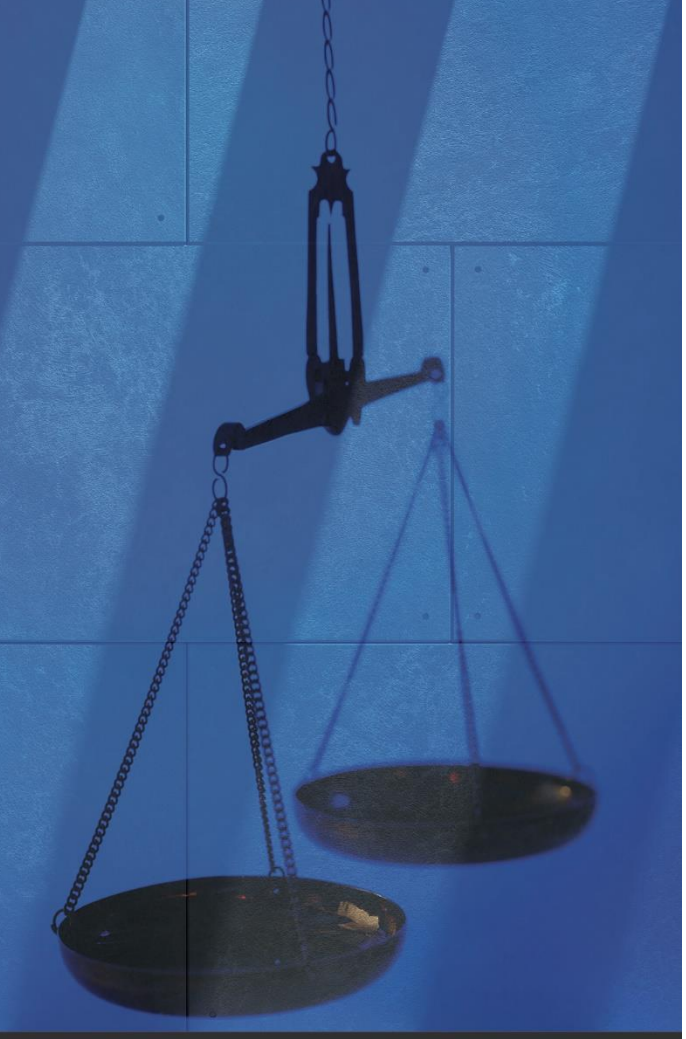

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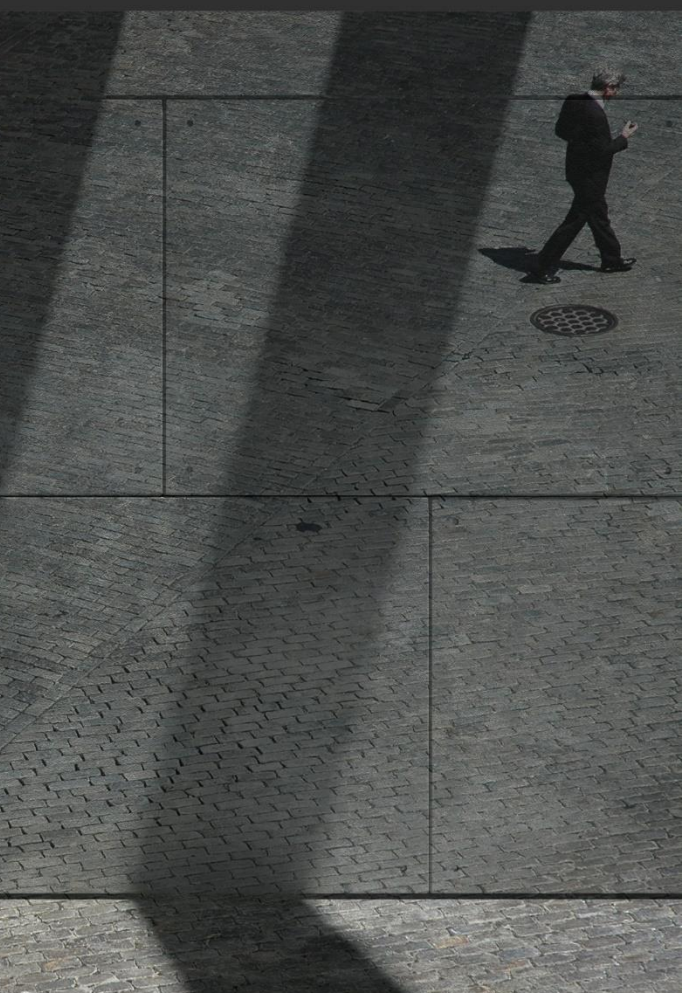

IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION

Phase 1bis Report

Argentina

This Phase 1bis Report on Argentina by the OECD Working Group on Bribery examines Argentina's implementation of all articles of the Anti-Bribery Convention that relate to the liability of legal persons for foreign bribery, including Annex 1 to the 2009 Recommendation on Further Combating the Bribery of Foreign Public Officials which clarifies the standard under Article 2 of the Convention (on the liability of legal persons). This report was adopted by the 44 members of the OECD Working Group on Bribery on 29 June 2019.

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A. IMPLEMENTATION OF THE CONVENTION

1. Argentina signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) on 17 December 1997, and deposited the instrument of ratification with the OECD Secretary-General on 8 February 2001. Argentina's legislation for implementing the Convention, Law 25 188 on Ethics in the Exercise of Public Office, was enacted on 1 November 1999 and entered into force on 10 November 1999. Argentina has also adhered to the 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation). The OECD Working Group on Bribery in International Business Transactions (Working Group) evaluated Argentina's implementation of the Convention in Phase 1 (September 2001), Phase 2 (June 2008), Phase 3 (December 2014) and Phase 3bis (March 2017).

2. In the most recent Phase 3bis evaluation, the Working Group found that Argentina remained seriously non-compliant with key articles of the Convention. Among the most significant legislative deficiencies were problems with the foreign bribery offence, the absence of corporate liability for foreign bribery, and jurisdiction to prosecute this offence.

3. To address some of the Working Group's concerns, Argentina enacted Law 27 401 (Corporate Liability Law, CLL) which entered into force on 1 March 2018. Later that month, the Working Group decided to conduct this Phase 1bis evaluation to assess how the CLL impacts Argentina's implementation of the Convention.

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

4. This section considers changes to Argentina's foreign bribery offence that were introduced by the CLL.

1.1. Undue and Improper Advantage

5. Article 1 of the Convention requires Parties to criminalise the offer, promise or giving of any "undue" advantage to a foreign public official in order to obtain or retain business or other "improper" advantage in the conduct of international business.

6. In previous evaluations, the Working Group raised concerns that Argentina's foreign bribery offence in Art. 258bis PC did not require the advantage offered by the briber to the official to be "undue". Nor did the offence require the advantage obtained by the briber in return be "improper". This raised concerns that the offence may criminalise legitimate payments seeking proper official action (Phase 3bis Report para. 41 and Recommendation 1(c)).

7. The CLL amended Argentina's foreign bribery offence (indicated in bold):

> Art. 258bis. Any person who, directly or indirectly, **unduly** offers**, promises** or gives a public official from a foreign State or from a public international organisation, for this official's benefit or for the benefit of a third party, money or any **other** object of pecuniary value, or other compensations, such as gifts, favours, promises or advantages, for the purpose of having such official do or not do an act related to the performance of his official duties, or to use the influence derived from the office he holds, in a matter linked to a transaction of an economic, financial or commercial nature, shall be punished with ~~**confinement**~~ **prison** from one (1) to six (6) years and special disqualification for life in respect of the exercise of any public office.

8. The amendment leaves the wording of Art. 258bis PC similar but not identical to that of the Convention. The amended Art. 258bis PC attempts to address the Working Group's concern by adding the term "unduly". However, the word modifies the phrase "offers, promises or gives", and not the advantage provided or received by the briber as in the Convention. Argentina states that the different placement of the word "unduly" nevertheless produces the same effect as the Convention. Whether this is indeed the case should be discussed with Argentine practitioners in future evaluations.

1.2. Foreign Public Official

9. The Convention criminalises the bribery of "foreign public officials", a term that is defined in Art. 1(4)(a) of the Convention:

> "foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation.

10. Argentina's foreign bribery offence in Art. 258bis PC prohibits the bribery of "a public official from a foreign State or from a public international organisation". In Phase 3bis, a foreign public official was defined in Art. 77 PC:

> Art. 77. The terms "public official" [*funcionario público*] and "civil servant" [*empleado público*] as used in this Code refer to any person who temporarily or permanently discharges public functions, whether as a result of popular election or appointment by the competent authority.

11. The Working Group expressed three concerns about this definition. First, the definition was not autonomous and required proof that the bribe recipient was a foreign public official under foreign law. Second, the definition did not cover employees of foreign state-owned or state-controlled enterprises. Third, the definition did not explicitly cover officials of "any organised foreign area or entity, such as an autonomous territory or a separate customs territory" (Phase 3bis Report paras. 42-43 and Recommendations 1(a)-(b)).

12. The CLL introduced a new definition of a foreign public official by adding a second paragraph to Art. 258bis PC:

> A public official of a foreign State, or of any territorial entity recognised by the Argentine Republic, shall be defined as any person who has been designated or

elected to exercise public functions, at any level or territorial division of the Government, or within any kind of body, agency or state-owned enterprise where that State exerts a direct or indirect influence.

13. Argentina additionally explained that the term "public function" is the overriding criterion in the definition. It is not material whether a person exercises a public function as an unpaid volunteer, a contractor, or an employee of a private company. The interpretation of "public function" would be aided by domestic corruption jurisprudence that have interpreted this term and other Argentine laws that also use this concept.[1]

14. Argentina added that the definition specifically refers to "any territorial entity recognised by the Argentine Republic". This is to ensure that the foreign bribery offence applies only to the bribery of officials of territorial entities that Argentina recognises as foreign.

15. Argentina's definition also refers to state-owned but not state-controlled enterprises, unlike Commentary 14 of the Convention. Argentina states that the definition nevertheless includes cases where the state can influence or form a company's decisions without owning the company.

16. The new definition is much closer to the Convention though one difference remains and should be followed up in future evaluations. The provision does not expressly cover persons holding legislative, administrative or judicial office. Argentina states that these individuals are covered by the term "any person who has been designated or elected to exercise public functions". Argentina also argues that the domestic bribery offence in Art. 256 PC shows that the term "public official" includes judges and prosecutors.

2. Article 2: Responsibility of Legal Persons

17. Art. 2 of the Convention requires each Party to "take such measures as may be necessary […] to establish the liability of legal persons for the bribery of a foreign public official." Annex I of the 2009 Anti-Bribery Recommendation provides further guidance on how to implement Art. 2 of the Convention.

18. Prior to the CLL, Argentina had corporate liability for tax offences, insider trading and other securities offences, money laundering, and terrorism financing, but not foreign bribery or corruption (Phase 3bis Report, para. 50). The principal purpose for enacting the CLL was to address this deficiency.

2.1. Legal Entities Subject to Liability

2.1.1. General Rule under the CLL

19. The CLL covers all relevant legal persons, including state-owned and state-controlled enterprises. Art. 1 CLL establishes criminal corporate liability for all "private legal persons, whether of national or foreign capital, with or without State ownership". According to Argentina, the CLL therefore applies to all legal persons except "public entities", a term defined in Art. 146 of the Civil and Commercial Code as the National

[1] Article 1 of Law 25 188 states that "Public function is understood as any temporary or permanent activity, remunerated or honorary, performed by a person on behalf of the State or at the service of the State or its entities, in any of its hierarchical levels."

State, provinces, City of Buenos Aires, municipalities, foreign states, autonomous bodies, public international organisations and other entities with legal personality under public international law, and the Catholic Church.

2.1.2. Successor Liability

20. When a merger, acquisition, split or any other form of corporate transformation occurs, the liability of the transformed legal person(s) is transferred to the resulting or absorbing one(s) (Art. 3 CLL). Argentine authorities specify that when a company that committed bribery splits into two legal persons, both new entities would be responsible for the crime.

21. Companies also cannot avoid liability by merely altering their constitutive documents. Art. 3 CLL provides that a legal person also remains liable when "in a concealed or merely apparent manner, it continues its economic activity and maintains the substantial identity of its customers, suppliers and employees, or of the most relevant part of all of them." The onus is on prosecutors to prove the continuity of the entity beyond a reasonable doubt.

22. The exemption from liability in Art. 9 CLL (see Section 2.3 at p. 10) also applies to successor legal persons. Argentine authorities state that, if a legal person commits foreign bribery, its successor would escape liability by spontaneously reporting the illicit conduct and returning all undue benefits, and if the former legal person had implemented an adequate system of control and supervision.

2.2. Standard of Liability

23. Annex I.B of the 2009 Anti-Bribery Recommendation states that member countries' systems for the liability of legal persons for foreign bribery should take one of the two approaches:

a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or

b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:

- A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;
- A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and
- A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

24. Art. 2 CLL sets out the requirements for imposing corporate liability in Argentina. Art. 2(1) is the main head of liability, while Art. 2(2) provides for additional liability in a specific case involving third parties. Art. 2(3) then sets out a defence:

> Art. 2. Responsibility of the legal person. Legal persons are liable for the offences established in the preceding article which have been directly or indirectly committed with its intervention or in its behalf, interest or benefit.
>
> They are also responsible if the person acting in the benefit or interest of the legal person is a third party lacking attributions to act on behalf of it, provided that the legal entity had ratified the act, even if the ratification was tacit.
>
> The legal person will be exempt from liability only if the physical person who committed the offense was acting in its own benefit and its act did not generate any advantage to the legal person.

2.2.1. "With Its Intervention, in Its Behalf, Interest or Benefit"

25. Art. 2(1) CLL contains several undefined terms whose interpretation should be followed up in a future Working Group evaluation. The provision essentially provides four modes of corporate liability. First, a legal person is liable when foreign bribery is committed "with its intervention". There is, however, no explanation how a legal person can "intervene", or when the acts of a natural person would be attributed to a legal person as an "intervention". After reviewing a draft of this report, Argentina states that "intervention" is also used in Art. 304 PC (corporate money laundering offence) and means the decisions of a company's governing organs. Case law interpreting Art. 304 PC was not provided, however.

26. Second, a legal person is liable for foreign bribery committed "on its behalf". When a natural person acts on behalf of a legal person is not explained. Argentine authorities understand the term to mean "about those who formally, legally or contractually represent the company". The remaining two modes of liability are when foreign bribery is committed "in the interest" or "for the benefit" of the legal person. The CLL also does not define these terms. Presumably these two terms have different meanings.

27. A related issue is the level of authority of the natural person committing foreign bribery that would trigger the liability of a legal person. Argentina states that the perpetrator's level of authority is not a factor. A legal person is liable whenever the conditions in Art. 2 CLL are met. But as noted above, corporate liability may arise when foreign bribery is committed "with the intervention" or "on behalf of" the legal person. It is conceivable that the meaning of these terms takes into account the natural person perpetrator's level of authority in the company.

2.2.2. "A Third Party Lacking Attributions to Act on Behalf of [the Legal Person]"

28. Art. 2(2) CLL provides for corporate liability in a specific case involving third parties. A legal person is responsible if "the person acting in the benefit or interest of the legal person is a third party lacking attributions to act on behalf of it, provided that the legal entity had ratified the act, even if the ratification was tacit." Argentina explains that this provision covers cases in which "the natural person cannot represent the company or execute a company decision". As mentioned in para. 25, the terms "for the benefit", "in the interest", and "on behalf of" are undefined. The same is true of the term "third party"

(*terceros*), though Argentine authorities later explained that this means "non-members" of the company. The Working Group should follow up the interpretation of these terms in a future evaluation.

29. The Working Group should also follow up the interpretation of "ratification" in this context. Argentine authorities explained that the legal person is required to ratify "any stage or act linked to the payment of bribes. It includes the ratification of the bribe, the acceptance of the action of the natural person, the acceptance of the benefits derived from the act, omission or influence of the public official." To avoid tacit ratification, there must be "a positive act of rejection that demonstrates that the legal entity has been oblivious to the bribe and does not intend to use the crime to its advantage." This "act of rejection" must occur before an investigation has begun. Examples of ratification include where "the company withdraws and commercialises the merchandise that a third party freed from customs through bribes; or if it went ahead with the procedures of a tender; or if it recognised the third party or other persons through the payment of commissions or bonuses for obtaining the business; or if it paid the third party intermediary sums in fees after offering a bribe to achieve its purpose." There is not yet jurisprudence to support these interpretations of the Argentine authorities.

2.2.3. "Acting in Its Own Benefit and Its Act Did Not Generate Any Advantage"

30. Even if the conditions in Art. 2(1) or 2(2) are met, Art. 2(3) nevertheless allows the legal person to escape liability "only if the physical person who committed the offense was acting in its own benefit and its act did not generate any advantage to the legal person."

31. Argentine authorities state that a legal person would be liable if foreign bribery generates a benefit to both the natural person and the legal person. For example, if an employee bribes a foreign public official which results in a contract for the company and a bonus payment for the employee, the company would be liable because it benefits from the contract. The payment of commissions or bonuses to the employee could also be construed as ratification of the employee's act or acceptance of the benefits of bribery, which would also result in liability. There is also no jurisprudence supporting these interpretations. The Working Group should therefore follow up this issue in a future evaluation.

2.2.4. Bribery through Intermediaries

32. Annex I.C of the 2009 Anti-Bribery Recommendation states that a legal person cannot elude liability by using intermediaries, including related legal persons such as subsidiaries, to commit foreign bribery.

33. Argentine authorities state that a legal person is liable for foreign bribery committed by a subsidiary. Art. 2 CLL establishes that companies are liable for offenses committed "directly or indirectly". This mirrors the language in the foreign bribery offence in Art. 258bis PC which covers bribery through intermediaries. Argentina explains that the wording includes crimes perpetrated by interposed persons, agents, subsidiaries, and all intermediaries in general.

34. Nevertheless, it is not clear whether a parent company can escape responsibility by claiming that the other conditions of liability in Art. 2 CLL are not met. For example, the parent company could conceivably argue that the subsidiary did not pay the bribe with

the parent company's intervention, on the parent's behalf, in its interest or for its benefit (Art. 2(1) CLL; see Section 2.2.1 at p. 8). It might contend that the subsidiary was a third party that lacked attributions to act on the parent's behalf and the parent did not subsequently ratify the subsidiary's actions (Art. 2(2) CLL; see Section 2.2.2 at p. 8). Or it might claim that an employee of its subsidiary bribed for the subsidiary's own benefit and the bribery did not generate any advantages to the parent company (Art. 2(3) CLL; see previous Section 2.2.3). Argentina states that these rules (*i.e.* Art. 2(1)-(3)) apply regardless of whether bribery is committed through an intermediary. While that is undoubtedly true, it does not address the concern that these same rules could exculpate parent companies for bribery by subsidiaries. Given the lack of jurisprudence, the Working Group should follow up this issue in future evaluations.

35. Argentine authorities also state that a parent company could be liable for foreign bribery committed by a subsidiary due to the general rules on co-authorship of crimes in Art. 45 PC. Art. 4 PC provides that the "General Provisions" of the PC, which includes Art. 45, apply to all crimes provided for by special laws that do not state otherwise.

2.3. Exemption from Sanctions

36. Art. 9 CLL provides a defence if three conditions are met:

> Art. 9º. - Exemption from sanctions. The legal person will be exempt from punishment and administrative responsibility when the following circumstances concur simultaneously:
>
> a) Spontaneously has denounced an offence provided for in this law as a result of an internal detection and investigation activity;
>
> b) Would have implemented an adequate control and supervision system under the terms of articles 22 and 23 of this law, prior to the fact of the process, the violation of which would have required an effort from the parties involved in the commission of the offense; and
>
> c) Would have returned the undue benefit obtained.

37. The provision explicitly exempts a legal person from not only criminal sanctions in the CLL but also "administrative responsibility". Argentina authorities explain that administrative sanctions are those imposed by other State bodies such as the tax authorities. They add that while a prosecutor must prove the elements of the offence in Art. 2 CLL, the burden shifts to the legal person to prove the defence in Art. 9 CLL. The judge in charge of the criminal proceedings determines whether the defence succeeds.

38. Each of the three elements of the defence raises issues that may require Argentina to take steps to remediate.

2.3.1. Spontaneous Denunciation of an Offence

39. The first element of the Art. 9 CLL defence is that the legal person must internally detect, investigate and spontaneously denounce an offence covered by the CLL. Argentine authorities state that denunciations must be made to a judge, a prosecutor or the police, as per Arts. 174-175 CPC.

40. Argentina states that this provision limits the Art. 9 CLL defence to when a legal person reports a crime for which it is responsible (*i.e.* self-reporting). The provision states that the denounced offence must have resulted from "an internal detection and

investigation activity", which could limit most exemptions from liability to cases of self-reporting. However, discovery through an internal investigation may not be an absolute requirement. According to Argentine authorities, "there is no reason not to apply the exemption when the self-report is due to a motive different from an internal investigation. This is done with the intention to favour the detection of crime."

41. A more serious ambiguity is that, on its face, the text in Art. 9(a) does not limit the defence to self-reporting. The provision does not expressly preclude a legal person from benefitting from the defence by denouncing an alleged crime committed by *another* individual or legal person. Argentine authorities appear to support this view. They state that, only in the case of literal interpretation, if the denounced offence was committed by an unrelated natural or legal person (*e.g.* a competitor company), then "the exception operates fully since the law does not distinguish by reason of the natural person who commits the action or the action of third parties. The exemption from penalty benefits only the legal entity that makes the complaint and regarding the corporate criminal liability that may correspond to it."

42. The Argentina authorities acknowledge that Art. 9 is unclear in this respect. After reviewing a draft of this report, they state that the Attorney-General would issue a future guideline or recommendation to clarify this issue. This is a step in the right direction. But it may not be enough, since such a guideline or recommendation would not be legally binding on the judge who decides whether the Art. 9 defence succeeds.

43. Also unclear is whether the crime denounced by the legal person must be unknown to the authorities. On its face, Art. 9 CLL does not exclude such cases. The term "spontaneously" merely requires the company to denounce "without being prompted"; it does not preclude an offence known to the authorities. It would be pointless to allow legal persons to escape liability by reporting crimes that have already been uncovered. Argentine authorities state that it is their "understanding" that the defence applies only to crimes that are not yet known to the authorities. Nevertheless, they concede that this is an open issue which is "subject to future interpretations by judges and prosecutors". The issue should therefore be followed up in a future evaluation.

44. A further concern is the absence of a requirement to verify or investigate the legal person's denunciation. There is therefore no guarantee that the legal person's investigation leading to the denunciation was complete and thorough, or that the reported criminality is not merely the "tip of the iceberg". This concern would be exacerbated if the defence is not limited to self-reporting. A legal person could then conceivably escape liability by denouncing crimes committed by others no matter how frivolous the allegation. Argentine authorities state that a prosecutor would investigate the denunciation and confirm that the information is reliable and complete. But this position is not supported by the text of the statute.

2.3.2. Integrity Programme

45. The second condition of the Art. 9 CLL defence is that the legal person must have implemented an adequate integrity (*i.e.* compliance) programme at the time of the denounced offence. The offence must also have been committed through a violation of the integrity programme that "required an effort" from the perpetrator. This means that the crime must be "very sophisticated" and that "even the most diligent assessment and compliance programme would not have detected it", according to Argentine authorities.

46. An adequate integrity programme is one that meets the requirements of Arts. 22-23 CLL. The programme should be consistent with a legal person's size, economic capacity, and the risks it faces. Art. 23 CLL lists three mandatory and ten optional elements for all integrity programmes. Argentine authorities have also published "Integrity Guidelines" that provide further information on integrity programmes.[2] The Integrity Guidelines are not legally binding, unlike Arts. 22-23 CLL.

47. The list of mandatory elements of an integrity programme is too short. All integrity programmes must have (a) a code of ethics or integrity policies; (b) rules to prevent unlawful acts in interactions with the public sector, including when bidding for and implementing administrative contracts; and (c) training on the integrity programme for directors, managers and employees. However, many of the optional elements listed in Art. 23 CLL are also essential to an effective compliance programme, such as visible top-level management support; a periodic assessment of the company's risk profile; regular monitoring, assessment and updating of the integrity programme; a channel to report irregularities and whistleblower protection; and a procedure for investigating and sanctioning breaches.

48. As well, inadequate consideration is given to several elements that are especially important for fighting foreign bribery and which are identified in the Working Group's Good Practice Guidance on Internal Controls, Ethics, and Compliance.[3] Argentina's Integrity Guidelines briefly suggest that corporate codes of ethics may cover facilitation payments; hospitality and travel expenses for public officials; charitable donations; and political donations. There is no suggestion that companies may need to develop specific policies on these matters, nor guidance on how to develop such policies. Policies on solicitation and extortion are not mentioned at all. Argentina states that its domestic statutes on gifts and political campaign financing complement the Integrity Guidelines. However, such legislation does not apply when Argentine companies deal with foreign public officials.

49. A final issue is the availability of the defence when senior corporate officers commit or authorise foreign bribery. In these cases in Argentina, a company escapes liability if it can demonstrate that an adequate integrity programme was implemented at the time of the offence but was circumvented by the perpetrators, and if the other conditions in Art. 9 CLL are met. However, Annex I of the 2009 Recommendation (see para. 23) states that a legal person should be directly liable whenever high-level managers themselves commit, direct or authorise foreign bribery. As the Working Group has noted, "whether company management failed to prevent itself from committing the offence is tautological and hence immaterial".[4]

50. After reviewing a draft of this report, Argentine authorities state that Art. 9 CLL does not provide an exemption from *liability* but from *sanctions*. But leaving aside the issue of terminology, the provision has the effect of preventing a legal person from being punished and hence contravenes Annex I of the 2009 Recommendation. Argentina also states that the shortcomings identified above can be rectified through guidelines issued by the Anti-Corruption Office of the Ministry of Justice (Decree 277/2018, Art. 1). That would be a positive step. Nevertheless, the Working Group recommends that Argentina

[2] Resolution 27/2018, Anti-Corruption Office, Ministry of Justice and Human Rights.

[3] 2009 Anti-Bribery Recommendation, Annex II.

[4] Phase 1 Peru, paras. 47-49; Chile Phase 4, paras. 154-156.

rectify the deficiencies above through a legislative amendment. It will also follow up whether the CLL and the Integrity Guidelines result in effective integrity programmes in practice.

2.3.3. Return of Undue Benefit

51. The third condition of the Art. 9 CLL defence is that the legal person must return any undue benefit obtained. Argentina states that if the undue benefit cannot be returned because it has been consumed, destroyed or transferred, then the legal person must pay an amount equivalent in value to the benefit. Furthermore, there are also questions about how the value of the benefit can be determined in practice (see paras. 60-61). Argentina states that prosecutors and judges will have to resolve these issues. These matters should be followed up in a future evaluation.

2.4. Proceedings against Legal Persons

52. Annex I.B of the 2009 Recommendation states that member countries cannot limit the liability of legal persons to cases where the natural person(s) who perpetrated the offence is prosecuted or convicted.

53. The CLL deviates from Annex I.B by adding that a condition that the offence must have been committed without the legal person's "tolerance":

> Art. 6. Independent actions. The legal person may be sentenced even where it is not possible to identify or prosecute the individuals involved, provided that the circumstances of the case allow the establishment that the offence could not be committed without the tolerance of the bodies of the legal person.

54. Argentina explains that "tolerance" in Art. 6 CLL has the same meaning as ratification" in Art. 2(2) CLL. But the use of two different terms implies that the two provisions do not refer to the same thing. Even accepting the two terms have the same meaning, Art. 2(2) states that where a third party who lacks attributions to act on behalf of a legal person commits foreign bribery, then the legal person is liable only if it "had ratified the act, even if the ratification was tacit" (see Section 2.2.2 at p. 8). In these cases, the "tolerance" test in Art. 6 CLL merely duplicates Art. 2(2) CLL.

55. In other cases, however, the "tolerance" condition in Art. 6 CLL creates an additional defence to corporate liability. When foreign bribery is committed by not a third party but for instance an employee, then the legal person would be held liable under Art. 2(1) CLL, not 2(2). Under that provision, whether the legal person "ratified" the act is immaterial. But if the natural person perpetrator cannot be identified or prosecuted, then the legal person would escape liability by showing that it did not "ratify" or "tolerate" the crime by reason of Art. 6. There is no justification for this different treatment.

56. After reviewing a draft of this report, Argentina states that the term "tolerance" should be interpreted by "look[ing] beyond formalities of the compliance programme and assess[ing] where a real and parallel (and illegal) way to contact either local or foreign public officials exists within the entity. The law is aimed to focus on actions, not on legal or formal appearances." Argentina also does not believe that Art. 6 CLL creates a defence in addition to Art. 2(2) CLL.

3. Article 3: Sanctions

57. Art. 3(1) of the Convention requires foreign bribery to be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to domestic bribery.

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

3.1.1. Penalties for Natural Persons

58. The Working Group has long expressed concerns about inadequate financial sanctions against natural persons for foreign bribery. Foreign bribery under Art. 258bis PC was punishable by confinement (*reclusión*) of 1-6 years and permanent disqualification from exercising a public function. If an offence is committed "with the aim of monetary gain", then a fine of up to ARS 90 000 (USD 5 800) may be imposed (Art. 22bis PC). A fine is arguably not available at all if the gain is not pecuniary or goes not to the briber but his/her company (Phase 3bis Report paras. 55-56 and Recommendations 4(a)-(b)).

59. The CLL has increased financial sanctions for foreign bribery though questions remain in cases of non-pecuniary bribes. A new Art. 259bis PC provides for a fine of "two to five times the amount or value of the money, gratuity, benefit or monetary advantage offered or given". The provision refers to the money, benefit *etc*. given to the foreign public official and not the advantage obtained by the briber, according to Argentina. The fine may be imposed in conjunction with imprisonment and debarment. It is unclear what fine, if any, could be imposed if the monetary value of the bribe cannot be determined. Argentina states that this scenario "seems very improbable" and that there are no examples of such cases.

3.1.2. Penalties for Legal Persons

60. Legal persons may be fined for foreign bribery but how the amount of a fine is determined raises some questions. Art. 7(1) CLL provides that a legal person may receive a fine of two to five times the value of the "undue benefit that was obtained or could have been obtained" through a foreign bribery offence. It is not entirely clear how the "benefit" would be determined. Argentina states that the "benefit" would "take into account the type of business obtained or intended to be obtained, and the profit that he/she allowed or should allow". The "benefit" therefore does not appear to be the revenues received under a bribery-tainted contract. It is unclear what the fine would be if the contract generates a loss instead of a profit. The Working Group should follow up this issue in a future evaluation.

61. Also for future follow-up are cases where the "benefits" are not quantifiable. The Working Group has observed that "companies are known to bribe to gain entry into a new market or to increase their reputation. These benefits can be substantial for large companies but may not be readily quantifiable with certainty."[5] The CLL does not indicate how fines would be determined in these circumstances. Argentina nevertheless believes that the "benefit" in these cases can be "reduced to a reasonable value to calculate the fine".

[5] Peru Phase 1, para. 81.

62. A further issue concerns whether fines are a mandatory sanction upon conviction. In addition to fines, Arts. 7(2)-(6) CLL provide for additional penalties such as the publication of an extract of the judgment, and administrative sanctions which are discussed in detail below in Section 3.3 at p. 16. Argentina states that these additional sanctions are optional while fines are mandatory, but this is not explicitly stated in the CLL. If fines are optional, then penalties for foreign bribery may not be sufficiently effective, proportionate and dissuasive. Argentina also states that a future Attorney-General instruction or guideline will address this issue. But such an instruction or guideline would not be legally binding on the judge who decides the sentence.

63. Art. 8 CLL lists aggravating and mitigating factors for sentencing. Argentina states that this list is not exhaustive. Some of listed factors include whether the offence resulted from a failure to comply with internal rules and procedures; the number and hierarchy of officials, employees and collaborators involved; whether the legal person self-reported the offences to the authorities; and the legal person's subsequent behaviour. Recidivism, defined as an offence committed within three years of a conviction, is also an aggravating factor. A National Registry of Recidivism has been set up to record corporate convictions.[6]

64. Future Working Group evaluations should also follow up the application of two additional mitigating factors. First, a legal person may pay a fine in instalments over up to five years if a single payment may "jeopardise the survival of the legal person or the maintenance of jobs" (Art. 8(4) CLL). Second, suspension of a legal person's activities or its dissolution and liquidation cannot be imposed if "it is essential to maintain the operational continuity of the entity, or of a work, or of a particular service" (Art. 8(3) CLL). Argentina states that this exemption applies only when the legal person's activity is essential to the public interest and cannot be provided by another entity.

3.2. Seizure and Confiscation

3.2.1. Seizure

65. The CLL does not change the provisions on seizure applicable in foreign bribery cases against natural persons, and extends those rules to cases against legal persons. Art. 10 CLL states that "the rules of the Penal Code regarding *confiscation* will be applicable" to CLL cases. Argentina states that the provision applies to not only confiscation but also to seizure, and thus extends Art. 23(9)-(10) PC to CLL cases. A recently enacted law on civil confiscation also provides for precautionary measures including seizure.[7] Argentina referred to additional seizure provisions that do not directly concern foreign bribery investigations.[8]

3.2.2. Confiscation

66. As mentioned above, Art. 10 CLL extends the Penal Code rules regarding confiscation to CLL cases. Art. 23(1) PC provides for confiscation upon conviction of

[6] Art. 25 CLL and *Disposición* 27/2018 (DI-2018-11-APN-RNR#MJ).

[7] Decree 62/2019, Annex I, Art. 7.

[8] Art. 518 CPC deals with seizure to ensure eventual payment of penalties, compensation and costs. Art. 520 CPC concerns seizure to enforce a sentence. Arts. 16 and 46 deal with tax crimes.

"things that have been used to commit the offence, and the things or profits that constitute the proceeds or gains from the offence". The Phase 3bis Report (para. 62) observed that this provision allows the confiscation of the bribe and the direct proceeds of bribery. However, it does not provide for confiscation of property the value of which corresponds to that of the bribe and the proceeds of bribery, or that monetary sanctions of comparable effect are applicable (value confiscation).

3.3. Additional Civil and Administrative Sanctions

67. Art. 3(4) of the Convention states that each Party "shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official." Commentary 24 adds that these sanctions may include non-criminal fines; exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or from the practice of other commercial activities; placing under judicial supervision; and a judicial winding-up order.

68. Arts. 7(2)-(6) CLL provide for additional administrative sanctions for foreign bribery, namely the partial or total suspension of a legal person's activities of up to ten years; debarment from public tenders or bidding processes or other State-related activities also for a maximum of ten years; dissolution and liquidation of a legal person whose sole purpose or main activity was to commit foreign bribery; and loss or suspension of state benefits. As mentioned in para. 62, these sanctions are optional upon conviction.

69. Additional provisions outside the CLL also provide for debarment in some but not all foreign bribery cases. Decrees 436/2000 Art. 136 and 1023/2001 Art. 28 debar a person who is subject to criminal proceedings for an offence established by the Inter-American Convention against Corruption (IACAC). A new Decree 1169/2018 extends the debarment regime to public works contracts. In previous evaluations,[9] the Working Group noted that these provisions do not cover certain types of foreign bribery, *e.g.* the bribery of officials of public international organisations.

70. One issue concerning debarment is the lack of equivalence between domestic and foreign bribery cases. The 2009 Anti-Bribery Recommendation XI states that "to the extent a Member applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, such sanctions should be applied equally in case of bribery of foreign public officials". In Argentina, debarment due to domestic bribery is mandatory.[10] Debarment for foreign bribery is only optional under the CLL. It is mandatory under the Decrees cited above, but these provisions do not cover all foreign bribery cases. A further discussion of these issues is found in the Working Group's Summary and Conclusions on Argentina's Phase 3bis Written Follow-Up Report.

71. Companies may also be debarred from public procurement for foreign bribery convictions in other jurisdictions. Arts. 5(f) and (g) of Decree 1169/2018 impose debarment from public works contracts against legal persons convicted in another country of a foreign bribery offence that falls within the Convention. The prohibition also applies to legal persons that have been debarred by the World Bank or the Inter-American Development Bank because of foreign bribery. These provisions are similar to those that apply to debarment for non-public works contracts in Arts. 68(h)-(i) of Decree 1030/2016

[9] For example, see Phase 3bis Report, para. 213.

[10] Decree 1023/2001, Art. 28(e) and Decree 1169/2018, Art. 5(b).

described in the Phase 3bis Report (para. 215). They therefore also have some of the limitations identified in the Report (para. 216), namely difficulties in verifying foreign convictions and in determining the debarment period.

72. Notably missing from the available sanctions is a requirement that a legal person implement an effective integrity (*i.e.* compliance) programme to prevent future offences. Argentina confirms that a company can agree to implement an integrity programme voluntarily but cannot be required to do so as part of a sentence. However, a requirement to implement such a programme is mandatory as part of a non-trial resolution of foreign bribery charges (see Section 5.2 at p. 19). A prosecutor who wishes to impose this requirement would have no choice but to seek a non-trial resolution instead of proceeding to trial. The Working Group has recommended other countries to amend their legislation to rectify this discrepancy.[11] Making integrity programmes available as part of a sentence would also promote such programmes.

73. Argentina refers to additional provisions for sanctioning companies that are not directly relevant to foreign bribery cases. These provisions largely concern sanctions imposed by company regulators for breach of corporate laws, or of regulations applying to listed, financial, or insurance companies.[12] In any event, the CLL did not introduce these provisions.

4. Article 4: Jurisdiction

74. Art. 4(1) of the Convention requires Parties to establish jurisdiction over foreign bribery committed in whole or in part in its territory (territorial jurisdiction). Art. 4(2) states that if a Party has jurisdiction to prosecute its nationals for extraterritorial offences (*i.e.* nationality jurisdiction), then it should establish jurisdiction according to the same principles over foreign bribery.

75. Art. 1 PC specifies Argentina's jurisdiction over criminal offences, including foreign bribery. The CLL added a new Art. 1(3) PC that extended Argentina's jurisdiction in foreign bribery cases:

> Article 1. This Code shall apply to:
>
> 1.- Offences committed or whose consequences take place in the territory of the Argentine Republic, or in places under its jurisdiction;
>
> 2.- Offences committed abroad by representatives or employees of Argentine authorities in the exercise of their duties.
>
> 3.- The [foreign bribery] offence provided in Article 258bis that is committed abroad by Argentine citizens or legal entities with domicile in the Argentine Republic, whether they be the address established in their Articles of Incorporation or those of their establishments or branches in the Argentine territory.

[11] Chile Phase 4, para. 136 and Recommendation 3(c).

[12] Law 19 550, Art. 302; Law 22 315, Arts. 12-15; Law 26 831, Arts. 132; Law 21 526, Arts. 37-41; and Law 20 901, Arts. 10 and 28.

4.1. Jurisdiction over Natural Persons

76. The new Art. 1(3) PC provides jurisdiction over extraterritorial foreign bribery committed by Argentine citizens. Before this amendment, the Working Group had longstanding concerns over Argentina's jurisdiction to prosecute foreign bribery. Art. 1 PC provided territorial jurisdiction to prosecute "crimes committed – or whose effects take place – in the territory of the Argentine Republic or in any place under its jurisdiction". For crimes that were committed extraterritorially, Argentina had jurisdiction only if the offence was committed by representatives or employees of Argentine authorities in the exercise of their duties (Art. 1(2) PC; Phase 3bis Report paras. 47-49). With the new Art. 1(3) PC, Argentina now has jurisdiction over all nationals for extraterritorial foreign bribery.

4.2. Jurisdiction over Legal Persons

77. The new Art. 1(3) PC introduced by the CLL also addresses jurisdiction over legal persons for foreign bribery. The provision states that "This Code shall apply to […] the offence provided in Article 258bis that is committed abroad by […] legal entities with domicile in the Argentine Republic, whether they be the address established in their Articles of Incorporation or those of their establishments or branches in the Argentine territory." Argentine authorities add Art. 1(3) PC applies to the CLL by reason of Art. 4 PC extends the PC "General Provisions" to all crimes provided for by special laws, such as the CLL.

5. Article 5: Enforcement

5.1. Opening, Conducting and Terminating Corporate Foreign Bribery Investigations

78. The rules for opening and conducting foreign bribery investigations against legal persons are the same as those for natural persons. Art. 28 CLL states that "In the cases of national and federal jurisdiction reached by this Law, the Argentine Criminal Procedure Code shall apply in a supplementary manner." The procedure for natural persons described in the Phase 3bis Report (paras. 67-75) thus also applies to legal persons. Law enforcement authorities must commence an investigation (*instrucción*) once becoming aware of a foreign bribery allegation, including through a complaint (*denuncia*) (Art. 71 PC). A federal investigative judge (*juez de instrucción*) is responsible for conducting the formal investigation (Arts. 33(1)(e) and 174-353 CPC) but can delegate the investigation to a federal public prosecutor (Art. 196 CPC). The Federal Police (*Policía Federal Argentina*) provides police support in investigations. The formal investigation may be preceded by a preliminary investigation (*investigación preliminar*) conducted by a prosecutor.[13]

79. The rules for termination are also the same for cases against natural and legal persons. An investigative judge can terminate criminal proceedings at any stage (Art. 334 CPC). A prosecutor may also close a case if a judge has not taken conduct of the matter (Art. 181 CPC). The grounds for termination include (i) the statute of limitations or Congressional amnesty; (ii) the alleged crime had not been committed; (iii) the act is not a crime; (iv) the subject of the investigation did not commit the crime; (v) justification, insanity or immunity. If there is sufficient evidence, then the matter

[13] Organic Law of the Public Prosecutor's Office, Law 27 148, Article 8; Article 426 CPC.

proceeds to an oral trial (*juicio*) before a judge or judicial panel in the federal courts (Arts. 399, 401-403 CPC).

5.2. Non-Trial Resolution of Corporate Foreign Bribery Cases

80. Arts. 16-18 CLL provides for non-trial resolutions of corporate foreign bribery cases through effective collaboration agreements. The prosecutor and a legal person may enter into such an agreement if the latter undertakes to disclose information or accurate, useful and verifiable data to elucidate facts, or to identify a crime's participants or proceeds. The legal person must also pay a fine equivalent to half of the minimum set out in Art. 7(1) CLL, *i.e*. equal to the value of the undue benefit that the legal person obtained or could have obtained; agree to restitution of the product or benefit of the crime; and surrender property that would have been confiscated upon conviction. The agreement may include additional conditions such as the reparation of damage caused by the crime; community service; applying disciplinary measures to participants in the crime; and implementing or improving an integrity programme.

81. The Working Group should examine in a future evaluation whether collaboration agreements result in effective, proportionate and dissuasive sanctions in foreign bribery cases. The financial penalties are largely capped at the value of the benefit obtained plus restitution or confiscation in the same amount. Furthermore, the sanctions do not appear to vary regardless of whether the information provided by the legal person solves a crime of utmost gravity or a petit misdemeanour, or whether it identifies the kingpin of a criminal organisation or merely a minion at the very bottom. Argentina states that a future Attorney-General instruction or guideline will also address this issue.

82. Arts. 19-21 CLL address compliance and oversight. The prosecutor and the legal person may enter into a co-operation agreement only before the latter has been summoned to trial. A judge then assesses the lawfulness of the agreement's terms. Within one year of the agreement, a prosecutor or judge determines whether the information provided by the legal person pursuant to the agreement is authentic and useful, and whether the other terms in the agreement have been met. If these conditions are met, then no other penalties will be imposed in the case. Otherwise the agreement is annulled and the criminal proceedings against the legal person resume. It is unclear what happens if the authenticity and usefulness of the information provided by the legal person cannot be verified within one year, for example because an investigation has not been completed. Argentina states that a judge can extend the one-year period. However, the CLL does not explicitly allow for an extension.

83. Unfortunately, these provisions do not provide sufficient accountability and transparency to meet Working Group standards.[14] There are no published criteria on when prosecutors should consider a collaboration agreement. This could open prosecutors to criticisms that they make decisions arbitrarily. The judge assesses the legality but not the appropriateness of the agreement's terms, or the prosecutor's reasons for by-passing a trial. There is no requirement to publish the essential elements of the agreement, including the reasons for entering into the agreement, main facts of the case, party(s) to the agreement, sanctions imposed, and information provided by the legal person. Also not published is the outcome of the verification conducted one year after the agreement to

[14] For example, see Belgium Phase 3 (paras. 85-90); Chile Phase 4 (paras. 124-134); Denmark Phase 3 (paras. 77-81); Peru Phase 1 (paras. 116-117); UK Phase 3 (paras. 64-73); US Phase 3 (paras. 108-117 and Commentary after para. 128).

assess the information provided by the legal person and compliance with the other terms of the agreement. The public is therefore unlikely to be able to satisfy itself that the case resulted in effective, proportionate and dissuasive sanctions. Argentina adds that a future Attorney-General instruction or guideline will address transparency.

84. Argentina adds that two non-trial resolution mechanisms available to natural persons are unlikely to be used for legal persons. The abbreviated trial procedure in Art. 431bis CPC is technically available to legal persons, but Argentine authorities believe that CLL effective collaboration agreements are more likely to be used. Law 27 304 on Repentance provide sentence reductions that apply only to imprisonment and hence are not useful for legal persons.

6. Article 6: Statute of Limitations

85. Art. 5 CLL provides a limitation period of six years for prosecuting legal persons, subject to the same suspensions and interruptions available under the Penal Code. Hence, from the date of the commission of the offence, the Argentine authorities have six years to summon a legal person (*declaración indagatoria*), another six years to investigate before filing the indictment (*requerimiento de elevación a juicio*), six further years to summon the legal person for trial (*citación a juicio*), and a final six years from conviction (even if appealed) to execute the sentence. The limitation period is not suspended while a mutual legal assistance (MLA) request is outstanding.[15] These rules are identical to those for natural persons.

86. There are concerns that collaboration agreements do not suspend the limitation period. As described at para. 82, a legal person may enter into a collaboration agreement with certain conditions attached. The prosecution is then suspended for a one-year period, at the end of which the prosecution resumes if the legal person fails to discharge the conditions under the agreement. The limitation period, however, continues to run during year when the collaboration agreement is in effect. Furthermore, a company that enters into a collaboration agreement with one year or less of the limitation period remaining would have little incentive to honour the agreement.

87. The Working Group should follow up whether the statute of limitations under CLL is sufficient in practice. As noted in the Phase 3bis Report (paras. 82-87), exorbitant delays in corruption investigations and trials against natural persons in Argentina have been amply documented. Corruption cases lasting up to two decades are not unheard of. Many prosecutions have been time-barred. Investigations of legal persons will take even longer. Investigators will often have to untangle complicated corporate structures and opaque decision-making, as well as to assess the adequacy of corporate compliance programmes. Large corporations have deep pockets for protracted litigation. All of these factors can only add delay.

7. Article 7: Money Laundering

88. Argentina's money laundering offence is in Art. 303 PC. It is a crime to "transform, transfer, manage, sell, tax, conceal or in any other way circulate goods originating from criminal offences, with the possible consequence of having the origin of the original or surrogate goods appear lawful". The offence covers self-laundering.

[15] Arts. 62(2) and 67 PC; Phase 3bis Report para. 81.

Receiving money or goods originating from a criminal offence for the purpose of laundering is a separate offence (Article 303(3) PC).

89. Liability of legal persons for money laundering is available under the PC, not the CLL. In 2011, Argentina enacted Art. 304 PC to provide corporate liability for money laundering committed "in the name, with the intervention, or for the benefit of a legal entity". The maximum penalty is a fine of two to ten times the value of the laundered property; debarment from procurement and total or partial suspension of activities of up to ten years; loss or suspension of state benefits; publication of conviction; and dissolution of the legal person if money laundering is the entity's main activity or the sole purpose of its creation. The infringement of internal rules and procedures, and the lack of supervision over natural persons who commit the crime, are factors considered at sentencing. But they are not full exculpatory defences.

90. The Working Group should follow up in a future evaluation how the CLL operates in parallel with the separate corporate liability regime for money laundering. Many corporate foreign bribery cases will also involve money laundering. Companies in such cases would face two different corporate liability regimes for the two different charges. For the foreign bribery charge, the company can escape punishment by reporting an offence or enter into a collaboration agreement (see Sections 2.3 and 5.2 at pp. 10 and 19 respectively). It could not, however, use these mechanisms to resolve the money laundering charges. This might reduce the company's willingness to resolve the case without trial. Argentina states that "there is no reason to deny the application to money laundering cases the procedural rules or the agreed resolutions of CLL". But this position is not supported by the wording of the CLL and Art. 304 PC.

8. Article 8: Accounting and Auditing

91. Art. 300(2) PC prohibits certain natural persons from committing false accounting:

> Art. 300(2). The founder, director, administrator, liquidator or trustee of a corporation or cooperative or of another collective person, who knowingly publishes, certifies or authorizes an inventory, a balance, a profit and loss account or the corresponding reports, minutes or memoirs, false or incomplete or inform the assembly or meeting of partners, with falsehood, about important facts to assess the economic situation of the company, whatever the purpose sought to verify it.

92. The CLL has increased the maximum sanctions against natural persons for false accounting. In Phase 3bis, the Art. 300(2) PC offence was punishable by imprisonment of six months to two years. A fine of up to ARS 90 000 (USD 2 200)[16] may also be imposed if the offence is committed "with the aim of monetary gain" (Art. 22bis PC). Art. 37 CLL added Art. 300bis PC, which raised the penalty to one to four years' imprisonment and a fine of two to five times the value falsified when the crime is committed to conceal foreign or domestic bribery.

93. Unlike with money laundering, the CLL does provide for corporate liability for false accounting. Art. 1 CLL, which lists the offences that can result in corporate liability under that law, includes "aggravated false account balance sheets and reports, established

[16] Based on official wholesale exchange rate of the Central Bank of Argentina on 10 March 2019. The amount in USD is significantly lower than in Phase 3bis because of exchange rate fluctuations.

in article 300bis of the Penal Code". The maximum penalties are the same as those for foreign bribery (see Section 3 at p. 14).

B. IMPLEMENTATION OF THE 2009 ANTI-BRIBERY RECOMMENDATION

1. Public Procurement

94. Debarment from public procurement is discussed in Section 3.3 at p. 16. The CLL does not affect other issues covered by the 2009 Anti-Bribery Recommendation.

EVALUATION OF ARGENTINA

General Comments

95. The Working Group expresses its appreciation of Argentina's co-operation throughout the evaluation. Feedback by Argentine authorities during the drafting of the report ensured a comprehensive and effective basis for the evaluation.

96. The Working Group also commends the Argentine authorities for enacting the Corporate Liability Law (CLL) to address several longstanding Working Group recommendations. The CLL provides for corporate liability for foreign bribery and hence rectifies what had been one of the most significant deficiencies in Argentina's implementation of the Convention. The CLL also commendably seeks to address other issues related to the foreign bribery offence and jurisdiction. The CLL 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 future Working Group evaluations.

Specific Issues

Foreign Bribery Offence

97. The CLL amended Argentina's foreign bribery offence and the definition of a foreign public official. In future evaluations, the Working Group will follow up the remaining textual differences between the Convention and Argentine legislation, namely the phrase "unduly offers, promises or gives", and the bribery of persons holding legislative, administrative or judicial office as well as employees of foreign state-controlled enterprises.

Responsibility of Legal Persons

Standard of Liability

98. The Working Group will follow up the interpretation of new terms and concepts introduced by Art. 2 CLL, such as "with [a legal person's] intervention or in its behalf, interest or benefit"; "a third party lacking attributions to act on behalf of" a legal person; and ratification of an act of a third party, including tacit ratification. The Working Group will also follow up issues such as the level of authority of the natural person committing foreign bribery that would trigger the liability of a legal person; whether a legal person would be liable if foreign bribery generates a benefit to both the natural person and the legal person; and the liability of a parent company for foreign bribery committed by a subsidiary.

Exemption from Sanctions

99. Art. 9 CLL exempts a legal person from sanctions if three conditions are met. Under Art. 9(1), the legal person must have "spontaneously denounced an offense provided for in this law as a result of an internal detection and investigation activity." The Working Group recommends that Argentina amend this provision to make clear that the exemption from sanctions applies only when a legal person self-reports an offence that it has committed; and the legal person satisfies a court that it has conducted an appropriate internal investigation and reported all relevant wrongdoing. The Working Group will also follow up whether the reported offence must be unknown to the authorities.

100. Under Art. 9(2) CLL, the second condition for the exemption from sanctions is that the legal person must have implemented an adequate integrity (*i.e.* compliance) programme at the time of the denounced offence. Art. 23 CLL lists three mandatory and ten optional elements for all integrity programmes. Argentine authorities have also published "Integrity Guidelines" that provide further information on integrity programmes. The Working Group recommends that Argentina amend Art. 23 CLL and the Integrity Guidelines to include additional elements that are vital to an effective anti-foreign bribery compliance programme. It also recommends that Argentina amend Art. 9(2) CLL to ensure that the exemption from sanctions is not available when senior corporate officers commit or authorise foreign bribery, consistent with Annex I of the 2009 Anti-Bribery Recommendation.

101. The third condition of the exemption is that the legal person must return any undue benefit obtained (Art. 9(3) CLL). The Working Group will follow up whether a legal person would be required to pay an amount equivalent to the value of the benefit if the benefit itself cannot be returned.

Proceedings against Legal Persons

102. Annex I.B of the 2009 Recommendation establishes that the liability of legal persons cannot depend on the prosecution or conviction of the natural person(s) who perpetrated the offence. Art. 6 CLL deviates from Annex I.B by stating that a legal person is liable under these circumstances only if "the offence could not be committed without the tolerance of the bodies of the legal person." The Working Group recommends that Argentina amend the CLL and remove the requirement of the legal entity's "tolerance".

Sanctions for Foreign Bribery

Penalties against Natural and Legal persons

103. The CLL has commendably increased financial sanctions against natural persons for foreign bribery to a fine of two to ten times the value of the bribe. The Working Group recommends that Argentina amend the CLL to make clear that fines are available in cases where the monetary value of the bribe cannot be determined.

104. Legal persons may receive a fine of two to five times the value of the "undue benefit that was obtained or could have been obtained" through a foreign bribery offence (Art.8(1) CLL). The Working Group recommends that Argentina take steps to clarify whether fines are mandatory upon conviction. The Working Group should also follow up several issues, namely the interpretation of "benefit"; the fine imposed when the benefit is not quantifiable; the payment of fines in instalments (Art. 8(4) CLL); and the sanctions imposed where "it is essential to maintain the operational continuity of the entity, or of a work, or of a particular service" (Art. 8(3) CLL).

Confiscation

105. Art. 10 CLL extends the Penal Code rules regarding confiscation to CLL cases. Art. 23(1) PC provides for confiscation upon conviction of "things that have been used to commit the offence, and the things or profits that constitute the proceeds or gains from the offence". The Working Group recommends that Argentina amend this provision to provide for the confiscation of property the value of which corresponds to that of the bribe and the proceeds of bribery, or that monetary sanctions of comparable effect are applicable (value confiscation).

Additional Civil and Administrative Sanctions

106. Multiple pieces of legislation provide for debarment in Argentina. Arts. 7(2)-(6) CLL introduces new provisions to Decrees 436/2000 Art. 136, 1023/2001 Art. 28 and Decree 1169/2018 Arts. 5(f)-(g). These provisions are inconsistent, *e.g*. some mandatory and others optional; some cover all foreign bribery and others not. The Working Group therefore recommends that Argentina streamline its debarment provisions and ensure that they set out a consistent regime. It also recommends that Argentina ensures that debarment for foreign bribery applies to the same extent as debarment for domestic bribery, as required by the 2009 Anti-Bribery Recommendation XI.

107. Legal persons can be required to implement an adequate integrity (*i.e.* compliance) programme to prevent future offences as part of a non-trial resolution of foreign bribery charges. The Working Group recommends that Argentina amend the CLL so that such a condition can also be imposed upon conviction.

Enforcement

108. The CLL provides for non-trial resolutions of corporate foreign bribery cases through effective collaboration agreements. Unfortunately, these provisions do not provide sufficient accountability and transparency. The Working Group therefore recommends that Argentina publish criteria that prosecutors should consider before entering into a collaboration agreement; the essential elements of each agreement; and the outcome of the verification conducted one year after the agreement to assess the information provided by the legal person and compliance with the agreement. The

Working Group also recommends that Argentina ensure effective review mechanisms and transparency of non-trial resolutions.

109. The Working Group will also follow up whether collaboration agreements result in effective, proportionate and dissuasive sanctions in foreign bribery cases.

Statute of Limitations

110. Cases under the CLL are subject to a six-year limitation period that is restarted by major procedural acts. The Working Group recommends that Argentina amend the CLL so that the limitation period is suspended for the duration of a collaboration agreement. The Working Group should also follow up whether the statute of limitations is sufficient in practice, given the enormous systemic delays in many complex economic crime cases in Argentina.

Money Laundering

111. The Penal Code, not the CLL, provides for corporate liability for money laundering. The Working Group will follow up how these parallel regimes of corporate liability operate in cases involving both foreign bribery and money laundering.

ANNEX 1 LIST OF ABBREVIATIONS AND ACRONYMS

ARS	Argentine pesos
CLL	Corporate Liability Law 27 401
CPC	Federal Criminal Procedure Code (Law 23 984)
MLA	mutual legal assistance
PC	Federal Penal Code (Law 11 179)
SME	small- and medium-sized enterprise
USD	United States dollar

ANNEX 2 EXCERPTS OF RELEVANT LEGISLATION

Corporate Liability Law 27 401

Art. 1. - Purpose and scope. The present law establishes the criminal liability regime applicable to private legal persons, whether of national or foreign capital, with or without State ownership, for the following offenses:

a) Bribery and peddling in influence, national or transnational, established in articles 258 and 258 bis of the Penal Code;

b) Negotiations incompatible with public office, as established in Section 265 of the Argentine Penal Code;

c) Illegal exactions established in article 268 of the Penal Code;

d) Illicit enrichment of public officials and employees, established in articles 268 (1) and (2) of the Penal Code;

e) Aggravated false account balance sheets and reports, established in article 300 bis of the Penal Code.

Art. 2º. - Responsibility of the legal person. Legal persons are liable for the offenses established in the preceding article which have been directly or indirectly committed with its intervention or in its behalf, interest or benefit.

They are also responsible if the person acting in the benefit or interest of the legal person is a third party lacking attributions to act on behalf of it, provided that the legal entity had ratified the act, even if the ratification was tacit.

The legal person will be exempt from liability only if the physical person who committed the offense was acting in its own benefit and its act did not generate any advantage to the legal person.

Art 3°. - Successor liability. In case of conversion, merger, acquisition, split or any other corporate transformation, the liability of the legal person shall be transferred to the resulting or absorbent legal person.

The legal person remains liable also when, in a concealed or merely apparent manner, it continues its economic activity and maintains the substantial identity of its customers, suppliers and employees, or of the most relevant part of all of them.

Art. 4º. - Termination of the criminal action. The criminal action against the legal person shall only terminate by the grounds enumerated in articles 59 (2) and (3) of the Penal Code.

The limitation of the right to bring a criminal action against the individuals who committed or participated in the commission of a crime shall not affect the validity of the criminal action against the legal entity.

Art. 5º. - Statute of limitations. The limitation period for bringing a criminal action against the legal person prescribes after six (6) years from the time the crime was committed.

For this purpose, the rules of suspension and interruption of the criminal action provided for in the Penal Code shall apply.

Art. 6º. - Independent actions. The legal person may be sentenced even where it is not possible to identify or prosecute the individuals involved, provided that the circumstances of the case allow the establishment that the offense could not be committed without the tolerance of the bodies of the legal person.

Art. 7º. - Sanctions. The sanctions applicable to the legal persons are the following:

1) Fine of two (2) to five (5) times of the undue benefit obtained or that could have been obtained;

2) Partial or total suspension of the activities, which in no case shall exceed ten (10) years;

3) Suspension to participate in public tenders or bidding processes or any other

State-related activities, which in no case shall exceed ten (10) years;

4) Dissolution and liquidation of the legal person when it was created for the sole purpose of committing the offense, or such acts constitute the main activity of the entity;
5) Loss or suspension of any State benefit that it may have;
6) Publication of an extract of the condemnatory sentence at the expense of the legal person.

Art. 8º. - Graduation of the penalty. In order to calibrate the sanctions provided in article 7º of the this law, the Court will take into account the failure to comply with internal rules and procedures; the number and hierarchy of officials, employees and collaborators involved in the offense; the omission of vigilance over the activity of the authors and participants; the extent of the damage caused, the amount of money involved in the commission of the offense, the size, nature and economic capacity of the legal entity; the self-reporting to the authorities by the legal entity as a result of an internal detection or investigation activity; its subsequent behaviour; the disposition to mitigate or repair the damage, and recidivism.

It will be understood that there is recidivism when the legal entity is sanctioned for an offense committed within three (3) years following the date of the final judgment of a previous conviction.

In the cases in which it is essential to maintain the operational continuity of the entity, or of a work, or of a particular service, the sanctions provided in articles 7 (2) and (4), hereof shall not apply.

The Judge may order the payment of the fine in a fractioned form for a period of up to five (5) years when its amount and single-payment compliance jeopardize the survival of the legal person or the maintenance of jobs.

The provisions of article 64 of the Penal Code shall not apply to legal persons.

Art. 9º. - Exemption from sanctions. The legal person will be exempt from punishment and administrative responsibility when the following circumstances concur simultaneously:

a) Spontaneously has denounced an offense provided for in this law as a result of an internal detection and investigation activity;
b) Would have implemented an adequate control and supervision system under the terms of articles 22 and 23 of this law, prior to the fact of the process, the violation of which would have required an effort from the parties involved in the commission of the offense; and
c) Would have returned the undue benefit obtained.

Art. 10º. - Confiscation. In all the cases provided in this law, the rules of the Penal Code regarding confiscation will be applicable.

Art. 11º. - Procedural status of legal persons. Legal persons shall have the rights and obligations prescribed for an accused individual pursuant to the applicable provisions of the procedural codes, where applicable.

Art. 12º. - Notices. If the legal person has not appeared in the proceedings, notices shall be sent to its legal domicile, which will be deemed to be its valid address for the purposes of the proceedings. Notwithstanding this, notices may be sent to any other known address.

Art. 13º. - Representation. Legal persons shall be represented by their legal representative or by any other individual holding a special power of attorney for such purpose compliant with all formalities relevant to the type of entity; in any case, they shall appoint a defence attorney. Upon failure to do so, a public defender shall be appointed, which shall be the public defender on duty at the time of the appointment.

The representative shall inform the entity's address and establish an address for notification purposes on the first submission. Thereafter, notices addressed to the legal person shall be sent to that address.

Legal persons may replace their representative at any time throughout the proceedings. Replacements made after the trial begins must be justified and may only interrupt proceedings in accordance with the applicable procedural terms.

The replacement shall not affect the validity of the acts performed by the previous representative.

The faculties, number and intervention of the defenders that assist it will be governed by the corresponding procedural provisions.

Art. 14º. - Default. Should the legal person fail to enter an appearance, it shall be declared to be in default by the Judge, at the request of the prosecutor.

The judge that declares the default shall inform the GENERAL INSPECTION OF JUSTICE or the equivalent entity in local jurisdictions, and the FEDERAL ADMINISTRATION OF PUBLIC REVENUE, and the NATIONAL REGISTER OF RECIDIVISM, to its effects.

In addition, it must immediately order all the necessary precautionary measures to ensure the timely continuation and purpose of the process, in accordance with the last paragraph of article 23 of the Penal Code.

Art. 15º. - Conflict of interests. Abandonment of representation. In the event of a conflict of interest between the legal person and its appointed representative, the former will be required to replace its representative.

Art. 16º. - Effective cooperation agreement. The PUBLIC PROSECUTOR'S OFFICE and the legal entity may enter into an effective cooperation agreement, whereby the latter undertakes to cooperate through the disclosure of information or accurate, useful and verifiable data for the elucidation of the facts, the identification of its authors or participants or the recovery of the product or the profits of the crime, as well as through the fulfilment of the conditions established by virtue of the provisions of article 18 of this law.

The cooperation agreement can be held until the summons to trial.

Art. 17º.- Confidentiality of the negotiation. The negotiation between the legal person and the PUBLIC PROSECUTOR'S OFFICE, as well as the information exchanged in the context of the negotiation until the approval of the agreement, shall be classified as strictly confidential. The release of such information may be subject to the provisions Chapter III - Breach of secrecy and privacy, Title IV of Volume Two of the Argentine Penal Code.

Art. 18º.- Content of the agreement. The agreement shall identify the type of information, data or evidence to be provided by the legal person to the PUBLIC PROSECUTOR'S OFFICE, under the following conditions:

a) Payment of a fine equivalent to half of the minimum established in article 7 (1) of this law;

b) Restitution of the things or profits that are the product or the benefit of the crime; and

c) Surrender in favour of the State the property that would presumably be confiscated in the event of a conviction;

The following conditions may also apply, without prejudice to others which may be agreed upon according to the circumstances of the case:

d) Performing the necessary actions to repair the damage caused;

e) Rendering a specific service to the community;

f) Applying disciplinary measures against those who have participated in the crime;

g) Implementing an integrity programme in the terms of articles 22 and 23 of this law or make improvements or modifications to a pre-existing program.

Art. 19º.- Form and judicial control of the cooperation agreement. The agreement must be in writing. It will bear the signature of the legal representative of the legal entity, its defence counsel and the representative of the PUBLIC PROSECUTOR'S OFFICE and it will be submitted before the judge, who will assess the lawfulness of the agreed-upon terms and cooperation before deciding on its approval or rejection.

Art. 20º. - Rejection of the collaboration agreement. If the effective collaboration agreement is not reached or is rejected by the court, the information and the evidence submitted by the legal entity during the negotiations will be returned or destroyed and shall not be used by the Courts, except where the PUBLIC PROSECUTOR'S OFFICE had known them independently or could

have obtained them on the grounds of a course of investigation already existing in the proceedings before the agreement.

Art. 21º.- Monitoring compliance with the effective collaboration agreement. Within a period not exceeding one (1) year, the PUBLIC PROSECUTOR'S OFFICE or the judge will corroborate the authenticity and usefulness of the information provided by the legal entity in compliance with the effective collaboration agreement.

If the authenticity and usefulness of such information is confirmed, the sentence must respect the conditions established in the agreement, and no other penalties may be imposed.

Otherwise, the judge shall nullify the agreement and the proceedings will continue in accordance to the general rules.

Art. 22º.- Integrity Program. The legal persons included in the present regime may implement integrity programs, consisting of a set of internal actions, mechanisms and procedures for the promotion of integrity, supervision and control, aimed at preventing, detecting and correcting irregularities and unlawful acts included in this law.

An appropriate integrity programme should be consistent with the risks inherent in the activities carried out by the legal person, as well as its size and economic capacity, in accordance with the relevant regulations.

Art. 23º.- Content of the Integrity Program. The Integrity Program shall contain, in accordance with the guidelines established in the second paragraph of the preceding article, at least the following:

a) A code of ethics or conduct, or integrity policies and procedures that apply to all directors, managers and employees, irrespective of their position or functions, for the purpose of guiding the planning and fulfillment of their tasks or duties in such a way as to prevent the commission of the offenses described in this Law;

b) Specific rules and procedures to prevent unlawful acts in bidding processes, during the implementation of administrative contracts, or in any other interaction with the public sector;

c) The conduct of regular training sessions on the integrity program for directors, managers, and employees.

Integrity Programmes may also contained the following:

I. A periodic analysis of risk and the subsequent adaptation of the integrity program;

II. Visible and unequivocal support for the integrity program by top managers and directors;

III. Internal channels to report irregularities, open to third parties and appropriately disclosed;

IV. A policy for the protection of whistle-blowers against retaliation;

V. An internal investigation system that respects the rights of the persons under investigation and imposes effective sanctions for violations against the code of conduct;

VI. Procedures to verify the integrity and track record of third parties or business partners, including suppliers, distributors, service providers, agents and intermediaries, at the time of engaging their services during the business relationship;

VII. Due diligence during company transformation processes and acquisitions, in order to monitor irregularities, unlawful acts or the existence of vulnerabilities in the legal entities involved;

VIII. Continuous monitoring and assessment of the effectiveness of the integrity program;

IX. An internal officer responsible for the development, coordination and monitoring of the integrity program;

X. The fulfilment of the regulatory requirements imposed on these programmes by the relevant authorities holding federal, provincial, municipal or local police power over the activities carried out by the legal person.

Art. 24º.- Contracting with the National State. The existence of an adequate integrity program in accordance with articles 22 and 23 will be a necessary condition to contract with the National State, within the framework of the contracts that:

a) According to the regulations in force, because of their amount, must be approved by a competent authority with a rank not inferior to Minister; and

b) Are included in article 4 of Delegated Decree No. 1023/01 and/or governed by laws 13.064, 17.520, 27.328 and public service concession or license contracts.

Art. 25º.- National Register of Recidivism. The National Registry of Recidivism, under the Ministry of Justice and Human Rights of Argentina, will record the sentences that fall for the crimes foreseen in this law.

Art. 26º.- Competence. The court having competence over the imposition of the sanctions on legal person shall be competent to decide on the offence attributable to the human person.

Art. 27º.- Complementary application. This Law complements the Argentine Penal Code.

Art. 28º.- Supplementary application. In the cases of national and federal jurisdiction reached by this Law, the Argentine Penal Procedural Code shall apply in a supplementary manner.

The provinces and the Autonomous City of Buenos Aires are invited to adequate their legislations to the guidelines of this law.

Art. 29º.- ARTICLE 1° of the Argentine Penal Code is hereby replaced as follows:

"ARTICLE 1.- This Code shall apply to:

1.- Offences committed or whose consequences take place in the territory of the ARGENTINE REPUBLIC, or in places under its jurisdiction;

2.- Offences committed abroad by representatives or employees of Argentine authorities in the exercise of their duties.

3.- The offence provided in Article 258bis that is committed abroad by Argentine citizens or legal entities with domicile in the Argentine Republic, whether they be the address established in their Articles of Incorporation or those of their establishments or branches in the Argentine territory."

Art. 30º.- ARTICLE 258 bis of the Argentine Penal Code is hereby replaced as follows:

"ARTICLE 258 bis.- It shall be punished with a prison term from one to six years and perpetual special debarment for the exercise of public functions the person who, directly or indirectly, offers, promise or gives, unduly, to a public official of a foreign State or of a public international organization, whether in their own benefit or that of a third party, a monetary sum or any other object of monetary value or other compensations such as gratuities, favours, promises or advantages, in exchange for the public official to do or abstain from doing an act related to the exercise of their public functions, or to assert the influence derived from their position, in a matter related to a transaction of an economic, financial or commercial nature.

A public official of a foreign State, or of any territorial entity recognized by the Argentine Republic, shall be defined as any person who has been designated or elected to exercise public functions, at any level or territorial division of the Government, or within any kind of body, agency or state-owned enterprise where that State exerts a direct or indirect influence".

Art. 31º.- It is hereby incorporated as ARTICLE 259 bis of the Penal Code the following:

"ARTICLE 259 bis. – With respect to the offences provided in this chapter, a fine shall be imposed jointly, from two (2) to ten (10) times the amount or value of the money, gratuity, benefit or monetary advantage offered or given".

Art. 32.- ARTICLE 265 of the Penal Code is hereby replaced with the following:

"ARTICLE 265.- Shall be punished with imprisonment or imprisonment of one (1) to six (6) years and special perpetual disqualification, the public official who, directly, by

interposed person or by simulated act, is interested in view of his own benefit or that of a third party, in any contract or operation in which it intervenes due to its position.

A fine of two (2) to five (5) times of the value of the improper benefit sought or obtained shall also be applied.

This provision shall apply to the arbitrators, amicable conciliators, experts, accountants, guardians, curators, executors, liquidators and liquidators, with regard to the functions fulfilled in the character of such ".

Art. 33º.- ARTICLE 266 of the Penal Code is hereby replaced with the following:

"ARTICLE 266.- A prison term of one (1) to four (4) years and a special prohibition to hold public office for one to five years will be imposed on any public official who, abusing his position, solicits, demands or requeris the undue payment or delivery, in person or by proxy , a contribution, a fee or a gift or charges higher fees than those that correspond.

A fine of two (2) to five (5) times the amount of the levy will also be applied."

Art. 34º.- ARTICLE 268 of the Penal Code is hereby replaced with the following:

"ARTICLE 268.- Shall be punished with imprisonment of two (2) to six (6) years and absolute perpetual disqualification, the public official who converts the exactions expressed in the previous articles to his own or a third party's benefit.

A fine of two (2) to five (5) times the amount of the levy will also be applied."

Art. 35º.- It is hereby incorporated as second paragraph to ARTICLE 268 (1) of the Penal Code the following text:

"A fine of two (2) to five (5) times of the profit obtained will also be applied."

Art. 36º.- Amend the first paragraph of ARTICLE 268 (2) of the Penal Code, which will be worded as follows:

"Shall be punished with imprisonment of two (2) to six (6) years, a fine of two (2) to five (5) times the value of the enrichment, and perpetual absolute disqualification, which upon being duly required, will not justify the provenance of an appreciable two (2) to five (5) times the amount of enrichment and an absolute perpetual prohibition to hold any public office will be imposed on any person who, upon due request, fails to justify the origin of any substantial enrichment on their part or on the part of a third party for concealment purposes, after taking office and up to two (2) years after leaving office."

Art. 38º.- ARTICLE 33 of the Code of Penal Procedure, Law No. 23.984, is hereby replaced by the following:

"ARTICLE 33. - Federal courts will exercise jurisdiction over:

1. In the preliminary investigation of the following offences:

a) Those ones committed in the high seas, on board national vessels or by pirates, citizens or foreigners;

b) Those ones committed in Argentine waters, islands or ports;

c) Those ones committed within the territory of the City of Buenos Aires or of the provinces, in violation of federal laws, such as crimes against Argentina's sovereignty or security, crimes aimed at embezzling its revenues, crimes aimed at obstructing or perverting the good conduct of their employees, crimes aimed at stealing or tampering with mail, crimes aimed at obstructing or rigging national elections, or crimes aimed at falsifying national documents or counterfeiting national currency or notes issued by banks authorized by Congress;

d) Those ones committed in places or establishments where the national government has absolute and exclusive jurisdiction, with the exception of those that by this law are subject to the ordinary jurisdiction of the investigating judges of the City of Buenos Aires;

e) The offenses set forth in articles 41d, 142a, 142b, 145a, 145b, 149b, 170, 189 bis (1), (3) and (5), 212, 213 bis and 258 bis and 306 of the Penal Code.

2. In the trial in a single instance of those crimes indicated in the previous paragraph that are repressed with non-custodial penalty or deprivation of liberty whose maximum does not exceed three (3) years. "

Art. 39º.- Entry into force. This law shall enter into force ninety (90) days after its publication in the Official Gazette of the Argentine Republic.

Art. 40º.- Be it notified to the ARGENTINA EXECUTIVE BRANCH.

Penal Code (Law 11 179)

Art. 1º.- This Code shall apply to:

1. Offences committed or whose consequences take place in the territory of the ARGENTINE REPUBLIC, or in places under its jurisdiction;
2. Offences committed abroad by representatives or employees of Argentine authorities in the exercise of their duties.
3. The offence provided in Article 258bis that is committed abroad by Argentine citizens or legal entities with domicile in the Argentine Republic, whether they be the address established in their Articles of Incorporation or those of their establishments or branches in the Argentine territory.

Art. 258bisº.- It shall be punished with a prison term from one to six years and perpetual special debarment for the exercise of public functions the person who, directly or indirectly, offers, promise or gives, unduly, to a public official of a foreign State or of a public international organization, whether in their own benefit or that of a third party, a monetary sum or any other object of monetary value or other compensations such as gratuities, favours, promises or advantages, in exchange for the public official to do or abstain from doing an act related to the exercise of their public functions, or to assert the influence derived from their position, in a matter related to a transaction of an economic, financial or commercial nature.

A public official of a foreign State, or of any territorial entity recognized by the Argentine Republic, shall be defined as any person who has been designated or elected to exercise public functions, at any level or territorial division of the Government, or within any kind of body, agency or state-owned enterprise where that State exerts a direct or indirect influence.

Art. 259bisº.- With respect to the offences provided in this chapter, a fine shall be imposed jointly, from two (2) to five (5) times the amount or value of the money, gratuity, benefit or monetary advantage offered or given".

Article 300º.- Prison from six months to two years shall be imposed on:

[…]

3. Any incorporator, director, manager, liquidator or receiver of any corporation or cooperative or any other partnership who publishes, certificates or approves an untrue or incomplete balance sheet, profit and loss statement, or their respective reports, minutes, annual reports, or informs the meeting of members distorting the truth or with reticence regarding facts which are important for the appreciation of the economical situation of the company, regardless of the purpose he had to inform it.

Article 300bisº.- When the criminal acts provided for in subsection 2) of article 300 have been carried out in order to conceal the commission of the offenses set forth in articles 258 and 258 bis, a prison sentence of one (1) to four (4) shall be imposed years and fine of two (2) to five (5) times the value falsified in the documents and acts referred to in the aforementioned clause.

Article 303º.- 1) A prison term of three (3) to ten (10) years and a fine equal to two (2) to ten (10) times the amount of the relevant transaction will be imposed on any persons who transform, transfer, manage, sell, tax, conceal or in any other way circulate goods originating from criminal offences, with the possible consequence of having the origin of the original or surrogate goods

appear lawful, and as long as they have a value equal to or over three hundred thousand Argentine pesos (ARS 300 000),[17] whether the crime constitutes a single act or repeated and related different actions.

2) The punishment established in 1) above will be increased by a third of its maximum value and half of its minimum in the following cases:

a) Where the offender regularly engages in the activity or is a member of an association or group created for the purpose of regularly engaging in activities of such a nature; and

b) Where the offender is a public official committing the crime during the exercise or as part of its functions. In the latter case, the offender will also be punished with a special ban on engaging in business for a term of three (3) to ten (10) years. This penalty will also be applied to any person acting within the scope of a profession or trade that requires any special authorization.

3) Any person who receives money or other goods originating from in a criminal offence with a view to using them in any of the transactions described in 1) above and giving them a legitimate appearance will be punishable by a prison term of six (6) months to three (3) years.

4) Where the value of the goods is below the amount stated in 1) above, the offender will be punishable by a prison term of 6 (six) months to 3 (three) years.

5) The provisions hereof will apply even where the predicate criminal offence was committed outside the scope of the territorial implementation of this Code, as long as the crime committed is punishable in the place where it was committed.

Article 304º.- Where the crimes punishable by the above Article are committed in the name, with the participation, or for the benefit of a legal entity, the entity will be punishable by the following sanctions, either jointly or alternatively:

1. A fine equal to two (2) to 10 (ten) times the value of the goods involved in the crime.
2. Total or partial suspension of activities for a maximum term of ten (10) years.
3. Ban from participating in public calls for bids for public works or services, or in any other activities related to the Government, for a maximum term of ten (10) years.
4. Cancellation of legal entity status in the event that the corporation has been created for the sole purpose of committing the crime, or where said activities are the main activity of the entity.
5. Loss or suspension of any State benefits that may have been granted.
6. Publication of an excerpt of the conviction, to be paid by the legal entity.

In order to determine the punishment to be imposed, the courts will take into consideration the infringement of internal rules and procedures, the lack of supervision over the activities of principal and accomplices, the extent of the damage caused, the amount of money involved in the commission of the crime, and the size, nature, and economic capacity of the legal entity.

Where it is of the essence to preserve the operational continuity of the entity or of a given work or service, the sanctions provided for in (2) and (4) above will not be applied.

[17] Approximately USD 19 500.