



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

June 2014

This Phase 1 Report on Latvia by the OECD Working Group on Bribery evaluates and makes recommendations on Latvia's implementation and application of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 6 June 2014.

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

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A. IMPLEMENTATION OF THE CONVENTION

Formal Issues

1. On 29 May 2013, the OECD Council decided to open discussions with Latvia for accession to the Organisation. The Accession Roadmap, which sets out the terms, conditions and process for accession, provides that Latvia should commit to “full compliance with the requirements of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” (Convention) [[C\(2013\)122/FINAL](#)].
2. On 12 January 2000, the Government of Latvia formally applied to the OECD Secretary-General to become a full participant of the OECD Working Group on Bribery in International Business Transactions (Working Group) and to accede to the Convention. The OECD Council invited Latvia to join the Working Group on 19 September 2013 [[C/M\(2013\)16](#)]. Latvia accepted the invitation on 3 October 2013. The law adopting and approving the Convention was enacted on 6 March 2014 and entered into force on 21 March 2014. Latvia deposited its Instrument of Accession to the Convention with the OECD on 31 March 2014 and became a Party to the Convention on 30 May 2014.
3. The present report has been prepared for the purpose of the Phase 1 evaluation of Latvia. Latvia will be further assessed for the purposes of OECD accession in accordance with the procedure agreed by the OECD Members of the Working Group.

The Convention and the Latvian Legal System

4. Latvia’s Criminal Law (CL) criminalises foreign bribery. CL Section 323 prohibits the giving of bribes to a State official, which is defined in Section 316 to include Latvian and foreign public officials. In an effort to comply with the Convention, Latvia amended these provisions in 2013 and May 2014.
5. Under Latvia’s legal system, treaties must be adopted and approved by the *Saeima* (Parliament) through a legislative act. As mentioned in para. 2 above, a law adopting and approving the Convention entered into force in Latvia on 21 March 2014.

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

6. As mentioned above, CL Section 323 criminalises active bribery of State officials:

Section 323 Giving of Bribes

(1) For a person who commits giving of bribes, that is, the handing over or offering of material values, properties or benefits of other nature in person or through intermediaries to a State official in order that he or she, using his or her official position, performs or fails to perform some act in the interests of the giver or person offering the bribe, or in the interests of other persons, irrespective of whether the bribe offered is for this State official or for any other person, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service or a fine.

7. A separate offence in CL Section 322 punishes an intermediary in a bribery transaction:

Section 322 Intermediation in Bribery

(1) For a person who commits intermediation in bribery, that is, acts manifested as the handing over of a bribe or the offering thereof from the giver of the bribe to a person accepting the bribe, the applicable punishment is deprivation of liberty for a term not exceeding four years or temporary deprivation of liberty, or community service or a fine.

The offence in CL Section 322 covers an intermediary who gives a bribe to a foreign public official (albeit on behalf of the principal briber). The provision thus encompasses conduct that falls within Article 1 of the Convention. This report focuses on the specific foreign bribery offence in CL Section 323. To avoid repetition, the analysis regarding this offence is deemed applicable to the intermediation offence in CL Section 322 except where otherwise noted.

1.1 *The Elements of the Offence*

1.1.1 *any person*

8. CL Sections 323 prohibits “a person” from giving bribes. This and other CL offences apply to natural persons who have attained 14 years of age (CL Section 11). The application of the offence to legal persons is considered at p. 9.

1.1.2 *intentionally*

9. The general *mens rea* requirements of criminal offences are set out in CL Chapter I (General Provisions). Offences must be committed deliberately (intentionally) or negligently if so provided in the law (CL Sections 1(1) and 6(1)). Deliberate (intentional) offences are further subdivided into two categories: those that may be performed with direct intent and those with indirect intent. An offence is committed with direct intent if a person is aware of the harm caused by his/her act or omission and either knowingly commits the act or omission, or desires and foresees the “harmful consequences” of the offence. An offence is committed with indirect intent if a person is aware of the harm caused by his/her act or omission, foresees the “harmful consequences” of the offence, and allows the consequences to occur, regardless of whether he/she desired such consequences (CL Section 9).

10. Latvia’s bribe-giving offence only requires proof of direct intent. The Latvian authorities explain that CL Section 323 requires an intention (a) to give a bribe, and (b) to make a public official perform or fail to perform an act by using his/her official position in his/her interests or those of another person. The offence does not refer to “harmful consequences”; proof of such is therefore not required. Nevertheless, the offence covers foreign bribery committed by someone who is reckless (*dolus eventualis*) or wilfully blind. Latvia referred to case law in which a company board member withdrew and gave money to the company’s owner who used the money to bribe a Latvian official. The board member was guilty of bribery despite claiming that he did not intend to commit bribery and did not know the money would be used as bribe payments.¹ The Working Group will follow up this issue in Phase 2.

¹ Riga Regional Court (31 October 2006) Criminal Case No. 3870001305 KA-04-270-06/29. Latvia states that this case law remains valid despite amendments to CL Section 9 that entered into force in April 2013.

1.1.3 *to offer, promise or give*

11. Unlike the Convention, CL Section 323 expressly criminalises the “handing over” and the “offering” but not the “promise” of bribes. According to Latvia, when this Section was enacted, criminal law experts opined that “offer” and “promise” had the same meaning in the Latvian language.

12. “Offer” and “promise” are not synonymous under the Convention, however. An offer occurs when a bribe-giver *on his/her own initiative* expresses his/her readiness to pay the public official. A promise is broader and includes a bribe-giver’s definitive commitment to pay that is *prompted by the public official*. CL Section 323’s coverage of “promising” a bribe should be further examined in Phase 2.

13. A 2013 legislative amendment removed the requirement that the bribe must be accepted by the public official.

1.1.4 *any undue pecuniary or other advantage*

14. CL Section 323 covers bribes that are “material values, properties or benefits of other nature”. Latvia states that “material values” is “something of value which can be expressed in monetary terms”, such as cash, jewellery, real estate, vehicles etc. “Properties” is broader and covers property of any description, whether corporeal or incorporeal (such as rights). “Benefits of other nature” means any social, economic, or political advantages.

15. Bribes of a non-pecuniary nature are thus broadly covered, according to the Latvian authorities and courts. In 2008, the Supreme Court held that “benefits of other nature” include advantages such as a position on a hospital board or city council.² An earlier decision held that bribes can include “money, securities, food products, non-consumable goods, service of a different nature, rights to property, deposits in the name of a bribe-taker, processing of fictitious contracts, payment of unwarranted bonuses or allowances, intentional gambling losses in favour of the bribe-taker, gifts for the bribe-taker’s family members or friends, involvement in a profitable job etc.”³ Latvia add that other examples include honorific distinctions; non-material awards; a promise to provide a prestigious office or a place in a prestigious school; admission in privileged funds or societies; an exemption from certain conditions that are otherwise mandatory; a promise to support a nomination to an office when discussing a candidacy or in voting.

1.1.5 *whether directly or through intermediaries*

16. CL Section 323 covers bribes given “in person or through intermediaries to a State official”. A separate offence in CL Section 322 imposes liability against the intermediary.

1.1.6 *to a foreign public official*

17. CL Section 323 provides an offence of active bribery of a “State official”, which is defined in CL Section 316. An amendment to Subsection 316(3), which defines “foreign public officials”, was adopted by *Saeima* on 15 May 2014 and enters into force 14 June 2014:

Section 316 Concept of a State Official

(3) As State officials shall also be considered officials of international organisations, international parliamentary assemblies, international courts and

² Supreme Court of Latvia, No 13870001105 PAK-93 on 18 January 2008.

³ Supreme Court of Latvia, No. 7 on 21 June 1993.

delegated persons of these institutions, as well as any person holding a legislative, executive or judicial office of a foreign country or in any of its administrative unit, whether appointed or elected; as well as any person exercising a public function for a foreign country, including for its administrative unit, a public agency or public enterprise.

18. The amended provision substantially alleviates the Working Group's earlier concerns about the previous definition's scope and the necessity of proof of foreign law. Whether the term an "any of [a foreign country's] administrative unit" includes "all levels and subdivisions of government, from national to local, and officials of organised foreign areas or entities" would need to be further assessed in Phase 2.

1.1.7 for that official or for a third party

19. CL Section 323(1) covers bribe-giving "irrespective of whether the bribe offered is for this State official or for any other person".

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

20. CL Section 323(1) covers bribery in order that a State official, "using his/her official position, performs or fails to perform some act". Latvia explained that this provision covers bribery in order that a State official acts outside his/her official competence.

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

21. CL Section 323(1) differs from the Convention in one respect. CL Section 323(1) only applies if bribery is committed in return for an act or omission of an official that is "in the interests of the giver or person offering the bribe, or in the interests of other persons". According to Latvia, this phrase is meant to reflect that Article 1 of the Convention only applies to bribes paid "to obtain or retain business or other improper advantage in the conduct of international business". This approach raises a question of whether the term "interests" in CL Section 323 necessarily equates with "business or other improper advantage" in Article 1 of the Convention. A further question is whether CL Section 323(1) covers bribes paid in the interest of a legal – as opposed to natural – person. These issues should be further examined in Latvia's Phase 2 evaluation.

1.2 Complicity

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

23. CL Section 20 criminalises complicity in offences, including foreign bribery. The provision provides for the liability of persons who organise or direct the commission of a crime as an organiser. Those who induce others to commit crimes are liable as instigators. Liability as an abettor arises if a person knowingly promotes the commission of a crime by providing advice, direction or means, or by removing impediments to committing an offence.

1.3 Attempt and Conspiracy

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

25. CL Section 15 covers preparation and attempts to commit criminal offences, including foreign and domestic bribery. Preparation includes “the locating or adaptation of means or instrumentalities, or the intentional creation of circumstances conducive for the commission of an intentional offence” if “it has not been continued for reasons independent of the will of the guilty party.” Criminal liability shall result only for preparation for serious or especially serious crimes, which includes foreign bribery. An attempt is “a conscious act or omission that is directly dedicated to the intentional commission of a crime [...] if the crime has not been completed for reasons independent of the will of the guilty party.” Preparation and attempt are subject to the same penalties as the completed offence.

26. CL Section 19 creates the offence of participation in a crime, which covers conspiracies to commit foreign and domestic bribery. Participation arises when two or more persons knowingly and jointly commit an intentional criminal offence directly. Each participant is liable for the substantive offence.

1.4 Defences

27. “Effective regret” and extortion previously were absolute defences to foreign and domestic bribery. CL Section 324 stated that bribe-givers and intermediaries of bribery who voluntarily report the offence to the authorities are exculpated. Also exonerated are victims of extortion, which is defined as “the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to the harm lawful interests of a person.”

28. In 2013, CL Section 324 was amended so that extortion victims and individuals who report foreign bribery “may” – not “shall” – be released from liability. Immunity from liability would therefore not be granted automatically upon reporting, but only after a consideration of all of the circumstances. The provision has also been narrowed by requiring an individual to actively further the disclosure and investigation of the offence in order to benefit from the defence. Termination of proceedings on these grounds is discussed at p. 17.

2. Article 2: Responsibility of Legal Persons

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

30. Latvia enacted CL Sections 12 and 70¹ in 2005 to provide corporate criminal liability through the application of “coercive measures” against “private law legal persons”:

Section 12 Liability of a Natural Person in the Case of a Legal Person

For the criminal offences committed by a natural person in the interests, for the benefit or as a result of a lack of supervision or control by a private law legal person, the natural person shall be criminally liable but coercive measures provided for in this Law may be applied to a legal person.

Section 70¹ Basis for the Application of Coercive Measures to Legal Persons

For the criminal offences provided for in the Special Part of this Law, coercive measures may be applied by a court or in the cases provided in law by a public prosecutor to a private law legal person, including a state or a municipal capital company, as well as a partnership, if the criminal offence has been committed in the interests or for the benefit of the legal person or as a result of a lack of supervision or control by a natural person acting as an individual or as a member of the collegial institution of the relevant legal person:

- (1) on the basis of a right to represent the legal person or to act on behalf of such legal person;
- (2) on the basis to take decisions in the name of such legal person,
- (3) realising control within the scope of the legal person.

2.1 Legal Entities Subject to Liability

31. The CL does not clearly define which legal persons could be liable for offences. Latvia states that the objective of the CL was to provide for liability against any legal person except the State and local governments. The text of the CL, however, does not explicitly express this intention. Instead, CL Section 70¹ provides for liability against partnerships, “private law legal persons”, and State or municipal capital companies, which are defined as companies whose shares belong entirely to a State or local government.⁴ Whether CL Section 70¹ captures companies which the government owns only partially is thus not clear. The provision excludes governments, which are undoubtedly *public* law legal persons. But it leaves unanswered whether it excludes additional legal persons from liability, since the concept of “private law legal persons” is not defined in Latvian law. In attempting to answer this question, the Latvian authorities referred to several provisions in the Civil Law and Commercial Law.⁵ However, these provisions only define terms such as “legal person”, “merchant” and different types of companies. They do not address the central question of what a “private law legal person” is. Despite the lack of a clear legal definition the Latvian authorities are of the opinion that from the definition of what a public law legal person is in Article 1 of the State Administration Structure Law, it follows *a contrario* what a private law legal person is.

2.2 Standard of Liability

32. Parties to the Convention are required to meet the standard of corporate liability for foreign bribery as specified in the 2009 Anti-Bribery Recommendation.⁶ Two alternative approaches are prescribed. First, the level of authority of the person whose conduct triggers the liability of the legal person should be flexible and reflect the wide variety of decision-making systems in legal persons. Alternatively, corporate liability should arise when individuals with the highest level of managerial authority in a company (a) commit, direct or authorise foreign bribery, or (b) fail to prevent a lower level person in the company from committing the crime (2009 Anti-Bribery Recommendation Annex I.B).

33. Latvia’s regime of corporate liability for foreign bribery largely conforms to this standard. A legal person is liable when a relevant natural person (a) commits foreign bribery “in the interests or for the benefit of the legal person”, or (b) fails to exercise “supervision or control” which results in foreign bribery being committed. A relevant natural person is defined under CL Section 70¹ as someone, whether acting as an individual or as a member of “the collegial institution of the relevant legal person”, who (i) represents or acts on behalf of the legal person; (ii) takes decisions in the name of the legal person; or (iii) exercises control over the legal person. The prosecution has the burden of proof.

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

⁴ Law on State and Local Government Capital Shares and Capital Companies, Section 1.

⁵ Section 1407 of the Civil Law and Sections 134-135 of the Commercial Law.

⁶ 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions [[C\(2009\)159/REV1/FINAL](#)].

Under CL Section 70¹, a parent company can be liable for foreign bribery committed by a subsidiary resulting from the parent company's failure to exercise supervision and control over the subsidiary.

35. The operation of these provisions in practice should be explored in Latvia's Phase 2 evaluation. Relevant issues may include: (i) the interpretation of phrases such as "in the interests or for the benefit of the legal person" and "supervision or control"; (ii) whether corporate liability for failure to exercise supervision or control arises even when foreign bribery is not committed "in the interests or for the benefit of the legal person"; (iii) whether the burden on the prosecution to prove a failure to exercise supervision or control presents a challenge in practice; and (iv) whether corporate liability arises when a person with senior managerial authority "directs" or "authorises" (as opposed to "commits") foreign bribery.

2.3 *Proceedings against Legal Persons*

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

37. Latvia states that a legal person may be held liable for foreign bribery even if the natural person who committed the crime cannot be prosecuted or convicted. CL Section 12 provides that a natural person who has committed an offence will be held criminally liable but a legal person may also be punished. Under Section 439(3) of the Criminal Procedure Law (CPL), proceedings against a legal person generally take place within proceedings against the natural person. However, the proceedings against the legal person may be separated and continued on their own in four situations:

- (a) If the proceedings against the natural person are terminated without a conviction for "non-exonerating reasons" (CPL Section 439(3)1): This term is defined to include the natural person's death (CPL Sections 377(5), 380 and 615(3)) and conditional release from liability (CL Section 58¹ and CPL Section 415¹);
- (b) If there are circumstances that do not allow the determination of the liability of a natural person, or if the case cannot be tried in court within a reasonable time (Section 439(3)2):⁷ The Latvian authorities assert that these situations include where an offence is committed "by secret vote" or where the natural person has absconded, resides outside Latvia, or cannot be located. Latvia adds that a natural person who absconds or resides outside Latvia may be tried *in absentia* in the same proceedings with the legal person under certain circumstances (CPL Section 465);
- (c) If separate proceedings are in the interests of resolving in a timely manner criminal-legal relations with a natural person who has a right of defence (Section 439(3)e): This applies when there is an outstanding MLA request in the proceedings against a legal person. Separation would thus allow the proceedings against the natural person to proceed without delay; and
- (d) Where a legal person requests separation (Section 439(3)4).

38. One question remains. Proceedings against a legal person may be taken if "it has been ascertained *during the course of criminal proceedings*" that there is likely a basis to sanction the legal person (CPL Section 439(1); italics added). This suggests that proceedings against a legal person can be commenced only if other proceedings (e.g. against the natural person) have started. If the natural person perpetrator dies

⁷ CPL Section 14 provides a right to be tried within a reasonable time.

before proceedings can be launched against him/her, then proceedings against a legal person arguably can be commenced. A similar situation may result if the natural person absconds before proceedings begin or resides outside of Latvia and the test for a trial *in absentia* is not met. In response, Latvia states that CPL Section 370(1) allows criminal proceedings to be opened whenever there is an actual possibility that a criminal offence has taken place. If this test is met, then proceedings can be started, even against a natural person who has died or absconded. The proceedings against the legal person would then immediately be separated from the dead or absconded natural person and continued on their own as per Section 439(3)2 (see above). This thesis should be further explored in Phase 2.

3. Article 3: Sanctions

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

39. This section considers whether foreign bribery in Latvia is punishable by “effective, proportionate and dissuasive” criminal penalties that are comparable to those applicable to domestic bribery. The issue of confiscation is considered in Section 3.4.2 at p. 14.

3.1.1 Penalties for Natural Persons

40. Active non-aggravated foreign bribery in Latvia is punishable by a “basic punishment” and possible “additional punishments”. “Basic punishments” include (a) deprivation of liberty of up to five years or temporary deprivation of liberty of up to three months;⁸ (b) community service (40-280 hours); or (c) a fine 10-200 times the minimum monthly wage (EUR 3 200-64 000). Further “additional punishments” may include: deportation from Latvia; a fine 3-100 times the minimum monthly wage (EUR 960-32 000); restriction of rights; and probationary supervision (CL Sections 36, 38, 40-41 and 323(1)).

41. The maximum available sanctions are increased for aggravated foreign bribery. The offence is considered aggravated if the bribe is at least 50 times the minimum monthly wage (EUR 16 000);⁹ is committed by a public official; or is committed by a group of persons pursuant to a prior agreement. In these cases, the maximum basic penalty is deprivation of liberty of up to eight years; a ban (maximum five years) on engaging in specific employment or holding a specific office; and with or without confiscation. If the offence is committed by an organised group, the maximum penalty further increases to deprivation of liberty of two to 10 years; probationary supervision up to three years; a maximum five-year ban on engaging in specific employment or holding a specific office; and with or without confiscation of property (CL Sections 323(2) and (3)). The “additional punishments” described above for non-aggravated bribery, such as a fine of 3-100 times the minimum monthly wage (EUR 960-32 000), can also be imposed for aggravated foreign bribery.

42. The same maximum sanctions are applicable to active domestic bribery, as well as complicity, attempt and conspiracy to commit foreign bribery (see p. 8).

⁸ Under CL Section 38, the sanction of deprivation of liberty has a minimum duration of three months. A sentence of incarceration of less than three months is thus classified as a *temporary* deprivation of liberty.

⁹ An offence is committed on a large scale if the “total value of the property which was the subject of the offence is not less than 50 times the minimum monthly wage as specified in the Republic of Latvia at that time. The value of the property shall be determined according to the market prices or prices equivalent thereto at the time when the offence was committed” (Section 20 of the Law on the Procedures for the Coming into Force and Application of the Criminal Law).

43. As mentioned above, acting as an intermediary to commit foreign bribery is punishable by a separate offence under CL Section 322. The “basic punishment” is deprivation of liberty of up to four years; community service; or a fine of 10-200 times the minimum monthly wage (EUR 3 200-64 000) (CL Sections 36, 38, 40-41 and 322). The maximum period of incarceration is thus less than that for the foreign bribery offence in CL Section 323. Latvia explained that the lower maximum punishment reflects the nature and harm of the offence to the interests of society or an individual. This explanation raises concern since both the briber and the intermediary engage in the same criminal offence and thus inflict the same harm. If a Latvian official acts as an intermediary, then the punishment is deprivation of liberty of two to ten years, with or without confiscation.

44. Overall, while incarceration is available, the maximum fine that Latvia may impose against natural persons for foreign bribery is nevertheless low. The values of the bribes and proceeds of crime in many foreign bribery cases greatly exceed the maximum fines available. Sentences in practice may therefore not be effective, proportionate and dissuasive.

3.1.2 Penalties for Legal Persons

45. Legal persons are punishable for foreign (and domestic) bribery by liquidation; restriction of rights; confiscation of property; or a monetary levy (i.e. fine) of 10-100 000 times the minimum monthly wage (EUR 3 200-32 million) (CL Sections 70²(1) and 70⁶(1)). Apart from liquidation, these sanctions may be applied cumulatively to a legal person for the same offence (CL Section 70²(2)).

3.2./3.3 Penalties and Mutual Legal Assistance / Penalties and Extradition

46. Convention Article 3(1) states that, in the case of natural persons, sanctions for foreign bribery should include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.

47. Latvia’s ability to seek and provide mutual legal assistance does not depend on whether the offence underlying the request is punishable by a certain penalty in Latvia (CPL Chapter 64; see p. 24).

48. The available sanctions for foreign bribery in Latvia allow Latvia to seek and provide extradition for this crime. Latvia can provide extradition if the conduct underlying the request is punishable in Latvia by deprivation of liberty of at least one year if the conduct occurred in Latvia. Latvia can seek extradition for offences that are punishable by deprivation of liberty of at least one year. An applicable treaty may expressly override these requirements, however.

3.4 Seizure and Confiscation

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

3.4.1 Seizure

50. Seizure and freezing is provided through an “attachment on property” under CPL Chapter 28. Property may be attached to ensure confiscation and “the resolution of financial matters in criminal proceedings” (CPL Section 361(1)). Attachable property includes those of a detained person, suspect, accused, third parties, or persons who are materially liable for the actions of a suspect or accused. Attachment further applies to the property of other persons who have criminally acquired property and property related to criminal proceedings, or who own an instrumentality of a criminal offence if seizure is required to ensure the confiscation of the value of an instrumentality of a criminal offence. In addition,

attachment may be imposed on property and financial resources in the value of criminally acquired property and the yield from such property (Section 361(1¹)). Attachment is available in proceedings against natural and legal persons (CPL Section 361(2)).

3.4.2 *Confiscation*

51. Latvia has two separate confiscation regimes depending on whether confiscation is imposed as a sanction upon a criminal conviction. Which regime applies in a foreign bribery case depends on the gravity of the offence and whether the offender is a natural or legal person.

52. Against a natural person, confiscation based on a criminal conviction is available only for aggravated foreign bribery. CL Section 42 defines confiscation as the compulsory alienation of a convicted person's property to the State without compensation. This measure applies only to specified offences in the CL. This includes aggravated foreign bribery by reason of the words "with or without confiscation" in CL Section 323(2) and (3). The non-aggravated foreign bribery offence in CL Section 323(1) does not contain similar language and thus cannot result in confiscation. Likewise, confiscation is available only for the aggravated form of intermediation in foreign bribery (CL Section 322(2)). Property that has been transferred to third parties may be confiscated.

53. For non-aggravated (and aggravated) foreign bribery, confiscation against a natural person is available under separate provisions on non-conviction based confiscation. CPL Section 358 allows a court to confiscate "criminally acquired property". Property is "criminally acquired" if it has "directly or indirectly come into the property or possession of a person as a result of a criminal offence" (CPL Section 355). This includes gains obtained from the realisation of property, and yield acquired from using criminally acquired property (CPL Section 355(4)). The provision is therefore sufficiently broad to allow the confiscation of the bribe and proceeds of foreign bribery. If confiscation is not possible because the subject property has been alienated, destroyed, concealed or disguised, then the court may order the confiscation of other property or financial resources of equivalent value (CPL Sections 358(2) and (3)).

54. As for legal persons, both conviction-based and non-conviction-based confiscation are available for aggravated and non-aggravated foreign bribery. Confiscation is a specified form of "coercive measure" that may be applied against legal persons upon conviction (CL Sections 70¹(1) and 70⁵(5)). Property owned by a legal person that is necessary to fulfil its obligations to employees, the State and creditors, is exempt from confiscation. Property that has been transferred to third parties may be confiscated. Non-conviction-based confiscation under CPL Section 358 is also available against legal persons and has been used in the Latvenergo case.¹⁰

3.5 *Additional Civil and Administrative Sanctions*

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

56. Additional administrative sanctions are available for foreign bribery in Latvia. As mentioned above, natural persons convicted of aggravated foreign bribery may be banned from engaging in specific employment or holding a specific office for up to five years. In addition, an enterprise is debarred from obtaining public procurement contracts if the enterprise, a member of its board or council, or its authorised representative has been convicted of listed offences such as "bribery", fraud or money laundering (Public

¹⁰ This 2012 case involved bribery of officials of Latvia's state-owned electricity company. Confiscation under the CPL was ordered against three legal persons.

Procurement Law Section 391(1)). Debarment takes effect when the conviction is final and has entered into force. Public Procurement Law Article 39(4) states that debarment is for three years.

4. Article 4: Jurisdiction

4.1 Territorial Jurisdiction

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

58. It is not entirely clear to what extent Latvia may prosecute offences that take place partly in its territory. Pursuant to CL Section 2(1), Latvia has jurisdiction to prosecute criminal offences that are committed “in the territory of Latvia”. The Section provides jurisdiction to prosecute both natural and legal persons, according to the Latvian authorities. However, the provision does not speak of offences that take place partly in Latvia or what part of the offence must be committed on Latvian territory. The Latvian authorities assert that the provision would be interpreted broadly. They cited one example in which a foreign enterprise and a foreign citizen were being prosecuted for a crime of trading in influence that was committed partly in Latvia. They did not refer, however, to any judicial decisions interpreting CL Section 2(1). The precise contours of this provision should be explored in Phase 2.

4.2 Nationality Jurisdiction

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

60. Latvia has jurisdiction to prosecute nationals, non-citizens and permanent residents for offences committed in the territory of another State, including foreign bribery (CL Section 4(1)). The same applies to crimes committed outside the territory of any State. Jurisdiction arises irrespective of whether the act in question is a crime in the place where it occurred (i.e. dual criminality is not required).

61. Of greater concern is the jurisdiction to prosecute a Latvian company for foreign bribery committed outside Latvia by a company employee or agent who is not a Latvian national or resident. The Latvian authorities state that they have jurisdiction to prosecute a legal person only if they also have jurisdiction to prosecute the natural person who committed the offence. In the scenario described above, CL Section 4(1) would not provide jurisdiction to prosecute the natural person briber and hence also not the legal person. The Latvian authorities state that they could resort to CL Section 4(3) which allows the prosecution of non-Latvian citizens and residents for extraterritorial crimes. However, this provision applies to crimes “directed against the Republic of Latvia or against the interests of its inhabitants”. An act of foreign bribery would not meet this criterion. The Ministry of Justice has decided to propose a legislative amendment to provide jurisdiction to prosecute legal persons in the situation described above.

4.3 Consultation Procedures

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

63. Latvia has a number of channels through which consultation may be conducted. These include formal international legal co-operation in criminal matters set out in the CPL and MLA treaties (including

with non-Parties to the Convention such as Ukraine and China). Other channels include requests and communications through institutions such as EUROJUST and the European Anti-Fraud Office (OLAF). Consultation, including with non-European countries and non-Parties, may take the form of co-ordination meetings. Criminal proceedings may also be transferred to and from Latvia pursuant to CPL Chapter 68.

4.4 *Review of Basis of Jurisdiction*

64. Convention Article 4(4) requires each Party to review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, to take remedial steps.

65. Latvia states that, while seeking and providing international criminal legal co-operation, it has not encountered any obstacles relating to its current basis for jurisdiction.

5. *Article 5: Enforcement*

66. Convention Article 5 states that foreign bribery investigations and prosecutions must be “subject to the applicable rules and principles of each Party.”

5.1 *Rules and Principles Regarding Investigations and Prosecutions*

67. In Latvia, “criminal proceedings” broadly consist of an investigation phase and a prosecution phase. Various CPL provisions govern the process.

5.1.1 *Investigation*

68. An investigator has a duty to initiate criminal proceedings if he/she receives information that a possible criminal offence has been committed (CPL Sections 6, 369(1), 370(1) and 371(1)). CPL Section 373 states that a decision not to initiate proceedings may be in writing. Latvia states that there is no legal obligation to record a detailed decision because an investigator will decide not to initiate proceedings only when it is clear that a criminal offence has not been committed. In practice the decision not to start proceedings is always in writing, but the recording of detailed reasons for the decision is optional. Internal approval is not required for an investigator to decide not to initiate proceedings. However, the person who provided the initial information must be informed of the decision. He/she may then appeal the decision to a prosecutor, or to a senior prosecutor if the decision was taken by a prosecutor.

69. The decision to commence proceedings may be based on information received by an investigating institution, Prosecutor’s Office or court. The information may be submitted by any natural or legal person, including a non-governmental organisation. Latvia states that information submitted by the FIU and information contained in MLA requests from foreign countries can be used to initiate criminal proceedings. Anonymous information or unsourced information (e.g. from unidentified whistleblowers) cannot be a basis for commencing proceedings (CPL Section 369(2)-(3)). Latvia stated that, in practice, anonymous or unsourced information could trigger a preliminary examination or investigation which could reveal additional sourced information capable of resulting in proceedings. Nevertheless, a preliminary examination is largely limited to internal investigative steps; the full panoply of criminal investigative tools cannot be used.

70. Latvia states that the Corruption Prevention and Combating Bureau (KNAB) is the primary body for investigating foreign bribery allegations.¹¹ An investigation is conducted after criminal proceedings are opened (CPL Section 397). The State Police has jurisdiction to investigate all offences except those

¹¹ The Prosecutor General may assign an investigation to a different body where appropriate.

assigned to bodies with specific competencies (CPL Section 387(1)). One such specialised body is KNAB, which has jurisdiction over offences related to political financing and “criminal offences in the State Authority Service, if such offences are related to corruption” (CPL Section 387(6) and Law on Corruption Prevention and Combating Bureau Section 8(1)2)). On its face, these provisions appear to give KNAB jurisdiction to investigate only domestic corruption cases. However, Latvia states that these provisions allow KNAB to investigate all offences (including foreign bribery) in CL Chapter XXIV which is entitled “Criminal Offences Committed in State Authority Service”. KNAB has yet to investigate a foreign bribery case, however.

71. Upon the completion of an investigation, the investigator may transfer the file to a prosecutor and propose the commencement of prosecution. Alternatively, the investigator may terminate criminal proceedings if there are sufficient grounds (see below) (CPL Sections 377, 379 and 401).

5.1.2 Prosecution

72. A public prosecutor decides whether to commence prosecution, either after receiving the investigator’s proposal, or on his/her own initiative after obtaining the investigator’s records (CPL Sections 7, 36, 39 and 403; Law on Prosecution Office Section 13). If a decision to prosecute is made, the accused receives a copy of the indictment (CPL Section 406). The prosecutor may take additional steps, such as interrogating the accused or search for the accused (CPL Sections 407 and 409). When pre-trial matters are complete, the prosecutor may send the case to court whether through urgent or summary procedures, or with the accused’s consent). Alternatively, the prosecutor may terminate proceedings, including through a conditional release from liability (CPL Section 411).

5.1.3 Termination and Suspension of Criminal Proceedings

73. Criminal proceedings may be terminated either in the investigation or prosecution stage. Proceedings are not commenced, or terminated if already commenced, for certain stipulated grounds such as if it is determined that a crime has not taken place; if the act is not a criminal offence; the statute of limitations has expired; or the alleged offender has died (CPL Section 377). Proceedings may also be terminated if the guilt of a specific individual cannot be proven and additional evidence is not available (CPL Section 392-392¹). Terminated proceedings may be re-opened, e.g. if there is new information or changed circumstances, and the statute of limitations has not expired (CPL Section 393).

74. Criminal proceedings may also be suspended for specified reasons, such as when an accused is seriously ill, in hiding, or located outside Latvia. The proceedings are re-started when the reason for the suspension ceases to exist (CPL Section 378). Criminal proceedings may also be suspended if (a) the offence is not associated with violence, (b) the person who committed the crime cannot be found within four months, and (c) the minimum investigative steps prescribed by the Prosecutor General have been taken (CPL Section 400). Latvia states that, pursuant to an order of the Prosecutor General, these minimum investigative steps include all measures necessary to ascertain the existence or non-existence of the facts constituting the elements of the offence. In Latvia’s view, foreign bribery cases would not qualify for suspension since they are too complex for the minimum investigative steps to be completed in four months.

5.1.4 Release from Liability through Effective Regret and Extortion

75. As mentioned at p. 9, extortion victims and persons who “effectively regret” may be released from criminal liability. Effective regret applies when an investigator or a prosecutor may release from liability a bribe-giver or intermediary who, after the bribe has been given, voluntarily informs the authorities of the crime, and actively furthers the disclosure and investigation of the offence. An extortion

victim may also be released from liability regardless of whether he/she reports the crime to the authorities (CL Section 324).

76. One concern is that many individuals who commit foreign bribery could qualify for immunity from prosecution as extortion victims. CL Section 324(2) defines extortion to cover bribe demands associated with threats to harm the “lawful interests” of a person, which could conceivably include interests of an economic nature. A threat by a foreign official to breach a contract or to deny participation in a tender might thus be sufficient. Extortion may also cover bribe demands in order that an official perform “legal acts”. This would thus cover solicitation of bribes by an official to perform his/her duties.

77. How these provisions are applied in practice should also be examined in Phase 2. Latvia states that prosecutors and investigators would take into account all of the circumstances when deciding whether to release someone from liability due to extortion or effective regret. Factors that would be considered include the motivation for reporting the crime to the authorities; the benefits gained by the offender from the crime; and the timeliness of reporting. Decisions to release liability may be reviewed by a prosecutor or, if taken by a prosecutor, by a more senior prosecutor. However, guidelines have not been issued to investigators and prosecutors to ensure consistent application of these provisions.

5.1.5 Settlements Including Conditional Terminations

78. The CPL provides several additional means in which investigators and prosecutors may terminate criminal proceedings with the consent and/or co-operation of an offender. Proceedings may be terminated if an offence “has not caused harm that would warrant the application of a criminal punishment”; if the offence is not serious and the offender has reached a settlement with the victim; or if it is not possible to complete the proceedings within a reasonable time (CL Section 58 and CPL Section 379). The Prosecutor General may terminate proceedings if a person substantially assists with the disclosure of an offence which is more serious than the one that he has committed (CL Section 58(3) and CPL Section 410).

79. Foreign bribery proceedings may also be terminated conditionally if the accused does not have previous convictions or conditional terminations, and substantially assists in the disclosure of other serious offences. If the offender meets the conditions imposed, then the termination becomes final. The decision to terminate conditionally must be taken by a Chief Prosecutor with the consent of a more senior prosecutor. A person whose rights or lawful interests are affected can appeal the decision to another prosecutor who is more senior than the one who consented to conditional termination (CL Section 58¹; CPL Sections 336 and 415-419). The outcome of the appeal can be further appealed to more senior prosecutors, according to Latvia. Guidelines have not been issued to investigators and prosecutors on the application of these provisions.

80. Plea agreements are available against natural persons. A prosecutor and an accused may prepare a written agreement in which the accused admits his/her guilt, agrees to a statement of the circumstances of the offence, and accepts a specified punishment. The CPL sets out the detailed procedure for negotiating and recording the agreement. The agreement is then sent to a court for approval (CPL Section 438). Plea agreements with legal persons are not available. Under CL Section 70⁶(1), a prosecutor may fix the amount of a fine against a legal person only for less serious offences, which does not include foreign bribery. Parliament has adopted a law to provide plea bargaining for legal persons which has yet to enter into force.

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

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

82. Latvia states that Article 5 is binding on its investigators and prosecutors. CPL Article 2 states that Latvia’s criminal procedure is determined by, among other things, international legal norms. Investigators and prosecutors must therefore comply with the Convention. Latvia adds that the principle of mandatory prosecution in CPL Section 6 precludes its investigators and prosecutors from considering Article 5 factors.

83. Additional provisions regulate the interaction between the prosecutors and the executive and legislative branches of government. Section 6 of the Public Prosecutor’s Law (PPL) states that prosecutors shall be independent from any influence by any other institution or official of the legislative and executive branches of government. Parliamentarians and public officials are also prohibited from interfering with the activities of the Public Prosecutor’s Office (PPO), including in investigations. However, the Prosecutor General, who heads the PPO, may attend the meetings of the Cabinet of Ministers (PPL Section 23(3)5)). Latvia states that, in practice, the Prosecutor General attends Cabinet meetings to play an advisory role, e.g. to discuss the resources of the PPO and criminal law amendments but not specific cases. The relevant statutory provisions do not impose such a limit, however. The Prosecutor General is also required to inform the President of Latvia, the Parliament and the Cabinet of Ministers of violations of law that are of national significance.

84. These provisions raise issues that should be closely examined in Latvia’s Phase 2 evaluation, including: the role of Article 5 factors in the termination of criminal proceedings by investigators and prosecutors; and the Prosecutor General’s interaction with Parliament and the Cabinet of Ministers.

6. Article 6: Statute of Limitations

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

86. The statute of limitations that applies to foreign bribery as set out in CL Section 56 is sufficiently long on its face. The limitation period for the foreign bribery offence (CL Section 323) is 10 years but increases to 15 years if the crime is committed by an organised group. The statute of limitations for intermediaries in foreign bribery (CL Section 323) is 10 years and rises to 15 years if a public official commits the crime. Time begins to run from the commission of the offence. The prosecution must charge an accused (i.e. commence prosecution) or seek his/her extradition before the limitation period expires.

87. The limitation period may be suspended under certain circumstances, but not by an outstanding MLA request. If the person commits a new criminal offence before the limitation period expires, the limitation period for the more serious offence will be calculated from the time of the commission of the new criminal offence (CL Section 56(3)). As described at p. 17, criminal proceedings may be suspended for specified reasons, such as when an accused is seriously ill, in hiding, or located outside Latvia. However, the limitation period is not also simultaneously suspended in these situations.

7. Article 7: Money Laundering

7.1 Money Laundering Offence

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

89. Latvia's money laundering offence is defined in CL Section 195(1):

Section 195. Laundering of the Proceeds from Crime

(1) For a person who commits laundering of criminally acquired financial resources or other property, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.

90. This provision raises questions in three respects. First, the offence covers the "laundering of criminally acquired financial resources or other property". All crimes (including foreign bribery) qualify as predicate offences, according to Latvia. However, the acts which amount to laundering are not defined. In particular, it is unclear whether the offence covers self-laundering, such as when a bribe-giver, intermediary or bribed official launders his/her own instrumentalities or proceeds of crime. Second, this provision does not define the phrase "criminally acquired financial resources or other property". Third, the provision does not explicitly cover the laundering of proceeds from predicate offenses committed outside Latvia.

91. In response, Latvia states the Prevention of Money Laundering and Terrorism Financing Law (AMLFTL) addresses these concerns. The AMLFTL sets out Latvia's money laundering prevention and detection regime (see below). In Latvia's view, the definitions of "laundering" and "proceeds of crime" in Sections 5 and 4 of the AMLFTL apply to the offence in CL Section 195. Section 5 of the AMLFTL also extends the application of the CL Section 195 offence to foreign predicate offences. However, the language of these provisions in the AMLFTL does not clearly so provide. Latvia provided cases in support of its position.¹² However, the predicate offences in these cases were not foreign bribery. The compliance of these provisions with the Convention should be further explored in Phase 2.

92. The basic punishment for the CL Section 195 offence is deprivation of liberty for up to three years or a fine of up to 100 times the minimum monthly wage (EUR 32 000). Confiscation of property may also be imposed. The maximum basic punishment increases to deprivation of liberty of three to eight years if the offence is committed by a group of persons pursuant to prior agreement. It further increases to 5 to 12 years with the possibility of probation of up to three years if the crime is committed by an organised group or of a large scale (i.e. involving at least 50 times the minimum monthly wage or EUR 16 000). The additional punishments described at p. 12 are also available for the basic and aggravated offences. Legal persons are punishable by liquidation; limitation of rights; confiscation of property; or a monetary levy of 10-100 000 times the minimum monthly wage (EUR 3 200-32 million) (CL Section 70²; see p. 13).

¹² Rīga City Vidzeme Suburb Court No. 15830116607 on 11 June 2010; Rīga Regional Court No. KA04-169-10/17 on 21 September 2009; Daugavpils Court No. 82504000609 on 29 June 2010; Rīga Regional Court No. KA04-169-10/17 on 13 January 2010; Rīga City Central District Court No. K-27-319/10/4 on 30 June 2010; Madona District Court on 17 May 2010; Urban District Court of Riga on 13 July 2010; Kurzeme Regional Court on 13 February 2009; see also MONEYVAL (2012), [Latvia: Report on Fourth Assessment Visit](#), para. 105.

7.2 Money Laundering Prevention, Detection and Reporting

93. The AMLFTL sets out a framework for money laundering prevention, detection and reporting. Sections 5 and 4(1)-(3) define money laundering and proceeds of crime respectively. As mentioned earlier, these definitions are different from those for the money laundering offence in CL Section 195. Pursuant to Section 3, the Law applies to range of “subjects” including financial and credit institutions, specified non-financial businesses and professionals, as well as casino and gaming operators. Section 4(4) and Chapter IX establish Latvia’s Financial Intelligence Unit (FIU) for processing and analysing information concerning suspected money laundering transactions. Other government bodies (such as the banking regulator) are responsible for supervising and ensuring that the entities under their regulation comply with the AMLFTL (Chapter VIII).

94. Chapter II of the AMLFTL requires entities subject to the Law to maintain internal control systems to detect and prevent money laundering. These include measures for customer identification and due diligence. Sections 22 and 25 impose additional requirements and enhanced due diligence for establishing and maintaining business relationships with politically exposed persons (PEPs). A 2012 MONEYVAL Report found that the Law’s definition of PEPs did not meet international standards.¹³ Section 26 prescribes situations in which due diligence may be simplified. Parliament is currently considering an amendment to the definition of PEPs.

95. Chapter IV of the AMLFTL sets out the obligation to report suspected money laundering transactions. Entities subject to the Law are required to report “unusual transactions” and “suspicious transactions” to the FIU. Suspected money laundering transactions may be suspended pursuant to AMLFTL Chapter V. The FIU is responsible for analysing the reports, forwarding information relating to criminal offences to law enforcement, and providing feedback to reporting entities. The FIU also analyses and researches money laundering trends and gathers data and statistics (Section 51).

96. Chapters X and XIII provide for information exchange between the FIU and domestic as well as foreign authorities. The FIU is required to provide information to Latvian investigative bodies, prosecutors and courts upon demand if criminal proceedings have been commenced (Sections 55-56). The FIU may provide information to its foreign counterparts if the requesting agency guarantees confidentiality, and ensures that the information is used only for agreed purposes. The information must also be used for the “prevention and detection” of offences that are criminally punishable in Latvia (dual criminality) (Section 62(1)). Information for use in foreign criminal investigations must be formally requested under an international MLA treaty and must also meet the dual criminality requirement (Section 62(5)). The FIU may issue freezing orders at the request of foreign authorities (Section 63).

8. Article 8: Accounting and Auditing

8.1 Accounting and Auditing Requirements / 8.2 Companies Subject to Requirements

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

¹³ MONEYVAL (2012), [Latvia: Report on Fourth Assessment Visit](#), paras. 604-609 and 621.

98. The Law on Accounting (LOA) sets out the general accounting standards. Section 2 states that an entity's accounting must clearly reflect all of its economic transactions and facts or events that change the state of the entity's property. Accounts must allow persons qualified in accounting to obtain a true and clear view of the entity's financial position at the date of its balance sheet, the results of its operations, and its cash flow for a specific period. Accounts must also allow a determination of the commencement of each economic transaction and its course. The accounting information must be truthful, comparable, timely, significant, understandable and complete. The head of the entity is responsible for maintaining the accounts and supporting documentation. LOA Section 7 further requires accounting entries to be supported by source documents. Accounting entries must be timely, complete, precise, systematically arranged, and reflect their supporting source documents.

99. LOA Section 1 identifies the entities to which the Law applies. The Law broadly covers merchants and other legal persons as well as individuals who perform economic activities. It applies to foreign merchant branches and non-resident (foreign merchant) permanent establishments. State and local government agencies as well as entities financed by the State or local governments are included. Also covered are co-operative societies, associations and foundations, political organisations (parties) and their associations, religious organisations, and trade unions.

100. Additional requirements for financial statements are set out in the Annual Accounts Law (AAL) and the Law on Consolidated Annual Accounts (LCAA). The AAL concerns the preparation of a company's financial statements and the report of the company management. These documents must provide a true and fair view of the company's assets, liabilities, financial position, profit or loss, and cash flow. The LCAA specifies the requirements on parent companies to prepare consolidated financial statements, and the requisite form and content of such statements.

101. Breach of accounting requirements may result in criminal sanctions. CL Section 217 establishes an offence of hiding or forging of accounting documents, financial statements, statistical reports, or statistical information prescribed by law for an undertaking (company), institution or organisation. The basic punishment for the offence is deprivation of liberty of up to one year, temporary deprivation of liberty, community service, or a fine of 5 to 150 times the minimum monthly wage (EUR 1 600-48 000). The maximum basic punishment increases to deprivation of liberty of up to three years if the offence causes significant damage to a State authority, administrative order, or the interests of persons protected by law. If the offence is committed for economic gain, the maximum basic punishment further increases to imprisonment of up to five years, community service or a fine of up to EUR 64 000. The additional punishments described at p. 12 can also be imposed for the basic and aggravated offences.

102. In addition, Section 166⁶ of the Administrative Violations Code creates an offence of failure to comply with accounting requirements specified in regulatory enactments, failure to submit financial statements on time, or providing incomplete submissions. An individual or a member of the board is punishable for this offence by a fine of EUR 70-430. Individual and board members may also be fined EUR 140-350 for avoiding the submission of the information or documents. For both offences, the individual or board member may be suspended from holding a management position in the company or on the board. Latvia states that this provision only applies to minor violations not covered by criminal law and hence would not apply in foreign bribery cases.

103. Legal persons can be held criminally liable under CL Section 70¹ (see p. 9) for accounting violations in breach of CL Section 217. The same sanctions as for foreign bribery apply, i.e. liquidation; restriction of rights; confiscation of property; or a monetary levy (i.e. fine) of 10-100 000 times the minimum monthly wage (EUR 3 200-32 million) (CL Section 70⁶(1)). A company may also be liable to other natural and legal persons for damages caused by breaches of the LOA (LOA Section 17).

104. Overall, as with the foreign bribery offence, the maximum sanctions available against natural persons for false accounting appear to be low and may not be effective, proportionate and dissuasive.

8.3 External Auditing and Internal Company Controls

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

106. The requirement for companies to submit to external audit is set out in AAL Section 62. Annual external audits are mandatory for listed (stock) companies and financial institutions.¹⁴ External audits must also be conducted for companies, co-operative societies, European economic interest groups, European co-operative societies and European companies registered in Latvia if they exceed two of the following criteria in the two previous years: (a) balance sheet of EUR 400 000; (b) net turnover of EUR 800 000; and (c) 25 employees on average.

107. Latvian external auditors are required to apply the International Standards on Auditing (ISAs) (Sections 1(12) and 28(1) of the Law on Sworn Auditors, LSA). These include ISA 240 (material misstatements in financial statements due to fraud) and ISA 250 (breaches of laws and regulations resulting in material misstatements in financial statements).

108. The LSA also contains provisions on the independence of external auditors. A sworn auditor must be independent in his/her professional activity. State and local government institutions, courts, prosecutors and pre-trial investigation institutions shall guarantee the independence of the professional activity of the sworn auditor (LSA Section 25). An audit opinion cannot be provided if independence has been jeopardised, which includes any instances where a sworn auditor is directly or indirectly interested in the audit results. Specific instances where audit independence is considered jeopardised are listed in the statute (LSA Section 26).

109. External auditors report foreign bribery uncovered during an external audit to the audited company but not competent authorities. External auditors must inform the audited company's management of "issues not included in the [audit] opinion (for example, shortcomings, errors and violations of the internal control system), which shall not affect the opinion delivered" (LSA Section 33(1)). External auditors are required to report suspected money laundering transactions but not foreign bribery to the authorities (AMLFTL Sections 3(1)3 and 30). External auditors are otherwise prohibited from disclosing "commercial secrets" obtained while performing professional duties (LSA Section 27(1)). Companies that receive reports of suspected acts of foreign bribery from an external auditor are not required to actively and effectively respond to such reports.

110. An auditor's duty of confidentiality may even inhibit law enforcement from compelling an auditor to provide information during a foreign bribery investigation. LSA Section 25(2)2 prohibits courts, prosecutors and investigators from questioning external auditors as witnesses regarding facts that they learn while providing professional services. Courts, prosecutors and investigators also cannot demand information and explanations from sworn auditors, except in cases referred to in Section 33. Section 33, however, does not apply to foreign bribery investigations since it merely obliges auditors of financial institutions to provide information to the Finance and Capital Market Commission (LSA Section 33(2)).

¹⁴ Mandatory annual external audits are also conducted on municipalities and for political organisations (parties) whose revenues in the financial year exceeds ten times the minimum monthly wage.

111. Latvia's assertion that other provisions soften this limitation is not convincing. It points out that LSA Section 27(1) allows an auditor to disclose information when he/she has "the right or a duty to do so in accordance with a court adjudication". Whether and how this would assist law enforcement in compelling an auditor to disclose is unclear. In any event, this provision must be read in conjunction with the clear prohibition against courts and law enforcement from requesting information from external auditors in LSA Section 25(2)2). Latvia also points out that an auditor may disclose information with a client's consent. This would, however, "tip off" the investigation to the client. The client may also withhold consent. The remaining exceptions to auditor confidentiality relate to suspicious money laundering transaction reporting and providing information to a replacement auditor. They do not relate to the ability of courts and law enforcement to demand information from an auditor during an investigation. The issue of auditor confidentiality should be further examined in Latvia's Phase 2 evaluation.

112. Latvia states that companies are principally responsible for developing and adopting internal company controls. ISA 200(36) makes company management responsible designing, implementing and maintaining internal controls that ensure financial statements that are free from material misstatement. However, the external auditor does consider the integrity of the audited company during an external audit. Internal audits are required under Sections 183 and 184 of the Commercial Law.

9. Article 9: Mutual Legal Assistance

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

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

9.1.1 *Criminal Matters*

114. Latvia may provide mutual legal assistance in criminal matters (MLA) with or without an applicable international treaty. Latvia is party to 11 bilateral MLA treaties, 5 of which are with other Parties to the Convention (Estonia; Norway; Poland; Russian Federation; and US). It is party to the following multilateral conventions under which MLA may be provided in foreign bribery cases: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union; European Convention on Mutual Assistance in Criminal Matters and additional protocols; Council of Europe Criminal Law Convention on Corruption; United Nations Convention against Corruption (UNCAC); and United Nations Convention against Transnational Organized Crime (UNTOC). In the absence of an applicable treaty, Latvia may nevertheless provide MLA, though reciprocity may be required (CL Section 675).

115. The investigative measures in the CPL may be provided as MLA, subject to an applicable treaty (CPL Section 673). The types of available assistance thus include taking evidence and statements from individuals; search and seizure; production of documents and evidence, including official documents and records; service of documents; and execution of sentence. Latvia states that evidence may be obtained from natural and legal persons.

116. The CPL specifies the competent authorities and the procedure for receiving and considering MLA requests. Subject to an applicable treaty, the Minister of Justice and the Prosecutor General's Office (PGO) may submit and receive requests. A Latvian competent authority may also agree with a foreign

counterpart to allow direct communication between courts, prosecutors and investigating institutions (Section 675). In pre-trial proceedings, the PGO examines and decides whether to execute an incoming request. The State Police has concurrent, similar powers in cases where criminal prosecution has not begun. For cases that have been sent to a court, the Ministry of Justice examines and decides on execution (Section 846). A request must be considered and decided upon immediately and in any event within 10 days. Additional information may be requested from the requesting State (Section 848). If approved, an investigating institution, the Prosecutor's Office or a court executes the request (Section 849).

117. The CPL also specifies the grounds for refusing an MLA request. A request may be refused if it relates to a political offence; may harm Latvia's sovereignty, security, social order and "other substantial interests"; and sufficient information has not been provided (Section 850). The execution of a request cannot be contrary to the basic principles of Latvian criminal procedure (Section 847(2)). Additional grounds apply to requests for the temporary transfer of a person (Section 854); transfer of proceedings (Sections 723-748); execution of a sentence (Sections 749-789); and confiscation (Sections 790-800). The requirement of dual criminality and information covered by bank secrecy are discussed at p. 25 and 26.

118. A specific regime applies to requests from European Union (EU) Member States in relation to specified offences, including corruption, money laundering, and fraud (CPL Section 860). An EU Member may request Latvia to execute a "procedural adjudication" that has been issued in the Member to attach property or to acquire evidence. The request must be accompanied by a certificate. The PGO must evaluate the request without delay and in any event within 24 hours of receipt. The request may be refused if the certification is missing or defective; or if immunity from criminal prosecution or double jeopardy (*non bis in idem*) applies (Section 861). The requirement of dual criminality is discussed below. Execution of the request may be delayed due to specified grounds, such as if execution is harmful to criminal proceedings in Latvia (Section 862). Additional provisions apply to requests for security measures not involving a deprivation of liberty (Sections 866-875).

9.1.2 *Non-Criminal Matters*

119. The CPL does not *per se* contemplate the provision of MLA for use in non-criminal proceedings brought by a foreign State against a legal person concerning foreign bribery or related offences. Latvia states that, in these cases, the PGO would examine the "object and essence of the request", as well the description and legal classification of the underlying offence. The request would then be executed if the offence "corresponds to a criminal offence provided for in the Criminal Law".

9.2 *Dual Criminality for MLA*

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

121. Latvia generally does not require dual criminality before providing MLA but there are exceptions. First, Latvia may refuse a request for a "compulsory measure" if the underlying offence is not criminally punishable in Latvia and if a treaty does not apply to the request. If a treaty does apply, then the request may nevertheless be refused if the requesting State requires dual criminality before it provides MLA of a similar nature to other States (CPL Section 852). Second, MLA for "special investigative actions"¹⁵ may be granted only if such actions would be admissible in criminal proceedings in Latvia for

¹⁵ "Special investigative actions" are described in CPL Chapter 11 and include control of legal correspondence; control of means of communication; control of data in an automated data processing system; control of the content of transmitted data; eavesdropping; video surveillance; surveillance and

the same offence (CPL Section 853). Third, a request for confiscation will be executed only if the Criminal Law provides for confiscation as a basic or additional punishment for the same offence, or if the property would be confiscated in criminal proceedings under another law.

122. Dual criminality may also be required for an EU Member request to execute a “procedural adjudication” that has been issued in the Member to attach property or to acquire evidence (see p. 25). Whether dual criminality is required depends on whether the offence underlying the request is listed in CPL Annex 2, which includes corruption, money laundering or fraud. For listed offences, Latvia would not examine whether dual criminality exists only if the offence is punishable by deprivation of liberty of at least three years in the requesting State (CPL Section 860(6)). For offences that are not listed in Annex 2, dual criminality is generally required (CPL Section 861(1)4).

9.3 *Bank Secrecy*

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

124. The rules on bank secrecy apply equally to domestic investigations and foreign MLA requests seeking bank information. Bank secrecy covers “non-disclosable information” held by credit and financial institutions. This is broadly defined as “information regarding a client and his or her transactions, which the credit institution acquires in providing financial services in accordance with an entered contract” (Section 62(5) of the Credit Institutions Law, CIL). Such information may be requested in pre-trial proceedings only with the decision of an investigating judge. Accounts can also be monitored only with the permission of an investigating judge for up to three months (which may be renewed) (CPL Section 121(5); CIL Section 63). By contrast, the FIU does not need judicial authorisation to obtain secret bank information (CIL Section 63(1)2).

125. In deciding whether to lift bank secrecy, it is not entirely clear what factors the investigating judge would consider, or what supporting evidence is necessary. The CPL does not contain provisions that explicitly address these questions. Latvia states that the investigating judge is only required to abide by the general duty in CPL Section 40 to “control the observance of human rights” in criminal proceedings. The judge would also “reflect on the link between the requested information and the criminal offence, as well as the importance of the requested information for the investigation”. Latvia did not provide the statutory basis of this statement. The investigating judge has seven days to review a request to lift bank secrecy (CPL Section 324(2)).

126. A further question relates to providing confidential bank information without an applicable treaty. CIL Section 63(4) states that “non-disclosable information shall be provided by credit institutions to another Member State and foreign state court and investigatory institutions *according to the procedures specified in international agreements*” (italics added). Latvia thus may not be able to provide such information to a foreign country with which it does not have a bilateral or multilateral MLA agreement. MLA arguably may also not be provided to a country with which Latvia has an MLA agreement that does not specifically provide for the exchange of confidential bank information. Latvia confirms that the Convention is a treaty basis for lifting bank secrecy under CIL Art. 63(4). Hence, Latvia will provide information covered by bank secrecy to Parties and non-Parties to the Convention for use in foreign bribery investigations.

tracking of a person; surveillance of an object; a special investigative experiment; acquisition of the samples necessary for a comparative study; and control of a criminal activity.

10. Article 10: Extradition

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

10.1 Extradition for Bribery of a Foreign Public Official / 10.2 Legal Basis for Extradition

128. Latvia may seek and provide extradition with or without an applicable international treaty. Latvia is party to ten bilateral treaties that provide for extradition,¹⁶ five of which are with other Parties to the Convention (Australia, Estonia, Poland, Russian Federation, and US). In addition to the Anti-Bribery Convention, Latvia is party to the following multilateral arrangements under which extradition may be provided in foreign bribery cases: Council of Europe European Convention on Extradition and additional protocols; Council of Europe Criminal Law Convention on Corruption; UNCAC; UNTOC; and the European Arrest Warrant. In the absence of an applicable treaty, Latvia may nevertheless seek and provide extradition. Reciprocity may be required (CL Section 675).

129. The mandatory conditions for extradition from Latvia are set out in CPL Sections 696 and 697(2). Subject to an applicable treaty, the conduct underlying an extradition request, had it occurred in Latvia, must be punishable under Latvian law by deprivation of liberty of at least one year or a more serious punishment. Extradition will be refused if the person sought is a Latvian citizen (see below for more details); extradition is motivated by discrimination or persecution; a Latvian court has adjudicated on the same offence regarding the person sought; the offence would have been barred by the statute of limitations or an amnesty in Latvia; the person sought has been granted clemency; or if extradition may result in the death penalty or torture.

130. Latvia may refuse extradition on additional grounds described in CPL Section 697(1). These include cases where there is no applicable treaty between Latvia and the requesting state; the offence occurs wholly or partly in Latvia; Latvia tries the person sought for the same offence; Latvia decides to terminate or not to commence proceedings for the same offence; extradition is sought for a political or military offence; and the person sought has been convicted *in absentia* and a retrial is not guaranteed.

131. The CPL specifies the competent authorities and the procedure for receiving and considering extradition requests. Subject to an applicable treaty, the PGO may submit and receive requests.¹⁷ The PGO must examine an incoming request within 20 days of receiving the request or additional information that the foreign state has provided at Latvia’s request. The purpose of the examination is to determine whether the grounds for extradition and reasons for refusal exist (Section 704). If the PGO decides to grant extradition, the person sought has ten days to appeal the decision to a court (Section 705). Once the PGO’s decision becomes final, the Cabinet (on the proposal of the Minister of Justice) decides whether to surrender the person sought. Surrender may be refused if extradition would harm Latvia’s sovereignty; the offence is of a political or military nature; or extradition is sought on the basis of discrimination or persecution (Section 708). The entire process may be expedited if the person sought consents to extradition (Section 713).

¹⁶ These include bilateral extradition treaties and bilateral MLA treaties that contain extradition provisions.

¹⁷ Latvia states that CPL Section 675, which allows direct communication between courts, prosecutors and investigating institutions, applies to MLA but not extradition.

132. Separate CPL provisions apply to extradition based on the European Arrest Warrant (EAW). There are generally fewer and different grounds for denying extradition under an EAW (Section 714). For example, the statute of limitation is an optional and not mandatory ground for denying extradition. The procedure is also more expedited. The PGO need not examine whether the offence underlying extradition is criminal under Latvian law if the offence (a) is listed in CPL Annex 2, which includes corruption, money laundering and fraud; and (b) is punishable in the requesting state by at least three years' imprisonment (Section 714(2)). Once the PGO decides to extradite, the person sought may be surrendered; further deliberations by the Cabinet are not required (Section 721).

10.3 Extradition of Nationals

133. Article 10(3) of the Convention requires each Party to take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of foreign bribery. A Party that declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution (*aut dedere aut judicare* respectively *aut dedere aut punire*).

134. Latvia is a state party to the European Convention on Extradition and has made a reservation under that Convention in relation to the extradition of its own nationals. Latvia in principle does not extradite its own nationals, unless a multi- or bilateral treaty is in place or when the person concerned specifically agrees to being extradited. Furthermore, Latvia extradites its nationals to EU Member countries pursuant to an EAW or an applicable bilateral treaty. Article 98 of Latvia's Constitution permits the extradition of Latvian nationals in cases provided for by a binding international treaty, and if extradition would not result in the violation of basic human rights. The CPL likewise bars the extradition of Latvian citizens (CPL Section 697(2)1) apart from two exceptions. First, extradition is subject to applicable international legal norms (CPL Sections 2 and 674(1)). Latvian nationals may thus be extradited if an applicable treaty so provides (e.g. Latvia's bilateral extradition treaty with the US). Second, a Latvian citizen may be extradited pursuant to an EAW on the condition that he/she would be returned to Latvia to serve any sentence (Section 714(3)-(4)). There are no provisions explicitly requiring Latvia to prosecute a national whose extradition has been refused solely on grounds of nationality. However, Latvia states that the principle of mandatory prosecution would require its authorities to exercise nationality jurisdiction to prosecute such cases.

10.4 Dual Criminality for Extradition

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

136. Dual criminality is required for extradition from Latvia. As mentioned above, the conduct underlying an extradition request, had it occurred in Latvia, must be punishable under Latvian law by deprivation of liberty of at least one year or a more serious punishment (CPL Section 696).

11. Article 11: Responsible Authorities

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

138. Latvia has made the following designations. For the purposes of consultations under Article 4(3) and MLA under Article 9 of the Convention, the PGO is the responsible authority for cases in the pre-trial phase. Otherwise, the Ministry of Justice is the responsible authority. For extradition under Article 10, the PGO is the responsible authority in all cases.

B. IMPLEMENTATION OF THE 2009 ANTI-BRIBERY RECOMMENDATION

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

1. Tax Deductibility

140. The Anti-Bribery Recommendation VIII recommends “that Member countries explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner”, and that “in accordance with their legal systems” they “establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities”.

141. Latvia expressly denies the tax deduction of bribes through Section 5(9) of the Law on Enterprise Income Tax (LEIT) which entered into force on 7 March 2013. Under LEIT, “expenses unrelated to economic activity” cannot be deducted from taxes.¹⁸ Such expenses include bribes:

5(9) The expenses which are not directly related to economic activity shall include material values, properties or benefits of other nature, used for committing a criminal offence, including those ones given to a State official as a bribe or given to the state authority or local government employee, who is not a State official, or to the same kind of person authorised by the state authority for committing illegal activities, as well as to a private person for commercial bribery purposes.

142. This provision also applies to taxable income of individuals who engage in economic activities, according to the Law on Personal Income Tax (Section 11(4)).

¹⁸ Under LEIT Sections 4 and 5, a company’s taxable income is its net profit or loss, plus 1.5 times the value of expenses unrelated to economic activity. The tax rate is then applied to the taxable income to determine the tax payable. In effect, not only are expenses unrelated to economic activity ineligible for tax deduction, they are taxed at a 50% higher rate than a company’s income. Expenses related to economic activity are not taxed (i.e. are deducted) since they are accounted for when determining the company’s net profit or loss.

EVALUATION OF LATVIA

General Comments

143. The Working Group commends the Latvian authorities for their co-operation and openness during the evaluation process. The Group appreciates the feedback provided by the authorities during the drafting of the report to ensure a comprehensive and effective basis for the evaluation.

144. Section 323 of Latvia's Criminal Law (CL) criminalises bribery of foreign public officials. The Working Group considers that Latvia's legislation largely conforms to the standards of the Convention, subject to the issues noted below. In addition, some aspects of the legislation should be followed up during Latvia's Phase 2 evaluation.

Specific Issues

Foreign Bribery Offence

Offer, promise or give

145. Unlike the Convention, CL Section 323 expressly criminalises the "handing over" and the "offering" but not the "promise" of bribes. Latvian criminal law experts consider that "offer" and "promise" have the same meaning in the Latvian language. These two terms are not synonymous under the Convention, however. The extent to which Latvian law covers a "promise" to bribe should be further examined in Phase 2 with Latvian authorities, academics and legal practitioners.

Definition of a foreign public official

146. The Working Group will follow up in Phase 2 whether the term an "any of [a foreign country's] administrative unit" in the definition of a foreign public official includes "all levels and subdivisions of government, from national to local, and officials of organised foreign areas or entities".

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

147. Latvia's foreign bribery offence only applies if bribery is committed in return for an act or omission of an official that is "in the interests of the giver or person offering the bribe, or in the interests of other persons". According to Latvia, this phrase is meant to reflect that Article 1 of the Convention only applies to bribes paid "to obtain or retain business or other improper advantage in the conduct of international business". The Working Group will follow up in Phase 2 whether the term "interests" in CL Section 323 necessarily equates with "business or other improper advantage" in Article 1 of the Convention. It will also examine whether CL Section 323(1) covers bribes paid in the interest of a legal – as opposed to natural – person.

Liability of Legal Persons

148. The Working Group will follow up the application of Latvia's corporate liability legislation, including the following issues: (i) the interpretation of various phrases such as "private law legal persons", "in the interests or for the benefit of the legal person" and "supervision or control" in CL Section 70¹; (ii) whether corporate liability for failure to exercise supervision or control arises even when foreign bribery is not committed "in the interests or for the benefit of the legal person"; (iii) whether the burden on the prosecution to prove a failure to exercise supervision or control presents a challenge in practice;

(iv) whether corporate liability arises when a person with senior managerial authority “directs” or “authorises” (as opposed to “commits”) foreign bribery; and (v) whether proceedings against a legal person can be commenced if the natural person perpetrator dies or absconds before proceedings can be launched against him/her.

Sanctions for Foreign Bribery and Related Offences

149. In Latvia, acting as an intermediary to commit foreign bribery is subject to lower maximum penalties than committing foreign bribery. This raises concern since both the briber and the intermediary engage in the same criminal offence and thus inflict the same harm. The Working Group urges Latvia to take legislative action to eliminate this discrepancy in the sanctions for the two offences.

150. A second concern relates to the maximum penalties available for foreign bribery and related offences. At EUR 64 000, the maximum fine that Latvia may impose against natural persons for foreign bribery is too low. The maximum fines for money laundering (EUR 32 000) and false accounting (EUR 64 000) are also low. The maximum jail sentence for non-aggravated false accounting is only one year. The Working Group therefore recommends that Latvia amend its legislation to increase these sanctions.

Jurisdiction

151. The Latvian authorities have jurisdiction to prosecute a legal person only if they also have jurisdiction to prosecute the natural person who committed the offence. They therefore cannot prosecute a Latvian company for foreign bribery committed outside Latvia by a company employee or agent who is not a Latvian national or resident. The Working Group urges Latvia to amend its legislation to rectify this deficiency. It will also follow up in Phase 2 the scope of Latvia’s territorial jurisdiction to prosecute foreign bribery.

Investigation of Foreign Bribery

152. The procedure for commencing criminal proceedings raises two concerns. First, there is no legal obligation to record a detailed decision not to initiate proceedings because an investigator will decide not to initiate proceedings only when it is clear that a criminal offence has not been committed. In practice the decision not to start proceedings is always in writing, but the recording of detailed reasons for the decision is optional. The Working Group will follow up this issue in Phase 2.

153. Second, Latvia cannot commence criminal proceedings based on anonymous information or unsourced information, even though these are important sources for detecting foreign bribery allegations. Latvia stated that, in practice, anonymous or unsourced information could trigger a preliminary examination or investigation which could reveal additional sourced information capable of resulting in proceedings. Nevertheless, a preliminary examination is largely limited to internal investigative steps; the full panoply of criminal investigative tools cannot be used. The Working Group will follow up this issue in Phase 2.

Release from Liability through Effective Regret and Extortion

154. The Working Group is concerned that many individuals who commit foreign bribery could be released from liability as extortion victims. CL Section 324(2) defines extortion to cover bribe demands associated with threats to harm the “lawful interests” of a person, which could conceivably include interests of an economic nature. A threat by a foreign official to breach a contract or to deny participation in a tender might thus be sufficient. Extortion may also cover bribe demands in order that an official perform “legal acts”. This would thus cover solicitation of bribes by an official to perform his/her duties.

The Working Group will follow up in Phase 2 the application in practice of the provisions on the release of offenders from liability for foreign bribery due to extortion or effective regret.

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

155. Latvia states that Article 5 is binding on its investigators and prosecutors. Additional legislative provisions stipulate the independence of the Public Prosecutor's Office (PPO). Nevertheless, the Prosecutor General, who heads the PPO, may attend the meetings of the Cabinet of Ministers. He/she is also required to inform the President of Latvia, the Parliament and the Cabinet of Ministers of violations of law that are of national significance. The Working Group will closely examine in Latvia's Phase 2 evaluation the role of Article 5 factors in the termination of criminal proceedings by investigators and prosecutors; and the Prosecutor General's interaction with Parliament and the Cabinet of Ministers.

Money Laundering

156. Latvia's money laundering offence in CL Section 195(1) does not explicitly address the acts which amount to laundering, the types of property capable of being laundered, or money laundering predicated on offenses committed outside Latvia. Latvia states that the Prevention of Money Laundering and Terrorism Financing Law (AMLFTL) apply to the money laundering offence and addresses these concerns. The Working Group will follow up in Phase 2 case law and practice in this respect. It will also further examine the definition of "politically exposed persons" in the AMLFTL.

Accounting and Auditing

157. External auditors report foreign bribery uncovered during an external audit to the audited company but not competent authorities. An auditor's duty of confidentiality may even inhibit law enforcement from compelling an auditor to provide information during a foreign bribery investigation. LSA Section 25(2)2 prohibits courts, prosecutors and investigators from questioning external auditors as witnesses regarding facts that they learn while providing professional services. Courts, prosecutors and investigators also cannot demand information and explanations from sworn auditors, except in cases referred to in LSA Section 33. The Working Group will follow up in Phase 2 the impact of an auditor's confidentiality obligations on the detection and reporting of foreign bribery.

158. In the meantime, Latvia should (a) encourage companies that receive reports of suspected acts of bribery of foreign public officials from an external auditor to actively and effectively respond to such reports; and (b) consider requiring external auditors to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities, and for those countries that permit such reporting, ensure that auditors making such reports reasonably and in good faith are protected from legal action (2009 Anti-Bribery Recommendation X.B.iv and v).

Bank Secrecy

159. Latvian legislation allows information covered by bank secrecy to be provided to foreign authorities according to the procedures specified in international agreements. The Convention is a treaty basis for lifting bank secrecy under CIL Art. 63(4). Hence, Latvia will provide information covered by bank secrecy to Parties and non-Parties to the Convention for use in foreign bribery investigations. The Working Group will follow up in Phase 2 the application of this provision in practice.

160. In addition, Latvian legislation allows an investigating judge to order the release of information covered by bank secrecy for use in pre-trial proceedings. The legislation does not, however, clearly

describe what factors the investigating judge would consider, or what supporting evidence is necessary. The Working Group will follow up in Phase 2 the application of the relevant provisions in practice.

Extradition of Nationals

161. Latvia does not extradite its nationals unless a multi- or bilateral treaty is in place or when the person concerned specifically agrees to being extradited. Furthermore Latvia extradites its nationals to EU Member countries pursuant to an EAW or an applicable bilateral treaty. There are no provisions requiring Latvia to prosecute a national whose extradition has been refused solely on grounds of nationality. Latvia should amend its legislation in this respect to comply with Article 10(3) of the Convention and the principle of *aut dedere aut judicare* respectively *aut dedere aut punire*.

ANNEX 1 LIST OF ABBREVIATIONS AND ACRONYMS

AAL	Annual Accounts Law	LEIT	Law on Enterprise Income Tax
AML	anti-money laundering	LSA	Law on Sworn Auditors
AMLFTL	Prevention of Money Laundering and Terrorism Financing Law	LOA	Law on Accounting
CIL	Credit Institutions Law	MLA	mutual legal assistance in criminal matters
CL	Criminal Law	MOJ	Ministry of Justice
CPL	Criminal Procedure Law	MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Council of Europe)
EAW	European Arrest Warrant		
EU	European Union		
EUR	euro	PEP	politically exposed person
FATF	Financial Action Task Force	PGO	Prosecutor General's Office
FIU	Financial Intelligence Unit of Latvia	PPL	Public Prosecutor's Law
IFRS	International Financial Reporting Standards	PPO	Public Prosecutor's Office
ISA	International Standards on Auditing	SOE	state-owned or state-controlled enterprise
KNAB	Corruption Prevention and Combating Bureau	UN	United Nations
LCAA	Law on Consolidated Annual Accounts	UNCAC	United Nations Convention against Corruption
		UNTOC	United Nations Convention on Transnational Organised Crime

ANNEX 2 EXCERPTS OF RELEVANT LEGISLATION

Criminal Law

Section 2. Application of The Criminal Law in the Territory of Latvia

- (1) The liability of a person who has committed a criminal offence in the territory of Latvia shall be determined in accordance with this Law.
- (2) If a foreign diplomatic representative, or other person, who, in accordance with the laws in force or international agreements binding upon the Republic of Latvia, is not subject to the jurisdiction of the Republic of Latvia, has committed a criminal offence in the territory of Latvia, the issue of this person being held criminally liable shall be decided by diplomatic procedures or in accordance with bilateral agreements of the states.

Section 4. Applicability of The Criminal Law Outside the Territory of Latvia

- (1) Latvian citizens, non-citizens and foreigners who have a permanent residence permit for the Republic of Latvia, shall be held liable, in accordance with this Law, in the territory of Latvia for an offence committed in the territory of another state or outside the territory of any state regardless of whether it has been recognised as criminal and punishable in the territory of commitment.
- (2) Soldiers of the Republic of Latvia who are located outside the territory of Latvia shall be held liable for criminal offences in accordance with this Law, unless it is provided otherwise in international agreements binding upon the Republic of Latvia.
- (3) Foreigners who do not have permanent residence permits for the Republic of Latvia and who have committed serious or especially serious crimes in the territory of another state which have been directed against the Republic of Latvia or against the interests of its inhabitants, shall be held criminally liable in accordance with this Law irrespective of the laws of the state in which the crime has been committed, if they have not been held criminally liable or committed to stand trial in accordance with the laws of the state where the crime was committed.
- (4) Foreigners who do not have a permanent residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another state, in the cases provided for in international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with this Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state.

Section 9. Commission of a Criminal Offence Deliberately (Intentionally)

- (1) A criminal offence shall be considered to have been committed deliberately (intentionally) if the person has committed it with a direct or indirect intent.
- (2) A criminal offence shall be considered to have been committed with a direct intent if the person has been aware of the harm caused by his or her act or failure to act and has intentionally committed it or also been aware of the harm caused by his or her action or failure to act, foreseen the harmful consequences of the offence and has desired them.
- (3) A criminal offence shall be considered to have been committed with an indirect intent if the person has been aware of the harm caused by his or her act or failure to act, foreseen the harmful consequences of the offence and, although has not desired such consequences, has knowingly allowed them to result.

Section 12. Liability of a Natural Person in the Case of a Legal Person

For the criminal offences committed by a natural person in the interests, for the benefit or as a result of a lack of supervision or control by a private law legal person, the natural person shall be criminally liable but coercive measures provided for in this Law may be applied to a legal person.

Section 15. Completed and Uncompleted Criminal Offences

- (1) A criminal offence shall be considered completed if it has all the constituent elements of a criminal offence set out in this Law.
- (2) Preparation for a crime and an attempted crime are uncompleted criminal offences.
- (3) The locating of, or adaptation of, means or instrumentalities, or the intentional creation of circumstances conducive for the commission of an intentional offence, shall be considered to be preparation for a crime if, in

addition, it has not been continued for reasons independent of the will of the guilty party. Criminal liability shall result only for preparation for serious or especially serious crimes.

- (4) A conscious act (failure to act), which is directly dedicated to intentional commission of a crime, shall be considered to be an attempted crime if the crime has not been completed for reasons independent of the will of the guilty party.
- (5) Liability for preparation for a crime or an attempted crime shall apply in accordance with the same Section of this Law as sets out liability for a specific offence.
- (6) A person shall not be held criminally liable for an attempt to commit a criminal violation.

Section 19. Participation

Criminal acts committed knowingly by which two or more persons (that is, a group) jointly, knowing such, have directly committed an intentional criminal offence shall be considered to be participation (joint commission). Each of such persons is a participant (joint perpetrator) in the criminal offence.

Section 20. Joint Participation

- (1) An act or failure to act committed knowingly, by which a person (joint participant) has jointly with another person (perpetrator), participated in the commission of an intentional criminal offence, but he himself or she herself has not been the direct perpetrator of it, shall be considered to be joint participation. Organisers, instigators and abettors are joint participants in a criminal offence.
- (2) A person who has organised or directed the commission of a criminal offence shall be considered to be an organiser.
- (3) A person who has induced another person to commit a criminal offence shall be considered to be an instigator.
- (4) A person who knowingly has promoted the commission of a criminal offence, providing advice, direction, or means, or removing impediments for the commission of such, as well as a person who has previously promised to conceal the perpetrator or joint participant, the instrumentalities or means for committing the criminal offence, trail of the criminal offence or the objects acquired by criminal means or has previously promised to acquire or to sell these objects shall be considered to be an abettor.
- (5) A joint participant shall be held liable in accordance with the same Section of this Law which provides for the liability of the perpetrator.
- (6) Individual constituent elements of a criminal offence which refer to a perpetrator or joint participant do not affect the liability of other participants or joint participants.
- (7) If a joint participant has not had knowledge of a criminal offence committed by a perpetrator or other joint participants, he or she shall not be held criminally liable for such.
- (8) If the perpetrator has not completed the offence for reasons independent of his or her will, the joint participants are liable for joint participation in the relevant attempted offence. If the perpetrator has not commenced commission of the offence, the joint participants are liable for preparation for the relevant offence.
- (9) Voluntary withdrawal, by an organiser or instigator from the completing of commission of a criminal offence shall be considered as such only in cases when he or she, in due time, has done everything possible to prevent the commission with his or her joint participation of the contemplated criminal offence and this offence has not been committed. An abettor shall not be held criminally liable if he or she has voluntarily refused to provide promised assistance before the commencement of the criminal offence.

Section 42. Confiscation of Property

- (1) Confiscation of property is the compulsory alienation to State ownership without compensation of the property owned by a convicted person. Confiscation of property may be specified as an additional punishment. Property owned by a convicted person, which he or she has transferred to another natural or legal person, may also be confiscated.
- (2) Confiscation of property may be specified only in the cases provided for in the Special Part of this Law.
- (3) A court, in determining confiscation of property, shall specifically indicate which property is to be confiscated. A court, in determining confiscation of property for a criminal offence against traffic safety, shall relate it to the vehicle.
- (4) The indispensable property of the convicted person or of his or her dependants, which may not be confiscated, is that specified by law.

Section 56. Criminal Liability Limitation Period

(1) A person may not be held criminally liable if from the day when he or she committed the criminal offence, the following time period has elapsed:

- 1) [Repealed 21 October 2010];
- 2) two years after the day of commission of a criminal violation;
- 3) five years after the day of commission of a less serious crime;
- 4) ten years after the day of commission of a serious crime;
- 5) fifteen years after the day of commission of an especially serious crime, except for a crime for which, in accordance with law, life imprisonment may be adjudged;
- 6) twenty years after the day of commission of a serious crime or especially serious crime if the crime was against morality and sexual inviolability of a minor, except a crime for which life imprisonment may be adjudged according to the law.

(2) The limitation period shall be calculated from the day when the criminal offence has been committed until when charges are brought or the accused has been issued an official extradition request if the accused resides in another state and a search warrant has been issued for him or her.

(3) The running of the limitation period is interrupted if, before the date of termination of the period prescribed in Paragraph one of this Section, the person who has committed the criminal offence commits a new criminal offence. In such case, the limitation period provided for the more serious of the committed criminal offences shall be calculated from the time of the commission of the new criminal offence.

(4) The issue of the applicability of a limitation period, in respect of a person who has committed a crime for which life imprisonment may be imposed, shall be decided by a court if thirty years have passed since the day of commission of the crime.

Section 70.¹ Basis for the Application of Coercive Measures to Legal Persons

For the criminal offences provided for in the Special Part of this Law, coercive measures may be applied by a court or in the cases provided in law by a public prosecutor to a private law legal person, including a state or a municipal capital company, as well as a partnership, if the criminal offence has been committed in the interests or for the benefit of the legal person or as a result of a lack of supervision or control by a natural person acting as an individual or as a member of the collegial institution of the relevant legal person:

- (1) on the basis of a right to represent the legal person or to act on behalf of such legal person;
- (2) on the basis to take decisions in the name of such legal person,
- (3) realising control within the scope of the legal person.

Section 70.² Types of Coercive Measures Applicable to Legal Persons

(1) For a legal person one of the following coercive measures may be specified:

- 1) liquidation;
- 2) restriction of rights;
- 3) confiscation of property; or
- 4) monetary levy.

(2) For a legal person one or several of the coercive measures provided for in Paragraph one of this Section may be applied. In applying liquidation, other coercive measures shall not be specified.

(3) The procedures for execution of coercive measures shall be determined in accordance with the law.

(4) For a criminal violation provided for in the Special Part of this Law and a less serious crime a public prosecutor, in drawing up an injunction regarding coercive measure, may determine monetary levy or restriction of rights as a coercive measure to a legal person.

Section 70.⁶ Monetary Levy

(1) A monetary levy is a sum of money, which is imposed by a court or public prosecutor to be paid for the benefit of the State within 30 days. Monetary levy, in conformity with the seriousness of the criminal offence and the financial circumstances of a legal person, shall be determined in the amount of not less than ten thousand and not exceeding hundred thousand times the minimum monthly wage specified in the Republic of Latvia at the time of the rendering of the adjudication, indicating in the adjudication the amount of the monetary levy in the

monetary units of the Republic of Latvia. A public prosecutor may, in an injunction regarding a coercive measure, apply not more than half of the maximum amount of monetary levy provided for in this Section, complying to the amount of the minimum wage specified in the Republic of Latvia at the time of drawing up the referred to injunction and indicating therein the sum of such monetary levy in the monetary units of the Republic of Latvia.

- (2) A monetary levy, which has been imposed upon a legal person, shall be paid from the funds of the legal person.
- (3) A court or public prosecutor accordingly may divide the payment of the monetary levy into periods or postpone for a time period not exceeding one year from the day when an adjudication or injunction regarding coercive measure has entered into effect.
- (4) If the monetary levy has not been paid, the coercive measure shall be implemented by compulsory procedures.

Section 195. Laundering of the Proceeds from Crime

- (1) For a person who commits laundering of criminally acquired financial resources or other property, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.
- (2) For a person who commits the same acts, if they have been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.
- (3) For a person who commits the acts provided for by Paragraph one of this Section, if commission thereof is on a large scale, or if commission thereof is in an organised group, the applicable punishment is deprivation of liberty for a term of not less than three and not exceeding twelve years, with or without confiscation of property and with or without probationary supervision for a term not exceeding three years.

Section 217. Violation of Provisions Regarding Accounting and Statistical Information

- (1) For a person who commits hiding or forging of accounting documents, annual accounts, statistical reports or statistical information prescribed by law for an undertaking (company), institution or organisation, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine.
- (2) For a person who commits the same acts if they have caused substantial harm to the State authority or local government order, or the interests of persons protected by law as a result thereof, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.
- (3) For a person who commits the criminal offence provided for in Paragraph two of this Section, if it has been committed for acquiring property, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine.

Section 316. Concept of a State Official

- (1) Representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions regarding supervision, control, investigation, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials.
- (2) The President, members of the Saeima, the Prime Minister and members of the Cabinet as well as officials of State institutions who are elected, appointed or confirmed by the Saeima or the Cabinet, heads of local government, their deputies and executive directors shall be considered to be State officials holding a responsible position.
- (3) As State officials shall also be considered foreign public officials, members of foreign public assemblies (institutions with legislative or executive functions), officials of international organisations, members of international parliamentary assemblies, as well as international court judges and officials.

Section 322 Intermediation in Bribery

- (1) For a person who commits intermediation in bribery, that is, acts manifested as the handing over of a bribe or the offering thereof from the giver of the bribe to a person accepting the bribe, the applicable punishment is deprivation of liberty for a term not exceeding four years or temporary deprivation of liberty, or community service or a fine.

- (2) For a person who commits the same acts, if they have been committed by a State official, the applicable punishment is deprivation of liberty for a term of not less than two and not exceeding ten years, with or without confiscation of property.

Section 323. Giving of Bribes

- (1) For a person who commits giving of bribes, that is, the handing over or offering of material values, properties or benefits of other nature in person or through intermediaries to a State official in order that he or she, using his or her official position, performs or fails to perform some act in the interests of the giver or person offering the bribe, or in the interests of other persons, irrespective of whether the bribe offered is for this State official or for any other person, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service or a fine.
- (2) For a person who commits the same acts, if commission thereof is on a large scale or if they have been committed by a State official, or also if they have been committed in a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term not exceeding eight years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.
- (3) For the acts provided for in Paragraph one of this Section, if committed in an organised group, the applicable punishment is deprivation of liberty for a term of not less than two and not exceeding ten years, with or without confiscation of property, with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years and with probationary supervision for a term not exceeding three years.

Section 324 Release of a Giver of a Bribe and Intermediary from Criminal Liability

- (1) A person who has given a bribe may be released from criminal liability if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence. A person who has given a bribe may be released from criminal liability if he or she voluntarily informs of the occurrence and has actively furthered the disclosure and investigation of the offence.
- (2) Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.
- (3) An intermediary or abettor respecting a bribe may be released from criminal liability if, after commission of the criminal act, he or she voluntarily informs of the occurrence and has actively furthered the disclosure and investigation of the offence.

Criminal Procedure Law

Section 355. Criminally Acquired Property

- (1) Property shall be recognised as criminally acquired, if such property directly or indirectly has come into the property or possession of a person as a result of a criminal offence.
- (2) If the opposite has not been proven, property, including financial resources, shall be recognised as criminally acquired if such property or resources belong to a person who:
 - 1) is a member of an organised criminal group, or supports such group;
 - 2) has him or herself engaged in terrorist activities, or maintains permanent relations with a person who is involved in terrorist activities;
 - 3) has him or herself engaged in the trafficking of human beings, or maintains permanent relations with a person who is engaged in the trafficking of human beings;
 - 4) has him or herself engaged in criminal activities with narcotic or psychotropic substances, or maintains permanent relations with a person who is engaged in such activities;
 - 5) has him or herself engaged in criminal activities with counterfeit currency, State financial instruments or maintains constant relations with a person who is involved in such activities;
 - 6) has him or herself engaged in criminal activities in order to cross the State boundary or to promote relocation of another person across the State boundary, or to ensure a possibility to other persons to reside illegally in the Republic of Latvia, or maintains constant relations with a person who is involved in such activities;

- 7) has him or herself engaged in criminal activities in relation to child pornography or sexual abuse of children, or maintains constant relations with a person who is involved in such activities.
- (3) Within the meaning of this Section, the maintenance of permanent relations with another person who is engaged in specific criminal activities means that the person lives together with a second person or controls, determines, or influences the behaviour thereof.

Section 361. Imposition of an Attachment on Property

(1) In order to ensure the solution of financial matters in criminal proceedings, as well as the possible confiscation of property, an attachment shall be imposed in criminal proceedings on the property of a detained person, suspect, or accused, and also on property due to such person from other persons, or the property of persons who are materially liable for the actions of the suspect or accused. An attachment may be imposed as well on property in order to ensure the collection of the value of an instrumentality of criminal offence to be confiscated, if such instrumentality is owned by another person. An attachment may also be imposed on criminally acquired property, or property related to criminal proceedings, that is located with other persons.

⁽¹⁾ An attachment may be imposed on property, also on financial resources, in the value of criminally acquired property, as well as on the yield acquired as a result of the use of criminally acquired property.

(2) An attachment may also be imposed on property in proceedings regarding the application of security measures on legal persons, and regarding the determination of security measures of a medical nature, if the ensuring of a solution to financial matters in criminal proceedings, a possible recovery of money, or a confiscation of property is necessary.

[...]

Section 377. Circumstances that Exclude Criminal Proceedings

The initiation of criminal proceedings shall not be permitted, and initiated criminal proceedings shall be terminated, if:

- 1) a criminal offence has not taken place;
- 2) the committed offence does not constitute a criminal offence;
- 3) a limitation period has entered into effect;
- 4) an accepted act of amnesty that prevents the application of a punishment regarding the relevant criminal offence;
- 5) a person who is to be held or is held criminally liable has died, except for cases where proceedings are necessary in order to exonerate a deceased person;
- 6) a judgment, or a decision of a person directing the proceedings, on termination of criminal proceedings in the same prosecution against a person who has previously been held criminally liable regarding the same criminal offence;
- 7) such criminal proceedings are directed against a foreign national or stateless person regarding illegal crossing of the State border, and such foreign national or stateless person has been forcibly deported from the Republic of Latvia regarding such criminal offence;
- 8) an application of a victim does not exist in criminal proceedings that may be initiated only on the basis of an application of such person;
- 9) a settlement between a victim and a suspect or accused has taken place in criminal proceedings that may be initiated only on the basis of an application of a victim;
- 10) the circumstances that exclude criminal liability referred to in The Criminal Law have been determined.

Section 387. Institutional Jurisdiction

(1) Officials authorised by the State Police shall investigate any criminal offence, with the exception of the cases specified in Paragraphs two to ten of this Section, except if the Prosecutor General has assigned the performance thereof.

(2) Officials authorised by the Security Police shall investigate criminal offences that have been performed in the field of State security or in State security institutions, or other criminal offences within the framework of the competence thereof and in cases where the Prosecutor General has assigned the performance thereof.

(3) Officials authorised by the Financial Police shall investigate criminal offences in the field of State revenue and in the actions of officials and employees of the State Revenue Service.

- (4) Officials authorised by the Military Police shall investigate criminal offences committed in the military service and in military units, or in the places of deployment thereof, as well as criminal offences committed in connection with the execution of official duties by soldiers, national guardsmen, or civilians working in military units.
- (5) Officials authorised by the Latvian Prison Administration shall investigate criminal offences committed by detained or convicted persons, or by employees of the Latvian Prison Administration in places of imprisonment.
- (6) Officials authorised by the Corruption Prevention and Combating Bureau shall investigate criminal offences that are related to violations of the provisions of the financing of political organisations (parties) and the associations thereof, and criminal offences in the State Authority Service, if such offences are related to corruption.
- (7) Officials authorised by customs authorities shall investigate criminal offences in the field of customs matters.
- (8) Officials authorised by the State Border Guard shall investigate criminal offences that are related to the illegal crossing of the State border, the illegal transportation of a person across the State border, or illegal residence in the State, as well as criminal offences committed by a border guard as a State official.
- (9) Captains of seagoing vessels at sea shall investigate criminal offences committed on vessels of the Republic of Latvia.
- (10) The commander of a unit of the Latvian National Armed Forces shall investigate criminal offences committed by the soldiers of such unit, or that have been committed at the location of the deployment of such unit (in the closed territory of the place of residence), if the relevant investigating institutions of the foreign state are not investigating such offences.
- (11) The Prosecutor General shall determine the institutional jurisdiction of concrete criminal offences.
- (12) If the investigation of a concrete criminal offence is under the jurisdiction of more than one investigating institutions, the institution that initiated criminal proceedings first shall investigate such criminal offence.
- (13) If an investigating institution receives information regarding a serious or particularly serious crime that is taking place or has taken place, and the investigation of such offence is not included in the competence thereof, and the performance of emergency investigative actions are necessary for the detention of the perpetrator of the offence or for the recording of evidence, such institution shall initiate criminal proceedings, inform the relevant competent investigating institutions regarding such initiation of proceedings, perform the emergency investigative actions, and transfer the materials of the initiated criminal proceedings on the basis of jurisdiction.
- (14) The Prosecutor General shall resolve the disputes of investigating institutions regarding the jurisdiction of criminal offences.

Section 392. Termination of Pre-trial Criminal Proceedings and Criminal Prosecution

- (1) A person directing the proceedings shall terminate pre-trial criminal proceedings and criminal prosecution, if the circumstances referred to in Section 377 of this Law have been ascertained.
- (2) If the proving of the guilt of a concrete suspect or accused in the committing of a criminal offence has not been successful in pre-trial proceedings, and the gathering of additional evidence is not possible, the investigator, with a consent of the supervising public prosecutor, or the public prosecutor shall take a decision on termination of the criminal proceedings or part thereof against a person. If the criminal proceedings are terminated in the part against person, the pre-trial proceedings shall be continued.
- (3) If a case has several accused, but criminal prosecution is being terminated in relation to one or several of such accused, criminal proceedings shall be terminated in such part, and a public prosecutor shall take a decision on such termination.
- (4) If criminal proceedings are terminated in the part in relation to one or several accused, a public prosecutor shall, if necessary, decide the matter regarding the division of the criminal proceedings.

Section 392.¹ Decision on Termination of Criminal Proceedings

- (1) If, in pre-trial proceedings, circumstances have been determined that do not allow for criminal proceedings or may be grounds for the release of a person from criminal liability, or if guilt of the suspect or accused has not been proven and the gathering of additional evidence is not possible, the person directing the proceedings shall take a decision on termination of the criminal proceedings or a part thereof.
- (2) The descriptive part of a decision shall indicate the following:
 - 1) the grounds for the initiation of criminal proceedings;
 - 2) information regarding the personality of a suspect or accused;

- 3) when the prosecution was pursued and issued, and the criminal offence regarding which the prosecution has been pursued and issued or regarding which a person is being held suspect;
 - 4) the applied security measure; and
 - 5) whether criminal proceedings were terminated in a part thereof against one of the accused or suspects before the taking of such decision.
- (3) The reasoned part of a decision shall indicate the reasons and grounds for the termination of criminal proceedings or a part thereof.
- (4) The part of resolutions of a decision shall indicate the following:
- 1) the taken decision on termination of criminal proceedings or a part thereof;
 - 2) the revocation of a security measure;
 - 3) the revocation of an attachment on property;
 - 4) actions with seized objects and valuables;
 - 5) the procedures for the appeal of the decision.
- (5) A taken decision shall be immediately notified to the person or institution on the basis of a submission of which criminal proceedings were initiated. A copy of the decision on termination of criminal proceedings shall be immediately sent to the supervising public prosecutor, but to a victim and person, who has the right to defence, a copy of the decision on termination of criminal proceedings shall be sent or issued explaining the right to familiarise with the materials of the criminal case within 10 days from the day of receipt of the decision. If criminal proceedings have been terminated in any part thereof, then a victim has the right to familiarise with those materials of the criminal case which directly apply to him or her, but a person, who had the right to defence, may familiarise with materials of the criminal case after termination of all pre-trial criminal proceedings.
- (5¹) A person directing the proceedings shall send a copy of a decision on termination of criminal proceedings to the persons referred to in Section 369, Paragraph two, Clauses 2 and 4 of this Law and to such persons whose rights were infringed in the particular criminal proceedings, or issue upon their request.
- (6) If criminal proceedings have been terminated, but the materials of the criminal case contain information regarding facts in connection with which disciplinary coercion measures or an administrative punishment should be applied to a person, the person directing the proceedings shall send the necessary materials to the competent authority or official.
- (7) If the criminal proceedings are terminated, but the criminal case contains information that the offence was committed by a minor, who has not reached 14 years of age, the person directing the proceedings shall decide the sending of the material to a court for the application of a security measure of a correctional nature.

Section 393. Renewal of Terminated Criminal Proceedings and Criminal Prosecution

- (1) A procedurally authorised person may renew terminated criminal proceedings, or terminated criminal prosecution against a person, by revoking a decision on termination, if it has been determined that lawful grounds for the taking of such decision did not exist, or if new circumstances have been disclosed that were unknown to a person directing the proceedings at the moment of the taking of the decision, and which have substantial significance in the taking of the decision.
- (2) Pre-trial criminal proceedings and criminal prosecution may be renewed, if the limitation period for criminal liability has not entered into effect.

Section 439 Procedures for Criminal Proceedings

- (1) If it has been ascertained during the course of criminal proceedings that likely there is a basis for the application of coercive measures, a person directing the proceedings may take a reasoned decision on the fact that proceedings are being initiated for the application of coercive measures to the legal person. A person directing the proceedings shall notify the relevant legal person regarding the decision taken by sending a copy of a decision, and shall inform about its rights and duties.
- (2) Proceedings for the application of coercive measures to a legal person shall take place within the framework of the criminal proceedings initiated in accordance with the provisions of this Law.
- (3) In initiating proceedings for the application of coercive measures, a person directing the proceedings shall notify the relevant legal person regarding such initiation by sending a copy of a decision, and shall inform regarding the rights and duties of a representative of such person. A person directing the proceedings with the decision

may separate the proceedings for the application of coercive measures to the legal person in separate records in the following cases:

- 1) criminal proceedings against a natural person are terminated for non-exonerating reasons;
- 2) if the circumstances have been determined that do not allow to ascertain or hold criminally liable a concrete natural person, or the transfer of the criminal case to court is not possible in the near future (in a reasonable term) due to objective reasons;
- 3) in the interests of solving in timely manner criminal-legal relations with a natural person who has rights to defence;
- 4) it is requested by a legal person's representative.

Law on the Prevention of Money Laundering and Terrorism Financing

Section 4. Proceeds of Crime

- (1) Funds are considered proceeds of crime:
 - 1) if they are owned or possessed by a person in the result of a direct or indirect criminal offence; or
 - 2) in other cases prescribed by the Criminal Procedure Law.
- (2) The term "proceeds of crime" shall be used in the meaning of the term "criminally acquired property and financial resources" used in the Criminal Procedure Law.
- (3) In addition to the proceeds of crime specified in the Criminal Procedure Law, also such funds are considered proceeds of crime, which belong to a person or are directly or indirectly controlled by a person:
 - 1) on any list of persons suspected of being involved in terrorist activity compiled by the states or international organisations recognized by the Cabinet; or
 - 2) of whom bodies performing investigatory operations, pre-trial investigative institutions, the Prosecutor's Office or a court have information which forms the sufficient basis for suspecting such person of committing a criminal offence related to terrorism or participation therein.
- (4) The Office for Prevention of Laundering of Proceeds Derived from Criminal Activity (hereinafter – the Control Service) shall inform the subjects of the Law and their supervisory and control authorities regarding the persons referred to in Paragraph three of this Section.
- (5) Funds shall be declared to be proceeds of crime in accordance with the procedure specified in the Criminal Procedure Law.

Section 5. Money Laundering and Terrorism Financing

- (1) The following actions are money laundering:
 - 1) the conversion of proceeds of crime into other valuables, transfer of their location or ownership, knowing that that these funds are proceeds of crime and if such actions are carried out for the purpose of concealing or disguising the illicit origin of funds or assisting any person who is involved in committing of a criminal offence in evading the legal liability;
 - 2) the concealment or disguise of the true nature, origin, location, disposition, movement, ownership of proceeds of crime, knowing that these funds are proceeds of crime;
 - 3) the acquisition, possession or use of proceeds of crime, if at the time of acquisition of such rights it is known that these are proceeds of crime; or
 - 4) the participation in any of the activities specified in Paragraph one, Clauses 1, 2 and 3 of this Section.
- (2) Money laundering is also a criminal offence provided for in the Criminal Law in the result of which such funds have been directly or indirectly acquired, and which has been committed outside the territory of the Republic of Latvia and the criminal liability is intended for such a criminal offence at the place of its commitment.
- (3) Terrorism financing is the actions defined as such in the Criminal Law.

Law on Corruption Prevention and Combating Bureau

Section 8. Functions of the Bureau in Combating Corruption

- (1) In order to combat corruption, the Bureau shall perform the following functions:

- 1) hold public officials administratively liable and apply sanctions for administrative violations in the field of corruption prevention in the cases provided by the law;
- 2) carry out investigative and operational actions to discover criminal offences provided in the Criminal Law in the service of State authorities, if they are related to corruption.

(2) Other persons performing operational activities specified by the law have a duty, upon the request of the Bureau, to provide performance of measures of operational activities in a particular manner necessary for fulfilment of the functions of the Bureau.

Law on Sworn Auditors

Section 25. Independence of a Sworn Auditor

(1) A sworn auditor shall be independent in his or her professional activity.

(2) State and local government institutions, courts, prosecutors and pre-trial investigation institutions shall guarantee the independence of the professional activity of sworn auditors. In order to guarantee the independence of the professional activity of sworn auditors, it is prohibited:

- 1) to interfere with the professional activities of sworn auditors, to exert influence or pressure upon them;
- 2) to require information and explanations from sworn auditors, except in cases referred to in Section 33 of this Law, as well as to question them as witnesses regarding facts that have become known to them while providing professional services;
- 3) to control the mail, telegraph and other means of correspondence, as well as the documents which sworn auditors have received while providing professional services, to perform inspection and withdrawal of correspondence and documents, or to perform searches in order to find and withdraw correspondence and documents;
- 4) to control, also by the procedural measures referred to in Clause 3 of this Section, the information systems and means of communication necessary for the provision of professional services of sworn auditors, including electronic means of communication, to obtain information from them and to interfere with their functioning;
- 5) to require information from clients regarding the content of the professional services provided by sworn auditors;
- 6) to subject sworn auditors to any sanctions or threats in respect of the professional services they provide, in compliance with law, to clients; and
- 7) to bring sworn auditors to any type of liability for announcements made in writing or orally, which they have made, pursuant to law and in good faith, while fulfilling their professional duties.

(3) The members (shareholders), the head, members of the executive institution of a commercial company of sworn auditors and other persons are prohibited from interfering with the professional activities of a sworn auditor, or to exert pressure on him or her in order to influence the viewpoint of the auditor, or the opinion submitted by him or her as an independent expert.

Section 27. Confidentiality Requirements

(1) A sworn auditor is prohibited to disclose a commercial secret that he or she has learned while performing professional duties. The information containing a commercial secret may not be used or disclosed by a sworn auditor and a commercial company of sworn auditors without the written authorisation of the client, except in the cases referred to in Paragraph 2 of this Section, Section 33 of this Law and the Law On the Prevention of Laundering of Proceeds Derived from Criminal Activity, or in cases when the sworn auditor has the right or a duty to do so in accordance with a court adjudication.

Section 33. Sworn Auditor's Report to the Management of a Client and the Finance and Capital Market Commission

(1) A sworn auditor or a commercial company of sworn auditors shall notify the management (executive board or its responsible members) of a client or an audit committee (if such committee has been established) of the issues not included in the opinion (for example, shortcomings, errors and violations of the internal control system), which shall not affect the opinion delivered.