

COSTA RICA

● Limited enforcement

0.1% of global exports

Investigations and cases

In the period 2016-2019, Costa Rica opened two investigations, commenced no cases and concluded no cases.

The only public data available on the investigations concerns the countries where the bribery was allegedly carried out: Brazil and Panama. A further investigation relating to bribery in Guatemala was opened in 2020.

In the same period, several foreign bribery allegations surfaced in the media about foreign bribery and money laundering predicated on foreign bribery. In December 2017, the Costa Rican construction company **MECO** signed a leniency agreement with Panamanian authorities, following investigations that, according to media reports, revealed it had paid US\$9.4 million to officials in the country's Ministry of Public Works. The bribes were reportedly paid in exchange for public infrastructure contracts and to expedite proceedings and payments related to the contracts.¹

Another Costa Rican construction company is alleged to be involved in a corruption scheme supposedly orchestrated by the Minister of Communication, Infrastructure and Housing from

Guatemala. This case was investigated by the International Commission against Impunity in Guatemala in 2016 and the trial is pending. It relates to the alleged payment of bribes to obtain public contracts and to cancel debts owed by the company to the government.²

Recent developments

In 2019, Costa Rica enacted legislation on corporate liability, which comprehensively addresses issues such as the standard of liability, sanctions and procedure.³ Additionally, a new false accounting offence was established and the available sanctions against natural and legal persons (apart from small and medium-sized enterprises) have been increased.⁴

Transparency of enforcement information

The judiciary publishes statistics on criminal cases on its website, including the number of cases for each type of crime.⁵ As there are no foreign bribery cases, this category is not included in the statistics. No statistics are available on requests for mutual legal assistance.

Only judgements in criminal cases that are concluded in high-level courts such as Chamber III of Cassation are published.⁶

The OECD WGB noted in its Phase 2 Report in March 2020 the need for Costa Rica to improve the transparency of non-trial resolutions and collaboration agreements with cooperating offenders.⁷

¹ <https://www.nacion.com/el-pais/infraestructura/constructora-meco-negocio-con-fiscalia-panamena/27XJXJ35R5AKVE7SBZ6WMD6ZLE/story/>

² <https://elperiodico.com.gt/nacion/2017/08/22/civ-beneficia-a-constructora-de-profugo-senalado-de-pagar-sobornos/>;
<https://www.soy502.com/articulo/confesion-jaime-aparicio-capo-emergente-149>;

<https://elperiodico.com.gt/nacion/2017/07/16/al-menos-123-contratos-recibieron-constructoras-que-pagaron-sobornos-a-empresas-ligadas-a-sinibaldi/>

³ *Ley de Responsabilidad de las Personas Jurídicas sobre Cohechos Domésticos, Soborno Transnacional y Otros Delitos*

http://www.pgrweb.go.cr/scij/PJ/busqueda/jurisprudencia/jur_indice_despachos_x_anno.aspx?param1=IA&cmbDespacho=0006&strNomDespacho=Sala%20Tercera%20de%20la%20Corte¶m01=Sentencias%20por%20Despacho&txtRelevante=0

⁴ <http://www.oecd.org/corruption/Costa%20Rica-Phase-2-Report-ENG.pdf>

⁵ <https://www.poder-judicial.go.cr/planificacion/index.php/estadistica/estadisticas-judiciales>

⁶ http://jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_indice_despachos_x_anno.aspx?param1=IA&cmbDespacho=0006&strNomDespacho=Sala%20Tercera%20de%20la%20Corte¶m01=Sentencias%20por%20Despacho&txtRelevante=0

⁷ <http://www.oecd.org/corruption/costa-rica-has-improved-its-foreign-bribery-legislation-but-must-strengthen-enforcement-and-close-legal-loop-holes.htm>

Beneficial ownership transparency

Costa Rica has a central register of beneficial ownership information (the Register of Transparency and Ultimate Beneficial Owners) which is not accessible to the public. It was established pursuant to Law n° 9.41 passed in 2016, which was complemented by an Executive Decree in 2018.⁸ The decree determined that the Central Bank would set up an online platform where beneficial ownership data should be submitted by legal persons.⁹ The verification of the register's information has been automated through cross-checking several public databases.¹⁰

Inadequacies in legal framework

There are some deficiencies in the definition of the foreign bribery offence in Costa Rica. Under the current formulation, it does not cover some of the most common means of committing the crime. Further, it requires proof of direct intent. Recklessness or wilful blindness is not enough. The OECD WGB in its Phase 2 Report in March 2020 warned that this could leave unpunished most cases of foreign bribery committed through intermediaries. It also stated that “the notion of *concusión* allows an individual to escape liability if he/she is solicited for a bribe by a foreign official”.¹¹

The OECD WGB identified further concerns: 1. When property subject to confiscation is not available, authorities should be permitted to confiscate other property of equivalent value 2. Extradition should not be limited to crimes committed outside Costa Rica and which produced effects in the foreign state; nationals should be prosecuted in lieu of extradition without a request by a foreign state, and 3. provisions on special investigative techniques

should be explicitly extended to foreign bribery cases.¹²

There is insufficient protection for whistleblowers, which hinders the reporting of foreign bribery, while “provisions on special investigative techniques should be explicitly extended to foreign bribery cases”.¹³

Inadequacies in enforcement system

The OECD WGB's March 2020 review of Costa Rica had tough words for the country on several counts.¹⁴ According to its report, “Costa Rican authorities do not make full use of the available sources of allegations, including the media”. It also said, “in terms of enforcement, Costa Rica did not proactively investigate foreign bribery allegations, or prioritise the enforcement of this crime in practice, due to, among other things, a lack of resources”.

There is significant concern, including on the part of the OECD WGB, about the effect of the overlapping mandates of the Public Prosecution Service and the Attorney General's Office on foreign bribery enforcement. The OECD WGB has warned that lack of coordination between them “may waste resources and jeopardise cases”. This is especially important given the scarce resources available for law enforcement agencies.¹⁵ National economic interest may also influence sanctions and lead to the termination of a foreign bribery case, which is not allowed under Article 5 of the OECD Convention. The OECD WGB has also noted that the freezing of bank accounts should be used more frequently.

Recommendations

- Improve the collection and publication of statistics by the judiciary, especially as it relates to investigations and cases of corruption
- Ensure that

⁸ Executive Decree n° 41.040/2018

⁹ <https://www.internationalinvestment.net/news/4004161/costa-rica-strengthens-beneficial-ownership-rules>

¹⁰ <https://www.taxjustice.net/2020/04/03/costa-rica-a-bill-threatening-to-render-its-beneficial-ownership-register-useless/>

¹¹ <http://www.oecd.org/corruption/costa-rica-has-improved-its-foreign-bribery-legislation-but-must-strengthen-enforcement-and-close-legal-loop-holes.htm>

¹² <http://www.oecd.org/corruption/Costa%20Rica-Phase-2-Report-ENG.pdf>

¹³ <http://www.oecd.org/corruption/Costa%20Rica-Phase-2-Report-ENG.pdf>

¹⁴ <http://www.oecd.org/corruption/costa-rica-has-improved-its-foreign-bribery-legislation-but-must-strengthen-enforcement-and-close-legal-loop-holes.htm>

¹⁵ <http://www.oecd.org/corruption/costa-rica-has-improved-its-foreign-bribery-legislation-but-must-strengthen-enforcement-and-close-legal-loop-holes.htm>

the Register of Transparency and Ultimate Beneficial Owners of the Costa Rican Central Bank is accessible to the public • Improve the definition of foreign bribery to cover all aspects of this crime and eliminate the defence of *conculsi3n* • Adopt comprehensive legislation to protect whistleblowers from retaliation • Clarify the overlapping roles of the Prosecution Services and the Attorney-General as they relate to foreign bribery offences • Increase the resources for law enforcement agencies • Ensure that national economic interests do not affect foreign bribery enforcement • Increase the freezing of bank accounts • Fully use all available sources to detect foreign bribery, including the media and reporting by public officials • Encourage companies to adopt anti-corruption compliance programmes.