SURVEY ON MEASURES TAKEN TO COMBAT BRIBERY IN OFFICIALLY SUPPORTED EXPORT CREDITS –UNITED STATES

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?

[X] 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*)
- [X] text in the credit agreement
- [X] information posted on the organisation's web site
- [ ] customer publications (e.g. brochures, handbooks)
- [X] other (please elaborate):

Indicated on the short, medium and long-term Exporter's Certificate which is a legally enforceable certification that can and has been used to prosecute parties for making false claims to the U.S. Government. In addition, Ex-Im Bank's website, under Policies, contains a link which discusses some of the laws relating to anti-corruption efforts and includes further links to other resources, such as the U.S. Department of Justice's information page regarding the Foreign Corrupt Practices Act, the Department of the Treasury's Office of Foreign Assets Control, OECD's anti-bribery recommendations, and various debarment lists.
http://www.exim.gov/policies/foreign-corrupt-practices-and-other-anti-bribery-measures

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:

From Fact Sheet on Ex-Im Bank's Website:

Foreign Corrupt Practices Act (FCPA)

U.S. firms and individuals seeking to do business in foreign markets must be familiar with the Foreign Corrupt Practices Act of 1977 (FCPA), 15 U.S.C. §§ 78dd-1, et seq., which, in general, prohibits corrupt payments to foreign officials for the purpose of obtaining or keeping business. The anti-bribery provisions of the FCPA make it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. They also apply to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States.

Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system. Several firms that paid bribes to foreign officials have been the subject of criminal and civil enforcement actions, resulting in large fines and suspension and debarment from federal procurement contracting, and their employees and officers have gone to prison. To avoid such consequences, many firms have implemented detailed compliance programs intended to prevent and to detect any improper payments by employees and by third-party agents. Ex-Im Bank reserves the right to require that exporters, lenders and, where appropriate, other participants, disclose, upon demand: (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons. Ex-Im Bank also reserves the right to reject or cancel any transaction where there is a reasonable basis to believe that bribery has occurred.

More information about the FCPA, is available from the U.S. Department of Justice website, including, in particular, the Layperson's Guide to the FCPA Statute.

OECD Anti-bribery Recommendations

Consistent with the FCPA, the Organization for Economic Cooperation and Development (OECD) has promulgated anti-bribery recommendations to combat bribery of foreign public officials in international business transactions, which the U.S. Government has agreed to follow in its export credit practices. Ex-Im Bank adheres to these recommendations, including the recommendation to conduct enhanced due diligence with regard to any exporter or applicant that has been indicted, convicted or debarred for bribery.

http://www.exim.gov/policies/foreign-corrupt-practices-and-other-anti-bribery-measures

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

Ex-Im Bank application forms have been revised and updated. While the application forms indicate the laws that must be complied with, applications do not explicitly state the legal consequences of violating such laws. Such indications are explicitly stated in the Exporters Certificate and on Ex-Im Bank's website
http://www.exim.gov/policies/foreign-corrupt-practices-and-other-anti-bribery-measures

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

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?

[X] 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

[X] information posted on the organisation's web site

[ ] customer publications (e.g. brochures, handbooks)*

[X] other (please elaborate):

Ex-Im Bank relies on website based communications which contain detailed information on Ex-Im Bank's anti-bribery policies and the FCPA.

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:

Ex-Im Bank's FCPA fact sheet discusses the FCPA and similar laws, including OECD's anti-bribery recommendations and encourages all parties "to seek legal counsel and other guidance as to the various export and import laws and regulations that may affect any specific export transaction." It further stresses that "U.S. firms and individuals seeking to do business in foreign markets must be familiar with the [FCPA]. . . ." http://www.exim.gov/policies/foreign-corrupt-practices-and-other-anti-bribery-measures

From Fact Sheet on Ex-Im Bank's Website:

Foreign Corrupt Practices Act (FCPA)

Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system. Several firms that paid bribes to foreign officials have been the subject of criminal and civil enforcement actions, resulting in large fines and suspension and debarment from federal procurement contracting, and their employees and officers have gone to prison. To avoid such consequences, many firms have implemented detailed compliance programs intended to prevent and to detect any improper payments by employees and by third-party agents. http://www.exim.gov/policies/foreign-corrupt-practices-and-other-anti-bribery-measures

Other Debarment Lists

Many multilateral and other institutions also have debarment lists. Participants in Ex-Im Bank transactions should make a practice of checking other debarment lists as a step in conducting due diligence with regard to the various participants in a transaction. The Ex-Im Bank Exporter's Certificate and the various applications for Ex-Im Bank transactions require certifications that the entity signing (and, in some cases, the principals of such entity) are not on either the EPLS or any of the multilateral bank debarment lists set forth below, as well as the African Development Bank, (which does not maintain a published list). http://www.exim.gov/policies/foreign-corrupt-practices-and-other-anti-bribery-measures

World Bank	Inter-American Development Bank
Asian Development Bank	European Bank for Reconstruction and Development

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:

Depending on the facts present, Ex-Im Bank would seek to determine, when conducting an enhanced due diligence on an entity, that its anti-bribery system complies with expected norms. This determination is often based on a prior determination by the U.S. Department of Justice or other regulatory agencies that have reviewed the entity's compliance procedures.

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?

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

If Yes:

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

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

Ex-Im Bank has limited the number of customer publications in favor of website based communication containing detailed information on Ex-Im Bank anti-bribery policies and the FCPA.

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

- [X] the application form
- [X] a stand-alone document submitted by the **exporter**/applicant [ ] *at the time of application* [X] *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:

From Ex-Im Bank's Exporter Certificate:

Neither we nor any agent or representative acting on our behalf, has or will engage in any activity in connection with this transaction that is a violation of the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1, et seq.

Neither we nor any agent or representative acting on our behalf in connection with this transaction is currently under charge or has been, within the past 5 years, convicted in any court of any country, or subject to national administrative measures of any country, for bribery of public officials.

…to the best of our knowledge, the performance by the parties to this transaction of their respective obligations thereunder does not violate any applicable law.

From Ex-Im Bank's Direct Loan Credit Agreement:

[Section] 9.01 Representations and Warranties of the Borrower:

(v) No Corrupt Practices.

(A) Neither the Borrower, nor any agent or representative acting on the Borrower's behalf in connection with the Credit, is currently under charge or has been, within the past five (5) years, convicted in any court of any country, or subject to national administrative measures of any country, for bribery of public officials.

(B) Neither the Borrower nor any of its officers, directors or authorized employees, agents or representatives has (directly or indirectly) paid, offered or promised to pay, or authorized the payment of, any commission, bribe, pay-off or kickback or similar payment related to the Credit or the transactions contemplated thereby that violates any Applicable Law or entered into any agreement or arrangement under which any such payment will at any time be made. The Borrower has not and, to the best of the Borrower's knowledge and belief, each Exporter, Ancillary Services Provider (if any) and Local Cost Provider has not agreed to make or arrange for (directly or indirectly) any payment, discount, allowance, rebate, commission, fee or other payment in connection with the procurement of Eligible Goods and Services under any Supply Contract(s), without the express written consent of Ex-Im Bank, except for (i) payment of manufacturing costs of for the purchase of the Eligible Goods and Services; (ii) the regular remuneration of regular full-time directors, officers and employees of such party; (iii) commissions or fees, if any, to regular sales agents, brokers or representatives, which are (A) on arm's length terms for fair market value for the services rendered, (B) paid in the ordinary course of business, (C) and readily identifiable on the party's books and records as to amount, purpose, and recipient, (D) in an amount customary for the services rendered, or to be rendered, with respect to each counterparty's country; and (E) not intended to be used for any illicit or corrupt purposes . . . .

(vi) Suspension and Debarment

(A)The Borrower and each of its Principals individually (i) is not Excluded or Disqualified from participating in a Covered Transaction; or (ii) is formally proposed for debarment by any U.S. Federal Government Authority, with a final determination still pending; or (iii) is not, and within the last three (3) years has not been, indicted, convicted or had a civil judgment rendered against it for any conduct or offense described in 2 C.F.R. § 180.800(a) in the Debarment Regulations.

(B) The Borrower has not made, and to the best of the Borrower's knowledge and belief, each Exporter, Local Cost Provider, and Ancillary Services Provider, if any, have not made any payment in connection

with the Credit to any Person who is Excluded or Disqualified from participating in a Covered Transaction. (C) The Borrower and each of its Principals individually are not listed on any of the publicly available debarment lists of the World Bank Group, the African Development Bank, the Asian Development, the European Bank for Reconstruction and Development and the Inter-American Development Bank. (D) To the best of the Borrower's knowledge, the Borrower has not entered into any sales, leasing or financing agreements in connection with the Credit with a Sanctioned Person.

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 note[1] 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?

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

If Yes:

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

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

Other transaction participants, including borrowers, guarantors and agents, are checked against the United States Government debarment lists as appropriate and against the World-Check database, which is a compilation of multiple worldwide databases.

b) Please indicate how the verification is achieved:

[X]	staff check the lists	[ ]	*at the time of application*	[X]	*before support is provided*
[X]	exporter/applicant self-declaration	[X]	*at the time of application*	[X]	*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:

In addition to references to the lists in the application and exporter's certificate, Ex-Im Bank's website contains links to the debarment lists. See links contained on this page -- http://www.exim.gov/policies/foreign-corrupt-practices-and-other-anti-bribery-measures

[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?

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

If Yes:

a) Please indicate how requirement is met:

[X] the application form provides for such disclosures to be made

[X] a stand-alone document requiring such disclosures must be provided by the exporter/applicant [ ] *at the time of application* [X] *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:

The declarations are included in the application and also in the Exporter's Certificate provided by the exporter prior to support.
Ex-Im Bank's supply chain financing program supports indirect exports (i.e. sales from suppliers to U.S. exporters) and the eligible exporter certifies to compliance with FCPA.

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:

The appropriate ceiling is determined on a transaction-by-transaction basis and is based on a number of factors, including the identity of the agent, the scope of the agent's services and the amount of the payment.

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

Ex-Im Bank's objective is to support U.S. exports—not unreasonable and irregular commission payments. Moreover, excess commissions increase the risk of disguised bribes and more broadly, credit risk.

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

Generally, commissions are eligible for support if they are regular commissions or fees paid in the ordinary course of business to the exporter's regular sales agent, broker or representative, are readily identifiable on the exporter's books and records as to amount, purpose and recipient, in an approximate amount or percentage customarily paid in the industry for the services rendered, and are not intended to be used for any illicit or corrupt purpose (Exim-Bank's Exporter Certificate enumerates these factors). Ex-Im Bank may review the price reasonableness of medium-term and long-term transactions, which may assist in determining whether the cost of administrative fees or commissions is reflected in the amount of support requested from Ex-Im Bank. Ex-Im Bank may also review and determine the appropriateness of supporting such commissions at a number of points during the course of the transaction, including pre-authorization, pre-disbursement, and claims evaluation.

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 [X] Yes, sometimes (*please provide details below)* [ ] No

If yes:

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

[ ] Yes, always [X] 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

[X] other (please elaborate):

Exporters are required to disclose on the Exporter's Certificate, prior to approval of disbursements, any fees or arrangements that are not regular commissions or fees to regular sales agents, brokers or representatives or that are not readily identifiable on the exporter's books and records as to amount and purpose. Exporters also are required to provide information regarding the recipient of any such commission.
In addition to these programmatic requirements, Ex-Im Bank may inquire about commissions in specific cases. For example, Ex-Im Bank may review the price reasonableness of long-term and medium-term transactions, which assists in determining whether the cost of administrative fees or commissions is reflected in the amount of support requested from Ex-Im Bank. Ex-Im Bank may review the appropriateness of supporting commissions at a number of points during the course of a transaction, including pre-authorization, pre-disbursement, and claims evaluation, and may request additional information regarding the amount, level and purpose of such commission as part of such review. In addition, Ex-Im Bank may seek information about commissions as part of its inquiry into how a transaction was originated, in order to assess the creditworthiness of the transaction.

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

[ ] Yes, always [X] 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

[X] other (please elaborate):

See 7a above for discussion of the "reasonableness" of fees.

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

[ ] Yes, always [X] 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

[X] other (please elaborate):

As indicated above, the purpose of any commission is expected to be readily identifiable on the exporter's books. Otherwise, the commission must be specifically disclosed on the exporter's certificate.

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 [X] 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

[X] other (please elaborate):

Whether or not financed by Ex-Im Bank, exporters are required to disclose on the Exporter's Certificate, prior to approval of disbursements, any fees or arrangements that are not regular commissions or fees to regular sales agents, brokers or representatives or that are not readily identifiable on the exporter's books and records as to amount and purpose. With respect to any such commission, the exporter will be required to provide information regarding the identity of the agent.

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 evidence[2] of bribery?

[X] Yes [ ] No

If Yes:

Please provide a short description of your policies and procedures:

Ex-Im Bank employees are trained to promptly inform their supervisors and the Office of General Counsel if they become aware of, or obtain evidence of, bribery of a foreign public official. The Office of General Counsel, with the assistance of staff, will conduct appropriate inquiries. If the Office of General Counsel determines that there is a reasonable suspicion of bribery, it will refer the matter to Ex-Im Bank's Office of the Inspector General which has law enforcement agents trained to investigate such matters. The Office of General Counsel and the Office of the Inspector General have well-established working relationships with the U.S. Department of Justice and other relevant law enforcement agencies.

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?

[X] Enhanced due diligence is undertaken. [X] *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?

[X] 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?

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

c) How is the application treated?

[X] The approval of the application is suspended pending the outcome of the enhanced due diligence process. [X] *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:

Depending on the situation, the amount of enhanced due diligence would vary.

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?

[X] Enhanced due diligence is undertaken. [X] *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?

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

b) How is the application treated?

[X] The approval of the application is suspended pending the outcome of the enhanced due diligence process. [X] *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:

Depending on the situation, the amount of enhanced due diligence would vary.

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?

[X] Enhanced due diligence is undertaken. [X] *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?

[X] 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?

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

c) How is the application treated?

[X] The approval of the application is suspended pending the outcome of the enhanced due diligence process. [X] *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:

In conducting an enhanced due diligence analysis in this situation, Exim focuses its inquiry on whether, in light of the conviction, the applicant is nevertheless presently responsible to do business with Exim, such that the government's interest is protected. This analysis takes into account various factors, including whether it has accepted responsibility for the past wrongful conduct, whether it has enhanced its internal compliance procedures, whether it has taken appropriate actions against the employees involved etc.

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?

[X] Enhanced due diligence is undertaken. [X] *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?

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

b) How is the application treated?

[X] The approval of the application is suspended pending the outcome of the enhanced due diligence process. [X] *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:

Ex-Im Bank carefully balances the need to have a transaction free of corruption and fraud against the right of companies and individuals to defend themselves against allegations which may or may not be true, or of which they have no knowledge. The steps taken by Ex-Im Bank may vary depending on the facts of the case. For example, in one situation, Ex-Im Bank required a company to report on a regular basis on certain compliance issues, and to provide an exporter's certificate (certifying to legal compliance relating to the FCPA and other laws) for every single disbursement request – and not just at the time of application.

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?

[X] Law enforcement authorities are informed.	[X] *always*	[ ] *sometimes (please provide details below)*
[X] Enhanced due diligence is undertaken.	[X] *always*	[ ] *sometimes (please provide details below)*
[X] Support is not provided for the transaction.	[X] *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?

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

b) How is the application treated?

[X] The approval of the application is suspended pending the outcome of the enhanced due diligence process.	[X] *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?

[X] The approval of the application is suspended pending the outcome of the review by law enforcement authorities.	[X] *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?

[X] Law enforcement authorities are informed.	[X] *always*	[ ] *sometimes (please provide details below)*
[X] Enhanced due diligence is undertaken.	[X] *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:

Ex-Im Bank's Office of the Inspector General has law enforcement agents trained to handle such matters. The Office of the Inspector General will be notified if there is a reasonable basis to believe that bribery may be involved in the transaction. However, it is often the case that Ex-Im Bank becomes aware of bribery allegations after law enforcement has begun an investigation.

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?

[X] Law enforcement authorities are informed.	[X] *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:

Ex-Im Bank's Office of the Inspector General has law enforcement agents trained to handle such matters. The Office of the Inspector General will be notified if there's a reasonable basis to believe that bribery may be involved in the transaction. However, it is often the case that Ex-Im Bank becomes aware of bribery allegations after law enforcement has begun an investigation.

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?

[X]	Law enforcement authorities are informed. *(only in relation to a conviction outside the Member's country)*	[X] *always*	[ ] *sometimes (please provide details below)*
[X]	Loan disbursements are interrupted.	[ ] *always*	[X] *sometimes (please provide details below)*
[X]	Cover is invalidated (*for export credit insurance and guarantees*).	[ ] *always*	[X] *sometimes (please provide details below)*
[X]	Claims are not indemnified (*for export credit insurance and guarantees*).	[ ] *always*	[X] *sometimes (please provide details below)*
[X]	Recourse is sought for amounts disbursed.	[ ]	[X]
[X]	Recourse is sought for claims that have already been paid (*for export credit insurance and guarantees*).	[ ] *always*	[X] *sometimes (please provide details below)*
[X]	Access to official support is denied for a specified period of time.	[ ] *always*	[X] *sometimes (please provide details below)*
[X]	Other (please elaborate):	[ ] *always*	[ ] *sometimes (please provide details below)*

Ex-Im Bank will review the situation to determine if any other remedies are appropriate, such as declaring an event of default and accelerating the debt.

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

If it is proven that bribery was involved in the award of the export contract for a transaction, Ex-Im Bank will refer the matter to Ex-Im Bank's Office of the Inspector General which will investigate for possible criminal prosecution under the Foreign Corrupt Practices Act (FCPA) and other laws. Ex-Im will also work with the Department of Justice to pursue possible civil lawsuits under the False Claims Act; under this Act, the U.S. government can recover up to treble damages from the entity that engaged in the unlawful bribery and concealed it from Ex-Im Bank.

Ex-Im Bank's short term export credit insurance policy specifically states that the Bank shall not be responsible for any loss if the exporter fails to strictly comply with the conditions of the policy, which contains an agreement by the insured to comply with all applicable laws, including the FCPA. In the medium term insurance context, the insured is required to obtain from the U.S. exporter a signed Exporter Certificate, which contains certifications relating to FCPA compliance.

Where appropriate, Ex-Im Bank will also exercise its authority to debar the entity that engaged in bribery from future transactions with the United States government.

Depending on the structure of the transaction and the parties involved in the proven bribery, loan disbursements may be interrupted or stopped.

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:

	You became aware that an exporter/ applicant was on one of the debarment lists that you verify, and…	*You became aware that an exporter/ applicant was under charge in a national court for bribery, and…*	*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…*	*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…*	*You became aware of credible evidence that bribery was involved in the award of the export contract for a transaction, and…*
... you notified law enforcement authorities.	☐	☐	☐	☐	☐
... you undertook enhanced due diligence.	X	X	X	X	☐
…you decided not to provide support for the transaction.	X	☐	☐	☐	☐
…you suspended approval of the application pending the outcome of the enhanced due diligence process.	X	X	X	X	☐
…you suspended approval of the application pending the outcome of the legal process.	☐	☐	☐	☐	☐
... [other].	☐	☐	☐	☐	☐
... [other].	☐	☐	☐	☐	☐

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).

In one instance where Ex-Im Bank learned that a buyer was on a debarment list, the exporter was informed, per the language of the insurance policy, that insurance coverage would not be provided for any sale to that buyer. As a general matter, most incidents and allegations of bribery and corruption come to our attention either while law enforcement is conducting its investigation, or after it has been completed. We have not encountered or discovered a bribery situation while the transaction is pending.

[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:

	You became aware that an exporter/ applicant was under charge in a national court for bribery, and…	*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…*	*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…*	*You became aware of credible evidence that bribery was involved in the award of the export contract for a transaction, and…*	*It was proven that bribery was involved in the award of the export contract for a transaction, and…*
... you notified law enforcement authorities.	☐	☐	X	X	☐
…you interrupted loan disbursements.	☐	☐	☐	☐	☐
…you invalidated export credit cover.	☐	☐	☐	☐	☐
…you did not indemnify a claim.	☐	☐	☐	☐	☐
…you sought recourse for disbursed loan amounts.	☐	☐	X	X	☐
…you sought recourse for claims that had already been paid.	☐	☐	X	X	☐
..denied access to official support for a specified period of time.	☐	☐	☐	☐	☐
... [other].	☐	☐	☐	☐	☐
... [other].	☐	☐	☐	☐	☐

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.

In one case we discovered, well after the transaction had been approved and funded, that the exporter and the borrower had colluded to provide a kickback to the borrower. The borrower was a charity and not a government entity. The exporter used "donations" as a way to provide kickbacks to the borrower. The Office of the Inspector General was informed of the matter, and Ex-Im Bank, through the Department of Justice, pursued recourse against the exporter.

[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.

"Due diligence" is the diligence that is due based on the particular circumstances present in a transaction. Due diligence is a flexible standard that in Ex-Im Bank's case typically includes, but is not limited to, consulting the following sources with respect to parties involved in a proposed transaction:

- Overseas embassies
- Banks
- Other ECAs or international financial institutions
- Other appropriate U.S. agencies
- A U.S. list of companies and individuals whose assets have been blocked due to non-compliance with U.S. sanctions or regulations (the Department of Treasury's Office of Foreign Assets Control, or OFAC)
- Local sources
- Subscription-based database of publicly available records that helps to identify and manage financial, regulatory and reputational risk
- Federal debarment database (SAM—System for Award Management)

Due diligence also includes an examination of the role of transaction participants, including agents. In addition, due diligence includes an examination of price reasonableness.

"Enhanced due diligence" refers to a level of investigation beyond that of ordinary "due diligence," which may include but is not limited to consulting the following sources, in addition to those listed above:

- A detailed company profile provided by the investigative services of overseas embassies
- Private investigators
- Local legal counsel
- Department of Justice consultations
- Publicly available prosecution records
- Information provided by applicant in response to Exim's request

Ex-Im Bank will undertake enhanced due diligence as appropriate including in circumstances where: (i) an exporter, applicant or other transaction participant appears on the publicly available debarment lists of one of the international financial institutions; or (ii) Ex-Im Bank becomes aware that an exporter, applicant or other transaction participant is currently under charge in a national court, or, within a five-year period preceding the application, has been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country; or

(iii) Ex-Im Bank has reason to believe that bribery may be involved in or that irregular commissions or fees will be paid in connection with the proposed transaction Enhanced due diligence is undertaken by appropriate staff from the originating division, the Credit Underwriting division, and OGC and includes, depending on the facts, the examination of the anti-bribery controls of the exporter/applicant and whether the exporter/applicant has taken appropriate internal corrective and preventative measures.

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.

The assessment of whether evidence of bribery is credible is made by Ex-Im Bank's Office of General Counsel, after making appropriate inquiries and consulting with Ex-Im Bank staff. It should be emphasized that any reasonable suspicion of wrongdoing, including bribery, is referred to the Office of Inspector General, which has law enforcement agents trained to investigate such matters.

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).

National court is interpreted broadly to include national courts within and beyond those of the United States and the buyer/borrower's country.

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:

Ex-Im Bank has established due diligence standards for its guaranteed and insured lender partners and participants, and requires guaranteed and insured lenders to implement "know your customer" practices. http://www.exim.gov/policies/due-diligence-standards. Ex-Im Bank has also established general procedures for the prevention, detection and prosecution of fraud and corruption. http://www.exim.gov/policies/fraud-prevention.

Ex-Im Bank provides periodic training relating to bribery and fraud awareness and detection, which is mandatory for loan officers and other employees most likely to encounter fraud or bribery situations. All employees are also required to attend annual ethics training.

At this time, no further specific steps are being considered.

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:

Generally yes if public information is available (e.g., if the entity has been charged or convicted). In situations where there are only allegations, or where an investigation is pending, whether by Ex-Im Bank, its Office of Inspector General, or by other governmental authorities, Ex-Im Bank always takes into account the suspected parties' reputation, their right to defend themselves and to generally be considered "innocent until proven guilty."

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).

These submissions are valid as of April 29, 2016.

Responses as at end-June 2016
(The latest update to responses: 29 April 2016)