



PHASE 2 FOLLOW-UP REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN COLOMBIA

February 2018

This Phase 2 Follow-up Report on Colombia by the OECD Working Group on Bribery evaluates and makes recommendations on Colombia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 15 February 2018.

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.

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of findings

1. In October 2017, Colombia presented its written follow-up report to the OECD Working Group on Bribery in International Business Transactions (Working Group), outlining its responses to the recommendations and follow-up issues identified during the [Phase 2 evaluation](#) in October 2015. Colombia has taken substantial steps to implement a number of the recommendations. 28 of the 50 recommendations are fully implemented, with one converted to a follow-up, 12 recommendations are partially implemented, and 9 recommendations are not implemented. One recommendation is considered no longer relevant, but is converted to a follow-up issue for Phase 3.

2. Law 1778 of 2016 significantly strengthens Colombia's foreign bribery offence and addresses many deficiencies raised in Phase 2. The scope of a "foreign country" has now been defined in law (recommendation 8a), employees of all types of enterprises are now covered by the offence in a way consistent with commentary 14 to the Convention (recommendation 8b) and "promising" a bribe has become an offence (recommendation 8c). At the time of Phase 2, there was a question as to whether an offer of a bribe that did not reach a foreign public official would constitute an offence (recommendation 8d). Now that the foreign bribery offence is defined in the same terms as the domestic bribery offence, it can be inferred that a relevant Supreme Court decision on the domestic bribery offence would apply, which means the issue is now limited to a follow-up in Phase 3.

3. Law 1778 has also brought significant improvements to Colombia's corporate liability regime. The definition of legal person, which previously excluded publicly traded companies and non-profit making entities, has been widened to include all legal persons (recommendation 9a). Law 1778 of 2016 further clarifies that proceedings to establish a legal person's liability do not depend on the initiation of another legal process, irrespective of its nature, nor to the decision to be rendered in such process (recommendation 9b). The statute of limitations for proceedings against a company for a foreign bribery offence has been adequately increased from 5 to 10 years, and the investigation period from a maximum of 60 days to at least one year, and in many cases two years (recommendation 9c). A doubt over territorial jurisdiction has also been addressed (recommendation 9d) and a Presidential decree strengthened safeguards for the independence of the Superintendence of Companies with respect to rules for appointment and removal, with a view to preventing improper influence by political concerns or factors prohibited by Article 5 of the Convention (recommendation 10a).

4. An important issue identified in Phase 2 was the number of investigative bodies potentially responsible for foreign bribery cases, and a very low prosecution and conviction rate for serious crimes. In 2017, Colombia restructured the Prosecutor's office, with changes made to strengthen its capacity to investigate financial and economic crimes. A specialised "Unit of Criminal Finances" (*Delegatura para las Finanzas Criminales*), whose predecessor was set up in 2014, is available to support investigations and prosecutions, and has taken steps to increase its expertise in foreign bribery (recommendation 7b). Colombia has demonstrated through several initiatives that it has placed greater priority on the detection and investigation of foreign bribery cases (recommendation 7a) and provided an increased level of human and financial resources (recommendation 7d).

5. As concerns enforcement capacity for foreign bribery, Colombia has set up the National Directorate for Prosecution against Corruption (NDAC) which has responsibility for prosecuting the most serious corruption cases, and has further created a special working group in 2017 with the specific objective of prosecuting transnational corruption cases. These developments have both clarified the rules regarding allocation of cases within the Prosecutor's office, and given the unit against corruption a greater co-ordinating role (recommendation 7e). The overall effect has been that Colombia is in a position to more pro-actively detect and investigate foreign bribery including by the use of MLA (recommendation 7g). This has been demonstrated in practice: Colombia has opened one foreign bribery investigation, based on an incoming mutual legal assistance (MLA) request from another Party to the Convention, and has also been active in the transnational corruption case involving Odebrecht, by investigating, prosecuting and sanctioning Colombian public officials on the passive side, and providing MLA to other jurisdictions. Nevertheless, the Working Group remains concerned that the Superintendence of Companies does not have at its disposal the same investigative powers available to the prosecuting authorities (recommendation 10c) which may sometimes impede its ability to effectively carry out foreign bribery investigations into legal persons.¹

6. Important efforts have been made to ensure better information sharing between authorities. Legislation has been passed to make it obligatory for the tax authorities to pass information on foreign bribery cases to the Superintendence of Companies (recommendations 4b and 10e). Similarly, the Prosecutor's office and the Superintendence of Companies must inform each other of any criminal notice or investigation provisionally labelled as transnational bribery, and various follow-up obligations are in place regarding information sharing, including at early stages of foreign bribery investigations (recommendations 7f and 10d). However, due to current constitutional constraints, the UIAF, Colombia's financial intelligence unit, still cannot pass classified information to the Superintendence of Companies (recommendation 10e).

7. In respect of awareness raising, Colombia has made significant efforts through a programme of events across various sectors organised by the Secretariat of Transparency, including targeted training for public sector officials involved with Colombian companies operating abroad (recommendation 1a) and for companies operating in high-risk geographic areas and sensitive sectors, including SME's (recommendation 1b). Strong efforts have also been made in training investigators and prosecutors (recommendation 7c), judges (recommendation 7i) and staff of the Superintendence of Companies (recommendation 10b). There have been some efforts in the training of accountants and auditors (recommendation 5a) but more needs to be done to target these professionals. Whilst training has been developed for the UIAF on identification of the underlying predicate offence (recommendation 6a), efforts need to be increased to provide appropriate directives and training materials on foreign bribery (recommendation 6e). Finally, as concerns whistleblower protection, while legislation is still not in place, the Working Group is encouraged by the draft legislation, and encourages Colombia to promptly proceed with its adoption (recommendation 2).

8. Regrettably, little progress has occurred as concerns officially supported export credits since Phase 2. The Colombian authorities will therefore need to make significant efforts to appraise Bancóldex, Colombia's export credit bank, of the importance of its role in preventing and detecting foreign bribery (recommendations 3a-f).

¹ See [Phase 2 evaluation of Colombia](#), paras 256-259 and commentary following para. 266.

9. In the field of taxation, concerns were raised in Phase 2 that the two-year limitation period during which a tax return could be re-examined was too low (recommendation 4a). Whilst the time period has been increased by the enactment of Law 1819 of 2016, the three year period that now applies in most cases is still considered to be inadequate.

10. Several positive developments have taken place in the field of accounting and auditing. A range of mandatory and voluntary measures to strengthen internal controls within companies have been enacted, along with improvements in the use of internal audit committees (recommendation 5b), notably as concerns State Owned Enterprises – an important area of the Colombian economy identified as requiring reform in Phase 2. In addition, Colombia now applies International Accounting Standards (IFRS) to all businesses except micro-enterprises (recommendation 12a), but there remains a longstanding concern about the independence and functions of the *revisor fiscal* (a public accountant who must be employed by certain companies) when compared to those of an external auditor (recommendation 5c). A new mandatory requirement for auditors to report suspicions of foreign bribery to the appropriate authorities has been enacted under Law 1778 of 2016 (recommendation 5d).

11. A similar obligation on lawyers to report suspicious transactions has been introduced (recommendation 6d). However this positive development is undermined considerably by the fact that it only applies to lawyers reporting an annual income of 30 000 minimum legal wages (approximately USD 8.6m). In a similar vein, Colombia has issued a decree defining a “politically exposed person” (PEP) for the purposes of money laundering (recommendation 6c). However the suggestions of the Working Group in Phase 2 were not incorporated; as a result, the definition does not include foreign PEPs and excludes a number of other categories of person who would be relevant for anti-money laundering purposes, especially where foreign bribery is the predicate offence.

12. Sanctions for foreign bribery have also been increased, with regard to both natural and legal persons. The ability to prohibit a person convicted of foreign bribery from exercising a public function and deprivation of any political rights has been introduced, in line with the available sanction for domestic bribery (recommendation 13a). Substantially increased financial sanctions are available for legal persons (recommendation 13b) which have been increased from a maximum of 2 000 monthly legal wages to 200 000 (approx. USD 45m). Legal persons convicted in a foreign bribery process can also be debarred from public contracting in line with the sanction already applicable to natural persons (recommendation 13d). Colombia has further taken steps to improve its forfeiture regime (recommendation 13c) with the adoption of Law 1708 of 2017. However concerns remain regarding the possibility of confiscating the proceeds of foreign bribery in the hands of legal persons in the absence of proceedings against natural persons.

13. Concerns raised by the Working Group in Phase 2 also remain concerning the possibility of full exoneration from sanctions for individuals in foreign bribery cases (recommendation 7h). With regard to legal persons (recommendation 9e), a similar risk has been tempered by the adoption of legislation limiting the circumstances when a full exoneration is permissible as well as forthcoming guidance.

14. Finally, Colombia needs to improve the quality and detail of statistics, notably those available on predicate offences for money laundering (recommendations 6b and 11) and false accounting offences (recommendation 12b).

Conclusions of the Working Group on Bribery

15. Based on these findings, the Working Group concludes that recommendations 1a, 1b, 4b, 5b, 5d, 6a, 7a, 7b, 7c, 7d, 7e, 7f, 7g, 7i, 8a, 8b, 8c, 9a, 9b, 9c, 9d, 10a, 10b, 10d, 12a,

13a, 13b and 13d have been fully implemented. Of these, recommendation 10a has been converted to a follow-up issue. Recommendations 3d, 4a, 5a, 5c, 6b, 6c, 6d, 9e, 10c, 10e, 11 and 13c have been partially implemented. Recommendations 2, 3a, 3b, 3c, 3e, 3f, 6e, 7h and 12b have not been implemented. Recommendation 8d is no longer relevant and has been converted to a follow-up issue for Phase 3. Colombia has addressed follow-up items 14a and 14g by the passing of Law 1778 of 2016. Remaining follow-up items, as well as recommendations that are either partially or not implemented will be followed up by the Working Group in the Phase 3 evaluation of Colombia, currently scheduled for October 2019.

PHASE 2 EVALUATION OF COLOMBIA: WRITTEN FOLLOW-UP REPORT

Date of approval of Phase 2 Report: 16 October 2015

Date of information: 18 August 2017

Part I: Recommendations for Action

Text of recommendation 1(a):

1. With respect to prevention, awareness raising and training activities, the Working Group recommends that Colombia:

(a) Pursue more targeted training for relevant public sector officials, in particular those involved with Colombia companies operating abroad on foreign bribery and how to detect it; and

Actions taken as of the date of the follow-up report to implement this recommendation:

Colombia has pursue training for public sectors officials on foreign bribery in the following agencies. Moreover, has implemented constant and in house regular training and tools for public officials and agencies that are involved with companies operating abroad.

ProColombia (Colombia's investment promotion agency):

1. Training ProColombia officials (training program with officials on site and trough videoconference for those in offices abroad that cover the Convention and Law 1178 of 2016, detection skills and reporting obligations). 15 managers where trained and 83 Pro Colombia officials connected in the commercial offices abroad. Subsequently this video was uploaded at the internal communication portal available to all ProColombia officials for constant information. For dates, programs and attendees please see:<http://www.secretariatransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>.
2. Legal profiles where delivered to all offices in Colombia and abroad including information related to Law 1778 of 2016.

Ministry of Industry and Commerce:

1. Preparation of an internal directive on the Anti-Bribery Convention and Law 1778 of 2016 for officials and companies that operate abroad.

Ministry of Foreign Affairs:

2. Directive on the Anti-Bribery Convention and Law 1778 of 2016 sent to Embassies, consulates and diplomatic officials abroad.
3. Development of a session on the Anti-Bribery Convention and Law 1778 to be included in the syllabus of the students of the San Carlos Diplomatic Academy.
4. Training sessions with students at the San Carlos Diplomatic Academy and officials of the

Ministry of Foreign Affairs. For dates, programs and attendees please see: <http://www.secretariattransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>.

Bancoldex (export credit bank):

1. Training session on the Anti Bribery Convention. For dates, programs and attendees please see: <http://www.secretariattransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Non Applicable (“NA”)

Text of recommendation 1(b):

1. With respect to prevention, awareness raising and training activities, the Working Group recommends that Colombia:

(b) Develop awareness-raising and training targeting companies, including SMEs, operating in high-risk geographic regions and sensitive sectors. [2009 Recommendation, Section III(i) and (iv), and IX(ii)]

Actions taken as of the date of the follow-up report to implement this recommendation:

The Transparency Secretariat and the Government of Colombia has done more than 40 events with law firms, auditing firms and companies including SMEs and SOEs, operating in different high risk sectors and different geographic regions (15 cities). This training has been conducted on site by consultants, the Transparency Secretariat, Prosecutors and the Superintendence of Companies. Overall, our list of attendees show that more than 1.500 companies have been trained on foreign bribery and more than 5.000 employees on the Anti Bribery Convention, Law 1778 of 2016 and other relevant legislation. In the following link, are dates, programs and attendees, including the names of companies involved, regions and the sectors they are involved. Please see: <http://www.secretariattransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>.

#	Event	Entity	Participating Entities	Date
1	Training for Chinese Entrepreneurs	Chinese Embassy	Chinese Embassy, Colombian-Chinese Business Association (AECC), ZTE Corporation.	11.07.2017
3	Talk on bribery of foreign officials	Central Investments CISA	Central Investments CISA	23.04.2017
7	Talk on transnational corruption	National Committee of the Legal Vice-Presidency of	Superintendency of Finances, Banco de Occidente.	04.11.2016

		Banco de Occidente		
8	Talk about the Anti-Bribery Law 1778	Ernst & Young Colombia	Ernst & Young Colombia	26.10.2016
1 3	Good anticorruption practices in the private sector	Law Firm: Cavelier Abogados	Law Firm: Cavelier Abogados	19.07.2016
2 2	Event on Compliance	Law Firms: Brigard y Urrutia, Pérez Bustamante & Ponce Abogados, Superintendency of Finances, Willkie Farr & Gallagher LLP.	Law Firms: Brigard y Urrutia, Pérez Bustamante & Ponce Abogados, Superintendency of Finances, Willkie Farr & Gallagher LLP.	05.04.2016
2 3	International Conference on Financial Crimes	Association of Certified Specialists in Financial Crimes (ACFCS) and Javeriana University.	Association of Certified Specialists in Financial Crimes (ACFCS) and Javeriana University.	31.03-01.04.2016
2 4	Breakfast / Annual Conference Control Risks	Control Risks	Control Risks	17.02.2016
2 6	Talk on bribery and corruption in Colombia	ABB LTDA	ABB LTDA	09.11.2015
2 7	Bribery of foreign officials and Liability of Legal Persons	Vice Presidency of Compliance of the Legal Vice Presidency, and Ethics and Compliance Unit, of ECOPETROL.	Vice Presidency of Compliance of the Legal Vice Presidency, and Ethics and Compliance Unit, of ECOPETROL.	08.10.2015
2 8	Bribery of foreign officials and Liability of Legal Persons	College of Advanced Studies of Administration (CESA)	College of Advanced Studies of Administration (CESA), PWC, Argos, Ecopetrol, Aviatour, Brigard&Urrutia, Grupo Aval	13.08.2015
3 0	Seminar on Anti Bribery Law with the Private Sector. Cali.	National Association of Entrepreneurs of Colombia - ANDI	Information available at: http://www.secretariatransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx	19.06.2015

3 1	Seminar on Anti Bribery Law with the Private Sector. Barranquilla.	National Association of Entrepreneurs of Colombia - ANDI	Information available at: http://www.secretariatransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx	17.06.2015
3 2	Seminar on Anti Bribery Law with the Private Sector. Bogotá.	National Association of Entrepreneurs of Colombia - ANDI	Superintendency of Companies, ANDI, OECD	20.09.2014

This training has been continually done over the last 4 years, with more than 12 events a year. We are currently developing additional trainings with embassies and investment promotion agencies of other countries for transnational companies that operate in Colombia. This has include trainings for over 100 companies operating in Colombia from countries like Mexico, Canada, China, Russia, Italia, Chile, US, Spain, Sweden, Japan and Norway. For dates, programs and attendees please see: <http://www.secretariatransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>).

An additional private sector initiative for the prevention of bribery and corruption includes the development of the Secretariat of Transparency's Register of Active Companies in Anti-Corruption (Empresas Activas Anticorrupción EAA in Spanish). EAA assesses the compliance program of companies (including SOE's) based on a set of international ethical standards, through 10 different categories including (i) corruption risks identification, (ii) organization and responsibilities, (iii) detailed policies for specific sensitive areas, (iv) compliance program's implementation, (v) financial and internal controls implementation, (vi) communication and training, (vii) human resources policies, (viii) complaints procedures, (ix) compliance program audit system and (x) collective actions. The register aims to promote good corporate practices in compliance and corruption prevention and generates a set of standards aligned with the current regulation, including Law 1778 of 2016.

The register has two different editions: one for large companies and another one for SME (small and medium enterprises). Since 2015, the Secretariat of Transparency has run three evaluations (two for big companies and one for SME) allowing six (6) large companies and one (1) SME to enter the register. The third large company evaluation is currently taking place and 47 companies, including several multinational Companies incorporated in Colombia, have shown their willingness to participate. The second SME edition will begin in September 2017.

Finally, it is important to add that the Secretariat of Transparency is currently holding anti-bribery and compliance workshops aimed at the sectors (pharmaceutical, infrastructure, mines and energy, manufacturing, and ICT) prioritized by the Superintendence of Companies(see Resolution 100.002657). These workshops will address relevant international and local regulation, corporate government, risks identification, anti-corruption policies.

Relevant Legal Provisions

Law 1778 of 2016 (art. 7 and 23)

The Resolution 100.002657 of the Superintendence of Companies requires particular companies belonging to the above mentioned sectors and meeting other criteria (such as gross income, total assets and staff) to adopt a compliance program. Failing to adopt such programs may result in penalties up to 2000 minimum monthly wages (USD 486.000).

National Citizens Commission Against Corruption

The National Citizens Commission against Corruption included in the following reports information related to foreign bribery, the Convention and Law 1778. This is a group of civil society organizations that does follow up on the anti-corruption public policy:

- The National Citizens Committee for the Fight against Corruption (NCCFC) first report can be found at the following link:
http://www.anticorrupcion.gov.co/SiteAssets/Paginas/Informes_CNCLCC/CNCLC_PrimerInforme_2012_2013.pdf
Page: 13.
- The NCCFC second report can be found at the following link:
http://www.anticorrupcion.gov.co/SiteAssets/Paginas/Informes_CNCLCC/CNCLC_Segundo_Informe_Jul_Dic_2013.pdf
Pages: 2, 11 to 13.
- The NCCFC third report can be found at the following link:
http://www.anticorrupcion.gov.co/SiteAssets/Paginas/Informes_CNCLCC/TercerInformeCNCLCC2014_2.pdf
Pages: 11, 20, 21 and 23.
- The NCCFC fourth report can be found at the following link:
http://www.anticorrupcion.gov.co/SiteAssets/Paginas/Informes_CNCLCC/cuarto-informe-CNCLCC.pdf
Page: 3.
- The NCCFC fifth report can be found at the following link:
http://www.anticorrupcion.gov.co/SiteAssets/Paginas/Informes_CNCLCC/quinto-informe-CNCLCC.pdf
Pages: 4, 28 to 30.
- The NCCFC sixth report can be found the following link:
<http://ciudadanoscontralacorrupcion.org/apc-aa-files/74656d706c6174656667646667666467/6to-informe-de-la-cnclcc.pdf>
Pages: 17 to 20.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 2:

2. Regarding whistleblower protection, the Working Group recommends that Colombia proceed as a matter of priority with its plan to adopt measures to protect from retaliatory or disciplinary action private and public sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery. [2009 Recommendation, Sections III(iv) and IX(iii)]

Actions taken as of the date of the follow-up report to implement this recommendation:

Whistleblowing legislation has already been drafted by the Transparency Secretariat and will be put into Congress by the end of 2017. This legislation will unify and create additional measures to protect whistleblowers against reprisals and harassment.

However, Colombia already has a system to protect witnesses and other complainers in the criminal and disciplinary procedure. Both private and public sector can be protected by the Prosecutors Office and the Inspectors General Office. Furthermore, the Inspectors General Office has among its functions the protection of whistleblowers.

Colombia has also incorporated the following in its legal order:

Against reprisals and harassment:

In Colombia, there is indeed a legislation aimed at prohibiting reprisals against persons who have reported acts of corruption. First, there is Law 1010 of 2006 "By means of which measures are adopted to prevent, correct and punish harassment at work and other harassment within the framework of labour relations". It seeks to define, correct and punish workplace harassment that in many cases is a reprisal for those who complain, as they begin to experience mistreatment, harassment, discrimination, inequality and lack of protection. Additionally, article 43 of the Anti-Corruption Statute added to Law 734 of 2002 (Disciplinary Regime of Public Servants) a provision in which it is qualified as a very serious offense "to commit, directly or indirectly, on the occasion of their functions or exceeding in the exercise of them, arbitrary or unjustified act against another public servant who has reported acts of corruption".

Anonymous complaints:

Article 69 of the Code of Criminal Procedure (Law 906 of 2004) establishes in its fourth paragraph that "anonymous criminal complaints that does not provide evidence or concrete data to guide the investigation will be filed by the corresponding prosecutor." In this way, it allows the filing of an anonymous criminal complaint, unless the burden imposed on the complainant of submitting evidence and concrete data is not fulfilled. This was upheld by the Supreme Court of Justice in its Interlocutory Order dated July 6, 2016, where it is stated that the problem is not whether the anonymous criminal complaint has an author or not but rather whether "the judicial authority refuse the complaint, even if it has an author known, when the factual description that supports it does not contain a specific and definite imputation that makes it possible to reasonably infer the possible occurrence of one or more punishable conducts, to identify its perpetrators and to conduct a possible investigation".

Relevant Legal Provision:

Article 80 of Law 418 of 1997, establishes the protection of witnesses, victims and interveners, in the disciplinary process. This Law has been continuously extended, the last being through Law 1738 of 2014, for another 4 years. The PGN with Resolution No. 0377 of September 5, 2003, regulated the protection of witnesses in the disciplinary process.

If no action has been taken to implement recommendation 2, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The Whistle-blower Protection Bill will be submitted in Congress by the end of 2017. This project aims at unifying many of the protections already mentioned and add new ones in order to protect public and private sector employees.

Text of recommendation 3(a):

3. With respect to officially supported export credits, the Working Group recommends that Colombia implement fully the provisions contained in the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits, and in particular that Bancóldex, its export credit agency:

(a) Require exporters and/or applicants to provide a declaration that they have not engaged in bribery in the transaction and to disclose whether they have been convicted of bribery in the preceding five years, and encourage exporters and/or applicants to develop, apply and document appropriate management control systems that combat bribery;

Actions taken as of the date of the follow-up report to implement this recommendation:

Bancoldex has worked on strengthening its internal policies and procedures in order to be able to manage the risk of foreign bribery in potential future operations, by requiring credit applicants to certify their funds origin and economic resources legacy, as well as the destination of funds provided by Bancoldex. This declarations are designed to detect and prevent possible money laundering operations, which has *foreign bribery* as a predicate offence, according to Colombian Law.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Colombia has not yet require exporters to provide a declaration that they have not been convicted of bribery, because Bancoldex insist they do not provide export credits and cannot therefore require such declaration.

Text of recommendation 3(b):

3. With respect to officially supported export credits, the Working Group recommends that Colombia implement fully the provisions contained in the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits, and in particular that Bancóldex, its export credit agency:

(b) Check whether exporters and/or applicants have are listed on International Financial Institutions' debarment lists;

Actions taken as of the date of the follow-up report to implement this recommendation:

Bancoldex has worked on strengthening its internal policies and procedures in order to be able to manage the risk of foreign bribery in potential future operations, by checking credit applicants on regulatory sanctions lists (United Nations and OFAC). OECD recommended lists are not yet included in Colombian regulation.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Colombia has not implemented this recommendation because Bancoldex states that they do not provide export credits and this list do not require mandatory checks by Law.

Text of recommendation 3(c):

3. With respect to officially supported export credits, the Working Group recommends that Colombia implement fully the provisions contained in the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits, and in particular that Bancóldex, its export credit agency:

(c) Require exporters and/or applicants to disclose upon demand (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons;

Actions taken as of the date of the follow-up report to implement this recommendation:

Bancoldex has worked on strengthening its internal policies and procedures in order to be able to manage the risk of foreign bribery in potential future operations, by applying “know your customer” procedures included in Bancoldex’s Anti Money Laundering System. This process includes evaluation of credit applicants, their shareholders, legal representatives, and board of directors, statutory auditor, final beneficiaries and other related parties.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Bancoldex will evaluate the relevance of including a clause related to require credit applicants to disclose the amount and purpose of commissions or fees paid, since Bancóldex does not currently provide officially supported export credits.

Text of recommendation 3(d):

3. With respect to officially supported export credits, the Working Group recommends that Colombia implement fully the provisions contained in the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits, and in particular that Bancóldex, its export credit agency:

(d) Raise awareness of the foreign bribery offence among Bancóldex staff as well as among financial intermediaries, and institute appropriate measures (such as by adapting its internal policies and procedures) to facilitate the detection and reporting of foreign bribery;

Actions taken as of the date of the follow-up report to implement this recommendation:

Bancoldex has worked on strengthening its internal policies and procedures in order to be able to manage the risk of foreign bribery in potential future operations, by giving training in foreign bribery risk to

Bancóldex staff. This training was offered by the Secretariat of Transparency in 2015.

In 2016, Bancoldex added foreign bribery as a category in the fraud matrix included in the Fraud and Corruption Prevention Program. As part of Bancóldex risk management methodology, fraud risks must be identified, monitored and controlled among the bank's processes. This program is available to the public at: www.bancoldex.com.

Bancoldex's Fraud and Corruption Prevention Program includes training activities to help staff in identification of fraud risks (i.e. foreign bribery) in internal processes. Bancoldex's staff receives training yearly on the prevention of money laundering which has *foreign bribery* as a predicate offense.

With respect to detection tools, it is important to mention that Bancoldex has put into place an anonymous report channel (whistleblowing mechanism) in its web page, named "Linea Ética", acting as a source of information of cases or suspicions of any type of irregular activity or misconduct, and is available for any internal or external stakeholder, whenever related to the financial or any other bank activity. The response procedure or protocol for the report received through this channel is already established through a Review Committee, responsible for determining the appropriate treatment for every report.

In addition, Bancóldex has an Ethics Code which is read and signed by every employee. This code contains an explicit reference to conflict of interest and bribery of foreign public officials as forbidden practices.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 3(e):

3. With respect to officially supported export credits, the Working Group recommends that Colombia implement fully the provisions contained in the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits, and in particular that Bancóldex, its export credit agency:

(e) Establish formal, written policies for denying or withdrawing export credit support to legal and natural persons convicted of foreign bribery; and

Actions taken as of the date of the follow-up report to implement this recommendation:

Bancoldex has worked on strengthening its internal policies and procedures in order to be able to manage the risk of foreign bribery in potential future operations, by including clauses in its contracts, that allow to stop relations and operations with credit applicants in case of evidence of illegal activity. As predicate offence of money laundering, foreign bribery would constitute a ground for the termination of the contract.

If no action has been taken to implement recommendation 3, please specify in the space below the

measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 3(f):

3. With respect to officially supported export credits, the Working Group recommends that Colombia implement fully the provisions contained in the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits, and in particular that Bancóldex, its export credit agency:

(f) Undertake enhanced due diligence if Bancóldex has reason to believe that bribery may be involved in a transaction. [2009 Recommendation, Section XII and 2006 Export Credit Recommendation]

Actions taken as of the date of the follow-up report to implement this recommendation:

Bancoldex has worked on strengthening its internal policies and procedures in order to be able to manage the risk of foreign bribery in potential future operations, by having a Money laundering Prevention System that monitors operations aimed at detecting unusual activity, including money laundering when foreign bribery is the predicate offense. In case of detecting suspicious transactions, there is a formal procedure to report to the *Unidad de Investigación y Análisis Financiero* (UIAF) in Colombia, this report is made by Bancoldex's Compliance Officer.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 4(a):

4. Regarding taxation, the Working Group recommends that Colombia:

(a) Extend the statutory time during which a tax return may be re-examined to determine whether bribes have been deducted; and

Actions taken as of the date of the follow-up report to implement this recommendation:

The statutory time during which a tax return may be re-examined was modified by Law 1819 of 2016. Pursuant to said law, the statute of limitations was modified so that the general time for a tax return to be examined rose from 2 years as a general rule to 3 years. However, if the taxpayer is subject to the transfer pricing regime, the time also rose from 5 years to 6 years. Additionally, if the taxpayer incurs in tax losses or offsets them, the statute limitations may be increased to up to 15 years.

These rules, will only be applicable to those tax returns which refer to taxes assessed in fiscal year 2017 and those following.

The aforementioned rules may be found in articles 147 and 714 of the Colombian Tax Code.

Relevant Legal Provision

Tax Code of Colombia

Article 147 Offset of tax losses by Companies

Companies can offset tax losses, with the taxable income obtained in the following twelve (12) taxable years, without prejudice to the presumptive income of the year. Shareholders shall not deduct nor offset the losses of the Companies against their own taxable income.

The acquiring corporation or the resulting one from a merger process, may offset with the taxable income obtained, the tax losses suffered by the merged corporation, up to a limit equivalent to the percentage of equity in the equity of the merged corporation or resulting corporation. The offset of the losses suffered by the merged Companies referred to in this article must take into account the taxable years to offset and the annual limitations established in the Law at the period in which the tax loss was generated and filed in the corresponding tax return.

Companies resulting from a spin-off process may offset with its taxable income, the tax losses suffered by the spun-off corporation, up to a limit equivalent to the percentage of the equity of the resulting corporation in the equity of the corporation that was split. The offset of the losses suffered by the corporation that was split must take into account the previous taxable years to offset and the annual limitations, established in the Law at the period in which the tax loss was generated and filed in the corresponding tax return.

If the corporation being split does not dissolve, it will be able to offset its tax losses incurred prior to the spin-off process with its taxable income, up to a limit equivalent to the percentage of the equity retained after the spin-off process. The offset of losses suffered by the spun-off Companies must take into account the previous taxable years to offset and the annual limitations, established in the Law at the period in which the tax loss was generated and filed in the corresponding tax return.

In all cases, the offset of tax losses in merger and spin-off processes with the taxable income obtained by the acquiring or resulting Companies, can only be triggered, if the economic activity of the Companies involved in those processes is the same before the respective merger or spin-off.

Tax losses arising from income considered as nontaxable and costs or deductions that do not have a nexus with the taxable income, may not, under any circumstance, be offset against the taxable income of the taxpayer, except those generated in the deduction for investment in fixed assets referred to in article 158-3 of the Colombian Tax Code.

The statute of limitations of income tax returns and reassessment, in which tax losses are determined or offset will be six years from the date of the filing of the corresponding tax return.

Article 714 Reassessment of tax returns

The tax returns may be reassessed within three years, counted from the due date of the filing of the tax return, if no tax audit procedure has been notified. When the tax return has been filed extemporaneously the tax return may be reassessed within three years counted from the date in which the return was filed.

Tax returns with balance in favor of the taxpayer or responsible may be reassessed within three years counted from the request of the offset of the balance in favor against other national taxes due or tax refund, if no tax audit procedure has been notified. When the balance in favor is charged against the tax due in the following year, the tax return may be reassessed within the same time limits as those indicated in the preceding paragraph of this article.

Tax returns may not be reassessed if at the time in which an official reassessed tax return had to be notified and it was not.

Tax returns in which tax losses are accrued or offset may be reassessed for as long as the taxpayer is allowed to offset the tax losses pursuant to the rules set forth in the Tax Code.

If the tax loss is offset in any of the last two years that the taxpayer is allowed to do so, then the tax return in which the tax loss was accrued may be reassessed for an additional three years.

Tax returns from taxpayers subject to the transfer pricing regime may be reassessed within six years counted from

its filing due date. If the tax return is filled extemporaneously, the six years will be counted from the filing date.

If no action has been taken to implement recommendation 4, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 4(b):

4. Regarding taxation, the Working Group recommends that Colombia:

(b) Allow tax authorities to share information, both spontaneously and on request, with the administrative authorities in charge of proceedings against legal persons for foreign bribery. [2009 Recommendation, Sections III(iii) and VIII, and 2009 Tax Recommendation]

Actions taken as of the date of the follow-up report to implement this recommendation:

Article 22 of Law 1778 provides that National Tax and Customs Authority (“DIAN”) shall report to the Superintendence of Companies any suspicious activity related to foreign bribery. To this end, the Superintendence of Companies initiated negotiations with the above mentioned government entity to enter into an agreement with the purpose of coordinating a framework that will allow DIAN to create alerts and a systems of collaboration in order to inform the Superintendence of any suspicious activities which may lead to the initiation of an investigation in the shortest possible time.

Relevant Legal Provisions

**Law 1778 of 2016
Chapter III. Procedural provisions**

ARTICLE 22. Submission of information by other entities. The National Taxes and Customs Directorate (Dian) **must informed the Superintendence of Companies all suspicious activity reports** indicating alleged conducts of typical behaviors established as transnational bribery.

If no action has been taken to implement recommendation 4, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 5(a):

5. Regarding accounting and auditing, the Working Group recommends that Colombia:

(a) Encourage the detection and reporting of suspected foreign bribery by the accounting and auditing profession, in particular through guidelines and training for these professionals, and through raising the awareness of the management and supervisory boards of companies about these issues

Actions taken as of the date of the follow-up report to implement this recommendation:

The Secretariat of Transparency along with UNODC has trained and offered conferences on foreign bribery targeting accountants and auditors in Colombia, encouraging the detection and reporting of suspected foreign bribery.

On January 20, 2017, the Secretariat of Transparency, the UNODC, the Public Accounting Technical Council (CTCP) and the Central Board of Accountants offered a workshop in Bogotá titled “*Detección y reporte de actos de soborno transnacional*”. The workshop aimed at developing the scope of the Auditor’s role in the prevention and fight against corruption in Colombia, to raise awareness of the importance of the activity and to train attendees on the main applicable rules. In this scenario, the content of Law 1778 of 2016 was expanded in relation to the scope of professional secrecy of tax auditors when dealing with acts of corruption or other irregular situations and the duty to report in specific cases. Likewise, tools for the development of practical skills were identified in the main behavioral indicators of transnational bribery and bribery behavior, as well as of other suspected conducts which may constitute acts of corruption, crimes against public administration, crimes against the economic and social order or crimes against the economic patrimony.

The workshop was attended by 57 participants, including: *revisores fiscales*, auditors and public accounting professionals, representatives of the Central Board of Accountants, members of the Public Accounting Technical Council, members of the Delegate for Economic Affairs and Accountants of the Superintendence of Corporations; Members of the *Colegiatura Profesional de los Contadores Públicos*; and public accounting professionals, or related areas, of the PEF of the PGO. Please see: <http://www.unodc.org/colombia/es/press/2017/Enero/la-iniciativa-contr-la-corrupcion-de-unodc-prepara-a-los-audidores.html> and <http://www.secretariatransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>.

In relation to raising the awareness of the management and supervisory boards of companies about these issues please refer to answer 1(b).

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 5(b):

5. Regarding accounting and auditing, the Working Group recommends that Colombia:

(b) Encourage Colombian companies, including SOEs, to: (i) continue to develop and adopt adequate internal controls, ethics and compliance measures for preventing and detecting foreign bribery; and (ii) adopt and develop efficient internal audit procedures, including through corporate monitoring bodies, such as audit committees;

Actions taken as of the date of the follow-up report to implement this recommendation:

From April 14th to October 21st, of 2016, officials of the Secretary of Transparency, the Superintendence of Companies, under the sponsorship of United Nations, have been teaching workshops related to Law 1778 in different cities of Colombia, which include Santa Marta, Cucuta, Medellin, Bogota, Barranquilla, Cali, Cartagena, Bucaramanga, Villavicencio, Neiva, Ibaguè, Pereira, Pasto, Valledupar and Monteria. The sessions were addressed to compliance officers, attorneys from law firms and public officials from the PGO, the courts and the Superintendence of Companies. These sessions have had the participation of over 100 companies and more than 1500 law enforcement officials and included internal controls, ethics and compliance for preventing and detecting foreign bribery. Please see: <http://www.secretariatransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>.

As stated before, an additional private sector initiative for the prevention of bribery and corruption includes the development of the Secretariat of Transparency's Register of Active Companies in Anti-Corruption (Empresas Activas Anticorrupción EAA in Spanish). EAA assesses the compliance program of companies (including SOE's) based on a set of international ethical standards, through 10 different categories including (i) corruption risks identification, (ii) organization and responsibilities, (iii) detailed policies for specific sensitive areas, (iv) compliance program's implementation, (v) financial and internal controls implementation, (vi) communication and training, (vii) human resources policies, (viii) complaints procedures, (ix) compliance program audit system and (x) collective actions. The register aims to promote good corporate practices in compliance and corruption prevention and generates a set of standards aligned with the current regulation, including Law 1778 of 2016 (also known as Anti-bribery Law).

The register has two different editions: one for large companies and another one for SME (small and medium enterprises). Since 2015, the Secretariat of Transparency has run three evaluations (two for big companies and one for SME) allowing six (6) large companies and one (1) SME to enter the register. The third large company evaluation is currently taking place and 47 companies, including several multinational Companies incorporated in Colombia, have shown their willingness to participate. The second SME edition will begin in September 2017.

Finally, it is important to add that the Secretariat of Transparency is currently holding anti-bribery and compliance workshops aimed at the sectors (pharmaceutical, infrastructure, mines and energy, manufacturing, and ICT) prioritized by the Superintendence of Companies(see Resolution 100.002657). These workshops will address relevant international and local regulation, corporate government, risks identification, anti-corruption policies.

The Superintendence of Companies has the duty of promoting ethics and transparency programs among companies that are subject to its control and supervision, according to article 23 of Law 1778 of 2016, taking into consideration aspects such as asset value, revenue, number of employees and the business field in which they operate.

In resolution 100-002657 of the 25th of July of 2016 is the criteria to establish which companies must adopt corporate ethical programs, and the External Circular letter 100-000003 of the 26th of July of 2016, provides a guide containing the administrative instructions related with the promotion of the mentioned programs, as well as internal auditing mechanism, anticorruption and international bribery prevention, all of it within what is stated in Law 1778 of 2016.

For the purpose of verifying compliance with the law, the 7th of April of 2017 the Superintendence of companies issued a communication to 531 companies, requesting the legal representative person to issue a certification stating that such program was being established.

Relevant Legal Provisions

Law 1778 of 2016 (art. 7 and 23)

The Resolution 100.002657 of the Superintendence of Companies requires particular companies belonging to the above mentioned sectors and meeting other criteria (such as gross income, total assets and staff) to adopt a compliance program. Failing to adopt such programs may result in penalties up to 2000 minimum monthly wages (USD 486.000).

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 5(c):

5. Regarding accounting and auditing, the Working Group recommends that Colombia:

(c) Develop and implement more stringent auditing requirements consistent with international standards in order to effectively ensure the independence of external auditors and provide adequate education and training of *revisores fiscales*; and

Actions taken as of the date of the follow-up report to implement this recommendation:

On 17 July 2009, the Congress of Colombia enacted Law 1314, "By which the principles and rules of accounting and financial information and assurance of information accepted in Colombia are regulated, and designates the competent authorities, the procedure for their issuance and determines the entities responsible for monitoring its compliance." Article 1 provides that: "*In compliance with the principles of equity, reciprocity and national convenience, in order to support the internationalization of economic relations, State action will be directed towards the convergence of such accounting standards, of financial information and assurance of information, with worldwide accepted international standards, with best practices and with the rapid evolution of business.*"

The Ministries of Finance and Public Credit, and Trade Industry and Tourism, under the Direction of the President of the Republic, proceeded to issue a series of Decrees regulating Law 1314 of 2009, containing the normative technical framework of financial information for those preparing the information comprised in Group 1 and 2, respectively, which include the International Financial Reporting Standards IFRS, the

International Accounting Standards (IAS), with their interpretations and the conceptual framework, as well as the International Financial Reporting Standard for Small and Medium Enterprises (IFRS) for SMEs issued by the International Accounting Standards Board (IASB). Similarly, Decree 302 of February 2015 issued the Normative Technical Framework of Information Assurance Standards (IAS), which contains the International Standards on Auditing (ISA), International Standards of Quality Control (ISQC); International Standards for Review Work (ISRW); The International Standard on Assurance Engagements (ISAE); The International Standards of Related Services (ISRS) and the Code of Ethics for Accounting Professionals.

Up to date, in Colombia, the process of convergence from local principles to International Financial Reporting Standards has been conducted, compiling the different regulatory frameworks for financial information and information assurance in the Single Regulatory Decree 2420 of 2015, as follows: (i) Annex number 1: listed companies, public interest entities, commercial companies and branches of foreign companies, considered to be large (in relation to the amount of assets or revenues) or by the degree of relationship with its parent company or business model. They are part of group 1 and these entities must apply full IFRS; (ii) Annex number 2: unlisted companies, entities that are not of public interest, SMEs, among others. They are part of group 2 and these entities must apply IFRS for SMEs; (iii) Annex number 3: directed to the micro-enterprises becoming a normative framework of simplified accounting; and (iv) Annex number 4: public accountants who conduct audit work on financial information, review of historical financial information, other assurance work or other professional services must apply the International Insurance Standards (mentioned above) in addition to Comply with the international code of ethics issued by the International Federation of Accountants (IFA).

Additionally, with respect to “provide adequate education and training of *revisores fiscales*” the *Consejo Técnico de Contaduría Pública* (CTCP) has worked on the dissemination and training to public accountants (including Revisores Fiscales) of the convergence process towards NIIF, pursuant to Art. 8 (12) of Law 1314 of 2009. Please visit: http://www.ctcp.gov.co/ctcp_publicaciones.php for more information about these training activities. Likewise, CTCP frequently publishes relevant information for public accountants, such as legal and technical opinions, please visit: http://www.ctcp.gov.co/ctcp_concepto.php?concept_id=2017 for more information.

Relevant Legal Provisions

Law 1314 of 2009

“By which the principles and rules of accounting and financial information and assurance of information accepted in Colombia are regulated, and designates the competent authorities, the procedure for their issuance and determines the entities responsible for monitoring its compliance”

ARTICLE 8. Criteria to which the technical council of the public accounting should be subjected to: In preparing the draft standards to be submitted by the Ministries of Finance and Public Credit and Trade, Industry and Tourism, the Technical Board of the Public Accounting will apply the following criteria and procedures:

(...)

12. In coordination with the Ministries of Education, Finance and Public Credit and Commerce, Industry and Tourism, as well as with the representatives of the country's Public Accounting Faculties and Programs, promote a process of dissemination, knowledge and understanding that seeks to develop activities aiming at raising awareness and socialize the processes of convergence of accounting standards, financial information and information assurance established in this law, with international standards, in the country's companies and other stakeholders during all stages of its implementation.

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 5(d):

5. Regarding accounting and auditing, the Working Group recommends that Colombia:

(d) Consider introducing a clear duty for auditors to report suspicions of foreign bribery, such as the one envisaged under Bill 159; and, if such a reporting obligation is put in place, ensure that auditors making such reports reasonably and in good faith are protected from legal action. [2009 Recommendation, Sections III(i), (iv) and (v), X, and Annex II]

Actions taken as of the date of the follow-up report to implement this recommendation:

Law 1778 of 2016, goes one step further in encouraging the detection and reporting of suspected foreign bribery by the accounting and auditing profession. In fact, Article 32 of said Law, imposes an obligation upon statutory auditors to report to the criminal, disciplinary and administrative authorities, acts of corruption (including suspected foreign bribery) and the alleged acts of a crime against the patrimonial economic order which he discovers in the exercise of his work. Further, this provision also provides that the professional secrecy of the statutory auditors shall not be applicable in these cases.

New development: General Prosecutor's office Bill

Moreover, it is worth mentioning that the PGO has recently filed a draft Bill which aims at criminalizing the failure to report suspicious activities. Article 4 of this draft Bill foresees an amendment to Article 325C of the Criminal Code, which seeks to criminalize the omission to report unusual operations or corruption to the UIAF of lawyers, accountants, external auditors (*revisores fiscales*) and the chiefs of internal control, imposing a penalty of up to 6 years of imprisonment. This amendment is accompanied with a legal obligation upon these individuals to report unusual operations or suspicious activities related to corruption.

Relevant Legal Provision

Law 1778 of the 2nd February of 2016

Chapter VI

Modifications to Law 1474 of 2011

ARTICLE 32. Liability of the statutory auditor.-Article 7 of Law 1474 of 2011 shall read as follows:

Article 7. *Liability of the statutory auditor.* Add number 5) to Article 26 of Law 43 of 1990, which shall read:

5. The statutory auditors are obliged to report to the criminal, disciplinary and administrative authorities, acts of corruption and the alleged acts of a crime against the public administration, a crime against the

economic and social order, or a crime against the patrimonial economic order which he discovers in the exercise of his work. They should also put these facts to the attention of the governing bodies and the administration of the company. The corresponding complaints must be filed within six (6) months by the time that the auditor was aware of the facts. For the purposes of this article professional secrecy of the statutory auditors shall not apply.

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 6(a):

6. With regard to money laundering and foreign bribery, the Working Group recommends that Colombia increase its capacity to detect foreign bribery through its anti-money laundering regime, and in particular:

(a) Provide training or clarification to the UIAF with respect to the identification of the underlying predicate offence, in line with FATF recommendation 29, with a view to detecting instances of foreign bribery;

Actions taken as of the date of the follow-up report to implement this recommendation:

Colombia has provide training to UIAF officials during 2016. This included the identification of the underlying predicate offence and general detection of foreign bribery. This has been complemented by training officials at PEF and other relevant areas of the PGO.

For dates, programs and attendees please see:

<http://www.secretariatransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>).

According to UIAF, “this training help the UIAF officials to improve the knowledge about foreign bribery, such as the complex mechanisms used by for illegal movements. For example, the transactions involving flows of cash and assets of public officials through different countries”.

In addition, the UIAF has compiled a set of guidelines (typologies) about corruption, which is used by the authorities in relation to risk management in AML / CFT.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 6(b):

6. With regard to money laundering and foreign bribery, the Working Group recommends that Colombia increase its capacity to detect foreign bribery through its anti-money laundering regime, and in particular:

(b) Maintain statistics on predicate offences;

Actions taken as of the date of the follow-up report to implement this recommendation:

Detailed statistics in money laundering cases and the predicate offence are kept and include sanctions, fines and assets seizure or confiscation, such statistics are reported and kept in the PGO's information systems which is administrated by the Public Policy Unit of the PGO.

Even though no foreign bribery case have been evidenced so far by the PGO, whenever a foreign bribery case should be detected, it will be included in the money laundering and the assets forfeiture unit's statistics. As an example the following chart:

2016	Money laundering	502
	Aggravated conspiracy for being part of illegal armed forces	1
	Aggravated conspiracy for drug trafficking	6
	Conspiracy	14
	Crimes against public administration (corruption)	3
	Illicit enrichment of individuals	19
	Drug trafficking	784
	Illegal weapon carrying/trafficking	3
	Substance Trafficking for Narcotics Processing	2
	Human trafficking	12
	Illegal collection of money by unauthorized entities	26

2017	Money laundering	401
	Aggravated conspiracy for being part of illegal armed forces	0
	Aggravated conspiracy for drug trafficking	0

		Conspiracy	7
		Crimes against public administration (corruption)	0
		Illicit enrichment of individuals	15
		Drug trafficking	247
		Illegal weapon carrying/trafficking	1
		Substance Trafficking for Narcotics Processing	0
		Human trafficking	1
		Illegal collection of money by unauthorized entities	14
		Extortion/blackmailing	1
		Crimes against the Financial System	1

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 6(c):

6. With regard to money laundering and foreign bribery, the Working Group recommends that Colombia increase its capacity to detect foreign bribery through its anti-money laundering regime, and in particular:

(c) Continue to develop the concept of PEPs in Colombian law;

Actions taken as of the date of the follow-up report to implement this recommendation:

Colombia has already develop the concept of PEP in Law by the issuing of Decree 1674/2016 with the purpose of defining who are considered PEPs and their obligations with the financial system due to their condition.

The Decree 1674/2016 has a comprehensive list of individuals who are considered PEPs, which includes, among others;

- President of the Republic, Vice President of the Republic, High Counselors, director of the

- Administrative Department of the Presidency of the Republic, ministers and deputy ministers,
- Governors, mayors, municipal and district councils members, and departmental assemblies members,
- General Secretaries, Treasurers, Financial Directors of Ministries, Administrative Departments and Superintendence's,
- Presidents, Directors, Managers, General Secretaries, Treasurers, Financial Directors of Public Establishments, Special Administrative Units, Public Services Companies, and State- Owned Enterprises
- Senators, Representatives, secretaries of the permanent constitutional commissions of the Congress of the Republic and Administrative Directors of the Senate and the House of Representatives,
- Directors of the Regional Autonomous Companies, National Commissioners of the Civil Service, Board members of the National Television Authority, Commissioners of the Energy Regulatory Commission, the Commission of Regulation of Drinking Water and Basic Sanitation and the Commission of Regulation of Communications,
- Magistrates, Auxiliary Magistrates and Counselors of Courts and High Courts, judges, Attorney General, Deputy Attorney, Director of National Prosecutors.
- General Comptroller of the Republic, Deputy Controllers, Territorial Controllers, Accountant, Ombudsman, Deputy Ombudsman.
- Counsellors of the National Electoral Council and the National Registrar.
- Legal representatives, presidents, directors and treasurers of political parties and movements, and other forms of political association recognized by law
- Directors and treasurers of trusts managing public resources.

As mentioned, this Decree regulates the obligations of Politically Exposed Persons and entities. Those who are considered as Politically Exposed Persons (PEP) are obligated to report their position, the date they took office and the date they left their position to the financial institutions.

This has to be done while establishing new businesses relationships, performing customer due diligence measures, and updating the client's information.

The obligated institutions and subjects will also collaborate and provide assistance when required by the competent authorities.

This decree also enables Colombian authorities to share the information above-mentioned with criminal, fiscal or administrative agencies in other countries, in strictly observance to the procedures provided in international standards and in accordance with the internal regulation.

Finally, it is important to mention that the PEP status and obligations ceases to apply two years after the PEP ceases their public appointment. This time frame was established in line with the Anticorruption Statute (Law 1474 of 2011) which contains a provision on the so called "revolving door" or "cooling off period" (article 3).

Hence, according to the current Anticorruption Law, a public official could no longer have influence in the public sector or could no longer use their former position for their own personal benefit after a period of two years. That is why, while drafting the Decree 1674/2016, both the Presidency of the Republic and the Civil Service Department considered that the PEP status should only apply for that period of time as well.

Relevant Legal Provision

<http://es.presidencia.gov.co/normativa/normativa/DECRETO%201674%20DEL%2021%20DE%20OCTUBRE%20DE%202016.pdf>

Attached: PPT presentation of the obligations of PePs.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 6(d):

6. With regard to money laundering and foreign bribery, the Working Group recommends that Colombia increase its capacity to detect foreign bribery through its anti-money laundering regime, and in particular:

(d) Extend suspicious transaction reporting obligations to lawyers; and,

Actions taken as of the date of the follow-up report to implement this recommendation:

The extension of the suspicious transaction obligation to lawyers has already been addressed by Colombia. This is included in the AML/CFT regulation issued by the Superintendence of Companies. The regulation is included in Chapter 10 of the “Legal Basic Regulation” (attached), and since the expedition in 2016, the lawyers have the obligation to report STR to the UIAF and implement a risk management system that make easier the detection of ML and FT.

The system include the following principles and categories:

1. System elements.
 - 1.1. Risk identification.
 - 1.2. Risk measurement and evaluation.
 - 1.3. Risk control.
 - 1.4. Risk supervision
2. System steps.
 - 2.1. Approval of the system.
 - 2.2. Supervision and enforcement of the system.
 - 2.3. Training and divulgation.
3. AML / CFT management and risk prevention measures.
 - 3.1. Transactions and contracts Evaluation and analysis.
 - 3.1. Due diligence procedures.

3.3. Cash flow regulations.

3.4. Other measures.

4. Suspects transactions report.

This regulations is mandatory for lawyers that report income of 30.000 monthly minimum legal wages or more, in the previous year.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 6(e):

6. With regard to money laundering and foreign bribery, the Working Group recommends that Colombia increase its capacity to detect foreign bribery through its anti-money laundering regime, and in particular:

(e) Issue appropriate directives and training materials (e.g. typologies) on the identification and reporting of active bribery, including on concealment of bribery and bribe proceeds. [2009 Recommendation, Sections III(i), (iv) and (vi)]

Actions taken as of the date of the follow-up report to implement this recommendation:

The UIAF has structured some typologies and red flags about corruption, which is used by the authorities and in risk management related to AML / CFT, especially in relation with transactions made by public officials.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

This guide is in process of improvement and update, but UIAF projects to spread it with the public and private sectors.

Text of recommendation 7(a):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(a) Emphasise the importance of pursuing foreign bribery and place greater priority on the detection and investigation of foreign bribery cases;

Actions taken as of the date of the follow-up report to implement this recommendation:

Criminal Regime

According to Resolution 573/2014 issued by the Attorney General, the National Directorate for the Prosecution Against Corruption (NDAC) is in charge of investigating and prosecuting the most serious corruption cases; the same document indicates that Transnational Bribery, especially those cases related to the OECD Convention, must be considered as serious and relevant. The NDCA is working on initiatives in order to investigate and prosecute Transnational Bribery cases, especially by developing criminal analysis to detect possible transnational corruption scenarios.

At the beginning of the year, Resolution 071 of 2017 issued by the NDCA created a special working group with the specific objective of prosecuting transnational corruption cases. The first particular cases that this group investigated were related to the Colombian part of the “Odebrecht Case”. Since the beginning of the group, the prosecutors had the continuous specialized support of the PEF in this investigation. PEF investigators used investigation techniques which have been used in other complex corporate and financial investigations, which in these cases had a “follow the money” approach.

PEF has taken further steps to specialize in investigation techniques for foreign bribery investigations. Among other, they have created a methodology for “comprehensive research” aimed at identifying and prosecuting economic and financial crimes, the modus operandi of each crime and provide sufficient tools for identifying relevant facts for an effective prosecution.

Under this perspective they have created the following methodology:

- Tracking the money trail
- Network Analysis
- Specialized Research Methodology
- Identification and use of new sources
- International cooperation

These offer the possibility of having a standard methodology to conduct criminal investigations, facilitating the identification of sources and uses of money; people, companies and organizations involved in the offenses; the identification and use of information sources - human, signals, open, etc. And finally the use of international cooperation mechanisms to enable the identification and investigation of the relevant facts occurred at a transnational level.

The concrete way in which this specialized support was applicable to a foreign bribery case even in the passive side of the conduct shows the proactivity to investigate such cases. On the Odebrecht investigation the information made public by the US Department of Justice on December in 2016 related to the FCPA investigation and included only the total amount of the bribes related to Colombia which, according to DOJ was US\$11 million, particularly distributed in two installments; US\$6, 5 million in 2010 and US\$4, 6 million in 2014.

Regarding the US\$6, 5 million, the investigation made by the PGO identified the public official, the offshore company, the transactions and the banks outside of Colombia which were used to receive the mentioned bribe. The results of the investigation also allowed to locate the subsequent transactions after the bribe was received. This complex scheme involved an offshore company in Panama, a bank in Antigua that originated the payments, a bank account in Andorra where the bribe was paid, and the subsequent transfer of the money to banks located in the USA where significant part of the money was invested in a BVI company. The individuals involved in these case were arrested and given the concrete evidence gathered by the PGO, they have since plead guilty.

In this particular case MLA was also crucial. PEF supported the elaboration of the MLA sent to Panama which confirmed the ultimate beneficial owner of the company used to receive the bribe. Part of the success of this MLA was the concrete understanding of the regulation of Panama related to offshore companies by Colombian prosecutors and investigators.

Regarding the US\$4, 6 million payment the investigation identified 7 companies, 4 of them in Panama and 3 in Hong Kong. Regarding the companies located in Panama, MLA requests were also crucial to identify some of the beneficiaries of the payments in Colombia as well as the money laundering scheme that was used to introduce part of those bribes in Colombia. This part of the investigation has been more complex given the fact that a more complex money laundering scheme has been used to hide the ultimate beneficiaries of the payments.

All of these results have been possible without receiving any information from the Brazilian or US investigation due to the confidentiality clause agreed with ODEBRECHT and those authorities that prevented any other country to request information on the case before June 1st 2017.

The successful implementation of the methodology by PEF investigators will be included as part of a new internal guide on investigation and prosecution of foreign bribery based on this case.

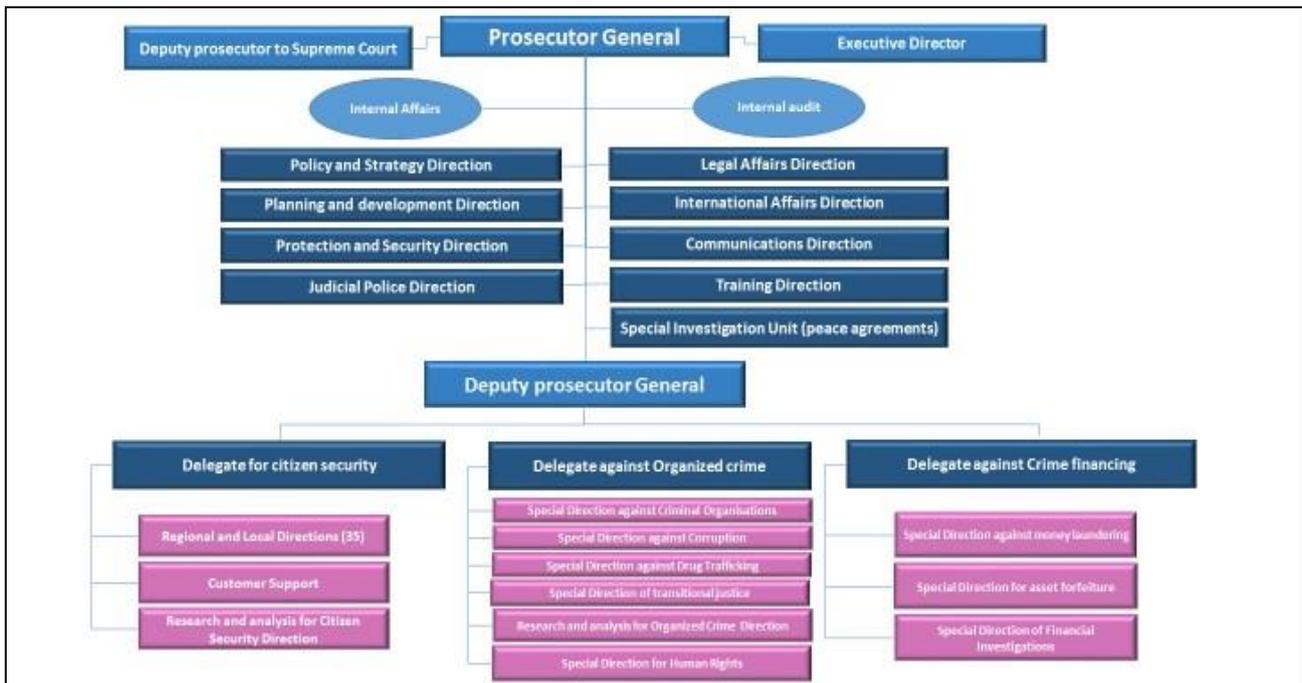
Relevant Legal Provisions

Decree 898 of 2017

New Structure of the PGO

With Decree 898 of 2017 the PGO structure changed in order to prepare itself for the peace implementation process. The decree also made some changes to strengthen the PGO's capacity to investigate the financial and economic aspects of crime, one of the main goals of the PGO 2016/2020 strategic plan.

Three new delegations were created: one in charge of investigating citizen related crimes such as homicide, burglary, etc.; other in charge of investigating organized crime (drug trafficking, criminal organizations, corruption and human rights) and finally a delegate against criminal finances. This last area is in charge of leading prosecution and investigations related to economic aspects of crime and has 3 specialized units, Money Laundering Asset Forfeiture and Financial Investigations. The Unit for Financial Investigations is the new name of the Financial and Economic Police PEF which has in charge the specialized know-how on investigating complex economic related cases such as foreign bribery. Under the new structure this Delegate against Criminal Finances will continue to provide support in terms of specialized knowledge to the Anticorruption unit on foreign bribery cases.



Administrative Regime

- Manual:

A manual was prepared to conduct investigations of international bribery and related offences according to the training received in Washington D.C during the International Bribery conference. Accordingly, the manual was drawn up with the following four aspects:

- International Bribery Detection
- Patterns and the schemes of International Bribery
- Investigation techniques for corporate entities
- Evaluating techniques for corporate ethical programs

The aim of this manual is to provide investigators with the tools and a clear understanding of the dynamic of international bribery, how to detect it, frequent patterns, and the most effective investigation techniques as well as how to evaluate corporate ethical programs, giving the importance of these programs and their capacity of imposing sanctions.

- Preventive visits:

Out of a sample of 12 companies chosen to conduct preventive visits during June and July of 2017 in order to verify the implementation of corporate ethical programs, in accordance with the article 73 of the 1778 law of 2016, and resolution 100-002657 of the 25th of July, 2016. For the visits the following aspects were taken into consideration:

- Companies with the biggest assets and revenue
 - Most vulnerable sectors mentioned in the resolution 100-002657
- Selection of frequently asked questions with answers regarding international bribery

A selection of frequently asked questions was uploaded in the web page of the superintendence, responding to the inquiries received about transparency and corporate ethics programs of entities subject to the control and supervision of the Superintendence of Societies.

- Agreement with the General State Prosecutor's Office:

It was signed the 9th of October of 2015 in order to achieve agile exchange of information

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Summary of bill No 005 chamber of Representatives “to create procedural tools to facilitate the investigation and prosecution of corruption”

Article	conduct	Penalty	Inability for public office
10	Bribery for delaying or omitting	4 to 8 years of imprisonment and a fine of twice the amount of the bribery	6 to 10 years
12	Violation of the legal or constitutional regime of disabilities and incompatibilities	5 to 18 years of imprisonment and a fine of 300 minimum wages	6,6 years to 18 years
14	Improper interest in administrative action in favor of thirds	4 to 8 years of imprisonment and a fine of 300 minimum wages	6,6 years to 18 years
15	Illicit enrichment of public official or persons that perform public duties	9 to 15 years of imprisonment and a fine of 50000 minimum wages	8 to 15 years
17	Secrets disclosure of public official	3 to 5 years of imprisonment and a fine of 20-120 minimum wages (increased when damage is evidenced)	10 years
18	Use of matters subject to secrecy or reservation	5 to 18 years of imprisonment and relieve from public office	N/A
19	Misuse of privileged official information	5 to 18 years of imprisonment and relieve from public office	N/A
20	Use of public office for electoral favoring	6 to 12 years of imprisonment and a fine of 20000 minimum wages	N/A

Text of recommendation 7(b):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(b) Take further steps to ensure that specialised expertise in foreign bribery investigations is available to PEF and any other relevant investigative bodies;

Actions taken as of the date of the follow-up report to implement this recommendation:

The PEF has taken further steps to specialize in investigation techniques for foreign bribery investigations. Among other, they have created a methodology for “comprehensive research” aimed at identifying and prosecuting economic and financial crimes, the modus operandi of each crime and provide sufficient tools for identifying relevant facts for an effective prosecution.

Under this perspective they have created the following methodology:

- Tracking the money trail
- Network Analysis
- Specialized Research Methodology
- Identification and use of new sources
- International cooperation

These offer the possibility of having a standard methodology to conduct criminal investigations, facilitating the identification of sources and uses of money; people, companies and organizations involved in the offenses; the identification and use of information sources - human, signals, open, etc. - And finally the use of international cooperation mechanisms to enable the identification and investigation of the relevant facts occurred at a transnational level.

As part of a possible investigation of foreign bribery, these tools will allow the researcher to overcome traditional barriers (trying to reconstruct the facts related to the crime) and, in particular, establish a methodological framework leading to an effective identification and prosecution of all those involved in such crimes.

As seen in our answer to recommendation 7(a) above we have some examples of the concrete way in which the specialized PEF methodology was applied to ongoing investigations.

Also, PEF has had received and given training in the detection and investigation of foreign bribery and in matters related to its own specialized investigation methodology, as can be seen below:

Subject	Participants	Responsible entities	Date
Workshop on detection and reporting of foreign bribery	10	UNODC- Secretariat of Transparency	20/02/2017
Foreign bribery (Money laundering)	7	US Embassy (FBI) - Secretariat of Transparency	06 to 08/03/2017
PEF methodology (sources of information)	66	Internal training	23/03/2017

PEF methodology (Specialized research)	58	Internal training	24/03/2017 30/03/2017
Legal Research in Financial Markets	21	Externado University	02/05/2017
PEF methodology (Money trail)	21	Internal training	14/06/2017

Based upon these trainings and PEF's experience and expertise the PEF has made progress in building a guide specifically geared to the development of detection and investigations of foreign bribery, detailing the main characteristics of such crimes, research approaches and a small compendium of the most relevant cases worldwide, providing the investigator and / or analyst with a set of suitable tools.

The PEF has also worked closely with the Secretary of Transparency of the Presidency of the Republic and the Superintendence of Companies, in order to establish channels of communication, training, collaboration and best practices that enable to develop a common front both from the regulatory perspective and the identification, analysis and investigation of these crimes, building a coordinated response.

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 7(c):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(c) Ensure appropriate and specific foreign bribery training is developed for investigators and prosecutors, including on the particularities of foreign bribery investigations and prosecutions, and on the referral and coordination of cases of foreign bribery and related offences;

Actions taken as of the date of the follow-up report to implement this recommendation:

Criminal Regime

Steps taken

Trainings received by PEF officials in 2014

- Training for investigators and prosecutors was made in December 2014 specifically on foreign bribery – to public and private sector representatives, as well as a training in June 2014 targeting Colombian tax officials. Public officials were represented from the Attorney General's Office, PEF, tax and customs officials, representatives from the Superintendence of Companies and Superintendence of Finance.

- <http://www.secretariattransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>.

Trainings received by PEF officials in 2015

- Financial Internships: 12 investigators where trained by UNODC.
- XV Pan American Congress in money laundering risk and Terrorism Financing.
- Money Laundering Workshops: Twelve (12) investigators where trained by UNODC
- Financial Investigations Training by US Embassy (IRS officials).
- Along with the Transparency Secretariat, the Superintendence developed a seminar on investigation techniques at the Superintendence of Companies. PEF officials and prosecutors where part of this seminar.

<http://www.secretariattransparencia.gov.co/estrategias/Documents/agenda-cumbre-internal-inteligencia.pdf>.

Trainings received by PEF officials in 2016

- Financial investigation techniques training by the British Embassy.
- Regional workshop in the fight against terrorism and money laundering by the US DoJ.
- Trainings in 15 cities to investigators and prosecutors (local prosecution offices) on “Liability of legal persons and investigation techniques for foreign bribery”. These session have had the participation of over 1500 law enforcement officials.

<http://www.secretariattransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>

Training session between the Superintendence of Companies and the PGO (“Prosecutor General Office”)

- As stated before, under the sponsorship of United Nations, the Transparency Secretariat has lead workshops related to Law 1778 in different cities of Colombia. These workshops included officials from both institutions who were asked to work on different exercises for joint investigations and how to share information and evidence collected during an investigation. Moreover, the importance of working together was brought to the attention of every law enforcement official at these workshops.

Trainings received by PEF officials in 2017

During 2017 there have been almost 30 training programs for PEF officials of which 20 were of subjects related to their duties, Among which we must highlight:

Subject	Participants	Responsible entities	Date
Workshop on detection and reporting of foreign bribery	10	UNODC- Secretariat of Transparency	20/02/2017
Specialization in Forensic Audit	3	PGO & Externado University	02/02/2017

I2 Data Analysis tool	29	Internal training	06-07/02/2017
PGO Information systems	49	Internal training	16-23/02/2017 02-06/02/2017
Criminal Analysis Tools	3	Internal training	23/02 to 04/03/2017
Central deposit of securities	7	Deceval	24/03/2017
Money laundering	6	British embassy	24/02/2017
Foreign bribery (Money laundering)	7	US Embassy (FBI) - Secretariat of Transparency	06 to 08/03/2017
FIU Database	18	Internal training	13/03/2017
Money laundering	10	INL – ICE (US Embassy)	27-29/03/2017
Illegal collection of money by unauthorized entities	19	Superintendence of Finance	30/03/2017
PEF methodology (sources of information)	66	Internal training	23/03/2017
PEF methodology (Specialized research)	58	Internal training	24/03/2017 30/03/2017
Legal Research in Financial Markets	21	Externado University	02/05/2017
PEF methodology	21	Internal training	14/06/2017
Investigation Methodology (compared experiences)	17	Externado University	22/06/2017
PENLIK interception software administrator	2	US Embassy - DEA	20-23/06/2017
Money laundering (comparative law)	1	PGO of México.	24-29/07/2017
International symposium on criminal law	2	Externado University	09-11/08/2017
Inspection, Surveillance and Control in Sanitation Procedures	2	PROJUST- UNODC	28/07/2017 10/08/2017
Database of Central deposit of securities	5	Deceval	03-08-2017

Administrative Regime

Trainings received by the officials of the Superintendence of Companies

Year 2015:

- **Training in strategy and capacity building for the effective implementation of Colombia's new anticorruption legislation.**
Workshop on intelligence techniques, comparative law between FCPA and UK legislation and research procedures conducted in London in September 2015.
- **Seminar on the implementation of best practices in anti-bribery policies in Colombia.**
Held in Bogota in November 2015.

Year 2016:

- **Training in judicial police functions.**
Held in Bogota in March 2016.
- **Transnational bribery and corruption conference.**
Held in Washington in November 2016 by SEC, Department of Justice and FBI.
- **Workshop challenges in the investigation and punishment of acts of corruption in a transnational and national context.**
Held in Bogota in November 2016 by UNODC.
- **IBM I2 forensics tools training**
Held in Bogota in November 2016 in relation to forensic laboratory tools.
- **Course on research techniques of international bribery and legal entities in general.**
Conducted at the Superintendence of Companies in Bogotá in November 2016

Year 2017:

- **Training in research related to corruption and bribery issues.**
Conducted in the auditorium of the Superintendence of Companies in March 2017 by the FBI, US Embassy, Department of Justice and SEC.
- **Training in transparency and integrity. Mechanisms to prevent and combat corruption in the public and private sectors in Colombia.**
Held in Bogota in June 2017 by UNODC.
- **Training in the use of the FTK tool.**
Training conducted in Bogotá on the current use of the FTK forensic laboratory tool.

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 7(d):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(d) Ensure sufficient and adequate human and financial resources are provided to the PEF and the PGO for the effective investigation and prosecution of foreign bribery cases;

Actions taken as of the date of the follow-up report to implement this recommendation:

With decree No 898 of 2017 the PGO organization changed in order to prepare itself for the peace implementation process among other challenges. The decree also made some changes to strengthen the PGO's capacity to investigate the financial and economic aspects of crime, one of the main goals of the PGO 2016/2020 strategic plan.

Three new delegations were created: one in charge of investigating citizen related crimes such as homicide, burglary, etc.; other in charge of investigating organized crime (drug trafficking, criminal organizations, corruption and human rights) and finally a deputy prosecutor in charge of investigated crime financing and which is comprised of the money laundering, asset forfeiture and financial investigation (PEF) Directions. The Special unit against Corruption at the PGO is now under the Organized Crime Delegate and currently has a total of 108 prosecutors and 105 criminal investigators, increasing its capacity almost two times the numbers reported in 2015. Besides being lawyers, most have specialization and / or expertise in criminal law and other related legal areas. In terms of experience, most have 15 years of experience at the PGO.

PEF has 95 investigators, among those analyst, investigators and 3 prosecutors, 3 assistants to prosecutors and 10 people as administrative personnel.

Role in PEF	No.	Total
Strategic Analysts	15	60
Operational analysts	15	
Forensic accountants	30	
Field Investigators	35	35
Prosecutors	3	3
Assistants to prosecutors	3	3
Support for investigators	10	10
Total: 111		

Also PEF (Currently DIF) has hired new specialized personal to enhance its capacity to investigate complex crime by bringing in over 50 new accountants of which 15 have majors in forensic accounting.

In Colombia, the guidelines for criminal investigation are listed in the Criminal Procedure Code (Law 906 of 2004), under the guidance of the PGO, who is responsible for "directing and coordinating the functions

of Judicial Police, who cooperate, on an ongoing basis, with the National Police and the servants of the Technical Investigation Corps of the PGO (CTI).”¹

The role of the National Police is complementary to the Prosecutors, in matters of criminal investigation, as well as compliance monitoring work (urban-rural and proximity), intelligence, and other community activities.

The tasks of the Judicial Police are headed by the Criminal Investigation Office (DIJIN). This directorate is responsible for establishing protocols for conducting investigations to identify, isolate, and prosecute those suspected of a crime. The DIJIN is organized into eight areas and several groups according to the categorization of crimes in the Penal Code, such as narcotics, traffic and transportation of drugs and anti-extortion and abductions.

There is a specific group within the DIJIN which is responsible for investigating crimes against the public administration (which includes foreign bribery) and internal affairs and investigations. The Criminal Investigations Office (DIJIN) supports the administration of justice in the investigation of a criminal conduct, through the study of a crime, author, victim, and circumstances surrounding the act, focusing on managing the processes of criminal investigation, which consists of:

- Obtaining material evidence and / or physical evidence.
- Capturing suspects (by Court order or flagrant).
- Seizing elements.
- Dismantling criminal organizations.
- Conducting Extradition of persons.
- Presenting and occupying property for forfeiture.
- Administrating criminal information

The internal structure of the DIJIN is designed to meet the specialized work of criminal investigation. While under one directorate, it is organized into eight areas and several groups, according, in principle, to the categorizations of crime recorded in the Penal Code (Law 599 of 2000).

As an outside component to international crime, DIJIN has an INTERPOL National Central Bureau, to address, through co- operation, Transnational Crimes, by way of partnerships with governments and Police around the world.

There is a specific group within the DIJIN for anti-corruption crimes, called Crimes against public administration and internal affairs and investigations. It has around 66 investigators and their financial resources depend on the number of cases they are working on.

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 7(e):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(e) Clarify the rules governing the allocation of foreign bribery cases within the Prosecutor General's Office (PGO), and consider granting a greater coordinating role to the Unit specialised in crimes against corruption;

Actions taken as of the date of the follow-up report to implement this recommendation:

As seen in our answer to recommendation 7(a) above with Decree No 898 of 2017 the PGO organization changed in order to prepare itself for the peace implementation process among other challenges and also to strengthen its capacity to investigate the financial and economic aspects of crime, one of the main goals of the PGO 2016/2020 strategic plan, among those the allocation of cases and the new delegate for criminal finances.

Also as stated above in our answer to recommendation 7(d) the Specialized Direction against Corruption at the PGO is now under the Organized Crime Delegate and currently has a total of 108 prosecutors and 105 criminal investigators, increasing its capacity almost two times the numbers reported in 2015.

According to our answer to recommendation 7(a) resolution 573/2014 issued by the Attorney General, provides that the Special Direction against Corruption at the PGO (NDAC) is in charge of investigating and prosecuting the most serious corruption cases, including Transnational Bribery situations.

Also, resolution 071 of 2017 issued by the NDCA created a special working group with the specific objective of prosecuting transnational corruption cases. The first particular cases that this group investigated were related to the Colombian part of the Odebrecht case. Since the beginning of the group, the prosecutors had the continuous specialized support of the PEF in this investigation. PEF investigators used investigation techniques which have been used in other complex corporate and financial investigations, which in these cases has had a "follow the money" approach. This shows that not only the role of the Specialized Direction against corruption has increased and is currently coordinating efforts with other specialized units as PEF, but also that it has been empowered and that adequate human resources has been provided for the fulfillment of its duties

Finally, according to Colombia's Constitution, the Attorney General has the right to assign any investigation to the prosecutor that he or she considers. Following the Colombian case-law, this attribution must pursue the improvement of justice administration service. For those reasons, Transnational Corruption cases normally will be assigned to the Special Direction against Corruption.

Regarding allocation of cases it is necessary to clarify, as stated in our previous report, that the procedure for initial distribution is based on a computerized system that allocates the cases to the specific units within the PGO based on the principle of specialty or area of expertise (e.g. a suspicion of corruption will be attributed to the Unit specialized in crimes against corruption). Also that this system cannot be manipulated although a case can still be reassigned to a more relevant unit in the course of the investigation. The rules that govern the allocation of cases to individual prosecutors are similar: cases are generally assigned randomly through a computerized system, unless the Prosecutor considers the need to reassign them.

This special assignation and withdrawal is regulated internally by the PGO through Resolution 0689 of 2012 and it is a faculty that relies only in the Prosecutor General, as stated by the Constitution (article 251 numeral 3) "the Prosecutor General can directly assume the investigations and processes, whatever the state in which they are, as

well as freely assign and move their servers in investigations and processes. Likewise, in accordance with the principles of unit of management and hierarchy, determine the criteria and position that the Prosecutor General Office must assume, without prejudice to the autonomy of the delegated prosecutors in the terms and conditions established by law.”

However, as stated before, the application of such faculty is regulated (Resolution No 0689 of 2012) which means that the only way to reallocate a case by the PGO should obey to objective facts which are considered as exceptional and should be motivated according to the circumstances of every particular case and “that it can start from the request of any of the procedural subjects, of the complainant, of the victim or of third parties, of course, provided that it finds objective reasons and reflects a character of Exceptionality that cannot be remedied through a mechanism of the ordinary procedure.” (council of state case file No 11001-03-24-000-2011-00438-00 (1245-2013), so more than a faculty is a responsibility that can act in favor of any of the procedural subject, when they deem it as necessary (i.e. when any of the parties feels there is a need to recuse the prosecutor in charge of investigations)

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 7(f):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(f) Strengthen the current framework to promote better coordination among law enforcement authorities, including within the PGO, between the PGO and the police, and especially between the PGO and the Superintendence of Companies;

Actions taken as of the date of the follow-up report to implement this recommendation:

Judicial police in Colombia is not merely a corpse or a unit but a function stated by law, which can be assigned or appointed by the Prosecutor General to public officials of different public entities, allows integration of taskforces and joining common efforts, a practice which is recommended by most of OECD’s groups such as, for example, the task force on tax and crime. This means that the prosecutor in charge of a case can use the judicial police available in the PGO or in the police and that is clear and understated by prosecutors.

In relation with the relation with the Superintendence of Companies, Law 1778 of 2016 mandates the Prosecutor General’s Office shall inform the Superintendence of Companies of any criminal notice which is provisionally labelled as transnational bribery, that the Prosecutor General’s Office and the Superintendence of Companies shall make the necessary agreements to exchange information and evidentiary elements and to articulate their actions in investigations under their jurisdiction, at any stage of the investigation and that it’s also possible to translate probative material evidence or physical evidence that the Office of the Prosecutor General of the Nation, the victims, or the defense, may have discovered, even if it has not been introduced or controvert in the trial hearing and therefore does not have the quality of proof yet. This is confirmed and understood by the PGO and the Superintendence of Companies.

This probative material evidence or physical evidence must be submitted to scrutiny in the punitive administrative process. When the Superintendence needs information concerning an ongoing criminal investigation or needs to transfer probative material elements or physical evidence that has not been presented to the location where the administrative punitive action is taking place, they should make a request the Office of the Prosecutor General of the Nation (articles 26,27 and 28 of Law 1778 of 2016).

Moreover, at the early stages of criminal investigations the PGO may collect evidence on any wrongdoing without previously identifying a natural person. The information gathered in these early stages may be passed on to the Superintendence of Companies by way of the agreement already signed between the two institutions.

As explained in Recommendation 10(d), Articles 26 and 28 of Law 1778 of 2016 provide the legal framework to allow a close coordination in foreign bribery cases between the PGO and the Superintendence of Companies. As part of this coordination, on October 9th, 2015, both institutions executed an agreement to exchange evidence and coordinate actions to carry out investigations at any stage of the criminal or administrative law proceeding (attached).

As a development of the agreement between the PGO (PEF) and the superintendence of Companies, we have regular work meetings to develop joined action in offences related to Companies and the use of complex corporate schemes, in which the fluid flow of information and the common effort has allowed to press charges in an extremely efficient and timely manner in such cases and also allowed that 3 Superintendence of Companies officials served as criminal investigators by the PGO (an example of the Prosecutor General faculties to assign or appoint public officials of different public entities) allowing integration of taskforces and joining common efforts, a practice which is recommended by most of OECD`s groups such as, for example, the task force on tax and crime.

Also, as stated before, resolution 071 of 2017 issued by the NDCA created a special working group with the specific objective of prosecuting transnational corruption cases. The first particular cases that this group investigated were related to the Colombian part of the Odebrecht case. Since the beginning of the group, the prosecutors had the continuous specialized support of the PEF in this investigation. PEF investigators used investigation techniques which have been used in other complex corporate and financial investigations, which in these cases has had a “follow the money” approach; the afore mentioned results evidences that the group poses an example of internal coordination of different skills of various units within PGO.

Relevant Legal Provision

Law 1778 of 2016

Chapter IV

Powers and duties of the Superintendence’s

ARTICLE 27. Interinstitutional Agreements. The Prosecutor General’s Office and the Superintendence of Companies shall make the necessary agreements to exchange information and evidentiary elements and to articulate their actions in investigations under their jurisdiction, at any stage of the investigation.

ARTICLE 28. Provision of Information. The Prosecutor General’s Office shall inform the Superintendence of Companies of any criminal notice which is provisionally labelled as transnational bribery. This information shall be provided immediately after the initiation of the preliminary investigation.”

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 7(g):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(g) More proactively detect and investigate foreign bribery, including by encouraging law enforcement authorities to make full use of all available investigative methods, and to use incoming MLA requests as a potential source of information for initiating foreign bribery investigations in Colombia;

Actions taken as of the date of the follow-up report to implement this recommendation:

Criminal Regime

PEF has been working on the implementation of a new concept of proactive investigation that takes advantage of open source information analysis (public record, public databases, news, etc.) to start investigations in a timely manner and also to provide more evidence and elements to the case theory, once the prosecutor involvement should be required.

Also incorporation of strategic analysis to understand criminal and economic phenomena (context analysis) has ended in criminal investigations in some other forms of crime (i.e. money laundering through crypto currencies).

Also regarding the Odebrecht investigation, as seen before in answer to recommendation 7 (a), In this particular case international assistance was also crucial. PEF supported the elaboration of the MLA sent to Panama which confirmed the ultimate beneficial owner of the company used to receive the bribe, part of the success of this MLA was the concrete understanding of the regulation of Panama related to offshore companies.

These are some examples on the use of special investigation techniques with a “follow the money” approach which evidence the full use of all available investigative methods and also proper internal coordination of different skills of various units within PGO.

Administrative Regime

- MoU:

The Superintendence of Companies started a negotiation process of MOU with several countries with the aim of strengthening and making more effective the international cooperation in regards to joint or parallel investigations into Foreign bribery.

A model was prepared for the memorandum of understanding based on the document “Typology on

Mutual Legal Assistance in Foreign Bribery Cases” by the OCDE and the “IOSCO MMOU” by the SEC. This document was shared with the authorities of Peru, Costa Rica and Mexico.

In regards to Peru, on 18th of July of 2017 the memorandum of understanding between the Superintendence of Companies and the Prosecutors General’s Office of the Peruvian Republic was signed.

In regards to Costa Rica, a first draft was sent, but it will be updated once this country approves its respective anti-bribery law.

With Brazil, the possibility exists of negotiating a memorandum according to the conversations held in Washington D.C. in November 2016. In the same respect during 2017 conversations have been advanced with the Secretariat of Transparency and Corruption Prevention of Brazil. Furthermore, a mail has been sent to the competent authority in Panama with a draft of a memorandum of understanding but we have not received a positive answer yet.

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 7(h):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(h) Take appropriate steps, such as providing guidance to prosecutors, to ensure that the application of article 324(18), which provides an exception to the legality principle in bribery cases for cooperating offenders, does not prevent in practice effective enforcement of the foreign bribery offence;

Actions taken as of the date of the follow-up report to implement this recommendation:

Colombia reiterates that this article applies only to cases of domestic bribery contained in Chapter III, Title XV of the Penal Code, entitled “cohechos” (articles 405 to 407) on domestic bribery offences. Foreign bribery is not a “cohecho” since it is named “soborno” under the Criminal Code. Practice enforcement of this is impossible at the moment since no foreign bribery cases have arisen in Colombia.

Recently, Resolution 4155 of December 2016 defined procedure for the application of the principle of opportunity. It should be noted that the application of 324 (18) is subject to the approval of the Prosecutor General of Colombia, this puts a filter to its excessive application since it obtains the approval under a regulated procedure that involves a request, a formal review by a group of early termination mechanisms and a decision that is solely for the Prosecutor General and must be motivated.

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 7(i):

7. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

(i) Ensure adequate and sufficient training, resources and expertise are available in the courts, and consider whether an integrated approach, for instance relying on specialised courts to deal with offences such as economic and financial crime, may be appropriate to ensure foreign bribery can be effectively sanctioned;

Actions taken as of the date of the follow-up report to implement this recommendation:

The Transparency Secretariat along with the Judges Training School “Rodrigo Lara Bonilla” conducted training on 66 judges in 15 cities, on the criminal type of foreign bribery, on “Liability of legal persons and investigation techniques for foreign bribery” and it also included criminal judges, administrative judges and Justices.

Attached the information by city, by judge and date.

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 8(a):

8. Regarding the foreign bribery offence, the Working Group recommends that Colombia:

(a) Amend its law to ensure that the definition of “foreign country” is not limited to States, but includes any organised foreign area or entity, such as an autonomous territory or a separate customs territory, in conformity with commentary 18 to the Convention;

Actions taken as of the date of the follow-up report to implement this recommendation:

Article 30 of the Law incorporates a broader definition to cover this issue. The definition includes public officials from organised foreign areas or entities (its political subdivisions or local authorities, or in a foreign jurisdiction) and as such covers specifically autonomous territories or separate customs territories in conformity with commentary 18 to the Convention. This is stated in the same way in relation to the administrative offence for legal persons bribing a foreign official.

Relevant Legal Provision

Law 1778 of 2016

Chapter I

Administrative liability of legal persons for the bribery of foreign public officials in international business transactions

Chapter V

Provisions in criminal matters

ARTICLE 30. Transnational Bribery. Modifies Article 30 of Law 1474 of 2011 which shall read as follows:

TRANSNATIONAL BRIBERY. Article 433 of the Penal Code shall read as follows:

Whoever gives, promises or offers a foreign public official, for his own benefit or that of a third party, directly or indirectly, any money, object of financial value or any other benefit or profits in exchange for committing, omitting, or delaying any action related to the exercise of his functions and in relation to an international business or international transaction, shall incur in imprisonment for a period of nine (9) to fifteen (15) years, debarment from the exercise and rights of public functions for the same term, and a fine of six hundred and fifty (650) to fifty thousand (50.000) current minimum legal monthly wages.

Subsection. For the purposes of this article, a foreign public official is deemed any person with a legislative, administrative or judicial position in a State, its political subdivisions or local authorities, or a foreign jurisdiction, regardless whether the individual was appointed or elected. A foreign public official is also any person who performs a public function for a State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a public organ, a state owned enterprise or an entity whose decision making power is subject to the will of a State, its political subdivisions or local authorities, or a foreign jurisdiction. Any agent or official of an international public organization shall also be deemed to be a foreign public official.

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 8(b):

8. Regarding the foreign bribery offence, the Working Group recommends that Colombia:

(b) Take steps to ensure that its foreign bribery offence is sufficiently broad to cover employees of all public enterprises as defined by commentary 14, including all types of SOEs;

Actions taken as of the date of the follow-up report to implement this recommendation:

In relation to commentary 14 to the Convention, which defines a “public enterprise” as any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence we have included a specific reference to it in article 433 PC in which we define a foreign public official as anyone who performs a public function “within a public organ, a state owned enterprise or an entity whose decision making power is subject to the will of the State, its political subdivisions or local authorities, or a foreign jurisdiction”. This brings the definition in line with the requirements of Commentary 14 of the Convention. Accordingly, this broad definition covers employees of all public entities and enterprises. This is stated in the same way in relation to the administrative offence for legal persons bribing a foreign official.

Relevant Legal Provision

Law 1778 of 2016

**Chapter V
Provisions in criminal matters**

ARTICLE 30. Transnational Bribery. Modifies Article 30 of Law 1474 of 2011 which shall read as follows:

Transnational Bribery. Article 433 of the Penal Code shall read as follows:

Whoever gives, **promises** or offers a foreign public official, for his own benefit or that of a third party, directly or indirectly, any money, object of financial value or any other benefit or profits in exchange for committing, omitting, or delaying any action related to the exercise of his functions and in relation to an international business or international transaction, shall incur in imprisonment for a period of nine (9) to fifteen (15) years, debarment from the exercise and rights of public functions for the same term, and a fine of six hundred and fifty (650) to fifty thousand (50.000) current minimum legal monthly wages.

Subsection. For the purposes of this article, a foreign public official is any person with a legislative, administrative or judicial position in **a State, its political subdivisions or local authorities, or a foreign jurisdiction**, regardless of whether the individual was appointed or elected. A foreign public official is also any person who performs a public function for a **State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a public organ, a state owned enterprise or an entity whose decision making power is subject to the will of a State, its political subdivisions or local authorities, or a foreign jurisdiction**. Any agent or official of an international public organization shall also be understood to be a foreign public official.

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 8(c):

8. Regarding the foreign bribery offence, the Working Group recommends that Colombia:

(c) Promptly proceed with the adoption of foreseen legislation aiming to include “promise” to the foreign bribery offence; and

Actions taken as of the date of the follow-up report to implement this recommendation:

The new text reads as follows: “Whoever gives promises or offers a foreign public official, for his own benefit or that of a third party”. This is stated in the same way in relation to the administrative offence for legal persons bribing a foreign official.

Relevant Legal Provision

Law 1778 of 2016

Chapter V

Provisions in criminal matters

ARTICLE 30. Transnational Bribery. Modifies Article 30 of Law 1474 of 2011 which shall read as follows:

Transnational Bribery. Article 433 of the Penal Code shall read as follows:

Whoever gives, promises or offers a foreign public official, for his own benefit or that of a third party, directly or indirectly, any money, object of financial value or any other benefit or profits in exchange for committing, omitting, or delaying any action related to the exercise of his functions and in relation to an international business or international transaction, shall incur in imprisonment for a period of nine (9) to fifteen (15) years, debarment from the exercise and rights of public functions for the same term, and a fine of six hundred and fifty (650) to fifty thousand (50.000) current minimum legal monthly wages.

Subsection. For the purposes of this article, a foreign public official is any person with a legislative, administrative or judicial position in a State, its political subdivisions or local authorities, or a foreign jurisdiction, regardless of whether the individual was appointed or elected. A foreign public official is also any person who performs a public function for a State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a public organ, a state owned enterprise or an entity whose decision making power is subject to the will of a State, its political subdivisions or local authorities, or a foreign jurisdiction. Any agent or official of an international public organization shall also be understood to be a foreign public official.

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 8(d):

8. Regarding the foreign bribery offence, the Working Group recommends that Colombia:

(d) Clarify that an offer that does not reach the intended public official constitutes an offence under Colombian law. [Convention, Article 1]

Actions taken as of the date of the follow-up report to implement this recommendation:

Relating to Colombia's foreign bribery offence stated in article 433 of the Penal Code, the conduct of bribery of a foreign public official as giving, offering or promising (as newly added by Law 1778 of 2016) is defined in the same terms as Article 407 (domestic bribery). Thus, elements of the offence of bribery of foreign public officials will be interpreted in a similar way to those of domestic bribery.

According to the Supreme Court of Justice, by way of its Criminal Chamber, domestic bribery is a (i) unilateral and an (ii) alternative offence. Meaning that (i) it may be committed by giving or offering the bribe even if the public official does not accept such bribe, and (ii) the criminal conduct is comprised of either giving or offering, and not both. In the Court's view, the crime "is of mere behaviour and instantaneous consummation". Therefore, the crime is perfected with the simple commission of any of the actions that the definition establishes in alternative form (giving or offering), regardless of the result obtained ..."

This was indeed confirmed at the onsite visit by judges who stated unequivocally that a mere offer is sufficient to constitute the full offence". The report even recognizes this by stating that "[a]lthough there does not appear to be any problems with Colombia's legislation on this point, the variances in views on this issue does indicate that further clarification is needed".

We believed that if further clarification should be offered by means of jurisprudence and that as such this issue should not be included in Law 1778 of 2016.

It is also important to mention that judicial decisions made by High Courts, such as the Supreme Court of Justice, are binding for lower judges as well as for the Court itself. This has been repeatedly held by the Constitutional Court. For instance, in Judgment C-836 of 2001, the Constitutional Court held that judicial authorities are bound to follow precedent from the Supreme Court of Justice or justify their reasons for departing from it. In Judgment C-335 of 2008, the Constitutional Court held that a lower judge who departs from precedent without justification, commits the offence of malfeasance, and incurs the same penalty as that of an official who willingly transgresses the law.

This holding was reiterated by the Supreme Court of Justice in the specific subject of criminal law (Supreme Court of Justice, Chamber of Criminal Cassation, Judgment of 10 of April 2013, Case No. 39456). Finally, in Judgment C-816 of 2011 the Constitutional Court upheld a general legislative rule according to which all authorities are bound to follow high court jurisprudence. It should also be noted that departing from precedent without justification is a cause for constitutional action against the court, including the Supreme Court of Justice, and the Constitutional Court has voided Supreme Court judgments for not following precedent (see Judgment SU-120 of 2003).

The Supreme Court may depart from its own precedent in four cases: first, if the underlying legislation has been modified; second, if there is a contradiction or dispersion among different precedents so that the applicable rule is not clear; third, if the societal situation in which the original precedent was adopted has changed; and fourth, if the Court finds that the applicable precedent is erroneous, case in which the Court

must show that the precedent is contrary to the "values, objectives, principles and rights in which the legal order is founded". These four cases are set out in Judgment C-836 of 2001.

In sum, even though Colombia is classified as a civil law system, its courts follow the doctrine of *stare decisis*. Accordingly, Colombia is bound to interpret Article 433 as an "offence of mere behaviour and instantaneous consummation" as already established by the Court.

Finally, it is important to mention that the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" as signed and ratified by Colombia, does not include a specific obligation to include such a characteristic in the criminal type, therefore we believe this issue would be best resolved by our courts than by way of Law, but that sufficient clarification has been given by Colombia's Supreme Court in the rulings mentioned above.

Relevant Legal Provision

Law 1778 of 2016

Chapter V Provisions in criminal matters

ARTICLE 30. Transnational Bribery. Modifies Article 30 of Law 1474 of 2011 which shall read as follows:

Transnational Bribery. Article 433 of the Penal Code shall read as follows:

Whoever gives, **promises** or offers a foreign public official, for his own benefit or that of a third party, directly or indirectly, any money, object of financial value or any other benefit or profits in exchange for committing, omitting, or delaying any action related to the exercise of his functions and in relation to an international business or international transaction, shall incur in imprisonment for a period of nine (9) to fifteen (15) years, debarment from the exercise and rights of public functions for the same term, and a fine of six hundred and fifty (650) to fifty thousand (50.000) current minimum legal monthly wages.

Subsection. For the purposes of this article, a foreign public official is any person with a legislative, administrative or judicial position in **a State, its political subdivisions or local authorities, or a foreign jurisdiction**, regardless of whether the individual was appointed or elected. A foreign public official is also any person who performs a public function for a **State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a public organ, a state owned enterprise or an entity whose decision making power is subject to the will of a State, its political subdivisions or local authorities, or a foreign jurisdiction**. Any agent or official of an international public organization shall also be understood to be a foreign public official.

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 9(a):

9. Regarding the legislation on liability of legal persons for foreign bribery, the Working Group recommends that Colombia:

(a) Urgently amend its legislation to ensure that all legal persons, including listed entities, financial institutions, publicly-traded companies and non-profit entities, can be held liable for foreign bribery;

Actions taken as of the date of the follow-up report to implement this recommendation:

Article 2 of Law 1778 of 2016 refers broadly to “legal person”, which is defined by Article 633 of the Colombian Civil Code as “a fictitious person capable of exercising civil rights and obligations”. This term refers to any legal person, including publicly traded companies, financial institutions, non – profit entities and any other legal entity incorporated under Colombian law. The referred term is used in the following articles of Law 1778 of 2016: 3 (jurisdiction); 4 (non-preliminary judicial decision); 5 (general penalties); 6 (penalties applicable in case of bylaws amendments); 8 (applicable procedural rules); 10 (administrative actions); 11 (preliminary investigations); 16 (administrative decisions); 17 (administrative remedies); 21 (refusal to provide information); 23 (corporate ethics programs) and 31 (debarment to enter into an administrative contract).

Relevant Legal Provision

Law 1778 of 2016

Chapter I

Administrative liability of legal persons for the bribery of foreign public officials in international business transactions

ARTICLE 2. - Administrative liability of legal persons. Legal persons that through one or several of its:

- I. Employees,
- II. Contractors
- III. Directors or
- IV. Associates

Whether or not they have authority to bind the legal entity:

- I. Give,
- II. Offer or
- III. Promise

To a foreign public official, directly or indirectly:

- I. Amounts of money
- II. Any other good which has monetary value, or
- III. Any other benefit or other perquisite

In exchange for the foreign public official to;

- I. Perform;
- II. Omit or
- III. Delay

Any action related to the exercise of his powers and in relation to an international business or international transaction.

Such persons will be sanctioned administratively in the terms established in this Law.

Entities classified as parent companies under Law 222 of 1995, or the law that modifies or substitutes it, shall also be liable and shall be subject to administrative penalties in the event in which any of its subsidiaries engages in any of the activities listed in the first section of this article, with the consent or tolerance of the matrix.

Subsection 1. – For the purposes of this article, a foreign public official shall be any individual who has a legislative, administrative or judicial position either in the government of a State or its political subdivisions or local authorities, or a foreign jurisdiction, regardless of whether the individual was appointed or elected. A foreign public official shall also be any person who performs a public function for a State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a governmental entity, a state owned enterprise or an entity in which the decision-making power is subject to the government's will, its political subdivisions, local authorities or a foreign jurisdiction. Agents or officials of an international public organization shall also be considered to be foreign public officials.

Subsection 2. – The provisions of this law shall also extend to branches of companies that operate abroad, as well as state owned industrial and commercial enterprises, companies in which the State has a share and mixed companies.

Subsection 3. - The provisions of this article will not apply when the conduct was performed by a shareholder that does not hold control of the legal person.

If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 9(b):

9. Regarding the legislation on liability of legal persons for foreign bribery, the Working Group recommends that Colombia:

(b) Take all necessary steps to ensure that proceedings against legal persons do not, in law or in practice, depend on the initiation of proceedings against a natural person;

Actions taken as of the date of the follow-up report to implement this recommendation:

Colombia has taken the necessary measures to ensure that its regime for liability of legal persons in foreign bribery is not restricted to cases where the natural person who perpetrated the offence has been prosecuted or convicted. As stated in Colombia's phase 2 evaluations, Law 1778 of 2016 addresses the Working Group's concern by clearly dissociating proceedings against legal persons from those against natural persons. Colombia reiterates that in practice the foreign bribery offence can be investigated independently and this is widely supported by articles 4, 20 and 21 of Law 1778 of 2016.

In law

Article 4 of Law 1778 of 2016 states that the proceeding to establish a legal person's liability "shall not depend upon or be subject to the initiation of another legal process, irrespective of its nature, nor to the decision to be rendered in such process".

Furthermore, articles 20 and 21 of Law 1778 of 2016 vested the Superintendence of Companies with authority to conduct administrative investigations against legal persons through the use of some investigative tools which will be addressed thoroughly in recommendation 10(c).

In practice

Not only does Law 1778 explicitly exclude the need for prosecution of a natural person, but in practice the Colombian Superintendence's, such as the Superintendence of Industry and Commerce and the Superintendence of Companies have conducted administrative investigations and issued harsh penalties against legal persons without establishing the responsibility of any natural person solely through the use of administrative investigative powers. This will also be addressed in more detail in recommendation 10(c).

Likewise, at the early stages of criminal investigations, the PGO may collect evidence on any wrongdoing without previously identifying a natural or legal person. The information gathered in these stages may be transferred to the Superintendence of Companies by way of the agreement already executed between these two entities².

Relevant Legal Provisions

Law 1778 of 2016

Administrative liability of natural and legal persons for the bribery of foreign public officials in international business transactions

ARTICLE 4. Non-reliance on previous judicial decisions. The initiation, prosecution and termination of an administrative investigation related to a legal person arising for the actions or omissions described in Article 2 of this Law, **shall not depend upon or be subject to the initiation of another legal process, irrespective of its nature, nor to the decision to be rendered in such process.** Likewise, any decision in the administrative process provided for under this Law shall not prevent other authorities or courts from rendering additional decisions.

ARTICLE 20. Procedures to carry out administrative investigations of transnational bribery. To enforce the powers envisaged in this law, the Superintendence of Companies **may carry out all actions**

² see recommendation 10(d)

authorized by the law for the exercise of its powers of inspection, surveillance and control. In particular it may:

1. Carry out inspection visits, order and collect evidence and gather all relevant information.
2. Order natural and legal persons to provide data, reports, books and commercial papers that may be required for the elucidation of the facts.
3. Conduct interrogations, under oath and observing the formalities foreseen for this kind of procedures in the Procedure Code, regarding any person whose testimony may be useful to shed light on the facts during the exercise of their functions”.

If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 9(c):

9. Regarding the legislation on liability of legal persons for foreign bribery, the Working Group recommends that Colombia:

(c) Ensure that the statute of limitations and the investigation period allow adequate time for proceeding against legal persons for a foreign bribery offence;

Actions taken as of the date of the follow-up report to implement this recommendation:

Article 9 of Law 1778 of 2016 establishes a longer statute of limitations (10 years) for foreign bribery which is different to other regimes that provide a shorter term (i.e. General Administrative Procedure Code is 3 years, Competition Law is 5 years, among others).

Moreover, the investigation period is regulated in Article 11, which determines that preliminary investigation procedures will last one year and shall end with the indictment or the file of the case. However, this term may be extended up to one year more, when mutual legal assistance is required.

Relevant Legal Provisions

Law 1778 of 2016

Administrative liability of natural and legal persons for the bribery of foreign public officials in international business transactions

ARTICLE 9. Statute of limitations. The power to impose penalties under this Law **is subject to a statute of limitations of ten (10) years**, counted as from the date of the illegal conduct has occurred.

The statute of limitations shall be interrupted with the indictment. From this time onwards, the statute of limitations shall run again for ten (10) years, until the decision to impose a penalty is issued.

ARTICLE 11. Preliminary investigation. Once the administrative proceedings are initiated, the Superintendence of Companies shall begin a preliminary investigation to establish whether one of the conducts foreseen in Article 2 of this law was committed. **The preliminary investigation shall have a maximum duration of one (1) year** and shall end with the file of the case or the indictment against the legal persons under investigation. **This term may be extended up to one (1) year more if mutual legal assistance is required.**

If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 9(d):

9. Regarding the legislation on liability of legal persons for foreign bribery, the Working Group recommends that Colombia:

(d) Explicitly provide in legislation for nationality jurisdiction over Colombian legal persons for the foreign bribery offence; and

Actions taken as of the date of the follow-up report to implement this recommendation:

Article 3 of Law 1778 of 2016 clarifies the situation by providing explicitly for nationality jurisdiction. Particularly, the abovementioned article states that *“the Superintendence shall have jurisdiction over conducts committed in foreign territory, as long as the allegedly responsible legal person or the branch of a foreign company is incorporated in Colombia.”*

Relevant Legal Provision

Law 1778 of 2016

Administrative liability of natural and legal persons for the bribery of foreign public officials in international business transactions

ARTICLE 3. Jurisdiction. The conducts listed in section 2 of this Law shall be investigated and punished by the Superintendence of Companies.

The Superintendence shall have jurisdiction over conducts occurred abroad, as long as the allegedly liable legal person or the branch of a foreign company is incorporated in Colombia.

Subsection. The jurisdiction provided in this section will not deal with the exercise of judicial powers vested in the Superintendence of Companies.

If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 9(e):

9. Regarding the legislation on liability of legal persons for foreign bribery, the Working Group recommends that Colombia:

(e) Clarify the application of benefits for collaboration envisaged under draft legislation, so that they do not prevent in practice the effective enforcement of the foreign bribery offence against legal persons [Convention, Article 2; 2009 Recommendation, Sections III(viii) and Annex I.B]

Actions taken as of the date of the follow-up report to implement this recommendation:

The clarification of the benefits for collaboration have been included in Law 1778 of 2016. The Superintendence of Companies may provide benefits provided that the same be made known to the Superintendence in a timely manner and delivery of information and evidence relating to such conduct may be provided.

The benefits may include full or partial waiver of the penalty. Total exemption from the sanction may be granted ONLY when there is information provided prior to the initiation of any administrative action (including preliminary investigation) from the legal person and that such person (i) has informed the Superintendence the violations of this Law and (ii) no obligations or rights have been exercise arising from a contract in an international or business transaction.

The partial waiver of the penalty may be granted when the information was delivered subsequent to the initiation of administrative action. In any case, the decrease of the penalty, in regard to the fine, cannot exceed 50% of thereof.

This is a “Self – Reporting” mechanism, which allows the Superintendence to concede some benefits to reporting companies, depending on several circumstances, such as: the opportunity and quality of the information and evidence provided, the performance or non-performance of the different acts which constitute the offence, and the effectiveness of the information provided to identify the offenders and to end the effects of the offence. This article specifically intends that this provision does not discourage that the effective enforcement of the foreign bribery offence against legal persons and its used as an effective detection tool.

Moreover, recently the Superintendence of Companies has been working on further clarifying this by means of issuing additional guidelines. This will include a precision of the benefits under the following criteria:

1. The quality of the information provided to the Superintendence of Companies: The regulation regarding this part of the article is orientated to fulfill a minimum standard of the information given by the legal person. Thus, the information given must guarantee that the Superintendence of Companies shows without doubt the guilt of itself and each of the individual members involved.

2. The usefulness of the information provided by the accused, to the Superintendence: Regarding the usefulness of the information, the regulation will be orientated to persuade the people involved in the conducts, to give notorious and practical information that leads the investigation to the responsibility of the Corporation. In other words, if the information proves a powerful link between the corporation and the conduct.
3. The timing as the information is provided by the prosecuted to the Superintendence: In this matter the regulation is orientated to give the superintendence a margin from which is possible to reduce or exonerate the penalty. So the times from which this information could guarantee a meaningful collaboration and the correlated standard to waive the penalty should be defined.

Relevant Legal Provision

Law 1778 of 2016

Administrative liability of natural and legal persons for the bribery of foreign public officials in international business transactions

Article 19. Benefits for collaboration. The Superintendence of Companies may provide benefits to participants in the offenses described in this law, provided that these are made known to the Superintendence and participants cooperate with the timely supply of information and evidence related to such conduct, pursuant to the following rules:

1. The benefits may include a full or partial waiver of the penalty. In any case, regardless of the form of waiver, the Superintendence shall consider the following criteria for granting such benefits:
 - a) The quality and usefulness of the information provided to the Superintendence for the clarification of the facts, for repressing the conducts and to determine the type, duration and effects of the illegal conduct and as well as the identity of the offenders, their degree of participation and the benefit that would have been obtained with it.
 - b) The time when the Superintendence receives said cooperation.
2. A total waiver of the penalty may be granted provided that prior to the initiation of the administrative action, the legal person: (i) has informed the Superintendence about a breach of this Law and (ii) no obligations or rights have been exercised arising from a contract in an international business or transaction pursuant to this law, in accordance to each case.
3. A partial waiver of the penalty may be granted when the information is delivered after the initiation of administrative action. In any case, the decrease of the penalty, in regards to the fine, cannot exceed 50% of it.

If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Moreover, recently the Superintendence of Companies has been working on further clarifying this by means of issuing additional guidelines. This will include the rating system for the partial or full waiver of the sanction.

Text of recommendation 10(a):

10. Regarding administrative proceedings against legal persons for foreign bribery, the Working Group recommends that Colombia:

(a) Further strengthen safeguards for the independence of the Superintendence of Companies³ to ensure it cannot be subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention;

Actions taken as of the date of the follow-up report to implement this recommendation:

Decree 1817 of 2015 establishes a special regime for the appointment and removal of the Superintendents of (i) Finance, (ii) Companies, and (iii) Industry and Commerce. Please be advised that this is the first time that Colombia provides tenure for Superintendents to ensure independence and stability to this public function.

Article 2.2.34.1.4 of Decree 1817 provides that the President is the entitled official to appoint the Superintendents for the equivalent period to his tenure. Furthermore, Article 2.2.34.1.2 of Decree 1817 sets forth the professional qualifications and work experience that any candidate must meet in order to apply for the position of Superintendent. Consequently, the application requirements are: an undergraduate and graduate degree in areas akin to the functions of such position and work experience of no less than 10 years in disciplines related to such position.

The nomination regime provided in Decree 1817 is one step beyond in comparison to other nomination regimes provided in Colombia (i.e. Art. 232 of the Colombian Constitution related to the nomination of the justices of the highest courts). To this end, Article 2.2.34.1.3 provides a competition based on merit, principles of transparency and participation of civil society.

Accordingly, the competition process includes: a) a public invitation through the Presidency's website to anyone who meets the abovementioned professional qualifications, b) the opinion of social and academic organizations (i.e. universities) regarding the qualifications of the candidates and c) interviews that may be conducted by the President with some of the candidates.

As has been noted, the nomination of the Superintendents was structured under international standards as it is advised in different publications of international experts in regulation law, who consider that elected authorities (i.e. officers of the executive or legislative branch) may designate⁴ the heads of the independent regulatory agencies "on merit after an open competition"⁵, which is evidenced in the procedure described herein.

Regarding the removal process, Articles 2.2.34.1.4 and 2.2.34.1.5 of Decree 1817 provide that the President shall explain the reasons of dismissal. As a matter of fact, most of the administrative decisions in

³

The WGB recommendations address the Superintendence of Companies as the administrative authority in charge of foreign bribery enforcement against legal persons at the time of this review. If, as foreseen under Bill 159 currently before Parliament, the Superintendence of Finance is also endowed with authority over certain legal persons for the foreign bribery offence, these recommendations will also be applicable to it.

⁴Mark Thatcher, "The third force? Independent regulatory agencies and elected politicians in Europe", in Working Paper 13 of School of Public Policy University College London, January 2005, page 2.

⁵Dawn Oliver "The Regulatory State. Constitutional Implications", Oxford University Press, 2010, page 250.

Colombia must include factual and legal reasons that administrative authorities took into consideration to adopt a decision; this is known in Administrative Law as “motivación de los actos administrativos”⁶.

The appointment and removal of Superintendents is made through decrees, which are considered administrative decisions “actos administrativos”- according to the General Administrative Procedure Code. Before the enactment of Decree 1817, dismissal of Superintendents did not require any justification. Now, with the new rules provided in Decree 1817, the President regulated its own faculties of dismissal of Superintendents and established the rules for justifying such dismissal. Hence, the Decree works as a deterrent to the President’s constitutional powers regarding dismissal of Superintendents, which increases the independence of these officials.

Likewise, Articles 5 and 7 of Law 1712 of 2014 (Transparency and Access to Information Act) establishes that any person can access the information related to any administrative decision, especially through the website of the administrative authority that issued the decision, in this case, the Presidency’s website. This means that the reasons for dismissal must always be public, and anyone can have access to this information.

Relevant Legal Provision

Decree 1817 of 2015

“(…)

Article 2.2.34.1.2. Professional Qualifications. Those who intend to be appointed for the position of Superintendent of Industry and Commerce, Superintendent of Finance, or Superintendent of Companies, must meet the following professional qualifications:

1. Undergraduate degree and a Master Degree or a PhD in areas akin to the functions of such position.
2. Ten (10) years of professional experience in areas related to the position of Superintendent, both in public or private sector or academic experience on the disciplines related to the functions of the above mentioned position.

Article 2.2.34.1.3. Open Invitation. The President of the Republic will appoint the superintendents mentioned herein through an open invitation, displayed at the Presidency's website and addressed to those individuals who meet the requirements and conditions to hold the position of Superintendent.

If the President deems it necessary, he may seek the opinion of citizens, social, university and academic organizations on the qualifications of the candidates. Likewise, he is entitled to conduct interviews with some of them.

Article 2.2.34.1.4. Appointment and tenure of the Superintendents. The Superintendents mentioned herein will be appointed by the President to hold their positions within the respective presidential tenure.

Article 2.2.34.1.5. Removal from service of the Superintendents. If the removal of the Superintendents mentioned in Section 2.2.34.1.1 [Superintendents of Finance, Companies and Industry and Commerce] of this Decree is made before the ending of the presidential tenure, the removal decision must be duly

⁶ Court Ruling SU – 917 of November 16, 2010, Constitutional Court.

justified”.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 10(b):

10. Regarding administrative proceedings against legal persons for foreign bribery, the Working Group recommends that Colombia:

(b) Provide appropriate training and awareness-raising specifically addressing foreign bribery among Superintendence officials, including in the regional offices;

Actions taken as of the date of the follow-up report to implement this recommendation:

Trainings in 2015:

· Training in strategy and capacity building for the effective implementation of Colombia's new anticorruption legislation.

Workshop on intelligence techniques, comparative law between FCPA and UK legislation and research procedures conducted in London in September 2015.

During the last week of November (24 to 26) 2015, a team of 4 specialists from the United Kingdom (SFO, ICAEW and the law firm Steptoe & Johnson) visited Colombia to train officials of the superintendence of Companies in foreign bribery investigations, in particular; intelligence and investigations techniques, detection of bribery in the financial statements and compliance policies.
<http://www.supersociedades.gov.co/noticias/Paginas/2015/Reino-Unido-capacitar%C3%A1-a-autoridades-colombianas-sobre-Ley-Antisoborno.aspx>

<https://www.gov.uk/government/world-location-news/306167.es-419>

· **Seminar on the implementation of best practices in anti-bribery policies in Colombia.**

Held in Bogota in November 2015.

Along with the Transparency Secretariat, the Superintendence developed a seminar on investigation techniques for public officials at the superintendence of Companies. This was focused on foreign bribery and investigation techniques for that offence.

<http://www.secretariattransparencia.gov.co/estrategias/Documents/agenda-cumbre-internal-inteligencia.pdf>.

Internal memorandum for Superintendence officials, including in the regional offices:

On 10 June 2015, the Superintendence of Companies issued an internal memorandum (Circular Internal No. 100-000007) whereby it informed its personnel about the content and scope of the OECD Anti-Bribery Convention. This memorandum included the scope of application of the Convention in Colombia.

Likewise, it described the obligation upon public officials to report any criminal conduct before the relevant authorities, pursuant to Article 67 of Law 904 of 2004 (Disciplinary Code), as well as the legal consequences in case of a failure to report, pursuant to Article 417 of Law 599 of 2000 (Criminal Code), which criminalizes the abuse of authority for the omission of reporting.

Further, the Memorandum also specified the sanctions available both for individuals and legal persons in cases of foreign bribery. Finally, the Memorandum also included the reporting channels available in case a public official becomes aware of a crime or administrative infringement related to foreign bribery, e.g. a criminal notice before the General Prosecutor's Office; a notice before de Superintendence of Companies or before the Transparency Secretariat of the Presidency of the Republic of Colombia (attached).

Trainings in 2016:

The Prosecutor General Office organized two training sessions in criminal investigation techniques addressed to the officials of the superintendence of Companies, particularly in methods related to the collection of evidence. The first session was held on the third week of March (14 to 18), and the second one was held on the third week of April (18 to 22).

Furthermore, from April 14th to October 21st, Officials of the Secretary of Transparency, the superintendence of Companies, under the sponsorship of United Nations, have been teaching workshops related to Law 1778 in different cities of Colombia, which include Santa Marta, Cucuta, Medellin, Bogota, Barranquilla, Cali, Cartagena, Bucaramanga, Villavicencio, Neiva, Ibague, Pereira, Pasto, Valledupar and Monteria. The sessions were addressed to compliance officers, attorneys from law firms and public officials from the PGO, the courts and the Superintendence of Companies. These sessions have had the participation of over 100 companies and more than 1500 law enforcement officials.

<http://www.secretariatransparencia.gov.co/estrategias/Paginas/socializacion-y-entrenamiento-ocde.aspx>.

In March 2017, The Superintendence of Companies hosted a training for foreign bribery with the help of the Transparency Secretariat, the US Department of Justice and the FBI for investigators, prosecutors from the PGO and officials, PEF, SIJIN and officials at the superintendence on:

- a) Foreign Bribery detection techniques (including those detected by the tax officers).
- b) General investigations techniques in foreign bribery.
- c) Mutual legal assistance experiences.
- d) Techniques to evaluate compliance programs in the course of a foreign bribery investigation.

Year 2017:

- **Training in research related to corruption and bribery issues.**
Conducted in the auditorium of the Superintendence of Companies in March 2017 by the FBI, US Embassy, Department of Justice and SEC.
- **Training in transparency and integrity. Mechanisms to prevent and combat corruption in the public and private sectors in Colombia.**
Held in Bogota in June 2017 by UNODC.
- **Training in the use of the FTK tool.**
Training conducted in Bogotá on the current use of the FTK forensic laboratory tool.

Other seminars:

- **Transnational bribery and corruption conference.**
Held in Washington in November 2016 by SEC, Department of Justice and FBI.
- **Workshop challenges in the investigation and punishment of acts of corruption in a transnational and national context.**
Held in Bogota in November 2016 by UNODC.
- **IBM I2 forensics tool training**
Held in Bogota in November 2016 in relation to forensic laboratory tools.
- **Course on research techniques of international bribery and legal entities in general.**
Conducted at the Superintendence of Companies in Bogotá in November 2016

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 10(c):

10. Regarding administrative proceedings against legal persons for foreign bribery, the Working Group recommends that Colombia:

(c) Ensure that all necessary investigative means are available to the Superintendence for effectively carrying out foreign bribery investigations into legal persons;

Actions taken as of the date of the follow-up report to implement this recommendation:

Carrying out investigations in practice

Regarding the investigative powers of the Superintendence of Companies, this institution has more than 75 years of experience conducting complex investigations in several fields, ranging from the identification of the beneficial owners of a complex holding structure in a product liability case related to the collapsing of a building in 2013, to the dismantling of several Ponzi schemes, which affected the Colombian public economy order in 2008.

Steps taken

Investigative powers granted to the Superintendence in Law 1778

According to Articles 20 and 21 of Law 1778 of 2016, the Superintendence of Companies is empowered to conduct administrative investigations on transnational bribery through several investigative tools, which include:

- a) Carry out inspection visits;
- b) Gathering evidence and gathering all relevant information from companies

- c) Issue orders to natural and legal persons to provide data, reports, books and documents that may be required in the course of an investigation;
- d) Conduct interrogatories under oath to any person whose testimony may be useful to shed light on the facts related to a foreign bribery offence;
- e) Use “Self – Reporting” mechanism, which allows the Superintendence to grant some benefits to reporting companies, depending on several circumstances such as: the opportunity and quality of the information and evidence provided, the performance or non-performance of the different acts which constitute the offence, and the effectiveness of the information provided to identify the offenders and to end the effects of the offence. The benefits shall not exceed in any case, half of the financial sanction to be imposed (Article 19 of Law 1778), and
- f) Impose fines to legal persons under investigation when they are reluctant to provide information. Therefore, the Superintendence of Companies will be entitled to impose fines up to 200.000 minimum monthly wages (Article 21 of Law 1778).

Forensic laboratory

To improve its investigation techniques, the Superintendence of Companies is in the process of acquiring a forensic laboratory, which will allow the Superintendence to collect and analyze digital evidence using the best technology available in Colombia.

The acquisition process is being conducted through a public bidding divided in three phases: (a) acquisition of hardware and software to collect evidence, (b) acquisition of equipment to process and analyze data, and (c) the construction and adaptation of an area within the Superintendence of Companies to place the forensic laboratory.

The forensic lab will be much like the one at the Superintendence of Industry and Commerce (“SIC”) that collects and acquires digital evidence during dawn raids and elements of probative material for the different cases that are conducted in each one of the Deputy Superintendence’s.

During 2014, roughly 41 Terabytes (“TB”) of digital evidence was collected by SIC during dawn raids. Moreover, about 700 emails were collected as evidence in the baby diaper case; 200 emails were collected in the toilet paper case; and 24 containers of digital evidence were collected in the bid rigging investigation that is conducted in the private security sector. (The competition division conducts the referred three cases).

This information was collected during investigations against legal persons with no involvement of the Prosecutors General Office (PGO) showing that in practice, the responsibility, investigation or conviction of a natural person is not necessary for the administrative procedure to be successful. The antitrust committee of the OECD has recognized in practice and during the course of several investigations that Superintendence’s in Colombia are able to conduct independent administrative investigations from the criminal ones.

Last August 5, 2016, first phase was adjudicated to the company that supplied the equipment used by the Superintendence of Industry and Commerce to collect evidence, and to the company that provided software to British SFO to analyze information.

On June 28 and 29, 2017, 4 contracts were signed for the forensic laboratory. For the supply, installation, configuration, support and commissioning of hardware and software components for the forensic computer lab platform.

Transferred Evidence and institutional agreements with the PGO

Besides that, Law 1778 of 2016 mandates the Prosecutor General's Office shall inform the Superintendence of Companies of any criminal notice which is provisionally labelled as transnational bribery, that the Prosecutor General's Office and the Superintendence of Companies shall make the necessary agreements to exchange information and evidentiary elements and to articulate their actions in investigations under their jurisdiction, at any stage of the investigation and that it's also possible to translate probative material evidence or physical evidence that the Office of the Prosecutor General of the Nation, the victims, or the defense, may have discovered, even if it has not been introduced or controvert in the trial hearing and therefore does not have the quality of proof yet.

This probative material evidence or physical evidence must be submitted to scrutiny in the punitive administrative process. When the Superintendence needs information concerning an ongoing criminal investigation or needs to transfer probative material elements or physical evidence that has not been presented to the location where the administrative punitive action is taking place, they should make a request the Office of the Prosecutor General of the Nation (articles 26,27 and 28 of Law 1778 of 2016).

Moreover, at the early stages of criminal investigations the PGO may collect evidence on any wrongdoing without previously identifying a natural person. The information gathered in these early stages may be passed on to the Superintendence of Companies by way of the agreement already signed between the two institutions.

Constitutional Issues

Law 1778 of 2016 grants investigative powers to the Superintendence of Companies to the greatest extent allowed by the Constitution.

However, the Constitution of Colombia does not allow administrative authorities, who form part of the Executive Branch, to exercise investigative functions that would interfere with fundamental rights. Powers such as wiretapping are reserved to judicial institutions, and may not be attributed to the Superintendence of Companies without breaching the principle of separation of powers.

Enforcement

Colombia would like to reiterate that the issue relating to the proper use of investigative tools by the Superintendence of Companies is also an enforcement issue when cases of foreign bribery are conducted in practice.

Relevant Legal Provision:

See Recommendation 9 (b) regarding Article 20.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 10(d):

10. Regarding administrative proceedings against legal persons for foreign bribery, the Working Group recommends that Colombia:

(d) Ensure the PGO and the relevant Superintendence's closely coordinate in foreign bribery cases and draw the attention of prosecutors to the importance of considering legal person liability; and

Actions taken as of the date of the follow-up report to implement this recommendation:

Transfer of evidence and institutional agreements with the PGO

As stated before, Article 28 of Law 1778 of 2016 orders the PGO to inform the Superintendence of Companies of any criminal notice provisionally labeled as transnational bribery, likewise, the Superintendence shall inform PGO of any investigation related to this illegal conduct.

On the other hand, According to Article 26 of Law 1778, the PGO may deliver to the Superintendence any clue collected by the victims, the defense, or PGO itself, even if this information has not been classified formally as evidence from the criminal law point of view. These clues shall be subject to examination within the administrative punitive procedure.

Whenever the Superintendence of Companies may require information from the PGO regarding an ongoing criminal investigation or require adding evidence to the administrative proceeding, the PGO will evaluate what information may be delivered without affecting the criminal investigation.

Cooperation agreement between the Superintendence and the PGO

As explained in Recommendation 10(d), Articles 26 and 28 of Law 1778 of 2016 provide the legal framework to allow a close coordination in foreign bribery cases between the PGO and the Superintendence of Companies. As part of this coordination, on October 9th, 2015, both institutions executed an agreement to exchange evidence and coordinate actions to carry out investigations at any stage of the criminal or administrative law proceeding (attached).

Please be advised that at the early stages of criminal investigations the PGO may collect evidence on any wrongdoing without previously identifying a natural person. The information gathered in these initial stages may be delivered to the Superintendence of Companies in the terms provided in the above-mentioned agreement.

Training session between the Superintendence of Companies and the PGO

As stated before in recommendation 10(b), under the sponsorship of United Nations, the Transparency Secretariat and the Superintendence have lead workshops related to Law 1778 in different cities of Colombia. These workshops included officials from both institutions who were asked to work on different exercises for joint investigations and how to share information and evidence collected during an investigation. Moreover, the importance of working together was brought to the attention of every law enforcement official at these workshops.

Recently, the Superintendence of Companies has held meetings with the PGO to exchange views on possible cases of bribery, formal information has been exchange and this has proven too been useful work between them.

Relevant Legal Provisions

Law 1778 of 2016 Chapter IV. Powers and duties of the Superintendence

ARTICLE 26. Transferred Evidence. Information that has been gathered validly in a judicial or administrative action, in the country or abroad, as well as material evidence, **can be transferred for the punitive action of the Superintendence with authorization from the respective official.**

Likewise, it is also possible to transfer evidence that the Office of the Prosecutor General of the Nation, the victims or the defense, may have discovered, even if it has not been introduced or challenged in the trial hearing and therefore does not have the quality of evidence yet. This evidence must be submitted to scrutiny in the punitive administrative process.

When the Superintendence needs information concerning an ongoing criminal investigation or needs to transfer evidence that has not been presented to the location where the administrative punitive action is taking place, they should make a request the Office of the Prosecutor General of the Nation. In each case the Office of the Prosecutor General will evaluate the request and determine which information or probative material elements or physical elements can be accepted without affecting the criminal investigation or jeopardizing its successful outcome.

ARTICLE 27. Interinstitutional Agreements. The Prosecutor General's Office and the Superintendence of Companies shall make the necessary agreements to exchange information and evidentiary elements and to articulate their actions in investigations under their jurisdiction, at any stage of the investigation.

ARTICLE 28. Provision of Information. The Prosecutor General's Office shall inform the Superintendence of Companies of any criminal notice which is provisionally labelled as **transnational bribery**. This information shall be provided immediately after the initiation of the preliminary investigation.

The Superintendence of Companies shall inform the Prosecutor General's Office of every investigation carried out pursuant to this Law.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 10(e):

10. Regarding administrative proceedings against legal persons for foreign bribery, the Working Group recommends that Colombia:

(e) Establish appropriate mechanisms for cooperation and coordination between the Superintendence and other relevant agencies such as the anti-money laundering and tax authorities, to ensure all suspicions of foreign bribery involving legal persons can be effectively investigated by the Superintendence [Convention, Article 2; 2009 Recommendation, Sections III(viii) and Annex I.B]

Actions taken as of the date of the follow-up report to implement this recommendation:

Article 22 of Law 1778 provides that National Tax and Customs Authority (“DIAN”) shall report to the Superintendence of Companies any suspicious activity related to foreign bribery. To this end, the Superintendence of Companies initiated negotiations with the above mentioned government entity to enter into an agreement with the purpose of coordinating a framework that will allow DIAN to create alerts and a systems of collaboration in order to inform the Superintendence of any suspicious activities which may lead to the initiation of an investigation in the shortest possible time.

In relation with anti-money laundering, the UIAF in Colombia is an intelligence agency and constitutionally may pass information only to the PGO, it will be therefore unconstitutional for an intelligence gathering agency to pass classified information to the Superintendence of Companies.

Relevant Legal Provisions

**Law 1778 of 2016
Chapter III. Procedural provisions**

ARTICLE 22. Submission of information by other entities. The National Taxes and Customs Directorate (Dian) **must informed the Superintendence of Companies all suspicious activity reports** indicating alleged conducts of typical behaviors established as transnational bribery

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 11:

11. Regarding the related money laundering offence, the Working Group recommends that Colombia maintain detailed statistics on (i) sanctions in money laundering cases, including the size of fines and forfeited/confiscated assets, and (ii) whether foreign bribery is the predicate offence. [Convention, Article 7]

Actions taken as of the date of the follow-up report to implement this recommendation:

Colombia’s legal system contemplates some sanctions on legal persons for money laundering such as the suspension or dissolution of the legal person. (As stated on Par. 271 and 291 of Phase 2 Report). Under article 91 of the Criminal Procedure Code *“At any time and before the prosecution is filed, at the request of the Public Prosecutor’s Office, the guarantee control judge shall order the competent authority, prior to complying with the legal requirements established for this, to suspend the legal status or to Temporary closure of premises or establishments open to the public, legal or natural persons, when there are well-founded reasons to infer that they have been totally or partially dedicated to the development of criminal activities.”*

In addition, Colombia has two main mechanisms enabling confiscation of assets: criminal confiscation and civil asset forfeiture. While criminal confiscation could be the result of a conviction, civil asset forfeiture is

an autonomous process which is independent from criminal proceedings and it applies to ill-gotten assets, including those that have relationship with money laundering investigations. Both mechanisms are conducive to deprive criminals from criminal proceeds, instrumentalities and property of equivalent value. Precautionary or provisional measures aimed to ensure the proceeds can be applied effectively in the framework of both criminal and asset forfeiture proceedings.

Law 1708 of 2014 – Asset Forfeiture Law (AFL) establishes the possibility of forfeit assets whenever there is evidence in the investigation that those assets had some type of relationship with the criminal activities investigated (proceeds of crime or goods that were used to commit a crime). This procedure of asset forfeiture is done without compensation of any nature for the affected party.

Asset forfeiture action (article 30) can affect any person, natural or legal, who claims to be the owner of rights over any of the assets that are the subject of the forfeiture action.

As stated in our answer to recommendation 6 (b) detailed statistics in money laundering cases are kept and include sanctions, fines and assets seizure or confiscation, such statistics are reported and kept in the PGO's information systems which is administrated by the Public Policy Unit of the PGO.

Value in confiscated goods in money laundering investigations

Value of confiscated goods		
	2016	Mayo - 2017
Colombian Pesos	\$6.034.733.200	\$720.220.370
Euros	€ 848.730	\$501.600
Dollars	\$1.192.478,00	\$41.818
Panamanian Balboas	\$1.619	\$0

Also as seen on answered to recommendation 6(b) money laundering detailed statistics include not only the facts related to money laundering charges but also the predicate offences. So far no foreign bribery case have been evidenced by the PGO, however whenever a foreign bribery case is detected, it will be included in the money laundering and the assets forfeiture unit's statistics.

Also the Assets Forfeiture Unit reports the number of assets (including but not limited to corporations, vehicles, realty, accounts, etc.) which are forfeited in favor of the state, and also the assets that even though haven been forfeited yet, are frozen or seized under the Forfeiture Law. The PGO, through asset forfeiture procedures has sanctioned 29 legal persons between 2016 and 2017.

If no action has been taken to implement recommendation 11, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 12(a):

12. Regarding the related false accounting offence, the Working Group recommends that Colombia

(a) Proceed with legislative developments intended to incorporate the IFRS into Colombian law; and

Actions taken as of the date of the follow-up report to implement this recommendation:

On 17 July 2009, the Congress of Colombia enacted Law 1314, *“By which the principles and rules of accounting and financial information and assurance of information accepted in Colombia are regulated, and designates the competent authorities, the procedure for their issuance and determines the entities responsible for monitoring its compliance.”*

Article 1 provides that: *“In compliance with the principles of equity, reciprocity and national convenience, in order to support the internationalization of economic relations, State action will be directed towards the convergence of such accounting standards, of financial information and assurance of information, with worldwide accepted international standards, with best practices and with the rapid evolution of business”*.

The Ministries of Finance and Public Credit, and Trade Industry and Tourism, under the Direction of the President of the Republic, proceeded to issue a series of Decrees regulating Law 1314 of 2009, containing the normative technical framework of financial information for those preparing the information comprised in Group 1 and 2, respectively, which include the International Financial Reporting Standards IFRS, the International Accounting Standards (IAS), with their interpretations and the conceptual framework, as well as the International Financial Reporting Standard for Small and Medium Enterprises (IFRS) for SMEs issued by the International Accounting Standards Board (IASB). Similarly, Decree 302 of February 2015 issued the Normative Technical Framework of Information Assurance Standards (IAS), which contains the International Standards on Auditing (ISA), International Standards of Quality Control (ISQC); International Standards for Review Work (ISRW); The International Standard on Assurance Engagements (ISAE); The International Standards of Related Services (ISRS) and the Code of Ethics for Accounting Professionals.

Up to date, in Colombia, the process of convergence from local principles to International Financial Reporting Standards has been conducted, compiling the different regulatory frameworks for financial information and information assurance in the Single Regulatory Decree 2420 of 2015, as follows: (i) Annex number 1: listed companies, public interest entities, commercial companies and branches of foreign companies, considered to be large (in relation to the amount of assets or revenues) or by the degree of relationship with its parent company or business model. They are part of group 1 and these entities must apply full IFRS; (ii) Annex number 2: unlisted companies, entities that are not of public interest, SMEs, among others. They are part of group 2 and these entities must apply IFRS for SMEs; (iii) Annex number 3: directed to the micro-enterprises becoming a normative framework of simplified accounting; and (iv) Annex number 4: public accountants who conduct audit work on financial information, review of historical financial information, other assurance work or other professional services must apply the International Insurance Standards (mentioned above) in addition to Comply with the international code of ethics issued by the International Federation of Accountants (IFA).

If no action has been taken to implement recommendation 12, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 12(b):

12. Regarding the related false accounting offence, the Working Group recommends that Colombia

(b) Maintain detailed statistics on enforcement of false accounting offences. [Convention, Article 8; 2009 Recommendation, Section X.A]

Actions taken as of the date of the follow-up report to implement this recommendation:

In relation to the false accounting offence, Colombia already maintains detailed statistics on its enforcement. In Colombia the crime it's called "forgery in a private document" and according to the information system of the PGO (SPOA) during 2016 and 2017 the PGO has started 24 investigations for forgery in both public and private documents which are related to corruption.

If no action has been taken to implement recommendation 12, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 13(a):

13. Regarding sanctions and confiscation applicable to foreign bribery, the Working Group recommends that Colombia:

(a) Introduce the sanction of deprivation of political rights and prohibition from exercising public functions for foreign bribery committed by a natural person, in line with the sanction applicable for active domestic bribery;

Actions taken as of the date of the follow-up report to implement this recommendation:

This sanction has already been introduced in Law 1778 of 2016. This is stated as "*debarment from the exercise and rights of public functions for the same term (prison term)*". This is the same drafting included in the active domestic bribery offence.

Relevant Legal Provision

Law 1778 of 2016

Chapter V

Provisions in criminal matters

ARTICLE 30. Transnational Bribery. Modifies Article 30 of Law 1474 of 2011 which shall read as follows:

Transnational Bribery. Article 433 of the Penal Code shall read as follows:

Whoever gives, **promises** or offers a foreign public official, for his own benefit or that of a third party, directly or indirectly, any money, object of financial value or any other benefit or profits in exchange for committing, omitting, or delaying any action related to the exercise of his functions and in relation to an international business or international transaction, shall incur in imprisonment for a period of nine (9) to fifteen (15) years, debarment from the exercise and rights of public functions for the same term, and a fine of six hundred and fifty (650) to fifty thousand (50.000) current minimum legal monthly wages.

Subsection. For the purposes of this article, a foreign public official is any person with a legislative, administrative or judicial position in **a State, its political subdivisions or local authorities, or a foreign jurisdiction**, regardless of whether the individual was appointed or elected. A foreign public official is also any person who performs a public function for a **State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a public organ, a state owned enterprise or an entity whose decision making power is subject to the will of a State, its political subdivisions or local authorities, or a foreign jurisdiction**. Any agent or official of an international public organization shall also be understood to be a foreign public official.

If no action has been taken to implement recommendation 13, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 13(b):

13. Regarding sanctions and confiscation applicable to foreign bribery, the Working Group recommends that Colombia:

(b) Promptly proceed with the adoption of legislation to increase financial sanctions applicable to legal persons, with a view to ensuring they are effective, proportionate and dissuasive;

Actions taken as of the date of the follow-up report to implement this recommendation:

Legislation was passed increasing financial sanctions to legal persons. This monetary sanction is the highest for any natural or legal person in Colombia's Law.

Relevant Legal Provision

Law 1778 of 2016

Chapter II

Penalties

ARTICLE 5. Penalties. The Superintendence of Companies shall impose one or several of the penalties set forth below to the legal persons that engage in any of the activities provided for under Article 2 of this Law. In order for these penalties to be imposed, a duly motivated resolution shall be issued in accordance with the guidelines set forth in Article 7 of this Law:

1. Fine of up to 200.000 minimum monthly legal wages.

2. Debarment from contracting with the Colombian government for a term of up to twenty (20) years. The debarment from contracting with the State shall begin on the date in which the resolution through which the penalty is imposed is final. This debarment shall be imposed on legal entities and natural persons.
3. Publication in broadly diffused media as well as on the legal entity's website which shall include excerpt of the decision through which the penalty has been imposed for a term of one (1) year. The entity subject to this penalty shall bear all publication expenses.
4. Prohibition of receiving any government incentives or subsidies within a period of 5 years.

If no action has been taken to implement recommendation 13, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 13(c):

13. Regarding sanctions and confiscation applicable to foreign bribery, the Working Group recommends that Colombia:

(c) Ensure that confiscation of the proceeds of foreign bribery, or property the value of which corresponds to that of such proceeds, can be enforced in practice against legal persons, even in the absence of criminal proceedings against a natural person, or that monetary sanctions of comparable effect are applicable; and

Actions taken as of the date of the follow-up report to implement this recommendation:

At the time of Phase 2 Evaluation the Law that regulated the procedure of asset forfeiture (extinción de dominio) was Law 793. During the period of time between such report and this follow up the applicable law is 1708 of 2017, Asset Forfeiture Law (AFL) which includes new provisions that addresses aspects related to the recommendation.

Colombia's AFL (article 15) states that forfeiture has a patrimonial consequence for illegal activities, consisting in the declaration of ownership in favor of the State, of the goods related to criminal activities (proceedings of crime or goods that were used to commit a crime), without compensation of any nature for the affected party.

The law establishes (article 16) 11 causes for the forfeiture action to proceed regarding goods:

- a. Those that are direct or indirect product of an illegal activity.
- b. Those that correspond to the material object of the illegal activity, unless the law provides for its destruction.
- c. Those that come from the transformation or partial or total conversion, physical or legal of the product, instruments or material object of illegal activities.
- d. Those that are part of an unjustified patrimonial increase, when there are elements of knowledge that allow reasonably to consider that they come from illegal activities.

- e. Those that have been used as a means or instrument for the execution of illegal activities.
- f. Those who according to the circumstances in which they were found, or their particular characteristics, make it possible to establish that they are intended for the execution of illegal activities.
- g. Those that constitute income, rents, value, profits and other benefits derived from the goods described in the previous numerals.
- h. Those of legal origin, used to conceal property of illicit origin.
- i. Those of legal origin, mixed materially or legally with property of illicit origin.
- j. Those of lawful origin whose value is equivalent to any of the assets described in the preceding numerals, when the forfeiture action is inadmissible by the recognition of the rights of a third party in good faith exempt of fault.
- k. Those of legal origin whose value corresponds or is equivalent to the direct or indirect proceeds of an illegal activity, when it is not possible to locate, identify or materially affect them.

Asset Forfeiture is a constitutional, public, jurisdictional action of a realty nature and of patrimonial content that proceeds on any property, regardless of who has it in its possession or has acquired it (article 17 Law 1708 of 2014) and it is independent and autonomous from the criminal action, as well as from any other, statement of responsibility of any nature. (Disciplinary, administrative, etc.) (Article 18).

Asset forfeiture action (article 30) can affect any person, natural or legal, who claims to be the owner of rights over any of the assets that are the subject of the forfeiture action.

Moreover, Law 1778 of 2017 brings monetary sanctions of comparable effect for foreign bribery being the highest fine in Colombia's legal order (200.000 SMLMV, US \$50.000.000).

Relevant Legal Provision

Law 1778 of 2016

Chapter II

Penalties

ARTICLE 5. Penalties. The Superintendence of Companies shall impose one or several of the penalties set forth below to the legal persons that engage in any of the activities provided for under Article 2 of this Law. In order for these penalties to be imposed, a duly motivated resolution shall be issued in accordance with the guidelines set forth in Article 7 of this Law:

1. **Fine of up to 200.000 minimum monthly legal wages.**
2. Debarment from contracting with the Colombian government for a term of up to twenty (20) years. The debarment from contracting with the State shall begin on the date in which the resolution through which the penalty is imposed is final. This debarment shall be imposed on legal entities and natural persons.
3. Publication in broadly diffused media as well as on the legal entity's website which shall include excerpt of the decision through which the penalty has been imposed for a term of one (1) year. The entity subject to this penalty shall bear all publication expenses.
4. Prohibition of receiving any government incentives or subsidies within a period of 5 years.

If no action has been taken to implement recommendation 13, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Text of recommendation 13(d):

13. Regarding sanctions and confiscation applicable to foreign bribery, the Working Group recommends that Colombia:

(d) Consider extending the exclusion from public contracting already applicable to natural persons convicted of foreign bribery, and to legal persons controlled by such natural persons, to legal persons engaged in foreign bribery where appropriate. [Convention, Article 3]

Actions taken as of the date of the follow-up report to implement this recommendation:

Legislation was passed to include debarment from public contracting to legal persons convicted of foreign bribery in Law 1778 of 2016.

Relevant Legal Provision

Law 1778 of 2016

Chapter II

Penalties

ARTICLE 5. Penalties. The Superintendence of Companies shall impose one or several of the penalties set forth below to the legal persons that engage in any of the activities provided for under Article 2 of this Law. In order for these penalties to be imposed, a duly motivated resolution shall be issued in accordance with the guidelines set forth in Article 7 of this Law:

5. Fine of up to 200.000 minimum monthly legal wages.
6. **Debarment from contracting with the Colombian government for a term of up to twenty (20) years. The debarment from contracting with the State shall begin on the date in which the resolution through which the penalty is imposed is final. This debarment shall be imposed on legal entities and natural persons.**
7. Publication in broadly diffused media as well as on the legal entity's website which shall include excerpt of the decision through which the penalty has been imposed for a term of one (1) year. The entity subject to this penalty shall bear all publication expenses.
8. Prohibition of receiving any government incentives or subsidies within a period of 5 years.

If no action has been taken to implement recommendation 13, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

NA

Part II: Issues for Follow-up by the Working Group

14. The Working Group will follow up on the issues below:

Text of issue for follow-up 14(a):

(a) Legislative developments concerning the passing of Bill 159 and how they may affect Colombia's implementation of the Convention;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Bill 159 has become Law 1778 of 2016, implementing much of the recommendation of the phase 2 report.

Text of issue for follow-up 14(b):

(b) Whether foreign bribery cases are preserved from undue influence and large-scale corruption in the judiciary, as well as efforts made by Colombia to reform the judiciary and address its independence;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Ten Year Justice Plan was adopted through Decree 979 of 2017. This decree was enacted pursuant to Article 108 of Law 1753 of 2015, which establishes that eight institutions of the justice sector must design the Ten Year Justice Plan in order to define the main objectives and commitments to strengthen the justice system. Such Justice Plan has already been formulated and, in accordance with the Plan's technical annex the Colombian Government will work on the design of the legal instruments related with this commitment.

Within the framework of the Ten Year Justice Plan, the Colombian Government is preparing a bill to improve the administrative capacity of the Judicial Branch. This bill will be analyzed in the abovementioned committees to continue with a consultation process. Among other issues, this reform will:

i) Regulate details of the procedures established in the Balance of Powers constitutional reform in order to, among others, increase requirements for the election of judges of the high courts, regulate obligation for an open call and the incorporation of criteria for a merit-based process, establish stronger rules to avoid the "revolving door", and determine rules of the disciplinary jurisdictional function for the investigation of public servants and employees of the Judicial Branch.

(ii) Establish a legal basis for the Judicial Statistics System to consolidate all the information of the Colombian justice system.

(iii) Set a group of rules regarding transparency and integrity in the Judicial Branch.

It is expected that these actions will contribute to the judiciary independence given that they will improve its administrative capacity as well as the management model of the justice system.

As it was also explained in the OECD Public Governance Committee, the objective of the Colombian Government is to present this bill to the Congress before the end of 2018. To the extent that it modifies specific norms about the administrative capacity of the Judicial Branch, the bill must be approved through a statutory legislative process which requires four debates in Congress and the approval by absolute majority.

Moreover, the new Prosecutor General which took office in August 2016, has set as one of its priorities the implementation of an anti-corruption program within the PGO. This program does not only include the strengthening of the anti-corruption unit, which has increased its number of officials, but also the prioritization of criminal action in some critic sectors under a policy called “Bolsillos de Cristal” -Cristal Pockets- that pursues the transparency of public officials as well as addressing corruption in critical sectors such as judiciary, government, budgeting, public health care system, public infrastructure among others.

This program includes the intention of fighting corruption on the judiciary system and particularly internal corruption in the PGO. During the last semester of 2016 and all of 2017, 55 PGO officials have been arrested due to corruption investigations, some of the cases include high level officials in positions such as the anti-corruption directorate, prosecutors before regional high courts, special prosecutors, criminal investigators, etc.

Regarding corruption in the Judiciary, On July 2017 the PGO has recently arrested and pressed charges against 5 Judges of the Criminal Section of 2 Regional High Courts on corruption charges. Other arrests and investigations have been also initiated related to local judges.

Text of issue for follow-up 14(c):

(c) Colombia’s capacity to efficiently and successfully investigate foreign bribery, including in the preliminary stages of the investigation;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Please see 7(a), (c) and (g).

Text of issue for follow-up 14(d):

(d) The procedural timelines for law enforcement authorities, to ensure there is an adequate period of time for the investigation and prosecution of the foreign bribery offence;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Colombia's Criminal Code establishes that the statute of limitation is equal to the maximum of the penalty stated by the law, if it is imprisonment, but in no case shall be less than five (5) years, nor exceed twenty (20).

For foreign bribery the maximum penalty of imprisonment is ten (10) years, however criminal law states that the term of prescription will be increased in half when the crime has been initiated or consummated abroad, therefore the statute of limitation for foreign bribery will be of fifteen (15) years from the commission of the crime.

The PGO prosecutors and investigators applying the Law have repeatedly stated that this time frame is sufficient to investigate in an adequate manner any case of foreign bribery.

Text of issue for follow-up 14(e):

(e) The application of article 433 PC on the foreign bribery offence, as case law develops, to ensure it is interpreted in conformity with the Convention;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Article 433 PC has not been applied yet. Therefore no case law can be follow up at this point.

Text of issue for follow-up 14(f):

(f) Colombia's ability to seek MLA in foreign bribery-related cases against a legal person;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Regarding Colombia's ability to seek Mutual Legal Assistance (MLA) in bribery-related cases against a legal person, the Superintendence of Companies signed a Memorandum of Understanding (MoU), with the Public Ministry of Peru on July 18th of 2017.

Following the instructions in the MoU, the Group of Transnational Bribery and Special Investigations (Superintendence Of Companies) send a respectful request to the General Attorney of Peru (Public Ministry of Peru) on July the 21st of the present year, seeking to get any relevant information recollected

in the investigation of Company A (confidential) in Peru, apparently involved in a transnational corruption case. The Superintendence of Companies is still waiting to get a response from the Public Ministry of Peru, but there is a lot of expectation concerning the information that will be provide from this collaboration. The WGB would be update on this situation and others that may arise on a case by case basis.

Text of issue for follow-up 14(g):

(g) Whether a legal person can be held liable for transnational bribery committed by lower level employees;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Law 1778 of 2016 clearly states that this is strict liability. Moreover, article 2 states that a legal person can be held liable by the acting of any employee, contactor, directors or associates. This confirms the strict liability concept. Case Law has not been develop, but Colombia will make sure the WGB is informed when practical cases arise.

Relevant Legal Provision

Law 1778 of 2016

Chapter I

Administrative liability of legal persons for the bribery of foreign public officials in international business transactions

ARTICLE 2. - Administrative liability of legal persons. Legal persons that through one or several of its:

- V. Employees,
- VI. Contractors
- VII. Directors or
- VIII. Associates

Whether or not they have authority to bind the legal entity:

- IV. Give,
- V. Offer or
- VI. Promise

To a foreign public official, directly or indirectly:

- IV. Amounts of money
- V. Any other good which has monetary value, or
- VI. Any other benefit or other perquisite

In exchange for the foreign public official to;

- IV. Perform;
- V. Omit or
- VI. Delay

Any action related to the exercise of his powers and in relation to an international business or international transaction.

Such persons will be sanctioned administratively in the terms established in this Law.

Entities classified as parent companies under Law 222 of 1995, or the law that modifies or substitutes it, shall also be liable and shall be subject to administrative penalties in the event in which any of its subsidiaries engages in any of the activities listed in the first section of this article, with the consent or tolerance of the matrix.

Subsection 1. – For the purposes of this article, a foreign public official shall be any individual who has a legislative, administrative or judicial position either in the government of a State or its political subdivisions or local authorities, or a foreign jurisdiction, regardless of whether the individual was appointed or elected. A foreign public official shall also be any person who performs a public function for a State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a governmental entity, a state owned enterprise or an entity in which the decision-making power is subject to the government’s will, its political subdivisions, local authorities or a foreign jurisdiction. Agents or officials of an international public organization shall also be considered to be foreign public officials.

Subsection 2. – The provisions of this law shall also extend to branches of companies that operate abroad, as well as state owned industrial and commercial enterprises, companies in which the State has a share and mixed companies.

Subsection 3. - The provisions of this article will not apply when the conduct was performed by a shareholder that does not hold control of the legal person.

Text of issue for follow-up 14(h):

(h) Whether a legal person can be held liable in practice for foreign bribery committed by related legal persons; and

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Article 2 of Law 1778 of 2016 specifically address this issues by stating that entities classified as parent companies under Law 222 of 1995, or the law that modifies or substitutes it, shall also be liable and shall be subject to administrative penalties in the event in which any of its subsidiaries engages in any of the activities listed in the first section of this article, with the consent or tolerance of the matrix. This is further clarified by paragraph 2 of the same article when it says that provisions extend to branches of companies that operate abroad, covering related legal persons.

Relevant Legal Provision

Law 1778 of 2016

Chapter I

Administrative liability of legal persons for the bribery of foreign public officials in international business transactions

ARTICLE 2. - Administrative liability of legal persons. Legal persons that through one or several of its:

- IX. Employees,
- X. Contractors
- XI. Directors or
- XII. Associates

Whether or not they have authority to bind the legal entity:

- VII. Give,
- VIII. Offer or
- IX. Promise

To a foreign public official, directly or indirectly:

- VII. Amounts of money
- VIII. Any other good which has monetary value, or
- IX. Any other benefit or other perquisite

In exchange for the foreign public official to;

- VII. Perform;
- VIII. Omit or
- IX. Delay

Any action related to the exercise of his powers and in relation to an international business or international transaction.

Such persons will be sanctioned administratively in the terms established in this Law.

Entities classified as parent companies under Law 222 of 1995, or the law that modifies or substitutes it, shall also be liable and shall be subject to administrative penalties in the event in which any of its subsidiaries engages in any of the activities listed in the first section of this article, with the consent or tolerance of the matrix.

Subsection 1. – For the purposes of this article, a foreign public official shall be any individual who has a legislative, administrative or judicial position either in the government of a State or its political subdivisions or local authorities, or a foreign jurisdiction, regardless of whether the individual was appointed or elected. A foreign public official shall also be any person who performs a public function

for a State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a governmental entity, a state owned enterprise or an entity in which the decision-making power is subject to the government's will, its political subdivisions, local authorities or a foreign jurisdiction. Agents or officials of an international public organization shall also be considered to be foreign public officials.

Subsection 2. – The provisions of this law shall also extend to branches of companies that operate abroad, as well as state owned industrial and commercial enterprises, companies in which the State has a share and mixed companies.

Subsection 3. - The provisions of this article will not apply when the conduct was performed by a shareholder that does not hold control of the legal person.

Text of issue for follow-up 14(i):

(i) The application of sanctions imposed on legal persons for the offence of money laundering.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Colombia's legal system contemplates some sanctions on legal persons such as the suspension and cancellation of legal status -dissolution- (As stated on Par. 271 of Phase 2 Report). Colombia's criminal procedure law article No 91 states that: *“At any time and before the prosecution is filed, at the request of the Public Prosecutor's Office, the guarantee control judge shall order the competent authority, prior to complying with the legal requirements established for this, to suspend the legal status or to Temporary closure of premises or establishments open to the public, legal or natural persons, when there are well-founded reasons to infer that they have been totally or partially dedicated to the development of criminal activities.”*

In addition, Colombia has two main mechanisms enabling confiscation of assets: criminal confiscation and civil asset forfeiture. While criminal confiscation could be the result of a conviction, civil asset forfeiture is an autonomous process which is independent from criminal proceedings and it applies to ill-gotten assets, including those that have relationship with money laundering investigations. Both mechanisms are conducive to deprive criminals from criminal proceeds, instrumentalities and property of equivalent value. Precautionary or provisional measures aimed to ensure the proceeds can be applied effectively in the framework of both criminal and asset forfeiture proceedings.

Under Law 1708 of 2014 – Asset Forfeiture Law (AFL) during 2016 and 2017 a total of 87 corporations and 171 business establishments have been affected with forfeit sanctions, from this 29 corporations because of being used/related to money laundering activities:

Type of affected goods in 2016 by asset forfeiture procedure	
Type of goods	Quantity
REALTY	1,383
CORPORATIONS	57
BUSINESS ESTABLISHMENTS	107
CARS	373

FOREIGN EXCHANGE	255.100 EU 1.272.216.000 COP 173.300 USD
CATTLE	4,481
BOATS	6
AIRPLANES	1
OTHER GOODS	31
TOTAL OF GOODS	6,449
APPROX VALUE COP	5.100.000.000.000
APPROX VALUE USD	USD 1.700.000.000

Type of affected goods by asset forfeiture procedure until May 2017	
Type of goods	Quantity
REALTY	413
CORPORATIONS	30
BUSINESS ESTABLISHMENTS	64
CARS	161
FOREIGN EXCHANGE	2.070.294 USD 59.610 EUR 255 TURKISH LIRA 1.235.258.726 COP
CATTLE	2145
BOATS	6
AIRPLANES	1
OTHER GOODS	31
TOTAL OF GOODS	2870
APPROX VALUE COP	2,52038EUR
APPROX VALUE USD	USD 860.000.000