



# Implementing the OECD Anti-Bribery Convention



## Phase 2 Two-Year Follow-Up Report: Peru

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This report, submitted by Peru, provides information on the progress made by Peru in implementing the recommendations of its Phase 2 report. The OECD Working Group on Bribery's summary and conclusions to the report were adopted on 14 June 2023.

The Phase 2 report evaluated and made recommendations on Peru's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The Phase 2 report was adopted by the OECD Working Group on Bribery on 17 June 2021.

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## Peru Phase 2: Two-year Written Follow-Up Report – Summary and Conclusions

### Summary of findings<sup>1</sup>

1. In June 2023, Peru submitted its Phase 2 written follow-up report to the OECD Working Group on Bribery in International Business Transactions (Working Group). The report described Peru's efforts to implement the 67 recommendations and to address the follow-up issues identified during its [Phase 2 evaluation](#) of June 2021. In sum, Peru has fully implemented 25 recommendations, partially implemented another 20 and not implemented 22. As requested by the Working Group, Peru also reported on its foreign bribery enforcement actions and developments concerning follow-up issues.
2. The Working Group welcomes many efforts that have been made by Peru. Law 31 740 enacted on 13 May 2023 addressed several recommendations concerning the Corporate Liability Law. Peru has provided substantial training to and raised awareness of judges, prosecutors and law enforcement. Tax authorities have also trained hundreds of its officials, and have enacted an express prohibition on the tax deduction of bribes. Officials in the financial intelligence unit received training on topics related to legal persons, beneficial ownership, compliance, and foreign bribery.
3. On the other side of the ledger, there are grave concerns that Peru's legal framework for fighting foreign bribery has regressed. A June 2022 amendment narrowed the foreign bribery offence. The crime can now be committed only by Peruvian nationals or legal persons domiciled in Peru, which clearly contravenes the Convention. Some of the Working Group recommendations on the foreign bribery offence, corporate liability, and sanctions for foreign bribery are not implemented.
4. Concerns also remain about actual enforcement. The 2021 Phase 2 Report found that corruption enforcement levels improved since 2017, particularly with the creation of the Lava Jato Special Team. Today, virtually all of the Lava Jato Special Team cases are still ongoing. Peru's capacity to investigate and prosecute complex corporate corruption cases must therefore be substantially improved.
5. The Working Group's Summary and Conclusions of Peru's implementation of the Phase 2 recommendations are presented below. The Summary and Conclusions should be read in conjunction with the report prepared by Peru in the annex.

#### **Regarding the prevention, detection and reporting of foreign bribery:**

*Recommendation 1(a) – Partially implemented:* Peru has not yet assessed its foreign bribery risk and approach to enforcement. However, Peru indicates that the updated National Integrity and Anti-Corruption Policy will include two guidelines that reference foreign bribery (OP3 and OP4). These guidelines will be part of Peru's anti-corruption strategy through 2030. The new National Policy, however, is not yet in force. It is expected to be adopted by the end of 2023.

*Recommendation 1(b) – Fully implemented:* Peru has commendably published and disseminated materials to raise awareness of foreign bribery and the Convention. Peru's efforts have progressively included more awareness-raising events, including workshops and seminars in May and June 2023. It also has an ambitious agenda of initiatives planned for 2023 that involves business associations, the chamber of commerce, public entities and the judiciary. Peru is encouraged to see through these events and continue its awareness-raising efforts for 2023 and beyond.

*Recommendation 2 – Partially implemented:* Peru has raised awareness of the reporting of foreign bribery in a March 2023 workshop with prosecutors and the legal profession. However, more efforts should have

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<sup>1</sup> The team evaluating Peru's follow-up report was composed of lead examiners from Brazil (Elizabeth Cristina Marques Cosmo and Rafael Ramos da Luz, Office of the Comptroller General) and Israel (Tamar Rosman and Yael Bitton, Office of the State Attorney), as well as members of the OECD Anti-Corruption Division (William Loo and Martha Monterrosa).

been made to raise awareness among a broader array of public officials, preferably with specific reference to CPC Art. 326(b). The “Single Digital Platform for Citizens” now includes an option for reporting foreign bribery. But the webpage requires the user to choose from a list of public entities to which the complaint relates; non-Peruvian entities are not among the options (Phase 2 Report para. 26). PROMPERÚ provided guidance and an email address to its personnel for reporting foreign bribery. Clarification of reporting channels was not issued to any other public officials.

*Recommendation 3(a) – Not implemented:* Two laws in Peru deal with whistleblower protection. The Phase 2 Report found that the overall legislative framework was inadequate, duplicative and fragmented. Peru is drafting legislation to amend this regime. However, the Working Group only considers enacted legislation when assessing the implementation of the Convention.<sup>2</sup> The Working Group urges Peru to consider 2021 Anti-Bribery Recommendation XXII when revising its legislation.

*Recommendation 3(b) – Fully implemented:* Peru conducted 13 training sessions related to corruption and whistleblower protection in the public sector, including the Public Prosecutor’s Office (PPO), judiciary, municipalities and other government agencies. Similar awareness-raising in the private sector was conducted in May 2023. These are positive steps. The Secretariat for Public Integrity also referred to an Integrity Model for public sector entities, but this is a tool for evaluation rather than awareness-raising.

*Recommendation 4 – Fully implemented:* The Public Integrity Secretariat now forwards foreign bribery allegations circulated by the Working Group to the PPO and the Specialised Anti-Corruption Public Prosecutor’s Office (FECOF). This is positive. FECOF has also taken measures to strengthen its own media monitoring of foreign bribery allegations that implicate Peruvian companies and individuals. This includes providing training to the communication analyst who monitors and disseminates FECOF’s news alerts to the PPO (Office of Institutional Images). Future Working Group evaluations of Peru will examine the effectiveness of these measures in detecting actual foreign bribery allegations.

*Recommendation 5(a) – Fully implemented:* The Ministry of Foreign Affairs (MRE) and PROMPERÚ have provided information on the Convention to their staff, including through memorandums and intranet sites. The MRE provided specific training for its staff on 18 May 2023 on foreign bribery topics. A training event focused on foreign bribery for a variety of stakeholders, including PROMPERÚ personnel was held on 1-2 June 2023. These training initiatives are welcome. MRE and PROMPERÚ are encouraged to build on these efforts, and develop guidelines so that the information and training that has been provided so far can be codified into policy for its staff.

*Recommendation 5(b) – Partially implemented:* The MRE and PROMPERÚ have taken some steps to clarify and provide training to staff on reporting foreign bribery to Peruvian law enforcement. PROMPERÚ provided guidance and an internal email address to its personnel for reporting foreign bribery. On 15 May 2023, PROMPERÚ issued a circular that further explains that these complaints are assessed internally and then forwarded to the PPO. On 18 May 2023, the MRE provided training for its staff on foreign bribery. The MRE is planning to prepare a circular for staff, particularly those on diplomatic missions and overseas, to clarify the procedure for reporting and denouncing foreign bribery but this has not yet been completed.

#### **Regarding taxation:**

*Recommendation 6(a) – Fully implemented:* In January 2022, Legislative Decree 1522 amended the Income Tax Law to expressly deny a tax deduction for “the disbursements described in the criminal offences of bribery in its different modalities regulated in the Criminal Code or in special criminal laws”.

*Recommendation 6(b) – Partially implemented:* Peru has taken steps to implement a procedure to routinely re-examine tax returns of individuals and companies convicted of foreign bribery to verify whether bribes have been deducted. In June 2022, the National Superintendency of Customs and Tax Administration (SUNAT) requested information about foreign bribery cases from the PPO’s Unit for International Judicial Co-operation and Extraditions (UCJIE). SUNAT has institutionalised this practice by including it in the SUNAT Institutional Information Plan 2023. In the initial request, SUNAT did not inquire with PPO units that conduct bribery prosecutions and thus have direct knowledge of bribery convictions, such as FECOF and the Lava Jato Special Team. Peru indicates, however, that going forward, SUNAT

<sup>2</sup> For example, see [Chile: Follow-up to the Phase 3 Report and Recommendations](#), para. 5.

will be inquiring with the UCJIE of the PPO, the FECOF and the Lava Jato Special Team. The limitation period for re-examinations, however, is unchanged.

*Recommendation 6(c) – Fully implemented:* In 2022 and 2023, SUNAT included a virtual module on foreign bribery in its training programme for staff. To date, 372 officials have taken the course.

*Recommendation 6(d) – Not implemented:* Peru has not set out procedures and guidance for tax officials and examiners to report suspicions of foreign bribery to law enforcement. SUNAT is only drafting an internal policy on this matter.

*Recommendation 6(e) – Fully implemented and convert to follow up:* In Phase 2, Peru did not have statistics on the detection and reporting of bribe payments by tax authorities. SUNAT now states that it has established a “statistical registry of cases”, which is part of SUNAT’s Institutional Information Plan 2023. No statistics could be provided since no foreign bribery reports existed. The statistical registry will be under the responsibility of the National Intendancy of Process Management and will collect information from the UCJIE, FECOF, Lava Jato Special Teams and the Judiciary’s National Registry of Convictions.

### **Regarding accounting requirements, external audit and internal company controls:**

*Recommendation 7(a) – Not implemented:* Peru has not raised awareness among Peruvian external auditors and regulators of the role that external audits can play in foreign bribery detection. Future awareness-raising activities are being co-ordinated with the Peruvian Public Accountants’ Association.

*Recommendation 7(b) – Not implemented:* Peru has not encouraged companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports. The National Confederation of Private Business Institutions (CONFIEP) will update its Code of Conduct to include a section on promoting the use of internal and external audits by its members. Certain awareness-raising activities with the Peruvian Public Accountant’s Association, CONFIEP, and other foreign trade-related business associations are only planned.

*Recommendation 7(c) – Fully implemented:* Peru has taken steps to consider requiring external auditors to report suspected foreign bribery to competent authorities independent of the company, and ensuring that auditors making such reports reasonably and in good faith are protected from legal action. Peru is evaluating a regulatory reform to address this recommendation through possible amendments in Law 28 951 (the law regulating public accountants and activities related to its professional association). The regulatory reform consultation process, which is foreseen to finalise by the end of 2023, involves a focal point from the National Board of Deans of the Peruvian Public Accountant’s Associations along with various relevant government entities.

*Recommendation 7(d) – Partially implemented:* Peru took steps to encourage companies in various sectors to develop and adopt adequate internal controls, ethics and compliance programmes. The Corruption Prevention Programme for Enterprises (DEPE) and the SME Integrity Ambassadors Programme targeted SMEs. Some 46 companies achieved anti-bribery compliance programme certification. Conferences on corporate compliance were held in 2021 and 2022. However, these efforts focused primarily on anti-corruption generally and did not refer to foreign bribery specifically. Insufficient emphasis was given to larger enterprises, which the Phase 2 Report (para. 75) found were internationally active but had more rudimentary compliance programmes that do not refer to foreign bribery.

### **Regarding anti-money laundering:**

*Recommendation 8(a) – Not implemented:* In Phase 2, the Working Group recommended that Peru systematically take foreign bribery into account when conducting money laundering risk assessments in the future. The latest National Money Laundering Risk Assessment (2021) identifies money laundering related to crimes against public administration as a “very high” risk. But the Assessment was based on corruption and crimes committed by Peruvian public officials (Assessment pp. 58-79, 240-242). There was no corresponding analysis on foreign bribery, sectors vulnerable to this crime and the risk it poses to Peruvian companies and individuals. Further, foreign bribery is not explicitly mentioned in the definition of “crimes against public administration” (Assessment p. 59). Peru states that the Assessment referred to foreign bribery. However, these only mention the Phase 2 Report and its recommendations (Assessment pp. 199, 276) and do not constitute an analysis of Peru’s foreign bribery risk.

*Recommendation 8(b) – Fully implemented:* A politically exposed person includes “founders, members of the governing bodies, legal representatives, accountant, treasurer and candidates for elections of political parties or electoral alliances” (SBS Resolution 4349-2016, Annex 1, para. 2(m)). Enhanced due diligence, applied to PEPs, is also applicable to “partners, shareholders, associates or equivalent title, and administrators of legal persons or legal entities in which a PEP holds 25% or more of the share capital, contribution or participation” SBS Resolution 2660-2015, Article 32(h).

*Recommendation 8(c) – Partially implemented:* Peru has begun efforts to raise awareness of foreign bribery among reporting entities. The UIF (financial intelligence unit) is designing an online course scheduled for late 2023 with modules on preventing and detecting foreign bribery for reporting entities. The course will be aimed at compliance officers, regulated entities and public officials. The UIF’s training course is a welcome initiative but has not started.

*Recommendation 8(d) – Not implemented:* Peru has not developed guidance and typologies on suspicious money laundering transactions that specifically address money laundering predicated on foreign bribery. The UIF is undertaking but has not completed an initiative to produce such materials. Peru is encouraged to complete this initiative.

*Recommendation 8(e) – Fully implemented:* Peru has trained 15 UIF analysts and co-ordinators on topics related to legal persons, beneficial ownership, and compliance, which included topics on international AML standards and foreign bribery.

#### **Regarding the investigation and prosecution of foreign bribery and related offences:**

*Recommendation 9(a) – Fully implemented:* Peru reported over 19 awareness-raising initiatives directed at judges, prosecutors and law enforcement. A portion of these initiatives specifically covered foreign bribery or the Convention. Many of the conferences and sessions related to corporate liability but focused on general corruption topics, not on foreign bribery. General awareness-raising of corporate liability and proceeding against legal persons under the CLL in all corruption cases is important. In May and June 2023, Peru progressively increased its various foreign bribery awareness raising initiatives, including sessions focused on corporate liability and foreign bribery with judges, prosecutors and law enforcement. On 11 May 2023, the Office of the Attorney General (AG) distributed informational flyers on the Convention and published a video on foreign bribery. The AG’s training office also hosted a seminar on corporate liability in cases of corruption and related crimes. The Secretariat for Public Integrity hosted on 1-2 June 2023 a workshop on foreign bribery for judges, anti-corruption prosecutors, and National Police, among other government official attendees. These initiatives are positive steps for raising awareness of foreign bribery. Peru is encouraged to continue with training initiatives that emphasise corporate liability in the context of foreign bribery cases.

*Recommendation 9(b) – Not implemented:* In Phase 2, the Working Group recommended that Peru assign primary responsibility for foreign bribery cases (including related offences) to a specific prosecutorial unit. The Special Prosecutors for Corruption of Public Officials (FECOF) had jurisdiction over serious crimes against the public administration, including foreign bribery. But FECOF had over 550 staff in 32 prosecutor districts who were mostly focused on domestic corruption. Peru later stated that foreign bribery would be assigned to FECOF’s Corporate Supraprovincial Prosecutor. However, this was not reflected in regulations or decrees that defined this unit’s jurisdiction. Divergent views were expressed on jurisdiction over related offences such as money laundering in foreign bribery cases.

Since Phase 2, no steps have been taken to clarify these matters. The PPO reiterates that Supraprovincial prosecutors would be assigned these cases based on Regulations of the Specialised Prosecutor’s Offices. However, the Working Group already found that this was not clearly reflected in the unit’s regulations and no changes have been made since Phase 2. Peru states that the PPO and its advisors are evaluating “if there is a possibility of improving and specifying our standards in response to what is suggested by the recommendation of the Phase 2 Report.” Peru notes that this would require “the strengthening of new prosecutorial offices, which are subject to the budgetary availability assigned by the Peruvian State.” Peru later adds that the National Co-ordinating Bodies of the Specialised Prosecutor’s Offices are formulating a draft normative document “Regulations of the Specialised Prosecutor’s Offices” that will supersede other internal regulations. The drafting process will consider giving competence over foreign bribery cases to the Supraprovincial Corporate Prosecutor’s Office of the Specialised Prosecutor’s

Offices for Officials' Corruption Crimes. This is positive. However, the regulations are only being drafted and not yet in force.

*Recommendation 9(c) – Fully implemented and convert to follow up:* Peru indicated that the operating budget of the Lava Jato Special Team in 2023 has been increased eight-fold as of the 10 May 2023 to continue its investigations and prosecutions. As explained in the section below on foreign bribery enforcement actions, the Special Team is continuing the over 20 prosecutions referred to in the Phase 2 Report. However, the cases remain ongoing and have yet to be successfully concluded, which may raise questions about the adequacy about the resources and support given to the Special Team.

*Recommendation 9(d) – Partially implemented:* The Phase 2 Report found that the Lava Jato Special Team did not have sufficient access to forensic accounting and financial experts. Since then, the Special Team has continued to utilise such experts in some of its cases. The Special Team indicates that it currently has a specialised unit of 17 experts, including approximately ten accountants and other financial and forensic experts. Peru, however, has not provided information on whether these specialised expertise and resources are sufficient based on the number of cases where these experts are being used and the number of cases with pending requests for such experts.

*Recommendation 9(e) – Fully implemented:* The PPO, Judiciary, State Attorney General's Office and Judicial Academy engaged in an active training schedule for judges and law enforcement to cover corporate and white-collar crime investigation topics since Phase 2. Peru outlines over 50 events and training courses for law enforcement participants. Of these, 30 related broadly to corporate and white-collar crime investigations.

#### **Regarding non-trial resolutions:**

*Recommendations 10(a) – Partially implemented:* Since Phase 2, Peru has published information about five effective collaboration agreements in Lava Jato Special Team cases.<sup>3</sup> But this falls short of systematic publication of every non-trial resolution (the Special Team alone has 26 effective collaboration agreements – see below). Moreover, only the terms of the agreement were published. There is no information on matters such as the key facts of the case or the reasons for using a non-trial resolution. Peru states that it is developing guidance on publishing parts of non-trial resolutions. Peru also refers to the *Jurisprudencia Nacional Sistematizada* website, but the Working Group already found in Phase 2 (para. 107 and footnote 55) that this website was inadequate. Peru states that the *Jurisprudencia Nacional Sistematizada* allows the search of some decisions but that it remains limited. The publication of first instance decisions is "sporadic" and there are no guidelines on publication. Peru adds that it is assessing the feasibility of further addressing this recommendation.

*Recommendation 10(b) – Not implemented:* In Phase 2, Peru had guidance for prosecutors on effective collaboration agreements. Since Phase 2, a Protocol for Effective Collaboration Agreements was published in December 2022. (Also published was a Protocol for the Application for Payment of Civil Reparation, though this is not a non-trial resolution.) However, Peru still does not have guidance on two other types of non-trial resolutions, namely early termination of proceedings and early conclusion of proceedings. The Ministry of Justice and Human Rights, through the General Directorate of Criminological Affairs and the General Directorate of Normative Development and Regulatory Quality, is designing a guide on early termination for dissemination among justice system operators. However, the guide is only planned and is subject to validation by the General Directorate, PPO and judiciary. Peru states that the new guide will incorporate aspects related to corporate crime in the two above-mentioned December 2022 protocols on effective collaboration agreements and civil reparation. Peru also refers to a 2018 [Protocol of Interagency Action for Implementation of Early Termination of Proceedings](#). But as the Phase 2 Report (para. 106) pointed out, this document does not address the factors that a prosecutor should consider before exercising his/her discretion to enter into a resolution or to agree to a particular level of sentence reduction, e.g. the type and seriousness of the offence, circumstances of the offender.

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<sup>3</sup> Effective collaboration agreement in the [Odebrecht Case](#); Press Releases of the Procuraduría General del Estado on [9 Feb., 2022](#), [16 Sep. 2022](#), [3 Jan. 2023](#), [18 Jan. 2023](#).



**Regarding statute of limitations:**

*Recommendation 11 – Not implemented:* Preliminary proceedings and preparatory investigations must be completed within a short limitation period. This is especially concerning in foreign bribery cases which generally require the seeking of mutual legal assistance. Unfortunately, Peru did not enact the draft amendment of CPC Art. 342 that was under consideration during Phase 2. The draft would have increased the deadline to 36 months for a preparatory investigation that requires international judicial assistance or co-operation.

**Regarding investigative tools:**

*Recommendation 12(a) – Not implemented:* In Phase 2, the Working Group found that each financial institution provided information to law enforcement in different formats. It thus recommended that Peru develop a standard template for banks to provide information. Since Phase 2, a “Reference Glossary on banking secrecy” has been prepared that contains “details of the information (active, passive and neutral operations) that the competent authorities may request from companies in the financial system.” Thus, the document is more akin to a guideline rather than a template for providing information. Peru states that the Reference Glossary requires information to be submitted in Excel format. But this falls short of standardisation, as it leaves financial institutions with wide discretion to structure their Excel documents differently. The Reference Glossary is also only pending approval for official use.

*Recommendation 12(b) – Partially implemented:* In 2022, the School of Public Prosecutors held five training events that covered freezing and seizure of assets. One event covered specifically corporate accountability for corruption offences. More events targeting corruption and bribery cases would be desirable, as would guidance to law enforcement and prosecutors. The UIF is evaluating an amendment to Law 27 693 which would specify more expressly that the freezing of funds and/or assets by the UIF covers predicate offences for money laundering, including foreign bribery. It is not clear whether the amendment would apply to only the UIF or also criminal law enforcement bodies. Data from Peru indicate that freezing was imposed on average in 4.6 corruption cases annually in 2013-2022, which is almost identical to the corresponding figure in Phase 2 (4.7).

**Regarding judicial and prosecutorial independence and integrity:**

*Recommendation 13(a) – Fully implemented and convert to follow-up:* In 2018, Law 30 944 created the National Control Authorities of the PPO and Judiciary (ANCMP and ANCPJ). The bodies would be responsible for prosecutorial and judicial disciplinary cases that do not call for dismissal. The heads of the ANCMP and ANCPJ were appointed in August 2022 and May 2023 respectively. However, a key feature of the reform was the creation of ANCMP “control” prosecutors chosen through public merit-based competitions. These have yet to be appointed. In the meantime, staff from the ANCMP’s predecessor perform the role of “control” prosecutors, but this was envisioned by Law 30 944 only as a transitional measure. The National Board of Justice (JNJ) states that no “control” prosecutors or judges have yet to be appointed as this “will be done progressively” in line with Law 30 944. The Working Group will follow up the appointment of “control” prosecutors and judges through a merit-based process.

*Recommendation 13(b) – Partially implemented:* Peru has taken steps to fill judicial and prosecutorial vacancies, resulting in the appointment of 79 judges and 78 prosecutors as of 25 January 2023. Eight competitions to fill vacancies are ongoing. However, the proportion of prosecutors who are provisional has increased from 46% in Phase 2 to 65.82% as of 15 May 2023. The number of provisional and supernumerary judges have also increased from 1 558 to 1 979. Peru has not reviewed the rules for judicial and prosecutorial appointment with the view to eliminating the use of provisional and supernumerary judges and prosecutors.

*Recommendation 13(c) – Fully implemented:* Peru has considered increasing judicial and prosecutorial appointments in the lower levels of courts. The National Board of Justice (JNJ) will launch in 2023 nine more competitions for 308 judicial and 193 prosecutorial positions at the three lowest levels.

*Recommendation 13(d) – Partially implemented:* In 2023, Law 31 718 amended Legislative Decree 52 (PPO Law) Art. 29 to provide that provisional prosecutors have the same duties, rights, powers, prerogatives, prohibitions and incompatibilities as “titular” (i.e. regular) prosecutors. Law 30 483 (PPO Career Law) Arts. 64-65 were also amended to specify that a provisional prosecutor should be the

prosecutor with “the highest position in the merit table”, or alternatively the prosecutor with the highest “seniority, speciality and experience in the functions to be performed”. Peru states that these amendments give greater stability to provisional prosecutors, including those who work in FECOF and the Lava Jato Special Team. However, these measures do not protect prosecutors – both provisional and titular (regular) – from unjustified removals from cases, which is the focus of the recommendation. Prosecutor circular 01-2023-MP-FN-OREF sets out guidelines for dismissing a prosecutor. But it does not address the Attorney General’s power to remove and re-assign prosecutors from specific cases. Peru is considering changing the circular to address this shortcoming.

### **Regarding mutual legal assistance (MLA) and extradition:**

*Recommendation 14(a) – Partially implemented:* Since Phase 2, the PPO’s Legal Co-operation and Extraditions Unit (UCJIE) has improved the SUCJIE system for recording information on MLA requests. The system can produce some statistics, such as the number of requests broken down by foreign states, status and type of offence. In particular, Peru states that the system now records whether a request was made under the Convention and the underlying offence is foreign bribery. This is a major improvement. Nevertheless, statistics on some matters that would be vital for assessing the performance of Peru’s MLA system remain unavailable. For example, SUCJIE cannot generate statistics on requests’ execution times since the Code of Criminal Procedure does not set time limits for execution, explains Peru. Statistics on the reasons for refusing a request are also unavailable. On 8 June 2023, UCJIE asked its IT staff to rectify this shortcoming. Until such statistics are available, this recommendation is not fully implemented and will be revisited in the future.

*Recommendation 14(b) – Fully implemented and convert to follow up:* The UCJIE is Peru’s central authority for international co-operation. To address the Working Group’s recommendation on duplicate outgoing MLA requests, it held working groups, training events and meetings with specialised prosecutor offices, 34 prosecutorial districts and two Supreme Court Justices. It also communicated the Working Group’s recommendation to the Secretary General of the Attorney General’s Office. These activities are useful, but Peru is encouraged to repeat them regularly in the future. The Working Group will follow up in a future evaluation whether these efforts are sufficient to resolve the issue.

*Recommendation 14(c) – Not implemented:* Peru is considering amending CPC Art. 510(2) to state that MLA and extradition cannot be refused on the ground that Peru has jurisdiction over the crime underlying a request for assistance. The amendment would be a positive development but is unlikely to be sufficient, since Phase 2 participants cited other factors in deciding whether to extradite a Peruvian national, such as “the strength of the requesting state’s case, the interest of the requesting state in the case, and the seriousness of the crime in each country” (Phase 2 Report para. 178). In any event, the Working Group only considers enacted legislation when assessing the implementation of the Convention.

*Recommendation 14(d) – Partially implemented:* As with recommendation 14(a), the improvements to SUCJIE are positive. The system now records whether a request was made under the Convention and the underlying offence is foreign bribery. But statistics on matters that would be vital for assessing the performance of Peru’s extradition system (e.g. reasons for refusing a request and execution times) remain unavailable. UCJIE asked its IT staff on 8 June 2023 to rectify this shortcoming. Until such statistics are available, this recommendation is not fully implemented and will be revisited.

### **Regarding the foreign bribery offence:**

*Recommendation 15(a) – Not implemented:* In Phase 1, Peru stated that the foreign bribery offence requires proof that the foreign public official is aware of the bribe offer or promise. The Working Group recommended that Peru take steps to clarify that this is not an element of the offence. Peru has not taken and does not intend to take action to implement this recommendation. It states that implementation will “depend on jurisprudential development”.

*Recommendation 15(b) – Fully implemented and convert to follow-up:* Peru has enacted Law 31 501 which introduced a definition of a foreign public official:

Article 425-A. Foreign public official or servant

A foreign official or public servant is anyone who, regardless of the nature of the relationship he or she maintains with the entities or bodies of a foreign State, military, police forces or any foreign

national security agency, companies or corporations that are included in the business activity of a foreign State and who by virtue of this acts as a member, official, appointee, nominee or representative of these, even if his or her position emanates from popular election. Included within this scope are those who exercise these functions or roles in international organisations.

Peru states that this new provision uses language similar to the definition of a domestic public official, in particular CC Art. 425(3)). However, there are subtle differences between Arts. 425-A and 425(3). Whether the two provisions would be interpreted identically would need to be followed up, especially regarding the coverage of holders of legislative, judicial or administrative office; companies hired by a foreign government to perform a public function; individuals hired as a consultant in his/her own capacity to perform a public function; and whether the term “a foreign State” includes all levels and subdivisions of government, from national to local, as well as any organised foreign area or entity, such as an autonomous territory or a separate customs territory.

More troubling is that Law 31 501 amended the foreign bribery offence to limit its application to Peruvian individuals and companies, which clearly contravenes Convention Art. 1:

Article 397-A. Transnational bribery

Whoever, having Peruvian nationality or representing a legal person domiciled in Peru, under any modality, offers, grants or promises directly or indirectly to a foreign official or public servant a donation, promise, advantage or undue benefit that results in their for their own benefit or that of another person, so that said servant or public official performs or omits acts proper to their position or employment, in violation of their obligations or without failing in their obligation to obtain or retain business or another undue advantage in the carrying out international economic or commercial activities, will be punished with imprisonment of not less than five years nor more than eight years; disqualification, as appropriate, in accordance with paragraphs 1, 2 and 8 of Article 36; and, with three hundred sixty-five to seven hundred thirty days-fine.

Peru is recommended to take urgent action to rectify this deficiency as soon as possible.

*Recommendation 15(c) – Not implemented:* Peru’s foreign bribery offence does not cover the bribery of a foreign official to use his/her position outside his/her authorised competence. A bill drafted to expand the trafficking in influence offence would not have rectified this deficiency even if it had been enacted, for two reasons. First, the amended offence would have applied only to the person selling the influence and not the one purchasing it. (The former is analogous to a bribed official and the latter the briber.) Second, unlike the Convention, the influence trafficking offence would require proof that the bribe recipient “invoked or has real or simulated influence” over another foreign public official. The offence would thus “require proof of elements beyond those which would be required to be proved if the offence were defined in [Convention Art. 1]” (Convention Commentary 3).

*Recommendation 15(d) – Not implemented:* Peru has not taken steps to amend its legislation to extend its foreign bribery offence to preparatory acts, and to eliminate two preconditions for exercising nationality jurisdiction described in the Phase 2 Report. Peru is only considering a “policy proposal” on this issue, not a legislative amendment as recommended by the Working Group.

### Regarding the liability of legal persons:

*Recommendation 16(a) – Not implemented:* Corporate Liability Law (CLL) Art. 2 states that after a merger or spin-off, only the “absorbing legal person” can be fined for an offence committed before a split. Peru has not enacted legislation to clarify to which entities successor liability applies after a corporate spin-off.

*Recommendation 16(b) – Partially implemented:* Peru has not amended the CLL to ensure that a legal person is liable for foreign bribery that benefits both the natural person perpetrator and the legal person. It has also not amended the CLL to ensure that liability arises even when the benefit intended for the legal person does not eventually materialise. Regarding bribery through an intermediary, Law 31 740 was enacted on 13 May 2023. The Law amended CLL Art. 3(1)(a) to specify that corporate liability results from crimes committed “under any of the modalities of authorship and participation provided for in the Criminal Code”. This clarifies that corporate liability results when a senior company executive commits foreign bribery through an intermediary. But Art. 3(1)(a) is only one of three modes through which corporate liability arises. The same clarification was not made to CLL Art. 3(1)(b) which deals with crimes

ordered or authorised by senior executives, or Art. 3(1)(c) which covers crimes committed by lower-level persons.

*Recommendation 16(c) – Partially implemented:* The Anti-Bribery Recommendation Annex I permits a compliance defence to corporate liability when foreign bribery is committed by lower-level persons in the company. However, it does not allow a similar defence to foreign bribery committed, authorised or directed by senior management. Law 31 740 amended CLL Arts. 12 and 17 to exclude the prevention model defence when a crime is committed by a legal person’s partners, directors, de facto or legal administrators, legal representative etc. But in such cases, the available sanctions are drastically reduced: a fine can be reduced by up to 90%, and other sanctions such as debarment and confiscation are not available. This severe reduction of sanctions is tantamount to a full defence against liability. Furthermore, the amendment only affects liability when a senior person commits a crime. The prevention model defence continues to be available when a senior person authorises or directs a crime.

*Recommendation 16(d) – Not implemented:* Peru has not amended CLL Art. 3(c) to ensure that company management’s duties of supervision, surveillance and control are not set by the company itself. It states that it will draft a bill to address this issue.

*Recommendation 16(e) – Not implemented:* Law 31 740 made amendments to CLL Art. 17 that do not address the Recommendation. The language providing the prevention model defence was moved from Art. 17.1 to Art. 12 (see recommendation 16(c)). Art. 17.1 was then replaced essentially by text from the previous Art. 17.2.2. The list of mandatory model elements in Art. 17 is unchanged in substance. The list of optional elements in the CLL Regulation is untouched. The legislation therefore remains unaligned with the Working Group’s Good Practice Guidance on Internal Controls, Ethics and Compliance.

*Recommendation 16(f) – Fully implemented:* The amendments to CLL Art. 17 clarify that all prevention models, including those of SMEs, must take into account the legal person’s risk profile. Models of SMEs are no longer permitted to include only one of the listed minimum elements.

*Recommendation 16(g) – Fully implemented:* Law 31 740 repealed the provision in CLL Art. 18 that binds the prosecutor to the assessment of prevention models by the Superintendence of the Securities Market (SMV). A new CLL Art. 19 adds that the SMV’s report “is assessed by the prosecutor and the judge with the other evidentiary elements incorporated in the investigation or the proceedings”.

*Recommendation 16(h) – Fully implemented:* Law 31 740 repealed CLL Art. 17(4).

*Recommendation 16(i) – Fully implemented:* CLL Art. 2(1) lists the legal entities to which the CLL applies. Law 31 740 clarified that the CLL also applies to foreign legal persons that “carry out or develop their activities, directly or indirectly, in the national territory, through any corporate, contractual or business modality”.

## Regarding the money laundering offence

*Recommendation 17(a) – Not implemented:* Peru introduced a new CC Art. 2(5) which provides for jurisdiction to prosecute extraterritorial foreign bribery committed by a Peruvian national or representative of a legal entity domiciled in Peru. But recommendation 17(a) concerns Peru’s jurisdiction to prosecute the laundering in Peru of the proceeds of foreign bribery that had been committed outside of Peru. Peru has not taken steps to clarify or raise awareness of the jurisdictional rules for this situation.

*Recommendation 17(b) – Fully implemented:* The Public Prosecutor’s School, judiciary and Academy of the Magistracy organised seven courses, workshops and conferences on money laundering, three of which specifically addressed corruption-related money laundering.

*Recommendation 17(c) – Partially implemented:* Peru updated a study<sup>4</sup> on the sentences imposed for money laundering referred to in the Phase 2 Report (para. 236). The updated study again indicated the number of convictions of money laundering predicated on corruption offences. It did not provide more detailed statistics such as the investigations and prosecutions in money laundering cases. The Working Group requires statistics on enforcement, not only convictions.

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<sup>4</sup> SBS (2022), [III Informe de Sentencias de Lavado de Activos en el Perú](#).

### Regarding the false accounting offence

*Recommendation 18(a) – Partially implemented:* Peru enacted a new offence in CC Art. 198(9) that covers the range of accounting misconduct described in Convention Art. 8. However, as the Phase 2 Report (para. 238) pointed out, CC Art. 198 only applies to “a person exercising administrative functions or representation of a legal entity”. However, Convention Art. 8 applies to any individual that engages in the misconduct described in the Article, and does not require proof of the individual’s functions or status. CC Art. 198 is also narrower than Convention Art. 8 because it requires proof of damage to the company or third parties.

*Recommendation 18(b) – Partially implemented:* Law 31 740 added CC Art. 199 on parallel accounting to the list of offences that could trigger corporate liability under the CLL. But as the Phase 2 Report (para. 238) pointed out, CC Art. 199 prohibits the maintaining of parallel accounts but not other types of accounting misconduct. The offence also requires proof that the act is committed to obtain an undue advantage. These features make the offence narrower than Convention Art. 8. Law 31 740 also extended the CLL to the offence under Criminal Tax Law Art. 5. However, the Phase 2 Report had found that this offence, too, is narrower than the Convention because it only covers false accounting with tax consequences. It is unclear why Law 31 740 did not extend the CLL to cover offences under CC Art. 198, which Peru has amended to create a new false accounting offence (see recommendation 18(a)).

*Recommendation 18(c) – Partially implemented:* The new false accounting offence in CC Art. 198(9) and the CC Art. 199 parallel accounting offence are punishable by 2-5 years’ imprisonment and 180-365 fine days. This is positive. However, as mentioned under recommendations 18(a) and (b), these two offences do not fully implement Convention Art. 8. For legal persons, Law 31 740 made legal persons liable for some of the accounting misconduct described in Convention Art. 8 (see recommendation 18(b)). If convicted, companies would then be fined two to six times the benefit of an offence, or (if the benefit cannot be determined) 10-10 000 [UITs](#) (PEN 49 500-49.5 million, EUR 12 000-12 million).

*Recommendation 18(d) – Not implemented:* Peru has not taken steps to increase the actual enforcement of foreign bribery-related false accounting. Statistics provided by Peru show that the vast majority of false accounting cases are under the Criminal Tax Law and are hence likely related to tax offences, not bribery. FECOF states that there are no false accounting cases related to foreign bribery. Nevertheless, it will continue to follow up the implementation of this recommendation.

### Sanctions for foreign bribery

*Recommendation 19(a) – Fully implemented:* Law 31 740 adopted by Congress amended CLL Art. 7. If convicted, a legal person would be fined two to six times the benefit obtained or expected to be obtained from the offence. If this value cannot be determined, then the legal person would be fined 10-10 000 [UITs](#) (PEN 49 500-49.5 million, EUR 12 000-12 million). The actual fine to be imposed within this range would be determined based on a list of factors.

*Recommendation 19(b) – Partially implemented:* The National Judicial Registry and IT Management have set the terms of reference and resource requirements for the Registry of Sanctioned Legal Entities. However, the Registry is still not operational.

*Recommendation 19(c) – Not implemented:* Peru has not taken action to ensure that sanctions against natural persons for foreign bribery in practice – particularly in light of sentence suspensions – are effective, proportionate and dissuasive. It refers to the prohibition of suspensions in CC Art. 57. But the provision applies to a Peruvian official, not a person who bribes a foreign official. It is also not a new provision but was in force in Phase 2.

*Recommendation 19(d) – Not implemented:* Peru has not taken steps to ensure that confiscation is routinely applied in foreign bribery cases.

*Recommendation 19(e) – Not implemented:* Peru has not taken steps to maintain detailed statistics on the sanctions and confiscation imposed in foreign bribery cases.

*Recommendation 19(f) – Fully implemented:* The *Ficha Única del Proveedor* allows procuring authorities to check whether a supplier has been debarred. The Electronic State Procurement System also prevents a debarred supplier from registering in the system. The *Ficha Única* has links to the debarment lists of the World Bank and Inter-American Development Bank.

*Recommendation 19(g) – Fully implemented:* From June 2021 to March 2023, the *Organismo Supervisor de las Contrataciones del Estado* (OSCE) organised 7 training events that dealt with “impediments to contracting with the state”.

### Foreign bribery enforcement actions

The Phase 2 Report (paras. 108-112) found Peru’s enforcement of corruption cases was less than adequate until at least 2017. Three known allegations of active foreign bribery in the *Oil Group X Case* were not investigated. Given the lack of active foreign bribery cases, the Report also considered passive foreign bribery cases to assess Peru’s enforcement capacity. It found that the *Printing Company Case* was investigated only after the Phase 2 evaluation began, while the *Aircraft Services Case* resulted only in a minor administrative sanction.

More promising were cases conducted by the Lava Jato Special Team, many of which involved passive foreign bribery. By the time of Phase 2, the Special Team had over 20 cases, many of which involved corruption by Peruvian officials at the highest levels. However, virtually all of these cases were still ongoing. Moreover, many of the cases alleged facts that suggested possible bribery, but this crime was identified as an offence under investigation in only six cases. Alternate offences of collusion and money laundering were charged instead. Corporate enforcement was also lacking.

Since Phase 2, the assessment of Peru’s enforcement of foreign bribery has not changed substantially. The *Oil Group X* active foreign bribery cases are still not investigated, and likely will remain so given the age of the allegations. No new active foreign bribery allegations have been detected. The status of the *Printing Company* and *Aircraft Services Cases* are unchanged.

Most importantly, virtually all of the Lava Jato Special Team cases considered in Phase 2 are still ongoing. Of the Team’s 89 current prosecutorial files, only 2 are under trial. The remaining 87 are still in a preliminary or preparatory investigation, or at the “intermediate stage”. This is not unreasonable, given the size and complexity of the cases. That said, many of the cases started as early as 2017. Furthermore, 27 defendants in these cases have been convicted after non-trial resolutions (26 via “effective collaboration agreements” including 1 with a legal person, and 1 “early termination of proceedings”). Only 3 of the criminal sentences were the result of convictions after trial. Until the Special Team’s cases reach successful conclusions, it is clear that Peru must improve its capacity to investigate and prosecute complex cases of corporate corruption. Furthermore, as in Phase 2, bribery charges and corporate enforcement remain lacking. The Special Team’s 89 current cases involve only 17 bribery charges and 22 legal entities. Future corporate and bribery convictions are necessary to dispel concerns over Peru’s enforcement of the bribery offence and its ability to impose liability for bribery under the Corporate Liability Law.

### Follow-up issues

Case law and practice have not clarified the issues identified for follow-up in the Phase 2 Report. In particular, Peru should provide more details on the major issues and obstacles to international co-operation, especially the specific matters listed in follow-up issue 20(e).

## Conclusions of the Working Group on Bribery

6. Based on these findings, the Working Group concludes that recommendations 1(b), 3(b), 4, 5(a), 6(a), 6(c), 6(e), 7(c), 8(b), 8(e), 9(a), 9(c), 9(e), 13(a), 13(c), 14(b), 15(b), 16(f)-(i), 17(b), 19(a), and 19(f)-(g) have been fully implemented; recommendations 1(a), 2, 5(b), 6(b), 7(d), 8(c), 9(d), 10(a), 12(b), 13(b), 13(d), 14(a), 14(d), 16(b)-(c), 17(c), 18(a)-(c), and 19(b) partially implemented; and recommendations 3(a), 6(d), 7(a)-(b), 8(a), 8(d), 9(b), 10(b), 11, 12(a), 14(c), 15(a), 15(c)-(d), 16(a), 16(d)-(e), 17(a), 18(d), 19(c)-(e) not implemented. The issues in recommendations 6(e), 9(c), 13(a), 14(b) and 15(b) should be followed up in the future. The Working Group invites Peru to report back in writing within one year on the implementation of recommendations 3(a), 9(b), 9(d), 10(a)-(b), 11, 13(b), 13(d), 14(a), 14(c), 14(d), 15(a), 15(c)-(d), 16(a)-(e), 19(b)-(e); the issues in recommendations 9(c) and 13(a); the amendment to the foreign bribery offence to include non-Peruvian nationals and legal persons not domiciled in Peru; and

Peru's foreign bribery enforcement actions. The Working Group will continue to monitor follow-up issues identified in the Phase 2 Report as case law and practice develop.

## Annex. Phase 2 Evaluation of Peru: Two-Year Written Follow-Up Report by Peru

### Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 2 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 2 Monitoring Information Resources](#) (page 18).\*

**Name of country:** PERU  
**Date of approval of Phase 2 Report:** 17 June 2021  
**Date of information:** 04 April 2023

### *Part I: Recommendations for Action*

Regarding Part I, responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

### Recommendations for ensuring effective prevention and detection of the bribery of foreign public officials

#### **Text of recommendation 1(a):**

1. With respect to prevention and awareness-raising, the Working Group recommends that Peru:
- (a) assess its foreign bribery risk and its approach to enforcement, and include policies and actions in its national anti-corruption strategy that are commensurate with this risk. (2009 Recommendations II and III(i));

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

As part of the process of updating the National Integrity and Anti-Corruption Policy, guidelines for action have been technically established that are specifically linked to transnational bribery. Thus, the guidelines incorporated are:

- "Strengthen the regulatory framework on asset recovery and transnational bribery".
- Increase the implementation of compliance and prevention models for national and transnational corruption in the private sector".

In addition, the Public Integrity Secretariat by Resolution No. 003-2023-PCM/SIP approved the "Integrity Standard Assessment Guide for Stage 2: Application and implementation of integrity mechanisms and tools", where the following question is expressly incorporated as part of the questions to be answered every six months by public entities:

- Does the entity include in the 2023 People Development Plan specific training on: i) Conflict of Interest Management; ii) Ethical Decision Making; iii) Interest Management; iv) Crimes against public

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\* As agreed, the evaluation schedule is based on the Phase 4 Two-Year Written Follow-Up Report Timetable set out in Annex 8 to the Phase 4 Monitoring Guide.



administration, including transnational bribery; or, v) Risk Management?

These actions ensure that the fight against transnational bribery is part of the National Integrity and Anti-Corruption Policy, as well as mechanisms to monitor its implementation.

**ANNEX 01:**

(a) Screenshot of the incorporation of the guidelines into the text of the update of the National Integrity and Anti-Corruption Policy.

b) Resolution N° 003-2023-PCM/SIP and screenshot of question 69 of the "Integrity Standard Assessment Guide for Stage 2: Application and implementation of integrity mechanisms and tools".

c) Integrity Standard Assessment Guide - Stage N° 02

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 1(b):**

1. With respect to prevention and awareness-raising, the Working Group recommends that Peru:

(b) take urgent steps to raise awareness of foreign bribery and the Convention among all relevant public and private sector stakeholders (2009 Recommendations II and III(i)).

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

A) The Lima Chamber of Commerce (CCL) conducted an interview in the CCL's Weekly Business Magazine with Secretary of Public Integrity of the Presidency of the Council of Ministers, who addresses the private sector, mainly the 17,000 companies associated to the CCL, to inform about OECD programmes and policies to fight corruption, especially about the "Convention on Combating Bribery of Public Officials in International Business Transactions" and the efforts to combat the crime of transnational bribery. The interview was published in the CCL's Revista Digital Empresarial and disseminated through its social networks: facebook and LinkedIn. (<https://lacamara.pe/sara-farfan-la-ocde-aliado-estrategico-del-peru-en-la-lucha-contra-la-corrupcion/>)

(<https://www.facebook.com/107854269243024/posts/pfbid0m64TuYLwm641hmKSse7btGTpbSqRX4G4UHU4qBhoVFvj3JWRzVEejAwAtNQ1ml/>)

(<https://www.linkedin.com/feed/update/urn:li:activity:7046194607084195840/>)

B) The Lima Chamber of Commerce (CCL) created a folder on the institutional website of the CCL with the following option: "OECD-Anti-Bribery Convention"; which contains documentation for consultation and download for all associated private companies, who have access to:

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related documents.

- Implementing the OECD Anti-Bribery Convention - Phase 2 Report: Peru\_English

- Implementing the OECD Anti-Bribery Convention - Phase 1 Report: Peru\_English.

- OECD-Peru Country Programme - Executive summaries and main recommendations.

- The OECD Anti-Bribery Convention and the Working Group on Bribery.

- Anti-Corruption Ethics and Compliance Elements Handbook for Business.

(<https://www.camaralima.org.pe/ocde-convencion-anticohecho/>)

C) The Ministry of Foreign Affairs has published the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" on the intranet page of the Ministry of

Foreign Affairs, which can be downloaded and consulted by all officials (administrative and diplomatic) of the Ministry, whether they are working abroad or in the national territory.

D) The Ministry of Foreign Affairs has sent a memorandum to all embassies, consulates, consular sections and representations enclosing the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" and informing them of the importance of this international instrument in the fight against transnational bribery, Emphasising the recommendations made by the OECD to Foreign Ministry officials on the detection of reports published in foreign media involving cases of international bribery involving Peruvian individuals, companies and officials, as well as the obligation to alert on allegations of transnational bribery and to provide information and assistance.

E) PROMPERU published the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" on the institution's intranet page, which can be downloaded and consulted by all PROMPERU officials working in Peru or abroad. Likewise, graphic pieces of dissemination called "Know about Transnational Bribery" and "What is the OECD Anti-Bribery Convention" have been disseminated on PROMPERU's intranet and by e-mails addressed to the Commercial Economic Offices and to all PROMPERU's staff.

F) The judiciary, by means of Circular No. 00004-2023-ST-UETI-CPP-PJ, sent and informed all the higher courts at the national level of the content of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the recommendations relating to the judiciary, urging them to take action to implement it.

G) The Judiciary sent e-mails to all judges in Peru (dissemination campaign) informing them about the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", attaching the text of this international instrument, the Phase 2 Report and the matrix with the OECD recommendations related to the Judiciary.

H) The National Confederation of Private Business Institutions (CONFIEP) is updating its Code of Conduct, which will also include a regulation. As of February 2023, 20 guilds (91%) have approved in their respective boards of directors and/or executives, the updating of the Code of Conduct and the regulations. The updated Code of Conduct will include the principle of anti-corruption, which refers to the crime of bribery, as well as the current regulations on transnational active bribery (Art. 397- SA Penal Code).

I) The Academy of the Magistracy, through its institutional library, has disseminated the OECD Anti-Bribery Convention, highlighting the importance of the investigation and prosecution of the crime of transnational active bribery of both natural and legal persons. Likewise, the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" has been included on the website of the Academy of the Judiciary for downloading and consultation by all judges, prosecutors and justice operators.

J) The National Society of Industries developed a graphic and communication piece for the dissemination of the "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" as well as its recommendations, addressed to all members by e-mail and on its website.

K) The Public Integrity Secretariat has made the "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" and its evaluation reports available to all citizens (<https://www.gob.pe/institucion/can/colecciones/17620-convencion-anticohecho-de-la-ocde-e-informes-de-evaluacion-al-peru>). Likewise, by means of multiple official letters, it has been ordered that integrity officers of all entities of the Executive Branch, as well as of the Judiciary, the Public Prosecutor's Office, the Attorney General's Office and the National Superintendence of Customs and Tax Administration, proceed to carry out the necessary actions to promote and disseminate the following:

- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with special mention of Article 5.
- Law 30424, Law regulating the Administrative Responsibility of Legal Persons, applicable to the crime

of transnational active bribery.

- Article 397-A of the Criminal Code on Transnational Active Bribery, specifying the elements of the offence.

- The Single Citizen Complaints Platform ([www.denuncias.servicios.gob.pe](http://www.denuncias.servicios.gob.pe)), specifying "transnational bribery" as one of the grounds for complaint.

L) The Office of the Attorney General of the State has developed the "Road to the OECD: Peru and its fight against transnational bribery". (30 March 2023).

#### ANNEX 2:

(a) Ministry of Foreign Affairs: Screenshot of the intranet system of the Ministry of Foreign Affairs and Memorandum ETI000172023.

b) PROMPERU: Screenshot of PROMPERU's intranet system and graphic pieces produced and disseminated by PROMPERU entitled "Conoce el Cohecho Trasnacional" and "¿Qué es la Convención Anticohecho de la OCDE".

c) Lima Chamber of Commerce: Interview on transnational bribery and screenshot of the web folder on the OECD Anti-Bribery Convention.

d) Judiciary: Circular No. 00004-2023-ST-UETI-CPP-PJ and email to judges on the OECD Anti-Bribery Convention.

e) CONFIEP: Basic presentation on the Code of Conduct that CONFIEP is updating.

f) Academia de la Magistratura: Report N° 022-2023-AMAG-DA-B of the AMAG Library and screenshot of the AMAG website.

g) National Society of Industries: Screenshot of the dissemination of the OECD Anti-Bribery Convention.

h) Secretariat of Public Integrity: Multiple Notices to the integrity officers of all entities of the Executive Branch, as well as the Judiciary, the Public Prosecutor's Office, the Attorney General's Office and the National Superintendence of Customs and Tax Administration. Screenshot of web page dissemination.

i) Attorney General's Office: Graphic piece and documents on the discussion.

**If no action has been taken to implement this recommendation, 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 Lima Chamber of Commerce has scheduled for the months of April, May and July 2023: interviews in the Weekly Business Magazine of the CCL and dissemination of the interview in our social networks and institutional website to the following officials:

- Deputy Superintendent of the Financial Intelligence Unit of the SBS on the "Measures to combat transnational bribery in the fight against corruption - Progress at national and international level". (April 2023)

- Coordinator of Anti-Corruption Prosecutors, Public Prosecutor's Office on "Peruvian legislation to combat cross-border crimes" (May 2023).

- President of the Peruvian Association of Compliance, How does the crime of transnational bribery affect business (July 2023).

The Lima Chamber of Commerce has scheduled for June 2023 a hybrid event (face-to-face/virtual) at its institutional headquarters on "Transnational bribery-challenges and challenges" with national and international speakers and panellists from the public and private sectors. Likewise, in September 2023, a hybrid event at its institutional headquarters on "The regulation of transnational bribery in Peru" with national and international speakers and panellists from the public, private and academic sectors.

The Ministry of Foreign Affairs has scheduled a training activity for Heads of Mission and diplomatic staff on the scope of the crime of transnational bribery and the "OECD Convention on Combating

Bribery of Foreign Public Officials in International Business Transactions" for the last week of April 2023. Additionally, in coordination with the Secretariat of Public Integrity and the UNODC - UN (Peru headquarters), both the Ministry of Foreign Affairs and PROMPERU will participate in the training activity to be held in the last week of May 2023 or first week of June 2023, on the subject of transnational bribery.

The Judiciary has scheduled the academic event entitled Virtual Course: "The crime of transnational bribery in relation to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", for the month of April 2023, which will be aimed at magistrates, judicial and administrative staff of the Criminal Modules of the 35 Superior Courts of Justice in the country.

The Judiciary has scheduled for April 2023 the dissemination of information flyers on the Facebook page of the UETI CPP (Institutional Technical Team Unit of the Code of Criminal Procedure), on the crime of transnational bribery based on our national legislation and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development - OECD; The recommendations of the Anti-Bribery Working Group, so that members of the Judiciary and the general public are aware of them.

The National Confederation of Private Business Institutions (CONFIEP) plans to carry out training programmes during the second half of 2023 in the framework of the updating of its Code of Conduct, which will include transnational bribery as a casuistry or topic to be analysed in a working group. Two newsletters will be issued in May 2023 with an overview of the OECD Anti-Bribery Convention and its importance.

The Academy of the Judiciary is planning to hold five (05) national virtual conferences for magistrates and judicial assistants of the Judiciary and the Public Prosecutor's Office between April-November 2023. Likewise, the course "Administrative liability of legal persons" will be held between June and July 2023 and the specialisation course on organised crime and corruption of public officials, to be held from June to October 2023, will incorporate the OECD Anti-Bribery Convention and all national regulations related to this international instrument as part of the study materials.

During the months of April and May 2023, the National Society of Industries will conduct a training (Webinar) for its partners on anti-bribery and transnational bribery standards, as well as the preparation of a note of legal interest on the importance of implementing a compliance programme. In addition, a Legal Interest Note on bribery modalities, including transnational bribery, will be prepared in the second half of 2023.

The Attorney General's Office will produce from April 2023 informative infographics, memoranda and official letters to disseminate the OECD Anti-Bribery Convention and the fight against transnational bribery.

The Ministry of Justice and Human Rights, through the Centre for Justice and Human Rights Studies (CEJDH), will develop two virtual conferences (April and May 2023) in the framework of the programme "Justice and Rights Tuesdays", on topics related to the importance of transnational bribery and the scope of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Similar activities will also be scheduled during 2023.

#### **Text of recommendation 2:**

2. Regarding the reporting of foreign bribery, the Working Group recommends that Peru raise awareness of the duty of public officials to report foreign bribery under CPC Art. 326(b), and clarify the channels for making such reports (2009 Recommendations III (iv), IX(ii) and Annex I.A).

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

In the discussion "On the road to the OECD: Peru and its fight against transnational bribery". (30 March 2023) developed by the Attorney General's Office, the importance of reporting the crime of

transnational bribery was emphasised.

The Ministry of Public Integrity has proceeded to incorporate transnational bribery (<https://denuncias.servicios.gob.pe/>) as one of the cases that can be reported in the "Single Digital Platform for Citizens". This is expressly stated as follows:

"Access to Undue Advantages (including national and transnational bribery): When the public servant encourages, solicits or accepts any undue advantage or benefit (gifts, personal donations, goods, incentives, courtesies or favours). It includes bribery of a foreign public official to obtain or retain business or other undue advantage in the conduct of international economic or commercial activities.

PROMPERU through Memorandum Circular No. 00004-2023-PROMPERU/GG-ORH has established the flow for making complaints in matters of transnational bribery, stating:

- "If it is known that a Peruvian or Peruvian company is linked to the bribery of a foreign public official or international organisation (direct or indirect receipt of a gift, promise, advantage or undue benefit), to perform or omit acts proper to their position or employment in international business or trade, report it to the email [secretariatecnicapad@promperu.gob.pe](mailto:secretariatecnicapad@promperu.gob.pe), with the subject "Denuncia de Cohecho Transnacional". The report must include a detailed description of the facts and relevant documentation.

- PROMPERÚ's Technical Secretariat will evaluate the complaint received and, in the event that the complaint is likely to constitute criminal conduct, will forward it to the Attorney General's Office of the Ministry of Foreign Trade and Tourism (MINCETUR) with a copy to PROMPERÚ's Legal Advisory Office. In case the information received is not classified as a crime, the Technical Secretariat will proceed in accordance with its competences".

**ANNEX 3:**

a) Graphic piece and documents on the conversation "Road to the OECD: Peru and its fight against transnational bribery".

b) Screenshot of the "Plataforma Digital Única del Ciudadano" which includes transnational bribery as an alleged offence.

c) Memorandum Circular N° 00004-2023-PROMPERU/GG-ORH

**If no action has been taken to implement this recommendation, 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 Ministry of Foreign Affairs is preparing a circular memo for staff (with emphasis on diplomatic staff and staff serving abroad) to specify the procedure for reporting or denouncing transnational bribery, to be carried out between April and May 2023.

In April and May 2023, the Ministry of Justice and Human Rights, through the Directorate for the Promotion of Justice and Strengthening of Legal Practice, will hold dissemination events on the duty of lawyers to report to the competent authority those crimes of which they are aware, including transnational bribery, and which must be investigated by the competent authority. The aforementioned dissemination activity is closely linked to the purpose of the Project "Strengthening the MINJUSDH in the fight against corruption and organised crime - PRODOC", which is linked to the OECD recommendation. During 2023, MINJUSDH, through the Directorate for the Promotion of Justice and Strengthening of Legal Practice of MINJUSDH, will hold events to raise awareness about reporting transnational bribery and disseminate the channels to do so.

**Text of recommendation 3(a):**

3. Regarding whistleblowing, the Working Group recommends that Peru, as a matter of priority:

(a) take appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report to the competent authorities suspected acts of foreign

bribery (2009 Recommendations III(iv), IX(i) and (iii));

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

**If no action has been taken to implement this recommendation, 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 Public Integrity Secretariat is in the process of drafting legislation to address the implementation of this recommendation.

**Text of recommendation 3(b):**

3. Regarding whistleblowing, the Working Group recommends that Peru, as a matter of priority:

(b) raise awareness in the public and private sectors of the importance of whistleblowing and the protection available to whistleblowers (2009 Recommendations III(iv), IX(i) and (iii)).

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

The Public Integrity Secretariat has been measuring progress in the implementation of the integrity model through the preventive capacity index against corruption (ICP), a tool that allows a standardised evaluation of the implementation of the nine (9) components of the integrity model in public administration entities. This assessment is made on the basis of an Integrity Standard defined by the Public Integrity Secretariat. The Integrity Standard is a set of mechanisms and tools that are enforceable over a specified period of time. The objective of setting the standards periodically is to promote a progressive implementation and assessment of the integrity model.

The components that are being evaluated in terms of whistleblowing and whistleblower protection are linked to: i) Implementation of the Single Digital Platform for Citizen Complaints; ii) Approval of a directive on the granting of whistleblower protection measures; iii) Dissemination to civil servants of the entity on the Single Digital Platform for Citizen Complaints and whistleblower protection measures; iv) The entity reports every six months to the Public Integrity Secretariat on the complaints received and protection measures granted.

Thus, in the reports on the results of the corruption prevention capacity index (ICP) issued to date, it has evaluated the components of whistleblowing and whistleblower protection in ministries and entities of the executive branch, the judiciary, regional governments, and constitutionally autonomous bodies.

In addition, the Public Integrity Secretariat has conducted training on corruption reporting and whistleblower protection during the years 2021, 2022 and 2023, as detailed below:

2021

Municipality of San isidro - 07 July 03:00 - 04:30

2022

Supreme Court / 28 April 04:30 - 06:00

Fondo de Desarrollo Pesquero / May 11 03:00 - 04:30

Office of the Ombudsman / 26 July 03:00 - 04:30

Public Prosecutor's Office / August 09 10:00 - 11:30

Ministry of Women and Vulnerable Populations / September 05 03:00 - 04:30

Regional Directorate of Ayacucho / 21st October 03:00 - 04:30

AURORA PROGRAMME / 3rd of November 03:00 - 04:30

National Superintendence for the Control of Security Services, Arms, Ammunition and Explosives for Civilian Use / 4th November 03:00 - 04:30

Public Prosecutor's Office / November 8 03:00 - 04:30

National Penitentiary Institute / 28th of November 03:00 - 04:30

National Superintendence for the Control of Security Services, Arms, Ammunition and Explosives for Civilian Use / 29 November 03:00 - 04:00

2023

Integral Health Insurance 23 January 03:00-04:00

Metropolitan Municipality of Lima 31 January 10:00 - 11:00

**ANNEX 4:**

- a) 2021 and 2022 Corruption Preventive Capacity Index (ICP) Result Reports.
- b) SIP PCM training on whistleblowing and whistleblower protection.
- c) Details of the Preventive Capacity Index (ICP) reports only in relation to whistleblowing and whistleblower protection.

**If no action has been taken to implement this recommendation, 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 National Confederation of Private Business Institutions (CONFIEP), as part of the updating of the Code of Conduct Compliance Regulations, has included the "Whistleblower Channel" management process, which includes corruption-related complaints as a category. As part of the planning of the Whistleblowing Channel, work has been done on its design, which includes the categorisation of reports, complying with the principles established in the recommendations, anonymity if applicable, and the protection of the whistleblower. As of June 2023, programmes will be launched to disseminate the Whistleblowing Channel to members and the general public.

The Lima Chamber of Commerce will conduct an interview with, President of the Peruvian Compliance Association, on the topic: How does the crime of transnational bribery affect business? (July 2023).

The National Society of Industries will proceed in May 2023 on the elaboration and dissemination of the importance of the implementation of a Compliance Programme, focusing, among other issues, on whistleblowing and whistleblower protection.

The Attorney General's Office will produce in April and May 2023 as well as during the current year, graphic and audiovisual pieces highlighting the importance of whistleblowing and whistleblower protection measures.

The Ministry of Justice and Human Rights through the Centre for Justice and Human Rights Studies (CEJDH) will develop in April - May 2023, within the framework of the programme "Justice and Rights Tuesdays", two virtual conferences on issues related to raising awareness on the importance of reporting and the protection available to whistleblowers, linked to the strengthening of the fight against transnational bribery. These activities will take place during the year 2023.

**Text of recommendation 4:**

4. Regarding detection through media reports, the Working Group recommends that Peru take steps to ensure that its law enforcement authorities are aware of media reports of foreign bribery allegations

implicating Peruvian individuals, companies and officials, including media reports circulated by the Working Group to its members (2009 Recommendation III (i) and Annex I.A).

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

The Public Integrity Secretariat has proceeded to share the WGB OECD matrix of cases with both the Public Prosecutor's Office and the Specialised Anti-Corruption Public Prosecutor's Office, which have been carrying out the respective analyses, as evidenced by the response provided by the National Coordination of the Specialised Public Prosecutor's Offices for Officials' Corruption Offences and the Specialised Anti-Corruption Public Prosecutor's Office.

This has even led to the sending of an e-mail to the Technical Secretariat of the WGB - OECD requesting support in relation to five cases included in the aforementioned matrix.

ANNEX 5:

(a) Letters from the Public Integrity Secretariat attaching the WGB OECD case matrix to the Public Prosecutor's Office and Anti-Corruption Public Prosecutor's Office; also, mail to the WGB - OECD Technical Secretariat requesting support in relation to five cases.

b) Response letters from the National Coordination of the Specialised Public Prosecutor's Offices for Officials' Corruption Offences and the Specialised Anti-Corruption Public Prosecutor's Office.

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 5(a):**

5. Regarding the detection by foreign diplomatic representations, the Working Group recommends that the MRE and PROMPERÚ urgently:

- (a) provide information and training as appropriate to its officials posted abroad on Peru's laws implementing the Convention, so that such personnel can provide basic information to Peruvian companies in foreign countries and appropriate assistance when such companies are confronted with bribe solicitations (2009 Recommendation III (i)(iv) and Annex I.A);

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

The Ministry of Foreign Affairs has published the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" on the intranet page of the Ministry of Foreign Affairs, so that it can be downloaded and consulted by all officials (administrative and diplomatic) of the Ministry, whether they are working abroad or in the national territory.

In addition, the Ministry of Foreign Affairs has sent a memorandum to all embassies, consulates, consular sections and representations enclosing the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" and informing them of the importance of this international instrument in the fight against transnational bribery, Emphasising the recommendations made by the OECD to Foreign Ministry officials on the detection of reports published in foreign media involving cases of international bribery involving Peruvian individuals, companies and officials, as well as the obligation to alert on allegations of transnational bribery and to provide information and assistance.

PROMPERÚ proceeded to publish the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" on the institution's intranet page, which can be



downloaded and consulted by all PROMPERU officials working in Peru or abroad. Likewise, graphic pieces of dissemination called "Know about Transnational Bribery" and "What is the OECD Anti-Bribery Convention" have been disseminated on PROMPERU's intranet and by e-mails addressed to the Commercial Economic Offices and to all PROMPERU's staff.

**ANNEX 6:**

(a) Screenshot of the intranet system of the Ministry of Foreign Affairs and Memorandum ETI000172023.

b) Screenshot of PROMPERU's intranet system and graphic pieces produced and disseminated by PROMPERU entitled "Conoce el Cohecho Trasnacional" and "¿Qué es la Convención Anticohecho de la OCDE".

**If no action has been taken to implement this recommendation, 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 Ministry of Foreign Affairs has scheduled a training activity for Heads of Mission and diplomatic staff on the scope of the crime of transnational bribery and the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" for the last week of April 2023. Additionally, in coordination with the Secretariat of Public Integrity and the UNODC - UN (Peru headquarters), both the Ministry of Foreign Affairs and PROMPERU will participate in the training activity to be held in the last week of May 2023 or first week of June 2023, on the subject of transnational bribery.

**Text of recommendation 5(b):**

5. Regarding the detection by foreign diplomatic representations, the Working Group recommends that the MRE and PROMPERÚ urgently:

- (b) clarify and provide training on the procedure for MRE and PROMPERÚ officials to report foreign bribery allegations to Peruvian law enforcement authorities (2009 Recommendation III (i)(iv) and Annex I.A).

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

**If no action has been taken to implement this recommendation, 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 Ministry of Foreign Affairs is preparing a circular memo for staff (with an emphasis on diplomatic and overseas staff) to clarify the procedure for reporting or denouncing transnational bribery, to take place between April and May 2023.

**Text of recommendation 6(a):**

6. Regarding taxation, the Working Group recommends that Peru:

- (a) enact, as soon as possible, the amendment to the ITL to expressly deny the tax deduction of crime related payments, including bribes to foreign public officials (2009

Recommendation VIII(i); 2009 Tax Recommendation I(i));

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

By Legislative Decree No. 1522, a fifty-fourth provision was incorporated into the Single Ordered Text of the Income Tax Law (Supreme Decree No. 179-2004-EF), with the following text:

"Fifty-fourth. - Non-deductibility of bribery payments

In accordance with the provisions of Articles 20, 37 and 51-A of the Law, the disbursements described in the criminal offences of bribery in its different modalities regulated in the Criminal Code or in special criminal laws do not constitute a deductible cost or expense for the purpose of determining Income Tax".

**ANNEX 7:**

Legislative Decree No. 1522 - Legislative Decree amending the Income Tax Law.

**If no action has been taken to implement this recommendation, 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:**

SUNAT will continue to train its officials on international bribery during 2023.

**Text of recommendation 6(b):**

6. Regarding taxation, the Working Group recommends that Peru:

(b) develop a procedure for routinely re-examining the tax returns of individuals and companies convicted of foreign bribery to verify whether bribes have been deducted; and increase the limitation period for such re-examinations;

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

The re-examination procedure included requesting information from the Unit for International Judicial Cooperation and Extraditions (UCJIE) of the Public Prosecutor's Office of Peru, as it is the source of information on international bribery proceedings. This stage concluded in June 2022, and the unit indicated that no information was found in this regard.

**ANNEX 8:**

Oficio 7830-2022-MP-FN-OCJIE-LNRR

**If no action has been taken to implement this recommendation, 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:**

A regulatory proposal is under discussion regarding the increase of the statute of limitations for the review or examination of tax returns in the case of individuals and companies convicted of transnational bribery.

**Text of recommendation 6(c)**

6. Regarding taxation, the Working Group recommends that Peru:

(c) further train tax auditors on the detection of foreign bribery (2009 Recommendations III(iii))

and VIII(i));
<p><b>Actions taken as of the date of the follow-up report to implement this recommendation:</b></p> <p>By means of Resolutions of the National Deputy Superintendence of Administration and Finance No. 000200-2021-SUNAT/800000 and No. 000231-2022-SUNAT/800000, the People Development Plans - PDP 2022 and 2023 were approved, which include the course on "Introduction to the Study of International Bribery". To date, the Tax Administration Institute has trained 372 officials.</p> <p><u>ANNEX 9:</u></p> <p>SUNAT People Development Plan for the years 2022 (See file 175 of the matrix) and 2023 (See file 108 of the matrix).</p>
<p><b>If no action has been taken to implement this recommendation, 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:</b></p>

<p><b>Text of recommendation 6(d):</b></p> <p>6. Regarding <u>taxation</u>, the Working Group recommends that Peru:</p> <p>(d) set out the procedure for reporting suspicions of foreign bribery to law enforcement, and provide guidance to tax examiners on this matter (2009 Recommendations III(iii) and VIII(i));</p>
<p><b>Actions taken as of the date of the follow-up report to implement this recommendation:</b></p>
<p><b>If no action has been taken to implement this recommendation, 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:</b></p> <p>SUNAT is developing a draft internal policy document for reporting cases of transnational bribery.</p>

<p><b>Text of recommendation 6(e):</b></p> <p>6. Regarding <u>taxation</u>, the Working Group recommends that Peru:</p> <p>(e) maintain statistics on the detection and reporting of foreign bribery with a view to assessing the effectiveness of SUNAT's anti-foreign bribery measures (2009 Recommendations I and III(iv)).</p>
<p><b>Actions taken as of the date of the follow-up report to implement this recommendation:</b></p> <p>SUNAT, based on the sources of information at its disposal, has established the statistical register of cases, with no data to date.</p>
<p><b>If no action has been taken to implement this recommendation, 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:</b></p>

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**Text of recommendation 7(a):**

7. Regarding accounting requirements, external audit and internal company controls, the Working Group recommends that Peru:

- (a) raise awareness among Peruvian external auditors and regulators of the role that external audits can play in foreign bribery detection (Convention Art. 8; 2009 Recommendations X.B(i) and (v));

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

**If no action has been taken to implement this recommendation, 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:**

Dissemination and awareness-raising activities are being coordinated with the Board of Deans of the Peruvian Public Accountants' Associations, among others.

**Text of recommendation 7(b):**

7. Regarding accounting requirements, external audit and internal company controls, the Working Group recommends that Peru:

- (b) encourage companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports (Convention Art. 8; 2009 Recommendation X.B(iv));

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

**If no action has been taken to implement this recommendation, 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:**

Dissemination and awareness-raising activities are being coordinated with the associations linked to foreign trade (ADEX: Association of Exporters / COMEX: Society of Foreign Trade of Peru / CAMEX: Peruvian Chamber of Foreign Trade) for the implementation of the recommendation. Likewise, dissemination and awareness-raising activities are also being coordinated with the Board of Deans of the Peruvian Public Accountants' Associations (Junta de Deans de los Colegios de Contadores Públicos del Perú, CONFIEP) within the framework of the update of the recommendation.

CONFIEP, as part of the updating of the Code of Conduct, has a section on financial management and internal controls, which seeks to promote the use of internal or external accounting audits by its members.

**Text of recommendation 7(c):**

7. Regarding accounting requirements, external audit and internal company controls, the Working Group recommends that Peru:

(c) consider requiring external auditors to report suspected foreign bribery to competent authorities independent of the company, such as law enforcement or regulatory authorities, and ensure that auditors making such reports reasonably and in good faith are protected from legal action. (Convention Art. 8; 2009 Recommendations III(iv), IX(iii) and X.B(v));

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

**If no action has been taken to implement this recommendation, 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:**

A regulatory reform is being evaluated to address the implementation of this recommendation, without prejudice to dissemination and awareness-raising activities with the Board of Deans of the Peruvian Colleges of Public Accountants, among other entities.

**Text of recommendation 7(d):**

7. Regarding accounting requirements, external audit and internal company controls, the Working Group recommends that Peru:

(d) take steps to encourage Peruvian companies that trade or invest overseas to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. (2009 Recommendations III(i) and (v), X.C(i)).

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

A) USAID and the Association "Entrepreneurs for Integrity", with the institutional support of Confiep and the Comptroller General of the Republic of Peru, launched in June 2021 the "SME Integrity Ambassadors Programme" which aims to increase integrity standards in SMEs in the public infrastructure construction sector and its value chain. It includes companies in the departments of Cusco, Lambayeque, Lima, Loreto and Piura.

B) The Association "Entrepreneurs for Integrity" has achieved the anti-bribery certification of 46 companies operating in various sectors such as agribusiness, finance, construction, services, industrial, energy, marketing, logistics, mining, telecommunications, SMEs, among others.

C) The main objective of the Corruption Prevention Programme for Enterprises (DEPE) is to help companies develop and implement effective anti-corruption and crime prevention mechanisms and systems against malpractice. It focuses on small and medium-sized enterprises in the construction and agribusiness sectors, among others, that have little or no experience in implementing compliance programmes and corruption prevention measures and want to learn how to implement them in their organisation, giving them useful tools to help them establish an anti-corruption compliance programme and a transparent and integrity way of doing business. It is run by the Alliance for Integrity as part of the USAID Transparent Public Investment Project and the Governance Programme of the German Development Cooperation (GIZ), with the support of the Presidency of the Council of Ministers through the Public Integrity Secretariat.

D) The National Plan for Business and Human Rights 2021 - 2025 has established as one of its actions

the development of a mechanism for compliance and corruption prevention, which seeks to generate spaces for discussion on the benefits of business compliance, as well as to provide support to the business sector, both private and public, for the implementation of these corruption prevention schemes.

E) The Peruvian Chapter of the World Compliance Association has held during the years 2021 and 2022 the Fifth and Sixth International Congress on Compliance and Anti-Corruption with the support of the Lima Chamber of Commerce, and has also developed several conferences on the subject of corporate compliance.

ANNEX 10:

- a) Information related to the activities mentioned in points A), B) and C).
- b) National Business and Human Rights Plan (See action 74 - Page 84).

**If no action has been taken to implement this recommendation, 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:**

Actions are being coordinated with foreign trade associations (ADEX: Association of Exporters / COMEX: Peruvian Foreign Trade Association / CAMEX: Peruvian Chamber of Foreign Trade) for activities that encourage Peruvian companies to develop greater internal controls, ethics and compliance programmes or measures that address transnational bribery, among other issues.

CONFIEP indicates that its plan for the year 2023 includes monitoring the ethics and/or anti-corruption programmes of its member associations, and it is working on the design of a methodology to review the crime prevention models of CONFIEP's member associations.

**Text of recommendation 8(a):**

8. Regarding money laundering, the Working Group recommends that Peru:

- (a) systematically take foreign bribery into account when conducting money laundering risk assessments in the future (Convention Art. 7; 2009 Recommendation II);

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

In 2021, the Financial Intelligence Unit published the National Money Laundering Risk Assessment 2021 where the results of the WGB OECD Phase 2 report were added and referred to. It expressly stated in relation to aspects that facilitate public corruption as part of the very high vulnerabilities in terms of money laundering, that:

"Finally, in the Phase 2 Report on the implementation of the OECD Anti-Corruption Convention (OECD, 2021), it is noted that counterparties in Peru are generally unaware of the crime of international bribery and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, despite the fact that many Peruvian companies operate internationally and could pay bribes to public officials. It is also noted that the regulations related to combating transnational bribery are not adequate; consequently, it is necessary to increase awareness of this crime among justice operators and modify national regulations to adapt them to the standards of the Convention".

The National Money Laundering Risk Assessment 2021 identifies and assesses twenty-three threats and sixty-six vulnerabilities that affect the fight against money laundering in Peru. In the legal framework actions to reduce the risks of money laundering, the need is expressly stated: "Modify the regulations on international bribery to bring them into line with the standards of the OECD Anti-Corruption Convention".

The result of this assessment indicates that the main threats to money laundering in Peru are: illegal mining, crimes against public administration (including transnational bribery), illicit drug trafficking, tax

crimes and crimes against property. Similarly, the main vulnerabilities are: lack of social awareness of the consequences of money laundering, the existence of corruption among justice operators, and the existence of conditions that facilitate public corruption, including tolerance.

ANNEX 11:

National Money Laundering Risk Assessment 2021.

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 8(b):**

8. Regarding money laundering, the Working Group recommends that Peru:

(b) extend the requirement to conduct enhanced due diligence to additional close associates of PEPs, such as prominent members of the same political party, and business partners or associates (Convention Art. 7; 2009 Recommendation II);

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

**If no action has been taken to implement this recommendation, 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 Superintendencia de Banca, Seguros y AFP is currently assessing the feasibility of the legal reform for the implementation of the OECD recommendation.

**Text of recommendation 8(c):**

8. Regarding money laundering, the Working Group recommends that Peru:

(c) raise awareness of foreign bribery among reporting entities (Convention Art. 7; 2009 Recommendation II);

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

In the framework of the Master Plan Programme SBS and Swiss Cooperation - SECO, the FIU is in the process of designing 02 asynchronous virtual courses entitled "How to prevent the use of legal persons in ML/TF and other crimes" and "International Framework ML/TF and other predicate offences". These courses are aimed at compliance officers, regulated entities and public officials, and are intended, among others, to raise awareness on transnational bribery, the Convention and national regulations.

ANNEX 12:

Progress in the design of the two asynchronous virtual courses: "How to prevent the use of legal persons in ML/TF and other crimes" and "International Framework for ML/TF and other predicate offences".

**If no action has been taken to implement this recommendation, 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 courses are scheduled to be available on the SBS Virtual Classroom in the second half of 2023.

**Text of recommendation 8(d):**

8. Regarding money laundering, the Working Group recommends that Peru:

(d) develop guidance and typologies on suspicious money laundering transactions that specifically address money laundering predicated on foreign bribery (Convention Art. 7; 2009 Recommendation II);

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

**If no action has been taken to implement this recommendation, 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 Financial Intelligence Unit has been analysing the development of typologies on suspicious money laundering transactions that specifically address this foreign bribery-based crime, a technical task that has not yet been completed.

**Text of recommendation 8(e):**

8. Regarding money laundering, the Working Group recommends that Peru:

(e) raise awareness of the Convention and Peru's foreign bribery laws among UIF officials (Convention Art. 7; 2009 Recommendations II and III(i)).

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

From April 2022 to date, 15 FIU officials have been trained in subjects related to the OECD Anti-Bribery Convention, such as corruption prevention, compliance, risk of use of legal persons in the commission of crimes, beneficial ownership, among others.

The design of the FIU curriculum was completed, which includes the following educational subjects: (i) Other international standards on ML/FT/AML, (ii) International standards on integrity, (iii) Ethics and Integrity and (iv) Beneficial ownership of legal persons. Implementation is scheduled to start in the first half of 2024.

**ANNEX 13:**

Excel tables with the Financial Intelligence Unit's curriculum and details of training for Financial Intelligence Unit officials.

**If no action has been taken to implement this recommendation, 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:**



## Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery and related offences

### Text of recommendation 9(a):

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

(a) take urgent steps to raise awareness among prosecutors, judges and law enforcement officials of (i) the Convention, particularly Art. 5, (ii) the foreign bribery offence, and corporate liability for this crime, and (iii) the importance of proceeding against individuals and legal persons for active bribery under the CLL or CC, whenever appropriate (Convention Art. 5 and Commentary 27; 2009 Recommendations III, V and Annex I.D);

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

The Public Prosecutor's School has conducted training activities for prosecutors on topics associated with the Anti-Bribery Convention and the liability of legal persons, among them:

- Workshop on corporate regulatory compliance and criminal liability of companies that are coverage of TID offences and organised crime (18 to 22 July 2022).
- Enforcement Workshop: Law N° 30424 and the Role of the Securities Market Superintendency (10 and 17 June 2022).
- Regional project on corporate liability for corruption offences (30 and 31 March 2022).
- Regional specialised training workshop on the evaluation of the effectiveness of corporate compliance programmes (23 and 24 February 2022).

The Judiciary has also promoted training for judges, as follows:

- Conference "Public Compliance regarding the approval of the Anti-Bribery Policy in the Judiciary". (25 August 2021)
- The System of Imputation of Criminal Responsibility in the case of the General Manager of companies (11 August 2022).
- "Corporate Corruption, Business Criminality and Money Laundering" (25 November 2022).

The Attorney General's Office has also promoted training on the subject for its prosecutors and staff:

- Conversatorio "Road to the OECD: Peru and its fight against transnational bribery". (30 March 2023).
- Highly specialised course on criminal liability of legal persons (28 March 2023).

The Judicial Academy has also provided training on the subject to judges and prosecutors, as follows:

- Virtual conference "Fundamental issues of criminal compliance" (03 November 2022).
- Reflections from the legal philosophy to combat bribery of foreign public servants" (01 September 2022).
- The Criminal Prosecution of Legal Entities (Current Problems and Future Challenges) - 18 July 2022.

The Judiciary, through Circular No. 00004-2023-ST-UETI-CPP-PJ, sent and informed all High Courts nationwide of the content of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the recommendations related to the Judiciary, urging them to take action to implement it.

The Judiciary sent e-mails to all judges in Peru (dissemination campaign) informing them about the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", attaching the text of this international instrument, the Phase 2 Report and the matrix with the OECD recommendations related to the Judiciary.

The Judicial Academy, through its institutional library, has disseminated the OECD Anti-Bribery Convention, highlighting the importance of investigating and prosecuting the crime of transnational active bribery of both natural and legal persons. Likewise, the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" has been included on the website of the Academy of Magistrates for downloading and consultation by all judges, prosecutors and justice operators.

The United Nations Office on Drugs and Crime (UNODC - UN) launched in October 2021 the second phase of the Corporate Accountability for Corruption Offences in Panama, Colombia and Peru project to be developed with funding from the UK government. The project covers Peru, Colombia and Panama. The implementation of the Corporate Accountability for Corruption Offences project provides the authorities with the opportunity to strengthen their technical capacities to assist the country's efforts to improve its domestic and international service platform. In this framework, the project involves the participation of the Judiciary (Anti-Corruption System), the Public Prosecutor's Office (Anti-Corruption Prosecutor's Offices and Special Teams), the Anti-Corruption Prosecutor's Office and the Ad Hoc Prosecutor's Office, the Anti-Corruption Directorate of the National Police, the Financial Intelligence Unit, among others.

**ANNEX 14:**

- (a) Accreditation of the training of the entities.
- b) Circular No. 00004-2023-ST-UJETI-CPP-PJ and e-mail.
- c) Report from the AMAG Library.
- d) Information on the project on corporate responsibility of companies for corruption offences, UNODC-UN with the support of the United Kingdom.

**If no action has been taken to implement this recommendation, 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 Judicial Academy, within the framework of the virtual conferences scheduled in the current Academic Plan (Year 2023), will hold five conferences on transnational bribery, in order to promote awareness of the OECD Anti-Bribery Convention among judges and prosecutors, aimed at magistrates and judicial assistants of the Judiciary and the Public Prosecutor's Office, at the national level. In addition, it will conduct a course on the administrative liability of legal persons (June or July 2023).

In the framework of the project on corporate liability of companies for corruption offences, the Secretariat of Public Integrity has coordinated with UNODC - UN a training for judges, prosecutors and public prosecutors on anti-corruption, which will address the international and national aspects of transnational bribery, an activity that will take place in May or June 2023.

The State Attorney General's Office will hold coordination meetings in April and May, in addition to sending out letters and drafting minutes of commitment for the dissemination of the OECD Anti-Bribery Convention and the fight against transnational bribery. It will also organise a discussion or workshop on the aforementioned issues in 2023.

**ANNEX 15:**

Letter from UNODC - UN and Response from the Public Integrity Secretariat.

**Text of recommendation 9(b):**

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

- (b) assign primary responsibility for foreign bribery cases (including related offences) to a specific prosecutorial unit (Convention Art. 5 and Commentary 27; 2009 Recommendations III,

V and Annex I.D);
<b>Actions taken as of the date of the follow-up report to implement this recommendation:</b>
<p><b>If no action has been taken to implement this recommendation, 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:</b></p> <p>The collection of information by the Public Prosecutor's Office is being coordinated.</p>

<p><b>Text of recommendation 9(c):</b></p> <p>9. Regarding <u>investigation and prosecution</u> of foreign bribery and related offences, the Working Group recommends that Peru:</p> <p>(c) maintain the resources and support necessary for the Lava Jato Special Team to continue its investigations and prosecutions;</p>
<b>Actions taken as of the date of the follow-up report to implement this recommendation:</b>
<p><b>If no action has been taken to implement this recommendation, 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:</b></p> <p>The collection of information by the Public Prosecutor's Office is being coordinated.</p>

<p><b>Text of recommendation 9(d):</b></p> <p>9. Regarding <u>investigation and prosecution</u> of foreign bribery and related offences, the Working Group recommends that Peru:</p> <p>(d) ensure sufficient resources and specialised expertise – especially forensic financial and accounting experts – for investigating and prosecuting foreign bribery cases (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D);</p>
<b>Actions taken as of the date of the follow-up report to implement this recommendation:</b>
<p><b>If no action has been taken to implement this recommendation, 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:</b></p> <p>The collection of information by the Public Prosecutor's Office is being coordinated.</p>

**Text of recommendation 9(e):**

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

(e) further train judges and law enforcement on corporate and white-collar crime investigations (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D).

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

The Public Ministry School has carried out various training activities for prosecutors in relation to corporate and white-collar crimes, including:

- Conference The challenges of the Public Ministry in the fight against corruption (December 07, 2022).
- Workshop on Current Trends on Corruption Crimes in the Country (December 19, 2022).
- Fiscal Investigation Workshop on Money Laundering crimes (December 22 to 29, 2022).
- Conference on Criminal Repression of Organized Crime (October 4, November 14 and 22, 2022).
- Training Cycle for the XXII Anniversary of the Specialized Prosecutors for Corruption Crimes of Officials (October 20, 21 and 25, November 2 and 3, 2022).
- Course - Workshop Strengthening capacities to face the fight against Organized Crime (October 3 to November 4, 2022).
- Webinar: Fight against corruption of officials on the Costa Rican experience (September 23, 2022).
- Workshop: Offenses of Corruption of Officials (07, 14, 21, 28 June and 14 July 2022).
- Conference on Money Laundering (July 1, 2022).
- Workshop on prevention of corruption, judicial integrity, transparency and fight against corruption (05, 06 and 07 July 2022).
- Workshop on corporate regulatory compliance and criminal liability of companies that are cover for TID crimes and organized crime (July 18 to 22, 2022).
- Specialized Course on Organized Crime, Effective Collaboration and Collusion (July 21 and 22, 2022).
- Workshop on Investigation Techniques for Corruption Cases (June 1 to 3, 2022).
- Workshop: Offenses of Corruption of Officials (07, 14, 21, 28 June and 14 July 2022).
- Application Size: Law No. 30424 and the Role of the Superintendency of the Stock Market (June 10 and 17, 2022).
- International Symposium on Best Practices to Combat Public Corruption (May 12, 2022).
- Fiscal Investigation Course on crimes of corruption of officials (February 28 to April 22, 2022).
- Regional project on corporate responsibility for crimes of corruption (March 30 and 31, 2022).
- Regional training workshop specialized in evaluating the effectiveness of company compliance programs (February 23 and 24, 2022).
- Specialization Course: Asset Forfeiture, Money Laundering and Corruption of Officials (June 4, 11, 18, 25 and July 2, 2021).
- Workshop: Investigation and Prosecution of Corruption Crimes linked to National and Transnational Organized Crime (June 30, July 1, 2, 5 and 6, 2021).
- Workshop: Theoretical and Practical on Crimes Against the Public Administration (September 08 and 09, 2021).
- Course on financial concepts in predicate offenses of money laundering (October 27, 28 and 29,

2021).

- Issues related to banking and insurance in predicate offenses of Money Laundering for the Public Ministry (November 24 and 26, 2021).

The Judiciary has also promoted training for judges, as detailed below:

- Awareness conference "Introduction to the Anti-Bribery Management System" (June 2021)
- Keynote Conference: Challenges in the fight against corruption in the rule of law (July 12, 2021).
- Lecture "Public Compliance regarding the approval of the Anti-Bribery Policy in the Judiciary". (August 25, 2021)
- Conference "Technology against corruption: Tools and strategies for action" (September 22, 2021)
- Cycle of Webinars "Inter-institutional articulation: Prevention, investigation and punishment of crimes against public administration" (November 22, 24 and 26, 2021).
- "International Seminar on Corruption Prevention: Its Impact on Vulnerable Groups" (December 09 and 10, 2021)
- The Criminal Responsibility Attribution System in the case of the General Manager of the companies (August 11, 2022)
- Principle of Trust in crimes against public administration (April 28, 2022).
- Lecture The Anti-Bribery Management System and its impact on the Judiciary. (September 21, 2022).
- Conference Fight against corruption (October 26, 2022).
- Conference "Judicial determination of the sentence in crimes of organized crime, corruption of officials and money laundering" (February 24, 2022).
- "The importance of the complaints channel as a tool to fight corruption". (April 12, 2022).
- "Basic Components of an Anti-Bribery Management System" (June 17, 2022).
- "Guide to good practices in the processing of complex corruption cases" (August 4, 2022).
- "Corporate corruption, business crime and money laundering" (November 25, 2022).

The State Attorney General's Office has also promoted training on the subject for its Attorneys and staff of the Attorney General's Office:

- Specialization course against corruption and organized crime (November 2022).
- Discussion "Road to the OECD: Peru and its fight against transnational bribery". (March 30, 2023).
- Highly Specialized Course on Criminal Responsibility of Legal Entities (March 28, 2023).

The Academy of the Magistracy has also provided training on the matter to judges and prosecutors, according to the following detail:

- Distance course "Organized crime, illegal networks and effective collaboration". (March 29 to May 2, 2023).
- Virtual conference "The criminal process against senior public officials" (December 22, 2022).
- Virtual conference "Corporate corruption, business crime and money laundering" (November 25, 2022).
- Virtual Conference: "Effective tools in search of evidence in crimes of corruption" (November 30, 2022).
- Virtual conference "Fundamental issues of criminal compliance" (November 03, 2022).
- "Reflections from legal philosophy to combat the bribery of foreign public servants" (September 1, 2022).
- International virtual conference "The Criminal Process of Legal Entities. Current problems and future

challenges" (July 18, 2022).

- Distance course: "Crimes Against the Public Administration and Corruption of Officials" (August 3 to September 6, 2022).
- Distance course "Organized crime, illegal networks and effective collaboration" (March 30 to May 3, 2022).
- Virtual Conference "Judicial determination of the sentence in crimes of organized crime, corruption of officials and money laundering" (February 24, 2022).
- "Complaint channels as an instrument against corruption: whistleblowing from procedural guarantees" (April 26, 2023)

**ANNEX 16:**

- (a) Trainings of the Public Prosecutor's Office.
- b) Trainings of the Judiciary.
- c) Training provided by the State Attorney General's Office.
- d) Training provided by the Judicial Academy.

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 10(a):**

10. Regarding non-trial resolutions, the Working Group recommends that Peru:

- (a) make public, as necessary and in compliance with the relevant rules, the essential elements of non-trial resolutions, in particular the reasons for using a resolution, the main facts of the case, the party(s) to the agreement, and the sanctions (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D);

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

The Judiciary, through the website "Jurisprudencia Nacional Sistematizada" (<https://jurisprudencia.pj.gob.pe/jurisprudenciaweb/faces/page/inicio.xhtml>), has published court rulings on early terminations, early conclusions and effective collaboration, although this does not apply to all rulings issued in these special proceedings.

**If no action has been taken to implement this recommendation, 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 feasibility of further implementation of this recommendation is being assessed.

**Text of recommendation 10(b):**

10. Regarding non-trial resolutions, the Working Group recommends that Peru:

- (b) publish guidance that applies to early terminations of proceedings and early conclusions to a

trial (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D).

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

**If no action has been taken to implement this recommendation, 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 Ministry of Justice and Human Rights has been coordinating, through the Directorate of Criminological Affairs and the General Directorate of Normative Development and Regulatory Quality, the publication of a guide on early terminations and early conclusions of judicial proceedings, in coordination with the relevant actors.

**Text of recommendation 11:**

11. Regarding statute of limitations, the Working Group recommends that Peru enact the draft amendment of CPC Art. 342 and extend the limitation period for investigations that require MLA (Convention Arts. 5, 6 and 9 and Commentary 27; 2009 Recommendation V and Annex I.D)

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

The Executive in Draft Law No. 677/2021-PE proposed the modification of article 342, paragraph 2 of the Code of Criminal Procedure, in the following terms:

"In the case of complex investigations, the time limit for the Preparatory Investigation is eight months. In the case of investigations into crimes perpetrated by members of criminal organisations, persons linked to them or acting on their behalf, as well as investigations that require international judicial assistance or cooperation because they are transnational crimes, the time limit for the preparatory investigation is thirty-six months. An extension for the same period of time must be granted by the Judge of the Preparatory Investigation".

However, the Justice and Human Rights Commission in the opinion that subsequently originated the approval of the Congress of the Republic and the enactment of Law 31501, did not consider addressing and approving the requested reform.

ANNEX 17:

Draft Law No. 677/2021-PE

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 12(a):**

12. Regarding investigative tools, the Working Group recommends that Peru:

- (a) develop standard templates for banks to provide information to law enforcement (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D);

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

As part of Working Team No. 5, Investigation and Sanction, of the Multisectoral Executive Commission against Money Laundering and Financing of Terrorism (CONTRALAFI), a "Reference Glossary on banking secrecy" was drawn up containing details of the information (active, passive and neutral operations) that the competent authorities may request from companies in the financial system.

**If no action has been taken to implement this recommendation, 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:**

To date, this document has to be approved by the Special Commission for the Implementation of the Criminal Procedure Code of the Ministry of Justice and Human Rights.

**Text of recommendation 12(b):**

12. Regarding investigative tools, the Working Group recommends that Peru:

- (b) take steps to ensure that the freezing and seizing of assets is used in foreign bribery cases whenever appropriate (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D).

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

The Financial Intelligence Unit (FIU) currently registers 50 proceedings for the freezing of funds for the crime of money laundering, the predicate offences of which are corruption of officials, fraud in the administration of a legal person and embezzlement. Of these, 19 are linked to the money laundering case. It should be noted that these freezing of funds were initiated between 2013 and 2022.

ANNEX 18:

Attached is an Excel file with data on the 50 cases of freezing of funds.

**If no action has been taken to implement this recommendation, 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 FIU is currently evaluating an amendment to Law No. 27693, which would more expressly specify that the freezing of funds and/or assets by the Financial Intelligence Unit covers predicate offences for money laundering, including transnational bribery.

**Text of recommendation 13(a):**

13. Regarding judicial and prosecutorial independence and integrity, the Working Group recommends that Peru:

- (a) take steps to ensure that the ANCMP and ANCPJ are operational as soon as possible (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D);

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

The National Justice Board has held a total of four (04) public competitions for the selection and appointment of the heads of the NCA Judiciary and the Public Prosecutor's Office.



Two of these competitions were held in 2020, with a total of ten (10) applicants registered for the position of head of the NCA Judicial Branch and four (04) applicants for the position of head of the NCA Public Prosecutor's Office, however, none of these authorities were appointed.

In 2021, the aforementioned positions were again put out to competition, with a total of sixteen (16) applicants for the position of head of the NCA Judicial Branch and seven (07) applicants for the position of head of the NCA Public Prosecutor's Office, resulting in the appointment of the head of the National Control Authority of the Public Prosecutor's Office in 2022. However, the competition for the appointment of the Head of the National Authority of Control of the Judiciary was declared void as there were no successful candidates in the knowledge evaluation stage.

For this reason, in December 2022, a competition for the position of head of the National Authority for the Control of the Judiciary was announced, which will end in May 2023.

**ANNEX 19:**

(a) Resolution N° 1014-2022-JNJ of 31 August 2022 appointing Juan Antonio Fernández Jeri as Head of the National Control Authority of the Public Prosecutor's Office.

b) Screenshot of the website of the Public Prosecutor's Office showing that Mr. Juan Antonio Fernández Jeri as Head of the National Authority of Control of the Public Prosecutor's Office started his duties on 6 September 2022.

c) Resolution of the Public Prosecutor's Office N° 036-2023-MP-FN of 6 January 2023 by which the Public Prosecutor's Office created the Executive Unit "National Control Authority of the Public Prosecutor's Office" as a body to be incorporated into the institutional budget with administrative and financial independence, which has legal status and budget appropriation.

d) Current timetable for the public competition for the position of head of the National Authority for the Control of the Judiciary, the final results of which are scheduled for 24 May 2023.

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 13(b):**

13. Regarding judicial and prosecutorial independence and integrity, the Working Group recommends that Peru:

(b) take urgent measures to reduce the number of provisional and supernumerary judges and prosecutors, including by reviewing the rules for judicial and prosecutorial appointments with a view to eliminating the use of provisional and supernumerary judges and prosecutors (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D);

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

As of 25 January 2023, the Board has completed a total of eight (08) calls for vacant and budgeted positions for judges and prosecutors, having appointed a total of seventy-nine (79) judges - 03 of them as reserve candidates - and seventy-eight (78) prosecutors - 01 of them as reserve candidates, This represents a total of 81% of positions in the Judiciary and 63% of positions in the Public Prosecutor's Office filled, compared to the ninety-eight (98) and one hundred and twenty-four (124) positions, respectively, that were submitted for competition.

Likewise, in December 2022, four (04) competitions were held to fill two hundred and twenty-two (222) positions for judges and one hundred and seventy-one (171) for prosecutors, competitions that are expected to conclude in December 2023.

On the other hand, in January of this year, the five (05) calls for applications suspended in 2018 were resumed, with eighty-six (86) positions for judges and twenty-two (22) positions for prosecutors in competition, calls for applications that should conclude in July 2023.

These calls are expected to cover a significant number of vacant and budgeted positions reported by the Judiciary and the Public Prosecutor's Office, increasing the number of judges and prosecutors.

It should be noted that in December 2022, the regulations for competitions for the selection and appointment of judges and prosecutors, both for promotion and open access, were modified in order to optimise the selection procedures. An important modification was the inclusion in the regulations for promotion competitions of the appointment by means of a ballot of reserve candidates, a modality that was previously only included in the open access regulations.

This method of appointment means that applicants who passed all four stages of the competition but were not appointed because the post they applied for has been filled, can fill a vacant and budgeted post that arises in the year following the end of the competition, thereby increasing the number of posts to be filled.

#### ANNEX 20:

(a) Bases for calls for applications No. 002-2022-SN/JNJ, No. 003-2022-SN/JNJ, No. 004-2022-SN/JNJ and No. 005-2022-SN/JNJ, held in December.

b) Notices of resumption of the 05 calls for the appointment of judges and prosecutors that had been suspended in 2018.

c) Resolution No. 1589-2022-JNJ of 16 December 2022 amending the Regulations on Competitive Competitions for the Selection and Appointment of Judges and Prosecutors - Open Access Mode in order to optimise the selection and appointment procedures, establishing details for the better development of Open Access competitions, as well as new curricular evaluation tables.

d) Resolution No. 1588-2022-JNJ of 16 December 2022, which amends the Regulations on Competitive Competitions for the Selection and Appointment of Judges and Prosecutors - Promotion Mode, to include the provisions relating to candidates in reserve of the Judicial Career Law in the framework of promotion competitions. It also contains clarifications for the better development of promotion competitions, as well as new curricular evaluation tables.

**If no action has been taken to implement this recommendation, 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:**

#### **Text of recommendation 13(c):**

13. Regarding judicial and prosecutorial independence and integrity, the Working Group recommends that Peru:

- (c) consider increasing judicial and prosecutorial appointments in the lower levels of courts (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D); and

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

The National Board of Justice, in compliance with its constitutional function of selecting and appointing judges and prosecutors, in the year 2023 will execute a total of nine (09) calls for applications (Calls for applications 2022 and calls for applications 2018 - resumption) to fill three hundred and eight (308) vacant positions for judges and one hundred and ninety-three (193) vacant positions for prosecutors from the first to the third level of the judicial and prosecutorial career, as detailed below:

Judicial branch

- 1st level vacancies - Justice of the Peace (Juez de paz letrado): 50
- 2nd level positions - Specialised and Mixed Judge: 158
- 3rd level positions - Senior Judge: 100

Public Prosecutor's Office

- 1st level places - Deputy Provincial Public Prosecutor: 115
- 2nd level places - Provincial Prosecutor and Senior Deputy Prosecutor: 58
- 3rd level vacancies - Senior Prosecutor and Deputy Supreme Prosecutor: 20

The above positions constitute the total number of vacant and budgeted positions reported by the Judiciary and the Public Prosecutor's Office.

See supporting documentation in sections a) and b) of ANNEX 20.

**If no action has been taken to implement this recommendation, 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:**

There are additional positions that will be called for by the National Justice Board, once the Public Prosecutor's Office and the Judiciary report that they are duly budgeted for.

**Text of recommendation 13(d):**

13. Regarding judicial and prosecutorial independence and integrity, the Working Group recommends that Peru:

- (d) take steps to ensure that prosecutors are protected from unjustified removals from cases (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D).

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

Law No. 31718 amends the Organic Law of the Public Prosecutor's Office in order to establish, among others, that: "Supreme, Superior and Provincial Prosecutors who are appointed as Provisional Prosecutors at any level have the same duties, rights, powers, prerogatives, prohibitions and incompatibilities as the Titular Prosecutors in their respective categories for the duration of the provisional position, both as head of the public criminal action and in the institutional and administrative progress". Likewise, it is also established that: "The prosecutor called to provisionally cover a higher position is the one who occupies the highest position in the merit table of his or her level, as a consequence of the partial performance evaluation process. Failing this, the appointment shall be made in order of seniority, speciality and experience in the functions to be performed".

With this legal amendment, provisional prosecutors are granted the same duties, rights, powers, prerogatives, prohibitions and incompatibilities as Titular Prosecutors, which has an impact on several areas including their permanence and stability in the exercise of the function, and therefore that they are not unjustifiably removed from their position or from the investigations they are in charge of.

ANNEX 21:

Law N° 31718

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 14(a):**

14. Regarding MLA and extradition, the Working Group recommends that Peru:

(a) maintain detailed statistics on incoming and outgoing MLA requests in foreign bribery cases, including the requesting/requested state, offences underlying the request, type of assistance sought, and the time required for execution or reasons for refusal (Convention Art. 9; 2009 Recommendations III(ix) and XIII);

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

The Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office reports that since 2021 various improvements have been made to the SUCJIE system, which currently has various items such as: i) Request number; ii) Name of the investigated person; iii) Requesting State; iv) Requested State; v) Indicator (active/passive); vi) Type of offence; vii) Treaty to be invoked; viii) File status; ix) Start date; x) End date. It is also currently allowing reports to be generated by offence, treaty and country.

ANNEX 22:

Screenshots of the SUCJIE system.

**If no action has been taken to implement this recommendation, 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 Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office informs that in order to obtain the prompt implementation in its SUCJIE system, by means of Oficio No. 4621-2023-MP-FN-UCJIE it was requested to the Management of the Systems Office to make several improvements such as: A) To incorporate the heading Treaties to the "Convention to combat bribery of foreign public officials in international business transactions (OECD)"; and, B) To add in all the headings and reports the crime of transnational bribery.

With regard to the mapping of the time required for execution or the reasons for refusal, the Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office is preparing an internal directive for its staff, with the aim of establishing a register for each person in charge of processing judicial assistance and extradition files.

ANNEX 23:

Oficio N° 4621-2023-MP-FN-UCJIE

**Text of recommendation 14(b):**

14. Regarding MLA and extradition, the Working Group recommends that Peru:

(b) take steps to improve the co-ordination of outgoing MLA requests and to eliminate duplicate requests (Convention Art. 9; 2009 Recommendations III(ix) and XIII);

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

During the years 2021 and 2022, the Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office has been taking various steps to improve the coordination of international judicial assistance requests, such as the development of formats for judicial assistance requests, which

are publicly accessible to judges and prosecutors at the national level (<https://www.mpfm.gob.pe/ucjie/>).

Various working groups have also been held for the Specialised Prosecutor's Offices, training for the 34 Prosecutorial Districts, as well as for the staff of the Superior Court of Justice of Cusco and Lambayeque and virtual and face-to-face meetings with the aim of providing support for the formulation of international legal assistance requests. One of the topics of training was the principle of speciality and use of evidence, a cooperation procedure that has been used in the framework of requests sent to Brazil, Switzerland and the United Kingdom, among others, and whose aim is to prevent requests for judicial assistance from being sent with the aim of obtaining results that are already in the possession of the Peruvian authorities.

Regarding duplicity in the formulation of requests, it is reported that the term duplicity is not accurate, since these cases are linked to requests for judicial assistance issued by different prosecutors' offices, in the framework of different investigations, in which the same act of international cooperation has been requested, which are generally generated due to the various specialised subsystems that exist in the Public Prosecutor's Office. Notwithstanding the above, the Public Prosecutor's Office has been informed of the recommendations made by the OECD in Oficio No. 000332-2021-MP-FN-OCOPJIE of 24 August 2021.

**ANNEX 24:**

(a) Forms prepared by the Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office.

b) Oficio No. 000332-2021-MP-FN-OCOPJIE

**If no action has been taken to implement this recommendation, 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:**

An item is being worked on in the Internal Directive establishing that each staff member responsible for the Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office who identifies a duplicate request for judicial assistance (i.e. the same request made by prosecutors' offices belonging to different subsystems) must inform the Head of the Office so that the circumstances of requesting the same evidence from the foreign authority are made clear and suggest the use of the mechanism for the use of evidence regulated in numeral 1 of Article 535 of the Code of Criminal Procedure.

**Text of recommendation 14(c):**

14. Regarding MLA and extradition, the Working Group recommends that Peru:

(c) take steps to clarify through legally-binding means the rules on the extradition of Peruvian nationals in foreign bribery cases (Convention Art. 10; 2009 Recommendations III(ix) and XIII);

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

**If no action has been taken to implement this recommendation, 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 amendment of numeral 2 of Article 510 of the Code of Criminal Procedure is under evaluation for its incorporation in a Draft Law, in order to be in accordance with the provisions of Article 3 of the Criminal Code, which establishes that Peruvian criminal law may be applied when extradition is requested and the agent is not handed over to the competent authority of a foreign state, a regulation that establishes a facultative modality, since the current wording of criminal procedure has an

imperative character (the current wording is: "It shall not be grounds for rejecting a request for international judicial cooperation, except in matters of extradition, the circumstance that the offence is subject to national jurisdiction"): 'It shall not be a ground for refusing a request for international judicial cooperation, except in matters of extradition, that the offence is within the national jurisdiction'). The proposed wording would be: "The fact that the offence falls within national jurisdiction shall not be a ground for refusing requests for international judicial cooperation (judicial assistance and extradition).

**Text of recommendation 14(d):**

14. Regarding MLA and extradition, the Working Group recommends that Peru:

(d) maintain detailed statistics on incoming and outgoing extradition requests, including the requesting/requested state, offences underlying the request, and time required for execution or reasons for refusal (Convention Art. 10; 2009 Recommendations III(ix) and XIII).

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

The Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office reports that since 2021 various improvements have been made to the SUCJIE system, which currently has various items such as: i) Request number; ii) Name of the investigated person; iii) Requesting State; iv) Requested State; v) Indicator (active/passive); vi) Type of offence; vii) Treaty to be invoked; viii) File status; ix) Start date; x) End date. It is also currently allowing reports to be generated by offence, treaty and country.

It should be noted that the Ministry of Justice and Human Rights, through the Directorate of Justice and Religious Affairs of MINJUSDH, keeps statistics on the number of active and passive extradition requests. This information corresponds to the political (intermediate) phase of the extradition process in which MINJUSDH intervenes.

ANNEX 25:

Screenshots of the SUCJIE system.

**If no action has been taken to implement this recommendation, 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 Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office informs that in order to obtain the prompt implementation in its SUCJIE system, by means of Oficio No. 4621-2023-MP-FN-UCJIE it was requested to the Management of the Systems Office to make several improvements such as: A) To incorporate the heading Treaties to the "Convention to combat bribery of foreign public officials in international business transactions (OECD)"; and, B) To add in all the headings and reports the crime of transnational bribery.

With regard to the mapping of the time required for execution or the reasons for refusal, the Office of International Judicial Cooperation and Extraditions of the Public Prosecutor's Office is preparing an Internal Directive for its staff, with the aim of establishing a register for each person in charge of processing judicial assistance and extradition files.

The Ministry of Justice and Human Rights will coordinate with the Judiciary and the Public Prosecutor's Office in order to have comprehensive statistics on the number of incoming and outgoing extradition requests.

ANNEX 26:

Oficio N° 4621-2023-MP-FN-UCJIE

**Text of recommendation 15(a):**

15. With respect to the foreign bribery offence, the Working Group recommends that Peru:

- (a) take steps to clarify that the awareness of the bribe by the foreign public official is not an element of the foreign bribery offence (Convention Art. 1; 2009 Recommendations III(ii) IV, V, and Annex I.A);

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

**If no action has been taken to implement this recommendation, 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 implementation of this recommendation will depend on the jurisprudential development of convictions for the crime of transnational active bribery.

**Text of recommendation 15(b):**

15. With respect to the foreign bribery offence, the Working Group recommends that Peru:

- (b) urgently enact legislation defining a foreign public official in line with the Convention (Convention Art. 1 and Commentaries 12 to 18; 2009 Recommendations III(ii) IV, V, and Annex I.A);

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

By Law No. 31501, article 425-A was incorporated into the Criminal Code, defining a foreign public official or public servant as follows:

"A foreign public official or public servant is anyone who, regardless of the nature of the link they maintain with the entities or bodies of a foreign State, military or police forces or any foreign national security agency, companies or corporations that are included in the business activity of a foreign State and by virtue of this act as a member, official, appointee, appointed or representative of these, even if their position emanates from popular election. Included within this scope are those who exercise these functions or roles in international organisations".

**ANNEX 27:**

Law No. 31501 (Law that modifies the Criminal Code in order to strengthen the fight against the crimes of fraudulent administration, parallel accounting and transnational bribery).

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 15(c):**

15. With respect to the foreign bribery offence, the Working Group recommends that Peru:

- (c) amend its legislation to ensure that bribery in order that a foreign public official uses his/her

position outside his/her authorised competence is prohibited and subject to the same sanctions as other forms of foreign bribery (Convention Art. 1 and Commentary 19; 2009 Recommendations III(ii) IV, V, and Annex I.A);

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

Draft Bill No. 677-2021-PE of the Executive Branch proposed the modification of the offence of influence peddling with the following text:

"Whoever, invoking or having real or simulated influence, receives, causes to give or promise for himself or for a third party, a gift or promise or any other advantage or benefit with the offer to intercede with a public official or servant who is to hear, is hearing or has heard a judicial or administrative case shall be punished with imprisonment for not less than four nor more than six years; disqualification, as appropriate, in accordance with paragraphs 2, 3, 4 and 8 of Article 36; and one hundred and eighty to three hundred and sixty-five day-fines. If the agent is a public official or public servant, national or foreign, he shall be sentenced to imprisonment for not less than five nor more than eight years; disqualification, as appropriate, in accordance with Article 36, paragraphs 1, 2 and 8; and a fine of three hundred and sixty-five to seven hundred and thirty days".

However, the Justice and Human Rights Commission in the opinion that subsequently originated the approval of the Congress of the Republic and the enactment of Law 31501, did not consider addressing and approving the requested reform.

ANNEX 28:

Bill N° 677-2021-PE and Opinion of the Commission of Justice and Human Rights of the Congress of the Republic.

**If no action has been taken to implement this recommendation, 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:**

In response to the report on the second year of implementation of the Phase 02 recommendations, a Bill is being drafted to address the implementation of this recommendation.

**Text of recommendation 15(d):**

15. With respect to the foreign bribery offence, the Working Group recommends that Peru:

(d) amend its legislation to extend its foreign bribery offence to cover preparatory acts and to eliminate the following preconditions for exercising jurisdiction over Peruvian nationals who commit foreign bribery extraterritorially: (i) dual criminality, and (ii) the individual enters in any way into Peruvian territory (Convention Art. 4(1) and (4) and Commentary 26; 2009 Recommendation III(ii)).

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

**If no action has been taken to implement this recommendation, 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 feasibility and relevance of addressing this recommendation through a policy proposal is being assessed.



**Text of recommendation 16(a):**

16. With respect to liability of legal persons, the Working Group recommends that Peru:

- (a) enact legislation to clarify to which entities successor liability applies after a corporate spin-off (Convention Art. 2; 2009 Recommendation III(ii) and Annex I.B);

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

Draft Bill No. 676/2021-PE submitted by the Executive Branch proposed the amendment of Article 2 of Law 30424, to eliminate the last paragraph of said article which states: "In the case of a merger or spin-off, the absorbing legal entity: (i) may only be sanctioned with the payment of a fine, which is calculated taking into account the rules set out in Articles 5 or 7, as appropriate, and according to the assets transferred, provided that the offence was committed prior to the merger or spin-off, unless the legal persons involved have used these forms of corporate reorganisation for the purpose of evading possible administrative liability of the merged or spun-off legal person, in which case this assumption does not apply; and, (ii) does not incur administrative liability when it has carried out an adequate due diligence process prior to the merger or spin-off process. It is understood that due diligence is complied with when it is verified that reasonable actions have been taken to verify that the merged or spun-off legal person has not committed any of the offences provided for in Article 1.

However, the text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament does not take up this proposal and maintains the aforementioned wording.

**ANNEX 29:**

Draft Law No. 676/2021-PE and Autograph approved by the Congress of the Republic, which is currently in the insistence procedure due to slight observations by the Executive.

**If no action has been taken to implement this recommendation, 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:**

In response to the report on the second year of implementation of the Phase 02 recommendations, a Bill is being drafted to address the implementation of this recommendation.

**Text of recommendation 16(b):**

16. With respect to liability of legal persons, the Working Group recommends that Peru:

- (b) amend the CLL to (i) ensure that a legal person is liable for foreign bribery that benefits both the natural person who perpetrated the crime and the legal person; (ii) ensure that a legal person is liable for foreign bribery that is intended to benefit it, even if the benefit later does not materialise; and (iii) ensure that legal persons cannot avoid liability for foreign bribery by using an intermediary to make bribe payments (Convention Art. 2; 2009 Recommendation III(ii) and Annexes I.B and II);

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

Regarding point (i) of the recommendation, Draft Law No. 676/2021-PE submitted by the Executive Branch proposed the incorporation in Article 3 of Law 30424, of the following text:

"The liability of the legal person is determined, even if the natural person who commits any of the offences provided for in Article 1 of the Law and within the framework of the assumptions described in the present article, also obtained an economic or other benefit".

However, the text approved by the Justice and Human Rights Commission of the Congress of the

Republic and by the plenary of the National Parliament does not include this proposal.

Regarding point ii) of the recommendation, the text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament modifies Article 2 of Law 30424, making the following addition:

"Article 2 - Subjective scope of application:

(...)

In the case of foreign legal persons, it shall be applicable when they carry out or develop their activities, directly or indirectly, in the national territory, through any corporate, contractual or business modality, and any of the offences provided for in Article 1 is committed.

(...)"

Additionally, the text proposes to amend Article 3(a) of Law 30424, stating:

"Legal persons are administratively liable for the offences indicated in article 1, when these have been committed in their name or on their behalf and for their benefit, directly or indirectly, by:

(a) Its partners, directors, de facto or de jure administrators, legal representatives or attorneys-in-fact of the legal person, or of its affiliates or subsidiaries, under any of the modalities of authorship and participation provided for in the Criminal Code. (...)"

This covers the recommendation that the legal person should not evade its responsibility by resorting to intermediaries, insofar as it covers the activities that companies can carry out directly and indirectly, and also that the types of perpetration and participation provided for in the Criminal Code are applicable to them, i.e.: 1) perpetration; 2) immediate perpetration; 3) co-perpetration; 4) primary complicity; 4) secondary complicity; 5) instigation.

#### ANNEX 30:

(a) Draft Law No. 676/2021-PE of the Executive Power.

(b) Autograph approved by the Congress of the Republic, which is currently in the process of insistence due to slight observations by the Executive.

**If no action has been taken to implement this recommendation, 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:**

In response to the report of the second year of implementation of the Phase 02 recommendations, a Bill is being drafted to address the implementation of this recommendation, to the extent that a legal person is liable for foreign bribery that benefits both the natural person who committed the offence and the legal person.

#### **Text of recommendation 16(c):**

16. With respect to liability of legal persons, the Working Group recommends that Peru:

(c) urgently amend the CLL to eliminate the prevention model defence when a senior corporate officer commits, authorises or directs a crime of foreign bribery (Convention Art. 2; 2009 Recommendation III(ii) and Annexes I.B and II);

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

The text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament modifies article 17 of Law 30424, in the following terms:

"Article 17 - Implementation of the Prevention Model:

17.1 The legal person draws up its prevention model based on its risk profile that identifies and

assesses inherent and residual risks, in accordance with its size, characteristic nature and complexity of its operations.

17.2 The prevention model should have the following minimum elements:

17.2.1 A person in charge of prevention, appointed by the highest governing body of the legal person or whoever takes its place, as appropriate, who must exercise his or her function with autonomy. In the case of micro, small and medium-sized enterprises, the role of the prevention officer may be assumed directly by the management body.

17.2.2 Actions to mitigate identified risks.

17.2.4 Dissemination and regular training on the prevention model.

17.2.5 Ongoing evaluation and monitoring of the prevention model.

17.3 The legal person, in the exercise of its self-regulation, may implement or incorporate into its prevention model any other element in accordance with its risk profile and design the necessary mechanisms. In the case of micro, small and medium-sized enterprises, the prevention model will be limited to their nature and characteristics.

17.4 In the case of state enterprises or mixed economy companies, the prevention model is exercised without prejudice to the competences and powers corresponding to the bodies that make up the National Control System.

17.5 The content of the prevention model is developed in the regulations of the Law".

Additionally, the same text modifies article 12 of Law 30424, in the following terms:

"The legal person is exempt from liability for the commission of the offences included in Article 1 if it adopts and implements in its organisation, prior to the commission of the offence, a prevention model appropriate to its nature, risks, needs and characteristics, consisting of surveillance and control measures suitable for preventing the aforementioned offences or for significantly reducing the risk of their commission.

The aforementioned exoneration is inapplicable when the offence is committed by partners, directors, de facto or de jure administrators, legal representatives or attorneys-in-fact, with the capacity to control the legal person; in this case, the judge only imposes the administrative measure of a fine, which can be reduced by up to ninety percent".

In this sense, the legal reform will allow legal persons to be investigated and prosecuted even if the offence is committed by a high-ranking official of the legal person.

#### ANNEX 31:

(a) Draft Law No. 676/2021-PE of the Executive Branch.

b) Autograph approved by the Congress of the Republic that is currently in the process of insistence due to slight observations by the Executive.

**If no action has been taken to implement this recommendation, 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:**

On 28 March 2023, Congress has put the initially approved text and the insistence opinion on the agenda, which would mean that the approval process would take place in April, May or June 2023.

#### **Text of recommendation 16(d):**

16. With respect to liability of legal persons, the Working Group recommends that Peru:

(d) amend CLL Art. 3(c) to ensure that company management's duties of supervision,

surveillance and control are not set by the company itself (Convention Art. 2; 2009 Recommendation III(ii) and Annexes I.B and II);
<b>Actions taken as of the date of the follow-up report to implement this recommendation:</b>
<p><b>If no action has been taken to implement this recommendation, 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:</b></p> <p>In response to the report on the second year of implementation of the Phase 02 recommendations, a Bill is being drafted to address the implementation of this recommendation.</p>

<p><b>Text of recommendation 16(e):</b></p> <p>16. With respect to <u>liability of legal persons</u>, the Working Group recommends that Peru:</p> <p>(e) amend CLL Art. 17(2) and Art. 33 of the CLL Regulation to align more closely with the Working Group's Good Practice Guidance on Internal Controls, Ethics and Compliance, including by (i) expanding the lists of mandatory and optional elements for a prevention model; (ii) elaborating on certain existing elements, and (iii) clarifying that some of the elements listed in Art. 33 are mandatory for certain companies (Convention Art. 2; 2009 Recommendation III(ii) and Annexes I.B and II);</p>
<p><b>Actions taken as of the date of the follow-up report to implement this recommendation:</b></p> <p>Draft Bill No. 676/2021-PE presented by the Executive Branch proposed the incorporation of the following text in Article 3 of Law 30424:</p> <p>"Article 17.- Implementation of prevention models.</p> <p>17.1 Any legal person, regardless of its classification or size, which voluntarily implements a prevention model, does so on the basis of its risk profile in which the inherent and residual risks are identified and evaluated, in accordance with its size, nature, characteristics and complexity of its operations, in order to have suitable surveillance and control measures that enable it to prevent the offences provided for in Article 1 or to significantly reduce the risk of their commission.</p> <p>17.2 For such purposes, legal persons should review and evaluate their risk profile at least once a year; and, extraordinarily, whenever circumstances or factors occur that may impact on the risk profile previously developed.</p> <p>17.3 The prevention model referred to in paragraph 17.1 of this article is implemented considering the following elements:</p> <p>a. A duly documented policy prohibiting the commission of the offences referred to in Article 1; and expressly stating the commitment and leadership of the governing bodies, management, senior management and middle management for the implementation, execution and supervision of the prevention model, for the rejection of the commission of offences, and establishing the integration of the said model in the business processes of the legal person.</p> <p>b. A person in charge of prevention, appointed by the highest management or governing body of the legal person or whoever takes its place, as appropriate, who must exercise his or her function with autonomy and independence and must be assigned the necessary resources for the proper discharge of his or her responsibilities. In the case of micro, small and medium-sized enterprises, the role of prevention officer may be assumed directly by the management body.</p> <p>c. Regular dissemination and training of the prevention model at all levels of the legal entity.</p>

d. The conduct that the organisation's managers and workers must observe in order to comply with the prevention model and the classification of the infringements and the respective disciplinary measures in the event of non-compliance.

e. Whistleblowing procedures that include at least easily accessible channels for the submission of complaints and mechanisms for dealing with them, guaranteeing the protection of the whistleblower and prohibiting reprisals against him/her.

f. Implementation of measures to mitigate the risks identified, including, among others

1. Specific and suitable controls for the prevention and detection of risks focused on particularly sensitive areas that may be linked to its activity or corporate purpose, such as:

a. Facilitation payments, including payments through third parties for simulated or actual services that serve to conceal an illicit payment.

b. Gifts, entertainment, hospitality, entertainment expenses, travel and entertainment.

c. Contributions to political campaigns.

d. Donations, sponsorships, solicitations, inducements and extortions.

e. Conflicts of interest.

2. The implementation of procedures to ensure the prompt and timely interruption or remediation of identified risks, as well as non-compliance.

g. The evaluation, control or supervision, monitoring and continuous improvement of the prevention model.

17.4. The legal person, in the exercise of its self-regulation, may implement or incorporate into its prevention model any other element in accordance with its risk profile and design the necessary mechanisms.

17.5. In the case of state enterprises or mixed economy companies, the prevention model is exercised without prejudice to the competences and powers corresponding to the bodies forming part of the National Control System.

17.6. The content of the prevention model is developed in the Regulations of this Law".

However, the text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament partially takes up the proposal with the following text:

"Article 17 - Implementation of the Prevention Model:

17.1 The legal person draws up its prevention model on the basis of its risk profile which identifies and assesses the inherent and residual risks, in accordance with its size, characteristic nature and complexity of its operations.

17.2 The prevention model should have the following minimum elements:

17.2.1 A person in charge of prevention, appointed by the highest governing body of the legal person or whoever takes its place, as appropriate, who must exercise his or her function with autonomy. In the case of micro, small and medium-sized enterprises, the role of the prevention officer may be assumed directly by the management body.

17.2.2 Actions to mitigate identified risks.

17.2.4 Dissemination and regular training on the prevention model.

17.2.5 Ongoing evaluation and monitoring of the prevention model.

17.3 The legal person, in the exercise of its self-regulation, may implement or incorporate into its prevention model any other element in accordance with its risk profile and design the necessary mechanisms. In the case of micro, small and medium-sized enterprises, the prevention model will be

limited to their nature and characteristics.

17.4 In the case of state enterprises or mixed economy companies, the prevention model is exercised without prejudice to the competencies and powers corresponding to the bodies comprising the National Control System.

17.5 The content of the prevention model is developed in the regulations of the Law".

ANNEX 32:

(a) Draft Law No. 676/2021-PE of the Executive Power.

(b) Author approved by the Congress of the Republic and currently in the process of insistence due to slight observations by the Executive.

**If no action has been taken to implement this recommendation, 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:**

In response to the report on the second year of implementation of the Phase 02 recommendations, a Bill is being drafted to address the implementation of this recommendation.

**Text of recommendation 16(f):**

16. With respect to liability of legal persons, the Working Group recommends that Peru:

(f) ensure that (i) the legally binding requirements for SMEs under the CLL take into account the companies' risk profile and (ii) clarify which of the minimum prevention model elements in CLL Art. 17(2) are required for SMEs (Convention Art. 2; 2009 Recommendation III(ii) and Annexes I.B and II);

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

The text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament modifies article 17 of Law 30424, in the following terms:

"Article 17 - Implementation of the Prevention Model:

17.1 The legal person draws up its prevention model based on its risk profile that identifies and assesses inherent and residual risks, in accordance with its size, characteristic nature and complexity of its operations.

17.2 The prevention model should have the following minimum elements:

17.2.1 A person in charge of prevention, appointed by the highest governing body of the legal person or whoever takes its place, as appropriate, who must exercise his or her function with autonomy. In the case of micro, small and medium-sized enterprises, the role of prevention officer may be assumed directly by the management body.

17.2.2 Actions to mitigate identified risks.

17.2.4 Dissemination and regular training on the prevention model.

17.2.5 Ongoing evaluation and monitoring of the prevention model.

17.3 The legal person, in the exercise of its self-regulation, may implement or incorporate into its prevention model any other element in accordance with its risk profile and design the necessary mechanisms. In the case of micro, small and medium-sized enterprises, the prevention model will be limited to their nature and characteristics.

17.4 In the case of state enterprises or mixed economy companies, the prevention model is exercised without prejudice to the competencies and powers corresponding to the bodies comprising the National

Control System.

17.5 The content of the prevention model is developed in the regulations of the Law".

In this regard, it is clear that the implementation of the prevention model for any legal person must be based on its risk profile, i.e. an analysis of the types of threats faced by a company (including SMEs) according to its size, nature, characteristics and complexity of its operations. It also provides for the possibility for the legal person to incorporate any additional mechanism according to its risk profile.

ANNEX 33:

(a) Draft Law No. 676/2021-PE of the Executive Branch.

b) Autograph approved by the Congress of the Republic, which is currently in the process of insistence due to slight observations of the Executive Power.

**If no action has been taken to implement this recommendation, 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:**

On 28 March 2023, the Congress has put the initially approved text and the insistence opinion on the agenda, so that its approval process would take place in April, May or June 2023.

In case of additional recommendations by the OECD Working Party, these can be addressed in the Draft Law under preparation.

**Text of recommendation 16(g):**

16. With respect to liability of legal persons, the Working Group recommends that Peru:

(g) repeal the unconstitutional provision in CLL Art. 18 which binds the prosecutor to the SMV's assessment of prevention models (Convention Art. 2; 2009 Recommendation III(ii) and Annex I.B);

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

The text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament modifies article 18 of Law 30424, eliminating the obligatory link between the Prosecutor and the evaluation of the prevention model by the Superintendence of the Securities Market (Superintendencia del Mercado de Valores). Thus the text of the first paragraph of the new article 18 will be:

"Article 18 - Issuance of the Technical Report on the prevention model:

The Prosecutor to formalise preparatory investigation, whenever the legal person claims to have a prevention model, must have a technical report from the Superintendence of the Securities Market (SMV) that analyses the implementation and functioning of the prevention model in relation to the crime imputed to the natural person. The technical report has the status of institutional expertise.

(...)"

To avoid confusion on the part of judges and prosecutors, the approved text would incorporate an article 19 with the following text:

"Article 19 - Assessment of the Technical Report.

The Technical Report issued by the Superintendencia del Mercado de Valores is assessed by the prosecutor and the judge with the other evidentiary elements incorporated in the investigation or the proceedings"

ANNEX 34:

(a) Bill N° 676/2021-PE of the Executive Power.

b) Author approved by the Congress of the Republic, which is currently in the process of insistence due to slight observations by the Executive Power.

**If no action has been taken to implement this recommendation, 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:**

On 28 March 2023, Congress has put the initially approved text and the insistence opinion on the agenda, which would mean that the approval process would take place in April, May or June 2023

**Text of recommendation 16(h):**

16. With respect to liability of legal persons, the Working Group recommends that Peru:

(h) amend the CLL to clarify the meaning of Art. 17(4) (Convention Art. 2; 2009 Recommendation III(ii) and Annex I.B);

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

The text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament proposes to repeal numeral 17.4 of Article 17 of Law 30424, which would mean that it would no longer be possible to exclude the liability of the legal person when any of the natural persons commits the offence by fraudulently evading the duly implemented prevention model.

ANNEX 35:

(a) Draft Law No. 676/2021-PE of the Executive Power.

(b) Autograph approved by the Congress of the Republic, which is currently in the process of insistence due to slight observations by the Executive.

**If no action has been taken to implement this recommendation, 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:**

On 28 March 2023, Congress has put the initially approved text and the insistence opinion on the agenda, which would mean that the approval process would take place in April, May or June 2023.

**Text of recommendation 16(i):**

16. With respect to liability of legal persons, the Working Group recommends that Peru:

(i) enact legislation to clarify its territorial and nationality jurisdiction over legal persons for foreign bribery (Convention Arts. 2 and 4; 2009 Recommendation III(ii) and Annex I.B).

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

Article 2 of the Penal Code was amended by Law No. 31501 to specify that Peruvian law applies to transnational bribery committed by a Peruvian national or a representative of a legal person in Peru. The legal amendment is as follows:

"Article 2. Principle of Extraterritoriality, Principle of Real or Defence and Principle of Active and



Passive Personality".

Peruvian Criminal Law applies to any offence committed abroad, when:

(...)

5. It is the offence of transnational active bribery perpetrated by a Peruvian or representative of a legal person domiciled in Peru.

(...)"

It should be noted that the same article maintains paragraph 6 of Article 2 of the Criminal Code, whereby Peruvian criminal law applies to any offence committed abroad that Peru is obliged to punish in accordance with international treaties.

Additionally, the text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament modifies article 2 of Law 30424, making the following addition:

"Article 2 - Subjective scope of application:

(...)

In the case of foreign legal persons, it shall be applicable when they carry out or develop their activities, directly or indirectly, in the national territory, through any corporate, contractual or business modality, and any of the offences provided for in Article 1 is committed.

(...)"

ANNEX 36:

(a) Draft Law No. 676/2021-PE of the Executive Power.

(b) Author's bill approved by the Congress of the Republic, which is currently in the insistence procedure due to slight observations by the executive branch.

(c) Law N° 31501 (Law that modifies the Penal Code in order to strengthen the fight against the crimes of fraudulent administration, parallel accounting and transnational bribery).

**If no action has been taken to implement this recommendation, 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:**

On 28 March 2023, Congress has placed the initially approved text and the insistence opinion on the agenda, which would mean that the approval process would take place in April, May or June 2023.

**Text of recommendation 17(a):**

17. Regarding the money laundering offence, the Working Group recommends that Peru:

(a) take steps to (i) clarify whether and how its money laundering offence covers the laundering in Peru of the proceeds of foreign bribery committed abroad, including applicable jurisdictional rules and ensuring that dual criminality is not a prerequisite for conviction, and (ii) raise awareness among prosecutors, UIF and other relevant authorities of these matters (Convention Art. 7; 2009 Recommendations II and V);

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

The Ministry of Justice and Human Rights through the Directorate of Criminological Affairs has carried out a preliminary analysis, indicating that our national legislation through Law No. 31501, Law amending the Criminal Code in order to strengthen the fight against the crimes of Fraudulent Administration, Parallel Accounting and Transnational Bribery, published on 29 June 2022, among

others, amended Article 2 of the Criminal Code, establishing that the criminal law (within which is regulated the crime of money laundering - DL. 1106), is applicable to any crime committed abroad when: "5. It is the crime of transnational active bribery perpetrated by a Peruvian or representative of a legal person domiciled in Peru". In this regard, the Directorate considers, on a preliminary basis, that the aspects recommended by the OECD have been taken up by Law No. 31501, since the money laundering offence regulated in Peru covers the laundering of the proceeds of transnational bribery committed abroad.

**If no action has been taken to implement this recommendation, 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:**

- a) No cases of money laundering that have transnational bribery as a predicate offence have yet been identified.
- b) The Directorate of Criminological Affairs of MINJUSDH will issue a legal report analysing the criminal offence of money laundering in the national legislation in order to verify if this criminal offence covers money laundering of transnational bribery.

**Text of recommendation 17(b):**

17. Regarding the money laundering offence, the Working Group recommends that Peru:

- (b) take steps to increase awareness and enforcement of the money laundering offence, including by training law enforcement authorities on issues that constitute obstacles to the enforcement of the offence (Convention Art. 7; 2009 Recommendations II and V); and

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

The Public Prosecutor's School has delivered the following courses:

- Prosecutorial Investigation Workshop on Money Laundering Offences (22 to 29 December 2022).
- Conference on Money Laundering (01 July 2022).
- Specialisation Course: On Asset Forfeiture, Money Laundering and Corruption of Officials (04, 11, 18, 25 June and 02 July 2021).
- Course on financial concepts in predicate offences for money laundering (27, 28 and 29 October 2021).
- Topics linked to banking and insurance in predicate offences for money laundering for the Public Prosecutor's Office (24 and 26 November 2021).

Judiciary has given:

- Conference "Judicial determination of the penalty in offences of organised crime, corruption of officials and money laundering" (24 February 2022).
- Corporate corruption, business crime and money laundering" (25 November 2022).

The Judiciary Academy has developed the following trainings:

- \* Virtual conference "Cryptocurrencies and money laundering".
- \* Course on Money Laundering and Extinction of Ownership.
- \* Specialisation course on money laundering and the crime of financing terrorism.

See ANNEX 16.

**If no action has been taken to implement this recommendation, 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 implementation of this recommendation is being evaluated by Task Force 2 "Training" of the Multisectoral Commission against ML/FT (CONTRALAFT), comprising the FIU, the Judiciary, the Public Prosecutor's Office, among other entities.

**Text of recommendation 17(c):**

17. Regarding the money laundering offence, the Working Group recommends that Peru:

(c) maintain, on a regular basis, statistics on the number of foreign bribery-related money laundering cases (Convention Art. 7; 2009 Recommendations II and V).

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

The Financial Intelligence Unit, within the framework of its competences, has prepared the III Report on Money Laundering Sentences in Peru, which contains an analysis of the convictions handed down in the country for money laundering between 2012 and 2020. This document presents updated results as of December 2020 and includes the analysis of 140 final convictions for money laundering in the period 2012-2020.

Of the total of 140 convictions for money laundering, only 122 identify predicate offences, the remaining 18 belong mainly to the modality of transporting cash of illicit origin.

In the 122 convictions, 137 predicate offences were identified, as follows: crimes against public health (53, 38.7%), crimes against property (35, 25.5%), crimes against public administration (20, 14.6%), crimes against public faith (14, 10.2%), environmental crimes (5, 3.6%), tax crimes (4, 2.9%) and customs crimes (2, 1.5%). Finally, one sentence (0.7%) was recorded for each of the following types: crimes against the State and national defence; crimes against the financial and monetary order; crimes against freedom; and terrorist crimes.

In Money Laundering sentences involving crimes against public administration (20), specific active bribery had the highest incidence with 30% (6), followed by specific passive bribery with 25% (5) and collusion, illicit enrichment and procedural fraud, each with 15% (3); while in sentences involving crimes against public faith (14), ideological falsehood was present in 50% of sentences (7) and falsification of documents in the remaining 50% (7).

ANNEX 37

Third Report on Money Laundering Sentences in Peru - Analysis of Final Convictions (2012-2020)

**If no action has been taken to implement this recommendation, 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 Financial Intelligence Unit has programmed as a permanent activity statistics on convictions for money laundering offences, and by 2023 the IV Report on Money Laundering Sentences in Peru will be published, which will include an analysis of the convictions handed down in the country for money laundering between 2012 and 2021.

**Text of recommendation 18(a):**

18. Regarding the false accounting offence, the Working Group recommends that Peru:

(a) enact a false accounting offence that covers the full range of misconduct described in Convention Art. 8(1) (Convention Art. 8; 2009 Recommendations III(ii), X.A(i) and Annex I.B);

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

Law No. 31501 amended Article 198 of the Criminal Code (Fraudulent Administration Offence) to include an additional offence to punish the use of accounting documents that support non-existent or simulated operations to cover up payments in favour of third parties, whether natural or legal persons, national or foreign. Likewise, the penalties for this offence were increased, as follows:

"Article 198. Fraudulent administration

Shall be punished with imprisonment of not less than two nor more than five years and one hundred eighty to three hundred sixty-five days-fine, whoever, exercising functions of administration or representation of a legal person, carries out any of the following acts to the detriment of the legal person or third parties:

(...)

9. Using any accounting document that supports non-existent or simulated operations to cover up payments in favour of third parties, whether natural or legal persons, national or foreign".

Likewise, Law No. 31501 amended Article 199 of the Criminal Code to increase the penalties for the offence of parallel accounting, its current wording being as follows:

"Article 199. Parallel accounting

Whoever, with the purpose of obtaining undue advantage, maintains parallel accounting different from that required by law, shall be punished with imprisonment of not less than two nor more than five years and with one hundred eighty to three hundred sixty-five days-fine".

**ANNEX 38:**

Law No. 31501 (Law that modifies the Penal Code in order to strengthen the fight against the crimes of fraudulent administration, parallel accounting and transnational bribery).

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 18(b):**

18. Regarding the false accounting offence, the Working Group recommends that Peru:

(b) include foreign bribery-related false accounting as a punishable offence under the Corporate Liability Law 30 424 (Convention Art. 8; 2009 Recommendations III(ii), X.A(i) and Annex I.B);

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

The text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament modifies article 1 of Law 30424, to include within its scope of application article 199 of the Criminal Code and article 5 of Legislative Decree N° 813 (Criminal Tax Law). The proposed legislation states:

"Article 1. Object of the Law

This Law regulates the administrative liability of national or foreign legal persons in criminal

proceedings for the offences provided for in articles:

- a) 199 (...) of the Penal Code.
- b) (...)
- c) (...)
- d) (...) 5 (...), of Legislative Decree N° 813, Criminal Tax Law. (...)"

It should be recalled that Article 5 of the Criminal Tax Law states:

"Article 5.- Any person shall be sentenced to imprisonment for not less than two (two) nor more than five (five) years and 180 (one hundred and eighty) to 365 (three hundred and sixty-five) days-fine, whoever, being obliged by tax regulations to keep books and accounting records:

- a) Totally fails to comply with said obligation.
- b) Has failed to record acts, transactions, income in the accounting books and records.
- (c) makes false entries of accounts, entries, amounts, names and data in the accounting books and records.
- d) Destroys or conceals all or part of the accounting books and/or registers or documents related to taxation".

For its part, Article 199 of the Criminal Code states:

"Article 199. Parallel accounting

Whoever, for the purpose of obtaining undue advantage, keeps parallel accounts other than those required by law, shall be punished with imprisonment of not less than two nor more than five years and with one hundred eighty to three hundred sixty-five day-fines."

**ANNEX 39:**

This is an autograph approved by the Congress of the Republic, which is currently in the process of insistence due to slight observations by the Executive Power.

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 18(c):**

18. Regarding the false accounting offence, the Working Group recommends that Peru:

- (c) ensure that sanctions against natural and legal persons for false accounting are effective, proportionate and dissuasive (Convention Art. 8; 2009 Recommendations III(ii), X.A(iii) and Annex I.B);

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

Law No. 31501 amended Article 198 of the Criminal Code (Fraudulent Administration Offence) to include an additional offence to punish the use of accounting documents that support non-existent or simulated operations to cover up payments in favour of third parties, whether natural or legal persons, national or foreign. Likewise, the penalties for this offence were increased, as follows:

"Article 198. Fraudulent administration

Shall be punished with imprisonment of not less than two nor more than five years and one hundred

eighty to three hundred sixty-five days-fine, whoever, exercising functions of administration or representation of a legal person, carries out any of the following acts to the detriment of the legal person or third parties:

(...)

9. Using any accounting document that supports non-existent or simulated operations to cover up payments in favour of third parties, whether natural or legal persons, national or foreign".

Likewise, Law No. 31501 amended Article 199 of the Criminal Code to increase the penalties for the offence of parallel accounting, its current wording being as follows:

"Article 199. Parallel accounting

Whoever, with the purpose of obtaining undue advantage, keeps parallel accounting different from that required by law, shall be punished with imprisonment of not less than two nor more than five years and with one hundred eighty to three hundred sixty-five day-fines."

**ANNEX 40:**

Law No. 31501 (Law that modifies the Penal Code in order to strengthen the fight against the crimes of fraudulent administration, parallel accounting and transnational bribery).

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 18(d):**

18. Regarding the false accounting offence, the Working Group recommends that Peru:

(d) take steps to increase the actual enforcement of foreign bribery-related false accounting (Convention Art. 8; 2009 Recommendations III(ii), X.A(i) and Annex I.B).

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

**If no action has been taken to implement this recommendation, 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:**

Statistics on convictions for accounting offences are being collected, although it will be further down the line that convictions for false accounting related to transnational bribery may become evident as more investigations into transnational bribery become available.

**Text of recommendation 19(a):**

19. Regarding sanctions and confiscation, the Working Group recommends that Peru:

(a) amend its legislation to increase sanctions for foreign bribery that generates a benefit whose value cannot be determined (Convention Arts. 2 and 3);

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

The text approved by the Justice and Human Rights Commission and whose autograph is in the process of being approved by insistence by the Congress of the Republic, establishes the modification of article 7 of Law 30424 under the following text:

"The fine is calculated as follows:

1. When the amount of the benefit obtained or expected to be obtained from the commission of the offence can be determined, the fine is not less than twice or more than six times that amount.
2. When the amount of the benefit obtained or expected to be obtained from the commission of the offence cannot be determined, the fine is not less than ten (10) and not more than ten thousand (10000) tax units (UIT).

The judges impose the fine, in a reasoned manner, according to the following criteria of substantiation and determination, as appropriate:

1. Non-compliance with internal rules and procedures.
2. The number and hierarchy of the officials, employees and collaborators involved in the offence.
3. Failure to monitor the activity of the perpetrators and participants.
4. The extent of the damage caused.
5. The amount of money involved in the commission of the offence.
6. The size, nature and economic capacity of the legal person.
7. The spontaneous reporting to the authorities by the legal person as a result of its own detection or internal investigation activity.
8. Behaviour subsequent to the commission of the offence.
9. Willingness to mitigate or repair the damage.

The fine must be paid within ten working days of the pronouncement of the sentence that has the status of consensual or enforceable. At the request of the legal person and when the payment of the amount of the fine could jeopardise its continuity or the maintenance of jobs or when it is advisable in the general interest, the judge authorises the payment to be made in monthly instalments, within a limit that does not exceed thirty-six months.

In the event that the legal person does not pay the fine imposed, it may be executed on its assets or converted, subject to a court order, into a definitive prohibition of activities, as provided for in Article 5(b)(2).

ANNEX 41:

Autograph approved by the Congress of the Republic, which is currently in the process of insistence due to slight observations by the Executive Power.

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 19(b):**

19. Regarding sanctions and confiscation, the Working Group recommends that Peru:

- (b) establish a database of foreign bribery convictions of legal persons (Convention Art. 3; 2009 Recommendation III(ii));

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

The Register of Sanctioned Legal Entities was created by Administrative Resolution No. 016-2020-CE-PJ, dated 15 January 2020, providing for its incorporation into the National Judicial Register, a document that also approved Directive No. 002-2020-CE-PJ "Rules governing the operation of the Register of Sanctioned Legal Entities", and the Procedure "Registration, Cancellation, Modification, Cancellation or Suspension of administrative measures in the Register of Sanctioned Legal Entities", which is currently in force.

In addition, the Judicial Investigation Centre of the Judiciary keeps a record of judicial decisions related to bribery in its various forms during the years 2021 - 2023, so that in the event of a conviction for transnational bribery, it will also be part of the monitoring carried out by the CIJ - PJ.

**ANNEX 42:**

Oficio N° 001467-2023-RENAJU-GSJR-GG-PJ of the National Judicial Registry.

**If no action has been taken to implement this recommendation, 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 application of the Registry of Sanctioned Legal Entities - REPEJUS, is in the process of implementation, for which, as indicated in Memorandum No. 000811-2022-GI-GG-PJ. of June 16, 2022, the IT Management submitted the Terms of Reference, with details of the resources required, based on the report prepared by the Deputy Manager of Information Systems Development, an office attached to the same line agency.

In this regard, the National Judicial Registry is currently resuming coordination with the IT Management in order to promote the implementation of the functional requirements related to the improvements of the implemented registries and the development of the registries that are still pending implementation.

**Text of recommendation 19(c):**

19. Regarding sanctions and confiscation, the Working Group recommends that Peru:

(c) ensure that sanctions in practice – particularly in light of sentence suspensions – are effective, proportionate and dissuasive (Convention Art. 3);

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

It is relevant to note that the last paragraph of Article 57 of the Criminal Code indicates that the suspension of the execution of the sentence is inapplicable to public officials or civil servants convicted of any of the intentional crimes provided for in Articles 384, 387, second paragraph of Article 389, 395, 396, 399, and 401 of the Criminal Code. That is, there is no suspension of the sentence for the crimes of collusion, embezzlement, aggravated embezzlement, specific passive bribery, passive corruption of judicial assistants, incompatible negotiation or taking undue advantage of the position and illicit enrichment.

**If no action has been taken to implement this recommendation, 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:**

Although there are still no convictions for the offence of transnational active bribery, a new draft law will propose to include the offence of transnational active bribery (Article 397-A of the Criminal Code) among the offences for which suspended sentences are not applicable.



**Text of recommendation 19(d):**

19. Regarding sanctions and confiscation, the Working Group recommends that Peru:

(d) take steps to ensure that confiscation is routinely applied in foreign bribery cases (Convention Art. 3);

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

**If no action has been taken to implement this recommendation, 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:**

Information is being gathered on existing investigations into the offence of Article 397-A of the Criminal Code (transnational active bribery).

**Text of recommendation 19(e):**

19. Regarding sanctions and confiscation, the Working Group recommends that Peru:

(e) maintain detailed statistics on the sanctions and confiscation imposed in foreign bribery cases (Convention Art. 3; 2009 Recommendation III(ii));

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

**If no action has been taken to implement this recommendation, 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:**

Information is being gathered on existing investigations into the offence of Article 397-A of the Criminal Code (transnational active bribery).

**Text of recommendation 19(f):**

19. Regarding sanctions and confiscation, the Working Group recommends that Peru:

(f) take steps to ensure that its procuring authorities verify whether an individual or entity seeking a public procurement contract has been convicted of foreign bribery, including by checking the debarments lists of multilateral development banks (Convention Art. 3; 2009 Recommendations II, III(ii) and XI(i));

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

Entities can obtain information on impeded persons through the tool designed by the OSCE called Ficha Única del Proveedor (<https://apps.osce.gob.pe/perfilprov-ui/>), where information on suppliers can be viewed. Likewise, it alerts about the configuration of any impediment, thanks to the cross-checking of information with different records of competent entities such as the Comptroller General of the Republic, the National Superintendence of Public Registries, the Judiciary, among others.

Likewise, in the Ficha Única del Proveedor there are links to verify the list of ineligible companies or

those sanctioned by the World Bank and the Inter-American Development Bank.

On the other hand, the Electronic State Procurement System (Sistema Electrónico de Contrataciones del Estado-SEACE) blocks the registration of acts in the system by ineligible suppliers. The OSCE Risk Management Directorate in the period from 01 June 2021 to 27 March 2023, has carried out ex officio supervision of the impediments to contracting with the State at the three levels of government, with the aim of identifying indications of the commission of an infringement of the State contracting regulations, regulated in paragraph c) of numeral 50.1 of article 50 of the Law on State Contracting. 1 of Article 50 of the Law on State Contracting, which establishes that contracting with the State despite being prohibited by law constitutes an infraction punishable by the State Contracting Tribunal.

By virtue of this, the following was noted:

- From 01 June 2021 to 31 December 2021, 1,291 contracts were identified with indications of transgression of the provisions of paragraph c) of numeral 50.1 of article 50 of the aforementioned legal provision, for a total amount of S/. 31'365,452.52.

- In 2022, of the total number of contracts supervised, a total of 5,049 contracts were identified with indications of transgression of the provisions of paragraph c) of numeral c) of numeral 50.1 of article 50 of the aforementioned legal provision, for a total amount of S/ 106'379,577.99.

- From 01 January 2023 to 27 March 2023, 1,078 contracts were identified with indications of transgression of the provisions of paragraph c) of numeral c) of numeral 50.1 of article 50 of the aforementioned legal provision, for a total amount of S/ 43'020,995.72.

The reports containing the findings were forwarded to the State Contracting Tribunal, so that it could evaluate the initiation of the respective administrative sanctioning procedures, if appropriate.

Likewise, these documents were forwarded to the contracting entities so that corrective and/or preventive actions could be taken to ensure the correct application of the State contracting regulations and full compliance with the impediments contained therein; and to the National Control System for the corresponding actions within the framework of its competencies.

**ANNEX 43:**

Example of the Single Supplier Form (<https://apps.osce.gob.pe/perfilprov-ui/>)

**If no action has been taken to implement this recommendation, 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:**

**Text of recommendation 19(g):**

19. Regarding sanctions and confiscation, the Working Group recommends that Peru:

(g) train procuring authorities to ensure that debarments may be imposed in practice whenever appropriate (Convention Art. 3; 2009 Recommendations II, III(ii), and XI(i)).

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

Within the framework of the implementation of the OSCE's Annual Training Plan on State Contracting, training on impediments to contracting with the State has been carried out. In the period from June 2021 to 23 March 2023, 33 events have been held with the participation of 15,033 attendees.

**ANNEX 44:**

Excel table with training related to impediments to contracting with the State and corruption.

**If no action has been taken to implement this recommendation, 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:**

By December of this year, 13 additional training events will be held, with a target of 8,490 participants.

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

Regarding Part II, countries are invited to provide information with regard to any follow-up issue identified below where there have been relevant developments since Phase 2. Please describe/include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

20. The Working Group will follow up on the issues below as case-law, practice and legislation develop:

### **Text of issue for follow-up 20(a):**

(a) issues related to public advantages, namely (i) whether Peru implements the 2019 Recommendation of the Council on Bribery and Officially Supported Export Credits to a degree that is commensurate to its export credits programme; and (ii) whether APCI implements anti-foreign bribery measures to a degree that is commensurate with Peru's development co-operation programme (2009 Recommendations XI(ii), XII, 2016 ODA Recommendation and 2019 Export Credit Recommendation);

**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 Peruvian Agency for International Cooperation (APCI), in addition to the general regulations on the prevention and punishment of corruption and the promotion of public integrity, has also promoted practices in this area:

- Virtual Integrity Module aimed at raising awareness and highlighting APCI's institutional values and practices on integrity (<https://www.gob.pe/institucion/apci/informes-publicaciones/3075721-modulo-de-integridad-en-la-intranet-de-apci>).
- Web link on APCI's main actions on the components of the Public Integrity Model (<https://www.gob.pe/23130-agencia-peruana-de-cooperacion-internacional-modelo-de-integridad>).
- Report on the identification, management and mitigation of corruption risks and/or risks affecting integrity in the APCI during the year 2022 (<https://www.gob.pe/institucion/apci/informes-publicaciones/3075705-gestion-de-riesgos-que-afecten-la-integridad-publica>).
- Implementation of the Single Digital Platform for Citizen Complaints (<https://www.gob.pe/institucion/apci/campa%C3%B1as/14940-plataforma-digital-unica-de-denuncias-ciudadanas-apc>).
- Assessment of the Work Climate to understand the perception of public integrity (<https://www.gob.pe/institucion/apci/noticias/612951-apci-evaluan-clima-laboral-para-conocer-percepcion-opinion-sobre-integridad-publica>).

### **Text of issue for follow-up 20(b):**

(b) limitation periods for preliminary proceedings and preparatory investigations in foreign bribery cases (Convention Arts. 5 and 6 and Commentary 27; 2009 Recommendation V and Annex I.D);

**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:**

Information is being sought on existing investigations into the offence of transnational active bribery (397-A of the Criminal Code).

**Text of issue for follow-up 20(c):**

(c) delay in the execution of orders to produce bank information in foreign bribery cases (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D);

**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:**

Since the Superintendency of Banking, Insurance and AFP is only responsible for channelling requests for the lifting of bank secrecy, it does not have statistical information on the delay in sending the information. Coordination will be made with the specialised anti-corruption and money laundering prosecutors' offices to update the reports on obstacles or difficulties in obtaining bank information.

**Text of issue for follow-up 20 (d):**

(d) appointment, discipline and dismissal and ethical training of judges and prosecutors (Convention Art. 5 and Commentary 27; 2009 Recommendation V and Annex I.D);

**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:**

With regard to the appointment of judges and prosecutors, in December 2022 the National Board of Justice amended the regulations on competitions for the selection and appointment of judges and prosecutors, both for promotion and open access, in order to optimise the selection procedures. An important modification was the inclusion in the regulations for promotion competitions of the appointment by means of a ballot of reserve candidates, a modality that was previously only included in the open access regulations.

This method of appointment means that applicants who passed all four stages of the competition but were not appointed because the post they applied for was filled, can fill a vacant and budgeted post that arises in the year following the end of the competition, thereby increasing the number of posts to be filled.

As can be seen from its Academic Plans for 2021, 2022 and 2023, the Academy of the Magistracy trains judges and prosecutors and candidates for these positions in relation to:

YEAR 2021

- Ethics in the Magistracy.
- Fundamentals of ethics in the judiciary.
- Ethics and corruption in the judiciary.
- Legal ethics, control and integrity in the judiciary.

## YEAR 2022

- Judicial ethics.
- The Bangalore Principles of Ethical Conduct for the Judiciary.

## YEAR 2023

- Ethics and Integrity in the Judiciary.
- Legal Ethics, Control and Integrity in the Judiciary.

The Judiciary has developed various trainings to strengthen ethics in the exercise of the work of judges, as follows:

- Awareness-raising conference "Ethics, integrity and their importance in the civil service" (18 June 2021).
- Awareness-raising talk "Ethics, integrity and their importance in the civil service". (24 August 2021).
- Awareness-raising lecture "Ethics, integrity and their importance in the public service" (19 October 2021).
- Lecture Series on "Integrity, Ethics and Corruption in the Public Service" (26, 27 and 28 October 2021).
- Awareness-raising lecture: "Ethics, integrity and their importance in the public service" (18 March 2022).
- Conference "Ethics, integrity and their importance in the public service" (11 May 2022).
- Webinar: "Integrity, Ethics and Corruption in the Public Service" (16 March 2022).
- Awareness-raising talk: "Ethics, integrity and their importance in the public service" (13 April 2022).

The Public Prosecutor's School has developed training and awareness-raising on ethics for the proper performance of prosecutors, including the following:

## YEAR 2022

- Seminar: Public Ethics, Institutional Integrity and Fight against Corruption.
- Workshop on corruption prevention, judicial integrity, transparency and the fight against corruption.
- Ethics and Philosophy from the point of view of the civil service.
- Ethics in the civil service.

## YEAR 2021

- Webinars: Interpersonal Skills, Ethics and Integrity, Internal Control System and Quality of Justice Services.
- Webinar: Change Management, Ethics and Personal Effectiveness.
- Keynote lecture: Ethics and Morality in Public Administration - Administrative Responsibility of State Officials and Civil Servants.
- Fundamentals of Ethics for Public Administration.
- Integrity and Ethics in Public Administration.
- Integrity in the Public Service.
- Ethics in the Public Service.

ANNEX 45:

(a) Resolution No. 1589-2022-JNJ of 16 December 2022 amending the Regulations on Competitive Competitions for the Selection and Appointment of Judges and Prosecutors - Open Access Mode in order to optimise selection and appointment procedures, establishing clarifications for the better

development of Open Access competitions, as well as new curricular evaluation tables.

b) Resolution No. 1588-2022-JNJ of 16 December 2022, which amends the Regulations on Competitive Examinations for the Selection and Appointment of Judges and Prosecutors - Promotion Mode, to include the provisions relating to candidates in reserve of the Judicial Career Law in the framework of promotion competitions. It also contains clarifications for the better development of promotion competitions, as well as new curricular evaluation tables.

c) Academic Plans for 2021, 2022 and 2023 of the Judicial Academy.

d) Report N° 000071-2023-SCAP-GRHB-GG-PJ.

e) Resolutions authorising training for the Public Prosecutor's Office.

NOTE: Statistical information on dismissal and disciplinary proceedings of the National Judicial Board for the years 2021, 2022 and 2023 is being collected.

**Text of issue for follow-up 20(e):**

(e) international co-operation, particularly: (i) the denial of a request due to public order, sovereignty, security or fundamental or essential interests; ii) MLA in non-criminal corporate foreign bribery proceedings; iii) delay in executing incoming MLA requests especially those that require the lifting of bank secrecy. (Convention Arts. 9 and 10; 2009 Recommendations III(ix) and XIII);

**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:**

Coordination is underway with the Office of International Judicial Cooperation to obtain information related to this recommendation.

**Text of issue for follow-up 20 (f):**

(f) the foreign bribery offence, particularly: (i) whether CC Art. 397-A prohibits proper or due advantages to foreign public officials; and ii) the application of concussion under CC Art. 382 (Convention Art. 1; 2009 Recommendation IV and Annex I.A);

**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:**

Pronouncements of the Supreme Court of Justice in relation to the crime of collusion are attached, thus we have the following:

- Appeal for Nullity 91-2020-PASCO:

TENTH. Now, in terms of violence and threats, it is worth considering:

10.1. Violence or threat. In the crime of extortion, unlike the crime of concussion, the common agent uses the commissive means of violence, oriented to the delivery of economic advantage, it is understood as "[...] the deployment of intense physical force, by of the author, in order to break their defense or resistance mechanisms and thus, obtain the undue advantage; Therefore, it must be suitable, suitable and effective for the objectives it pursues.

reach the individual" ; as well as the threat "[...] imports the announcement of an imminent evil, in terms of the production of damage to the fundamental legal assets of the taxpayer or a third party linked to him; This must reveal a certain magnitude, enough to be able to substantively reduce the victim's

response capacities, nullifying her decision-making capacity according to sense”.

10.2. Abusing his position. The exercise of public function by public servants and officials or intraneurs in the administration of funds (equity) or provision of public services has protection in the Constitution, as well as their performance or exercise of public function also has legal protection (article 425 of the CP) to determine or not the commission or prevention of crimes by public officials in the face of injury or endangerment of legal assets protected by the special part of the Substantive Code or the corresponding special law, subject to the material criminal principles of the Constitution.

In this sense, the commissive means of the abuse of the position of the public agent or prevalence of the official position or misuse of the functional investiture consists in the fact that the active subject positively takes advantage of the advantages of a specific and special situation of superiority, prerogative or power. with respect to the victim as an objective factor that facilitates the commission of the crime of concussion, which is determined based on three assumptions:

i) The abuse must be of the position and not of the public function, but the abuse of the position will materialize "within the exercise of the public function" and the scope of its general or specific institutional competence that is authorized by the state entity or by the superior official (not the signs of legality or non-regularization of the authorization), when the intervention of the public agent (initial, subsequent and final) is diverted or is outside the exercise of the constitutional and legal public function, it behaves as a common agent (common criminal) and not as an official or public servant and commits the crimes of coercion, kidnapping for extortion, extortion, kidnapping, etc. Thus, for example, the case of "illegal police intervention"

ii) There must necessarily be a legal link between the official or public servant and the individual (administrator and administered, intraneus and extraneus, etc.), that is, when the public agent in the exercise of the assigned public function performs a public service for the users; c) the public agent when exerting coercive pressure (constrain) on the will of the individual to induce him to promise to deliver to himself or to a third party an asset or a patrimonial benefit.

10.3. Force: in the crime of extortion, its guiding verb must be “to force is to compel someone to perform against her will. Therefore, the action carried out by the active subject goes against the consent of the passive subject, so that the latter's consent will be a cause of atypicality of the act. Thus, the normative element "compel" is the core of the criminal type by which the agent by means of commissive means —violence or threat— to another person (taxable subject) makes deliver the economic patrimonial advantage or advantage of any kind.

On the other hand, authoritative doctrine has established that, in the crime of concussion, the verb to oblige "[...] is synonymous with constraining and means forcibly compelling another to do or execute something, without reaching violence or threat in the sense of extortion. [...] there must be, at least, a difference of degree between the “force” of the concussion and the “violence or threat” of the extortion.

In reality, the difference is that the intimidation of the concussion is one that implies the announcement of the suffering of a damage derived from an act of power of the authority", that is to say, in this criminal type the verb to force acquires a different connotation, in which the violence, threat or pressure on a person who is exercising is of low intensity”

• Cassation No. 1743-2019-JUNIN

"Fifteenth. In view of this, the jurisprudential line of this Court has been reviewed with respect to the crime at hand and taking as a reference that the legislator has been more precise in other criminal types by demanding that the act of the subject be inherent to his functions, as occurs in the crime of abuse of authority, provided for in article 376 of the Penal Code, in which the legislator penalizes the conduct of public officials who "abusing their powers [...]", to understand the abuse of office element, a criterion must be applied broader, in which the active subject must not only hold the status of official or public servant, but, fundamentally, the typical conduct required is to abuse the position explicitly or covertly; this implies that, at the time of the facts, he misuses the position that has been granted to him or exercises it in a manner contrary to that entrusted to him. This abuse must have an impact on the will of the passive subject, vitiating it, in such a way that it accedes to its illegitimate claims. Hence, it admits two basic modalities of configuration: i) concussion for forcing a person to give or promise (crime of result) and ii) concussion by inducing or persuading a person to give a promise (activity crime).

• Appeal for Nullity No. 3183-2015-ANCASH

"The crime of concussion protects the rector and regular operation of the public administration, thus the central element of the legal type is that a person must improperly give or promise an asset or patrimonial benefit in favor of the public agent or for another. Therefore, the patrimony involved does not belong to the State, since this crime, due to its own typical configuration, does not entail an injury to public patrimony. Consequently, the replication of the limitation period does not proceed.

• Appeal for Nullity No. 4553-2008-LIMA.

"(...) that, in this sense, it is necessary to specify, that in the crime of concussion the protected legal right is the normal order and legal development of the function of the State organs, but in no way can it be affirmed that with the consummation of said criminal offence, the general patrimony of the State suffers any impairment; Therefore, the application of the provisions of the last part of the aforementioned article is not applicable to the present case, since said criminal offenses do not directly affect the assets of the State."

• Appeal No. 25-2017-LIMA

"9.1 Regarding the protected legal right, it protects the regular and correct development, the prestige and good reputation of the Public Administration, in which its members, officials and public servants, must have a functional performance outside of abuses of power of heritage connotation.

9.2. Regarding the objective imputation to the behavior, in the structure of the criminal type of concussion, the following can be seen, among other normative elements:

Active subject. The legal type requires a special quality from those involved in the punishable act, since the perpetrator cannot be any person but must hold the position of official or public servant. It is a crime of breach of positive special duty.

Regarding the guiding verb, the second modality refers to induction, which occurs when the official agent or public servant, abusing the position held within the Public Administration, induces a person to give or promise improperly, to yes or for a third party, an asset or patrimonial benefit. The active subject, in the exercise of his public powers, stimulates, instigates, induces or provokes his eventual victim so that he gives or promises to give in the immediate future an asset or undue patrimonial benefit.

Abuse of position, configured as that situation that occurs when the official or public servant misuses the position that the Public Administration entrusted to him in order to obtain an undue patrimonial benefit, either for him or a third party. The position is exercised outside the cases established by law, regulations, service instructions or without observance of the prescribed form, even when the official makes use of a power of competence in the proper manner, but to achieve a purpose illicit. The demand has been made without just cause, without legal protection, since the official or public servant acts arbitrarily by forcing or inducing, without any protection from the laws or infralegal regulations, to give or promise a good or an economic benefit for himself or for other.

Passive and aggrieved subject. The passive subject and the aggrieved party are constituted by the entities or agencies of the State."

ANNEX 46:

Appeal for Nullity 91-2020-PASCO.

Cassation No. 1743-2019-JUNIN

Appeal for Nullity No. 3183-2015-ANCASH

Appeal for Nullity No. 4553-2008-LIMA.

Appeal No. 25-2017-LIMA

**Text of issue for follow-up 20 (g):**

(g) the CLL, particularly: (i) successor liability for foreign bribery discovered during the due



diligence; ii) liability when a lower-level person who is not directly supervised by senior corporate officers commits foreign bribery due to the company's highest level managerial authority's failure to supervise the person or to implement adequate internal controls, ethics and compliance programmes or measures; iii) whether the prosecution of a legal person requires in practice that a natural person be prosecuted, convicted and/or sentenced (Convention Art. 2; 2009 Recommendation III(ii) and Annex I.B);

**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:**

It will have a scope when convictions are imposed for the crime of transnational active bribery (Article 397-A of the Criminal Code), as well as in the framework of Law 30424.

**Text of issue for follow-up 20 (h):**

(h) prevention models, particularly: (i) the burden of proof for the prevention model defence; ii) SMV's independence, expertise and powers; and iii) the SMV's interpretation and application of the requirements of a prevention model (Convention Art. 2; 2009 Recommendation III(ii) and Annex I.B);

**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 text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament modifies article 18 of Law 30424, to establish that the legal entity is the one that must allege that it has a prevention model and is the one that must provide the information, documentation and facilities to the Superintendence of the Securities Market (SMV); the text indicates:

"Issuance of the technical report on the prevention model:

The prosecutor in order to formalise the preparatory investigation, whenever the legal person claims to have a prevention model, must have a technical report from the Superintendence of the Securities Market (SMV) that analyses the implementation and operation of the prevention model in relation to the offence imputed to the natural person. The technical report has the status of institutional expertise.

The legal person that claims to have a prevention model must provide the respective information and documentation, as well as the necessary facilities to the Superintendence of the Securities Market, so that it can issue the technical report.

When preparing the technical report, international standards on the prevention model and good practices in corporate governance are taken into account.

The Superintendencia del Mercado de Valores issues the technical report within 90 days from the day following receipt of the request. Exceptionally, this period may be extended for an equal period depending on the complexity of the case, the size and location of the legal person, or other conditions or particularities".

The text approved by the Commission of Justice and Human Rights of the Congress of the Republic and by the plenary of the National Parliament also incorporates articles 19, 20, 21 and 22 in Law 30424, according to the following text:

"Article 19. Evaluation of the Technical Report:

The technical report issued by the Superintendence of the Securities Market is valued by the prosecutor and the judge together with the other evidentiary elements incorporated in the investigation or the

process.

Article 20. Confidentiality of the information and documentation on the prevention model:

The information and documentation provided by the legal person for the purpose of accrediting the implementation and operation of its prevention model are of a confidential nature.

Article 21. Powers of the Superintendency of the Securities Market:

In order to issue the technical report on the implementation and operation of the prevention model, the Superintendency of the Securities Market is empowered to:

1. Require from the legal person the necessary information and documentation on its prevention model.
2. Carry out the evaluation visits of the prevention model to the legal person, take statements from its personnel and from third parties with whom it maintains or has maintained a commercial or contractual relationship, as well as from any other person whose statement or contribution contributes to the effects of the issuance of the technical report, which is recorded in physical or digital support.

When the legal person does not deliver the information or documentation within the term established in the regulations or refuses to collaborate in the evaluation visits, the Superintendency of the Securities Market issues a report indicating this situation and the impossibility of concluding the implementation or operation of the prevention model".

This strengthens the independence and powers of the Securities Market Superintendence, in addition to legally specifying the assessment and interpretation to be made by the SMV based on the prevention model.

ANNEX 47:

This bill was approved by the Congress of the Republic and is currently in the process of insistence due to slight observations by the Executive Power.

**Text of issue for follow-up 20(i):**

(i) sanctions against natural persons, particularly: (i) whether fines imposed in practice are adequate, including against an offender with no income; iv) the use of non-custodial sentences in corruption cases (Convention Art. 3; 2009 Recommendation III(ii));

**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 Cassation Ruling of the Transitory Criminal Chamber of the Supreme Court (CASATION No. 1550-2018) of 16 November 2021 pronounces on the constitutional and legal validity of the Prohibition of the Suspension of the Execution of the Penal Execution in the Crime of Collusion, stating:

"In accordance with international instruments, the treatment of corruption offences must be based on a human rights approach, given that their commission by public officials or public servants affects democratic institutions and, in this regard, democratic societies have the obligation to prevent and repress corrupt practices, whether individual and/or structural, that affect the guarantee of human rights in a State governed by the rule of law. In this context, Article 39 of the Constitution, when it states that "All public officials and workers are at the service of the Nation", incorporates the principle of the proscription of corruption.

2. Under this approach to the fight against corruption, the over-criminalisation established in Law No. 30304, which establishes an exception to the rule by prohibiting the suspended sentence - which is aimed at a special subject (civil servant or public official), but not at an extraneous - has conventional and constitutional support.

3. Thus, the criminal policy adopted by the legislator with the prohibition established by Law No. 30304 is justified by the nature of the offences to which it refers and the acts of power that these special subjects carry out when they infringe their duties, which justifies the intensity of the sanction. These types of crimes are those that, as the IACHR has stated, affect or impede the full exercise of a multiplicity of collective rights, such as food, health, housing and education; in addition to stimulating discrimination and aggravating the socio-economic situation of those who live in vulnerable situations. In addition, they also weaken institutions, as they generate distrust among citizens towards democratic institutions. In short, these are crimes that not only affect an individual, but also collective goods and democratic institutions".

**ANNEX 48:**

Cassation Judgment of the Transitory Criminal Chamber of the Supreme Court (CASATION No. 1550-2018) of 16 November 2021.

**Text of issue for follow-up 20 (j):**

(j) sanctions against legal persons, particularly (i) the interpretation of "benefit" in CLL Art. 5(a); (ii) the use of suspended penalties in practice; (iii) adequacy of sanctions, including when a legal person implements a partial prevention model at the time of the offence, or a prevention model after the offence (Convention Art. 3; 2009 Recommendation III(ii)).

**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:**

It will have a scope when convictions are imposed for the offence of transnational active bribery (Article 397-A of the Criminal Code).