

**SURVEY ON MEASURES TAKEN TO COMBAT BRIBERY
IN OFFICIALLY SUPPORTED EXPORT CREDITS – JAPAN (JBIC) RESPONSES**

SECTION I – GENERAL MEASURES TO DETER BRIBERY

Question 1

Do you inform exporters and, where appropriate, applicants, requesting official export credit support about the legal consequences of the bribery in international business transactions under your national legal system including your national laws prohibiting such bribery?

Yes, always Yes, sometimes (*please provide details below*) No

If yes:

a) Please indicate the method(s) by which this is accomplished:

- text in the application form
- a stand-alone document is provided to applicants
- text included in a stand-alone document submitted by applicants
- text in the general conditions of cover (*for export credit insurance and guarantees*)
- text in the credit agreement
- information posted on the organisation's web site
- customer publications (e.g. brochures, handbooks)
- other (please elaborate):

Oral communication.

- b) Please provide the text used to describe the legal consequences of the bribery in international business transactions under your national legal system including your national laws prohibiting such bribery:

Unfair Competition Prevention Act (Article 18.1) (Prohibition of provision of illicit profit, etc. to foreign public officials, etc.)

No person shall give, or offer or promise to give, any money or other benefits to a foreign public officer for the purpose of having the foreign public officer act or refrain from acting in a particular way in relation to his/her duties, or having the foreign public officer use his/her position to influence another foreign public officer to act or refrain from acting in a particular way in relation to that officer's duties, in order to obtain illicit gains in business with regard to international commercial transactions.

(Penal Provisions)

Article 21. (2) Any person who falls under any of the following items shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both: (xi) a person who violates any provision of Articles 16, 17 or 18(1).

Text in the application form : "If it is proven that bribery was involved, JBIC may refuse to approve credit."

Comments/clarifications/additional information related to the answers provided above:

Please describe any additional measures taken in relation to information provided to exporters/applicants:

We have done briefing sessions to exporters to make the legal consequences of the bribery in international business to be understood and informed.

Question 2

Do you encourage exporters and, where appropriate, applicants, requesting official export credit support to develop, apply and document appropriate management control systems that combat bribery?

- Yes, always Yes, sometimes (*please provide details below*) No

If yes:

a) Please indicate how this is accomplished:

- text in the application form
- a stand-alone document is provided to applicants
- text in the general conditions of cover (*for export credit insurance and guarantees*)
- text in the credit agreement
- information posted on the organisation's web site
- customer publications (e.g. brochures, handbooks)
- other (please elaborate):

Oral communication.

b) Please provide the text used to encourage exporters and, where appropriate, applicants, requesting official export credit support to develop, apply and document appropriate management control systems that combat bribery:

Comments/clarifications/additional information related to the answers provided above:

Please describe any additional measures taken in relation to exporter/applicant management control systems to combat bribery:

Question 3

Do you require exporters and, where appropriate, applicants, requesting official export credit support to provide an undertaking/declaration that neither they, nor anyone acting on their behalf, such as agents, have been engaged or will engage in bribery in the transaction?

- Yes, always Yes, sometimes (*please provide details below*) No

If Yes:

a) The requirement is communicated to exporters/applicants via:

- text in the application form
- a stand-alone document is provided to applicants
- text in the general conditions of cover (*for export credit insurance and guarantees*)
- text in the credit agreement
- information posted on the organisation's web site
- customer publications (e.g. brochures, handbooks)
- other (please elaborate):

Oral communication.

b) The undertaking/declaration is obtained from exporters/applicants through:

- the application form
- a stand-alone document submitted by the exporter/applicant *at the time of application* *before support is provided*
- other (please elaborate): *at the time of application* *before support is provided*

c) Please provide the text of the requirement and/or the undertaking/declaration provided by exporters/applicants:

“We, the exporter, have not been convicted in a national court for violation of laws against bribery of foreign public officials within a five-year period preceding the export credit application, nor are currently under charge, nor will be charged in a national court in connection with the transaction.”

Comments/clarifications/additional information related to the answers provided above:

Please describe any additional measures taken in relation to exporter/applicant declarations/undertakings:

Question 4

Do you verify and note¹ whether exporters, and where appropriate, applicants, are listed on the publicly available debarment lists of the following international financial institutions (IFIs): World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank?

Yes, always Yes, sometimes (*please provide details below*) No

If Yes:

a) Which actors associated with the transaction are subject to verification?

the applicant *at the time of application* *before support is provided*
 the exporter(s) *at the time of application* *before support is provided*
 other (*e.g. agents – please elaborate*) *at the time of application* *before support is provided*

b) Please indicate how the verification is achieved:

staff check the lists *at the time of application* *before support is provided*
 exporter/applicant self-declaration *at the time of application* *before support is provided*
 other (please elaborate): *at the time of application* *before support is provided*

Comments/clarifications/additional information related to the answers provided above:

Please describe any additional measures taken in relation to current or past debarment of exporters/applicants by other institutions:

¹ Such verification may take the form of a self-declaration from exporters and, where appropriate, applicants, as to whether they are listed on the publicly available IFI debarment lists.

Question 5

Do you require exporters and, where appropriate, applicants, to disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge in a national court or, within a five-year period preceding the application, have been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country?

Yes, always Yes, sometimes (*please provide details below*) No

If Yes:

a) Please indicate how requirement is met:

- the application form provides for such disclosures to be made
- a stand-alone document requiring such disclosures must be provided by the exporter/applicant *at the time of application* *before support is provided*
- other (please elaborate): *at the time of application* *before support is provided*

Comments/clarifications/additional information related to the answers provided above:

Please describe any additional measures taken in relation to exporter/applicant disclosure of charges and/or convictions of bribery:

Question 6

Are agents' commissions (included in the export contract) eligible for official support?

Yes, always Yes, sometimes (*please provide details below*) No

If Yes:

a) Do you apply a ceiling to agents' commissions for which official support is provided?

Yes, always Yes, sometimes (*please provide details below*) No

If Yes:

b) Please provide details on the ceiling(s) applied:

c) What is the rationale for imposing a ceiling on agents' commissions?

Comments/clarifications/additional information related to the answers provided above:

Please describe any additional measures taken in relation to the eligibility for official support of agents' commissions:

Question 7

Do you require that details be provided in respect of agents' commissions associated with the transaction?

Yes, always Yes, sometimes (*please provide details below*) No

If yes:

a) Do you require the **amounts** of commissions to be disclosed?

Yes, always Yes, sometimes (*please provide details below*) No

If yes, the amounts of commissions must be disclosed:

- at the time of application
- before the final decision to provide support is made
- before a claim will be indemnified
- other (please elaborate):

Anytime when deemed necessary.

b) Do you assess whether the **level** of commissions is consistent with standard business practice?

Yes, always Yes, sometimes (*please provide details below*) No

If yes, the assessment is made:

- at the time of application
- before the final decision to provide support is made
- before a claim will be indemnified
- other (please elaborate):

c) Do you require the **purpose** of commissions to be clearly identified?

Yes, always Yes, sometimes (*please provide details below*) No

If yes, the purpose is identified:

- at the time of application
- before the final decision to provide support is made
- before a claim will be indemnified
- other (please elaborate):

Anytime when deemed necessary.

d) Do you require that details (e.g. name, company, address) be provided in respect of the **agent(s)** to whom commissions are paid?

Yes, always Yes, sometimes (please provide details below) No

If yes, the details must be provided:

- at the time of application
- before the final decision to provide support is made
- before a claim will be indemnified
- other (please elaborate):

Anytime when deemed necessary.

Comments/clarifications/additional information related to the answers provided above:

Please describe any additional measures taken in relation to the collection of information on and/or review of agents' commissions:

Question 8

Have you developed and implemented procedures to disclose to your law enforcement authorities instances of credible evidence² of bribery?

Yes No

If Yes:

Please provide a short description of your policies and procedures:

The internal reporting system (through either ordinary chain of reporting or individual reporting) to the JBIC Compliance Committee is established by JBIC's internal rules. In case an oblique dealing such as bribery is identified through such reporting, JBIC Compliance Committee will take appropriate actions such as reporting to law enforcement authorities.

Comments/clarifications/additional information related to the answers provided above:

Please describe any additional measures taken in relation to the disclosure of information on possible instances of bribery to law enforcement authorities:

² As defined in the OECD Council Recommendation on Bribery and Officially Supported Export Credits.

SECTION II – ACTIONS TAKEN IN RELATION TO A SPECIFIC APPLICATION BEFORE CREDIT, COVER OR OTHER SUPPORT HAS BEEN APPROVED

Question 9

If, **before** credit, cover or other support has been approved, you become aware that an exporter and, where appropriate, applicant (or anyone acting on their behalf in connection with the transaction) **are listed on any of debarment lists that you verify**, what action(s) are taken?

Enhanced due diligence is undertaken. *always* *sometimes (please provide details below)*

Other (please elaborate): *always* *sometimes (please provide details below)*

If enhanced due diligence is undertaken:

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

Yes, always Yes, sometimes (*please provide details below*) No

b) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has taken appropriate internal corrective and preventative measures after having been debarred?

Yes, always Yes, sometimes (*please provide details below*) No

c) How is the application treated?

The approval of the application is suspended pending the outcome of the enhanced due diligence process. *always* *sometimes (please provide details below)*

No fixed policy.

Other (please elaborate): *always* *sometimes (please provide details below)*

Comments/clarifications/additional information related to the answers provided above:

Question 10

If, **before** credit, cover or other support has been approved, you become aware that an exporter and, where appropriate, applicant (or anyone acting on their behalf in connection with the transaction) **is currently under charge in a national court for violation of laws against bribery of foreign public officials of any country**, what action(s) are taken?

- Enhanced due diligence is undertaken. *always* *sometimes (please provide details below)*
- Other (please elaborate): *always* *sometimes (please provide details below)*

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If enhanced due diligence is undertaken:

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

- Yes, always Yes, sometimes (*please provide details below*) No

b) How is the application treated?

- The approval of the application is suspended pending the outcome of the enhanced due diligence process. *always* *sometimes (please provide details below)*

No fixed policy.

- Other (please elaborate): *always* *sometimes (please provide details below)*

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Comments/clarifications/additional information related to the answers provided above:

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Question 11

If, **before** credit, cover or other support has been approved, you become aware that an exporter/applicant (or anyone acting on their behalf in connection with the transaction) **has been convicted in a national court or has been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period**, what actions are taken?

Enhanced due diligence is undertaken. *always* *sometimes (please provide details below)*

Other (please elaborate): *always* *sometimes (please provide details below)*

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If enhanced due diligence is undertaken:

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

Yes, always Yes, sometimes (*please provide details below*) No

b) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has taken appropriate internal corrective and preventative measures after having been convicted?

Yes, always Yes, sometimes (*please provide details below*) No

c) How is the application treated?

The approval of the application is suspended pending the outcome of the enhanced due diligence process. *always* *sometimes (please provide details below)*

No fixed policy.

Other (please elaborate): *always* *sometimes (please provide details below)*

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Comments/clarifications/additional information related to the answers provided above:

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Question 12

If, **before** credit, cover or other support has been approved, you have reason to believe that **bribery may be involved in the transaction** (e.g. press reports from a reputable source, information provided by participants in the transaction) related to the award of the export contract, what action(s) are taken?

Enhanced due diligence is undertaken. always sometimes (please provide details below)

Other (please elaborate): always sometimes (please provide details below)

If enhanced due diligence is undertaken:

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

Yes, always Yes, sometimes (please provide details below) No

b) How is the application treated?

The approval of the application is suspended pending the outcome of the enhanced due diligence process. always sometimes (please provide details below)

No fixed policy.

Other (please elaborate): always sometimes (please provide details below)

Comments/clarifications/additional information related to the answers provided above:

Question 13

If, **before** credit, cover or other support has been approved, you become aware of **credible evidence that bribery was involved in the award of the export contract for the transaction**, what action(s) are taken?

- Law enforcement authorities are informed. *always* *sometimes (please provide details below)*
- Enhanced due diligence is undertaken. *always* *sometimes (please provide details below)*
- Support is not provided for the transaction. *always* *sometimes (please provide details below)*
- Other (please elaborate): *always* *sometimes (please provide details below)*

If enhanced due diligence is undertaken:

a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?

- Yes, always Yes, sometimes (*please provide details below*) No

b) How is the application treated?

- The approval of the application is suspended pending the outcome of the enhanced due diligence process. *always* *sometimes (please provide details below)*

No fixed policy.

- Other (please elaborate): *always* *sometimes (please provide details below)*

If investigative authorities are informed:

c) How is the application treated?

- The approval of the application is suspended pending the outcome of the review by law enforcement authorities. *always* *sometimes (please provide details below)*

No fixed policy.

- Other (please elaborate): *always* *sometimes (please provide details below)*

Comments/clarifications/additional information related to the answers provided above:

SECTION III – ACTIONS TAKEN IN RELATION TO A SPECIFIC TRANSACTION AFTER CREDIT, COVER OR OTHER SUPPORT HAS BEEN APPROVED

Question 14

If, **after** credit, cover or other support has been approved, you have reason to believe that **bribery may be involved in the transaction** (e.g. press reports from a reputable source, information provided by participants in the transaction) related to the award of the export contract, what action(s) are taken?

- Law enforcement authorities are informed. *always* *sometimes (please provide details below)*
- Enhanced due diligence is undertaken. *always* *sometimes (please provide details below)*
- Other (please elaborate): *always* *sometimes (please provide details below)*

Law enforcement authorities are informed when we find credible evidence as a result of the enhanced due diligence.

Comments/clarifications/additional information related to the answers provided above:

Question 15

If, **after** credit, cover or other support has been approved, you become aware of **credible evidence that bribery was involved in the award of the export contract for a transaction**, what action(s) are taken?

- Law enforcement authorities are informed. *always* *sometimes (please provide details below)*
- Other (please elaborate): *always* *sometimes (please provide details below)*

Comments/clarifications/additional information related to the answers provided above:

Question 16

If, **after** credit, cover or other support has been approved, **it is proven that bribery was involved in the award of the export contract for a transaction**, what action(s) are taken?

Law enforcement authorities are informed. always sometimes (please provide details below)
(only in relation to a conviction outside the Member's country)

Loan disbursements are interrupted. always sometimes (please provide details below)

Cover is invalidated (for export credit insurance and guarantees). always sometimes (please provide details below)

Claims are not indemnified (for export credit insurance and guarantees). always sometimes (please provide details below)

Recourse is sought for amounts disbursed. always sometimes (please provide details below)

Recourse is sought for claims that have already been paid (for export credit insurance and guarantees). always sometimes (please provide details below)

Access to official support is denied for a specified period of time. always sometimes (please provide details below)

Other (please elaborate): always sometimes (please provide details below)

Comments/clarifications/additional information related to the answers provided above:

SECTION IV – PAST EXPERIENCE

Question 17

Please indicate by marking the appropriate boxes if you have had any experience with the following scenarios related to the time **before** credit, cover or other support has been approved:

	<i>You became aware that an exporter/ applicant was on one of the debarment lists that you verify, and...</i>	<i>You became aware that an exporter/ applicant was under charge in a national court for bribery, and...</i>	<i>You became aware that an exporter/ applicant had been convicted in a national court or had been subject to equivalent national administrative measures for bribery, and...</i>	<i>You have reason to believe that bribery may be involved in the transaction (e.g. press reports from a reputable source, information provided by participants in the transaction), and...</i>	<i>You became aware of credible evidence that bribery was involved in the award of the export contract for a transaction, and...</i>
... you notified law enforcement authorities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... you undertook enhanced due diligence.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... you decided not to provide support for the transaction.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... you suspended approval of the application pending the outcome of the enhanced due diligence process.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... you suspended approval of the application pending the outcome of the legal process.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... [other].	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... [other].	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please describe the circumstances of the actual incidents noted in the preceding table.³ Please also provide information on any actions that were taken as a result of situations not listed in the table (e.g. Members who review the details of agents' commissions as part of the standard application process should provide information on any actions that were taken as a result of the review of commissions).

³ It is recognised that Members may not be able to provide certain information in respect of a given transaction, e.g. if the transaction is subject to an ongoing investigation or prosecution or if the information is commercially confidential.

Question 18

Please indicate by marking the appropriate boxes if you have had any experience with the following scenarios related to the time **after** credit, cover or other support has been approved:

	<i>You became aware that an exporter/ applicant was under charge in a national court for bribery, and...</i>	<i>You became aware that an exporter/ applicant had been convicted in a national court or had been subject to equivalent national administrative measures for bribery, and...</i>	<i>You have reason to believe that bribery may be involved in the transaction (e.g. press reports from a reputable source, information provided by participants in the transaction), and...</i>	<i>You became aware of credible evidence that bribery was involved in the award of the export contract for a transaction, and...</i>	<i>It was proven that bribery was involved in the award of the export contract for a transaction, and...</i>
... you notified law enforcement authorities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you interrupted loan disbursements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you invalidated export credit cover.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you did not indemnify a claim.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you sought recourse for disbursed loan amounts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...you sought recourse for claims that had already been paid.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
..denied access to official support for a specified period of time.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
... [other].	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>					
... [other].	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>					

Please describe the circumstances of the actual incidents noted in the preceding table.⁴ Please also provide information on any actions that were taken as a result of situations not listed in the table.

⁴ See footnote 3.

SECTION V – PRACTICAL APPLICATION OF KEY TERMS

Question 19

Please provide a detailed description of your **Enhanced Due Diligence Procedures**, addressing, *inter alia*:

- Whether they comprise verification that the exporter/applicant has in place appropriate management control systems that combat bribery.
- Whether the procedures seek to verify whether an exporter/applicant that has been debarred by an IFI (or any other entity checked under your procedures) or convicted of bribery has taken appropriate internal corrective and preventative measures after having been debarred or convicted.
- The treatment of agents' commissions under the procedures.

Enhanced Due Diligence Procedures would, depending on the case, consist of the following:

- Verification whether the relevant parties have appropriate management control systems in place.
- Verification if the relevant parties have taken corrective/preventive measures in relation to past debarment and/or conviction.
- Investigation on commissions, especially the purpose of such payment.
- Other verification and/or investigation as appropriate in each case.

Question 20

Please describe how the term **Credible Evidence** is applied in practice under your system (*e.g.* who makes the assessment). Any Member who has adopted a definition which is broader (*i.e.* that sets a lower threshold) than the definition provided in footnote 5 of the OECD Council Recommendation on Bribery and Officially Supported export Credits should provide its definition.

We apply the term as defined in footnote 5 of the Recommendation. The Loan Department, the Policy Department and the Legal Department would jointly assess the credibility of the evidence.

Question 21

Please describe how the term **national court** is applied under your system (*i.e.* does it apply to any national court, or is it limited to certain national courts such as your own and/or or the national courts of the buyer/borrower country).

We interpret the term national court as courts in Japan

SECTION VI - FURTHER MEASURES

Question 22

Are you considering any further general measures to deter bribery and/or changes to your policies and practices described in the survey?

Yes No

Comments on measures and/or actions under consideration:

It is important to, first of all, gain some experience on the newly implemented policies and practices.

Question 23

Would you be prepared to exchange information with other ECG Members about suspected and/or proven instances of bribery related to specific officially supported export credit transactions?

Yes No

Comments:

Although we have no concrete instance so far.

SECTION VII – ADDITIONAL COMMENTS

Please provide any additional comments on the items covered in the survey, or in relation to any issue, policy, or practice which has not been addressed (including any additional measures you take to combat bribery).

(The latest update to responses: 19 Feb 2014)