Section V: Practical Application of Key Terms

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.	
Australia	EFIC would adopt the definition provided at footnote 5 of the OECD Recommendation on Bribery and Officially Supported Export Credits (adopted 14/12/06) 'as evidence of a quality which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if no contrary evidence were submitted'. EFIC would likely request external legal advice from specialist counsel to assist with a determination as to whether there was 'credible evidence'.
Austria	The assessment of Credible Evidence is made by the underwriting and legal department and further coordinated with the Ministry of Finance. It is interpreted in accordance with footnote 5 of the Recommendation.
Belgium	The legal department is involved to establish if there is credible evidence.
Canada	We use the definition as provided in footnote 5 of the Recommendation. In-house lawyers undertake the assessment and may consult experts such as criminal lawyers or the Department of Justice depending on the circumstances.
Czech Republic (EGAP)	EGAP accepts the definition provided in the footnote 5 of the OECD Council Recommendation on Bribery and Officially Supported Export Credits. According to our internal procedures it is the Director of Underwriting Department who must inform the Board of Directors of EGAP of credible evidence.
Czech Republic (CEB)	As per footnote 5 of the OECD Recommendation on Bribery and Officially Supported Export Credits. It is upto the Head of Export Finance Dept. to move the case up to the Credit Committee or to the Board.
Denmark	It refers to very strong evidence, not merely suspicions. In such cases management must always be informed in order to decide.
Finland	The assessment of the Credible Evidence is made in a process together with the legal team and the underwriting department in charge of the case (or FEC). The definition is interpreted in accordance with the footnote 5 of the OECD Recommendation.
France	Coface et les agents Coface en charge des procédures publiques doivent respecter la "Charte éthique applicable aux procédures publiques" (disponible sur le site web de Coface.fr) Les agents chargés de l'instruction des dossiers vérifient les informations déclarées par le demandeur (présence sur une liste des IFIs…) et tout élément pouvant constituer un indice de corruption. Des renseignements complémentaires peuvent être demandés. En cas de besoin, le Directeur de la Direction Moyen Terme Coface peut décider de saisir le Comité anti-corruption.
Germany	The assessment of the term "Credible Evidence" is made by the Sustainability Department together with the legal department General Counsel. EH has not adopted a definition which is broader than the definition provided in footnote 5 of the OECD Council Recommendation on Bribery.
Greece	We apply the OECD definition. ECIO's Administration Board assess whether the evidence is credible taking into account the report submitted by the MLT department together with the legal opinion of ECIO's legal department.
Hungary (MEHIB)	There is no (legally defined) formal definition for the term credible evidence. Under our internal regulation, a credible evidence occurs in case a criminal process is initiated against any representative (leading officer or employee) of the client in connection with the act of bribery, of which process ECAs is authentically acquainted (informed) under the declaration of the client, or by the press or otherwise.
Hungary (Eximbank)	There is no (legally defined) formal definition for the term credible evidence. Under our internal regulation, a credible evidence occurs in case a criminal process is initiated against any representative (leading officer or employee) of the client in connection with the act of bribery, of which process ECAs is authentically acquainted (informed) under the declaration of the client, or by the press or otherwise.
Italy	OECD definition applies to credible evidence. The assessment is made first by the underwriting department, that informs of its suspicions the Legal Department. This last one examines the matter and , coordinated with the Top Management, decides whether to proceed to law enforcement (please see question 8).

2006 Survey on Measures Taken to Combat Bribery
in Officially Supported Export Credits - Responses as of 31 December 2009

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Japan (JBIC)	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.
Japan (NEXI)	Following the footnote 5 of the Recommendation, when there seems to be Credible Evidence, we consult with our guardian authority.
Korea (Eximbank)	KEXIM applies the definition as provided in the footnote 5 of the Recommendation. The assessment whether the evidence is credible is made by the credit officer in cooperation with the internal legal team.
Korea (KEIC)	Taking into consideration opinions of 'Legal Services Division' of KEIC, KEIC would consult with appropriate authorities.
Luxembourg	We use the definition as provided in footnote 5 of the Recommendation. In case of suspicion of bribery being involved in the transaction, the Board of Directors will be immediately informed by the Secretariat of the Office du Ducroire. The assessment whether the evidence is credible is made by the Board of Directors.
Mexico	In the context of the Mexican legal system, the term **Credible Evidence** is equivalent to fulfill the conditions established in the Federal Criminal Code to determine that the crime of bribe has committed.
Netherlands	Up to this moment we never had to apply the term Credible Evidence, but we would apply the definition as mentioned in footnote 5 of the Recommendation.
New Zealand	NZECO would apply the definition provided in footnote 5 of the OECD Council Recommendation. It is very likely that the NZECO would seek external legal advice to assist with the consideration of whether 'credible evidence' was apparent. The final decision on whether an instance constituted credible evidence would be made by the NZECO Board.
Norway	The issue will be prepared by underwriters in cooperation with the legal team. The final assessment will be made by the board of directors.
Poland	The definition of "credible evidence" is interpreted as it reads in the footnote 5 of the OECD Recommendation. The assessment is made by underwriters in cooperation with the legal team.
Portugal	The assessment of "credible evidence" is made by the underwriting and legal staff and further coordinated with the Council and the Guardian authorities. It is interpreted in accordance with footnote 5 of the Recommendation.
Slovak Republic	The definition of Credible Evidence is interpreted according to the footnote 5 of the Action Statement. Credible evidence is evidence of a quality which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if no contrary evidence were submitted.
Spain	If there is any evidence that has the potential to constitute credible evidence that bribery was involved at any time in the award or execution of the export transactions, the issue shall be brought to the agenda of the Board of Directors of CESCE by the related department in collaboration with the legal services. The Board of Directors shall discuss the issue promptly and –if so required- shall inform the public prosecution office and take the necessary measures.
Sweden	If during the process of handling an application for guarantee or afterwards EKN finds credible evidence that bribes has been paid to foreign ministers, foreign members of parliament or foreign public employees, EKN will promptly inform law enforcement authority about the findings. It is EKN's Board of Directors that decides whether the evidence should be considered credible.
Switzerland	The assessment is made by the compliance team. Should the compliance team feel credible evidence exists, it will request the board of directors to judge the situation. In the end, it is the board of directors if the evidence provided is credible according to the 2006Action Statement.

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Turkey	We directly adopted the definition of "credible evidence" into our Directives. After the issuance of the Directives, Turk Eximbank provided information about the ECG Recommendation and the Bank's practices to the Diplomatic Counselors of Trade and Economy through the Ministry of Foreign Affairs, the Undersecretariats of Foreign Trade and the Treasury, and requested any information available that can be described as "credible evidence". Apart from that, the line officers who are in charge of the applications or responsible for transactions for specific countries, after analysing the information and deciding that an evidence that has the potential to constitute credible evidence that bribery was involved at any time in the award or execution of the export transactions, will bring the issue to the agenda of the Executive Committee of the Bank through the related department. The Executive Committee shall discuss the issue promptly and –if so required- shall inform the public prosecution office and take the necessary measures.
United Kingdom	ECGD would decide whether any instances of alleged bribery or corruption should be referred to the appropriate law enforcement authorities taking into account advice from ECGD's lawyers regarding the allegations in question.
United States (EXIM)	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.
United States (USDA)	Instances are examined on a case-by-case basis.