

Bribery and corruption

REDUCING BRIBERY RISKS IN CROSS-BORDER TRADE AND INVESTMENT DEALS

- ▶ As a Party to the OECD Anti-Bribery Convention, South Africa is well placed to provide leadership in combating corruption in international business transactions to other African countries and to G20 countries that have not yet ratified the Convention.
- ▶ As such, South Africa needs to better enforce the law prohibiting the bribery of foreign public officials, and make sure that South African companies know how to effectively prevent such bribery in their foreign business deals.
- ▶ In order to provide such leadership, South Africa needs to significantly increase investigations and prosecutions of cases of international bribery involving South African companies.
- ▶ South Africa also needs to ensure that South African businesses have a clear understanding of what measures they should take to prevent cross-border corruption.

What's the issue?

South Africa has a solid legislative framework for combating the bribery of foreign public officials in international business transactions, as suggested by the peer review process of the OECD's Working Group on Bribery for evaluating Parties' compliance with the OECD Anti-Bribery Convention. The country has also taken important steps to ensure that its private sector has effective tools for preventing and detecting bribery in international business transactions.

However, South Africa has not been successful in enforcing its law prohibiting the bribery of foreign public

officials. Out of 10 allegations that have surfaced since South Africa ratified the Anti-Bribery Convention in 2007, none has reached the prosecution stage. Two of these cases involved sensitive sectors at high risk of bribery. As a result, the OECD has made several recommendations to South Africa to increase enforcement, and will be closely following up on these recommendations.

Moreover, South African companies do not have adequate understanding of the regulation requiring publicly listed and state-owned enterprises over a certain size to have a social and ethics committee that is responsible for

Sectors with a high risk of corruption account for a sizable share of South Africa's GDP

GDP shares and corruption risks of selected sectors



Note: A sector's bribery risk is measured as the share of the sector in all bribery cases concluded by members of the Working Group on Bribery between 1999 and 2014.
 Source: OECD (2014), Foreign Bribery Report: An Analysis of Crime of Bribery of Foreign Public Officials, OECD Publishing; Reserve Bank of South Africa.

monitoring, inter alia, companies' compliance with the OECD Anti-Bribery Convention and the Recommendation on Further Combating Foreign Bribery. In the absence of such knowledge, South African companies are at high risk of becoming involved in corrupt transactions abroad. The OECD has therefore targeted this issue as an area for improvement, which it will also follow-up through its monitoring process.

Why is this important for South Africa?

Economic sectors with a high risk of corruption such as transportation storage and communication as well as mining and quarrying account for a sizable share of South Africa's GDP (see Figure). Similarly, South Africa's trade activities involve business sectors at very high risk of corruption. According to data from the South African Department of Trade and Industry, in 2014, exports of mineral products amounted to more than 25 percent of South African exports, precious and semi-precious metals and gems amounted to more than 15 percent, and base metals amounted to more than 12 percent. The OECD *Foreign Bribery Report* published in December 2015, shows that 19% of all 427 concluded cases of foreign bribery between 1999 and 2014 were in the extractives sector.

South Africa is also a growing source of outward investment, especially in Africa. According to the South African Ministry of Communications (Brand South Africa), in 2012, South Africa's foreign direct investment outflows almost doubled, due to major investments in telecommunications, mining and retail. For instance, UNCTAD's 2013 *World Investment Report* documents a major investment in metals, gold ore and silver ore by a South African company in the Democratic Republic of Congo worth USD 455 million. According to the OECD *Foreign Bribery Report* the information and communications industry involved 10 percent of concluded foreign bribery cases between 1999 and 2014, and the retail sector involved 4 percent of the cases.

Due to their growing international presence, South African companies are increasingly at risk of corruption involving foreign public officials. South African companies come into contact with foreign public officials at various stages of international business transactions, including for the purpose of clearing customs, obtaining licenses and permits to conduct business in foreign countries, paying taxes, and in particular in relation to public procurement contracting. The OECD *Foreign Bribery Report* shows that 57% of international bribery cases concluded between 1999 and 2014 involved public procurement contracting.

What should policy makers do?

- ▶ Enhance investigations and prosecutions of international bribery by South African companies, including in sensitive sectors, for example by increasing resources available to specialist prosecutors.
- ▶ Use an integrated approach to investigations involving all the relevant law enforcement bodies and all the available investigative tools.
- ▶ Raise awareness of the foreign bribery offence among the auditing profession.
- ▶ Raise awareness among publicly listed and state-owned enterprises of the requirement to establish social and ethics committees to strengthen foreign bribery compliance.



Further reading

OECD (2014), *Phase 3 Monitoring report on South Africa* by OECD Working Group on Bribery, OECD Publishing. <http://www.oecd.org/daf/anti-bribery/southafrica-oecdanti-briberyconvention.htm>

OECD (2014), *Foreign Bribery Report: An Analysis of Crime of Bribery of Foreign Public Officials*, OECD Publishing. <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>

OECD (2011), *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents*, OECD Publishing. <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>