THE LIABILITY OF LEGAL PERSONS FOR FOREIGN BRIBERY: A STOCKTAKING REPORT



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The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report



Please cite this publication as:

OECD (2016), *The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report*

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Foreword

The liability of legal persons is a key feature of the emerging legal infrastructure for the global economy. Without it, governments face a losing battle in the fight against foreign bribery and other complex economic crimes.

This stocktaking report presents a chronology and a "mapping" of the features of the systems for liability of legal persons found in the 41 Parties to the Anti-Bribery Convention.

The report is based on the monitoring reports of the OECD Working Group on Bribery (WGB) which is responsible for implementation and enforcement of the Anti-Bribery Convention. While the Convention has been effective in strengthening and broadening legal person liability systems globally in the fight against foreign bribery and against economic crime more generally, the WGB will focus on the liability of legal persons for more in-depth exploration in the course of its Phase 4 monitoring reviews, which are set to begin in 2017.

The report was prepared by Kathryn Gordon and Brooks Hickman of the Anti-Corruption Division of the OECD Directorate for Financial and Enterprise Affairs, and Michel Levien González provided valuable research assistance. Other members of the Anti-Corruption Division provided numerous insights and comments.

Table of contents

Executive summary 7

Introduction 11

Part 1. **The Anti-Bribery Convention, WGB monitoring and LP liability: Catalysts for change** 13

Part 2. **Liability of legal persons: Mapping the legal landscape** 19

2.1. Nature of legal person liability 20
2.2. Legal basis for legal person liability 27
2.3. Types of legal persons covered 34
2.4. Standard of liability for legal persons 46
2.4.1. Whose acts can trigger liability? 46
2.4.2. When will a natural person's acts be attributed to a legal person? 53
2.4.3. When can a compliance system preclude liability? 66
2.5. Links between unlawful acts by natural persons and legal person liability 71
2.6. Liability for unlawful acts of intermediaries 78
2.6.1. Liability for related intermediaries 79
2.6.2. Liability for unrelated intermediaries 91
2.7. Successor liability 101
2.8. Jurisdiction over legal persons 110
2.9. Nationality of legal persons 124
2.10. Sanctions for legal persons: Nature and level 129
2.11. Mitigating factors for sanctions 148
2.12. Settlements 155

Tables

1. Nature of legal person liability 23
2. Legal basis for legal person liability for foreign bribery 29
3. Types of legal person covered 37
4. Standard of liability for bribery: Whose acts? 48
5. Standard of liability for bribery: What conditions? 56
6. Standard of liability for bribery: Relevance of compliance system? 67
7. Links between the liability of natural persons and the liability of legal persons 73
8. Liability of legal persons for related legal persons 82
9. Liability of legal persons for unrelated persons 93
10. Successor liability 104
11. Jurisdiction over legal persons 114
12. Nationality of legal persons 125

13. Sanctions for legal persons 133
14. Sanctions for legal persons: Mitigating factors 149
15. Settlements 158

Figures

1. Nature of legal person liability 21
2. Legal basis for legal person liability 27
3. Types of legal persons covered 34
4. Can a compliance system preclude liability? 66
5. Is the prosecution or conviction of natural persons required for LP liability? 71
6. Successor liability 101
7. Jurisdiction for legal persons 110
8. Nationality of legal persons: Criteria 124
9. Mitigating factors for sanctions 148
10. Settlements 155

Boxes

1. Timeline of law-making events concerning the liability of legal persons 16
2. Methodology for mapping LP liability 19
3. Jurisdiction over legal persons: Issues raised in the 2006 Mid-Term Study 111

Executive summary

The liability of legal persons for foreign bribery and related economic offences is a key feature of the emerging legal infrastructure for the global economy. Without it, governments face a losing battle in the fight against the bribery of foreign public officials ("foreign bribery") and other complex economic crimes.

In recognition of the essential role that liability of legal persons plays in combating foreign bribery, Articles 2 and 3 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "Anti-Bribery Convention" or "Convention") require "[e]ach Party … to establish the liability of legal persons for foreign bribery" and to apply "effective, proportionate and dissuasive" penalties to legal persons for foreign bribery.

By "legal persons", this report refers to organisations (e.g. corporations) that have legal rights and are subject to legal obligations. For legal persons subject to the laws of a Party that has implemented the Anti-Bribery Convention, these obligations would also include the obligation to respect laws prohibiting foreign bribery. The Convention's texts concerning the "liability of legal persons" thus aim to ensure that business organisations (and not just individuals) can be held responsible for foreign bribery.

The liability of legal persons (or "LP liability") is important because it casts legal persons as subjects of the law enforcement process. At its most basic level, LP liability ensures that a legal person can be held liable for certain types of wrongdoing in addition to, or independently from, any natural persons – such as its officers, employees or agents – who were involved in the offence. Furthermore, some LP liability frameworks create additional incentives that induce companies to have effective compliance programs and cooperate in the law enforcement process, in order to enhance the detection, prevention, investigation and resolution of cases of foreign bribery.

The objective of the present report is to provide mappings of the features of the 41 Anti-Bribery Convention Parties' systems of LP liability. These mappings are based primarily on information provided in roughly 200 monitoring reports that the Working Group on Bribery (WGB), the inter-governmental body charged with monitoring the Parties' compliance with their obligations under the Convention, has prepared over three phases of monitoring. In some instances, the report contains additional information provided by the WGB member countries to supplement the WGB's findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.[1] While the report primarily reflects the WGB findings, it is not binding on the WGB and its contents do not prejudice the WGB's on-going or future evaluations of the WGB members' compliance with the Anti-Bribery Convention.

[1] For convenience, this information is highlighted in grey. The updates in this report concern laws that were adopted and entered into force no later than 1 July 2016.

Part 1 of this report begins with a timeline of law-making events relevant for LP liability in the 41 Parties since the adoption of the Convention in 1997. It shows that the Convention Parties had very different starting points for LP liability. Sixteen of them had no established system for LP liability prior to the Convention, except possibly in some areas of administrative law (e.g. tax and customs). For these Parties, LP liability was essentially a foreign concept, alien to their legal traditions and practices, which generally required them to create their LP liability systems "from scratch". In contrast, 25 countries had some prior legal basis for liability of legal persons, including codified law and judicial decisions. Whether they were establishing systems for liability of legal persons for the first time or refining existing systems, 40 of the 41 Parties engaged in some kind of law-making activity relevant for LP liability after the adoption of the Convention. Many of these expressly attributed this legal evolution to the obligations of the Convention as well as the WGB's advice and peer pressure.

Part 2 of this report maps the 41 Convention Parties' legal landscape for LP liability based on the WGB reports prepared during the first three phases of monitoring the Parties' implementation of the Convention.[2] The purpose of this mapping is to provide a detailed overview of the Parties' LP liability systems for foreign bribery. This overview takes the form of a mapping involving some 2 624 data points characterising the main features of these systems. No policy conclusions or recommendations are drawn from this overview, but it does report WGB conclusions and recommendations where relevant.

Viewed as a whole, this mapping attests to the wide variability among the 41 Parties' LP liability systems. This variability exists despite the marked trend toward adopting and strengthening of LP liability laws over the years of implementing the Convention. Thus, overall, this mapping paints a picture marked by contrast between a convergence of legal arrangements (as Part 1's timeline shows) and the persistent variability of legal approaches to LP liability (as Part 2's mapping shows).

The variability manifests itself in two ways. First, there are differences in the Parties' underlying approach and philosophy toward holding legal persons liable for foreign bribery. This can be seen, for example, in Part 2.1 ("Nature of Legal Person Liability"), which shows that 27 Parties (66%) have adopted criminal LP liability, 11 countries (27%) have adopted various forms of non-criminal approaches (e.g. administrative liability). At least two countries, Mexico and the United States, have both. The WGB has found that various types of regimes may be compliant with the Convention, in accordance with the principle of "functional equivalence".

Similarly, the Parties have adopted different approaches to the legal basis of LP liability for foreign bribery. Most have placed their LP liability laws in their general criminal laws, while 20 countries (49%) have resorted to other statutes when creating LP liability for foreign bribery (e.g. Japan has placed the offence in its competition law). Ten Parties (24%) have made use of bribery-specific legislation. Case law is a source of law for at least some aspect of the LP liability regimes in 11 Parties (27%). Interestingly, most Parties use more than one basis of law to establish LP liability for foreign bribery, and no country has recourse to only a law specific to the foreign bribery offence. One conclusion from this is that nearly all Parties with LP liability laws have chosen to apply this law to a broader set of offences than just foreign bribery, though the breadth of the Parties' LP liability systems varies. Consequently, the Convention and the WGB monitoring of its provisions have strengthened or, in some countries, even helped

[2] Note that the WGB has not completed all three Phases of monitoring for its newest members.

establish LP liability systems both for foreign bribery and for offences beyond the scope of the Convention.

Another source of variability relates to the different stages of development of the Parties' systems of LP liability. Some have relatively mature and tested systems, whereas others are still exploring and experimenting with their systems – whether old or new. This is particularly apparent when comparing WGB monitoring in such areas as liability for intermediaries, jurisdiction, and successor liability.[3] Often the WGB is unable to evaluate the state of LP liability in certain areas in a given country's monitoring report, due to a lack of case law and/or to differences of view among legal practitioners during on-site visits.

This suggests that, despite the significant progress made in developing LP liability systems over nearly two decades since the adoption of the Convention, many Parties are still clarifying their legal thinking and practice in relation to crucial areas of law for the global economy. The WGB, by providing a platform for learning and sharing of experiences, particularly through its monitoring process, helps to expedite this process.

[3] "Successor liability" refers to doctrines that, under certain circumstances, can ensure that, when an entity (i) acquires or merges with another entity, (ii) divides into separate entities, (iii) dissolves, or (iv) undergoes another form of reorganisation, the successor entity or entities will assume liabilities of the predecessor entity or entities. Neither the Convention nor the 2009 Recommendation expressly mention successor liability. However, depending on the facts of a case, it may be a relevant factor for determining whether or not LPs can, in such circumstances, be held liable for foreign bribery under Article 2.

Introduction

Corporations and other legal entities have an indisputably important role in the modern economy both in terms of their economic power and the scope of their operations. Increasingly, international business is conducted by multinational enterprises operating through groups of interconnected companies straddling numerous jurisdictions.[4] As a result, wrongdoing by companies or other legal entities can create problems in both the public and private spheres far beyond the borders of their "home country". The liability of legal persons for foreign bribery and related economic offences is a key feature of the emerging legal infrastructure for the global economy. Without it, governments face a losing battle in the fight against foreign bribery and other complex economic crimes.

The term "legal person" refers to an organisation – generally, a corporation or some other entity, as specified in law – that has legal rights and is subject to obligations, including the obligation to respect laws prohibiting foreign bribery (in the case of the Parties that have implemented Article 2 of the Anti-Bribery Convention). The liability of legal persons ("LP liability") means that these organisations can be held responsible for foreign bribery instead of, or along with, the natural person(s) involved in the offence. Specifically, the organisation can be subject to investigation, judicial or administrative proceedings (or, in some countries, out-of-court settlement arrangements), and ultimately sanctions if it is held responsible for the offence.

LP liability is important because it casts legal persons as subjects of the law enforcement process. At its most basic level, LP liability ensures that legal persons can be held liable for wrongdoing in addition to, or independently from, any natural persons – such as officers, employees or agents – who were involved in the offence. In addition, some LP liability frameworks attempt to establish additional incentives designed to encourage companies to prevent wrongdoing, to detect potential offences by policing themselves, their business partners as well as other third parties, and to resolve allegations of wrongdoing by cooperating with law enforcement authorities. In this way, legal persons may become indispensable – if perhaps not always enthusiastic – partners with law enforcement authorities. Finally, any legal framework for LP liability must adhere to widely accepted legal norms such as due process, transparency, consistency and predictability.

In recognition of the essential role that LP liability plays in combating foreign bribery, Article 2 of the Convention obligates each Party to "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".[5] Under Article 3 of the Convention,

4 A study of international business organisations reported that almost 70 000 multinational parent companies conduct business through some 690 000 foreign affiliates. In the same publication, the largest 100 companies had at average of 187 subsidiaries per group. *See* Phillip I. Blumberg, Kurt A. Strasser, Nicholas L. Georgakopoulos, *The Law of Corporate Groups: Jurisdiction, Practice, and Procedure* (Aspen Publishers Online, July 13, 2007), pages 1-6.

5 Anti-Bribery Convention, art. 2; *see also* Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted by the

"effective, proportionate and dissuasive criminal penalties" shall be applied to legal persons for foreign bribery, unless "under the legal system of a Party, criminal responsibility is not applicable to legal persons". In the latter case, the LP liability regime must "ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions".[6] In 2009, the OECD Council adopted the 2009 Recommendation on Further Combating Bribery. Annex I of the Recommendation provides that LP liability systems should not "restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted."[7] It also provides guidance on the "approaches" that the Convention Parties should take to attribute liability for foreign bribery to a legal person based on the acts of a natural person or persons.[8]

The Working Group on Bribery (WGB) is an inter-governmental body hosted at the OECD, in which the 41 Parties to the Convention meet in order to *inter alia*: (i) review each other's foreign bribery laws and enforcement efforts to identify gaps in compliance with their obligations under the Convention; (ii) make recommendations for eliminating those gaps; (iii) monitor whether these recommendations have been implemented; and (iv) share experiences and good practices for implementing and enforcing foreign bribery laws. As will be documented in the present report, the Convention – together with the WGB's peer-monitoring process, which is now entering its fourth phase – has been effective in strengthening and broadening LP liability regimes globally in the fight against foreign bribery and against economic crime more generally. The WGB has identified LP liability as being a candidate for more in-depth exploration in the course of its Phase 4 monitoring reviews.

The aim of the present report is to provide a chronology and a comparative overview of the systems of LP liability in the 41 Parties to the Convention. The report traces the development of LP liability systems across time and documents LP liability characteristics across jurisdictions. The report is organised into three sections:

- Part 1. *The Anti-Bribery Convention, WGB Monitoring and LP liability: Catalysts for Change*. This section provides a timeline of major legislative events relevant for LP liability and documents the catalytic role of the WGB in developing and spreading this area of law internationally.
- Part 2. *Liability of Legal Persons: Mapping the Legal Landscape*. This section presents, in 12 sub-sections an overview of comparative legal institutions relevant for LP liability. Each section contains a brief description and a comparative table.

Negotiating Conference on 21 November 1997) (hereinafter, the "Commentaries"), comment 20 ("In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall not be required to establish such criminal responsibility.").

6 Anti-Bribery Convention, arts. 3(1) and 3(2). Article 3(4) permits Parties to impose "additional civil or administrative sanctions" on legal or natural persons "subject to sanctions for the bribery of a foreign public official."

7 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009), Annex I, Part B. *See* Section B.4 for an excerpt of this provision.

8 *Ibid*.

Part 1

The Anti-Bribery Convention, WGB monitoring and LP liability: Catalysts for change

LP liability is a crucial element in the architecture of law enforcement targeting unlawful activity in business organisations, including the offence of foreign bribery. As noted above, its importance is recognised in Articles 2 and 3 of the Convention, which obligate the 41 Parties to establish LP liability in accordance with their legal principles and to ensure that legal persons are subject to "effective, proportionate and dissuasive criminal penalties" or (if criminal responsibility is not applicable to legal persons under a Party's legal system) equivalent "non-criminal sanctions, including monetary sanctions" for foreign bribery.

The Anti-Bribery Convention and the WGB's intensive monitoring of Parties' compliance with their commitments under the Convention[9] have served as a catalyst for the adoption of LP liability. While obliging Parties to establish LP liability, the Convention and the related Commentaries provide flexibility on how they implement it.[10] The need for this flexibility arises from the diversity of legal institutions and traditions among the 41 Parties.

This section of the report presents a timeline of law-making events relevant for LP liability in relation to the adoption of the Convention in 1997. The timeline shows that Parties had very different starting points for LP liability when they began taking steps to implement the Convention. Many had no established system for LP liability prior to the Convention – for them, LP liability was a foreign concept, largely alien to their legal traditions and practices except possibly in some areas of administrative or regulatory law (e.g., tax, environment or customs). In contrast, a number of countries had quite developed LP liability systems covering complex offences requiring proof of action and intent.

Regardless of their starting points, nearly all the Parties have been active in refining their LP liability systems in the post-adoption period, which has been one of intense law-making activity in this area. At the same time, many Parties have availed themselves of

9 Article 12 of the Anti-Bribery Convention requires the Parties to "co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation" of the Convention.

10 This flexibility is demonstrated both in the text of the Convention and in the Commentaries. Article 2 of the Convention provides that a Party's measures concerning company liability should be taken "in accordance with its legal principles". Similarly, comment 2 in the Commentaries explains that the "Convention seeks to assure a functional equivalence among the measures taken by the Parties … without requiring uniformity or changes in fundamental principles of a Party's legal system."

the flexibility provided by the concept of "functional equivalence". This has produced a situation of wide divergence of law and practice across jurisdictions regarding LP liability. Part 2 of the report describes, when relevant, the WGB's ongoing concerns about whether the standard of functional equivalence has been attained in all cases.

Box 1 presents a timeline of the development of this crucial legal concept for foreign bribery to nearly all of the Convention Parties. Using information contained in the WGB monitoring reports, it maps out legislative and other major law-making events (e.g. decrees or significant judicial decisions) relevant for LP liability that occurred in the Convention Parties. The timeline specifically covers LP liability concerning foreign bribery. However, many countries apply LP liability to foreign bribery and to a broader array of offences. In contrast, Argentina has not adopted LP liability for foreign bribery, even though it has some form of LP liability for other offences.

Before the adoption of the Convention in 1997, at least 25 Convention Parties (61%)[11] had either statutes or rules developed through case law establishing LP liability for economic or regulatory offences. The time line shows that, after the signature of the Convention, at least 66 law-making events took place in 40 countries to either establish or refine LP liability. As shown below, these changes were often a direct response to commitments made in the Convention or subsequent peer pressure from the WGB. At the same time, the WGB reports show that some of the impetus for this intense activity in LP liability rule-making also came from other international instruments.[12] More specifically, the timeline shows that:

- Before the adoption of the Convention in 1997, only one country – the United States – had explicit provisions and clear case law allowing it to hold companies liable for foreign bribery prior to the adoption of the Convention.
- The 25 countries identified as having some form of LP liability before the adoption of the Convention employed laws of various types. Some LP liability regimes were limited to specific areas of law such as competition, tax and environmental regulation (e.g. Argentina, Japan, Iceland, Poland and Norway), while other countries' laws could in principle hold legal persons liable for criminal offences generally (e.g. Canada, Germany, Ireland, New Zealand, South Africa, the United Kingdom, and the United States).
- After the adoption of the Convention, many Parties initiated law-making events relevant for LP liability and foreign bribery. These included:
  - ***Creation of LP liability frameworks for foreign bribery in the absence of prior legal traditions***. Based on information provided in the WGB's monitoring reports, it appears that 16 Parties (39%) took steps to create LP liability systems apparently without any previous experience before the

[11] For clarity, unless otherwise indicated, all percentages used in this report refer to the percent of countries with a particular LP liability characteristic out of the total 41 Convention Parties.

[12] Examples of these other instruments identified in WGB reports include the 1988 Recommendation of the Council of Europe R No 18/1988 and the 1997 Second Protocol to the Convention on the Protection of the European Communities' Financial Interests. *See, e.g.*, Finland Phase 1 page 5; Austria Phase 1 page 8. Anti-corruption obligations, including treatment of legal persons, can also be found in other instruments, such as regional free trade agreements. *See, e.g.*, Article 26.7(3) of the Trans-Pacific Partnership, which was signed on 4 February 2016 but, at the time of publication, had not yet entered into force.

adoption of the Convention: Austria, Belgium, Bulgaria, Chile, Colombia, Czech Republic, Estonia, Greece, Hungary, Italy, Latvia, Luxembourg, Russian Federation, Slovenia, Spain, and Switzerland.

  - ***Adaptation or application of LP liability systems that existed in some form before the Convention to cover foreign bribery***. In addition, 24 Parties (59%) adapted or applied pre-existing systems for LP liability to foreign bribery while implementing the Convention: Australia, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Ireland, Israel, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, South Africa, Sweden, Turkey, United Kingdom and the United States.

- ***A multi-stage process of refining legal approaches to LP liability***. Twenty-one countries (51%) have two or more entries in the timeline after the 1997 adoption of the Convention: Australia, Brazil, Canada, Colombia, Estonia, France, Germany,[13] Greece, Hungary, Latvia, Mexico, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey and the United States. These multiple entries suggest that the creation of an LP liability regime may be, for many countries, an ongoing search for an appropriate fit with the local legal system through experimentation and adaptation as they apply their laws.[14]

- The WGB has served not only as a catalyst for the adoption of LP liability, but also as a platform for mutual learning and sharing of experiences. These different law-making events have changed various aspects of the LP liability regime over the course of implementing the Convention (e.g. offences covered, jurisdiction over legal persons, and clarification of legal entities covered). The WGB not only contributed to these changes through its peer-review monitoring process and the resulting peer pressure, but also provided – and continues to provide – a platform for sharing experiences and good practices. In some cases,[15] countries or international organisations have expressly attributed the changes to the LP liability systems to the influence of WGB monitoring.

13 Germany reports that its Federal Ministry of Justice and Consumer Protection is working on a reform of Germany's legislation on LP liability.

14 An example of this can be seen in Spanish Supreme Court decisions from February and March 2016, which have been summarised in judicial press releases that Spain has provided to the Secretariat. Although neither case concerned foreign bribery, these decisions help clarify basic features of Spain's amended law on legal person liability. Notably, they address *inter alia* the requirements of due process in proceedings against legal persons as well as the burden of proof in relation to breaches of the duty to supervise.

15 *See, e.g.*, Parliament of Australia, Bill Digest no. 75 2015-16 on *Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Bill 2015* (2 Feb. 2016) (Schedule 2: False Accounting Offences) ("Accordingly, the OECD Working Group on Bribery recommended Australia either increase the maximum penalties that apply to legal persons for false accounting under Commonwealth law or increase the scope and penalties that apply to state offences."); New Zealand Ministry of Justice, "Departmental Disclosure Statement: Organised Crime and Anti-Corruption Legislation Bill" (21 May 2014), page 3 ("The Bill .... enhances New Zealand's compliance with a number of other international conventions including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[.]"); United Kingdom, EU Anti-Corruption Report COM(2014) 38 final (3 February 2014), Annex 28 page 4 (explaining that the Bribery Act 2010 "largely addressed concerns raised by the OECD in 2008").

Box 1. **Timeline of law-making events concerning the liability of legal persons**

Year	Number of Parties with some form of LP liability	**Before the signature of the OECD Anti-Bribery Convention** Non-exhaustive list of LP liability arrangements in the 41 Parties before the signing of the Convention (based primarily on WGB Phase 1-3 monitoring reports). *Grey text indicates that the information comes from an official source outside the WGB monitoring process (see Box 2).*
Pre-1997	At least 25 Parties	ARGENTINA Phase 2 Follow-up page 21 (LP liability exists but is limited to certain offences; e.g. anti-trust, but not bribery); AUSTRALIA Phase 2 para. 2 (LP regime codified in 1995 Criminal Code); BRAZIL Phase 1 pages 10-11 (criminal liability for environmental crimes, plus administrative liability for certain non-bribery offences); CANADA Phase 1 page 8 & Phase 3 para. 40 (common law and criminal code definition of "person" includes LP); DENMARK Phase 1 page 8 & Phase 2 para. 207 (criminal code amended in 1996 to create "discretionary" LP liability); FINLAND Phase 2 page 18 (LP liability established in criminal law 1995); FRANCE Phase 3 para. 40 (LP liability introduced into criminal law in 1994); GERMANY Phase 2 para. 105 (administrative liability for corruption at least since 1994); ICELAND Phase 2 page 27 (LP liability exists in specialised laws, e.g. customs and tax); IRELAND Phase 1 page 13 (1937 Interpretation Act plus subsequent laws); ISRAEL Phase 3 para.16 (case law on criminal LP liability has developed since 1973, with some elements codified in 1994); JAPAN Phase 1 page 1 (LP for Unfair Competition Prevention Law); KOREA Phase 1 page 8 (Supreme Court case law); MEXICO Phase 2 para. 57 (criminal sanctions for LPs for offences expressly providing for their application); NETHERLANDS Phase 1 pages 11-12 (article 51 of Dutch Penal Code, which has been in force since 1976, establishes the liability of legal persons, while a 1991 Supreme Court decision clarifies standard of liability by clarifying concept of "manager"); NORWAY Phase 2 para. 99 (criminal LP liability introduced in 1991); NEW ZEALAND Phase 1 page 4 & Phase 2 para. 185 (LPs included in definition of "person" in 1961 Crimes Act and two 1986 Acts – Fair Trading and Commerce – attribute some individual acts and the mental states to the company under specified circumstances); POLAND Phase 1 page 9 (1993 Act introduces LP liability for a non-criminal fine for certain acts of unfair competition); PORTUGAL Phase 2 para. 143 (criminal LP liability established in 1984); SLOVAK REPUBLIC Phase 1 page 8 (various administrative laws create administrative LP liability in specific contexts); SOUTH AFRICA Phase 1 paras. 39 & 43 (1957 Interpretation Act defines "person" to include LPs and 1977 Criminal Procedures Act sets forth procedures for prosecuting LPs); SWEDEN Phase 2 para. 184 et seq. (provisions on "corporate fine" have been in effect since 1986); TURKEY Phase 1 page 9 (some criminal offences for LPs); UNITED KINGDOM Phase 2 para. 201 (LP liability exists under the common law, the 1889 Public Bodies Corrupt Practices Act or the 1906 Prevention of the Corruption Act); UNITED STATES Phase 1 page 9 (LP liability exists under general legal principles and other sources such as US Code and 1977 FCPA for "issuers" and "domestic concerns").

Year	Number of law-making events*	**After the signature of the OECD Anti-Bribery Convention** Country and nature of law-making event in relation to LP liability. *Grey text indicates that the information comes from an official source outside the WGB monitoring process (see Box 2).*
1997	1	**Signature of Anti-Bribery Convention**. NORWAY Phase 3 para. 34 (criminal LP liability for foreign bribery added to criminal code).
1998	4	CANADA Phase 1 page 8 (The Corruption of Foreign Public Officials Act (CFPOA) established LP liability for foreign bribery by incorporating the existing broad definition of "person" already contained in the Criminal Code); GREECE Phase 2 paras. 158-159 (administrative LP liability is imposed for enterprises, but not for all legal persons). ICELAND Phase 1 page 1 (entry into force of criminal law on LP liability); UNITED STATES Phase 1 page 1 (FCPA extended "to any person who engages in any act while in the territory of the U.S. and to any U.S. national and company engaged in an act outside the U.S. in furtherance of a proscribed purpose".).
1999	7	**Entry into force of Anti-Bribery Convention**. BELGIUM Phase 1 page 7 (criminal LP liability established); JAPAN Phase 1 page 1 & Phase 3 para. 36 (entry into force of competition law provisions creating LP liability for foreign bribery); KOREA Phase 1 page 1 & Phase 2 para. 109 (criminal LP liability established for foreign bribery but not domestic); MEXICO Phase 2 para. 57 (criminal sanctions introduced for LPs for 2 offences, including foreign bribery); NEW ZEALAND Phase 1 page 11 Interpretation Act of 1999 defines person to include LPs); SLOVENIA Phase 2 para 153 (LP liability established for limited number of offences, including active bribery); SWITZERLAND Phase 1 page 1 (provision on LP liability adopted)
2000	3	AUSTRALIA (LP liability created for all offences in the criminal code, including foreign bribery); DENMARK Phase 1 page 1 (implementing legislation adopted, including LP liability for foreign bribery); FRANCE Phase 3 para 40 (LP liability established for foreign bribery).
2001	3	AUSTRALIA Phase 2 para. 148 (scope of LP liability extended also to criminal offences found in Commonwealth statutes); IRELAND Phase 2 para. 187 (two laws amended to create two forms of LP liability, depending on offence); ITALY Phase 3 para. 36(administrative LP liability introduced for certain offences, including foreign bribery).

Year	Number of law-making events*	**After the signature of the OECD Anti-Bribery Convention** Country and nature of law-making event in relation to LP liability. *Grey text indicates that the information comes from an official source outside the WGB monitoring process (see Box 2).*
2002	5	ESTONIA Phase 1 para. 53 (LP liability adopted in criminal code); GERMANY Phase 2 para. 117 & n.42 (broadening range of actors whose actions trigger LP liability and increasing the administrative fine for LPs); GREECE Phase 2 para. 159 (administrative LP liability extended to include all LPs); POLAND Phase 2 para. 155 (new law for LP liability); UNITED STATES Phase 3 para. 165 (Sarbanes-Oxley law imposes with new accounting, audit and internal control requirements on LP issuers).
2003	5	FINLAND Phase 3 paras. 25 *et seq*. (new criminal LP liability provision enters into force; NETHERLANDS Phase 2 para. 201 (2003 Supreme Court decision provides for autonomous liability of LP); SPAIN Phase 3 para. 40 (two provisions in Penal Code introduce a limited criminal LP liability); SWITZERLAND Phase 3 paras. 26-27 (revisions to criminal code create two systems of criminal liability for enterprises); TURKEY Phase 1 page 9 (LP liability established by amendment of criminal code).
2004	3	CANADA Phase 3 paras. 40-42 (amendment of criminal law changes attribution of an offence to a LP); HUNGARY Phase 2 para. 141 (entry into force of first law on criminal LP liability); SOUTH AFRICA Phase 1 page (the Prevention and Combating of Corrupt Activities Act 2004 created the offence of bribing foreign public official).
2005	5	BULGARIA Phase 2 Follow-up page 14 (administrative LP liability introduced); FRANCE Phase 3 para. 40 (Perben II law extends criminal LP liability to all criminal offences, unless otherwise specified); LATVIA Phase 1 para. 30 (criminal law amended to provide for "coercive measures" against "private law LPs"); POLAND Phase 2 para. 155 (2002 law amended to ensure constitutionality); TURKEY Phase 2 paras. 173-174 (2003 LP liability law repealed due to concerns about its constitutionality).
2006	2	AUSTRIA Phase 2 para. 127 (introduced general LP criminal liability); SWEDEN Phase 2 Follow-up page 15 (new legislation widens the scope of application for corporate fines).
2007	2	PORTUGAL Phase 3 paras. 43-44 (amendments to criminal statutes related to LP liability); SWITZERLAND Phase 3 paras. 26-27 (LP liability criminal code provisions amended).
2008	6	ESTONIA Phase 3 para. 28 (amendment to criminal code alters standard of liability for LPs); HUNGARY Phase 3 para. 20 (LP liability regime amended to partially respond to WGB concerns about relationship to natural persons); NORWAY Phase 3 para. 47 (Civil Liability Act establishes LP civil liability for foreign bribery); PORTUGAL Phase 3 para. 44 (new foreign bribery law clarifies application of LP liability to foreign bribery); RUSSIAN FEDERATION Phase 1 para. 32 (administrative LP liability established for corruption offences); SWEDEN Phase 2 Follow-up para. 14 & page 19 (revised law allows for debarment of LP suppliers if an official of the LP has been convicted of *inter alia* foreign bribery).
2009	2	CHILE Phase 3 para. 36 (criminal LP liability established for foreign and domestic bribery, money laundering, and terrorism financing); TURKEY Phase 3 para. 36 (LP liability re-established for a limited number of offences, including foreign bribery).
2010	5	LUXEMBOURG Phase 3 para. 26 (adoption of law introducing criminal LP liability); ISRAEL Phase 3 para. 38 (sanctions for foreign bribery increased in February 2010); SLOVAK REPUBLIC Phase 3 para. 38 (amended criminal code permits confiscation of money or property from legal persons); SPAIN Phase 3 para. 43 (criminal liability attributed to LPs for offences committed by individuals when law explicitly provides for LP liability, including for foreign bribery offences); UNITED KINGDOM Phase 3 para. 9 (LP liability strengthened, including new offence for "failure to prevent bribery").
2011	1	COLOMBIA Phase 1 para. 32 (administrative LP liability created, including for foreign bribery).
2012	2	CZECH REPUBLIC Phase 3 para. 34 (criminal LP liability established for a number of criminal offences, including foreign bribery); SWEDEN Phase 3 Follow-up page 6 (new provision on negligent financing of bribery enters into force).
2013	2	CANADA (CFPOA amendments on nationality jurisdiction over legal persons for foreign bribery came into force in 2013); GERMANY (amendment increased the maximum fines for LPs tenfold and addressed liability of legal successors).
2014	2	BRAZIL Phase 3 paras. 18-19 (new LP liability law enters into force); LATVIA Phase 2 Follow-up para. 227 (extraterritorial jurisdiction established for LPs registered in Latvia).
2015	4	BRAZIL (enactment of the Implementing Decree to the Corporate Liability Law); COLOMBIA (new legislation adopted; not yet evaluated by WGB); NEW ZEALAND Phase 3 Follow-up para. 2 (amended Crimes Act establishes statutory basis for LP liability for foreign bribery); SPAIN (Penal Code amendments including LP liability; not yet evaluated by WGB).
2016	2	MEXICO (the new National Code of Criminal Procedure, first adopted in 2014, enters into force across Mexico and contains provisions concerning the prosecution of legal person); SLOVAK REPUBLIC (a new law creating criminal liability for legal persons entered into force in July 2016).

Source: OECD. Events include new or amended legislation and decrees (usually dated as entry into force).

Part 2

Liability of legal persons: Mapping the legal landscape

This section maps the international legal landscape for LP liability based on the roughly 200 reports that the WGB prepared during its first three phases of monitoring. The purpose of this mapping is to provide a comparative overview of the 41 Convention Parties' LP liability laws. This section does not attempt to draw policy conclusions or make recommendations from this mapping exercise. When relevant, however, it does report the WGB's conclusions.

The mapping methodology applies a standardised data collection procedure to each of the 41 Parties. This procedure involved performing key-word searches of the WGB reports, reading the relevant texts, and collecting data concerning LP liability characteristics identified primarily from provisions in the Convention and the 2009 Recommendation. This produced a total of about 2 624 data points characterising the WGB's coverage of the 41 Parties' LP liability systems. A more detailed description of the mapping methodology is provided in Box 2.

Viewed as a whole, the 12 sub-sections in Part 2 attest to the wide variation in LP liability frameworks among the 41 Parties. This variability exists despite the marked trend toward adoption of LP liability laws documented by the timeline in Part 1 above. Thus, the overall portrait painted by this report's comparative survey is a contrasting one of both convergence of legal arrangements and persistent variability of legal approaches to LP liability.

Box 2. **Methodology for mapping LP liability**

The methodology applies standardised data-collection procedures to the LP liability systems of all 41 Parties to the Convention. The mapping results are presented in the form of 15 tables appearing at the end of each sub-section. Each sub-section is generally preceded by a quote from the Convention or the 2009 Recommendation providing the normative basis for the data-collection effort. The choice of certain LP liability characteristics was also influenced by the coverage of the WGB reports themselves.

Collectively, Tables 1-15 have column headings representing 64 specific characteristics of the general subject matters covered by the survey. This results in about 2 624 unique data points on LP liability for the 41 countries. These specific characteristics were chosen in light of the provisions of the Anti-Bribery Convention and the 2009 Recommendation (including its Annex I), concerning such issues as the nature and type of sanctions, intermediaries, nationality, jurisdiction and settlements.

Box 2. **Methodology for mapping LP liability** (cont.)

The data-gathering procedure consisted of reading pertinent sections in the WGB reports concerning, for example, the liability of legal persons (Article 2) and sanctions (Article 3). In addition, we performed key-word searches on the reports to find discussions of other aspects, such as "successor" liability, or "settlements". Based on these readings, one of the following values was assigned to the characteristics for each Party:

- ***Yes or no***. A "yes" or "no" – represented respectively in the tables as a solid [•] or empty [○] dot – signifies that the characteristic either exists or does not exist. For example, the fact that South Africa has four solid dots in the "legal basis of liability" table (Table 2) means that its LP liability regime is grounded in all of the following legal bases: criminal law; case law; other statute; and bribery-specific legislation.

- ***Question mark***. A question mark indicates that the characteristic is either not discussed in a WGB report or that the WGB has expressly decided not to make a determination in the context of a WGB report.

  - ***Unknown.*** The Phase 1-3 reports do not systematically examine all characteristics for all countries. A question mark [?] in the tables for a given characteristic could indicate either that no information was found in the country's reports or that the discussion in the report did not support a definite answer. For example, successor liability is discussed or referenced in the WGB reports for 12 countries, but is not systematically examined in all reports.

  - ***Undetermined.*** In other cases, the WGB deliberately chose not to take a definite position on the characteristic for that country. Often this occurs when the WGB decides to wait until jurisprudence has developed before making an assessment. This absence of information or assessments in the WGB reports is recorded in order to provide a complete picture of the LP liability information available in the WGB reports. No value judgment or policy conclusion is implied by a [?] entry.

- ***Not applicable***. As noted above, this methodology subjects all of the 41 Parties' LP liability systems to the same data-collection procedure. However, not all characteristics are relevant for all countries. Thus, whenever a characteristic was "not applicable" for a particular country, the relevant Table entry contains a dash [–].

The "Comment" columns in the accompanying tables provide additional details – generally in the form of quotes from WGB monitoring reports – on the specifics of each country's approach to LP liability.

This report and the tables generally reflect the state of the law as it existed in each country when the WGB made its most recent assessment. In some instances the tables, and the relevant discussion in the report, reflect additional information provided by the WGB member countries to the Secretariat in order to supplement the WGB's findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review. These updates concern laws that were adopted and entered into force no later than 1 July 2016 and are highlighted in grey.

Finally, while the report primarily reflects the WGB findings, it is not binding on the WGB and its contents do not prejudice the WGB's on-going or future evaluations of the WGB members' compliance with the Anti-Bribery Convention.

2.1. Nature of legal person liability

> ***"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."***
>
> ***Article 2 of the Anti-Bribery Convention***

The Convention requires each Party to establish a system for holding legal persons liable for foreign bribery. Given the variety of legal traditions, however, the Convention does not require Parties to establish criminal liability when "under the legal system of a Party, criminal responsibility is not applicable to legal persons".[16] This section explores the various systems that the Parties have enacted to hold legal persons liable for foreign bribery.

Figure 1. **Nature of legal person liability**

(Number of Parties)

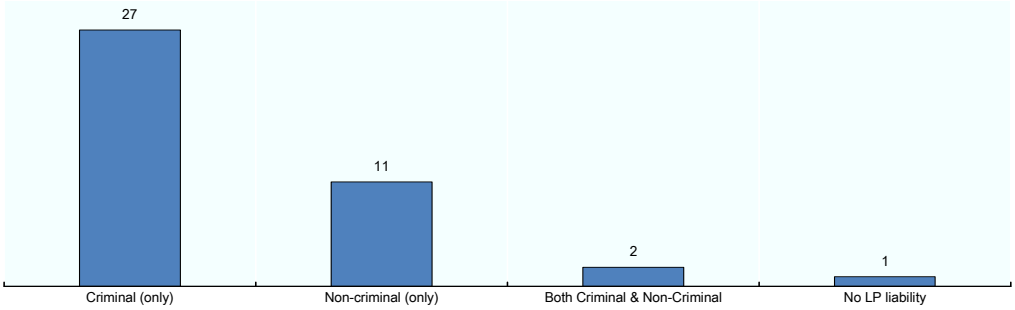


Table 1 reviews the nature of liability of legal persons in the 41 Parties. It uses two categories: criminal liability and non-criminal liability.[17] Criminal liability is used here to describe systems where an LP is held liable for the offence of committing bribery as a matter of criminal law. A non-criminal system is one that does not impose liability as a criminal matter, but can hold a legal person responsible for foreign bribery (i) under an "administrative" system (e.g., Brazil, Bulgaria, Colombia, Germany, Greece, Italy, Mexico, Poland, Russian Federation, and Turkey), (ii) by imposing criminal law sanctions, sometimes known as "coercive measures", under the criminal code even though the legal person, technically, cannot be liable for a criminal offence (e.g., Colombia, Latvia, and Sweden), or (iii) under a "civil" action brought by a governmental authority (e.g. United States). Twenty-seven countries (66%) are reported to have only criminal liability and

16 Commentaries to the Anti-Bribery Convention, comment 20; *see also* Anti-Bribery Convention, art. 3.

17 This column does not count arrangements available in some countries that allow private parties to pursue others for damages relating to foreign bribery. For example, Norway's Civil Liability Act provides the following: "any person who has suffered damage as a consequence of corruption can claim compensation from anybody who by intent or negligence is responsible for the corrupt act(s) or for complicity thereto. Norway Phase 3 para. 47.

11 countries (27%) have some form of non-criminal liability. At least two countries (5%), Mexico and the United States, have both criminal and non-criminal liability.

In contrast, only one Party has not yet established an LP liability regime for foreign bribery. As the WGB concluded in its Phase 3 report for Argentina: "[S]ome 12 years after becoming a Party to the Convention, Argentina remains unable to hold legal persons liability for foreign bribery…. In the meantime, criminal corporate liability has been established for several other offences but not for foreign bribery."[18]

For its part, Sweden has an arrangement to impose "corporate fines", which is closely linked to enforcement actions against individuals. In this regard, the WGB found: "Under Swedish law, only natural persons can commit crimes. However, pursuant to chapter 36, section 7 of the Penal Code, a kind of quasi-criminal liability is applied to an 'entrepreneur' for a 'crime committed in the exercise of business activities'".[19]

While this report documents the Convention Parties' efforts to establish LP liability for foreign bribery, it should be recalled that the WGB may still consider that a Party's chosen LP liability system does not live up fully to the standards of the Convention and the 2009 Recommendation.[20] For example, the WGB has consistently criticised LP liability systems that follow a pure "identification" theory approach to attributing liability to a legal person.[21] In this regard, the WGB has stated that "Ireland has not implemented the Working Group's recommendations … to review 'on a high priority basis' the law on the liability of legal persons for the bribery of foreign public officials with a view to codifying it, and to expand the scope of the liability of legal persons to cover bribery committed by a lower level person with the express or implied permission of a senior person.… The lead examiners therefore reiterate the[se] … recommendations and further recommend that Ireland should expand the scope of the liability of legal persons to meet the Good Practice Guidance in paragraph B) b) of Annex 1 to the 2009 Anti-Bribery Recommendation."[22] In the United Kingdom, Section 7 of the Bribery Act 2010 introduced the criminal offence of failure of a commercial organisation to prevent bribery. This represented a significant exception to the applicability of the identification theory in the United Kingdom.[23]

18 Argentina Phase 3 para. 49.

19 Sweden Phase 1 page 7; *see also* Sweden Phase 3 para. 80 ("[U]nder the Penal Code, there is no liability of legal persons. Instead, corporate fines may, in certain circumstances, be imposed on a legal person in the circumstances set out in … the Penal Code….").

20 As explained in the Methodology Section (see Box 2 above), this report does not purport to alter WGB findings or prejudice future WGB evaluations. In some places, however, it contains supplemental information provided by a WGB country about areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review. This supplemental information is highlighted in grey.

21 *See e.g.*, United Kingdom Phase 3 para. 32 ("Since 2005, the Working Group has repeatedly criticised the use of the identification theory for imposing liability against legal persons for foreign bribery….").

22 Ireland Phase 3 page 22 (Commentary).

23 United Kingdom Phase 3 para. 30; *see also* The Law Commission, *Reforming Bribery*, Report No. 313 (2008) para. 6.90 ("We believe that our recommended offence, the 'failure to prevent bribery' offence, will make the regime of liability of companies in England and Wales more 'effective, proportionate and dissuasive'. It would be an important step in following the spirit, d not just – like the current legal position – in observing the letter, of the obligations under the OECD Convention.").

Table 1. **Nature of Legal Person Liability**

	Criminal liability	Non-Criminal liability	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Argentina	○	○	No LP liability for foreign bribery: "Some 13 years after becoming a Party to the Convention, Argentina remains unable to hold legal persons liable for foreign bribery…. In the meantime, criminal corporate liability has been established for several other offences but not foreign bribery." Phase 3 para. 49.
Australia	•	○	Criminal: Australia established an expanded version of "liability of legal persons for criminal offences" under Division 12 of the Criminal Code Act. Phase 3 paras. 18-19.
Austria	•	○	Criminal: "The Austrian Federal Statute on the Responsibility of Entities for Criminal Offences … entered into force on 1 January 2006…. It applies to all offences, intentional and unintentional, thus including bribery of foreign public officials." Phase 1*bis* para. 62
Belgium	•	○	Criminal: "Criminal liability of legal persons, as laid down in Article 5 of the Criminal Code, has existed in Belgium since 1999. Its scope *ratione materiae* covers, in principle, all offences whether or not they require intention, including transnational bribery, which is an intentional offence". Phase 2 para. 123.
Brazil	○	•	Non-criminal: Brazil's law on liability of legal persons "provides for a strict civil and administrative liability regime for legal persons." Phase 3 para. 26.
Bulgaria	○	•	Non-criminal: "Bulgaria created liability of legal persons for foreign bribery in 2005 after its Phase 2 evaluation by enacting Articles 83a-83f of the Law on Administrative Offences and Sanctions (LAOS). These provisions created administrative and not criminal liability against legal persons for bribery and other selected criminal offences." Phase 3 para. 20; *see also* Phase 3 page 48 (LAOS Article 83a).
Canada	•	○	Criminal: "Pursuant to section 2 of the Criminal Code, legal persons are liable for criminal offences, including an offence under the CFPOA…." Phase 2 para. 71. Section 22.2 of the Criminal Code (which entered into force in March 2004) sets forth the conditions for holding an LP liable for offences, including foreign bribery (in section 3 of the CFPOA), that require "the prosecution to prove fault, other than negligence". Phase 3 para. 42.
Chile	•	○	Criminal: Law 20 393 creates "criminal liability of legal persons for foreign and domestic bribery, money laundering, and terrorism financing." Phase 3 para. 36.
Colombia	○	•	Non-criminal: Following the WGB's Phase 2 report, Colombia adopted Law 1778 of 2016, which provides for administrative liability for legal persons for the bribery of foreign public officials "in relation to an internal business or international transaction". Colombia's general regime for the liability of legal persons for other offences is found in Article 34 of Law 1474 of 2011. Under Article 34(1), sanctions contained in the Code of Criminal Procedure can be applied to an LP "in the context of a prosecution against a natural person". Phase 1 para. 47. Under Article 34(2), LPs can be held "civilly liable" by "possibly affected State entities". Phase 1 para. 45. Finally, under Article 3(3), LPs can face administrative proceedings with the "Superintendence of Corporations". Phase 1 para. 44.
Czech Republic	•	○	Criminal: "On 1 January 2012, the Act on Criminal Liability of Legal Persons and Proceedings against Them (Act No. 418/2011 Coll.) entered into force, establishing the criminal liability of legal persons for a number of criminal offences, including foreign bribery." Phase 3 para. 34.

	Criminal liability	Non-Criminal liability	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Denmark	•	○	Criminal: "Since Phase 2, Danish statutory provisions and guidelines on the criminal liability of legal persons for foreign bribery have not changed. The Criminal Code provides that a legal person may be punished by a fine if such punishment is authorised by law or applicable rules." Phase 3 para. 47.
Estonia	•	○	Criminal: "[L]egal persons committing foreign bribery are subject to criminal responsibility under section 14 of the Penal Code." Phase 3 para. 25.
Finland	•	○	Criminal: Following "corporate liability provision in the Criminal Code" in force since January 2003, the "provisions concerning implementation of Article 2 of the Convention are now set out in § 1:9, § 8:7 and Chapter 9 of the Criminal Code." Phase 3 para. 24.
France	•	○	Criminal: "The criminal liability of legal persons was introduced into French law in 1994. Corporate liability for the offence of transnational bribery was introduced by Section 3 of the Act of 30 June 2000…". Phase 3 para. 40.
Germany	○	•	Non-criminal: Germany established liability for LPs "including liability for the foreign bribery offence, under the Administrative Offences Act…". Phase 3 para. 57.
Greece	○	•	Non-criminal: "Greece has established an administrative and not criminal form of liability of legal persons for foreign bribery." Phase 3*bis* para. 50.
Hungary	•	○	Criminal: Under Act CIV of 2001, an LP can be "liable for foreign bribery". Phase 3 para. 19. The WGB has described this law as establishing "criminal liability of legal persons". Phase 3 para. 19.
Iceland	•	○	Criminal: An LP "can be held criminally liable for a foreign bribery offence committed by 'its spokesman, employee or other person acting on its behalf', as provided under the general corporate liability regimes established under section 19c [of the General Penal Code]". Phase 3 para. 19. & page 36.
Ireland	•	○	Criminal: While recognising that Ireland has "criminal liability" of LPs, the WGB recommended codifying and clarifying the scope of such liability because Ireland continues to rely on the common law "identification theory" approach to attribute acts of natural persons to LPs. *See* Phase 3 paras 55-58.
Israel	•	○	Criminal: "Israel has a regime of criminal liability for legal persons…. The regime has developed at common law since 1973, and some elements were enshrined in article 23 of the Penal Law (PL) in 1994. Phase 3 para. 16.
Italy	○	•	Non-criminal: "Under Legislative Decree 231, 8 June 2001 … administrative liability may be attributed to legal persons for certain criminal offences committed by a natural person, including foreign bribery and false accounting." Phase 3 para. 36.
Japan	•	○	Criminal: Under Japan's Unfair Competition Prevention Law, "a legal person is liable to punishment by fine for the foreign bribery offence when 'a representative of a juridical person, or an agent, employee or any other of a juridical person 'has committed the foreign bribery offence 'with regard to the business of said juridical person'". Phase 3 para. 36.
Korea	•	○	Criminal: "Article 4 of the FBPA establishes the criminal responsibility of a legal person for the bribery of a foreign public official … specifically to address the requirements of the Convention, and an equivalent provision does not exist in relation to the domestic bribery offences…." Phase 1 page 7.
Latvia	○	•	Non-criminal: Section 12 of Latvia's Criminal Procedure Law provides for the application of "coercive measures" to legal persons, but the term "criminal liability" only applies to natural persons under this law". Phase 2 para. 211.

	Criminal liability	Non-Criminal liability	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Luxembourg	•	○	Criminal: "The scope of application *ratione materiae* of the criminal liability of legal persons … is very broad. It makes a general principle of the criminal liability of legal persons and extends it to all crimes and offences covered by the Penal Code and by specific laws. Bribery of a foreign public official is a crime in Luxembourg law, and consequently legal persons are criminally liable for such violations." Phase 3 para. 29.
Mexico	•	•	Criminal: Mexico has informed the Secretariat that amendments to the National Code of Criminal Procedure, which were adopted in June 2016 along with a new Article 11*bis* of the Federal Criminal Code, provide for criminal liability of legal persons for specific offences, including the foreign bribery offence under Article 222*bis* of the Federal Criminal Code. Non-criminal: Mexico has two other forms for sanctioning legal persons. First, under Article 11 of the Federal Criminal Code, Mexico can impose certain non-criminal sanctions on LPs. Phase 2 para. 61; *see also* Phase 1 page 24. This provision remains in force. Second, Mexico has created a parallel "regime of administrative liability of legal persons" under its public procurement law. Phase 3 Follow-up para. 4.
Netherlands	•	○	Criminal: "The criminal liability of legal persons is set out under article 51 of the Criminal Code. If an offence is committed by a legal person, 'criminal proceedings may be instituted and the punishments and other measures provided for by the law may be implemented where appropriate against (a) the legal person, or (b) those who ordered the commission of the offence, and those were in control of such unlawful behaviour, or (c) the persons mentioned under (a) and (b) together.'" Phase 3 para. 32.
New Zealand	•	○	Criminal: The Crimes Act "defines 'person' to include companies. Legal persons can thus in theory be liable for criminal offences applicable to persons, including offences requiring intent or *mens rea*, except for certain offences such as murder or offences that provide only for sanctions of imprisonment." Phase 2 para. 178
Norway	•	○	Criminal: Norway established LP liability in 1997 under Section 48a of its penal code. "Under this section, a company may be liable where 'a penal provision is contravened by a person who has acted on behalf of' the LP.'" Phase 3 para. 34.
Poland	○	•	Non-Criminal: "The Act on Liability of Collective Entities … provides for the liability of legal persons…. Under the Act, a collective entity may be liable for the criminal conduct of a natural person…". Phase 3 para. 45.
Portugal	•	?	Criminal: "The general provisions on the criminal liability of legal persons in Article 11 of the Criminal Code now apply to the foreign bribery offence and other enumerated crimes." Phase 3 para. 44.
Russian Federation	○	•	Non-criminal: The Russian Federation has established "administrative liability of legal persons for foreign bribery." Phase 2 para. 252.
Slovak Republic	•	○	Criminal: The Act on Criminal Liability of Legal Persons, which was adopted on 13 November 2015 and promulgated on 25 February 2016, entered into force in July 2016. The WGB will have the opportunity to examine the application of the 2015 Act in practice during Phase 4.
Slovenia	•	○	Criminal: "Article 33 of the Criminal Code provides that 'the liability of a legal person for criminal offences which the perpetrator commits in its name, on its behalf or in its favour shall be provided for by statute." In furtherance of this requirement, the 1999 Liability of Legal Persons for Criminal Offences Act ("Liability of Legal Persons Act") was enacted … to establish the liability of legal persons under the Act related to a limited list of criminal offences, including the active bribery of domestic or foreign public officials." Phase 2 para. 153.

	Criminal liability	Non-Criminal liability	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
South Africa	•	○	Criminal: "The criminal liability of a legal person depends on a culpable act by a representative of the legal person." Phase 3 para. 22. "[T]he Interpretation Act 1957 provides that South African law applies to natural and legal persons alike. This implies that section 5(1) of the Prevention and Combating of Corrupt Activities Act, 2004, which covers the offence of bribery of foreign public officials, applies to both natural and legal persons. Phase 3 para. 21.
Spain	•	○	Criminal: Under Penal Code article 31 *bis* established in December 2010, "criminal liability can be attributed to legal persons for certain Penal Code offences committed by a natural person in offences which specifically state that companies can also be held liable." Phase 3 para. 43. A March 2016 Supreme Court decision concerning LP liability for fraud, has clarified that under Spain's new regime for criminal LP liability, prosecutors must adhere to "the structural principles of the criminal procedure", including due process, before sanctions can be imposed under the Penal Code.
Sweden	○	•	Non-criminal: Sweden does not have criminal "liability of legal persons for the bribery of foreign public officials". Instead, the "Swedish system for liability of legal persons is a special legal effect of crime (corporate fines)" and thus requires "that a crime has been committed by a natural person." Phase 3 para. 80; *see also* Phase 1 page 7 ("Under Swedish law, only natural persons can commit crimes. However, pursuant to chapter 36, section 7 of the Penal Code, a kind of quasi-criminal liability is applied to an 'entrepreneur' for a 'crime committed in the exercise of business activities'….").
Switzerland	•	○	Criminal: The liability of LPs "is governed in Swiss law by article 102 SCC" following the 2007 entry into force of "the revised general part of the Criminal Code". However article 102 SCC replaced "without substantive amendment" two prior previsions on LP liability adopted in 2003. Phase 3 para. 26.
Turkey	○	•	Non-criminal: After originally enacting criminal LP liability, Turkey adopted an administrative liability regime for foreign bribery and certain other offences. While it did not repeal a criminal code provision that provides for "certain sanctions on legal persons in the event of a conviction of a natural person," the WGB did not agree that this alone would constitute "liability for legal persons". Phase 3 para. 36.
United Kingdom	•	○	Criminal: "For offences prior to the 2010 Bribery Act, legal persons may be held liable for foreign bribery under the 'identification theory'…. Under the Bribery Act, legal persons may be liable for foreign bribery under Section 1 or 6 of the Bribery Act, again under the identification theory. Section 7 creates a new corporate offence of failure to prevent foreign bribery." Phase 3 para. 30.
United States	•	•	Criminal: "[L]egal persons are liable for crimes committed by employees acting within the scope of their employment. This standard of liability is simple and direct, and has resulted in an impressive record of law enforcement actions." Phase 3 para. 98. Non-criminal: "In addition to criminal penalties, the FCPA provides for civil penalties" for foreign bribery. Phase 1 page 12.

2.2. Legal basis for legal person liability

> ***"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."***
>
> ***Article 2 of the Anti-Bribery Convention***

Figure 2. **Legal basis for legal person liability**

(Number of Parties)

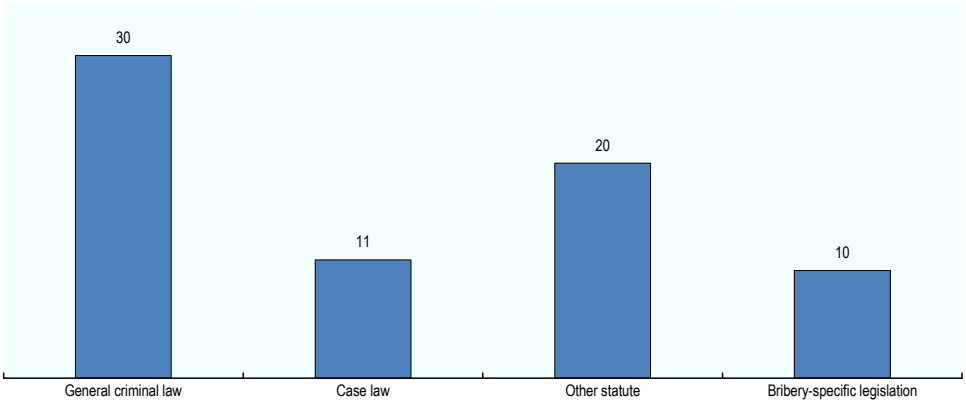


Table 2 shows the legal basis of the Parties' LP liability systems for foreign bribery. The possibilities are (i) general criminal law, (ii) case law, (iii) other statute, and (iv) bribery-specific legislation. The table shows the following:

- ***General criminal law*** is a source for at least some aspect of LP liability in 30 Parties (73%).
- ***Case law*** is a source for at least some aspect of LP liability in 11 Parties (27%); however, all the Parties have codified (to some degree) their LP liability laws, either before or after the signing of the Convention.[24]
- Twenty Parties have employed ***other statutes*** to create company liability regimes, either in whole or in part. These "other statutes" take a variety of forms. For example:
  - Japan is unique among the 41 Parties in having located its foreign bribery offence and related company liability in its "Unfair Competition Prevention Law".

[24] This trend toward codification has continued even into the recent past. For example, New Zealand's Phase 3 Follow-up para. 2 states: "New Zealand has addressed a number of high-priority Phase 3 recommendations by passing substantial amendments to the *Crimes Act 1961*, with effect from 4 November 2015. The amendments enhance New Zealand's corporate liability system by establishing for the first time a statutory basis for legal person liability for foreign bribery."

- Mexico has enacted legislation to create a parallel administrative liability regime for foreign bribery under its public procurement law alongside its regime for criminal liability.

- South Africa, Ireland and Israel have stand-alone definitional statutes that define "persons" in the relevant offences to include legal as well as natural persons.[25]

- Ten countries (24%) have ***bribery-specific legislation*** relevant for LP liability for foreign bribery.[26]

An important overall finding from this Table is that the Parties have generally fulfilled their obligations to create LP liability for foreign bribery by adopting broader laws that also cover at least some other offences.[27] No Party still relies on bribery-specific legislation as the sole basis for its LP liability system.[28] Ten Parties have chosen to enact bribery-specific legislation for LP liability, and this legislation is generally complemented with additional sources of law for LP liability such as interpretative or procedural acts. Thus, most of the Parties have typically chosen to enact LP liability for a broader set of offences than just foreign bribery, though the breadth of application varies. Consequently, WGB monitoring of the Parties' creation and enforcement of LP liability for foreign bribery under the Convention has also strengthened corporate liability regimes for offences beyond the scope of the Convention.

25 This list is not exhaustive. A number of other countries have such definitional statutes as well, as shown in Table 2. In some cases, the definition of LP in these statutes has been overtaken by definitions in other legal provisions. For example, the definition of "person" in New Zealand's Interpretation Act 1999 "includes a corporation sole, a body corporate, and an unincorporated body." (New Zealand Phase 1 page 11). This definition has been made redundant by the definition in the Crimes Act. For this reason, the Interpretation Act has not been counted as a source of legal basis for LP liability for foreign bribery in New Zealand.

26 The WGB countries with bribery-specific legislation are Canada, Iceland, Ireland, Korea, Mexico, Portugal, the Russian Federation, South Africa, the United Kingdom, and the United States.

27 Some countries have LP liability systems in which corporations can be liable for any criminal offence, provided that the requisite conditions are met to attribute the offence to the legal entity. *See, e.g.*, Australia Phase 3 page 70 (reproducing Australia's Criminal Code Act 12.1(2): "A body corporate may be found guilty of any offence, including one punishable by imprisonment"). Other countries limit LP liability to specifically identified offences. *See e.g.*, Chile's Law 20,393 (concerning LP liability for four specific offences: domestic bribery, foreign bribery, money laundering and terrorism offences), *reproduced in* Chile Phase 3 page 66.

28 Parties, however, sometimes modify their LP liability regimes **only** for foreign bribery. In 2015, New Zealand amended its criminal code provision concerning foreign bribery to specify the circumstances when a legal person will be held liable as a result of the acts of its employees. The new provisions, however, do not address LP liability for other offences. *See* Crimes Act 1961, as amended by the Organised Crime and Anti-corruption Legislation Bill.

Table 2. **Legal basis for legal person liability for foreign bribery**

	General criminal law	Case law	Other statute	Bribery-specific legislation	Comments /observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Argentina	-	-	-	-	No LP liability for foreign bribery, but it exists for other offences. *See* Phase 3 paras. 49, 51.
Australia	●	●	○	○	**General criminal law**: Commonwealth Criminal Code Act 1995, Divisions 12 & 70. **Common law**: Australia can hold an LP liable for foreign bribery offences committed before Division 12 entered into force under the common law approach developed in the *Tesco* decision. *See* Phase 3 para. 18. Australia does not have a statute of limitations period for foreign bribery. *See* Phase 1 page 14.
Austria	●	○	●	○	**General criminal law:** Sections 307, 307a, and 307b Penal Code contain the substantive foreign bribery offences. Phase 3 para 18. **Other statute**: Federal Statute on Responsibility of Entities for Criminal Offences, which entered into force 1 January 2006, "applies to all offences, intentional and unintentional, thus including bribery of foreign public officials". Phase 1*bis* para. 62.
Belgium	●	●	○	○	**General criminal law / Case law**: Article 5 of the Criminal Code concerns LP liability; however, given lack of clarity on whose acts (and intent) should be attributed to the LP, "Belgian authorities note that it is hence for the courts to refer to ordinary law … to determine how to attribute intent." Phase 3 paras. 30-31.
Brazil	○	○	●	○	**Other statute**: Law 12.846 of 1 August 2013 on corporate liability. *See* Phase 3 para. 19.
Bulgaria	●	○	●	○	**Criminal law / Other statute**: Law on Administrative Offences and Sanctions creates LP liability for "criminal offences" contained in specified articles of the Criminal Code. Phase 3 page 48.
Canada	●	●	○	●	**General criminal law**: Canada "reform[ed] its law on corporate liability by clarifying and expanding its scope through codification in the Criminal Code" in 2003. The resulting Section 22.2, which entered into force in March 2004, sets forth the conditions for establishing whether "an organisation is a 'party' to an offence that requires the prosecution to prove fault, other than negligence", including foreign bribery. Phase 3 paras. 40-43. **Case law**: "Canada was able to convict a corporation (Hydro-Kleen Group Inc.) of foreign bribery under the CFPOA by relying on the common law 'identification theory' of corporate criminal liability" when the offence was committed before Section 22.2 entered into force. Phase 3 Follow-up page 17. **Bribery-specific**: The Corruption of Foreign Public Officials Act. *See* Phase 3 page 5.
Chile	○	○	●	○	**Other statute**: "In 2009, Chile enacted Law 20 393 to create criminal liability of legal persons for foreign and domestic bribery, money laundering, and terrorism financing…." Phase 3 para. 36.

	General criminal law	Case law	Other statute	Bribery-specific legislation	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Colombia	○	○	●	○	**Other statute**: Following the WGB's Phase 2 report, Colombia adopted Law 1778 of 2016, which provides for administrative liability for legal persons for the bribery of foreign public officials "in relation to an internal business or international transaction". Also, Law 1474 of 2011 (Article 34) concerns measures against legal persons for "crimes against public administration or any offence related with public property". Phase 1 para. 32. Law 1778 of 2016 amended Law 1474 of 2011 to provide for debarment of "legal persons who have been declared administratively liable for the conduct of foreign bribery".
Czech Republic	○	○	●	○	**Other statute**: Act on Criminal Liability of Legal Persons and Proceedings Against Them Act No. 418/2011 Coll. *See* Phase 3 para. 34. Civil Code gives content to term "legal person". Phase 3 para. 35.
Denmark	●	○	○	○	**General criminal law**: Act 474 of 12 June 1996 amended Danish Criminal Code to establish "rules on criminal liability for legal persons". Phase 3 para. 47.
Estonia	●	○	○	○	**General criminal law**: "[L]egal persons committing foreign bribery are subject to criminal responsibility under section 14 of the Penal Code." Phase 3 para. 25.
Finland	●	○	○	○	**General criminal law**: "The provisions concerning implementation of Article 2 of the Convention are now set out in § 1:9, § 8:7 and Chapter 9 of the Criminal Code." Phase 3 para. 24.
France	●	○	○	○	**General criminal law**: "Under article 121-2 CP, legal persons are criminally liable for offences committed *on their account*." Phase 3 para. 41.
Germany	●	○	●	○	**General criminal law / Other statute**: "Germany establishes the liability of legal persons, including liability for the foreign bribery offence, under the Administrative Offences Act …." However, a criminal offence must be committed to create liability under the Act. Phase 3 para. 57.
Greece	○	○	●	○	**Other statute**: Law 4254/2014 (the Anti-Money Laundering Law) consolidated various foreign bribery provisions. *See* Phase 3*bis* para. 50.
Hungary	●	○	●	○	**General criminal law**: Article 258B contains Hungary's substantive foreign bribery offence. *See* Phase 3 para. 11. **Other statute**: Act CIV on Measures Applicable to Legal Persons under Criminal Law (1 May 2001) as amended by Act XXVI of 2008. *See* Phase 3, para. 19 & n.15.
Iceland	●	○	○	●	**General criminal law**: General Penal Code Section 19 contains the general principles of LP liability. *See* Phase 3 para. 19; Phase 1 page 6. **Bribery-specific legislation**: Act No. 144/1998 on Criminal Liability of Legal Persons on Account of Bribery of Public Officials. *See* Phase 3 para. 19; Phase 1 page 5.

	General criminal law	Case law	Other statute	Bribery-specific legislation	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Ireland	○	●	●	●	**Case law**: Irish authorities informed WGB that they would "they will maintain the common law position and allow the law to evolve in this area rather than legislate" LP liability. Phase 3 para. 59.. **Other statute**: Interpretation Act 2005 defines "person" to include a "body corporate" for purposes of an "offence". Phase 3 para. 53 & n.12. **Bribery-specific legislation**: Public Bodies Corrupt Practices Act 1889 and serious of Prevention of Corruption Acts adopted between1906 and 2010. *See* Phase 1 at pages 1 & 12; *see also* Phase 3 pages 69-70.
Israel	●	●	○	○	**General criminal law / Case law**: Israel has a regime of criminal liability for legal persons (also known as bodies corporate). "The regime has developed at common law since 1973, and some elements were enshrined in article 23 of the Penal Law…." Phase 3 para. 16.
Italy	●	○	●	○	**General criminal law / Other statute**. Under Legislative Decree 231 of 8 June 2001, Italy can impose "administrative liability" on LPs for "certain criminal offences committed by a natural person, including foreign bribery and false accounting". Phase 3 para. 36.
Japan	○	○	●	○	**Other statute**: Foreign bribery offence for legal persons is codified in Unfair Competition Prevention Law. *See* Phase 3 para. 36.
Korea	●	●	○	●	**General criminal law / Case law**: Contains general principles such as complicity contained in Criminal Code. *See* Phase 1 pages 6-7. **Bribery-specific legislation**: Act on Preventing Bribery of Foreign Public Officials in International Business Transactions. *See* Phase 1 page 1.
Latvia	●	○	●	○	**General criminal law**: Criminal Law Sections 12 and 701 created LP liability through the application of "coercive measures". Phase 2 para. 211. **Other statute**: The Civil Law, Commercial Law, and the Associations and Foundations Law provide definitions of the types of LPs covered. *See* Phase 2 paras. 213-215.
Luxembourg	●	○	○	○	**General criminal law**: Article 34 of the Criminal Code. *See* Phase para. 27.
Mexico	●	○	●	●	**General criminal law**: Mexico first introduced sanctions for LPs in 1999 through application of Article 11 of the Federal Criminal Code. Article 222*bis* in the same code contains the foreign bribery offence. *See* Phase 2 para. 57. In June 2016, Mexico adopted Article 11*bis* of the Federal Criminal Code, which authorises additional sanctions to be imposed on legal persons implicated in certain offences, including foreign bribery. **Other statue**: Following amendments promulgated June 2016, Article 421 of the National Code of Criminal Procedure provides for the criminal liability of legal persons. **Bribery-specific legislation**: According to Mexico, its 2012 Federal Anti-Corruption Law in Public Procurement creates a regime of administrative LP liability for foreign bribery that exists alongside Mexico's prior LP framework in the Federal Criminal Code. Phase 3 Follow-up para. 4. In addition, Mexico has informed the Secretariat that it can now impose criminal liability on legal persons for specific offences, including foreign bribery, following amendments to National Code of Criminal Procedure (along with the new Article 11*bis* of the Federal Criminal Code) adopted in June 2016.

	General criminal law	Case law	Other statute	Bribery-specific legislation	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Netherlands	●	●	○	○	**General criminal law**: Article 51 of the Criminal Code. *See* Phase 3 para. 32. **Case law:** Supreme Court decision. *See* Phase 3 para. 36.
New Zealand	●	●	○	○	**General criminal law**: Crimes Act 1961, including amendments to foreign bribery offence in 2015. *See* Phase 3 para. 28. **Case law**: Presumably, common law rules on attributing offences to legal persons would apply to unincorporated entities not covered by 2015 amendment. *See* Phase 2 para. 181-182.
Norway	●	○	○	○	**General criminal law:** Section 48a of the General Civil Penal Code. *See* Phase 3 para. 34.
Poland	●	○	●	○	**General criminal law / Other statute:** The Act on Liability of Collective Entities creates LP liability for selected offences contained in the Penal Code. *See* Phase 3 para. 45.
Portugal	●	○	○	●	**General criminal law**: The general provisions for LP liability are contained in Article 11 of the Criminal Code, and apply to foreign bribery and other specifically enumerated offences. *See* Phase 3 para. 44. **Bribery-specific legislation**: Law 20/2008 adopted a new foreign bribery offence and provides that "legal persons and similar entities shall be held liable, in general terms, for the offences laid down in the present law", which "applies Article 11 of the Criminal Code … to the foreign bribery offence". Phase 3 para 44.
Russian Federation	○	○	●	●	**Other / Bribery-specific legislation:** Article 14 of Federal Law 273-FZ establishes "administrative responsibility". Article 13.3 of Federal Law 273-FZ requires "organizations" to elaborate and take measures to prevent the "giving", the "offer" and the "promise" of a bribe as prohibited acts. Phase 2 para. 250.
Slovak Republic	●	○	●	○	**General criminal law**: Sections 332 to 334 of the Criminal Code criminalises active bribery. Under Section 1(2) of the 2015 Act on the Criminal Liability of Legal Persons, the Criminal Code and the Code of Criminal Procedure shall apply to LPs unless the 2015 Act on Criminal Liability of Legal Persons provides otherwise. **Other statute**: The 2015 Act on Criminal Liability of Legal Persons. Also, the Civil Code, the Commercial Code and other specialised laws help define the scope of term "legal person".
Slovenia	●	○	●	○	**General criminal law / Other statute**: As provided for in Article 33 of Criminal Code, the 1999 Liability of Legal Persons for Criminal Offences Act established LP liability for "a limited list of criminal offences, including the active bribery of domestic or foreign public officials." Phase 2 para. 153; *see also* Phase 3 para. 31.
South Africa	●	●	●	●	**General criminal law**: 332(1) of the Criminal Procedure Act, 1977 ('CPA'). *See* Phase 3 para. 21. **Case law**: Courts have added a *mens rea* requirement to the bribery offence, though none is specified in statute. *See* Phase 3 paras. 14 *et seq*. **Other statute**: The Interpretation Act 1957 provides that South African law applies to natural and legal persons alike. *See* Phase 3 para. 21. **Bribery-specific legislation**: The Prevention and Combating of Corrupt Activities Act, 2004. Phase 3 para. 21.

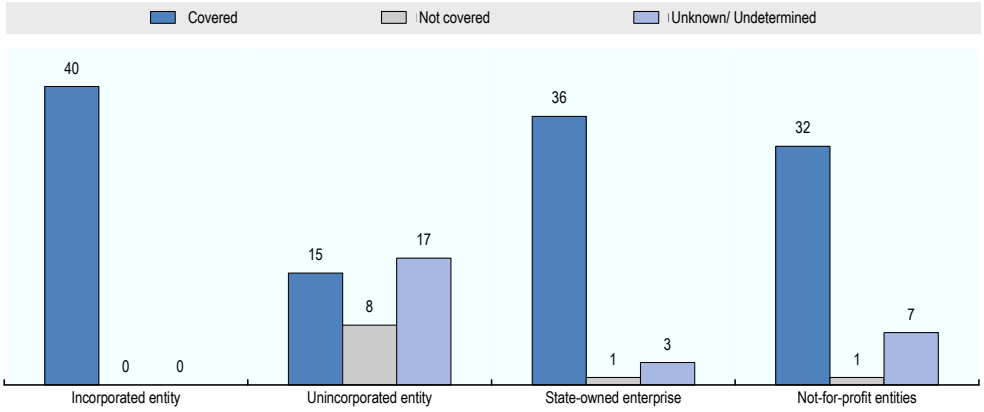
	General criminal law	Case law	Other statute	Bribery-specific legislation	Comments /observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Spain	●	○	○	○	**General criminal law**: "The new Spanish regime of criminal liability for legal persons introduced by Organic Act 5/2010 … is contained in revised [Penal Code] art. 31 *bis*." Phase 3 para. 43.
Sweden	●	○	○	○	**General criminal law**: LP can be subject to "corporate fines" in specific circumstances defined in Chapter 36, Section 7 of the Penal Code. Phase 3 para 40.
Switzerland	●	○	○	○	**General criminal law**: LP liability is contained in the "revised general part of the Criminal Code". Phase 3 para. 26.
Turkey	●	○	●	○	**General criminal law**: Art. 60 of Criminal Code allows sanctions to be imposed on LP, but only if NP is convicted. *See* Phase 3 para 36. **Other statute:** Article 43/A of the Code of Misdemeanours. *See* Phase 3 para. 36.
United Kingdom	○	●	○	●	**Case law:** The identification theory approach would at least apply to offences pre-dating the entry into force of the Bribery Act. *See* Phase 3 para. 30. **Bribery-specific legislation**: Bribery Act 2010. *See* Phase 3 para. 30.
United States	○	●	○	●	**Case law**: General legal principles of agency liability, including the *respondeat superior* doctrine determine when wrongful acts can be attributed to LPs. *See* Phase 1 page 10. **Bribery-specific legislation**: Foreign Corrupt Practices Act. Phase 1 page 1.

2.3. Types of legal persons covered

> ***"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."***
>
> ***Article 2 of the Anti-Bribery Convention***

Figure 3. **Types of legal persons covered**

(Number of Parties)



This section documents the types of entities covered by the Parties' LP liability systems. An excessively narrow definition of "legal person" could open up possibilities for entities to escape liability for foreign bribery by choosing organisational forms not covered by a Party's laws prohibiting foreign bribery. Furthermore, the WGB has been concerned with ensuring that state-owned enterprises are covered and can be held liable under each Party's foreign bribery law.

Table 3 presents three main dimensions concerning the type of legal entities covered by a LP liability regime. These are whether it covers: (1) incorporated or unincorporated entities; (2) private or state-owned entities; and (3) not-for-profit or for-profit entities. The findings are as follows:

- ***Legal status***. Under Article 2 of the Convention, each Party is obligated to "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".[29] Strictly

[29] Neither the Anti-Bribery Convention nor the Commentaries define the term "legal person", so one commentator has said that the Parties must refer to their "legal principles" to determine the types of legal entities that must be covered to satisfy their obligation under Article 2. *See* Mark Pieth, "The Responsibility of Legal Persons", *in The OECD Convention on Bribery: A Commentary* (2d ed. M. Pieth, L.A. Low & N. Bonucci eds., 2014) page 226 ("The term 'legal person' is not defined in the OECD Convention. The understanding is that this term refers back to the law of the state Parties."). The WGB examines the extent to which the scope of each Party's domestic law covers legal entities under Article 1 and Article 2. In the

speaking, legal persons are juridical entities that the law recognises as having rights and obligations separate from their members or owners.[30]

- ***Incorporated.*** All 40 Parties with LP liability for foreign bribery cover incorporated entities.
- ***Unincorporated legal entities***. The WGB has identified eight countries (20%) that do not cover unincorporated legal entities. These countries are Bulgaria, Colombia, Ireland, Japan, Korea, Luxembourg, Mexico and Slovenia. Fifteen countries (37%) definitely include at least some unincorporated entities within the scope of their LP liability regimes for the foreign bribery offence.[31] For the remaining 17 countries (41%), no conclusion could be drawn from the WGB Phase 1-3 monitoring reports.

- ***State-owned enterprises.*** Unsurprisingly, each Party that has adopted LP liability for foreign bribery will apply it to private entities. In addition, the vast majority of the Parties – 34 countries (83%) – will also apply their foreign bribery laws to state-owned enterprises at least under certain circumstances.[32] Up through its Phase 3 evaluations, however, the WGB could not determine whether all state-owned enterprises were covered in Portugal, the Slovak Republic, South Africa, and Turkey. Selected approaches to the application of foreign bribery law to state-owned enterprises include:
  - ***Mexico***. According to the WGB's Phase 3 reports, state-owned enterprises could not be held liable for foreign bribery at the time in Mexico.
  - ***Spain***. In light of recent amendments to its Penal Code, Spain reports that the provisions on criminal responsibility apply to public corporations [*sociedades* mercantiles *públicas*], although only certain sanctions can be imposed on "Public Corporations that implement public policies or provide services of general economic interest".[33] The WGB will have the opportunity to examine the application of these amendments in practice during Phase 4.

process, it may make recommendations to ensure that each Party fully implements the obligations of the Anti-Bribery Convention.

30 Black's Law Dictionary (7th ed., 1999) defines "artificial person" (including related terms such as a "juristic person" or a "legal person") as: "An entity, such as a corporation, created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being."

31 For example, Brazil, in Article 1 of its corporate liability law, expressly applies its corporate liability law to "companies and general partnerships, *either incorporated or not*, regardless of their business organization or corporate model". Brazil Phase 3 pages 83-84.

32 *See* Mark Pieth, "The Responsibility of Legal Persons", *in The OECD Convention on Bribery: A Commentary* (2d ed. M. Pieth, L.A. Low & N. Bonucci eds., 2014) page 227 ("The nature of 'state-owned' or 'state-controlled enterprises differs from one state to the next, but the WGB has insisted that such bodies be covered by the state Parties' definitions of 'legal persons'.").

33 New Article 31*quinquies*, according to an English translation provided by Spain, reads as follows: "1. The provisions related to the criminal liability of legal persons shall not be applicable to the State, to the territorial and institutional Public Administrations, to the Regulatory Bodies, the Public Agencies and Public Corporate Entities [*Entidades públicas Empresariales*], to the international organisations under Public Law or to others that exercise public powers of sovereignty or administration. 2. In the case of Public Corporations that

  - ***Turkey***. The law does not cover enterprises that have over 50% state ownership.

- ***Not-for-profit entities.*** Once again, the Parties that have either adopted or attempted to adopt LP liability regimes will apply them to commercial or for-profit legal entities. In addition, at least 32 countries (78%) will, in specific circumstances, also apply their laws against foreign bribery to not-for-profit entities. Of these, some countries, such as Switzerland and the United Kingdom, will only impose liability on a non-profit if the bribery occurs in the performance of commercial acts or if the non-profit engages in business activities. For the remaining 7 countries (17%), the applicability of foreign bribery laws to non-profit entities could not be determined from the WGB reports.

implement public policies or provide services of general economic interest [*Sociedades mercantiles públicas que ejecuten políticas públicas o presten servicios de interés económico general*], the penalties provided for in article 33, number 7, letters a) and g) shall only apply. This restriction shall not apply when the Judge or Court at law considers that this is a legal form/status created by the promoters, founders, administrators/managers, or representatives in order to avoid eventual criminal liability."

Table 3. **Types of legal person covered**

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Argentina	-	-	-	-	No LP liability for foreign bribery, but it exists for other offences. *See* Phase 3 paras. 49, 51.
Australia	●	?	●	?	**Incorporated**: LP liability exists for a "body corporate", which is an entity "having separate legal personality". Phase 1 page 8. The Federal Court of Australia, in a non-criminal case not involving corruption, ruled that the term "body corporate" included the Commonwealth itself. *See Coochey v Commonwealth of Australia* [2005] FCA 1165. **Unincorporated**: Not discussed directly in WGB reports. **SOE**: According to authorities, all bodies corporate should be covered, even if owned or controlled by State. *See* Phase 1 page 8. **Non-Profit**: Not discussed in WGB reports directly, but, according to authorities, all Australian bodies corporate should be covered once case law develops, even if LP is established for non-profit aims. *See* Phase 1 page 8.
Austria	●	●	●	●	**Incorporated / Unincorporated / SOE / Non-Profit**: WGB found LP liability for entities with or without "legal personality", including "not-for-profit" and "public" entities. Public LPs not liable for acts in "exercise [of] state authority. Phase 1*bis* para. 62 & n.23
Belgium	●	●	●	?	**Incorporated / Unincorporated / SOE**: Belgium's LP liability provisions apply to "public law legal persons", "private law legal persons" (e.g. "commercial companies and associations" and "certain entities that do not have legal personality but are assimilated to legal persons". Phase 2 para. 123. **Non-profit**: Not expressly discussed in WGB reports.
Brazil	●	●	●	?	**Incorporated / Unincorporated**: LP law covers "companies and general partnerships, either incorporated or not", as well as "foundations", and "associations". Phase 3 pages 83-84. **SOE**: Though LP law not expressly cover SOEs, Brazilian officials should be liable as corporations, even if "fully or partially owned" by the State. *See* Phase 3 para. 24. The WGB encouraged Brazil to "clarify" the situation in its legislation. Phase 3 page 22 (Commentary). **Non-profit**: WGB has not expressly considered, but the language appears broad enough to potentially cover non-profit LP.
Bulgaria	●	○	●	●	**Incorporated / Unincorporated / Non-profit**: According to Bulgarian academics, LP would, among other types, include: "any entity with legal personality … including, non-profit legal entities, political parties, companies". Phase 3 para. 21. **SOE**: Bulgaria claims that "state-owned or controlled entities" can be held liable. Phase 3 para. 21.

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Canada	●	●	●	●	**Incorporated / Unincorporated / SOE:** For purposes of the CFPOA, a "person" includes "Her Majesty and an organization", while "organization" is further defined as "a public body, body corporate, society, company, firm, partnership, trade union or municipality", or "an association of persons that (i) is created for a common purpose, (ii) has an operational structure, and (iii) holds itself out to the public as an association of persons". Section 2 of the Criminal Code (incorporated by reference in CFPOA section 2). **Non-profit**: Following Phase 3 Follow-up, Canada amended its law to remove the words "for profit" from its definition of "business". *See* CFPOA section 2; *see also* Phase 3 Follow-up page 17 (discussing draft bill then pending)**.**
Chile	●	**?**	●	●	**Incorporated / Unincorporated / Non-profit**: Chile's LP law applies to "private legal persons" including "civil and business corporations" as well as "non-profit corporations and foundations". Phase 1*ter* para. 6. **SOE**: Chile's LP law also applies to "State companies" and would also cover State-controlled "private companies". Phase 1*ter* para. 8.
Colombia	●	○	●	●	**Incorporated / Unincorporated / SOE / Non-profit**: Law 1778 of 2016, which governs "administrative liability of legal persons" for the bribery of foreign public officials, permits the Superintendence of Companies to impose sanctions on "legal persons", including fines. Article 2(2) of Law 1778 specifies that the law applies to "state-owned industrial and commercial enterprises" as well as "companies in which the State has a share" or "mixed private-public ownership companies". Colombia confirms that non-profits can be sanctioned if they are "legal persons"; however, Law 1778 does not apply to entities that lack legal personality. *See also* Phase 1 para. 33 (explaining that under Colombia's Civil Code, legal persons include "corporations and non-profit entities"). The WGB will have the opportunity to first review the new law's application in practice during Colombia's Phase 3 review.
Czech Republic	●	**?**	●	●	**Incorporated / Unincorporated / Non-profit / SOE**: LP liability law does not define "legal persons", but Civil Code provides that LP covers "associations of natural persons or legal persons or legal entities" as well as "other entities designated as such by law". WGB believed this was broad enough to cover "non-profit" entities as well. Finally, the LP liability law expressly provides that State ownership of shares "'does not preclude criminal liability'". Phase 3 para. 35.
Denmark	●	**?**	●	**?**	**Incorporated / Unincorporated**: LP liability covers "any legal person, including … companies, co-operative societies, partnerships, associations, foundations … and state authorities". Phase 1 page 8. **SOE**: SOEs can be liable "for acts committed in the course of the performance of functions comparable to functions exercised by natural or legal persons." According to prosecutor guidelines, SOEs can be liable "when carrying out activities corresponding or similar to activities carried out by private individuals or companies". Phase 2 para. 220. **Non-profit**: Not directly discussed in WGB reports.

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Estonia	●	?	●	?	**Incorporated** / **Unincorporated / SOE / Non-profit**: All "companies founded in private interests are considered legal persons in private law". Estonia excludes State and local governments as well as "legal persons in public law", such as public libraries or radio, which "do not exist primarily to conduct economic activities". Authorities asserted that SOEs would be covered as they primarily "perform economic activities". WGB not expressly consider whether private not-for-profit entities would be exempt. Phase 3 para. 26.
Finland	●	●	●	●	**Incorporated / Unincorporated**: Finland's Criminal Code can cover a "corporation, foundation or other legal entity," which can cover "partnerships", "associations" and "co-operative societies". Phase 1 page. 5. **SOE**: Finnish law requires SOEs to "abide by the same norms" as other Finnish LPs, but public and private LPs are exempt from liability for "offences committed in the exercise of public authority". Phase 3 paras. 29-30. **Non-Profit**: A "legal entity" can include "non-commercial organisations". Phase 1 page 5.
France	●	?	●	●	**Incorporated / SOE / Non-Profit**: Article 121-1 PC applies to "all" LPs, "whether public or private, for profitable or non-profitable aims, French or foreign, with the exception of the State". Phase 1 page 11.
Germany	●	●	●	●	**Incorporated / Unincorporated**: Administrative offences apply to "legal entities" and to "associations or partnerships without legal capacity". Phase 1 page 5. **SOE**: Administrative offences apply to all LPs "based on private law", whether private or "state-owned or state-controlled". WGB suspects also applies to entities "under public law". Phase 1 page 5. **Non-Profit**: Inferred that law would apply to non-profit LP, provided that it is "based on private law". Phase 1 page 5.
Greece	●	?	●	●	**Incorporated** / **Unincorporated / SOE / Non-Profit**: Greece's Anti-Money Laundering law applies to any type of "legal persons". Though undefined, if it matched the coverage of the law in effect at time of the first Phase 3 review, it would cover "State-owned and State-controlled enterprises". Logically, it would also cover non-profit entities deemed to be "legal persons". Phase 3*bis* para. 51.
Hungary	●	●	●	●	**Incorporated / Unincorporated**: Law applies to LPs either "recognise[d] as legal entities" or is "subject to … civil law in their own right and possess assets distinct from their members". Phase 2 para. 155. Hungarian authorities assert that law applies to both *de jure* and *de facto* LPs. Phase 2 para. 157. **SOE**: Hungarian authorities assert SOEs are covered because they are defined as "legal persons" and "function in accordance with the Civil Code". Phase 2 para. 156. **Non-Profit**: Given broad standard, a non-profit entity (i) recognised as such, (ii) subject to civil law, or (iii) having its own assets would be covered. *See* Phase 2 para. 155.

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Iceland	●	**?**	●	●	**Incorporated**: Criminal LP liability for "any entity … able, under Icelandic law, to be entitled to rights and bear duties" Phase 1 page 6. **Unincorporated**: Not directly discussed by WGB reports. **SOE**: Icelandic authorities explain that SOE will be covered like any other "joint stock company or other enterprise", provided offence occurs in course of commercial operations. Phase 1 page 6. **Non-Profit**: Covers "any entity" with "rights" and "duties", law logically includes eligible non-profits. Phase 1 page 6.
Ireland	●	○	●	**?**	**Incorporated / Unincorporated**: Irish LP liability regime expressly applies to "a body corporate" and not to an unincorporated LP. Thus, WGB expresses concern that Irish law does not cover unincorporated legal persons. See Phase 3 paras. 62-64 & page 21 (Commentary) **SOE**: The term "bodies corporate" would cover "private, public or statutory companies". Phase 1 page 13. **Non-profit**: Although WGB does not expressly discuss, the broad language seemingly covers any "private" body corporate that had non-profit purposes. *See* Phase 1 page 13.
Israel	●	**?**	●	●	**Incorporated / Unincorporated**: LP liability applies to entities that have been given "legal personality" that is a "legal body, qualified in respect of obligations, rights and legal actions". Phase 1 para. 48. **SOE**: No legal barrier prevents "the prosecution of State-owned or State-controlled companies for criminal offences." Phase 1 para. 50. **Non-profit**: Though the WGB did not expressly discuss non-profit entities, the discussion indicates that the law would apply to any entity with "legal personality". Phase 1 para. 48.
Italy	●	●	●	●	**Incorporated / Unincorporated**: Decree 231/2001 covers "legal persons" and "bodies without legal personality" not carrying out "statutory functions. Phase 1 page 11. **SOE**: Public entities are subject to Decree 231/2001, unless not "enterprises", not engaged in for-profit activities, or performing public functions. Phase 3 para. 38. **Non-profit**: WGB found that Decree 231/2001 applied to various "bodies" but not (*inter alia*) non-profit public entities Phase 2 para. 157. Thus, private non-profits should be covered.
Japan	●	○	●	●	**Incorporated / Unincorporated**: "Unincorporated business entities" not included in term "juridical persons". Phase 1 page 7. **SOE / Non-profit**: Japan explained that, so long as entities are "juridical persons", then "there are no restrictions on the types of companies" subject to liability, including "state owned or state-controlled" entities. Phase 1 page 7.

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Korea	●	○	●	●	**Incorporated** / **Unincorporated**: FBPA covers LPs "whose legal personality is given or acknowledged by law". Korea, however, explained that "legal person" would include "partnerships" and "associations". Phase 1 page 7. **SOE**: Korea explained, with support from case law, that "no legal barrier to prosecuting … state-owned or state-controlled" LPs. Phase 1 page 7. **Non-profit**: No limitation on the form of legal person covered. *See* Phase 1 page 7.
Latvia	●	**?**	●	**?**	**Incorporated** / **Unincorporated / SOE**: Law covers "partnerships", "private law legal persons" and "State or municipal capital companies". However, not clear if partially state-owned companies also subject to liability. Phase 1 para. 31. **Non-profit**: WGB not directly address, but likely covered if LP is a "private law legal person[]". Phase 1 para. 31.
Luxembourg	●	○	●	●	**Incorporated** / **Unincorporated / SOE**: WGB found LP liability applied broadly to "all legal persons, including those incorporated under public law", except for "the State and municipalities". Phase 3 para. 29; *see also* Phase 3 para. 54 ("a legal person is an entity effectively endowed with legal personality by virtue of a law"). **Non-profit**: Implicitly, non-profit "legal persons" should be covered. Phase 3 para. 29.
Mexico	●	○	○	●	**Incorporated** / **Unincorporated / Non-Profit**: In Phase 2, the WGB was satisfied that Criminal Code Article 11 would apply to "any entity with legal personality other than a government institution". Phase 2 para. 66. **SOE**: WGB has found that Mexico cannot impose liability on state-owned or state-controlled enterprises". Phase 3 para. 25.
Netherlands	●	●	●	●	**Incorporated** / **SOE / Non-Profit**: Under Dutch civil law, "legal persons" include "all kinds of corporations hav[ing] legal personality" as well as "religious associations", "companies limited by shares", "limited liability" companies, and "foundations". Phase 2 para. 198. Further, the "Dutch authorities confirm that state-controlled and state-owned companies are covered". Phase 1 page 13. **Unincorporated**: Under Dutch Penal Code Article 51(3), certain unincorporated entities will be treated as legal persons for the purpose of establishing criminal liability, including an "unincorporated company", a "partnership", and "special funds". Phase 1 page 13.
New Zealand	●	●	●	●	**Incorporated** / **Unincorporated**: New Zealand's Criminal Act defines "person" to include "both incorporated and unincorporated bodies of persons". However, provision on extraterritorial effect "explicitly applies to bodies corporate and corporations sole". Phase 3 para. 28. **SOE / Non-profit**: Given New Zealand's law, the foreign bribery offence presumably would apply to any "incorporated" or "unincorporated" entity, whether state-owned enterprise or non-profit.

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Norway	●	?	●	●	**Incorporated** / **Unincorporated** / **SOE** / **Non-profit**: Penal Code applies to an "enterprise" including "a company, society or other association, one-man enterprise, foundation, estate or public activity". While SOEs and non-profits not expressly covered, they could be captured by the terms "company", "society" or "association". Phase 1 page 5.
Poland	●	●	●	●	**Incorporated** / **Unincorporated**: Polish law applies to "collective entities", such as "commercial companies" and even entities "without personality at law" at least where "specific legal provisions grant legal capacity". Phase 2 para. 156. **SOE**: The law covers "state-owned and –controlled entities and organisations". Phase 3 para. 45. **Non-profit**: Law also covers "non-business associations". Phase 2 para. 156.
Portugal	●	●	?	●	**Incorporated** / **Unincorporated**: LP law covers "legal persons" including "*de facto* associations". Phase 3 para. 45. **SOE**: During the Phase 3 evaluation, Portuguese officials confirmed that SOEs enjoyed "exemption" from criminal liability, which the WGB found "a serious loophole". Phase 3 para. 45. Portugal believes that its law, following amendments in April 2015, should now cover SOEs, but the WGB was "unclear" whether the new law would "still exclude[] some or all SOEs from liability". Phase 3 Follow-up para. 3. The WGB will have the opportunity to review the law's application in practice during the Phase 4 monitoring cycle. **Non-profit**: WGB did not discuss directly, but likely all "legal persons" are covered. *See* Phase 3 para. 45. Portugal has informed the Secretariat that its definition of "legal persons" would include non-profits.
Russian Federation	●	?	●	●	**Incorporated** / **Unincorporated** / **SOE** / **Non-Profit**: LP liability for "legal entities", including "profit and non-profit" as well as "public and private" entities. Phase 2 para. 252. WGB flagged application to SOEs for follow up as case law develops. Phase 2 para. 252.

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Slovak Republic	●	?	●	●	**Incorporated** / **Unincorporated**: The 2015 Act on Criminal Liability of Legal Persons applies to "acts committed by legal persons within the territory of the Slovak Republic". Section 2. The Act also "determine[s] criminal liability for an act committed outside the territory … by a legal person with registered office within … the Slovak Republic." Section 3. Thus, the Act applies to incorporated legal persons. The Slovak Republic has informed the Secretariat that several laws regulate "registered offices". For example, commercial companies and cooperatives are regulated by the Commercial Code (Act no. 513/1991 Coll.). Non-profit organisations, foundations), non-investment funds, and associations are regulated by separate acts. Each act also creates a register for all relevant entities. Any legal person has to be registered in the relevant register, unless it is created by operation of law. **SOE**: The Act expressly excludes certain legal persons from criminal liability, including "the Slovak Republic and its authorities" as well as "legal persons which … were established by operation of law". Section 5(1). However, it also specifies that an "[o]wnership interest" held by the State or another excluded entity "does not exclude criminal liability" of the legal person owned by the excluded entity. Section 5(2). In addition, the Secretariat has searched the Slovak register of commercial entities for 7 Slovak SOEs and confirms that all 7 were on the register. **Non-profit**: The Act expressly excludes certain legal persons from criminal liability, including "the Slovak Republic and its authorities" as well as "legal persons which … were established by operation of law". Section 5(1). The Act does not expressly exclude non-profit legal persons. The WGB will have the opportunity to examine the application of the 2015 Act in practice during Phase 4.
Slovenia	●	○	●	●	**Incorporated** / **Unincorporated / Non-profit**: Slovenian law does not define types of "legal persons", but authorities assert it would cover "*de jure* associations" and "non-profit entities" but not "*de facto* entities". Phase 3 para. 51. **SOE**: According to authorities, SOEs are not considered part of the "Republic of Slovenia" and thus can be held liable. Phase 1 para. 52.
South Africa	●	●	?	●	**Incorporated** / **Unincorporated / Non-profit**: South Africa's corruption law applies to "any person" including "a person in the private sector". This would include a "partnership", "association", "institution", as well as a "company incorporated", a "body of persons corporate or unincorporated" or "other legal person". Phase 1 para. 6 **SOE**: Given lack of case law, WGB decided to follow-up whether SOEs can be liable for foreign bribery. *See* Phase 2 para. 197; *see also* Phase 3 para. 29.

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Spain	●	?	●	●	**Incorporated / Unincorporated / Non-profit**: In Spain, "legal entities" defined broadly, including "corporations, associations and foundations of public interest". Phase 3 para. 44 & n.35. **SOE**: At time of Phase 3, certain LPs are excluded from liability, such as "commercial public entities" and "public companies … providing services of general economic interest". Phase 3 para. 44. However, by Phase 3 Follow-up, Spain anticipated enactment of legal reforms. Following the adoption of amendments to its Penal Code, Spain provided the Secretariat with the amended text of Articles 31*bis* and 31*quinquies*. Article 31*bis* specifies the circumstances when legal persons shall be held criminally liable. Article 31*quinquies* excludes from criminal liability "Public Corporate Entities [*Entidades públicas Empresariales*]", which Spain reports "do not have a commercial private form and always pursue goals and aims outside the market with a general and public interest." Article 31*quinquies*, however, does not exclude public corporations [*sociedades mercantiles públicas*] from liability, even though it limits the types of "penalties" that can be imposed on "Public Corporations that implement public policies or provide services of general economic interest [*Sociedades mercantiles públicas que ejecuten políticas públicas o presten servicios de interés económico general*]". The WGB will have the opportunity to examine the application of this law in practice during Phase 4, but the plain text of Article 31*quinquies* would seem to cover at least some SOEs.
Sweden	●	?	●	○	**Incorporated / Unincorporated / SOE / Non-profit**: "According to the Swedish authorities, 'entrepreneur' is a general term that is used in different statutes. The uncodified definition of the term is 'any natural or legal person that professionally runs a business of an economic nature'. They add that the term covers state owned and municipal trading companies." Phase 1 page 7.
Switzerland	●	?	●	●	**Incorporated / Unincorporated / SOE**: Swiss law covers "private law legal persons", "companies", "sole proprietorships" and "public law legal persons except for territorial corporations". Phase 3 para. 27. According to officials, this would cover "public law companies". Phase 1 page 7. **Non-profit**: Non-profits are covered "when they engage in a commercial activity". Phase 3, para 30.
Turkey	●	?	?	●	**Incorporated / Unincorporated / SOE**: Turkish LP liability provision applies to a "civil legal person". WGB had "serious doubts" whether this would cover state-owned or state-controlled enterprises, as this term would exclude any company in which "State owns more than 50% of the shares". Phase 3 paras. 37, 38. **Non-profit**: Turkey explained that "associations, foundations, unions, [and] political parties" would be covered by the term "civil legal person". Phase 3 para. 38.

	Incorporated entity	Un-incorporated entity	State-owned entity	Not-for-profit entity	Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
United Kingdom	●	●	●	●	**Incorporated** / **Unincorporated / Foreign LP**: Section 7 applies to a "relevant commercial organisation", which includes an LP "incorporated under the law of any part of the United Kingdom", "any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part" of the UK, a "partnership" formed in the UK, and a "partnership (wherever formed) if it carries on a business in whole or in part inside the UK. Phase 1*ter* paras. 36, 38. In contrast, Section 6 foreign bribery offence can apply to "a body of persons, corporate or unincorporated", such as a trust. Phase 1*ter* para. 39. **SOE**: According to UK officials, "state-owned or controlled bodies" would also be considered "relevant commercial organisations" for purposes of Section 7. Phase 1*ter* para. 38. **Non-profit**: WGB found that "political parties", "charities," and "non-profit organisations" would be covered by Section 1 and 6 bribery offences. Phase 1*ter* para. 15.
United States	●	●	●	●	**Incorporated** / **Unincorporated**: Domestic concerns include "any corporation, partnership, association … unincorporated organisation … or sole proprietorship". Phase 1 page 2. **SOE**: All U.S. "state-owned and state-controlled companies are subject to criminal responsibility", if domestic concern. Phase 1 page 10. **Non-profit**: WGB did not directly discuss, but logically any LP "domestic concern" would be covered, even if it has non-profit status. *See* Phase 1 page 10. The United States has confirmed that US foreign bribery law can apply to non-profit entities.

2.4. Standard of liability for legal persons

> ***"Member countries' systems for the liability of legal persons for the bribery of foreign public officials … should take one of the following approaches:***
>
> ***(a) the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision making systems in legal persons; or***
>
> ***(b) the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level of managerial authority because the following cases are covered:***
>
> - ***A person with the highest level of managerial authority offers, promises or gives a bribe to a foreign public official;***
> - ***A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and***
> - ***A person with the highest level managerial fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures."***
>
> ***Annex I, Part B of the 2009 Recommendation for Further Combating Bribery***

The standard of liability for legal persons helps to clarify how a legal person can be held liable for an unlawful act. This section examines two dimensions of this topic by first examining *who* can trigger liability of a legal person and then considering the circumstances *when* liability may be attributed to the legal person. For the first question, Table 4 shows how the Parties address the standards contained in Part B of Annex I to the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials. For the second question, Table 5 sets forth the various conditions that must be met before a legal person can be held responsible for a given natural person's act. Finally, Table 6 examines whether an effective compliance programme constitutes a legal defence or would otherwise preclude liability for foreign bribery under the Parties' LP liability regimes.

2.4. 1. Whose acts can trigger liability?

Table 4 presents the details on how the Parties' laws deal with the three aspects mentioned in Annex I, Part B, paragraph (b).[34] Based on WGB reports, it would appear that at least 38 countries (93%) can hold legal persons liable when a person with the

[34] While the WGB sometimes assesses a given Party's LP liability regime under the approach described in paragraph (a) or under Part B generally, this survey collected data on the elements of Annex I, Part B, paragraph (b) because they could be objectively assessed across all jurisdictions. This decision is not meant to reflect any value judgment between the two approaches contained in Annex I, Part B of the 2009 Recommendation.

highest level of managerial authority commits the offence. At least 31 countries (76%) can also hold them liable if a person with such authority directs or authorises the offence. Finally, at least 29 Parties (71%) can hold companies liable if an officer or other manager fails to prevent the offence "through a failure to supervise … or … a failure to implement adequate controls".

Table 4. **Standard of liability for bribery: Whose acts?**

	Annex I (B)(b) breakdown: Is LP liable when person with highest level managerial authority			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Commits offence?	Directs or authorises offence?	Fails to prevent offence: failure to supervise/ adopt adequate controls?	
Argentina	-	-	-	No LP liability for foreign bribery, but it exists for other offences. *See* Phase 3 paras. 49, 51.
Australia	●	●	●	LP can be "liable for crimes committed by an employee, agent or officer". Phase 3 para. 19.
Austria	●	?	?	LP can be liable for "offences committed by a 'decision maker'". Phase 3 para. 43. LP can also be held liable for offences committed by staff if "offence … [was] made possible or considerably easier due to the fact that decision makers failed to apply the due and reasonable care required…." Phase 3 para. 46 (emphasis omitted). However, WGB was not certain that Austria could effectively hold LP liable if person with "management authority … directs or authorises a lower level person" or "fails to prevent a lower level person" from committing foreign bribery. Phase 3 para. 48.
Belgium	?	?	?	"Article 5 CP does not make reference to the natural persons or corporate bodies which may cause the company to incur liability", so courts must "refer to ordinary law in order to determine how to attribute intent". Phase 3 para. 30-31. WGB questioned whether Belgian practice on attribution of NP acts to LP complied with Annex I(B). *See* Phase 3 para. 31.
Brazil	●	●	●	According to Brazil, an NP's "hierarchical level" or "legal ties" with LP are not relevant for LP liability. Phase 3 para. 35.
Bulgaria	●	●	●	Under LAOS, LP can be liable for acts of its representatives, supervisors as well as for employees in certain conditions. *See* Phase 3 para. 22.
Canada	●	●	●	LP liable for acts by "senior officers" as well as for acts performed by others as result of a senior officer's direction or failure to supervise. Phase 3 paras. 42-43.
Chile	●	●	●	LP can be liable for acts committed by owners, officers, representatives, or a "person under [their] direction or supervision", provided that the offence also resulted from breach of entity's "supervisory functions". Phase 3 paras. 38-40.

	Annex I (B)(b) breakdown: Is LP liable when person with highest level managerial authority			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Commits offence?	Directs or authorises offence?	Fails to prevent offence: failure to supervise/ adopt adequate controls?	
Colombia	●	●	●	Article 2 of Law 1778 of 2016 provides that legal persons will be held responsible for foreign bribery committed by their "employees, contractors, directors, or associates". However, Article 2(3) states that Article 2 "will not apply when the conduct was performed by a shareholder that does not control the legal person". The WGB will have the opportunity to first review the new law's application in practice during Colombia's Phase 3 review.
Czech Republic	●	●	●	LP liable for acts of persons with "high level of managerial authority" and for acts of "lower level persons" under certain conditions. Phase 3 paras. 37-39.
Denmark	●	●	●	LP responsible for acts of persons "connected" to it, as well as acts of the "legal person itself". Phase 3 para. 47; *see also* Phase 2 para. 209.
Estonia	●	●	?	LP liable for acts of a "competent representative"—in Estonia's view—an "employee, agent or other representative", but WGB expressed uncertainty regarding liability for employees. Phase 3 para. 29.
Finland	●	●	●	Person in "statutory organ" or "management" of LP committed offence or allowed it to occur by person who was "in a service or employment relationship" or "acted on assignment". Phase 3 para. 25.
France	●	?	?	LP liable for acts of its "organs or representatives". Phase 3 para. 42.
Germany	●	●	●	LP liable for offences committed by "responsible person" who is "acting for the management" either commits or permits offence by failure to exercise "duties of supervision". Phase 3 para. 59.
Greece	●	?	●	LP liable for acts by persons in a "management position" and for offences committed as result of their "lack of supervision", but WGB sought follow-up on whether LP liable when manager "directs" or "authorises" offence. Phase 3*bis* at paras. 54-55.
Hungary	●	●	●	LP can be liable for acts of officers, members, or employees. *See* Phase 3 para. 19.
Iceland	●	●	●	LP can be liable for acts of a "spokesman, employee or other person". Phase 3 para. 19.
Ireland	●	○	○	As Ireland still relies on common law "identification theory", LP only liable for acts of persons deemed "controlling mind and will" of LP. Phase 3 paras. 56-61.
Israel	●	●	?	While Israel's courts apply "functional" test to attribute NP acts to LP, WGB did not clearly find that LP would be liable for acts of low-level employees. This may reflect fact that WGB's assessment was guided by Part B(a) of Annex I to the 2009 Recommendation. *See* Phase 3 paras. 18-23 (Israeli judges "clarified after the on-site visit that conduct by an employee who is not a senior officer could result in legal person liability, but indicated that the PL is not sufficiently clear in this regard.").

	Annex I (B)(b) breakdown: Is LP liable when person with highest level managerial authority			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Commits offence?	**Directs or authorises offence?**	**Fails to prevent offence: failure to supervise/ adopt adequate controls?**	
Italy	●	●	●	LP liable for offences committed by NP in "senior positions" and those under their supervision or management. Phase 3 paras. 43-44.
Japan	●	●	●	According to Japan, LP can be liable for acts of its representatives, agents, employees or others. Phase 3 para. 39.
Korea	●	●	●	LP can be liable for acts of its "representative, agent, employee or other individual working for" the LP. Phase 1 page 7.
Latvia	●	●	●	LP liable for acts of relevant persons with authority and for acts committed as result of the LP's "failure to exercise supervision or control". Phase 2 paras. 219-222.
Luxembourg	●	●	**?**	LP can be liable for acts of "de jure or de facto managers", but not clear if this would cover liability for failure to prevent lower-level employees from committing an offence. Phase 3 paras. 35-36.
Mexico	●	●	**?**	The WGB has found that although Federal Criminal Code Articles 11 and 222*bis* could cover acts of employees, Article 11's condition that offence be committed with "means provided by" the LP "for such purpose" seems to require approval by management before LP can be responsible. Phase 2 paras. 61-63. Mexico has informed the Secretariat that the June 2016 amendments to the National Code of Criminal Procedure and the adoption of new Article 11*bis* should broaden the range of persons for whose acts an LP can be held liable for foreign bribery. The WGB will have the opportunity to review the effect of these new provisions during the Phase 4 evaluation.
Netherlands	●	●	●	LP responsible for act or omission of anyone "who is employed by or works for" the LP. Phase 3 para. 36.
New Zealand	●	●	●	Following amendments made in 2015, LP liable for any employee's acts where (i) the employee acted within the scope of their authority; (ii) the actions were intended, at least in part, to benefit the company, and (iii) the company failed to take reasonable steps to prevent the offence. Phase 3 Follow-up page 9.
Norway	●	●	●	LP can be liable for acts of any "person" acting on its "behalf", irrespective of his or her "level of authority". Phase 3 paras. 34 & 40.
Poland	●	●	●	LP can be liable for acts of "authorised" persons as well those by persons acting either (i) with "consent" or "knowledge" or (ii) as a result of management's "neglect". Phase 3 para. 46.
Portugal	●	●	●	Pending jurisprudence, LP appears to be liable (i) for acts of anyone "in a leadership position" who commits offence; (ii) when someone with authority "authorises or directs a lower level person" to commit offence or (iii) where offence occurred "by virtue of" a lack of surveillance. Phase 3 para. 47.

	Annex I (B)(b) breakdown: Is LP liable when person with highest level managerial authority			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Commits offence?	**Directs or authorises offence?**	**Fails to prevent offence: failure to supervise/ adopt adequate controls?**	
Russian Federation	●	?	?	Russia maintains that any person "empowered to act" for company can trigger liability, but courts have not yet attributed liability to LP except for acts of a "director or founder". Phase 2 para. 259.
Slovak Republic	●	?	●	Section 4 of the 2015 Act on Criminal Liability of LPs states: "(1) A legal person is considered to have committed a criminal offence if the criminal offence was committed… by (a) its statutory body or a member of its statutory body; (b) a personal performing control or supervision with the legal person, or (c) another person authorised to represent the legal person or make decisions on its behalf. (2) A legal person is considered to have committed a criminal offence… also if a person referred to in paragraph 1 fails, even if by negligence, to properly perform its control and supervision duties, thus allowing a criminal offence being committed by a person acting with the scope of authority conferred by the legal person." The WGB will have the opportunity to examine the application of the 2015 Act in practice during Phase 4.
Slovenia	●	●	●	LP responsible for acts committed carrying out order of management; if management "influenced … or enabled" the offence; if management has "omitted obligatory supervision"; or if the offence results in "property gain … through a criminal offence". Phase 3 para. 31 & n.32.
South Africa	●	●	●	LP responsible for acts of its "representative", which for corporation includes "director or servant". Phase 3 para. 22.
Spain	●	●	●	LP can be liable for acts of those "in senior positions" and for those "subject to their management or supervision". Phase 3 para. 48.
Sweden	●	?	?	LP can be liable for acts of a person who is "in a leading position" or who "has a special responsibility of supervision or control of the business". Phase 3 para. 40.
Switzerland	?	?	●	WGB observed that Article 100*quater*, para. 2 "does not contain any rules for attribution of the individual's act of bribery to the enterprise". Phase 2 para. 109; *see also* Phase 3 para. 26 (explaining that Article 100*quater* was subsequently replaced "without substantive amendment" by Article 102). Article 102(2) allows LP to be held liable for offence if LP "failed to take all reasonable and necessary organisational measures to prevent such an offence". Phase 3 para. 27. However, in at least one case, prosecutors declined to prosecute two LPs after a "director" paid bribes because "it would be difficult to prove that the legal persons had not taken all reasonable measures to prevent corruption on the part of the director". Phase 3 para. 33.
Turkey	●	●	●	LP can be liable for acts of "an organ or a representative" or any person who "undertakes a duty within the scope of that legal person's operational framework." Phase 3 para. 44.

	Annex I (B)(b) breakdown: Is LP liable when person with highest level managerial authority			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Commits offence?	**Directs or authorises offence?**	**Fails to prevent offence: failure to supervise/ adopt adequate controls?**	
United Kingdom	●	●	●	For Section 7, LP liable for offences committed by "persons associated with it". Phase 3 para. 35. **NOTE**: For Section 1 & 6 offences, UK only attributes LP liability using identification theory, thus limiting liability for those offences to cases where a person with highest managerial authority participated in crime. *See* Phase 3 para. 31.
United States	●	●	●	LP can be held liable for "the act of *any* corporate employee, not merely high-level executives" under a "*respondeat superior*" theory. Phase 1 page 10; *see also* Phase 2 para. 15.

2.4.2. When will a natural person's acts be attributed to a legal person?

While the previous table primarily considered *who* exactly can trigger the liability of a legal person, Table 5 reviews the various conditions that the Parties use to determine *when* a legal person will be held liable for the acts of such persons. Though the Parties' formulations of these conditions vary considerably, they can be grouped into five main categories: (1) in relation to the legal person's activity; (2) in the legal person's name or on its behalf; (3) within the scope of the natural person's particular duties or authority; (4) for the legal person's benefit or interest; (5) as a result of a failure to supervise. In addition, some countries have "other" provisions for attributing the acts of a given natural person to a legal person.

This variation in the conditions required to attribute liability to a legal person is compounded in two ways. First, countries often have multiple conditions that must be met before liability can be imposed on legal persons. Some countries treat these conditions as alternative grounds for imposing liability on a legal person, while other countries take a cumulative approach requiring that all the relevant conditions must be satisfied in order to hold a legal person liable. To take an example of the former approach, a legal person in Latvia will be liable for an offence committed either (1) "in the interests or for the benefit of" the legal person or (2) where the offence was made possible "as a result of a lack of supervision or control".[35] In contrast, Chile takes a cumulative approach as it will only hold a legal person liable for an offence that was committed both (1) "directly and immediately" in the legal person's "interest or … benefit" and (2) in violation of "the legal person's direction and supervisory functions".[36]

A second complexity shown in Table 5 is that some countries impose different conditions as a function of the level of authority or role that the natural person offender has in relation to the legal person. At least ten Parties (24%) have conditions that depend on whether or not the natural person who engages in bribery has managerial authority within the legal person[37]. In contrast, 29 Parties (71%) appear to apply the same conditions to attribute the acts of any relevant natural person to the legal person, without regard to the level of authority that the relevant person has.[38]

For the more detailed conditions (e.g. benefit or interest, within the scope of duties), the frequency is as follows:

- Twenty-seven Parties (66%) will consider whether the acts of a relevant natural person were committed for the legal person's ***benefit or interest***;
- Twenty-one Parties (51%) will consider whether the acts of a relevant natural person were committed as a result of a ***failure to*** supervise;
- Fourteen (34%) will consider whether the acts of a relevant natural person were committed ***in the legal person's name or on its behalf***;

35 Latvia Phase 2 paras. 211, 219.

36 Chile Phase 3 paras. 38, 50.

37 These are Austria, Bulgaria, Canada, Czech Republic, Finland, Germany, Greece, Hungary, Portugal and Turkey.

38 It should be noted, however, that this number may simply reflect the fact that it is not yet clear how a legal person would be held liable for an offence committed by a lower-level employee given the absence of case law in some jurisdictions.

- Twelve (29%) will consider whether the acts of a relevant natural person were committed ***within the scope of the natural person's duties or authority***; and
- Twelve Parties (29%) will consider whether the acts of a relevant natural person were ***related to the legal person's activity***.

The WGB monitoring reports also contain more detailed information on when natural persons' acts can be attributed to an LP. These include:

- ***Benefit: Intent to benefit or actual (***potential***) benefit?*** Before they will impose liability on a legal person, some countries require proof that the natural person or persons who committed the offence were acting with the intent to benefit the legal person.[39] Some countries, in contrast, require that the legal person actually received, or actually could have received, a benefit before sanctions can be imposed. For example, Bulgaria requires that the legal person actually "has obtained or would obtain [an] advantage" from the criminal offence.[40] Similarly, under the "spirit of the legal person" doctrine employed in the Netherlands, a legal person can be held liable for an offence when the act was "useful … in the business conducted by the legal person".[41] In these countries, this is a separate condition that must be met in addition to the conditions of finding that the relevant natural person committed the offence (as discussed in Table 4 above). Finally, some countries seemingly can hold a legal person liable if the offence in fact benefited that entity, without regard to whether the offender intended to benefit the legal person or had the requisite authority to engage its responsibility. Hungary appears to use actual "benefit" in this way, provided that a relevant person within the entity had knowledge of the offence. This use of "benefit" as a free-standing condition triggering liability of a legal person might serve as a catch-all, in circumstances where a legal person has clearly benefited from a bribery scheme but it is nonetheless difficult to prove exactly which offender committed the offense or which entity the offender intended to benefit: for example, when a legal person obtains a benefit through a bribery scheme involving a number of persons from related entities.
- ***"[W]ith means provided … for such purpose"***. Mexico has a condition that seemingly restricts application of Article 11 of the Federal Criminal Code to instances where the natural persons committed bribery with "means provided by the legal entity for such purpose".[42] No other Party was found to use a similar condition. The WGB expressed concern that this condition might unduly limit the scope of a legal person's liability to those circumstances when its management was involved in the offence.[43]

39 As shown in Table 5 below, some of the countries that require that the offence has been committed with the intent to benefit the legal person include: Austria (offence committed "for the benefit of entity"); Canada ("with the intent … to benefit" the LP); Chile ("for the benefit" of the LP); Germany (offence must have violated the "duties incumbent on the legal person" or either "enriched"—or have been "intended" to enrich—the LP); Mexico (the offence for the "benefit" of the LP); and the United States ("for the benefit" of the LP).

40 Bulgaria Phase 3 page 48 (reproducing Article 83a).

41 Netherlands Phase 3 para. 36.

42 Mexico Phase 2 para. 61.

43 Mexico Phase 2 page 21 (Commentary) ("[T]he lead examiners are concerned that for legal persons to be sanctioned, the bribery offence must have been committed with means provided by the legal person 'for such purpose', as it could prevent sanctions in cases where ordinary employees or foreign subsidiaries committed the offence.").

While Article 11 remains in force, Mexico has informed the Secretariat that the June 2016 amendments to the National Code of Criminal Procedure and the adoption of new Article 11*bis* should broaden the range of conditions in which an LP can be held liable for foreign bribery. The WGB will have the opportunity to review the effect of these new provisions during the Phase 4 evaluation.

- ***Negligent financing of bribery***. Swedish law now contains a criminal offence for "employees or individuals associated with" a "commercial organisation" who "through gross negligence further[] the offences of giving a bribe, gross giving of a bribe or trading in influence" by providing "available financial or other assets to anyone representing" the commercial organisation in a particular matter.[44] In turn, a "corporate fine" can also be imposed on the legal person under the circumstances provided in Chapter 36, Section 7 of the Penal Code.[45]
- ***Strict liability for foreign bribery committed "through" employees or associates***. Under Article 2 of Law 1778 of 2016, Colombia appears to take an extremely broad approach and will apparently hold a legal person liable for foreign bribery committed "through … its employees, contractors, directors, or associates", so long as the bribery scheme related to the "exercise of [a foreign public official's] powers in relation to an international business or international transaction". Thus, there does not seem to be any other limiting conditions that would need to be met to attribute a foreign bribery offence to the LP (e.g., there is no need to show that the act was committed "for the benefit" of the LP or if the relevant persons were acting within the scope of their duties). The WGB will have the opportunity to explore how this provision are applied in practice when Colombia undergoes its Phase 3 review.[46]

44 Phase 3 para. 24.

45 Phase 3 paras. 24, 40.

46 In contrast, Colombia's general provision for the liability of legal persons requires showing that the legal person "sought to benefit from the commission of crimes against public administration". Phase 1 page 11.

Table 5. **Standard of liability for bribery: What conditions?**

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Argentina	-	-	-	-	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51
Australia	-	○	○	●	○	●	●	**Duties**: The "physical element" (act) must be within the "actual or apparent" scope of employment or authority. Phase 3 para. 19. **Supervision:** LP is liable for acts of "an employee, agent or officer … if the LP's "board of directors" or a "high managerial agent" either committed the offence or "expressly, tacitly or impliedly authorised or permitted the commission of the offence". Phase 3 para. 19; see also Phase 3 page 71 (Sections 12.3(2)(a) & (b)). **Other**: The "fault element" can be established, if LP's "'corporate culture' … led to the offence" or did not require "compliance with the relevant law". Phase 3 para. 19.
Austria	**Officers**	○	○	○	●	○	●	**Benefit / Other**: Offence must either be committed "for the benefit of entity" or otherwise neglect "duties of entity". Phase 3 para. 45. **Supervision**: For acts by staff, responsible officials' lack of "due and reasonable care" must have made offence "possible or considerably easier". Phase 3 para. 46.
	Staff	○	○	○	●	●	●	
Belgium	-	○	●	○	○	**?**	○	**Behalf**: LP liable for offences "committed on its behalf" but the WGB considered "the required link between the act of bribery and the company's benefit or interest is not clear." Phase 3 para. 27
Brazil	-	○	●	○	●	○	○	**Behalf / Benefit**: Acts must be committed in the "interest" or on "behalf" of the legal person. Phase 3 para. 35.

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Bulgaria	**Authorised persons**	○	○	○	●	○	○	**Benefit**: LP must "[have] or could have enriched itself" from the offence. Phase 3 para. 24.
	Employees	○	○	●	●	○	○	**Duties / Benefit**: Besides initial condition of benefit, offence by staff must also be committed while performing task assigned by LP. Phase 3 at para. 22.
Canada	**Senior officer**	○	○	●	●	○	○	**Duties / Benefit**: LP liable if senior officer "with the intent ... to benefit" LP is a party to offence while acting "within the scope of … authority". Phase 3 para. 42
	Employees	○	○	●	●	●	○	**Supervision**: If a staff member commits bribery, LP only liable if senior officer "with the intent ... to benefit" LP (i) ordered offence while acting "within the scope of … authority" or (ii) failed to take "reasonable measures" to prevent it despite "knowing" of it. Phase 3 para. 42.
Chile	**-**	○	○	○	●	●	○	**Benefit**: offence must be "directly and immediately in the interest or for the benefit" of the LP. In addition, the offence must be result of "a breach of the legal person's direction and supervisory functions". Phase 3 para. 38. **Supervision**: Prosecution must also show that offence was committed in violation of LP's "direction and supervisory functions". Phase 3 paras. 38 & 50.
Colombia	**-**	○	○	○	○	○	●	**Other**: Under Article 2 of Law 1778 of 2016, Colombia can impose administrative liability on a legal person for foreign bribery committed "through … its employees, contractors, directors, or associates" engage in the bribery of a foreign public official in exchange for "any action related to the exercise of [the foreign public official's] powers" that is "in relation to an international business or international transaction". .The WGB will have the opportunity to first review the new law's application in practice during Colombia's Phase 3 review.

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Czech Republic	**Authorized persons**	●	●	**?**	●	**?**	**?**	**Activity / Behalf / Benefit**: LP liable for conduct of those entitled to act on its behalf "committed in its name or in its interest or within its activity". Phase 3 page 64. **Supervision**: LP also liable for low-level employees if (i) while "fulfilling [their] duties/tasks", they (ii) act either (a) under orders or guidance of person with authority or (b) "because" person with authority failed to take "legally or 'justly' required measures to prevent" offence. Phase 3 para. 39 & page 65.
	Employee	○	○	●	○	●	●	
Denmark	**-**	●	○	○	○	○	**?**	**Activity**: Under prosecutor guidelines, LP liable for acts committed "in the course of … business". **Other**: LP liable for acts committed "by itself" or by person "connected" with the LP, not clear whether "by itself" provides another basis for liability. See Phase 3 paras. 47-48.
Estonia	**Body, member, officer or representative**	○	○	●	●	**?**	○	**Interest**: LP liable for acts in its "interests" committed by body or representative. Phase 3 page 67. **Duties**: Note to Estonian legislation suggests acts that "exceed the representative's authority" not attributed to LP. Not clear that low-level employee is considered a "representative". Phase 3 para. 29.
Finland	**Managerial authority**	●	●	○	●	○	○	**Activity**: While LP liable for act committed "within the operations" of the LP, this requires act "on behalf" or "for the benefit of" LP. Phase 3 para. 25. **Supervision**: For acts of employees, decision-maker must have also failed to exercise "care and diligence necessary". Phase 3 page 43.
	Employees	●	●	○	●	●	○	
France	**Relevant person**	○	●	○	○	**?**	○	**Behalf**: LPs liable for offences committed "on their account". But WGB found that "required link between the corrupt act and the benefit or interest of the company is not clear". Phase 3 para. 41.

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Germany	**Relevant person**	●	○	●	●	○	●	**Duties / Benefit / Other** : Relevant person must be "acting in that capacity" and must commit an offence that either "enriched" the LP or "was intended" to enrich LP or violated the LP's duties. Phase 3 paras. 59-60 & page 88. Germany has asked the Secretariat to emphasise that the notion of "LP's duties" can be quite broad and includes all "company-related obligations". As a consequence, all criminal acts of relevant persons, other than those resulting from "strictly private acts", would in principle violate the duties of the LP. **Activity / Supervision**: LP can be liable for offences by lower-level people if they "result from a failure by a senior corporate figure to faithfully discharge his/her duties of supervision". This failure to supervise must be intentional or negligent. Phase 3 paras. 59, 62. Germany informed the Secretariat that, under Section 130 of the Regulatory Offences Act, the offence committed by lower-level person's offence must be connected to the LP's "operation or undertaking".
	Other employee	●	?	?	?	●	?	
Greece	**Management**	○	●	○	●	○	○	**Behalf:** A person is in a "management position" if he or she has the power to "represent the legal person" or make decisions "on behalf of" the LP. Phase 3*bis* para. 54. **Benefit**: "Under Article 51 of the AML Law, a legal person is liable for foreign bribery that is committed 'for the benefit' of the legal person." Phase 3*bis* para. 52. **Supervision**: LP can also be liable "if the lack of supervision or control" committed by a person in a management position "enables foreign bribery to be committed". Phase 3*bis* para. 54. However, WGB was "unclear how the law enforcement authorities and judges actually understand the notion of 'lack of supervision or control'." Phase 3*bis* para. 57.
	Non-management	?	?	?	●	●	?	

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Hungary	**Authorized persons**	●	○	○	●	○	○	**Activity / Benefit**: LP liable for acts by certain persons "entitled to represent" it, if (i) they were "acting within the legal entity's scope of activity" and (ii) the act was "aimed at or … resulted in the legal entity gaining benefit". Phase 3 paras. 19, 24 & page 63 (Art. 2(1) of Act CIV of 2001).
	Lower-level persons	●	○	○	●	●	○	**Activity / Benefit / Supervision**: LP liable for low-level employee who commits act (i) while "acting within the legal entity's scope of activity" (ii) with aim or result to benefit LP the act and (iii) "could have been prevented" if "supervisory or control obligations" had been fulfilled. Phase 3 page 63 (Art. 2(1) of Act CIV of 2001)
	-	○	○	○	●	○	●	**Benefit / Other**: LP liable for unlawful act that actually "resulted in the legal entity gaining benefit", if a relevant person had "knowledge of the commission of the criminal act". Phase 3 page 63 (Art. 2(2) of Act CIV of 2001).
Iceland	**-**	●	○	○	○	○	○	**Activity**: LP liable for bribery if relevant person commits crime "in the course of its operations". Phase 3 para. 19.
Ireland	**Controlling mind**	**?**	**?**	**?**	**?**	**?**	**?**	**General**: "Summarising the situation, high level Irish legal experts stated that there is no clear standard of criminal liability for legal persons in Ireland". Phase 2*bis* para 94; *see also* Phase 3 para. 56.
Israel	**-**	○	○	○	○	○	●	**Other**: LP liability depends on assessment whether act should be "deemed the act … of the legal person" in light of "**the circumstances of the case**", including the position, authority and responsibility of the person who committed it. Phase 3 para. 16.
Italy	**Relevant person**	○	○	○	●	○	○	**Benefit**: LP liable if relevant person commits offence "in the interest" or "to the advantage" of LP. Phase 3 para. 45; *see also* Phase 3 page 62 (Art. 5, Decree 231).
Japan	**Relevant individual**	●	○	○	○	**?**	○	**Activity**: LP liable for foreign bribery committed by relevant individual "with regard to the business of said juridical person". Phase 3 para. 36.

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Korea	**Relevant individual**	●	○	○	○	○	○	**Activity**: An LP will be liable when a relevant individual commits an offence "in relation to its business". Phase 2 paras. 109 & n.92
Latvia	**-**	○	○	○	●	●	○	**Benefit / Supervision**: LP subject to "coercive measures" for offences "committed in the interests or for the benefit of" the LP or "as a result of a lack of supervision or control" by a relevant natural person." Phase 2 paras. 211 & 219.
Luxembourg	**-**	○	○	○	●	**?**	○	**Benefit**: Liability exists for offences "committed 'in the interest' of the legal person". Phase 3 para. 43.
Mexico	**-**	○	●	○	●	●	●	**Behalf / Benefit / Other**: Under Article 11 of the Federal Penal Code, the WGB found that an LP would be liable if its "representative" commits offence "using the means … provided" by the LP "for that purpose, in a way that the crime be committed in the name of, or under the protection [of] the entity or for its benefit". Phase 3 page 47. The WGB considered that Article 11 required the active involvement of management in the offence "at the very least as inducers or accomplices", which suggests that failure to supervise was not a sufficient condition to impose liability at that time. Phase 2 para. 63. **Behalf / Benefit / Other / Supervision**: Following Mexico's June 2016 amendments, Article 421 of the National Code of Criminal Procedure permits the imposition of "criminal liability on legal persons for crimes committed in their name, for their account, to their benefit, or through the means that they provide, when it is determined that, in addition, there was not proper control of the organization". The WGB will have the opportunity to examine the application of the conditions contained in Article 421 NCCP as well as those contained in Article 11 of the Federal Criminal Code in the Phase 4 evaluation.

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Netherlands	-	●	?	?	●	●	●	**Supervision**: WGB found LP could be liable "if it did not prevent the act even though it was in its power to do so." Phase 3 para. 37. **Activity / Benefit / Other**: "The main criterion is now 'whether the conduct took place or was carried out in the spirit of the legal entity'", including acts:(i) by someone working for LP; (ii) part of LP's "normal business processes"; (iii) act was "useful" to LP in its business conduct; and (iv) the behaviour was "accepted or used to be accepted" by the LP. Phase 3 para. 36.
New Zealand		?	?	●	●	●	?	**Authority / Benefit / Supervision**: An LP can be liable for an offence committed by its "employee" if "the employee was acting within the scope of … authority … at least in part with the intent to benefit the company" and the LP "failed to take reasonable steps to prevent the offence". Phase 3 Follow-up page 9.
Norway	-	○	●	○	○	○	○	**Behalf**: LP liable when person acting "on behalf of" LP violates criminal law. Phase 3 para. 34.
Poland	-	○	○	○	●	●	○	**Benefit**: "[A] collective entity may be liable for the criminal conduct of a natural person if the criminal conduct 'did or could have given the collective entity an advantage'". Phase 3 para. 45 **Supervision**: Offence must also be result of the 'absence of due supervision' over the perpetrator" or lack of "due diligence" in hiring that person. Phase 3 para. 45.
Portugal	**Leadership position**	?	●	?	●	?	?	**Behalf / Benefit**: Leadership positions: LP liable if "person in a leadership position within the legal person commits foreign bribery in the legal person's name and collective interest". Phase 3 at para. 47. **Duties / Supervision**: Low-level offenders: LP liable if (i) "individual [was] acting under the authority of persons in a leadership position" and (ii) the offence occurred "by virtue of a breach of the surveillance or control duties" by someone in leadership. Phase 3 para. 47.
	Lower-level persons	○	○	●	○	●	○	

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Russian Federation	-	○	●	○	●	?	○	**Behalf / Benefit**: A legal person will be liable for active bribery "by a natural person 'on behalf or in the interest' of the legal person Phase 2 para. 254.
Slovak Republic	Relevant persons	●	●	●	●	●	○	**Activity / Behalf / Benefit**: Under Section 4(1) of the 2015 Act on Criminal Liability of Legal Person, an LP is liable if the offence was committed "for its benefit, on its behalf, as part of or through its activities…". **Supervision / Authority**: Under Section 4(2) of the 2015 Act, an LP will also be held liable if a designated person "fails, even by negligence, to properly fulfil control and supervision duties… thus allowing a criminal offence being committed by a person acting within the scope of authority conferred by the legal person." The WGB will have the opportunity to examine the application of the 2015 Act in practice during Phase 4.
Slovenia	Relevant persons	○	●	○	●	●	●	**Behalf / Benefit**: LP liable for acts "committed 'in the name of, on behalf of or in favour of the legal person.'" Slovenia Phase 3 para. 37. **Supervision / Other**: In addition to the conditions of acting on behalf or for the benefit of the LP, Slovenian law also requires that: (1) the offence involved "carrying out an illegal resolution, order or endorsement of … management or supervisory bodies"; (2) the LP's "management or supervisory bodies influenced the perpetrator or enabled ... the criminal offence"; (3) the offence resulted in the LP obtaining an "illegal[] property gain", or (4) the LP's "management or supervisory bodies have omitted obligatory supervision of the legality of the actions of employees". Phase 3 para. 31 & n.32.
South Africa	-	○	○	●	●	○	○	**Duties / Benefit**: LP liable for offence committed (i) "in the performance of … official duties or (ii) "in furthering or endeavouring to further the interests of that corporate body". Phase 3 paras. 22, 27 & page 82.

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Spain	-	○	●	○	●	●	○	**Behalf / Benefit**: "Liability under art. 31 *bis* PC also depends on whether the offence was committed 'for the account' and 'to the benefit' of the legal person." Phase 3 para. 54. **Supervision**: To hold LP responsible for act of lower-level employee, must show that "those in senior positions" failed to exercise "due control"; *see* Phase 3 paras. 48-49; *see also* PC, Article 31*bis* (1)(b).
Sweden	-	●	○	○	○	●	●	**Supervision / Other (joint conditions)**: "In Sweden, 'corporate fines' may be imposed on legal persons in specific circumstances. Chapter 36, Section 7 of the Penal Code states, in relevant part, that an 'entrepreneur . . . shall be ordered to pay a corporate fine' where 'the entrepreneur has not done what could reasonably be required of him for prevention of the crime' or if the crime was committed by either (i) 'a person who has a leading position based on a power of representation of the entrepreneur or an authority to take decisions on behalf of the entrepreneur' or (ii) 'a person who has a special responsibility of supervision or control of the business'." Phase 3 para. 40. **Other (alternative condition):** "The new negligent financing of bribery provision makes it criminal for 'a commercial organisation [to] provide[] financial or other assets to anyone representing it in a certain matter and which thereby through gross negligence furthers the offences of giving a bribe, gross giving of a bribe or trading in influence in that matter.' Accordingly, an employee or agent acting on behalf of a company could be prosecuted for providing money or other assets in a grossly negligent manner to a third-party, which is then used to facilitate bribery. In addition, the company could be fined as well." Phase 3 para. 24.

	NP position (if conditions vary based on which NP engages in bribery)	Offence committed must have been:						Comments/extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Related to LP's activity	Done on LP's behalf / in its name	Done in scope of NP's duties / authority	Done for LP's benefit or interest	Result of failure to supervise	Other	
Switzerland	-	●	○	○	○	●	○	**Activity**: LP liable for "offence … committed within an enterprise in the pursuit of commercial activities in conformity with its objectives". Phase 3 para. 30. **Supervision**: "Liability for defective organization [under Art. 102(2)] can be analysed as liability for additional negligence over and above commission of the act of bribery". Phase 2 para. 107.
Turkey	Organ or representative	○	○	○	●	○	○	**Benefit**: "Article 43/A provides for corporate liability where the offence has been committed 'to the benefit of that legal person'" by a relevant person. Turkey Phase 3 para. 45.
	Other person	○	○	●	●	○	○	**Duty / Benefit**: In Turkey, if offender is not an "organ or representative" of LP, he or she must also have "undertake[n] a duty within the scope of that legal person's operational framework". See Turkey Phase 3 page 77.
United Kingdom	Associated persons (Section 7 offence)	○	○	○	●	●	○	**Benefit / Supervision**: For a Section 7 offence, a commercial organisation is liable if a person "associated with" commits bribery "with the intention of obtaining or retaining ... an advantage" for the LP, unless the LP proves it had "adequate procedures" to prevent bribery". Phase 3 para 35; *see also* Phase 3 page 77.
United States	-	○	○	●	●	○	○	**Duty / Benefit**: "According to the applicable theory, a company is liable for the acts of its directors, officers or employees whenever they act within the scope of their duties and for the benefit of the company." Phase 2 para. 15.

2.4.3. When can a compliance system preclude liability?

Figure 4. **When can a compliance system preclude liability?**

(Number of Parties)

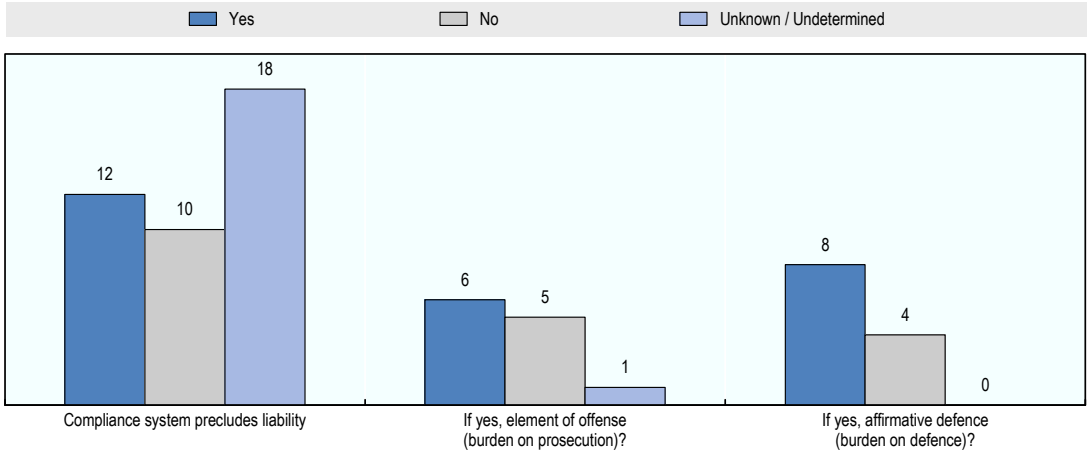


Table 6 shows that in 12 countries[47] (29%) the existence of internal "compliance systems" can preclude liability for foreign bribery as a matter of law in at least some circumstances. In some countries, a compliance system could negate an element of the offence that the prosecution must prove to establish the liability of a legal person. For example, in Chile, prosecutors "must prove that a company failed to properly design and implement an offence prevention model".[48] In other countries, the legal person can use a compliance system to establish a defence. For example, Australia's Code Section 12.3(3) provides that certain methods for establishing a legal person's fault will not apply "if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission".

As discussed in the context of mitigating factors (Table 14), even if countries do not permit compliance systems to preclude the liability of legal persons, compliance systems can still be considered as a mitigating factor when imposing sanctions for foreign bribery and other offences. These arrangements are potentially important tools for promoting effective compliance with the law within legal persons.

47 Australia, Chile, Czech Republic, Greece, Italy, Korea, Netherlands, Portugal, Spain, Switzerland and the United Kingdom.

48 Chile Phase 3 para. 50.

Table 6. **Standard of liability for bribery: Compliance systems**

	Compliance system can preclude liability as a matter of law	If yes, is burden on prosecution or defence?		Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Element of offense (prosecution)	Affirmative defence (defence)	
Argentina	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51.
Australia	●	●	●	**Compliance (prosecution)**: Section 12.3(2)(d) provides that LP will be liable if prosecution can establish "that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance", Phase 3 page 71. **Compliance (defence)**: In contrast, Section 12.3(3) provides that LP can avoid responsibility under Section 12.3(2)(b) for acts of a "high managerial agent" where "the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission". Phase 3 page 71.
Austria	?	?	?	Not identified as relevant in WGB reports.
Belgium	○	-	-	"In Belgium, the existence of internal controls, codes of ethics or compliance programmes has no influence in principle on the attribution of criminal liability to a legal person". Phase 3 para. 112.
Brazil	○	-	-	Compliance program can be "mitigating factor", but not a "defence to avoid liability". Phase 3 para. 58.
Bulgaria	?	?	?	Not identified as relevant in WGB reports.
Canada	○	-	-	Not identified as relevant in WGB reports. Canada has informed the Secretariat that an LP cannot avoid liability by proving that an compliance programme existed.
Chile	●	●	○	Compliance model can prevent attribution of liability, as prosecution must show that offence was committed in violation of LP's "direction and supervisory functions". Phase 3 paras. 38 & 50.
Colombia	○	-	-	At the time of Phase 2 evaluation, WGB found that "[t]here are currently no defences … explicitly stated in the law on liability of legal persons." Phase 2 para. 242. Colombia confirms that Law 1778 of 2016, which was adopted after the Phase 2 evaluation, does not permit a legal person to use the existence of a compliance programme or any other efforts it may have made to prevent an offence as a defence to liability. The WGB will have the opportunity to first review the new law's application in practice during Colombia's Phase 3 review.
Czech Republic	●	●	●	Prosecutor has initial burden to show LP not take "justly required" measures to prevent offence; then LP has burden to show it made its best effort to implement effective compliance program. Phase 3 para. 41.
Denmark	?	?	?	Not identified as relevant in WGB reports.
Estonia	?	?	?	Not identified as relevant in WGB reports.

	Compliance system can preclude liability as a matter of law	If yes, is burden on prosecution or defence?		Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Element of offense (prosecution)	Affirmative defence (defence)	
Finland	?	?	?	Not identified as relevant in WGB reports.
France	○	-	-	French law does not give "legal weight to a compliance programme". Phase 3 para. 144.
Germany	○	-	-	Lack of "monitoring system" can establish failure to supervise, but existence of such system "does not appear to go as far as constituting a defence" to LP liability. Phase 3 para. 64.
Greece	?	?	?	Possibly a compliance system would negate LP liability under Article 51(2) following lack of control over low-level persons. However, WGB found it not clear what would count as "adequate supervision or control". Phase 3 paras. 54, 57.
Hungary	?	?	?	Not identified as relevant in WGB reports.
Iceland	?	?	?	Not identified as relevant in WGB reports.
Ireland	○	-	-	Draft bill under consideration would provide "defence where all reasonable steps and all due diligence" taken to prevent offence, but not yet adopted. Phase 3 para. 59.
Israel	?	?	?	According to Israeli judges, "compliance programmes would be a factor considered in determining legal person liability". Phase 3 para. 36. Draft bill proposed creating "duty of supervision and control" for LP as well as defence if LP can prove it took "measures … reasonable for the performance of its duty". Phase 3 para. 35.
Italy	●	○	●	LP has "defence", if it has an "organisational model aimed at preventing an offence". Phase 3 paras. 39-42; *see also* Phase 2 paras. 176-180.
Japan	?	?	?	Not identified as relevant in WGB reports.
Korea	●	○	●	Compliance system is not required as such but can form part of the evidentiary proof needed to satisfy defence. Phase 3 Follow-up page 28*; see* Phase 1 pages 7-8 ("[I]t is a defence under article 4 if the legal person has 'paid due attention or exercised proper supervision to prevent the offence'.").
Latvia	?	?	?	Not identified as relevant in WGB reports.
Luxembourg	?	?	?	Not identified as relevant in WGB reports.
Mexico	?	?	?	Not identified as relevant in WGB reports.
Netherlands	●	○	●	Dutch officials explained LP "could escape liability if it had established effective internal controls … and compliance rules and that it did all in its power to prevent the act." Phase 3 para. 37.

	Compliance system can preclude liability as a matter of law	If yes, is burden on prosecution or defence?		Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Element of offense (prosecution)	Affirmative defence (defence)	
New Zealand	●	●	○	Following amendments made in 2015, the prosecutor must show that the LP did not take "reasonable steps" to prevent the offence, if the LP raises the issue. If the LP does not raise the issue, the prosecutor is presumed to have met this burden. Crimes Act 1961, section 105C(2C).
Norway	○	-	-	While compliance system is not a defence to criminal liability *per se*, "consideration shall be paid to … whether [LP] could by guidelines, … control, or other measures have prevented the offence" when the penalty is set. LP can also avoid civil liability if it can show it took "all necessary internal compliance measures … to prevent the corrupt behaviour". Phase 3 paras. 45, 47-48.
Poland	?	?	?	Not discussed in WGB reports.
Portugal	●	○	●	LP has defence to liability if NP "acted against express orders or instructions of authorised persons", potentially including contraventions of its Code of Ethics. Phase 3 paras. 50-51.
Russian Federation	?	?	?	WGB was not sure whether relevant provisions established LP liability for "failure to take measures to prevent bribery". WGB also not sure if LP would have "defence" if it could show that "it did take all measures to prevent bribery". Phase 2 paras. 260-261.
Slovak Republic	?	?	?	Not discussed in WGB reports. The 2015 Act on Corporate Criminal Liability does not expressly address the relevance of compliance programmes or systems for liability. The WGB will have the opportunity to examine this matter in practice during Phase 4.
Slovenia	?	?	?	Not discussed in WGB reports.
South Africa	?	?	?	Not discussed in WGB reports.
Spain	●	?	●	LP can benefit from "defence" based on "internal compliance programmes". Phase 3 para. 52; *see* PC, Article 31 *bis* (2); *see also* Phase 3 Follow-up page 14.
Sweden	●	●	○	Though the WGB has not discussed compliance systems directly, it has found that Chapter 36, Section 7 of Sweden's Penal Code authorises a corporate fine when "the entrepreneur has not done what could reasonably be required of him for prevention of the crime", which could include non-existent or inadequate compliance programs. Phase 3 para. 40. An LP's "procedures and policies would also be relevant determining whether there was gross negligence" in connection with Sweden's offence for the negligent financing of bribery. Phase 3 para. 25.
Switzerland	●	●	○	Compliance system can constitute proof that LP took "all reasonable and necessary organisational measures to prevent such an offence", thus disproving an element of offence specified in Article 102(2). Phase 3 paras. 27-29.

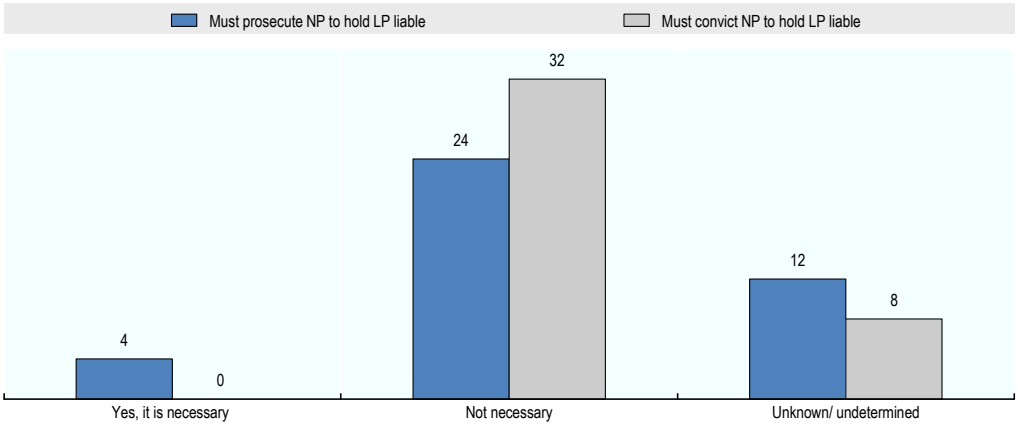
	Compliance system can preclude liability as a matter of law	If yes, is burden on prosecution or defence?		Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Element of offense (prosecution)	Affirmative defence (defence)	
Turkey	○	-	-	Turkish companies, if they adopt "anti-corruption policies", tend to do so "for compliance with United States and United Kingdom law (rather than Turkish law)." Phase 3 para. 153.
United Kingdom	●	○	●	Under Section 7, LP liable if prosecution proves that an "associated" person engaged in bribery with intent to obtain advantage for LP, unless LP can establish as defence "that it had adequate procedures in place to prevent" the offence. Phase 3 para. 35*; see also* Phase 1*ter* at para. 40.
United States	○	-	-	Under *respondeat superior* theory, LP "liable for acts of its employees although it cannot always control them". But an effective compliance program can influence prosecutorial discretion not to pursue charges or play a role in mitigating sanctions in accordance with the US Sentencing Guidelines. Phase 1 page 10; *see also* Phase 3 para. 57 (remediation).

2.5. Links between unlawful acts by natural persons and legal person liability

> ***"[S]ystems for the liability of legal persons … should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted."***
>
> ***Annex I, Part B of the 2009 Recommendation for Further Combating Foreign Bribery***

Figure 5. **Is prosecution or conviction of natural persons required for LP liability?**

(Number of Parties)



Unlawful acts committed in a business or organisational context must be perpetrated by one or more natural persons, as legal persons can only act through natural persons. However, it may not always be possible to prosecute or convict specific natural persons for an offence, even if an offence has clearly taken place. This is why Annex I Part B of the 2009 Recommendation provides that Parties should not restrict LP liability to cases where natural person(s) are prosecuted or convicted.

Table 7 explores the procedural links between LP liability and legal actions targeting the natural persons who perpetrated the offence. In line with Annex I, Part B of the 2009 Recommendation, Table 7 looks, first, at whether a natural person must be prosecuted in order to hold the legal person liable and, second, whether a natural person must be convicted in order to hold a legal person liable.

WGB monitoring reports indicate that five countries establish a link between the prosecution of a natural person and the ability to hold a legal person liable for foreign bribery. As of the end of Phase 3, the WGB had found that only one country (Mexico) required the conviction of a natural person in order to be able to hold the legal person

liable under Article 11 of the Federal Penal Code.[49] The question of the necessity of convicting a natural person remains open for several other countries.

Belgium's law is worth noting because of its unique way of linking LP liability to unlawful conduct by natural persons. In Phase 3, the WGB described Belgium's system of "mutually exclusive liability" as follows:

> *Article 5 CP does not establish the explicit autonomous liability of legal persons. Rather, article 5(2) envisages the possibility of a mutually exclusive liability of the related natural and legal persons. In cases where a company incurs liability solely because of the intervention of an identified natural person, "only the person who committed the more serious offence may be convicted". The construction of this sentence leaves open the possibility of exonerating a company of criminal liability where it manages to prove that an identified natural person "committed the more serious offence".*[50]

Some other interesting special cases are:

- ***Germany***. "[L]egal persons are exempted from liability where the natural person cannot be prosecuted for 'legal reasons'. The German authorities state that such reasons do not include the death of the natural person or the exercise of prosecutorial discretion not to prosecute him/her. The cases in practice and published commentaries only refer to an example where the statute of limitations expired for the natural person. However, the German authorities state that the situation where the natural person is convicted or acquitted in a Schengen country is likely to constitute a 'legal reason', as the *non bis idem* rule is a binding rule in Germany under the Schengen Agreement as far as parties thereto are concerned. This might raise a question about the prosecution of legal persons, where the natural person was convicted in a Schengen country but the legal person was not prosecuted, although in principle, it is expected that the country proceeding against the natural person would take the primary responsibility of sanctioning the legal person."[51]
- ***Russian Federation***. "Prosecutors during the [on-site] visit explained that the timeframe for investigation of legal persons is limited to 2 months since evidence is already available as a consequence of the investigation against the natural person…. The lead examiners note that in practice the very short timelines for completion of investigations against legal persons create an evidentiary dependency on the parallel investigation and prosecution of a natural person."[52]

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49 Mexico has informed the Secretariat that, following the June 2016 amendments to the National Code of Criminal Procedure, it is no longer necessary to prosecute or convict a natural person to hold an LP liable. *See* National Code of Criminal Procedure, Article 421. The WGB will have the opportunity to explore the application of the amended law, along with the pre-existing Article 11 of the Federal Penal Code, in the Phase 4 evaluation.

50 Belgium Phase 3 para 28.

51 Germany Phase 2 para. 121.

52 Russian Federation Phase 2 para. 257.

Table 7. **Links between liability of natural persons and liability of legal persons**

	Must prosecute NP to hold LP liable	Must convict NP to hold LP liable	Comments / Observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Argentina	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51.
Australia	?	?	The WGB has not directly discussed this issue in its reports.
Austria	?	○	LP liability requires "prosecutor to attribute *mens rea* to one individual perpetrator with leading role in company". Phase 3 para 43. **Prosecute**: Not directly discussed in WGB reports. **Convict**: After 2005 amendment, LP liability is "in addition to and independent from" NP liability. Phase 1*bis* para. 62.
Belgium	?	○	If an LP is solely liable because of the act of an identified NP, "only the person who committed the more serious offence may be convicted." Phase 3 para. 28. The WGB expressed concerns about this "mutually exclusive liability" between NP and LP. Phase 3 para. 29. **Prosecute** / **Convict**: Not expressly discussed in WGB reports, except for "mutually exclusive liability". Rather than being a prerequisite, conviction of NP can preclude liability of LP. *See* Phase 3 paras. 28-29.
Brazil	○	○	**Prosecute** / **Convict**: Brazilian officials claimed "administrative and civil proceedings" against LPs "could be initiated and concluded without waiting for the initiation and conclusion of criminal proceedings against" the NP. Phase 3 para. 36.
Bulgaria	●	○	**Prosecute**: When an NP perpetrator is identified, LP liability regime links the start of administrative proceedings against LP to the indictment of NP, unless certain exceptions are met. But, proceedings against LP are possible under civil procedural code if NP is not identified. Phase 3 para. 32. **Convict**: LP can be liable "even if the natural person who committed foreign bribery is not convicted". Phase 3 para. 25.
Canada	○	○	**Prosecute** / **Convict**: In Canada, "no obligation to prosecute an individual and an organisation jointly … [or] separately". Phase 3 para. 45.
Chile	○	○	LP liability can exist even when "criminal conduct cannot be attributed" to an LP. Phase 3 para. 36. Typically, must commence investigation against NP to investigate LP, but some exceptions apply. Phase 3 para. 38. **Prosecute / Convict**: No conviction is needed in certain (limited) circumstances such as death, insanity, etc. Phase 1*ter* para. 36; Phase 3 para. 108.
Colombia	○	○	**Prosecute / Convict**: Article 4 of Law 1778 of 2016 provides that the "initiation, prosecution and termination of an administrative investigation related to a legal person" for foreign bribery "shall not depend upon or be subject to the initiation of another legal process, irrespective of its nature, nor to the decision to be rendered in such process". The WGB will have the opportunity to first review the new law's application in practice during Colombia's Phase 3 review. **NOTE**: This table reflects Colombia's system of administrative fines under Article 34(3). In contrast, the sanctions under Article 34(1) "would require the prosecution and conviction of a natural person". Phase 2 para. 233.

	Must prosecute NP to hold LP liable	Must convict NP to hold LP liable	Comments / Observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Czech Republic	○	○	**Prosecute / Convict**: LP can be liable even if "a concrete natural person […] cannot be identified". Phase 3 para. 36. The WGB also found "[c]riminal proceedings against a natural person are not a prerequisite" to proceedings against LP. Phase 3 para. 47.
Denmark	**?**	○	**Prosecute**: WGB did not expressly discuss prosecution of NP in connection with LP liability. **Convict**: Authorities assert "conviction of a natural person is not a prerequisite", but Prosecutor's guidelines require a determination that NP committed act "in the course of the [LP's] business". . Phase 3 para. 47-48.
Estonia	○	○	Estonian law seems to require "the identification of a culpable natural person in proceedings against legal persons" to prove *mens rea* and *actus reus* elements. Phase 3 paras. 17-18. At the on-site, officials asserted that investigation of LP "is dependent on the identification of a natural person" who "must be first or concurrently investigated". Phase 3 paras. 34, 35. However, panellists also believed they could start investigating LP directly "to identify the natural actor" when bribery is suspected. Phase 3 para. 36. **Prosecute / Convict**: Estonian law does not require the indictment or prosecution of a natural person for proceedings to be initiated against a legal person". Phase 3 para. 34. WGB did question whether need to identify NP may create practical need to prosecute NP before LP. *See* Phase 3 para. 35 & page 20 (Commentary).
Finland	○	○	**Prosecute / Convict**: WGB found LP liability was available under § 9:2(2) even when offender "not punished" and that this was "in line with" 2009 Recommendation. Phase 3 para. 26.
France	**?**	**?**	WGB has not expressly considered this aspect of the 2009 Recommendation.
Germany	○	○	**Prosecute**: "Administrative fines against legal persons for bribery are in principle imposed in the course of the criminal proceedings against natural persons (section 444 CCP). However, where the natural person is not prosecuted due, for example, to the exercise of prosecutorial discretion or because he/she has died or cannot be identified, it is possible to sanction the legal person in separate proceedings." Phase 3 para. 65. At the same time, if an NP cannot be prosecuted for "legal reasons" (e.g. limitations period), then LP will be exempt from liability. "The German authorities state that such reasons do not include the death of the natural person or the exercise of prosecutorial discretion not to prosecute him/her. " Phase 2 para. 121. **Convict**: WGB found that the conviction of an NP is "not *per se* the main criterion" for LP liability. Phase 3 para. 61.
Greece	●	○	**Prosecute**: WGB found in practice, prosecution of NP is required. Phase 3*bis* para. 62. **Convict**: LP liability does not require "conviction" of NP. Phase 3*bis* paras. 61. However, WGB recommended that Greece ensure that investigation not also required. Phase 3*bis* page 21 (Commentary).
Hungary	○	○	**Convict**: In Phase 2, LP liability required NP be "convicted and punished". Phase 3 para. 19. In 2008, Hungary enacted exceptions (e.g., if NP receives reprimand or probation; if NP has mental illness or dies, no conviction required). In 2013, Hungary adopted more exceptions, but WGB has not assessed if issue has been entirely resolved. *See* Phase 3 para. 20; Phase 3 Follow-up pages 10-11.
Iceland	**?**	**?**	LP can be sanctioned even if NP's identity not established, but WGB was not clear how case law would apply provision. Phase 3 para. 19; Phase 1 page 6 (LP can be liable even if NP not identified, provided it can be shown that "someone acting on the legal person's behalf committed the act").

	Must prosecute NP to hold LP liable	Must convict NP to hold LP liable	Comments / Observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Ireland	**?**	**?**	**Prosecute / Convict**: Under identification theory, LP only liable for acts of NP deemed to be "controlling mind and will" of the LP. Phase 2 para. 189. WGB observed that no cases had yet held an LP was held liable for corruption without identifying, prosecuting and convicting an NP. Phase 2 para. 193.
Israel	○	○	At least one case has held an LP liable for an offence with a *mens rea* element, without having identified an NP. The WGB, however, has reserved judgment as it is subject to appeal. Phase 3 para. 29. WGB did not identify any formal requirement linking the investigation of LP to that of an NP. *See* Phase 3 paras. 28-29 & pages 15-16 (Commentary). **Prosecute / Convict**: "Israel's law clearly does not require prosecution or conviction of a natural person to proceed against a legal person". Phase 3 para. 28.
Italy	○	○	**Prosecute**: Trial against LP can proceed if investigation does not identify any NP. However, WGB recommended follow-up, as some provisions "appear to presuppose" that NP would be "charged" at same time. Phase 2 para. 161-162; Phase 3 paras. 46, 48. **Convict**: Not needed as law provides for LP liability even if NP not "identified" or "indictable". Phase 3 para. 46.
Japan	**?**	**?**	With limited case law, WGB could not determine if LP liability "depends upon the conviction or punishment" of NP. Phase 3 para. 39. In the Phase 3 Follow-up evaluation, Japan reported that "as described in Phase 3 on-site visit, according to case law developed with respect to cooperate liability, it is unnecessary for the liability of legal persons to have the natural person convicted or punished …." However, Japan also acknowledged that, "no new case law … [has been] developed with regard to foreign bribery offence since Phase 3 evaluation." Phase 3 Follow-up page 25. The WGB, however, left this as an issue for continued follow-up.
Korea	○	○	**Prosecute**: LP can be liable even if NP not prosecuted, provided court finds that NP in fact committed offence. Phase 2 para. 120. **Convict**: Not necessary if NP is not prosecuted or if NP is dismissed for "procedural reasons". Phase 2 para. 120.
Latvia	●	○	**Prosecute**: WGB considered proceedings against NP a "precondition" for prosecuting LP. Phase 2 paras. 146, 229. **Convict**: WGB did not identify conviction as a prerequisite to LP liability, but rather expressed concern that prior conviction of NP may prevent LP liability due to double jeopardy. *See* Phase 2 paras. 229-233.
Luxembourg	○	○	**Prosecute / Convict**: Law provides that LP liability not require that NP "be actually tried and convicted", but court must make factual finding of NP guilt in proceedings against LP. Phase 3 para. 40. WGB found Luxembourg should "ensure" LP liability is not limited to instances where NP is prosecuted and convicted. Phase 3 page 19 (Commentary).
Mexico	**?**	**?**	**Prosecute / Convict:** While the WGB found that Criminal Code Article 11 only applies to an LP, where the relevant NP is "convicted" (Phase 3 para. 25), Mexico has informed the Secretariat that, following amendments adopted in June 2016, Article 421 of the National Code of Criminal Procedure provides that criminal proceedings against an LP can be commenced "independently" from the criminal action that could be brought against the natural persons involved in the offence. Thus, it may no longer be necessary to either prosecute or convict the NP to hold an LP liable for an offence. However, the WGB will have its first opportunity to explore the application of Article 11 and the amended provisions in the Phase 4 evaluation.

	Must prosecute NP to hold LP liable	Must convict NP to hold LP liable	Comments / Observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Netherlands	○	○	**Prosecute** / **Convict**: Under Dutch law, "criminal proceedings may be instituted and the punishments … provided for by the law may be implemented" against the LP, the NP, or both. Phase 3 para. 32.
New Zealand	○	○	**Prosecute**: WGB observed that natural and legal "persons can be prosecuted in the same proceeding", but this is presumably not required. Phase 2 para. 178. **Convict**: "Panellists at the on-site visit indicated that a conviction of a legal person does not require the conviction of an individual although no authority has been supplied for this proposition." Phase 2 para. 178.
Norway	○	○	**Prosecute** / **Convict**: Law "explicitly provides that proceedings against the natural person are not a pre-condition to proceedings against the legal person." Phase 3 para. 40.
Poland	●	○	**Prosecute / Convict**: LP liability "requires the conviction of … or a discontinuance of proceedings against" an NP. The WGB found that this condition "prevents prosecution … where the natural person cannot be identified". Phase 3 paras. 44, 47-53.
Portugal	○	○	**Prosecute**: "Article 11 of the Criminal Code has clarified that an investigation and prosecution of a natural person is not a precondition to corporate liability." Phase 3 para. 52, **Convict**: WGB found that revised Article 11(7) provides that LP "liability is not dependent on the liability" of an NP. Phase 3 para. 52.
Russian Federation	○	○	**Prosecute / Convict**: Legally, no need to prosecute or convict NP to hold LP liable. See Phase 2 para. 256. Practically, the "very short timelines" to investigate an LP "create an evidentiary dependency on the parallel investigation and prosecution" of an NP. WGB expressed concern this might require "investigation of a specific and identifiable" NP. Phase 2 para. 257.
Slovak Republic	**?**	○	**Prosecute**: The 2015 Act does not seem to require proceedings to be brought against an NP before an LP can be prosecuted for an offence. However, in the context of joint proceedings brought against both an NP and an LP under Section 24(1), the Act requires that "juridical acts pertaining to criminal procedure" (e.g., examining a witness) should be "usually first performed … [in] respect of the natural person." Section 24(3). The WGB will have the opportunity to examine the application of these provisions in Phase 4. **Convict**: Section 4(4) of the 2015 Act on Criminal Liability of Legal Persons states that LP liability "is not conditional on whether the natural person [whose acts can confer liability on the LP] … has been found criminally liable or on whether it has been established which natural person" committed the offence or failed to supervise the person who committed the offence. The WGB will have the opportunity to examine the application of the 2015 Act in practice during Phase 4.
Slovenia	○	○	**Prosecute / Convict**: Proceedings against LP not tied to proceedings against NP. Phase 3 para. 33; see also Phase 1 para. 62 ("The conviction of a natural person is not a prerequisite for the liability of the legal person.").
South Africa	○	○	**Prosecute** / **Convict**: Though still lacking solid jurisprudence, authorities maintain that "prosecution or conviction" of NP not required for LP liability. Phase 3 para. 23.
Spain	○	○	**Prosecute / Convict**: NP liability is not required for LP liability. Phase 3 para. 47.

	Must prosecute NP to hold LP liable	Must convict NP to hold LP liable	Comments / Observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Sweden	**?**	**?**	**Prosecute / Convict**: LP not criminally liable *per se*, but "corporate fines may be imposed" as "a special legal effect of the crime committed by a natural person". Phase 3 paras. 80-81. According to Swedish officials, the corporate fine is "normally but not necessarily" imposed during the proceedings against the NP. Phase 3 para. 41. Sweden did not produce examples where LP fined for *mens rea* offences "without prosecuting" the NP. Phase 3 para. 41.
Switzerland	○	○	Though WGB did not identify any formal legal barriers, Swiss panellists suggested traditional focus on NP may have inhibited use of LP liability regime. Phase 3 para. 31. **Prosecute / Convict**: According to Article 102(2), LP can be liable "irrespective of the criminal liability" of any NP. Phase 3 para. 27.
Turkey	**?**	**?**	**Prosecute** / **Convict**: WGB did not identify any specific link between NP and LP liability, but Turkey appears to have assumed that "proceedings will necessarily be conducted jointly against natural and legal persons." Phase 3 para. 48. Some panellists assumed that "at least a prosecution" and perhaps even "conviction" of NP may be necessary to prosecute LP. Phase 3 paras. 41-42. The WGB indicated that it would follow-up, as case law develops, on practical implementation to ensure that Turkey could effectively prosecute LPs.
United Kingdom	○	○	**Prosecute / Convict**: Under Section 7, "prosecution need not actually commence proceedings and obtain a conviction against the associated person", but it must prove NP guilt "beyond a reasonable doubt" in proceedings against LP. Phase 1*ter* para. 40.
United States	○	○	**Prosecute / Convict**: WGB reports that US is committed to "an increased emphasis" on pursuing NPs "in addition to companies" and indicates LP liability does not require prosecuting or convicting the NP involved. Phase 3 para. 21.

2.6. Liability for unlawful acts of intermediaries

> ***"Each Party shall take such measures ... necessary to establish that it is a criminal offence … for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official …."***
>
> ***Article 1(1) of the Anti-Bribery Convention (emphasis added)***
>
> ***"Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party."***
>
> ***Article 1(2) of the Anti-Bribery Convention (emphasis added)***
>
> ***"Member countries should ensure that … a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf."***
>
> ***Annex I, Part C of the 2009 Recommendation for Further Combating Foreign Bribery (emphasis added)***

The 2009 Recommendation recommends that the 41 Convention Parties to ensure that legal persons cannot avoid liability for foreign bribery committed "using intermediaries, including related legal persons".[53] This section presents comparative information on the circumstances in which a legal person can be held liable for intermediaries. It first addresses the situations when legal persons can be held liable for intermediaries that are "related legal persons" and then addresses their liability for "unrelated" intermediaries, including business partners, agents, consultants or contractors (whether these intermediaries are natural or legal persons).

For the purposes of data collection, the report explores various possible grounds for which one legal person can be liable for the acts of another person. For *related intermediaries*, it examines whether Parties to the Convention can hold an LP liable for an offence committed by another legal entity if the first entity: (i) was complicit in the offence; (ii) knew of or tolerated the offence before it was committed; (iii) ratified the offence after the fact; (iv) had legal control over the other entity; (v) had functional control over the other entity; or (vi) engaged its responsibility on some other basis. For *unrelated intermediaries*, the report examines whether an LP can be liable for an offence committed by any third party – whether a natural person or a legal person – when it: (i) was complicit in the offence; (ii) knew of or tolerated the offence before it was committed; (iii) ratified the offence after the fact; (iv) engaged the partner to act on its behalf (as an agent); or engaged its responsibility on some other basis.

[53] Anti-Bribery Convention, art. 1(1); 2009 Recommendation, Annex I, Part C.

2.6.1 Liability for related intermediaries

Table 8 presents the grounds on which the Parties to the Convention can hold a legal person liable for the acts of related legal persons within the same corporate group. This would include the liability of a parent legal person for the acts of its subsidiaries, liability of a subsidiary for the acts of its parent, or the liability of one entity for the acts of another entity in the same corporate group. As a preliminary caveat, the relatively large number of "unknowns" in Table 8 often reflects uncertain or inconsistent views expressed during on-site visits about the exact grounds on which a legal person can be held responsible for the act of an intermediary. The issue, however, should be clarified as countries develop jurisprudence through prosecutions of legal persons for foreign bribery.

Based on the WGB monitoring reports, however, it appears that at least 32 Parties (78%) can, at least under some conditions, hold companies liable for the unlawful acts of related intermediaries.[54] In ten countries (24%), the WGB was unable to make a determination based on the information available, often because of the lack of any case law.

Table 8 also shows the conditions for liability explored for this mapping. The most common of these conditions – relevant for at least 29 countries (71%) – is that a parent company can be held liable when it participated in or directed a subsidiary's wrongful conduct. This is by far the most common situation in which Parties can hold a legal person liable for the acts of a related entity. It also fits with the Parties' general obligation under the Convention to criminalise "complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official."[55]

The situation is far less clear when the legal entity is not directly involved in authorising or committing the offence. However, a handful of countries can hold a legal person liable for the acts of related entities when it: (i) knew of or tolerated the acts (7 countries, or 17%); (ii) ratified or approved the acts after they were committed (3 countries, or 7%); (iii) legally controlled the entity (2 countries, or 5%); or (iv) functionally controlled the entity (3 countries, or 7%).[56] However, the WGB reports often do not exactly specify when a legal person could be held liable in any of the hypothesised circumstances.[57]

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54 For 8 other countries (20%), the laws may permit imposing liability on parent companies, but this was not clear at the time of the WGB's evaluation. *See, e.g.*, Greece Phase 3 page 13 ("The lead examiners recommend that the Working Group follow up …. whether a parent company would be liable if its subsidiary commits foreign bribery.").

55 Article 1(2) of the Anti-Bribery Convention.

56 It should be noted that legal or functional control alone is not always sufficient to impose liability. In the United States, a parent company can be liable for the acts of a subsidiary, if the latter is deemed to be an agent of the former entity. Formal or practical control of the subsidiary or even knowledge about, or involvement in, its operations are relevant factors for determining whether an agency relationship exists between the parent and subsidiary that would justify attributing liability for the subsidiary's acts to the parent company. *See* United States DOJ & SEC, A Resource Guide to the U.S. Foreign Corrupt Practices Act (Nov. 14, 2012), page 27.

57 Thus, while it was not possible to confirm whether 15 countries (37%) would hold a legal person liable even when it participated in or directed the acts of related legal persons, the number of unknowns for the other situations ranged from 30 to 36 countries (73% to 88% of the Parties).

A further 10 countries (24%) can impose liability or sanctions on some "other" basis, such as: the existence of a *de facto* relationship within the corporate group (Italy); when an offence was committed on behalf or for the benefit of the legal person (e.g., Norway, Slovenia); if a person associated with a legal person "through gross negligence" provided the legal person's funds to a representative who then uses them to engage in bribery (Sweden); or if the legal person failed to prevent a related legal person deemed to be an "associated person" (United Kingdom) or an "agent" (United States) from engaging in bribery.

Excluding Argentina, the WGB has not expressly found that any Party cannot hold a legal person responsible for using related entities to offer, promise or give a bribe to a foreign public official. As already noted above, however, a striking aspect of Table 8 is the large number of "unknowns". This is true even for the most basic question relating to whether, and when, a parent company can be held liable for the acts of its subsidiaries. In some cases, the WGB has noted that the country has in fact held legal persons liable for the acts of related intermediaries without expressly indicating the legal basis.[58]

Some of the more noteworthy models of liability for related entities are:

- ***In the spirit of the organisation***. According to the WGB report, Dutch law enforcement officials indicated that the Netherlands can prosecute a parent company for an offence committed by its subsidiary if the parent entity "knew about the illegal acts of the subsidiary or if the act was carried out 'in the spirit of the legal entity'".[59] According to Dutch authorities, an act performed "in the spirit of the entity" could include acts "useful for the legal person in the business conducted by the legal person" as well as acts resulting from behaviours that were either "accepted or used to be accepted … by the legal person".[60]
- ***"On behalf of"***. In some countries, a parent company can be liable for the acts of its subsidiary, if the subsidiary is an "agent" or otherwise acting on its behalf. According to Norwegian officials and other panellists at the WGB's on-site visit, Norway can hold the parent liable whenever the subsidiary acts "on behalf of" the parent.[61] In the United States, "a parent may be liable for its subsidiary's conduct under traditional agency principles", whenever it has sufficient "control", whether formally or in fact, over the subsidiary's operations or conduct. Whenever such an "agency relationship" arises, the "subsidiary's actions and knowledge" can trigger criminal or other liability for the parent company.[62]
- ***"For the benefit of"***. According to Slovenia, a parent company can be held liable if it "benefited from the bribe given by subsidiary".[63] Such approaches potentially go

58 *See, e.g.*, Germany Phase 3 para. 74 (indicating that entities have been held liable for acts related legal persons without specifying the grounds on which such liability was established).

59 Netherlands Phase 3 at para. 39 (concerning parent company liability for subsidiaries' acts).

60 Netherlands Phase 3 at para. 36 (describing acts "carried out in the spirit of the legal entity").

61 *See* Norway Phase 3 at para. 41. However, the WGB also observed that such an "interpretation [was] not supported by case law" when the report was drafted.

62 United States DOJ & SEC, A Resource Guide to the U.S. Foreign Corrupt Practices Act (Nov. 14, 2012), pages 27-28.

63 There is not yet any case law to support this position, but the WGB did observe that Article 4 of the Slovenian Liability of Legal Persons for Criminal Offences Act does permit liability

beyond the "agency" model to encompass wrongdoing that objectively benefits a parent company, even though the subsidiary that committed the offence may not be controlled by, or otherwise acting for, the parent company at the time of the offence.

- ***Corporate Groups***. Brazil's corporate liability regime notably holds "parent, controlled or affiliated companies … jointly liable for the perpetration of acts" covered by the law. Perhaps in recognition of the broad scope of this liability, Brazil limits such liability to "applicable fines" and the "full compensation" for damages caused.[64]

On a related note, descriptions in several WGB monitoring reports of on-site discussions with practitioners point to a lack of clarity in some jurisdictions regarding when liability can be imposed on a legal person for the acts of its foreign subsidiaries committed abroad. For example, when asked about the case of a foreign subsidiary of a Russian parent company bribing abroad on behalf of the parent company, judges were not entirely in agreement as to the exact jurisdictional basis that could be applied. The judges presented a variety of legal theories the lead examiners, who concluded in the Phase 2 report: "The nature of the discussion on this point demonstrates to the lead examiners that, as one judge put it, the Russian judiciary does not yet have much experience with the 'foreign element' ... and that 'time is required to test the law'".[65] The jurisdictional reach of the 41 Convention Parties' foreign bribery laws is covered in Part 2.8.

where an act was committed "in the name of, on behalf of or in favour of" a legal person. Slovenia Phase 3 para. 37.

64 Brazil Phase 3 page 84 (reproducing Article 4(2) of Brazil's Law 12,846 of 1 August 2013).

65 Russian Federation Phase 2 para. 181.

Table 8. **Liability of legal persons for related legal persons**

	LP liable for related entity?	Conditions for liability:						Comments / observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
Argentina	○	-	-	-	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51.
Australia	●	●	?	?	?	?	?	**Complicity**: An LP can be liable for an offence committed "jointly with a subsidiary or joint venture" or by "aiding, abetting … or inciting" the subsidiary or joint venture to commit the offence. Phase 3 para. 19.
Austria	●	●	○	○	○	○	○	**Complicity**: LP not "directly liable" for acts of subsidiaries, but can be liable as "instigator" under general criminal law rules. Phase 2 para. 128; *see also* Phase 3 Follow-up page 7 (LP liability must "be examined for every particular entity" but a parent LP can be liable for subsidiary under "the general rules on contribution to an offence").
Belgium	●	●	?	?	○	○	?	**Complicity**: A parent LP is not responsible for the acts of its subsidiaries unless the parent LP "would incur liability … under the traditional rules of participation in a crime". Phase 3 para. 32. **Legal / functional control**: Given need to establish "participation" in crime, legal or functional control over another LP would not, alone, be sufficient to trigger liability of first LP. *See* Phase 3 para. 32; Phase 2 para. 132.
Brazil	●	?	?	?	●	●	?	**Complicity**: Exists for criminal offences. See Phase 2 para. 141. But WGB has not expressly make similar finding for LP administrative liability. **Legal / functional control**: According to Brazil, joint liability for acts of "controlled' companies, such as subsidiaries or affiliates, but not clear what circumstances required. Phase 3 para. 37. **NOTE**: Parent's liability for subsidiary is limited to certain sanctions. *See* Phase 3 paras. 37, 63.
Bulgaria	●	●	?	?	?	?	?	**Complicity**: LP liable if intermediary commits offence when designated persons linked to LP "instigates or is an accessory" to offence. Phase 3 para. 23. **Other basis**: Potentially, LP also liable for offence of intermediary whenever it receives benefit from offence. *See* Phase 3 para. 23.

	LP liable for related entity?	Conditions for liability:						Comments / observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
Canada	●	●	●	○	○	○	○	**Complicity**: Phase 3 Follow-up at page 18 (discussing Niko Resources case involving bribery through subsidiary). **Knowledge**: Under Canadian law, wilful blindness is tantamount to knowledge. This doctrine could be applied if an officer of a parent company had knowledge or was wilfully blind concerning the unlawful activities of a related entity acting as a representative for the LP. *See* Phase 1 pages 3-4. **Ratification / Legal control / Functional control / Other**: Canada reports that none of these theories would trigger liability of an LP for the acts of a related entity.
Chile	?	?	?	?	?	?	?	**Complicity**: While no case law yet, Chile asserts that parent LP can be liable for acts of persons acting for subsidiary if "direct hierarchical link" exists.
Colombia	●	●	●	?	?	?	?	As LPs can be liable for bribery committed "directly or indirectly", Colombia stated in Phase 2 that an LP could be responsible for the acts of related legal persons. Phase 2 para. 236. The WGB flagged the issue for follow-up. *See* Phase 2 page 72 (Commentary). **Complicity/Tolerance**: Subsequently, Colombia adopted Law 1778 of 2016, Article 2 of which imposes liability for prohibited payments "to a foreign public official, directly or indirectly". Law 1778 further provides that "parent companies … shall also be liable and … subject to administrative penalties" if any subsidiary bribes a foreign public official "with the consent or tolerance of the parent company". When reviewing the draft law, the WGB warned that this provision might unduly restrict LP liability for acts of related entities to only cover parent-subsidiary relationships. *See* Phase 2 para. 237. The WGB will have the opportunity to first review the new law's application in practice during Colombia's Phase 3 review.
Czech Republic	●	●	?	?	?	?	?	**Complicity**: WGB found "Czech law specifically addresses" LP liability for related intermediaries, but recommended follow-up on issue. Phase 3 para. 43 & page 20 (Commentary).

	LP liable for related entity?	Conditions for liability:						Comments / observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
Denmark	●	●	●	●	?	?	●	**Complicity / Knowledge**: According to authorities, parent LP can be liable for acts subsidiary on the "basis of complicity" or if an officer "authorises" the offence. According to authorities, parent company could also be liable for acts of subsidiary based on "implied agreement or consent". Phase 3 para. 50. **Ratification**: According to authorities, parent company could be liable for acts of subsidiary if its "officers accept that its subsidiary commits bribery". Phase 3 para. 50. **Other**: According to authorities, "a legal person could be held liable for failing to prevent foreign bribery" when it has specific knowledge of offence. Phase 3 para. 51.
Estonia	●	●	●	?	?	?	?	**Complicity**: Estonia reports LP can be liable for "aiding and abetting" a subsidiary commit bribery if the offence were committed under its "authorisation or order". WGB, however, recommended follow-up. Phase 3 at para. 32. **Knowledge**: Estonia reports LP can be liable for "aiding and abetting" a subsidiary in committing bribery if the offence committed with "resources" provided by LP. WGB flagged this for follow-up. Phase 3 para. 32.
Finland	?	?	?	?	?	?	?	**Functional control**: It was "unclear" to WGB how Finnish LP would be held liable for acts of foreign subsidiaries. However, at least one n-site panellist "assumed" that prosecutors would focus on whether Finnish LP had "factual control". Phase 3 para. 27.
France	●	●	?	?	?	?	?	**Complicity**: France confirmed parent LP can be liable for subsidiaries on "grounds of conspiracy or complicity". Phase 3 at para. 45. **Other basis**: French circular of 9 February 2012 provides that an LP may be liable for acts of any "person to whom powers have been delegated". Phase 3 Follow-up at page 15.

	LP liable for related entity?	Conditions for liability:						Comments / observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
Germany	●	●	?	?	?	?	●	**General**: WGB recognised that Germany has held LPs liable for using a variety of intermediaries, including related persons. However, not specify legal basis for attributing such liability. Phase 3 para. 74 (citing "consultants", "representatives", and "letter box companies"). **Complicity**: While WGB did not consider issues expressly for LPs, the German Criminal Code contains a general provision imposing liability for complicity. Phase 3 para. 48. Germany has informed the Secretariat that, because the liability of a manager or other decision-maker would be attributed to the LP under German law, the general provisions on liability for complicity are also decisive for the liability of the LP. **Other basis**: Germany has informed the Secretariat that an LP can be fined for bribery committed by the employee of a related entity if a manager of the LP commits an offence, for example, by neglecting any duty of supervision that may have existed.
Greece	?	?	?	?	?	?	?	**General**: The WGB could not determine LP liability for intermediaries: as no express law covers the situation, "it is up to the courts to clarify this issue". Phase 3*bis* para. 53. LP liability for subsidiary was identified for follow-up. Phase 3*bis* page 64.
Hungary	●	●	?	?	?	?	?	**General**: Given multiple interpretations, WGB was not clear when LP can be liable for act of another LP. **Complicity**: Prosecutors indicated LP would liable if responsible person of LP was "directly involved" in offence committed by intermediary. Phase 3 para. 22. **Knowledge**: Justice Ministry indicated that LP may be liable for bribery by third party if a responsible person of LP had "knowledge" offence "may result in … benefit for the legal person". Phase 3 para. 22; *see also* Phase 1*bis* page 7.
Iceland	●	●	?	?	?	?	?	**General**: No case law supported assertion, but "all" on-site panellists believed law imposed LP liability for "bribery through intermediaries". Phase 3 para. 20. **Complicity**: WGB has not expressly found LP can be liable through complicity, but general criminal principles appear broad enough to cover LPs. *See* Phase 1 at pages 4-5.

	LP liable for related entity?	Conditions for liability:						Comments / observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
Ireland	●	●	**?**	**?**	**?**	**?**	**?**	**Complicity**: LP liable for acts of its officers, and complicity is a general ground for establishing a criminal bribery offence. *See* Phase 1 page 12; *see also* Phase 2 para. 143 (discussing "bribing through an intermediary").
Israel	●	●	**?**	**?**	**?**	**?**	**?**	**Complicity**: Israel explains that LP can be liable for acts of intermediary "if the requisite *mens rea* was established in accordance with general principles of criminal law". Phase 3 paras. 26-27. Complicity was found to a ground for establishing liability for bribery offences. *See* Phase 1 para. 31.
Italy	●	**?**	**?**	**?**	●	●	●	**Legal / Functional control**: Any LP in corporate group can be liable if "any relationship, organic or even *de facto*" exists. Phase 3 Follow-Up page 30. **Other basis**: LP in corporate group can be liable if "any relationship, organic or even *de facto*" exists. Phase 3 Follow-Up page 30.
Japan	●	●	**?**	**?**	**?**	**?**	**?**	**Complicity**: LP liable if its "representative, an agent, employee or any other person of the headquarters [in Japan] had conspired … to commit the offence". Phase 3 para. 40; *see also* Phase 3 Follow up page 25 (including cases where LP headquarters "directs or authorises" bribery or if it is source of bribe).
Korea	●	●	**?**	**?**	**?**	**?**	**?**	**Complicity**: Under general criminal law, a "person who directs another … to bribe … can be subject to criminal punishment as an accomplice." Phase 2 paras. 96-97 (provided intermediary actually offers or delivers bribe).
Latvia	●	●	**?**	**?**	○	●	**?**	**Complicity**: A parent LP "can be liable based on complicity if it authorises or approves a bribe paid by a subsidiary. Complicity includes aiding, abetting, organising and facilitating the offence." Phase 2 para 225. **Functionally controlled**: While a parent LP is generally "not legally obliged to supervise or control its subsidiaries", Latvia reports that such an obligation could arise in some circumstances. Phase 2 para. 225.
Luxembourg	**?**	**?**	**?**	**?**	**?**	**?**	**?**	**Unknown**: WGB did not or could not ascertain in reports.

	LP liable for related entity?	Conditions for liability:						Comments / observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
Mexico	●	●	?	?	?	?	?	**Complicity**: WGB recognised that potentially LP could be liable for "complicity" under Article 11 of the Federal Criminal Code, provided that the LP also gave the offender the "means to commit the bribe". Phase 2 para. 64. Mexico has informed the Secretariat that, following the 2016 amendments, an LP should be liable for offences under "any of the various forms of intervention" foreseen in the criminal code without there being any need to show that the LP provided the means to commit a crime. The WGB will have the opportunity to examine the application of the amended laws in practice during the Phase 4 evaluation.
Netherlands	●	●	●	?	?	?	●	**Complicity / Knowledge / Other**: Case law imposes liability on those who bribe through intermediaries. While no case law yet holding parent LP liable for subsidiary, prosecutors asserted LP would be liable if it "knew" of subsidiary's act or if act were done "in the spirit of" the parent LP. Phase 3 paras. 36, 38-39.
New Zealand	●	●	?	?	?	?	?	**Complicity**: "New Zealand generally does not provide for liability of a parent corporation as such for bribery by its subsidiaries…. In order successfully to prosecute the parent company, it would be necessary to show complicity, such as direction or authorisation, by a directing mind of the parent." Phase 2 para. 190.
Norway	●	●	?	?	?	?	●	**Complicity:** Despite lack of case law, WGB believed that bribery through intermediaries would be covered. Phase 3 page 14; *see also* Phase 2 page 52 (Section 276a). **Knowledge / Other:** According to prosecutors, LP parent would be liable, if foreign subsidiary committed offence on parent's behalf and parent knew or should have known about it. Phase 2 para. 105. However, in Phase 3, officials asserted LP parent would be liable whenever its subsidiary acts "on behalf of" parent. Phase 3 para. 41. NOTE: As knowledge alone seems insufficient (even if it still is required), we have categorised this ground as "Other basis".
Poland	?	?	?	?	?	?	?	**Complicity**: Although no case law at time, authorities believed law would apply to LPs that authorise "intermediaries" to engage in foreign bribery. Phase 3 para. 41; *see also* Phase 2 para. 159 (suggesting that NP associated with subsidiary could trigger liability of parent LP, at least when a leading person in the LP had knowledge and the NP has sufficient "relationship" to parent LP).

	LP liable for related entity?	Conditions for liability:						Comments / observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
Portugal	●	●	?	●	?	?	?	**Complicity**: An LP could be liable if "a specific authorisation to commit the bribery offence was issued to the foreign subsidiary by a representative of the parent company from Portugal." Phase 2 para. 158. **Ratification**: Article 7 of Law 20/2008 covers bribery through an intermediary when it is committed with the briber's "consent or ratification". Phase 3 para. 33.
Russian Federation	?	?	?	?	?	?	?	**General**: "Russian law does not address the liability of parent companies in general, nor does it specifically provide for the liability of parent companies for acts of bribery committed by intermediaries, including related legal persons such as their subsidiaries." WGB expressed concern that LP could not be held liable for bribes for benefit of related entities "could potentially fall outside the scope" of LP liability. Phase 2 para. 254.
Slovak Republic	●	●	?	?	?	?	?	WGB recommended establishing LP liability for bribery through intermediaries. Phase 3 para. 3. Section 6 of the 2015 Act on the Criminal Liability of Legal Persons now provides for liability when an LP acts as either an "accomplice" or "abettor" of a perpetrator of a criminal offence. The WGB will have the opportunity to further evaluate LP liability for the acts of intermediaries, including related legal persons, during the Phase 4 evaluation.
Slovenia	●	●	●	?	?	?	●	**Complicity / Knowledge / Other**: According to officials, LP liable for subsidiary, if (i) LP knew of acts; (ii) LP's management "influenced" acts; or (iii) or if LP "benefited from the bribe given", provided that offence was committed in LP's name, on its behalf, or in its favour. Phase 3 para. 37.
South Africa	●	●	?	?	?	?	?	**General**: No express provision on liability of parent LPs for acts of intermediaries, but reference to "directly or indirectly" may cover use of "foreign subsidiary" to bribe for parent LP. Phase 2 para. 198. **Complicity**: LP liability likely depends on evidence that offence committed "by or on instructions or with permission" of representative of LP. Phase 2 para. 199. **Knowledge / Benefit**: WGB noted new, albeit untested theories that parent LP might be liable if LP "reckless" towards acts of subsidiary or if LP "obtains a benefit". Phase 3 para. 28.

	LP liable for related entity?	Conditions for liability:						Comments / observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
Spain	?	?	?	?	?	?	?	**General**: WGB could not determine whether LP could be held liable for acts of "intermediaries, including related legal persons" as that situation was "not expressly covered" under the law at that time and no clear case law indicating how Spanish courts would interpret the issue. Phase 3 para. 55.
Sweden	●	●	?	?	?	?	●	**Complicity**: WGB warned that "Swedish companies may evade 'corporate fines' simply by using intermediaries, foreign subsidiaries, or non-Swedish employees abroad." Phase 3 pages 20-21 (Commentary). While the WGB has not made an express finding, Sweden suggests that corporate fines could be imposed on an LP if a responsible person aids or abets the offence. **Other basis**: Corporate fine if "commercial" LP provides resources to "anyone representing it in a certain matter" and "thereby through gross negligence" furthers bribery. Phase 3 paras. 24-26.
Switzerland	●	?	?	?	?	?	●	**Other basis**: LP liable for violation committed "within" enterprise; Switzerland considers "intermediaries and subsidiaries … to be 'within' an enterprise". Phase 3 paras. 27, 30.
Turkey	?	?	?	?	?	?	?	**General**: At time of Phase 2*bis*, WGB not sure LP liability for acts of intermediaries, even related persons. Phase 3 para. 47. **Complicity**: Turkey asserts that rules of complicity would apply. **Other basis**: Authorities assert that parent LP can be liable for act of foreign subsidiary that is created by Turkish NP, when Turkish NP commits offence. Phase 3 para. 47.
United Kingdom	●	●	?	?	?	?	●	**Complicity**: It is "offence to procure an offence, including any offences under the Bribery Act". Phase 1*ter* para. 20. **Other basis**: For Section 7, parent LP liable if subsidiary "performs services for or on behalf of" parent LP. Phase 1*ter* paras. 41-43.

	LP liable for related entity?	Conditions for liability:						Comments / observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		Complicit in or directed act	Knew of or tolerated act	Ratified act after it occurred	Had legal control over entity	Had functional control over entity	Other basis	
United States	●	●	●	●	?	?	●	**Complicity**: According to the US DOJ and SEC, a parent LP may be liable for subsidiary's unlawful acts if parent LP participated in conduct. FCPA Resource Guide page 27. **Ratification**: The WGB has not directly discussed this issue. The United States reports, however, that if an LP conspires to join an on-going foreign bribery scheme, it would be liable if the scheme continued. *Cf. Smith v. United States*, 133 S. Ct. 714 (2013). **Legal / Functional control**: The WGB has not expressly assessed whether an LP can be held liable for foreign bribery committed by a related entity solely based on the fact that the LP had legal or functional control over the related entity. The United States, however, has reported that though the analysis can be complex, an LP could incur civil (SEC) but not criminal (DOJ) liability under the FCPA's accounting provisions even in the absence of the LP's knowledge or complicity. *Compare* 15 U.S.C. Sec. 78m(b)(2) (civil standard), *with* 15 U.S.C. Sec. 78m(b)(5) (criminal standard). **Knowledge**: "Because Congress anticipated the use of third-party agents in bribery schemes—for example, to avoid actual knowledge of a bribe—it defined the term 'knowing' in a way that prevents individuals and businesses from avoiding liability by putting 'any person' between themselves and the foreign officials…. As Congress made clear, it meant to impose liability not only on those with actual knowledge of wrongdoing, but also on those who purposefully avoid actual knowledge". FCPA Resource Guide page 22; *see also* 15 USC 78dd-1(f)(2) (defining the term "knowing" in the FCPA). **Other**: According to US DOJ and SEC, parent LP may be liable if subsidiary is deemed an "agent" of parent LP. FCPA Resource Guide page 27 ("If an agency relationship exists, a subsidiary's actions and knowledge are imputed to its parent").

2.6.2. Liability for unrelated intermediaries

The 2009 Recommendation, in accordance with Article 1 of the Convention and the principle of functional equivalence, also commits the Parties to ensure that legal persons cannot avoid responsibility for foreign bribery by using "intermediaries", which includes *unrelated* intermediaries. Such unrelated intermediaries could include third-party agents, consultants or contractors. Table 9 explores whether and how the Parties can hold legal persons liable for the acts of unaffiliated business partners or other third parties. It shows that at least 31 countries (76%) have laws that would allow them to hold companies liable for the unlawful acts of unrelated intermediaries under certain conditions.[66]

As with liability for related intermediaries, the WGB reports did not always contain information about the specific grounds on which a legal person could be held liable for the acts of its business partners. The most common reason identified by the WGB for holding a legal person liable for an offence committed by an unrelated entity or third-party agent is that the legal person in fact participated in, or directed, the unlawful act.[67] Based on WGB findings and supplemental information provided by the Parties, this was true in 27 countries (66%). There was not enough information to make a determination for 13 countries (32%). In contrast, according to the same sources, at least 15 countries (37%) would impose liability on a legal person using a theory not tied to complicity. The number of "unknowns", however, for the other theories listed in Table 9 ranged from 33 to 36 countries (80% to 88%).

Agency principles provided the second most frequent ground for imposing liability on a legal person for the acts of its unrelated business partners. At least seven countries (17%) can hold a legal person liable for bribery committed by a third party authorised to act on the legal person's behalf. These are Denmark, Estonia, Iceland, Korea, Slovenia, Turkey and the United States.[68] Except for complicity or agency principles, none of the other surveyed theories of liability appeared in more than 10% of the Parties' company liability regimes.

At least 10 countries (24%) can hold a legal person liable on a theory other than complicity or agency. For example, the WGB found that at least one country, Portugal, can impose liability on a legal person that ratifies or approves the unlawful conduct of an unrelated intermediary after the fact.[69] One other country, Canada, provided supplemental information indicating that it can also hold an LP liable on this basis. Examples of other techniques for holding legal persons liable for the unlawful acts of their business partners, include:

- ***Associated persons***. The Section 7 of the United Kingdom's Bribery Act 2010 makes certain companies liable for the acts of any "associated" person who "performs

66 For nine countries (22%), there was not enough information to make a clear determination. At the same time, however, the WGB has not yet expressly found that any country cannot hold a legal person liable for the acts of its business partners in at least some circumstances.

67 This was also the case for LP liability for related intermediaries, which is unsurprising as Article 1(2) of the Convention requires Parties to criminalise "complicity", including "incitement, aiding and abetting, or authorisation of bribery" generally without regard to the whether the other party is a related or unrelated entity or partner.

68 It was not possible to make a definitive assessment of a legal person's liability for a third-party agent in 33 countries (80%).

69 *See* Portugal Phase 3 para. 33.

services" for them. Section 8(2) of the UK Bribery Act specifies that "the capacity in which [the associated person] performs services for or on behalf of [the legal person] does not matter".[70]

- ***Consortium or Joint Venture Members***. Brazil's corporate liability regime holds companies that are members of a consortium liable for the unlawful acts committed by other consortium member "within the scope of their respective consortium agreement".[71] As with its rules for attributing liability within corporate groups, Brazil limits liability for consortium members to "applicable fines" and the "full compensation" for damages caused. Poland has a similar provision holding a legal person liable for the acts of its joint venture partners, provided that the legal person had "knowledge" of the act or "consents" to it.[72]
- ***Negligence offence***. Parties have widely different approaches to determining whether the requisite "fault" or "intent" (often referred to as *dol* in civil law traditions or as the *mens rea* element in the common law world) has been established within the company-intermediary relationship.[73] Some countries have attempted to side-step the difficulty of proving intent by holding legal persons liable for negligence. For example, Sweden has enacted a "negligent financing" offence, whereby a legal person can be sanctioned for providing money in a "grossly negligent" manner to an intermediary who then uses it for bribery.[74]

70 UK Bribery Act (2010), sections 7 and 8(2).

71 Brazil Phase 3 page 84 (reproducing Article 4(2) of Brazil's Law 12,846 of 1 August 2013).

72 Poland Phase 3 para. 46 & page 59.

73 For example, in Latvia, it is necessary *inter alia* to prove that a legal person had knowledge of the bribery to hold it liable for the acts of the intermediary. *See* Latvia Phase 2 para. 195. In contrast, in Canada intention or knowledge (including "wilful blindness") would establish the necessary *mens rea* required for the offence. Canada Phase 1 page 4.

74 *See* Sweden Phase 3 para. 24 ("The new negligent financing of bribery provision makes it criminal for 'a commercial organisation [to] provide[] financial or other assets to anyone representing it in a certain matter and which thereby through gross negligence furthers the offences of giving a bribe, gross giving of a bribe or trading in influence in that matter.'")

Table 9. **Liability of legal persons for unrelated persons**

	LP can be liable for business partners?	Conditions for liability					Comments /observations
		Complicit in or directed act	Knew of or tolerated act	Ratified act after the fact	Partner acted on LP's behalf (agent)	Other basis	**Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Argentina	○	-	-	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51.
Australia	●	●	?	?	?	?	**Complicity**: An LP can be liable for committing an offence "jointly with a subsidiary or joint venture" or by "aiding, abetting … or inciting" the subsidiary or joint venture to commit the offence. Phase 3 para. 19.
Austria	●	●	?	?	?	?	**Complicity**: LP not "directly liable" for acts of others, but can be liable as "instigator" under general criminal law rules. Phase 2 para. 128; *see also* Phase 3 para. 30 (general rules for liability for intermediaries). **Agency**: LP may be liable if it "authorised an intermediary in another country" to bribe. Phase 3 para. 31; *see also* Phase 3 Follow-up at pages 5-6 (act of agent with an "employee-like" status "may be attributed" to LP when it "deliberately" used the agent for bribery).
Belgium	●	●	?	?	?	?	**Complicity**: Law states that the act of "proposing directly or through intermediaries" constitutes bribery, whether the third party is an "accomplice or a co-author". Phase 1 page 3; *cf.* Phase 3 para. 32 (discussing LP liability for "traditional rules of participation in a crime" in context of related corporate entities).
Brazil	●	?	?	?	?	●	**General:** Although WGB did not identify statutory clear basis, Brazilian officials asserted LP could be liable for acts of subcontractors and other third parties. Phase 3 para. 39. **Other basis**: Brazilian law provides that "consortium members" are liable for offences committed "within the scope of their respective consortium agreement". Phase 3 Annex 2 page 84 (Article 4(2)).
Bulgaria	●	●	?	?	?	?	**Complicity**: LP can be liable if designated person affiliated with LP "instigates or is an accessory" to offence. Phase 3 para. 23.
Canada	●	●	●	●	?	?	**Complicity**: Canada's offence holds LP liable for bribery committed "directly or indirectly, including through intermediaries". Phase 1 pages 3-4. **Knowledge/Ratification**: While the WGB has not made an express finding on these theories of liability, Section 22.2(c) of the Criminal Code provides that an LP can be liable for the acts of its "representative" if a senior officer of the LP failed to "take all reasonable measures" to prevent the representative from becoming a party to the offence, despite "knowing that [the] representative [was] or [was] about to be a party to the offence". Phase 3 para. 42. Canada informed the Secretariat that this provision could thus cause an LP to be liable for the acts of a business partner acting as its "representative" under either of these theories of liability.

	LP can be liable for business partners?	Conditions for liability					Comments /observations
		Complicit in or directed act	Knew of or tolerated act	Ratified act after the fact	Partner acted on LP's behalf (agent)	Other basis	**Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Chile	?	?	?	?	?	?	**Complicity**: Law does not explicitly address bribery through intermediaries. Chile asserts that a person who "induces another party (*e.g.*, intermediary) to commit bribery would be guilty as a principal offender." Thus, Chilean officials claimed that a parent LP would be liable if its managers "ordered a person in the subsidiary to commit the crime". They also maintain that an LP can be held liable for the acts of "subcontractors, depending on the contractual terms and the existence of a direct hierarchical relationship" with a relevant person connected with the LP. Case law, however, does not yet support this interpretation. Phase 3 paras. 33, 40-41.
Colombia	?	?	?	?	?	?	Though Article 34 of Law 1474 of 2011 prohibited bribery "directly or indirectly", the WGB could not reach a conclusion on LP liability for intermediaries (specifically in context of related legal persons) in "absence of explicit legal provisions and case law". Phase 2 para. 236 & page 72 (Commentary). Law 1778 of 2016, which was adopted after Phase 2, also applies to bribes given, offered, or promised "to a foreign public official, directly or indirectly", which Colombia states would cover intermediaries. The WGB will have the opportunity to first review the new law's application in practice during Colombia's Phase 3 review..
Czech Republic	●	●	?	?	?	?	**Complicity**: WGB found "Czech law specifically addresses" LP liability for related or unrelated intermediaries, where LP "used" another LP to commit the criminal act. Phase 3 para. 43. **Agency**: Czech authorities believed an LP could be held liable for its "agents", who would be considered intermediaries. The WGB seemed willing to accept this understanding, pending case law. Phase 3 paras. 38 & 43.
Denmark	●	●	?	?	●	?	**Complicity**: According to authorities, parent LP can be liable for acts of joint venture on the "basis of complicity" or if an officer "authorises" the offence. Phase 3 para. 50. **Agency**: LP can be liable for anyone with whom it has a "contractual relationship", including an "agent". Phase 2 at para. 209.

	LP can be liable for business partners?	Conditions for liability					Comments /observations
		Complicit in or directed act	Knew of or tolerated act	Ratified act after the fact	Partner acted on LP's behalf (agent)	Other basis	**Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Estonia	●	●	?	?	●	?	**Complicity**: Estonia reports LP can be liable for "aiding and abetting" a subsidiary commit bribery if the offence were committed under its "authorisation or order". WGB recommended follow-up. Phase 3 para. 32. **Knowledge**: "Thus a company may now be held liable" when a relevant NP "foresaw the occurrence of circumstances constituting the necessary elements of an offence and tacitly accepts that such circumstances will occur." Phase 3 para. 34. **Agency**: According to Estonia, an "agent" can be a competent representative of LP. Phase 3 at para. 29. **Other**: Estonia reports LP can be liable for "aiding and abetting" a subsidiary to commit bribery if the offence were committed with "resources" provided by LP. WGB, however, recommended follow-up. Phase 3 at para. 32.
Finland	?	?	?	?	?	?	LP liability for unrelated intermediaries was not discussed, but use of intermediaries was flagged for Follow-up in Phase 3.
France	?	?	?	?	?	?	
Germany	●	●	?	?	?	●	**General**: WGB recognised that Germany has held LPs liable for using a variety of intermediaries, including related persons. However, not specify legal basis for attributing such liability. Phase 3 para. 74 (citing "consultants", "representatives", and "letter box companies"). **Complicity**: While WGB did not consider issues expressly for LPs, the German Criminal Code does contain a general provision imposing liability for complicity. *See* Phase 3 para. 48. Germany has informed the Secretariat that, because the liability of a manager or other decision-maker is attributed to the LP under German law, the general provisions on liability for complicity are also decisive for the liability of the LP. **Other basis**: Germany has informed the Secretariat that an LP can be fined for bribery committed by the employee of an unrelated entity if a manager of the LP commits an offence, for example, by neglecting any duty of supervision that may have existed.
Greece	?	?	?	?	?	?	**General**: The WGB could not determine LP liability for intermediaries: as no express law covers the situation, "it is up to the courts to clarify this issue". Phase 3*bis* para. 53.

	LP can be liable for business partners?	Conditions for liability					Comments /observations
		Complicit in or directed act	Knew of or tolerated act	Ratified act after the fact	Partner acted on LP's behalf (agent)	Other basis	**Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Hungary	●	●	?	?	?	?	**Complicity**: "[A]ccording to prosecutors, Hungary's law does not cover the situation where a bribe is paid through a third party, such as an agent or intermediary, *unless* … [a responsible person] (i) is directly involved in paying the bribe and (ii) has an actual intent to pay a bribe."[This was the one case that prosecutors said would trigger liability. See Phase 3 at para. 22]. **Knowledge**: Justice Ministry indicated that LP may be liable for bribery by third party if a responsible person of LP had have "knowledge" that offence "may result in … benefit for the legal person". Phase 3 para. 22; *see also* Phase 1*bis* page 7.
Iceland	●	●	?	?	●	?	No case law supported assertion, but "all" on-site panellists believed law imposed LP liability for "bribery through intermediaries". Phase 3 para. 20. **Complicity**: WGB has not expressly found LP can be liable through complicity, but general criminal principles appear broad enough to cover LPs. *See* Phase 1 at pages 4-5. **Agency**: After Phase 2, law was clarified to cover offences committed by "spokesman, employee or other person acting on [company's] behalf", which seemingly would cover agents. Phase 3 at para. 19.
Ireland	●	●	?	?	?	?	**Complicity**: LP liable for acts of its officers, and complicity is a general ground for establishing a criminal bribery offence. *See* Phase 1 page 12; *see also* Phase 2 para. 143 (discussing "bribing through an intermediary").
Israel	●	●	?	?	?	?	**Complicity**: Israel explains that LP can be liable for acts of intermediary "if the requisite *mens rea* was established in accordance with general principles of criminal law". Phase 3 paras. 26-27. Complicity was found to a ground for establishing liability for bribery offences. *See* Phase 1 para. 31.
Italy	●	●	?	?	?	?	**Complicity**: While law not expressly cover bribes paid by intermediaries, Italy explained an "agreement between the briber and the public official can be deduced from the facts", even when the scheme does not involve "direct contact" between the briber and the public official. Phase 1 pages 6-7.
Japan	●	●	?	?	?	?	Japan's Unfair Competition Prevention Law "does not expressly apply to bribery … through an intermediary", but authorities report that it is "sanctioned in practice". Phase 2 para. 152. However, principal only liable if intermediary in fact offers or gives bribe. *See* Phase 2 para. 153. **Complicity**: LP liable if its "representative, an agent, employee or any other person of the headquarters [in Japan] had conspired … to commit the offence". Phase 3 para. 40.

	LP can be liable for business partners?	Conditions for liability					Comments /observations
		Complicit in or directed act	Knew of or tolerated act	Ratified act after the fact	Partner acted on LP's behalf (agent)	Other basis	**Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Korea	●	●	?	?	●	?	**Complicity**: Under general criminal law, a "person who directs another … to bribe … can be subject to criminal punishment as an accomplice." Phase 2 paras. 96-97 (provided intermediary actually offers or delivers bribe). **Agent**: LP liable for any person, even if not "employee", who "performs a business, directly or indirectly" for a legal person and is under its "control or supervision". Korea Phase 2 Follow-up page 20.
Latvia	●	●	?	?	?	?	**Complicity**: An LP can be liable "based on complicity", which includes "aiding, abetting, organising and facilitating the offence." Phase 2 para 225. **Knowledge**: The WGB had "significant concerns" that Latvia's "direct intent" requirement "would exclude many cases of foreign bribery", including when there is no "direct proof" that the LP "knew that an official would be bribed" when its agent has committed bribery. Phase 2 para. 194
Luxembourg	?	?	?	?	?	?	
Mexico	?	?	?	?	?	?	**Unknown**: Potentially, LP could be liable under "complicity" principles, but WGB could not ascertain in light of limited case law. *See* Phase 2 para. 64. Mexico informed the Secretariat that, following the June 2016 amendments, Article 421 of the National Code of Criminal Procedure should make an LP liable if anyone, even an unrelated person, committed an offence for the "benefit" of the LP. The WGB will have the opportunity to assess the application of this provision to unrelated intermediaries in the Phase 4 evaluation.
Netherlands	●	●	?	?	?	?	**Complicity**: Case law imposes liability on those who bribe through intermediaries, "including local agents, representatives and consultants". Phase 3 para. 38.
New Zealand	●	●	?	?	?	?	**Complicity**: "New Zealand generally does not provide for liability of a parent corporation as such for bribery by its subsidiaries…. In order successfully to prosecute the parent company, it would be necessary to show complicity, such as direction or authorisation…." Phase 2 para. 190.
Norway	●	●	?	?	?	?	**Complicity:** Despite lack of case law, WGB believed that bribery through intermediaries would be covered. Phase 3 page 14; *see also* Phase 2 Annex 1 page 52 (reproducing Section 276a, which explicitly punishes complicity in relation to corruption). **Knowledge / Other:** According to prosecutors, LP parent would be liable, if foreign subsidiary committed offence on parent's behalf and parent knew or should have known about it. Phase 2 para. 105. However, in Phase 3, officials asserted LP parent would be liable whenever its subsidiary acts "on behalf of" parent. Phase 3 para. 41. **NOTE**: Presumably, this same reasoning would be true for LP responsibility for business partners, but left it as "Unknown" given lack of any express WGB statement.

	LP can be liable for business partners?	Conditions for liability					Comments /observations
		Complicit in or directed act	Knew of or tolerated act	Ratified act after the fact	Partner acted on LP's behalf (agent)	Other basis	**Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Poland	●	●	●	?	?	?	**Complicity**: Although no case law at time, authorities believed law would apply to LPs that authorise "intermediaries" to engage in foreign bribery. Phase 3 para. 41. **Knowledge / Agent**: LP potentially could be responsible for its "contractors" and "agents", at least when a leading person in the LP had knowledge. Phase 2 para. 159. In addition, Article 3(3)(a) may make LP liable for acts of joint venture partner, where LP has "knowledge" of the act or "consents" to it. Phase 3 para. 46 & page 59. However, it is not clear that an LP is responsible for the acts of its agents based solely on the existence of an agency relationship.
Portugal	●	●	?	●	?	?	**Complicity / Ratification**: Article 7 of Law 20/2008 covers bribery through an intermediary when it is committed with the briber's "consent or ratification". Phase 3 para. 33.
Russian Federation	?	?	?	?	?	?	**General**: "Russian law does not address the liability of parent companies … for acts of bribery committed by intermediaries, including related legal persons such as their subsidiaries." WGB questioned whether requirement that offence be committed in "interest" of LP might preclude liability if subsidiary gives bribe for benefit of parent LP. Phase 2 para. 254.
Slovak Republic	●	●	?	?	?	?	**General**: WGB recommended establishing LP liability, including liability for bribery through intermediaries. Phase 3 para. 3. [Section 6 of the 2015 Act on the Criminal Liability of Legal Persons provides for liability when an LP acts as either an "accomplice" or "abettor" of a perpetrator of a criminal offence. The WGB will have the opportunity to further evaluate LP liability for the acts of intermediaries, including related legal persons, during the Phase 4 evaluation.
Slovenia	●	●	?	?	●	●	**Complicity**: LP liable if "representative directs an intermediary to obtain a contract … by any means". Phase 1 para. 15. Criminal law rules on "participation" can also trigger liability for bribery. Phase 1 para. 22. **Agent**: LP could be liable for anyone acting on its "behalf", which could include a "contractor". Phase 1 para. 54. **Other**: Slovenia claims that LP can be liable for acts of any person, "even a person outside the company", provided LP receives "benefit" from the offence. Phase 1 para. 54.
South Africa	●	●	?	?	?	?	**General**: No express provision on liability of parent LPs for acts of intermediaries, but reference to "directly or indirectly" may cover use of "foreign subsidiary" to bribe for parent LP. Phase 2 para. 198. **Complicity**: LP liability likely depends on evidence that offence committed "by or on instructions or with permission" of representative of LP. Phase 2 para. 199.

	LP can be liable for business partners?	Conditions for liability					Comments /observations
		Complicit in or directed act	Knew of or tolerated act	Ratified act after the fact	Partner acted on LP's behalf (agent)	Other basis	**Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Spain	?	?	?	?	?	?	**General**: LP's use of "intermediaries, including related legal persons …. is not expressly covered" in legislation on LP liability. Phase 3 para. 55. The offence of bribing EU officials (unlike the general foreign bribery offence) does cover bribes through intermediaries. *See* Phase 3 para. 55.
Sweden	●	?	?	?	?	●	**Complicity**: WGB warned that "Swedish companies may evade 'corporate fines' simply by using intermediaries, foreign subsidiaries, or non-Swedish employees abroad." Phase 3 at pages 20-21 (Commentary). **Other basis**: Corporate fine if "commercial" LP provides resources to "anyone representing it in a certain matter" and "thereby through gross negligence" furthers bribery. Phase 3 paras. 24-26.
Switzerland	●	?	?	?	?	●	**Other basis**: LP liable for violation committed "within" enterprise; Switzerland considers "intermediaries and subsidiaries … to be 'within' an enterprise". Phase 3 paras. 27, 30.
Turkey	●	?	○	○	●	?	**General**: At time of Phase 2bis, WGB not sure LP liability for acts of intermediaries, even related persons. Phase 3 para. 47. **Complicity**: Turkey asserts that rules of complicity would apply. Phase 3 para. 47. **Agency**: A "representative" includes "any agent of the company who is legally authorized to represent the company, even if not an employee of the company". Phase 3 para. 44. **Other basis**: Authorities assert that parent LP can be liable for act of foreign subsidiary that is created by Turkish NP, when Turkish NP commits offence. The WGB, however, considered that there was "no available case law in support of these different interpretations." Phase 3 para. 47.
United Kingdom	●	●	?	?	?	●	**Complicity**: It is "offence to procure an offence, including any offences under the Bribery Act". Phase 1*ter* para. 20. **Other basis**: For Section 7, LP liable if "associated" person "performs services for or on behalf of" LP and the LP cannot establish a defence that it had "adequate procedures" to prevent the offence. Phase 1*ter* paras. 41-43; Phase 3 para. 35.

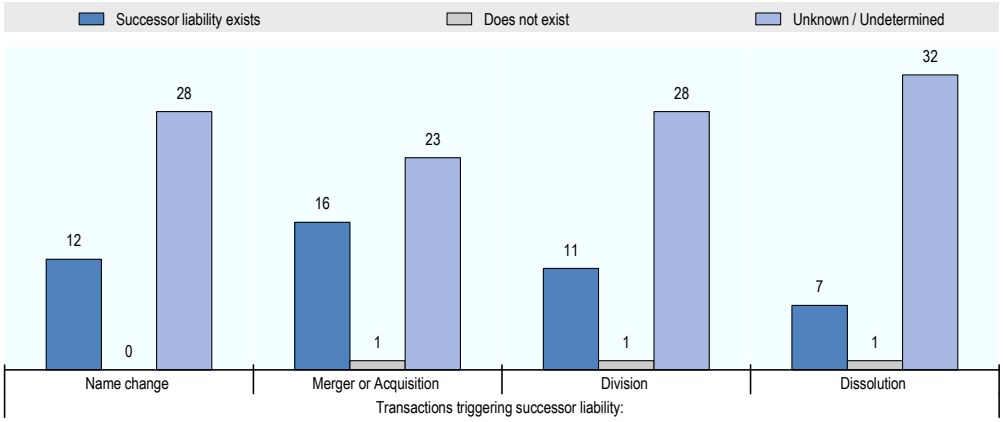
	LP can be liable for business partners?	Conditions for liability					Comments /observations
		Complicit in or directed act	Knew of or tolerated act	Ratified act after the fact	Partner acted on LP's behalf (agent)	Other basis	**Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
United States	●	●	●	●	●	?	**Complicity**: Under FCPA, liability can arise for giving "authorisation" or otherwise being complicit in an offence. *See* Phase 1 pages 8-9. **Knowledge**: "Because Congress anticipated the use of third-party agents in bribery schemes—for example, to avoid actual knowledge of a bribe—it defined the term "knowing" in a way that prevents individuals and businesses from avoiding liability by putting "any person" between themselves and the foreign officials…. As Congress made clear, it meant to impose liability not only on those with actual knowledge of wrongdoing, but also on those who purposefully avoid actual knowledge". FCPA Resource Guide page 22; *see also* 15 USC 78dd-1(f)(2) (defining the term "knowing" in the FCPA). **Ratification**: The WGB has not directly discussed this issue. The United States reports, however, that if an LP conspires to join an on-going foreign bribery scheme, it would be liable if the scheme continued. *Cf. Smith v. United States*, 133 S. Ct. 714 (2013). **Agent**: "The FCPA also imposes liability for foreign bribery committed by third parties acting as agents." According to the WGB, this vicarious liability has induced LPs to conduct "due diligence" on their "local agents, business partners … sales representatives, and … joint venture partners". Phase 2 para. 16.

2.7. Successor liability

> ***"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."***
>
> ***Article 2 of the Anti-Bribery Convention***

Figure 6. **Successor liability**

(Number of Parties)



In a corporate law context, when a legal person merges with or acquires another entity, the successor or acquiring legal person can, in certain circumstances, assume the predecessor entity's liabilities. Successor liability in the context of foreign bribery refers to whether and under what conditions LP liability for the offence is affected by changes in company identity and ownership. Without it, a legal person may avoid liability by reorganising or otherwise altering its corporate identity.[75] In some legal systems, however, successor liability is viewed as problematic in the criminal law context because it is viewed as conflicting with the fundamental notion that no one can be punished for the act of another.[76]

75 *See* Russian Federation Phase 2 para. 253 ("Under the CAO, companies cannot artificially escape sanctions by way of a merger to become a new legal entity.").

76 *See, e.g.,* French Penal Code Article 121-1 ("*Nul n'est responsable pénalement que de son propre fait.*"). Applying this principle, the Cour de Cassation overturned a lower court decision holding a legal person that subsequently acquired another entity liable for involuntary homicide on the grounds that the lower court ignored the fact that the merger had extinguished the existence of the acquiring entity, as it had merged into the acquired entity. *See* Cour de Cassation, Chambre criminelle, (Pourvoi 02-86376), available at www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007069654 ("*Attendu que, pour déclarer la société Acetex Chimie, coupable d'homicide involontaire, après avoir constaté qu'elle avait absorbé la société Pardies Acétiques postérieurement à l'accident, la cour d'appel énonce qu'elle a 'ainsi continué sa personnalité juridique' ; Mais attendu qu'en prononçant ainsi, alors que l'absorption avait fait perdre son existence juridique à la société*

Although neither the Anti-Bribery Convention nor the 2009 Recommendation explicitly covers successor liability, 16 WGB monitoring reports either discuss the issue or attach relevant legal provisions in an annex to the report. However, it has not been systematically explored in the WGB monitoring reports.

The available information on successor liability is summarised in Table 10. The monitoring reports, supplemented by material provided directly to the Secretariat by certain countries, shows that the Parties have adopted varying approaches. Among the Parties, at least 18 countries (44%) have some form of successor liability for foreign bribery or other criminal offences.

Table 10 also reports the types of transactions or reorganizations that can trigger successor liability, including name change or reincorporation (at least 12 countries, or 29%), merger/acquisition (at least 16 countries, or 39%), division or divestiture (at least 11 countries, or 27%) and dissolution (7 countries, or 17%).[77]

A striking feature of Table 10 is the large number of unknowns indicated by question marks. This relatively sparse coverage of the issue in WGB monitoring reports may reflect the fact that successor liability is not explicitly covered in the Convention. However, as a policy matter, any approach that effectively "wipes the slate clean" following a corporate reorganization or transaction would undermine the effectiveness of a country's LP liability regime for foreign bribery and hence defeat the objectives of the Convention. In extreme cases, a company can evade liability by engaging in a corporate restructuring whenever it perceives a risk of prosecution. Even when the corporate transaction has a legitimate business purpose, the failure to provide for successor liability would allow the vagaries of business needs to determine whether LP liability will apply to any given legal entity for a given fact situation.

Although the issue has not been fully explored in the WGB reports, some of the Parties' legal frameworks and practices concerning successor liability deserve special attention:

- ***Comprehensive statutory frameworks***. In some countries, the legislature has clearly adopted a set of provisions that comprehensively address successor liability. In Chile, for example, Article 18 of Law 20,393 on the liability of legal persons sets forth rules for how liability for specified criminal offences should be transferred in "case of voluntary or mutually agreed transformation, merger, absorption, division or dissolution of the legal person" that originally committed the offence.[78] Thus, in "cases of transformation, merger or absorption of a legal person, the resulting legal person shall be responsible for the total quantum" of any fine imposed.[79] For its part, Article 4 of Brazil's 2013 corporate liability law states that "the liability of legal entities remains in the event of amendments to their articles of incorporation, corporate changes, mergers, acquisitions, or spin-offs".[80] Other countries, such as the

absorbée, la juridiction du second degré a méconnu le texte susvisé et le principe ci-dessus rappelé ; .... CASSE et ANNULE l'arrêt susvisé de la cour d'appel de Pau, en date du 28 août 2002, mais en ses seules dispositions ayant déclaré la société Acetex Chimie coupable du délit d'homicide involontaire, toutes autres dispositions étant expressément maintenues[.]").

77 The number of countries marked as "unknown" for these options ranged from 27 to 35 countries (66% to 85%).

78 Chile Phase 3 page 71 (reproducing Article 18 of Law 20,393).

79 Chile Phase 3 page 71 (reproducing Article 18 of Law 20,393).

80 Brazil Phase 3 page 84 (reproducing Article 4 of Law 12,846 of 1 August 2013).

United States rely on well-established jurisprudence or other legal principles to ensure successor liability.[81]

- ***Limits on sanctions***. Brazil limits the type sanctions that may be imposed on successor companies to the payment of fines and compensation for damage. Brazil also limits the fine that can be imposed on the successor entity to an amount "within the limit of the transferred assets" received from the legal person that originally created the liability.[82] The WGB expressed concern that limiting the ability to confiscate the profits of foreign bribery from successor companies "deprives the administration of one of the most serious deterrents to foreign bribery".[83]
- ***Mechanisms to prevent the extinction of a legal person***. It should also be noted that the WGB has also identified some techniques that countries can use to prevent corporate reorganisations that would allow a legal person to escape liability or sanctions. These techniques could be used even where "successor liability" is not possible as a matter of legal doctrine. For instance, under Belgium's 1999 Act establishing LP liability, a judge may, after finding "serious indications of guilt on the part of a legal person", impose a provisional measure to suspend "any proceedings to dissolve or wind up the legal entity" or block any transfers of assets that "could result in the legal entity becoming insolvent".[84] Similarly, the WGB observed that Slovenia could prevent legal persons that have been convicted of certain offences (including foreign bribery) to evade an exclusion from public procurement by conducting a corporate transformation that would result in removing the "convicted legal person from a court register".[85]

81 United States DOJ & SEC, A Resource Guide to the U.S. Foreign Corrupt Practices Act (Nov. 14, 2012), page 27.

82 Brazil Phase 3 para. 38.

83 Brazil Phase 3 para. 63.

84 Belgium Phase 2 para. 88.

85 Slovenia Phase 3 para. 158.

Table 10. **Successor liability**

	Successor LP is liable for the acts of original LP	Transactions triggering successor liability: Name change (N) Merger or Acquisition (M/A) Division (DV) Dissolution (DS)				Types of sanctions that survive: Fines (F) Confiscation (C) Other (O)			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		N	M/A	DV	DS	F	C	O	
Argentina	-	-	-	-	-	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51.
Australia	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Austria	●	●	●	●	?	●	●	●	In case of "universal succession", LP liability fines or other "legal consequences … shall apply to the legal successor". Phase 1bis page 34 (Section 10 of Federal Statute on Responsibility of Entities for Criminal Offences).
Belgium	?	?	?	?	?	?	?	?	**Other safeguard**: While the WGB did not provide specific information on successor liability in its Phase reports, it did find that an examining magistrate can, during an investigation, "order provisional measures" to suspend "any proceedings to dissolve or wind up" an LP if there are "serious indications of guilt on the part of a legal person". Phase 2 para. 88.
Brazil	●	●	●	●	?	●	○	○	**Transactions**: LP liability "remains in the event of amendments to their articles of incorporation, corporate changes, mergers, acquisitions or spin-offs". Phase 3 page 84. **Sanctions**: Brazil limits types of sanctions that can be imposed on successor entities "to the payment of fines and the compensation for damage", thus "confiscation of the profit of foreign bribery is not available". Furthermore, the liability is limited to the "transferred assets", thus creating the possibility that the companies can minimise the fine imposed. Phase 3 para. 63.
Bulgaria	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Canada	●	●	●	?	?	●	●	●	The WGB has not made any findings on this issue. **Transactions**: Canada has provided the Secretariat with authority showing that Canadian law does not permit an LP formed by amalgamation of other legal entities to avoid liability for prior acts of a constituent entity. *See R. v. Black & Decker Manufacturing Co.*, [1975] 1 S.C.R. 411. Logically, this principle would cover changes in the form of the legal person.

	Successor LP is liable for the acts of original LP	Transactions triggering successor liability: Name change (N) Merger or Acquisition (M/A) Division (DV) Dissolution (DS)				Types of sanctions that survive: Fines (F) Confiscation (C) Other (O)			Comments /observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		N	M/A	DV	DS	F	C	O	
Chile	●	●	●	●	●	●	●	●	Article 18 of Law 20,393 on Liability of Legal Persons address LP liability in cases of "voluntary … transformation, merger, absorption, division or dissolution of the legal person responsible for one or more crimes" identified in the law. Phase 3 page 71 (reproducing Article 18).
Colombia	●	?	●	●	?	●	●	●	The WGB has not made any findings on this issue. Article 6 of Law 1778 of 2016, however, contains rules for imposing liability when the LP that committed foreign bribery "amends or changes its nature before the enactment of the administrative sanctioning act", including where (i) the LP is "extinguished by effect of a merger", (ii) the LP is split into different entities, and (iii) there has been a "transfer of control over a company". The WGB will have the opportunity to first review the new law's application in practice during Colombia's Phase 3 review.
Czech Republic	●	●	?	?	●	?	?	?	**Change of Form / Dissolution**: The LP liability law provides that "criminal liability of legal persons descends to all its legal successors." It also addresses procedural issues in case LP "undergoes a change in form or dissolution in the course of criminal proceedings". Phase 3 para. 44.
Denmark	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Estonia	?	?	?	?	?	?	?	?	**Merger / Division**: During on-site, Estonian judges raised concern about potential "serious loophole" in LP liability regime when an LP "divides or merges with another entity to avoid liability", with many believing that judgment could not be enforced against the new LP. Phase 3 para. 37. WGB recommended Estonia "address the potential loopholes". Phase 3 page 20 (Commentary).
Finland	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
France	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.

	Successor LP is liable for the acts of original LP	Transactions triggering successor liability: Name change (N) Merger or Acquisition (M/A) Division (DV) Dissolution (DS)				Types of sanctions that survive: Fines (F) Confiscation (C) Other (O)			Comments /observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		N	M/A	DV	DS	F	C	O	
Germany	●	●	●	●	?	●	●	○	The WGB has not made any findings on this issue. **Division**: Germany informed the Secretariat that Section 30(2a) of the Regulatory Offences Act addresses successor liability in the event of either (i) universal or (ii) partial universal succession by means of splitting. "In such cases, the regulatory fine may not exceed the value of the assets which have been assumed, as well as the amount of the regulatory fine which is suitable against the legal successor." Section 30(2a). The same provision also provides that the "legal successor(s) shall take up the procedural position in the regulatory fine proceedings in which the legal predecessor was at the time when the legal succession became effective."
Greece	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Hungary	?	?	?	?	?	?	●	?	**Confiscation**: Hungary reports confiscation of criminal property possible even after it is "transferred by succession to another natural or legal person". Phase 3 Follow-up page 40.
Iceland	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Ireland	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Israel	●	?	●	?	?	?	?	?	**Acquisition**: According to information provided by Israel to the Secretariat (but not included in report), an LP could be liable following the "acquisition" of an entity, if it were made a subsidiary, but an LP might not inherit liability from another entity following a "merger" with that entity.
Italy	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Japan	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Korea	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Latvia	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.

	Successor LP is liable for the acts of original LP	Transactions triggering successor liability: Name change (N) Merger or Acquisition (M/A) Division (DV) Dissolution (DS)				Types of sanctions that survive: Fines (F) Confiscation (C) Other (O)			Comments /observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		N	M/A	DV	DS	F	C	O	
Luxembourg	●	●	○	○	○	?	?	?	**Name change**: "Legal personality is not lost in the case of statutory amendment (of a trading company) or in the case where a company (trading or non-trading) is transformed in the course of its existence." Phase 2*bis* para. 55. **Merger / Division**: In mergers where the "legal personality of the acquired company disappears", the acquiring LP cannot be "liable for the acquired company's past offences. "The same reasoning applies to the split-up of companies." Phase 2*bis* para. 55. **Other safeguard**: However, a draft law would protect the "public right of action" against an LP, if corporate reorganisation was proven an attempt to escape liability. Same is true if public right of action had already commenced. Phase 2*bis* para. 56.
Mexico	●	●	●	●	●	?	?	?	The WGB has not made any findings on this issue, but Mexico has informed the Secretariat that, following amendments made in June 2016, Article 421 of the National Code of Criminal Procedure now provides that criminal liability of legal persons will not be extinguished when they "transform, merge, absorb or split". In addition, Article 421 provides that such liability will also not be "extinguished by … [the] apparent dissolution" of a legal person. The WGB will have the opportunity to examine these provisions in practice during the Phase 4 evaluation.
Netherlands	●	●	●	●	●	?	?	?	**Dissolution**: Dutch officials identified dissolution and bankruptcy as *de facto* reasons not to prosecute. Phase 3 para. 33. However, the Netherlands has provided case law showing that a new or reorganised legal person can be prosecuted for the wrongs of a prior entity, provided that the "social reality" is that the new entity has effectively "carried on" the "business operation of the [original] company".
New Zealand	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Norway	●	?	●	?	?	?	?	?	**Merger**: In at least one case, the Supreme Court still imposed liability even after an offending company in price-fixing scheme "was merged into a parent company that had not taken part in the illegal price fixing." WGB found this prevented LPs from using mergers to "artificially escape sanctions". Phase 2 para. 107. **Division**: Although no case law provided, prosecutor claimed if offending company split, prosecutors could choose which surviving entity to prosecute. Phase 2 para. 107.

	Successor LP is liable for the acts of original LP	Transactions triggering successor liability: Name change (N) Merger or Acquisition (M/A) Division (DV) Dissolution (DS)				Types of sanctions that survive: Fines (F) Confiscation (C) Other (O)			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		N	M/A	DV	DS	F	C	O	
Poland	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Portugal	●	?	●	●	?	●	●	●	**Merger / Division**: "Civil companies, *de facto* associations, and a company created from a corporate merger or spin-off may be liable for foreign bribery committed by its predecessor". Phase 3 para. 45. *See also* Phase 3 page 65
Russian Federation	●	?	●	?	?	?	?	?	**Merger**: LP "cannot artificially escape sanctions by way of a merger to become a new legal entity." Phase 2 para. 253.
Slovak Republic	●	●	●	●		●	●	●	**Dissolution**: Section 7(1) of the 2015 Act on the Criminal Liability of Legal Persons states that the "[c]riminal liability of a dissolved legal person shall be transferred to all legal successors of the dissolved legal persons…. [but such] liability … is not transferrable to a natural person." **Name change / Merger / Division**: Section 7(2) of the Act on the 2015 Criminal Liability of Legal Persons provides for "concurrent, joint, cumulative or further penalty on legal successors of legal persons" but allows courts to "impose a separate penalty" where the "nature of legal succession" would otherwise exclude a penalty foreseen by the Criminal Code. Section 7(3) authorises the court to "decide whether and to what extent the unexecuted portion of the penalty" should apply to the legal successor when there has been "a change or dissolution of a legal person in the course of enforcement proceedings." Finally, Section 7(4) provides that "the change of a legal person means its merger, consolidation, or division, transfer of its share capital to a member, change in its legal form, or relocation of the legal person's abroad." The WGB will have the opportunity to examine the application of the 2015 Act in practice during Phase 4.
Slovenia	?	?	?	?	?	?	?	?	**Other safeguard**: Although WGB did not identify any successor liability provisions as such, Slovenian courts can enjoin corporate reorganisations that could enable a convicted LP to evade debarment sanctions. Phase 3 para. 158.
South Africa	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.

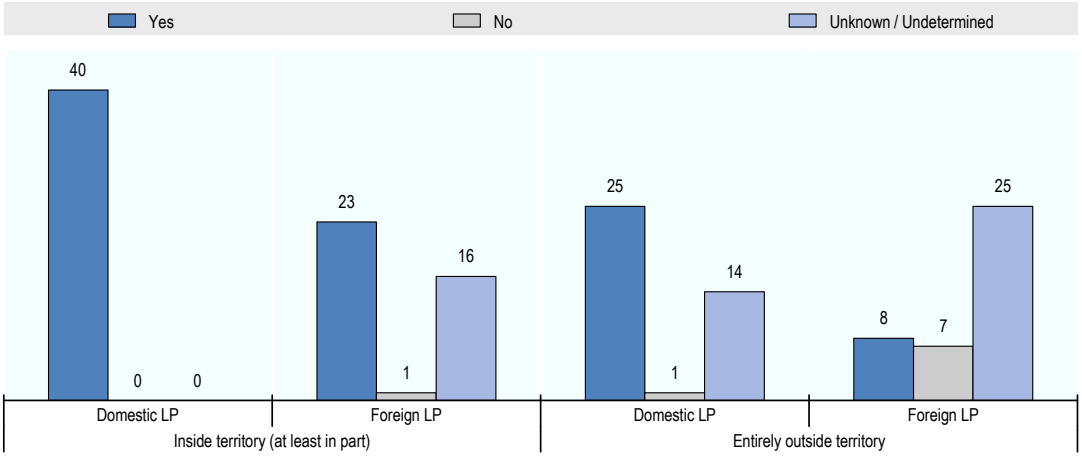
	Successor LP is liable for the acts of original LP	Transactions triggering successor liability: Name change (N) Merger or Acquisition (M/A) Division (DV) Dissolution (DS)				Types of sanctions that survive: Fines (F) Confiscation (C) Other (O)			Comments /observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
		N	M/A	DV	DS	F	C	O	
Spain	●	●	●	●	●	●	?	●	**Name change / Merger / Division**: "The transformation, merger, takeover or division of a legal person does not extinguish criminal responsibility, which will be transferred to the entity or entities in which it is transformed, remains merged or absorbed and extended to the entity or entities resulting from the split ... Criminal liability is not extinguished by covert or merely apparent dissolution of the legal entity". Art 130 2. Penal Code. **NOTE**: Confiscation left as "unknown" because not clear it applies to legal persons. *See* Phase 3 para. 80.
Sweden	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Switzerland	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
Turkey	?	?	?	?	?	?	?	?	The WGB has not made any findings on this issue.
United Kingdom	●	?	●	?	?	?	?	?	**Merger**: LP can inherit liability from another LP through "merger or acquisition", however, SFO at Phase 3 had guidance indicating it would determine on a case-by-case basis "whether it would prosecute the case" if notified of the situation "during due diligence" for transaction. The acquiring/surviving LP would need to take "necessary remedial action" as a condition. Phase 3 para. 112.
United States	●	●	●	●	●	●	●	●	According to the US DOJ and the SEC, "Successor liability is an integral component of corporate law and, among other things, prevents companies from avoiding liability by reorganizing. Successor liability applies to all kinds of civil and criminal liabilities, and FCPA violations are no exception. Whether successor liability applies to a particular corporate transaction depends on the facts and the applicable state, federal, and foreign law. Successor liability does not, however, create liability where none existed before." FCPA Resource Guide page 28 (footnotes omitted). **Division/Dissolution**: The US also reports that the legal analysis of successor liability when an LP has split or dissolved would depend on the individual circumstances of the case. *See e.g.*, *Melrose Distillers v. United States*, 359 U.S. 271, 273-74 (1959).

2.8. Jurisdiction over legal persons

> ***"Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of foreign public officials when the offence is committed in whole or in part in its territory.***
>
> ***Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.***
>
> ***[….]***
>
> ***Each Party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps."***
>
> ***Article 4(1),(2), & (4) of the Anti-Bribery Convention***
>
> ***"The territorial basis for jurisdiction should be interpreted broadly so that an extensive physical connection to the bribery act is not required."***
>
> ***"Nationality jurisdiction is to be established according to the general principles and conditions in the legal system of each Party."***
>
> ***Commentaries on Article 4 of the Anti-Bribery Convention, comments 25 and 26***

Figure 7. **Jurisdiction for legal persons**

(Number of Parties)



As can be seen from the quotes in the Box above, the Convention expressly addresses two elements of jurisdiction: territorial and nationality jurisdiction. Table 11 below provides an overview of the coverage of jurisdiction in WGB reports. Before entering into a discussion of this table, it is worth recalling the earlier overview of the coverage of

jurisdiction in the WGB reports which is available in the WGB's 2006 Mid-Term Study of the Phase 2 Reports.[86] The Mid-Term Study identifies salient issues, many of which remain relevant today. These are presented in Box 3.

Box 3. **Jurisdiction over legal persons: Issues raised in the 2006 Mid-Term Study**

Nationality jurisdiction – lack of express provisions and practice. "[E]ven in Parties where nationality jurisdiction is expected to apply to legal persons, it is often based on the expected application of general provisions rather than express provisions and there is often little if any practice to confirm the expectation...." (para. 239).

Determining the nationality of legal persons. "The application of nationality jurisdiction to legal persons raises a number of additional issues, including how the nationality of a legal person is determined. Generally, common law Parties … apply the law of the jurisdiction under whose laws the legal person is organised. Some civil law Parties … determine or are expected to determine the nationality of legal persons by reference to their effective seat of operations or their head office, although some uncertainty often exists about the nature or application of these rules in practice in criminal cases. Some Parties explicitly define the nationals to which the foreign bribery offence will apply…." (para. 240).

Interplay between jurisdiction over natural and legal persons. "In many cases, jurisdiction over legal persons appears to depend on the existence of jurisdiction over an individual…. This jurisdictional rule … has the effect of excluding cases where no identifiable individual committed the offence and thus undercuts one of the key purposes of requiring the liability of legal persons, *i.e.*, to cover cases where complex corporate structures and transactions make is difficult to identify an individual perpetrator. Not all Phase 2 reports address this issue, but it is an important cross-cutting issue for the Working Group as a whole because it undermines the effectiveness of the liability of legal persons." (para. 241).

Territorial jurisdiction over a foreign company. "The rules for the establishment of territorial jurisdiction over legal persons have attracted less attention than nationality jurisdiction. They are particularly important, however, in Parties that do not apply nationality jurisdiction or where it is of uncertain application. Even in Parties with nationality jurisdiction, territorial jurisdiction can be important, such as where the bribery of a foreign public official is perpetrated by a foreign company in the territory of a Party.... Territorial jurisdiction over legal persons is often particularly uncertain because the substantive law of legal person liability – itself subject to uncertainty – may determine whose actions matter for purposes of jurisdiction. For example, substantive law will determine whether the actions of sales representatives can trigger liability or whether only actions by organs of the company or legal representatives suffice. In addition to limiting liability as a matter of substantive law, such rules may preclude territorial jurisdiction." (paras. 243-244).

Jurisdiction and responsibility of parent companies for acts of subsidiaries. "With respect to foreign bribery offences that take place in part in a Party's territory, or wholly abroad, the Working Group sometimes looked at the issue from the perspective of the responsibility of a parent company for foreign bribery committed abroad by a foreign subsidiary." (para. 245).

Table 11 provides an overview of the coverage of jurisdiction over legal persons in the WGB monitoring reports. The overview is presented in four columns, which are grouped under two broad categories: (1) jurisdiction over offences committed at least in part inside

86 *Mid-Term Study of Phase 2 Reports: Application of the Convention on Combating Bribery of Foreign Public in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions* (22 May 2006), paras. 238-242.

the Party's territory;[87] and (2) jurisdiction for offences committed entirely outside the Party's territory. Within each category, two columns display the WGB's findings concerning each Party's territorial and extra-territorial coverage of domestic and foreign legal persons. For the purposes of Table 11, the definition of foreign and domestic legal persons is that adopted in the law of each Party. It should be noted that the fourth column of Table 11, which covers foreign bribery offences committed by foreign legal persons entirely outside the territory of the Party, is not covered expressly in the Convention. This information is included, however, because the WGB has identified some Parties as having LP liability frameworks that nevertheless could cover this circumstance.

Some of the key findings in relation to jurisdiction are:

- All the Parties to the Convention (except Argentina) establish some form of territorial jurisdiction over legal persons for the offence of foreign bribery. In some Parties, this jurisdiction is a collateral effect of having jurisdiction over the acts of a natural person who commits foreign bribery in its territory.
- At least 23 Parties (56%) are able, in at least some circumstances, to assert jurisdiction over foreign companies that commit foreign bribery in their territory. One country – Colombia – reported to the Secretariat that its Superintendency of Corporations cannot sanction foreign legal persons for acts committed on its territory. For the other Parties, it could not be determined from the WGB reports whether such jurisdiction exists over foreign legal persons.
- At least 23 Parties (56%) can hold a domestic legal person liable for foreign bribery committed entirely abroad. In line with the WGB's 2006 Mid-Term Study of Phase 2 Reports, the Phase 3 evaluations have indicated that some Parties still cannot assert jurisdiction over a domestic legal person for an offence committed abroad unless the Party also has jurisdiction over the natural person who actually committed the offence. In several cases, the Party may not be able to assert jurisdiction over the legal person unless the natural person who committed the act was a national (e.g. Austria, Bulgaria, Chile, Estonia, Germany, Italy, Latvia, Japan and Sweden). For 16 Parties (39%), no determination was made in the WGB reports.
- At least 8 Parties (20%) seemingly can hold a foreign legal person liable for foreign bribery committed entirely abroad, provided that some condition links the foreign legal person to the country for purpose of applying its foreign bribery offence.

Mailbox companies in the Netherlands are also identified as a source of concern. The Phase 3 report for the Netherlands describes varying views within the Netherlands' legal profession about whether it has effective jurisdiction over mailbox companies.[88] The report also states that the Netherlands' approach to "mailbox companies appears to be a potentially significant loophole in the Dutch framework"[89] and urges it "to take all necessary measures to ensure that such companies are considered legal entities under the Dutch Criminal Code, and can be effectively prosecuted and sanctioned."[90]

87 At least some WGB countries will also assert jurisdiction over offences committed on board airplanes or vessels registered in their country. For the purposes of this section and Table 11, this jurisdiction is assimilated to territorial jurisdiction.

88 Netherlands Phase 3 paras. 90-93.

89 Netherlands Phase 3 para. 95.

90 Netherlands Phase 3 page 33 (Commentary).

Finally, although the Convention does not create obligations for Parties to assert jurisdiction over acts of foreign legal persons for offences that take place entirely outside its territory, the WGB has identified some interesting arrangements among the Parties for asserting such jurisdiction. These include:

- ***Universal jurisdiction***. According to Iceland authorities, Iceland asserts universal jurisdiction for foreign bribery offences falling under the Anti-Bribery Convention.[91] Likewise, the Phase 3 report for Norway states: "Norway has extremely broad jurisdiction over foreign bribery offences, and could, in theory, prosecute any person committing a foreign bribery offence, regardless whether the offence was committed in Norway, and regardless whether the person involved is a Norwegian national. In practice, Norway explained that the universal jurisdiction was in fact rarely relied on, and only used in exceptional cases (twice between 1975 and 2004, and never in corruption cases). At any rate, this broad jurisdiction allows Norway to exercise both territorial and nationality jurisdiction over foreign bribery offences."[92] Estonia reports that it might be able to exercise universal jurisdiction over bribery offenses punishable by a "binding international agreement", but in the absence of case law supporting this theory, the WGB has not been able to reach a definitive conclusion.[93]

- ***Foreign legal person conducts business in, or owns property, in the territory*.** The Czech Republic can assert jurisdiction over a foreign legal person for acts committed outside of its territory when that legal person "conducts … activities … or owns property" inside the Czech Republic.[94] Similarly, the United Kingdom can apply its Section 7 offence under the Bribery Act to any "commercial organisation" that "carries on a business, or part of a business" inside the United Kingdom. In such a case, the foreign legal person would be liable for the acts of any "associated person" even if the associated person commits the offence outside of the United Kingdom.[95]

- ***Foreign legal person committed offence for the benefit of a domestic legal person***. The Czech Republic can assert jurisdiction over a foreign legal person for acts committed outside of its territory when the "criminal act was committed for the benefit of a Czech legal person".[96]

- ***Foreign legal person is closely connected to a domestic legal person or natural person.*** Greek authorities maintain that Greek law would apply to a foreign subsidiary having a "sufficient connection" with a parent company located in Greece.[97] Israeli authorities believed that they could likely assert jurisdiction over a foreign legal person, "if the crime was committed by an Israeli citizen or resident who was the controlling owner of the legal person".[98]

91 Iceland Phase 2 pages 30-31.

92 Norway Phase 3 para. 65; *see also* Norway Phase 2 para. 107.

93 Estonia Phase 3 para. 161.

94 Czech Republic Phase 3 page 64.

95 UK Bribery Act (2010), sections 7 and 12.

96 Czech Republic Phase 3 para. 51.

97 Greece Phase 3*bis* paras. 58-59.

98 Israel Phase 3 para. 101.

Table 11. **Jurisdiction over legal persons**

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
Argentina	-	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51
Australia	●	●	●	?	**Domestic LP outside**: Phase 2 para. 152; *see also* Phase 1 page 12 (Australia has "jurisdiction over a body corporate incorporated under the laws of Australia" that commits offence "wholly outside Australia"). **Foreign LP inside / outside**: Not directly discussed in WGB reports, but Section 70.5 suggests that a foreign entity can only be liable for offences committed at least in part in Australia or on its vessels. *See* Phase 3 page 70.
Austria	●	?	?	?	**Domestic LP outside**: *See* Phase 3 paras. 35-38 (officials expressed disagreement on whether jurisdiction would exist if Austrian entity used non-national for offence committed entirely abroad). **Foreign LP inside / outside**: Not directly discussed in WGB reports.
Belgium	●	●	●	?	**Domestic LP outside**: WGB found that Article 10*quater*, para. 2, provides jurisdiction over foreign bribery offences "on the grounds that the briber is a Belgian national (or resident)" and noted that this provision could be applied "to prosecute parent companies for the actions of their foreign subsidiaries". Phase 3 paras. 21-23. By analogy, it should also apply to the actions of Belgian parent companies that themselves commit an offence wholly outside of Belgian territory. **Foreign LP inside**: *See* Phase 3 para. 31, 35 (noting that French company held liable for foreign bribery, but not Belgian subsidiary).
Brazil	●	●	●	●	**Domestic LP outside**: "Article 28 CLL states that 'this law applies to wrongful acts committed by Brazilian legal entities against foreign administration, even if such acts were committed overseas'." Phase 3 para. 114. **Foreign LP inside / outside**: Phase 3 pages 83-84 (law applies to "foreign companies that have set up their main office, a branch or representative office in the Brazilian territory", even on a temporary basis).

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
Bulgaria	●	?	●	?	**Domestic LP outside**: WGB observed that Bulgaria cannot prosecute LP unless it has "jurisdiction to prosecute the individual who bribed a foreign public official. There would thus be no jurisdiction if a non-Bulgarian employee or officer … bribes a foreign public official while outside Bulgaria. This is a major shortcoming." Phase 3 para. 28. **Foreign LP inside / outside**: Not directly discussed in WGB reports.
Canada	●	●	●	○	**Domestic / Foreign LP inside**: The WGB has found that Canada has jurisdiction over offences that have a "real and substantial link" with Canadian territory. Phase 3 para. 116; *see also* Phase 2 para. 77. . **Domestic LP outside**: After the Phase 3 report, Canada amended its legislation to adopt nationality liability for foreign bribery. *See* CFPOA s. 5(1)(c); *see also* Phase 3 Follow-up at pages 5, 7. **Foreign LP outside**: Not directly discussed in WGB reports, but Canada has informed the Secretariat that Canada would not have jurisdiction over a foreign LP for acts committed entirely outside Canadian territory.
Chile	●	●	●	?	**Domestic LP outside**: Noting that Chile's law on LP liability does "not clearly specify when Chile would have jurisdiction to prosecute" the WGB found "Chile … cannot prosecute a Chilean company when an employee of the company who is not a Chilean national or habitual resident commits foreign bribery wholly outside Chile (i.e. extraterritorially)." Phase 3 para. 107; *see also* Phase 3 para. 108 (reporting draft legislation to create nationality jurisdiction for LPs independent of jurisdiction over NPs). **Foreign LP inside**: The law applies to "foreign companies operating in Chile". Phase 1*ter* para. 33. **Foreign LP outside**: Not directly discussed in WGB reports.
Colombia	●	○	●	○	**Domestic LP outside**: Article 3 of Law 1778 of 2016 gives the Superintendency of Companies jurisdiction to sanction an LP involved in foreign bribery "committed in foreign territory" provided that the legal entity is "incorporated in Colombia". This is true even if the entity is a "branch of a foreign company". When discussing the draft bill, WGB recognised that this provision would create nationality jurisdiction. *See* Phase 2 para. 241. **Foreign LP inside / outside**: Colombia reports that the Superintendence of Corporations cannot sanction foreign legal persons.

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
Czech Republic	●	●	●	●	**Domestic LP outside**: Nationality jurisdiction over LPs with "registered office" in country. Phase 3 para. 51. **Foreign LP inside/outside**: Jurisdiction over foreign LPs for acts abroad, where "criminal act was committed for the benefit of a Czech legal person". Phase 3 para. 51. Also, jurisdiction over LP that "conducts … activities … or owns property" in territory. Phase 3 page 64.
Denmark	●	?	●	?	**Domestic LP outside**: "Denmark has jurisdiction over a Danish legal person for extraterritorial foreign bribery", subject to dual criminality requirements. Phase 3 para. 107. **Foreign LP inside/outside**: Not directly discussed in WGB reports, but WGB noted that Denmark has jurisdiction over offences "committed wholly or partly on its territory". Phase 3 para. 99.
Estonia	●	?	●	?	**Domestic LP outside**: Jurisdiction over LPs "registered in Estonia" for bribery offences "committed outside the territory of Estonia". Phase 3 paras. 38-39. However, questions remain on whether Estonia must also have jurisdiction over NP if a bribe is "merely offered or promised". Phase 3 para. 38. **Foreign LP inside / outside**: The WGB suggested that Estonia might be able to subject a legal person "lacking Estonian nationality" to Estonian penal law, if jurisdiction existed over the natural person who committed the offence, but did not definitely resolve the issue in the absence of case law. Phase 3 para. 39.
Finland	●	?	●	?	**Domestic LP outside**: Finland no longer has dual criminality requirement for "nationality jurisdiction over Finnish nationals and companies for offences committed abroad". Phase 3 para. 51. **Foreign LP inside / outside**: WGB expressed uncertainty "whether a foreign subsidiary … [of] a Finnish corporation would be within the definition of a "corporation, foundation or other legal entity". Phase 3 para. 27.
France	●	?	●	?	**Domestic LP outside**: France has nationality jurisdiction, subject to dual criminality. Phase 3 para. 24. **Foreign LP inside / outside**: Not directly discussed in WGB reports. *But see* Phase 3 para. 78 (indicating that "several preliminary investigations involving major French … companies or foreign entities had been opened").

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
Germany	●	●	●	○	**Foreign LP inside**: Not directly discussed in WGB reports. Germany has informed the Secretariat that, under Section 5 of the Regulatory Offences Act and Section 3 of the Criminal Code, both foreign and domestic LPs can be held liable for offences committed within its territory. **Domestic LP outside**: Germany does not have jurisdiction over an LP for acts abroad unless it has jurisdiction over NP. *See* Phase 1 page 6. Germany confirms that this situation has not changed since Phase 1. **Foreign LP outside**: Not directly discussed in WGB reports. Germany reports that it would only have jurisdiction over a foreign LP for offences committed abroad, if it had jurisdiction over the offence committed by the NP.
Greece	●	?	?	●	**Domestic LP outside**: Not clear if nationality jurisdiction would apply. *See* Phase 3*bis* at para. 58. **Foreign LP inside**: Not clearly discussed. Greece suggests that "Greek laws apply to all legal persons that have a registered office or an 'effective seat' in Greece", which might exclude foreign LPs. Phase 3*bis* para. 58. **Foreign LP outside**: According to authorities, Greek law can apply to foreign subsidiary having a "sufficient connection" with a parent company located in Greece. Phase 3*bis* at paras. 58-59.
Hungary	●	●	?	?	**Domestic / Foreign LP outside**: Not clear whether Hungarian law applies to acts of LPs abroad. Phase 3 para. 16. **Foreign LP inside**: According to Hungary, Act CIV does not differentiate between domestic and foreign LPs. Phase 3 para. 157.
Iceland	●	●	●	●	**Domestic LP outside**: Iceland asserts universal jurisdiction for foreign bribery offences falling under the OECD Anti-Bribery Convention. Phase 2 at pages 30-31. **Foreign LP inside / outside**: Iceland asserts universal jurisdiction for foreign bribery offences falling under the OECD Anti-Bribery Convention. Phase 2 at pages 30-31.
Ireland	●	?	●	?	**Domestic LP outside**: POCA 2010 created "extraterritorial jurisdiction for the foreign bribery offence" over "a company registered under the Companies Act" or "any other body corporate resident in Ireland". Phase 3 paras. 76-78. **Foreign LP inside / outside**: Not directly discussed in WGB reports, but potentially a foreign entity could be deemed a "body corporate resident in Ireland". *See* Phase 3 para. 78.

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
Israel	●	●	●	?	**Domestic / Foreign LP inside**: "Israel considers that it will have territorial jurisdiction over legal persons where the crime or part of the crime was committed in Israel, whether the legal person was incorporated in Israel or abroad.". Phase 3 para. 101. **Domestic LP outside**: Nationality jurisdiction over LP exists, but "has yet to be applied to a legal person for the foreign bribery offence". Phase 3 para. 100. **Foreign LP outside**: While no jurisprudence confirms, Israel believed it could assert jurisdiction over a foreign LP, "if the crime was committed by an Israeli citizen or resident who was the controlling owner of the legal person" and the NP's acts could be attributed to the LP. Phase 3 para. 101.
Italy	●	●	?	○	**Domestic outside**: In Phase 2, WGB expressed uncertainty whether nationality jurisdiction applied to LPs unless jurisdiction existed over NP. Phase 2 paras. 172-173; *see also* Phase 3 page 58 (Follow-up item d(i)). **Foreign LP inside:** WGB found that Italy can prosecute foreign LPs for offences in Italy, if they conduct business in Italy and thus are registered there. Phase 2 para. 166-167. But WGB flagged this issue for follow up. *See* Phase 3 page 58 (Follow-up item d(i)). **Foreign LP outside**: For acts abroad, no jurisdiction unless company is Italian with a head office in Italy. Phase 2 para. 169.
Japan	●	●	?	?	**Domestic outside**: WGB identified as issue for follow-up. Phase 3 paras. 37-40 (noting LP nationality jurisdiction remained unresolved after Phase 2 and Phase 2*bis* reviews). Possibly, jurisdiction would exist over LP only if Japanese employee commits offence. Phase 2 para. 167. **Foreign LP inside**: Not directly discussed in WGB reports. Japan informs the Secretariat that, under Articles 1 and 8 of the Penal Code, it can assert jurisdiction over "anyone who commits a crime within the territory of Japan", including for crimes codified in another statute, such as the Unfair Competition Prevention Act. On this basis, Japan asserts jurisdiction over any legal person responsible for the bribery of foreign public officials committed within the territory of Japan. **Foreign LP outside:** Not directly discussed in WGB reports.

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
Korea	●	?	?	?	**Domestic outside**: WGB found "it is not clear that nationality jurisdiction can be established over legal persons in Korea", as it appears that Korea must first be able to assert jurisdiction over the natural person offender. Phase 2 para. 119. **Foreign LP inside/outside**: The WGB did not make an express finding, but it suggested that Korea could assert jurisdiction over a foreign LP so long as it had jurisdiction over the NP who committed the offence. Phase 2 para. 118-119.
Latvia	●	?	●	?	**Domestic outside**: Phase 2 paras. 226-227 ("Latvia has jurisdiction over a legal person for extraterritorial offences if the legal person is registered in Latvia"; provided that it has jurisdiction over NP, which "is in turn limited to Latvian nationals and residents"). **Foreign LP inside/outside**: Not directly discussed in WGB reports. However, Latvia reported that proceedings were started against two foreign entities, so likely jurisdiction exists over foreign LPs that commit offences inside Latvia. *See* Phase 2 para. 216.
Luxembourg	●	●	?	?	**Domestic outside**: WGB has not made an express finding on LP nationality jurisdiction. *Compare* Phase 2*bis* para. 58, *with* Phase 3 para. 21 (discussion of abolition of dual criminality for "persons habitually residing … or a foreigner found in … Luxembourg" suggests still focused on NPs). **Foreign LP inside**: LPs liable for offence committed "within the territory … whether or not they are incorporated under Luxembourg law". Phase 2*bis* para. 57 **Foreign LP outside**: Not directly discussed in WGB reports for Luxembourg. Not clear that a foreign LP would be considered a "foreigner found in the Grand Duchy". Phase 3 para. 21.
Mexico	●	?	?	?	**Domestic LP outside**: Not clear nationality jurisdiction exists over LPs "incorporated or headquartered in Mexico". Phase 3 para. 28. **Foreign LP inside / outside**: WGB reports do not directly discuss issue for sanctions found in Criminal Code. The administrative sanctions under 2012 Federal Anti-Corruption Law in Public Procurement do not apply to "foreign companies operating in Mexico". Phase 3 Follow-up para. 4.

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
Netherlands	●	●	●	○	**Domestic LP outside**: LP nationality jurisdiction, at least where dual criminality exists. But the LPs of certain parts of Caribbean Netherlands are not considered "Dutch citizens". Phase 3 paras. 87-88. Also, questions remain on jurisdiction over Netherlands "mailbox" companies operating exclusively abroad. See Phase 3 Follow-up para. 6. **Foreign LP inside**: Under Article 2 of the Penal Code, the Netherlands has territorial jurisdiction over "any person who commits an offence within the Netherlands". Phase 1 page 18; *see also* Phase 2 para. 175. **Foreign LP outside**: "Netherlands has no legal power over foreign subsidiaries of Dutch companies." Phase 3 para. 39.
New Zealand	●	?	●	?	**Domestic LP outside**: "Thus, a New Zealand company or individual who aids and abets bribery abroad through a foreign subsidiary could be subject to prosecution in New Zealand". Phase 3 para. 73. **Foreign LP inside / outside**: Not clearly discussed in WGB reports, as general "absence of corporate prosecutions for foreign bribery renders it difficult to assess how New Zealand would apply jurisdiction over legal persons". Phase 3 para. 73.
Norway	●	●	?	?	**Domestic LP outside**: Norway has universal jurisdiction over acts of any "person domiciled in Norway", but the WGB has not expressly determined that this would apply to Norwegian LP. Phase 3 para. 65. **Foreign LP inside/outside**: Norway has universal jurisdiction but authorities explained that it is rarely used. Phase 3 para. 65; *see also* Phase 2 para. 107 ("A prosecutor indicated that even if [prosecuting foreign enterprises for bribery] was possible, law enforcement authorities would certain encounter problems in practice.")
Poland	●	●	?	?	**Domestic LP outside**: Not clear given lack of jurisprudence. *See* Phase 3 para. 59. **Foreign LP inside**: Law would include a "foreign organisational entity". Phase 2 para. 156. **Foreign LP outside**: Not directly discussed in WGB reports.
Portugal	●	●	●	●	**Domestic / Foreign LP inside / outside**: Portugal can prosecute LPs "registered in Portugal" even if "incorporated outside Portugal". Jurisdiction exists whether offence was "committed in or outside of Portugal." Phase 3 para. 102.

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
Russian Federation	●	●	?	?	**Domestic LP outside**: Given lack of express legislation or jurisprudence, WGB could not assess whether LP nationality jurisdiction existed in practice. Phase 2 paras. 180-182. **Foreign LP inside**: Prosecutors confirmed territorial jurisdiction over "foreign or Russian" entities. Phase 2 para. 176.
Slovak Republic	●	●	●	●	**Domestic / Foreign LP inside**. Pursuant to section 2(2) of the Act on the Criminal Liability of Legal Persons, an LP can be held liable if it "committed the act at least in part within … [the] territory [of the Slovak Republic], even if the actual breach of or threat to an interest protected under this Act took place or was intended to take place …outside the territory of the Slovak Republic".. **Domestic LP outside**: Section 2(3) of the 2015 Act states that criminal liability exists for "an act committed outside the territory of the Slovak Republic by a legal person with a registered office within the territory of the Slovak Republic…. Legal persons with registered office in the Slovak Republic shall also include legal persons whose branch has a registered office in the Slovak Republic if the criminal offence was committed through the activities of the latter." **Foreign LP outside**: Section 2(4) provides that the 2015 Act will also "determine criminal liability for an act committed outside the territory of the Slovak Republic" by an LP without a "registered office" in the Slovak Republic, if the offence was committed "for the benefit of" (i) an LP having such a registered office, (ii) a Slovak national or (iii) a foreign national who is a permanent resident in the Slovak Republic. **Domestic / Foreign LP outside**: In addition, the Slovak Republic will consider an offence to have been committed within its territory even though an LP "committed the act outside the territory of the Slovak Republic", if the actual breach of or threat to an interest protected under this Act took place or was intended to take place at least in part within the territory of the Slovak Republic, See Section 2(2)(b) of the 2015 Act on the Criminal Liability of Legal Persons. The WGB will have the opportunity to evaluate the application of the 2015 Act in practice during Phase 4.
Slovenia	●	●	?	?	**Domestic / Foreign LP outside**: WGB not make clear finding, but Slovenian and foreign LPs might be liable if bribery deemed an "offence … against a foreign state … citizen or … legal person". Phase 3 paras. 94-95. **Foreign LP inside**: At least where offence is "committed" inside country, but not clear whether this includes offences "only partly committed in Slovenia". Phase 3 para. 94.

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
South Africa	●	?	●	?	**Domestic LP outside**: On paper, South Africa seemingly has LP nationality jurisdiction, but WGB expressed concern with "relatively restrictive criteria" developed by courts. Phase 3 para. 103; Phase 2 para. 164. **Foreign LP inside / outside**: Not directly discussed in WGB reports.
Spain	●	?	?	?	**Domestic LP outside**: Not directly discussed in WGB reports. **Foreign LP inside/outside**: Not directly discussed in WGB reports.
Sweden	●	●	●	●	**Domestic LP outside**: WGB found no "nationality jurisdiction" over LP because LP sanctions are only "a special legal effect of the crime" and thus require jurisdiction over NP. Phase 3 para. 81. However, Sweden has informed the Secretariat that it can impose a corporate fine on an LP for an "offence … committed in the course of business operations" provided that "Swedish jurisdiction over a natural person" exists for the offence. **Foreign LP inside:** Sweden has informed the Secretariat that a corporate fine can be imposed for an "offence … committed in the course of business operations" provided that "Swedish jurisdiction over a natural person" exists for the offence. It adds that such jurisdiction is "primarily asserted if the offence is considered to have been committed in Sweden". **Foreign LP outside**: Not directly discussed in WGB reports.
Switzerland	●	?	●	○	**Domestic LP outside**: LP nationality exists, according to Swiss authorities. Phase 2 para. 104. **Foreign LP inside / outside**: Unknown how territorial jurisdiction would be applied to foreign LPs, but WGB found no jurisdiction over foreign LP for acts committed abroad. *See* Phase 2 paras. 103-104.
Turkey	●	?	?	?	**Domestic LP outside**: Turkish authorities believe LP nationality jurisdiction exists, but WGB decided that monitoring still needed, given lack of jurisprudence. Phase 3 para. 48. **Foreign LP inside**: Not directly discussed in WGB reports. **Foreign LP outside**: Not directly discussed in WGB reports. *But see* Phase 3 para. 95 (discussing jurisdiction over "foreigners" for acts outside Turkey under certain conditions, without deciding if it covers foreign LPs).

	Country can have jurisdiction over domestic or foreign LPs for offences committed either:				Comments / extracts from Phase 1-3 reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Inside its territory or vessels (at least in part)		Entirely outside its territory or vessels		
	Domestic LP	Foreign LP	Domestic LP	Foreign LP	
United Kingdom	●	●	●	●	**Domestic LP outside**: Jurisdiction for crimes committed entirely abroad, if act or omission made by "body incorporated under the law of any part of the United Kingdom". But no LP jurisdiction over legal persons from Crown Dependencies or Overseas Territories unless they carry on "a business, or part of a business," in the UK, triggering application of Section 7 of Bribery Act. *See* Phase 1*ter* paras. 63-64; *see also* Phase 3 paras. 181-183. **Foreign LP inside/outside**: Section 7 of Bribery Act can apply to any "commercial organisation", foreign or domestic, which "carries on a business, or part of a business," in the UK. Phase 1*ter* para. 38. However, the Section 1 and 6 offences of Bribery Act "only apply to bodies incorporated in the UK". Phase 3 para. 37.
United States	●	●	●	○	**Domestic LP outside**: FCPA provides nationality jurisdiction over "issuers" and "any United States person", including enumerated LPs. Phase 2 para. 110 **Foreign LPs**: For the foreign bribery offence, a foreign LP that is either an issuer or a domestic concern can be held liable if it or its officers, employees or other agents "make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of" the bribery scheme. 15 U.S.C. 78dd-1 & 78dd-2; *see also* Phase 1 pages 13-14. If the foreign LP is not an issuer or a domestic concern, then it can be held liable for foreign bribery if an act "in furtherance of" the bribery scheme takes place within the US, including through an agent or employee of the legal person. 15 U.S.C. 78dd-3; *see also* Phase 1 pages 13-14. The United States observes that the underlying bribery scheme need not take place in the US in order for foreign LP issuers to be held liable for violations of the FCPA's books-and-records and internal controls requirements.

2.9. Nationality of legal persons

Figure 8. **Nationality of legal persons: criteria**

(Number of Parties)

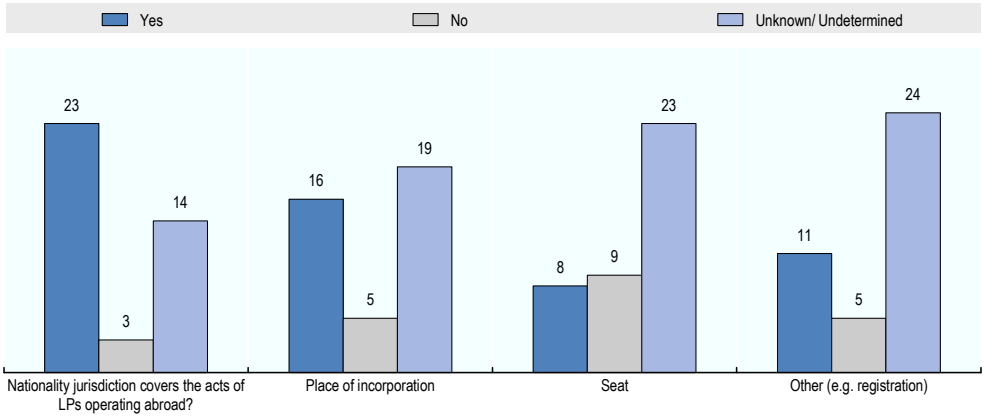


Table 12 shows the criteria used by Parties to determine the nationality of a legal person. Of the 41 Convention Parties, at least 16 countries (39%) will consider any legal person incorporated or formed in accordance with their laws to have their nationality. At least eight countries (20%) will look to the legal person's headquarters or seat of operations to determine its nationality, and at least another three countries (7%) will look at either the place of incorporation or the seat. Only 1 country, Brazil, restricts the application of its nationality jurisdiction to legal persons that are both incorporated in and headquartered in the country's territory.[99]

Finally, at least 11 countries (27%) will assert nationality jurisdiction over legal entities based on "other" factors, primarily whether the company is "registered" under the country's laws or has a "registered office" on its territory. Depending on the country, these other factors may be exclusive or operate alongside the place of incorporation or the seat of the company.

99 Although the Netherlands primarily looks to the place of incorporation, Dutch courts might also look at the "seat" of operations for at least certain types of companies. One criminal court refused to apply Netherlands law to a Dutch "mailbox" company incorporated in the Netherlands but having its real operations abroad. *See* Netherlands Phase 3 page 5 ("The Working Group questions in particular the Netherlands' ability and proactivity in initiating proceedings against companies which are incorporated in the Netherlands but pursue their activities entirely from abroad ('mailbox companies').''); *see also* Netherlands Phase 3 paras. 13, 40-42 (expressing concern that a court decision might have "create[d] a significant jurisdictional loophole in the Netherlands' ability to prosecute foreign bribery committed by 'mailbox companies'").

Table 12. **Nationality of legal persons**

	LP nationality is determined by place of:			Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Incorporation/ Formation	Seat	Other	
Argentina	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51.
Australia	●	○	○	Australia has "jurisdiction over a body corporate incorporated under the laws of Australia" that commits offence "wholly outside Australia". Phase 1 page 12.
Austria	?	●	●	If offence applies to acts of Austrian citizens abroad, it will also apply to an LP "registered" or having "its place of operation or establishment" in Austria. Phase 3 para. 36.
Belgium	?	?	?	The WGB has not made findings on this issue.
Brazil	●	●	?	Brazil requires that a company **both** (i) be incorporated in Brazil and (ii) have its seat there before it will apply nationality jurisdiction. *See* Phase 3 para. 113.
Bulgaria	?	?	?	The WGB has not made findings on this issue.
Canada	●	○	○	After the Phase 3 Follow-up, Canada amended its LP law to provide jurisdiction over any foreign bribery violation committed abroad by "a public body, corporation, society, company, firm or partnership that is incorporated, formed or otherwise organized under the laws of Canada or a province".
Chile	?	?	?	The WGB has not made findings on this issue.
Colombia	●	?	?	The WGB has not made findings on this issue. Article 3 of Law 1778 of 2016 gives the Superintendency of Companies jurisdiction to sanction an LP involved in foreign bribery "committed in foreign territory" provided that the legal entity is "incorporated in Colombia", including "the branch of a foreign company". The WGB will have the opportunity to first review this law's application in practice during Colombia's Phase 3 review.
Czech Republic	?	?	●	"Section 3 [of Act 418/2011] provides for nationality jurisdiction over legal persons with a registered office in the Czech Republic." Phase 3 para. 51. In fact, Czech Republic also asserts jurisdiction over foreign legal persons without a registered office "if the criminal act was committed for the benefit of a Czech legal person". Phase 3 para. 51.
Denmark	?	●	?	"Whether a legal person has its seat in Denmark or abroad is decided in accordance with the rules of company law". Phase 3 para. 107 & n.24. **NOTE**: The Phase 1 report references "domicile[]", but it not clear if this is the same as "seat". Phase 1 page 14.
Estonia	?	?	●	Following 2008 amendments, Estonia's Penal Code explicitly applies "'to grant[ing], arranging receipt or acceptance of gratuities or bribes or influence peddling committed outside the territory of Estonia if such act was committed by … a legal person registered in Estonia'". WGB, however, not certain whether LP nationality jurisdiction exists if bribe only "offered or promised". Phase 3 para. 38.

	LP nationality is determined by place of:			Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Incorporation/ Formation	Seat	Other	
Finland	?	?	?	The WGB has not made findings on this issue.
France	?	●	?	Under the Civil Code, "'companies whose head office is located on French territory are subject to French law'". According to the Cour de Cassation, a company's nationality "is determined, in theory, by the location of its real head office, defined as the seat of effective management and presumed to be its statutory head office". Phase 2 para. 120
Germany	?	?	?	The WGB has not addressed this issue. Germany reports that Germany has no nationality jurisdiction over legal persons. *See* Table 11, above.
Greece	○	●	●	"Greek laws apply to all legal persons that have a registered office or an 'effective seat' in Greece." The effective seat where an LP is managed, unless its corporate documents provide otherwise. Phase 3*bis* para. 58.
Hungary	?	?	?	The WGB has not made findings on this issue.
Iceland	?	?	?	Although not certain, Icelandic authorities presumed an LP's nationality would be "determined by the place where its headquarters are [located]". Phase 2 page 33.
Ireland	●	?	●	Ireland has extraterritorial jurisdiction over (i) companies "registered under the Companies Act" or (ii) "any other body corporate established under Irish law". Phase 3 para. 78.
Israel	●	●	?	**Formation/Seat**: Israel reportedly determines the nationality of an LP on the basis of its place of "incorporation" or "control". Phase 3 para. 100; see also Phase 2 para. 158 ("'[A] legal person that is a national or resident of Israel' is defined as either 'a legal person that was incorporated in Israel; or a legal person which control over business and management is conducted in Israel.'). **Other**: Israeli officials assumed that it could assert jurisdiction over a foreign LP that is **controlled** by an Israeli national, even if the entity's operations and seat are located outside Israel. There is no clear jurisprudence yet on this point. Phase 3 para. 101.
Italy	●	?	●[100]	For offences inside territory, jurisdiction exists over LPs incorporated or registered in Italy. Phase 2 paras. 165-166. For offences committed outside Italy, only jurisdiction over LP with "head office in Italy", which Decree does not define. Phase 2 paras. 169-170.
Japan	●	?	?	Japan has informed the Secretariat that, under Article 2 of the Companies Act, it distinguishes domestic from foreign companies on the basis of whether they are incorporated under the law of Japan or the law of a foreign country.
Korea	?	?	?	The WGB has not made findings on this issue.
Latvia	○	○	●	After 2014 amendment, Latvia can now prosecute LPs "registered" in the Latvian Registry of Enterprises for extraterritorial offences. Phase 2 para. 227.

100 For extraterritorial offences, Italian law applies to companies if their "head office" is in Italy, provided that the natural person is also subject to Italian jurisdiction. Some panellists at the WGB's on-site visit believed that the "head office" merely referred to the place of registration, while others believed that the headquarters for operations had to be in Italy. See Phase 2 at paras. 165-66 & 169-170.

	LP nationality is determined by place of:			Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Incorporation/ Formation	**Seat**	**Other**	
Luxembourg	●	**?**	**?**	LPs "acquire legal personality upon conclusion of their instrument of incorporation", even if before they register. Phase 2*bis* paras. 55.
Mexico	●	**?**	**?**	According to Mexico, it would have jurisdiction over LP "organised under the laws of Mexico, so long as it had jurisdiction over the NP who committed offence. *See* Phase 1 page 12.
Netherlands	●	●	**?**	Under Dutch Civil Law, LP nationality is determined by the place of incorporation. Yet; in a criminal case, the court refused to apply Dutch criminal law to "mail-box" companies formally incorporated in the Netherlands but exclusively conducting their operations abroad. Phase 3 paras. 40-41, 91-92.
New Zealand	●	○	○	The "place of incorporation" determines the "nationality" of a legal person. Phase 3 para. 73.
Norway	**?**	**?**	**?**	The WGB has not made findings on this issue.
Poland	**?**	**?**	**?**	Without an express statute or case law, Polish authorities believed LP nationality should be determined by the "place of its registry". Phase 3 para. 59.
Portugal	○	○	●	Following 2007 amendment, LP jurisdiction over acts abroad exists over LPs "registered in Portugal". This also covers LPs that are "incorporated outside of Portugal but are [also] registered inside." Phase 3 para. 102.
Russian Federation	**?**	**?**	**?**	Authorities asserted that LP nationality is determined by "the place of registration", but WGB found it unclear how this test would be applied Russia. Phase 2 at para. 180-181.
Slovak Republic	○	○	●	**Other**: Under Sections 2(3) and 2(4) of the 2015 Act on the Criminal Liability of Legal Persons, the Slovak Republic uses the place of the "registered office" as the criterion that determines whether it can assert jurisdiction over acts committed abroad.
Slovenia	●	**?**	**?**	Slovenia defines "domestic legal persons" as LPs "established in accordance with national laws". Phase 1 para. 51.
South Africa	●	○	●	Section 35(1) of PRECCA, authorises extra-territorial jurisdiction over any "company, incorporated or registered as such under any law, in the Republic." Phase 2 paras. 164, 167.
Spain	**?**	**?**	**?**	The WGB has not made findings on this issue.
Sweden	**?**	**?**	**?**	The WGB has not made findings on this issue.
Switzerland	○	○	●	"The Swiss authorities also consider that nationality jurisdiction applies to Swiss companies and that the nationality of legal entities will be determined by their registered office." Phase 2 para. 104.
Turkey	**?**	**?**	**?**	The WGB has not made findings on this issue.
United Kingdom	●	○	○	Domestic LPs are those "incorporated … or formed in the U.K.", as Section 7 applies to such LPs whether they "carry on a business in the U.K. or elsewhere". Phase 1*ter* para. 38. In contrast, Section 7 will only apply to a foreign LP that "carries on a business, or part of a business" in the UK. Phase 3 para. 37.

	LP nationality is determined by place of:			Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Incorporation/ Formation	**Seat**	**Other**	
United States	●	●	○	An LP "domestic concern" must either have "its principal place of business" in the US or be "organised under the laws of the United States" or any of its sub-divisions. Phase 1 page 2. The US will apply the FCPA to extraterritorial conduct by (i) any US "issuer" or "any United States person", including a "domestic concern". Phase 2 para. 110. An issuer is an LP that either has "registered a class of securities" or "is required to file reports" with SEC. Phase 1 page 2.

2.10. Sanctions for legal persons: Nature and level

> ***"The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.***
>
> ***In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.***
>
> ***Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.***
>
> ***Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official."***
>
> ***Article 3(1)-(4) of the Anti-Bribery Convention***[101]

The comparative overview of sanctions regimes for legal persons provided in Table 13 underscores the diversity of rules and practices in this area. Sanctions for legal persons vary in terms of size, and the availability of different types of sanctions. These include fines, confiscation or disgorgement, debarment from public procurement, or other forms of public advantage, and other penalties (e.g. dissolution and publication of sentence). Sanctions also vary in the degree to which they permit consideration of mitigating factors.

Fines. Though all of the Parties other than Argentina can impose fines for foreign bribery, their methods for calculating fines vary considerably. Many countries provide maximum and/or minimum thresholds on the amount of fine that can be imposed.

- ***Maximum thresholds***. Thirty-three countries (80%) have a fixed maximum, whether this amount is expressed as a fixed sum or as a multiple of the benefit received,

[101] The Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which were adopted by the Negotiating Conference at the same time as the Convention, contain helpful explanations to understand the scope of Article 3. By "proceeds" of bribery, the Negotiating Conference intended to cover "the profits or other benefits derived by the briber … or other improper advantage obtained or retained through bribery". Commentaries, comment 21. The term "confiscation", including "forfeiture where applicable", was intended to cover "the permanent deprivation of property by order of a court or other competent authority". Commentaries, comment 22. Finally, the Negotiating Conference made clear that a Party can set "appropriate limits to monetary sanctions" or, conversely, could impose additional "civil or administrative sanctions", such as: "exclusion from entitlement to public benefits or aid", "temporary or permanent disqualification from participation in public procurement", or placement "under judicial supervision". Commentaries, comments 23-24.

damage caused, a "fine unit", or the minimum wage. For instance, the fine in Hungary will be an amount up to three times the benefit of the offence, while in Israel it will be up to four times the benefit. Other countries define the maximum fine either as a fixed monetary amount or as a certain number of fine units with a certain maximum value for each fine unit. Of these fines that can be determined *ex ante*, without knowing the value of the bribe, the proceeds of bribery, or other variables dependent on the factual circumstances of the offence, the Czech Republic has the highest maximum fine for legal persons: the equivalent to EUR 54 million.[102] Often these maximum fines appear small, relative to the potential benefits from foreign bribery, as 10 Parties (24%) appear to have maximum fines that are set at amounts less than EUR 1 million (e.g. Finland's maximum fine is EUR 850 000). That said, these fines typically may be cumulated with other sanctions so they cannot be evaluated in isolation. In contrast, seven countries (17%) have no cap whatsoever on the maximum fine for a foreign bribery offence.

- ***Minimum thresholds***. At the other end of the fine range, only 18 countries (44%) have a fixed minimum fine set above an amount equivalent to EUR 1 000. A further seven Parties (17%) have a fixed minimum fine that is less than the equivalent of EUR 1 000. Fourteen countries (34%) have no minimum threshold at all.

Confiscation. Article 3(3) of the Convention obliges Parties to ensure 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."

According to WGB reports, at least some form of confiscation is available against legal persons in all Parties except for possibly Mexico and Greece.[103] In Phase 3, the WGB questioned whether Spain's confiscation regime applies to legal persons, given the absence of any express reference to legal persons in the confiscation provisions and the lack of case law applying confiscation to legal persons in practice.[104] Spain has subsequently informed the Secretariat that its "confiscation regime has … been revised and a more comprehensive regulation has been adopted …. to increase the effectiveness of confiscation". The WGB will have the opportunity to examine its application in

102 For the sake of comparison, the currencies of the Parties were equalised in Euros using the exchange rate of 19 August 2016.

103 *See* Mexico Phase 3 para. 37; *see also* Greece Phase 3*bis* paras. 74-77. However, Mexico has informed the Secretariat that, following the June 2016 reforms introducing criminal liability for legal persons, Article 422 of the National Code of Criminal Procedure now permits the imposition of confiscation on legal persons. The WGB will have the opportunity to examine application of this provision for foreign bribery during the Phase 4 evaluation. On the other hand, even when some confiscation is permitted, some Parties do not have the ability to confiscate both the bribe and the proceeds of bribery. *See e.g.*, Japan Phase 3 paras. 49 (reporting that "the bribe given to a foreign public official can be confiscated", but the "benefit obtained" cannot be confiscated); Russian Federation Phase 2 para. 282 (reporting that "Article 19.28 CAO provides for the confiscation of the bribe" but finding that, due to lack of other provisions, prosecutors "cannot confiscate the proceeds of foreign bribery by legal persons"). Under Article 3(3), countries without confiscation can still comply with the Convention if they can impose "monetary sanctions of comparable effect". As a disclaimer, please note that the finding that a given confiscation regime exists does not imply that the Working Group on Bribery would consider it adequate to meet the standards under the Anti-Bribery Convention.

104 *See* Spain Phase 3 paras. 80-81 & page 34 (Commentary).

practice during Phase 4. Confiscation is the only mechanism available for sanctioning legal persons in the Slovak Republic.[105] Confiscation in the Slovak Republic is closely connected to prosecutions of natural persons under criminal law, as Slovak law "only establishes the possibility to confiscate a sum of money or a property from a legal person …where a natural person is responsible for a crime. Under current Slovak law, the focus thus remains on the natural person involved in a foreign bribery offence as the only responsibility that has to be demonstrated is the liability of this natural person".[106]

As with fines, confiscation measures can take multiple forms and be subject to conditions on the type of benefits or assets that can be confiscated and on when confiscation is possible once an illicit benefit has been transferred to a third party, commingled with lawful property, or otherwise transformed. These dimensions of confiscation regimes are not dealt with in this mapping, but may nevertheless merit further consideration by the WGB.

Debarment. Debarment typically refers to the collateral action or sanction by which a natural or legal person can be suspended from enjoying public advantages or participating in public procurement process for a certain period of time after having been convicted of committing an offence (although some countries employing a lower threshold can debar entities even without a formal conviction). Some Parties have also linked conviction for foreign bribery to the loss of other public benefits, such as tax incentives or investment credits. Construed in this broad sense, "debarment" is a common sanction for legal persons: 33 Parties (80%) provide for some form of debarment, while only 5 countries (12%) clearly do not.[107]

In some cases, debarment is mandatory when a company is found to have engaged in foreign bribery (e.g. in the Netherlands debarment for public procurement is mandatory, with some exceptions). In others, information about unlawful activity is supposed to be taken into account in decision processes relating to the allocation of public advantages. Thus, seen from this perspective, the decision to debar a legal person may have a punitive effect on the company, but it also aims to protect the integrity of public spending. An example of this can be found in the WGB's evaluation of the United Kingdom, which states: "A UK public contracting authority must permanently exclude an economic operator from public procurement contracts if the authority knows that the economic operator (or its directors or representatives) has been convicted of offences relating to corruption, bribery, fraud or money laundering. The UK considers exclusion (known as

105 In the Slovak Republic, the amount confiscated varies depending on whether the confiscation is of (i) property gained through crime or the proceeds of crime or (ii) a sum of money. There is no limit on the amount of property that can be confiscated, provided that its illicit origins can be established. In contrast, an order of confiscation for a monetary sum must be for an amount between EUR 800 and EUR 1 660 000. Under Slovak law, a court cannot order the confiscation of money if it has already ordered the confiscation of property for that offence. *See* Slovak Republic Phase 3 page 57.

106 Slovak Republic Phase 3 para. 43.

107 According to the WGB reports and country information provided to the Secretariat, Brazil, Bulgaria, New Zealand, the Russian Federation and Switzerland do not include debarment as a sanction. Article 5(2) of Colombia's Law 1778 of 2016, which was adopted after the WGB's Phase 2 evaluation, provides for debarment directly against legal persons. Mexico and the Slovak Republic have likewise reported adopting new laws that provide for debarment of legal persons for foreign bribery.

debarment in some jurisdictions) not as a sanction but as protection of the procurement process."[108]

Dissolution. In at least 12 countries (29%), the law permits the dissolution of a legal person either as a sanction for, or as a consequence of a conviction for, foreign bribery: Belgium, Brazil, Chile, Czech Republic, Germany, Hungary, Latvia, Luxembourg, Mexico, Norway, Portugal, and the Slovak Republic. While dissolution is admittedly a draconian sanction, the WGB has expressed concern that its very severity might make it a disproportionate and unrealistic sanction except in the most egregious cases of foreign bribery by legal persons.[109]

Other sanctions. Twenty-four Parties (59%) provide for various types of other sanctions. Examples include: (1) oversight of the legal person's operations and compliance efforts either by the judiciary or by a court-appointed corporate monitor (found in at least six countries,[110] or 15%); (2) prohibition on advertising the business (e.g. Poland); and (3) orders for the publication of sentence (e.g. Belgium, Brazil, Canada, Czech Republic, France, Poland and Portugal). In another interesting example, defendants in three foreign bribery cases in in the United Kingdom were required to make payments to the country of the bribed official in addition to other financial penalties.

108 United Kingdom Phase 3 para. 207.

109 *See, e.g.*, Colombia Phase 1 para. 54 (observing that the actual use of Colombia's sanction of "suspension or dissolution of the legal person" is "improbable, or at the very least, very limited" and warning that its use could be "considered inappropriate and disproportionate to the act committed").

110 Canada, France, Netherlands, Portugal, the United Kingdom and the United States have been identified as having the ability to impose probation or other conditions with oversight by the judiciary or corporate monitors. The WGB has found that other countries can impose probation on companies, but has not specified who would supervise the conditions of probation. *See e.g.*, Austria Phase 3 paras. 60-61.

Table 13. **Sanctions for legal persons**

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Argentina	-	-	-	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51.
Australia	AUD	○	18 000 000 Or, if greater, either 3x benefit (if known) or 10% previous yearly income (if unknown)	●	●	○	Fine: In 2012, the maximum standard fine was AUD 11 million. Phase 3 para. 26. Australia reports that as of 31 July 2015, the maximum standard fine was increased to USD 18 million. Alternatively, the fine can be three times the benefit, if greater than the default statutory fine. If the value of the benefit is unknown, the alternative fine can be up to 10% of the LP's previous yearly turnover, if greater than the default statutory fine. *See* Phase 3 para. 26. Confiscation: Australia can confiscate proceeds and instruments of an offence either with or without a conviction. *See* Phase 3 paras. 37-38. Debarment: Australia's "public procurement agencies have discretion to debar companies based on domestic or foreign bribery". Phase 3 para. 148.
Austria	Daily Rate EUR equivalent	1 50	130 1 300 000	●	●	●	Fine: The default Daily Rate is equal to 1/360th of the company's annual income, plus or minus one-third, but can be no less than EUR 50 and no more than EUR 10 000. For associations serving charitable, humanitarian or church purposes, however, the Daily Rate can range from EUR 2 to EUR 500. *See* Austria Phase 3 page 64. Confiscation: Austrian law provides for "confiscation of proceeds of illicit enrichment" or, if assets are no longer available, for "forfeiture" of an "equivalent" amount. Phase 3 para. 63. Debarment: An LP "convicted" of bribery "is required to be excluded from participating in the procurement procedure" and can face other consequences concerning "public advantages". Phase 3 paras. 56, 160-168. Other: Law contemplates probation in the context of diversion. Phase 3 paras. 52-55.
Belgium	EUR	180 000	6 600 000	●	●	●	Debarment: Phase 3 paras. 44-46. Confiscation: An LP can face "compulsory confiscation of the instrument and proceeds of criminal offences" or "assets of an equivalent value". Phase 3 paras. 43, 54. Other: Dissolution; banning corporate activities; closing establishments; and publishing judgments. Some sanctions are not applied to public enterprises or those performing public functions. *See* Phase 3 para. 43.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Brazil	Percentage	0.10%	20%	●	○	●	Fines: In Brazil, the default fine is calculated based on the percentage of gross revenues for the prior fiscal year, excluding taxes. However, the fine may never be lower than the advantage obtained, when it can be calculated. Phase 3 para. 48. If LP's gross revenues cannot be assessed, an alternative fine, ranging from BRL 6 000 to BRL 60 000 000 will be imposed. Phase 3 page 85. Confiscation: Brazilian law allows confiscation of proceeds, but not of the bribe. Also, "[c]onfiscation of the profits … is excluded in cases of successor companies, companies held jointly liable and leniency agreements." Phase 3 para. 65. Debarment: Debarment was "excluded from the list of available penalties" for legal persons in the final legislation. Phase 3 para. 54. Other: In addition, Brazilian law contemplates other sanctions for an LP, such as "partial suspension or interdiction of its activities"; "compulsory dissolution"; "prohibition from receiving incentives, subsidies … or loans from public agencies or entities". *See* Phase 3 page 88.
	BRL (alternative fine)	6 000	60 000 000				
Bulgaria	BGN (no property advantage)	5 000	100 000	●	○	○	Fines: The fine varies depending on the nature of the offence's anticipated or actual advantage. If considered "property", the fine can be "up to BGN 1 million … but not less than the value of the advantage." If not considered "property", or if the advantage's value "cannot be ascertained", the maximum fine will be BGN 100 000. Phase 3 para. 45. Confiscation: Confiscation of proceeds is possible when the individual perpetrator controls the LP. Confiscation of the bribe is possible if the person who received it is prosecuted. Phase 3 para. 52. Debarment: However, procurement candidates are required to disclose criminal history. *See* Phase 3 at paras. 111-112 & Commentary (page 35).
	BGN (property advantage)		1 000 000				
Canada	CAD	○	○	●	●	●	Fines: *See* Phase 3 para. 57-59. Confiscation: Phase 3 para.64. Debarment: A conviction of a foreign bribery offence under the CFPOA now automatically leads to permanent debarment from contracting with Public Works and Government Services Canada. Phase 3 Follow-up para 4. Other: Various, including: probation; compulsory policies and/or compliance programs to prevent future offences; and publication of sentence. Phase 3 para. 60.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Chile	UTM	200	10 000	●	●	●	Fines: In Chile, fines are calculated based on Unidades tributaries mensuales (UTM). In February 2014, the UTM was equivalent to CLP 41 181. *See* Phase 3 para. 67 & n.19. Confiscation: While the standard fine can range from 200 and 10 000 UTMs, the maximum rises to 20 000 UTMs for certain repeat offenders. In such a case, the maximum could be CLP 824 million. Phase 3 para. 71. Debarment: *See* Phase 3 paras. 71-72&74. Other: Dissolution; cancellation of commercial/ activity status; and partial or total loss of public benefits. Phase 3 paras. 71-74.
Colombia	MMW	○	200 000	●	●	●	Fines: Article 5 of Law 1778 of 2016 authorises a fine of up to 200 000 MMW. Based on the MMW set in June 2015, this would amount to a maximum fine of COP 128,870 000 000. Confiscation: Colombia could apply *extinción de domino* proceedings against a legal person, but only if a criminal investigation was opened against a natural person. Phase 2 paras. 298-299. Debarment / Other: Article 5 of Law 1778 of 2016 additional authorises debarment from contracting for up to 20 years, the prohibition on "receiving any government incentives or subsidies" for a 5-year period, and the publication of sentence and sanction imposed for a period of one year. Furthermore, Article 91 of the Criminal Procedure Code authorises the "cancelation" of an LP's legal status or the "temporary closure of … [its] establishments" in the course of criminal proceedings against a natural person. Phase 2 page 100.
	COP equivalent	-	1.379 billion				
Czech Republic	Daily Rate	20	730	●	●	●	Fines: As of Phase 3, the daily rate could be set between a minimum of CZK 1 000 and a maximum of CZK 2 million. Confiscation: forfeiture of proceeds or disgorgement along with fines. Phase 3 para. 73. Debarment: LP can be barred from public contracts and from receiving public subsidies, but "only … if the criminal act was committed in connection with the performance of a public contract or with the use of public endowments or subsidies". Phase 3 para. 64. Other: Other sanctions include: dissolution; prohibitions on activities; and publication of judgement. *See* Phase 3 paras. 62-65.
	CZK equivalent	20 000	1 460 000 000				

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Denmark	DKK	○	○	●	●	●	Fines: "sum fines" are calculated as a function of the gravity of the offence, ability to pay, actual/ intended financial benefit of crime and entity's turnover Phase 3 paras. 54-55. Confiscation: Phase 3 paras. 63-64. Debarment: Phase 3 para 176. Other: Following convictions (but not out-of-court settlements), courts may order improvement of compliance programs. Phase 3 para. 80.
Estonia	EUR	3,200	16 000 000	●	●	○	Other: While dissolution was previously available under Section 46 of the Penal Code (*see* Phase 3 paras. 44-47), Estonia has informed the Secretariat that this provision was repealed effective as of January 2015.
Finland	EUR	850	850 000	●	●	?	Fines: *See* Phase 3 para. 33. Confiscation: "The possibility of confiscation applies to legal persons and a corporation may be subject to a forfeiture order…. for the confiscation of both the instrument (or its equivalent) and proceeds of foreign bribery…." Phase 3 para. 39. Debarment: Phase 3 para. 36.
France	EUR	○	5 000 000 Or, 10 times proceeds	●	●	●	Fines: *See* Phase 3 Follow-up at para. 5. Confiscation: *See* Phase 3 paras. 64, 70. Debarment: Exclusion from public procurement. Phase 3 para. 64. Other: These include "a ban on engaging in a professional or corporate activity"; "judicial observation"; "closure of the company's establishments" involved in offence; "a ban on public offerings of securities"; "a ban on issuing cheques other than certified cheques" or similar instruments; and "display or dissemination of the judgment". Phase 3 para. 64.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Germany	EUR	5	10 000 000	●	●	●	Fines: Under German law, a regulatory fine must be at least EUR 5. *See* Phase 3 page 88. The highest statutory maximum of EUR 10 million is applied to crimes committed with intent, which would be required for the substantive foreign bribery offence. A lower statutory maximum of EUR 5 million exists for negligent offences. While intent is required to commit foreign bribery, an LP could be punished for the negligent failure to prevent a lower-level employee from committing the offence. *See* Phase 3 at para. 62. Notwithstanding the statutory maximum, the fine must always exceed the financial benefit gained from the offence. Phase 3 paras. 101-102. Germany has confirmed that the sanctions for LP have increased ten-fold following the adoption of the 8th Amendment of the Act Against Restraints of Competition, the draft of which the WGB considered in Phase 3 Follow-up report. Confiscation: *See* Phase 3 para. 110. Debarment "[D]ebarment from public procurement may be a consequence of an administrative decision finding a company liable" Phase 3 para. 112 Germany has asked the Secretariat to make clear that debarment is not a sanction for foreign bribery *per se*, but rather an administrative decision made by the specialised authorities responsible for the relevant procurement decision. Other: There is a "possibility of judicial dissolution if due to unlawful conduct by its directors the company jeopardises public welfare and the supervisory board and the shareholders' meeting do not ensure dismissal of the directors." Phase 3 Follow-up page 14. Germany has asked the Secretariat to make clear that this is not a sanction *per se*, but judicial dissolution can be the consequence of a criminal act.
Greece	EUR (non-obligated LPs)	20 000	2 000 000	?	●	●	Fines: In Greece, the fine range is determined by the type of LP. "Non-obligated" LPs, which are not subject to the requirements of the AML law, the fine for foreign bribery can range from EUR 20 000 to EUR 2 million. However, for non-obligated LPs, the fine for failure to exercise supervision or control can be no less than EUR 5 000 and no

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
	EUR (obligated LPs)	50 000	5 000 000				more than EUR 500 000. Phase 3*bis* para. 71. "Obligated" LPs, which are subject to the requirements of the AML law, the fine for foreign bribery can range from EUR 50 000 to EUR 5 million. However, for obligated LPs, the fine for failure to exercise supervision or control can be no less than EUR 10 000 and no more than EUR 1 million. Phase 3*bis* para. 71. Confiscation: *See* Phase 3*bis* paras. 74-77. Debarment: *See* Phase 2 paras. 195-208. Other: Withdrawal / suspension of operating permits; prohibition on conducting business for up to 2 years; prohibition on specific business activities establishing branches or increasing capital for up to 2 years. *See* Phase 2 paras. 191-193.
Hungary	HUF	500 000	3x benefit of crime	●	●	●	Fines: The maximum fine can be up to three times the actual or intended benefit. Phase 3 page 17 footnote 25. Confiscation: *See* Phase 3 para. 37. Debarment: Export credits. *See* Phase 3 paras. 112-116. Public procurement. *See* Phase 3 paras. 117-121. Other: includes dissolution; and restrictions on exercise certain activities. Phase 3 paras. 35.
Iceland	ISK	○	○	●	?	○	Fines: No maximum fine. *See* Phase 1 page 20 footnote 5. Confiscation: *See* Phase 3 paras. 23 *et seq.* Debarment: No "criminal debarment sanctions" for LPs. But "not clear" Iceland's agencies would consider LP convictions when deciding whether to provide financial support. Phase 3 para 27.
Ireland	EUR	○	○	●	●	?	Fines: *See* Phase 3 para. 69. Confiscation: *See* Phase 3 para. 74. Debarment. "[D]iscussions at the on-site visit confirmed that …only the bribery of officials of Member States of the European Union would trigger exclusion [from being considered for awards for public contracts]." Phase 3 para 72.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Israel	ILS	○	2,260 000 Or, if greater, up to 4x benefit	●	●	?	Fines: For LPs, the fine can be up to ILS 2,260 000 or up to four times the benefit obtained or intended to be obtained by the offence, whichever is higher. *See* Israel Phase 3 para. 38; *see also* Israel Phase 3 pages 78-79. Confiscation: *See* Phase 3 paras. 47-49. Debarment: "[D]isqualification from participation in public procurement and exclusion from entitlement to other public benefits are not available to the courts as possible administrative or civil sanctions in addition to the available criminal sanctions. Public procurement authorities may discretionarily exclude companies convicted of foreign bribery from publicly funded contracts." Phase 3 para. 43.
Italy	EUR equivalent	25,800 51 600 77,400	309,800 929,400 1 239,200	●	●	●	Fines: Administrative fines for LPs calculated on a "quota" derived from LP's economic and financial condition. The quota can range from EUR 258 to EUR 1 549. *See* Phase 3 para. 61 & n.44; *see also* Administrative Liability Law (Decree 231/2001), arts. 10(3) & 25. Bribing to obtain an official act is punished by 100 up to 200 quotas, or EUR 25,800 to 309,800. *See* Phase 3 para. 61 & n.44. Bribing to obtain (i) an official act contrary to official duties or (ii) judicial acts are both punished by 200 to 600 quotas, or EUR 51 600 to 929,400. *See* Italy Phase 3 para. 61 & n.44. Certain aggravated bribery offences are punished by 300 to 800 quotas, or EUR 77,400 to 1 239,200. *See* Phase 3 para. 61 & n.44. Confiscation: Under Decree 231/2001, "the confiscation of the price or the proceeds of the offence" is mandatory for a legal person. Phase 3 para. 74. Debarment / Other: Among sanctions, LP can be subject to: (i) "suspension or revocation of authorisations, licenses or concessions"; (ii) "prohibition on contracting with the public administration"; (iii) "denial of facilitations, funding, contributions and subsidies"; and (iv) "prohibition on advertising". If necessary, court could "flatly prohibit the offender from conducting business activities". Phase 3 paras. 67-68.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	Minimum fine	Maximum fine				
Japan	JPY	10 000	300 000 000	●	●	○	Fines: An LP can be fined up to JPY 300 million for bribing a foreign official. *See* Phase 3 para. 46. For the minimum fine, Japan has provided the Secretariat with an English translation of Article 15 of the Penal Code, which states: "A fine shall be not less than 10 000 yen; provided, however, that in cases where it shall be reduced, the amount may be reduced to less than 10 000 yen". Under Article 8 of the Penal Code, this general provision applies to offences committed in other statutes, such as the Unfair Competition Prevention Act. Confiscation: Japan can confiscate "the bribe given to a foreign public official" but it cannot confiscate "the proceeds of bribing a foreign public official (i.e., the benefit obtained from bribing a foreign public official, such as a public procurement contract)". Phase 3 para. 49. Debarment: "While debarment is not automatic upon conviction in foreign bribery cases, agencies can decide to debar companies suspected or convicted of foreign bribery …." Phase 3 para. 121.
Korea	KRW	○	1 billion	●	●	○	Fines: An LP has "a maximum fine of KRW 1 billion", which can be increased to "twice the profit earned from the offence if the profit exceeds KRW 500 million". Phase 3 para. 45. Confiscation: Korea can clearly confiscate the bribe from LPs, but it is not clear that it can confiscate the proceeds of bribery from LPs. *See* Phase 3 paras. 50-51. Debarment: "Korean authorities … impose mandatory debarment on companies found to have committed foreign bribery, for a period ranging from six months to two years …, from bidding on public procurement contracts." Phase 3 para 49.
Latvia	MMW	10	100 000	●	●	●	Fines: Assessed as a multiple of minimum monthly wage (MMW), which was EUR 360 in October 2015. Phase 2 page 80. Confiscation. Latvia can confiscate property from an LP for foreign bribery with or without conviction. *See* Phase 2. paras. 262-264. Debarment: Public Procurement Law also provides for debarment. Phase 2 paras 265-266. Other: An LP can be subject to dissolution and restriction of rights. *See* Phase 2 para. 259.
	EUR equivalent	3,600	36 000 000				
Luxembourg	EUR	500	3,750 000	●	●	●	Fines: For an LP, the minimum fine is EUR 500. *See* Phase 3 page 78. The maximum fine for certain offences, including foreign bribery is EUR 3,750 000. Phase 3 para. 62. For repeat offences, the maximum fine is EUR 15 000 000. See Phase 3 para. 62. Confiscation / Debarment: *See* Phase 3 para. 65 and page 78 (reproducing Article 35 of Act of 3 March 2010). Other: Dissolution is available. *See* Phase 3 para. 64.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Mexico	Units of Measure	1	1 000	?	?	●	Fines: An LP can face criminal sanctions calculated in "units of measure", which were formerly known as "fine days" and are based on the LP's daily income. However, the criminal sanction that can be imposed is limited to an amount ranging "between 1 to 1000 [units of measure]". Phase 2 para. 74; *see also* Phase 3 para 33. For criminal law purposes, when the units of measure cannot be calculated, fines are imposed based on minimum wage days. *See* Phase 3 Follow-up pages 12-13. In Mexico, LP can also face administrative sanctions under the Anticorruption Federal Law on Public Procurement, which are calculated in minimum wage days and are equal to the legal minimum income of a natural person. *See* Federal Anti-Corruption Law in Public Procurement, art. 27(II)(a). As of April 2016, the daily minimum wage in Mexico was MXN 73.04. Confiscation: While the WGB found that there was "an absence of legislation" on whether "confiscation may be ordered against legal persons" (*see* Phase 3 Follow-up para. 5), Mexico has informed the Secretariat that, following the June 2016 reforms introducing criminal liability for legal persons, Article 422 of the National Code of Criminal Procedure now permits the imposition of confiscation on legal persons. The WGB will have the opportunity to examine application of this provision for foreign bribery during the Phase 4 evaluation. Debarment: In Phase 3, the WGB found that "[d]ebarment from public procurement is an available sanction for domestic but not foreign bribery." Phase 3 para. 112. Subsequently, Mexico has informed the secretariat that Article 422 of the National Code of Criminal Procedure, following the June 2016 reforms, provides for the "[t]emporary disqualification involving the suspension of rights to participate directly or through an intermediary in procurement procedures" regulated by certain acts. The WGB will have the opportunity to examine the application of this provision to legal persons in the context of foreign bribery during the Phase 4 evaluation. Other: The Court can "suspend or dissolve" an LP if "necessary for public safety reasons". Phase 3 para. 33.
	Minimum Wage Days	10 000	2 000 000				

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Netherlands	EUR	3	810 000 Or, if appropriate, up to 10% LP's "annual turnover"	●	●	●	Fines: Following amendments to the Netherlands Criminal Code, the minimum criminal fine must be at least EUR 3.00. The maximum fine for foreign bribery is EUR 810 000 per offence, or, alternatively, the fine can go up to "10% of the [legal entity's] annual turnover", if appropriate. Phase 3 Follow-up page 17. Debarment: While courts cannot "impose debarment or other disqualification sanctions on legal persons", agencies "may discretionarily exclude companies convicted of foreign bribery from publicly funded contracts and export credits support". Phase 3 para 53. Other: LP can have corporate monitors imposed for a probationary period. Phase 3 para 33.
New Zealand	NZD	○	○	●	○	○	Fines: *See* Phase 3 para. 45. Confiscation: *See* Phase 3 para. 50. Debarment: In NZ, courts cannot "impose any additional non-criminal (administrative or civil) sanctions". Thus, the "exclusion or suspension from access to procurement as a sanction for bribery and corruption offences does not exist. However, there are some possibilities for independent bodies charge of administering public funds to take into account convictions and /or suspicions of … foreign bribery…." Phase 3 para. 48.
Norway	NOK	○	○	●	●	●	Fines: *See* Phase 3 para. 50. Confiscation: *See* Phase 3 paras. 51, 53-55. Debarment: *See* Phase 3 para. 52. Other includes "legal persons may also be subject to prohibitions, deprivation of rights and professional disqualifications". Phase 3 para. 50.
Poland	PLN	1 000	5 000 000	●	●	●	Fine: Cannot exceed 3%of revenue from the tax year when the offence was committed, which is lower than the cap of 10% of revenue that existed at Phase 2. *See* Poland Phase 3 paras. 65, 67. Confiscation: Phase 2 para. 183. Debarment: Possible for public procurement, but not for official development assistance or privatisation. Phase 2 paras. 189-191. Other: law contemplates "public pronouncement of the ruling" as well as bans on promoting or advertising; receiving public funds or subsidies; and receiving aid from international organisations. Phase 2 para. 187.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Portugal	EUR	12 000	9,600 000	●	●	●	Minimum / Maximum fines: In Portugal, an LP will face a fine whose amount will be calculated within a range determined by the length of imprisonment a natural person would face for the same offence. Under Criminal Code Section 90-B, an LP will face a fine of EUR 1 000 to EUR 100 000 for each month of imprisonment. *See* Phase 3 para. 57. The foreign bribery offence is punishable by a term of imprisonment of 1 to 8 years, which would result in a fine for an LP ranging from EUR 12 000 to EUR 9 600 000. *See* Phase 3 para. 28. Other: "Legal persons may receive sanctions other than fines. They may be dissolved, or subject to accessory penalties such as judicial orders; prohibition on the exercise of an activity; prohibition on executing certain contracts or contracts with certain entities; … closing of establishment; and publicity of a conviction sentence … as an accessory sanction, a court may monitor a company's implementation of an effective anti-corruption corporate compliance programme." Phase 3 para. 59.
Russian Federation	RUB	1 000 000	3x bribe	●	○	?	Fines: In Russia, the minimum fine varies based on the amount of the bribe. If bribe is less than RUB 1 million, the fine will be up to 3x the amount of the bribe, but must be equal to or exceed RUB 1 million. If bribe is between RUB 1 million and RUB 20 million, the fine will be up to 30x the amount of the bribe, but must be equal to or exceed RUB 20 million. If bribe is more than RUB 20 million, the fine will be up to 100x the amount of the bribe, but must be equal to or exceed RUB 100 million *See* Phase 2 paras. 277. Confiscation: *See* Phase 2 paras. 280-287 (reporting that confiscation of the "bribe" is authorised under the CAO, but that "in effect, prosecutors cannot confiscate the proceeds of foreign bribery by legal persons"). Debarment: *See* Phase 2 paras. 297-299.
		20 000 000	30x bribe				
		100 000 000	100x bribe				

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Slovak Republic	EUR	1 500	1 600 000	●	●	●	The 2015 Act on Criminal Liability of Legal Persons provides for the following penalties or sanctions, the application of which the WGB will have the opportunity to evaluate in practice during Phase 4: Minimum / Maximum Fines. *See* Section 15 of the 2015 Act. Confiscation: Sections 13 and 14 of the 2015 Act provide for "forfeiture of property" and "forfeiture of a thing". However, under Section 11(4) of the Act, it "shall not be possible to impose a concurrent penalty of … forfeiture of property with pecuniary penalty". Debarment: Section 17 of the 2015 Act permits a court to prohibit "grants or subsidies" when sentencing an LP "for a criminal offence committed in connection with the application for a grant, a subsidy, a contribution or other funds from the State budget … or in connection with their allocation or use." Section 18 permits a similar prohibition when the offence was committed in connection with EU funds. Section 19 requires courts to prohibit an LP from "participat[ing] in public procurement for a period of one to ten years" if the LP has been convicted of a "criminal offence committed in connection with public procurement" or "the application for … funds of the European Union" or the use of such funds. The WGB will have the opportunity to consider whether these provisions would apply to LPs convicted of foreign bribery during Phase 4. Other: Other sanctions provided by the 2015 Act include: dissolution (Section 12); prohibitions on activities (Section 16); and the publication of judgment (Section 20).
Slovenia	EUR	10 000	1 000 000	●	●	●	Fines: The EUR 1 million maximum applies if there is no property benefit or damage caused by the offence. If there is a property benefit or damage, then the fine can go up to 200 times such benefit or damage. Phase 3 para 48; *see also* Phase 3 page 71. Confiscation: *See* Phase 3 paras. 57-58. Debarment: "[E]xclusion from public procurement contracts and other forms of public advantages, including export credits and overseas development assistance…." Phase 3 para 51. Other: *See* Phase 3 para. 49.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
South Africa	ZAR	○	720 000 Unlimited	●	●	?	Fines: The maximum fine varies: either there is a maximum fine of ZAR 720 000 (Regional Court) or no limit (High Court). *See* Phase 3 para. 35. Confiscation: LP can face confiscation of "bribe payment" (if "still in the hands of the briber") and of the "proceeds of unlawful activities". Officials asserted that a parent LP could face confiscation of "benefits" derived from the act of its subsidiary. Phase 3 para. 49-50. Debarment. "Companies convicted of foreign bribery may be debarred in South Africa from receiving public contracts." Although debarment "is not automatic upon conviction", a judge can order it. Phase 3 para. 40.
Spain	Fine Days	180 (6 months)	1 800 (5 years)	?	●	?	Fines: In Spain, one fine day is fixed by the courts within a range of EUR 30 to 5 000. By statute, each month contains 30 fine days per month and one year constitutes 360 fine days. *See* Penal Code Article 50. Under Penal Code Article 286ter, a natural person could a face jail term of three to six years for the bribery of a foreign public official. As a result, under Article 288, an LP would face a fine ranging from a minimum of two to five years for the offence—that is, 720 to 1 800 fine days (EUR 21 600 to EUR 9 million). Alternatively, the fine could be calculated as three to five times the benefit obtained. The WGB will have the opportunity to examine the application of these provisions in practice during Phase 4. Confiscation: The WGB was uncertain whether an LP would be subject to confiscation. *See* Phase 3 paras. 80-81. At that time, the WGB recommended that Spain "clarify that legal persons can be subject to confiscation measures on the same basis as natural persons." Phase 3 page 34 (Commentary). Spain has informed the Secretariat that its "confiscation regime has … been revised and a more comprehensive regulation has been adopted …. to increase the effectiveness of confiscation" after the Phase 3 evaluations. The WGB will have the opportunity to examine its application in practice during Phase 4. Debarment. "[D]ebarment upon final conviction for foreign bribery will be administered directly by contracting authorities, subject to the scope and duration of the debarment being specified in the judgment". Phase 3 para. 180.
	EUR (equivalent)	32 400 Or 3x benefit, if greater	9 000 000 Or 5x benefit, if greater				

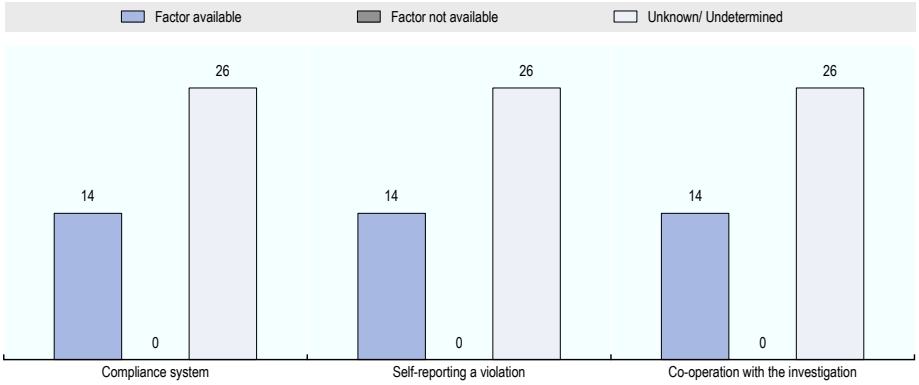
	Fines[1]			Confiscation	Debarment	Other	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	**Minimum fine**	**Maximum fine**				
Sweden	SEK	5 000	10 000 000	●	●	?	Fines: After Phase 2, Sweden increased fine range to "SEK 5000 to SEK 10 million". Phase 3 para. 56. Confiscation: Sweden can confiscate "proceeds of a crime" if not "manifestly unreasonable". Through "extended confiscation" it can confiscate property "more probably … than not" derived from crime. Finally, it can also confiscate "financial advantages" from an LP if not "unreasonable". Phase 3 paras. 60-64 & 66-68. Debarment: "[T]he Swedish International Development Agency (SIDA), Swedfund, the Swedish Export Credit Corporation (SEK), and the Exports Credit Guarantee Board (EKN), … are now better equipped to prevent and detect … [foreign] bribery …." Phase 3 Follow-up para. 4.
Switzerland	CHF	?	5 000 000	●	○	●	Fines: *See* Phase 3 para. 36. Confiscation: *See* Phase 3 para. 44. Debarment: *See* Phase 3 para. 37. Other: "Another penalty ... is publication of the judgment … if the public interest, the interests of the person harmed or of the complainant so require." Phase 3 para. 37.
Turkey	TRY	13,827	2 765 440	●	●	●	Fines: Figures for 2014. When adopted in June 2009, the permitted fine ranged from TRY 10 000 to 2 million, but the fines increase annually. Phase 3 para 52. Confiscation: *See* Phase 3 para. 55. Debarment: Though not a court sanction, debarment "is a necessary resulting effect of foreign bribery convictions." However, the length of the exclusion period for legal persons "is unclear".. Phase 3 paras. 56 & 165. Other: LP can also face the revocation of its operating licence as a "special security measure". Phase 3 para. 57.

	Fines[1]			Confiscation	Debarment	Other	Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Unit	Minimum fine	Maximum fine				
United Kingdom	GBP	○	○	●	●	●	Fines: "Legal persons who commit domestic or foreign bribery, or who fail to prevent domestic or foreign bribery, are punishable by an unlimited fine", but the amount assessed must be "proportionate to the gravity of the offence". Phase 1*ter* para. 49. Confiscation: *See* Phase 3 para. 55. Debarment. "A UK public contracting authority must permanently exclude an 'economic operator' from public procurement contracts if the authority knows that the economic operator … has been convicted of offences relating to corruption, bribery, fraud or money laundering." Phase 3 para. 207. Other: "When a case is resolved, a corporate defendant may be required to improve its compliance systems, including by appointing a corporate monitor." Phase 3 para. 76. In addition, an LP can be ordered to make reparations "to the country of the bribed official". Phase 3 para. 79.
United States	USD	○	2 000 000 Or, up to 2x "gross gain or gross loss"	●	●	●	Fine: Under US law, an LP can face a fine of USD 2 million or an alternative fine of "twice the gross pecuniary gain or the loss resulting from the offense". Phase 3 para. 129(a). Confiscation: *See* Phase 3 paras. 148-155. Debarment: *See* Phase 3 para. 50. Other: LP can be subject to "discretionary" sanctions following conviction for FCPA offence, including denial of licenses to export arms. Phase 3 para. 144. Also, a compliance monitor can be imposed on an LP. *See* Phase 3 paras. 120-128.

1. The minimum fine column reflects the lowest minimum that could be applied to the foreign bribery offence. The maximum fine column reflects the highest maximum that could be applied to the foreign bribery offence.

2.11. Mitigating factors for sanctions

Figure 9. **Mitigating factors for sanctions** (Number of Parties)



Some Parties provide for mitigating factors that will be considered when determining the degree to which a legal person will be punished for foreign bribery. Table 14 provides data on selected mitigating factors found in the Parties' LP liability systems. These mitigating factors include: (i) the existence and effectiveness of compliance systems,[111] (ii) self-reporting a violation to the authorities,[112] at least under certain conditions; and (iii) cooperation with investigations.[113] These mitigating factors are a key part of the incentive system that encourages companies to play a role in the law enforcement process. While providing for mitigating factors may be an effective way of creating incentives for effective compliance, cooperation, and voluntary disclosure, the use of mitigating factors without clear criteria or instructions could render the sanctioning process less transparent and predictable.[114] Although the data are not presented in the Table, at least seven Parties (17%) provide guidance for judges, prosecutors or to the general public on how these sanctions are to be applied.[115]

111 The WGB has identified ten Parties (24%) that can consider "compliance" systems as a mitigating factor: Austria, Brazil, Chile, Germany, Italy, Norway, Portugal, Spain, Switzerland and the United States. Australia, Colombia Mexico, and Sweden have subsequently informed the Secretariat that their legal systems will also consider compliance systems or other efforts to prevent offences when setting sanctions. This means that at least 14 Parties (34%) reportedly will consider compliance systems as potential mitigating factors.

112 Excluding "effective regret" provisions, which typically give full immunity or defence to persons who report their own wrongdoing, 14 Parties (34%) that will give credit for a voluntary self-disclosure when imposing sanctions. Those Parties are Australia, Austria, Brazil, Canada, Chile, Colombia, Estonia, Germany, Portugal, Slovenia, Spain, Sweden, the United Kingdom, and the United States.

113 At least 11 Parties (27%) will give credit for cooperating with an investigation, such as providing documents or identifying wrongdoers. These include Australia, Austria, Brazil, Canada, Colombia, Denmark, Estonia, Germany, Iceland, Israel, Portugal, Spain, the United Kingdom, and the United States.

114 *See e.g.*, Estonia Phase 3 pages 56-57 (Recommendation 2(c)) ("Provide appropriate guidance on, inter alia, factors to be taken into account when considering whether to enter into settlement agreements and the degree of mitigation of sanctions, to ensure that plea-bargaining does not impede the effective enforcement of foreign bribery").

115 These are Brazil, Chile, Germany, Israel, Korea, the United Kingdom and the United States.

Table 14. **Sanctions for legal persons: Mitigating factors**

	Mitigating factors			Comments /observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Compliance system	**Self-reporting a violation**	**Subsequent cooperation with investigation**	
Argentina	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51.
Australia	●	●	●	**Compliance/Self-reporting**: Australia has informed the Secretariat that, while it does not have express statutory provisions concerning these mitigating factors, Australian courts can consider self-reporting and the establishment of a compliance system as factors that can influence the eventual sanction imposed. **Cooperation**: "In a criminal matter, the degree to which a … company has cooperated with law enforcement in the investigation of the offence [must] be taken into account by the Court on sentencing under s 16A of the Crimes Act 1914." Phase 3 Follow-up page 17.
Austria	●	●	●	**Compliance** LP can receive a lower fine if the LP before the offence "took measures to prevent such offences" or "told staff to observe the law" or if the LP after the offence "took essential steps towards future prevention of similar offences". Phase 3 page 64. **Cooperation**: LP can receive a lower fine if it "substantially contributed to finding out the truth". Phase 3 page 64.
Belgium	?	?	?	**Mitigating factors**: As of Phase 1, Belgium's "legislation [was] silent on how penalties within the limits laid down by the law should be set." The fines applied are "left fully to the discretion of the judge" Phase 1 page 12. The WGB did not note any change in subsequent reports.
Brazil	●	●	●	**Compliance**: Article 7 of Brazil's LP liability law provides that "existence of internal mechanisms and procedures of integrity, audit and incentive for the reporting of irregularities, as well as the effective enforcement of codes of ethics and of conduct" can be considered as mitigating factor. Phase 3 para. 57. **Self-reporting / Cooperation**: Article 7 also permits consideration of "the cooperation of the legal entity to the investigations of the offences". The WGB believed that this could "encourage self-reporting". Phase 3 para. 60.
Bulgaria	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
Canada	?	●	●	The WGB has not made express findings concerning these mitigating factors. Canada has informed the Secretariat that there is no express statutory provision concerning these mitigating factors. Canadian courts, however, consider self-reporting and cooperation with the investigation as factors that can influence the eventual sanction imposed. On the other hand, Canada maintains that simply having a corporate compliance system in place is not a mitigating factor on sentencing.

	Mitigating factors			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Compliance system	Self-reporting a violation	Subsequent cooperation with investigation	
Chile	●	●	?	**Compliance system**: If, "before the initiation of the legal proceeding", the LP adopts "effective measures" to prevent repetition of the offence, this will be considered as a mitigating factor. Phase 3 page 68 (Article 6 Law 20 393). **Self-reporting / Cooperation**: If a LP "substantially collaborates when at any stage of the investigation or judicial proceeding, its legal representatives, **before taking notice that a judicial proceeding has been brought against the legal person**, have reported the criminal offense to the authorities or supplied information to ascertain the facts under investigation". Phase 3 page 68 (Annex 6 Law 20 393).
Colombia	●	●	●	**Compliance / Self-reporting / Cooperation:** At time of Phase 2, WGB found "no defences or mitigating circumstances explicitly stated in the law on liability of legal persons." Phase 2 para. 242. However, Article 19 of Law 1778 of 2016, which was adopted after Phase 2, authorises the Superintendence of Companies to "provide benefits", including the "full or partial waiver of the penalty", when "participants" in the offence (i) inform the Superintendence of the offence and (ii) "collaborate with timely delivery of information and evidence relating to such conduct". In addition, Article 7 of Law 1778 provides that sanctions should be assessed based on a list of criteria, including the "existence, execution and effectiveness of programs of transparency and corporate ethics, or of internal anticorruption mechanisms within the company". The WGB will have the opportunity to first review this law's application in practice during Colombia's Phase 3 review.
Czech Republic	?	?	?	The WGB has not made findings on this issue.
Denmark	?	?	●	**Cooperation**: The Director of Public Prosecutions has issued Notice 11/1998 permitting "mitigation of sentence in case of evidence against co-perpetrators". But no details provided on the "nature and degree of co-operation expected" from an LP. ". Phase 3 para 79.
Estonia	?	●	●	**Self-reporting / Cooperation:** The WGB reports do not expressly discuss these mitigating factors. Estonia observes that Section 57 of Estonia's Penal Code provides that "voluntary confession" and "active assistance in detection of the offence" will constitute "mitigating circumstances". The WGB will have the opportunity to evaluate the application of these provisions to LPs in practice during the Phase 4 evaluation.
Finland	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
France	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
Germany	●	●	●	**Mitigating factors**. "Courts have … considered … co-operation with the authorities in the investigation, such as voluntary disclosure of information and releasing the company's employees from confidentiality obligations in order to assist the authorities. Another mitigating factor is whether the company has taken measures to prevent foreign bribery in the future, such as by setting comprehensive compliance programmes". Phase 3 para 105.
Greece	?	?	?	The WGB reports do not expressly discuss these mitigating factors.

	Mitigating factors			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Compliance system	Self-reporting a violation	Subsequent cooperation with investigation	
Hungary	?	?	?	**Self-Reporting**: Under Article 293(6) the punishment imposed for bribery can be reduced "if the perpetrator who committed the criminal acts [of bribery] …, before the authority becomes aware of the act, confesses the act to the authorities and reveals the circumstances of the commission." Phase 3 Follow-up pages 7-8. However, it is not clear that this provision would apply to the "measures" applicable to the legal person under Act CIV of 2001.
Iceland	?	?	●	**Cooperation:** In particular, "it shall be taken into account whether the offender has provided information on the involvement of other parties to the offence." Phase 3 para 43.
Ireland	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
Israel	?	?	●	**Cooperation:** "The new sentencing law directs the court to find a 'proportionate sentencing range' … and then follow additional directions regarding factors and principles related to sentencing. To determine the proportionate sentencing range, the court must have regard to the social value harmed as a result of the commission of the offence, the degree of this harm, the customary sentencing practices for the particular offence, and the circumstances of the offence. The court is then required to determine the offender's sentence within the sentencing range, taking into consideration a wide range of other factors. These factors include the defendant's efforts to compensate for the damage caused and cooperation with law enforcement authorities … and additional circumstances at the court's discretion …." Phase 3 para. 42
Italy	●	?	?	**Compliance**: Under Article 12(2) of Legislative Decree 231/2001, the fine imposed on a legal person for an offence can be reduced, if the legal person "implements an appropriate organisational model to prevent similar offences in the future" before the trial begins. Phase 3 para. 62.
Japan	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
Korea	?	?	?	The WGB has not expressly discussed these mitigating factors. However, Supreme Court guidance lists factors which may refer to self-reporting of violations or cooperation with the investigations (namely, "report of inner violation" and "serious repentance"). See Phase 3 Follow-up page 11.
Latvia	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
Luxembourg	?	?	?	"Sanctions are fixed by the courts on their own authority according to the circumstances of the offence. The principle of mitigating circumstances set forth in the Penal Code allows the courts to reduce the applicable prison terms and fines. The Penal Code does not list mitigating circumstances, their application being left to the court's discretion. No implementing text has been adopted … [on] mitigating circumstances that may be taken into account in transnational bribery cases." Phase 3 para. 50.

	Mitigating factors			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Compliance system	**Self-reporting a violation**	**Subsequent cooperation with investigation**	
Mexico	●	?	?	**Compliance:** The WGB reports do not expressly discuss these mitigating factors, but Mexico has informed the Secretariat that Article 422 of the National Code of Criminal Procedure permits courts to consider the "degree of … compliance with laws and regulations" as well as the "magnitude of the failure of proper control in the organisation" when setting the appropriate sanction. In addition, Article 11*bis* of the Federal Penal Code (as adopted in June 2016) provides that sanctions can be mitigated by 25% if an LP had a "body of permanent control, responsible for verifying compliance with applicable laws" before the offence was committed, provided some "follow-up to internal policies and crime prevention" was made "before or after" the alleged offence.
Netherlands	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
New Zealand	?	?	?	While mitigating factors under Sentencing Act "apply to both natural and legal persons", it was not clear which factors would be considered to reduce the sanctions issued on LPs. Phase 3 para. 45
Norway	●	?	?	**Compliance**. When determining whether to impose penalty on LP and how much the penalty should be, "'consideration shall be paid to […] whether the enterprise could by guidelines, instruction, training, control or other measures have prevented the offence' …." Phase 3 para. 45.
Poland	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
Portugal	●	●	●	**Compliance / self-reporting / cooperation**: According to authorities, judges could consider "internal compliance programmes and other preventive measures" as a mitigating factor for LPs. Sentence could also be reduced if offender "demonstrated acts of 'regret'" following offence. Phase 2 para. 181. Presumably this could include self-reporting to or cooperation with the authorities.
Russian Federation	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
Slovak Republic	?	?	?	The 2015 Act on the Criminal Liability of Legal Persons makes no mention of these three mitigating factors. Instead, Sections 11(1) and 11(2) list the criteria that courts should consider for "the determination of the type and degree of penalty". Among these criteria, the Act mentions "the actions of the legal person after the commission of the criminal offence, in particular effective effort to eliminate harmful consequences of the criminal offence or voluntary compensation for the damage". *See* Section 11(2)(c). The 2015 Act also provides that the court "shall consider" *inter alia* whether the LP is "of strategic significance for the national economy, defence or security". The WGB will have the opportunity to evaluate the application of the 2015 Act in practice during Phase 4.

	Mitigating factors			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Compliance system	Self-reporting a violation	Subsequent cooperation with investigation	
Slovenia	?	●	?	**Self-reporting**. "[T]he Liability of Legal Persons Act provides grounds for reducing or withdrawing a sentence against a legal person …. In particular … it states that the sentence may be reduced, 'if after the committing of a criminal offence the management or supervisory body voluntarily reports the perpetrator'. This provision does not explicitly state the stage of the proceeding at which the perpetrator should be reported for this mitigating factor to be applicable." Phase 2 para. 170
South Africa	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
Spain	●	●	●	**Compliance**: LP can try to mitigate sentence, if it "before the beginning of the hearing" establishes "effective measures to anticipate and detect crimes that could be committed in the future" through or for the LP. Phase 3 page 89. **Self-reporting / Cooperation**: LP can try to mitigate sentence by "confess[ing] the offence to the authorities, before knowing that there is a criminal procedure" against it and by "collaborat[ing] in the investigation … at any time within the proceedings" by "producing … new evidence". Phase 3 page 89; see also Phase 3 para. 53 ("In the absence of implementing rules, guidelines or case law, the exact scope of these mitigating factors and their impact on the liability of a legal person, remains to be determined….").
Sweden	●	●	?	**Self-reporting / Cooperation**: The WGB reports do not expressly discuss these mitigating factors. Sweden, however, informed the Secretariat that, under the current version of Chapter 36 Section 10, a corporate fine may be reduced "(1) if the offence carries other financial liabilities or special legal effects for the entrepreneur and the total consequences of the crime would become disproportionately burdensome, (2) if the entrepreneur to has made efforts to prevent, remedy or limit the harmful effects of the offence, (3) if the entrepreneur voluntarily has reported the offence, or (4) if there otherwise are particular reasons to reduce the fine." The WGB will have the opportunity to review Sweden's current framework sanctions under Chapter 36 of the Penal Code during the Phase 4 evaluation.
Switzerland	●	?	?	**Compliance systems**. Under article 102(1), the "amount of the fine is fixed by the judge in accordance with the seriousness of the offence, of the lack of organisation and of the damage caused, and [also] based on the economic capacity of the company". Phase 3 para. 36. Presumably, a judge could deem a compliance system as evidence that the LP did not have a serious "lack of organisation".
Turkey	?	?	?	The WGB reports do not expressly discuss these mitigating factors.
United Kingdom	?	●	●	**Self-reporting**: "The SFO's written policy encourages companies to self-report foreign bribery by enticing them with the prospect of civil recovery." Phase 3 para. 102 **Co-operation**: "A sentence may be reduced if a defendant agrees to co-operate with the authorities…." Phase 3 para. 54.

	Mitigating factors			Comments /observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
	Compliance system	**Self-reporting a violation**	**Subsequent cooperation with investigation**	
United States	●	●	●	**Compliance**: Sentencing guidelines make the "existence of an effective corporate compliance programme … a mitigating factor". Phase 2 para. 53. **Self-reporting / Cooperation**: Mitigating factors for criminal penalties under FCPA include: the offender's "criminal history, efforts to obstruct justice, voluntary co-operation with the investigation, pleading guilty (accepting responsibility), and the size of the company." Phase 2 para 47; *see also* Phase 3 para. 57 (grounds for declination include "[m]itigating factors such as voluntary self-disclosure" and "co-operation"); Phase 3 para 112 (observing that Deferred-Prosecution and Non-Prosecution Agreements "generally cite factors such as the defendants' co-operation and self-reporting of the crime as the reasons for the agreement.").

2.12. Settlements

> ***"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."***
>
> ***Article 2 of the Anti-Bribery Convention***

Figure 10. **Settlements**

(Number of Parties)

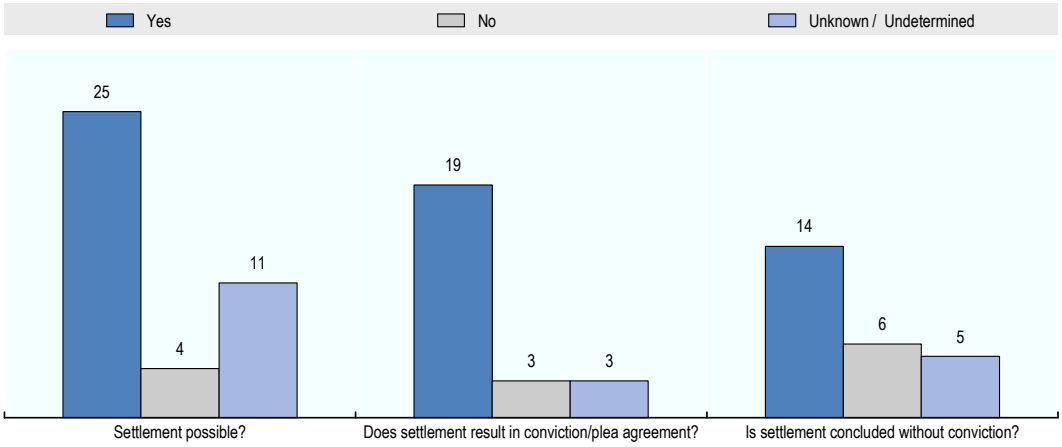


Table 15 presents comparative information on whether, in each Party to the Anti-Bribery Convention, it is possible to resolve foreign bribery cases involving legal persons using settlements. It shows: (1) whether settlement is possible; (2) whether settlement arrangements can result in a conviction; and (3) whether settlements can be concluded without a conviction. Here the term "settlement" is used broadly to describe all agreements to either resolve or defer the prosecution of, a foreign bribery case involving a legal person. Various terms are used in the WGB reports to describe these settlements or agreements,[116] which signals that they may have important differences in their conditions and effects.

As shown in Figure 10 above, 25 Parties (61%) provide for settlements to resolve matters relating to foreign bribery (and typically for matters concerning other unlawful activities). Of these, 19 countries (46%) have arrangements for settlements with legal persons that result in a conviction or plea agreement; and 14 countries (34%) have arrangements for settlements that can be concluded without conviction. Eight countries (20%) have both options.[117]

[116] These include, for example, "diversion" for a settlement without conviction in Austria and "*patteggiamento"* for a settlement with conviction in Italy.

[117] These are: Australia, Chile, Estonia, Germany, Mexico, Switzerland, United Kingdom and United States.

A number of WGB reports have assessed settlement arrangements:

- ***Italy***. The patteggiamento procedure, which is akin to plea-bargaining, is credited in WGB reports with boosting Italy's enforcement efforts and effectiveness. The WGB states that the procedure has been "instrumental to the settlement and sanction of foreign bribery cases".[118] Patteggiamento advances two main aims: (1) avoiding the dismissal of cases because of the statute of limitations and (2) choosing the most economically viable solution against a background of complex investigations and scarce resources. According to the reports, the procedure succeeded, in a few cases, in streamlining judicial processes enough to prevent the dismissal of these cases because of the statute of limitations. It also encourages future legal compliance by providing for "the extinction of the offence if the defendant commits no other offences of the same kind during the five years following sentencing".[119]
- ***Switzerland***. The WGB evaluates Swiss settlement procedures as follows: "Such procedures have undeniable advantages for law enforcement authorities, in that they streamline procedures and reduce costs. The use of such procedures in transnational bribery matters is not isolated to Switzerland: these procedures exist in several Parties to the Anti-Bribery Convention in various forms and have sometimes proved useful in these countries …. However, the use of these procedures does raise some questions, in the absence of documents or guidelines setting out a framework for law enforcement authorities and due to the fact that the final decision is sometimes confidential…."[120]
- ***United States.*** The United States has three types of settlement arrangements: non-prosecution agreements (NPAs), deferred-prosecution agreements (DPAs), and plea agreements (PAs). The WGB credits these settlement arrangements with boosting public enforcement efforts: "The United States strongly believes that such agreements are an efficient way to resolve foreign bribery cases. In their view, these agreements provide both appropriate punishment and flexibility to reward voluntary disclosures and co-operation. This practice has worked well in the U.S. legal system, resulting in strong enforcement and private sector compliance efforts."[121]

Settlement arrangements – especially those that provide flexibility for prosecutors and judges – create discretion and therefore present the challenge of guiding this discretion so that such arrangements are used and applied appropriately, while respecting basic legal values of transparency, predictability and non-discrimination. Although the data are not presented in Table 15, the WGB reports document the use of several mechanisms designed to guide this discretion:

- ***Court review and approval*** of the settlement is one way to ensure that discretion is properly exercised when concluding settlements and establishing their terms.
- ***Guidance/guidelines for judges and prosecutors***. Another way is to publish guidance on how settlements are to be concluded and what they are to contain. At least nine countries (22%) have issued some form of guidance on whether and how such settlements should be reached.

118 Italy Phase 3 para. 95.

119 Italy Phase 3 para. 94.

120 Switzerland Phase 3 para. 41.

121 United States Phase 3 para. 108.

- ***Publication of settlements***. Publication of settlements enhances the transparency of the process. WGB reports mention that settlements are or can be made public in a number of countries (e.g. Czech Republic (in anonymised form), Estonia, Netherlands, Norway, and the United States). The WGB has also encouraged countries to make these settlements public.[122]

[122] *See, e.g.*, Belgium Phase 3 page 60 (Recommendation 5) ("With respect to settlement, the Working Group recommends that Belgium make public, as necessary and in compliance with the relevant rules of procedure, the most important elements of settlements concluded in foreign bribery cases, in particular the main facts, the natural or legal persons sanctioned, the approved sanctions and the assets that are surrendered voluntarily"); Denmark Phase 3 page 51 (Recommendation 3(c) ("Denmark adopt a clear framework for out-of-court settlements and make public, where appropriate and in conformity with the applicable rules, as much information about settlement agreements as possible"); Italy Phase 3 pages 52-53 (Recommendation 4(e)) ("Make public, where appropriate …, certain elements of the arrangements reached through patteggiamento, such as the reasons why patteggiamento was deemed appropriate … and the terms of the arrangement, in particular, the amount agreed to be paid"); Latvia Phase 2 pages 74-75 (Recommendation 9(e)) (recommending that Latvia "make public, where appropriate and in conformity with applicable rules, available information about the settlements in foreign bribery cases, including the facts, the reason for settlement, the terms of the settlement, and any sanctions imposed"); and United Kingdom Phase 3 page 61 (Recommendation 5(c) (recommending that the UK "make public, where appropriate and in conformity with the applicable rules, as much information about settlement agreements as possible, including on the SFO's website").

Table 15. **Settlements**

	Settlement possible?	If yes, does settlement result in conviction/plea agreement?	If yes, is settlement concluded without conviction?	Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Argentina	-	-	-	No LP liability for foreign bribery, but it exists for other offences. Phase 3 paras. 49, 51
Australia	●	●	●	**With / without conviction**: "Australia's legal system contains some elements for plea bargaining and co-operation from offenders. The CDPP may enter into an agreement with a defendant to provide testimonial or prosecutorial immunity. It may enter into an agreement in which the defendant pleads guilty to some of the charges or to a lesser charge(s), with the remaining charges dropped or not taken into account. " Phase 3 para. 79. At least three LPs "have reported … evidence of foreign bribery". Phase 3 para. 80.
Austria	●	?	●	**Without conviction**: "Diversion" is a form of settlement "without a trial" that can apply to legal persons in certain bribery contexts. Phase 3 paras. 57- 61; *see also* Phase 2 para. 79 (explaining that diversion does not result in "a criminal record"). "The requirements for applying diversion to legal persons are nearly identical to those for … natural persons, except that in the case of legal persons restoration of the damages caused by the crime is *required* …." Phase 3 para 60.
Belgium	●	○	●	**Without conviction**: "Prosecutors can offer a settlement to natural or legal persons, including in bribery cases…. As settlement is not considered to constitute a conviction, it is not registered in the criminal record of the legal person concerned...." Phase 3 para 36.
Brazil	●	●	?	**With conviction**: In Brazil, "leniency agreements" are permitted in administrative proceedings, when the legal person "effectively collaborate[s] with the investigation and proceedings", including providing information and documents and helping identify the persons involved. If the conditions are met, "legal persons can reduce the applicable fines by up to two-thirds" and avoid certain additional sanctions. Phase 3 at para. 103-104.
Bulgaria	○	-	-	**Settlement**: While Bulgaria permits natural persons to resolve a charge through an "expedited procedure" in court, this option does not appear to be available for a legal person. Phase 3 paras. 42 *et seq*.
Canada	●	●	○	**With conviction**: "The Canadian Criminal Code does not directly address the use of plea agreements or provide sentencing guidelines." Phase 3 para. 50. The WGB, however, has discussed a case where "a conviction [was] obtained" after an LP plead guilty. Phase 3 para. 71. Canada confirms that criminal proceedings are routinely resolved through guilty pleas, which will result in a conviction. Canada also reports that it is not possible to have a settlement that does not result in a "conviction".

	Settlement possible?	If yes, does settlement result in conviction/plea agreement?	If yes, is settlement concluded without conviction?	Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Chile	●	●	●	**With conviction**: Expedited procedure "*procedimiento abreviado*" is available in certain circumstances, including under Chile's law on LP liability. Phase 3 para. 88. **Without conviction**: Possible to "conditionally suspend" proceedings, if LP meets conditions (e.g., pay fine, implement compliance system, etc.). Phase 3 para. 89.
Colombia	?	?	?	The WGB has not made findings on this issue.
Czech Republic	●	●	○	**With conviction**: As the LP liability law provides that Criminal Code and Criminal Procedure Code apply unless otherwise indicated, "proceedings against legal persons may be settled through the agreements on guilt and punishment" contained in the Criminal Procedure Code. Phase 3 paras. 48, 67-68. As "the procedure includes a guilty plea by the offender, it is akin to a conviction". Phase 3 para. 68.
Denmark	●	○	●	**Without conviction**: Through use of a "penalty notice", prosecutors can resolve foreign bribery cases "out of court if the penalty does not exceed a fine", provided that "the accused admits guilt and pays the fine by a certain time". "Legal persons can only be fined and are thus always eligible for out-of-court settlements." Phase 3 para. 77.
Estonia	●	●	●	**With conviction**: Plea-bargaining, known as "settlement agreements", is available for foreign bribery cases and apparently result in having the accused "natural or legal persons convicted". Phase 3 para. 72. **Without conviction**: The Criminal Procedure Code allows prosecutors to "terminate criminal proceedings relating to co-operating offenders. A court order or approval is not needed." Phase 3 para 70.
Finland	●	○	●	**Without conviction**: A "waiver of prosecution" is available to LPs, if the offence was "of minor significance" or only involved "minor damage" and if the LP has "voluntarily taken the necessary measures to prevent new offences". However, authorities considered that "waiver would likely not be contemplated in foreign bribery cases" given the gravity of the offence. Phase 3 para. 49.
France	●	●	○	**With conviction**: An accused can "agree to appear on prior admission of guilt (often described as the French version of plea-bargaining) whereby the [accused] accepts one or more of the penalties for which he or she is liable." However, these agreements are not negotiated, and the prosecutor remains "free to choose the penalties he or she intends to propose to the offender". Phase 3 para 69.

	Settlement possible?	If yes, does settlement result in conviction/plea agreement?	If yes, is settlement concluded without conviction?	Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Germany	●	●	●	**Settlements**: The WGB has not assessed which settlement options are available for LP, other than finding that one option—provisionally exempting a party from prosecution—did not apply to LPs. *See* Phase 3 para. 136 ("According to … authorities … section 153a CCP does not apply to legal persons.") & Phase 3 paras. 129, 137-138. Germany has informed the Secretariat that because the principle of discretionary prosecution applies to proceedings under the Act on Regulatory Offences, prosecutors have flexibility for settlements with LPs. Settlements without conviction are possible so long as the discontinuation of proceedings does not "depend on, or relate to, payment of a sum of money" *See* Section 47(3) of the Act on Regulatory Offences. Settlements with conviction are possible whenever a fine is imposed on an LP.
Greece	●	**?**	●	**Without conviction**: "The Greek authorities informed the lead examiners that Greece reached an out-of-court settlement with Siemens in March 2012, and that proceedings in the case against natural persons were continuing." Phase 3 para. 82.
Hungary	**?**	**?**	**?**	The WGB has not made findings on this issue.
Iceland	**?**	○	**?**	**With conviction**: "Other techniques such as plea bargaining are not applied in Iceland. However, section 5 of the Act on the OSP does make provision for granting immunity to cooperating witnesses who offer or submit information or materials…." Phase 3 para 43. **Without conviction**: Left as unknown as not clear that prosecutor could grant "immunity" to LP as a "cooperating witness[]". Phase 3 para. 43.
Ireland	**?**	**?**	**?**	The WGB has not made findings on this issue.
Israel	●	●	**?**	**With conviction**: "A plea bargain may be struck with a natural or legal person defendant." Phase 3 para. 82. The "plea bargaining framework is governed by common law principles and has not been codified …. A plea bargain "involves admission of guilt by the defendant and a conviction entered by the Court." Phase 3 paras. 83-84
Italy	●	●	**?**	**With conviction**: "Under the *patteggiamento* procedure, which is akin to plea-bargaining, the prosecution and defence can jointly ask the judge for the imposition of a substitute penalty or a fine on which they both agree…." Phase 3 para. 93. The WGB considered that "the *patteggiamento* procedure has proven to be instrumental to the settlement and sanction of foreign bribery cases: all 12 persons (9 individuals and 3 legal persons) sanctioned to date in relation to bribing foreign public officials reached settlement with prosecutors through *patteggiamento*." Phase 3 para. 95.

	Settlement possible?	If yes, does settlement result in conviction/plea agreement?	If yes, is settlement concluded without conviction?	Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
Japan	?	○	?	**With conviction**: In context of discussion of how to obtain "credible … evidence" and "cooperation" in foreign bribery cases, one prosecutor interviewed on-site indicated that "plea bargaining would also be helpful". Phase 3 para. 64. No such option currently exists, although Japan was reportedly "exploring the use of immunity from prosecution and plea bargaining". Phase 2 para. 6.
Korea	?	?	?	The WGB has not made findings on this issue.
Latvia	●	●	○	**With conviction**: "Plea agreements are available for natural and legal persons", and they must be "approved by the court" after the "the accused admits guilt, agrees to a statement regarding the offence, and accepts a specified punishment." Phase 2 para. 162. **Without conviction**: An "out-of-court settlement" known as a "prosecutor's injunction" is not available for foreign bribery "because it is classified as a serious crime." However, an LP did receive a prosecutor's injunction for a domestic bribery offence. Phase 2 para. 261.
Luxembourg	?	?	?	**Settlements**: "The current thinking is that plea bargaining would apply only to misdemeanours (délits), thus excluding bribery, which is a felony (crime). However, such a system could in theory be applied to downgraded bribery cases." Phase 3 para. 52.
Mexico	●	●	●	**Settlements**: At time of Phase 3, settlements were not available under Mexican law. *See* Phase 3 para. 44. **With conviction**: Under Article 201 of the recently adopted National Code of Criminal Procedure, Mexico can resort to a "procedimiento abreviado" procedure to resolve a matter, where the accused "admit[s] … responsibility" and waives right to trial, provided that the victim does not oppose. **Without conviction**: Under Article 191 of the new National Code of Criminal Procedure, the prosecutor or accused can request a "suspensión condicional del proceso" which can result in the "extinction of a criminal action" if the accused fulfils a plan that "ensures an effective protection of the victim's rights". The WGB will have the opportunity to review the application of both of these provisions in practice during the Phase 4 evaluation.
Netherlands	●	?	●	**Without conviction**: "Out-of-court settlements in the Netherlands do not require an admission of guilt…. It is further worth noting that an out-of-court settlement would not be taken into account for EU debarment purposes. This may prove a very serious incentive to companies to try and settle (foreign) corruption cases out-of-court." Phase 3 para. 54. Dutch authorities "concluded out-of-court transactions with seven companies … in the context of the Oil-for-Food Programme in Iraq", which involved sanctions offences. Phase 3 para. 55.

	Settlement possible?	If yes, does settlement result in conviction/plea agreement?	If yes, is settlement concluded without conviction?	Comments/observations Selected quotes from Phase 1-3 Reports *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
New Zealand	●	●	○	**With conviction**: "Out-of-court settlement similar to plea-bargaining and negotiations with the prosecution do not exist as such under the New Zealand system. However, the Solicitor-General Prosecution Guidelines provide that 'arrangements between the prosecutor and the accused person as to the laying or proceeding with charges to which the accused is prepared to enter a plea of guilty can be consistent with the requirements of justice….'" Phase 2 para. 192.
Norway	●	●	**?**	**With conviction**: An out-of-court settlement, known as an "optional penalty writ" (or as a "penalty notice"), available under the Criminal Procedure Act "may concern natural or legal persons" and "has the same legal consequences as a conviction". Phase 3 paras. 63-64. The WGB observed that Norwegian authorities have "largely relied on this optional penalty writ process in foreign bribery cases". Phase 3 para. 64.
Poland	**?**	**?**	**?**	The WGB has not made findings on this issue.
Portugal	○	**-**	**-**	**With conviction: "**Plea bargaining is unavailable in Portugal", but "an accused may co-operate with authorities and consequently avoid punishment or receive a reduced sentence". Phase 3 para. 68. **Without conviction**: "The Portuguese authorities state that out-of-court settlements are unavailable under Portuguese law in respect of the foreign bribery offence." Phase 1 page 20.
Russian Federation	**?**	**?**	**?**	The WGB has not made findings on this issue.
Slovak Republic	**?**	**?**	**?**	**Settlements**: Slovak Republic allows prosecutors to grant conditional stays of prosecution or to make plea bargains for natural persons, but it was not clear at the time of Phase 3 that these procedures could be used for legal persons. *See* Phase 3 paras. 100-104. The subsequently enacted 2015 Act on the Criminal Liability of Legal Persons does not directly discuss this matter, but the Slovak Republic believes that settlement provisions under the Criminal Code or the Code of Criminal proceedings should logically apply to LPs in light of Section 1(2) of the 2015 Act as nothing in that Act would prohibit settlements. The WGB will have the opportunity to evaluate the application of the 2015 Act and the relevant provisions of the Criminal Code for settlements in practice during Phase 4 to assess their applicability to legal persons.
Slovenia	**?**	**?**	**?**	**Settlements**: The WGB discussed plea bargaining in the Phase 3 report's section on sanctions for natural persons, so it is not clear whether the procedure could also be applied to legal persons. *See* Phase 3 para 47.
South Africa	●	●	**?**	**With conviction**: "Prosecutors also have the possibility to enter into plea bargaining with an accused in a criminal trial…. The prosecution and defence can reach a settlement through which the defendant pleads guilty to a certain offence, normally accompanied by a mutual agreement on the corresponding sentence. A plea bargain must be approved by the court and … as a judgment. A guilty plea triggers the debarment of the company from public contracts." Phase 3 para. 79.

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Spain	●	●	○	**With conviction**: "Spanish criminal procedure provides for a form of settlement known as *conformidad* …. In practice, the prosecution service undertakes to reduce the penalty in exchange for the defendant's acceptance of the most serious charges. Hence, while *conformidad* does not require an explicit recognition of guilt, it is tantamount to it…." Phase 3 para. 113. These settlements must be approved by the judge and "cannot be appealed" once accepted. Phase 3 para. 114. Finally, a legal person can "agree to a *conformidad* through its legal representatives". Phase 3 para. 114.
Sweden	○	-	-	**Settlements**: The WGB has not made express findings on this issue. Sweden has informed the Secretariat that "Swedish law does not allow negotiated settlements in criminal matters."
Switzerland	●	●	●	**With conviction**: "The summary punishment order … allows the prosecutor … to settle a case … without bringing it before a court", provided that the accused acknowledges "the facts in the charges" and "the parties agree on a penalty". Phase 3 para. 39. In the Alstom matter, a Swiss subsidiary was "convicted by summary punishment order". Phase 3 page 20, footnote 41. **Without conviction**: The "Reparation" procedure provides "an exemption from liability once the defendant has made all efforts that could be reasonably expected to compensate the wrong." Phase 3 para. 39. In the Alstom matter, Switzerland used the Reparation procedure to dismiss investigation against parent company. *See* Phase 3 page 20, footnote 41.
Turkey	○	-	-	**Settlements**: "Turkish law does not provide for any possibility of out-of-court settlement or plea-bargaining procedure." Phase 3 para. 84.

	Settlement possible?	If yes, does settlement result in conviction/plea agreement?	If yes, is settlement concluded without conviction?	Comments/observations **Selected quotes from Phase 1-3 Reports** *Text highlighted in grey contains additional information provided by the WGB member countries to supplement findings in areas not yet covered in the WGB's evaluations for that country or to report new developments that the WGB has not yet had the opportunity to review.*
United Kingdom	●	●	●	**With conviction**: "A defendant in the UK may negotiate and reach an agreement with the prosecutor on particular matters before entering a guilty plea and being sentenced." The accused can (i) agree "to plead guilty to some of the charges … on the basis of the facts as alleged by the prosecution"; (ii) "agree to plead guilty and to be sentenced on the basis of an agreed set of facts"; or (iii) plead guilty on an agreed set of facts along with "a joint submission by the defence and prosecution on the appropriate sentence range." Phase 3 para. 53. "The court plays a key role in plea agreements to protect the public interest…. and decides the sentence to be imposed." Phase 3 para. 56. **Without conviction**: "The SFO has settled foreign bribery enforcement actions through *consent* civil recovery orders…." This option enables LP to agree on terms of settlement and the amount of the recovery without any court involvement, giving the LP "certainty in the outcome of settlement negotiations that is unavailable in the criminal plea negotiation process". Phase 3 para. 65. In addition, the United Kingdom reports that DPAs were introduced into its law in February 2014 and can be used for bribery, fraud and other specified economic crime. According to the United Kingdom, entering into a DPA is a fully transparent public event and the process must be approved and supervised by a judge. Any request for a DPA is subject to a full public interest test and is only available to a body corporate, a partnership or an unincorporated association. The SFO's first two DPAs were finalised and approved by the Court in November 2015 and July 2016.
United States	●	●	●	**With/without conviction:** "The DOJ resolves most FCPA matters through plea agreements (PAs), deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs). The United States strongly believes that such agreements are an efficient way to resolve foreign bribery cases." Phase 3 para 108. *See also* FCPA Resource Guide for more information.



THE LIABILITY OF LEGAL PERSONS FOR FOREIGN BRIBERY: A STOCKTAKING REPORT

This stocktaking report provides a unique mapping across time and across countries of the systems of legal person liability of the 41 Parties to the Anti-Bribery Convention. It summarises the information contained in some 200 separate monitoring reports of the OECD Working Group on Bribery, thereby giving an overview of the key design elements of legal person liability systems and of their evolution over time. The Report will help policy makers, law practitioners and anti-corruption activists understand more fully how these systems work in key jurisdictions.

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