



# OECD ANTI-BRIBERY CONVENTION

## PHASE 4 MONITORING GUIDE





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**MONITORING IMPLEMENTATION OF THE OECD ANTI-BRIBERY  
CONVENTION:  
PHASE 4 EVALUATION PROCEDURE<sup>1</sup>**

**Executive Summary**

- The Working Group on Bribery adopted in 2009 a post- Phase 2 assessment mechanism, to act as a permanent cycle of peer review, involving systematic on-site visits as a shorter and more focused assessment mechanism than for Phase 2. The aim of the mechanism is to improve the capacity of Parties to fight bribery in international business transactions by examining their undertakings in this field through a dynamic process of mutual evaluation and peer pressure. The first cycle of review under this mechanism is known as Phase 3. The post-Phase 2 assessment mechanism was revised in 2015 in view of the following review cycle: Phase 4.
- Phase 4 will focus on key Group-wide cross-cutting issues; the progress made by Parties on weaknesses identified in previous evaluations; enforcement efforts and results; and any issues raised by changes in the domestic legislation or institutional framework of the Parties. Phase 4 will endeavour to take a tailor-based approach, considering each country's unique situation and challenges, and reflecting positive achievements.
- Phase 4 evaluations are to comprise the following elements (described in part B herein), the timetable for which is set out in Annex 1 herein:
  - Reply by the evaluated country to a standard (Annex 2 herein) and supplementary questionnaire ;
  - An on-site visit to the evaluated country, two to four days in length;
  - Preparation by the lead examiners and Secretariat, in consultation with the evaluated country, of a preliminary report on country performance including recommendations and issues for follow-up (using a standard format, as set out in Annex 4 herein);

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<sup>1</sup> Reissued in December 2018 following revisions approved by the Working Group on Bribery at its October 2018 plenary.

- An evaluation in the Working Group, with adoption by the Group of the evaluation report, including recommendations and issues for follow-up, and a press release; and

Publication of the evaluation report, and press release.

- Following the adoption by the Working Group of an evaluation report, each evaluated country will report to the Group (in the manner described in part C herein) in writing, within 24 months of the adoption of the report (using the template in Annex 6 herein); and at any other time as required by the Working Group.
- In the event of inadequate implementation of the Convention, or where attendance at the Phase 4 on-site visit prevents the lead examiners from assessing whether a country has adequately implemented the Convention, the Working Group will consider conducting a Phase 4*bis* evaluation (part D herein). When there is continued failure to adequately implement the Convention, further steps might be considered by the Working Group.
- The responsibilities of the evaluated country, lead examiners, the Secretariat, and other members of the Working Group throughout the Phase 4 evaluation process are set out in part E herein.

## **A. INTRODUCTION**

1. In December 2009, the Working Group on Bribery agreed on the general parameters for a post-Phase 2 assessment mechanism, to govern all cycles of peer review following Phase 2, beginning with the [Phase 3 review cycle](#). The post-Phase 2 assessment mechanism was adopted for the purpose of governing all cycles of peer review following Phase 2, but may be amended by the Working Group on Bribery at any time. The standard questionnaire for each cycle, which reflects the substantive content for evaluations, is likely to require revision prior to the commencement of each cycle. The Secretariat will incorporate into the Agenda of the Working Group a review of both the evaluation procedure and the questionnaire to take place 12 months prior to the commencement of each new review cycle.

2. In June 2015, the Working Group on Bribery updated these general parameters for the purpose of the Phase 4 review cycle, to begin in 2016, as agreed to in principle at the Working Group meeting on 9-12 June 2015. These also reflect responses to the private sector consultation undertaken in December 2014.

## **B. THE CONDUCT OF PHASE 4 EVALUATIONS**

3. The post-Phase 2 assessment mechanism acts as a permanent cycle of peer review, subject to review and amendment, involving focussed and systematic on-site visits. Each Party that has already completed a Phase 2 evaluation agrees to be evaluated under the revised post-Phase 2 procedure, starting with the Phase 3 review cycle. The first cycle of review under the revised post-phase 2 mechanism adopted in June 2015 will be known as Phase 4. Subsequent cycles will be known as Phase 5, etc.

### **1. Objectives and principles of the Phase 4 evaluation mechanism**

4. The purpose of the Phase 4 mutual evaluation of the implementation of the Convention and related legal instruments<sup>2</sup> (hereafter “Phase 4

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<sup>2</sup> Following the Working Group’s October 2018 plenary decision to amend the Phase 4 Procedure, “related legal instruments” include the following instruments: Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0378], Recommendation of the Council on Bribery and Officially Supported Export Credits [OECD/LEGAL/0348], Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0371]

evaluation” or “Phase 4”) is to maintain an up-to-date assessment of the structures put in place to enforce the laws and rules implementing the Convention and related legal instruments, and their application in practice. Phase 4 will focus on key Group-wide cross-cutting issues (identified in the Phase 4 standard questionnaire); the progress made by Parties on weaknesses identified in previous evaluations; enforcement efforts and results; and any issues raised by changes in the domestic legislation or institutional framework of the Parties. Phase 4 will also highlight good practices which have proved effective in combating foreign bribery and enhancing enforcement. These are not intended to create new benchmarks for Working Group members. Phase 4 will endeavour to take a more tailor-based approach, considering each country’s unique situation and challenges, and reflecting positive achievements.

5. The Working Group agrees that the monitoring procedure under Phase 4 should conform to the following general principles:

**Purpose.** The purpose of monitoring is to ensure compliance with the Convention and implementation of the Convention and related legal instruments. Monitoring also provides an opportunity to consult on difficulties in implementation and to learn from the experiences of other countries.

**Effectiveness.** Monitoring must be systematic and provide a coherent assessment of whether a participant has implemented the Convention and related legal instruments.

**Equal treatment.** Monitoring must be fair and this means equal treatment for all participants. Equal treatment should be understood to require equitable treatment in line with a country’s specific circumstances, as opposed to identical treatment. To ensure equal treatment in the overall monitoring work of the Group, Phase 4 evaluations should be conducted in a way that takes into account the lessons learnt during previous phases of evaluation. The Secretariat has an important role in ensuring the consistent application of procedures and standards, including in ensuring that Phase 4 includes an analysis of issues and/or standards which have been developed

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and Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption [OECD/LEGAL/0431], and any subsequent additions, revisions or replacements thereto.

by the Group since an evaluated country's previous evaluation, or were overlooked at the time of the previous evaluations.

**Efficiency and effectiveness.** The Phase 4 process should be efficient, realistic, concise and not overly burdensome. Monitoring must also be effective to guarantee a level playing field.

**Tailor-based approach.** Monitoring must be tailor-based and customised to take into account the specific circumstances of the evaluated country. Phase 4 evaluations will strive to identify the unique challenges and achievements of the evaluated country and to assist the country in addressing challenges in a way that is suitable and feasible within its legal system, in accordance with the principles of functional equivalence<sup>3</sup> and equal treatment. The tailor-based approach is intended to make Phase 4 reports shorter and more focused. The reports will centre on the main challenges and achievements of the evaluated country and will omit discussion of minor issues and matters which were not problematic in previous phases, except where such matters are used to highlight good practices or where new findings suggest that the matter needs to be further analysed.

**Co-ordination within the OECD.** The monitoring of practical applications of some issues might require specific expertise that may be found in other parts of the Organisation. In conducting its evaluation work, the Working Group will endeavour to draw on information and expertise developed by other OECD bodies – particularly the Committee on Fiscal Affairs, the Development Assistance Committee, and the Working Party on Export Credits and Credit Guarantees – on implementation of elements of the related legal instruments in their respective fields.

**Co-ordination with other organisations.** International organisations such as the Council of Europe (GRECO and MONEYVAL), the United Nations (UNODC), OAS, and FATF, share the goal of combating corruption and money-laundering, although the scope of their respective efforts and their objectives may differ. All Parties to the Convention want to avoid duplication of effort. The OECD Secretariat will communicate regularly with the Secretariats of relevant organisations, with a view to avoiding duplication among respective exercises to monitor commitments to combat bribery in international

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<sup>3</sup> As defined under Commentary 2 to the OECD Anti-Bribery Convention.

business transactions. When contacting these organisations, the Secretariat should be particularly attentive to avoiding burdening a particular country with multiple on-site visits, or completion of questionnaires, at the same time or close together.

**Public information.** The 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions calls on the Working Group to provide regular information to the public on its work and activities and on implementation of the Recommendation. This general responsibility must be balanced against the need for confidentiality which facilitates frank evaluation of performance. If the country being evaluated makes available to the evaluation team information it considers confidential, confidentiality of this information will be respected. Information contained in reports on country performance would remain confidential until it has been declassified. A country concerned could, however, take whatever steps it felt appropriate to release information concerning its report, or to make it publicly available.

6. Consistent with its established practice in monitoring work, the Working Group will undertake all aspects of the Phase 4 evaluation process on the basis of “consensus minus one” (i.e., the Party under evaluation will not have a right of veto). Although the evaluated country cannot block such decisions, it has the right to have its views and opinions fully reflected in the applicable documentation.

## **2. Overview and timetable**

7. The cycle of Phase 4 evaluations will commence in 2016. In principle, and subject to practical and budgetary implications, the Phase 4 cycle should be completed within a five- to seven-year cycle.

8. Phase 4 evaluations will be based on the replies by the country evaluated to the Phase 4 questionnaires, the results of the on-site visit, research undertaken by the Secretariat and lead examiners, and evaluation in the Working Group.

9. Phase 4 evaluations are to comprise of the following elements, the timetable for which is set out in Annex 1 herein:

- Reply by the country under evaluation (hereafter the “evaluated country”) to a standard and supplementary questionnaire;
- On-site visit to evaluated country;

- Preparation of a preliminary report on country performance;
- Evaluation in the Working Group; and
- Publication of the evaluation report and press release.

10. The evaluation for each country will be conducted in accordance with a calendar to be determined by the Working Group. The country undergoing evaluation will play an active role in fixing the date for the visit. Bearing these factors in mind, the Secretariat will establish a calendar for Phase 4 evaluations (see part F(3)(a) below), taking into account the schedule of other organisations involved in related monitoring work. Any changes to the agreed calendar will be submitted to the Group for approval. The template timetable for Phase 4 evaluations (Annex 1) will be used by the Secretariat to fix an evaluation schedule for each evaluation, in consultation with the evaluated country and the lead examiners (see part F(3)(b) below).

11. Once an evaluation schedule is fixed, the evaluated country, the lead examiners, and the Secretariat must endeavour to comply strictly with the schedule. This is particularly important in the context of the deadline for the submission by the evaluated country of written responses to the Phase 4 questionnaires.

12. The evaluation for each country will be conducted in English or French. The language in which the evaluation will be conducted will be agreed upon in advance between the Secretariat and the evaluated country, and will remain the same throughout the course of the evaluation.

13. The responsibilities of the evaluated country, lead examiners, the Secretariat, and other members of the Working Group throughout the Phase 4 evaluation process are set out in part E herein.

### **3. Questionnaires**

14. The Group has agreed on a standard questionnaire for Phase 4 (Annex 2), which will be sent to the evaluated country. Supplementary questions, specific to the country concerned, will be issued with (or as soon as possible after) the standard questionnaire.

15. The replies, in the agreed language (see part B(2) above), should be sent to the Secretariat together with supporting material (see part F(2)(b) below). The Phase 4 evaluation team (see part B(4)(a) below) will review the replies given to the questionnaires and may request, where appropriate, additional information from the country undergoing evaluation.

#### **4. On-site visit to evaluated country**

16. Each country agrees to allow an on-site visit for the purpose of providing information concerning its law and practice, including enforcement and prosecution. Each on-site visit will normally be conducted over a period of two to four days, according to the complexity and number of issues to be evaluated, or other logistical practicalities. The duration of the on-site visit will be decided by the evaluation team following consultation with the evaluated country.

17. The on-site visit should be carried out in accordance with a programme agreed between the country undergoing evaluation and the on-site evaluation team (see part B(4)(a) below), taking account of the specific requests expressed by the evaluation team. The country undergoing evaluation will play an active role in preparing the visit.

18. During on-site visits, a country should not be required to disclose information that is otherwise protected by a country's laws and regulations. The evaluated country should describe how its authorities have applied the offence in cases involving bribery of foreign public officials (by natural or legal persons). Ideally, participants would address this by referring to concrete cases that have arisen under their implementing legislation or any other legislation (such as trafficking in influence or misuse of company assets, etc) with regard to the bribery of foreign public officials (whether or not these cases have been successfully prosecuted). The aim of such discussions, which are to be held on a confidential basis, will be to determine how the foreign bribery offence is being prosecuted, what investigative techniques are being utilised, and what hurdles are being faced by countries in the fight against the bribery of foreign public officials. The Phase 4 evaluation report will not include any confidential information, including information pertaining to on-going cases, and will aim to provide feedback on how the evaluated country might improve the way it prosecutes cases of foreign bribery, taking into account its domestic legislation. The evaluated country will also have an opportunity to review the preliminary evaluation report and, should any confidential information remain in it, require that it be removed.

##### **a. Composition of evaluation teams**

19. Two lead examiner countries will be chosen for each Phase 4 evaluation. Wherever possible, one of the lead examiner countries should be a Party with a similar legal system as the evaluated country, and one Party (potentially the same country) which was involved in the Phase 3 review of the

evaluated country. There should be no other restrictions on the appointment of lead examiner countries.

20. Two experts from each lead examiner country should normally be appointed to form part of the evaluation team, plus Secretariat staff. Experts should be appointed at least four weeks prior to the sending of the supplementary questionnaire, so as to be able to contribute to its preparation. To assist in this process, at least eight weeks prior to the sending of the supplementary questionnaire the Secretariat will advise the lead examiner countries of the need to appoint experts. The experts will take part in the entirety of the Phase 4 process, including all panels during the on-site visit (with the exception of parallel sessions as provided for in para. 24), the lead-up to it, as well as preparation of the preliminary report (including recommendations and executive summary) and press release, and the conduct of the evaluation in the Group. The experts should in principle also be available for the written follow-up report by the evaluated country (see part C(1) below), and any Phase 4*bis* evaluation of the evaluated country (see part D(2) below).

21. While countries acting as lead examiners will appoint, at their discretion, the experts to participate in the evaluation team, the composition of each evaluation team should ensure relevant expertise for the areas to be evaluated. Lead examiners should aim to have at least one of their experts be a law enforcement official with corruption-related experience. Lead examiners are encouraged to liaise with the Secretariat with the aim of assembling relevant expertise in the evaluation team. Experts must be sufficiently proficient in the language in which the evaluation is to be conducted so as to be able to understand the written material provided and actively engage in discussions. Upon formation of the evaluation team, the Secretariat will inform the Working Group's Management Group of the names and expertise of the experts. If issues arise in the appointment of experts either during the nomination process or during the course of the evaluation, the Secretariat may request that the Management Group contact the relevant lead examiner country to express its concerns. The Management Group will not take any substantive decision without consulting the Working Group.

***b. Agenda for on-site visits***

22. Each on-site visit should include panels on:

- Relevant issues identified in the Phase 4 standard questionnaire (Annex 2).

- Progress made by the evaluated country on weaknesses identified in earlier evaluations; enforcement efforts and results; and issues raised by changes in domestic legislation, or institutional frameworks.
- Private sector and civil society views on awareness, implementation and enforcement.

**c. *Composition and format of panels***

23. The evaluation team should seek to obtain the views of multiple agencies in both the government and non-government sectors, including parliamentarians and the judiciary. It is particularly important to compare and contrast the answers to determine, among other things, the actual state of public awareness, the true degree of cooperation amongst governmental agencies, and the degree of uniformity in the interpretation of laws and regulations.

24. The evaluation team may hold parallel sessions where the entire team agrees this is necessary and provided the evaluated country can accommodate such a request.

25. The evaluated country should consult with the evaluation team concerning the composition of the panels. It must ensure that all governmental officials which the evaluation team has requested to meet with are made available, and should make its best endeavours to secure the attendance of non-governmental participants requested by the evaluation team. It should also take reasonable steps<sup>4</sup> to secure the attendance of at least one high-level government representative to meet with the evaluation team during the on-site visit. Where appropriate, the evaluated country will facilitate any request of the evaluation team to attend a meeting(s) at a particular location.

26. Panels should be composed of a sufficient number of experts to adequately comment on issues relevant to implementation and enforcement. Panels should also be of a manageable size to permit productive discussions with the evaluation team. Formal presentations should be kept to a minimum and discussion encouraged.

27. The evaluated country may attend, but should not intervene, during the course of non-government panels.

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<sup>4</sup> Note that the term “reasonable steps” is not intended to carry any specific legal meaning and should be understood to carry only its ordinary meaning.

**d. Preliminary views**

28. At the end of the on-site visit, there may be a final “wrap-up” session with the evaluated country and the evaluation team. The purpose of this session will be to request additional information, to pose outstanding questions, or to review matters that were not sufficiently addressed. The evaluation team may also decide to communicate their preliminary views in a concluding session. The evaluated country may choose to submit additional information for the purpose, among other things, of clarifying issues and/or correcting what it perceives as confusion or misunderstandings of the evaluation team.

**e. Funding for on-site visits**

29. The following provisions will apply to the funding for Phase 4, and Phase 4*bis*, evaluations:

- a) The countries taking part in the evaluations as lead examiners will bear the costs of travel and per diem expenses for their experts assigned to the on-site visit teams.
- b) The country undergoing evaluation will bear the cost of replying to the questionnaires, and preparing and hosting the on-site visit.
- c) The budget of the Organisation will bear the expenses for the travel and per diem expenses for the members of the Secretariat who take part in the on-site visit.
- d) If an evaluated country unjustifiably causes the cancellation of a scheduled on-site visit, it is expected to reimburse the lead examiner countries and/or the Secretariat for any mission-related expenses (e.g. hotel, visa, or travel expenses) that have been incurred and cannot be refunded.

**5. Preliminary report on country performance**

**a. Preparation of preliminary report**

30. On the basis of the information gathered from the questionnaires and the on-site visit, as well as research undertaken by the Secretariat and the lead examiners, the Secretariat will prepare a “preliminary report” incorporating the preliminary views of the lead examiners and including draft recommendations and issues for follow-up. The lead examiners and Secretariat may request further information during the course of preparing the preliminary report and the evaluated country must provide such further information as soon as

practicable. The lead examiners will review the preliminary report and decide upon any necessary revisions.

31. The revised preliminary report will be transmitted to the evaluated country, which can offer corrections and comments to be considered by the lead examiners. Any further revisions to the preliminary report will result in a “draft report”, which will be circulated amongst members of the Working Group and made subject to the Group’s evaluation process (see part B(6) below). The draft report will include the revised draft recommendations and issues for follow-up, as well as a draft executive summary. The draft executive summary will be drafted by the Secretariat under the guidance of the lead examiners and in a standard format (see Annex 4).

32. In the event that the lead examiners disagree amongst themselves or with the Secretariat concerning any proposed recommendation or comment, such disagreement must be noted in the draft report as an issue to be resolved by the full Working Group (see further parts F(1)(d) and F(3)(g) below).

***b. Format for Phase 4 evaluation reports***

33. Clear, well-structured, tailored, and focussed reports will be important to achieving a qualitative assessment of the country’s performance which could be accepted as the result of a fair process applying an equal standard to all countries. Without prejudicing these aims, and taking into account the fact that the number and complexity of issues will vary from country to country, Phase 4 evaluation reports should aim to be concise and shorter than Phase 3 evaluation reports.

34. Phase 4 reports will have a standard format as follows (see details in Annex 4):

- an executive summary;
- the identification of issues;
- the inclusion of commentaries by the lead examiners; and
- recommendations and issues for follow-up.

35. The preliminary report (as sent to the evaluated country for review) will include the lead examiners’ commentaries, and draft proposed recommendations and issues for follow up (see Annex 4). The commentaries will contain the lead examiners’ observations and advice to the Working Group regarding appropriate actions to be taken by the evaluated country and follow-up by the Working Group. The draft report (as distributed to the Working Group

prior to the plenary) will include the lead examiners' commentaries, and proposed recommendations and issues for follow up, as well as the draft executive summary (see part B(6)(e) below).

## **6. Evaluation in the Working Group**

### **a. Circulation of draft report**

36. The Secretariat will circulate a copy of the draft report to the Working Group at least three weeks in advance of the Working Group meeting. In order to ensure that all evaluated countries have an adequate opportunity to review the draft report, the evaluation schedule should be strictly respected by all Parties involved in the preparation of the draft report. If the evaluated country has not sent its comments within the time limits set in the evaluation schedule, the Secretariat may send the draft report to the Group noting that the evaluated country's comments will be sent separately.

### **b. Meetings preparatory to the Working Group's consideration of the draft report**

37. Essential to the smooth and efficient running of Working Group meetings are the preparatory meetings and break-away sessions between the evaluation team and the evaluated country. These meetings and sessions should be used to discuss and resolve any factual or other inaccuracies, and as many issues as possible. This will ensure that the Working Group, whose plenary time is limited, can consider and deliberate upon clearly-defined questions that remain at issue. Where preparatory meetings and break-away sessions have failed to resolve the abovementioned details, the Group may wish to adjourn its reading(s) of the draft report and require the evaluation team and evaluated country to reconvene separately.

38. The evaluated country is expected to have raised factual or other inaccuracies, as well as disputed issues, during the written feedback on the preliminary report (see part F(2)(d) below). It should only be in exceptional cases that matters are raised for the first time during the preparatory meetings or in the Working Group's plenary meeting.

39. Prior to the discussion of the draft report by the Working Group, preparatory meetings will be held at the OECD (see Annex 5, which sets out guidance for the conduct of preparatory meetings, break away sessions, and readings in the Working Group).

40. Following the preparatory meetings, the Secretariat and the lead examiners will revise the report (in tracked changes mode). Depending on the complexity of the changes to the report arising from the preparatory meeting, the Secretariat may circulate a copy of the revised draft report (in tracked changes mode) to the Working Group at the first reading.

***c. Overview of the Working Group's consideration of the draft report***

41. The Working Group, in plenary, will discuss the draft report (including draft executive summary, recommendations and issues for follow-up) submitted by the evaluation team. Evaluation in the Working Group provides an opportunity to discuss difficult issues, to hear the evaluated country explain its legal system and approach, and to finalise the recommendations that the Group will make. Discussions in the Working Group - as well as interaction between the Secretariat, lead examiners, and the evaluated country - should ensure that the evaluation reflects the fullest possible understanding of the country's approach.

42. After a full discussion of the draft report through the first, second and third readings, the Working Group will adopt the report in respect of the evaluated country (what will become the "evaluation report"). The Working Group will continue to adopt evaluation reports on the basis of "consensus minus one" (see part B(1) above). Although the country undergoing evaluation cannot block the decision to adopt the evaluation report, it has the right to have its views and opinions fully reflected in the evaluation report.

43. In accordance with Rule 5 of the Rules of Procedure of the Organisation, discussions of the Working Group on mutual evaluations will be confidential.<sup>5</sup>

***d. First reading of the draft report***

44. The first reading by the Working Group will involve a review and debate of the draft report, focusing on the substance of the draft report and the commentaries of the lead examiners (see Annex 5 for guidance on the conduct of the first reading).

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<sup>5</sup> See [C\(2007\)14/FINAL](#): Rules of Procedure of the Organisation.

**e. *Break-away sessions***

45. Following the first reading in the Working Group, break-away sessions will be held for the purpose of revising the report, and making any consequential changes to the draft executive summary, recommendations and issues for follow-up and formulating an OECD press release (see Annex 5 for guidance on the conduct of the break-away sessions).

46. The Secretariat will circulate the revised draft report (including revised executive summary, recommendations and issues for follow-up, all in tracked changes mode) and the draft press release to the Working Group at the second reading.

**f. *Second reading of the draft report***

47. A second reading will consider the draft press release, revised draft recommendations and executive summary, and any remaining disagreement on the draft report (see Annex 5 for guidance on the conduct of the second reading). The Group will also determine whether the evaluated country should be subject to any additional measures (see Parts C.3. and D below).

**g. *Further break-away sessions***

48. Following the second reading, the lead examiners, evaluated country, and Secretariat will meet to ensure that all documentation reflects decisions taken in the second reading of the Working Group (see Annex 5 for guidance on the conduct of the break-away sessions). The Secretariat will circulate the final revised draft report and the final revised draft press release to the Working Group (in tracked changes mode) at the third reading.

**h. *Third reading and adoption of the evaluation report***

49. At the third reading, the Working Group will adopt the Phase 4 evaluation report, and press release (see Annex 5 for guidance on the conduct of the third reading).

**7. *Publication of the evaluation report and press release***

50. As soon as possible after the third reading, the evaluation report will be published on the OECD website and announced through the agreed press release. The Secretariat should coordinate this action with the evaluated country. In accordance with their domestic processes, the evaluated country is required to translate at least the executive summary, press release, and recommendations into a national language and publish these on one or several

government websites within two months after the plenary meeting at which the report is agreed. These documents must also be sent to the Secretariat for publishing on the OECD website. The evaluated country should make best efforts to publicise and disseminate the report and translated documents, for example, by making a public announcement, organising a press event, and translating the full report into the national language. In particular, the evaluated country should share the report and translated documents with relevant stakeholders, particularly those involved in the evaluation (through the questionnaire or on-site visit).

### **C. FOLLOW-UP REPORTS TO PHASE 4 EVALUATIONS**

51. Following the adoption by the Working Group of an evaluation report:

- Within 12 months of the adoption of the evaluation report, the Secretariat, copying the Chair and lead examiners, will contact the evaluated country to remind it that it should be progressing with implementation of the Phase 4 recommendations.
- Within 24 months of the adoption of the evaluation report, the evaluated country will submit to the Working Group a written report explaining the steps taken by it concerning the Phase 4 recommendations and follow-up issues.
- The evaluated country may be required to give an additional oral or written report on key recommendations, at a time decided by the Working Group upon adoption of the evaluation report or during its consideration of any follow-up report (see part C(3) below).
- Other steps may be considered as provided under part E below.

#### **1. Two-year written follow-up report**

52. Within 24 months of the adoption of the evaluation report, the evaluated country will submit a written report explaining the steps it has taken concerning the Phase 4 recommendations and follow-up issues. The written report should be made according to the standard format agreed by the Working Group (Annex 6). The written report must be provided to the Secretariat at least six weeks prior to the start of the plenary meeting at which the Working Group is scheduled to consider the report. The Secretariat should send the template in Annex 6 to the reporting country at least four weeks prior to the due date for the written report. The complete timetable template for Phase 4 two-year written follow-up reports is set out in Annex 8.

53. Answers should be given to each and every recommendation. Concerning follow-up issues, information should be provided where there have been relevant developments since the adoption of the Phase 4 report; the Secretariat and the lead examiners may also identify follow-up issues for which it specifically requires information from the evaluated country. Answers should include any necessary supporting material (e.g. translations of legislation). If the evaluated country has not taken any steps to implement a recommendation which requires action (or a part thereof), an explanation should be given as to the reasons for the lack of action. In addition, the evaluated country in question should provide information as to any intended or planned action and the timing of such action.

**a. *Review of follow-up report***

54. The Secretariat and lead examiners will review the written follow-up report and may request, where appropriate, additional information from the evaluated country, particularly where such information may influence the determination of whether a recommendation has been implemented, partially implemented, or not implemented. The Secretariat and lead examiners should, in particular, endeavour to clarify any matters with the evaluated country in advance of the plenary meeting if such matters are likely to determine whether or not a Phase 4 recommendation has been implemented.

55. The lead examiners and the Secretariat will prepare a document presenting the evaluation team's preliminary summary and conclusions on the evaluated country's progress. This document will reflect the lead examiners' preliminary views as to the evaluated country's implementation of its Recommendations and whether the lead examiners consider that any additional follow-up measures are required (see Parts C.3. and D below). The preliminary summary and conclusions will be transmitted to the evaluated country for a period of two weeks; the evaluated country can offer corrections and comments to be considered by the lead examiners during a two-week period (see timetable in Annex 8). Any further revisions to the preliminary summary and conclusions will result in draft summary and conclusions, which will be circulated amongst members of the Working Group and made subject to the Group's usual evaluation process.

56. The written follow-up report prepared by the evaluated country, plus any further information provided upon request, will be circulated to Working Group delegates at least four weeks in advance of the start of the plenary meeting. Provided the written follow-up report and additional materials are received in sufficient time, the lead examiners' draft summary and conclusions

will be circulated to the Working Group at least two weeks in advance of the plenary meeting.

***b. Meetings preparatory to the presentation of the written report to the Working Group***

57. Prior to the Working Group meeting, preparatory meetings will be held at the OECD (see Annex 5 for guidance on the conduct of the preparatory meetings).

***c. Evaluation in the Working Group***

58. The Working Group will consider the written follow-up report and the preliminary summary and conclusions for the purpose of determining whether the Phase 4 recommendations have been implemented, partially implemented, or not implemented (see Annex 5 for guidance on the conduct of the evaluation). The Working Group will also determine whether any additional follow-up measures are required in respect of the evaluated country (see parts C(3) and E below). The evaluation team's preliminary summary and conclusions will be revised during the meeting in accordance with the Working Group's decisions and will be adopted by the Working Group during the meeting. In exceptional circumstances where the summary and conclusions are unable to be approved during the meeting, the Working Group may agree that they be circulated to the Group for comment and approval by written procedure<sup>6</sup> after the meeting.

***d. Finalisation and disclosure of the follow-up report***

59. The follow-up report will be made available on the OECD website as soon as possible after its adoption. The follow-up report will be published as provided by the reporting country (subject to editorial corrections). The summary and conclusions adopted by the Group will be published as a cover note to the written report.

**2. Updates to the written follow-up report**

60. Following the written follow-up report, and prior to the commencement of the next evaluation cycle, the evaluated country or the Working Group may consider that the Working Group's assessment of a particular recommendation as being "implemented", "partially implemented", or "not implemented", is no

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<sup>6</sup> Written procedure is defined in the OECD Rules of Procedure, Rule 6 and in [CE\(2010\)7/FINAL](#).

longer valid as a result of significant legislative, institutional, or operational changes in the country. In such circumstances, the country may provide in writing or be asked by the WGB to provide in writing to the Secretariat a “supplemental report” (in the standard format in Annex 6) explaining the steps it has taken concerning the relevant recommendation(s). The lead examiners and the Secretariat will review the report and any relevant information provided in support thereof. Where relevant action has been taken that affects the assessment of the recommendation, the report and the lead examiners’ preliminary views will be submitted to the Working Group (either in plenary or via written procedure) for decision. A country may ask for a particular recommendation to be re-assessed only once every two years, or on the occasion of an additional oral or written report requested by the Working Group. If the Group’s assessment of a recommendation is changed, the country’s supplemental report and the Group’s new assessment will be reflected as an addendum to the written follow-up report and published on the OECD website.

### **3. Failure to implement core recommendations**

61. In the event that a country has failed to take action to effectively implement the recommendations of a Phase 4 evaluation report which require concrete action and which constitute core matters under the Convention, it will be required to provide additional reports on its progress in implementing these recommendations within a fixed timeframe.

62. Any requirement to provide additional reports will need to be agreed by the Working Group on the basis of a proposal by the Chair or the lead examiners, following consultations with the reporting country. In the case of non-compliance with the recommendations of the Working Group amounting to inadequate implementation of the Convention, even after additional follow-up reports have been provided, the Working Group should consider the possibility of conducting a Phase 4*bis* evaluation (see part D below) or taking other additional steps as necessary (see part E below).

## **D. PHASE 4BIS EVALUATIONS**

### **1. Inadequate implementation of the Convention**

63. In the event of inadequate implementation of the Convention, or where attendance at the Phase 4 on-site visit prevents the lead examiners from assessing whether the country has adequately implemented the Convention, the Working Group will consider conducting a Phase 4*bis* evaluation. When

there is continued failure to implement adequately the Convention, further steps might be considered by the Working Group (see part E below).

64. The Phase 4*bis* evaluation should be conducted under the same procedure as for Phase 4 evaluations. Phase 4*bis* reports would focus on the more severe deficiencies identified in the Phase 4 evaluation, and should be made available on the OECD website.

65. Annex 7 describes the linkage between the Phase 4 evaluation, the follow-up reports, and the Phase 4*bis* evaluation.

## **2. Phase 4*bis* on-site visit**

66. The Working Group could consider the possibility of conducting a second on-site evaluation of a country whose implementation of the Convention has appeared to be inadequate in practice. Such an on-site visit, which would be conducted as an “extraordinary” measure, would be a simplified one and would focus on issues of concern. It should ideally be led by the same examiners as the original Phase 4 evaluation, but in certain cases it could be necessary to call upon new examiners. A decision to conduct such a Phase 4*bis* on-site review could be made by the Working Group on the occasion of the discussion of the Phase 4 report, or after it has considered any follow-up report to the Phase 4 evaluation.

## **E. CONTINUED FAILURE TO ADEQUATELY IMPLEMENT THE CONVENTION**

67. In cases where there is continued failure to adequately implement the Convention following a Phase 4 evaluation, Phase 4*bis* evaluation or any follow-up to a Phase 4 or 4*bis* evaluation, the Working Group may consider any appropriate measures, such as:<sup>7</sup>

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<sup>7</sup> As under the procedures for Phase 2 and Phase 3 evaluations, the list of measures contained in the Phase 4 Procedure is not exhaustive. In accordance with its traditionally flexible approach, the Working Group is not required to follow any particular sequence of measures and can develop other measures on an *ad hoc* basis. Thus, it can apply any measure it deems appropriate to encourage the evaluated country to correct any deficiency in the implementation of the OECD Anti-Bribery Convention or related legal instruments, including insufficient enforcement of the offences set forth in the Convention. For the sake of clarity, the Working Group can also apply the measures contained in the Phase 4 Procedure – or develop other *ad*

- a) *Expedited reporting.* The Working Group could require the evaluated country to provide regular reports on an expedited basis of its progress in implementing the Convention or related legal instruments. The evaluated country could thus be asked to report to each meeting of the Working Group on its progress and it would be expected to be significantly in compliance within a fixed timeframe. The reports could be accompanied by a brief analysis of the progress that has been made, which could be prepared by the Secretariat and, following approval by the Group, published online.
- b) *Monitoring sub-group.* A group of Working Group members, selected by the plenary, could in conjunction with the Secretariat be given responsibility for reviewing any progress, including holding face to face meetings with the evaluated country, and making recommendations to the Working Group on the next steps to be taken.
- c) *Letter from the Chair.* A letter could be sent from the Chair of the Working Group to the relevant Minister(s) in the evaluated country to draw attention to the Working Group's concerns about the country's failure to implement adequately the Convention or related legal instruments.
- d) *Diplomatic engagement.* The Working Group could invite the evaluated country to arrange for its ambassador or other diplomatic representative to attend an upcoming plenary to discuss the Working Group's concerns and possible solutions for better implementing the Convention or related legal instruments, with the aim of fostering political will and conveying the Working Group's concerns to all relevant national authorities.
- e) *Action Plan.* The Working Group could invite the evaluated country to develop a draft plan of proposed measures to address specific deficiencies in implementing the Convention or related legal instruments. The draft plan should provide sufficient detail to enable the Working Group to assess whether the proposed measures adequately address each deficiency. If the measures seem inadequate, the Working Group could invite the evaluated country to submit a revised draft plan for consideration. If the measures seem

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*hoc* measures – in the context of Phase 2 and Phase 3 evaluations and follow-up monitoring.

adequate, the Working Group could invite the evaluated country to report back on their implementation.

- f) *Technical mission.* A technical mission could be arranged to the evaluated country to discuss the Working Group's concerns about, as well as possible solutions for facilitating, the evaluated country's implementation and enforcement of the Convention or related legal instruments.
- g) *High-level mission.* A high-level mission (typically comprised of the Chair of the Working Group, the Head of the Anti-Corruption Division, and several Heads of Delegation of Working Group members) could be arranged to the evaluated country to express the Working Group's concerns. The mission would meet with Ministers and senior officials.
- h) *Public statement.* The Working Group could issue a formal public statement to express concern about the evaluated country's insufficient compliance with the Convention or related legal instruments and to request their expeditious implementation.
- i) *Due diligence warning.* The Working Group could issue a public statement advising that the evaluated country's inadequate implementation of the Convention or related legal instruments may justify enhanced due diligence on companies from that country. The evaluated country should first receive a confidential warning during a Working Group plenary before this measure is applied.
- j) *Designating high-priority recommendation.* The Working Group could label any significant or long-outstanding unimplemented recommendation made to the evaluated country as a high-priority recommendation. The recommendation would be included in an online list of high-priority recommendations in order to highlight its unimplemented status. It would be removed from the online list once the Working Group decides that it has been implemented or rendered obsolete by developments.
- k) *Suspending start of next monitoring phase.* The Working Group could publicly suspend the evaluated country's advancement to the next monitoring phase when warranted by the evaluated country's continuous or repeated failure to adequately implement the Convention or related legal instruments. During the suspension, the evaluated country would remain subject to monitoring within the context of the last monitoring phase that it had already commenced,

including any additional measures that the Working Group may decide to impose during the suspension. The Working Group will consider whether to prolong the suspension every two years or earlier at the request of any Working Group member. To facilitate its deliberation on whether to end or prolong the suspension, the Working Group could invite the evaluated country to provide any additional information it deems relevant and ask the Secretariat and the relevant lead examiner countries to prepare a preliminary analysis.

In appropriate cases, the Working Group could decide, after hearing the evaluated country's views, to publish online details concerning any measure imposed.

## **F. RESPONSIBILITIES OF LEAD EXAMINERS, EVALUATED COUNTRY, SECRETARIAT, AND OTHER WORKING GROUP MEMBERS**

### **1. Responsibilities of the lead examiners**

#### **a. *Participation as lead examiner***

68. Each country will take part in the evaluation of two other countries which are Parties to the Convention, over the period of the complete review cycle. Each country should fully accept all of the obligations relating to such service, including the provision of timely comments and full attendance at all meetings (preparatory, on-site, Working Group evaluation, written follow-up, and Phase 4*bis* evaluation where necessary). Where a country is unable to carry out its obligations for a compelling reason, it should notify the Secretariat as soon as possible to allow another country to substitute as lead examiner.

#### **b. *Central point of contact***

69. Each country serving as a lead examiner should designate someone as a central point of contact for communicating with the Secretariat and the evaluated country, as well as with its own agencies.

70. The central point of contact will:

- Provide the Secretariat with a preliminary list of questions to be included in the supplementary questionnaire.
- Ensure that materials are received and distributed to appropriate experts within their government.

- Consult with the appropriate experts within the government to identify issues raised by the evaluated country's response to the Phase 4 questionnaires, and then communicate these issues to the Secretariat for inclusion in any follow-up questions.

**c. *On-site visit***

71. The lead examiners should take an active role in the conduct of the panels at the on-site visit and should be prepared to chair panels as appropriate. The lead examiners will participate in an objective, impartial manner and will not be influenced by the way in which issues are treated by their own country.

**d. *Attendance at Working Group meetings***

72. The lead examiner experts must attend the Working Group meeting to present the preliminary Report. The lead examiner experts must also, wherever possible, attend the Working Group meetings which will discuss the follow-up reports to the Phase 4 evaluation, as well as any Working Group meeting concerning a Phase 4*bis* evaluation.

**e. *Written follow-up report***

73. The lead examiners will review the contents of the follow-up written reports and provide their views to the Secretariat for the purpose of preparing the preliminary summary and conclusions which the lead examiners will review prior to its circulation to the Working Group. The lead examiners will also be prepared to raise substantive or policy issues that need to be addressed to initiate the discussion of such reports (see further part C(1) above). They should also be ready to present views to the Group on whether the evaluated country should be subject to any additional measures or reports (see part C(3) and D above).

**2. *Responsibilities of the evaluated country***

**a. *Central point of contact***

74. The evaluated country must designate someone as a central point of contact, who will be responsible for:

- Communicating with the Secretariat and the lead examiners.
- Coordinating the evaluated country's response to the Phase 4 questionnaire and supplementary questions.

- Coordinating the preparation for the on-site visit, and any matters arising from the on-site visit or during the preparation of the preliminary report.
- Coordinating the evaluated country's attendance at the OECD for the evaluation in the Working Group, and preparatory meetings.

**b. Questionnaire responses and supporting materials**

75. In accordance with the evaluation schedule established by the Secretariat, the evaluated country must submit a written response, in the agreed language (see part B(2) above), to the Phase 4 questionnaires and to any additional questions collectively submitted by the lead examiners and the Secretariat. Where appropriate or requested by the lead examiners or the Secretariat, the evaluated country must also provide supporting materials, such as laws, regulations, and judicial decisions.

76. Answers should be integrated into a single written response. It is essential that answers, and any accompanying materials, be provided sufficiently in advance of the on-site visit for review by the lead examiners and the Secretariat.

77. Supporting materials should be provided in the agreed language (see part B(2) above). Where the materials are voluminous, the evaluated country should discuss with the Secretariat which items should be translated on a priority basis.

**c. On-site visit<sup>8</sup>**

78. The evaluated country must assemble panels in accordance with the agenda and in consultation with the Secretariat and the lead examiners. The names, titles, and responsibilities of each participant must be provided to the Secretariat in advance of the on-site visit. The evaluated country should do its utmost to ensure that the composition of the panels reflects the proposals of the evaluation team (see part B(4)(c) above).

79. The evaluated country is responsible for providing a venue for the on-site visit. The language in which the evaluation will be conducted will be agreed upon in advance (see part B(2) above). The evaluated country will be required to provide interpretation and translation if deemed necessary by the evaluation team.

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<sup>8</sup> See also part B(4) above.

80. Although the evaluated country is not required to make travel arrangements for the evaluation team, it may consider negotiating for a block of hotel rooms at a government rate at a location convenient to the venue for the evaluation.

81. The evaluated country will be responsible for providing additional information requested by the evaluation team during the on-site visit as well as a complete list of all participants in the on-site visit.

**d. Preliminary report**

82. After the evaluation team has prepared its preliminary report, this will be forwarded to the evaluated country, which should carefully review the preliminary report and submit any corrections or clarifications it deems appropriate. Corrections or clarifications should be indexed to specific paragraphs of the preliminary report. This should not be viewed as an opportunity to rewrite the report. The evaluated country should, however, note significant points of disagreement to allow the Secretariat to draw up a list of preliminary issues for the meeting preparatory to the Working Group evaluation (see part B(6)(b) above).

83. Provided the preliminary report is transmitted to the evaluated country on time, comments must be submitted within the time limits set in the evaluation schedule. To ensure that the Working Group receives the draft report in time to review it prior to the Working Group meeting, comments that are submitted late will not be included in the draft report circulated to the Working Group but will be circulated separately (see part B(6)(a) above).

**e. Evaluation in the Working Group**

84. The evaluated country must bring the relevant experts to the Working Group's evaluation on the draft report (see part B(6) above) in order to be able to respond to questions from the Group. It may submit observations and views orally, and/or in writing, to the plenary.

**f. Post-evaluation**

85. The evaluated country is expected to do its utmost to implement the recommendations made in the Working Group's evaluation report. The evaluated country must provide a two-year written follow-up report to the Working Group, and other additional reports where required, on progress made in implementing the Group's recommendations and issues for follow-up (see part C above). The evaluated country should make best efforts to publicise and

disseminate its two-year written follow-up report and the Working Group's summary and conclusions on this report.

### **3. Responsibilities of the Secretariat**

#### ***a. Calendar of Phase 4 evaluations***

86. The Secretariat will establish a calendar for Phase 4 evaluations, taking into account the calendar of other organisations involved in related monitoring work. Once approved by the Working Group, any significant changes to the calendar must be submitted to the Working Group for approval (either during a plenary meeting or via written procedure).

#### ***b. Evaluation schedule***

87. In consultation with the lead examiners and the evaluated country, and as much in line as possible with the timetable in Annex 1, the Secretariat will establish an evaluation schedule for submitting questions, questionnaire responses, the on-site visit, and drafting and review of the report.

#### ***c. Secretariat members of the evaluation team***

88. The Secretariat will name a team to staff the Phase 4 evaluation. The size of this team may vary from one examination to another, depending on the complexity of the review and the available budget. For example, it may require a larger team to review a G-20 country; or a smaller team may be adequate for a smaller country. As appropriate, the team may draw upon the expertise existing within other parts of the Secretariat in areas critical to a successful review.

#### ***d. Questionnaires***

89. The Secretariat and the lead examiners will review the evaluated country's previous evaluations, and any additional materials, and prepare a list of supplementary questions including questions submitted by members of the Working Group. As well as including additional or more specific questions to supplement the Phase 4 standard questionnaire, the supplementary questions should focus on progress made on weaknesses identified in previous phases, enforcement efforts and results, and issues raised by changes in domestic legislation, or institutional frameworks. The supplementary questionnaire will be sent to the evaluated country after consultation with the lead examiners.

**e. *Preparation for on-site visit***

90. In consultation with the lead examiners and the evaluated country, the Secretariat will prepare an agenda for the on-site visit. The Secretariat will perform the necessary preparatory work for the on-site visit, including assembling a list of issues in consultation with the lead examiners. This list, which may take the form of bullet-points to be addressed by each panel at the on-site visit, is intended to guide the evaluated country toward the issues that should be addressed in the on-site visit and is not intended to be a supplemental questionnaire. The agenda and list of issues must be provided sufficiently in advance of the on-site visit to permit the evaluated country to prepare. The Secretariat should in addition prepare a summary of issues for use by the evaluation team.

**f. *On-site visit***

91. At the conclusion of each day, the Secretariat should convene a meeting of the lead examiners to share preliminary views. The Secretariat should maintain a list of follow-up questions and additional materials requested of the evaluated country during the on-site visit.

**g. *Preparation of preliminary report***

92. Following the on-site visit, the Secretariat will draft a preliminary report based upon the evaluated country's response to the Phase 4 questionnaires, the on-site visit, and any additional materials and research. The preliminary report will incorporate the lead examiners' preliminary views and will include draft recommendations and issues for follow-up. After being reviewed by the lead examiners, this draft will be provided to the evaluated country. The Secretariat, under the guidance of the lead examiners, will make any appropriate changes in response to comments and corrections submitted by the evaluated country. Further guidance on the preparation and format of the preliminary report is set out in part B(5) above and Annex 4 below.

93. The Secretariat has an important role in ensuring the consistent application of procedures and standards throughout the Phase 4 evaluation cycle. In the event that the lead examiners disagree amongst themselves, and have been unable to resolve the issue, it is the responsibility of the Secretariat to ensure that such disagreement is noted in the draft report as an issue to be resolved by the full Working Group. The Secretariat should further ensure that the draft report notes any treatment of an issue which is inconsistent with the way such issues have been treated during the course of the ongoing or previous monitoring cycles. This will be particularly important in circumstances

where the disagreement or inconsistency arises because an issue is treated in the same way by the evaluated country and the lead examiner(s).

***h. Publication of evaluation report***

94. The Secretariat will be responsible for editing and publishing the evaluation report following its adoption in the third reading by the Working Group.

***i. Follow-up reports***

95. Countries which are due to provide a regular or additional report (see part C above) will be reminded by the Secretariat in advance of the meeting.

96. Following the discussion of any oral follow-up reports, the Secretariat will prepare a brief summary to be included in the record of the meeting.

97. In the case of the two-year written follow-up reports, the Secretariat will send the template (Annex 6) in advance to the evaluated country. The Secretariat will review the written report and liaise with the lead examiners to determine whether additional information should be requested from the evaluated country. The Secretariat, in consultation with the lead examiners, will prepare a document presenting the preliminary summary and conclusions of the lead examiners on the evaluated country's progress and whether further action is required (see parts C.3., D and E above). The Secretariat will also arrange preparatory meetings for the lead examiners to consider their views as to whether the Phase 4 recommendations have been implemented, partially implemented, or not implemented, and to communicate these views to the evaluated country.

98. Following the Working Group's consideration of the two-year written follow-up report and adoption of the final summary and conclusions, the Secretariat will be responsible for publication of these documents on the OECD website as soon as possible. The Secretariat should coordinate this action with the evaluated country.

**4. Responsibilities of other members of the Working Group**

***a. Pre-evaluation***

99. Working Group members are encouraged to submit questions and concerns at any stage of the evaluation process. Six weeks prior to the sending of the supplementary questionnaire, the Working Group will be asked for submissions on foreign bribery-related challenges, achievements, or questions

concerning the evaluated country, as well as its views on its international cooperation experience with the evaluated country, for purposes of the on-site review (see Annex 3). Submissions should be sent to the Secretariat two weeks prior to the sending of the supplementary questionnaire. The Secretariat and the lead examiners should carefully examine whether any issues raised have been addressed in the questions and answers they are already considering.

**b. *Plenary review***

100. Each Working Group member should ensure that a qualified expert has reviewed the preliminary Phase 4 report, or written follow-up report and preliminary summary and conclusions, in advance of the plenary session and that, whenever possible, such qualified experts attend and actively participate in the plenary review of the Phase 4 reports, written follow-up reports, and discussion of oral follow-up reports.

101. Two Working Group members will also be asked to act as Facilitators in respect of each Phase 4 report to engage in in-depth discussions. Should countries wish to volunteer for this role, they should contact the Secretariat as soon as possible, and no later than four weeks in advance of the start of the plenary meeting. In the absence of volunteers, the Secretariat will contact potential Facilitators four weeks in advance of the start of the plenary meeting. Where a country is unable to act as Facilitator, it should notify the Secretariat as soon as possible to allow another country to substitute as Facilitator. Each country should act as Facilitator in the evaluation of two other countries which are Parties to the Convention, over the period of the complete review cycle. The Facilitator role is not intended to undermine or supplant the role of the lead examiners, nor does it change the expectation that all Working Group members actively participate in evaluation reports.

## ANNEX 1

### Phase 4 Evaluation Schedule

**[Evaluated Country]**

**Lead Examiners: [...]**

| Stages | Week       | Action  | Time until next step <sup>1</sup>       |
|--------|------------|---|---|
| 1.     | 0          | Send Phase 4 letter to the WGB on international cooperation and main challenges and achievements in the evaluated country (Annex 3)   | 6 weeks                                 |
|        |            | Secretariat research and liaison with lead examiners to formulate supplementary questions   |   |
| 2.     | 6          | Send Phase 4 standard questionnaire (Annex 2) and supplementary questionnaire to evaluated country  | 8 weeks<br>(+1 if translation required) |
|        |            | Preparation of on-site review: <ul style="list-style-type: none"> <li>• Preparation of preliminary agenda for on-site visit</li> <li>• Consultation with evaluated country</li> </ul> |   |
| 3.     | 14<br>(+1) | Written responses to questionnaires by evaluated country due  | 6 weeks                                 |
|        |            | Analysis of replies and preparation for on-site visit<br>Finalise agenda [2 weeks ahead of on-site]   |   |
| 4.     | 20         | On-site visit   | 6 weeks                                 |
| 5.     | 26         | Draft evaluation report to lead examiners for review  | 2 weeks                                 |
| 6.     | 28         | Comments from lead examiners due : <ul style="list-style-type: none"> <li>• Incorporation of corrections</li> <li>• Liaison between Secretariat and lead examiners</li> </ul>         | 2 weeks                                 |
| 7.     | 30         | Draft evaluation report to evaluated country for review   | 3 weeks<br>(+1 if translation required) |

<sup>1</sup> *Note:* Working Group meeting weeks and public holidays should not be counted in establishing the schedule for a country evaluation.

|     |            |  |                     |
|-----|------------|--|---------------------|
| 8.  | 33<br>(+1) | Comments from evaluated country due: <ul style="list-style-type: none"> <li>• Incorporation of corrections</li> <li>• Liaison between Secretariat, evaluated country, and lead examiners</li> <li>• Revision (if necessary)</li> </ul> | 3 weeks             |
| 9.  | 36         | Circulation of draft evaluation report to the WGB  | 3 weeks             |
| 10. | 39         | Working Group on Bribery evaluation  |                     |
| 11. |            | Following adoption of report: publication of evaluation report and press release   | As soon as possible |

## ANNEX 2

### Phase 4 Questionnaire

#### Objective

The fourth phase of the peer evaluation (Phase 4) of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention) and related legal instruments<sup>1</sup> will strive to identify the unique challenges and achievements of the evaluated country and to assist the evaluated country in addressing challenges in a way that is suitable and feasible within its legal system, in accordance with the principles of functional equivalence<sup>2</sup> and equal treatment. The purpose of Phase 4 is to focus on:

- **Key horizontal issues**, including issues raised by changes in the domestic legislation or institutional framework of the Parties since Phase 3, focusing on:
  - A. Detection of the foreign bribery offence;
  - B. Enforcement; and
  - C. Responsibility of legal persons.
- Any other **country specific issues** arising out of progress made by Parties on weaknesses identified in previous evaluations or **issues raised by changes in the domestic legislation or institutional framework** and not falling under the key horizontal issues identified for Phase 4.

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<sup>1</sup> Following the Working Group's October 2018 plenary decision to amend the Phase 4 Procedure, "related legal instruments" include the following instruments: Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0378], Recommendation of the Council on Bribery and Officially Supported Export Credits [OECD/LEGAL/0348], Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0371] and Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption [OECD/LEGAL/0431], and any subsequent additions, revisions or replacements thereto.

<sup>2</sup> As defined under Commentary 2 to the OECD Anti-Bribery Convention.

- Problems and challenges faced in combating bribery of foreign public officials in international business transactions.
- Achievements and good practices in combating foreign bribery, duly noting that these are not intended to create new standards, liability or obligations for the Parties to the Convention, but to share positive experiences with a view to better combating foreign bribery globally.

The standard questionnaire below will assist the Phase 4 evaluation team and the Working Group on Bribery in assessing how the evaluated country addresses those issues. Phase 4 is carried out in accordance with the Phase 4 evaluation procedure.

### **Submission of replies**

Replies shall be submitted to the Secretariat in the agreed official language for the evaluation within the time limits fixed in the evaluation schedule, and preferably in electronic format. Replies shall be precise and provide sufficient detail to enable an assessment of the law implementing the Convention and its actual application. Where appropriate, copies of, or links to, relevant laws, regulations, administrative guidance, or court decisions shall be provided.

### **Confidentiality**

*Answers to all questions should be provided in accordance with national rules on confidentiality.* Replies to the questionnaire received by the Secretariat are confidential. The evaluated country is not required to disclose or agree to the publication of information that is protected by law, regulations and/or professional rules of conduct in the evaluated country. The evaluated country is encouraged to release information concerning its questionnaire responses, or make them publicly available, subject to its domestic laws on the protection of privacy and secrecy.<sup>3</sup>

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<sup>3</sup> The published version of the Phase 4 evaluation report will not include any confidential information, including information pertaining to on-going cases, taking into account domestic legislation requirements on confidentiality. The evaluated country will also have an opportunity to review the preliminary evaluation report and, should any confidential information remain in it, require that it be removed. See Phase 4 Evaluation Procedure, paragraph 5.

## QUESTIONS CONCERNING PHASE 4

*The evaluated country should be prepared to describe how authorities have applied the foreign bribery offence and related offences since Phase 3. Ideally, this would be addressed by referring to concrete cases that have arisen under implementing legislation, irrespective of whether these cases have been successfully prosecuted. The aim of such information, which will be held on a confidential basis, is to assist the Working Group on Bribery (Working Group) to determine how the foreign bribery offence is being prosecuted, what investigative techniques are being utilised, and what hurdles are being faced by countries in the fight against the bribery of foreign public officials. In the absence of concrete cases concerning the bribery of a foreign public official, please refer if possible to cases involving bribery of domestic officials or other similar offences (e.g. fraud, money laundering, or an offence(s) against anti-monopoly or anti-cartel laws)*

*Unless otherwise specified, all information provided should refer to changes and developments since Phase 3.*

### **PART I. PROGRESS ON PHASE 3 RECOMMENDATIONS<sup>4</sup>**

*The evaluation team will provide a supplementary, country-specific questionnaire to address, in particular, steps taken by the evaluated country to implement the recommendations identified by the Working Group as not having been implemented, or having been only partially implemented, practice which may have developed concerning the issues identified for follow-up in Phase 3, as well as issues arising out of subsequent follow-up reports and other official updates.*

*In responding to the questions in Parts I and II, please note that some questions may overlap, depending on outstanding recommendations and follow-up issues from earlier evaluations for each country, and depending on the nature of any legal and institutional changes for each country. Please do not repeat responses given but refer, instead, to the appropriate question where the response was already made.*

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<sup>4</sup> This section of the Questionnaire addresses Phase 3 recommendations that were not fully implemented by the time of your country's written follow-up report to Phase 3.

## PART II. KEY HORIZONTAL ISSUES FOR PHASE 4

### A. DETECTING FOREIGN BRIBERY

1. What are the most common sources of information referred to your law enforcement authorities accusing natural and/or legal persons of involvement in foreign bribery? If possible, please indicate the likely reasons why some sources are more often relied on, and what the likely reasons are if such information is not being referred to your authorities. Please provide information on the sources of information regarding foreign bribery and how they came to the attention of your law enforcement authorities, including through sources such as (depending on available information):
  - a. Tax authorities;
  - b. Financial intelligence units and other anti-money laundering units;
  - c. Other specialised anti-corruption authorities, law enforcement authorities<sup>5</sup> and securities regulators, as relevant;
  - d. Embassies;
  - e. Other domestic institutions (e.g. export credit agencies, competition authorities, etc.), as appropriate;
  - f. Investigation of other offences (e.g. money laundering, enforcement of books and records requirements, accounting and auditing standards, financial statements disclosures);
  - g. Information from foreign authorities (e.g. through MLA, foreign court decisions, or other international organisations);
  - h. Media;
  - i. Self-reporting by companies;
  - j. Competitors of companies alleged to have engaged in foreign bribery;
  - k. Intermediaries or other partners in the companies' supply chains;
  - l. Employees;
  - m. Whistleblowers;

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<sup>5</sup> This includes all authorities involved in investigation and prosecution.

- n. Auditing professionals; and
  - o. Others, as relevant.
2. Has one source of detection particularly increased? If so, what are the likely causes for this change? In particular, please describe any initiative by your law enforcement authorities to enhance its cooperation with other public or private sector stakeholders to enhance the detection capacities for foreign bribery. If information on suspected acts of foreign bribery is not being referred to your authorities, what are the reasons for this?
  3. If applicable, please indicate reporting procedures or mechanisms developed for the reporting of suspected acts of foreign bribery, and how these have been publicised, among which stakeholder groups, as well as their effectiveness in practice.
  4. If applicable, please indicate any new measures to encourage and/or require reporting by your own public officials of suspected acts of foreign bribery. Please describe specific awareness raising activities undertaken to publicise the existence of these reporting channels, and facilitate their use. Please indicate whether certain bodies of public officials, which may play a particular role in detecting foreign bribery, have been targeted with a view to drawing their attention to foreign bribery “red flags”, and the importance of reporting to relevant law enforcement authorities. In responding to this question, please refer in particular to initiatives to enhance detection capacities of:
    - a. Tax authorities;
    - b. Financial intelligence units and other anti-money laundering units;<sup>6</sup>
    - c. Other law enforcement authorities and securities regulators, as relevant;
    - d. Embassies; and
    - e. Other domestic institutions, as appropriate.
  5. If applicable, please describe any new measures to protect from discriminatory or disciplinary action public and private sector

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<sup>6</sup> In responding on this aspect, reference can be made where appropriate to progress reported in the context of other evaluations regarding in particular politically exposed persons (PEPs), transparency and beneficial ownership.

employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities. Please also indicate whether any specific awareness raising activities have been undertaken to publicise the existence of such measures.

6. Concerning enhancing detection of suspected foreign bribery by the private sector, please describe efforts to encourage detection and reporting by:
  - a. Companies, in particular to indicate whether self-reporting by companies is encouraged under the law or otherwise;
  - b. External auditors, in particular to describe initiatives developed by your government and/or by professional associations to encourage reporting and enhance detection capacities of external auditors of suspected foreign bribery; and
  - c. Other private sector stakeholders, as relevant.
7. Concerning detection of suspected acts of foreign bribery through media reports, please explain whether investigations are being initiated on the basis of media reports. If applicable, please provide examples of foreign bribery cases detected through media reports, including whether formal investigations may be (and have been) opened on the basis of such reports, or whether certain challenges or obstacles prevent the opening of formal investigations based on media reports.

## **B. ENFORCEMENT OF FOREIGN BRIBERY SINCE PHASE 3**

### **1. Issues raised by changes in legislation or the institutional framework since Phase 3**

8. Please describe any changes to your legal framework (legislative, regulatory, or jurisprudential) or institutional framework (including policy statements, guidelines, directives, and protocols) which might *directly or indirectly* impact upon any of the obligations under the Convention, the 2009 Anti-Bribery Recommendation, or the 2009 Tax Recommendation. If there have been such changes, please include or provide exact references to all relevant documentation (e.g. legislation, regulations, court decisions, interpretative notes or commentaries, guidelines, or policy directives), and describe the impact on the implementation of the Convention or other OECD anti-

bribery instruments. In particular, please include reference to any change(s) since Phase 3 affecting:

- a. the offence of bribing a foreign public official (the foreign bribery offence), criminal responsibility for the foreign bribery offence, and related defences and exceptions, including small facilitation payments;
- b. the exercise of territorial, nationality or other forms of extraterritorial jurisdiction over the foreign bribery offence;
- c. the statute of limitations applicable to the foreign bribery offence;
- d. false accounting offences, and money laundering offences in so far as the latter relate to foreign bribery;
- e. the tax treatment of bribes to foreign public officials, including the tax treatment of small facilitation payments and implementation of the 2009 Recommendation on Tax Measures, and the ability of your tax authorities to require financial institutions in your country to provide information;
- f. your national policy or strategy on combating the bribery of foreign public officials;
- g. if more than one level of government has relevant legislative-making powers, the changes to all levels of legislation which might directly or indirectly impact upon the implementation of the Convention; and
- h. if you have any dependencies or overseas territories, progress made to bring them in compliance with the Convention. In addition, if you have the authority to extend ratification of the Convention to them, please describe steps taken in this regard.

## **2. Cases involving the bribery of foreign public officials since Phase 3**

9. Please provide information in the tables below on enforcement action<sup>7</sup> with regard to alleged foreign bribery. Concerning all data provided hereunder, please distinguish between natural persons (NP) and legal persons (LP) (e.g. “3NP” for three matters involving natural persons,

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<sup>7</sup> If this has not been provided in the context of earlier evaluations, countries are encouraged to provide relevant information on all enforcement actions since signing the Convention.

or “2LP” for two matters involving legal persons). Please indicate in particular:<sup>8</sup>

- a. (i) The total number of foreign bribery investigations commenced each year; (ii) the number of investigations still on-going; (iii) the number of discontinued investigations without sanctions; and (iv) the number of discontinued or deferred investigations where persons were sanctioned as a result of settlement, mediation, or equivalent.

|   | 20xx<br>(year) | 20xx | 20xx | 20xx |
|---|----------------|------|------|------|
| Total foreign bribery investigations                      |                |      |      |      |
| Still ongoing investigations                              |                |      |      |      |
| Investigations discontinued or deferred without sanctions |                |      |      |      |
| Investigations discontinued or deferred with sanctions    |                |      |      |      |

- b. (i) The total number of foreign bribery prosecutions with formal charges commenced each year; (ii) the number of prosecutions still on-going; (iii) the number of prosecutions discontinued or deferred without sanctions or conditions; and (iv) the number of prosecutions discontinued or deferred with sanctions or other measures.

|                                    | 20xx<br>(year) | 20xx | 20xx | 20xx |
|------------------------------------|----------------|------|------|------|
| Total foreign bribery prosecutions |                |      |      |      |

<sup>8</sup> Please note the tables in sub-sections a to d are indicative. Information may be provided in a different format suitable to the evaluated country’s specific circumstances.

|   |  |  |  |  |
|---|--|--|--|--|
| Still ongoing prosecutions                              |  |  |  |  |
| Prosecutions discontinued or deferred without sanctions |  |  |  |  |
| Prosecutions discontinued or deferred with sanctions    |  |  |  |  |

- c. (i) The total number of court proceedings relating to foreign bribery cases commenced each year; (ii) the number of court proceedings still ongoing; (iii) the number of court proceedings resulting in acquittals; and (iv) the number of court proceedings resulting in convictions with sanctions.

|   | 20xx<br>(year) | 20xx | 20xx | 20xx |
|---|----------------|------|------|------|
| Total foreign bribery court proceedings   |                |      |      |      |
| Still ongoing court proceedings           |                |      |      |      |
| Court proceedings resulting in acquittals |                |      |      |      |
| Court proceedings resulting in sanctions  |                |      |      |      |

- d. Concerning additional administrative or civil proceedings foreseen under Article 3(4) of the Convention which seek imposition of sanctions (e.g. regulatory enforcement actions, debarment, suspension from public procurement contracts, suspension or termination of official export credit support, penalties for accounting violations), please identify (i) the total number of proceedings relating to foreign bribery cases commenced each year; (ii) the number of proceedings still ongoing; (iii) the number of proceedings discontinued or deferred without sanctions or other measures; (iv) the number of proceedings discontinued or deferred with sanctions or other measures; (v) the number of proceedings discontinued as a result

of civil settlements or agreements, or reference of the matter to arbitration; (vi) the number of decisions finding liability with sanctions; and (vii) the number of decisions finding no liability.

|  | 20xx<br>(year) | 20xx | 20xx | 20xx |
|--|----------------|------|------|------|
| Total other administrative or civil proceedings  |                |      |      |      |
| Still ongoing proceedings  |                |      |      |      |
| Other proceedings discontinued or deferred without sanctions                               |                |      |      |      |
| Other proceedings discontinued or deferred with sanctions                                  |                |      |      |      |
| Other proceedings discontinued due to settlements, agreements, or reference to arbitration |                |      |      |      |
| Other proceedings concluding in liability with sanctions                                   |                |      |      |      |
| Other proceedings concluding in the absence of liability                                   |                |      |      |      |

10. Please provide a summary of foreign bribery cases, including those that address weaknesses identified in previous evaluations and information on any changes in the domestic legal or institutional framework. Please attach a copy of any relevant documentation, with a translation of the relevant parts of such documentation into the agreed official language for the evaluation. Please provide in particular information on:
- a. The important facts of the case revealed by the evidence (which may be anonymised), including the briber (NP and/or LP), the

amount of the bribe, the nature of the advantage obtained, the time period and location of the events, the involvement of intermediaries, etc.;

- b. The procedural steps taken, including investigative and prosecutorial steps;
  - c. The practices and procedures used by law enforcement authorities to assess the information received; and
  - d. Any interpretation of the foreign bribery offence by the court (or opinion of).
11. Have your law enforcement authorities investigated and/or prosecuted credible factual allegations of bribing a foreign public official where all of the advantage was transferred directly to a third party with the knowledge or agreement of the foreign public official? If so, please describe (by reference to selected relevant cases) what practical or legal obstacles your authorities faced in this situation.
12. Please provide a summary of relevant money laundering cases predicated on a foreign bribery offence. Please indicate whether such cases also resulted in foreign bribery prosecutions. If so, please indicate the outcomes of the corresponding foreign bribery prosecutions. If not, please indicate why no foreign bribery prosecution occurred. Where applicable, the tables under question 9 above should be completed in respect of money laundering cases predicated on foreign bribery. Please attach a copy of any relevant, publicly available documentation, with a translation of the relevant parts of such documentation into the agreed official language for the evaluation. Please include, if available:
- a. Information on whether cases of bribing foreign public officials have been detected by your money laundering authorities, or by foreign money laundering authorities where information was shared with your authorities. Please also explain whether this was done by identifying the laundering of the proceeds of bribing a foreign public official and/or the bribe payment and/or a connected offence.
  - b. Information concerning the capacity to detect bribe payments through money laundering transactions involving politically exposed persons (PEPs) who are foreign public officials.

- c. Any available information on how your authorities have quantified the proceeds of bribery in money laundering cases concerning the bribery of foreign public officials as a predicate offence, and whether your authorities have encountered difficulties in this respect.
  
- 13. Please provide a summary of relevant false accounting cases related to foreign bribery. Please indicate whether such cases also resulted in foreign bribery prosecutions. If so, please indicate the outcomes of the corresponding foreign bribery prosecutions. If not, please indicate why no foreign bribery prosecution occurred. Where applicable, the tables under question 8 above should be completed in respect of false accounting cases related to foreign bribery. Please attach a copy of any relevant, publicly available documentation, with a translation of the relevant parts of such documentation into the agreed official language for the evaluation.
  
- 14. Where applicable, please indicate the nature of any challenges encountered in investigating and bringing foreign bribery enforcement actions.<sup>9</sup> Where such challenges have arisen, please explain what measures you have taken in attempting to overcome them, including practices that have worked particularly well. Please address situations which:
  - a. Prevented information referred to your law enforcement authorities accusing natural and/or legal persons of involvement in foreign bribery from progressing to the investigative stage, and how such challenges were possibly overcome; or
  - b. Prevented investigations from leading to indictments (or the initiation of civil or administrative proceedings) or a resolution with sanctions, and how such challenges were possibly overcome; or
  - c. Prevented indictments (or other proceedings) from going to trial or leading to a conviction or a resolution with sanctions, and how such challenges were possibly overcome; or

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<sup>9</sup> Practical challenges might include certain elements of the offence (e.g. use of intermediaries, including related legal persons, benefits provided to third party beneficiaries, or definition of the foreign public official) or other procedural challenges (e.g. defences or exceptions whether in your country's legislation or the foreign jurisdiction, jurisdictional issues, statute of limitations, double jeopardy, or international assistance).

- d. Resulted in trials leading to acquittals (or the finding of no liability) or a dismissal without sanctions, and how such challenges were possibly overcome.

### **3. Law enforcement resources and expertise**

15. Please describe any changes to your legal framework (legislative, regulatory, or jurisprudential) or institutional framework (including policy statements, guidelines, directives, and protocols) affecting the availability of investigative techniques in cases of bribery, including access to information from financial institutions and tax authorities. Please include or provide exact references to all relevant documentation (e.g. legislation, regulations, court decisions, interpretative notes or commentaries, guidelines, or policy directives).
16. Please describe any changes affecting the resources (human and financial) available for the enforcement of offences under the Convention and the 2009 Anti-Bribery Recommendation.
17. Please indicate whether specialised bodies have been set up to investigate and/or prosecute foreign bribery (whether on its own or as part of a broader group of offences). If so, please indicate how long such bodies have been in place and how they are staffed (both in terms of numbers and type of experts). Please also describe the perceived benefits in terms of the effectiveness of foreign bribery investigations and prosecutions and/or the quantification and recovery of the bribe and proceeds of foreign bribery.
18. If specialised bodies are not in place, please indicate the steps taken to ensure adequate expertise and resources are available within law enforcement authorities to permit effective investigation and prosecution of foreign bribery. Please highlight which steps have, in your view, been most effective in ensuring adequate expertise is available within law enforcement authorities.
19. Please describe the steps taken to provide expertise and training to judges on the specificities and complexities of foreign bribery cases. Please highlight which steps have, in your view, been the most effective in ensuring adequate expertise is available within the courts.
20. Please indicate whether specialised courts exist for the purpose of hearing foreign bribery cases (or as part of a broader group of offences). If so, please indicate how long such courts have been in

place and how they are staffed. Please also describe the perceived benefits.

#### 4. **International cooperation**<sup>10</sup>

21. Please describe any changes to your legal framework (legislative, regulatory, or jurisprudential), institutional framework (including policy statements, guidelines, directives, and protocols) or resources concerning mutual legal assistance (MLA) and extradition; and the rules governing MLA and extradition, including the potential impact of issues addressed under Articles 9 and 10 of the Convention (i.e. bank secrecy, absence of an extradition treaty, declining extradition requests solely on the grounds that a person is a country's national, requirement for dual criminality). Please include or provide exact references to all relevant documentation (e.g. legislation, regulations, court decisions, interpretative notes or commentaries, guidelines, or policy directives).
22. Have you considered ways for facilitating MLA between Parties and with non-Parties in cases of foreign bribery, including regarding treaty requirements and evidentiary thresholds where applicable? Please also indicate whether systems have been developed to facilitate the tracking and provision of MLA requests by your authorities (e.g. case management systems).
23. Concerning MLA requests regarding the bribery of a foreign public official made by your authorities to other countries,<sup>11</sup> please provide the following information, if this information is available and capable of being shared:
  - a. How many requests have you made to other countries, per year? What types of measures were requested (e.g. search and seizure of financial and company records, witness statements, court records, etc.)? How long has it taken for your country to receive a reply to such requests? How many of them were granted/rejected

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<sup>10</sup> The Phase 4 evaluation of international cooperation issues is also carried out through a questionnaire sent out to all other Parties to the Convention and seeking their views on their international cooperation experience with your country (see Annex 3 to the Phase 4 Procedure).

<sup>11</sup> Countries are encouraged to provide relevant information on all requests since signing the Convention.

and on what grounds? In responding to this question, please differentiate between requests to Parties and non-Parties.

- b. If you did not receive a response to your request(s), what further steps did you take, if any? Did the absence of a response result in termination of proceedings?

24. Please describe the requests for MLA received by your authorities from other Parties to the Convention regarding the bribery of a foreign public official.<sup>12</sup> Please include answers to the following questions, if this information is available and capable of being shared:

- a. How many requests of this kind have your authorities received each year from other Parties to the Convention? How many requests have been granted/rejected each year and on what grounds? What types of measures were requested (e.g. search and seizure of financial and company records, witness statements, court records, etc.)?
- b. On average, how long has it taken your country to reply to requests for MLA from other Parties concerning foreign bribery? Is the delay for answering similar to the delay for other offences? Are there time limits for responding to requests for the various forms of MLA? Was the range of legal assistance provided the same as that provided for other offences? If applicable, please indicate whether some requests were only partially executed, and the reasons for this.
- c. Have you granted or denied requests for MLA concerning a legal person and, if so, on what grounds?
- d. Have your authorities been able to grant MLA as promptly in cases where a request is for:
  - (i) Information from a financial institution (such as a customer's name or details about a customer's transaction); or
  - (ii) Information about a company (including the identity of the owner, proof of incorporation, legal form, address, the names of directors, etc.)?

25. In cases where several Parties, including your country, had jurisdiction over an alleged offence under the Convention, please describe the steps taken to consult with the other Party(ies) with a view to

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<sup>12</sup> Countries are encouraged to provide relevant information on all requests since signing the Convention.

determining the most appropriate jurisdiction for prosecution. In the event that such a case has never occurred, please indicate the procedures foreseen and whether these have been communicated to law enforcement authorities so they are aware of the need for such consultation.

26. Please describe the circumstances in which you have consulted and otherwise co-operated with competent authorities in other countries on the identification, freezing, seizure, confiscation and recovery of the proceeds of bribery of foreign public officials.
27. Please describe the circumstances in which you have consulted and otherwise co-operated as appropriate with international and regional law enforcement networks involving Parties and non-Parties, in investigations and other legal proceedings concerning specific cases of foreign 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.
28. Have reports of foreign bribery been referred to your authorities by international government organisations, such as the international and regional development banks? If so, please describe the steps taken by your authorities to investigate such matters.
29. Please describe initiatives by your country to prevent foreign bribery in cooperation with other countries, for instance through capacity-building seminars, international conferences, and bilateral conferences for the purpose of sharing good practices and preventing bribery and corruption.

**5. Article 5 considerations**

30. Please describe any changes to your legal framework (legislative, regulatory, or jurisprudential) or institutional framework (including policy statements, guidelines, directives, and protocols) affecting the potential impact of factors prohibited under Article 5 the Convention (i.e. national economic interest, relations with another State, the identity of the natural or legal persons involved), or of other forms of improper influence which are the result of concerns of a political nature, on investigations and prosecutions. Please include or provide exact references to all relevant documentation (e.g. legislation,

regulations, court decisions, interpretative notes or commentaries, guidelines, or policy directives).

31. Please describe any changes to your legal framework (legislative, regulatory, or jurisprudential) or institutional framework (including policy statements, guidelines, directives, and protocols) affecting prosecutorial discretion, and any requirement to obtain consent from the executive branch of government (e.g. Minister of Justice) to open, close or continue an investigation or prosecution; or to inform the executive branch prior to the opening, closure or continuance of an investigation or prosecution; or any authority of the executive branch to direct the opening, closure or continuance of an investigation or prosecution. Please include or provide exact references to all relevant documentation (e.g. legislation, regulations, court decisions, interpretative notes or commentaries, guidelines, or policy directives).
32. Please provide information on specific measures taken by your authorities to ensure that:
  - a. Investigations and prosecutions of the bribery of foreign public officials 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;
  - b. Credible factual allegations of bribery of foreign public officials are seriously investigated and assessed by the competent authorities; and
  - c. Adequate resources have been provided to law enforcement authorities to permit effective investigation and prosecution of bribery of foreign public officials.

## **6. Enforcement efforts and results**

33. Please describe any changes to your legal framework (legislative, regulatory, or jurisprudential) or institutional framework (including policy statements, guidelines, directives, and protocols) which might directly or indirectly impact sanctions applicable to the foreign bribery offence, including confiscation and administrative sanctions. Please include or provide exact references to all relevant documentation (e.g. legislation, regulations, court decisions, interpretative notes or commentaries, guidelines, or policy directives).

34. Please describe any legislative or other measures taken relating to settlement procedures (e.g. plea-bargaining, deferred or non-prosecution agreements). Please indicate in particular the circumstances under which such procedures may be relied on, the procedural rules for their application, the rules on transparency of outcomes, and any measures to protect settlement procedures from the influence of Article 5 considerations.
35. Please indicate the number of foreign bribery investigations concluded through (i) court decisions and (ii) settlement procedures (e.g. plea-bargaining or other procedures such as deferred or non-prosecution agreements) as relevant. Please provide a copy of relevant court decisions or other documentation, or at least the relevant extracts concerning in particular any interpretation of the foreign bribery offence and the rationale for the imposition of sanctions or the acquittal.<sup>13</sup>
36. Please describe sanctions applied in practice to natural and legal persons for the foreign bribery offence, per year. Please provide, if possible, information on:
- a. The nature (type and level) of all criminal, administrative, and civil sanctions, including indications of suspended sentences;
  - b. The grounds for determining the severity of the sentence (including the amount of the fine and/or term of the imprisonment, and/or other sanction, or for the non-imposition of a sanction); and
  - c. The application of other types of sanctions, if applicable (including, for instance, plea bargaining, deferred prosecutions, etc.). If information is available, please compare the sanctions imposed as a result of these procedures with those obtained otherwise.
37. Please describe, using the example of selected relevant cases, confiscation measures applied in foreign bribery cases. Please provide in particular information on:
- a. Whether confiscation measures imposed in practice concerned confiscation of the bribe or of the proceeds of bribery;

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<sup>13</sup> Such documentation should be translated into the agreed official language for the evaluation

- b. Whether confiscation measures were imposed against natural or legal persons;
  - c. If confiscation is not available under your country's laws, please explain how monetary sanctions of a comparable effect have been applied;
  - d. Have your authorities been able to trace the proceeds generated by commission of the foreign bribery offence? Have there been difficulties in quantifying the proceeds of bribery for the purpose of pre-trial seizure, or confiscation? If applicable, please describe the nature of such difficulties and what measures you have taken in attempting to overcome them, including practices that have worked particularly well.
  - e. Whether confiscation of foreign bribery-related proceeds, instrumentalities and property of equivalent value is pursued as a policy objective;
  - f. Whether provisional measures (e.g., freezing or seizures) are used to prevent the flight or dissipation of asset related to foreign bribery; and
  - g. Whether specialised units exist for the purpose of tracing, quantifying and/or seeking confiscation of the proceeds of crime, including foreign bribery. If applicable, please indicate how long such units have been in place, how they are staffed, and whether the setting up of such units has had an impact on the number of confiscation measures imposed and the amount of assets confiscated (please provide figures if appropriate).
38. Please indicate whether measures were taken to permit your authorities to suspend from competition for public contracts or other public advantages (e.g. public procurement and ODA-funded contracts, export credits, etc.) companies determined to have bribed a foreign public official in the context of an international business transaction. If so, please describe the measures taken. Please also describe what steps you have taken to evaluate the effectiveness of your approach in this area.

## **C. RESPONSIBILITY OF LEGAL PERSONS**

### **1. Corporate liability**

39. Please describe any changes to your legal framework (legislative, regulatory, or jurisprudential) or institutional framework (including policy statements, guidelines, directives, and protocols) which might directly or indirectly impact the responsibility of legal persons for the foreign bribery offence, or the responsibility of legal persons more generally. Please include or provide exact references to all relevant documentation (e.g. legislation, regulations, court decisions, interpretative notes or commentaries, guidelines, or policy directives).
40. Please provide case examples of the application in practice of your corporate liability legislation to the bribery of a foreign public official. If this hasn't been applied in foreign bribery cases, please refer if possible to cases involving bribery of domestic officials or other similar intentional criminal offences (e.g. fraud, money laundering, or an offence(s) against anti-monopoly or anti-cartel laws). Please provide in particular information on:
- a. The types of entities that have been prosecuted (including State-owned or State-controlled enterprises), and whether these prosecutions involved only the legal person or also natural persons;
  - b. The standard of liability (e.g. vicarious liability, or liability triggered by acts of high-level managerial authority) applied;
  - c. Where a case has been brought against a natural person employed by or acting on behalf of a legal person, please explain whether an investigation or prosecution has also been initiated against the legal person. If not, please explain the reasons for this.
  - d. Whether jurisdiction has been established (or not) over legal entities operating abroad, including foreign subsidiaries of national companies or legal entities which are registered or operate in more than one jurisdiction; and
  - e. Whether your corporate liability legislation has been applied to legal persons who relied on intermediaries, notably related legal persons, to engage in bribery of a foreign public official.
41. Please indicate whether legal persons may be held liable for money laundering offences where foreign bribery is the predicate offence, as defined under Article 7 of the Convention, and provide examples of

the application of such liability in practice. Please also indicate whether such liability is linked to investigations or prosecutions against the natural person, in law and in practice.

42. Please indicate whether legal persons may be held liable for false accounting offences as defined under Article 8 of the Convention, and provide examples of the application of such liability in practice. Please also indicate whether such liability is linked to investigations or prosecutions against the natural person, in law and in practice.
43. Where a legal person has engaged in bribery of a foreign public official, please indicate any changes as to whether the existence of internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery may be taken into account in assessing the degree of liability of and/or in determining the appropriate sanction for the legal person. Please provide, if possible, information on:
  - a. Whether the existence of internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery is acknowledged in legislation, or otherwise (through other measures or in practice by law enforcement authorities and/or the courts);
  - b. The value granted to the existence internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery (i) in law (e.g. they may be relied on as a defence or a mitigating circumstance, or their absence could constitute a presumption of guilt, etc.), and (ii) in practice in foreign bribery cases since Phase 3;
  - c. Whether and how the effectiveness of internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery is assessed in practice; and
  - d. Whether debarment decisions may be mitigated by the implementation of effective internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery.
44. Please indicate whether self-reporting / voluntary disclosure of foreign bribery by a legal person is encouraged and/or incentivised, whether in legislation, or otherwise, and provide examples in practice if applicable. Please also describe initiatives developed to incentivise or

encourage cooperation by a legal person with law enforcement authorities in the course of a foreign bribery investigation.

## **2. Engaging with the private sector**

45. Please describe actions undertaken to engage companies (especially small and medium-sized enterprises), business associations and professional associations on issues relating to the Convention and/or your country's foreign bribery law.
46. What steps has your country taken to encourage companies to adopt and develop adequate internal controls, ethics and compliance programmes or measures for the prevention and detection of bribery of foreign public officials? In particular, please describe:
- a. Steps taken by your country, on its own or in coordination with business associations and/or professional organisations—to encourage companies to take into account elements identified in the Good Practice Guidance on Internal Controls, Ethics and Compliance (Annex 2 to the 2009 Anti-Bribery Recommendation);
  - b. Steps to encourage companies to make statements in their annual reports or otherwise publicly disclose (e.g. in annual reports, on their web sites, or otherwise) their internal controls, ethics and compliance programmes or measures, including those which contribute to preventing and detecting foreign bribery;
  - c. Steps taken by your country, on its own or in coordination with business associations and/or professional organisations, with respect to the issues above in particular as concerns small and medium-sized enterprises.
  - d. Steps taken to encourage companies to provide mechanisms for communication by and protection of persons not willing to violate professional standards or ethics, as well as for persons willing to report in good faith and on reasonable grounds suspected breaches of the law or professional standards or ethics. Please also indicate what steps have been taken to encourage companies to take appropriate action based on such reporting.
47. Please describe any steps taken to encourage or require your government agencies in charge of disbursing public monies to consider the existence of internal controls, ethics and compliances systems or measures relating to foreign bribery in their decisions to grant public advantages (e.g. public subsidies, export credits, public licences, public procurement and ODA-funded contracts, etc.).

48. Please describe any steps taken to assist your companies confronted with bribe solicitation abroad. If available, please describe positive experiences in this respect, and/or challenges and how these were overcome.

## ANNEX 3

### Model letter inviting comment on country under evaluation

Phase 4 evaluation of [*evaluated country*]: Letter to WGB countries on international co-operation and main challenges and achievements in relation to foreign bribery

#### To all members of the Working Group on Bribery,

You are invited to notify the WGB Secretariat at [*e-mail*] of any issues that you would like to see raised and discussed during the Working Group on Bribery's assessment of [*evaluated country*] regarding: (1) the main challenges and achievements of [*evaluated country*] in fighting foreign bribery; and (2) your jurisdiction's experience concerning international cooperation in relation to foreign bribery cases with [*evaluated country*].

#### 1. Challenges and achievements

Delegations are invited to provide any comments that they may have relating to [*evaluated country*] that will assist the evaluation team to identify those challenges and achievements of [*evaluated country*] in fighting foreign bribery that need increased focus.

#### 2. International co-operation

Jurisdictions are invited to provide any information relating to their international cooperation experience in relation to foreign bribery with [*evaluated country*], such as mutual legal assistance, extradition and other forms of cooperation, including any positive or negative experiences.

Examples of the types of information which may usefully be provided include information on experiences with mutual legal assistance and extradition, law enforcement and other criminal or administrative justice cooperation relating to foreign bribery, such as:

1. number of requests made to [*evaluated country*] and answered – indicate the timeliness, quality and usefulness of the responses;
2. number of requests made to [*evaluated country*] and refused – indicate the nature of the request and the reasons for refusal;
3. number of requests received from [*evaluated country*] and the quality of the request;

4. improvement or deterioration in quality of responses or response time, or quality of requests received;
5. the nature of any specific problems experienced, including details of the case such as offence(s) or other inquiry, type and date of request; date of request and time period for responding;
6. requests relating to access to financial information and the outcome of such requests;
7. requests relating to legal persons, particularly where your jurisdiction has an administrative system for liability of legal persons, and any difficulty in obtaining assistance;
8. co-operation with the administrative authorities of [*evaluated country*] where [*evaluated country*] has an administrative system for liability of legal persons, and whether this presented any difficulty in obtaining assistance.

## ANNEX 4

### Phase 4 Report Outline

[COUNTRY]: PHASE 4

#### REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND RELATED ANTI-BRIBERY INSTRUMENTS

#### EXECUTIVE SUMMARY

*The executive summary will be approximately one page, and will be organised as follows:*

- *The first paragraph will be a standard paragraph, outlining the purpose and scope of the Phase 4 evaluation.*
- *Two to three paragraphs will outline main areas for improvement and highlight the most important recommendations. Significant legislative or institutional changes might also be referred to.*
- *The following paragraph will outline the main positive features of the report. The order of the critical and positive paragraphs may be reversed, depending upon the decision of the Working Group, but the general rule should be to have the critical features appear first in the draft to be presented to the Group.*
- *The last paragraph will summarise the goal and procedure of the Phase 4 evaluation mechanism.*

#### INTRODUCTION

*The Introduction will include a description of the scope of Phase 4 and present the report outline. It will also provide a description of the Phase 4 on-site visit as well as the country-specific monitoring steps leading to Phase 4. The Introduction will also provide a brief economic background of the country and a summary of cases involving the bribery of foreign public officials since Phase 3.*

*The following sections (A, B, and C.) of the report will consider the approach of [Country X] to the key horizontal issues identified by the Working*

*Group for the evaluation of all Parties subject to Phase 4. Where applicable, consideration will also be given to country-specific issues arising from progress made by [Country X] on weaknesses identified in Phase 3, or issues raised by changes in the domestic legislation or institutional framework of [Country X]. For each topic, good practices and particular challenges will be presented, based on laws, cases and other practices implementing the Convention and related anti-bribery instruments. Information and analysis will be based on the Phase 4 questionnaires, the on-site visit, and/or independent research undertaken by the evaluation team.*

#### **A. DETECTION OF THE FOREIGN BRIBERY OFFENCE**

*This section will cover good practices and particular challenges relating to detection of foreign bribery through different sources including, inter alia:*

- *Domestic authorities;*
- *Foreign authorities;*
- *The private sector;*
- *Whistleblowers; and*
- *Media.*

#### **B. ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE**

*This section will cover good practices and particular challenges relating to enforcement of the foreign bribery offence including as concerns, inter alia:*

- *Law enforcement resources and expertise;*
- *International cooperation;*
- *Article 5 considerations; and*
- *Enforcement results.*

#### **C. RESPONSIBILITY OF LEGAL PERSONS**

*This section will cover good practices and particular challenges relating to legal persons including as concerns, inter alia:*

- *Corporate liability; and*
- *Engagement with the private sector.*

#### **D. OTHER ISSUES**

*Outstanding recommendations or follow-up issues from Phase 3, as well as any legislative or institutional changes which do not fit under A, B or C above can be addressed separately here (and under additional sections as appropriate).*

#### **CONCLUSION: RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP**

## ANNEX 5

### **Guidance on the Conduct of Meetings Surrounding the Adoption of Evaluation Reports and Consideration of Written Follow-up Reports**

*With a view to achieving equal treatment amongst all Parties, this Annex sets out guidance on the conduct of meetings leading up to the adoption of Phase 4 evaluation reports, and consideration of written follow-up reports.*

#### **CONDUCT OF MEETINGS FOR THE ADOPTION OF EVALUATION REPORTS**

##### **Meetings preparatory to the Working Group's consideration of the draft report**

Prior to the discussion of the draft report by the Working Group, preparatory meetings will be held at the OECD (see part B(6)(b) of this Note).

Discussions should aim to achieve the timeframes suggested below:

- 1 hour (in principle): The Secretariat will meet with the lead examiners to discuss any outstanding issues in the draft report, including the draft commentaries of the lead examiners.
- 2 hours (in principle): The Secretariat and lead examiners will then meet with the evaluated country to review outstanding issues in the draft report and the commentaries of the lead examiners. This meeting will be focused on the main points of disagreement between the lead examiners and evaluated country, and will not involve discussion of technical drafting issues.

##### **First reading in the Working Group**

The first reading by the Working Group will involve a review and debate of the draft report, focusing on the substance of the draft report and the commentaries of the lead examiners (see part B(6)(d) of this Note). The first reading should aim to achieve the timeframes suggested below:

- 15 minutes: The *lead examiners* will present a summary of the following regarding the evaluated country:
  - The on-site visit.

- Main unresolved concerns about the implementation of the Convention and Revised Recommendation.
- Major issues that have been resolved to their satisfaction.
- Places where the draft report and commentaries have been amended as a result of discussions in the preparatory meeting.
- 15 minutes: The *evaluated country* will respond to the concerns of the lead examiners.
- 1 hour 30 minutes – 2 hours: The *Working Group* will have the opportunity to react to the draft report and presentations of the lead examiners and the evaluated country. Working Group members should indicate where they agree and disagree with the concerns of the lead examiners, and may raise other issues of concern or interest that may have been overlooked in the report. The Working Group may also propose and agree upon changes to parts of the draft report where necessary. This part of the first reading will be conducted as an open debate, and must afford the evaluated country and the lead examiners adequate opportunity to respond to queries and comments by the Working Group.

### **Break-away sessions**

Following the first reading in the Working Group, break-away sessions will be held for the purpose of revising the report; making any consequential changes to the draft recommendations, executive summary; and formulating a draft OECD press release (see part B(6)(e) of this Note). Discussions should aim to achieve the timeframes suggested below:

- 1 hour (in principle): The Secretariat will meet with the lead examiners to formulate a draft press release to be presented at the second reading in the Working Group. In drafting the press release, input should be obtained from the OECD Media Division. The lead examiners and the Secretariat will also revise the draft report and make any consequential changes to the draft executive summary, recommendations and issues for follow-up on the basis of the discussion in the Working Group.
- 1 hour (in principle): The Secretariat, lead examiners and evaluated country will meet once the evaluated country has had an opportunity to review the draft press release and the other revised documents to hear the country's reaction to them and to discuss any outstanding issues.

- 30 minutes: Where necessary the Secretariat, lead examiners and evaluated country will meet again prior to the second reading in the Working Group to ensure that the revised draft report, recommendations, executive summary, and press release are ready to be circulated in the Working Group.

### **Second reading in the Working Group**

A second reading will consider the draft press release, the revised draft recommendations and executive summary, and any remaining disagreement on the draft report (see part B(6)(f) of this Note). The second reading should aim to achieve the timeframes suggested below:

- 15 minutes: The *lead examiners* will present the draft press release and the revised report, recommendations, and executive summary to the Working Group. The lead examiners will indicate the areas where disagreement on the revised documents remains between the lead examiners and the evaluated country.
- 15 minutes: The *evaluated country* will be given the opportunity to respond to the draft press release and the revised documents.
- 1 hour – 1 hour 30 minutes: The *Working Group* will discuss and debate the revised report and matters raised in the second reading by the lead examiners and evaluated country, affording them adequate opportunity to respond to comments by the Working Group. The Working Group will:
  - Finally adopt a comprehensive set of recommendations identifying areas for (i) action by the evaluated country, and (ii) follow-up by the Working Group.
  - Determine whether the evaluated country should be required to undergo any additional reports on any specific recommendation(s) or follow-up issue(s).
  - Agree on the executive summary of the report.
  - Consider the draft press release and, where appropriate, make suggestions concerning any desired amendment of the press release.

- Consider, as appropriate, the need to hold a related press conference following the adoption of the draft report.
- The Working Group may also agree upon changes to the draft report where necessary.

### **Further break-away sessions**

Following the second reading (see part B(6)(g) of this Note):

- 1 hour (in principle): The Secretariat will meet with the lead examiners to review the revised draft report, including the recommendations, the executive summary, as well as the draft press release, in order to check that they reflect the Working Group discussions.
- 30 minutes (in principle): Where necessary, the Secretariat, the lead examiners and the evaluated country will meet again prior to the third reading in the Working Group to ensure that the draft report, recommendations, executive summary, and press release are ready to be circulated to the Working Group for the third reading.

### **Third reading in the Working Group**

The third reading, of 15 minutes, should proceed as follows (see part B(6)(h) of this Note):

- 5 minutes: The *lead examiners* will present any major changes made in the revised version of the report (including the recommendations and the executive summary) and the press release.
- 5 minutes: The *evaluated country* will be given an opportunity to respond.
- 5 minutes: The *Chair* will propose adoption of the Phase 3 evaluation report, and the press release.

## **CONDUCT OF MEETINGS FOR WRITTEN FOLLOW-UP REPORTS**

### **Meeting preparatory to the presentation of written follow-up reports**

Prior to the Working Group meeting, preparatory meetings will be held at the OECD (see part C(1)(b) of this Note). Discussions should aim to achieve the timeframes suggested below:

- 30 – 45 minutes: The Secretariat will meet with the lead examiners to discuss outstanding issues, including preliminary views as to whether the Phase 4 recommendations have been implemented, partially implemented, or not implemented.
- 1 hour: The Secretariat and lead examiners will then meet with the evaluated country. The lead examiners will explain their preliminary views as set out in the evaluation team's preliminary summary and conclusions. While these views will not be open to debate, the evaluated country will be given an opportunity to comment on the preliminary conclusions, or provide further information or materials relevant to these.
- 15 – 30 minutes: Where necessary, the Secretariat and lead examiners may meet again to revise the preliminary summary and conclusions document and ensure that the lead examiners are ready to present their views to the Working Group in plenary.

### **Evaluation in the Working Group**

The Working Group will consider the preliminary summary and conclusions and the evaluated country's written follow up report for the purpose of determining whether the Phase 4 recommendations have been implemented, partially implemented, or not implemented (see part C(1)(c) of this Note). The evaluation should aim to achieve the timeframes suggested below:

- 10 minutes: The *lead examiners* will present a summary of their preliminary views as to whether the Phase 4 recommendations have been implemented, partially implemented, or not implemented.
- 10 minutes: The *evaluated country* will respond to the concerns of the lead examiners.
- 40 minutes: The *Working Group* will have an opportunity to react to the presentations, to discuss the status of the Phase 4 recommendations

and follow-up issues. The Group will decide by “consensus minus one” whether the Phase 4 recommendations have been implemented, partially implemented, or not implemented. The Working Group will consider the preliminary summary and conclusions document prepared by the Secretariat with the lead examiners (see part C(1)(c) of this Note) to confirm its contents and to determine whether further steps are required on account of any failure to implement core recommendations.

## ANNEX 6

### Template for Written Follow-up to Phase 4

#### **Instructions**

*This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 4 Monitoring Guide (part C(1)).*

*Please submit completed answers to the Secretariat on or before.....*

**Name of country:**

**Date of approval of Phase 4 evaluation report:**

**Date of information:**

#### **Part I: Recommendations for Action**

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

##### **Text of recommendation 1:**

*[For the sake of convenience and for practical reasons, the Secretariat will send the template including the text of all the Recommendations].*

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

**If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

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

**Text of issue for follow-up:**

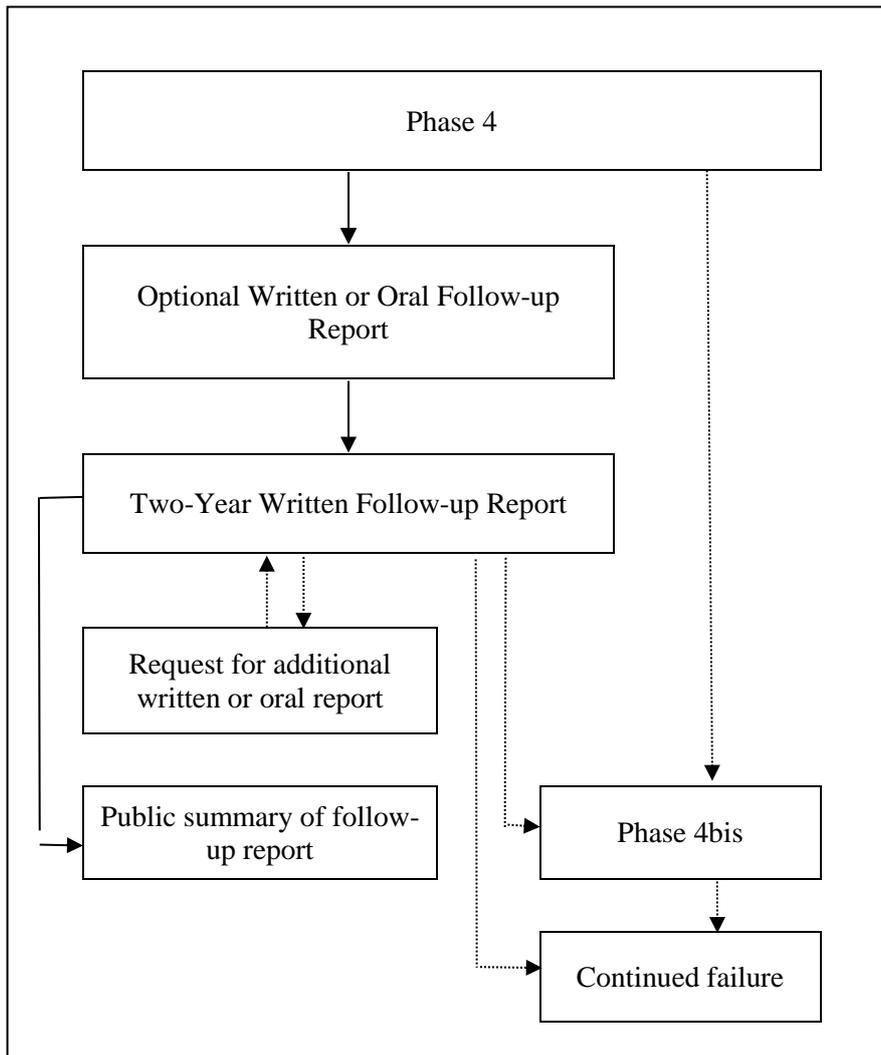
**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

### **Part III: Dissemination of Evaluation Report**

**Please describe the efforts taken to publicise and disseminate the Phase 4 evaluation report:**

**ANNEX 7**

**Diagram of Phase 4 Evaluations, Phase 4 Follow-up Reports, and Phase 4bis Evaluations**



**ANNEX 8**  
**Phase 4 Two-Year Written Follow-Up Report**  
**Timetable Template**

| <b>Stages</b> | <b>Week</b> | <b>Action</b>  | <b>Time until next step</b> |
|---------------|-------------|--|-----------------------------|
| 1.            | 0           | Send template for Phase 4 two-year written follow-up report to evaluated country   | 4 weeks                     |
| 2.            | 4           | Written two-year written follow-up report by evaluated country due<br><br>Analysis of replies and preparation of preliminary summary and conclusions by the evaluation team (Secretariat + lead examiners)                             | 4 weeks                     |
| 3.            | 8           | Preliminary summary and conclusions to evaluated country for review  | 2 weeks                     |
| 4.            | 10          | Comments from evaluated country due: <ul style="list-style-type: none"> <li>• Incorporation of corrections</li> <li>• Liaison between Secretariat, evaluated country, and lead examiners</li> <li>• Revision (if necessary)</li> </ul> | 2 weeks                     |
| 5.            | 12          | Circulation of draft summary and conclusions to the WGB  | 2 weeks                     |
| 6.            | 14          | Working Group on Bribery evaluation (WGB meeting)  |                             |
| 7.            |             | Publication of WGB summary and conclusions and two-year written follow-up report.  | As soon as possible         |

**CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC  
OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND  
RELATED INSTRUMENTS**

**CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC  
OFFICIALS  
IN INTERNATIONAL BUSINESS TRANSACTIONS**

Adopted by the Negotiating Conference on 21 November 1997

**Preamble**

***The Parties,***

**Considering** that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions;

**Considering** that all countries share a responsibility to combat bribery in international business transactions;

**Having regard** to the Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Council of the Organisation for Economic Co-operation and Development (OECD) on 23 May 1997, C(97)123/FINAL, which, *inter alia*, called for effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions, in particular the prompt criminalisation of such bribery in an effective and co-ordinated manner and in conformity with the agreed common elements set out in that Recommendation and with the jurisdictional and other basic legal principles of each country;

**Welcoming** other recent developments which further advance international understanding and co-operation in combating bribery of public officials, including actions of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the Council of Europe and the European Union;

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

**Recognising** the role of governments in the prevention of solicitation of bribes from individuals and enterprises in international business transactions;

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

**Recognising** that achieving equivalence among the measures to be taken by the Parties is an essential object and purpose of the Convention, which requires that the Convention be ratified without derogations affecting this equivalence;

**HAVE AGREED AS FOLLOWS:**

## **Article 1**

### **The Offence of Bribery of Foreign Public Officials**

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give 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.
2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.
3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as "bribery of a foreign public official".

4. For the purpose of this Convention:
- a) “foreign public official” means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation;
  - b) “foreign country” includes all levels and subdivisions of government, from national to local;
  - c) “act or refrain from acting in relation to the performance of official duties” includes any use of the public official’s position, whether or not within the official’s authorised competence.

## **Article 2**

### **Responsibility of Legal Persons**

Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

## **Article 3**

### **Sanctions**

1. The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party’s own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.
2. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.

3. Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.
4. Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.

#### **Article 4**

##### **Jurisdiction**

1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.
2. Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.
3. When more than one Party has jurisdiction over an alleged offence described in this Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution.
4. Each Party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps.

#### **Article 5**

##### **Enforcement**

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall 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.

## **Article 6**

### **Statute of Limitations**

Any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

## **Article 7**

### **Money Laundering**

Each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

## **Article 8**

### **Accounting**

1. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its 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.
2. Each Party shall 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.

## **Article 9**

### **Mutual Legal Assistance**

1. Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance.
2. Where a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention.
3. A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy.

## **Article 10**

### **Extradition**

1. Bribery of a foreign public official shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them.
2. If a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.
3. Each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign

public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution.

4. Extradition for bribery of a foreign public official is subject to the conditions set out in the domestic law and applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of Article 1 of this Convention.

#### **Article 11**

##### **Responsible Authorities**

For the purposes of Article 4, paragraph 3, on consultation, Article 9, on mutual legal assistance and Article 10, on extradition, each Party shall notify to the Secretary-General of the OECD an authority or authorities responsible for making and receiving requests, which shall serve as channel of communication for these matters for that Party, without prejudice to other arrangements between Parties.

#### **Article 12**

##### **Monitoring and Follow-up**

The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference, or within the framework and terms of reference of any successor to its functions, and Parties shall bear the costs of the programme in accordance with the rules applicable to that body.

#### **Article 13**

##### **Signature and Accession**

1. Until its entry into force, this Convention shall be open for signature by OECD Members and by Non-Members which

have been invited to become full participants in its Working Group on Bribery in International Business Transactions.

2. Subsequent to its entry into force, this Convention shall be open to accession by any non-signatory which is a member of the OECD or has become a full participant in the Working Group on Bribery in International Business Transactions or any successor to its functions. For each such non-signatory, the Convention shall enter into force on the sixtieth day following the date of deposit of its instrument of accession.

#### **Article 14**

##### **Ratification and Depositary**

1. This Convention is subject to acceptance, approval or ratification by the Signatories, in accordance with their respective laws.
2. Instruments of acceptance, approval, ratification or accession shall be deposited with the Secretary-General of the OECD, who shall serve as Depositary of this Convention.

#### **Article 15**

##### **Entry into Force**

1. This Convention shall enter into force on the sixtieth day following the date upon which five of the ten countries which have the ten largest export shares set out in DAF/FE/IME/BR(97)18/FINAL (annexed), and which represent by themselves at least sixty per cent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification. For each signatory depositing its instrument after such entry into force, the Convention shall enter into force on the sixtieth day after deposit of its instrument.
2. If, after 31 December 1998, the Convention has not entered into force under paragraph 1 above, any signatory which has deposited its instrument of acceptance, approval or ratification may declare in writing to the Depositary its

readiness to accept entry into force of this Convention under this paragraph 2. The Convention shall enter into force for such a signatory on the sixtieth day following the date upon which such declarations have been deposited by at least two signatories. For each signatory depositing its declaration after such entry into force, the Convention shall enter into force on the sixtieth day following the date of deposit.

#### **Article 16**

##### **Amendment**

Any Party may propose the amendment of this Convention. A proposed amendment shall be submitted to the Depositary which shall communicate it to the other Parties at least sixty days before convening a meeting of the Parties to consider the proposed amendment. An amendment adopted by consensus of the Parties, or by such other means as the Parties may determine by consensus, shall enter into force sixty days after the deposit of an instrument of ratification, acceptance or approval by all of the Parties, or in such other circumstances as may be specified by the Parties at the time of adoption of the amendment.

#### **Article 17**

##### **Withdrawal**

A Party may withdraw from this Convention by submitting written notification to the Depositary. Such withdrawal shall be effective one year after the date of the receipt of the notification. After withdrawal, co-operation shall continue between the Parties and the Party which has withdrawn on all requests for assistance or extradition made before the effective date of withdrawal which remain pending.

**Annex**  
**Statistics on OECD Exports**

|                             | 1990-1996        | 1990-1996          | 1990-1996       |
|-----------------------------|------------------|--------------------|-----------------|
|                             | US\$ million     |                    |                 |
|                             |                  | % of Total<br>OCDE | % of 10 largest |
| United States               | 287 118          | 15.9%              | 19.7%           |
| Germany                     | 254 746          | 14.1%              | 17.5%           |
| Japan                       | 212 665          | 11.8%              | 14.6%           |
| France                      | 138 471          | 7.7%               | 9.5%            |
| United Kingdom              | 121 258          | 6.7%               | 8.3%            |
| Italy                       | 112 449          | 6.2%               | 7.7%            |
| Canada                      | 91 215           | 5.1%               | 6.3%            |
| Korea <sup>(1)</sup>        | 81 364           | 4.5%               | 5.6%            |
| Netherlands                 | 81 264           | 4.5%               | 5.6%            |
| Belgium-<br>Luxembourg      | 78 598           | 4.4%               | 5.4%            |
| <b>Total 10<br/>largest</b> | <b>1 459 148</b> | <b>81.0%</b>       | <b>100%</b>     |
| Spain                       | 42 469           | 2.4%               |                 |
| Switzerland                 | 40 395           | 2.2%               |                 |
| Sweden                      | 36 710           | 2.0%               |                 |
| Mexico <sup>(1)</sup>       | 34 233           | 1.9%               |                 |
| Australia                   | 27 194           | 1.5%               |                 |
| Denmark                     | 24 145           | 1.3%               |                 |
| Austria*                    | 22 432           | 1.2%               |                 |
| Norway                      | 21 666           | 1.2%               |                 |
| Ireland                     | 19 217           | 1.1%               |                 |
| Finland                     | 17 296           | 1.0%               |                 |
| Poland <sup>(1)</sup> **    | 12 652           | 0.7%               |                 |
| Portugal                    | 10 801           | 0.6%               |                 |
| Turkey *                    | 8 027            | 0.4%               |                 |
| Hungary **                  | 6 795            | 0.4%               |                 |
| New Zealand                 | 6 663            | 0.4%               |                 |

|                       |                  |             |  |
|-----------------------|------------------|-------------|--|
| Czech Republic<br>*** | 6 263            | 0.3%        |  |
| Greece *              | 4 606            | 0.3%        |  |
| Iceland               | 949              | 0.1%        |  |
| <b>Total OCDE</b>     | <b>1 801 661</b> | <b>100%</b> |  |

Notes: \* 1990-1995; \*\* 1991-1996; \*\*\* 1993-1996

Source: OECD, (1) IMF

*Concerning Belgium-Luxembourg: Trade statistics for Belgium and Luxembourg are available only on a combined basis for the two countries. For purposes of Article 15, paragraph 1 of the Convention, if either Belgium or Luxembourg deposits its instrument of acceptance, approval or ratification, or if both Belgium and Luxembourg deposit their instruments of acceptance, approval or ratification, it shall be considered that one of the countries which have the ten largest exports shares has deposited its instrument and the joint exports of both countries will be counted towards the 60 per cent of combined total exports of those ten countries, which is required for entry into force under this provision.*

## **COMMENTARIES ON THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS**

Adopted by the Negotiating Conference on 21 November 1997

### **General:**

1. This Convention deals with what, in the law of some countries, is called “active corruption” or “active bribery”, meaning the offence committed by the person who promises or gives the bribe, as contrasted with “passive bribery”, the offence committed by the official who receives the bribe. The Convention does not utilise the term “active bribery” simply to avoid it being misread by the non-technical reader as implying that the briber has taken the initiative and the recipient is a passive victim. In fact, in a number of situations, the recipient will have induced or pressured the briber and will have been, in that sense, the more active.

2. This Convention seeks to assure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of a Party’s legal system.

### **Article 1. The Offence of Bribery of Foreign Public Officials:**

Re paragraph 1:

3. Article 1 establishes a standard to be met by Parties, but does not require them to utilise its precise terms in defining the offence under their domestic laws. A Party may use various approaches to fulfil its obligations, provided that conviction of a person for the offence does not require proof of elements beyond those which would be required to be proved if the offence were defined as in this paragraph. For example, a statute prohibiting the bribery of agents generally which does not specifically address bribery of a foreign public official, and a statute specifically limited to this case, could both comply with this Article. Similarly, a statute which defined the offence in terms of payments “to induce a breach of the official’s duty” could meet the standard provided that it was understood that every public official had a duty to exercise judgement or discretion impartially and this was an “autonomous” definition not requiring proof of the law of the particular official’s country.

4. It is an offence within the meaning of paragraph 1 to bribe to obtain or retain business or other improper advantage whether or not the company concerned was the best qualified bidder or was otherwise a company which could properly have been awarded the business.

5. "Other improper advantage" refers to something to which the company concerned was not clearly entitled, for example, an operating permit for a factory which fails to meet the statutory requirements.

6. The conduct described in paragraph 1 is an offence whether the offer or promise is made or the pecuniary or other advantage is given on that person's own behalf or on behalf of any other natural person or legal entity.

7. It is also an offence irrespective of, *inter alia*, the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage.

8. It is not an offence, however, if the advantage was permitted or required by the written law or regulation of the foreign public official's country, including case law.

9. 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. However, criminalisation by other countries does not seem a practical or effective complementary action.

10. Under the legal system of some countries, an advantage promised or given to any person, in anticipation of his or her becoming a foreign public official, falls within the scope of the offences described in Article 1, paragraph 1 or 2. Under the legal system of many countries, it is considered technically distinct from the offences covered by the present Convention. However, there is a commonly shared concern and intent to address this phenomenon through further work.

Re paragraph 2:

11. The offences set out in paragraph 2 are understood in terms of their normal content in national legal systems. Accordingly, if authorisation, incitement, or one of the other listed acts, which does not lead to further action, is not itself punishable under a Party's legal system, then the Party would not be required to make it punishable with respect to bribery of a foreign public official.

Re paragraph 4:

12. "Public function" includes any activity in the public interest, delegated by a foreign country, such as the performance of a task delegated by it in connection with public procurement.

13. A "public agency" is an entity constituted under public law to carry out specific tasks in the public interest.

14. A "public enterprise" is any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence. This is deemed to be the case, *inter alia*, when the government or governments hold the majority of the enterprise's subscribed capital, control the majority of votes attaching to shares issued by the enterprise or can appoint a majority of the members of the enterprise's administrative or managerial body or supervisory board.

15. An official of a public enterprise shall be deemed to perform a public function unless the enterprise operates on a normal commercial basis in the relevant market, *i.e.*, on a basis which is substantially equivalent to that of a private enterprise, without preferential subsidies or other privileges.

16. In special circumstances, public authority may in fact be held by persons (e.g., political party officials in single party states) not formally designated as public officials. 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;<sup>1</sup>
- 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

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<sup>1</sup> 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.

partners to combat corruption in all development co-operation efforts;<sup>2</sup>

- 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.

### **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

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<sup>2</sup> 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.

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**

As adopted by the OECD Council on 13 March 2019

### **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 OECD Guidelines for Multinational Enterprises [C(76)99/FINAL, as amended] (hereafter the “MNE Guidelines”) (in particular, Chapter VII on Combating Bribery, Bribe Solicitation and Extortion), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter the “Anti-Bribery Convention”), the Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions [[C\(2009\)159/REV1/FINAL](#) as amended] (hereafter the “2009 Recommendation”) (including its Annex II: Good Practice Guidance on Internal Controls, Ethics & Compliance, which is an integral part of the 2009 Recommendation), the Recommendation of the Council on Public Procurement [[C\(2015\)2](#)] and the Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption [[C\(2016\)156](#)];

**RECOGNISING** that the 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 bribery in international business transactions;

**NOTING** that the present Recommendation builds upon Adherents’ experience in implementing the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits [[C\(2006\)163](#)], which this Recommendation replaces, and the 2006 Action Statement on Bribery and Officially Supported Export Credits;

**CONSIDERING** that combating bribery in international business transactions is a priority issue, as demonstrated by the

importance placed on the fight against corruption in international fora including the G20, and that the Working Party on Export Credits and Credit Guarantees is the appropriate forum to ensure the implementation of OECD anti-bribery instruments in respect of international business transactions benefiting from official export credit support;

**NOTING** that the implementation of this Recommendation by Members and non-Members having adhered to it (hereafter the “Adherents”) in no way mitigates the responsibility of the exporter and other parties in transactions benefiting from official support to: (i) comply with all relevant laws and regulations, including those for combating bribery 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:**

**I. RECOMMENDS** that Adherents take appropriate measures to deter bribery in international business transactions benefiting from official export credit support, in accordance with the Anti-Bribery Convention, the UNCAC, the legal system of each Adherent and the character of the export credit, without causing prejudice to the rights of any parties not responsible for bribery.

**II. AGREES** that this Recommendation applies to transactions benefitting from all types of official export credit support, while recognising that not all export credit products are conducive to a uniform implementation of the Recommendation. For example, on short-term whole-turnover, multi-buyer and letter-of-credit export credit insurance policies, Adherents may, where appropriate, implement this Recommendation on an export credit policy basis rather than on a transaction basis.

**III. AGREES** that, for the purposes of this Recommendation:

- The term “equivalent measures” includes, for example, resolutions of bribery violations using deferred prosecution agreements (DPAs) or non-prosecution agreements (NPAs), as well as those resulting from any formal admission or voluntary self-reporting, where such measures exist. The terms of any equivalent measures agreed to with the relevant legal authority may be taken

into consideration by an Adherent when considering subsequent actions.

- “Multilateral Financial Institutions” are the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the World Bank Group.
- The term “relevant parties” may refer to the applicant, buyer, borrower and any party with which an Adherent has or intends to have a contractual relationship. In this context, “party with which an Adherent has or intends to have a contractual relationship” refers to any party in an export credit transaction with which the Export Credit Agency (ECA) has or intends to have a direct contractual relationship arising from a written contract or similar binding declaration in which there is a manifestation of mutual assent of the Adherent and the party to enter into a loan, guarantee and/or insurance relationship not including reinsurance, co-financing or counterguarantee partners.

### **General measures to deter bribery**

#### **IV. RECOMMENDS** that each Adherent:

1. Inform exporters and, where appropriate, other relevant parties about the legal consequences of bribery in international business transactions under its legal system, including national laws prohibiting bribery of foreign and domestic public officials and, where applicable, national laws prohibiting bribery in the private sector.
2. Encourage exporters, and, where appropriate, other relevant parties to develop, apply and document appropriate management control systems that prevent and detect bribery.
3. Raise awareness that parties involved in international business transactions should also comply with all relevant laws and regulations prohibiting bribery in the country or jurisdiction where they are conducting business.
4. Promote responsible business conduct among parties involved in applications for official export credit support.

5. Develop, apply and document appropriate management control systems within its export credit system that seek to deter bribery in international business transactions and that are supported by adequate training for staff, reporting mechanisms and internal audit procedures.

6. Develop and implement policies and procedures, in accordance with national laws on such disclosure, for disclosing credible allegations or evidence that bribery was involved in the award or execution of the export contract to law enforcement authorities, where such policies and procedures do not already exist.

### **Screening**

**V. RECOMMENDS** that Adherents screen and undertake due diligence on all applications for official export credit support covered by this Recommendation with the aim of identifying which applications should be subject to enhanced due diligence for risks associated with bribery. To this end, Adherents should:

1. Start the screening as early as possible in the risk assessment process.
2. Require that, where necessary, the parties involved in an application provide all information necessary to undertake the screening and, if relevant, any subsequent enhanced due diligence.
3. Require exporters and, where appropriate, other relevant parties to provide a declaration that, in the transaction neither they, nor any natural or legal person acting on their behalf in connection with the transaction, such as agents, have been engaged or will engage in bribery:
  - a) For exporters and relevant parties conducting business in the Adherent's country or under its jurisdiction, such a declaration should cover bribery of foreign and domestic public officials and, where prohibited under the Adherent's national laws, bribery in the private sector.
  - b) For any other relevant parties, such a declaration should cover bribery of foreign and domestic public officials.
4. Require exporters and, where appropriate, other relevant parties to declare whether they or any natural or legal person

acting on their behalf in connection with the transaction, such as agents:

- a) are currently under charge in any court or, to the best of their knowledge, are formally under investigation by public prosecutors for violation of laws against bribery of any country; and/or
- b) within a five-year period preceding the application, have been convicted in any court for violation of laws against bribery of any country, been subject to equivalent measures, or been found as part of a publicly-available arbitral award to have engaged in bribery.

5. Verify or require a declaration that exporters and, where appropriate, other relevant parties, and any natural or legal person acting on their behalf in connection with the transaction, such as agents, are not listed on the publicly-available debarment lists of one of the Multilateral Financial Institutions (MFIs).

6. Require exporters and, where appropriate, other relevant parties to declare that the commissions and fees paid, or agreed to be paid, to any natural or legal person acting on their behalf in connection with the transaction, such as agents, is, or will be, for legitimate services only.

7. Require, upon demand, the disclosure of: (i) the identity of any natural or legal person, such as agents, acting on behalf of the exporter and, where appropriate, other relevant parties in connection with the transaction; (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons; and (iii) the country or jurisdiction in which the commissions and fees have been paid, or agreed to be paid.

Where necessary for a particular export credit transaction, the declarations required in accordance with this paragraph of the Recommendation may be obtained *via* other parties involved in the transaction where, due to the nature of the export credit product, the ECA does not have a contractual relationship with the exporter or relevant party.

### **Enhanced due diligence**

#### **VI. RECOMMENDS** that Adherents:

1. Evaluate the information provided in the application form, the declarations provided in accordance with paragraph V of this Recommendation and any due diligence undertaken with such information and/or declarations with a view to undertaking enhanced due diligence of a transaction or a party involved in a transaction if, for example, there is an increased risk of bribery, the Adherent has reason to believe that bribery may be involved in the transaction, the Adherent requires additional information to allay any suspicions of bribery, etc.
2. Decide what enhanced due diligence measures to undertake, including, for example:
  - a) If one of the parties involved in the transaction has been convicted of violation of laws against bribery, been subject to equivalent measures, or been found as part of a publicly-available arbitral award to have engaged in bribery within a five-year period preceding the application, verifying that the party concerned has taken, maintained and documented appropriate internal corrective and preventative measures, such as, where appropriate, replacing individuals that have been involved in bribery, adopting appropriate anti-bribery management control systems, submitting to an audit, making the results of such periodic audits available, etc.
  - b) Verifying and noting whether additional parties involved in a transaction are listed on the publicly available debarment lists of one of the MFIs.
  - c) Where such information has not already been demanded during application screening and due diligence, requiring, upon demand, the disclosure of: (i) the identity of any natural or legal person, such as agents, acting on behalf of the exporter and, where appropriate, other relevant parties in connection with the transaction; (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons; and (iii) the country or jurisdiction in which the commissions and fees have been paid, or agreed to be paid.

- d) Verifying whether the level of commissions and fees paid, or agreed to be paid, the purpose of such commissions and fees, and the location of such payments, appear appropriate and for legitimate services only.
- e) Extending due diligence to other parties involved in a transaction, including, for example, joint ventures and consortia partners, and requesting information about the beneficial ownership and financial condition of any of the transaction parties.
- f) Considering any statements or reports made publicly available by an Adherent's National Contact Point (NCP) at the conclusion of a specific instance in accordance with the procedure under the MNE Guidelines.

### **Evaluation and decision**

**VII.RECOMMENDS** that Adherents evaluate the information resulting from the screening, due diligence and/or enhanced due diligence of a transaction or of a party involved in a transaction, and decide whether to request further information, decline official support or provide official support. In this regard, Adherents should:

1. Inform their law enforcement authorities promptly if, before official export credit support has been provided, they become aware of a credible allegation or evidence that bribery was involved in the award or execution of the export contract.
2. Refuse to provide official export credit support if the screening, due diligence and/or the enhanced due diligence concludes that bribery was involved in the transaction and/or if the declarations required in accordance with paragraph V of this Recommendation are not provided.
3. Decide, in the event that support is to be provided, whether this should involve conditions to fulfil prior to, or after, the final commitment for official support, including, for example:
  - a) warranties, in appropriate documentation, that the Adherent will be informed of any material changes to the declarations provided in accordance with paragraph V of this Recommendation;
  - b) warranties, in appropriate documentation, that exporters and, where appropriate, other relevant parties and any

natural or legal person acting on their behalf in connection with the transaction, such as agents, have complied and will comply with all relevant laws and regulations prohibiting bribery in the country or jurisdiction where they are conducting business; and

- c) rights to audit or review a party's management control systems, the transaction for which support is provided, including all relevant payments, etc.

### **Post-final commitment**

**VIII. RECOMMENDS** that, after official export credit support has been provided, Adherents take the following measures, where applicable:

1. Inform their law enforcement authorities promptly if they become aware of a credible allegation or evidence that bribery was involved in the award or execution of the export contract.
2. Take appropriate action, consistent with their national laws and without causing prejudice to the rights of any parties not responsible for bribery, such as enhanced due diligence, denial of payment, indemnification, or refund of sums provided, if, in relation to the transaction, one of the parties involved is convicted of violation of laws against bribery, subjected to equivalent measures, or found as part of a publicly-available arbitral award to have engaged in bribery.
3. Undertake further due diligence if they become aware of reasons to believe that bribery may be involved in the transaction (e.g. press reports from a reputable source, information provided by parties involved in the transaction, whistle-blower information, etc.).

### **Reporting and monitoring**

**IX. RECOMMENDS** that Adherents:

1. Publish national ECA bribery and other related policy statements or principles relevant to the implementation of this Recommendation.
2. Monitor and evaluate, over time, the experience with this Recommendation at a national level, and share experiences and good practices with the other Adherents.

3. Continue to enhance and improve procedures at a national level to deter and combat bribery in international business transactions, and to encourage their ECAs to allocate appropriate resources for this purpose.

4. Report to the ECG *ex post* information concerning any transactions where bribery was involved in the award or execution of an export contract resulting in a conviction for violation of laws against bribery or equivalent measures against one of the parties involved in the transaction or where one of these parties was found as part of a publicly-available arbitral award to have engaged in bribery, including the party concerned and the appropriate action(s) taken by the Adherent, consistent with its national laws on such disclosures.

5. Build a body of experience on the application of this Recommendation through regular reporting and exchanges of information on actions taken by Adherents to combat both bribery of foreign and domestic public officials and bribery in the private sector, in respect of international business transactions benefiting from official export credit support, with the aim of improving common practices, developing guidance, and promoting a uniform implementation of this Recommendation.

**X. INVITES** the Secretary-General to disseminate this Recommendation.

**XI. INVITES** Adherents to disseminate this Recommendation at all levels of Government.

**XII. INVITES** non-Adherents to take account of and to adhere to this Recommendation, subject to a review by the Working Party on Export Credits and Credit Guarantees.

**XIII. INSTRUCTS** the Working Party on Export Credits and Credit Guarantees to:

1. Serve as a forum for exchanging information on international anti-bribery activities, involving relevant stakeholders, including the Working Group on Bribery in International Business Transactions, on how the Anti-Bribery Convention and the 2009 Recommendation are being taken into account in national official export credit systems;

2. Monitor international anti-bribery activities and emerging trends that may impact international business transactions benefitting from official export credit support;

3. Collate and map the information exchanged and continue to build a body of experience on the practical application of this Recommendation, with a view to considering further steps to deter and combat both bribery of foreign and domestic public officials and bribery in the private sector, in respect of international business transactions benefiting from official export credit support; and

4. Monitor the implementation of this Recommendation and to report thereon to Council no later than five years following its adoption and regularly thereafter, notably to review its relevance and applicability, and whether it requires amendments in the light of experience gained by Adherents.

## RECOMMENDATION OF THE COUNCIL FOR DEVELOPMENT CO-OPERATION ACTORS ON MANAGING THE RISK OF CORRUPTION

16 November 2016

### 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 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement [[DCD/DAC\(96\)11/FINAL](#)], which this Recommendation replaces;

**HAVING REGARD** to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Recommendation of the Council on Bribery and Officially Supported Export Credits [[C\(2006\)163](#)]; the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions and in particular its Annex II: Good Practice Guidance on Internal Controls Ethics and Compliance [[C\(2009\)159/REV1/FINAL](#)] and the Recommendation of the Council on Public Procurement [[C\(2015\)2](#)];

**HAVING REGARD** to the OECD Policy Paper on Anti-Corruption Setting an Agenda for Collective Action [[DCD/DAC/GOVNET\(2006\)3/REV2](#)] and the Development Assistance Committee's study Working Towards More Effective Donor Responses to Corruption which calls for more effective coordinated and collective responses from international development agencies to cases of corruption involving aid;

**RECOGNISING** the important work on anti-corruption developed within the framework of the United Nations (UN) notably the United Nations Convention against Corruption (UNCAC) and the UN Sustainable Development Goals, in particular the target in goal 16 to substantially reduce corruption and bribery in all their forms;

**RECOGNISING** that corruption poses serious threats to development goals and that international development agencies have a common interest in managing and reducing, to the extent possible, the internal and external risks

to which aid activities are exposed, in order to obtain effective use of aid resources;

**RECOGNISING** that corruption can be an ongoing and tenacious condition of the operating context for development activities and that aid can be another resource that ends up being exploited for corruption purposes;

**RECOGNISING** the role that development co-operation agencies may play in tackling the supply side of corruption including the bribery of foreign public officials;

**RECOGNISING** that, following good practices, international development agencies should seek to better understand the political economy of the countries and contexts in which they operate;

**CONSIDERING** that corruption risks are not easily managed with short-term or technical approaches, but rather require comprehensive and ongoing internal and external risk management approaches applied in full coordination with activities carried out by key relevant actors responsible for trade, export credit, international co-operation and diplomatic representations as well as the private sector;

**CONSIDERING** that international development agencies have an interest and a role to play in influencing peer government agencies as well as other actors operating in developing countries to effectively comply with anti-corruption obligations, such as anti-bribery commitments, in order to improve standards of operation within developing countries;

**CONSIDERING** that the staff employed by an international development agency (civil servants or contractual) is the first line of defence in preventing corruption and managing corruption risks in the disbursement of aid, but many other actors are also involved;

**RECOGNISING** that there are a number of good practices among donor agencies and standards already developed by the OECD and others, on which this Recommendation seeks to build and that aid donors have developed an array of policies and practices to address the associated risks as documented through the 2015 OECD study “Building Donors’ Integrity Systems: Background Study on Development Practice” [[DCD/DAC/GOVNET/RD\(2015\)2/RD10](#)];

## **On the proposal of the Development Assistance Committee and the Working Group on Bribery in International Business Transactions:**

**I. AGREES** that the purpose of this Recommendation is to promote a broad vision of how international development agencies can work to address corruption as defined in articles 15-25 of UNCAC, including the bribery of foreign public officials, and to support these agencies in meeting their international and regional commitments in the area of anti-corruption;

**II. AGREES** that, for the purpose of the present Recommendation, the following definitions are used:

- **Corruption risk management** refers to the elements of an institution's (public or private) policy and practice that identify, assess, and seek to mitigate the internal and external risks of corruption for its activities;
- **Implementing partners** refers to government's line ministries or other public agencies, as well as partners of international development agencies such as developing countries' governments, non-governmental organisations, multilateral organisations and suppliers of good and services involved in implementing aid projects or programmes or private sector organisations recipient of aid funds;
- **Internal integrity and anti-corruption system** refers to those elements of an agency's ethics, control, and risk management systems (laws, regulations and policies) that relate to corruption risk, including both prevention and enforcement elements;
- **International development agency (also referred as donor)** refers to government line ministries or other public or private agencies entrusted with the responsibility of disbursing public funds that are accounted for as Official Development Assistance (ODA);
- **Public Official** refers to any person who performs a public function or provides a public service, i.e. any person holding a legislative, administrative or judicial office, whether appointed or elected; exercising a public function, including for a public agency or public enterprise; and any official or agent of a public international organisation.

**III. RECOMMENDS** that Members and non-Members adhering to this Recommendation (hereafter the “Adherents”) set up or revise their system to manage risks of and respond to actual instances of corrupt practices in development co-operation. Such a system should be implemented by the Adherent’s international development agencies and their implementing partners when they are involved in the disbursement and/or management of aid and should include, as appropriate:

**1. Code of Conduct (or equivalent),** which should:

- i. Be applicable to public officials engaged in any aspect of development co-operation work and the management of aid funds;
- ii. Be decided on and endorsed by the highest authority within the international development agency, disseminated to all staff and communicated on an ongoing basis;
- iii. Clearly establish what practices should be avoided and embraced with regard to corruption and anti-corruption, using specific examples of corrupt practices to reduce possible differences in understanding across social, cultural and institutional settings.

**2. Ethics or anti-corruption assistance/advisory services,** which should:

- i. Assure human and financial resources are available to provide ethics and anti-corruption advice, guidance and support to staff in a safe, confidential, independent and timely manner;
- ii. Ensure that staff providing such advisory services are trained and prepared to discuss sensitive matters (i.e. such as how to respond to evidence or suspicions of corruption, and related issues) in a safe and non-threatening environment in order to build a strong, shared understanding of acceptable and unacceptable behaviours;
- iii. Build trust between staff responsible to providing advice in anti-corruption with the rest of personnel, in particular when reporting channels are also responsible for investigation.

**3. Training and awareness raising on anti-corruption,** which should:

- i. Include ethics and anti-corruption training, including for locally-engaged staff in partner countries. Opportunities for interactive training, including discussions of scenarios and exploration of possible

responses, should be put in place for making codes of conduct and other anti-corruption rules practically applicable and meaningful across different social, cultural, and institutional settings;

- ii. Clarify the roles and responsibilities of different staff and tailor the extent and specialisation of training according to the exposure to corruption risk of each role, particularly in face of resource constraints;
- iii. Assure that training of all staff involved in posts that are more directly involved in dealing with corruption risks (such as programme design, management, procurement and oversight) goes beyond the internal ethics and reporting regime, to include corruption risk identification, assessment and mitigation approaches as well as main international obligations to which their country has committed to.

**4. High level of auditing and internal investigation** in order to ensure a proper use of resources and prevent, detect and remedy corruption risks, with the following functions provided for:

- i. Internal audit services. Detailed standards for internal auditors are available through relevant international professional associations and should serve as guidance as appropriate;
- ii. External audit, including of the agencies as well as of the projects/activities the agencies fund, conducted by relevant authorities (i.e. Supreme Audit Institutions, independent external audits). Detailed standards for external auditors are available through relevant international professional associations and should serve as guidance as appropriate;
- iii. Access to investigatory capacity, within or outside the agency, to respond to audit findings;
- iv. Systematic and timely follow-up of internal audit findings as well as findings from independent external audits to assure that weaknesses have been addressed and any sanctions implemented;
- v. Communication to staff about audit and investigation processes and outcomes, within confidentiality limits, to build trust, reduce perceptions of opacity and take into account lessons learned.

**5. Active and systematic assessment and management of corruption risks** in an ongoing way and at multiple levels of decision making, which should:

- i. Integrate corruption risk assessment into all programme planning and management cycles in formalised ways, informing relevant hierarchical levels within the international development agency, assuring analysis and review of corruption risk throughout the project cycle and not as a stand-alone exercise at the project design phase;
- ii. Provide guidance or frameworks appropriate for different levels of corruption risk analysis with a view to help programme managers identify how corruption might directly affect the desired outcomes of the activity, including more detailed assessment than a broad political economy analysis, such as a careful examination of assumptions regarding obstacles and opportunities for anti-corruption and identifying adequate anti-corruption measures;
- iii. Use tools like risk registers or matrices at the outset of a development intervention, and update them regularly throughout implementation, with necessary adjustments to anti-corruption measures;
- iv. Strengthen integration between agency control functions, including auditors and controllers, and programme management functions and other relevant stakeholders for the purposes of more effective corruption risk assessment and management;
- v. Build an evidence base for corruption risk management by sharing experience internally and among other international development agencies about the content and form of corruption risk assessments and management tools, ways that risk management is built into the project cycle, and the impact of these processes.

**6. Measures to prevent and detect corruption enshrined in ODA contracts**, which should:

- i. Ensure that funding for projects financed by ODA are accompanied by adequate measures to prevent and detect

- corruption and that implementing partners, including other government agencies, government of developing countries, NGOs and companies that have been convicted of engaging in corruption are denied such funding as appropriate;
- ii. Ensure that persons applying for ODA contracts be required to declare that they have not been convicted of corruption offences;
  - iii. Establish mechanisms to verify the accuracy of information provided by applicants and ensure that due diligence is carried out prior to the granting of ODA contracts, including consideration of applicant's corruption risk management system, such as companies' internal controls, ethics and compliance programmes and measures, in particular where international business transactions are concerned;
  - iv. Verify publicly available debarment lists of national and multilateral financial institutions during the applicant's selection process; include such lists as a possible basis of exclusion from application to ODA funded contracts;
  - v. Ensure that ODA contracts specifically prohibit implementing partners (whether from the international development agency's own country, local agents in developing countries or from third countries) and their possible sub-contractors from engaging in corruption.

**7. Reporting/whistle-blowing mechanism, which should:**

- i. Be applicable for all public officials involved in development co-operation and implementing partners who report in good faith and on reasonable grounds suspicion of acts of corruption;
- ii. Remind public officials involved in the disbursement of aid, including implementing partners, of their obligation to report corruption including foreign bribery;
- iii. Issue clear instructions on how to recognise indications of corruption and on the concrete steps to be taken if suspicions or indications of corruption should arise, including reporting the matter as appropriate to law enforcement authorities in the

- beneficiary country and/or the international development agency's home country;
- iv. Assure broad accessibility of secure reporting mechanisms, beyond the staff of the international development agency to include implementing partners to the extent possible;
  - v. Communicate clearly about how confidential reports can be made, including providing training if necessary, and streamlining channels to reduce confusion if different reporting mechanisms exist for different stakeholders;
  - vi. Provide alternatives to the normal chain of management or advice services such as independent advisors, ombudsperson and, where relevant, access to law enforcement authorities;
  - vii. Ensure protection for whistle-blowers, including protection from retaliation when reporting suspicion of corruption, including allegations of bribery paid by the donors' own staff or implementing partners;
  - viii. Follow up on reported incidents of suspected corruption in a timely manner;
  - ix. Communicate clearly and frequently about the processes and outcomes of corruption reporting, to build trust and reduce any perception of opacity around corruption reports and investigations.

**8. Sanctioning regime, which should:**

- i. Include, within ODA contracts, termination, suspension or reimbursement clauses or other civil and criminal actions, where applicable, in the event of the discovery by international development agencies that information provided by applicants to ODA funds was false, or that the implementing partner subsequently engaged in corruption during the course of the contract;
- ii. Respond to all cases of corruption;
- iii. Put in place a sanctioning regime that is effective, proportionate and dissuasive;

- iv. Include clear and impartial processes and criteria for sanctioning, with checks and balances in decision making to reduce the possibility of bias;
- v. Allow sharing information on corruption events, investigations, findings and/or sanctions, such as debarment lists, within the limits of confidentiality and/or other legal requirements, to help other international development agencies and other actors implementing aid to identify and manage corruption risks.

**9. Joint responses to corruption** to enhance the effectiveness of anti-corruption efforts, which would be achieved through:

- i. Preparing in advance for responding to cases of corruption involving aid when they arise, agreeing in advance on a graduated joint response to be implemented proportionally and progressively if performance stagnates or deteriorates;
- ii. Following the partner government lead where this exists;
- iii. Promoting and enhancing transparency, accountability and donor coordination where this lead is absent;
- iv. Encouraging other donors to respond collectively to the extent possible, but allowing flexibility for individual donors and making use of comparative advantage;
- v. Fostering accountability and transparency domestically and internationally, including publicising the rationale for and nature of responses to corruption cases;
- vi. Acting internationally, including working to influence their own peer government agencies in upholding anti-corruption obligations undertaken at the international level, but support implementing partners and field staff to link international efforts to anti-corruption actions in partner countries.

**10. Take into consideration the risks posed by the environment of operation**, which would be achieved through:

- i. Adapting to the fact that some corruption risks are outside the direct control of international development agencies relating to

the corruption risk management systems put in place by aid recipients and grantees;

- ii. Performing in-depth political economy analysis where context allows, in order to have adequate understanding of the environment where the development intervention will be implemented, so that it is designed in such a way that development co-operation has adequate anti-corruption measures and does not inadvertently reinforce or support corruption;
- iii. Working collaboratively, providing resources and/or technical assistance, with recipients and grantees in the home country of the international development agency or in developing countries to improve their own corruption risk management systems;
- iv. Working collaboratively with key relevant government departments responsible for trade, export credit, international legal co-operation and diplomatic representation headquartered in the country of origin of the international development agency to improve joint efforts to fight corrupt practices, including bribe payments by companies;
- v. Raising awareness and foster responsible business behaviour of other relevant actors, private as well as public, active in developing countries, discouraging facilitation payments and where relevant highlighting the illegality of such payments pursuant to the legislation of the donor country;

**IV. INVITES** the Secretary-General to disseminate this Recommendation;

**V. INVITES** Adherents and their relevant government agencies such as international development agencies to disseminate this Recommendation among staff and throughout partners;

**VI. ENCOURAGES** relevant government partners, contractors and grantees to disseminate and follow this Recommendation;

**VII. INVITES** non-Adherents to take account of and adhere to this Recommendation;

**VIII. INSTRUCTS** the Development Assistance Committee and the Working Group on Bribery in International Business Transactions to:

- i. Establish a mechanism to monitor regularly the implementation of the Recommendation, within or outside of their respective peer review mechanisms, and in line with their mandates and programme of work and budget;
- ii. Report to the Council no later than five years following the adoption of the Recommendation and regularly thereafter, notably to review its relevance and applicability and whether it requires amendments in the light of experience gained by Adherents.

## **OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES**

Adopted 25 May 2011

### **Section 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.<sup>1</sup> A programme of rigorous and systematic

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<sup>1</sup>. 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. ...”.

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 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.



**For more information on foreign bribery,  
the Anti-Bribery Convention  
and the OECD Working Group on Bribery,  
go to:  
[www.oecd.org/corruption/anti-bribery](http://www.oecd.org/corruption/anti-bribery)**

