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Fighting Bribery and Corruption: Frequently asked questions



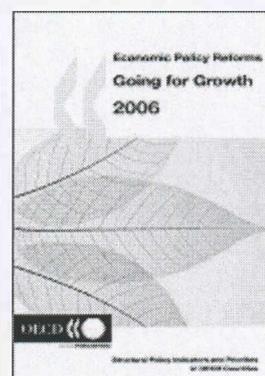
Following are questions that companies, journalists, academics, students, lawyers, consulting firms, non governmental organisations and citizens most frequently ask the OECD Anti-Corruption Division about the Anti-Bribery Convention and the work of the OECD in fighting corruption. Please select those general or Convention-specific questions you want answered. If you have other questions not answered, contact us!

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Major publication just released:

**Going for Growth 2006**

This second issue takes stock of the progress made in implementing policy reforms, and provides comparative indicators covering structural policy areas such as labour markets, education and product market regulation. Special feature: a focus on innovation, which is a key driver of economic growth.

Is bribery of foreign public officials a crime?

Bribing a foreign public official is a crime in the countries that have ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This Convention is the most important international instrument in the fight against the bribery of foreign public officials.

What is the history of the OECD initiative to combat bribery?

Bribery and corruption have been on the OECD agenda since 1989. A Working Group

of experts was created to draft and then monitor the Organisation's first Recommendation on Combating Bribery in International Business Transactions, adopted in 1994. That Recommendation, and the Revision that followed in 1997, set the stage for negotiations on an international convention to criminalise bribery. In 1996, the OECD took the first step towards eliminating tax deductions for bribe payments by adopting a Recommendation urging countries to deny such tax deductibility. Also in 1996 the OECD, through the Development Assistance Committee (DAC), issued recommendations to curb corruption in aid-funded procurement. The OECD Export Credit Action Statement followed in 2000, focusing attention on how countries deter bribery in officially supported export credits. And most recently, the OECD Guidelines for Multinational Enterprises highlights foreign bribery in its 2000 version and encourages companies to comply with the standards spelled out in the other OECD instruments.

Why did the OECD develop the Anti-Bribery Convention?

The momentum to develop this Convention was born out of the conviction that bribery of foreign government officials in international business transactions is a serious threat to the development and preservation of democratic institutions. Not only does it undermine economic development, it also distorts international competition by seriously misdirecting resources. With this Convention, the OECD sought to level the competitive playing field in international business transactions.

The OECD realised that strong multilateral co-operation was necessary in any serious fight against corruption. This realisation led OECD to adopt a Convention—a rather unusual action at the OECD—to have a more binding text with monitoring mechanisms.

What is the role of the OECD?

Besides acting as the depository of the International Anti-bribery Convention, the OECD provides the institutional framework for monitoring the Convention. This work is supported by the Anti-Corruption Division located in the Directorate for Financial and Enterprise Affairs.

The OECD also pursues regional co-operation notably with Central, Eastern and South Eastern Europe, Caucasus and Central Asia, Asia/Pacific and the Russian Federation. This OECD regional work promotes internationally accepted anti-corruption and good governance norms.

Sharing information on developments and initiatives taken by civil society, trade unions and the private sector is also a key element in an effective campaign to fight bribery and corruption.

How does the Convention work/Who ensures that it is effectively implemented?

Each country must adopt the necessary national legislation to criminalise the bribery of foreign public officials and address related obligations under the Convention. Examples of such obligations include insisting on corporate responsibility for the offence, sanctioning the laundering of the bribe and the proceeds of foreign bribery, penalising related accounting omissions and falsifications, providing mutual legal assistance and extradition. Every participating country has an interest in ensuring that all other partners in the Convention are living up to their obligations. This is done through monitoring and surveillance procedures that are carried out by the OECD Working Group on Bribery, made up of all Parties. This is a rigorous process that takes place in two phases. Phase 1 evaluates the adequacy of countries' legislation to implement the Convention. Phase 2 assesses whether a country is applying this legislation effectively. The Working Group evaluates each country's performance and makes recommendations that are forwarded to the Government of each participating country.

How effective is the Convention?

The Convention is effective in its overall aim of developing an "anti-corruption culture". The most critical element of this aim is the political will to fight corruption on all fronts. Indeed, several countries have amended their legislation following the recommendations of the OECD Working Group on Bribery. Recommendations may include amending an offence to bring it into conformity with the Convention, repealing a defence not contemplated by the Convention or lengthening the statute of limitations. By promoting high standards, the Convention has contributed to the global fight against corruption, and levelling the competitive playing field for companies doing trans-border business.

What problems remain unresolved?

The OECD Working Group on Bribery is examining acts of bribery involving foreign political parties, candidates for foreign public office, and foreign subsidiaries, among others. The Group is also paying particular attention to the use of off-shore financial centres, private sector bribery, solicitation, whistleblower protection and practices that block effective investigation and prosecution of corruption cases.

CONVENTION-SPECIFIC QUESTIONS

- Why is the OECD Anti-Bribery

Convention important?

- What does the Convention do?
- How does the Convention define the bribery of foreign public officials?
- What is meant by "foreign public officials" under the Convention?
- Why does the Convention only address the "supply" side/what about the "demand" for bribes?
- What about accomplices to bribery and attempts to bribe?
- A company officer, employee or agent can be found guilty of bribery. What about punishing the company for whose benefit he has presumably acted?
- Is the Convention in force?
- Who takes part in the Convention?
- Why should other countries engage in the fight against corruption?
- How can other countries take part in the Convention?
- What is the role of the private sector and civil society?
- How do other international initiatives interplay with the Convention?

Why is the OECD Anti-Bribery Convention important?

Most countries have laws which make it a crime to bribe domestic public officials. For the first time, OECD countries and their partners in the Convention moved together to stop the "flow" of bribes to foreign officials. In this way, the Convention helps ensure that decisions to award major public works contracts that are worth millions of dollars to the successful bidder are based on sound economic judgements rather than on who offers the biggest bribe.

The Anti-Bribery Convention sends a strong and clear signal to all trading partners that Parties to the Convention will not engage in bribery to obtain business deals. It bears witness to the global awareness of the pernicious effects of corruption. It helps strengthen the will of governments to combat bribery and helps restore faith in democratic institutions. And it contributes to building a stronger alliance between governments, private businesses, and private citizens who are working to achieve honest government.

What does the Convention do?

The Convention obliges Parties to adopt national legislation that makes it a crime to bribe foreign public officials in international business transactions. It requires that bribery of foreign public officials be punishable, by effective, proportionate and dissuasive criminal penalties comparable to those applicable to their own public officials. It commits Parties to interpret territorial jurisdiction in as broad a manner as possible and to establish nationality jurisdiction if this is in accord with their legal system. Parties are

obliged to establish corporate liability (the liability of "legal persons") for foreign bribery, and where a Party's legal system does not provide criminal liability for companies, the Party must apply effective, proportionate and dissuasive non-criminal sanctions to them. Furthermore, countries must facilitate mutual legal assistance and cannot invoke "bank secrecy" to deny mutual legal assistance.

How does the Convention define the bribery of foreign public officials?

This document compiles questions that companies, journalists, academics, students, lawyers, consulting firms, non governmental organisations and citizens most frequently ask the OECD Anti-Corruption Division about the Anti-Bribery Convention and the work of the OECD in fighting corruption.

The Convention defines the bribery of foreign public officials as the voluntary giving (promising or offering) of something of value to a foreign public official in order to obtain or retain business or other improper advantage in the conduct of international business. Bribery of domestic public officials is already a crime in the countries that are party to the Convention, as well as in most countries of the world. The Convention focuses on the person who offers, promises, or gives a bribe -- "active" bribery; not with the recipient of the bribe -- so-called "passive" bribery.

A straight-forward case of bribery under the Convention can be illustrated as follows: A company officer from a country participating in the Convention (Country A) participates in a public tender in a foreign country (Country B). The officer meets with public officials from Country B and offers, promises, or pays, a substantial "amount" to "assist" the public officials in making their decision to award the officer's company the business contract in question.

Under the Convention, it is also bribery whether money or some other type of advantage is offered, promised or given; whether the bribe was given directly or through intermediaries; whether the bribe was for the benefit of the foreign official or a third party; and whether the business receives in exchange a business contract or some other form of improper advantage, such as favourable tax treatment or a reduction in customs duty.

What is it meant by "foreign public official" under the Convention?

A "foreign public official" is defined broadly so that any person that holds an office (whether elected or appointed) or any person exercising a public function for a foreign country is considered a foreign public official. "Public function" includes any activity in the public interest. Under the definition of the Convention, a foreign public official could be a company officer of a public enterprise, the head of a government designated monopoly,

or senior officers of any company in which the government exercises dominant control.

Why does the Convention only address the "supply" side/what about the "demand" for bribes?

It is clear that there are two sides to bribery. As the largest exporters of trade and investment in the world, multinationals represent, by far, the greatest potential source of bribe money. The supply side was a logical place for our countries to start, notably given that these countries are home to most multinational enterprises. However, the problem of the demand for bribes is not being neglected. The OECD promotes cooperation with a number of other regions of the world, and other international instruments also offer sound strategies to combat the demand side. In addition, the OECD works with partners from the private sector and civil society to investigate possible government actions to tackle the demand side of bribery. Find out more about OECD work on the "demand" side at Ethics and Corruption.

What about accomplices to bribery?

Any person that incites, aids or abets, or authorises an act of bribery of a foreign public official is guilty of the same criminal offence.

A company officer, employee or agent can be found guilty of bribing a foreign public official. What about punishing the company for whose benefit he has presumably acted?

Under the Convention, participating countries must take measures to establish the liability of companies ("legal persons") that engage in bribery acts. Countries are also required to impose effective, proportionate and dissuasive sanctions, including monetary sanctions (i.e. fines and confiscation of the bribes and proceeds of bribery or property the value of which corresponds to the proceeds), and should consider imposing additional civil or administrative sanctions, such as disbarment from public tenders or disqualification from public subsidies. Companies accused of bribery acts risk serious damage to their "corporate image," a fact that can also be very dissuasive. The most important message companies should take from the Convention is that they need to beware of practices that encourage or ignore foreign bribery—or risk serious penalties.

Is the Convention in force?

The Convention was signed on 17 December 1997 and entered into force on 15 February 1999.

Who takes part in the Convention?

There are presently 36 Parties to the Convention, representing many of the world's largest trading partners. This includes all 30

OECD countries (Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States) as well as 6 non-OECD countries (Argentina, Brazil, Bulgaria, Chile, Estonia and Slovenia). [View the ratification and entry into force dates of each of these countries.](#)

Why should other countries engage in the fight against corruption?

In many countries, corruption has become so endemic that it has almost eroded the fabric of democratic and economic institutions. In recent years corruption scandals have played a major role in governments being turned out of office. This sends a strong signal that ordinary people are rapidly approaching zero tolerance for bribery and corruption. All governments need to heed this message.

How can other countries take part in the Convention?

The Convention is open to countries that become participants in the Working Group on Bribery. Ministers of participating states have declared their intention to secure the accession of other countries to the Convention. The [OECD Regional Actions](#) contribute to this aim.

A country who wishes to apply to the Working Group needs to satisfy certain criteria, including that it has a satisfactory legal framework for combating domestic bribery, that it meets certain standards such as the criminalisation of foreign bribery and non deductibility of bribes or accounting requirements, that it has effective enforcement mechanisms, and that it is a significant economic actor.

What is the role of the private sector and civil society?

The private sector and civil society were instrumental in the development of the OECD Convention. Their continuing support is necessary to ensure that the Convention is effectively implemented. They are engaged in talks with officials from participating countries on matters of particular concern to them, including the "demand" side, or solicitation of bribes by public officials and bribery transactions between private individuals or entities.

In addition, every Phase 2 Country Monitoring examination involves discussions with civil society and the private sector. During these discussions, they offer comments on the examined country's implementing legislation and its application in the country.

How do other international initiatives

interplay with the Convention?

The measures that governments are taking as members of the Convention interplay with the actions to fight corruption taken by **other institutions** such as the United Nations, Council of Europe, the European Union, the Organisation of American States and the African Union. They also reinforce anti-corruption activities of institutions such as the World Bank, the International Monetary Fund and the World Trade Organisation.

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