



IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION

Phase 1bis Report Liability of Legal Persons



Slovak Republic

In June 2016, the OECD Working Group on Bribery agreed that the Slovak Republic should undergo a Phase 1bis review on its new Law on the Criminal Liability of Legal Persons (CCL), which was adopted in November 2015 and entered into force on 1 July 2016.

This Phase 1bis Report on the Slovak Republic by the OECD Working Group on Bribery examines the Slovak Republic'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 17 October 2017.

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

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A. Implementation of the Convention

1. The Slovak Republic signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) on December 17, 1997. On February 11, 1999, the Slovak Parliament approved the Convention and the instrument of ratification was deposited with the OECD on September 24, 1999.

1. The OECD Working Group on Bribery monitoring process and the Slovak Republic legislation

2. In June 2016, the OECD Working Group on Bribery in International Business Transactions (Working Group) agreed that the Slovak Republic should undergo a Phase 1bis review on its new Law on the Criminal Liability of Legal Persons (CCL),¹ which was adopted in November 2015 and entered into force on 1 July 2016.

3. The Phase 1 and Phase 2 reviews of the Slovak Republic took place in 2003 and 2005 respectively. During Phase 1, the Working Group found that the Slovak Republic “does not know the concept of criminal responsibility of legal persons”² and in Phase 2, the Working Group strongly recommended that the Slovak Republic establish the liability of legal persons for foreign bribery “without delay” and put in place sanctions that are effective, proportionate, and dissuasive.³ During the Slovak Republic’s Phase 3 evaluation in 2012, the Working Group found that while the Slovak Republic had introduced “protective measures” which enabled it to confiscate property from legal persons, it still had not established any specific form of corporate liability (criminal or otherwise) as is required under Article 2 and Commentary 20 to the Convention. The Group thus recommended that the Slovak Republic establish, as a matter of priority, the liability of legal persons for bribery of a foreign public official.⁴

4. The Slovak Republic provides that the CCL was adopted to address these recommendations and ensure the effective implementation of the Convention and other relevant international instruments. Accordingly, this Phase 1bis review examines the Slovak Republic’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 (2009 Recommendation) which clarifies the standard under Article 2 of the Convention (on the liability of legal persons).

5. The Slovak Republic is scheduled to undergo its Phase 4 review on implementation of the Convention in March, 2021. The Phase 4 review will focus on key group-wide cross-cutting issues; measures taken to address weaknesses identified in previous evaluations; enforcement efforts and results; and any issues raised by changes to its domestic legislation or institutional framework. The Slovak Republic’s broader compliance with the Anti-Bribery Convention will thus be evaluated in the context of its Phase 4 review, rather than as part of the current Phase 1bis evaluation, the scope of which is limited to an assessment of its new legislation on the liability of legal persons.

2. Article 2: Responsibility of Legal Persons

6. Article 2 of the Convention requires each Party to “take such measures as may be necessary [...] to establish liability of legal persons for the bribery of a foreign public official”. CCL, section 3, establishes the liability of “legal persons” for a range of criminal offences, including foreign bribery and other related offences, such as domestic bribery, embezzlement, and money laundering.

¹ Act no. 91/2016 Coll.

² See section 2, Slovak Republic Phase 1 Report.

³ See section 23, Phase 2 Report.

⁴ See section 2, Slovak Republic Phase 3 Report, and Phase 3 recommendations 2 & 3.

2.1 Legal Entities Subject to Liability

7. The CCL applies to all legal persons unless they are explicitly excluded from its application under section 5. While the CCL does not contain a definition of “legal person”, under the Civil Code, “legal entities” are defined as all legal entities that have rights and duties, including associations of individuals or legal entities, purpose-made associations of property, territorial self-governing units, and other entities defined as such in legislation.⁵ Charities, foundations, and non-governmental organisations are all required to undergo registration. Without such registration, these entities do not exist in law and thus cannot enter into legal arrangements, form contracts etc. Entities gain their legal capacity at the moment of registration with the competent authority (e.g. Register Courts for commercial companies; District Administration Office for non-profits).⁶

8. CCL, section 5(1), excludes certain legal persons from criminal liability under the Act, including the Slovak Republic and its authorities (i.e. entities that directly perform or fulfil duties of the State such as Government Ministries, the National Security Authority, Government Office of the Slovak Republic etc.)⁷; other States and their authorities; international organisations; municipalities and self-governing regions; and legal persons exempt from the Slovak Republic’s bankruptcy laws (namely state institutions).⁸ The exemption also applies to legal persons who, at the time of commission of the criminal offence, were established by operation of law. The Slovak Republic provides that this is an individual category of legal persons, generally funded by the state budget in order to fulfil a state function. Examples include the Environmental Fund, Slovak Arts Council, and Radio and Television of Slovakia.⁹

9. The Slovak Republic emphasises that the exemption under section 5(1) is not intended to apply to state-owned or controlled enterprises (SOEs), both of which are subject to corporate liability. This is supported by CCL, section 5(2), which provides that an ownership interest by any of the abovementioned entities in a legal person does not exclude the liability of the latter legal person under the Act (i.e. where a public body owns or controls a legal person, that legal person is still subject to liability under the CCL). However, two SOEs Railways of the Slovak Republic and Eximbanka (the Slovak Republic’s export credit agency are ‘established by operation of law’ and thus exempt from liability under the CCL. The Slovak Republic provides that while SOEs *can* take this form that it is very rare as entities set up by operation of law must perform some state function. It submits that SOEs are generally business entities that do not ordinarily perform a state function. However, the Act establishing the Railways states that it “provides transport services that correspond to the interests of the transport policy of the State and requests of the market including relating activities.”¹⁰ While these are just two out of around 180 SOEs in the Slovak Republic¹¹, this description suggests that a broad range of SOEs could in theory perform a ‘state function’ and thus be established by operation of law. The fact that SOEs can take this form and thus avoid criminal corporate liability, raises concerns under Article 2 of the Convention which does not distinguish between public and privately owned legal persons.

2.2 Standard of Liability

10. The 2009 Recommendation sets out two approaches for corporate liability for foreign bribery and recommends that Parties adopt one of these. Under approach (a), the level of authority of the natural person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons. Approach (b) requires a person with the highest level of managerial authority to either (i) offer, promise, or give a bribe to a foreign public official; (ii) direct or authorise a lower level person to do the same; or (iii) fail to prevent such a person from doing so.¹² The Slovak Republic has adopted a hybrid

⁵ Civil Code, s18.

⁶ See Act no. 161/2015 Coll and Act no. 231/1997 Coll respectively.

⁷ The legal framework of the status and jurisdiction of central authorities is provided by the Act no. 575/2001 Coll. on Organisation of Operation of the Government and Organisation of Central State Administration as amended.

⁸ See Act on Bankruptcy and Restructuring and on Alteration, s2

⁹ Respectively established by the Acts no. 587/2004 Coll. and Act no. 284/2014 Coll.

¹⁰ Act no. 258/1993 Coll. on Railways of the Slovak Republic, s1(2).

¹¹ A list of SOEs as at 1 November 2015 is available online here: <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-130967?prefixFile=m>.

¹² CCL, s4.

of these two approaches that nonetheless appears to capture a range of ways that legal persons can be held liable for foreign bribery as recommended under the 2009 Recommendation. As the Slovak Republic has yet to finalise a prosecution a legal person under the CCL, it remains to be seen how the new law will operate in practice. This should thus be examined in the context of the Slovak Republic's Phase 4 evaluation.

2.2.1 *Level of authority of the natural person*

11. Under CCL, section 4(1), a legal person commits a criminal offence if the offence is committed “for its benefit, on its behalf, as part of or through its activities by (a) its statutory body or a member of its statutory body; (b) a person performing control or supervision within the legal person; or (c) another person authorised to represent the legal person or make decisions on its behalf.”

(i) CCL, section 4(1)(a): Statutory body or a member of its statutory body

12. The CCL does not include a definition of ‘statutory body’. However, the Slovak Republic provides that a ‘statutory body’ could more accurately be described as a legal person’s board or other body or person whose actions may constitute the actions of the company itself. It provides that this must be specified in the legal person’s deed or agreement of association. In Phase 4, the Working Group should follow-up on how liability would attach to a statutory body in practice (given they are not ordinarily natural persons).

(ii) CCL, section 4(1)(b): A person performing control or supervision within the legal person; and CCL, section 4(1)(c): Another person authorised to represent the legal person or make decisions on its behalf

13. The Slovak Republic states that it does not matter whether the natural person attracting corporate liability is an employee of the legal person, provided they act on the basis of delegation of powers. This is supported by section 20 of the Civil Code which provides that legal entities act through persons authorised in the deed of association or through “other employees or members, provided that this possibility is stipulated in the internal regulations of the legal entity or if it is customary with regard to their position.” While there is currently no case law on the level of ‘control’, ‘supervision’, or ‘authority’ that an individual must exercise to attract corporate liability, the legislation itself appears flexible, capturing a wide range of individuals holding varying levels of authority within an organisation. Its implementation in practice should be assessed in Phase 4.

(iii) For its benefit, on its behalf, as part of or through its activities

14. The Slovak Republic provides that “for its benefit, on its behalf, as part of or through its activities” are alternatives (i.e. only one element under CCL, section 4(1) is required) and that the “benefit” can be non-pecuniary (e.g. gaining a better position within a market or relative to a competing entity). It states that it is sufficient if the offence was *intended* to benefit the company and that it does not matter whether the company *actually* benefitted from the act. Slovak authorities further provide that “on its behalf” requires that the actions of the natural person are attached to and have legal consequences for the company, and that whether an offence is carried out “as part of or through its [the legal person’s] activities” shall be determined by the company’s deed or agreement of association which must state the legal person’s activities/objectives.¹³ In its questionnaire responses, the Slovak Republic goes on to provide that there has to be a causal relationship between the activities of the legal person, its interests, or the fact that it has been used as a vehicle for criminal activity on the one hand; and the conduct of the natural person who committed the crime on the other. Finally, the Slovak Republic states that this provision will also cover a situation where a bribe is paid for the benefit, on behalf of, or through the activities of a *related* legal person (e.g. a foreign subsidiary).

15. In the absence of case law, it is not possible to ascertain whether these provisions will be interpreted in the manner described. The Working Group should thus follow-up on this in the course of its Phase 4 evaluation of the Slovak Republic in 2021.

¹³ See for example, Commercial Code, s78 (Unlimited Company), s94 (Limited Partnerships), and s110 (Limited Liability Company)

2.2.2 *Corporate liability where relevant natural person fails to perform their control and supervision duties*

16. Under CCL, section 4(2), a legal person commits an offence if a person referred to in section 4(1) (i.e. a statutory body or its member, or a person with relevant level of control, supervision, or authority etc.) “fails, even if by negligence, to *properly perform* its control and supervision duties, thus allowing a criminal offence... [to be] committed by a person acting *within the scope of authority* conferred by the legal person.” It remains to be seen how the courts will interpret “properly perform” and determine whether a natural person is acting “within the scope of their authority”. The Slovak Republic provides that whether an employee is acting within the scope of his or her conferred authority will depend on the employment contract, and the employee’s duties under internal rules. In most instances where bribes are paid, the natural person will not only be breaking the law, but also the company’s code of conduct. The Working Group should thus follow-up on this in Phase 4 to ensure that this provision is not interpreted in a restrictive manner, enabling legal persons to avoid liability by claiming (for example) that the natural person was a rogue employee/agent acting outside the scope of their conferred authority.

17. CCL, section 4(3), goes on to provide that a legal person shall not be held criminally liable if this supervisory failure is of “negligible significance with regard to the object of activity of the legal person and to the manner, consequences and circumstances of the commission of the offence.” In its questionnaire responses, the Slovak authorities provide that “negligible significance” means that the offence would have occurred even if effective controls and supervision had been in place. The Working Group should follow-up on the courts’ application of this provision in Phase 4 to ensure that, among other things, it is not interpreted contrary to Commentaries 1.4 and 1.7 of the Convention (which ensure that companies can be held liable for foreign bribery regardless of whether or not they were the best qualified bidder, and irrespective of “*inter alia*, the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage”). The Slovak Republic provides that the prosecution bears the onus of proving that a person with the requisite level of control failed to perform their duties and that this failure was not of negligible significance.

2.2.3 *Corporate liability where relevant natural person directs or authorises a lower level person to offer, promise, or give a bribe to a foreign public official*

18. CCL, section 4, does not explicitly cover the situation where a natural person directs or authorises a lower level person to pay a bribe (which is a recommended approach under Annex 1(b) of the 2009 Recommendation). However, the legislation appears to capture this scenario in a number of other ways. For example, if a person with the requisite level of control, supervision, or authority directs or authorises a lower level person to pay a bribe, both individuals could be held liable through the Slovak Republic’s laws on complicity and corporate liability would still attach pursuant to CCL, section 4(1).¹⁴ Alternatively, this situation would be captured as a bribe paid through an intermediary. Again both individuals and the legal person could be held liable (see section 2.2.5 below).

2.2.4 *Onus of proof*

19. A presumption of innocence applies to all criminal proceedings in the Slovak Republic.¹⁵ Slovak authorities provide that the onus of proof falls on the prosecution to prove the elements of a criminal offence beyond reasonable doubt.¹⁶ As outlined above, foreign bribery prosecuted under CCL, section 4(2), would require proof that a person with the requisite level of control, supervision, or authority failed, even if by negligence, to prevent a bribe from taking place under the conditions set out in this section. The Slovak Republic provides that this would likely involve an assessment of whether a company had effective internal controls and compliance measures in place and whether these were implemented in practice. The Working

¹⁴ See section 1.2, Slovak Republic [Phase 1 Report](#).

¹⁵ See Constitution, Art. 50(2) and CPC, s2(4).

¹⁶ CPC, s2(10).

Group should follow-up on prosecutions under CCL, section 4(2) during Phase 4 to determine how the court assesses this burden of proof in practice.

2.2.5 *Bribes paid through intermediaries*

20. Annex I.C of the 2009 Recommendation states that a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise, or give a bribe to a foreign public official. Section 334 of the Slovak Republic's Criminal Code captures bribes paid to a foreign public official "either directly or through an intermediary." Therefore, provided the other conditions for corporate liability exist, it will not matter whether the natural person who paid the bribe did so directly or through an intermediary. The Slovak Republic confirms that this includes bribes paid through related legal persons.

2.3 *Proceedings against Legal Persons*

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

21. Annex I.B of the 2009 Recommendation recommends that Parties to the Convention ensure that the conviction or prosecution of a natural person is not a precondition to the liability of a legal person for foreign bribery. In line with the Convention, the CCL provides that "[c]riminal liability of a legal person is not conditional on whether a natural person referred to in paragraph 1 has been found criminally liable or on whether it has been established which natural person acted in a manner referred to in paragraphs 1 and 2"¹⁷ The Slovak Republic provides that this ensures that legal persons can be held liable for foreign bribery, even where the prosecution cannot identify a specific natural perpetrator (i.e. anonymous/cumulative acts are covered). The new law further provides that the criminal liability of a legal person is not conditional on whether the natural person who acted on behalf of the legal person can legally be held criminally liable for the relevant offence in law (e.g. by virtue of age or death).¹⁸ Joint proceedings may be brought against a natural and legal person where the criminal offences are interrelated (unless this would prevent a decision on the case within reasonable time). In such joint proceedings, the criminal liability of the legal and natural person shall be considered independently.¹⁹

3. **Article 3: Sanctions**

22. Convention Article 3(1) requires Parties to criminalise foreign bribery with "effective, proportionate and dissuasive criminal penalties" comparable to those applicable to bribery of the Party's own domestic officials. In line with this requirement, the same penalties apply to legal persons for both domestic and foreign bribery. At the time of drafting, no natural or legal persons had been prosecuted or sanctioned for bribery of a foreign public official in the Slovak Republic.

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

23. Sanctions for legal persons are set out in CCL, section 10, and reflected in Table 1 below. As with natural persons, sentences vary depending on whether or not the bribery is "aggravated". For foreign bribery, this requires that the act be committed "to a large extent." This is defined in section 125 of the Criminal Code as at least five hundred times EUR 266 (i.e. EUR 133 000).²⁰ While the legislation provides that this amount applies equally to the "amount of the benefit, value of items, and extent of the act", the PPO states that in practice, it has only considered the amount of the bribe paid when determining whether or not the domestic bribery offences were aggravated. This means that foreign bribery may be considered non-aggravated (and thus subject to lower penalties) in situations where the bribe is less than EUR 133 000, even if it is paid in return for

¹⁷ CCL, s4(4).

¹⁸ CCL, s5(d).

¹⁹ CCL, s24.

²⁰ CC, 334 and 335.

a contract worth far more than this. While this issue is not strictly within the scope of this Phase 1bis review, it is something that the Working Group should examine closely during the Slovak Republic’s Phase 4 evaluation.

24. Sanctions must be enforced within five years of conviction and all convictions against legal persons are expunged following the execution of the penalty. This means that once a legal person has paid its fine, completed its debarment period etc., it will no longer have a criminal record.²¹ During its Phase 4 evaluation of the Slovak Republic, the Working Group should examine whether the expungement of a legal person’s conviction has an impact on the effective, proportionate, and dissuasive nature of penalties under Article 3(1) of the Convention. It should also explore whether this impacts on the Slovak Republic’s ability to effectively implement the 2009 Recommendation more generally.

Table 1. Maximum criminal sanctions for aggravated and non-aggravated foreign bribery under Criminal Code (CC), section 33422

Criminal Penalties available under CCL, section 10	Type/level of Penalty	Level of sanction
(a) dissolution of legal persons used wholly or mainly for the commission of a crime	Mandatory	N/A
(b) forfeiture of property (NB: only applicable to <i>aggravated</i> foreign bribery under section CC, s334(2))	Mandatory	N/A
(c) forfeiture of a thing	Mandatory ²³	N/A
(d) pecuniary penalty (NB: only applicable to <i>non-aggravated</i> foreign bribery under section CC, s334(1))	Discretionary	EUR 1,500 to 1,600,000
(e) penalty of prohibition to perform professional activities	Discretionary	One to ten years
(f) penalty of prohibition to accept grants and subsidies	Discretionary	One to ten years
(g) penalty of prohibition to accept help and support from the funds of the European Union	Mandatory	One to ten years
(h) penalty of prohibition to participate in public procurement	Mandatory	One to ten years
(i) penalty of obligation to publish the convicting judgment	Discretionary	N/A

3.1.1 Availability of pecuniary penalties

25. Under the CCL, the court may impose a pecuniary penalty of EUR 1,500 to EUR 1,600,000 on legal persons convicted of a criminal offence.²⁴ As discussed further under section 3.4.2 below, this fine is only available for legal persons convicted of *non-aggravated* foreign bribery. This is because aggravated foreign bribery carries a *mandatory* penalty of ‘forfeiture or property, which cannot be imposed in conjunction with a pecuniary penalty.’²⁵ While confiscation (in the form of ‘forfeiture of a thing’) is mandatory for *non-aggravated* foreign bribery, it remains to be seen whether the court will impose a pecuniary fine *in addition* to confiscating the bribe and its proceeds. Moreover, a maximum fine of EUR 1,600,000 may be considered insufficient even for *non-aggravated* foreign bribery, particularly when committed by large multilateral corporations. Similarly low maximum penalties, when coupled with uncertain confiscation measures were deemed insufficient to be

²¹ CC, s90(d) (see exceptions in CC s90(3) and s90(4)).

²² As outlined in the [Phase 3 Report](#) “Aggravated foreign bribery covers offences committed at a large scale (sections 334 and 335 CC). A large scale is defined as a damage which is at least five hundred times higher than EUR 266, i.e. (Section 125 CC). This amount is also used to determine the amount of the benefit and the scope of the offence. More generally, damage is broadly defined as also covering an advantage gained from the perpetration of the criminal offence (section 124 CC). The way these provisions will be applied in practice remains to be followed up as case law develops.”

²³ Pursuant to CC, s60(6), mandatory forfeiture of a thing will not apply if it would impact on a victim’s right to damages, or is disproportionate to the gravity of the offence, or if the court waived the punishment of the offender.

²⁴ CCL, s15.

²⁵ CCL, s4.

effective, proportionate, and dissuasive in other jurisdictions.²⁶ This is particularly important given concerns raised in the Slovak Republic’s Phase 3 report that confiscation is “not universally applied” even though it is supposed to be mandatory. In the context of its Phase 4 review, the Working Group should thus follow-up on the imposition of fines and confiscation against legal persons for non-aggravated foreign bribery to determine whether the existing penalty regime enables the imposition of effective, proportionate, and dissuasive sanctions.

3.1.2 *Dissolution of the legal person*

26. Under the CCL, the Court *shall* dissolve a legal person with a registered office in the Slovak Republic if the activities of the legal person were wholly or mainly used for the commission of a crime.²⁷ The legal person shall enter into liquidation as soon as the penalty becomes final.²⁸ The Slovak Republic provides that this is after all appeals have been exhausted, meaning that businesses can continue to operate whilst awaiting a court’s decision on appeal.

3.1.3 *Debarment from public procurement*

27. Under the CCL, the court shall prohibit legal persons from accepting help or support from the funds of the European Union, and from participating in public procurement, for a period of one to ten years “when sentencing a legal person for a criminal offence committed in connection with public procurement or with the application for help or support from the funds of the European Union under a special law, or for other contribution from the funds of the European Union, their allocation or use.”²⁹ The court also has the discretion to prohibit legal persons from accepting grants and subsidies for a period of one to ten years “when sentencing a legal person for a criminal offence committed in connection with the application for a grant, a subsidy, a contribution or other funds from the State budget, budgets of public service institutions, State budget funds, budgets of regional or local self-governing authorities, or in connection with their allocation or use.”³⁰

3.1.4 *Prohibition to perform professional activities*

28. When sentencing a legal person for foreign bribery, the court may also prohibit the legal person from carrying out one or several professional activities or an activity that can be performed only under a special licence or whose performance is governed by a special law³¹ for a period of one to ten years.³² The ban may be permanent when the crime was committed in connection with those activities.³³

3.1.5 *Penalty of obligation to publish the convicting judgment*

29. The court may order a convicted legal person to publish (at its own expense) the convicting judgment (or part thereof) in the Commercial Gazette, or in one or several operations or branches of the legal person.³⁴ This publication would identify the name and the registered office of the convicted legal person. The Court will only do this where “there is a need to inform the public about the conviction, especially in view of the circumstances and seriousness of the criminal offence, or when this is in the interest of protecting safety or health of people, animals or property.” The Slovak Republic provides that a corporate conviction for foreign bribery would likely meet the public interest requirement. In any event, Slovak law mandates that all court

²⁶ The following jurisdictions received Phase 3 recommendations to increase their sanctions for legal persons: Austria (EUR 1.3m); Poland (EUR 1.3m); and Colombia (EUR 1.379m)

²⁷ CCL, s12.

²⁸ More specific conditions apply to the dissolution of a legal person that is a commodity exchange or supervised financial market entity (see CCL, ss12(4) and (5) respectively)

²⁹ CCL, s18 & s19.

³⁰ CCL, s17

³¹ For instance, Act No 455/1991 Coll. on sole traders (trade licence act) as amended, Act No 190/2003 Coll. on firearms and ammunition and on amendments to certain other acts as amended, Act No 382/2004 Coll. on experts, interpreters and translators and on amendments to certain other acts as amended.

³² CCL, s16.

³³ See CCL, s16(3) for special conditions that apply to supervised financial market entities.

³⁴ CCL, s20

judgments must be published online. Therefore, at a minimum, anonymised foreign bribery judgments will be available on a government website.³⁵

3.2 *Seizure and Confiscation*

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

3.4.1 *Seizure*

31. The Slovak Republic has several opportunities to seize assets during an investigation and subsequent court proceedings against a legal person.³⁶ Under the Criminal Procedure Code (CPC), anyone who “possesses an item important to the criminal proceedings is obligated to submit it to the court, public prosecutor, or police officer when prompted.” This applies to both the bribe and the proceeds of bribery of foreign public officials.³⁷ If such an item is not released when prompted, it may be seized. Pre-indictment (i.e. during an investigation), the public prosecutor (or a police officer with the prior consent of the public prosecutor) may issue a warrant for seizure of items. Post-indictment, the presiding judge must issue the warrant.³⁸

32. Authorities can also freeze funds in bank accounts where circumstances indicate that the funds were used to commit a criminal offence or are the proceeds of criminal activity. Again, a prosecutor (pre-indictment) and a presiding judge (post-indictment) may issue a warrant to freeze such funds.³⁹ In urgent cases, the public prosecutor may issue a warrant to freeze funds prior to the commencement of criminal proceedings. This must be confirmed by a judge within 48 hours or will lapse. The court must always seize assets following the imposition of a confiscation order for property or items, before such order becomes final.⁴⁰ Within the European Union, legal instruments based on mutual recognition are applicable and take precedence over Slovak laws.⁴¹ There are no time limitations on how long property can be seized or restrained before it must be confiscated or released. Instead, the state may hold it until it is no longer necessary for further proceedings.⁴²

3.4.2 *Confiscation*

(i) Aggravated Foreign Bribery

33. The Slovak Republic imposes a *mandatory* penalty of ‘forfeiture of property’ upon the conviction of legal (and natural) persons for *aggravated* foreign bribery.⁴³ As outlined above, the Slovak Republic cannot impose this type of confiscation *in addition* to a pecuniary penalty.⁴⁴ This means that the court cannot impose a fine on legal persons convicted of *aggravated* foreign bribery. However, the Slovak Republic provides that in this situation, the pecuniary penalty is subsumed by the confiscation proceedings under which the legal person is subject to forced bankruptcy and confiscation of *all property* that remains following bankruptcy proceedings.⁴⁵ The Slovak Republic may also apply confiscation measures to third parties provided certain conditions are met.⁴⁶

³⁵ Act on Courts, s92(2)(f) (Act no. 757/2004 Coll.

³⁶ Pursuant to CCL, s1(2), the seizure of assets from legal persons is governed by the Code of Criminal Procedure (CPC).

³⁷ CPC, s89 and 130.

³⁸ CPC, s91

³⁹ CPC, s95.

⁴⁰ CPC, s425 & s428.

⁴¹ In particular Act No. 650/2005 Coll. on the execution in the European Union of orders freezing property or evidence as amended. Act No. 316/2016 Coll. on the recognition and execution in the European Union of decisions on property. Article 7 of the Slovak Constitution provides that “Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic.

⁴² CPC, s97.

⁴³ CCL, s13(1), CC, s31 & 58(3).

⁴⁴ CCL, s11(4)

⁴⁵ Act on Bankruptcy Proceedings and Restructuring, s107a(2)(d).

⁴⁶ CC, s83.

34. The nature and gravity of the sanction of ‘forfeiture of property’, combined with the courts’ ability to confiscate items from third parties, mitigates concerns around the absence of a fine for aggravated foreign bribery. However, as outlined above, during the Slovak Republic’s Phase 3 evaluation, the Working Group raised concerns that even though confiscation was supposed to be mandatory, it was not universally applied. However, the Slovak Republic reports that since Phase 3, forfeiture of property has been applied in all cases where natural persons were convicted of offences for which forfeiture is a mandatory penalty. The Working Group should follow up on the implementation of this sanction in the course of Phase 4 to examine whether ‘forfeiture of property’ for aggravated foreign bribery is applied against legal persons in practice, and to assess whether this is an effective, proportionate, and dissuasive sanction.

(ii) Non Aggravated Foreign Bribery

35. The above-described penalty of ‘forfeiture of property’ is not available for *non-aggravated* foreign bribery.⁴⁷ However, the Court must instead impose a penalty of ‘forfeiture of a *thing*’. This includes all items used to commit the criminal offence, intended for the commission of a criminal offence, or acquired through a criminal offence or as a reward for it.⁴⁸ Such items may be confiscated from the legal person or *any other* legal or natural person provided certain conditions are met. The Slovak Republic provides that while no legal person has been sanctioned to ‘forfeiture of a thing’ (under new or old legislation), that it has been imposed against *natural* persons in all non-aggravated domestic bribery cases in the past 3 years that met the necessary statutory conditions for confiscation (34 cases in total). However, the Slovak Republic cites two examples where the court only confiscated the amount of the actual bribe payment. The Slovak authorities provide that this is compensated for through the imposition of pecuniary penalties. This nonetheless raises concerns that even though the definition of ‘item’ in the CCL is broad enough to capture both the bribe and its proceeds, that in practice, the courts are only confiscating the value of the bribe itself.⁴⁹

36. The Working Group should thus follow-up on the courts’ application of the penalty of ‘forfeiture of items’ in practice in Phase 4 to ensure that the courts are confiscating both the bribe and the proceeds of bribe payments. As outlined earlier in the report, the Working Group should also examine whether the courts are imposing a sanction of confiscation *in addition* to a pecuniary fine under CCL, section 15.

3.3 Additional Civil and Administrative Sanctions

37. Article 3(4) of the Convention requires each Party to consider the imposition of additional civil or administrative sanctions. Commentary 24 to the Convention notes that such additional sanctions could include exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or from the practice of other commercial activities; placing under judicial supervision; and a judicial winding-up order. The Slovak Republic does not have any additional civil or administrative penalties for any legal persons.⁵⁰ However, in light of the broad range of mandatory and discretionary *criminal* sanctions available, this does not raise any specific concerns.

3.4 Factors to be taken into account on sentencing

38. The CCL sets out a range of factors that the court shall consider when determining the type and degree of discretionary (but not mandatory) criminal sanctions. This includes the situation of the legal person including its previous activities and financial circumstances (including if the legal person performs activities in the public interest or of significance for the national economy).⁵¹ The Court must also consider the need to minimise the impact of the penalty on the employees of the legal person; the legally protected interests of the injured parties and the creditors; and the expected consequences of the execution of penalty for further activities

⁴⁷ This is because *non-aggravated* foreign bribery does not meet the requirements for ‘forfeiture of assets’ in CC, s58.

⁴⁸ CCL, s14 & CC, s60.

⁴⁹ CC, 130.

⁵⁰ CCL, s 21.

⁵¹ CCL, s11(1).

of the legal person.⁵² The fact that the court can take such economic factors into account when sentencing legal persons for foreign bribery raises concerns as to the effective, proportionate, and dissuasive nature of the sanctions. These provisions heavily emphasise the interests of employees and creditors and one could argue that a lack of free capital within a company may lead to a lenient pecuniary penalty for non-aggravated foreign bribery in order to protect these interests. One could also assume that a company in a difficult financial situation would be more vulnerable to paying bribes to secure contracts. There is thus a risk that these provisions could undermine the sanctions imposed on legal persons in foreign bribery cases. This could, in turn, potentially impact on Article 5 considerations (e.g. should the possibility of lenient sanctions impact on a decision whether to investigate or prosecute in the first instance). However, as the above factors cannot influence mandatory sanctions, none of these factors will be taken into account when imposing confiscation (i.e. forfeiture of a thing or property) which must be applied in all instances of foreign bribery.

39. In addition to the above factors, the court can consider efforts taken by the legal person to “eliminate harmful consequences of the criminal offence or voluntary compensation for the damage” when determining the appropriate sanction.⁵³ The Slovak Republic provides that this would not capture efforts to implement or improve an anti-corruption compliance programme, but rather focus on steps taken by the company to limit the impact of the offending on third parties (e.g. employees, creditors etc.). The Working Group should examine the courts’ use of these provisions closely in the course of its Phase 4 review to ensure that they do not impact on Article 5 considerations and that the sanctions imposed for foreign bribery are effective, proportionate, and dissuasive.

4. Article 4: Jurisdiction

4.1 Territorial Jurisdiction

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

41. The Slovak Republic establishes jurisdiction over legal persons, where the criminal offence was committed at least in part within its territory “even if the actual breach of or threat to an interest protected under...[the CCL] took place or was intended to take place, in whole or in part, outside the territory of the Slovak Republic.”⁵⁴ It also establishes jurisdiction over legal persons that commit a criminal offence entirely outside the territory of the Slovak Republic, if “the actual breach of or threat to an interest protected under ...[the CCL] took place or was intended to take place at least in part within the territory of the Slovak Republic.” This broad approach to territorial jurisdiction appears in line with Article 4(1) of the Convention but should be assessed in practice in Phase 4.

4.2 Nationality Jurisdiction

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

43. The Slovak Republic has jurisdiction to prosecute legal persons for crimes committed outside of its territory, provided they have a registered office within its territory. This includes legal persons whose branch has a registered office in the Slovak Republic, if the criminal offence was committed through the activities of the latter. The Slovak Republic also has jurisdiction over legal persons not registered in the Slovak Republic, for acts committed outside of its territory, if the offence was committed for the benefit of a legal person registered in the Slovak Republic, a national of the Slovak Republic, or a foreign national with permanent residency in the

⁵² CCL, section 11(2).

⁵³ CCL, s11(2)(c)

⁵⁴ CCL, s2(2)

country. The same jurisdiction applies where the offence caused harm to one of the aforementioned persons, if the act carries criminal liability in the place of its commission or does not fall under any criminal jurisdiction.⁵⁵ The latter situation is the only time that dual criminality is required.

44. In line with Article 4(2) of the Convention, it appears that the Slovak Republic can exercise broad nationality jurisdiction against its legal persons that pay bribes abroad.

4.3 Consultation Procedures

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

46. In the Slovak Republic, consultations on the transfer of a case involving legal persons to or from foreign authorities may take place through both informal and formal mutual legal assistance, the latter of which may be provided on the basis of a treaty or reciprocity (see discussion under section 9 below).

47. The transfer of criminal proceedings to and from a foreign state is regulated by the CPC. A decision on whether to *accept* a case at the request of a foreign jurisdiction is made by the Public Prosecutor's Office (PPO), which must inform the Ministry of Justice (MOJ) of this decision.⁵⁶ A decision on whether to *transfer* a case to a foreign jurisdiction is made by the PPO prior to indictment and the MOJ following indictment. Factors to be taken into consideration when deciding whether to transfer a case to another state include whether it would be cost-effective and efficient taking into account the merits of the case, or the execution of punishment.

4.4 Review of Basis of Jurisdiction

48. Convention Article 4(4) requires each Party to review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, to take remedial steps. The Slovak Republic undertook such a review with respect to its jurisdiction over legal persons when developing the CCL.

5. Article 5: Enforcement

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

5.1 Rules and Principles Regarding Investigations and Prosecutions

50. CCL, section 1(2), provides that criminal proceedings against legal persons shall be governed by the CPC. This situation remains materially unchanged from Phase 3 when the Slovak Republic provided that the procedures governing the investigation and prosecution of criminal offences apply to natural and legal persons alike. On 1 December 2012 (following its Phase 3 Report) the Slovak Republic replaced the Bureau for the Fight against Corruption with National Anticorruption Unit within the National Crime Agency (NAKA). The Director of the NAKA reports to the President of the Police Force. While independent from the PPO all bribery investigations conducted by NAKA are supervised by the Special Prosecutor's Office (SPO) which is responsible for corruption offences within the PPO.

51. All investigative tools available under the CPC can be used against legal persons (e.g. search and seizure, interception and recording of telecommunications, surveillance of persons and items, use of agents etc.)⁵⁷ As with natural persons, foreign bribery cases against legal persons will be heard by the Specialised

⁵⁵ CCL, ss2(4), 2(4), & 2(5) respectively.

⁵⁶ CPC, s528.

⁵⁷ CPC, Chapter Four, Division V and Chapter Five.

Criminal Court. The procedures governing the investigation and prosecution of corruption offences, including foreign bribery, were examined in detail in the Slovak Republic's Phase 3 Report and are thus not repeated here.⁵⁸ The investigation and prosecution of legal persons under the Slovak Republic's new corporate liability law should be examined closely in the context of its Phase 4 evaluation.

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

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

53. As in Phase 3, the Slovak Republic reiterates that the independence of the PPO is ensured by the Constitution and that no part of the government or government body can interfere with proceedings against natural or legal persons for foreign bribery for any reason.⁵⁹ As outlined above, all bribery investigations conducted by the NAKA are supervised by the SPO.

6. Article 6: Statute of Limitations

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

55. The limitation periods for the prosecution of both natural and legal persons are set out in the Criminal Code. The Slovak Republic provides that the limitation periods for natural and legal persons are independent and thus a legal person can be held liable even if the natural person is released from criminal liability in the same matter due to expiry of the state of limitations (for example, where the legal person's limitation period is extended but the natural person's is not). The limitation periods for non-aggravated and aggravated foreign bribery are five and twenty years respectively.⁶⁰ The period commences from the moment of commission of the criminal act and runs until it is suspended (at which point a new limitation period begins), expires, or on final judgment of the Court. Appeals must be lodged within 15 days or the judgment will become final.

56. In its questionnaire responses, Slovak Republic provides that where a bribery offence involves a series of bribe instalments, the limitation period runs from the last instalment of the bribe payment. As outlined in the Slovak Republic's Phase 3 Report, the limitation period is interrupted where an offender is intentionally avoiding prosecution, cannot be tried because of legal impediment, or during the deferment or suspension of a criminal prosecution.⁶¹ The limitation period is suspended and a new limitation period commences when criminal charges are laid or the offender commits a further criminal offence. These limitation periods appear adequate to enable the investigation and prosecution of legal persons for foreign bribery.

7. Article 7: Money Laundering

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

58. Money laundering is criminalised in the Slovak Republic under section 233 of the Criminal Code. Both domestic and foreign bribery are predicate offences to money laundering. In line with the Convention, the Slovak Republic can hold legal persons liable for money laundering predicated on foreign bribery pursuant to

⁵⁸ Slovak Republic Phase 3 Report, paras 83-104.

⁵⁹ See Articles 149-151 of the Constitution and CPC Articles 2 & 5.

⁶⁰ CC, s87.

⁶¹ Ibid.

CCL, section 3.⁶² All of the above outlined sanctions are thus available for legal persons convicted of money laundering predicated on foreign bribery.

8. Article 8: Accounting and Auditing Requirements

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

60. The Slovak Republic's framework for the maintenance of accounts, records, and financial statements is set out in its Accounting Act which applies to both natural and legal persons.⁶³ Article 38 of the Accounting Act sets out *administrative* sanctions for legal persons with respect to omissions and falsifications related to accounts and financial statements. Legal entities who fail to keep accounts or prepare financial statements in line with the Act are subject to a fine of up to EUR 3,000,000.⁶⁴ Other administrative offences relating to inadequate book-keeping and false accounting attract fines of 2% of the amount of total assets reported, to a maximum of EUR 1,000,000. Legal persons can also be held *criminally* liable for false accounting under the Criminal Code, and are thus subject to all available sanctions set out in the CCL (see section 3 above).⁶⁵ The imposition of sanctions against legal persons for conduct prohibited under Article 8 should be assessed in Phase 4.

9. Article 9: Mutual Legal Assistance

9.1 Laws, Treaties, and Arrangements Enabling Mutual Legal Assistance

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

9.1.1 Criminal Matters

62. The Slovak Republic's procedures for the provision of MLA in criminal matters apply to natural and legal persons alike.⁶⁶ The procedural and operational aspects of MLA in the Slovak Republic have not changed substantively since Phase 2. MLA may be provided on the basis of a bi-lateral or multi-lateral treaty, or relevant European Union legal instruments under which the Slovak Republic undertakes judicial cooperation within the EU, including MLA.⁶⁷ The Slovak Republic has concluded 39 bilateral treaties relating to MLA in criminal matters, including 13 with Working Group Member countries. Accordingly, requests relating to corporate foreign bribery may be made pursuant to the OECD Anti-Bribery Convention. Where there is neither a bi-lateral or multi-lateral treaty in place, requests may be made on the basis of reciprocity.⁶⁸

⁶² For further information on the Slovak Republic's frameworks for the enforcement of money laundering predicated on foreign bribery, see section 6 of the Slovak Republic's [Phase 3 Report](#).

⁶³ Act no. 431/2002 Coll. on Accounting as amended (Accounting Act, Art. 1).

⁶⁴ Accounting Act Arts. 4(1),6(1), 11, and 38.

⁶⁵ CCL, s3; CC, s259 &s260.

⁶⁶ CCO, s34 provides that Part Five of the CPC on Legal Relations with Foreign States applies to legal persons unless an international treaty or special law provide otherwise.

⁶⁷ At the time of Phase 3, the Slovak Republic specified that these instruments include applicable EU framework decisions (including Council Framework decisions 2002/584/JHA of 13 June 2002, 2003/577/JHA of 22 July 2003, 2005/214/

JHA of 24 February 2005, 2008/947/JHA of 27 November 2008, 2009/299/JHA of 26 February 2009, 2008/909/JHA of 27 November 2008, 2005/876/JHA of 21 November 2005) and the May 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union

⁶⁸ CPC, s479.

63. At the time of Phase 3, the absence of MLA treaties had proved a major impediment to the execution of MLA requests sent by the Slovak Republic to foreign states. This was cited as the key reason why none of the six foreign bribery related requests sent by the Slovak Republic at this time had been executed, and several were met with no response of any kind. Further, while the Slovak Republic is able to provide MLA on the basis of reciprocity, it had not done so in practice, and it remained unclear whether it could provide effective MLA on that basis in a criminal investigation where the target was a legal person.

64. The Slovak Republic does not systematically collect data on incoming and outgoing MLA requests for foreign bribery. However, it provides that between 2015-2016, Slovak authorities provided MLA to another Party to the Convention in relation to five bribery cases involving legal persons. The Slovak Republic should ensure that it is in a position to provide the Working Group with information specific to foreign bribery related MLA requests by the time of its Phase 4 evaluation.

65. The central authority for sending and receiving incoming MLA requests is the MOJ. This applies to proceedings related to both natural and legal persons, regardless of whether the matter is civil or criminal. All investigative tools and coercive measures available for domestic criminal investigations under the CPC can be provided in response to an MLA request regarding legal persons.⁶⁹

9.1.2 Non-Criminal Matters

66. The Slovak Republic does not have any specific laws governing the provision of MLA in *non-criminal* matters relating to legal persons. However, it provides that it can respond to requests from states that don't regulate criminal corporate liability if they have commenced *civil* proceedings. Such requests would be governed by the relevant bi-lateral or multilateral treaty under which the MLA request was made. For EU States, Slovak authorities can provide MLA under Council Regulation (EC) No 1206/2001 of 28 May 2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters. If no such treaty exists, the Slovak Republic can respond to a request for MLA on the basis of reciprocity.⁷⁰ The MOJ is the central authority for such requests.

67. To date, the Slovak Republic it has not received an MLA request regarding a foreign bribery matter commenced under *administrative* proceedings. It notes that while there is no legislative basis for the provision of MLA in this situation, it could still respond in certain situations. For example, if it receives a request from Germany (which has administrative liability for foreign bribery) it could provide a response pursuant to Article 24 of the European Convention on Mutual Assistance in Criminal Matters.⁷¹ In addition, the Slovak Republic's tax authorities can send and respond to foreign bribery related MLA requests pursuant to the Convention on Mutual Administrative Assistance in Tax Matters and various double taxation agreements. Nonetheless, this falls short of the requirement in Article 9(1) of the Convention which requires Parties to be able to provide MLA with respect to both criminal and non-criminal proceedings. This is of particular concern given a number of Parties to the Convention have adopted administrative (rather than criminal) liability for legal persons for foreign bribery.

9.2 Dual Criminality for MLA

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

69. In the Slovak Republic, the provision of MLA is only conditional upon dual criminality for certain coercive measures (e.g. search and seizure) and for recognition and execution of a foreign judgment.⁷² However,

⁶⁹ See, for example, CPC, ss515, 537, and 539.

⁷⁰ Section 56 of the Act no. 97/1963 Coll. on Private International Laws and Rules of International Procedure as amended.

⁷¹ Article 24 provides that "A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities."

⁷² CPC, s537(3) & s595

double criminality is not required for the provision of MLA to EU Member states where relevant EU legislation takes precedence.⁷³ In its responses to the Phase 1bis questionnaire, the Slovak Republic makes it clear that owing to the language in the Convention, the dual criminality requirement would be met with respect to all offences within the scope of the Convention.

70. While there is no dual criminality requirement for non-criminal matters, the Slovak Republic can still refuse MLA if it would lead to the disclosure of classified information or if a witness refuses to provide a statement in compliance with a Slovak Order (e.g. pursuant to legal, spousal, or clergy privilege).

9.3 Bank Secrecy

71. Article 9(3) of the Convention states that a Party shall not decline to render MLA, within the scope of the Convention, on the ground of bank secrecy. Pursuant to the Act on Banks, the Slovak Republic cannot decline MLA on the basis of bank secrecy.⁷⁴ It also cites a case example from 2017 where Slovak authorities provided a legal person's banking information to another Party to the Convention in relation to a money laundering investigation.

10. Article 11: Responsible Authorities

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

73. As outlined above, the central authority for both incoming and outgoing MLA requests is the MOJ. Where the Slovak Republic provides MLA to EU countries there is no central authority and the competent authorities may communicate with each other directly.

B. Implementation of the 2009 anti-bribery Recommendation

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

1. Tax Deductibility

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

76. In Phase 3, the Working Group noted that the Slovak Republic's Income Tax Act expressly prohibits deductions for the payment of bribes.⁷⁵ This applies to natural and legal persons alike.⁷⁶ In Phase 4, the Working Group should follow-up on tax inspectors' awareness of this prohibition on deductions for bribe payments by companies.

⁷³ Article 7 of the Slovak Constitution provides that "Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic.

⁷⁴ Act on Banks, section 91(4)(j)

⁷⁵ [Slovak Republic Phase 3 Report](#), para. 133

⁷⁶ Act no. 595/2003 Coll. on Income Tax, ss 1(1), 12, 14, & 21.

EVALUATION OF THE SLOVAK REPUBLIC

General Comments

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

78. The Working Group considers that the Slovak Republic's new legislation on the liability of legal persons largely conforms to the standards of the Convention. However, this is a new law that has yet to be tested by the courts. It thus remains to be seen how it will be applied in practice. While this will naturally be assessed in the course of the Slovak Republic's Phase 4 review in 2021, the Group should pay specific attention to the courts' interpretation of particular elements of the new law which currently lack clarity. These are identified below.

Specific Issues

Liability of State-Owned Enterprises for Foreign Bribery

79. In the Slovak Republic, SOEs may be 'established by operation of law' and thus exempt from criminal liability pursuant to CCL, section 9(1)(e). This raises concerns under Article 2 of the Convention which does not distinguish between public and privately owned legal persons.

Scope of Corporate Liability for Foreign Bribery

80. In the course of its Phase 4 review of the Slovak Republic, the Working Group should pay particular attention to:

- (i) The practical application of the requirement that a criminal offence is committed "for its [a legal person's] benefit, on its behalf, as part of or through its activities." More specifically, whether a bribe can be paid for the benefit etc. of a different natural or legal person (CCL, section 4(1));
- (ii) The level of 'control', 'supervision', or 'authority' that an individual must exercise to attract corporate liability (CCL, sections 4(1) and 4(2));
- (iii) The courts' determination of whether a legal person has failed to "properly perform" control and supervision duties (CCL, section 4(1)(2));
- (iv) The courts' assessment of whether a natural person was acting "within the scope of authority" conferred by the legal person (CCL, section 4(2));
- (v) What constitutes a supervisory failure of "negligible significance" (CCL, section 4(3));
- (vi) The burden of proof on the prosecution under CCL, sections 4(2) and 4(3). In particular, how the prosecution would fulfil the burden of proving that a natural person with the requisite level of control/authority had failed "even if by negligence, to properly perform its control and supervision duties..." and that this failure was not of "negligible significance".

Sanctions for Foreign Bribery and Related Offences

Factors to be taking into account on sentencing

81. The Working Group should examine the extent to which the court takes the following factors into account when sentencing a legal person for foreign bribery or related economic offences to ensure that these factors do not impact on Article 5 considerations and that sanctions imposed are effective, proportionate, and dissuasive:

- (i) A legal person's previous activities and financial circumstances, including, activities performed in the public interest, or of strategic significance for the national economy, defence, or security (CCL, section 11(1));
- (ii) The need to minimise the impact of the penalty of the employees of the legal person (CCL, section 11(2)(a))
- (iii) The legally protected interests of the injured parties and the creditors of the legal person (CCL, section 11(2)(b))
- (iv) Payment of voluntary compensation for damages or steps taken to eliminate the harmful consequences of a criminal offence after its commission (CCL, section 11(2)(c)).
- (v) The expected consequences of the execution of penalty for further activities of the legal person (CCL, section 11(2)(d))

82. To ensure that sanctions for legal persons are effective, proportionate, and dissuasive, in Phase 4, the Working Group closely examine whether the courts are imposing:

- (i) Mandatory confiscation ('forfeiture of property') on legal persons convicted of *aggravated* foreign bribery (and other related aggravated offences) (CCL, section 13); and
- (ii) Mandatory confiscation ('forfeiture of a thing') in addition to a pecuniary fine for non-aggravated foreign bribery, (and related non-aggravated offences) (CCL, sections 14 and 15).

83. The Working Group should also ensure that the Slovak Republic can, in practice, confiscate both the bribe *and the proceeds of bribe payments*.

Mutual Legal Assistance

84. Contrary to Article 9(1) of the Convention, the Slovak Republic cannot, in all instances, provide MLA in administrative proceedings against legal persons for offences within the scope of the Convention. This raises concerns given a number of Parties to the Convention have adopted administrative (rather than criminal) liability for legal persons for foreign bribery.

ANNEX 1 LIST OF ABBREVIATIONS AND ACRONYMS

2009 Recommendation	2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions
CC	Criminal Code
CCL	Law on the Criminal Liability of Legal Persons
CPC	Criminal Procedure Code
Convention	Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
EU	European Union
EUR	Euros
MLA	Mutual legal assistance
OECD	Organisation for Economic Cooperation and Development
PPO	Public Prosecutor's Office
SPO	Special Prosecutor's Office
Working Group	OECD Working Group on Bribery in International Business Transactions

ANNEX 2 EXCERPTS OF RELEVANT LEGISLATION

ACT ON CRIMINAL LIABILITY OF LEGAL PERSONS (“CCL”)

Part One: Introductory Provisions

Section 1: Object of the Act and its relationship to other acts

(1) This Act sets out the foundations of criminal liability of legal persons, the types of penalties, imposition of penalties, and criminal proceedings against legal persons.

(2) Unless this Act provides otherwise and unless the nature of the matter excludes it, the criminal liability of and the penalties imposed on legal persons shall be governed by the Criminal Code, and criminal proceedings against legal persons shall be governed by the Code of Criminal Procedure.

Section 2: Scope of the Act

(1) This Act shall be applied to determine criminal liability for acts committed by legal persons within the territory of the Slovak Republic.

(2) The criminal offence is considered to have been committed within the territory of the Slovak Republic if

(a) the legal person committed the act at least in part within its territory, even if the actual breach of or threat to an interest protected under this Act took place or was intended to take place, in whole or in part, outside the territory of the Slovak Republic, or

(b) the actual breach of or threat to an interest protected under this Act took place or was intended to take place at least in part within the territory of the Slovak Republic, although the legal person committed the act outside the territory of the Slovak Republic.

(3) This Act shall also be applied to determine criminal liability for an act committed outside the territory of the Slovak Republic by a legal person with registered office within the territory of the Slovak Republic. For the purposes of this Act, legal persons with registered office in the Slovak Republic shall also include legal persons whose branch has registered office in the Slovak Republic, if the criminal offence was committed through the activities of the latter.

(4) This Act shall also be applied to determine criminal liability for an act committed outside the territory of the Slovak Republic by a legal person that does not have a registered office within the territory of the Slovak Republic, if the offence was committed for the benefit of a legal person with registered office within the territory of the Slovak Republic, or for the benefit of a natural person who is a national of the Slovak Republic, or of a foreign national with permanent residence within the territory of the Slovak Republic.

(5) This Act shall also be applied to determine criminal liability for an act committed outside the territory of the Slovak Republic by a legal person that does not have a registered office within the territory of the Slovak Republic, if the offence caused harm to a legal person with registered office within the territory of the Slovak Republic, or to a natural person who is a national of the Slovak Republic, or to a foreign national with permanent residence within the territory of the Slovak Republic, if the act carries criminal liability in the place of its commission, or if the place of its commission does not fall under any criminal jurisdiction.

(6) This Act shall also be applied to determine criminal liability where this is prescribed by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.

(7) Paragraphs 1 to 5 shall not apply if their use is prohibited by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.

Part Two: Foundations of Criminal Liability of Legal Persons

Section 3: Criminal offences committed by legal persons

For the purposes of this Act, criminal offences shall mean the offences listed in the Special Part of the Criminal Code, namely: ..., embezzlement under Section 213, fraud under Section 221, credit fraud under

Section 222, insurance fraud under Section 223, capital fraud under Section 224, subsidy fraud under Section 225, fraudulent bankruptcy under Section 227, caused bankruptcy under Section 228, illegal gaming and betting under Section 229, unauthorised operation of lotteries and similar gambling under Section 230, sharing under Sections 231 and 232, legalisation of proceeds of crime under Sections 233 and 234, usury under Section 235, harm done to a creditor under Section 239, favouring a creditor under Section 240, ...unlawful business activity under Section 251, unlawful employment under Section 251a, misrepresentation of data in financial and commercial records under Sections 259 and 260, damaging the financial interests of the European Union under Sections 261 to 263, insider trading under Section 265, market manipulation under Section 265a, machination in public procurement and public auction under Sections 266 and 267, ...passive bribery under Sections 328 to 330, active bribery under Sections 332 to 334, trading in influence under Section 336, obstructing of enforcement of official decision under Section 348 and 349...

Section 4: Criminal liability of a legal person

(1) A legal person is considered to have committed a criminal offence under Section 3 if the criminal offence was committed for its benefit, on its behalf, as part of or through its activities by

- (a) its statutory body or a member of its statutory body,
- (b) a person performing control or supervision within the legal person, or
- (c) another person authorised to represent the legal person or make decisions on its behalf.

(2) A legal person is considered to have committed a criminal offence under Section 3 also if a person referred to in paragraph 1 fails, even if by negligence, to properly perform its control and supervision duties, thus allowing a criminal offence being committed by a person acting within the scope of authority conferred by the legal person.

(3) A legal person shall not be held criminally liable for a criminal offence committed by a person referred to in paragraph 2 if the failure to properly fulfil control and supervision duties by the legal person's body or persons referred to in paragraphs 1(a) to (c) is of negligible significance with regard to the object of activity of the legal person and to the manner, consequences and circumstances of the commission of the offence.

(4) Criminal liability of a legal person is not conditional on whether the natural person referred to in paragraph 1 has been found criminally liable or on whether it has been established which natural person acted in a manner referred to in paragraphs 1 and 2.

(5) A legal person is not relieved of criminal liability by a bankruptcy declaration, liquidation, winding up or receivership.

(6) Paragraphs 1 to 5 shall also apply if

- (a) the criminal offence was committed in the period between the establishment and the registration of the legal person,
- (b) the legal person was registered, but the court declared the registration null and void,
- (c) the juridical act whose purpose was to confer the authority to act on behalf of the legal person is invalid or of no effect,
- (d) the natural person who acted on behalf of the legal person is not criminally liable for such criminal offence.

Section 5: Exclusion of criminal liability of certain legal persons

(1) The following legal persons shall not carry criminal liability under this Act:

- (a) the Slovak Republic and its authorities,
- (b) other States and their authorities,
- (c) international organisations established under international public law and their authorities,
- (d) municipalities and self-governing regions,
- (e) legal persons which, at the time of commission of the criminal offence, were established by operation of law,
- (f) other legal persons in a debt situation whose financial affairs cannot be settled pursuant to the special law governing bankruptcy proceedings.⁷⁷

2) Ownership interest held by legal persons referred to in paragraph 1 in a legal person does not exclude criminal liability of the latter legal person under this Act.

⁷⁷ Section 2 of Act No. 7/2005 Coll. on bankruptcy and restructuring and on amendments to certain other acts as amended by Act No. 348/2011 Coll.

Section 6: Perpetrator, accomplice, abettor

(1) The perpetrator of a criminal offence is a legal person that has been attributed the breach of or a threat to an interest protected under the Criminal Code in a manner defined in this Act.

(2) If the criminal offence is committed by two or more perpetrators acting as accomplices, at least one of which is a legal person, each of them will carry the same criminal liability as if being a sole perpetrator of the offence.

(3) The abettor is a legal person that induces another legal person or a natural person to commit a criminal offence.

Section 7: Criminal liability of legal successors to legal persons

(1) Criminal liability of a dissolved legal person shall be transferred to all legal successors of the dissolved legal person; this shall also apply to unexecuted penalties, unless paragraph 3 provides otherwise. Criminal liability of a legal person is not transferrable to a natural person.

(2) The imposition of concurrent, joint, cumulative or further penalty on legal successors of legal persons shall be governed *mutatis mutandis* by the provisions of the Criminal Code; if this is excluded because of the nature of legal succession, the court may impose a separate penalty.

(3) In case of a change or dissolution of a legal person in the course of enforcement proceedings, the court that made the decision on the guilt and punishment shall, on a motion from the legal successor of the legal person, decide whether and to what extent the unexecuted portion of the penalty also applies to that legal successor; paragraph 2 shall be applied *mutatis mutandis*.

(4) For the purposes of this Act, the change of a legal person means its merger, consolidation, or division, transfer of its share capital to a member, change in its legal form, or relocation of the legal person's registered office abroad.

Part Three: Penalties

Section 10: Types of penalties

The court may impose the following penalties on a legal person that has committed a criminal offence listed in Section 3:

- (a) penalty of dissolution of the legal person,
- (b) penalty of forfeiture of property,
- (c) penalty of forfeiture of a thing,
- (d) pecuniary penalty,
- (e) penalty of prohibition to perform professional activities,
- (f) penalty of prohibition to accept grants and subsidies,
- (g) penalty of prohibition to accept help and support from the funds of the European Union,
- (h) penalty of prohibition to participate in public procurement,
- (i) penalty of obligation to publish the convicting judgment.

Section 11: Penalty imposition principles

(1) In the determination of the type and degree of penalty, the court shall consider the nature and seriousness of the criminal offence, the situation of the legal person including its previous activities and financial circumstances including, if any, activities performed by the legal person in public interest, or being of strategic significance for the national economy, defence or security.

(2) In the determination of the type and degree of penalty, the court shall also consider

- (a) the need to minimise the impact of the penalty on the employees of the legal person,
- (b) legally protected interests of the injured parties and the creditors of the legal person whose claims against the legal person arose in good faith and do not originate from and are not related to the criminal offence committed by the legal person,
- (c) the actions of the legal person after the commission of the criminal offence, in particular effective effort to eliminate harmful consequences of the criminal offence or voluntary compensation for the damage,
- (d) expected consequences of the execution of penalty for further activities of the legal person,

(e) the extent to which the legal person benefitted from the criminal offence in whose commission it participated as an accomplice.

(3) In the determination of the type and degree of penalty of legal successors to a legal person under Section 7, paragraphs 1 or 3, the court shall also consider the extent to which on any of them were transferred the assets corresponding to the proceeds or other benefits obtained through the criminal offence, and the extent to which any legal successor continues to perform the activities in connection with which the criminal offence was committed.

(4) The penalties listed in Section 10 may be imposed either separately or several penalties may be imposed concurrently. It shall not be possible to impose a concurrent penalty of dissolution of the legal person with forfeiture of property; forfeiture of property with pecuniary penalty; or forfeiture of property with forfeiture of a thing. The penalty of the obligation to publish the convicting judgment may be imposed concurrently only with one of the penalties listed in Section 10, subparagraphs (a) to (h).

Section 12: Penalty of dissolution of the legal person

(1) The court shall impose the penalty of dissolution of a legal person with registered office in the Slovak Republic if the activities of the legal person were wholly or mainly used for the commission of crime.

(2) The court may also impose the penalty of dissolution of a legal person when sentencing the legal person for a criminal offence carrying a sentence of imprisonment of twenty-five years or life imprisonment.

(3) As soon as the penalty of the dissolution becomes final, the legal person shall enter into liquidation.

(4) If the legal person is a commodity exchange, the court may impose the penalty of dissolution of a legal person only upon receiving the opinion of the authority that issued the licence for the creation and operation of the commodity exchange under a special law,⁷⁸ concerning possible forms and consequences of the penalty; the court shall consider that opinion in its decision-making.

(5) If the legal person is a supervised financial market entity⁷⁹ subject to the supervision by the National Bank of Slovakia, the court may impose the penalty of dissolution only upon receiving the opinion from the National Bank of Slovakia concerning possible forms and consequences of the penalty; the court shall consider that opinion in its decision-making.

Section 13: Penalty of forfeiture of property

(1) The court shall impose the penalty of forfeiture of property on a legal person that committed a criminal offence listed in Section 58, paragraph 2, of the Criminal Code if the legal person acquired the property to an at least significant extent through or from proceeds of crime, or if the legal person committed a criminal offence referred to in Section 58, paragraph 3, of the Criminal Code.

(2) The penalty of forfeiture of property shall be imposed against the property of a convicted legal person that has remained after the termination of bankruptcy proceedings held to enforce the forfeiture of property, and after the settlement of all claims against bankruptcy estate and of all registered claims.

(3) The forfeited assets shall become State property unless the court decides otherwise on the basis of an international treaty which is binding for the Slovak Republic.

(4) If the legal person is a supervised financial market entity³ subject to the supervision by the National Bank of Slovakia, the court may impose the penalty of forfeiture of property only upon receiving the opinion of the National Bank of Slovakia concerning possible forms and consequences of the penalty; the court shall consider that opinion in its decision-making.

Section 14: Penalty of forfeiture of a thing

The court shall impose the penalty of forfeiture of a thing on a legal person in compliance with the preconditions for imposing that penalty under Section 60 of the Criminal Code.

Section 15: Pecuniary penalty

The court may impose a pecuniary penalty of EUR 1,500 to 1,600,000 on a legal person.

⁷⁸ Sections 8 to 10 of Act No. 92/2008 Coll. on the commodity exchange and on amendment to Act of the National Council of the Slovak Republic No. 145/1995 Coll. on administrative fees as amended.

⁷⁹ Section 1, paragraph 3(a), of Act No. 747/2004 Coll. on supervision over financial market and on amendments to certain other acts as amended.

Section 16: Prohibition to perform professional activities

(1) The court may impose the penalty of prohibition to perform professional activities for a period of one to ten years or indefinitely when sentencing a legal person for a criminal offence committed in connection with those activities.

(2) The penalty of prohibition to perform professional activities means that, for the duration of the penalty, a legal person is prohibited from carrying out one or several professional activities or the activity that can be performed only under a special licence or whose performance is governed by a special law.⁸⁰

(3) If the legal person is a supervised financial market entity³ which is subject to the supervision by the National Bank of Slovakia, the court may impose the penalty of forfeiture of property only upon receiving the opinion of the National Bank of Slovakia concerning possible forms and consequences of the penalty; the court shall consider that opinion in its decision-making.

Section 17: Prohibition to accept grants and subsidies

(1) The court may impose the penalty of prohibition to accept grants and subsidies for a period of one to ten years when sentencing a legal person for a criminal offence committed in connection with the application for a grant, a subsidy, a contribution or other funds from the State budget, budgets of public service institutions, State budget funds, budgets of regional or local self-governing authorities, or in connection with their allocation or use.

(2) The penalty of prohibition to accept grants and subsidies means that, for the duration of the penalty, a legal person is prohibited from applying for or accepting a grant, a subsidy, a contribution or other funds from the State budget, budgets of public service institutions, State budget funds, budgets of regional or local self-governing authorities.

Section 18: Prohibition to accept help or support from the funds of the European Union

(1) The court shall impose the penalty of prohibition to accept help or support from the funds of the European Union for a period of one to ten years when sentencing a legal person for a criminal offence committed in connection with the application for help or support from the funds of the European Union under a special law,⁸¹ or for other contribution from the funds of the European Union, or in connection with their allocation or use.

(2) The penalty of prohibition to accept help or support from the funds of the European Union means that, for the duration of the penalty, the legal person is prohibited from accepting help or support from the funds of the European Union under a special law,⁵ or other allocation from the funds of the European Union.

Section 19: Penalty of prohibition to participate in public procurement

(1) The court shall impose the penalty of prohibition to participate in public procurement for a period of one to ten years when sentencing a legal person for a criminal offence committed in connection with public procurement or with the application for help or support from the funds of the European Union under a special law,⁵ or for other contribution from the funds of the European Union, their allocation or use.

(2) The penalty of prohibition to participate in public procurement means that, during the enforcement of the penalty, the legal person is prohibited from participating in public procurement.

Section 20: Penalty of obligation to publish the convicting judgment

(1) The court may impose the penalty of obligation to publish the convicting judgment if there is a need to inform the public about the conviction, especially in view of the circumstances and seriousness of the criminal offence, or when this is in the interest of protecting safety or health of people, animals or property. The convicting judgment is published in the Commercial Gazette; at the same time, the court may designate one or several operations or branches of the legal person in which the judgment is to be published. The court shall also determine the extent and manner of the publication of the convicting judgment and the deadline for its publication.

⁸⁰ For instance, Act No 455/1991 Coll. on sole traders (trade licence act) as amended, Act No 190/2003 Coll. on firearms and ammunition and on amendments to certain other acts as amended, Act No 382/2004 Coll. on experts, interpreters and translators and on amendments to certain other acts as amended.

⁸¹ Act No. 528/2008 Coll. on help or support provided from the funds of the European Community as amended.

Act No 292/2014 Coll. on contribution provided from European structural and investment funds and on amendments to certain other acts.

(2) The penalty of obligation to publish the convicting judgment means that the convicted legal person publishes at its own expenses the convicting judgment, or such part of the judgment as is determined by the court, in the Commercial Gazette, or in one or several operations or branches of the legal person, identifying the name and the registered office of the convicted legal person. Before publishing the convicting judgment, all data that would make it possible to identify other persons than the convicted legal person must be anonymised.

Part Four: Special Provisions on Criminal Proceedings Against Legal Persons

Section 21: Relationship to proceedings on administrative offences

(1) Initiation of criminal proceedings against a legal person rules out conducting parallel administrative offence proceedings in respect of the same act against the same legal person; this does not rule out imposing the receivership or other measures under a special law.⁸²

(2) Criminal prosecution against a legal person may not be instituted or, if it is already underway, may not continue and must be terminated if previous proceedings against the same legal person concerning the same act ended with a final decision on an administrative offence, which was not reversed.

(3) If a time limit is set out in a special law⁸³ for the extinction of liability of legal persons for administrative offences, the time taken by criminal proceedings concerning the same offence under this Act shall not be counted into the running of that time limit.

Section 22: Territorial jurisdiction

Criminal proceedings shall be conducted by the court with jurisdiction over the place of commission of the criminal offence. If the place of commission of the criminal offence cannot be identified, or if the criminal offence was committed abroad, criminal proceedings shall be conducted by the court with jurisdiction over the registered office of the accused legal person, or over the place in which a foreign legal person has its branch or operation; if these places cannot be identified or are located outside the territory of the Slovak Republic, the proceedings shall be conducted by the court with jurisdiction over the place where the criminal offence, or the most serious criminal offence in case of joint proceedings, was discovered.

Section 23: Notice on initiation or termination of criminal prosecution

(1) The police officer notifies the initiation of criminal prosecution against a legal person to the keeper of the commercial register or other register stipulated by law, by the entry in which the legal person was created. Similarly, this information is provided to the competent supervision authority or to the receiver in case of a legal person put under receivership pursuant to a special law⁸⁴, and to the authority that granted the legal person the licence or permit for its activities.

(2) The police officer notifies the initiation of criminal prosecution against a legal person for a criminal offence committed in connection with help and support from the funds of the European Union under a special law⁵ also to the Office of the Government of the Slovak Republic and the Ministry of Finance of the Slovak Republic and, in case of a criminal offence connected with public procurement, also to the Public Procurement Office and the Ministry of Finance of the Slovak Republic.

(3) Final termination of criminal prosecution shall be notified to the authorities referred to in paragraphs 1 and 2 by the presiding judge or by a prosecutor in preliminary proceedings.

(4) If the dissolution or a change of the legal person is subject to making an entry thereon in a register stipulated by law, the presiding judge shall notify the termination of enforcement proceedings to the public authority keeping the register.

Section 24: Joint proceedings

⁸² For instance, Section 50, paragraph 1(a) to (c) and (g) to (j) and Sections 53 to 62 of Act No 483/2001 Coll. on Banks and on amendments to certain other acts as amended.

⁸³ For instance, Section 19, paragraph 4, of Act No 747/2004 Coll. as amended, Section 50, paragraph 10, of Act No 483/2001 Coll. as amended.

⁸⁴ For instance, Sections 53 to 62 of Act No 483/2001 Coll. as amended, Sections 147 to 155 of Act No. 39/2015 Coll. on insurance and on amendments to certain other acts.

(1) Joint proceedings may be brought against an accused legal person and an accused natural person referred to in Section 4, paragraph 1, if criminal offences committed by these persons are interrelated, unless this would manifestly prevent a decision on the case within reasonable time. Joint proceedings shall be conducted by the court with jurisdiction over the more serious criminal offence; in case both the natural person and the legal person are accused of an equally serious criminal offence, the proceedings shall be conducted by the court with jurisdiction over the proceedings against the accused natural person.

(2) In joint proceedings against a legal person and a natural person, criminal liability of the legal person and of the natural person shall be considered independently.

(3) If juridical acts pertaining to criminal procedure are to be performed within joint proceedings against a natural and a legal person in respect of both these persons, they are usually first performed with respect of the natural person.

Section 25: Change, dissolution and winding up of a legal person

(1) The statutory body of a legal person against which criminal proceedings have been instituted or a member thereof shall send without delay a written notice to the prosecutor and, in case of court proceedings, to the presiding judge, about the performance of juridical acts or about the existence of legal facts that may lead to a change, dissolution or winding up of the legal person.

(2) Juridical acts that lead to a change, dissolution or winding up of the legal person shall become effective only subject to a written approval by the pre-trial judge in preliminary proceedings, or a written approval by the presiding judge in judicial or enforcement proceedings.

(3) Decisions taken pursuant to paragraph 2 are appealable by filing a complaint.

(4) The keeper of the commercial register or another register stipulated by law, by the entry in which the legal person was created, shall not enter the termination or the change of the legal person in the register and shall not erase its registration without the approval referred to in paragraph 2.

Section 26: Limiting and security measures

(1) If the findings suggest that the accused legal person is criminally liable for the committed offence, and if its actions or other concrete facts give a reason to believe that the legal person will continue committing criminal activities, complete the attempted criminal act, commit the criminal offence it prepared or threatened to commit, or divest itself of its property and obstruct the purpose of the penalty, the presiding judge or the pre-trial judge in preliminary proceedings may, on a motion from the prosecutor, impose a limiting or security measure on the accused legal person pursuant to paragraph 2. The imposition of a limiting or security measure shall be decided by a resolution.

(2) Limiting and security measures are, in particular:

(a) obligation to deposit money or tangible assets into the custody of the court,

(b) prohibition to dispose of certain things or rights,

(c) obligation to do something, refrain from doing something or suffer something done.

(3) When imposing a measure under paragraph 2, account shall be taken of the consequences such measure could have for the legal person or a third person.

(4) The court shall send without delay the decision to impose a measure under paragraph 2 or to restrict or withdraw such measure to the authority that keeps the register of assets, rights or other property values subject to limiting or security measures, and to the authority that granted the accused legal person the permit to operate or other authorisation.

(5) The measure imposed pursuant to paragraph 2 shall be withdrawn or restricted if it is no longer necessary or required in its initial extent for criminal proceedings purposes. On a motion from the accused legal person and for important reasons, the presiding judge or the pre-trial judge in preliminary proceedings may authorise a juridical act to be performed in relation to a measure under paragraph 2.

(6) The decisions referred to in paragraphs 1 to 5 are appealable by filing a complaint. A complaint against the decision to withdraw or restrict a limiting or security measure or against the decision pursuant to paragraph 5 shall have a suspensive effect.

Section 27: Acting on behalf of a legal person in criminal proceedings

(1) In criminal proceedings, juridical acts shall be performed on behalf of a legal person by its statutory body. The statutory body of a legal person shall have the right to remain silent.

(2) The legal person may appoint its representative who must be a natural person with full legal capacity and permanent residence in the Slovak Republic. The proof of authorisation to act on behalf of the legal person is a written power of attorney with explicit empowerment. The power of attorney may be made orally for the record. The costs incurred by the representative shall be borne by the legal person.

(3) At any given moment, the legal person may be represented in criminal proceedings and juridical acts may be performed on its behalf by only one person.

(4) The statutory body, the representative or the guardian of the legal person appointed pursuant to paragraph 7 (hereinafter referred to as “the person authorised to act on behalf a legal person”) shall have the same rights and obligations in criminal proceedings against the accused legal person as the legal person itself.

(5) At the beginning of the first interview, the statutory body and the representative must specify the address for the service of documents, including the documents to be delivered to the addressee only, and the method of service; any change of address or of the method of service must be notified without delay to the competent authority; instructions concerning the service and the related consequences shall be given to the statutory body or to the representative by the court.

(6) No person appointed as expert, interpreter or translator in criminal proceedings may act on behalf of the legal person. This shall also apply to the accused, the injured party, or the witness in the same case; this shall not apply if the body of the legal person consists of a single person, or if the legal person consists of a single natural person. Should such fact be established in the course of criminal proceedings, the presiding judge or the prosecutor in preliminary proceedings shall request the legal person to appoint another person to perform juridical acts on its behalf; the time limit for appointing that person may not be less than seven working days.

(7) In case the legal person has no statutory body, has not appointed a representative pursuant to paragraph 2 or any other person within the time limit pursuant to paragraph 6, or when it is manifestly impossible to serve documents on the legal person or its representative, the presiding judge or the pre-trial judge in preliminary proceedings shall appoint a guardian for the legal person who, as a rule, is an advocate. Other person than an advocate may be appointed a guardian only with his or her consent. The resolution on appointing a guardian shall be served on the appointed person and, if the nature of the case does not prevent it, also on the legal person. The resolution on appointing a guardian may be challenged by filing a complaint.

(8) The court may hold the main trial in the absence of the person authorised to act on behalf of the legal person only if the matter can be reliably decided and the purposes of the criminal proceedings can be achieved also in the absence of that person provided that

- (a) the accused legal person was duly served the indictment and the person authorised to act on behalf of the legal person was duly summoned for the trial,
- (b) the person authorised to act on behalf of the legal person was given the opportunity to make a statement before a law enforcement authority concerning the offence charged in the indictment; investigation has been conducted in compliance with the rules; and the person authorised to act on behalf of the legal person has been advised of the possibility to access and study the file and to file a motion for additional investigation, and
- (c) the person authorised to act on behalf of the legal person has been informed of the possibility of the main trial being held in his or her absence.

Section 28: Counsel

(1) Section 27 shall be without prejudice to the right of the accused legal person to choose counsel. Counsel may be chosen by the person authorised to act on behalf of the legal person.

(2) Sections 37 and 38 on mandatory defence shall not apply to legal persons.

Section 29: Interrogation, closing arguments and the last word

(1) The first person accorded the hearing at the main trial and at the public hearing in joint proceedings is the natural person, followed by the person authorised to act on behalf of the legal person.

(2) The closing arguments of the prosecutor, the representative of a citizens' association, the injured party, the intervener or their proxies shall be followed in joint proceedings by the statements of counsel of the legal person; the person authorised to act on behalf of the legal person; counsel of the natural person; and the natural person himself or herself.

(3) The presiding judge shall first accord the last word to the person authorised to act on behalf of the legal person, to be followed by the natural person.

Part Five: Enforcement of Penalties

Section 30: Enforcement of the penalty of dissolution of the legal person

As soon as the judgment imposing the penalty of dissolution of a legal person becomes final, the presiding judge shall send its true copy to the keeper of the commercial register or other register stipulated by law, by the entry in which the legal person was created.

Section 31 : Enforcement of the penalty of prohibition to exercise professional activities, prohibition to accept grants and subsidies, prohibition to accept help or support from the European Union funds, and prohibition to participate in public procurement

(1) As soon as the judgment imposing the penalty of prohibition to exercise professional activities becomes final, the presiding judge shall send its true copy to the keeper of the commercial register or other register stipulated by law, by the entry in which the legal person was created, and to the body issuing authorisations to perform such activities or keeping the record of those activities.

(2) As soon as the judgment imposing the penalty of prohibition to accept grants and subsidies becomes final, the presiding judge shall send its true copy to the keeper of the commercial register or other register stipulated by law, by the entry in which the legal person was created.

(3) As soon as the judgment imposing the penalty of prohibition to accept help or support from the funds of the European union becomes final, the presiding judge shall send its true copy to the Office of the Government of the Slovak Republic and to the keeper of the commercial register or other register stipulated by law, by the entry in which the legal person was created.

(4) As soon as the judgment imposing the penalty of prohibition to participate in public procurement becomes final, the presiding judge shall send its true copy to the Public Procurement Office and to the keeper of the commercial register or other register stipulated by law, by the entry in which the legal person was created.

Section 32: Enforcement of the penalty of obligation to publish the convicting judgment

(1) As soon as the judgment imposing the penalty of obligation to publish the convicting judgment becomes final, the presiding judge shall order the convicted legal person to publish the judgment at its own expenses within the specified time limit, in a specified extent, and in a specified manner.

(2) The convicted legal person that fails to publish the judgment within the specified time limit, in a specified extent, and in a specified manner without adequate excuse shall be imposed a procedural fine of up to EUR 16,500. The procedural fine may be imposed also repeatedly until the fulfilment of the imposed obligation. The legal person must be advised in advance of the possibility of being imposed, even repeatedly, a procedural fine.

(3) If the court considers the excuse of the convicted legal person under paragraph 2 to be adequate, it shall set a new time limit for the publication of the convicting judgment.

(4) The decision made under paragraph 2 is appealable by filing a complaint which has a suspensive effect.

Section 33: Conditional waiver of enforcement of the remainder of certain penalties

(1) Conditional waiver of enforcement of the remainder of the penalty of prohibition to perform professional activities, penalty of prohibition to accept grants and subsidies, penalty of prohibition to accept help or support from the funds of the European Union, or penalty of prohibition to participate in public procurement shall be governed *mutatis mutandis* by Sections 69 and 70 of the Criminal Code on conditional waiver of enforcement of the remainder of the penalty of prohibition to perform professional activities.

(2) The presiding judge shall notify the conditional waiver of enforcement of the remainder of the penalty of prohibition to perform professional activities, penalty of prohibition to accept grants and subsidies, penalty of prohibition to accept help or support from the funds of the European Union, or the penalty of prohibition to participate in public procurement to the keeper of the commercial register or other register stipulated by law, by the entry in which the legal person was created, and to the body issuing authorisations to perform such activities or keeping the record of those activities.

(3) The presiding judge shall notify the conditional waiver of enforcement of the remainder of the penalty of prohibition to accept help or support from the funds of the European Union or the penalty of prohibition to participate in public procurement also to the Office of the Government of the Slovak Republic and to the Public Procurement Office.

Part Six: Common, Transitional, and Final Provisions

Section 34: Special provisions on legal contacts with abroad

(1) In the legal contacts with abroad, Part Five of the Code of Criminal Procedure shall be applied *mutatis mutandis* with regard to legal persons unless an international treaty or a special law⁸⁵ provide otherwise.

(2) Proceedings on enforcement of penalties listed in Section 10, paragraph 1(a),(f) to (i), imposed on the basis of a recognised foreign decision, shall be governed by this Act.

Section 35: The costs

The costs incurred by criminal proceedings against a legal person, including the costs of enforcement proceedings and liquidation proceedings shall, if they cannot be reimbursed from the assets of the legal person, be borne by the State.

Section 36

This Act shall be applied to criminal offences committed after the date of entry into effect of the Act.

Section 37

This Act transposes legally binding acts of the European Union listed in the annex.

THE CRIMINAL CODE

Foreign Bribery Offence

Section 334

(1) Whoever, directly or through an intermediary, provides, offers or promises a bribe to a foreign public

⁸⁵ For instance, Act No 650/2005 Coll. on the execution in the European Union of orders freezing property or evidence and amending Act No 300/2005 Coll. Criminal Code, Act No 301/2005 Coll. Code of Criminal Procedure, and Act of the Slovak National Council No 372/1990 Coll. on misdemeanours as amended, Act No 183/2011 Coll. on mutual recognition and enforcement of financial penalties in the European Union and on amendments to certain other acts.

official or another person in connection with the performance of the official obligations or in connection with the discharge of their office of a foreign public official, with the intention to obtain or maintain a disproportionate advantage, shall be punished by a prison sentence of two to five years.

(2) A prison sentence of five to twelve years shall be imposed upon an offender if they committed an act referred to in Subsection 1 to a large extent.

Seizure and Confiscation

Forfeiture of Assets: Section 58

(1) The court may, in consideration of the circumstances of the criminal offence committed and the offender's personal circumstances, impose the forfeiture of assets if it convicted an offender to a life prison sentence or if it convicted an offender to an unconditional prison sentence for a particularly serious crime in which the offender sought to gain or gained material benefits of a large extent or by which they caused damage of large extent.

(2) ...

(3) The court shall impose forfeiture of assets without the fulfilment of the conditions referred to in Subsection 1 if it convicts an offender for commission of a criminal offence of...money laundering under Section 233 Subsection 3 or 4,... the criminal offence of acceptance of bribes under Section 328 Subsection 3 or Section 329 Subsection 3 or the criminal offence of bribery under Section 334 Subsection 2.

Section 60: Forfeiture of Items

- (1) The court shall impose the forfeiture of items,
 - (a) that were used to commit the criminal offence,
 - (b) that were intended for the commission of a criminal offence,
 - (c) which the offender acquired through a criminal offence or as a reward for it, or
 - (d) which the offender acquired for an item referred to in Paragraph c).

(2) If an item referred to in Subsection 1 is unattainable or unidentifiable, or is merged with the offender's assets or with the assets of another person obtained in compliance with the law, the court may impose the forfeiture of an item of a value that corresponds to the value of such item.

(3) An unattainable item means an item that is destroyed, damaged, lost, stolen, rendered useless, consumed, concealed, transferred to another person with the aim of excluding it from the scope of the law enforcement authorities or otherwise removed or the costs saved.

(4) The court may impose the forfeiture of items only if such is an item belonging to the offender.

(5) The State becomes the owner of the forfeited item unless the court decides otherwise based on a declared international treaty by which the Slovak Republic is bound.

(6) The provisions of Subsection 1 shall not apply, if

- (a) the victim incurred an entitlement to damages, the satisfaction of which would be obstructed by the forfeiture of items,
- (b) the value of the items is clearly disproportionate to the gravity of the offence, or
- (c) the court waived the punishment of the offender.

Section 83: Confiscation of Items

(1) If the punishment of the forfeiture of items referred to in Section 60 Subsection 1 was not imposed, the court shall impose the confiscation of items if

- (a) it belongs to a person who may not be prosecuted or convicted,
- (b) it belongs to an offender whose punishment the court waived or to an offender against whom criminal prosecution was terminated or to an offender against whom criminal prosecution was conditionally suspended or to an offender against whom criminal prosecution was terminated due to the approval of a settlement,
- (c) it does not belong to the offender and was obtained by a criminal offence or as remuneration for a criminal offence,
- (d) the item was acquired by a person other than the offender, even only in part, for an item that was acquired by a criminal offence or as remuneration for a criminal offence,
- (e) it is in regard to goods without control stamps or without other technical control measures required by generally binding legal regulations for its identification for tax purposes,

(f) the circumstances of the case justify the assumption that the matter could be a source of financing terrorism, or

(g) the safety of persons or assets, or another similar public interest requires it.

(2) The State becomes the owner of the confiscated item, unless the court decides otherwise, based on a declared international treaty by which the Slovak Republic is bound.

(3) The provisions of Subsection 1 shall not apply, if

(a) the victim incurred an entitlement to damages, the satisfaction of which would be obstructed by the confiscation of items, or

(b) the value of the items is clearly disproportionate to the gravity of the offence.

(4) If an item referred to in Subsection 1 is unattainable or unidentifiable, or is merged with the offender's assets or with the assets of another person obtained in compliance with the law, the court may impose the confiscation of an item with a value that corresponds to the value of such item.

Item: Section 130

(1) For the purposes of this Act, an item shall mean

(a) a movable item or immovable item, residential or non-residential premises, animal, unless the provisions of this Act indicate otherwise,

(b) controllable force of nature or energy,

(c) a security, regardless of its form,

(d) funds on an account,

(e) proceeds from a criminal activity as well as the profit, interest and other benefits arisen from such proceeds,

(f) a document that forms a basis for exercising a legal entitlement, or

(g) a proprietary right or another value appreciable in money.

(2) An item shall also be considered an intangible information, IT data or video recording on a technical medium.

(3) For the purposes of this Act, an entrusted item shall mean an item in another person's possession, which the offender is an authorised user of, based on a contract or based on the fulfilment of specific tasks according to its availability by the owner, with the obligation to use it only for the agreed purpose or return it to the owner under the agreed conditions.

(4) For the purposes of this Act, an appropriation of items shall mean the withdrawal of items from the possession of the owner or another person who legally has it in their possession, without consent, with the intention to manipulate it as their own item.

(5) For the purposes of this Act, an addictive substance shall mean alcohol, narcotics, psychotropic substances and other substances likely to adversely affect the human psyche and their control or distinguishing abilities, or social behaviour.

(6) For the purposes of this Act, means of public transport shall mean a vehicle capable of transporting at least nine persons.

(7) For the purposes of this Act, extremist material shall mean written, graphic, video, audio or audio-video works

(a) of texts and declarations, flags, badges, passwords, or symbols, groups and movements that lead or led in the past to the suppression of fundamental human rights and freedoms,

(b) of programmes or ideologies of groups and movements that lead or led in the past to the suppression of fundamental human rights and freedoms,

(c) advocating, promoting or inciting hatred, violence or unreasonable differential treatment of groups of persons or an individual because of their belonging to one race, nation, nationality, skin colour, ethnicity, origin, or their religion, if it is an excuse for the above reasons, or

(d) justifying, approving, denying or seriously derogating genocide, crimes against peace, crimes against humanity or military crimes, if the offender or an accessory to such an act was convicted by a final judgment of an international court established under international public law, the authority of which is recognised by the Slovak Republic, or by a final judgment of a court of the Slovak Republic.

(e) repealed from 1 January 2017.

(8) A material referred to in Subsection 7 shall not be deemed to be extremist material if it is demonstrably produced, distributed, put into circulation, made publicly accessible or kept in possession for the purpose of

educational, collection or research activities.

Statute of Limitations

Section 87

(1) The criminal liability of an act expires upon the expiry of the limitation period, which is

- (a) thirty years, if it is a crime for which this Act allows the imposition of a life prison sentence,
- (b) twenty years if it is a crime for which the separate part of this Act allows the imposition of a prison sentence with an upper limit of the criminal penalty of at least ten years,
- (c) ten years in the case of other crimes,
- (d) five years if it is an offence for which the separate part of this Act allows the imposition of a prison sentence with an upper limit of the criminal penalty of at least three years,
- (e) three years for other offences.

(2) The limitation period does not include

- (a) the period during which it was not possible to bring the offender before the court due to a legal obstacle,
- (b) the period during which the offender sojourns abroad with the intention of avoiding criminal prosecution,
- (c) the probational period of a conditional suspension of the criminal prosecution,
- (d) the period during which the charges were temporarily deferred, or
- (e) the period during which the criminal prosecution was suspended.

(3) Limitation of the criminal prosecution shall be suspended

- (a) by raising the charges for a criminal offence, which is subject to limitations, and by the subsequent actions of a law enforcement authority, judge for the preliminary proceeding or the court pointing to the criminal prosecution of the offender, or
- (b) if the offender committed an intentional criminal offence during the limitation period.

(4) The new limitation period begins by the suspension of the initial limitation.

(5) Criminal prosecution shall become statute-barred no earlier than three years after the person against whom a criminal offence of human trafficking under Section 179, a criminal offence of sexual abuse under Section 201 through 202, a criminal offence of maltreatment of a close and entrusted person under Section 208 and a criminal offence of production of child pornography under Section 368 reached the age of eighteen.

Section 88

Upon the expiry of the limitation period the criminal liability of the criminal offences referred to in Chapter Twelve in the separate part of this Act does not expire, except for the criminal offence of establishment, support and promotion of movements directed at the suppression of fundamental rights and freedoms under Section 421, the criminal offence of expression of sympathy for movements directed at the suppression of fundamental rights and freedoms under Section 422, the criminal offence of production of extremist materials under Section 422a, the criminal offence of distribution of extremist materials under Section 422b, the criminal offence of possession of extremist materials under Section 422c, the criminal offence of denial or approval of the holocaust, the crimes of political regimes and the crimes against humanity under Section 422d, the criminal offence of defamation of a nation, race and conviction under Section 423 and the criminal offence of incitement to national, racial and ethnic hatred under Section 424.

Limitation of the Execution of Punishment

Section 90

(1) The imposed punishment may not be enforced after the expiry of the limitation period, which is

- (a) twenty years if it is a conviction of a life prison sentence,
- (b) fifteen years if it is a conviction of a prison sentence exceeding ten years,
- (c) ten years if it is a conviction of a prison sentence of at least five years,
- (d) five years in convictions of other punishments.

(2) The limitation period begins upon the validity of the judgment; in a conditional conviction, conditional

conviction with supervision, conditional release or conditional release with supervision, the limitation period starts with the validity of the decision that the punishment shall be enforced.

(3) The limitation period shall not include the period during which the punishment could not be enforced because the convicted sojourned abroad with the intent to avoid the punishment, or they were serving punishment by prison sentence during it.

(4) Limitation of the execution of the punishment shall be suspended if

(a) the court ordered a measure directed toward the serving of the punishment, which the limitation refers to, or

(b) the convicted committed an intentional criminal offence during the limitation period.

(5) The new limitation period begins by the suspension of the initial limitation.

Section 91

The execution of the punishment imposed for the criminal offences referred to in Chapter Twelve in the separate part of this Act shall not be statute-barred, except for the criminal offence of establishment, support and promotion of movements directed at the suppression of fundamental rights and freedoms under Section 421, the criminal offence of expression of sympathy for movements directed at the suppression of fundamental rights and freedoms under Section 422, the criminal offence of production of extremist materials under Section 422a, the criminal offence of distribution of extremist materials under Section 422b, the criminal offence of possession of extremist materials under Section 422c, the criminal offence of denial or approval of the holocaust, the crimes of political regimes and the crimes against humanity under Section 422d, the criminal offence of defamation of a nation, race and conviction under Section 423 and the criminal offence of incitement to national, racial and ethnic hatred under Section 424.

False Accounting

Section 259: Misrepresentation of Data of Economic and Commercial Records:

(1) Whoever gives false or grossly misleading information or conceals compulsory data on important facts in a statement, in a report, in the input data entered into a computer or in other documents used for

(a) statistical surveys, with the intention to provide for themselves or another person an illegal advantage,

(b) employee records, with the intention to provide for themselves or another person an illegal advantage,

(c) the inspection of accounts,

(d) the inspection of the use of grants, subsidies or another fulfilment from the State budget, from the budget of public institutions, from the budget of the State fund, from the budget of the higher territorial unit or from a municipal budget,

(e) the determination of the value of assets or the rate of securities in its transfer or assignment to another person,

(f) bankruptcy, settlement, restructuring or debt relief, or

(g) incorporation in the Commercial Register or Land Register, Motor Vehicle Register or another register under a separate regulation, shall be punished by a prison sentence of six months to three years.

(2) The same punishment referred to in Subsection 1 shall be imposed upon a person who, with the intention referred to in Subsection 1,

(a) intervenes in the technical or programming utilities of a computer, or

(b) destroys, damages, or renders useless or fails to list the documents referred to in Subsection 1.

(3) A prison sentence of three to eight years shall be imposed upon an offender if they committed an act referred to in Subsection 1 or 2

(a) and thus cause significant damage,

(b) in a more serious manner of conduct, or

(c) out of a special motive.

(4) A prison sentence of five to twelve years shall be imposed upon an offender if they committed an act referred to in Subsection 1 or 2

(a) and thus cause damage of a large extent, or

(b) cause a particularly serious failure in the operation of the Slovak Republic economy or another particularly serious consequence.

Section 260

Whoever out of negligence commits a criminal offence of misrepresentation of economic and commercial registration through the conduct referred to in Section 259 Subsection 1, except for Paragraph a) or b), and causes damage of a large extent, shall be punished by a prison sentence of three to eight years.

THE CRIMINAL PROCEDURE CODE

Section 89: Obligation to Release Items

(1) Whoever possesses an item important to the criminal proceedings is obligated to submit it to the court, public prosecutor, or police officer when prompted; if the purpose of the criminal proceedings requires its seizure, they are obligated to release such item to the authorities when prompted. When prompted, it is necessary to advise them that if they fail to comply with the call, the item may be seized from them, as well as on the other consequences of non-compliance.

(2) The obligation under Subsection 1 shall not apply to a document or another item whose content relates to the circumstances of the ban on interrogation, unless they were exempt from the obligation to keep the matter secret or confidential.

(3) Prior to the onset of the criminal prosecution the presiding judge and, in the preliminary hearing, the public prosecutor or the police officer, are entitled to prompt the release of an item.

Section 91: Seizure of Items

(1) If an item important to the criminal proceedings or computer data is not released when those who have it in their possession are prompted, it may be removed from their possession on the warrant of the presiding judge and, in the preliminary hearing, the public prosecutor or police officer. The police officer needs have the prior consent of the public prosecutor for the issue of such warrant.

(2) If the authority that issued the warrant for the seizure of the items does not seize such items itself, the police officer shall do so on the basis of the warrant.

(3) Without the prior consent referred to in Subsection 1, the police officer may issue the warrant only if prior consent cannot be achieved and the matter cannot be delayed.

(4) A person who is not involved in the matter shall take part in seizing the items where necessary.

Section 425: Enforcement of Punishment of Forfeiture of Assets

(1) If an accused is being prosecuted for a criminal offence which, given the nature and seriousness of the act and the circumstances of the accused, an imposition of punishment by the forfeiture of assets is to be expected, and there is a concern that the enforcement of such punishment will be impeded or obstructed, the court and, the public prosecutor, may seize the assets of the accused after their interrogation. The court shall always seize the assets of the accused if it imposed the forfeiture of assets by a judgment which has not yet become final. During the seizure of assets of the accused, it shall proceed under Section 50 Subsection 2 and 3, Section 94 through 96 accordingly. After declaring bankruptcy during the execution of punishment by forfeiture of assets, it shall proceed under a special regulation governing insolvency proceedings; the seizure expires by the acceptance of assets by the bankruptcy trustee.

(2) A person whose assets have been seized has the right to request the revocation or restriction of the seizure. The presiding judge, and in the preliminary hearing the public prosecutor, must decide on such request without undue delay. A complaint against such decision is admissible. If the request was rejected, the person whose assets were seized, may, unless they specify different reasons in it, repeat the request after a period of 30 days from the date when the decision on their previous request became valid; otherwise it shall not be discussed.

(3) A complaint against the resolution on the seizure of assets is admissible.

Section 426

(1) The seizure shall refer to all the assets of the accused, as well as assets that the accused procures after the seizure; however, it does not concern the funds and items that are not subject to the law on the forfeiture of assets.

(2) If the seizure is valid, all legal actions of the accused are invalid that relate to the seized assets, besides

the actions directed towards averting imminent danger.

(3) A person who has an item in their possession which belongs to the seized assets is obligated to notify the public prosecutor or the court that seized the assets as soon as they learn about the seizure; otherwise, they shall be liable for damage caused by the omission of the notice.

Section 427

The presiding judge and, in the preliminary hearing, the public prosecutor, shall revoke the seizure by a resolution if the reason for which the assets was seized expired.

Section 428: Execution of Punishment of Forfeiture of Items

(1) Once a judgment of punishment by forfeiture of assets becomes enforceable, the presiding judge shall send a copy of the judgment without justification to the authority that is authorised to manage the assets of the State under a special regulation for the assumption of the assets under their management.

(2) If an accused is being prosecuted for a criminal offence which, given the nature and severity of the act and the circumstances of the accused, an imposition of punishment by forfeiture of items is to be expected, and there is a concern that the enforcement of such punishment will be impeded or obstructed, the court, and in the preliminary hearing the public prosecutor, may seize the items of the accused. During the seizure it shall proceed under Section 50 Subsection 2 and 3, Section 94 through 96 and Section 425 Subsection 2 accordingly.

(3) A complaint against the decision on seizure is admissible.

(4) The presiding judge and, in the preliminary hearing, the public prosecutor, shall revoke the seizure if the reason for which the items were seized expired.

Section 538: Jurisdiction for the Processing of Letters Rogatory

(1) The letters rogatory of a foreign authority for legal assistance shall be served to the Ministry of Justice.

(2) To ensure the processing of a letter rogatory from a foreign authority for legal assistance, the district prosecution, under which jurisdiction the requested act of legal assistance is to be performed, is competent. If the local jurisdiction is given to several public prosecutions, the Ministry of Justice shall send the letters rogatory to the Attorney General's Office for a decision as to which of the public prosecutions shall provide its processing.

(3) If a foreign authority requests the performance of an interrogation or another act of legal assistance by the court due to the application of the act in the criminal proceedings in the requesting State, the public prosecutor shall submit the letters rogatory of a foreign authority to this extent to the District Court under which jurisdiction the act of legal assistance is to be performed, for processing. If the subject of the letters rogatory is solely an act which is to be performed by the court, the Ministry of Justice shall serve the request directly to the competent court.

THE COMMERCIAL CODE

Section 3

(1) The validity of a legal act shall not be affected by the fact that the person involved is prohibited from conducting entrepreneurial activity or lacks authorisation to conduct entrepreneurial activity.

(2) A person that undertakes such activity without any authorisation to conduct entrepreneurial activity and any persons undertaking such activity in such person's name and on such person's account shall be liable for any damage thus caused. This shall not affect their liability under special regulations.

Section 13

(1) If an entrepreneur is a natural person, he/she shall act either in person or through his/her representative. A legal entity shall act through its statutory body or its representative.

(2) The provisions of this Act governing the various forms of companies and cooperatives set out the statutory body whose acts are deemed to be the acts of the entrepreneur.

(3) An entrepreneur shall be bound by the conduct of persons exercising the authority of the statutory body even if by their conduct they exceed the scope of the subject of entrepreneurial activity, except when such conduct exceeds the authority of the statutory body granted by law or which may be granted by law to the statutory body.

(4) Any limitation of the statutory body's authorisation to act shall not be enforceable in relation to third parties even if published.

(5) The head of a branch of an enterprise or the head of a foreign person's enterprise who is entered in the Commercial Register is entitled to undertake any legal acts relating to such branch or enterprise on the entrepreneur's behalf.

Section 15

(1) Any person entrusted with performance of a certain activity in the operation of an enterprise is entitled to undertake all acts usually involved in the course of such activity.

(2) If a person exceeds the powers conferred on him/her under Subsection 1 above, the entrepreneur shall only be bound by such conduct if a third party was not aware that such person had exceeded his/her powers and, in the light of all the circumstances of the case, could not have been aware that such person had exceeded his/her powers.

THE CIVIL CODE

Section 18

(1) Legal entities also possess the capacity to have rights and obligations.

(2) Legal entities are:

- (a) associations of natural persons or legal entities;
- (b) special purpose property associations;
- (c) municipal authorities;
- (d) other entities designated as such by law.

Section 19

(1) The establishment of a legal entity requires a written agreement or a deed of association, unless otherwise provided by special Act.

(2) Legal entities are established on the day they are entered into the Commercial Register or another register determined by law, except as provided by special Act.

Section 20

(1) Legal acts of legal entities in all matters are made by the persons so authorised by virtue of the agreement to establish the legal person, the deed of association or by law (the statutory bodies).

(2) Legal acts may be also made on behalf of a legal entity by its other employees or members, provided that this possibility is stipulated in the internal regulations of the legal entity or if it is customary with regard to their position. If these persons exceed their powers, rights and obligations shall ensue to the legal entity only if the legal act relates to the legal entity's scope of business and only if the other party could not have been aware of the exceeding.

ACT ON BANKRUPTCY

Section 2

This Act shall not apply to the arrangement of property relations of a debtor which is the State, a State budgetary organisation, State subsidised organisation, State fund, municipality, higher-level territorial unit, budgetary organisation or subsidised organisation within the establishing power of a municipality or higher territorial unit, or some other party for all the obligations of which the State is responsible or liable. This Act shall also not apply to the arrangement of property relations of a debtor which is the National Bank of Slovakia, the Deposit Protection Fund or the Investment Guarantee Fund.

Section 107a

(1) If the competent court^{22a)} delivers to the bankruptcy court a final decision imposing punishment by forfeiture of property, the bankruptcy court shall decide on a declaration of bankruptcy against the property of

the party on which such punishment was imposed, and shall do so without undue delay and without a petition. The bankruptcy court shall decide by a resolution against which no appeal is admissible. The bankruptcy declared as stated above shall be conducted under this Part of the Act.

(2) In proceedings under Subsection 1,

(a) upon the petition of the public administration authority competent under a special regulation^{22b)}, the bankruptcy court shall appoint or remove an administrator that shall administer the State's property under Paragraph d) (hereinafter referred to as the "temporary administrator"),

(b) only the administrator and the temporary administrator shall have the right to dispute claimed receivables,

(c) the powers of the competent body shall be exercised by the temporary administrator or person determined by them,

(d) the State's entitlement from the forfeiture of property may be settled only after all receivables against the assets and all claimed receivables have been settled; the administrator is obliged to release the remaining property^{22c)} to the temporary administrator without undue delay after the bankruptcy is cancelled.

ACT ON BANKS

Section 91

...

(4) A report on matters concerning a client that are subject to bank secrecy shall be submitted by a bank or branch office of a foreign bank without the prior approval of the client concerned solely upon request made in writing by:

...

(b) a law enforcement authority or court for the purposes of criminal prosecution,

...

(j) a competent state authority for the purposes of discharging obligations arising from an international treaty binding upon the Slovak Republic, where the discharge of obligations according to this treaty may not be declined on account of bank secrecy.

INCOME TAX ACT

Section 21

...

(1) Those expenses (costs) shall not be treated as tax expenses, which are not related to the taxable income, even though the same were posted in the books of accounts of the taxpayer as expenses (costs), those expenses (costs), the incurrence of which is not sufficiently documented, and also:

....

c) bribes or other illicit benefits provided to another person, directly or indirectly, even if the provision of such bribes or other illicit benefits is generally tolerated in a particular country;

...”