

QUESTIONNAIRE

Country self-assessment report on implementation and enforcement of G20 commitments on foreign bribery

G20 countries are invited to complete the questionnaire, below, on the implementation and enforcement of G20 commitments on foreign bribery.

Part I questions are drafted directly from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence endorsed by G20 Leaders in St. Petersburg, and its background note on Enforcement of Foreign Bribery Offences. Part II questions are drafted from the G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration.

Responses to this questionnaire could be compiled into a summary on the "state of play" in G20 countries on steps taken to date to implement the aforementioned commitments, as well as plans for future actions in this area.

I. Implementation of the Guiding Principles on Enforcement of the Foreign Bribery Offence in G20 Countries

Note 1: This section of the questionnaire is drafted from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence and the background note on Enforcement of Foreign Bribery Offences.

A. A robust legislative framework

In your jurisdiction:

1. Is there a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery, including offering, promising or giving of a bribe, bribery through intermediaries, and bribes paid to third party beneficiaries?

- *If your jurisdiction criminalises foreign bribery*, please provide references to the relevant provisions and/or the full text, if possible.
- *If your jurisdiction does not have a foreign bribery offence:*
 - Please note whether an offence has been "drafted", "submitted for government review", or "adopted but not yet entered into force".
 - Please provide a timeline for the entry into force of draft legislation, where applicable.

Response:

The article 222 bis of the Federal Criminal Code (FCC) establishes the criminal definition of the bribery of foreign public officials (foreign bribery) offence, including sanctions for the person who in order to gain or maintain unlawful advantages for himself or any other person during the execution or conduction of international business transactions offers, promises, or gives, directly or through others, money or any other form of gift in goods or services to a foreign public official or a third party determined by him, in order for such public official to arrange, or abstain from arranging, the proceedings or the resolution of matters related to the inherent functions of his job,

position, or commission.

In line with the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention), the referred criminal definition sets forth the “offer, promise or give” of a gift. Likewise, it points out that said actions may be carried out by the briber or by means of a third person, in the same way that the gift can be delivered directly to the foreign public official or to a third party determined by him.

FEDERAL CRIMINAL CODE

Chapter XI

Bribery of Foreign Public Officials

“Article 222 bis.- The sanctions contemplated in the last article will be imposed to any person who in order to gain or maintain unlawful advantages for himself or any other person during the execution or conduction of international business transactions offers, promises, or gives, directly or through others, money or any other form of gift in goods or services:

- I. To a foreign public official or a third party determined by him, in order for such public official to arrange, or abstain from arranging, the proceedings or the resolution of matters related to the inherent functions of his job, position, or commission.
- II. To a foreign public official or a third party determined by him, in order for such public official to arrange the proceedings or the resolution of matters unrelated to the inherent functions of his job, position, or commission, or
- III. To any person in order for him to come before a foreign public official and requires or proposes him to arrange the proceeding or resolution of any matter related to the inherent functions of the job, position, or commission of the foreign public official.

For the purposes of this article, a foreign public official is any person that performs a job, position or commission in the legislative, executive or judicial branch or in an autonomous public body at any governmental order or level of a foreign State, whether designed or elected; any persona executing a function for an authority, organism or public company or State-owned in a foreign country; and any public official or agent of an international public organism or organization.

When any of the offences included in this article is committed under the premises of the article 11 of this Code, the judge shall impose the legal person up to a thousand fine-days and could order its suspension or dissolution, taking into account the level of awareness of the administrative bodies with regard to the foreign bribery and the damage caused or the profit obtained by the legal person.”

Overall, the criminal definition of foreign bribery included in the Mexican legislation sticks to the offence definition provided by the Antibribery Convention; however, on March 4, 2014 it was presented before the Congress a Draft Legislative Amendment to article 222 bis of the FCC, with the purpose of punishing bribery when the benefit obtained due to its commission may fall to a foreign public official or a third party, even if the aforementioned third person is not necessarily determined by the public official. Furthermore, it includes an amendment proposal to the hypothesis in Section II of the aforementioned article, making it unnecessary to prove that the foreign public official processed a matter outside the scope of their official duties, rather it will suffice that the official processed the matter. Thus, said amendment would also be perfectly synchronized with Section I.

Finally, it is worth mentioning that on April 30, 2014 the Chamber of Deputies sent to the Senate the approved draft, which is currently pending discussion in their commissions.

Amendment Proposed to the Article 222 bis of the Federal Criminal Code

The article 222 bis of the Federal Criminal Code is amended as follows:

“Article 222 bis. ...

I. To a foreign public official, for his own benefit or for that of a third party, in order for such public official to arrange, or abstain from arranging, the proceedings or the resolution of matters related to the inherent functions of his job, position, or commission.

II. To a foreign public official, for his own benefit or for that of a third party, in order for such public official to arrange, or abstain from arranging, the proceedings or the resolution of matters unrelated to the inherent functions of his job, position, or commission.

III. ...

...
...”

Note 2: For questions 2 through 11, jurisdictions without a foreign bribery offence should include updates on plans to address the following issues in efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

2. What is the statute of limitations for investigating and prosecuting foreign bribery? Please indicate the criteria for suspension, interruption or extension of the statute of limitations?

Response:

The offence of bribery of foreign public officials in the Mexican legal system, like any other crime, shall be subject to the general rules on statute of limitation referred to in Articles 101, 102, 105 and 110 of the FCC. That is, the length of the statute of limitation for criminal action corresponds to the arithmetic mean of the prison sentence given for the offence in question and in no case shall be less than 3 years.

Now, given that this offence provides various sanctions for the freedom penalty, depending on the amount or value of the gift, the statute of limitation for investigating and prosecuting the offence will also be subject to these hypotheses.

In that sense, the first hypothesis, established in Section I of Article 222 of the FCC, the value of the gift should not exceed the equivalent of 500 times the minimum wage in the Federal District at the time of the offence. Thus, the statute of limitations in this case is 1 year 1 month 15 days. In the second (Section II of Article 222 of the FCC), when the amount or value of the gift is greater than the amount stated, the statute of limitation of the offence will be 8 years¹.

Likewise, it should be noted that for instantaneous offences such as bribery of foreign public officials, the statute of limitations will begin from the moment in which the offence is consummated, that is, from the moment of the act (immediate) on which the prosecutor grounds their accusation. Thus, if the prosecutor formally accuses the perpetrator of making the “offer” of the bribe, the statute of limitations will start to count from the moment in

¹ For the first case, the arithmetic mean for imprisonment is calculated as follows: Higher penalty (2 years) + minor penalty (3 months) / 2. For the second, the results come from the following arithmetic operation: 2 years (minor penalty) + 14 years (higher penalty) = 16/2 = 8 years.

which the “offer” was made; but if the prosecutor formally accuses the perpetrator of “delivering” the bribe, the statute of limitations will start running from the moment of the “delivery”, because that would be the moment in which the offence in question was consummated.

The statute of limitation, according to the Criminal Code, could be interrupted due to the following reasons:

- Because of the investigative proceedings that the Public Prosecutor carries out regarding the offence or the perpetrator, even if his identity remains unknown.
- For assistance requirement in the investigation of the offence or the perpetrator, and the actions of the requested authority will also cause the interruption of the statute of limitations.
- For diligences regarding international extradition. The interruption will remain until the required authority refuses the delivery or until the legal situation that delays the delivery of the defendant disappears.
- For the delivery requirement of the defendant by the Public Prosecutor of a federative entity to the Public Prosecutor of another in which the defendant is located or detained by the same or other offence.

On the other hand, the statute of limitations will be doubled when it is regarding persons who committed a crime and who are outside the national territory, and when for such reason, an investigation cannot be carried out, the process can not be concluded or the sanction can not be executed. Likewise, the interruption of the statute of limitation could only increase in a half the terms established in the articles 105, 106 and 107 of the FCC.

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Article 101.- Statute of limitations is a personal right; the simple passage of time, as indicated by law, shall be enough to cause statute of limitations.

Statute of limitations terms shall be doubled for those persons out of the national territory, if due to this fact; it is not possible to carry out a preliminary investigation to conclude a proceeding or to impose a penalty.

Likewise, the criminal legislation provides for the interruption of the statute of limitations if the Public Prosecutor effectuates investigative proceedings regarding the offence or the perpetrator. The interruption consists in cancelling the elapsed time and starting again.

Article 102.- The statute of limitation for criminal action shall be continuous; in them it will be considered the offence with its modalities, and will start to count:

- I. - From the time the offence was consummated, if instantaneous;
- II.- From the day that the last act of execution was performed or proper conduct was omitted, if the offence was in attempted;
- III.- From the day that the last behavior was performed, in case of a continuing offense; and
- IV.- Since the cessation of consummation in the permanent offence.

Article 105.- The Statute of Limitations of the criminal action shall be equal to the term of the imprisonment penalty corresponding to the crime; but in no case shall it be less than three years.

It is worth noting that according to article 101 of the aforementioned Code, the statute of limitations will be doubled concerning those persons who are outside the national territory.

Article 110.- Statute of limitations of criminal actions shall be interrupted by those proceedings that are related to the investigation of the crime and the offenders, even though these proceedings are not carried out against any specified person.

If the proceedings are suspended, statute of limitations shall begin count again on the day following the day the last proceeding took place.

[...]

3. Please describe the form of jurisdiction available over the foreign bribery offence (i.e. territorial or nationality jurisdiction).

Response:

The Mexican Jurisdiction (territorial or national) is established in the Federal Criminal Code for all the offences committed wholly or partially in Mexican territory, including the foreign bribery offence.

Article 1.- This Code shall apply to federal crimes throughout the Republic.

Territorial Jurisdiction

Established in the articles 2 and 3 of the Federal Criminal Code.

Article 2.- Likewise, it shall apply to:

I. Crimes which are initiated, prepared or committed abroad when they have or they are intended to have effects in the Republic territory; or to those crimes initiated, prepared or committed abroad, provided that a treaty binding Mexico stipulates an obligation to extradite or prosecute, the requirements provided for in article 4 of this Code are satisfied, and the person probably responsible is not extradited to the requesting state, and

II. Crimes committed in Mexican consulates or their personnel if the perpetrators are not prosecuted in the country in which the crime is committed.

Article 3.- Those continuous crimes which are committed abroad, and which commission continues in the Republic shall be prosecuted in accordance to the laws of the Republic, regardless of whether the perpetrators are Mexican or foreigners.

The same rule shall apply to continuing crimes.

National Jurisdiction

Established in article 4 of the Federal Criminal Code.

Article 4.- Crimes committed in a foreign territory, by a Mexican against Mexicans or against a foreigner, or by a foreigner against a Mexican, shall be punished in the Republic of Mexico, in accordance with federal law, if the following requirements are met:

I.- That the accused be in the Republic of Mexico;

II.- The accused has not been finally sentenced for the offense in the country where they committed the crime; and

III.- That the offense charged be a crime both in the country where it was committed and in the Republic of Mexico.

4. Please indicate whether your jurisdiction has a corporate liability regime for the offence of foreign bribery.

If your jurisdiction does not have a corporate liability regime for the offence of foreign bribery, please provide a

timeline for implementation of corporate liability.

Response:

The Federal Criminal Code (FCC) establishes in the cases mentioned by the law and when it is deemed necessary for public safety the possibility that the judge issues, the security measures for the legal persons (except those that are State-owned), such as suspension or dissolution of the legal person (Article 11 of FCC), when any of their members or representatives commit offences in order to benefit said legal person and with resources provided by those entities.

This is also stipulated in Chapter II, Section 421 of the National Code of Criminal Procedures², noting that "if a member or representative of a legal person, other than state institutions, commits a crime with the means that for such purpose provides the legal person, so that it is committed in the name, under the protection or benefit of it, the Federal Prosecutor shall exercise penal action against it, only if it has also exercised criminal action against the individual who is liable for the crime committed."

On the other hand, Mexican legal system includes the administrative liability of the legal persons for the infringements provided in the Federal Anti-Corruption Law in Public Procurement (FALPP). This law establishes the sanctions that could be imposed to foreign and national legal persons that participate in federal public procurements, as well as to Mexican legal persons that intervene in international business transactions, where they incur in the violations of the aforementioned law, such as:

To promise, offer or give money or any other gift to a public official (national or foreign) or to a third party, in order for said public official to arrange, or abstain from arranging, matters related to his functions or the functions of another public official (national or foreign), with the purpose of obtaining or keeping a profit or advantage, regardless of the acceptance or reception of the money or gift or the result.

They will also be liable when the promise or offer of money or any other gift is made to a third person, that in any form intervenes in the design or elaboration of the public tender convocation or of any other act related with the public procurement proceeding of federal order.

When such infringement is carried out regarding a public procurement, by a natural or legal person by means of an intermediary, in order to obtain any profit or advantage in the relevant public procurement, both the natural and legal persons, will be sanctioned before the sanctioning administrative proceeding takes place, according to the FALPP.

Finally, the FCC (article 32, Sections IV and V) allows imposing corporate liability on legal persons for the purpose of redress of damages, which consists in:

- a) The redress of the good obtained through the offence, and in case of being impossible, its price shall be paid;
- b) The compensation of the material and moral damage that was caused; and
- c) The payment of the incomes that the victim or passive subject has stopped to receive.

That way, the owners of the companies, representatives of negotiations or commercial establishments of any sort, are liable for the damage caused by the offences committed by their workers, laborers or employees, due to and during the performance of their services. The associations or groups can equally be considered liable of the payment of redress of damages by the offences committed by their partners or Managing Directors.

5(a) Please describe the sanctions and confiscation measures available for natural and legal persons for the crime

² It is worth noting that this Code was adopted on March 5, 2014 and that will gradually enter into force on the entire territory of the Republic no later than June 18, 2016.

of foreign bribery.

5(b) Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

- *Where possible, please provide references to the relevant provisions and/or the full text, if possible.*

Response:

5 (a)

➤ **Sanctions**

When the amount or value of the gift, promise or provision exceeds of five hundred times the daily minimum wage in the Federal District at the time of the offence, shall be imposed from two to fourteen years of prison, from three hundred to one thousand of fine days and dismissal and disqualification from two to fourteen years for holding another employment, position or commission.

In any case shall be returned to the perpetrators of the crime of bribery, the money or gifts delivered, which will serve to benefit the State.

On the other hand, the Article 222 bis of the FCC establishes the sanctions for legal persons: "*when any of the offences covered by this Article is committed in the circumstances referred to in Article 11 of the Federal Criminal Code, the judge shall impose the legal person up to one thousand fine days and may order its suspension or dissolution, taking into account the level of awareness of the governing bodies regarding the bribery in the international transaction and the damage caused or profit made by the corporation.*"

The definition of "fine days" is set forth in the second and third paragraphs of the Article 29 of the FCC:

"Article 29. A fine is the payment of a monetary amount to the State, determined by the number of days of fine and which shall not exceed a thousand days, except for the cases set forth in the law itself. A day of fine is equivalent to the daily net income of the person sentenced at the time the crime is committed, considering all of his/her income.

For the purposes of this Code, the lower limit of the day of fine shall be equal to the minimum daily wage in effect where the crime was perpetrated. Concerning the continuing crime, there shall apply the minimum daily wage in force at the moment in which the crime ceased."

The fine is applied to natural persons using as criteria the total income per day of the person. In the case of the legal persons, the judge shall determine whether the whole corporations or only the corresponding subsidiary income will be considered. The previous fine would be carried-out based on a logical analysis of the case, taking into account, among other things, who provided the means used or who obtained the benefit, just as it is described in the article 11 of the Federal Criminal Code.

Also, as it may be noted in the aforementioned provision, it is considered by our legal system that when fine days cannot be calculated for the criminal perpetrator, the penalty shall be established on the basis of minimum daily wages, method that would be applied as a last resort.

➤ **Forfeiture**

The Article 40 of the FCC includes the figure of forfeiture of objects or proceeds of the offence they are of unlawful use; when they are of lawful use, they will only be forfeited if the offence was intentional. This figure applies to both individuals and corporations, as the article in question makes no distinction in this sense, as long as is results from

an order issued by a judge.

Moreover, Article 249 of the National Code of Criminal Procedures, adopted on March 5, 2014 and that will gradually enter into force on the entire territory of the Republic no later than June 18, 2016, sets the figure of forfeiture of equivalent value.

“Article 249. Seizure of equivalent value

*In case that the proceeds, instruments or objects of an offence had disappeared or cannot be tracked down for a cause attributable to the defendant, the Public Prosecutor shall decree or request to the corresponding jurisdictional organ the precautionary embargo, the seizure and, where applicable, the forfeiture of assets property of the defendants, as well as the **forfeiture** of the assets in respect of which they conduct themselves as owners, whose value corresponds to that of the aforementioned proceeds, without prejudice to the applicable provisions concerning non-conviction based forfeiture.”*

Additionally, it should be noted that an action with seizure-like effects could be claimed as a form of damage redress in the terms of Article 32, Sections IV, V and VII, 37, 38 and 39 of the FCC; and Article 489 of the Federal Code of Criminal Procedures (FCPP), and additionally applying the civil regulations, which in turn provides as precautionary measures the embargo of property to ensure the redress of the patrimonial damage.

5 (b)

Currently there are no Criminal cases concluded by the offence of foreign bribery in this Attorney General’s Office (PGR).

B. Effective detection and domestic coordination

In your jurisdiction:

6. What steps have been taken to engage with relevant agencies, such as overseas missions, broader tax administrations, trade promotion, public procurement and export credit agencies, as well as with the private sector, on issues related to implementation and enforcement of the foreign bribery offence? Where possible, please cite specific examples.

Response:

Not applicable.

7(a) Are appropriate reporting channels available for whistleblowers in both the private and public sectors?

7(b) Are appropriate protections available for whistleblowers in both the private and public sectors?

Where possible, specific reference should be made to implementation of the G20 Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation.³

Response:

➤ **7 (a) Report Channels**

The Attorney General's Office has the following report mechanisms:

1. *Citizen Contact Center*

It is administered by the General Inspectorate⁴ and receives the complaints and reports for possible misconducts committed by the public officials of the PGR.

It was created on November 30th 2012 and has an area of direct service for the citizen to make his report confidentially. Additionally, it has other report mechanisms, such as the telephonic number 01 800 00 85 400 and the e-mail denuncias-vg@pgr.gob.mx; by means of which are received the documents from other authorities.

2. *Report Center and Citizen Attention (CEDAC)*

It was created by the agreement A/039/12, published in the Official Journal of the Federation on February 24th 2012. It is a holistic program of citizen service that allows to receive, funnel, follow-up and assess the phone calls, mails and messages in social networks directed to the PGR as a citizen report, complaint, congratulation or orientation request.

3. *Specialized Investigation Unit of Crimes Perpetrated by Public Officials and against the Administration of Justice (UEIDCSPCAJ)*

This Unit, to which is attached the Special Prosecutor's Office for the Combat against Corruption within the Federal Public Service (FECCSPF), has an electronic mailbox for reports and lawsuits referring to acts probably constitutive of offences of the federal order committed by public officials that do not belong to the PGR.

➤ **7 (b) Whistleblower Protection**

The Federal Law for the Protection of Persons Involved in Criminal Procedure, published in the Official Journal of the Federation on June 8, 2012, applies to victims, plaintiffs, witnesses, cooperating witnesses, experts, police officers, prosecutors, judges and members of the judiciary who have effectively collaborated in an investigation or proceeding, and to other persons who are related by blood or are close to those listed. It should be noted that such legislation is applicable to cases in which persons are related to a criminal proceeding dealing with serious offences (corruption offences are not classified as serious) or organized crime.

However, on March 4, 2014 it was presented to the Congress and Amendment Initiative to the Article 13 of the Federal Law for the Protection of Persons Involved in the Criminal Procedure, relating to the protection of persons at risk for their involvement in criminal proceedings. This reform is intended to protect the whistleblowers not only

³ Available online here: <http://www.oecd.org/corruption/48972967.pdf>

⁴ It is the body of legal-technical evaluation, supervision, inspection and control of the Agents of the Federal Public Prosecutor, the agents of the Federal Ministerial Police, of the ministerial officers, experts and the rest of the public officials of the PGR regarding the functions they perform as auxiliaries of the Public Prosecutor, as well as of investigation of the crimes in which they incur, without prejudice to the powers vested in the Internal Control Body (OIC) in the PGR, dependent hierarchically and functionally of the Secretariat of Public Function (SFP).

in cases of serious or organized crime, but also when the provisions of international treaties to which the Mexican government is a party, expressly provide for the obligation to provide such protection. With this modification, the above law would also apply in cases of offences of corruption, including foreign bribery.

On April 30, 2014 the Chamber of Deputies sent to the Senate the approved version of this initiative, which is currently pending discussion in the committees of the latter.

C. Effective investigation and prosecution

In your jurisdiction:

8(a) Please describe the investigative powers granted to law enforcement authorities to proactively and effectively investigate and prosecute foreign bribery.

8(b) Please describe the specialized training on detecting, investigating and prosecuting foreign bribery provided and/or planned to be provided to law enforcement authorities.

Response:

➤ 8 (a) Enforcement Law Authorities Powers

The Article 21 of the Political Constitution of the United Mexican States provides that the criminal investigation corresponds to the Public Prosecutor and the police, while the exercise of Criminal action rests solely on the first.

In addition, Articles 1, 3 and 4 of the Organic Law of the Attorney General's Office indicate that such institution is responsible for the dispatch of matters of the Public Prosecutor, for the exercise of the functions that said law, the Constitution and other applicable rules establish.

In that sense, regarding the combat to corruption offences, including bribery of foreign public officials, the PGR has the Special Prosecutor for Combating Corruption in the Federal Public Service, established by the agreement A/104/04 of the General Attorney, on August 2th 2004, and attached to the Specialized Investigation Unit of Crimes Perpetrated by Public Officials and against the Administration of Justice.

Through said agreement it is set that the Special Prosecutor has jurisdiction to investigate and prosecute offences related to acts of corruption in the federal public service, which result or have as purpose, an undue benefit or advantage for his author or another; as well as those relating to bribery of foreign public officials under Article 222 bis of the Federal Criminal Code.

On the other hand, on February 10th 2014, it was issued an Amendment Decree (not yet in force) by which the General Prosecutor of the Republic is created, pursuant to Article 102, paragraph A of the Constitution, and in which will now fall the office of Federal Public Prosecutor.

The General Prosecutor will have a Specialized Prosecutor Office in Offences relating to Acts of Corruption, which will report directly to the General Prosecutor and that will dramatically increase the capabilities of the current Special Prosecutor in charge of foreign bribery offences.

On March 12th 2014, as requested by the Congress through the Decree of February 10th, it was published in the Official Journal of the Federation the Agreement A/011/14 of the Attorney General, which creates and establishes the powers of that new Special Prosecutor, and shall enter into force on the date on which the Senate appoints the Head of said Unit.

The creation of the Specialized Prosecutor in advance to the institution of the General Prosecutor of the Republic reflects the commitment and priority for the Mexican Government to frontally fight corruption.

➤ **8 (b) Foreign Bribery related Training**

The Attorney General's Office conducts various training activities for its entire staff (administrative, police, ministerial and expert) to ensure that the actions undertaken are governed by the principles of legality, objectivity, efficiency, professionalism, honesty and respect to human rights.

An example of this is the "Course on Foreign Bribery" held on October 29th and 30th 2013, in Mexico City, which was mainly directed to the Agents of the Federal Public Prosecutor attached to the Specialized Investigation Unit of Crimes Perpetrated by Public Officials and against the Administration of Justice (UEIDCSPCAJ), of the Deputy Attorney Specialized in the Investigation of Federal Crimes (SEIDF).

The objectives of this course, taught by national and international experts (USA, Finland and the OECD Secretariat) were: 1) to provide with theoretical and practical tools to enhance the capabilities of detection, investigation and prosecution of the offence of foreign bribery to 43 agents of the Public Prosecutor and 15 public officials of competent administrative units in the field; 2) to raise awareness of the importance of the detection and investigation of this offence and; 3) let them know cases of successful investigations related to foreign bribery in other countries, particularly the investigation techniques used, which methodology would work as a reference for the investigations that eventually carry out the agents of the Public Prosecutor.

9(a) Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.

9(b) Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system.

Where possible, specific reference should be made to implementation of the G20 High-Level Principles on Mutual Legal Assistance.⁵

Response:

➤ **Prompt and Effective Processing of Requests of Assistance related to Foreign Bribery**

The active requests of international legal assistance formulated by this institution to foreign governments at the request of the investigating Mexican authorities are reviewed and thoroughly analyzed. Also, communication channels with internal authorities are set in case there is an important requirement missing that avoids the processing of the legal assistance. Formal requests for international legal assistance are made and transmitted both by email and through diplomatic channels in some cases, and in others directly with the central authorities.

The passive requests for international legal assistance that the Attorney General's Office receives from foreign authorities (General Prosecutors, Ministries of Justice, Departments of Justice, etc.), once analyzed, are immediately handed over to the Mexican authorities who have access to information, documentation and authority to perform the steps required by other countries.

➤ **9 (b) Informal Assistance**

In the Mexican legal system there is no figure of informal assistance, so it is not possible to give a

⁵ Available online here: <http://www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf>

description of the processing of those requirements.

However, it should be noted that under Article 46, paragraph 4 of the UN Convention against Corruption (UNCAC), Mexico has received spontaneous assistances that once received, are analyzed and channeled to the competent Mexican authority to know the facts in the records.

The above is based on article 5, section VII of the Organic Law of the Attorney General's Office and 3, subsection H), section V; 6 and 52, Sections VI, VII and VIII of its regulation.

II. Implementation of Foreign Bribery Provisions in the 2012-2013 G20 Anti-Corruption Action and the St Petersburg Declaration

Note 3: This section of the questionnaire is drafted from the 2012-2013 G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration. It also seeks updates from G20 countries on next steps for fighting foreign bribery.

10. Please specify next steps for continuing "efforts to adopt and enforce laws and other measures against foreign bribery".⁶

Response:

Among the actions undertaken by the Mexican government to combat foreign bribery, the following must be stressed out:

1. Presentation to the Congress, on March 4th 2014, of an Amendment Initiative to Articles 222 and 222 bis of the Federal Criminal Code, and Article 13 of the Federal Law for the Protection of Persons Involved in the Criminal Procedure, relating to the criminal definitions of bribery and bribery of foreign public officials, respectively, and to the protection of persons at risk for involvement in criminal procedures.

On April 30th 2014 the Chamber of Deputies sent to the Senate the approved opinion of this initiative, which is currently pending discussion in the committees of the latter.

2. Enactment, on February 10th 2014, of an amendment decree to various articles of the Political Constitution of the United Mexican States, through which is created the General Prosecutor of the Republic, whose major progress with regard to the current Attorney General's Office, is the budgetary and operational autonomy granted directly by the Constitution. This office, once established, for the fulfillment of its duties will have a Specialized Prosecutor Office in Offences relating to Acts of Corruption, which will be responsible of investigating and prosecuting the corruption offences set out in the Titles Tenth (Offences by Public Officials) and Eleventh (Crimes against the Administration of Justice) of the Federal Criminal Code.

11. Please specify next steps for engagement with the OECD Working Group on Bribery with a view to explore possible adherence to the OECD Anti-bribery Convention as appropriate.

Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2014;
- Co-organize or attend meetings on foreign bribery; and/or

⁶ G20 Anti-Corruption Action Plan 2013 – 2014, Point 2.

- Engage in technical assistance activities on the issue of implementation and enforcement of the foreign bribery offence;
- Open discussion for Membership in the WGB, with a view to acceding to the OECD Anti-Bribery Convention.

Response:

On December 17th 1997 Mexico signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the OECD, entering into force on July 26th 1999; as a result, our country is also an active member of the Working Group on Bribery (WGB).

The PGR regularly attends the plenary meetings of the Group, and collaborates and stays involved in many of the activities developed in its framework. At the meeting of March 2014 public officials of the PGR, as members of the Mexican delegation, demonstrated its strong commitment to the WGB through their participation in the integration and presentation of the Follow-Up Written Report of Phase 3 of our country, as well as through the interventions and contributions as one of the examiners of Chile.

With the above, it is demonstrated that the PGR has also participated in the evaluations on the implementation of the Anti-Bribery Convention, either through the appointment of officials who are part of the team of examiners of other countries, or providing the information required by the WGB, within its competence, in all three phases in which Mexico has been reviewed.

Foreign Bribery Questionnaire

Question 6. What steps have been taken to engage with relevant agencies, such as overseas missions, broader tax administrations, trade promotion, public procurement and export credit agencies, as well as with the private sector, on issues related to implementation and enforcement of the foreign bribery offence? *Where possible, please cite specific examples.*

Answer

- **Normative Criterion**

To comply with the 2009 OECD Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, which urges State parties to explicitly prohibit the deductibility of bribes, on July 23rd 2012 the SAT's Regulations Committee approved a normative criterion that states that bribes to foreign public officials are not deductible for tax purposes. This criterion is entitled: "Bribes to public officials are not deductible for income tax purposes" (*Dádivas a servidores públicos no son deducibles para los efectos del impuesto sobre la renta*). This document was communicated to public officials, through the official letter number 600-04-02-2012-57567. At the request of the Ministry of Foreign Affairs, the normative criterion was translated to English in order to be disseminated through its missions abroad, the Chambers of Commerce, and the Mexican companies based in other countries.

- **Tax information exchange**

In May 2010 Mexico became Party to the OECD and Council of Europe *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* what allows access to a broad network of international cooperation and exchange of information for combating tax evasion.

Additionally, Mexico has already renegotiated two bilateral treaties for information exchange on tax matters –i.e. Austria (June 2010) and Switzerland (December 2010) – so that the information exchanged can be used for further purposes, such as investigations of corruption, financing of terrorism and money laundering.

Question 7(a). Are appropriate reporting channels available for whistleblowers in both the private and public sectors?

Answer

The Tax Administration Service (SAT) has established a variety of reporting channels to encourage whistleblowers to set confidential complaint of bribery and corruption. Examples of such channels are the on-line channels: SAT’s webpage link to a reporting system that operates in Spanish and English; or via e-mail (denuncias@sat.gob.mx).

Also, SAT has established a hotline free of charge (01 800 DELITOS) operating from Monday to Friday from 8:00 am., to 9:00 pm., operated by qualified personnel, and a hotline accessible anywhere in North America (1 877 44 88 728). Additionally, complaints can be raised through SAT’s information hotline (01 800 INFOSAT).

Finally, in order to get as much complaints nationwide, SAT has deployed a network of strategically placed “Red Phones” –i.e. direct lines to a reporting system– at customs checkpoints, local taxpayer service offices, and in tax service modules. It also features mailboxes as a reporting system.

Complaints per Reporting Channel (annually)

Reporting channel	2012	2013
On-line mailbox	4,800	6,315
Webpage	677	437
Red Phones	349	407
01800 Delitos e INFOSAT	4,492	4,094
01800 international	39	33
SAT’s offices	1,351	1,206
Total	11,708	12,492

Complaints per Reporting Channel (1st Term)

Reporting channel	2012	2013	2014
On-line mailbox	1,281	1,069	4,391
Webpage	153	115	73
Red Phones	53	126	44
01800 Delitos e INFOSAT	977	979	1,154
01800 international	6	9	5
SAT’s offices	223	294	278
Total	2,693	2,492	5,945

Question 10. Please specify next steps for continuing “efforts to adopt and enforce laws and other measures against foreign bribery” (*G20 Anti-Corruption Action Plan 2013 – 2014, Point 2*).

Answer

SAT will promote a legislative amendment to the Federal Fiscal Code (CFF) in order to increase the maximum sanctions available for false accounting offences (OECD Anti-bribery Convention, Article 8(2)). Also, in coordination with other government organizations, will maintain reliable statistics of investigations, prosecutions, convictions and sanctions to natural and legal persons for offences related to foreign bribery.

Moreover, SAT will seek to establish collaboration and information exchange agreements with relevant authorities for convictions and processes for domestic and foreign bribery. With the information gathered, SAT will be in position to trigger audits in order to corroborate if taxpayers that have been found guilty or are facing a legal process for those crimes, have not claimed tax deduction for such payments (2009 Recommendation on Tax Measures for Further Combating Bribery).

As for training, SAT will maintain close relation with the audit and accounting profession to encourage them to develop courses on foreign bribery so that they can detect this crime and to make sure they are aware of its obligation to report illegal activities to competent authorities. Also, will continue with its training programs for tax auditors and examiners to improve case detection of domestic and foreign bribery (OECD 2009 Recommendation for further Combating Bribery of Foreign Public Officials, VIII (i))