

Such persons, through their *de facto* performance of a public function, may, under the legal principles of some countries, be considered to be foreign public officials.

17. “Public international organisation” includes any international organisation formed by states, governments, or other public international organisations, whatever the form of organisation and scope of competence, including, for example, a regional economic integration organisation such as the European Communities.

18. “Foreign country” is not limited to states, but includes any organised foreign area or entity, such as an autonomous territory or a separate customs territory.

19. One case of bribery which has been contemplated under the definition in paragraph 4.c is where an executive of a company gives a bribe to a senior official of a government, in order that this official use his office – though acting outside his competence – to make another official award a contract to that company.

Article 2. Responsibility of Legal Persons:

20. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall not be required to establish such criminal responsibility.

Article 3. Sanctions:

Re paragraph 3:

21. The “proceeds” of bribery are the profits or other benefits derived by the briber from the transaction or other improper advantage obtained or retained through bribery.

22. The term “confiscation” includes forfeiture where applicable and means the permanent deprivation of property by order of a court or other competent authority. This paragraph is without prejudice to rights of victims.

23. Paragraph 3 does not preclude setting appropriate limits to monetary sanctions.

Re paragraph 4:

24. Among the civil or administrative sanctions, other than non-criminal fines, which might be imposed upon legal persons for an act of bribery of a foreign public official are: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or from the practice of other commercial activities; placing under judicial supervision; and a judicial winding-up order.

Article 4. Jurisdiction:

Re paragraph 1:

25. The territorial basis for jurisdiction should be interpreted broadly so that an extensive physical connection to the bribery act is not required.

Re paragraph 2:

26. Nationality jurisdiction is to be established according to the general principles and conditions in the legal system of each Party. These principles deal with such matters as

dual criminality. However, the requirement of dual criminality should be deemed to be met if the act is unlawful where it occurred, even if under a different criminal statute. For countries which apply nationality jurisdiction only to certain types of offences, the reference to “principles” includes the principles upon which such selection is based.

Article 5. Enforcement:

27. Article 5 recognises the fundamental nature of national regimes of prosecutorial discretion. It recognises as well that, in order to protect the independence of prosecution, such discretion is to be exercised on the basis of professional motives and is not to be subject to improper influence by concerns of a political nature. Article 5 is complemented by paragraph 6 of the Annex to the 1997 OECD Revised Recommendation on Combating Bribery in International Business Transactions, C(97)123/FINAL (hereinafter, “1997 OECD Recommendation”), which recommends, *inter alia*, that complaints of bribery of foreign public officials should be seriously investigated by competent authorities and that adequate resources should be provided by national governments to permit effective prosecution of such bribery. Parties will have accepted this Recommendation, including its monitoring and follow-up arrangements.

Article 7. Money Laundering:

28. In Article 7, “bribery of its own public official” is intended broadly, so that bribery of a foreign public official is to be made a predicate offence for money laundering legislation on the same terms, when a Party has made either active or passive bribery of its own public official such an offence. When a Party has made only passive bribery of its own public officials a predicate offence for money laundering purposes, this article requires that the laundering of the bribe payment be subject to money laundering legislation.

Article 8. Accounting:

29. Article 8 is related to section V of the 1997 OECD Recommendation, which all Parties will have accepted and which is subject to follow-up in the OECD Working Group on Bribery in International Business Transactions. This paragraph contains a series of recommendations concerning accounting requirements, independent external audit and internal company controls the implementation of which will be important to the overall effectiveness of the fight against bribery in international business. However, one immediate consequence of the implementation of this Convention by the Parties will be that companies which are required to issue financial statements disclosing their material contingent liabilities will need to take into account the full potential liabilities under this Convention, in particular its Articles 3 and 8, as well as other losses which might flow from conviction of the company or its agents for bribery. This also has implications for the execution of professional responsibilities of auditors regarding indications of bribery of foreign public officials. In addition, the accounting offences referred to in Article 8 will generally occur in the company’s home country, when the bribery offence itself may have been committed in another country, and this can fill gaps in the effective reach of the Convention.

Article 9. Mutual Legal Assistance:

30. Parties will have also accepted, through paragraph 8 of the Agreed Common Elements annexed to the 1997 OECD Recommendation, to explore and undertake means to improve the efficiency of mutual legal assistance.

Re paragraph 1:

31. Within the framework of paragraph 1 of Article 9, Parties should, upon request, facilitate or encourage the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings. Parties should take measures to be able, in appropriate cases, to transfer temporarily such a person in custody to a Party requesting it and to credit time in custody in the requesting Party to the transferred person's sentence in the requested Party. The Parties wishing to use this mechanism should also take measures to be able, as a requesting Party, to keep a transferred person in custody and return this person without necessity of extradition proceedings.

Re paragraph 2:

32. Paragraph 2 addresses the issue of identity of norms in the concept of dual criminality. Parties with statutes as diverse as a statute prohibiting the bribery of agents generally and a statute directed specifically at bribery of foreign public officials should be able to co-operate fully regarding cases whose facts fall within the scope of the offences described in this Convention.

Article 10. Extradition

Re paragraph 2:

33. A Party may consider this Convention to be a legal basis for extradition if, for one or more categories of cases falling within this Convention, it requires an extradition treaty. For example, a country may consider it a basis for extradition of its nationals if it requires an extradition treaty for that category but does not require one for extradition of non-nationals.

Article 12. Monitoring and Follow-up:

34. The current terms of reference of the OECD Working Group on Bribery which are relevant to monitoring and follow-up are set out in Section VIII of the 1997 OECD Recommendation. They provide for:

- i) receipt of notifications and other information submitted to it by the [participating] countries;
- ii) regular reviews of steps taken by [participating] countries to implement the Recommendation and to make proposals, as appropriate, to assist [participating] countries in its implementation; these reviews will be based on the following complementary systems:
 - a system of self evaluation, where [participating] countries' responses on the basis of a questionnaire will provide a basis for assessing the implementation of the Recommendation;

- a system of mutual evaluation, where each [participating] country will be examined in turn by the Working Group on Bribery, on the basis of a report which will provide an objective assessment of the progress of the [participating] country in implementing the Recommendation.
- iii) examination of specific issues relating to bribery in international business transactions;
- ...
- v) provision of regular information to the public on its work and activities and on implementation of the Recommendation.

35. The costs of monitoring and follow-up will, for OECD Members, be handled through the normal OECD budget process. For Non-Members of the OECD, the current rules create an equivalent system of cost sharing, which is described in the Resolution of the Council Concerning Fees for Regular Observer Countries and Non-Member Full Participants in OECD Subsidiary Bodies, C(96)223/FINAL.

36. The follow-up of any aspect of the Convention which is not also follow-up of the 1997 OECD Recommendation or any other instrument accepted by all the participants in the OECD Working Group on Bribery will be carried out by the Parties to the Convention and, as appropriate, the participants party to another, corresponding instrument.

Article 13. Signature and Accession:

37. The Convention will be open to Non-Members which become full participants in the OECD Working Group on Bribery in International Business Transactions. Full participation by Non-Members in this Working Group is encouraged and arranged under simple procedures. Accordingly, the requirement of full participation in the Working Group, which follows from the relationship of the Convention to other aspects of the fight against bribery in international business, should not be seen as an obstacle by countries wishing to participate in that fight. The Council of the OECD has appealed to Non-Members to adhere to the 1997 OECD Recommendation and to participate in any institutional follow-up or implementation mechanism, i.e., in the Working Group. The current procedures regarding full participation by Non-Members in the Working Group may be found in the Resolution of the Council concerning the Participation of Non-Member Economies in the Work of Subsidiary Bodies of the Organisation, C(96)64/REV1/FINAL. In addition to accepting the Revised Recommendation of the Council on Combating Bribery, a full participant also accepts the Recommendation on the Tax Deductibility of Bribes of Foreign Public Officials, adopted on 11 April 1996, C(96)27/FINAL.

Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions

Adopted by the Council on 26 November 2009

THE COUNCIL,

Having regard to Articles 3, 5a) and 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997 (hereinafter “the OECD Anti-Bribery Convention”);

Having regard to the Revised Recommendation of the Council on Bribery in International Business Transactions of 23 May 1997 [C(97)123/FINAL] (hereinafter “the 1997 Revised Recommendation”) to which the present Recommendation succeeds;

Having regard to the Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 25 May 2009 [C(2009)64], the Recommendation of the Council on Bribery and Officially Supported Export Credits of 14 December 2006 [C(2006)163], the Recommendation of the Development Assistance Committee on Anti-corruption Proposals for Bilateral Aid Procurement of 7 May 1996 [DCD/DAC(96)11/FINAL], and the OECD Guidelines for Multinational Enterprises of 27 June 2000 [C(2000)96/REV1];

Considering the progress which has been made in the implementation of the OECD Anti-Bribery Convention and the 1997 Revised Recommendation and reaffirming the continuing importance of the OECD Anti-Bribery Convention and the Commentaries to the Convention;

Considering that bribery of foreign public officials is a widespread phenomenon in international business transactions, including trade and investment, raising serious moral and political concerns, undermining good governance and sustainable economic development, and distorting international competitive conditions;

Considering that all countries share a responsibility to combat bribery of foreign public officials in international business transactions;

Reiterating the importance of the vigorous and comprehensive implementation of the OECD Anti-Bribery Convention, particularly in relation to enforcement, as reaffirmed in the Statement on a Shared Commitment to Fight Against Foreign Bribery, adopted by Ministers of the Parties to the OECD Anti-Bribery Convention on 21 November 2007, the Policy Statement on Bribery in International Business Transactions, adopted by the Working Group on Bribery on 19 June 2009, and the Conclusions adopted by the OECD Council Meeting at Ministerial Level on 25 June 2009 [C/MIN(2009)5/FINAL];

Recognising that the OECD Anti-Bribery Convention and the United Nations Convention against Corruption (UNCAC) are mutually supporting and complementary, and that ratification and implementation of the UNCAC supports a comprehensive approach to combating the bribery of foreign public officials in international business transactions;

Welcoming other developments which further advance international understanding and co-operation regarding bribery in international business transactions, including actions of the Council of Europe, the European Union and the Organisation of American States;

Welcoming the efforts of companies, business organisations and trade unions as well as other non-governmental organisations to combat bribery;

Recognising that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, as well as rigorous and systematic monitoring and follow-up;

General

- I. **NOTES** that the present Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions shall apply to OECD Member countries and other countries party to the OECD Anti-Bribery Convention (hereinafter "Member countries").
- II. **RECOMMENDS** that Member countries continue taking effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions.
- III. **RECOMMENDS** that each Member country take concrete and meaningful steps in conformity with its jurisdictional and other basic legal principles to examine or further examine the following areas:
 - i) awareness-raising initiatives in the public and private sector for the purpose of preventing and detecting foreign bribery;
 - ii) criminal laws and their application, in accordance with the OECD Anti-Bribery Convention, as well as sections IV, V, VI and VII, and the Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as set out in Annex I to this Recommendation;
 - iii) tax legislation, regulations and practice, to eliminate any indirect support of foreign bribery, in accordance with the 2009 Council Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, and section VIII of this Recommendation;
 - iv) provisions and measures to ensure the reporting of foreign bribery, in accordance with section IX of this Recommendation;
 - v) company and business accounting, external audit, as well as internal control, ethics, and compliance requirements and practices, in accordance with section X of this Recommendation;
 - vi) laws and regulations on banks and other financial institutions to ensure that adequate records would be kept and made available for inspection and investigation;

- vii) public subsidies, licences, public procurement contracts, contracts funded by official development assistance, officially supported export credits, or other public advantages, so that advantages could be denied as a sanction for bribery in appropriate cases, and in accordance with sections XI and XII of this Recommendation;
- viii) civil, commercial, and administrative laws and regulations, to combat foreign bribery;
- ix) international co-operation in investigations and other legal proceedings, in accordance with section XIII of this Recommendation.

Criminalisation of Bribery of Foreign Public Officials

- IV. **RECOMMENDS**, in order to ensure the vigorous and comprehensive implementation of the OECD Anti-Bribery Convention, that Member countries should take fully into account the Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, set forth in Annex I hereto, which is an integral part of this Recommendation.
- V. **RECOMMENDS** that Member countries undertake to periodically review their laws implementing the OECD Anti-Bribery Convention and their approach to enforcement in order to effectively combat international bribery of foreign public officials.
- VI. **RECOMMENDS**, in view of the corrosive effect of small facilitation payments, particularly on sustainable economic development and the rule of law that Member countries should:
 - i) undertake to periodically review their policies and approach on small facilitation payments in order to effectively combat the phenomenon;
 - ii) encourage companies to prohibit or discourage the use of small facilitation payments in internal company controls, ethics and compliance programmes or measures, recognising that such payments are generally illegal in the countries where they are made, and must in all cases be accurately accounted for in such companies' books and financial records.
- VII. **URGES** all countries to raise awareness of their public officials on their domestic bribery and solicitation laws with a view to stopping the solicitation and acceptance of small facilitation payments.

Tax Deductibility

- VIII. **URGES** Member countries to:
 - i) fully and promptly implement the 2009 Council Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, which recommends in particular "that Member countries and other Parties to the OECD Anti-Bribery Convention explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner", and that "in accordance with their legal systems" they "establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities";

- ii) support the monitoring carried out by the Committee on Fiscal Affairs as provided under the 2009 Council Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

Reporting Foreign Bribery

IX. **RECOMMENDS** that Member countries should ensure that:

- i) easily accessible channels are in place for the reporting of suspected acts of bribery of foreign public officials in international business transactions to law enforcement authorities, in accordance with their legal principles;
- ii) appropriate measures are in place to facilitate reporting by public officials, in particular those posted abroad, directly or indirectly through an internal mechanism, to law enforcement authorities of suspected acts of bribery of foreign public officials in international business transactions detected in the course of their work, in accordance with their legal principles;
- iii) appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions.

Accounting Requirements, External Audit, and Internal Controls, Ethics and Compliance

X. **RECOMMENDS** that Member countries take the steps necessary, taking into account where appropriate the individual circumstances of a company, including its size, type, legal structure and geographical and industrial sector of operation, so that laws, rules or practices with respect to accounting requirements, external audits, and internal controls, ethics and compliance are in line with the following principles and are fully used in order to prevent and detect bribery of foreign public officials in international business, according to their jurisdictional and other basic legal principles.

A. Adequate accounting requirements

- i) Member countries shall, in accordance with Article 8 of the OECD Anti-Bribery Convention, take such measures as may be necessary, within the framework of their laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery;
- ii) Member countries should require companies to disclose in their financial statements the full range of material contingent liabilities;
- iii) Member countries shall, in accordance with Article 8 of the OECD Anti-Bribery Convention, provide effective, proportionate and dissuasive civil, administrative or criminal

penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

B. Independent External Audit

- i) Member countries should consider whether requirements on companies to submit to external audit are adequate;
- ii) Member countries and professional associations should maintain adequate standards to ensure the independence of external auditors which permits them to provide an objective assessment of company accounts, financial statements and internal controls;
- iii) Member countries should require the external auditor who discovers indications of a suspected act of bribery of a foreign public official to report this discovery to management and, as appropriate, to corporate monitoring bodies;
- iv) Member countries should encourage companies that receive reports of suspected acts of bribery of foreign public officials from an external auditor to actively and effectively respond to such reports;
- v) Member countries should consider requiring the external auditor to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities, and for those countries that permit such reporting, ensure that auditors making such reports reasonably and in good faith are protected from legal action.

C. Internal controls, ethics, and compliance

Member countries should encourage:

- i) companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance, set forth in Annex II hereto, which is an integral part of this Recommendation;
- ii) business organisations and professional associations, where appropriate, in their efforts to encourage and assist companies, in particular small and medium size enterprises, in developing internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance, set forth in Annex II hereto;
- iii) company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those which contribute to preventing and detecting bribery;
- iv) the creation of monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards;
- v) companies to provide channels for communication by, and protection of, persons not willing to violate professional standards or ethics under instructions or pressure from

hierarchical superiors, as well as for persons willing to report breaches of the law or professional standards or ethics occurring within the company in good faith and on reasonable grounds, and should encourage companies to take appropriate action based on such reporting;

- vi) their government agencies to consider, where international business transactions are concerned, and as appropriate, internal controls, ethics, and compliance programmes or measures in their decisions to grant public advantages, including public subsidies, licences, public procurement contracts, contracts funded by official development assistance, and officially supported export credits.

Public Advantages, including Public Procurement

XI. RECOMMENDS:

- i) Member countries' laws and regulations should permit authorities to suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials in contravention of that Member's national laws and, to the extent a Member applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, such sanctions should be applied equally in case of bribery of foreign public officials;¹
- ii) In accordance with the 1996 Development Assistance Committee Recommendation on Anti-corruption Proposals for Bilateral Aid Procurement, Member countries should require anti-corruption provisions in bilateral aid-funded procurement, promote the proper implementation of anti-corruption provisions in international development institutions, and work closely with development partners to combat corruption in all development co-operation efforts;²
- iii) Member countries should support the efforts of the OECD Public Governance Committee to implement the principles contained in the 2008 Council Recommendation on Enhancing Integrity in Public Procurement [C(2008)105], as well as work on transparency in public procurement in other international governmental organisations such as the United Nations, the World Trade Organisation (WTO), and the European Union, and are encouraged to adhere to relevant international standards such as the WTO Agreement on Government Procurement.

¹ Member countries' systems for applying sanctions for bribery of domestic officials differ as to whether the determination of bribery is based on a criminal conviction, indictment or administrative procedure, but in all cases it is based on substantial evidence.

² This paragraph summarises the DAC recommendation, which is addressed to DAC members only, and addresses it to all OECD Members and eventually non-member countries which adhere to the Recommendation.

Officially Supported Export Credits

XII. RECOMMENDS:

- i) Countries Party to the OECD Anti-Bribery Convention that are not OECD Members should adhere to the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits;
- ii) Member countries should support the efforts of the OECD Working Party on Export Credits and Credit Guarantees to implement and monitor implementation of the principles contained in the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits.

International Co-operation

XIII. **RECOMMENDS** that Member countries, in order to effectively combat bribery of foreign public officials in international business transactions, in conformity with their jurisdictional and other basic legal principles, take the following actions:

- i) consult and otherwise co-operate with competent authorities in other countries, and, as appropriate, international and regional law enforcement networks involving Member and non-Member countries, in investigations and other legal proceedings concerning specific cases of such bribery, through such means as the sharing of information spontaneously or upon request, provision of evidence, extradition, and the identification, freezing, seizure, confiscation and recovery of the proceeds of bribery of foreign public officials;
- ii) seriously investigate credible allegations of bribery of foreign public officials referred to them by international governmental organisations, such as the international and regional development banks;
- iii) make full use of existing agreements and arrangements for mutual international legal assistance and where necessary, enter into new agreements or arrangements for this purpose;
- iv) ensure that their national laws afford an adequate basis for this co-operation, in particular in accordance with Articles 9 and 10 of the OECD Anti-Bribery Convention;
- v) consider ways for facilitating mutual legal assistance between Member countries and with non-Member countries in cases of such bribery, including regarding evidentiary thresholds for some Member countries.

Follow-up and institutional arrangements

XIV. **INSTRUCTS** the Working Group on Bribery in International Business Transactions, to carry out an ongoing programme of systematic follow-up to monitor and promote the full implementation of the OECD Anti-Bribery Convention and this Recommendation, in co-operation with the Committee for Fiscal Affairs, the Development Assistance Committee, the Investment Committee, the Public Governance Committee, the Working Party on Export Credits and Credit Guarantees, and other OECD bodies, as appropriate. This follow-up will include, in particular:

- i) continuation of the programme of rigorous and systematic monitoring of Member countries' implementation of the OECD Anti-Bribery Convention and this Recommendation to promote the full implementation of these instruments, including through an ongoing system of mutual evaluation, where each Member country is examined in turn by the Working Group on Bribery, on the basis of a report which will provide an objective assessment of the progress of the Member country in implementing the OECD Anti-Bribery Convention and this Recommendation, and which will be made publicly available;
- ii) receipt of notifications and other information submitted to it by the Member countries concerning the authorities which serve as channels of communication for the purpose of facilitating international cooperation on implementation of the OECD Anti-Bribery Convention and this Recommendation;
- iii) regular reporting on steps taken by Member countries to implement the OECD Anti-Bribery Convention and this Recommendation, including non-confidential information on investigations and prosecutions;
- iv) voluntary meetings of law enforcement officials directly involved in the enforcement of the foreign bribery offence to discuss best practices and horizontal issues relating to the investigation and prosecution of the bribery of foreign public officials;
- v) examination of prevailing trends, issues and counter-measures in foreign bribery, including through work on typologies and cross-country studies;
- vi) development of tools and mechanisms to increase the impact of monitoring and follow-up, and awareness raising, including through the voluntary submission and public reporting of non-confidential enforcement data, research, and bribery threat assessments;
- vii) provision of regular information to the public on its work and activities and on implementation of the OECD Anti-Bribery Convention and this Recommendation.

XV. **NOTES** the obligation of Member countries to co-operate closely in this follow-up programme, pursuant to Article 3 of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960, and Article 12 of the OECD Anti-Bribery Convention.

Co-operation with non Members

XVI. **APPEALS** to non-Member countries that are major exporters and foreign investors to adhere to and implement the OECD Anti-Bribery Convention and this Recommendation and participate in any institutional follow-up or implementation mechanism.

XVII. **INSTRUCTS** the Working Group on Bribery in International Business Transactions to provide a forum for consultations with countries which have not yet adhered, in order to promote wider participation in the OECD Anti-Bribery Convention and this Recommendation, and their follow-up.

Relations with international governmental and non-governmental organisations

XVIII. **INVITES** the Working Group on Bribery in International Business Transactions, to consult and co-operate with the international organisations and international financial institutions active in the fight against bribery of foreign public officials in international business transactions, and consult regularly with the non-governmental organisations and representatives of the business community active in this field.

Annex I:

Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Having regard to the findings and recommendations of the Working Group on Bribery in International Business Transactions in its programme of systematic follow-up to monitor and promote the full implementation of the OECD Convention on Combating Bribery in International Business Transactions (the OECD Anti Bribery Convention), as required by Article 12 of the Convention, good practice on fully implementing specific articles of the Convention has evolved as follows:

A) Article 1 of the OECD Anti Bribery Convention: The Offence of Bribery of Foreign Public Officials

Article 1 of the OECD Anti-Bribery Convention should be implemented in such a way that it does not provide a defence or exception where the foreign public official solicits a bribe.

Member countries should undertake public awareness-raising actions and provide specific written guidance to the public on their laws implementing the OECD Anti-Bribery Convention and the Commentaries to the Convention.

Member countries should provide information and training as appropriate to their public officials posted abroad on their laws implementing the OECD Anti-Bribery Convention, so that such personnel can provide basic information to their companies in foreign countries and appropriate assistance when such companies are confronted with bribe solicitations.

B) Article 2 of the OECD Anti Bribery Convention: Responsibility of Legal Persons

Member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted.

Member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches:

- a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or
- b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:
 - A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;
 - A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and

- A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

C) *Responsibility for Bribery through Intermediaries*

Member countries should ensure that, in accordance with Article 1 of the OECD Anti Bribery Convention, and the principle of functional equivalence in Commentary 2 to the OECD Anti-Bribery Convention, a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf.

D) *Article 5: Enforcement*

Member countries should be vigilant in ensuring that investigations and prosecutions of the bribery of foreign public officials in international business transactions are not 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, in compliance with Article 5 of the OECD Anti Bribery Convention.

Complaints of bribery of foreign public officials should be seriously investigated and credible allegations assessed by competent authorities.

Member countries should provide adequate resources to law enforcement authorities so as to permit effective investigation and prosecution of bribery of foreign public officials in international business transactions, taking into consideration Commentary 27 to the OECD Anti Bribery Convention.

Annex II Good practice guidance on internal controls, ethics, and compliance

This Good Practice Guidance acknowledges the relevant findings and recommendations of the Working Group on Bribery in International Business Transactions in its programme of systematic follow-up to monitor and promote the full implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereinafter “OECD Anti-Bribery Convention”); contributions from the private sector and civil society through the Working Group on Bribery’s consultations on its review of the OECD anti-bribery instruments; and previous work on preventing and detecting bribery in business by the OECD as well as international private sector and civil society bodies.

Introduction

This Good Practice Guidance (hereinafter “Guidance”) is addressed to companies for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting the bribery of foreign public officials in their international business transactions (hereinafter “foreign bribery”), and to business organisations and professional associations, which play an essential role in assisting companies in these efforts. It recognises that to be effective, such programmes or measures should be interconnected with a company’s overall compliance framework. It is intended to serve as non-legally binding guidance to companies in establishing effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery.

This Guidance is flexible, and intended to be adapted by companies, in particular small and medium sized enterprises (hereinafter “SMEs”), according to their individual circumstances, including their size, type, legal structure and geographical and industrial sector of operation, as well as the jurisdictional and other basic legal principles under which they operate.

A) Good Practice Guidance for Companies

Effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery should be developed on the basis of a risk assessment addressing the individual circumstances of a company, in particular the foreign bribery risks facing the company (such as its geographical and industrial sector of operation). Such circumstances and risks should be regularly monitored, re-assessed, and adapted as necessary to ensure the continued effectiveness of the company’s internal controls, ethics, and compliance programme or measures. Companies should consider, *inter alia*, the following good practices for ensuring effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery:

1. strong, explicit and visible support and commitment from senior management to the company’s internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery;
2. a clearly articulated and visible corporate policy prohibiting foreign bribery;

3. compliance with this prohibition and the related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the company;
4. oversight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority;
5. ethics and compliance programmes or measures designed to prevent and detect foreign bribery, applicable to all directors, officers, and employees, and applicable to all entities over which a company has effective control, including subsidiaries, on, *inter alia*, the following areas:
 - i) gifts;
 - ii) hospitality, entertainment and expenses;
 - iii) customer travel;
 - iv) political contributions;
 - v) charitable donations and sponsorships;
 - vi) facilitation payments; and
 - vii) solicitation and extortion;
6. ethics and compliance programmes or measures designed to prevent and detect foreign bribery applicable, where appropriate and subject to contractual arrangements, to third parties such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter “business partners”), including, *inter alia*, the following essential elements:
 - i) properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of business partners;
 - ii) informing business partners of the company’s commitment to abiding by laws on the prohibitions against foreign bribery, and of the company’s ethics and compliance programme or measures for preventing and detecting such bribery; and
 - iii) seeking a reciprocal commitment from business partners.
7. a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of foreign bribery or hiding such bribery;
8. measures designed to ensure periodic communication, and documented training for all levels of the company, on the company’s ethics and compliance programme or measures regarding foreign bribery, as well as, where appropriate, for subsidiaries;
9. appropriate measures to encourage and provide positive support for the observance of ethics and compliance programmes or measures against foreign bribery, at all levels of the company;

10. appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company's ethics and compliance programme or measures regarding foreign bribery;
11. effective measures for:
 - i) providing guidance and advice to directors, officers, employees, and, where appropriate, business partners, on complying with the company's ethics and compliance programme or measures, including when they need urgent advice on difficult situations in foreign jurisdictions;
 - ii) internal and where possible confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employees, and, where appropriate, business partners, willing to report breaches of the law or professional standards or ethics occurring within the company, in good faith and on reasonable grounds; and
 - iii) undertaking appropriate action in response to such reports;
12. periodic reviews of the ethics and compliance programmes or measures, designed to evaluate and improve their effectiveness in preventing and detecting foreign bribery, taking into account relevant developments in the field, and evolving international and industry standards.

B) *Actions by Business Organisations and Professional Associations*

Business organisations and professional associations may play an essential role in assisting companies, in particular SMEs, in the development of effective internal control, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. Such support may include, *inter alia*:

1. dissemination of information on foreign bribery issues, including regarding relevant developments in international and regional forums, and access to relevant databases;
2. making training, prevention, due diligence, and other compliance tools available;
3. general advice on carrying out due diligence; and
4. general advice and support on resisting extortion and solicitation.

Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions

Adopted by the Council on 25 May 2009

THE COUNCIL,

Having regard to Article 5, b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials [C(96)27/FINAL] (hereafter the "1996 Recommendation"), to which the present Recommendation succeeds;

Having regard to the Revised Recommendation of the Council on Bribery in International Business Transactions [C(97)123/FINAL];

Having regard to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions to which all OECD Members and eight non-Members are Parties, as at the time of the adoption of this Recommendation (hereafter the "OECD Anti-Bribery Convention");

Having regard to the Commentaries on the OECD Anti-Bribery Convention;

Having regard to the Recommendation of the Council concerning the Model Tax Convention on Income and on Capital (hereafter the "OECD Model Tax Convention") [C(97)195/FINAL];

Welcoming the United Nations Convention Against Corruption to which most parties to the OECD Anti-Bribery Convention are State parties, and in particular Article 12.4, which provides that "Each State Party shall disallow the tax deductibility of expenses that constitute bribes"

Considering that the 1996 Recommendation has had an important impact both within and outside the OECD, and that significant steps have already been taken by governments, the private sector and non-governmental agencies to combat the bribery of foreign public officials, but that the problem still continues to be widespread and necessitates strengthened measures;

Considering that explicit legislation disallowing the deductibility of bribes increases the overall awareness within the business community of the illegality of bribery of foreign public officials and within the tax administration of the need to detect and disallow deductions for payments of bribes to foreign public officials; and

Considering that sharing information by tax authorities with other law enforcement authorities can be an important tool for the detection and investigation of transnational bribery offences;

On the proposal of the Committee on Fiscal Affairs and the Investment Committee;

I. RECOMMENDS that:

- (i) Member countries and other Parties to the OECD Anti-Bribery Convention explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner. Such disallowance should be established by law or by any other binding means which carry the same effect, such as:
- prohibiting tax deductibility of bribes to foreign public officials;
 - prohibiting tax deductibility of all bribes or expenditures incurred in furtherance of corrupt conduct in contravention of the criminal law or any other laws of the Party to the Anti-Bribery Convention.

Denial of tax deductibility is not contingent on the opening of an investigation by the law enforcement authorities or of court proceedings.

- (ii) Each Member country and other Party to the OECD Anti-Bribery Convention review, on an ongoing basis, the effectiveness of its legal, administrative and policy frameworks as well as practices for disallowing tax deductibility of bribes to foreign public officials. These reviews should assess whether adequate guidance is provided to taxpayers and tax authorities as to the types of expenses that are deemed to constitute bribes to foreign public officials, and whether such bribes are effectively detected by tax authorities.

- (iii) Member countries and other Parties to the OECD Anti-Bribery Convention consider to include in their bilateral tax treaties, the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention, which allows "*the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing)*" and reads as follows:

"Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use."

II. further RECOMMENDS Member countries and other Parties to the OECD Anti-Bribery Convention, in accordance with their legal systems, to establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities.

III. INVITES non-Members that are not yet Parties to the OECD Anti-Bribery Convention to apply this Recommendation to the fullest extent possible.

IV. INSTRUCTS the Committee on Fiscal Affairs together with the Investment Committee to monitor the implementation of the Recommendation and to promote it in the context of contacts with non-Members and to report to Council as appropriate.

Recommendation of the Council on Bribery and Officially Supported Export Credits

Adopted by the Council on 14 December 2006

THE COUNCIL

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960 and, in particular, to Article 5 b) thereof;

Having regard to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter the Anti-Bribery Convention) and to the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions [C(97)123] (hereafter the 1997 Recommendation);

Having regard to the 2006 Action Statement on Bribery and Officially Supported Export Credits;

Considering that combating bribery in international business transactions is a priority issue and that the Working Party on Export Credits and Credit Guarantees is the appropriate forum to ensure the implementation of the Anti-Bribery Convention and the 1997 Recommendation in respect of international business transactions benefiting from official export credit support;

Noting that the application by Members of the measures set out in Paragraph 2 in no way mitigates the responsibility of the exporter and other parties in transactions benefiting from official support to: (i) comply with all applicable laws and regulations, including national provisions for combating bribery of foreign public officials in international business transactions, or (ii) provide the proper description of the transaction for which support is sought, including all relevant payments;

On the proposal of the Working Party on Export Credits and Credit Guarantees (hereafter the ECG):

1. RECOMMENDS that Members take appropriate measures to deter bribery¹ in international business transactions benefiting from official export credit support, in accordance with the legal system of each member country and the character of the export credit² and not prejudicial to the rights of any parties not responsible for the illegal payments, including:

- a) Informing exporters and, where appropriate, applicants, requesting support about the legal consequences of bribery in international business transactions under its national legal system including its national laws prohibiting such bribery and encouraging them to develop, apply and document appropriate management control systems that combat bribery.

¹ As defined in the Anti-Bribery Convention.

² It is recognised that not all export credit products are conducive to a uniform implementation of the Recommendation. For example, on short-term whole-turnover and multi-buyer export credit insurance policies, Members may, where appropriate, implement the Recommendation on an export credit policy basis rather than on a transaction basis.

- b) Requiring exporters and, where appropriate, applicants, to provide an undertaking/ declaration that neither they, nor anyone acting on their behalf, such as agents, have been engaged or will engage in bribery in the transaction.
- c) Verifying and noting whether exporters and, where appropriate, applicants, are listed on the publicly available debarment lists of the following international financial institutions: World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank³.
- d) Requiring exporters and, where appropriate, applicants, to disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge in a national court or, within a five-year period preceding the application, have been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country.
- e) Requiring that exporters and, where appropriate, applicants, disclose, upon demand: (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons.
- f) Undertaking enhanced due diligence if: (i) the exporters and, where appropriate, applicants, appear on the publicly available debarment lists of one of the international financial institutions referred to in c) above; or (ii) the Member becomes aware that exporters and, where appropriate, applicants or anyone acting on their behalf in connection with the transaction, are currently under charge in a national court, or, within a five-year period preceding the application, has been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country; or (iii) the Member has reason to believe that bribery may be involved in the transaction.
- g) In case of a conviction in a national court or equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period, verifying whether appropriate internal corrective and preventive measures⁴ have been taken, maintained and documented.

³ The implementation of paragraph 1 c) may take the form of a self-declaration from exporters and, where appropriate, applicants, as to whether they are listed on the publicly available IFI debarment lists.

⁴ Such measures could include: replacing individuals that have been involved in bribery, adopting an appropriate anti-bribery management control systems, submitting to an audit and making the results of such periodic audits available.

- h) Developing and implementing procedures to disclose to their law enforcement authorities instances of credible evidence⁵ of bribery in the case that such procedures do not already exist.
 - i) If there is credible evidence at any time that bribery was involved in the award or execution of the export contract, informing their law enforcement authorities promptly.
 - j) If, before credit, cover or other support has been approved, there is credible evidence that bribery was involved in the award or execution of the export contract, suspending approval of the application during the enhanced due diligence process. If the enhanced due diligence concludes that bribery was involved in the transaction, the Member shall refuse to approve credit, cover or other support.
 - k) If, after credit, cover or other support has been approved bribery has been proven, taking appropriate action, such as denial of payment, indemnification, or refund of sums provided.
2. **INSTRUCTS** the ECG to continue to:
- a) Exchange information on how the Anti-Bribery Convention and 1997 Recommendation are being taken into account in national official export credit systems.
 - b) Collate and map the information exchanged with a view to considering further steps to combat bribery in respect of officially supported export credits.
 - c) Exchange views with appropriate stakeholders.
3. **INVITES** the Parties to the Anti-Bribery Convention which are not OECD Members to adhere to this Recommendation.

⁵

For the purpose of this Recommendation, credible evidence is evidence of a quality which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if no contrary evidence were submitted.

Recommendation of the Development Assistance Committee on Anti-Corruption Proposals for Bilateral Aid Procurement

Recommendation endorsed by the Development Assistance Committee at its High Level Meeting,
6-7 May 1996

1. DAC Members share a concern with corruption:
 - It undermines good governance.
 - It wastes scarce resources for development, whether from aid or from other public or private sources, with far-reaching effects throughout the economy.
 - It undermines the credibility of, and public support for, development co-operation and devalues the reputation and efforts of all who work to support sustainable development.
 - It compromises open and transparent competition on the basis of price and quality.
2. The DAC, therefore, firmly endorses the need to combat corruption through effective prohibition, co-ordinated in a multilateral framework to ensure harmonised implementation. Other meaningful and concrete measures are also required to ensure transparency, accountability and probity in the use of public resources in DAC Members' own systems and those of partner countries, who themselves are increasingly concerned with this problem.
3. In its efforts to curb corruption, the DAC recognises that opportunities may exist for corrupt practices in aid-funded procurement. Together with other efforts to deal with corruption, the DAC hereby expresses its firm intention to work to eliminate corruption in aid procurement.
4. **The DAC therefore recommends that Members introduce or require anti-corruption provisions governing bilateral aid-funded procurement. This work should be carried out in co-ordination with other work being undertaken in the OECD and elsewhere to eliminate corruption, and in collaboration with recipient countries. The DAC also recommends that its Members work to ensure the proper implementation of their anti-corruption provisions and that they draw to the attention of the international development institutions to which they belong, the importance of proper implementation of the anti-corruption provisions envisaged in their rules of operation.**
5. **The DAC will follow up on the effect given to this Recommendation within one year.**
6. **DAC Members will work closely with development partners to combat corruption in all development co-operation efforts.**

OECD Guidelines for Multinational Enterprises – Section VII

VII. Combating Bribery, Bribe Solicitation and Extortion

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates
2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.
3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.
4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.
5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery, bribe solicitation and extortion.

6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.
7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

Commentary on Combating Bribery, Bribe Solicitation and Extortion

Bribery and corruption are damaging to democratic institutions and the governance of corporations. They discourage investment and distort international competitive conditions. In particular, the diversion of funds through corrupt practices undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare, and it impedes efforts to reduce poverty. Enterprises have an important role to play in combating these practices.

Propriety, integrity and transparency in both the public and private domains are key concepts in the fight against bribery, bribe solicitation and extortion. The business community, non-governmental organisations, governments and inter-governmental organisations have all co-operated to strengthen public support for anticorruption measures and to enhance transparency and public awareness of the problems of corruption and bribery. The adoption of appropriate corporate governance practices is also an essential element in fostering a culture of ethics within enterprises.

The *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the *Anti-Bribery Convention*) entered into force on 15 February 1999. The *Anti-Bribery Convention*, along with the *2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions* (the *2009 Anti-Bribery Recommendation*), the *2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, and the *2006 Recommendation on Bribery and Officially Supported Export Credits*, are the core OECD instruments which target the offering side of the bribery transaction. They aim to eliminate the “supply” of bribes to foreign public officials, with each country taking responsibility for the activities of its enterprises and what happens within its own jurisdiction.¹ A programme of rigorous and systematic monitoring of countries’ implementation of the *Anti-Bribery Convention* has been established to promote the full implementation of these instruments.

The *2009 Anti-Bribery Recommendation* recommends in particular that governments encourage their enterprises to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the *Good Practice Guidance on Internal Controls, Ethics and Compliance*, included as Annex II to the *2009 Anti-Bribery Recommendation*. This *Good Practice Guidance* is addressed to enterprises as well as business organisations and professional associations, and highlights good practices for ensuring the effectiveness

¹. For the purposes of the Convention, a “bribe” is defined as an “...offer, promise, or giv(ing) of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business”. The Commentaries to the Convention (paragraph 9) clarify that “small ‘facilitation’ payments do not constitute payments made ‘to obtain or retain business or other improper advantage’ within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. ...”.

of their internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery.

Private sector and civil society initiatives also help enterprises to design and implement effective anti-bribery policies.

The *United Nations Convention against Corruption (UNCAC)*, which entered into force on 14 December 2005, sets out a broad range of standards, measures and rules to fight corruption. Under the *UNCAC*, States Parties are required to prohibit their officials from receiving bribes and their enterprises from bribing domestic public officials, as well as foreign public officials and officials of public international organisations, and to consider disallowing private to private bribery. The *UNCAC* and the *Anti-Bribery Convention* are mutually supporting and complementary.

To address the demand side of bribery, good governance practices are important elements to prevent enterprises from being asked to pay bribes. Enterprises can support collective action initiatives on resisting bribe solicitation and extortion. Both home and host governments should assist enterprises confronted with solicitation of bribes and with extortion. The *Good Practice Guidance on Specific Articles of the Convention* in Annex I of the *2009 Anti-Bribery Recommendation* states that the *Anti-Bribery Convention* should be implemented in such a way that it does not provide a defence or exception where the foreign public official solicits a bribe. Furthermore, the *UNCAC* requires the criminalisation of bribe solicitation by domestic public officials.