

FINLAND

REVIEW OF IMPLEMENTATION OF THE CONVENTION AND 1997 RECOMMENDATION

A. IMPLEMENTATION OF THE CONVENTION

Formal Issues

Finland signed the Convention on 17 December 1997. The necessary implementing legislation was enacted in November 1998, and came into force on 1 January 1999. Finland deposited its instrument of ratification on 10 December 1998.

The Convention as a whole

According to the Finnish authorities, the existing Finnish legislation already corresponded to a great extent to the provisions of the Convention. The only area where Finland needed to enact new legislation was the Penal Code. The scope of application of its sections on bribery has been broadened in order to cover bribery of foreign public officials.

1. ARTICLE 1. THE OFFENCE OF BRIBERY OF FOREIGN PUBLIC OFFICIALS

Finland translates the relevant provisions in its Penal Code¹ (“Rikoslaki” [39/1889]) as follows:

Section 13. Bribery.

(1) *A person who to a public official, to an employee of public corporation, to a soldier, to a person in the service of the European Communities, to an official of another member State of the European Union, or to a foreign public official, for his actions in service, promises, offers or gives a gift or other benefit, intended to the said person or to another, that affects or is intended to affect or is conducive to affecting the actions in service of the said person, shall be sentenced for bribery to a fine or to imprisonment for at most two years.*

(2) *A person who, for the actions in service of a public official or another person mentioned in (1), promises, offers, or gives a gift or other benefit mentioned in the said paragraph to another person, shall also be sentenced for bribery.*

Section 14. Aggravated bribery.

If in the bribery

(1) *the gift or benefit is intended to make the person act in service contrary to his duties with the result of considerable benefit to the briber or to another or of considerable loss or detriment to another; or*

(2) *the value of the gift or benefit is considerable, and the bribery, also when assessed in whole, is deemed to be aggravated,*

the offender shall be sentenced for aggravated bribery to imprisonment for at least four months and at most four years.

¹ The bribery provisions are found in chapter 16 of the Penal Code of Finland.

Section 20. Definitions.

(1) *A person in the service of the European Communities means any person who is in a permanent or temporary service relationship with the European Parliament, the Council of the European Union, the European Commission, the Court of Justice of the European Communities, the Court of Auditors, the Committee of the Regions, the Economic and Social Committee, the European Ombudsman, the European Investment Bank, the European Central Bank, or another body founded on the basis of the Treaties underlying the European Communities, or who performs a task on assignment for an institution of the European Communities or another body founded on the basis underlying the European Communities.*

(2) *An official of another Member State of the European Union means any person who according to the legislation of that State is subject to criminal liability as a public official or authority.*

(3) *Foreign public official means any person who in a foreign State has been appointed or elected to a legislative, administrative or judicial office or duty, or who otherwise performs a public duty for a foreign State, or who is an official or agent of an international organisation under public law.*

In the view of the Finnish authorities, the above-mentioned provisions cover all the elements of Article 1 of the Convention. They point out that some components of the domestic legislation have an even broader scope than the corresponding elements in the Convention.

1.1 The Elements of the Offence

1.1.1 any person

Section 13 of the Penal Code applies to “a person”. There is no definition in the Penal Code for “a person”. According to the Finnish authorities, any person aged at least 15 years can be prosecuted and sentenced for an offence.

1.1.2 intentionally

Finland does not include a discussion of the intentional requirement of the offence in its reply to the questionnaire. However, the relevant provisions contain the following references to the requirement and non-requirement of intent:

1. Under section 13(1), the offer, promise, etc. must be intended for the foreign public official, etc.
2. Under section 13(1) the offer, promise, etc. must either affect, intend to affect or be conducive to affecting the foreign public official’s actions in service.
3. Under section 14(1), an aggravated offence is committed where the gift, promise, etc. is intended to make the person act in service contrary to his duties.

The concept of intent is not defined in the Penal Code. According to the Finnish authorities, the offences are punishable only when committed intentionally. An offence of negligence is punishable only when this has been expressly mentioned. Criminal intent also covers “*dolus eventualis*”. There is no case law available.

1.1.3 to offer, promise or give

Section 13 expressly refers to “promises, offers or gives”. This wording is the same as in the Convention.

1.1.4 any undue pecuniary or other advantage

The relevant provisions in the Penal Code refer to “a gift or other benefit”.² Additionally, pursuant to section 14(2) a person is liable to be sentenced for aggravated bribery where the “gift or benefit is considerable” (and the bribery when assessed in whole is to be deemed aggravated). Thus, the Penal Code does not expressly refer to any requirement that the benefit be “undue” as provided in the Convention. It, therefore, does not appear that the Penal Code provides for any exceptions, such as where the gift or benefit was permitted or required by the law of the foreign public officials as contemplated by Commentary 8 on the Convention. It therefore appears that, in this regard, the Finnish Penal Code exceeds the requirements of the Convention.

The Finnish authorities confirm that the foreign bribery offences apply regardless if the gift or other benefit is "undue". Also, a gift which in itself is due, may constitute a bribery offence if the giver has intended to affect a public official's actions in service.

As far as the requirement of a "considerable" gift or benefit is concerned, the Finnish authorities point out that the term needs to be interpreted separately in each individual case, taking into consideration e.g. the economic circumstances of the bribed person. There is no case law available.

1.1.5 whether directly or through intermediaries

The relevant sections do not expressly provide that an offence is committed when the offer, promise or gift is made through an intermediary. The Finnish authorities indicate that this is the intention. According to Finnish authorities, the offences made through an intermediary is a settled principle with respect to the domestic bribery offences. The Finnish authorities confirm that this applies also to the foreign bribery offences where an offer, promise or gift is made through an intermediary.

1.1.6 to a foreign public official

This element of the offence is not discussed in the Finnish reply to the questionnaire. However, section 13(1) expressly refers to “a foreign public official”, “a person in the service of the European Communities”, and “an official of another Member State of the European Union”, amongst others. Although there appears to be some overlap between the definitions, the definition of “foreign public official” is clearly the one that is intended to apply to the foreign bribery offence as provided for in the Convention. It closely follows the definition under the Convention, except that it does not explicitly include persons acting for a “public agency” or a “public enterprise”, and refers to “international organisations under public law” instead of “public international organisations”.

The Finnish authorities confirm that the reference to a “foreign State” includes a public agency and a public enterprise. They also confirm that the term “international organisations under public law” has the same meaning as the term “public international organisations” in the Convention.

In addition, in the absence of a definition of “foreign state” in the Penal Code, it is not clear whether a foreign state “includes all levels and subdivisions of government, from national to local”, as provided in Article 4.b of the Convention in relation to the definition of “foreign country”.

The Finnish authorities confirm that the meaning of “foreign state” corresponds with the definition of “foreign country” in the Convention.

² See ss. 13(1), 13(2) and 14(1).

1.1.7 for that official or for a third party

Section 13 (1) and (2) applies where a person offers, etc. a gift or other benefit to “another person”(i.e. a person other than the foreign public official providing the actions in service). It is not clear whether these words are meant to indicate that the foreign bribery offences apply to the case where a benefit is “for a third party” as contemplated by the Convention.

The Finnish authorities confirm that Finland intends that the foreign bribery offences apply where the gift or benefit is for a third party. They refer to section 13 (2) in this respect.

1.1.8 in order that the official act or refrain from acting in relation to the performance of official duties

Sections 13(1) and (2) apply to “actions in service”, and section 14(1) applies to an “act in service contrary to his duties” where there has been a “considerable benefit to the briber or another” or a “considerable loss or detriment to another”. Finland does not discuss these elements of the offence in its reply, but it appears clear that pursuant to sections 13(1) and (2), there is no requirement that the official breached his/her duties. In contrast, this is required under section 14(1) in order for the briber to be liable for the more serious offence of “aggravated bribery”. However, it is not apparent whether section 14(1) does not require proof of the law of the particular official’s country as provided in Commentary 3 on the Convention. It also is not apparent whether “actions in service” under sections 13(1) and (2) and 14(1) include “any use of the public official’s position, whether or not within the official’s authorised competence” as provided in Article 4.c of the Convention.

The Finnish authorities confirm that the offence under section 14(1) requires proof of the law of the particular official’s country in order to be able to prove that the official breached his/her duties.

They explain that, in principle, “Actions in service” under sections 13(1) and (2) and 14(1) include any use of the public official’s position, whether or not within the official’s authorised competence as long as it is in some way linked with the public official’s position.

Moreover, the relevant provisions in the Penal Code only expressly apply to the “actions” of a foreign public official. It is therefore not clear whether the offences also apply to the omissions of a foreign public official, as provided in the Convention. The Finnish authorities confirm that the foreign bribery offences apply to the actions and omissions of a foreign public official.

1.1.9 in order to obtain or retain business or other improper advantage

The foreign bribery offences are not restricted to bribes given “in order to obtain or retain business or other improper advantage”. Consequently, small facilitation payments made to induce public officials to perform acts of a routine nature that are part of their functions are not exempted from the purview of these offences. In this regard the Finnish legislation goes beyond the requirements of the Convention.

1.1.10 in the conduct of international business

Again, the foreign bribery offences are not restricted to bribes given to obtain an improper advantage, etc. "in the conduct of international business". Thus, in this regard the Finnish legislation is broader than the Convention.

1.2 Complicity

Chapter 5 of the Penal Code contains general provisions on participation in criminal offences. The Finnish authorities confirm that these provisions apply also to the bribery of a foreign public official.

1.3 Attempt and Conspiracy

The Penal Code does not explicitly cover an attempt to bribe a domestic or foreign public official. The Finnish authorities consider that promising and offering a gift or another benefit to a public official already constitutes the offence of bribery itself. As the essential elements of the offence are fulfilled at such an early stage, the Finnish authorities do not see a need to criminalise the attempt to commit bribery separately.

Furthermore, the concept of attempt is not defined in the Penal Code. According to legal literature, an act remains an attempt if the action aiming at the commission of a crime has begun but all of that crime's elements have not been fulfilled.

According to the Finnish authorities, conspiracy to commit criminal offences is not punishable under the Penal Code.

2. ARTICLE 2. RESPONSIBILITY OF LEGAL PERSONS

2.1.1 Legal Entities/2.1.2 Standard of Liability

According to chapter 16, section 18, of the Penal Code, the provisions on corporate criminal liability apply to bribery and aggravated bribery. Chapter 9 of the Penal Code deals with corporate liability.

Chapter 9, section 1, of the Penal Code provides that a corporation, foundation or other legal entity, in whose operations an offence has been committed, may on the request of the public prosecutor be sentenced to a corporate fine, if such sanction has been foreseen in this Code. According to chapter 16, section 18, of the Penal Code, the provisions on corporate criminal liability apply to bribery and aggravated bribery. However, a fine cannot be imposed in relation to offences committed in the exercise of public authority.

According to the Finnish authorities, the term "corporation" etc. is not defined in the Penal Code. In practice, the meaning of these words has been interpreted very widely. According to a very new commentary on the Penal Code (Rikosoikeus, ed. by Olavi Heinonen, President of the Supreme Court, Juva 1999) the concept of "legal entity" includes companies (partnerships, limited partnership companies, limited liability companies), commercial and non-commercial associations, and foundations. The expression "other legal entities" is intended to cover other possible combinations, e.g. co-operative societies. The reason for the legislation on corporate criminal liability has been the Recommendation of the Council of Europe R No 18/1988.

The Finnish authorities confirm that corporate liability also applies to all public legal entities. However, the *exercise of a public function* cannot constitute corporate criminal liability. This concept has been defined in the motivations for chapter 9 (Hallituksen esitys 95/1993) according to which the exercise of a public function means "the prescribing of legal rules and applying of those rules in the actions of authorities and comparable organs when interfering in the individual liberties". A private legal entity cannot, in principle, exercise public functions. By contrast, offences in the *business transactions* of public enterprises, including state-owned and state-controlled enterprises, can constitute corporate liability.

According to chapter 9, section 2, a corporate fine may be imposed if a person belonging to a statutory organ or other management thereof has been an accomplice to an offence or allowed the commission of the offence, or if the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation.

It is not necessary that the offender be identified or otherwise be punished. Chapter 9, section 2 refers to the situations of "anonymous guilt". The reason for this provision is that it may be very apparent that an entity has not fulfilled its duty to take care even if the real offender remains unidentified. In these situations there may be reasonable cause for imposing a corporate fine.

According to chapter 9, section 3, paragraph 1, the offence shall be deemed to have been committed in the operations of a corporation, if the offender has acted on the behalf or for the benefit of the corporation, and belongs to its management or is in its service or employment or has acted on assignment by a representative of the corporation.

Chapter 9, section 4, provides the public prosecutor with some guidance in deciding whether to impose a sanction on the corporation or not. The rules on corporate criminal liability are therefore discretionary provisions. According to section 4, the public prosecutor shall, inter alia, duly take into account the nature and extent of the corporate neglect and the participation of the management in the offence, and the status of the offender as a member of the organs of the corporation. He shall likewise take into account the seriousness of the offence committed in the operations of the corporation as well as the extent of the criminal activity, other consequences of the offence to the corporation, and measures taken by the corporation to prevent new and remedy existing offences. Moreover, where a member of the management of the corporation is sentenced to a punishment, the prosecutor has to take into consideration the size of the corporation and the share of the corporation held by the offender, as well as the personal liability of the offender for the commitments of the corporation.

According to chapter 9, section 7, paragraph 1, the public prosecutor may waive the bringing of charges against a corporation, if the corporate neglect or participation of the management is of minor significance, or only minor damage or danger has been caused by the offence committed in the operations of the corporation, and the corporation has voluntarily taken the necessary measures to prevent new offences. Chapter 9, section 4 is applicable by a court for deciding on sanctions while section 7 is applicable at an earlier stage giving guidance to the prosecutor.

According to the Finnish authorities, the term "minor significance" needs to be interpreted in each individual case separately, taking into account the circumstances connected with the offence, e.g. the extent of the damage caused by or the amount of the unlawful benefit got by the offence.

According to chapter 9, section 7, paragraph 2, the bringing of charges may also be waived if the offender, in cases referred to in section 4, paragraph 6, has already been sentenced to a punishment and it is to be anticipated that the corporation for this reason will not be sentenced to a corporate fine.

The punishment of the offender does not automatically exclude a sanction on the corporation. A precondition for the waiving of charges against the corporation is always that the corporation has voluntarily taken the necessary measures to prevent new offences.

Moreover, according to chapter 9, section 7, paragraph 3, the provisions in sections 15b(1), 15b(3), 15c and 15d of the Decree on the Implementation of the Penal Code³ on the waiver of prosecution apply correspondingly to the decision to waive the bringing of charges against a corporation. In cases referred to in section 15b(3) of that Decree, the prosecutor shall submit, instead of the question of culpability, the question of the existence of grounds for corporate criminal liability to be considered by a court.

3. ARTICLE 3. SANCTIONS

3.1 Criminal penalties for Bribery of Domestic Public Officials

According to chapter 16, section 13, paragraph 1 of the Penal Code, a person who commits bribery of a domestic public official shall be sentenced to a fine or to imprisonment for at most two years. In case of aggravated bribery, the offender shall be sentenced to imprisonment for at least four months and at most four years according to chapter 16, section 14, of the Penal Code.

According to the Finnish authorities, the sanctions for bribery offences are "very normal" compared with other penalties provided in the Penal Code. For example, the penalties for theft are a fine or imprisonment for at most 18 months, for aggravated theft the minimum penalty is 4 months and the maximum penalty is 4 years⁴, for assault a fine or imprisonment for at most two years, for aggravated assault imprisonment for at least six months and at most ten years, for fraud and forgery a fine or imprisonment for at most two years, for aggravated fraud and aggravated forgery imprisonment for at least four months and at most for years etc.

Whether a particular act of bribery is "aggravated" needs to be assessed in whole. According to the Finnish authorities, the expression "when assessed in whole" is used in every provision concerning aggravated offences. This means that the existence of only some expressly mentioned aggravating circumstance is not sufficient. Rather, the seriousness of the offence must be assessed, taking into account all circumstances connected with the offence.

3.2 Criminal penalties for bribery of foreign public officials/legal persons

The above criminal penalties apply likewise to the bribery of foreign public officials.

With respect to sanctions in respect of corporations, chapter 9, section 5, provides that the corporate fine shall be at least FIM 5,000, and at most FIM 5,000,000. Section 6 provides that the amount of the corporate fine shall be determined in accordance with the nature and extent of the neglect and the participation of the management, and the financial standing of the corporation.

Additionally, chapter 9 section 8 provides for the imposition of a joint sentence for two or more offences at one time.

According to chapter 9, section 9, paragraph 1, the corporation on whose behalf the offender has acted shall not be fined, if the latter cannot be convicted due to the statute of limitations. However, the minimum period of the statute of limitations as regards corporate fines shall be five years. According to chapter 9,

³ The Finnish authorities declare that the provisions of the Decree on the Implementation of the Penal Code mentioned in chapter 9, section 7(3) have been replaced by provisions in the Criminal Procedural Act (689/1997, CPA). Section 15b(1) of the Decree is replaced by chapter 1, section 9(1) of the CPA, section 15(b)3 by chapter 1, section 10(1), section 15c by chapter 1, section 10(2), and section 15d by chapter 1, section 11. These provisions are mainly of a technical nature.

⁴ The same penalty exists for aggravated bribery.

section 9, paragraph 2, the enforcement of a corporate fine shall lapse in five years from the date of the final judgement imposing the fine.

The maximum period of the statute of limitations for the imposition of corporate fines is the same as for the sentencing of the offender. However, in respect of corporate fines the period can never be shorter than five years (chapter 9, section 9.1 of the Penal Code). Thus, in the case of bribery the period is five years and in the case of aggravated bribery ten years.

3.3 Penalties and Mutual Legal Assistance

According to the Finnish authorities, Finland provides international legal assistance on the basis of the "Act on International Legal Assistance in Criminal Matters" (non-treaty based legal assistance) as well as bilateral and multilateral conventions to which Finland is a party (treaty-based legal assistance). The Finnish authorities confirm that the Act on International Legal Assistance in Criminal Matters does not require the penalty to be of a certain degree to make international legal assistance possible. The Act came into force on 15 January 1994.

Finland has ratified the 1959 European Convention on Mutual Legal Assistance in Criminal Matters and its 1978 Additional Protocol. Finland has also joined the 1988 Vienna Convention on Drugs and the 1990 European Convention on Money Laundering. Furthermore, Finland has concluded agreements on co-operation between pre-trial investigation authorities with Estonia, Latvia, Lithuania and Russia. These agreements enable the pre-trial authorities to provide mutual legal assistance for the purposes of search, seizure, and freezing of proceeds from crime and other assistance.

3.4 Penalties and Extradition

The Finnish authorities explain that in relation to the ratification of the 1996 and 1995 Conventions relating to extradition between the Member States of the European Union, some sections of the Extradition Act have been amended. The amended provisions of the Extradition Act (182/1999) have come into force on 1 March 1999.

The 1996 EU Convention required amendments also to section 4 of the Extradition Act. Firstly, the wording of the section was amended to correspond to the wording of the 1957 European Convention on Extradition. According to the new wording of section 4 paragraph 1, extradition shall not be granted unless the act referred to in the request is an offence or, if committed in Finland under corresponding circumstances, would constitute an offence for which the maximum penalty according to Finnish law is deprivation of liberty for at least one year.

Secondly, two new paragraphs were added to section 4. According to the new paragraph 2, a person, who is not a Finnish national, can be extradited to another European Union Member State in respect of offences which are, if committed in Finland under corresponding circumstances, punishable according to the Finnish law by deprivation of liberty for a maximum period of at least six months. In addition to this, the offence has to be punishable under the law of the requesting Member State by deprivation of liberty for a maximum period of at least one year. The new paragraph 2 therefore constitutes requirements both for the Finnish legislation and to the legislation of the requesting Party.

As an explanation to the term "offence" used in section 4 of the Extradition Act, it can be noted, that section 4 of the Extradition Act establishes the requirement of dual criminality. Section 4 provides that the act referred to in the extradition request has to be an offence according to the Finnish law. The act referred to in the extradition request has to constitute an offence for which the maximum penalty according to Finnish law is deprivation of liberty for at least one year.

Section 4 paragraph 1 does not constitute requirements to the legislation of the requesting Member State. However, the 1957 European Convention on Extradition provides that extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty (article 2.1). This means that according to the Extradition Act, extradition could be granted more broadly than the European Convention requires. However, in Finland the obligations relating to extradition are based on Extradition Conventions, for example the European Convention on Extradition.

3.6 Seizure and confiscation of the bribe and the proceeds of the bribery

The Finnish authorities refer to chapter 40, section 4, of the Penal Code that deals with the forfeiture of a bribe. According to this provision, a gift or benefit that is received or the value thereof shall be declared forfeited to the State from the offender or from the person on whose behalf or in whose favour the offender has acted. The provision applies to persons who are convicted of *passive* corruption (acceptance of a bribe).

The Penal Code does not have a special provision on forfeiture in relation to *active* bribery. However, according to the Finnish authorities, chapter 2, section 16 of the Penal Code is applicable to active corruption. According to its paragraph 1, the financial benefit of the offence to the offender or to the person for whom or on whose behalf he/she has been acting shall be estimated at the discretion of the court and declared forfeited, regardless of whether charges have been brought against the person for whom the offender has been acting. Moreover, paragraph 3 provides for the forfeiture of “an object or property” owned by the offender or the person, for whom he/she was acting, which was “used in the commission of the offence or solely or primarily prepared or procured for the commission of the offence”.

The object or property must belong to the offender or to the person whom he/she has been acting for or on behalf of. When the property is jointly owned by the offender and another person it can not be forfeited. However, the value of the property may be forfeited, in this situation to an amount corresponding to the share of the offender's ownership.

The provisions on forfeiture apply to both the proceeds as well as instrumentalities. In the view of the Finnish authorities, the bribe which is still in the briber's possession may perhaps be forfeited.

3.8 Civil Penalties and Administrative Sanctions

According to the Finnish authorities, the Finnish legal system does not impose additional civil or administrative sanctions in cases of bribery. Finland is currently not considering introducing such sanctions in the future.

4. ARTICLE 4. JURISDICTION

4.1 Territorial Jurisdiction

Chapter 1, section 1, of the Penal Code provides that Finnish law shall apply to an offence committed in Finland. Chapter 1, section 10, paragraph 1 of the Penal Code defines the place of the commission. According to this provision, an offence is deemed to have been committed both where the criminal act was committed and where the consequence contained in the statutory definition of the offence became apparent.

The Finnish authorities confirm that an act of bribery is considered to be committed on Finnish territory if the act itself or its final result did occur there.

4.2 Nationality Jurisdiction

According to chapter 1, section 6, paragraph 1, of the Penal Code, Finnish law shall apply to an offence committed outside of Finland by a Finnish citizen. According to chapter 1, section 6, paragraph 3.1, permanent residents are deemed equivalent to Finnish citizens.

According to chapter 1, section 11, of the Penal Code, Finland applies the requirement of dual criminality to offences committed abroad by a Finn. This means that if the offence has been committed in the territory of a foreign State, Finnish law will only apply if the offence is punishable also under the law of the place of commission, and a sentence could have been passed on it by a court of that foreign State. In this case, a sanction that is more severe than what is provided by the law of the place of commission shall not be imposed in Finland.

The requirement of dual criminality also applies to the offence of bribery of a foreign public official. Accordingly, a Finnish national who commits the offence of bribery of a foreign public official abroad can only be punished in Finland if the offence is punishable also under the law of the place of commission.

In addition, according to section 11, Finnish law will only apply if a sentence could have been passed on it by a court of that foreign State. The intention of this requirement is that dual criminality shall not be a requirement in abstracto, but *in concreto*. According to section 11 the requirement of double criminality would not be fulfilled, for example in situations where the sentence could not be passed by the court of the foreign State because the offence was barred by the statute of limitations.

4.3 Consultation Procedures

According to the Finnish authorities, Finnish law does not contain provisions on procedures to allow consultations in cases where several States have jurisdiction in an alleged offence. In practice, the consultations would be in the responsibility of the Prosecutor-General.

The Finnish authorities consider that this issue may be covered by the European Convention on Mutual Legal Assistance in Criminal Matters (Article 21).

4.4 Review of Current Basis for Jurisdiction

The Finnish authorities are of the opinion that there is no need to change the current basis of jurisdiction as explained above. They point out that chapter 1 of the Penal Code - which contains the provisions on the scope of application of the criminal law - has only recently been reviewed with the new provisions having come into force in September 1996.

5. ARTICLE 5. ENFORCEMENT

5.1 Rules and Principles That Govern Investigation and Prosecution

According to the Finnish authorities, investigation and prosecution of bribery of a foreign public official is governed by the same rules and principles that govern any criminal investigation and prosecution. The relevant legislation is included in the Penal Code, the Criminal Investigation Act, the Coercive Measures Act and the Criminal Procedure Act. In addition, see under Article 2 relating to prosecutorial discretion in respect of charges against a corporation.

According to chapter 1, section 6, of the Criminal Procedure Act, the public prosecutor is to bring a charge if there is a prima facie case against the suspect.

According to chapter 1, section 2, paragraph 2, there may be cases where a request by the injured party is required for the bringing of a charge. The Finnish authorities confirm that the offence of bribery of foreign public officials does not fall under this category.

According to chapter 1, section 7, the public prosecutor may waive prosecution:

(1) where a penalty more severe than a fine is not anticipated for the offence and the offence is deemed of little significance in view of its detrimental effects and the degree of culpability of the offender manifest in it; and

(2) where a person under 18 years of age has committed the offence and a penalty more severe than a fine or imprisonment for at most six months is not anticipated for it and the offence is deemed to be the result of lack of judgement or incaution rather than heedlessness of the prohibitions and commands of the law.

According to chapter 1, section 8, unless an important public or private interest otherwise requires, the public prosecutor may, in addition to the events referred to in section 7, waive prosecution:

(1) where the trial and punishment are deemed unreasonable or pointless in view of the settlement reached by the offender and the injured party, the other action of the offender to prevent or remove the effects of the offence, the personal circumstances of the offender, the other consequence of the offence to the offender, the welfare of health care measures undertaken and the other circumstances; or

(2) under the provisions on joint punishment and the consideration of previous punishment in sentencing, the offence would not have an essential effect on the total punishment.

While chapter 1, sections 7 and 8, relate to the waiving of prosecution in respect of natural persons, chapter 9, section 7, of the Penal Code concerns prosecutor's discretion in respect of responsibility of legal persons.

If the public prosecutor has waived charges, the injured party has two alternatives to get a charge brought:

(1) According to chapter 1, section 14, paragraph 1, of the Criminal Procedure Act, the injured party itself may bring a charge for an offence. According to chapter 1, section 11, paragraph 2, a superior prosecutor has the right to reopen the case.

(2) The injured party, the person who has not been accused or even a third party can lodge a complaint to the general prosecutor because of non-prosecution. The general prosecutor is the superior of all public prosecutors. He/she can decide to bring a charge in a case where prosecution has been waived by a subordinate prosecutor. He/she can also order a subordinate prosecutor to prosecute in such case.

The statutory basis for the right of an injured party to lodge a complaint because of non-prosecution is section 11.2 of the Criminal Procedure Act. According to this provision, "a superior prosecutor has the right to reopen the case in accordance with the specific provisions thereon". The Prosecutor General is a superior of all the public prosecutors and anyone can lodge a complaint with him concerning erroneous actions of prosecutors. No time limits or specified forms are required for this kind of complaint.

5.2 Political or Economic Considerations

According to the Finnish authorities, investigation and/or prosecution of bribery of a foreign public official must not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

6. ARTICLE 6. STATUTE OF LIMITATIONS

Chapter 8 section 1 of the Penal Code contains general provisions concerning the statute of limitations. The provisions that are relevant in respect of the foreign bribery offences provide for a limitation period of 5 years.⁵ In the case of aggravated bribery the limitation period is 10 years.⁶ Chapter 8 section 3 paragraph 1, states that the periods mentioned above shall be calculated from the time of the commission of the offence. See section 3.2 in respect of limitation periods for corporate liability.

7. ARTICLE 7. MONEY LAUNDERING

Chapter 32, section 1, paragraph 2 of the Penal Code deals with money laundering. According to this provision, a person shall be punishable if he/she receives, transforms, conveys or transfer assets or other property which he/she knows have been gained through an offence or to replace such assets or property, in order to conceal or launder its illicit origins or to assist the offender in evading the lawful sanctions provided for the offence. The same applies if he/she conceals or launders the true nature, origin, location or transactions or rights pertaining to the above-mentioned property, or fails to make a notification referred to in section 10 of the Act on the Detection and Prevention of Money Laundering (68/1998) or, in violation of the prohibition provided in section 10, discloses a notification referred to therein⁷.

The Finnish authorities confirm that they consider bribery of a domestic or foreign public official as a predicate offence for the purpose of money laundering.

The Finnish authorities explain that the money laundering offence does not apply if a person simply believes that the assets or property that he/she is handling have been gained through an offence. The offender must always know that the assets or property have been gained through an offence.

According to the Finnish authorities, the money laundering offence applies to the laundering of the bribe in case of active bribery, and to the proceeds if the predicate offence has been passive bribery.

8. ARTICLE 8. ACCOUNTING

Chapter 30, section 9, of the Penal Code covers offences relating to accounting. According to this provision, a person with a legal obligation to keep accounts, his/her representative or the person entrusted with the keeping of accounts shall be sentenced for an accounting offence to a fine or to imprisonment for at most three years if this person intentionally neglects in full or in part the recording of business transactions or the balancing of the accounts, enters false or misleading data into the accounts, or destroys, conceals or damages account documentation, thereby essentially impeding to obtain a true and sufficient picture of the financial result of the business of the said person or of his/her financial standing. The penalty for an offence under this section is a fine or imprisonment for up to three years.

According to chapter 1, article 1, paragraph 1 of the Accounting Act, anyone who carries on a business or practices a profession must keep accounting records of these activities. This applies to natural persons and companies⁸. However, according to chapter 1, article 1, paragraph 2, public bodies, the Nordic Investment

⁵ See chapter 8 section 1 paragraph 1(3) of Penal Code, which applies a limitations period of 5 years to offences punishable by a maximum period of imprisonment of between 1 and 2 years.

⁶ See chapter 8 section 1 paragraph 1(2) of Penal Code, which applies a limitations period of 10 years to offences punishable by a maximum period of imprisonment of between 2 and 8 years.

⁷ According to the Finnish authorities, an English translation of the Act on the Detection and Prevention of Money Laundering is not available.

⁸ In addition, no matter whether they carry out a business or not, the following entities are under a legal obligation (Ch. 1 Sec. 1) to keep accounts and publish their financial statements:

Bank, the Nordic Project Fund or any other entity engaged in agriculture are excluded from this obligation, except “entities referred to in paragraph 1”. The Finnish authorities confirm that these entities are subject to accounting obligations under separate legislation.

According to chapter 2, article 1, a reporting entity has to record its transactions as expenditure, revenue, financial transactions and related adjustments and transfers. According to chapter 7, article 2, the transactions to be recorded in the accounting records of a person engaged in a profession are paid business expenditures, interest, and income taxes as well as revenue received and own consumption of goods and services.

The Finnish authorities confirm that these provisions do not allow the establishment of off-book accounts, the making of off-book transactions, the recording of non-existent expenditures or the use of false documents. They also confirm that false statements in the accounts in connection with bribing of foreign public officials are covered by these provisions.

According to chapter 8, article 4, a person who deliberately or through recklessness fails to respect certain specific accounting obligations mentioned in this article, shall be sentenced to a fine. However, this does not apply if the offence is punishable (i.e. more severe) as an accounting crime according to the Penal Code (Chapter 30, section 9).

The offender can be sentenced to 1 up to 120 ”day fines”. The amount of a day fine depends on the income of the offender. One day fine amounts to 1/90 of the gross monthly income; the minimum fine is 20 FINM. In case of an accounting crime, punishment could be day fines or imprisonment for up to three years.

9. ARTICLE 9. MUTUAL LEGAL ASSISTANCE

9.1 Laws, Treaties and Arrangements Enabling Mutual Legal Assistance

As already mentioned above in 4.3, Finland provides international legal assistance on the basis of the Act on International Legal Assistance in Criminal Matters (non-treaty based legal assistance), and bilateral and multilateral conventions to which Finland is a party (treaty-based legal assistance). The Finnish authorities emphasise that the Act on International Legal Assistance in Criminal Matters does not establish a reciprocity requirement.

However, in individual cases, chapter 2, section 16, of this Act allows the Ministry of Justice to refuse assistance where the requesting State would not afford corresponding assistance pursuant to a request made by a Finnish authority. The purpose of this provision is to permit refusal of mutual assistance where, for example, a certain State would have repeatedly refused giving mutual assistance to Finnish authorities.

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1. limited liability companies,
 2. co-operatives,
 3. general partnerships,
 4. limited partnerships,
 5. associations
 6. foundations,
 7. pension funds,
 8. insurance funds.
 9. mutual insurance companies,
 10. insurance associations,
 11. investment companies,
 12. employee profit-sharing funds,
 13. guarantee funds, and
 14. the Book-Entry Securities System fund and clearing funds.

9.2 Dual criminality

The Finnish authorities confirm that dual criminality is not a pre-condition for providing legal assistance under the Act on International Legal Assistance in Criminal Matters. However, Finland does apply the principle of dual criminality if coercive measures are at stake. According to chapter 2, section 15, paragraph 1, of this Act, legal assistance can in this case only be rendered if it were likewise permitted under Finnish law provided that the offence had been committed in Finland in similar circumstances.

Dual criminality is a precondition also for the treaty-based mutual assistance where coercive measures are requested. The International Legal Assistance in Criminal Matters Act is compatible with international treaty obligations of Finland.

Finland has made a Declaration to Article 5 of the 1959 European Convention on Mutual Assistance in Criminal Matters. According to the Declaration, Finland makes the execution of letters rogatory for search or seizure of property referred to in article 5 dependent on the conditions mentioned in sub-paragraph a and c of the said Article (that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party and that execution of the letters rogatory is consistent with the law of the requested Party).

In the International Legal Assistance in Criminal Matters Act coercive measures are defined by a reference to coercive measures under the Coercive Measures Act (450/1987). The Coercive Measures Act contains provisions on search, seizure, restraint orders and freezing of assets, telecommunications interception, telecommunications monitoring and technical surveillance. These are coercive measures which usually are related to mutual assistance. The Coercive Measures Act also contains provisions on apprehension, arrest, detention and travel ban.

Investigation and prosecution measures are included in the category of coercive measures only if above mentioned coercive measures are used.

9.3 Bank Secrecy

The Finnish authorities refer to the Act on Credit Institutions. Chapter 12, section 94, paragraph 2 obliges financial institutions to provide prosecution and investigation authorities with confidential information for the purpose of detecting crimes. Bank secrecy is therefore not an obstacle to rendering international legal assistance in criminal matters. Confidential information may, for example, concern the financial situation of a person.

There is the issue whether a Party needs to meet any criterion in order to obtain the production of banking records with respect to a request for mutual legal assistance in relation to criminal matters covered by the Convention. The Finnish authorities confirm that the production of banking records is not a coercive measure, and that therefore dual criminality is not required.

10. ARTICLE 10. EXTRADITION

10.1 Extradition for Bribery of a Foreign Public Official

The Finnish authorities refer to the domestic Extradition Act and the Act on Extradition between Finland and other Nordic countries. Finland is also a Party to the European Convention on Extradition of 1957. According to the Finnish authorities, these international conventions qualify bribery of a foreign public official as an extraditable offence. The Finnish authorities confirm that there are no further legal

requirements concerning treaty-based extradition besides the existence of an extraditable offence. With regard to the domestic Extradition Act, reference is made to section 3.4 above.

10.2 Legal Basis for Extradition

Finland can extradite persons on the basis of national legislation alone. After ratification, the Convention has become part of the domestic legal order.

10.3 Extradition of Nationals

According to section 2 of the Extradition Act, nationals of Finland shall not be extradited. However, Finnish nationals can be extradited to other Nordic countries under certain conditions.

Finnish nationals can be extradited to other Nordic countries under conditions set in the Act on Extradition between Finland and other Nordic countries. According to section 2 of the Act a Finnish national can be extradited to another Nordic country if he has lived permanently in the requesting country for at least two years or if the act is an offence or, if committed in Finland under corresponding circumstances, would constitute an offence for which the maximum penalty according to Finnish law is deprivation of liberty for at least four years.

Finland has deposited the instrument of ratification of the 1996 Convention relating to Extradition between Member States of the European Union on 7 April 1999. At the same time Finland deposited the instrument of ratification of the 1995 Convention on simplified extradition procedure between the Member States of the European Union.

When depositing the instruments of ratification, Finland gave declarations, in accordance to the provisions of the Conventions, that Finland will apply the Conventions, until the Conventions enter into force internationally, to its relations with Member States that have made the same declaration. According to this procedure Finland has started to apply the Conventions in relation to some Member States on 7 July 1999.

The ratification of the Conventions required some changes to the Extradition Act. The new legislation has come into force on 1 March 1999. The new provisions relating to the extradition of Finnish nationals are, however, applied only in relation to those Member states which already have ratified the 1996 Convention and apply it.

According to the new legislation Finland will grant extradition of its nationals only under the following conditions:

- at the discretion of the Ministry of Justice, a Finnish national may be extradited to a Member State of the European Union to stand trial for a crime the most severe punishment for which, under the Finnish law, is at least four years' imprisonment if committed under similar circumstances in Finland;
- a condition of extradition is that, once the judgement has become final, the requesting Member State undertakes immediately to return an extradited Finnish national to Finland for possible imprisonment if he consents to serve his sentence in Finland;
- no Finnish national may be extradited for a political crime or a crime committed in Finland, on a Finnish vessel on the high seas or in a Finnish aircraft;
- no Finnish national may be prosecuted or punished for a crime other than that referred to in the application for extradition, without the authorisation of the Ministry of Justice;

- no Finnish national may be re-extradited to another State.

In relation to the aggravated offence of bribery of a foreign public official, the requirements of extradition of nationals would be met.

10.4 Applicable rules and procedures for the purpose of prosecution in case that extradition is denied on grounds of nationality

As already mentioned in section 5.2 above, Finland has jurisdiction to prosecute a national for an offence of bribery of a foreign public official committed abroad (chapter 1, sections 6, 11 of the Penal Code). In addition, the Finnish authorities refer to chapter 1, section 8, of the Penal Code that also deals with the issue of offences committed outside of Finland. According to this provision, Finnish law shall apply to an offence committed outside of Finland which, under Finnish law, may be punishable by imprisonment for more than six months, if the State in whose territory the offence was committed has requested that charges be brought in a Finnish court or that the offender be extradited because of the offence, but the extradition request has not been granted.

10.5 Dual criminality

The Finnish authorities confirm that section 4 of the Extradition Act (see above section 3.4.) requires dual criminality as a precondition for extradition. According to the Finnish authorities, the condition of dual criminality would be fulfilled if the offence for which extradition is sought were covered by Article 1 of the Convention.

The Finnish authorities consider that the dual criminality requirement is not met if a state has only signed, but not yet ratified the Convention. However, if the criminal law of the state already would be consistent with the Convention, they believe the dual criminality requirement to be fulfilled.

The Finnish authorities confirm that dual criminality is a requirement also in case of treaty-based extradition.

11. ARTICLE 11. RESPONSIBLE AUTHORITIES

According to section 2 of the Presidential Decree from 5 February 1999 (126/1999), the Ministry of Justice has been appointed to the responsible authority for making and receiving requests relating to consultation, mutual legal assistance, and extradition under the Convention.

B. IMPLEMENTATION OF THE 1997 RECOMMENDATION

3. TAX DEDUCTIBILITY

According to the Finnish authorities, Finnish legislation does not explicitly prohibit tax deductibility of bribes. However, the deductible expenses are enumerated in detail in the different tax laws and they do *not* include bribes. The Finnish authorities declare that the non-deductibility of bribes has always been self-evident in Finland, and that the issue has not even been raised.

The Finnish authorities confirm that no prior criminal conviction is required in order to deny tax deductibility. They also confirm that the burden of proof in bribery matters is the same as in other tax matters. This means that the individual or company is obliged to provide all information needed. In addition, the tax authorities can conduct their own investigations.

EVALUATION OF FINLAND

General Remarks

The Working Party complimented the Finnish authorities for the rapid and thorough implementation of the Convention into Finnish legislation. Delegates thanked the Finnish authorities for their co-operation in the evaluation process, including their complete and speedy replies to questions that had been raised.

The Working Group considered in light of the available documentation and explanations given by the Finnish authorities that the Finnish legislation conforms to the standards of the Convention. As far as the issue of forfeiture of a bribe is concerned, the Working Party agreed that this matter raises a general question of interpretation of Article 3 paragraph 3 of the Convention.

Specific Issues

1. Actions in relation to the performance of official duties

Sections 13 (1) and (2) of the Penal Code apply to “actions in service”. The issue was raised whether this covers also omissions of a foreign public official. The Finnish authorities confirmed that the term “actions in service” has a broad meaning. It covers any act or omission that has “some link” to the public official’s position.

The Finnish legislation even goes beyond the requirements of the Convention, because it is not necessary that the bribe be given in order to obtain or retain business or other improper advantage.

2. Forfeiture of bribe

The issue was raised whether the Convention requires that the bribe can be forfeited if it is still in the briber’s possession. The Convention does not specifically address this matter. The Finnish authorities explained that in certain cases forfeiture might be possible under domestic law. However, it remained unclear what kind of situations this would be.

3. Jurisdiction

It was recognised that the Finnish legislation includes both territorial and nationality jurisdiction. It fulfils the requirements of Article 4 paragraph 2 of the Convention. With regard to the issue of nationality jurisdiction, the Working Group noted that, if the offence has been committed in the territory of a foreign state, Finnish law will only apply provided that the offence is punishable also under the law of the place of commission, and a sentence could have been passed on the offence by a court of the foreign state (e.g. the offence was not barred by the statute of limitations, etc.). In light of the requirements of Article 4 paragraph 4 of the Convention, the Working Group agreed that this issue should be reviewed in Phase 2 of the evaluation process.

4. Sanctions against a corporation

The question was raised whether there can be additional civil or administrative sanctions against a corporation or other legal entity. The Finnish authorities explained that there would be the possibility to prohibit the offender (i.e. the natural person who gave the bribe on behalf of the legal entity) from doing business for at least three and at most seven years. Such a sanction can be imposed by a court on request of the public prosecutor.

As in the case of other countries, the Working Group raised the issue of liability of a Finnish company if a non-Finnish agent committed the offence of bribery abroad. The Working Group agreed that this is a general issue that needs to be discussed further in order to ensure an effective implementation of the Convention.

5. Accounting

There is the issue of how high a fine could be under the Finnish Accounting Act. The Finnish authorities explained that the Accounting Act covers only minor offences that do not amount to an accounting crime under the Penal Code. The Accounting act itself does not specify the amount of the fine.

As far as fines against natural persons are concerned, the Penal Code provides for so-called “day fines” (the minimum day fine being 20 FINM⁹; there is no upper limit). For an accounting crime, punishment includes imprisonment of up to three years.

No corporate fines can be imposed concerning violations of the Accounting Act or accounting crimes.

⁹ After the Finland examination that was held on 8 July 1999, new legislation on fines came into force on 1 October 1999. Since then, the minimum day fine is 40 FIM.