing Requirements / 8.2 Companies Subject to Requirements .....	27
8.3 External Auditing and Internal Company Controls .....	28
9. Article 9: Mutual Legal Assistance .....	29
9.1 Laws, Treaties and Arrangements Enabling Mutual Legal Assistance (MLA).....	29
9.2 Dual Criminality for MLA .....	30
9.3 Bank Secrecy.....	30
10. Article 10: Extradition .....	31
10.1 Legal Basis for Extradition for Foreign Bribery.....	31
10.2 Extradition of Nationals.....	32
10.3 Dual Criminality for Extradition .....	32

11. Article 11: Responsible Authorities .....	33
B. IMPLEMENTATION OF THE 2009 ANTI-BRIBERY RECOMMENDATION .....	33
1. Tax Deductibility .....	33
EVALUATION OF LITHUANIA .....	35
ANNEX 1 LIST OF ABBREVIATIONS AND ACRONYMS .....	36
ANNEX 2 EXCERPTS OF RELEVANT LEGISLATION .....	38
Article 227. Active bribery .....	38
Article 230. Interpretation of Concepts.....	38
Article 14. Forms of Guilt.....	39
Article 15. Premeditated Crime and Misdemeanour.....	39

## A. IMPLEMENTATION OF THE CONVENTION

### Formal Issues

1. On 30 April 2013, Lithuania formally applied to become a member of the OECD Working Group on Bribery in International Business Transactions (Working Group) and to accede to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (Convention). On 9 April 2015, the OECD Council opened OECD accession discussions with Lithuania. Lithuania's Roadmap for Accession to the OECD, which sets out the terms, conditions, and process for accession to the OECD, provides that Lithuania should commit to full compliance with the requirements of the Convention [C(2015)92/FINAL]. On 26 January 2017, the OECD Council agreed to invite Lithuania to join the Working Group [C(2016)187]. This was formalised through an exchange of letters concluded on 15 February 2017 and on 16 May 2017, Lithuania deposited its Instrument of Accession to the Convention with the OECD.

2. The present report has been prepared for the purpose of the Phase 1 evaluation of Lithuania. Lithuania will be further assessed for the purposes of OECD accession in accordance with the procedure agreed by the OECD Members of the Working Group.

### The Convention and the Lithuanian Legal System

3. According to the Lithuanian legal system, international treaties must be approved by the *Seimas* (the Parliament). This requires the submission of a Bill which, once approved by Parliament, must be signed by the President and promulgated. The Law on Ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions No. XIII-305 was adopted by the *Seimas* on 20 April 2017. It was published in the Register of Legal Acts on 2 May 2017 and entered into force on 3 May 2017.

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

4. Lithuania has criminalised bribery of foreign public officials in its Criminal Code (CC) since 2002. Rather than having a standalone foreign bribery offence, bribery of foreign public officials is criminalised through the combined application of CC Articles 227 (Active Bribery) and 230 (Interpretation of Concepts).<sup>1</sup> In an effort to comply with the Convention, both articles were amended by Laws No. XII-2048 (2015), XII-2780 (2016) and XIII-391 (2017),<sup>2</sup> to fine-tune the definition of foreign public official, define foreign state, clarify the *mens rea* element, repeal the defence of “effective regret”, and criminalise the bribery of foreign public officials through intermediaries.

##### 1.1 The Elements of the Offence

5. The following section analyses Lithuania's foreign bribery offence and related legal provisions for their compliance with the elements of the offence set out in Article 1 of the Convention.

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<sup>1</sup> See Annex 2: Excerpts of Relevant Legislation.

<sup>2</sup> All Criminal Code provisions referred to in this report are as reflected in the most recent legislative amendments, hence provision numbers may differ from previous versions of the Criminal Code.

### 1.1.1 any person

6. CC Article 227 prohibits “a person” from giving a bribe. The only qualifications to this term are the minimum age for criminal liability (16 years in general and 14 years for specific offences) and legal incapacity or diminished capacity set out respectively in Articles 13, 17, and 18 CC. Liability of legal persons for Criminal Code offences is set out in CC Article 20 and discussed in Section 2.

### 1.1.2 intentionally

7. In accordance with Supreme Court jurisprudence, direct intent is the *mens rea* element applicable to the Article 227 active bribery offence.<sup>3</sup> CC Article 15 provides that direct intent is demonstrated when a person is aware of “the dangerous nature of the criminal act” and “desire[s] to engage therein”, or anticipates and desires the consequences that might arise from his/her act or omission.<sup>4</sup> The elements of the foreign bribery offence will therefore not be satisfied if it is committed by an individual offender who is reckless or wilfully blind (i.e. *indirect* intent does not apply).<sup>5</sup> This could be an issue, for example, when agents and intermediaries pay bribes and the supervising natural person pleads ignorance of the illicit use of agents’ fees. The requisite intent for legal persons is discussed below (see Section 2).

8. Lithuania referred to four recent Supreme Court cases which considered the *mens rea* element for the CC Article 227 active bribery offence. In each case, the Supreme Court found the prosecution must demonstrate that the briber understood that s/he illegitimately offered a bribe to a public official in return for acts or omissions in his/her interests. The Court also emphasised in three of the cases, the importance of taking into account the subjective elements of the offence, stating systematically that “it is necessary to assess not only how the actions of the person (the briber) were perceived by the civil servant...but also to establish the intention of the person to bribe the civil servant.”<sup>6</sup> If this interpretation was applied to a foreign bribery case, it would be contrary to Article 1 of the Convention which focuses only on the briber’s intent in offering, promising, or giving a bribe, and not the recipient’s perception of whether this offer, promise, or gift was “based on real possibilities.” To address this concern, Law XIII-391 (2017) inserts a new Article 227(5) into Lithuania’s Criminal Code, which provides that a person who engages in active bribery will be held liable “regardless how his actions were perceived by a civil servant or person equivalent thereto.”

9. In another case, the Supreme Court quashed a conviction based on the fact that the prosecution had not shown exactly what the briber desired in return for the bribe, and thus could not establish intent. The court found that “it was likely the placing of the money on the table was the effect of irrational and chaotic behaviour rather than a deliberate intent to bribe the civil servant” and that it had not been ascertained “what was specifically sought...by placing the money on the table.”<sup>7</sup> Lithuania cites subsequent Court of Appeal and Supreme Court cases which upheld active bribery convictions and found that the completion of the bribery offence did not depend “on the level of understanding of the briber’s purposes.”<sup>8</sup> Under the Law on Courts of the Republic of Lithuania (as interpreted by the Supreme Court), precedent shall only be binding in cases where the same legal norm is interpreted in similar factual circumstances (Article 33(4)). New Article 227(5) of the Criminal Code aims to clarify the requisite intent for active bribery and provides that a person will be held liable for seeking “a specific act or omission of the civil servant or person equivalent thereto in exercising his powers and for an exceptional position or a favourable attitude of this person.”

<sup>3</sup> Criminal cases No. 2K-83/2014 (18 March 2014), 2K-176/2014 (15 April 2014).

<sup>4</sup> Lithuania notes that the requirement to demonstrate anticipation or desire of the consequences of the offence does not apply to formal offences, including the CC Article 227 active bribery offence.

<sup>5</sup> Lithuania notes that the concepts of recklessness and wilful blindness do not exist in the Lithuanian criminal justice system.

<sup>6</sup> Criminal cases No. 2K-83/2014 (18 March 2014), 2K-176/2014 (15 April 2014), 2K-439-788/2016 (13 December 2016).

<sup>7</sup> Criminal case No. 2K-439-788/2016 (13 December 2016).

<sup>8</sup> Criminal case No. 1A-529-449/2015 (9 November 2015); Case No. 2K-266/2014 (20 May 2014).

10. Article 15 of the Criminal Code requires that the defendant be aware of the “dangerous nature of the criminal act” to prove direct intent. Lithuania asserts that as active bribery is a formal offence, it is completed upon the offer, promise, or gift of a bribe, regardless of the consequences and notes that article 7 of the Constitution of the Republic of Lithuania provides that ignorance of the law does not exempt a person from criminal liability. Lithuania further states that awareness of the “dangerous nature of the criminal act” does not constitute a separate element of proof when establishing *mens rea*. The question of awareness of the “dangerous nature of the criminal act” has not been an issue in active bribery cases, to date. One academic commentary on the Criminal Code which could inform future judicial reasoning, suggests that awareness of the dangerous nature of the criminal act requires awareness of the “factual circumstances” and the “social impact” of the act.<sup>9</sup> This is described as proving that the person “in general understood how his actions were perceived by the society – as useful, neutral or harmful.” This could prove difficult for prosecutors in foreign bribery cases, particularly where public perceptions of the impact of the bribery may vary between Lithuania and the country or countries where the bribery took place.

11. Lithuania asserts that, in practice, proof of intent does not present a challenge to active bribery prosecutions, noting that only 1.2% of defendants were acquitted of this charge in 2014 and just 0.7% in 2015.<sup>10</sup> Of these convictions, 47 were appealed and less than a quarter of these appeals resulted in the first instance conviction being overturned. In total, five of the 12 appeals by the prosecution in the same period resulted in acquittals being overturned in favour of convictions. The Working Group will nevertheless follow up on the interpretation and practical application of the *mens rea* element of the bribery offence in subsequent evaluations.

#### 1.1.3 *to offer, promise or give*

12. Consistent with the Convention, CC Article 227 makes it a crime to offer, promise, give, or agree to give a bribe. The Supreme Court has interpreted CC Article 227 expansively, asserting that the offence is complete at the point the perpetrator offers, promises, or agrees to give, or actually gives the bribe. It is irrelevant whether the public official accepts the bribe or performs the desired act or omission. The Court also found that a bribe may be given either before or after the performance or omission of the desired acts.<sup>11</sup>

#### 1.1.4 *any undue pecuniary or other advantage*

13. The Criminal Code was amended in 2011 to include CC Article 230(4) that defines a bribe as “an unlawful or unjustified reward expressed in the form of any material or another personal benefit for oneself or for another person (whether tangible or intangible, having or not having economic value in the market).” The courts have interpreted “another personal benefit” to include construction services and materials for a personal property; paying bills; and accompanying a company Director to an international exhibition free of charge.<sup>12</sup>

#### 1.1.5 *whether directly or through intermediaries*

14. Following amendments to CC Article 227 on 10 November 2016, the active bribery offence now covers a person who offers, promises, agrees to give, or gives a bribe directly or indirectly “himself or through an intermediary.” CC Article 24(3) also defines a perpetrator as a person who commits a criminal act alone or by involving other persons who are not guilty of that act, *inter alia*. Lithuania notes that even

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<sup>9</sup> Lithuanian Criminal Law (Part 1), Prof. V. Piesliakas. Justitia, Vilnius, 2006, p. 344.

<sup>10</sup> Lithuanian National Courts Administration, “Report on the Hearing of Criminal Cases. Trial at the First Instance Court” (2015).

<sup>11</sup> Decision of the Supreme Court, Case No. 2K-274/2007 (3 April 2007); Case No. 2K-266/2014 (20 May 2014).

<sup>12</sup> Decision of the Supreme Court, Case No. 2K-387-677/2015 (29 September 2015); Decision of the Panevėžys County Court, Case No. 1-3-366/2012 (23 May 2012); Decision of the Šiauliai County Court, Case No. 1-34-332/2014 (12 March 2014).

before this amendment was enacted, Supreme Court jurisprudence confirmed liability for the acts of intermediaries in active bribery cases.<sup>13</sup> On the basis of this jurisprudence, Lithuania maintains that a person will be held liable as the main perpetrator if s/he paid bribes through an intermediary, irrespective of whether the intermediary had the requisite knowledge or intent. The intermediary him/herself can be held liable, subject to proof of the necessary intent, either directly as a perpetrator or as an accessory to the crime (see Sections 1.2 and 1.3). Liability of legal persons for the acts of intermediaries is discussed below in Section 2.

#### *1.1.6 to a foreign public official*

15. The Convention defines a foreign public official as any person holding legislative, executive, or judicial office in a foreign country, or any person exercising a public function including for a public enterprise or public international organisation (Article 1(4)). Commentary 16 notes that persons exercising *de facto* public functions are considered public officials in some countries. Article 1(4)(b) provides that “foreign country” includes all levels and subdivisions of government, from national to local. Commentary 18 further defines “foreign country” as any organised foreign area or entity, such as an autonomous territory or separate customs territory.

16. CC article 230(2) defines a foreign public official as a person who performs the functions of a government representative, including judicial functions, has administrative powers or otherwise ensures the implementation of public interest through employment or by holding office on other grounds at an institution or body of a foreign state or... an international public organisation or an international judicial institution ... or a legal person or another organisation controlled by the foreign state, also official candidates for such office shall be held equivalent to a civil servant”. Following amendments introduced by XIII-391 (2017), article 230(2) further defines foreign state to mean “any foreign territory, regardless of its legal status, and includes all levels and subdivisions of government.” Lithuania notes that in the context of domestic bribery, the Supreme Court has confirmed that the Article 230(1) definition covers employees of both state and municipal entities and is broader than the definition of public servant in the Lithuanian Public Service Law.<sup>14</sup> Lithuania asserts that the same definition would be applied in future foreign bribery cases, to foreign public officials.

17. The Article 230(2) definition captures persons holding legislative, executive, judicial and administrative office in a foreign state or public international organisation. It also extends to future or potential foreign public officials, as envisaged in Commentary 10 to the Convention. With respect to employees of foreign public enterprises, CC Article 230(2) includes persons employed “at a legal person or any other organisation, which is controlled by a foreign state”. The Criminal Code does not set out the degree of control required to meet this definition. Lithuania, in its responses to the Phase 1 Questionnaire, instead refers to relevant provisions in other legislation governing financial institutions, competition, and corporations which define control as exercising a “decisive influence”, including by holding a majority of the voting rights or authorised capital. Lithuania asserts that the term would be interpreted broadly enough to encompass all kinds of dominant influence, whether direct or indirect, as required by Commentary 14 to the Convention. Lithuania also refers to the explanatory memorandum for Law No. XII-2048 (2015) amending Article 230(2), which notes that its purpose is to implement the Anti-Bribery Convention and that courts are required to refer to the intent of the legislator when interpreting legislation. In one case of domestic bribery of an official of a state-owned enterprise (SOE), the Supreme Court referred to the Articles of Association of the company in question (owned by the City of Vilnius) and determined that the Director of the company was a public official for the purposes of Article 230(1), even if the briber did not

<sup>13</sup> Case No. 2K-415-697/2015 (12 October 2015).

<sup>14</sup> Cases No. 2K-809/2003; 2K-658/2004; 2K-P-181/2008.

consider him to be a public official.<sup>15</sup> The coverage of employees of SOEs as public officials should be followed up in future evaluations.

18. Commentary 3 to the Convention requires an autonomous definition of foreign public official. Law XIII-391 (2017) modifies article 230(2) such that the definition of foreign public official is to be interpreted “irrespective of his status under the legal acts of a foreign state or an international public organisation.” Prior to this amendment, Supreme Court jurisprudence confirmed the Lithuanian courts’ practice of conducting an in-depth analysis of the functions, powers and other aspects of the legal status of the relevant person.<sup>16</sup> This approach is inconsistent with the Convention requirement of autonomy and would create a major obstacle for future foreign bribery prosecutions, which would require proof of the legal status of the foreign public official in question. The interpretation of the new autonomous element of the article 230(2) definition of foreign public officials should be followed up in future evaluations.

*1.1.7 for that official or for a third party*

19. Article 227 criminalises bribes offered to third parties and Article 230(4) defines a bribe as any benefit “for oneself or for another person”. In its responses, Lithuania referred to jurisprudence confirming liability for bribes paid to third parties, including third party legal persons (in the case in point, a political party).<sup>17</sup>

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

20. Convention Article 1(4)(c) defines the performance of official duties as any use of the official’s position, whether or not within his/her authorised competence. The Lithuanian Criminal Code differentiates between bribes for a lawful (Article 227(1)) and unlawful (Article 227(2)) “act or omission” of the public official “in exercising his powers.” Law XIII-391 (2017) inserts a new article 230(5) which defines “exercise of powers” for the purpose of the active bribery offence as any use of the public official’s position “irrespective whether or not it is within his authority prescribed by the legal acts.” The Commentary to the Criminal Code stipulates that the bribery offence is completed even if the briber is mistaken as to the competence of the bribed public official.<sup>18</sup> Case law prior to the enactment of the new article 230(5) demonstrated a narrow interpretation of the exercise of powers and cast doubt as to whether Article 227 would apply to cases involving bribes for acts/omissions outside an official’s authorised competence.<sup>19</sup> While new article 230(5) appears to address this concern, its interpretation and practical application should be followed up in future evaluations.

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<sup>15</sup> Decision of the Supreme Court, Case No. 2K-P-181/2008 (28 October 2008).

<sup>16</sup> “[T]he notions of a civil servant and a person equivalent to a civil servant shall be also interpreted in accordance with other legal acts, establishing their functions, rights, duties and powers.” (Decision of the Supreme Court, 28 October 2008, Case No. 2K-P-181/2008).

<sup>17</sup> Decision of the Panevėžys Regional Court of 23 May 2012, Case No. 1-71-1-00235-2008-0 (upheld by the Lithuanian Court of Appeal and Supreme Court); Decision of Kaunas District Court of 1 July 2011, Case No. 1-07-1-00117-2007-7 (upheld by the Lithuanian Court of Appeal and Supreme Court); Decision of Anykščiai Circuit Court of 20 December 2013, Case No. 1-07 00411-2010-8 (upheld by the Lithuanian Court of Appeal and Supreme Court).

<sup>18</sup> The Commentary of the Criminal Code of the Republic of Lithuania (Part III). A Abramavicius et al. Registru centras, Vilnius. Pages 94-95.

<sup>19</sup> Decision of the Supreme Court, Case No. 2K-P-181/2008 (28 October 2008), finding that bribes given to a public official “not for concrete action or inaction in exercise of powers ... is qualified as an abuse of office (Article 228 of the Criminal Code)”; Case No. 2K-7-48(2009) (10 February 2009), requiring that “the bribe is specifically related to exercising powers of a civil servant or a person equivalent to a civil servant”; Case No. 2K 207/2013 (14 May 2013) “It is sufficient that such actions are within the limits of this person’s office opportunities.”



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

21. Lithuania's active bribery offence applies to bribes for any purpose, and therefore is not limited to bribes for the purpose of obtaining or retaining business or other improper advantage in the conduct of international business.

## **1.2 Complicity**

22. CC Articles 24-26 govern complicity and liability of accomplices. Accomplices are divided into the categories of perpetrator, organiser, abettor, and accessory, and can be held liable on the basis of their intent. These categories correspond with those set out in Convention Article 1(2) and also encompass participation in organised criminal groups or associations. The Supreme Court considered complicity in a domestic bribery case and held that even if one of the accomplices does not participate in all bribe "episodes", this does not detract from his/her role as an accomplice.<sup>20</sup>

## **1.3 Attempt and Conspiracy**

23. Article 1(2) of the Convention requires Parties to criminalise attempt and conspiracy to bribe a foreign public official to the same extent as they criminalise attempt and conspiracy to bribe a domestic public official.

24. CC Article 22 criminalises the attempt of all intentional criminal acts set out in the Special Part of the Criminal Code. This includes both domestic and foreign bribery. It is an attempt to commit an intentional criminal act where the act has not been completed due to circumstances outside the offender's control, even if s/he is unaware that the act cannot be completed due to an inappropriate target or improper means. The Commentary to the Criminal Code states that if a briber mistakenly offers a bribe to a person who does not fall under the definition of public official in Article 230, then this act will be qualified as an attempt to commit bribery.<sup>21</sup> The penalty for an attempt is the same as for a completed offence, but may be commuted pursuant to CC Article 62, taking into account certain factors, including the stage of the offence.

25. The Lithuanian criminal justice system does not provide for the concept of "conspiracy". However, Article 25(2) defines a group of accomplices as one in which "two or more persons agree, at any stage of the commission of a criminal act, on the commission, continuation or completion of the criminal act, where at least two of them are perpetrators." In addition, CC Article 21 criminalises the preparatory stage of a criminal offence—such as search for or adaptation of means and instruments, development of an action plan, and engagement of accomplices—but only for serious or grave crimes, which would therefore only apply to aggravated bribery (i.e. bribes in excess of EUR 9 415, under Article 227(3)).

## **1.4 Defences**

26. The defence commonly known as "effective regret" is contained in CC Article 227(6) and applies where the person who bribed was solicited by the public official and notified law enforcement authorities of this fact as quickly as possible, and before a notice of suspicion is issued against him/her. This defence does not apply to bribery of foreign public officials, pursuant to Article 227(7), which came into force on 26 November 2015.

<sup>20</sup> Decision of the Supreme Court, Case No. 2K-409/2014 (21 October 2014).

<sup>21</sup> The Commentary of the Criminal Code of the Republic of Lithuania (Part III). A Abranavicius et al. Registru centras, Vilnius. Pages 94-95.

27. A defendant can be released from criminal liability under CC Article 39 when s/he confesses participation in an organised group or criminal association and actively assists in detecting the crimes perpetrated by that group or association. CC Article 25 defines “organised group” as one in which two or more persons agree, at any stage of the commission of a criminal act, on the commission of several crimes or of one less serious, serious or grave crime, and in committing the crime each member of the group performs a certain task or is given a different role. This provision does not apply to the organiser or leader of the said group or association. Lithuania confirms this provision could apply to cases of foreign bribery, raising concerns that persons involved in an organised bribery scheme could escape liability by confessing their participation and aiding the investigation. This could in theory be used as an alternative to the recently repealed defence of “effective regret”. The extent to which this defence is employed should be examined closely in the course of Lithuania’s Phase 2 evaluation.

28. CC Article 38 provides for release from criminal liability in relation to misdemeanours, negligent crimes or minor or less serious premeditated crimes where a person admits liability; voluntarily compensates or agrees to compensate for the damage; or reconciles with the victim or a representative of the legal person or government institution and there are grounds for believing that the person will not re-offend. It therefore can be used for all categories of active bribery offence except the CC Article 227(3) aggravated bribery offence (for bribes over EUR 9 415). The agreement for terms and conditions of release from criminal liability, including procedure for compensating the damage, must be approved by a court and complied with in one year; otherwise the court may revoke its decision and decide to prosecute. The publication of agreements for release from liability depends on whether they are agreed at trial stage (in which case they are approved by the court and the court decision is published) or at pre-trial investigation stage (in which case they are approved by a pre-trial investigation judge and not made public). This provision appears to be similar to a deferred prosecution agreement and could potentially be used in foreign bribery cases. Its use should be examined in greater detail in Phase 2.

29. General defences applicable to all Criminal Code offences are contained in CC Articles 28 to 35 and include defences for discharge of professional duty, immediate necessity, or justifiable professional or economic risk. While Lithuania asserts that none of these could be used to justify bribery, which is illegal in and of itself; the defence counsel in a foreign bribery case could plead any of these defences, depending on the circumstances. Their potential application in bribery cases should be followed up in Phase 2. CC Article 23(3) exempts the *organiser or abettor* from liability if s/he has made every effort within his/her reasonable power to prevent the commission of the offence by his/her accomplices and it is either not committed or has not caused any consequences. The same provision exempts an *accessory* from liability when s/he voluntarily refuses to participate in a criminal act, informs other accomplices or law enforcement institutions, and the act is not committed or is committed without his/her assistance. Where a person attempts to voluntarily renounce the completion of an offence but its consequences still occur, s/he will be held liable but the penalty could be commuted under Article 59. A penalty could potentially be commuted under this provision if a person who asks an intermediary to transfer a bribe to a foreign public official makes every effort to prevent the intermediary from following through with the bribe but the intermediary still offers the bribe to the official. This issue should be followed up in practice.

## **2. Article 2: Responsibility of Legal Persons**

30. Article 2 of the Convention requires each Party to “take such measures as may be necessary [...] to establish liability of legal persons for the bribery of a foreign public official”. Article 20 of Lithuania’s Criminal Code establishes the liability of “legal entities” for foreign bribery and other related offences including, domestic bribery, smuggling, and money laundering.

## 2.1 *Legal Entities Subject to Liability*

31. The Criminal Code does not include a definition of “legal entity”. However, the Constitutional Court considered the corporate liability provisions and found that this term must be interpreted consistent with relevant laws governing the formation of legal persons.<sup>22</sup> This includes the Civil Code, which defines a “legal person” as an enterprise or organisation which can assume rights and obligations under its own name, and appear before a court.<sup>23</sup> The Civil Code goes on to distinguish between public and private entities, stating that private legal persons are those aimed at meeting private interests, whereas public legal persons are those “established by the state or municipalities, their institutions, or other non-profit-seeking persons whose goal is to meet public interests (state and municipality enterprises, state or municipality institutions, public institutions, religious communities, etc.).”<sup>24</sup> In Lithuania, all legal persons are required to undergo registration with the Centre of Registers and are deemed incorporated entities thereafter.<sup>25</sup> Lithuania provides that all businesses and non-profit organisations must be registered

### 2.1.1 *Certain public bodies exempt from criminal corporate liability*

32. Article 20(6) of the Criminal Code provides an exception to criminal liability for “the State, a municipality, a state and municipal institution and agency as well as international public organisation[s]”. Law XIII-391 (2017) amended article 20(6) to clarify that “State and municipal enterprises, as well as public establishments, where the State or a municipality is an owner or a participant, and public and private companies, where the State or a municipality owns all or part of the shares, shall not be considered to be State and municipal institutions and agencies and they are liable under this code.” This is in accordance with Article 1(4) of the Convention, which requires state-owned and controlled enterprises (SOEs) to be subject to foreign bribery laws. Lithuania currently has 118 state-owned enterprises that take on different legal forms. Forty are “corporatised” limited liability companies; while 78, including many of Lithuania’s largest SOEs, are “statutory” state enterprises. Lithuanian authorities provide that no SOE has been convicted of an offence under Article 20 of the Criminal Code. The Working Group should follow-up on the interpretation and practical application of the amendments to the exception to corporate criminal liability in CC Article 20(6) in the context of Lithuania’s Phase 2 evaluation.

## 2.2 *Standard of Liability*

### 2.2.1 *Level of authority of the natural person*

33. Parties to the Convention are required to meet the standard of corporate liability for foreign bribery as specified in the 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation).<sup>26</sup> Lithuania has adopted approach (b) in the 2009 Recommendation which requires a person with the highest level of managerial authority to either: (a) commit foreign bribery; (b) direct or authorise a lower level person to commit foreign bribery; or (c) fail to prevent such a person from doing so.<sup>27</sup>

#### (a) *Corporate liability based on bribe paid by manager*

<sup>22</sup> Constitutional Court of the Republic of Lithuania, Case No. 34/2008-36/2008-40/2008-1/2009-4/2009-5/2009-6/2009-7/2009-9/2009-12/2009-13/2009-14/2009-17/2009-18/2009-19/2009-20/2009-22/2009 (available in English: <http://lrkt.lt/en/court/acts/search/170/ta1236/content>).

<sup>23</sup> Civil Code, Art. 2.33(1).

<sup>24</sup> Civil Code, Art. 2.34.

<sup>25</sup> Civil Code, Art. 2.62 & 2.63.

<sup>26</sup> 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions.

[C(2009)159/REV1/FINAL].

<sup>27</sup> CC, Arts. 20(2) & 20(3).

34. Under CC Article 20(2), legal entities *shall* be held liable where a natural person acting independently or on behalf of the legal entity, commits a criminal act, provided they (i) hold a “managing position”; and (ii) commit the act “for the benefit or in the interests of the legal entity”.

35. (i) *Managing position*: Article 20(2) provides that a person holding a “managing position” must be entitled to represent, take decisions on behalf of, or control the activities of the legal entity. While there is no case law interpreting the term “managing position”, the legislation itself appears clear and captures a wide range of persons holding managerial roles within an organisation.

36. (ii) *For the benefit or in the interests of the legal entity*: The Supreme Court has interpreted this broadly, in a case applying liability of legal persons that did not involve the active bribery offence, as including any material benefit or non-material objective that the legal person either recognises or is interested in, including evasion of possible loss.<sup>28</sup> The Court provides that the corporation must “acknowledge the benefit” or have an interest in the consequences brought about by the commission of the offence. The Court provides that in this sense, “the concept of “interest” is wider than the concept of “benefit” and can encompass the latter.”

37. The Court’s decisions raise potential concerns. While the Court stated that it is immaterial whether the legal entity *actually* gained any benefit or interest from the offence, that they must at least, *in theory*, have been able to obtain a benefit. If this same interpretation was applied to a foreign bribery case, it would detract from the formal nature of the bribery offence, which is not contingent on the outcome of the bribe. By requiring the bribes to be paid in the company’s benefit or interests, one may be able to avoid liability for bribes paid when in reality, there is no possibility that an advantage could be granted in return. Second, the Court provides that the corporation must “acknowledge the benefit.” Lithuania considers that “acknowledge” should be understood in general terms and that the legal entity should simply be aware that a manager is performing an unlawful act on its behalf and for its benefit which Lithuania asserts can be assessed by analysing the legal person’s structure and operations. Furthermore, Article 20(2) applies the standard of “for the benefit or in the interests of the legal entity”, whereas Articles 20(3) and 20(4) refer only to “for the benefit”. There is therefore a higher standard of proof with respect to corporate liability for acts committed as result of insufficient supervision or control (Article 20(3)) and acts committed by other entities controlled by or representing the company in question (Article 20(4)). With respect to the requirement in Article 20(2) to prove that bribes were paid in the company’s interest, companies could avoid liability by pleading that the briber was a “rogue employee”, acting against the interests of the company and that the company was, in fact, a victim of the bribery. This places a significant burden on the prosecution and goes beyond the requirements in Article 2 of the Convention.

38. A different Supreme Court decision raises another concern regarding the benefit or interest obtained by the legal entity. In this case, the Court determined that the mere commission of an offence for the benefit or in the interests of a legal person is insufficient and that it must also establish that the “owner (shareholders) knew about...encouraged...or contributed to the commission of the criminal offence.”<sup>29</sup> It concluded that in the absence of this link, a legal person could not be held criminally liable. A more recent Supreme Court case suggests that mere disinterest or indifference of shareholders towards the activities of a person in a managing position may be sufficient to establish this link.<sup>30</sup> While this issue has never been examined in the context of a bribery case, any requirement involving an assessment of shareholders’ involvement in the offence would go beyond the Convention, particularly if applied to larger companies with multiple shareholders independent from company management. The courts’ interpretation of “for the benefit or in the interests of the legal entity” should thus be monitored in the course of future evaluations.

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<sup>28</sup> Decision of the Supreme Court, Case No. 2K-620-677/2015 (22 December 2015).

<sup>29</sup> Decision of the Supreme Court, Case No. 2K-P-95/2012 (10 January 2012).

<sup>30</sup> Decision of the Supreme Court, Case No. 2K-7-28-303/2017 (January 2017).

(b) *Corporate liability where manager directs, authorises, or fails to prevent an employee or authorised representative from engaging in bribery*

39. Article 20(3) provides that a corporation may be held liable where an “employee or...authorised representative” of the legal entity commits a criminal act *for the benefit of* the legal entity “as a result of insufficient supervision or control” by a person holding a managing position. A 2009 Constitutional Court decision provides that when assessing liability under this provision the Court must examine the nature of the lack of supervision or control and how this influenced the crime: whether the manager’s lack of supervision or control was deliberate, intentional, or negligent; or whether the manager’s lack of care determined or encouraged the commission of the offence.<sup>31</sup>

40. Amendments to Article 20(3) that entered into force on 17 November 2016 also cover a situation where the said manager *instructs or authorises* an employee or authorised representative to commit a criminal act. Again, the act must be committed for the benefit of the legal entity. The Working Group should follow-up on the application of this new form of liability as case law develops.

41. While there is no case law on the term “employee” or “authorised representative”, the Constitutional Court has provided an official interpretation indicating that the definition of “authorised representative” should take into account the Civil Code provisions defining contractual representation which capture all persons linked to the legal person by employment relations and includes persons (legal and natural) linked to the legal person by a contract giving that person the right to act on the legal person’s behalf.<sup>32</sup> These provisions also cover agency relationships that are based on a contract, statute, court judgment, or administrative act but expressly exclude “persons who act in their own name although in the interest of the other person (sales intermediaries, etc.)”. Sales representatives and other persons in agency-type relationships play an important role in securing contracts, particularly in international commercial transactions; they are therefore at a high risk of bribery of foreign public officials. Should they not be considered to represent the legal person for the purposes of creating a nexus for corporate liability, this would create a significant loophole. The practical interpretation of “authorised representative” for the purposes of imposing corporate liability under Article 20(3) should be followed up in Phase 2.<sup>33</sup>

### 2.2.3 *Onus of proof*

42. A presumption of innocence applies to all criminal proceedings in Lithuania.<sup>34</sup> Lithuania provides that the onus of proof falls on the prosecution to prove the elements of a criminal offence, and that in the case of corporate liability for foreign bribery, this could include proving that a person in a managing position failed to prevent an employee or authorised representative from engaging in bribery.

### 2.2.4 *Bribes paid through intermediaries*

43. Annex I.C of the 2009 Recommendation states that a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to commit foreign bribery.

44. Lithuania’s foreign bribery offence now clearly applies to all bribes paid through intermediaries (see Part 1.1.5). Therefore, provided the other conditions for corporate liability exist, it will not matter whether the natural person who paid the bribe did so through an intermediary. In addition to this, Lithuania recently amended Article 20 of the Criminal Code to ensure that parent companies do not evade criminal

<sup>31</sup> The ruling of 8 June 2009 by the Constitutional Court of the Republic of Lithuania (available online in English here: [lrkt.lt/en/court-acts/search/170/ta1236/content](http://lrkt.lt/en/court-acts/search/170/ta1236/content)).

<sup>32</sup> Articles 2.132, 2.137, and 2.176.

<sup>33</sup> Ibid.

<sup>34</sup> Constitution, Art. 31 and CCP, Art. 44(6).

liability for the criminal acts of their subsidiaries. The new provision captures a situation where a person holding a managing position in one legal entity (“A”), instructs, authorises, or fails to prevent another legal entity that it controls or is represented by (legal entity “B”) from committing an offence.<sup>35</sup> Lithuania provides that it will ultimately be up to the court to determine whether legal person “A” controls or is represented by” legal person “B”, but that under Lithuanian law “control” generally requires that one company can exert influence over the other (e.g. by holding a majority of the voting rights).<sup>36</sup> Lithuania provides that various forms of contractual representation are sufficient to show that one company represented another. It further provides that Lithuania does not need to prosecute or convict legal entity “B”, in order to hold legal entity “A” liable, but that it must be able to establish the preconditions for “B’s” liability. As with other forms of corporate liability, the crime must be committed for the benefit or in the interests of legal entity “A”. Thus the same concerns regarding the courts’ interpretation of this phrase apply here.

### **2.3 Proceedings against Legal Persons**

#### *2.3.1 Ability to hold legal persons liable in the absence of a prosecution or conviction of natural person(s)*

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

46. Amendments to the Criminal Code and Code and Criminal Procedure Code (CCP) in 2016 make it clear that legal persons can be held liable for an offence regardless of whether a natural person is prosecuted, convicted, acquitted, or released from or not subject to criminal liability for other reasons (e.g. death, mental illness, immunity, or conviction in another state).<sup>37</sup> Lithuania’s law now goes one step further (and beyond the requirements of the Convention) providing for corporate liability where it is not possible to identify the natural person(s) who committed the offence but there is reason to believe that one or more persons related to the legal entity committed an offence either alone or through joint actions. The Lead Examiners commend Lithuania for the steps taken to rectify the previous shortcomings in this provision.

47. Lithuania has successfully held legal persons liable for a range of crimes. Between 2011 and 2015 authorities conducted 273 pre-trial investigations, 243 prosecutions, and convicted 170 legal persons for offences under the Criminal Code.<sup>38</sup> Between 2013 and 2015, nine legal persons were held liable for corruption related offences (graft and abuse of office) and a further 77 for economic crimes. The Lead Examiners are encouraged by Lithuania’s ability to enforce its corporate liability laws for corruption related offences. During Phase 2, the Working Group should follow-up on case law to ensure that Lithuania is able to do so effectively for its active domestic and foreign bribery offences.

### **3. Article 3: Sanctions**

48. Convention Article 3(1) requires Parties to criminalise foreign bribery with “effective, proportionate and dissuasive criminal penalties” comparable to those applicable to bribery of the Party’s own domestic officials. At the time of drafting, no natural or legal person had been prosecuted or sanctioned for bribery of foreign public officials in Lithuania.

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<sup>35</sup> CC, Art. 20(4).

<sup>36</sup> Law on Competition, Art. 2(8); Law on Companies, Art. 5; Law on Financial Institutions, Arts. 2(22) and 2(31).

<sup>37</sup> Article 20(5) of the Criminal Code and Article 387(3) of the CCP, which entered into force on 17 November 2016.

<sup>38</sup> Statistics provided by Ministry of Interior and of National Courts Administration.

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

#### 3.1.1 *Penalties for Natural Persons*

49. The active bribery offence in CC Article 227 stipulates maximum sentences depending on the nature of the bribe. Bribery to obtain a *lawful* act or omission (i.e. for an act the official is lawfully permitted to perform) is punishable by either a fine, restriction of liberty, arrest, or a maximum sentence of four years' imprisonment (Article 227(1)). Bribery to obtain an *unlawful* act or omission is punishable by either a fine, restriction of liberty, arrest, or a maximum sentence of five years' imprisonment (Article 227(2)). Bribes lower than one MSL (EUR 37.66) constitute a misdemeanour and are punishable by a fine, restriction of liberty, or arrest.

50. Bribes exceeding 250 MSLs (EUR 9 415) constitute an aggravated offence and are punishable only by a maximum of seven years' imprisonment.<sup>39</sup> There is no applicable fine. Prison sentences can be suspended for one to three years under CC Article 75 where there is a reasonable ground to believe that the purpose of the penalty will be achieved without actual imprisonment. Lithuania explains that the prison sentence could be reduced to a fine under CC Article 62, which provides for mitigated sanctions when a defendant self-reports and cooperates with authorities. In addition, Article 54(3) allows the court to impose more lenient penalties, including more lenient types of penalty, depending on the circumstances of the case. In practice, a fine was imposed instead of a prison sentence in a case involving bribery for an act or omission of the public officials under Article 227(2), which does provide for alternative sanctions of a fine or prison sentence.<sup>40</sup> It is unclear whether and how article 54(3) has been applied to convert prison sentences to fines for offences where there is no alternative sanction (e.g. the article 227(3) aggravated bribery offence).

51. Consistent with the requirements of the Convention, the same sanctions apply to the different categories of bribery of domestic and foreign public officials under Lithuania's Criminal Code. However it is curious that fines are available as an alternative sanction to imprisonment for all categories of the domestic and foreign bribery offence except the aggravated form, for which the only available penalty is a maximum seven-year prison sentence (see section 7.1). Lithuania noted that the Criminal Code's system of sanctions is based on the general rule that for serious and very serious crimes, imprisonment is the only available penalty. According to Lithuania, allowing for a fine as an alternative to the prison sentence accompanying the aggravated bribery offence would be seen by the public as an "escape route" for corrupt officials and business people. On the other hand, allowing for a fine as well as a prison sentence could be seen as a step back to the former soviet Criminal Code which contained a system of main and additional penalties for each crime and was widely criticised. Since 2013, three individuals have been convicted of the aggravated bribery offence. Sanctions ranged from one to three years' imprisonment for bribes between EUR 12 000 and EUR 16 000. As a point of comparison, the money laundering offence has the same categorisation as the aggravated foreign bribery offence and is punishable by a fine (maximum EUR 56 490 for natural persons) or a seven-year prison sentence. Given the sums involved in international business transactions, especially those involving public procurement, it is likely that most foreign bribery cases will involve bribes above the EUR 9 415 threshold for the aggravated offence. While confiscation of the bribe and its proceeds is mandatory, the court's inability to impose a fine as an alternative to the seven-year prison sentence for this category of the offence could raise concerns, particularly if the court opts for a

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<sup>39</sup> MSL stands for Minimum Subsistence Level. The Law on the Determination of Reference Indicators of social Security Benefits and the Basic Amount of Fines and Penalties requires that criminal fines be calculated on the basis of the MSL. The current value of one MSL (EUR 37,66) was approved by Government Resolution No. 924 of 10 September 2014.

<sup>40</sup> In case No. 1A-27-202/2017 the Court of Appeal applied the CC Article 54(3) and imposed a fine instead of a prison sentence to a person convicted under CC Article 227(2). The Court of Appeal evaluated the length of the proceedings, health condition of the convicted person and his family situation.

suspended prison sentence. The WGB should follow-up on sanctions imposed in practice during Lithuania’s Phase 2 evaluation to ensure they are sufficiently “effective, proportionate, and dissuasive.”

52. Pursuant to CC Article 42(3), “only one penalty may be imposed on a natural person for the commission of one crime or misdemeanour.” Confiscation is not considered to be a penalty, but a penal sanction, which can be imposed in conjunction with the penalty (regardless of the severity of the penalty or the Court’s decision to apply a more lenient penalty pursuant to CC Article 62), as well as when a person is released from criminal liability pursuant to CC Article 38. The only circumstances under which cumulative sanctions could be applied would be when a defendant is convicted for at least two offences. CC Article 42(6) provides for the imposition of two penalties if several offences are committed at the same time (Article 63), or a new offence is committed before the sentence is served (Article 64).<sup>41</sup> Lithuania confirms that confiscation is obligatory in cases where the instruments and proceeds of crime have been identified (see Part 3.4.2).

53. Fines are set out in CC Article 47 and calculated based on MSLs. Fines for the various categories of active bribery range from a maximum fine of 150 MSLs for misdemeanours (crimes punishable with a non-custodial sentence), to 1 500 MSLs for less serious crimes (punishable by 3 to 10 years’ imprisonment).<sup>42</sup> The applicable fines for the various categories of bribery offence in CC Article 227 are set out in the table below

**Table 1. Maximum criminal sanctions for bribery (Article 227)**

Penalties	Article 227 Paragraph 1 (“for desired legal action or inaction”)	Article 227 Paragraph 2 (“for desired illegal action or inaction”)	Article 227 Paragraph 3 (“aggravated bribery”)	Article 227 Paragraph 4 (“misdemeanour”)
category of offence (CC Article 11)	Less serious	Less serious	Serious	Misdemeanour
maximum imprisonment	4 years	5 years	7 years	-
maximum arrest	90 days	90 days	-	45 days
maximum restriction of liberty	2 years	2 years	-	2 years
maximum fine	1000 MSLs (EUR 38 000)	1000 MSLs (EUR 38 000)	-	150 MSLs (EUR 5 700)

54. CC Article 59 sets out a non-exhaustive list of mitigating circumstances to be taken into account by the courts when sentencing.<sup>43</sup> Some of these factors, such as conditions of industrial or economic risk, financial difficulty of the offender, and coercion are inherent to most cases of bribery in international business. The Constitutional Court has reinforced the importance of individualisation of punishment in two cases, where it found that the court should take into account all mitigating circumstances, even those which

<sup>41</sup> Article 42(6) provides that, in accordance with Articles 67, 68, 68<sup>1</sup>, 68<sup>2</sup>, 72, 72<sup>1</sup>, 72<sup>2</sup> and 72<sup>3</sup>, one or more of the following sanctions can be imposed in addition to the basic penalty: prohibition to exercise a special right, deprivation of public rights, deprivation of the right to be employed in a certain position or to engage in certain activities, confiscation of property, the obligation to reside separately from the victim and/or prohibition to approach the victim closer than [sic] a prescribed distance, participation in programmes addressing violent behaviour, extended confiscation of property.

<sup>42</sup> CC Art. 47 sets out the range of fines; CC Arts. 11 and 12 define the categories of crime and misdemeanour.

<sup>43</sup> Mitigating circumstances included in CC Article 59 that might be relevant in foreign bribery cases include: assisting the victim; confessing to commission of the act and assisting in its detection and identification of other offenders; voluntary compensation for the damage; financial difficulties or the “desperate situation” of the offender; mental or physical coercion; provocation or request by the victim; conditions of industrial or economic risk.



are not expressly provided by law, including to apply sanctions lower than the minimum prescribed penalties.<sup>44</sup> The Supreme Court has interpreted Article 54(3) to include lengthy criminal proceedings as a mitigating factor to be taken into consideration when sentencing.<sup>45</sup> In some domestic corruption cases the defence has raised the length of proceedings and the court has taken it into account either as a mitigating factor in sentencing, or as a basis for dismissing the prosecution's appeals and upholding acquittals.<sup>46</sup> Lithuania notes, however, that in a recent aggravated fraud case the Supreme Court refused to apply CC Article 54(3) with regard to lengthy criminal proceedings even though the duration of the proceedings was almost 10 years.<sup>47</sup> Foreign bribery cases often involve protracted criminal proceedings due to the complex nature of the bribery schemes and the need to obtain evidence from abroad. The Working Group should monitor emerging foreign bribery case law in Lithuania to determine whether reduced sentences due to the length of criminal proceedings—or other mitigating circumstances inherent to bribery in international business—impact on the effective, proportionate, and dissuasive nature of the sanctions for the offence.

55. The maximum fines applicable to the foreign bribery offence are low and may not be proportionate to the advantage obtained in many foreign bribery cases. The inability to impose fines as an alternative to a term of imprisonment exacerbates this situation. Further, linking the amount of the sanction to the amount of the bribe (as is the case for the offences in Articles 227(3) and (4)) can create difficulties when it is impossible to quantify the size of the bribe, or when the bribe itself does not meet the threshold for the aggravated form of the offence but the benefit obtained is substantial. Although confiscation of the bribe and its proceeds could counteract this shortcoming and contribute to effective, proportionate, and dissuasive sanctions in practice, this should be followed up as case law develops.

### 3.1.2 *Penalties for Legal Persons*

56. Sanctions for legal persons are set out in CC Article 43. As with natural persons, the court may only impose one criminal sanction: either a fine; restriction of operation; or liquidation. A court may also decide to announce the judgment in the media. The maximum fine for a legal person convicted of any crime or misdemeanour is set out in CC Article 47(4) and amounts to 50 000 MSL (EUR 1 883 000). Pursuant to CC Article 52, a court may restrict the operation of a legal entity by prohibiting it from engaging in certain activities or ordering it to close a certain division for a period of one to five years. CC Article 53 enables a court to order the termination of a legal entity's entire economic, commercial, financial, or professional activity within a prescribed time limit. In addition to these criminal sanctions, legal persons are subject to mandatory confiscation or extended confiscation of property where criminal instruments or direct or indirect proceeds of crime are identified (CC Article 67(5) is discussed further in Section 3.4).

### 3.2 / 3.3 *Penalties and Mutual Legal Assistance / Penalties and Extradition*

57. Pursuant to Article 3(1) of the Convention, criminal penalties for natural persons must include the "deprivation of liberty" sufficient to enable mutual legal assistance (MLA) and extradition. Lithuania does not take criminal penalties into consideration in granting MLA or extradition as the Criminal Code does not make international cooperation conditional on a minimum sanction of deprivation of liberty. Some international treaties to which Lithuania is a Party make extradition conditional on a minimum period of deprivation of liberty of at least one year (e.g. Article 2, European Convention on Extradition (1957)). Lithuania notes that the available sanctions for most of the categories of active bribery in Article 227 (ranging from 4 to 7 years' imprisonment for the other categories of bribery offences) allow Lithuania

<sup>44</sup> Ruling of 10 June 2003; Ruling of 26 January 2004; Ruling of 3 November 2005.

<sup>45</sup> Cassation Rulings in Criminal Cases No. 2K-7-45/2007; 2K-256/2009; 2K-503/2010; 2K-192/2011, as cited in Decision of the Supreme Court, Case No. 2K-409/2014 (21 October 2014).

<sup>47</sup> Case No. 2K-48-696/2017.

to seek and provide extradition under all relevant multilateral and bilateral treaties to which it is a party. The active bribery misdemeanour (Article 227(4)) entails 2 years' restriction of liberty and is therefore not an extraditable offence in Lithuania.

### **3.4 Seizure and Confiscation**

58. Article 3(3) of the Convention requires each Party to take such measures as necessary to ensure that the bribe and the proceeds of the bribery of the foreign public official are subject to seizure and confiscation, or that monetary sanctions of "comparable effect" are applicable.

#### **3.4.1 Seizure**

59. Once a pre-trial investigation has commenced, pre-trial judges can order seizure of property under CCP Article 147. A prosecutor or pre-trial investigation officer may undertake seizures in urgent cases but must obtain a ruling from a pre-trial judge on the legitimacy of the coercive measure within three days of the seizure (CCP Article 160<sup>1</sup>). Prosecutors may impose provisional restraint of property that could be subject to confiscation or extended confiscation against both natural and legal persons (CCP Article 151). Provisional restraint of property can be imposed for a maximum period of one year (six months with an option of extension for two three-month periods). Serious and grave crimes can have unlimited extensions of the period of provisional restraint. A 2012 MONEYVAL report recommended that Lithuania ensure, through a review of past and current practice, that the limited period for seizure does not hinder unnecessarily the effective targeting of proceeds from crime.<sup>48</sup>

#### **3.4.2 Confiscation**

60. Pursuant to CC Articles 67 and 72, confiscation is obligatory where criminal instruments or direct or indirect proceeds are identified, regardless of whether the property is held by the offender or other natural or legal persons. Provisions on confiscation are the same for both natural and legal persons. Confiscation is mandatory upon conviction but also applies when a person is released from criminal liability or sanctions (Article 72(1)). In accordance with Supreme Court jurisprudence interpreting CPC Article 94(1)(1), confiscation can also be imposed when a suspect dies or has not reached the minimum age of criminal liability, or when conviction is precluded due to expiry of the statute of limitations.<sup>49</sup>

61. Lithuania allows for confiscation of the equivalent value of the property when it has been concealed, consumed, belongs to third parties, or cannot be taken for other reasons (Article 72(5)). Confiscation can be imposed on a person other than the offender when: s/he is aware or ought to have been aware that the property was used for the commission of a criminal act; s/he receives the property by way of an artificial transaction; s/he is a family member or close relative of the offender; it is a legal person and the offender or the offender's close relatives hold majority shares or management positions. Extended confiscation applies to the foreign bribery offence and enables the State to appropriate part or all of the offender's property (or the equivalent monetary amount) that is disproportionate to his/her income when the offender fails to prove the legitimate origin of such property (Article 72<sup>3</sup>). CC Article 230(6) was enacted on 10 November 2016 to clarify that, in the context of bribery, criminal proceeds include property directly or indirectly obtained through bribing, including advantages obtained by a desired act or omission of a public official, irrespective of whether such act or omission was undertaken legally. This serves to clarify previous Supreme Court jurisprudence which cast doubt as to whether it would be possible to

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<sup>48</sup> MONEYVAL, Lithuania: Report on Fourth Assessment Visit (2012), p. 58.

<sup>49</sup> Supreme Court, Overview No. AB-32-1 of court practice in applying confiscation (Article 72) (18 February 2010); Case No. 2K-409/2014.

confiscate the proceeds of bribes for acts that would otherwise have been performed or that were legal, *per se*.<sup>50</sup>

62. In 2010, the Supreme Court issued an overview of court practice in applying confiscation under CC Article 72.<sup>51</sup> The court noted that the bribe itself is both an instrument (for the briber) and proceeds (for the person receiving the bribe). It further explained that when calculating the proceeds to be confiscated, the advantage obtained through bribery can include material benefits but also elimination of any future material liability. It stipulates that courts should, in these cases, order recovery of a monetary amount corresponding to the value of the liability avoided. For example, if a bribe was paid to a tax officer to avoid income tax, then the briber should be ordered to pay the amount of income tax that was avoided.

### 3.5 Additional Civil and Administrative Sanctions

63. Article 3(4) of the Convention requires each Party to consider the imposition of additional civil or administrative sanctions. Commentary 24 to the Convention notes that such additional sanctions could include exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or from the practice of other commercial activities; placing under judicial supervision; and a judicial winding-up order.

64. Lithuania refers to Constitutional Court jurisprudence that the imposition of cumulative criminal and administrative penalties for the same offence would be a violation of the principle of *ne bis in idem*.<sup>52</sup> However, Lithuania notes that natural or legal persons found guilty of the foreign bribery offence are not precluded from civil liability for damages arising from the illegal conduct. A civil suit must be brought in the same criminal case or submitted to a civil court following criminal proceedings where damage to the State has been established.<sup>53</sup> To date, the State has never filed a civil claim in a domestic bribery case. It is unclear on what basis the State could establish standing for a civil suit in a foreign bribery case. Even if standing was established, it may be difficult to prove and quantify the actual damage. The use of civil damages orders in foreign bribery cases therefore appears unlikely.

65. The Law on Public Procurement was amended by Law No. XIII-327 of 2 May 2017 and will enter into force on 1 July 2017. Article 46 of the Law on Public Procurement replaces previous Article 33(1)(1) on grounds for excluding suppliers and implements EU Directive 2014/24/EU. It requires that suppliers (both natural and legal persons) convicted of bribery, bribery of an intermediary, or graft be excluded from public procurement. The exclusion applies to natural persons (or directors, accountants, or other persons entitled to represent, control, adopt decisions or enter into transactions on behalf of legal persons) and legal persons against whom “a judgment of conviction was passed and became effective” within the past five years. CC Article 97 governs the duration of the conviction, and hence the exclusion period for the purposes of the Law on Public Procurement. For natural persons, this can vary between the end of the penalty to 10 years after the penalty is served. For legal persons, the duration is fixed at 5 years from the date of judgment. All Lithuanian authorities engaged in public procurement must implement Article 46 and require suppliers to submit an extract from the judicial record or a certificate issued by the

<sup>50</sup> Noting that, according to jurisprudence of the Constitutional Court, court practice, which was established before the amendments of the relevant law, is applicable only as far as it is compatible with the updated text and meaning of the amended law (Decision No. 81-2903 (13 May 2004); No. 36-1292 (28 March 2006); No. 111-4549 (24 October 2007)).

<sup>51</sup> Overview No. AB-32-1.

<sup>52</sup> “The constitutional principle *non bis in idem* also means, inter alia, that if a person, who has committed a deed which is contrary to law, has been held administratively but not criminally liable, i.e. he was imposed a sanction—a penalty not for a crime but for an administrative violation of law—he cannot be held criminally liable for the said deed.” (Decision No. 01/04 (10 November 2005), available in English: <http://www.lrkt.lt/en/court-acts/search/170/ta1313/content>).

<sup>53</sup> CCP Art. 110 provides that a civil claimant can be a natural or legal person, including the state; Article 117 requires a prosecutor to bring a civil action in criminal cases where the offence has caused damages to the State.

Ministry of the Interior. Lithuania does not collect statistics concerning companies excluded from public procurement.

#### **4. Article 4: Jurisdiction**

##### **4.1 Territorial Jurisdiction**

66. Convention Article 4(1) requires each Party to establish jurisdiction for the foreign bribery offence when it is committed “in whole or in part in its territory.” Commentary 25 clarifies that “an extensive physical connection to the bribery act is not required.”

67. CC Article 4 establishes jurisdiction for offences committed in whole or in part in Lithuanian territory. The place of commission of the offence is defined as the place in which a person acted, ought to have acted, or could have acted, or the place in which the consequences occurred and includes the place where accomplices acted. Furthermore, a single criminal act committed both in Lithuania and abroad is considered to have been committed in the territory of Lithuania if it was commenced, completed, or discontinued in Lithuania.

##### **4.2 Nationality Jurisdiction**

68. Article 4(2) of the Convention requires that where a Party has jurisdiction to prosecute its nationals for offences committed abroad it shall “take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official.”

69. CC Article 5 establishes jurisdiction over Lithuanian citizens and permanent residents for crimes committed abroad, subject to dual criminality (Article 8(1)) and compliance with the principle of *ne bis in idem* (Article 8(2)). Article 7 CC establishes universal jurisdiction over a list of offences governed by international treaties, including the active bribery offence in Article 227. Under this provision, Lithuania has jurisdiction to prosecute the bribery of foreign public officials regardless of the citizenship and/or place of residence of the defendant; the place of commission of the offence; and whether it is criminalised under the laws of the place where the crime occurred. Supreme Court jurisprudence (and the Commentary on the Criminal Code) clarifies that, in accordance with the principle of *pacta sunt servanda*, universal jurisdiction takes precedence in cases involving transnational crimes governed by international treaties and that therefore the dual criminality limitation that applies to other offences would not apply.<sup>54</sup> However, the Court found that the principle of *ne bis in idem* (as set out in CCP Article 3(1)(8)) would prevent the exercise of universal jurisdiction under Article 7. CCP Article 3(1)(8) provides that a criminal procedure may not be instituted (or must be terminated) where a court judgment, court order or prosecutor’s decision to terminate the procedure has become effective for the same charge. Ongoing proceedings in another country are therefore not an obstacle to prosecuting a Lithuanian national or company for the same offence. However, foreign bribery cases terminated through settlement arrangements in other countries are likely to be precluded from prosecution in Lithuania. Lithuania cited a human trafficking case in which the court exercised universal jurisdiction while nevertheless establishing a territorial nexus, as the victim was recruited in Lithuania.<sup>55</sup> Exercise of jurisdiction in foreign bribery cases should be followed up as practice develops, with particular attention to whether the principle of *ne bis in idem* inhibits prosecutions when criminal proceedings are ongoing in another country or a settlement arrangement has been concluded.

70. Lithuania asserts that universal jurisdiction applies equally to natural and legal persons and that there are no restrictions on exercising jurisdiction over foreign or Lithuanian legal persons for the foreign

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<sup>54</sup> Commentary on the Criminal Code of the Republic of Lithuania. General Part. Concluded by Assoc. Dr. J Prapiestis. Vilnius, 2004. Pg.59.

<sup>55</sup> Court of Appeal of Lithuania, Case No. 1A-66/2011; CC Art. 5.

bribery offence. This is based on both the definition of legal entity in Civil Code Article 2.33(1) and the Criminal Code provision for criminal liability of legal persons (Article 20), neither of which requires any territorial nexus with Lithuania, such as place of registration or incorporation, activities, or legal form.

#### **4.3 Consultation Procedures**

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

72. CCP Article 68 provides for transfer of criminal proceedings to and from foreign authorities or international organisations. CCP Article 68<sup>1</sup> provides for information exchange and consultations with competent authorities of EU member states to avoid parallel proceedings. Lithuania states that, in practice, such consultations are conducted with EU member states and non-member states (in accordance with relevant international treaties) although no consultations over jurisdiction in bribery cases have taken place to date. Lithuania also enlists the support of Eurojust, the European Judicial Network and the European Anti-Fraud Office (OLAF) to facilitate and accelerate cooperation.

#### **4.4 Review of Basis of Jurisdiction**

73. Convention Article 4(4) requires each Party to review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, to take remedial steps. Lithuania considers that, in applying universal jurisdiction to the foreign bribery offence under CC Article 7, it is not necessary to review its current basis for jurisdiction.

### **5. Article 5: Enforcement**

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

#### **5.1 Rules and Principles Regarding Investigations and Prosecutions**

75. Criminal proceedings against both natural and legal persons are governed by Lithuania’s Criminal Procedure Code (CCP). Investigations into foreign bribery, are carried out by either the Prosecution Service’s central office (the Prosecutor General’s Office (GPO)), or by a pre-trial investigation institution under the supervision of the GPO. CCP Article 165 designates the police, the State Border Guard Service, the Special Investigation Service (STT), the Military Police, the Financial Crimes Investigation Service (FCIS), the Customs of the Republic of Lithuania and the Fire and Rescue Department as pre-trial investigation institutions. The Police, the FCIS, and STT are all mandated to conduct pre-trial investigations into corruption offences and prosecutors have the discretion to establish investigation groups with representatives from each of these agencies. Lithuania indicates that while there is no regulatory basis for requiring the STT to investigate foreign bribery cases, in 2012 the Prosecutor General instructed prosecutors to commission the STT to investigate all cases of ‘complex corruption.’<sup>56</sup> Lithuania asserts that foreign bribery cases would fall into this category.

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<sup>56</sup> Decision of the Prosecutor General No. 17.2-7188 (28 March 2012) “On the Pre-trial Investigations the Execution Whereof is Assigned upon the Special Investigations Service”, addressed to chief prosecutors of regional prosecutor’s offices.

5.1.1 *Opening a pre-trial investigation*

76. A pre-trial investigation must be opened by either a prosecutor or a pre-trial investigation officer (in corruption cases, an officer of the STT) upon receipt of a complaint, statement, or report of criminal activity; or identification of elements of criminal activity.<sup>57</sup> Investigations can thus be opened on the basis of mutual legal assistance (MLA) requests, as well as anonymous or unsourced information such as whistleblower or media reports. Lithuania states that where a case involves both natural and legal persons, investigations into the individual and corporation should be conducted together. However, as outlined in section A.2.3.1, an investigation into a legal person is not dependent on an investigation into a natural person and may be conducted separately.

77. Within the Prosecution Service, corruption investigations are organised and supervised by prosecutors from the Department for Investigation of Organised Crime and Corruption (OCCI). The GPO and five regional prosecution offices each have their own OCCI Bureau. Regulations governing the Prosecution Service were amended in April 2017 to explicitly state that pre-trial investigations into foreign bribery should be handled by the GPO rather than one of the regional prosecution offices. Lithuania states that foreign bribery would always fall within this category. Thus upon detecting or receiving a complaint of foreign bribery, a given regional prosecution office must open an investigation and immediately notify the OCCI within the GPO.<sup>58</sup>

78. The STT has both a Complaints Division and regional offices (including in Vilnius), but no central office. Where the Complaints Division receives a report of foreign bribery, it must also notify the GPO immediately. Where corruption is detected by or reported to one of the STT's regional offices, it must open an investigation and notify the OCCI within its regional prosecutor's office. However, again, reports of foreign bribery must be reported to the OCCI within the GPO directly. Within the GPO's OCCI, there are eight prosecutors specialised in corruption offences. A foreign bribery case would be assigned to one of these prosecutors depending on their workload.

79. In relation to foreign bribery allegations, regardless of whether it is the STT or GPO that opens an investigation, the GPO has the discretion to either conduct the investigation itself, or delegate this task to the STT under the supervision of a prosecutor from the GPO.<sup>59</sup> Where the GPO decides to conduct its own investigation, it can still direct the STT to carry out specific investigative tasks. Pursuant to the Prosecutor General's Recommendations on the Allocation of Investigations to Pre-Trial Investigation Authorities, the GPO should conduct its own investigations into cases of significant importance to the public, unless the case is assigned to another specialised unit, including the STT. Lithuania states that in practice, prosecutors conduct pre-trial investigations themselves for various reasons including greater efficiency, competency, and impartiality, and due to the complexity of investigations. It nonetheless appears entirely at the prosecutor's discretion whether he/she retains or delegates a foreign bribery investigation.

80. The STT and Prosecution Service can only refuse to open a pre-trial investigation in a limited number of circumstances set out in legislation (e.g. where there are no elements of a crime, the accused is dead or a minor etc.)<sup>60</sup> Where such a refusal is made, authorities must submit a reasoned report to the person/institution that filed the statement. A refusal by the STT must be approved by the head of the agency and can be appealed to the prosecutor. If the prosecutor also refuses, its decision can be appealed to a pre-trial investigative judge. The decision of the pre-trial judge can be appealed to a regional court

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<sup>57</sup> CCP Arts. 166, 169, 171.

<sup>58</sup> Competence Provisions of prosecutors and the Prosecution Service of the Republic of Lithuania, Article 7.1.4.4, 7.1.5.4, 8.1.4.4, & 8.1.5.4.

<sup>59</sup> CCP Arts. 169 & 171.

<sup>60</sup> CCP, Article 3(1)

pursuant to CCP Article 168(4) and the procedure set out in CCP Part X. The decision of the regional court is final.

### 5.1.2 *Conducting a pre-trial investigation*

81. Where the STT conducts the investigation, the head of the STT is ultimately responsible for overseeing the investigation and ensuring that it is completed within the shortest possible period of time. In this situation, the STT is required to perform all mandatory procedural actions under the CCP and other steps that do not restrict a person's rights and freedoms including questioning witnesses and suspects and inspecting items relevant to the investigation. The STT must fulfil the instructions of the prosecutor, and keep the prosecutor informed of the progress within an agreed timeframe. While the extent of the oversight is ultimately at the supervising prosecutor's discretion, certain key decisions, including whether to suspend, terminate, or hand the case to the court for examination can only be made by the supervising prosecutor. Other investigative steps must be carried out by a pre-trial investigative judge at the request of the supervising prosecutor. These include coercive measures such as detention, search and seizure, wiretapping, surveillance, removal from office, and questioning witnesses and suspects under oath.<sup>61</sup> A pre-trial investigative judge is assigned to a case as needed, and cannot perform any procedural acts on his/her own initiative. Where the Prosecution Service conducts its own investigation, it has the right to carry out the abovementioned mandatory procedural steps itself, assign specific tasks to the STT, or request the STT's assistance. In urgent cases, the STT and/or supervising prosecutor may perform certain coercive measures, such as search and seizure; however, they must notify and seek the approval of a pre-trial judge immediately after doing so.

### 5.1.3 *Suspending and terminating a pre-trial investigation*

82. A pre-trial investigation must be suspended where investigators have exhausted all procedural steps but failed to identify a criminal offender. As outlined above, a decision to suspend a pre-trial investigation can only be taken by a supervising prosecutor.<sup>62</sup> The grounds for terminating a pre-trial investigation are set out in the CCP.<sup>63</sup> Depending on the circumstances, a pre-trial investigation may be terminated by a prosecutor, pre-trial judge, or a pre-trial judge approving a prosecutor's decision.

### 5.1.4 *Commencing court proceedings*

83. The Prosecution Service is responsible for preparing the indictment upon completion of the pre-trial investigation and submitting it to the competent court. The District Court will hear all cases of non-aggravated foreign bribery while cases of aggravated foreign bribery will be heard by the Regional Court.<sup>64</sup> The Head or Deputy Head of the Court or Head of the Division of Criminal Cases then appoints a trial judge who must decide about transferring the case to trial within 15 days if the defendant has been arrested, or within one month if the defendant has not been arrested. The trial must commence within 20 days of the decision to transfer the case to trial, or three months for complex cases or those large in scope.<sup>65</sup> Lithuanian law does not provide for plea agreements, however as discussed above under the section on Defences, the provisions for release from criminal liability in CC Article 38 appear similar to a deferred prosecution agreement.

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<sup>61</sup> CCP, Art. 173.

<sup>62</sup> CCP, Art 170.

<sup>63</sup> CCP, Art. 12.

<sup>64</sup> CCP, Arts. 224 and 225.

<sup>65</sup> CCP, Art. 240.

## 5.2 *Investigation time-limit*

84. The CCP provides that pre-trial investigations must be completed within the shortest time possible but no longer than three months for misdemeanours, six months for less serious offences, and nine months for serious and grave offences.<sup>66</sup> Where a case is “highly complex” the investigation time limit may be extended indefinitely on approval of a senior prosecutor (one level above the prosecutor supervising the investigation).<sup>67</sup> However, pursuant to CCP Article 215, if an investigation is not complete within six months of the first interview, the suspect (or his representative or legal counsel) may file a complaint with the investigative judge who can then decide whether to, dismiss the complaint; instruct the prosecutor to complete the investigation within a prescribed time limit; or terminate the pre-trial proceedings.<sup>68</sup> The supervising prosecutor may apply to the pre-trial investigation judge requesting an extension of the time limit set by the judge. Lithuania states that both provisions are intended to ensure that investigations are completed in a timely manner and that they do not pose a problem in practice. Nonetheless, given the complex nature of foreign bribery investigations, the basic pre-trial investigation time limits appear too short and should be examined during Phase 2. In particular, the Working Group should follow up on the practical application of the provisions extending investigation time limits.

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

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

86. The Lithuanian authorities explain that both the STT and Prosecution Service are independent and impartial law enforcement bodies that operate within the mandated authority of the Lithuanian Constitution, national legislation and international treaties. As outlined above, it is mandatory for the STT and Prosecution Service to initiate a pre-trial investigation as soon as they become aware of criminal activity. Only the supervising prosecutor or pre-trial investigative judge has the authority to suspend or terminate an investigation, and this must be based on specific legislative grounds.

87. Lithuania’s Law on the Special Investigation Service prohibits state institutions, agencies, political parties, public organisations, mass media, and all other natural and legal persons from interfering with the work of the STT.<sup>69</sup> This same law prohibits the head of the STT from engaging in a number of activities that could compromise his/her independence (e.g. membership in political parties, representing interest of national or foreign enterprises etc.). The head of the STT is appointed and dismissed by the President of the Republic of Lithuania, with the consent of the *Seimas* based on statutory grounds<sup>70</sup>

88. The independence of prosecutors is guaranteed by the Constitution and the Law on the Prosecution Service. These provide that prosecutors shall be independent of all state institutions and free from any political, economic, or other unlawful influence. The Prosecution Service is headed by the Prosecutor General who is appointed and dismissed by the President of Lithuania with the approval of the *Seimas*, based on set legislative criteria. The Prosecutor General is appointed for a term of five years and cannot hold office for more than two successive terms.<sup>71</sup> Pre-trial investigative judges are judges of the

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<sup>66</sup> CCP Art. 172 & 176.

<sup>67</sup> Article 15, Law on the Prosecution Service.

<sup>68</sup> CCP Art. 215.

<sup>69</sup> Constitution, Art. 118(3) and Republic of Lithuania Law on Prosecution Service, Art. 118.

<sup>70</sup> Law on the Special Investigative Service, Arts. 11 and 12, and 15.

<sup>71</sup> See Chapter 4, Law on the Prosecution Service.



District Court, appointed by the Chairman of the District Court. The principle of judicial independence is enshrined in the Constitution and reflected in various other statutes.<sup>72</sup>

89. Interference with the functions of any public official, including investigators, prosecutors, and judges is an offence punishable by a fine, or up to two year's imprisonment.<sup>73</sup> The CCP sets out a procedure for reviewing the legitimacy or validity of decisions made during criminal proceedings, where there is evidence of interference. As outlined above, unlawful or unjustified decisions of a pre-trial investigative authority can be appealed to the supervising prosecutor and a senior prosecutor thereafter. In general, all decisions made by the Superior Prosecutor can be appealed to the pre-trial investigative judge assigned to the case (i.e. the District Court), and to the Regional Court thereafter

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

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

91. Limitation periods in Lithuania vary depending on the category of offence. CC Article 95(1) sets out a three-year statute of limitations for a misdemeanour; twelve years for a less serious premeditated crime, and fifteen years for a serious crime. Therefore, all foreign bribery cases except the bribery misdemeanour (involving a bribe of less than EUR 37.66) will have a twelve or fifteen year limitation period. CCP Article 387(3) provides that a legal person may be held liable even if the natural person is released from criminal liability due to expiry of the state of limitations. The limitation period commences from the moment of commission of the criminal act and runs until the passing of a judgment (Article 95(2)). With respect to bribery offences involving a series of bribe instalments, Lithuania states that the limitation period would run from the moment of the last bribe instalment. In relation to the end of the limitation period, Supreme Court jurisprudence clarifies that the limitation period stops running after the decision of the court of first instance and therefore cannot be grounds for dismissing an appeal if it expires following the trial judgment.<sup>74</sup> An MLA request is not a ground for suspending or interrupting the limitation period during the pre-trial investigation. However, the limitation period can be suspended for a maximum of five years by the court, during the trial, due to absence of the defendant or council for the defence; pending a response to an MLA request; for the prosecutor or pre-trial investigative judge to carry out procedural steps; or for new defence council to prepare the case.

## **7. Article 7: Money Laundering**

### **7.1 Money Laundering Offence**

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

93. Money laundering is prohibited under CC Article 216 which sets out an offence for "legalisation of property obtained by criminal means." The offence applies to anyone who, seeking to conceal or legalise his/her own property or the property of another, "acquires, manages, uses, transfers...performs financial operations, enters into transactions..." with that property "while being aware that it has been obtained by criminal means". The offence therefore applies to self-laundering. It also applies to anyone who "conceals the true nature, source, location, disposition, movement, or ownership of or other rights..."

<sup>72</sup> Constitution, Art. X; Law on Courts Articles 2, 3, & 46; Code of Civil Procedure, Art. 21, CCP, Art. 44; and Law on Administrative Proceedings, Art. 7.

<sup>73</sup> CC, Art. 288.

<sup>74</sup> Decision of the Supreme Court, Case. No. 2K-550/2012.

of property s/he is aware was obtained by criminal means. This is an “all of crime approach” meaning that all offences under the Criminal Code constitute a predicate offence for the purposes of money laundering.

94. CC Article 224 explains that the offence applies to any property that is obtained either directly or indirectly from a criminal act and that no conviction is required. A Court of Appeal judgment provides that “[i]n order to acknowledge that property has been obtained by criminal means, it is enough to build on the evidence of the case, clearly proving the criminal origin of the property.”<sup>75</sup> As Lithuania exercises universal jurisdiction over the offence of bribery of foreign public officials, it does not matter whether the predicate offence took place within Lithuania or abroad. The requirement that the accused “be aware” that the property is obtained by criminal means appears to set a high burden of proof. The Supreme Court has previously stated that “knowledge” may be inferred from “objective factual circumstances.”<sup>76</sup> Lithuania’s Phase 2 evaluation should explore the practical impact of this mental element on money laundering prosecutions.

95. The money laundering offence carries a maximum prison sentence of seven years *or* a fine and is therefore categorised as a serious offence. The maximum fine for natural persons convicted of money laundering is 1 500 MSLs (EUR 56 490). Legal persons are subject to a maximum fine of 50 000 MSLs (EUR 1 883 000 EUR).<sup>77</sup> Confiscation of property can also be imposed against natural and legal persons.

## 7.2 *Money Laundering Prevention, Detection, and Reporting*

96. Lithuania’s Law on the Prevention of Money Laundering and Terrorist Financing (AML/CFT Act) sets out a framework for money laundering prevention, detection, and reporting by financial institutions, casinos, and other designated non-financial business professionals including auditors, accountants, lawyers, insurers, trust service providers, and tax advisors (hereafter referred to as ‘reporting entities’).<sup>78</sup> A range of bodies are responsible for supervising and ensuring that reporting entities within their competence comply with the AML/CFT Act and corresponding regulations.<sup>79</sup>

97. The AML/CFT Act, along with the Law on the Financial Crime Investigation Service establishes the scope and functions of Lithuania’s financial intelligence unit (FCIS). The FCIS is a law enforcement agency accountable to the Ministry of Interior, responsible for preventing, investigating, and reporting criminal acts related to money laundering. As part of its functions, it is responsible for receiving and analysing suspicious transaction reports submitted by reporting entities, and reports of violations detected by supervisory authorities. The FCIS is also able to exchange financial intelligence with foreign financial intelligence units.<sup>80</sup>

98. The AML/CFT Act imposes a range of record keeping and customer due diligence requirements on reporting entities.<sup>81</sup> This includes a requirement for reporting entities to carry out enhanced due diligence in all situations where the customer is not physically present for identification purposes, on correspondent banking relationships, foreign politically exposed persons (PEPs), and all other PEPs deemed to pose a high risk of money laundering or terrorist financing. Enhanced due diligence is required in all other situations where the reporting entity considers there is a “great risk of money laundering and/or

<sup>75</sup> Decision of the Court of Appeal, Case No. 1A-84/2013 (5 July 2013); Case No. 1A-44/2014 (8 May 2014).

<sup>76</sup> Decision of the Supreme Court, Case No. 2K-7-96/2012 (17 April 2012).

<sup>77</sup> Fines for natural and legal persons were calculated based on an MSL of EUR 37.66 at the time of writing this report.

<sup>78</sup> Other reporting entities include dealers in precious stones, metals, cultural property and antiques and postal service providers and bailiffs.

<sup>79</sup> These include The Bank of Lithuania; The Department of Cultural Heritage Protection; The State Gaming Control Commission; The Lithuanian Bar Association; The Chamber of Notaries; The Chamber of Auditors; The Chamber of Bailiffs of Lithuania; The Lithuanian Assay Office.

<sup>80</sup> AML/CFT Act, Art. 5(5).

<sup>81</sup> AML/CFT Act, Art. 9; Money Laundering and Terrorist Financing Prevention Guidelines for Financial Market Participants.

terrorist financing.”<sup>82</sup> A 2012 MONEYVAL report found that Lithuania’s coverage of PEPs fell short of the FATF standard on a number of fronts. Lithuania advises that these shortcomings have since been addressed through legislative amendments and will be analysed in a forthcoming follow-up report to Lithuania’s fourth round MONEYVAL report. The Phase 1 evaluation team did not have an opportunity to assess the new legislation and will examine it in the context of Lithuania’s Phase 2 evaluation.

99. As outlined above, reporting entities are required to submit suspicious and unusual transaction reports to the FCIS.<sup>83</sup> This includes, among other things, cash transactions of EUR 15 000 or more. There is no requirement to submit an STR for an electronic transaction over a specific threshold. On 3 December 2014, the Government adopted a Resolution which describes the procedure for suspending suspicious monetary transactions, including how to report them to the FCIS.<sup>84</sup> In December 2015, the Government issued guidelines for reporting entities on the identification and reporting of suspicious transactions.<sup>85</sup>

100. Certain supervising authorities have the power to impose sanctions for non-compliance of reporting entities within its supervision. These are set out in the legislation governing that supervising authority. For example, the Law on the Bank of Lithuania, sets out a broad range of sanctions that the Bank can impose on financial institutions for violations of (among others) the AML/CFT Law, including fines, removal from office, prohibition on the provision of financial services, suspension of license etc. The FCIS can also request that the District Court impose fines ranging from EUR 500 to 6000 for non-compliance with the AML/CFT Act. The imposition of sanctions remains at the Court’s discretion. The 2012 MONEYVAL report noted that in practice, supervisors had only imposed warnings for violations under the Act. Lithuania has not provided any updated statistics on the imposition of sanctions for non-compliance with the AML/CFT Act. This should therefore be followed up in the course of Lithuania’s Phase 2 evaluation.

## **8. Article 8: Accounting**

### ***8.1 Accounting and Auditing Requirements / 8.2 Companies Subject to Requirements***

101. Article 8 of the Convention requires that within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, each Party prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations for the purpose of bribing foreign public officials or of hiding such bribery. The Convention also requires that each Party provide for effective, proportionate, and dissuasive penalties in relation to such omissions and falsifications.

102. The Civil Code and Administrative Offences Code establish civil and administrative liability for omissions and falsifications concerning records, accounts, and financial statements. Article 205 of the Administrative Offence Code establishes administrative liability for natural persons in violation of accounting laws or who present false financial statements. Fines range from EUR 30 to EUR 6 000.

103. Administrative liability for false reporting by legal persons is set out in Article 223 of the Administrative Offences Code and accompanied by fines of EUR 200 to EUR 3 000, to be imposed on the head or legal representative of the legal person. CC Articles 205, 222, and 223 provide for criminal

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<sup>82</sup> AML/CFT Act, Art. 11.

<sup>83</sup> AML/CFT Act, Art. 14.

<sup>84</sup> Resolution No. 135116.

<sup>85</sup> FCIS Order No. V-240 “On Approval of Criteria for Identifying Possible Money Laundering Suspicious Monetary Operations or Transactions.”

liability for natural and legal persons for fraudulent statements on activities or assets of a legal person, as well as for fraudulent or reckless accounting, where this disables, fully or in part, determination of the person's activities, amount or structure of assets, equity, or liabilities. Criminal penalties for natural persons follow the ranges set out in CC Articles 11 and 47 and include fines ranging from EUR 18 830 to EUR 37 660 or imprisonment for two to four years. Legal persons are liable to the same sanctions for the foreign bribery offence, namely a maximum fine of EUR 1 883 000. Between 2012 and 2016, the FCIS and the State Tax Inspectorate drew up 8 326 administrative offence protocols and sanctioned 8 099 individuals for violations of accounting rules.<sup>86</sup> In the same period, 1 755 natural persons and 101 legal persons were convicted at first instance for criminal offences relating to fraudulent accounting under CC Articles 205, 222, and 223.<sup>87</sup>

104. Accounting and financial reporting requirements are established in the Law on Accounting, the Law on Financial Reporting by Undertakings, and the Law on Consolidated Financial Reporting by Groups of Undertakings. The Law on Accounting provides that persons who violate the law shall be held liable (Article 23) it does not, however, provide for sanctions for violation of its provisions. Lithuania states that the sanctions set out in the Civil Code, Administrative Offences Code, Criminal Code, and Law on Tax Administration for accounting and tax offences would be applied to a violation of the Law on Accounting. Detailed reporting requirements are set out in the above laws and will be examined in Phase 2.

### 8.3 *External Auditing and Internal Company Controls*

105. The Anti-Bribery Recommendation asks Parties to ensure that laws, rules or practices with respect to external audits, and internal controls, ethics and compliance are fully used to prevent and detect foreign bribery, according to their jurisdictional and other basic legal principles (Recommendation X).

106. The Law on Audit of Financial Statements sets the rules and procedures for the audit of financial statements in Lithuania. It implements European Directive 2006/43/EU<sup>88</sup> on audit of annual and consolidated accounts and requires that the audit of a company's financial statements be carried out in accordance with International Standards on Auditing (ISAs) prepared and approved by the International Federation of Accountants. Auditors and audit entities must apply all relevant ISAs, including ISA 240 (material misstatements in financial statements due to fraud) and ISA 250 (breaches of laws and regulations resulting in material misstatements in financial statements). As of 1 March 2017, the Law on Audit implements European Audit Directive 2014/56/EU<sup>89</sup> and is in line with the requirements of EU Regulation No 537/2014<sup>90</sup> on specific requirements regarding statutory audit of public-interest entities. There are now more stringent requirements for auditor independence and specific, additional requirements for auditors and audit firms that carry out the audit of and for public interest entities.<sup>91</sup> The recent amendments to the Law on Audit have strengthened the role and independence of audit committees,

<sup>86</sup> Specifically, violation of Article 173-1 of the former Code of Administrative Infringements of the Law which is now Article 205 of the Administrative Offences Code. Drawing up a protocol for an administrative offence is a final document of an administrative inquiry (or preliminary investigation) then the case is transferred to a court or other competent body to pass a final decision.

<sup>87</sup> Source: National Court Administration.

<sup>88</sup> Available at: <http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex%3A32006L0043>

<sup>89</sup> Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0056>

<sup>90</sup> Available at : <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014R0537>

<sup>91</sup> Art. 2.24 of the Law on Audit defines a "public interest entity" as: an entity that is of significant public relevance because of the nature of its business, its size or the number of clients. A public-interest entity shall be: (1) public company whose securities are traded in the regulated market of the Republic of Lithuania and/or any other member state; (2) the bank and the Central Credit Union; (3) brokerage houses; (4) collective investment undertaking as it is defined in Republic of Lithuania Law on Collective Investment of Undertakings, pension fund as it is defined in Republic of Lithuania Law on Accumulation of Pensions and Republic of Lithuania Law on the Supplementary Voluntary Accumulation of Pensions, and occupational pension fund as it is defined in Law on the Accumulation of Occupational Pensions; (5) firms of management of undertakings of collective investment and/or pension fund/funds; (6) insurance undertaking and reinsurance undertaking; (7) central securities depository of Lithuania and operator of a regulated market.

including requirements pertaining to audit committees' composition, formation, activities, and their functions, particularly in their selection of external auditors. According to the Law on Financial Reporting by Undertakings (Article 24), annual financial statements of private limited liability companies must be audited when they have at least two of the following: a balance sheet total of more than EUR 1 800 000, a net turnover of more than EUR 3 500 000, and at least 50 employees. Public interest, state and municipal entities, public limited liability companies, private limited liability companies in which the state and/or a municipality is the shareholder, and private limited liability companies whose goods/services prices are regulated by law must also be audited. In Lithuania, a total of 3 000 companies and other entities are required to submit to annual audits.

107. With respect to internal controls, the Law on Financial Reporting by Undertakings (Article 23<sup>1</sup>) requires listed companies to provide information about the scope of risk and management thereof in their corporate governance statements.

## **9. Article 9: Mutual Legal Assistance**

### **9.1 *Laws, Treaties and Arrangements Enabling Mutual Legal Assistance (MLA)***

108. Article 9(1) of the Convention requires Parties to cooperate with each other to the fullest extent possible in providing “prompt and effective” MLA in criminal investigations and proceedings, and non-criminal proceedings against a legal person, within the scope of this Convention.

#### *9.1.1. Criminal Matters*

109. Lithuania can make and receive MLA requests in criminal matters on the basis of a treaty or reciprocity.<sup>92</sup> It follows the same procedures regardless of whether the MLA request relates to a natural or legal person. Lithuania has concluded bilateral MLA treaties with Poland, Russia, Ukraine, Belarus, Armenia, Azerbaijan, Kazakhstan, Uzbekistan, Moldova, China; Japan, and the United States. It is currently negotiating bilateral MLA treaties with Algeria, Brazil, Mexico, Egypt, the United Arab Emirates, and Ecuador. It has also entered into a range of multilateral MLA treaties including with Latvia and Estonia, the European Convention on Mutual Legal Assistance in Criminal Matters and Additional Protocols; United Nations Convention against Transnational Organised Crime; United Nations Convention against Corruption and Convention on Mutual Legal Assistance in Criminal Matters between EU Member States and its Additional Protocol. In the absence of an international treaty or EU instrument, Lithuania applies the principle of reciprocity as the legal basis for seeking or providing MLA. In such cases, the MLA request must not violate the Constitution, domestic legislation, or fundamental principles of criminal procedure. Lithuania does not make the provision of MLA conditional on a minimum penalty of a deprivation of liberty.

110. The central authority for incoming and outgoing MLA requests is dependent on the instrument under which the request is made. With respect to MLA between Lithuania and other EU Member States, pre-trial investigation requests are made directly between pre-trial investigation bodies, and requests at the trial stage are made directly between the courts. Requests and responses may also be transmitted directly between the courts, prosecution services, and pre-trial investigation authorities where a bilateral or multilateral treaty provides for this. If the relevant instrument does not specify a central authority, the GPO will take on this role for incoming and outgoing MLA requests in the pre-trial investigation stage. Once judicial proceedings commence, the Ministry of Justice will take over as the central authority.<sup>93</sup> Requests based on reciprocity are handled in the same manner. Where there is no international instrument, requests and responses must be transmitted through diplomatic channels (i.e. foreign ministries).

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<sup>92</sup> CCP, Art. 67.

<sup>93</sup> CCP, Art. 66(2) & 67(2).

111. Requests received or transmitted during a pre-trial investigation are handled by pre-trial investigation bodies (in the case of foreign bribery, the STT, and GPO). All requests received during trial stage are initiated and fulfilled by the courts. Requests are translated into Lithuanian as necessary, depending on the nature and urgency of the request. Investigative tools and coercive measures available for domestic criminal investigations under the CCP can be provided in response to an MLA request, including questioning the suspect, collecting data and serving documents on the suspect or accused, search and seizure, obtaining documents and other items from undertakings, identification or questioning of witnesses, and access to internet accounts, bank accounts, or information system data.<sup>94</sup> Lithuania can also undertake procedures not included in the Criminal Procedure Code, where they are included in the relevant treaty and do not violate the Constitution or other Lithuanian law. Finally, Lithuania notes that in addition to formal MLA, Lithuania can spontaneously exchange information with foreign authorities. Such exchange requires the prosecutor's approval if it occurs during the pre-trial investigation.

### 9.1.2 *Non-Criminal Matters*

112. Lithuania does not have any specific laws governing the provision of MLA in *non-criminal* matters relating to legal persons. Lithuania provides that such requests would be governed by the treaty under which the MLA request was made. It notes that as foreign bribery is a criminal offence in Lithuania, it does not envisage any obstacles regarding MLA requests received from country where foreign bribery is a non-criminal matter (e.g. countries that have administrative rather than criminal liability for legal persons). Lithuania notes that in such situations, it would still execute the request under the CCP and could thus provide the full range of assistance available under this law.

## 9.2 *Dual Criminality for MLA*

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

114. Lithuanian law does not make the provision of MLA conditional on dual criminality. However, Lithuania notes that it *may* assess dual criminality in exceptional cases, for example, where the type of assistance requested is not envisaged by the Criminal Procedure Code. Regardless, Lithuania will abide by the conditions on dual criminality set out in the treaty under which MLA is sought.<sup>95</sup> Therefore dual criminality is deemed to exist for all offences within the scope of the Anti-Bribery Convention.

## 9.3 *Bank Secrecy*

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

116. Lithuanian law does not set out any specific grounds for declining MLA requests. Therefore, any refusal must be made pursuant to the conditions set out in the relevant international treaty under which the request is made. Lithuania's Civil Code protects the confidentiality of bank secrets.<sup>96</sup> However, Lithuania's Law on Banks provides that bank secrecy may be lifted where it is necessary for institutions to carry out (among other things) pre-trial investigations, criminal intelligence, intelligence, tax administration, and supervision of financial markets.<sup>97</sup> To obtain banking information, the supervising prosecutor must obtain a court order giving the Prosecution Service and relevant pre-trial investigation authorities (e.g. STT, FCIS)

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<sup>94</sup> CCP, Art. 67.

<sup>95</sup> CCP, Art. 67(1).

<sup>96</sup> Civil Code, Art. 6.925.

<sup>97</sup> Law on Banks, Art. 55(6).

the right to obtain (from public and private sector organisations) documents and other information “necessary for the investigation of a criminal act.” Unless the laws or data provision contract concluded with the bank provide otherwise, the relevant pre-trial investigative authority may provide the bank with written notice setting out the information it is requesting and giving the bank 20 days to respond or five days to provide a reasoned refusal.<sup>98</sup> Persons who refuse to comply with such an order may be subject to a fine.<sup>99</sup> It does not appear that Lithuania would have difficulties accessing banking information in response to an MLA request. However, Lithuania’s Phase 2 evaluation should explore whether authorities experience any challenges in practice.

## **10. Article 10: Extradition**

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

### **10.1 Legal Basis for Extradition for Foreign Bribery**

118. Extradition in Lithuania is governed by international treaties or UN Security Council resolutions.<sup>100</sup> The Anti-Bribery Convention is thus considered a legal basis for extradition relating to foreign bribery. Lithuania has ratified the European Convention on Extradition of 13 December 1957 and its Additional Protocols of 1975, 1978, and 2010. It is also a Party to the Council Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW) and the Surrender Procedures between Member States. In addition to these multilateral treaties, Lithuania has concluded bilateral treaties on extradition with the United States and China. Where no legal ground for extradition exists, Lithuania can request extradition based on “good will” but cannot respond to an extradition request on this basis (i.e. the principle of reciprocity does not apply).

119. The GPO is the central authority for all incoming extradition requests as well as outgoing extradition requests during pre-trial proceedings. The Ministry of Justice is responsible for outgoing extradition requests during court proceedings. Lithuania advises that it may also use diplomatic channels, and in urgent cases, requests may be made through Interpol. Extradition requests submitted through the EAW are subject to a simplified procedure that eliminates the need to use diplomatic channels and removes the requirement of dual criminality for a wide range of crimes, including corruption. The request must identify the accused, and contain authenticated copies of the arrest warrant or detention order; statement of offences for which extradition is requested, a copy of relevant laws, and any additional information required under the treaty that serves as the basis for extradition. Where the documentation is insufficient, Lithuania may request additional documentation to supplement the request.

120. Once an extradition request is received, it is translated into Lithuanian and depending on the instrument under which extradition was sought; a regular or simplified extradition procedure is initiated. Under a *regular* procedure, the GPO will submit the application to the Vilnius County Court which shall hold a hearing within seven days. The County Court’s decision may be appealed to the Court of Appeal within seven days and a hearing held within 14 days thereafter. The Court of Appeal’s decision is final and not subject to further appeal.<sup>101</sup> Under a *simplified* procedure, the Vilnius County Court must hold a

<sup>98</sup> The STT has data provision contracts with banks that may set out a shorter period of time within which the bank must respond. Lithuania provides that the STT has such contracts with all major banks operating in Lithuania.

<sup>99</sup> CCP, Art. 155.

<sup>100</sup> CC Art. 9 and CCP Ar. 71.

<sup>101</sup> CCP, Art. 73.

hearing within three days and its ruling is final. A simplified procedure may only be applied where: it is provided for by treaty; Lithuania has received an official extradition request from the foreign state; the person subject to extradition agrees; and the GPO approves.

121. Lithuania reserves the right to refuse an extradition request (or surrender request under an EAW) for various reasons, including where the conduct is not regarded as a crime or misdemeanour under the Criminal Code; the act was committed within Lithuania's territory; the crime is political in nature; the person has been convicted, acquitted, or released from criminal liability or penalty (in any country); the person may be subject to capital punishment; the statute of limitations has expired<sup>102</sup>; the person is granted amnesty or clemency (in any country); or other grounds for refusal exist under a treaty to which Lithuania is a Party.<sup>103</sup> Where the Court does not have sufficient information to make a decision, it can direct the GPO to request additional information from the requesting authority without delay.<sup>104</sup>

### **10.2 Extradition of Nationals**

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

123. Article 13 of Lithuania's Constitution prohibits the extradition of its citizens unless "an international treaty of the Republic of Lithuania establishes otherwise." Article 71, CCP expands on this, providing that Lithuania may only extradite its nationals in accordance with a treaty to which it is a party or a resolution of the United Nations Security Council.<sup>105</sup> However, in practice, Lithuania has made reservations under several international instruments, including the UN Convention against Corruption, to ensure they *cannot* be used as a legal basis for the extradition of its citizens.<sup>106</sup> Currently, Lithuanian citizens can *only* be extradited pursuant to Lithuania's bilateral treaty with the United States, or an EAW. Lithuania explains that Article 2, CCP makes the investigation of any "criminal activity" obligatory. Therefore prosecutors/pre-trial investigators would be required to take "all measures provided by law" to investigate a case where extradition is rejected on the basis of nationality "within the shortest time possible." Lithuania may also request that the foreign state transfer any criminal proceedings to Lithuania.<sup>107</sup> This appears in line with the requirement in Article 10(3) of the Convention.

### **10.3 Dual Criminality for Extradition**

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

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<sup>102</sup> Whether the statute of limitations of the requesting state is taken into account will depend on provisions of the international treaty under which extradition is sought.

<sup>103</sup> CC, Art. 9(3) and Article 9<sup>1</sup>(3)

<sup>104</sup> CCP, Art. 73(5).

<sup>105</sup> CCP, Art. 71.

<sup>106</sup> "... it is provided in subparagraph a) of paragraph 6 of Article 44 of the Convention, the Seimas of the Republic of Lithuania declares that the Republic of Lithuania shall consider this Convention a legal basis for cooperation on extradition with other States Parties to the Convention; however, the Republic of Lithuania in no case shall consider the Convention a legal basis for the extradition of Lithuanian nationals, as it is stipulated in the Constitution of the Republic of Lithuania;" (available at: [http://www.unodc.org/documents/treaties/UNCAC/Reservations\\_Declarations/Declarations\\_AndReservations14Aug2008.pdf](http://www.unodc.org/documents/treaties/UNCAC/Reservations_Declarations/Declarations_AndReservations14Aug2008.pdf)).

<sup>107</sup> CCP, Art. 68.



125. Lithuania reserves the right to deny an extradition request where dual criminality does not exist.<sup>108</sup> However, as outlined above, the Anti-Bribery Convention serves as the legal basis for extradition (of non-citizens) related to foreign bribery and thus dual criminality will be deemed to exist for all offences within the scope of Article 1 of the Convention. When determining whether an offence falls within the scope of the Convention, the Court will consider the language of the offence itself, as well as the factual circumstances of the crime.

## **11. Article 11: Responsible Authorities**

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

127. As outlined earlier in the report, the GPO is responsible for making and receiving MLA requests in the pre-trial investigation stage and the Ministry of Justice, during trials.<sup>109</sup> The GPO is the central authority for all incoming extradition requests as well as outgoing extradition requests during pre-trial proceedings. It is also responsible for Consultation procedures pursuant to Article 4(3) of the Convention. The Ministry of Justice is responsible for outgoing extradition requests during court proceedings.

## **B. IMPLEMENTATION OF THE 2009 ANTI-BRIBERY RECOMMENDATION**

128. Consistent with Working Group practice, this Report only addresses Recommendation VIII of the 2009 Anti-Bribery Recommendation, relating to the non-deductibility of bribes for tax purposes.

### **1. Tax Deductibility**

129. Recommendation VIII asks OECD Member countries and other Parties to the OECD Anti-Bribery Convention to fully implement the 2009 Council Recommendation on Tax Measures for Further combating Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation). The 2009 Tax Recommendation recommends, in particular, that countries explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner. It also recommends that countries facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities, in accordance with their legal systems.

130. Lithuania's Corporate Income Tax Act and Personal Income Tax Act allow deductions for all costs incurred for the purpose of earning income or deriving economic benefit, unless provided otherwise in the relevant statute. Under the Corporate Income Tax Act, allowable expenses include "all the usual costs that an entity actually incurs for the purpose of earning income or deriving benefit," unless provided otherwise. Article 17(2) sets out a list of "limited allowable deductions" which includes costs of business trips, advertising and promotional activities, expenses for the benefit of employees and (or) their family members, sponsorship, membership fees, payments, and contributions. Amendments to the Corporate Income Tax Act and Personal Income Tax Act came into effect on 1 January 2015 and included the

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<sup>108</sup> CC, Art. 9.

<sup>109</sup> CCP, Art. 66(2) & 67(2).

following item to the list of non-deductible expenses: “expenses incurred while engaging in acts prohibited by the Criminal Code, including bribes”.<sup>110</sup> Both laws require that claims for deduction be substantiated by legally valid documents containing all the mandatory requirements for accounting documents as set out in the Law on Accounting.<sup>111</sup> The State Tax Inspectorate has translated the OECD Bribery Awareness Handbook for Tax Examiners (2009) and OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors (2013) and included them on the internal website. It has also amended the “Rules on the identification of cases involving indications of alleged corruption-related offences and communication of information on such cases to the Special Investigative Service of the Republic of Lithuania,”<sup>112</sup> which set out the procedure for detecting and reporting corruption-related offences to the STT. Presentations on the indicators of fraud and bribery as well as on examination techniques are included in training programmes for tax officials responsible for performing tax audits. In December 2016, the State Tax Inspectorate held training with the STT for 190 tax officials and 10 STT representatives, on the non-deductibility of bribes to foreign public officials, detecting bribes disguised as allowable or limited allowable deductions, and recognising and reporting indicators of bribery in the course of regular tax examinations to the STT.

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<sup>110</sup> Law on Corporate Income Tax, Art. 31(1)(20); Law on Personal Income Tax, Art. 18(3)(14).

<sup>111</sup> Law on Corporate Income Tax, Art. 11; Law on Personal Income Tax, Art. 18(8).

<sup>112</sup> Approved by Order No. V-299 of the Head of the State Tax Inspectorate of 8 September 2006 (as amended by Order No. V-380 of the Head of the State Tax Inspectorate of 5 July 2016).

## EVALUATION OF LITHUANIA

### General Comments

131. The Working Group commends the Lithuanian authorities for their high level of co-operation and openness during the examination process. The Group appreciates the extensive information and feedback provided by the authorities during the drafting of the report to ensure a comprehensive basis for the examination.

132. The Working Group recognises recent legislative reforms and considers that Lithuania's legislation largely conforms to the standards of the Convention, subject to the issues noted below. These issues, along with the practical application of other legislative provisions identified in the report, should be followed up during Lithuania's Phase 2 evaluation.

### Specific Issues

#### *Corporate Liability for Foreign Bribery*

133. Several aspects of judicial interpretation of Lithuania's criminal corporate liability provision raise particular concerns. These relate to the requirements that a corporation must, at least in theory, be able to obtain a benefit from the offence and the requirement that a corporation must "acknowledge the benefit" it received or could receive from the offence. Another concern relates to the courts' interpretation of the requirement that the employee/authorised representative commit the offence "for the benefit or in the interests of the legal entity."<sup>113</sup> To apply the law in the same manner in a foreign bribery case may be inconsistent with the requirements set out in Article 2 of the Convention and Annex II of the 2009 Anti-Bribery Recommendation. Judicial interpretation of the scope of "authorised representative" might be an additional source of concern.

#### *Sanctions for Foreign Bribery and Related Offences*

134. The aggravated bribery offence (CC Article 227(3)) is the only category of active bribery that does not have the option of imposing a fine. This could raise concerns given that most foreign bribery cases will involve bribes above the EUR 9 415 threshold at which the offence is deemed aggravated. In addition, the maximum fines applicable to the misdemeanour and non-aggravated forms of the foreign bribery offence are low and may not be proportionate to the advantage obtained in many foreign bribery cases.

135. The Supreme Court has interpreted CC Article 54(3) to include lengthy criminal proceedings as a mitigating factor which could be taken into consideration when sentencing and in some domestic corruption cases the court has taken the length of proceedings into account either as a mitigating factor in sentencing, or as a basis for dismissing the prosecution's appeals and upholding acquittals. Foreign bribery cases often involve protracted criminal proceedings due to the complex nature of the bribery schemes and the need to obtain evidence from abroad. This could impact on the effective, proportionate, and dissuasive nature of the sanctions for the offence.

#### *Investigation Time Limit*

136. Given the complex nature of foreign bribery investigations, the basic three, six and nine-month pre-trial investigation time limits are too short (CCP Articles 172 and 176). A defendant can also apply to a pre-trial investigative judge for termination of the pre-trial investigation if it is not completed within six months of the first interview (CCP Article 215) and extension of the time limit is at the discretion of the court.

## ANNEX 1 LIST OF ABBREVIATIONS AND ACRONYMS

2009 Recommendation	2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions
2009 Tax Recommendation	2009 Council Recommendation on Tax Measures for Further combating Bribery of Foreign Public Officials in International Business Transactions
AML/CFT Act	Law on the Prevention of Money Laundering and Terrorist Financing
CCP	Criminal Procedure Code
CDD	Customer due diligence
Convention	Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
EAW	European Arrest Warrant
EU	European Union
EUR	Euros
FCIS	Financial Crime Investigation Service
FIU	Financial intelligence unit
IFRS	International Financial Reporting Standards
ISA	International Standards on Accounting
MLA	Mutual legal assistance
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism
MSL	Minimum subsistence level
OCCI	Department for Investigation of Organized Crime and Corruption
OECD	Organisation for Economic Cooperation and Development
PEPs	Politically exposed persons
GPO	Prosecutor General's Office
State-owned and state-controlled enterprises	SOEs
STR	Suspicious transaction reports
STT	Special Investigation Service
UN	United Nations
Working Group	OECD Working Group on Bribery in International Business Transactions

## ANNEX 2 EXCERPTS OF RELEVANT LEGISLATION

### THE CRIMINAL CODE

#### Foreign Bribery Offence

##### **Article 227. Active bribery**

1. A person who directly or indirectly himself or through an intermediary offers, promises or agrees to give or gives a bribe to a civil servant or a person equivalent thereto or to a third party in exchange for a desired lawful act or omission of the civil servant or person equivalent thereto in exercising his powers shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to four years.
2. A person who directly or indirectly himself or through an intermediary offers, promises or agrees to give or gives a bribe to a civil servant or a person equivalent thereto or to a third party in exchange for a desired unlawful act or omission of the civil servant or person equivalent thereto in exercising his powers shall be punished by a fine or by arrest or by a custodial sentence for a term of up to five years.
3. A person who carries out the actions provided for in paragraph 1 or 2 of this Article by offering, promising or agreeing to give or giving directly or indirectly himself or through an intermediary a bribe of the value exceeding 250 MSLs shall be punished by a custodial sentence for a term of up to seven years.
4. A person who carries out the actions provided for in paragraph 1 or 2 of this Article by offering, promising or agreeing to give or giving directly or indirectly himself or through an intermediary a bribe of the value lower than 1 MSL shall be considered to have committed a misdemeanour and shall be punished by a fine or by restriction of liberty or by arrest.
5. A person, who carried out the actions provided for in paragraphs 1, 2, 3 or 4 of this Article is liable under this code both for seeking by bribe of a specific act or omission of the civil servant or person equivalent thereto in exercising his powers and for an exceptional position or a favourable attitude of this person, also regardless how his actions were perceived by a civil servant or person equivalent thereto.
6. A person shall be released from criminal liability for grafting where he was demanded or provoked to give a bribe and he, upon offering or promising to give or giving directly or indirectly himself or through an intermediary the bribe voluntarily notifies a law enforcement institution thereof within the shortest possible time, but in any case before the delivery of a notice of suspicion raised against him, also where he promises to give or gives the bribe with the law enforcement institution being aware thereof.
7. Paragraph 6 of this Article shall not apply to a person who directly or indirectly himself or through an intermediary offers or promises to give or gives a bribe to a person referred to in Article 230(2) of this Code.
8. A legal entity shall also be held liable for the acts provided for in paragraphs 1, 2, 3 and 4 of this Article.

##### **Article 230. Interpretation of Concepts**

1. The civil servants referred to in this Chapter shall be state politicians, state officials, judges and civil servants under the Law on Civil Service and other persons who, by way of employment or by holding office on other statutory grounds at state or municipal institutions or agencies, perform the functions of a government representative or have administrative powers, as well as official candidates for such office.

2. A person who, irrespective of his status under the legal acts of a foreign state or an international public organisation, performs the functions of a government representative, including judicial functions, has administrative powers or otherwise ensures the implementation of public interest through employment or by holding office on other grounds at an institution or body of a foreign state or of the European Union, an international public organisation or an international judicial institution or a judicial institution of the European Union or a legal person or another organisation controlled by the foreign state, also official candidates for such office shall be held equivalent to a civil servant. A foreign state shall mean any foreign territory, regardless of its legal status, and includes all levels and subdivisions of government.
3. Moreover, a person who is employed or holds office on other statutory grounds in a public or private legal person or another organisation or is engaged in professional activities and has appropriate administrative powers or is entitled to act on behalf of the legal person or another organisation or provides public services, also an arbitrator or jury shall also be held equivalent to a civil servant.
4. A bribe referred to in this Chapter shall mean an unlawful or unjustified reward expressed in the form of any material or another personal benefit for oneself or for another person (whether tangible or intangible, having or not having economic value in the market) in exchange for a desired lawful or unlawful act or omission of a civil servant or a person equivalent thereto in exercising his powers.
5. The exercise of powers referred to in this Chapter shall mean any use of the position of a civil servant or person equivalent thereto, irrespective whether or not it falls within the authority of the civil servant or the person equivalent thereto as prescribed by the legal acts.
6. For the purposes of application of provisions of Article 72 of this Code, a result of the acts prohibited under paragraphs 1, 3, and 5 Article 226 and under Article 227 of this Chapter shall be property of any form directly or indirectly obtained from these acts, including material advantage that emerged from a desired act or omission of the civil servant or person equivalent thereto in exercising his powers, irrespective of whether it was obtained in the course of activities which in accordance with the procedure established by legal acts may be undertaken legally, or not.

## **Intent**

### **Article 14. Forms of Guilt**

A person shall be found guilty of commission of a crime or misdemeanour where he has committed this act with intent or through negligence.

### **Article 15. Premeditated Crime and Misdemeanour**

1. A crime or misdemeanour shall be premeditated where it has been committed with a specific or general intent.
2. A crime or misdemeanour shall be committed with a specific intent where:
  - 1) when committing it, the person was aware of the dangerous nature of the criminal act and desired to engage therein;
  - 2) when committing it, the person was aware of the dangerous nature of the criminal act, anticipated that his act or omission might cause the consequences provided for by this Code and desired that they arise.
3. A crime or a misdemeanour shall be committed with a general intent where, when committing it, the person was aware of the dangerous nature of the criminal act, anticipated that his act or omission might cause the consequences provided for by this Code and, though he did not desire that they arise, consciously allowed the consequences to arise.

### **Article 16. Commission of a Crime and Misdemeanour through Negligence**

1. A crime or misdemeanour shall be committed through negligence where it has been committed through a criminally false assumption or criminal negligence.
2. A crime or a misdemeanour shall be committed through a criminally false assumption if the person who committed the act had anticipated that his act or omission may cause the consequences provided for by this Code, but recklessly expected to avoid them.
3. A crime or a misdemeanour shall be committed through criminal negligence if the person who committed it had not anticipated that his act or omission might cause the consequences provided for by this Code, although the person could and ought to have anticipated such a result based the circumstances of the act and his personal traits.
4. A person shall be punishable for commission of a crime or misdemeanour through negligence solely in the cases provided for separately in the Special Part of this Code.

### **Corporate Liability**

#### **Article 20. Criminal Liability of a Legal Entity**

1. A legal entity shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of this Code.
2. A legal entity shall be held liable for the criminal acts committed by a natural person solely where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying a managing position in the legal entity, was entitled:
  - 1) to represent the legal entity, or
  - 2) to take decisions on behalf of the legal entity, or
  - 3) to control activities of the legal entity.
3. A legal entity may be held liable for criminal acts also where they have been committed for the benefit of the legal entity by an employee or by an authorised representative of the legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person indicated in paragraph 2 of this Article.
4. A legal entity may be held liable for criminal acts where they have been committed under conditions of paragraphs 2 or 3 of this Article by another legal entity controlled by or representing the legal entity, where they have been committed for the benefit of the former legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person occupying a managing position in it or by his representative.
5. Criminal liability of a legal entity shall not release from criminal liability a natural person who has committed, organised, instigated or assisted in commission of the criminal act. Criminal liability of the legal entity for the criminal act committed, organised, instigated or assisted for its benefit or in its interests by a natural person shall not be eliminated by the natural person's criminal liability, as well as by the fact that the natural person is released from criminal liability for this act or is not subject to criminal liability due to other reasons.
6. The State, a municipality, a state and municipal institution and agency as well as international public organisation shall not be held liable under this Code. State and municipal enterprises, as well as the public establishments whose owner or stakeholder is the State or a municipality, and the public and private limited liability companies wherein the State or a municipality holds by the right of ownership all or part of shares shall not be considered to be state and municipal institutions and agencies and shall be held liable under this Code.'

#### **Article 59. Mitigating circumstances**

1. The following shall be considered as mitigating circumstances:



- 1) the offender has provided assistance to the victim or otherwise actively avoided or attempted to avoid more serious consequences;
  - 2) the offender has confessed to commission of an act provided for by a criminal law and sincerely regrets or has assisted in the detection of this act or identification of the persons who participated therein;
  - 3) the offender has voluntarily compensated for or eliminated the damage incurred;
  - 4) the criminal act has been committed due to a very difficult financial condition or desperate situation of the offender;
  - 5) the act has been committed as a result of mental or physical coercion, where such a coercion does not eliminate criminal liability;
  - 6) the commission of the act has been influenced by a provoking or venturesome behaviour of the victim;
  - 7) the act has been committed at the request of the victim, who is in a desperate situation;
  - 8) the act has been committed in violation of conditions of arrest of a person who has committed the criminal act, direct necessity, discharge of professional duty or performance of an assignment of law enforcement institutions, conditions of industrial or economic risk or lawfulness of a scientific experiment;
  - 9) the act has been committed by exceeding the limits of self-defence, where a criminal law provides for liability for exceeding the limits of self-defence;
  - 10) the act has been committed in a state of extreme agitation caused by unlawful actions of the victim;
  - 11) the act has been committed by a person of diminished legal capacity;
  - 12) the act has been committed by a person intoxicated by alcohol or drugs against his will;
  - 13) a voluntary attempt to renounce commission of the criminal act has been unsuccessful.
2. A court may also recognise as mitigating other circumstances which have not been indicated in paragraph 1 of this Article.
  3. When imposing a penalty, a court shall not take into consideration a mitigating circumstance, which is provided for in a law as constituting the body of a crime.”

## **Jurisdiction**

### **Article 4 - Validity of a Criminal Law in Respect of the Persons who have Committed Criminal Acts within the Territory of the State of Lithuania or On-board the Ships or Aircrafts Flying the Flag or Displaying Marks of Registry of the State of Lithuania**

1. The persons who have committed criminal acts within the territory of the state of Lithuania or on-board the ships or aircrafts flying the flag or displaying marks of registry of the State of Lithuania shall be held liable under this Code.
2. The place of commission of a criminal act shall be the place in which a person acted or ought to have acted or could have acted or the place in which the consequences provided for by a criminal law occurred. The place of commission of a criminal act by accomplices shall be the place in which the criminal act was committed or, if one of the accomplices acted elsewhere, the place where he acted.
3. A single criminal act committed both in the territory of the State of Lithuania and abroad shall be considered to have been committed in the territory of the Republic of Lithuania if it was commenced or completed or discontinued in this territory.
4. The issue of criminal liability of the persons who enjoy immunity from criminal jurisdiction under international legal norms and commit a criminal act in the territory of the Republic of Lithuania shall be decided in accordance with treaties of the Republic of Lithuania and this Code.

### **Article 5. Criminal Liability of Citizens of the Republic of Lithuania and Other Permanent Residents of Lithuania for the Crimes Committed Abroad**

Citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for the crimes committed abroad under this Code.

#### **Article 6. Criminal Liability of Aliens for the Crimes Committed Abroad against the State of Lithuania**

The aliens who do not have a permanent residence in the Republic of Lithuania shall be liable under a criminal law where they commit crimes abroad against the State of Lithuania as provided for in Articles 114-128 of this Code.

#### **Article 7. Criminal Liability for the Crimes Provided for in Treaties**

Persons shall be liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime where they commit the following crimes subject to liability under treaties:...

- 5) property laundering (Article 216);
- 6) bribery (Article 225);
- 7) trading in influence (Article 226);
- 8) graft (Article 227);

#### **Article 8. Criminal Liability for the Crimes Committed Abroad**

1. A person who has committed abroad the crimes provided for in Articles 5 and 6 of this Code shall be held criminally liable only where the committed act is recognised as a crime and is punishable under the criminal code of the state of the place of commission of the crime and the Criminal Code of the Republic of Lithuania. Where a person who has committed a crime abroad is prosecuted in the Republic of Lithuania, but a different penalty is provided for this crime in each country, the person shall be subject to a penalty according to laws of the Republic of Lithuania, however it may not exceed the maximum limit of penalty specified in the criminal laws of the state of the place of commission of the crime.
2. A person who has committed the crimes provided for in Articles 5, 6, and 7 of the Criminal Code of the Republic of Lithuania shall not be held liable under this Code where he:
  - 1) has served the sentence imposed by a foreign court;
  - 2) has been released from serving the entire or a part of the sentence imposed by a foreign court;
  - 3) has been acquitted or released from criminal liability or punishment by a foreign court's judgment, or no penalty has been imposed by reason of the statute of limitation or on other legal grounds provided for in that state.
3. A citizen of the Republic of Lithuania or another person permanently residing in Lithuania who has committed abroad one or more crimes provided for in Article 149(3) and (4), Article 150(3) and (4), Article 151(2), Article 151<sup>1</sup>, Article 152<sup>1</sup>, Articles 153 and 157, Article 162(1), Article 307(3), Article 308(3) and Article 309(2) and (3) of this Code shall be punishable regardless of whether the committed act is punishable under the criminal law of the state of commission of the crime.

#### **Sanctions**

#### **Article 39<sup>(1)</sup>. Release from Criminal Liability When a Person Actively Assisted in Detecting the Criminal Acts Committed by Members of an Organised Group or a Criminal Association**

1. A person who is suspected of participation in the commission of criminal acts by an organised group or a criminal association or belonging to a criminal association may be released from criminal liability where he confesses his participation in the commission of such a criminal act or his membership of the criminal association and where he actively assists in detecting the criminal acts committed by members of the organised group or the criminal association.

Paragraph 1 of this Article shall not apply to a person who participated in the commission of a premeditated murder or who had already been released from criminal liability on such grounds, also to the organiser or leader of an organised group or a criminal association.

#### **Article 42. Types of Penalties**

1. The following penalties may be imposed on a person who commits a crime:
  - 1) community service;
  - 2) a fine;
  - 3) restriction of liberty;
  - 4) arrest;
  - 5) fixed-term custodial sentence;
  - 6) custodial life sentence.
2. The following penalties may be imposed on a person who commits a misdemeanour:
  - 1) community service;
  - 2) a fine;
  - 3) restriction of liberty;
  - 4) arrest.
3. Only one penalty may be imposed on a person for the commission of one crime or misdemeanour.
4. In the cases provided for in Articles 63 and 64 of this Code, two penalties may be imposed.
5. If more than two penalties of a different type are imposed for several committed crimes, a court shall, when imposing a final combined sentence, select two penalties from those imposed: one of them being the most severe penalty, and the other one selected at the discretion of the court.
6. A person who committed a criminal act may, together with a penalty and in accordance with Articles 67, 68, 68<sup>1</sup>, 68<sup>2</sup>, 72, 72<sup>1</sup>, 72<sup>2</sup> and 72<sup>3</sup> of the Code, be imposed one or more of the following penal sanctions - prohibition of the exercise of a special right, deprivation of public rights, deprivation of the right to be employed in a certain position or to engage in certain activities, confiscation of property, the obligation to reside separately from the victim and/or prohibition to approach the victim closer than a prescribed distance, participation in programmes addressing violent behaviour, extended confiscation of property.
7. The types of penalties in respect of legal entities and peculiarities of imposition of penalties upon minors shall be stipulated by Articles 43 and 90 of this Code.

#### **Article 43. Types of Penalties in Respect of Legal Entities**

1. The following penalties may be imposed upon a legal entity for the commission of a criminal act:
  - 1) a fine;
  - 2) restriction of operation of the legal entity;
  - 3) liquidation of the legal entity.
2. Having imposed a penalty upon a legal entity, a court may also decide to announce this judgement in the media.
3. Only one penalty may be imposed upon a legal entity for one criminal act.
4. The sanctions of articles of the Special Part of this Code shall not specify the penalties to which legal entities are subject. In imposing a penalty upon a legal entity, a court shall refer the list of penalties specified in paragraph 1 of this Article.

#### **Article 47. Fine**

1. A fine shall be a pecuniary penalty imposed by a court in the cases provided for in the Special Part of this Code.
2. A fine shall be calculated in the amounts of minimum standard of living (MSL). The minimum amount of a fine shall be one MSL.
3. The amounts of a fine shall be determined as follows:
  - 1) for a misdemeanour – up to the amount of 150 MSLs;
  - 2) for a minor crime – up to the amount of 500 MSLs;
  - 3) for a less serious crime – up to the amount of 1 000 MSLs;
  - 4) for a serious crime – up to the amount of 1 500 MSLs;
  - 5) for a negligent crime – up to the amount of 225 MSLs.
4. The amount of a fine for a legal entity shall be up to 50 000 MSLs.
5. The sanction of an article shall not indicate the amount of a fine for a committed criminal act. It shall be specified by a court when imposing the penalty.
6. Where a person does not possess sufficient funds to pay a fine imposed by a court, the court may, in compliance with the rules stipulated in Article 65 of this Code and subject to the convict's consent, replace this penalty with community service.
7. Where a person evades voluntary payment of a fine and it is not possible to recover it, a court may replace the fine with arrest. When replacing the fine with arrest, the court shall act in compliance with the rules stipulated in Article 65 of this Code.

#### **Article 72. Confiscation of Property**

1. Confiscation of property shall be the compulsory uncompensated taking into the ownership of a state of any form of property subject to confiscation and held by the offender or other persons.
2. An instrument or a means used to commit an act prohibited by this Code or the result of such an act shall be considered as property subject to confiscation. The property of any form directly or indirectly obtained from the act prohibited by this Code shall be considered as the result of the act.
3. The property held by the offender and being subject to confiscation must be confiscated in all cases.
4. The property held by another natural or legal person and being subject to confiscation shall be confiscated irrespective of whether the person has been convicted of the commission of an act prohibited by this Code, where:
  - 1) when transferring the property to the offender or other persons, he was, or ought to have been, aware that this property would be used for the commission of the act prohibited by this Code;
  - 2) the property has been transferred thereto under a fake transaction;
  - 3) the property has been transferred thereto as to a family member or close relative of the offender;
  - 4) the property has been transferred to him as to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);
  - 5) when acquiring the property, he or the persons holding managing positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property is an instrument or a means used to commit an act prohibited by this Code or the result of such an act.
5. Where the property which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 4 of this Article a sum of money equivalent to the value of the property subject to confiscation.

6. When ordering confiscation of property, the court must specify the items subject to confiscation or the monetary value of the property subject to confiscation.

### **Article 72<sup>3</sup>. Extended Confiscation of Property**

1. Extended confiscation of property shall be the taking into ownership of the State of the property of the offender or part thereof disproportionate to the legitimate income of the offender, where there are grounds for believing that the property has been obtained by criminal means.
2. Extended confiscation of property shall be imposed provided that all of the following conditions are met:
  - 1) the offender has been convicted of a less serious, serious or grave premeditated crime from which he obtained, or could have obtained, material gain;
  - 2) the offender holds the property acquired during the commission of an act prohibited by this Code, after the commission thereof or within the period of five years prior to the commission thereof, whose value does not correspond to the offender's legitimate income, and the difference is greater than 250 minimum living standards (MLS), or transfers such property to other persons within the period specified in this point;
  - 3) the offender fails, in the course of criminal proceedings, to provide proof of the legitimacy of acquisition of the property.
3. The property referred to in paragraph 2 of this Article and being subject to confiscation, if it has been transferred to another natural or legal person, shall be confiscated from this person, where at least one of the following grounds exists:
  - 1) the property has been transferred under a fake transaction;
  - 2) the property has been transferred to the offender's family members or close relatives;
  - 3) the property has been transferred to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);
  - 4) the person whereto the property has been transferred or the persons holding managing positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property has been obtained by criminal means or with illicit funds of the offender.
4. The extended confiscation of property provided for in this Article may not be imposed on the property of the offender or third parties or part thereof if it is not recoverable under international treaties of the Republic of Lithuania and provisions of the Code of Civil Procedure of the Republic of Lithuania and other laws.
5. Where the property, or part thereof, which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 3 of this Article a sum of money equivalent to the value of the property subject to confiscation.
6. When ordering extended confiscation of property, the court must specify the items subject to confiscation or the monetary value of the property or part thereof subject to confiscation.

### **Statute of Limitations**

#### **Article 95. Statute of Limitations of a Judgment of Conviction**

1. A person who has committed a criminal act may not be subject to a judgment of conviction where:
  - 1) the following period has lapsed:
    - a) three years, in the event of commission of a misdemeanour;
    - b) eight years, in the event of commission of a negligent or minor premeditated crime;
    - c) twelve years, in the event of commission of a less serious premeditated crime;

- d) fifteen years, in the event of commission of a serious crime;
- e) twenty-five years, in the event of commission of a grave crime;
- f) thirty years, in the event of commission of a crime relating to a premeditated homicide;
- 2) within the period laid down in point 1 of paragraph 1 of this Article, the person did not hide from pre-trial investigation or a trial and did not commit a new criminal act.
2. The statute of limitations shall run from the commission of a criminal act until the passing of a judgment.
3. If a minor suffers from the criminal acts provided for in Chapters XVIII, XX, XXI, XXIII and XLIV of this Code, the statute of limitations may not run out before the person reaches the age of twenty-five years.
4. Where a person who has committed a criminal act hides from pre-trial investigation or a trial, the statute of limitations shall not run. The statute of limitations shall resume running from the day when the person is detained or when he appears before a pre-trial investigation officer, a prosecutor or the court. However, a judgment of conviction may not be passed where twenty-five years have lapsed since the commission of the criminal act by the person and thirty years have lapsed since the commission of a crime relating to a premeditated homicide, and the statute of limitations has not stopped running due to commission of a new crime.
5. Where a person who has committed a criminal act enjoys, under laws of the Republic of Lithuania or international legal norms, immunity from criminal liability and the competent authority does not allow his prosecution, the statute of limitations stops running. The statute of limitations shall resume running from the receipt of the competent authority's permission to prosecute the person who has committed the criminal act or after he loses immunity as referred to in this paragraph by other means.
6. In the course of hearing of a case before the court, the statute of limitations shall stop running for a period for which:
  - 1) the court announces a break in the hearing before the court or postpones the hearing of the case due to the absence of the accused or his defence counsel;
  - 2) the court announces a break in the hearing before the court pending an expert examination or a professional investigation assigned by the court or satisfaction of a request for legal assistance submitted to a foreign state;
  - 3) the court announces a break in the hearing before the court and charges a prosecutor or a pre-trial investigation judge with taking the procedural actions provided for in the Code of Criminal Procedure of the Republic of Lithuania;
  - 4) the court announces a break in the hearing before the court for the new defence counsel of the accused to familiarise with the case file.
7. In the cases provided for in paragraph 5 of this Article, a judgment of conviction cannot be passed where a period exceeding that provided for in paragraph 1 by five years has lapsed since the commencement of the statute of limitations.
8. Where a person commits a new premeditated criminal act before the expiry of the terms indicated in this Article, the statute of limitations shall stop running. In such a case, the statute of limitations in respect of the first criminal act shall start to run from the commission of a new crime or misdemeanour.
9. The following crimes provided for in this Code shall have no statute of limitations...

### **False Accounting**

#### **Article 216. Legalisation of Property Obtained by Criminal Means**

1. A person who, seeking to conceal or legalise the property of his own or another person while being aware that it has been obtained by criminal means, acquires, manages, uses, transfers it to other persons, performs financial operations with this property, enters into transactions, uses it in economic and commercial activities, otherwise converts it or makes a false declaration that it has been obtained

from lawful activities, also a person who, conceals the true nature, source, location, disposition, movement or ownership of or other rights with respect to his or another person's property, while being aware that such property has been obtained by criminal means, shall be punished by a fine or a custodial sentence for a term of up to seven years.

2. A legal entity shall also be held liable for the acts provided for in this Article.

**Article 222. Fraudulent Management of Accounts**

1. A person who fraudulently manages the accounts required by legal acts or conceals, destroys or damages accounting documents, where this disables, fully or in part, determination of the person's activities, the amount or structure of the assets, equity or liabilities thereof, shall be punished by a fine or by arrest or by a custodial sentence for a term of up to four years.
2. A legal entity shall also be held liable for the acts provided for in this Article.

**Article 223. Negligent Management of Accounts**

1. A person who is under the obligation, but fails to manage the accounts required by legal acts or negligently manages the accounts required by legal acts or fails to store the accounting documents for a period stipulated by laws, where this disables, fully or in part, determination of the person's activities, the amount or structure of the assets, equity or liabilities thereof, shall be punished by community service or by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to two year.
2. A legal entity shall also be held liable for the acts provided for in this Article.

**Article 224<sup>1</sup>. Interpretation of Concepts**

The property referred to in Article 216 of this Chapter as derived from crime shall be property of any form obtained directly or indirectly from a criminal act.

**CIVIL CODE**

**Article 2.33. Concept of a Legal Person**

1. A legal person shall be an enterprise or an organisation which has its business name, which may in its name gain and enjoy rights and assume obligations as well as act as a defendant and as a plaintiff in courts...

**Article 2.34. Public and Private Persons**

1. Legal persons shall be divided into public and private persons.
2. Public legal persons shall be legal persons established by the state or municipalities, their institutions or other non-profit-seeking persons whose goal is to meet public interests (state and municipality enterprises, state or municipality institutions, public institutions, religious communities, etc.).
3. Private legal persons shall be legal persons, which aim at meeting private interests.
4. Chapter VII of the given book shall be applied to the public legal persons in a subsidiary manner. Chapter IX of the given book shall not be applied to the public legal persons.

**Investigation Time Limits**

**Article 176. Terms of a pre-trial investigation**

1. A pre-trial investigation shall be performed within the shortest time possible, but in any case, within no longer than:
  - 1) regarding a criminal offence – within three months;
  - 2) regarding minor, medium severity offences, or offences through recklessness – within six months;
  - 3) regarding serious and grave crimes – within nine months.
2. In view of a high complexity of the case, its scope or other material circumstances, upon a request of the prosecutor leading the pre-trial investigation by its respective resolution the superior prosecutor may extend the time limits referred in par. 1 of the present Article. A pre-trial investigation must be prioritized in the cases in which the suspects are detained, and the cases in which the suspects and the injured are minors.
3. In case a pre-trial investigation is lasting for too long, having received a complaint of a suspect or his defence attorney, the pre-trial investigation judge may decide to pass decisions referred to in Article 215 of the present Code.

**Article 387. Order of proceedings**

3. Proceedings for a criminal act may be commenced or continued with respect to a legal entity separately from a natural person who has allegedly committed the criminal act for the benefit or in the interests of the legal entity:

**CODE OF ADMINISTRATIVE OFFENCES OF THE REPUBLIC OF LITHUANIA**

**Administrative liability for false accounting**

**Article 205. Violation of Legal Acts Regulating Accounting or Presentation of False Financial Statements**

1. Violation of the Rules on Accounting of Economic Transactions shall incur a warning or fine from thirty to sixty euros.
2. Violation of the Rules on Accounting of Cash and Material Values shall incur a fine from sixty to one hundred and forty euros.
3. Administrative offences referred to in paragraphs 1 and 2 of this Article committed repeatedly shall incur a fine from one hundred and forty to six hundred euros.
4. Negligent accounting management, where owing to non-payment of taxes equal to from thirty to fifty basic amounts of fines and penalties that should have been paid according to the law for the period being examined shall incur a fine from nine hundred to one thousand four hundred euros.
5. Negligent accounting management, when taxes equal to more than fifty basic amounts of fines and penalties that should have been paid according to the law for the period being examined shall incur a fine from one thousand four hundred to three thousand euros.
6. Deceptive accounting management for the purpose of concealing or disguising taxes equal to from ten to fifty basic amounts of fines and penalties that should have been paid according to the law for the period being examined shall incur a fine from three thousand to four thousand three hundred euros.
7. Deceptive accounting management for the purpose of concealing or disguising taxes of more than fifty basic amounts of fines and penalties that should have been paid according to the law for the period being examined shall incur a fine from four thousand two hundred to six thousand euros.



**THE LAW ON CORPORATE INCOME TAX**

**Article 31. Non-allowable Deductions**

1. The following may not be deducted from income: ...
  - 20) costs incurred while engaging in acts prohibited by the Criminal Code, including bribes...