

## ICELAND

### REVIEW OF IMPLEMENTATION OF THE CONVENTION AND 1997 RECOMMENDATION

#### A. IMPLEMENTATION OF THE CONVENTION

##### Formal Issues

Iceland signed the Convention on 17 December 1997 and deposited its instrument of ratification on 17 August 1998, the first OECD country to do so. It enacted implementing legislation (Act No.147/1998, amending the General Penal Code<sup>1</sup>, on 22 December 1998. At the same time, the Icelandic Parliament passed Act No. 144/1998 on the Criminal Liability of Legal Persons on Account of Bribery of Public Officials. Implementing legislation entered into force on 30 December 1998.

##### Convention as a Whole

In addition to existing legislation relevant to the effective implementation of the Convention in Iceland, amendments have been made to the General Penal Code to criminalise foreign bribery and to introduce criminal responsibility of legal persons for bribery offences. Iceland has also amended the General Penal Code (Chapter II, section 6) to extend its territorial basis of jurisdiction.

Iceland states in its reply to the questionnaire that it believes that corruption and crimes related thereto constitute an urgent problem which needs to be addressed by all available means. In combating such crimes regard must be had of their special nature, which is, for example, manifested by their secrecy, and the fact that no borders are respected. For success against corruption, the struggle against this category of crimes must be afforded priority, both nationally, by adopting effective means to eradicate it, and internationally, by close co-operation.

#### 1. ARTICLE 1. THE OFFENCE OF BRIBERY OF FOREIGN PUBLIC OFFICIALS

##### 1.1 The Elements of the Offence

Iceland reports that bribery of public officials is punishable pursuant to Section 109 of the General Penal Code (hereafter referred to as the GPC). As the provision was limited to domestic public officials, it was necessary, in order to comply with the Convention, to specifically criminalise bribery of foreign public officials. It was also necessary, in order to achieve full uniformity between Icelandic criminal law and the Convention, to adopt a broader definition of the act.

Act No. 147/1998 amended Section 109 of the GPC which, in the opinion of the Icelandic Government, is now in full conformity with the scope of the Convention. Section 109 fully equates bribery of a foreign public official, or an official of a public international organisation, in international business transactions with bribery of a domestic public official.

Iceland explains that it was stated unequivocally in the explanatory notes to Act No. 147/1998 that its purpose was to amend Section 109 of the GPC in order to adapt Icelandic law to the Convention. This being so, Icelandic law will be interpreted to conform to the Convention, including the Commentaries

---

1. General Penal Code, No. 19/1940.

from which the substance of the Convention is also to be inferred. Thus, the Commentaries also exert an influence, in that they would be consulted when interpreting the relevant statutes. This accords with the prevailing view in Iceland on the interpretation of law.

Section 109 (as amended) reads (in translation):

1. *Whoever gives, promises or offers a public official a gift or other advantage in order to induce him to take an action or to refrain from an action related to his official duty, shall be imprisoned for up to three years, or, in case of mitigating circumstances, fined.*

2. *The same penalty shall be ordered if such a measure is resorted to with respect to a foreign public official or an official of a public international organisation in order to obtain or retain business or other improper advantage in the conduct of international business.*

### **1.1.1 any person**

The Icelandic authorities state that the GPC commonly refers to the perpetrator as any person, and in the absence of some particular limitation, such as age or mental illness, its provisions consequently apply to “anyone”. The authorities confirm that any person includes non-Icelandic nationals and non-residents of Iceland.

### **1.1.2 intentionally**

According to Section 18 of the GPC, intent is a condition for the criminality of an act. Negligently committed acts are not punishable unless this is specifically provided for in the Code. There is no such provision in relation to bribery of a public official, and consequently the offence must be intentionally committed. According to accepted legal doctrines in Iceland, “intent” includes *dolus eventualis*.

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

Section 109 of the GPC specifically criminalises the act of giving, promising, or offering a bribe to a domestic or a foreign public official. Iceland reports that in determining whether the act in question is criminal, the question of who may have initiated the act is irrelevant.

Icelandic authorities also state that bribery of a foreign public official is punishable irrespective of the tolerance of such payments by the country in question, or the alleged necessity of the payment.

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

According to GPC Section 109, the act of bribing a domestic or foreign public servant by a *gift or other advantage* is criminal. The authorities assert that this wording covers any advantages, and is not limited to pecuniary advantages. The granting of non-pecuniary advantages is not excluded. While there are no examples from case law, it is clear that concessions, or grants, or intangibles (such as membership in a club or a sexual relationship) would be covered. Other advantages might include promotion or career advancement of a public official or person related to him.

There is no explicit exception for small facilitation payments. However, according to Iceland the fact that Section 109 paragraph 2 of the GPC makes the act punishable of resorting to bribery in relation to a public official or an official of a public international organisation “*in order to obtain or retain business or other improper advantage in the conduct of international business*” would mean that small facilitation payments are probably not criminal. It cannot be stated, on the other hand, whether a person will be punished for the bribery of a foreign public official when the law of the state in question

allows it. GPC Section 109 makes no explicit exception here either but according to Iceland, it is likely that the provision might be interpreted in this way with a view to the Convention and paragraph 8 of the Commentaries.

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

In its reply, Iceland states that bribery is punishable under Section 109 without regard to whether a bribe is offered to a public servant directly or through an intermediary.

Icelandic authorities confirm that according to Icelandic criminal law, an act is punishable even if committed through an intermediary. This is held to apply even if nothing is stated to this effect in the criminal provision in question. The intermediary may also, depending on the circumstances, be punished for aiding and abetting in the commission or for acting as an accomplice. Iceland affirms that although there are no judicial precedents to bear this out, this conclusion cannot be doubted.

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

Iceland contends that the term “public official” (or “public servant”), within the meaning of Section 109 of the GPC, includes any person engaged in public administration, whether with state or municipal authorities, commissioned or otherwise lawfully instituted in office. The provision furthermore includes various other persons, who have been officially granted particular rights or licensed to practice certain occupations that do not come under the definition of public administration. Iceland gives as an example of the latter, practising lawyers.

The authorities affirm that the term *foreign public official* within the meaning of paragraph 2 of Section 109 must be interpreted likewise, but in order to dispel any doubts and to ensure conformity between Icelandic criminal law and the Convention it is particularly mentioned that the provision also applies to *the officials of international public organisations*.

Section 109 does not provide a definition of public official nor does the GPC. The explanatory notes however delineate the term, stating that it covers *any person engaged in public administration*, commissioned or otherwise lawfully instituted in office. This refers to all public officials, and thus also includes persons discharging legislative and judicial functions. The form of engagement is not relevant, and therefore GPC Section 109 paragraph 2 will also cover officials who have been elected to office.

In reply to a question whether explanatory notes to draft laws have force of law in Icelandic courts, Iceland reiterates that the explanatory notes to Act No. 147/1998 expressly state that the provision applies to the public officials to which the Convention applies. The Act would be interpreted on this basis, and when doing so the Commentaries to the Convention would be consulted. Thus the Commentaries are among the sources influencing interpretation and consequently also judicial resolutions. The foregoing accords with Icelandic judicial practice and the accepted principles of legal construction and interpretation.

### **1.1.7 for that official or for a third party**

Although Section 109 is silent with respect to whether the beneficiary could be the public official or a third party (as provided in Article 1 of the Convention), Iceland states that the act is criminal without regard to the ultimate beneficiary, as long as its purpose is to induce the public official to take an action or to refrain from an action related to his official duty.

Iceland states that this has not been tested in criminal litigation concerning bribery of public officials. However, it points to scholarly opinion as confirming that this is the accepted view<sup>2</sup>.

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

Prior to the amendment of Section 109 of the GPC by Act No. 147/1998, bribery of an official was punishable if its purpose was to induce the official to act or to refrain from an act in contravention of his official duty. Thus, the act of offering a public official money or other advantage for a lawful discharge of his official function was not considered punishable. Nor was the act of offering a public official money or other advantage for an act, or the refraining from an act, outside the scope of his duties, considered punishable.

By the enactment of Act No. 147/1998, Section 109 of the GPC was adapted to the Convention by adopting the same description of the punishable act, making bribery of a domestic or foreign public official punishable, if designed to induce him to act or refrain from acting, in relation to the performance of his official duties. The explanatory notes to the bill explain further that it is punishable to grant an advantage to a public servant in order to induce him to use his position for influencing the conclusion of a matter, even if the handling of that matter is outside the scope of his authority. This corresponds to Article 1.4c of the Convention. Iceland points out that the explanatory notes furthermore provide that the fact that the advantage aims at securing some ministrations to which the perpetrator is actually entitled does not affect the criminality of the act.

### **1.1.9 in order to obtain or retain business or other improper advantage**

Section 109 paragraph 2 of the GPC uses the terminology as Article 1 and the authorities confirm that it will be interpreted to conform to the Convention.

### **1.1.10 in the conduct of international business**

This element of the offence in Section 109 paragraph 2 of the GPC is worded in the same manner as the Convention and will be interpreted to conform to it.

## **1.2 Complicity**

The Convention provides that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery ...shall be a criminal offence.

In replying to the questionnaire, Iceland reports that when two persons commit an offence together, the same rule applies to bribery as to other crimes, that the offence of each perpetrator will be regarded as a separate offence. The penalty of each perpetrator is then determined separately, with a view to his participation and the situation in other respects. According to Section 70 paragraph 2 of the GPC, the fact that two or more persons have committed a crime together shall generally be regarded as an aggravating factor.

Aiding, abetting, incitement and authorisation would appear to be covered by Section 22 of the GPC which provides that accomplices in the commission of an offence under the GPC are criminally liable. Accordingly, "any person who in word or deed provides aid in the commission of a punishable act, or takes, by persuasion, exhortation, or otherwise, a part in committing such act, shall be punished as

---

2. see Pormundsson, Jonatan, in *Ulfjotur*, 4 issue 1973, p.377.

provided for in the provision applying to the offence.” This Section applies generally to the acts made punishable in GPC, and therefore also to bribery of domestic and foreign public officials. It makes provision for the ordering of lower penalties than those prescribed by the applicable provision.

In judicial practice there are no examples of convictions under GPC Section 22 by reason of bribery of public officials. It may be inferred from the application of the provision to other offences that the penalty ordered would be lighter than when the offence involves a violation of GPC Section 109 directly.

Iceland further clarifies that as the penalty prescribed in GPC Section 109 is imprisonment for up to three years, the penalty cannot be cancelled by reference to GPC Section 22 paragraph 3. In that provision, this possibility is limited to offences where the maximum penalty can not exceed one year in prison.

### **1.3 Conspiracy and Attempt**

Article 1(2) of the Convention requires Parties to criminalise the attempt and conspiracy to bribe a foreign public official to the same extent as these acts are criminalised with respect to their own domestic officials.

According to Section 20 of the GPC, an attempt to commit an act made punishable in the Code is also punishable. This applies to all such acts, and consequently also the offence of bribery under its Section 109. An attempt to bribe a public official, foreign or domestic, is therefore punishable as long as Section 109 applies. Section 20 provides for the possibility of a lower penalty than for a completed offence, or the cancellation of the penalty if the attempt could not have led to the completion of the offence.

There are no examples of convictions under GPC Section 20 on account of bribery of public officials. The application of the provision to other offences indicates that the penalty ordered would be lighter than when the offence relates to Section 109 directly.

The GPC does not declare a conspiracy to commit a crime punishable, but depending on the circumstances this could constitute a violation of GPC Section 20.

## **ARTICLE 2. RESPONSIBILITY OF LEGAL PERSONS**

The Convention stipulates that each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

### **2.1.1 Legal Entities**

In order to fulfil Iceland’s obligations under the Convention, Parliament enacted Act No. 144/1998 on Criminal Responsibility of Legal Persons on Account of Bribery of Public Officials. The Icelandic authorities noted that although in their view this is not an unequivocal obligation under the Convention, the Government deemed it desirable to adapt Icelandic law in this manner. Section 1 of the Act reads as follows in translation:

*“A legal person may be fined if its employee or staff member has, in order to secure or maintain business or other improper advantage for the benefit of the legal person, given, promised or offered a public official a gift or other advantage in order to induce the public official to take a measure or to*

*refrain from taking a measure within the sphere of his or her official duties. This shall also apply to such acts committed with respect to foreign public servants or officials acting for international institutions.”*

The general principles governing criminal liability of legal persons are laid down in Chapter II A, Section 19 (a – c), of the GPC, and these apply to criminal liability under Act No. 144/1998. Therefore criminal liability is the same irrespective of whether the public servant is Icelandic or foreign.

According to Section 19 b of the GPC, the provisions on criminal responsibility of legal persons apply to any entity that is not a natural person but is able, under Icelandic law, to be entitled to rights and bear duties, including joint stock companies, private limited liability companies, companies with mixed liability of owners, European Interest Groupings, partnership companies, co-operative societies, associations, independent foundations, administrative authorities, institutions and municipal authorities.

The Penal Code does not specify that “companies” also means state-owned or state-controlled. Iceland states, however, that as regards the criminal liability of a joint stock company or other enterprise, it is irrelevant whether it is partially or totally in public ownership. But criminal liability of administrative authorities can only be invoked if an unlawful and criminal act has been committed in the course of an operation deemed comparable to the operations of private entities. This is provided for in Section 19 c of the GPC.

According to Iceland, Section 111 of the Code of Criminal Procedure (CCP) whereby any punishable act shall be subject to public indictment unless statute law prescribes otherwise, applies to the offence under Act No. 144/1998.

### **2.1.2 Standard of Liability**

In order that a legal person can be ordered to pay a fine, its officer, employee or other representative must have committed a criminal and unlawful act in the course of its operations. The rank or status of that natural person is irrelevant. A fine can be ordered even if the identity of that person has not been established, provided it is established that someone acting on the legal person’s behalf committed the act, cf. Section 19 c of the GPC.

This might, for example, apply if it is shown that one of two or more staff members committed the act in the course of the legal person’s operations, and his, or their, identity remains unknown. Likewise, the provision could be applied if it is shown that funds for bribing came from a legal person, while it cannot be established who made the payment. The outcome in such cases depends on the general principles applicable to evidence and proof.

The fact that an individual has been subjected to a penalty on account of bribery of a public official does not prevent the legal person from also being subjected to a penalty on account of the same offence.

## **ARTICLE 3. SANCTIONS**

Article 3.1 of the Convention requires that each Party establish "effective, proportionate and dissuasive criminal penalties" for the bribery of a foreign public official, and that the penalties are "comparable" to those for the bribery of the Parties' own public officials.

### **3.1 Criminal Penalties for Bribery of a Domestic Official**

Section 109 paragraph 1 of the GPC provides for penalties for bribery of domestic and foreign public officials, including officials of a public international organisation. The act of bribery of a domestic official in order to induce him to take an action or refrain from an action related to his official duty, is punishable by imprisonment up to three years. Fines may be ordered in case of mitigating circumstances.

Possible mitigating circumstances in relation to GPC Section 109 are listed in Section 70 of the Code. Among these are that the offence did not relate to important interests, the age of the offender, his conduct, the strength of his resolve, his motive, and his behaviour following its commission. The enumeration in Section 70 is not exhaustive, and therefore any mitigating factor or circumstance making the offence less serious may come into consideration. It is for the courts to assess in each case whether circumstances are mitigating to the extent of ordering a fine instead of imprisonment.

Section 34 of the GPC provides that imprisonment cannot be ordered for a period less than 30 days. This applies to any offence under the Code, and consequently also to acts coming under Section 109. There are no guidelines for determining the level of penalty to be applied on account of a violation of Section 109. The courts determine the level of penalty.

According to Section 49 of the GPC a fine may be ordered jointly with imprisonment provided for in the relevant criminal provision, if the defendant obtained, or intended to obtain, a financial advantage by the commission of an offence.

A legal person who is criminally liable on account of bribery of a domestic public official can be fined as provided for in Section 1 of Act No. 144/1998 on the Criminal Liability of Legal Persons on Account of Bribery of Public Officials.

The maximum fine ordered under GPC Section 109 may be up to ISK 4,000,000 (Section 50 of the GPC). The maximum amount of a fine applies also to any legal person indicted for violating Act No. 144/1998. According to the Icelandic authorities, the amount, laid down by statute, has not followed the price level changes that have occurred in the past 15 years. Furthermore, the maximum amount thus laid down was determined with regard to the criminal liability of natural, rather than legal, persons. For a long time legal persons were seldom made criminally liable, but legal provisions to this effect have become more common in recent years. The maximum limit of a fine provided for in Section 50 of the GPC will certainly be raised significantly when the next revision of these matters takes place. There are no guidelines on assessing the fines to be imposed. This comes within the purview of the courts.

### **3.2. Criminal Penalties for Bribery of a Foreign Public Official**

Section 109 paragraph 2 of the GPC provides that the same penalty (i.e., imprisonment up to three years, or fines) shall be ordered for natural persons if a bribery act is resorted to with respect to a foreign public official or an official of an international organisation in order to obtain or retain business or other improper advantage in the conduct of international business.

As concerns legal persons, pursuant to Section 1 of Act No. 144/1998, they may be subject to a fine for bribery with respect to a foreign public official or an official of a public international organisation.

Iceland states that its replies in Section 3.1 above concerning penalties for bribery of domestic officials, would apply to penalties for bribery of a foreign public official. It is assumed that this covers the application of Section 49 of the GPC allowing for both fines and imprisonment on a natural person in case of aggravated bribery (i.e., financial advantage).

### **3.3 Penalties and Mutual Legal Assistance**

Iceland reports that mutual legal assistance to other states is governed by Act No. 13/1984 on Extradition of Criminal Offenders and other Assistance in Criminal Matters. Under that Act, the maximum term of imprisonment is not a relevant factor in determining whether to provide mutual legal assistance. Therefore, the limits of the penalty to be ordered on account of bribery of a foreign public official are not relevant in determining whether to provide mutual legal assistance and would not stand in the way of effective legal assistance being rendered to other states.

### **3.4 Penalties and Extradition**

Section 3 of the aforementioned Extradition Act, No. 13/1984, only permits extradition in cases where an offence could be punishable under Icelandic law by imprisonment for more than one year. According to Section 109 paragraph 2 of the GPC, the penalty for bribery of a foreign public official could be up to three years imprisonment. Consequently, penalty limitations do not stand in the way of extradition as concerns the offence of bribery of foreign public officials.

### **3.6 Seizure and Confiscation of the Bribe and its Proceeds**

Article 3.3 of the Convention requires each Party to take necessary measures to provide that "the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable".

Section 78 paragraph 1 of the Code of Criminal Procedure (hereafter referred to as the CCP), states that any objects that may have evidential value in criminal proceedings, objects that have been obtained by crime, and objects that may be subject to confiscation shall be seized. The provision specifies that the term "objects" includes documents. The Icelandic authorities affirm that documents also include money.

Furthermore, Iceland adds that Section 69 of the GPC allows confiscation by judgement of *objects or proceeds* obtained by crime, to which no one is lawfully entitled, or an amount of money corresponding to such proceeds, or property purchased for such proceeds. If the monetary amount of the proceeds cannot be conclusively established, the court may assess the amount.

A bribe can be seized even if it is in the possession of a person other than the offender. The circumstances each time will determine whether proof must be adduced of that person's knowledge of the origin of the valuables to be seized.

### **3.8 Civil Penalties and Administrative Sanctions**

In Iceland, civil or administrative sanctions cannot be applied on account of bribery of a foreign public official. Such recourses will be considered in connection with ratification of conventions on corruption prepared under the auspices of the Council of Europe and the adaptation of such conventions to Icelandic law.

Iceland is not in a position to discuss the kinds of sanctions that are being considered.

## **ARTICLE 4. JURISDICTION**

### **4.1 Territorial Jurisdiction**

Article 4.1 of the Convention requires each Party to "take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory". Commentary 25 on the Convention explains that it is not necessary for there to be "an extensive physical connection to the bribery act".

The rules governing Icelandic criminal jurisdiction are in Chapter II of the GPC. These apply generally, to bribery of foreign public officials as well as to other criminal offences.

Icelandic criminal jurisdiction covers any offences committed, in part or in their entirety, in Iceland. This applies also to bribery of foreign public officials. An offence is deemed to have been committed where the original act is committed, irrespective of where its effects are manifested. It is not required that an offence is committed in Iceland as regards all its various elements, but these must, to a significant degree, be traced to Iceland. In addition to this, Section 7 of the GPC provides that an offence is also deemed to have been committed where its consequences are manifested or intended.

Subsection 4(1) of the GPC states that the penalties cannot be imposed in relation to offences committed in Iceland by "a person employed on board, or a passenger of, a foreign ship or aircraft...against a person travelling with that craft or against any interests closely linked to the craft" unless the Minister of Justice has ordered the investigation and prosecution.

The provision of GPC subsection 4 (1) to the effect that investigation and prosecution is subject to the decision of the Minister of Justice has its roots in older statutes that envisaged a share by the Ministry in the exercise of the power of prosecution. Iceland asserts that the limitation in question is, because of the provisions on criminal jurisdiction in Section 6 GPC (see below under section 4.2.2), not relevant to bribery of foreign public officials.

### **4.2 Extraterritorial Jurisdiction**

Article 4.2 of the Convention requires that where a Party has jurisdiction to prosecute its nationals for offences committed abroad it shall, according to the same principles, "take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official". Commentary 26 on the Convention clarifies that where a Party's principles include the requirement of dual criminality, it "should be deemed to be met if the act is unlawful where it occurred, even if under a different criminal statute".

#### **4.2.1.Nationality Jurisdiction**

Section 5 of the GPC allows sentencing under Icelandic criminal law of Icelandic nationals and residents of Iceland on account of offences committed abroad, provided the act was also punishable under the law of the state in question<sup>3</sup>. According to Section 8 paragraph 2 of the GPC, the penalty must however not exceed the maximum applicable in the state of commission. This provision applies to bribery of foreign public officials as well as to any other criminal offence.

---

3. Note that for Danish, Finnish, Norwegian, or Swedish nationals or residents in Iceland, the requirement is that the offence must also be punishable under the law of the *offender's* home state (GPC, No. 19/1940, Sect.5, (1)). Since all these countries are also Parties or signatories to the Convention, this requirement is automatically met.

Iceland confirms that the requirement of dual criminality is deemed to be met if the act is punishable where it occurred, even if under a different criminal statute. There are no restrictions to the power of prosecuting Icelandic citizens on account of crimes committed abroad, other than those provided for in Section 5 of the GPC. In addition to this, the requirement of dual criminality does not have to be met on account of the bribery of a foreign public official, as this is not necessary when Iceland has criminal jurisdiction under Section 6 of the GPC.

#### **4.2.2. Extraterritorial jurisdiction over non-nationals**

In its reply, Iceland noted that bribery of a foreign public official may generally be assumed to take place in the country of his residence and consequently outside Icelandic criminal jurisdiction. Therefore the Icelandic Government decided to extend Icelandic criminal jurisdiction to offences of this kind in order to ensure the fullest conformity between Icelandic rules of criminal jurisdiction and the objective of the Convention to fight against bribery of foreign public officials. Consequently, Act No. 147/1998 added a provision to Section 6 of the GPC to the effect that Icelandic criminal law shall apply to conduct subject to the Convention, even if the offence is committed outside Iceland and irrespective of the offender's identity. This makes it possible to invoke criminal liability on the part of a person with no ties to Iceland who has committed such offence abroad, if the matter is of concern to the Icelandic criminal justice system by reason of the offender's stay in Iceland. Section 6 of the GPC does not require that the act is punishable under the criminal law of the state of perpetration.

Iceland's criminal jurisdiction under GPC Section 6 is very wide-ranging, but as amended by Act No. 147/1998 it only applies to certain enumerated offences, among which is the offence of bribing a foreign public official.

Section 6 would make it possible to prosecute a person for certain offences committed abroad without regard to nationality, even if the person in question had no ties to Iceland. This is of course not practical unless the Icelandic criminal justice system could involve itself with the matter by reason of the offender's presence or stay in Iceland *after* he committed the offence. A stay in Iceland *prior* to the commission of the offence is of no consequence.

Iceland confirms that Section 6 would cover the hypothetical of a non-Icelandic person working for an Icelandic company who bribes a foreign public official abroad and who is now found in Iceland.

#### **4.3 Consultation Procedures**

According to Iceland, there is no restriction on consultation with one or more other states who also have jurisdiction in a criminal case due to alleged bribery of a foreign public official.

As described above, the rules on Icelandic criminal jurisdiction provide for an authority of a wide scope to prosecute cases involving bribery of foreign public officials in Iceland, and make it possible to transfer a case to Iceland. When a case is handled abroad, the state in question can also be provided with any necessary legal assistance.

Iceland is not a party to any international instruments relating to the transfer of a case.

#### **4.4 Review of Current Basis for Jurisdiction**

Iceland reports that in adapting Icelandic law to the Convention, particular consideration was given to the question whether the rules of jurisdiction were conducive to results being obtained in the struggle

against bribery of foreign public officials. As a result of this examination, criminal jurisdiction in such cases was extended by an amendment of Section 6 of the GPC, as described above.

## **ARTICLE 5. ENFORCEMENT**

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

Article 5 of the Convention demands that the investigation and prosecution of the bribery of a foreign public official be "subject to the applicable rules and principles of each Party". It also requires that each Party ensures that the investigation and prosecution of the bribery of a foreign public official "shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved".

In Iceland, investigation and prosecution of bribery of a domestic or foreign public official is governed by the general rules of procedure in criminal cases found in the Code of Criminal Procedure (CCP), Act No. 19/1991. Thus, such offences are handled in the same manner as other crimes.

Iceland reports that according to Section 66 paragraph 2 of the CCP, the police shall commence investigation of a criminal offence based on knowledge or suspicion, regardless of whether a complaint has been received or not. The Director General of Public Prosecutions, who is the supreme prosecution authority, can issue orders in this context and instruct the police to commence an investigation. Section 67 provides that the objective of an investigation shall be to collect evidence in order to enable the prosecution authority to decide whether or not to prosecute, and to prepare for prosecution.

Section 111 of the CCP lays down the principle that in the absence of statutory provisions to the contrary, any criminal act shall be subject to indictment. A decision not to prosecute must therefore be legally founded. Section 112 of the CCP provides that a prosecution authority may decide not to prosecute if the evidence available is assessed as not being adequate or likely to secure a conviction. Iceland explains that in practice, this is by far the most common reason for a decision not to prosecute. The law also allows such a decision to be taken in certain circumstances, such as if an offence is of minor nature, or in special situations if the prosecution is not deemed to be required by the public interest (Section 113). In their reply, the Icelandic authorities affirm that this provision can hardly be invoked in the case of bribery of a foreign official, as such offences are, as other corruption-related offences, regarded as serious.

No instance is known of a decision under CCP Section 113 not to prosecute a case of bribing a public official. The special circumstances to which Section 113 applies are enumerated in the text of the provision.

The Director of Public Prosecutions is the supreme holder of prosecution authority in Iceland, and he will decide whether to prosecute a case involving an alleged violation of GPC Section 109. His decision is final, save for the possibility provided for in GPC Section 26 paragraph 2, that the Minister of Justice propose to the President of Iceland that prosecution be cancelled. That provision is in fact merely precautionary, and it has never been used.

### **5.2 Considerations such as National Economic Interest**

Iceland replied in its questionnaire that according to Icelandic law, the investigation and/or prosecution of bribery of a foreign public official can under no circumstances be influenced by considerations of national economic interest, the potential effects upon relations with another State, or the identity of the natural or legal persons involved. Iceland further explains that this is obvious, undisputed and indubitable, and an express statement to this effect in enacted law has been considered superfluous. It

is an unwritten principle that administrative authorities shall proceed according to law. Considerations of this kind would be totally incompatible with this principle.

## **ARTICLE 6. STATUTE OF LIMITATIONS**

Article 6 of the Convention requires that any statute of limitations with respect to the bribery of a foreign public official provide for "an adequate period of time for the investigation and prosecution" of the offence.

According to Section 81 of the GPC, there are differing periods of limitation depending on the maximum penalty applicable to the particular offence. For cases where the penalty may reach three years in prison, as is the case for criminal liability of natural persons on account of bribery of a foreign public official, the statute is five years from the date of the offence. When an offence is only subject to fines, criminal liability lapses in two years. This latter period would apply in the case of a legal person criminally liable on account of bribery of a foreign public official.

When a police investigation has been commenced against a natural or legal person on account of a particular suspected offence, the limitation period is halted. It does not commence again while the investigation is in progress, provided the investigation is proceeding at a reasonable pace (Section 82 paragraph 4 of the GPC).

Iceland indicates that the provisions of Article 81 were enacted with personal criminal liability primarily in mind and therefore it would be worthy of consideration whether the period for legal persons should be extended.

Iceland further provides that enforcement of a criminal judgement lapses depending on the sentence ordered. A fine amounting to less than ISK 60,000 (approximately 760 EUR or 825 USD) becomes unenforceable when three years have passed since it first became enforceable. If higher, the period is five years (Section 83 a of the GPC). If a sentence of imprisonment has been ordered and its enforcement has not commenced, it lapses in 5 years if its length is one year or less, and in 10 years if longer than one year but shorter than four years.

## **ARTICLE 7. MONEY LAUNDERING**

Article 7 of the Convention requires that where a Party has made bribery of a domestic official a predicate offence for the application of money laundering legislation, it must do so on the same terms for bribery of a foreign public official, regardless of where the bribery occurred.

### **7.1 Domestic Bribery**

Section 264 paragraph 1 of the GPC provides that whoever receives or procures for himself or others any gains from an offence committed against the Code shall be fined or imprisoned for up to two years. The same penalty shall be ordered in case a person stores or transports any such gains, renders any assistance in their delivery, or otherwise similarly endeavours to secure for others the gains obtained from an offence. Imprisonment for up to four years may be ordered in serious cases, or if such an offence has been repeated.

### **7.2 Foreign Bribery**

Iceland indicates in its reply that bribery of a public official may be a predicate offence in the context of money laundering. This applies equally to bribery of domestic and foreign public officials.

In case of a violation of GPC Section 264 committed in Icelandic territory, Icelandic criminal law will apply, even if the predicate offence was committed abroad, and irrespective of the offender's identity (Section 4 (3) of the GPC). The location where the offence of bribery was committed has no bearing on the criminality of the money laundering act.

As expressly provided for in GPC Section 264, any offence against the Code can be a predicate offence in the context of money laundering. The offence is however likely to be of more practical significance in the context of passive bribery, especially as regards "*gains obtained from an offence*". Iceland observes that one can however conceive of a situation where the person who bribes a public official receives some advantage that the official is in a position to grant, which subsequently is enjoyed by a third party, or a third person assists in securing the gains from the offence for others. With this, the third person has committed an offence against GPC Section 264.

GPC Section 264 paragraph 4 permits cancellation of penalty if the maximum penalty on account of the predicate offence does not exceed imprisonment for one year. This provision has no significance as regards bribery in violation of GPC Section 109 which carries a maximum penalty of three years.

As regards evidence in a money laundering case, the ordinary rules apply.

## **ARTICLE 8. ACCOUNTING**

Article 8 of the Convention requires that within the framework of its laws and regulations the maintenance of books and records, financial statement disclosures and accounting and auditing standards, a Party prohibits the making of falsified or fraudulent accounts, statements and records for the purpose of bribing foreign public officials or of hiding such bribery. The Convention also requires that each Party provide for persuasive, proportionate and dissuasive penalties in relation to such omissions and falsifications.

### **8.1 Accounting and Auditing Requirements**

Iceland reports that Act No. 145/1994 applies to business records. According to Section 4 of the Business Records Act, any parties obliged to keep business records shall maintain clear records in an accessible form, and shall prepare annual accounts in conformity with law, administrative provisions and good accounting practice. Section 6 provides that business records shall be kept in such a manner as to make it possible to trace any transactions and use of assets clearly and accessibly. The records shall provide information on operations and financial status as detailed as necessary in order to serve the needs of owners, creditors and public authorities, and in order to make possible the assessment of revenues, expenses, assets and liabilities. According to Section 8, each entry in the records shall be based on dependable and adequate evidence, traceable to the transactions made. Section 9 provides that any transactions shall be recorded as soon as they occur, provided this conforms to good accounting practice. Any other occurrences shall be recorded as soon as possible.

Iceland states that these provisions in effect prohibit establishment of off-the-book accounts, making of off-the books or inadequately identified transactions, recording of non-existent expenditures, entry of liabilities with incorrect identification of their object and the use of false documents, in the purpose of paying bribes to foreign parties or to hide such payments.

- *Independent external audit*<sup>4</sup>

According to Section 22 of the Business Records Act, No. 145/1994, parties obliged to keep business records shall prepare annual accounts for each accounting year in accordance with the Act, subject to any stricter requirements that may be made in other acts of law. Annual accounts shall, as a minimum, contain a profit and loss account, a balance sheet, and explanatory notes as applicable.

Section 32 of the Business Records Act allows parties obliged to keep business records to elect, at a general meeting or at a meeting of the association in question, one or more annual account inspectors. Such inspectors may be shareholders or partners, but shall not be members of the board of the association or persons acting in executive capacities. The inspectors shall have access to the business records at any time in the purpose of making any examinations or checks they consider necessary. The board shall furthermore ensure that such inspectors are provided with any documentation, information and assistance they consider necessary, cf. Section 33 of the Act. Section 34 paragraph 2 continues to provide that if an inspector considers that any necessary information is lacking in the annual accounts or in a board report, that information contained therein is misleading, or that events have occurred as a result of which liability on the part of the board members can be invoked, he shall provide a comment to that effect in his report on the annual accounts.

The rules applying to annual accounts and audit are made subject to any stricter requirements made in other acts of law. Such requirements are made by the Annual Accounts Act, No. 144/1994, which applies to limited liability companies and other relatively large companies. The requirements made there as regards annual accounts and audit are considerably stricter than those made in the Business Records Act. In practice, the provisions of the Business Records Act relating to annual accounts and audit only apply to small enterprises of simple structure.

According to Section 3 of the Annual Accounts Act, the board and the managing director shall prepare annual accounts for each accounting year, containing a profit and loss account, a balance sheet, a statement of cash flows, and notes. For parent companies, consolidated accounts shall also be prepared. The board shall also prepare a report on the preceding operating year. The annual accounts, signed by the board members and with the report of the auditors or inspectors, shall be submitted one week before the general meeting at the latest. Annual accounts and consolidated accounts shall be prepared in accordance with good accounting practice and shall provide a clear picture of the results of the operations during the accounting year and the enterprise's financial status when it ends (Section 9).

Section 57 provides that the annual or general meeting shall elect one or more auditors or inspectors. The inspectors shall have attained majority and must not have been deprived of the competency to manage their personal financial affairs. They shall have the experience of accounting and business methods, which is necessary with a view to the operations and size of the company (Section 58 paragraph 2). Auditors, on the other hand, are subject to Act No. 18/1997. According to that Act, a person must be officially licensed in order to provide the services of an auditor. This is only granted to persons who fulfil extensive demands as regards training and competence. The accounts of companies above a certain size, of companies whose shares or bonds are registered on a stock exchange, of companies whose shares are freely negotiable, and of companies where the election of an auditor is demanded by one fifth of the shareholders, must be audited by a licensed auditor (Section 59).

---

4. The information in the following section was provided by Iceland in reply to questions concerning implementation of the accounting/auditing provisions of the 1997 Revised Recommendation. They are integrated here for the purpose of providing a more complete picture of the accounting/auditing requirements in force in Iceland.

According to Section 63 of the Act, the auditors or inspectors shall audit the annual accounts as required by law and good auditing practice, and examine the financial records of the company and other matters relating to its operations and financial status. If they notice that the directors have, in their capacity as such, failed to observe the law, with the possible result that their own or the company's liability may be invoked, or that they have violated the statutes of the company, this shall be notified to the general meeting. According to Section 64, the board members and the managing director shall provide the auditors or inspectors with any information and documents they consider of significance for their audit. The board or the managing director shall also provide the auditor or inspector with any information, documents, facilities and assistance they may consider necessary for the discharge of their functions.

Neither the Business Records Act nor the Annual Accounts Act obliges auditors or inspectors to report to police a suspicion of criminal activity they may encounter while performing their work.

- *Internal company controls*

Detailed laws have been enacted on companies of the forms engaged in economic activity. These are the Joint Stock Companies Act, No. 2/1995, the Private Limited Companies Act, No. 138/1994, and the Co-operative Societies Act, No. 22/1991. They contain detailed rules on the duties of their boards and managing directors, and on the roles of meetings. With this, and the laws mentioned above on Business Records and Annual Accounts, internal controls have been provided for.

## **8.2 Companies Subject to Laws and Regulations**

Section 1 of the Business Records Act places the duty of keeping business records upon all companies with limited liability of the owners, all companies with unlimited liability, credit institutions, and any enterprises and other associations, funds and institutions engaged in economic activity. Individuals engaged in independent economic activity are also obliged to keep business records.

Section 1 of the Business Records Act enumerates those obliged to keep business records. The enumeration may be summed up as including any enterprise, company and institution engaged in economic activity, without regard to whether it aims for financial profit. This also relates to non-profit entities like NGOs.

## **8.3 Penalties**

According to Section 36 of the Business Records Act, anyone who violates the provisions of the Act shall be fined, and if the offence is serious, imprisonment for up to six years may be ordered. According to Section 36, the following conduct on the part of an individual obliged to keep business records, or an individual in charge if a legal person, shall always be deemed to constitute a serious offence:

1. A failure to keep the prescribed records for himself or the legal person, thereby failing to fulfil, in main, the requirements of law.
2. A failure to preserve supporting documentation or other related documents, and a preservation thereof so inadequate that entries can not be related to the transactions made and the records and annual accounts based on them.
3. False entries into the records and false preparation of business records, preparation of documents without foundation in transactions made with other parties, systematic failure to enter revenues, and employment of any other artifices to otherwise present an incorrect picture of his transactions and use of assets, provided the act does not constitute an offence against Section 158 of the GPC.

4. Destruction of his own or the legal person's business records in their entirety or of the individual constituents thereof, and secretion of records and other prevention of access to them. This also applies to any documentation to which record entries may be traced.

5. A failure to compile annual accounts in conformity with the results shown by the regular accounts, and presentation of annual accounts not containing the necessary items and explanations or falsely prepared in part or in whole, provided the act does not constitute an offence against Section 158 of the GPC.

6. The same shall apply to a person assisting a natural or legal person obliged to keep records in committing the offences enumerated under (1-5) above, and to a person who otherwise furthers their commission.

According to GPC Section 158 it is punishable to make a wilfully incorrect entry in documents, books or records which the offender is under a legal duty to issue or keep.

In addition to Section 36 of the Business Records Act there is, in Section 82 of the Annual Accounts Act, a corresponding penal provision providing for the same range of penalties.

## **ARTICLE 9. MUTUAL LEGAL ASSISTANCE**

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

Iceland refers to its reply to Question 3.3, according to which foreign states can be granted legal assistance as provided for in Act No. 13/1984 on Extradition of Criminal Offenders and Other Legal Assistance in Criminal Matters (the Extradition Act). Section 22 provides that a decision can be taken to apply the Code of Criminal Procedure in order to collect evidence for use in a criminal case prosecuted abroad, in a manner corresponding to what would be done in a similar domestic criminal case. Section 23 provides that a decision can be taken to send a person who has been arrested or deprived of liberty by judgement as a result of criminal conduct, to a foreign state in order to be heard as a witness or for interrogation together with others.

In order to ensure a firm legal basis for legal assistance to foreign states the CCP provides expressly that the procedures laid down in the Code shall be observed when measures are to be taken in Iceland upon the request of foreign judicial or administrative authorities in connection with criminal cases.

Iceland has ratified the following international instruments relating to international legal assistance in criminal cases:

- The European Convention on Mutual Assistance in Criminal Matters, and the 1978 Additional Protocol.
- The European Convention on Extradition, and the 1975 and 1978 Additional Protocols.
- The European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

As regards non-criminal proceedings against a legal person coming within the scope of the Convention, Iceland can provide legal assistance on the basis of the Lugano Convention of 1988. Legal assistance for collection of evidence in court can also be granted by Iceland on the basis of the Code of Civil Procedure, Act No. 91/1991.

The Lugano Convention of 1988 provides for the mutual recognition of judgements rendered by the States Parties, and they can be enforced as provided for in Chapter III of the Convention.

According to Chapter XI of the Code of Civil Procedure, Act No. 91/1991, the statement of a party can be received, or a witness questioned in court, for the purposes of a case in progress before another court. This provision applies also to cases in progress abroad. The conditions set for this are that collection of evidence before the court where the case is in progress will bring about significant cost or inconvenience. This condition is obviously fulfilled when evidence must be collected in another country.

## **9.2 Dual Criminality**

As provided in Sections 22 and 23 of the Act on Extradition and Other Legal Assistance in Criminal Matters, it is a condition for legal assistance to foreign states that the request for legal assistance relate to an act which also would be punishable in Iceland. This condition of dual criminality is fulfilled in cases of offences within the scope of the Convention. Where coercive measures are to be employed, there is a requirement that the request for MLA may only be granted if it is demonstrated that a decision has been taken on coercive measures which are in conformity with the legislation of the state involved.

## **9.3 Bank Secrecy**

Iceland affirms that legal assistance to a foreign state, relating to a violation within the scope of the Convention, cannot be refused on the basis of bank secrecy.

Upon judicial order, any necessary information can be obtained from banks and other entities operating in the capital market for the purposes of criminal investigation. Icelandic law sets no conditions for legal assistance to other states granted in the form of obtaining information from banks or financial institutions.

Iceland also states that it is not likely at all that access to banking records would be granted for the purposes of non-criminal proceedings initiated by a Party to the Convention. The question has not come up, and the power to decide whether to grant access would be with the courts. The facts and the nature of the case in question could matter in this context.

## **ARTICLE 10. EXTRADITION**

### **10.1 Extradition for Bribery of a Foreign Public Official**

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.

According to the Extradition Act, No. 13/1984, bribery of a foreign public official is an extraditable offence. A request for extradition can be granted on the basis of the Act irrespective of whether an international agreement is in force.

### **10.2 Legal Basis for Extradition**

As noted, the granting of a request for extradition is not dependent upon the existence of an extradition treaty.

Aside from Iceland's bilateral agreements on extradition concluded with other states, a person can only be extradited in the basis of the Extradition Act, No. 13/1984. Thus, a person could be extradited under

the Extradition Act even in the absence of an extradition agreement, and if the conditions set for extradition in an extradition agreement are stricter than those set in the Act.

### **10.3/10.4 Extradition of Nationals**

Article 10.3 of the Convention requires Parties to ensure that they can either extradite their nationals or prosecute them for the bribery of a foreign public official. And where a Party declines extradition because a person is its national, it must submit the case to its prosecutorial authorities.

Section 2 of the Extradition Act prohibits extradition of Icelandic nationals.

The reply to Question 4 describes the rules governing Icelandic criminal jurisdiction, which ensure that criminal action can be taken in Iceland on account of crimes falling within the scope of the Convention.

If a request for extradition is denied on account of the nationality of a suspect, the relevant holder of prosecution authority will decide whether to initiate criminal action in Iceland. The general rules of the CCP apply in this respect. In the opinion of the Icelandic Government, criminal action is to be taken against persons not extradited, to the extent the law allows such prosecution.

There is no known instance from case law of the issuance of an indictment following denial of extradition. Iceland believes that its replies on this point are however in conformity with the accepted views and the consensus of legal opinion.

### **10.5 Dual Criminality**

Article 10.4 of the Convention states that where a Party makes extradition conditional on the existence of dual criminality, it shall be deemed to exist as long as the offence for which it is sought is within the scope of the Convention.

According to Section 3 of the Extradition Act, a suspect can not be extradited unless the alleged act, or a similar act, may result in a sentence of imprisonment for more than one year under Icelandic law. This condition of dual criminality is fulfilled in cases coming under the scope of the Convention.

## **ARTICLE 11. RESPONSIBLE AUTHORITIES**

Article 11 of the Convention requires Parties to notify the Secretary-General of the OECD of the authority or authorities acting as a channel of communication for the making and receiving of requests for consultation, mutual legal assistance and extradition.

Iceland has notified the Secretary General of the OECD of the responsible authorities as provided for in Article 11 of the Convention. These are the Director General of Public Prosecutions in relation to Article 4 paragraph 3 on consultation, and the Ministry of Justice in relation to Article 9 on mutual legal assistance and Article 10 on extradition.

## **B. IMPLEMENTATION OF THE REVISED RECOMMENDATION**

### **3. Tax deductibility**

Section 52 of Act No. 75/1981 on Tax on Income and Capital (the Tax Act) was amended by Act No. 95/1998, as required by the 1996 Recommendation, by expressly providing that the following items cannot be declared as operating expenses or as a deduction from taxable income:

Payments, gifts or other contributions which are unlawful under Section 109 of the General Penal Code, No. 19/1940, to persons engaged or elected to discharge an official legislative, judicial or executive function, in Iceland, in other states, or with international organisations or institutions to which national states, governments or international institutions are parties.

This provision applies to all taxable parties, private individuals and legal persons, including non-incorporated companies.

The provision of Section 52 of the Tax Act will be applied without regard to whether someone has been convicted of an offence against GPC Section 109.

## EVALUATION OF ICELAND

### General Remarks

The Working Group complimented Iceland for being the first country to have ratified the Convention and for the rapid implementation of the Convention into its legislation. Delegates thanked the Icelandic authorities for their co-operation in the evaluation process.

The Working Group considered, in light of the available documentation and explanations given by the Icelandic authorities, that the Icelandic legislation conforms to the standards of the Convention.

### Specific Issues

#### 1. Level of sanctions vis-à-vis legal persons

The Group noted that legal persons are liable of a fine which may be up to 4 millions ISK (the equivalent of approximately 60.000 US dollars). The Icelandic authorities recognised that the level of fines, which had not been increased for the last 15 years, was not sufficiently dissuasive.

The Group noted Iceland's intention to increase the level of fines as soon as possible.<sup>5</sup>

#### 2. Statute of limitations

The Group raised the question of the appropriateness of the periods of limitation provided by section 81 of the GPC. In particular the Group expressed concern that when the offence is only subject to fines (as this is the case for legal persons), criminal liability lapses in two years. Iceland indicates that the provisions of article 81 were enacted with criminal liability of natural persons primarily in mind.

The Group noted that Iceland will give due consideration to an extension of the limitation period for offences committed by legal persons.<sup>6</sup>

---

<sup>5</sup> Following the examination of Iceland, on 9 May 2000, section 2 of Law no. 39 came into force, which deleted section 50 of the General Penal Code effectively removing the maximum limit on fines for legal persons.

<sup>6</sup> Following the examination of Iceland, on 9 May 2000, section 5 of Law no. 39 came into force, which added a new paragraph to section 81 of the General Penal Code increasing the statute of limitations for legal persons to five years.