



Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

And related documents

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Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Adopted by the Negotiating Conference on 21 November 1997

Preamble

The Parties,

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

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

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

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

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

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

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

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

HAVE AGREED AS FOLLOWS:

Article 1

The Offence of Bribery of Foreign Public Officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.
2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.
3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as “bribery of a foreign public official”.
4. For the purpose of this Convention:
 - a) “foreign public official” means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation;
 - b) “foreign country” includes all levels and subdivisions of government, from national to local;
 - c) “act or refrain from acting in relation to the performance of official duties” includes any use of the public official’s position, whether or not within the official’s authorised competence.

Article 2

Responsibility of Legal Persons

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

Article 3

Sanctions

1. The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party’s own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.

2. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.
3. Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.
4. Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.

Article 4

Jurisdiction

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

Article 5

Enforcement

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Article 6

Statute of Limitations

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

Article 7

Money Laundering

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

Article 8

Accounting

1. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.
2. Each Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

Article 9

Mutual Legal Assistance

1. Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance.
2. Where a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention.

3. A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy.

Article 10

Extradition

1. Bribery of a foreign public official shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them.
2. If a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.
3. Each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution.
4. Extradition for bribery of a foreign public official is subject to the conditions set out in the domestic law and applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of Article 1 of this Convention.

Article 11

Responsible Authorities

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

Article 12

Monitoring and Follow-up

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

Article 13

Signature and Accession

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

Article 14

Ratification and Depositary

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

Article 15

Entry into Force

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

Article 16

Amendment

Any Party may propose the amendment of this Convention. A proposed amendment shall be submitted to the Depositary which shall communicate it to the other Parties at least sixty days before convening a

meeting of the Parties to consider the proposed amendment. An amendment adopted by consensus of the Parties, or by such other means as the Parties may determine by consensus, shall enter into force sixty days after the deposit of an instrument of ratification, acceptance or approval by all of the Parties, or in such other circumstances as may be specified by the Parties at the time of adoption of the amendment.

Article 17

Withdrawal

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

Annex A. Statistics on OECD Exports

	1990-1996 US\$ million	1990-1996	1990-1996
		% of Total OECD	% of 10 largest
United States	287 118	15.9%	19.7%
Germany	254 746	14.1%	17.5%
Japan	212 665	11.8%	14.6%
France	138 471	7.7%	9.5%
United Kingdom	121 258	6.7%	8.3%
Italy	112 449	6.2%	7.7%
Canada	91 215	5.1%	6.3%
Korea ⁽¹⁾	81 364	4.5%	5.6%
Netherlands	81 264	4.5%	5.6%
Belgium-Luxembourg	78 598	4.4%	5.4%
Total 10 largest	1 459 148	81.0%	100%
Spain	42 469	2.4%	
Switzerland	40 395	2.2%	
Sweden	36 710	2.0%	
Mexico ⁽¹⁾	34 233	1.9%	
Australia	27 194	1.5%	
Denmark	24 145	1.3%	
Austria *	22 432	1.2%	
Norway	21 666	1.2%	
Ireland	19 217	1.1%	
Finland	17 296	1.0%	
Poland ⁽¹⁾ **	12 652	0.7%	
Portugal	10 801	0.6%	
Turkey *	8 027	0.4%	
Hungary **	6 795	0.4%	
New Zealand	6 663	0.4%	
Czech Republic ***	6 263	0.3%	
Greece *	4 606	0.3%	
Iceland	949	0.1%	
Total OECD	1 801 661	100%	

Note: * 1990-1995; ** 1991-1996; ***1993-1996

Source: OECD, ⁽¹⁾ IMF.

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

Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Adopted by the Negotiating Conference on 21 November 1997

General:

1. This Convention deals with what, in the law of some countries, is called “active corruption” or “active bribery”, meaning the offence committed by the person who promises or gives the bribe, as contrasted with “passive bribery”, the offence committed by the official who receives the bribe. The Convention does not utilise the term “active bribery” simply to avoid it being misread by the non-technical reader as implying that the briber has taken the initiative and the recipient is a passive victim. In fact, in a number of situations, the recipient will have induced or pressured the briber and will have been, in that sense, the more active.
2. This Convention seeks to assure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of a Party’s legal system.

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

Re paragraph 1:

3. Article 1 establishes a standard to be met by Parties, but does not require them to utilise its precise terms in defining the offence under their domestic laws. A Party may use various approaches to fulfil its obligations, provided that conviction of a person for the offence does not require proof of elements beyond those which would be required to be proved if the offence were defined as in this paragraph. For example,

a statute prohibiting the bribery of agents generally which does not specifically address bribery of a foreign public official, and a statute specifically limited to this case, could both comply with this Article. Similarly, a statute which defined the offence in terms of payments “to induce a breach of the official’s duty” could meet the standard provided that it was understood that every public official had a duty to exercise judgement or discretion impartially and this was an “autonomous” definition not requiring proof of the law of the particular official’s country.

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

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

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

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

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

9. Small “facilitation” payments do not constitute payments made “to obtain or retain business or other improper advantage” within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. However, criminalisation by other countries does not seem a practical or effective complementary action.

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

Re paragraph 2:

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

Re paragraph 4:

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

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

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

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

16. In special circumstances, public authority may in fact be held by persons (e.g., political party officials in single party states) not formally designated as public officials. Such persons, through their *de facto* performance of a public function, may, under the legal principles of some countries, be considered to be foreign public officials.

17. “Public international organisation” includes any international organisation formed by states, governments, or other public international organisations, whatever the form of organisation and scope of competence, including, for example, a regional economic integration organisation such as the European Communities.

18. “Foreign country” is not limited to states, but includes any organised foreign area or entity, such as an autonomous territory or a separate customs territory.

19. One case of bribery which has been contemplated under the definition in paragraph 4.c is where an executive of a company gives a bribe to a senior official of a government, in order that this official use his office – though acting outside his competence – to make another official award a contract to that company.

Article 2. Responsibility of Legal Persons:

20. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall not be required to establish such criminal responsibility.

Article 3. Sanctions:

Re paragraph 3:

21. The “proceeds” of bribery are the profits or other benefits derived by the briber from the transaction or other improper advantage obtained or retained through bribery.

22. The term “confiscation” includes forfeiture where applicable and means the permanent deprivation of property by order of a court or other competent authority. This paragraph is without prejudice to rights of victims.

23. Paragraph 3 does not preclude setting appropriate limits to monetary sanctions.

Re paragraph 4:

24. Among the civil or administrative sanctions, other than non-criminal fines, which might be imposed upon legal persons for an act of bribery of a foreign public official are: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or from

the practice of other commercial activities; placing under judicial supervision; and a judicial winding-up order.

Article 4. Jurisdiction:

Re paragraph 1:

25. The territorial basis for jurisdiction should be interpreted broadly so that an extensive physical connection to the bribery act is not required.

Re paragraph 2:

26. Nationality jurisdiction is to be established according to the general principles and conditions in the legal system of each Party. These principles deal with such matters as dual criminality. However, the requirement of dual criminality should be deemed to be met if the act is unlawful where it occurred, even if under a different criminal statute. For countries which apply nationality jurisdiction only to certain types of offences, the reference to “principles” includes the principles upon which such selection is based.

Article 5. Enforcement:

27. Article 5 recognises the fundamental nature of national regimes of prosecutorial discretion. It recognises as well that, in order to protect the independence of prosecution, such discretion is to be exercised on the basis of professional motives and is not to be subject to improper influence by concerns of a political nature. Article 5 is complemented by paragraph 6 of the Annex to the 1997 OECD Revised Recommendation on Combating Bribery in International Business Transactions, C(97)123/FINAL (hereinafter, “1997 OECD Recommendation”), which recommends, inter alia, that complaints of bribery of foreign public officials should be seriously investigated by competent authorities and that adequate resources should be provided by national governments to permit effective prosecution of such bribery. Parties will have accepted this Recommendation, including its monitoring and follow-up arrangements.

Article 7. Money Laundering:

28. In Article 7, “bribery of its own public official” is intended broadly, so that bribery of a foreign public official is to be made a predicate offence for money laundering legislation on the same terms, when a Party has made either active or passive bribery of its own public official such an offence. When a Party has made only passive bribery of its own public officials a predicate offence for money laundering purposes, this article requires that the laundering of the bribe payment be subject to money laundering legislation.

Article 8. Accounting:

29. Article 8 is related to section V of the 1997 OECD Recommendation, which all Parties will have accepted and which is subject to follow-up in the OECD Working Group on Bribery in International Business Transactions. This paragraph contains a series of recommendations concerning accounting requirements,

independent external audit and internal company controls the implementation of which will be important to the overall effectiveness of the fight against bribery in international business. However, one immediate consequence of the implementation of this Convention by the Parties will be that companies which are required to issue financial statements disclosing their material contingent liabilities will need to take into account the full potential liabilities under this Convention, in particular its Articles 3 and 8, as well as other losses which might flow from conviction of the company or its agents for bribery. This also has implications for the execution of professional responsibilities of auditors regarding indications of bribery of foreign public officials. In addition, the accounting offences referred to in Article 8 will generally occur in the company's home country, when the bribery offence itself may have been committed in another country, and this can fill gaps in the effective reach of the Convention.

Article 9. Mutual Legal Assistance:

30. Parties will have also accepted, through paragraph 8 of the Agreed Common Elements annexed to the 1997 OECD Recommendation, to explore and undertake means to improve the efficiency of mutual legal assistance.

Re paragraph 1:

31. Within the framework of paragraph 1 of Article 9, Parties should, upon request, facilitate or encourage the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings. Parties should take measures to be able, in appropriate cases, to transfer temporarily such a person in custody to a Party requesting it and to credit time in custody in the requesting Party to the transferred person's sentence in the requested Party. The Parties wishing to use this mechanism should also take measures to be able, as a requesting Party, to keep a transferred person in custody and return this person without necessity of extradition proceedings.

Re paragraph 2:

32. Paragraph 2 addresses the issue of identity of norms in the concept of dual criminality. Parties with statutes as diverse as a statute prohibiting the bribery of agents generally and a statute directed specifically at bribery of foreign public officials should be able to co-operate fully regarding cases whose facts fall within the scope of the offences described in this Convention.

Article 10. Extradition:

Re paragraph 2:

33. A Party may consider this Convention to be a legal basis for extradition if, for one or more categories of cases falling within this Convention, it requires an extradition treaty. For example, a country may consider it a basis for extradition of its nationals if it requires an extradition treaty for that category but does not require one for extradition of non-nationals.

Article 12. Monitoring and Follow-up:

34. The current terms of reference of the OECD Working Group on Bribery which are relevant to monitoring and follow-up are set out in Section VIII of the 1997 OECD Recommendation. They provide for:

- i) receipt of notifications and other information submitted to it by the [participating] countries;
- ii) regular reviews of steps taken by [participating] countries to implement the Recommendation and to make proposals, as appropriate, to assist [participating] countries in its implementation; these reviews will be based on the following complementary systems:
 - a system of self evaluation, where [participating] countries' responses on the basis of a questionnaire will provide a basis for assessing the implementation of the Recommendation;
 - a system of mutual evaluation, where each [participating] country will be examined in turn by the Working Group on Bribery, on the basis of a report which will provide an objective assessment of the progress of the [participating] country in implementing the Recommendation.
- iii) examination of specific issues relating to bribery in international business transactions;
- ...
- v) provision of regular information to the public on its work and activities and on implementation of the Recommendation.

35. The costs of monitoring and follow-up will, for OECD Members, be handled through the normal OECD budget process. For Non-Members of the OECD, the current rules create an equivalent system of cost sharing, which is described in the Resolution of the Council Concerning Fees for Regular Observer Countries and Non-Member Full Participants in OECD Subsidiary Bodies, C(96)223/FINAL.

36. The follow-up of any aspect of the Convention which is not also follow-up of the 1997 OECD Recommendation or any other instrument accepted by all the participants in the OECD Working Group on Bribery will be carried out by the Parties to the Convention and, as appropriate, the participants party to another, corresponding instrument.

Article 13. Signature and Accession:

37. The Convention will be open to Non-Members which become full participants in the OECD Working Group on Bribery in International Business Transactions. Full participation by Non-Members in this Working Group is encouraged and arranged under simple procedures. Accordingly, the requirement of full participation in the Working Group, which follows from the relationship of the Convention to other aspects of the fight against bribery in international business, should not be seen as an obstacle by countries wishing to participate in that fight. The Council of the OECD has appealed to Non-Members to adhere to the 1997 OECD Recommendation and to participate in any institutional follow-up or implementation mechanism, i.e., in the Working Group. The current procedures regarding full participation by Non-Members in the Working Group may be found in the Resolution of the Council concerning the Participation of Non-Member Economies in the Work of Subsidiary Bodies of the Organisation, C(96)64/REV1/FINAL. In addition to accepting the Revised Recommendation of the Council on Combating Bribery, a full participant also accepts the Recommendation on the Tax Deductibility of Bribes of Foreign Public Officials, adopted on 11 April 1996, C(96)27/FINAL.

Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions

Adopted by the Council on 26 November 2021

THE COUNCIL,

HAVING REGARD to Articles 3, 5a) and 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997 [OECD/LEGAL/0293] (hereinafter “the OECD Anti-Bribery Convention”);

HAVING REGARD to the Revised Recommendation of the Council on Bribery in International Business Transactions of 23 May 1997 [C(97)123/FINAL] and the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 26 November 2009 [C(2009)159/REV1/FINAL and C(2010)19] (hereinafter “the 2009 Recommendation”) to which the present Recommendation succeeds;

HAVING REGARD to the Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0371], the Recommendation of the Council for Development Cooperation Actors on Managing the Risk of Corruption [OECD/LEGAL/0431], the Recommendation of the Council on Bribery and Officially Supported Export Credits [OECD/LEGAL/0447], the Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises [OECD/LEGAL/0451], the OECD Guidelines for Multinational

Enterprises [OECD/LEGAL/0144], the Recommendation of the Council on Public Integrity [OECD/LEGAL/0435], and the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [OECD/LEGAL/0443];

CONSIDERING the progress which has been made in the implementation of the OECD Anti-Bribery Convention and the 2009 Recommendation and reaffirming the continuing importance of the OECD Anti-Bribery Convention and the Commentaries to the Convention;

CONSIDERING that bribery of foreign public officials is a widespread phenomenon in international business transactions, including trade and investment, raising serious moral and political concerns, undermining good governance and sustainable economic development, and distorting international competitive conditions;

ACKNOWLEDGING the harmful effects caused by foreign bribery and considering the importance of effectively combatting foreign bribery in order to address and prevent those effects on society;

CONSIDERING that all countries share a responsibility to combat bribery of foreign public officials in international business transactions;

REITERATING the importance of the vigorous and comprehensive implementation of the OECD Anti-Bribery Convention, including in periods of crisis, and reaffirming member countries' commitment to robust enforcement of the laws implementing the foreign bribery offence, as reiterated in the Statement on a Shared Commitment to Fight Against Foreign Bribery, adopted by Ministers of the Parties to the OECD Anti-Bribery Convention on 21 November 2007, the Policy Statement on Bribery in International Business Transactions, adopted by the Working Group on Bribery on 19 June 2009, the Conclusions adopted by the OECD Council Meeting at Ministerial Level on 25 June 2009 [C/MIN(2009)5/FINAL], and the Ministerial Declaration at the OECD Anti-Bribery Ministerial Meeting of 16 March 2016;

RECOGNISING that the OECD Anti-Bribery Convention and the United Nations Convention against Corruption (UNCAC) are mutually supporting and complementary, and that ratification and implementation of the UNCAC supports a comprehensive approach to combating the bribery of foreign public officials in international business transactions;

WELCOMING other developments which further advance international understanding and co-operation regarding bribery in international business transactions, including actions of the Council of Europe, the European Union, and the Organization of American States;

WELCOMING the efforts of companies, business organisations and trade unions, non-governmental organisations, and the media to contribute to the fight against bribery of foreign public officials;

RECOGNISING the need to improve our understanding of linkages between gender and corruption, including bribery of foreign public officials, how corruption can affect genders differently, and the importance of promoting gender equality and women's empowerment;

RECOGNISING the potential role of innovative technologies in advancing public and private sector efforts to combat foreign bribery;

RECOGNISING that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, as well as rigorous and systematic monitoring and follow-up;

On the proposal of the Working Group on Bribery in International Business Transactions:

General

- I. **NOTES** that the present Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions applies to OECD Member countries and other countries party to the OECD Anti-Bribery Convention (hereinafter "member countries").
- II. **NOTES** that the present Recommendation is to be implemented in conformity with member countries' jurisdictional and other basic legal principles.
- III. **RECOMMENDS** that member countries continue taking effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions.
- IV. **RECOMMENDS** that each member country take concrete and meaningful steps to examine or further examine the following areas:
 - i. awareness-raising and training initiatives in the public sector for the purpose of preventing and detecting foreign bribery;
 - ii. awareness-raising in the private sector, in particular among enterprises operating abroad, including small and medium size enterprises, for the purpose of preventing and detecting foreign bribery as well as, where appropriate, through targeted, profession and sector-specific initiatives, including on the Good Practice Guidance on Internal Controls, Ethics and Compliance, as set out in Annex II hereto, which is an integral part of this Recommendation, and through collective action and partnerships between the private and public sector in awareness-raising activities;

- iii. criminal laws, their application and enforcement, in accordance with the OECD Anti-Bribery Convention, as well as sections V to XVIII of this Recommendation, and the Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as set out in Annex I hereto, which is an integral part of this Recommendation;
- iv. international co-operation in investigations and other legal proceedings, in accordance with section XIX of this Recommendation;
- v. tax legislation, regulations and practice, to eliminate any indirect support of foreign bribery, in accordance with the 2009 Council Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0371], and section XX of this Recommendation;
- vi. provisions and measures to ensure the reporting of foreign bribery and protection of reporting persons, in accordance with sections XXI and XXII of this Recommendation;
- vii. company and business accounting, external audit, as well as internal control, ethics, and compliance requirements and practices, in accordance with section XXIII of this Recommendation;
- viii. laws and regulations on banks and other financial institutions to ensure that adequate records are kept and made available for inspection and investigation;
- ix. public subsidies, licences, public procurement contracts, contracts funded by official development assistance, officially supported export credits, or other public advantages, so that advantages could be suspended or denied as a measure to combat foreign bribery in appropriate cases, and compliance incentives provided for appropriate remediation, in accordance with sections XXIV and XXV of this Recommendation;
- x. civil, commercial, and administrative laws and regulations, to combat foreign bribery.

Criminalisation and Enforcement of the Offence of Bribery of Foreign Public Officials

- V. **RECOMMENDS**, in order to ensure the vigorous and comprehensive implementation of the OECD Anti-Bribery Convention, including enforcement of the offence of bribery of foreign public officials, that member countries take fully into account the Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, set forth in Annex I hereto.
- VI. **RECOMMENDS** that member countries:

- i. periodically review their laws implementing the OECD Anti-Bribery Convention and their approach to enforcement in order to effectively combat international bribery of foreign public officials;
 - ii. take all necessary measures to ensure that law enforcement authorities act promptly and proactively so that complaints of bribery of foreign public officials are seriously investigated and credible allegations are assessed by competent authorities;
 - iii. take a proactive approach to the investigation and prosecution of bribery of foreign public officials, with respect to both natural and legal persons, including by ensuring that the competent authorities are provided with adequate training and guidance on effective methods to detect and investigate foreign bribery.
- VII. **RECOMMENDS** that member countries provide adequate resources to law enforcement authorities so as to permit effective investigation and prosecution of bribery of foreign public officials in international business transactions, taking into consideration Commentary 27 to the OECD Anti Bribery Convention.
- VIII. **RECOMMENDS** that member countries encourage law enforcement authorities to proactively gather information from diverse sources to increase detection of foreign bribery and enhance investigations, such as the media, reporting persons, public agencies, including those referred to under Section XXI, foreign investigative authorities and the private sector.
- IX. **RECOMMENDS** that member countries:
- i. ensure that cases of bribery of foreign public officials are investigated and prosecuted without undue delay;
 - ii. where delays occur in investigations, prosecutions, and judicial or administrative proceedings, take reasonable steps to ensure that these do not unduly impede effective enforcement of the offence of bribery of foreign public officials and do not result in the expiry of limitation periods in such bribery cases.
- X. **RECOMMENDS** that member countries:
- i. ensure that a broad range of investigative measures is available in foreign bribery investigations and prosecutions, such as access to financial, banking and company information, including on beneficial ownership, asset tracing, forensics, and special investigative techniques, where appropriate;

- ii. where appropriate and proportionate, and to the extent permitted and under the conditions prescribed by domestic laws, ensure that competent authorities make full use of the broad range of investigative measures available in foreign bribery investigations and prosecutions, including special investigative techniques;
 - iii. consider measures to encourage persons who participated in, or have been associated with, the commission of bribery of foreign public officials, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions.
- XI. **RECOMMENDS** that member countries permit and promote effective and timely co-operation and information sharing among and within national competent authorities with a view to improving the detection, investigation, and prosecution of bribery of foreign public officials. In particular, member countries should consider adequate methods and tools for facilitating such co-operation.

Addressing the Demand Side

- XII. **RECOMMENDS** that member countries:
- i. raise awareness of bribe solicitation risks among relevant public officials, particularly those posted abroad, and the private sector, with particular attention to high-risk geographical and industrial sectors of operation;
 - ii. provide training to their public officials posted abroad on information and steps to be taken to assist enterprises confronted with bribe solicitation, where appropriate, and provide clear instructions on the authorities to whom allegations of solicitation and foreign bribery should be reported;
 - iii. where appropriate, undertake coordinated actions with other member and non-member countries, with a view to engaging with the host country on addressing the solicitation and acceptance of bribes;
 - iv. consider fostering, facilitating, engaging, or participating in anti-bribery collective action initiatives with private and public sector representatives, as well as civil society organisations, aiming to address foreign bribery and bribe solicitation.
- XIII. **URGES** all countries to:
- i. raise awareness of their public officials on their domestic bribery and solicitation laws with a view to stopping the solicitation and acceptance of bribes and small facilitation payments;

- ii. publish on a publicly available website their rules and regulations governing gifts, hospitality, entertainment, and expenses for domestic public officials so that individuals and enterprises are aware of such rules and can abide by them.
- XIV. **RECOMMENDS**, in view of the corrosive effect of small facilitation payments, particularly on sustainable economic development and the rule of law, that member countries:
- i. undertake to periodically review their policies and approach on small facilitation payments in order to effectively combat the phenomenon;
 - ii. encourage companies to prohibit or discourage the use of small facilitation payments in internal controls, ethics, and compliance programmes or measures, recognising that such payments are generally illegal in the countries where they are made and must in all cases be accurately accounted for in such companies' books and financial records.

Sanctions and Confiscation

- XV. **RECOMMENDS** that member countries:
- i. take appropriate steps, such as through providing guidance and/or training to law enforcement authorities and the judiciary without prejudice to the discretionary powers of judicial or other relevant authorities, to help ensure that sanctions against natural and legal persons for foreign bribery are transparent, effective, proportionate, and dissuasive in practice, including by taking into account the amounts of the bribe paid and the value of the profits or other benefits derived and other mitigating or aggravating factors;
 - ii. with a view to incentivising and rewarding good corporate behaviour, consider taking into account mitigating factors, such as:
 - a. fulsome, timely, and voluntary disclosures to law enforcement authorities of misconduct;
 - b. full cooperation with law enforcement authorities including the disclosure of all facts relevant to the wrongdoing at issue;
 - c. acceptance of responsibility; or
 - d. timely and appropriate remediation including the implementation or enhancement of an effective ethics and compliance programme;

- iii. make public and accessible, consistent with data protection rules and privacy rights, as applicable, and through any appropriate means, important elements of resolved cases of bribery of foreign public officials and related offences under Articles 7 and 8 of the OECD Anti-Bribery Convention (hereinafter “related offences”), including the main facts, the natural or legal persons sanctioned, the approved sanctions, and the basis for applying such sanctions.
- XVI. **RECOMMENDS** that member countries, in order to assist with ensuring that foreign bribery offences are punishable by effective, proportionate, and dissuasive sanctions:
- i. make full use, whenever possible and appropriate, of the measures available in their national laws for the identification, freezing, seizure, and confiscation of bribes and the proceeds of bribery of foreign public officials, or property the value of which corresponds to that of such proceeds;
 - ii. develop a proactive approach to the identification, freezing, seizure, and confiscation of bribes and the proceeds of bribery of foreign public officials or property the value of which corresponds to that of such proceeds, including in the context of proceedings involving legal persons;
 - iii. raise awareness among law enforcement and other competent authorities of the importance of conducting thorough financial investigations to detect and recover bribes and the proceeds of bribery of foreign public officials, and confiscating bribes and the proceeds of bribery of foreign public officials, or property the value of which corresponds to that of such proceeds; and
 - iv. consider developing, publishing, and disseminating to law enforcement authorities guidelines for identifying, quantifying, and confiscating bribes and the proceeds of bribery of foreign public officials, or property the value of which corresponds to that of such proceeds.

Non-Trial Resolutions

- XVII. **RECOMMENDS** that member countries consider using a variety of forms of resolutions when resolving criminal, administrative, and civil cases with both legal and natural persons, including non-trial resolutions. Non-trial resolutions refer to mechanisms developed and used to resolve matters without a full court or administrative proceeding, based on a negotiated agreement with a natural or legal person and a prosecuting or other authority.
- XVIII. **RECOMMENDS** that member countries ensure that non-trial resolutions used to resolve cases related to offences under the OECD Anti-Bribery Convention follow the principles of due process, transparency, and accountability, and in particular:
- i. adopt a clear and transparent framework regarding non-trial resolutions, including the authorities entitled to enter into non-trial resolutions, whether these resolutions are available to natural and/or legal persons, and the requirement for the alleged offender to admit facts and/or guilt, where applicable;

- ii. develop clear and transparent criteria regarding the use of non-trial resolutions including, where appropriate, voluntary self-disclosure of misconduct, cooperation with law enforcement authorities, and remediation measures;
- iii. provide clear and publicly accessible information on the advantages that an alleged offender may obtain by entering into a non-trial resolution;
- iv. where appropriate, and consistent with data protection rules and privacy rights, as applicable, make public elements of non-trial resolutions, including:
 - a. the main facts and the natural and/or legal persons concerned;
 - b. the relevant considerations for resolving the case with a non-trial resolution;
 - c. the nature of sanctions imposed and the rationale for applying such sanctions;
 - d. remediation measures, including the adoption or improvement of internal controls and anti-corruption compliance programmes or measures and monitorship;
- v. ensure that foreign bribery resolved by non-trial resolutions is punishable by transparent, as well as effective, proportionate and dissuasive sanctions as required by Article 3 of the OECD Anti-Bribery Convention;
- vi. ensure that the non-trial resolution of foreign bribery cases does not constitute an obstacle to the effective investigation and prosecution of natural or legal persons in other countries, and generally allows for effective international cooperation, as provided under Articles 9 and 10 of the OECD Anti-Bribery Convention;
- vii. ensure that the conclusion of a non-trial resolution with a natural or legal person is without prejudice to an enforcement action against other relevant natural or legal persons, where appropriate;
- viii. ensure that non-trial resolutions are subject to appropriate oversight, such as by a judicial, independent public, or other relevant competent authority, including law enforcement authorities.

International Co-operation

XIX. **RECOMMENDS** that member countries, in order to effectively combat bribery of foreign public officials in international business transactions, in conformity with their jurisdictional and other basic legal principles, consult and otherwise co-operate with competent authorities in other countries, and, as appropriate, international and regional law enforcement networks involving member and non-member countries, in investigations and other legal proceedings concerning specific cases of such bribery, through such means as the sharing of information spontaneously or upon request, the provision of evidence, extradition, and the identification, freezing, seizure, confiscation, and recovery of the proceeds of bribery of foreign public officials. In this regard:

A. Mutual legal assistance procedures

Member countries should, in order to effectively combat bribery of foreign public officials in international business transactions:

- i. make full use of existing agreements and arrangements for mutual international legal assistance and where necessary, enter into new agreements or arrangements for this purpose;
- ii. ensure that clearly publicised and easily accessible channels are in place for incoming and outgoing mutual legal assistance requests;
- iii. in accordance with Articles 9 and 10 of the OECD Anti-Bribery Convention, ensure that their national laws afford an adequate basis for mutual legal assistance, for any purposes, consistent with relevant laws, treaties, agreements and arrangements, including provision of evidence, executing searches, seizures, and freezing, identifying and tracing proceeds of crime, property or instrumentalities, and confiscation and recovery of the proceeds of bribery of foreign public officials;
- iv. to the fullest extent possible under national laws, relevant treaties and arrangements, provide mutual legal assistance in non-criminal investigations and proceedings within the scope of the OECD Anti-Bribery Convention involving a legal person, including when the non-criminal investigations and proceedings are not directly related to criminal proceedings involving a natural person;
- v. consider ways for facilitating mutual legal assistance between member countries and with countries not party to the OECD Anti-Bribery Convention in cases of such bribery, including regarding evidentiary thresholds for some member countries;
- vi. provide prompt and effective processing of outgoing and incoming mutual legal assistance requests;

- vii. ensure that their statute of limitations allows for adequate time to promptly and effectively provide and request mutual legal assistance in foreign bribery cases;
- viii. ensure that an effective institutional framework for mutual legal assistance is in place and that resources for the provision and requesting of mutual legal assistance are adequate and efficiently used. In particular, member countries should ensure that authorities responsible for receiving incoming mutual legal assistance and managing outgoing requests are provided with an adequate number of staff with relevant expertise and that adequate training is available to relevant staff, including on the mutual legal assistance framework and on drafting requirements and policies applicable to outgoing requests, where relevant;
- ix. consider the use of technologies for greater efficiency of the mutual legal assistance process, including adequate equipment to monitor the progress made on incoming and outgoing mutual legal assistance requests, presentation of outgoing mutual legal assistance requests in digital format, and presentation of information provided in response to mutual legal assistance requests in a digital format suitable for use by the requesting country;
- x. adopt a proactive approach in seeking international cooperation for offences under the OECD Anti-Bribery Convention, including by raising awareness and providing training to competent authorities to identify foreign bribery cases requiring mutual legal assistance, with a view to ensuring that an outstanding outgoing mutual legal assistance request does not jeopardise an ongoing investigation.

B. Enhancing international cooperation

Member countries should:

- i. take effective measures to develop direct co-operation with competent authorities in other member countries, as appropriate, including by:
 - a. entering into bilateral agreements or arrangements for mutual legal assistance with other member countries and making full use of existing agreements;
 - b. actively participating in regional and international law enforcement networks specialised in anti-corruption matters and involving member and non-member countries; and
 - c. promoting the exchange of personnel and experts where applicable, including the posting of liaison officers in other countries or international organisations;
- ii. without prior request, consider transmitting information, where appropriate and in a manner consistent with national laws and relevant treaties and arrangements, to a competent authority in

another member country where such information could assist the member country in undertaking investigations or successfully concluding proceedings. The transmission of information spontaneously should be without prejudice to inquiries and proceedings carried out by the competent authority in the member country providing the information;

- iii. consider, in a manner consistent with national laws and relevant treaties and arrangements, complementary forms of international exchange of information through other mechanisms, such as by facilitating (a) exchange of financial intelligence by Financial Intelligence Units; (b) exchange of tax information; (c) exchange of information with financial regulators; and (d) cooperation, as appropriate, within relevant international and regional networks;
- iv. promptly investigate credible allegations of bribery of foreign public officials referred to them by international governmental organisations, such as the multilateral and regional development banks and, where applicable, seek from international governmental organisations the lifting of secrecy of internal investigation.

C. Multijurisdictional cases

Member countries should:

- i. encourage direct coordination in concurrent or parallel investigations and prosecutions, where appropriate, including through such means as the sharing of information and evidence;
- ii. consistent with Article 4.3 of the OECD Anti-Bribery Convention, when more than one member country has jurisdiction over an alleged offence described in the OECD Anti-Bribery Convention, consider, where appropriate, consultations during the investigation, prosecution, and conclusion of the case, in conformity with their legal systems. Member countries should also pay due attention to the risk of prosecuting the same natural or legal person in different jurisdictions for the same criminal conduct;
- iii. consider coordination as early in the process as is feasible and where appropriate, and in such a way that respects the independence of the individual jurisdictions and recognises the benefits of co-operation in achieving effective law enforcement. Member countries should take steps to reasonably ensure that their coordination efforts do not unduly impact the effectiveness of investigations and prosecutions in other jurisdictions;
- iv. consider using relevant international and regional organisations which can assist with consultations between countries, where appropriate;
- v. where appropriate and in conformity with their national laws and relevant treaties and arrangements, consider setting up joint or parallel investigative teams when conducting

investigations and prosecutions of bribery of foreign public officials that may necessitate coordinated and concerted action with one or several other member countries.

Tax Deductibility

XX. **RECOMMENDS** that member countries:

- i. fully and promptly implement the 2009 Council Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0371], which recommends in particular “that Member countries and other Parties to the OECD Anti-Bribery Convention explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner”, and that “in accordance with their legal systems” they “establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities”;
- ii. support the monitoring carried out by the Committee on Fiscal Affairs as provided for under the 2009 Council Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0371].

Reporting Foreign Bribery

XXI. **RECOMMENDS** that member countries:

- i. establish and publicise clear policies and procedures by which any natural person, including public officials, can report suspicions of bribery of foreign public officials and related offences to competent authorities, including by allowing for confidential and, where appropriate, anonymous reporting;
- ii. provide easily accessible and diversified channels for the reporting of suspected acts of bribery of foreign public officials and related offences and raise awareness of these channels and of the importance of reporting such suspicions, including by providing guidance and follow-up to encourage and support reporting persons;
- iii. ensure that appropriate measures are in place to allow public officials to report or bring to the attention of competent authorities suspected acts of foreign bribery and related offences detected in the course of their work, in particular for officials in public agencies that interact with, or that are exposed to information regarding companies operating abroad, including foreign representations, financial intelligence units, tax authorities, trade promotion authorities, relevant securities and financial market regulators, anti-corruption agencies and procurement authorities;

- iv. encourage proactive detection by public officials, in particular those that interact with or that are exposed to information regarding companies operating abroad, through appropriate means including media monitoring and alerts, as well as early reporting of suspicions of bribery of foreign public officials and related offences;
- v. periodically review the effectiveness of reporting policies, procedures, and channels and consider making publicly available the results of these periodical reviews;
- vi. raise awareness through regular training and other means about the foreign bribery offence and reporting obligations to officials in government agencies that could play a role in preventing and/or detecting and reporting foreign bribery, including diplomatic missions, export credit agencies, and official development aid agencies, with a view to informing their companies operating abroad on foreign bribery laws and the importance of effective compliance programmes.

Protection of Reporting Persons

XXII. **RECOMMENDS**, in view of the essential role that reporting persons can play as a source of detection of foreign bribery cases, that member countries establish, in accordance with their jurisdictional and other basic legal principles, strong and effective legal and institutional frameworks to protect and/or to provide remedy against any retaliatory action to persons working in the private or public sector who report on reasonable grounds suspected acts of bribery of foreign public officials in international business transactions and related offences in a work-related context, and in particular:

- i. ensure that sufficiently-resourced and well-trained competent authorities implement the legal framework for the protection of reporting persons, and receive, investigate or otherwise process complaints of retaliation;
- ii. afford protection to the broadest possible range of reporting persons in a work-related context, including as appropriate to those whose work-based relationship has ended, to persons who acquire information on suspected acts of foreign bribery during advanced stages of the recruitment process or the contractual negotiations, and who could suffer retaliation, for instance in the form of negative employment references or blacklisting, and consider extending protection to third persons connected to the reporting person who could suffer retaliation in a work-related context;
- iii. ensure appropriate measures are in place to provide for the confidentiality of the identity of the reporting person and the content of the report, in a manner consistent with national laws, in particular on investigations by competent authorities or judicial proceedings;
- iv. consider allowing for anonymous reports, and ensure that all relevant protections are available to those who are subsequently identified and may suffer retaliation;

- v. ensure appropriate measures are in place to prohibit or render invalid any contractual provisions designed or intended to waive, terminate, diminish, or modify the claims and legal protections of persons who make reports that qualify for protection to competent authorities;
- vi. provide a broad definition of retaliation against reporting persons that is not limited to workplace retaliation and can also include actions that can result in reputational, professional, financial, social, psychological, and physical harm;
- vii. ensure appropriate remedies are available to reporting persons to compensate direct and indirect consequences of retaliatory action following a report that qualifies for protection, including financial compensation, and interim relief pending the resolution of legal proceedings;
- viii. provide for effective, proportionate, and dissuasive sanctions for those who retaliate against reporting persons;
- ix. in administrative, civil, or labour proceedings, shift the burden of proof on retaliating natural and legal persons and entities to prove that such allegedly adverse action against a reporting person was not in retaliation for the report;
- x. ensure that reporting persons are not subject to disciplinary proceedings and liability based on the making of reports that qualify for protection;
- xi. consider introducing incentives for making reports that qualify for protection;
- xii. raise awareness and provide training on the design and implementation of the legal and institutional frameworks to protect reporting persons and protections and remedies available;
- xiii. periodically review the effectiveness of the legal and institutional frameworks for the protection of reporting persons and consider making publicly available the results of these periodical reviews;
- xiv. with due regard to data protection rules and privacy rights, ensure that such rules and laws that prohibit transmission of economic or commercial information do not unduly impede reports by and protection of reporting persons.

Accounting Requirements, External Audit, and Internal Controls, Ethics and Compliance

- XXIII. **RECOMMENDS** that member countries take the steps necessary, taking into account where appropriate the individual circumstances of a company, including its size, type, legal structure and geographical and industrial sector of operation, so that laws, rules or practices with respect to accounting requirements, external audits, and internal controls, ethics and compliance are in line

with the following principles and are fully used in order to prevent and detect bribery of foreign public officials in international business, according to their jurisdictional and other basic legal principles. To this effect:

A. Adequate accounting requirements

- i. member countries shall, in accordance with Article 8 of the OECD Anti-Bribery Convention, take such measures as may be necessary, within the framework of their laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery;
- ii. member countries shall, in accordance with Article 8 of the Convention, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts, and financial statements of such companies, and should ensure that both natural and legal persons can be held liable for the full range of conduct described in Article 8.1 of the Convention;
- iii. member countries should require companies to disclose in their financial statements the full range of material contingent liabilities;
- iv. member countries should ensure that competent authorities also give due consideration to proceeding against the involved natural or legal persons for accounting offences committed for the purpose of bribing foreign public officials or hiding such bribery, as defined under Article 8 of the OECD Anti-Bribery Convention;

B. Independent External Audit

- i. member countries should consider whether requirements on companies to submit to external audit are adequate;
- ii. member countries and professional associations should maintain adequate standards to ensure the independence of external auditors which permits them to provide an objective assessment of companies' accounts, financial statements and internal controls;
- iii. member countries should require the external auditor who discovers indications of a suspected act of bribery of a foreign public official to report this discovery to management and, as appropriate, to corporate monitoring or governance bodies;

- iv. member countries should encourage companies that receive reports of suspected acts of bribery of foreign public officials from an external auditor to actively and effectively respond to such reports;
- v. member countries should consider requiring the external auditor to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities, and for those countries that permit such reporting, ensure that auditors making such reports on reasonable grounds are protected from legal action.

C. Internal controls, ethics, and compliance

Member countries should encourage:

- i. companies, including state-owned enterprises, to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance, set forth in Annex II;
- ii. business organisations and professional associations, where appropriate, in their efforts to encourage and assist companies, in particular small and medium size enterprises, in developing internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance, set forth in Annex II hereto;
- iii. company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those which contribute to preventing and detecting bribery;
- iv. the creation of monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards;
- v. companies to implement frameworks for the protection of persons reporting potential violations of law, as well as channels for reporting, including as part of an internal controls, ethics and compliance programme or measures for preventing and detecting bribery of foreign public officials, and to take appropriate action based on such reporting.

D. Incentives for compliance

Member countries should:

- i. encourage their government agencies to consider, where international business transactions are concerned and as appropriate, internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery in their decisions to grant public advantages, including public subsidies, licences, public procurement contracts, contracts funded by official development assistance, and officially supported export credits;
- ii. where member countries implement measures to incentivise enterprises to develop such compliance programmes or measures, provide training and guidance to their relevant government agencies, on how internal controls, ethics and compliance programmes or measures are taken into consideration in government agencies' decision-making processes, and ensure such guidance is publicised and easily accessible for companies;
- iii. encourage law enforcement authorities, in the context of enforcement of the foreign bribery and related offences, to consider implementing measures to incentivise companies to develop effective internal controls, ethics, and compliance programmes or measures, including as a potential mitigating factor. Member countries should nevertheless ensure that the mere existence of internal controls, ethics and compliance programmes or measures does not fully exonerate the legal person from its liability, that the final consideration of such programmes or measures remains the sole responsibility of judicial, law enforcement, or other public authorities, and that sanctions remain effective, proportionate and dissuasive, in accordance with Article 3 of the OECD Anti-Bribery Convention;
- iv. where member countries implement measures to incentivise companies to develop such compliance programmes or measures, ensure that competent authorities consider providing training and guidance on assessing the adequacy and effectiveness of internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, as well as on how such programmes or measures are taken into consideration in the context of foreign bribery enforcement, and ensure such information or guidance is publicised and easily accessible for companies, where appropriate.

Public Advantages, including Public Procurement

XXIV. RECOMMENDS that:

- i. member countries' laws and regulations permit authorities to suspend or debar, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, companies determined to have bribed foreign public officials in contravention of that member country's national laws, considering mitigating factors. To the extent that a member country's laws and regulations permit the application of such measures to companies that are determined to have bribed domestic public officials, such measures should also be permitted in case of bribery of foreign public officials;

- ii. member countries ensure that relevant government agencies are able to access information on companies sanctioned for foreign bribery, or, if this is not possible, to obtain this information from companies;
- iii. where appropriate and to the extent possible, in making such decisions on suspension and debarment, member countries take into account, as mitigating factors, remedial measures developed by companies to address specific foreign bribery risks, as well as any gaps in their existing internal controls, ethics, and compliance programmes or measures;
- iv. member countries provide guidance and training to relevant government agencies on such suspension and debarment measures applicable to companies determined to have bribed foreign public officials and on remedial measures which may be adopted by companies, including internal controls, ethics and compliance programmes or measures, which may be taken into consideration;
- v. in accordance with the 2016 Recommendation of the Council for Development Cooperation Actors on Managing the Risk of Corruption [OECD/LEGAL/0431], member countries require anti-corruption provisions in bilateral aid-funded procurement, promote the proper implementation of anti-corruption provisions in international development institutions, including multilateral development banks, and work closely with development partners to combat corruption in all development co-operation efforts;
- vi. member countries support the efforts of the OECD Public Governance Committee to implement the principles contained in the Recommendation of the Council on Public Procurement [OECD/LEGAL/0411], as well as work on transparency in public procurement in other international governmental organisations such as the United Nations, the World Trade Organisation (WTO), and the European Union, and are encouraged to adhere to relevant international standards such as the WTO Agreement on Government Procurement.

Officially Supported Export Credits

XXV. RECOMMENDS that:

- i. countries Party to the OECD Anti-Bribery Convention that are not OECD Members adhere to and implement the OECD Recommendation of the Council on Bribery and Officially Supported Export Credits [OECD/LEGAL/0447];
- ii. member countries support the efforts of the OECD Working Party on Export Credits and Credit Guarantees to monitor implementation of the OECD Recommendation of the Council on Bribery and Officially Supported Export Credits [OECD/LEGAL/0447].

Data Protection

XXVI. **RECOMMENDS** that, with due regard to data protection rules and privacy rights:

- i. member countries ensure that compliance with data protection rules and laws that prohibit transmission of economic or commercial information does not unduly impede effective international co-operation in investigations and prosecutions of foreign bribery and related offences, in accordance with Articles 9 and 10 of the OECD Anti Bribery Convention;
- ii. member countries ensure that compliance with data protection rules and laws that prohibit transmission of economic or commercial information does not unduly impede the effectiveness of anti-corruption internal controls, ethics, and compliance programmes or measures, including internal reporting mechanisms, due diligence, and internal investigation processes;
- iii. member countries with applicable data protection rules provide guidance to companies and where appropriate, consider issuing regulations that allow for the processing of data in conducting anti-corruption related due diligence and internal investigation processes.

Follow-Up and Institutional Arrangements

XXVII. **INSTRUCTS** the Working Group on Bribery in International Business Transactions to carry out an ongoing programme of systematic follow-up to monitor and promote the full implementation of the OECD Anti-Bribery Convention and this Recommendation, in co-operation with the Committee for Fiscal Affairs, the Development Assistance Committee, the Investment Committee, the Public Governance Committee, the Working Party on Export Credits and Credit Guarantees, and other OECD bodies, as appropriate. This follow-up will include, in particular:

- i. continuation of the programme of rigorous and systematic monitoring of member countries' implementation of the OECD Anti-Bribery Convention and this Recommendation to promote the full implementation of these instruments, including through an ongoing system of mutual evaluation, where each member country is examined in turn by the Working Group on Bribery, on the basis of a report which will provide an objective assessment of the progress of the member country in implementing the OECD Anti-Bribery Convention and this Recommendation, and which will be made publicly available;
- ii. receipt of notifications and other information submitted to it by the member countries concerning the authorities which serve as channels of communication for the purpose of facilitating international cooperation on implementation of the OECD Anti-Bribery Convention and this Recommendation;
- iii. periodic reporting in Working Group on Bribery meetings on steps taken by member countries to implement the OECD Anti-Bribery Convention and this Recommendation, including non-

confidential information on investigations and prosecutions of bribery of foreign public officials, as well as where appropriate on steps taken to enforce the demand side of such foreign bribery cases;

- iv. voluntary meetings of law enforcement officials directly involved in the enforcement of the foreign bribery offence to discuss best practices and horizontal issues relating to the investigation and prosecution of the bribery of foreign public officials, in addition to voluntary participation by such law enforcement officials in Working Group on Bribery plenary sessions, country monitoring and other relevant activities;
- v. examination of prevailing trends, issues and counter-measures in foreign bribery, including through work on typologies and cross-country studies;
- vi. development of tools and mechanisms to increase the impact of monitoring and follow-up, and awareness raising, including through research, bribery threat assessments and the annual submission and public reporting of non-confidential enforcement data;
- vii. provision of regular information to the public on its work and activities and on implementation of the OECD Anti-Bribery Convention and this Recommendation; and
- viii. reporting to the Council on the implementation of this Recommendation no later than five years following its adoption and at least every five years thereafter.

XXVIII. **NOTES** the obligation of member countries to co-operate closely in this follow-up programme, pursuant to Article 3 of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960, and Article 12 of the OECD Anti-Bribery Convention.

Co-operation with Non-Members

XXIX. **APPEALS** to non-member countries that are major exporters and foreign investors to adhere to and implement the OECD Anti-Bribery Convention and this Recommendation and participate in any institutional follow-up or implementation mechanism.

XXX. **INSTRUCTS** the Working Group on Bribery in International Business Transactions to provide a forum for consultations with countries which have not yet adhered, in order to promote wider participation in the OECD Anti-Bribery Convention and this Recommendation, and their follow-up.

Relations with International Governmental and Non-Governmental Organisations and the Private Sector

XXXI. **INVITES** the Working Group on Bribery in International Business Transactions, to consult and co-operate with the international organisations and international financial institutions active in the fight against bribery of foreign public officials in international business transactions, and consult regularly with the non-governmental organisations and representatives of the business community active in this field.

Annex I: Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Having regard to the findings and recommendations of the Working Group on Bribery in International Business Transactions in its programme of systematic follow-up to monitor and promote the full implementation of the OECD Convention on Combating Bribery in International Business Transactions (the OECD Anti-Bribery Convention), as required by Article 12 of the Convention, good practice on fully implementing specific articles of the Convention has evolved as follows:

A. Article 1 of the OECD Anti Bribery Convention: The Offence of Bribery of Foreign Public Officials

1. Article 1 of the OECD Anti-Bribery Convention should be implemented in such a way that it does not provide a defence or exception where the foreign public official solicits a bribe.
2. Member countries should undertake public awareness-raising actions and provide specific written guidance to the public on their laws implementing the OECD Anti-Bribery Convention and the Commentaries to the Convention.
3. Member countries should provide information and training as appropriate to their public officials posted abroad on their laws implementing the OECD Anti-Bribery Convention, so that such personnel can provide basic information to their companies in foreign countries and appropriate assistance when such companies are confronted with bribe solicitations.

B. Article 2 of the OECD Anti Bribery Convention: Responsibility of Legal Persons

1. Member countries should ensure that state-owned enterprises can be held liable for the bribery of foreign public officials in international business transactions.
2. Member countries systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted.

3. Member countries systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches:
 - a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or
 - b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:
 - a person with the highest level managerial authority offers, promises, or gives a bribe to a foreign public official;
 - a person with the highest level managerial authority directs or authorises a lower level person to offer, promise, or give a bribe to a foreign public official; and
 - a person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics, and compliance programmes or measures.
4. Consistent with Articles 2 and 4 of the OECD Anti-Bribery Convention and related Commentary, member countries should:
 - a. explore all jurisdictional bases available under their law when investigating and prosecuting legal persons for foreign bribery offences, including to establish territoriality and nationality jurisdiction;
 - b. in asserting nationality jurisdiction over legal persons for the purpose of investigating and prosecuting bribery of foreign public officials, consider criteria such as, but not limited to, the laws under which the legal person was formed or is organised, or the legal person's headquarters or effective management and control;
 - c. ensure that they are able to exercise appropriate jurisdiction over legal persons regardless of whether they have jurisdiction over the natural person who committed the bribery of a foreign public official.
5. Member countries should have appropriate rules or other measures to ensure that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity.

C. Responsibility for Bribery through Intermediaries

1. Member countries should ensure that in accordance with Article 1 of the OECD Anti-Bribery Convention and the principle of functional equivalence in Commentary 2 to the OECD Anti-Bribery Convention, a legal person cannot avoid responsibility by using intermediaries, including related legal persons and other third parties, irrespective of their nationality, to offer, promise, or give a bribe to a foreign public official on its behalf.
2. Member countries should undertake awareness-raising activities within both the public and private sectors and in particular among relevant law enforcement authorities in this regard.

D. Article 5: Enforcement

1. Member countries should be vigilant in ensuring that investigations and prosecutions of the bribery of foreign public officials in international business transactions are not influenced by considerations of national economic interest, the potential effect upon relations with another country or the identity of the natural or legal persons involved, in compliance with Article 5 of the OECD Anti-Bribery Convention.
2. Member countries should ensure, in conformity with their legal system, that the evidentiary threshold or any other standard necessary for initiating investigations is not applied in a way that prevents the effective investigation and prosecution of bribery of foreign public officials.

Annex II: Good Practice Guidance on Internal Controls, Ethics and Compliance

Introduction

This Good Practice Guidance (hereinafter “Guidance”) is addressed to companies, including state-owned enterprises, for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting the bribery of foreign public officials in their international business transactions (hereinafter “foreign bribery”), and to business organisations and professional associations, which play an essential role in assisting companies in these efforts. It recognises that to be effective, such internal controls, ethics, and compliance programmes or measures should be interconnected with a company’s overall compliance framework. It is intended to serve as non-legally binding guidance to companies in establishing effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery. This Guidance is flexible, and intended to be adapted by companies, in particular small and medium sized enterprises (hereinafter “SMEs”), according to their individual circumstances, including their size, type, legal structure, and geographical and industrial sector of operation, as well as the jurisdictional and other basic legal principles under which they operate.

A. Good Practice Guidance for Companies

Effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery should be developed on the basis of a risk assessment addressing the individual circumstances of a company, in particular the foreign bribery risks facing the company (such as its geographical and industrial sector of operation, and regulatory environment, potential clients and business partners, transactions with foreign governments, and use of third parties). Such circumstances and risks should be regularly monitored, re-assessed, and taken into account as necessary, to determine the allocation of compliance resources and ensure the continued effectiveness of the company's internal controls, ethics, and compliance programme or measures. Companies should consider, inter alia, the following good practices for ensuring effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery:

1. strong, explicit and visible support and commitment from the board of directors or equivalent governing body and senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery with a view to implementing a culture of ethics and compliance;
2. a clearly articulated and visible corporate policy prohibiting foreign bribery, easily accessible to all employees and relevant third parties, including foreign subsidiaries, where applicable and translated as necessary;
3. compliance with this prohibition and the related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the company;
4. oversight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies, senior management, the board of directors or equivalent governing body, the supervisory board or their relevant committees, are the duty of one or more senior corporate officers, such as a senior compliance officer, with an adequate level of autonomy from management and other operational functions, resources, access to relevant sources of data, experience, qualification, and authority;
5. ethics and compliance programmes or measures designed to prevent and detect foreign bribery, applicable to all directors, officers, and employees, and applicable to all entities over which a company has effective control, including subsidiaries, on, inter alia, the following areas:
 - i. gifts;
 - ii. hospitality, entertainment and expenses;
 - iii. travel, including customer travel;
 - iv. political contributions;
 - v. charitable donations and sponsorships;
 - vi. facilitation payments;

- vii. solicitation and extortion;
 - viii. conflicts of interest;
 - ix. hiring processes;
 - x. risks associated with the use of intermediaries, especially those interacting with foreign public officials; and
 - xi. processes to respond to public calls for tender, where relevant.
6. ethics and compliance programmes or measures designed to prevent and detect foreign bribery applicable, where appropriate and subject to contractual arrangements, to third parties such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter “business partners”), including, inter alia, the following essential elements:
- i. properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular continued oversight of business partners throughout the business relationship;
 - ii. informing business partners of the company’s commitment to abiding by laws on the prohibitions against foreign bribery, and of the company’s ethics and compliance programme or measures for preventing and detecting such bribery;
 - iii. seeking a reciprocal commitment from business partners;
 - iv. implementing mechanisms to ensure that the contract terms, where appropriate, specifically describe the services to be performed, that the payment terms are appropriate, that the described contractual work is performed, and that compensation is commensurate with the services rendered;
 - v. where appropriate, ensuring the company’s audit rights to analyse the books and records of business partners and exercising those rights as appropriate;
 - vi. providing for adequate mechanisms to address incidents of foreign bribery by business partners, including for example contractual termination rights.
7. a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of foreign bribery or hiding such bribery;

8. the use of internal control systems to identify patterns indicative of foreign bribery, including as appropriate by applying innovative technologies;
9. measures designed to ensure effective periodic communication and documented training for all levels of the company, on the company's ethics and compliance programme or measures regarding foreign bribery, as well as, where appropriate, for business partners;
10. appropriate measures to encourage and provide positive support and incentives for the observance of ethics and compliance programmes or measures against foreign bribery at all levels of the company including by integrating ethics and compliance in human resources processes, with a view to implementing a culture of compliance;
11. measures to address cases of suspected foreign bribery, which may include:
 - i. processes for identifying, investigating, and reporting the misconduct and genuinely and proactively engaging with law enforcement authorities;
 - ii. remediation, including, inter alia, analysing the root causes of the misconduct and addressing identified weaknesses in the company's compliance programme or measures;
 - iii. appropriate and consistent disciplinary measures and procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company's ethics and compliance programme or measures regarding foreign bribery; and
 - iv. appropriate communication to ensure awareness of these measures and consistent application of disciplinary procedures across the company.
12. effective measures for providing guidance and advice to directors, officers, employees, and, where appropriate, business partners, on complying with the company's ethics and compliance programme or measures, including when they need urgent advice on difficult situations in foreign jurisdictions, as well as measures to ensure there is no retaliation against any person within the company who is instructed or pressured, including from hierarchical superiors, to engage in foreign bribery and chooses not to do so;
13. a strong and effective protected reporting framework, including:
 - i. internal, confidential, and where appropriate, anonymous, reporting by, and protection against any form of retaliation for, directors, officers, employees, and, where appropriate, business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for reporting persons willing to report

breaches of the law or professional standards or ethics occurring within the company on reasonable grounds; and

- ii. clearly defined procedures and visible, accessible, and diversified channels for all reporting persons to report breaches of the law or professional standards or ethics occurring within the company.
14. periodic reviews and testing of the internal controls, ethics and compliance programmes or measures, including training, designed to evaluate and improve their effectiveness in preventing and detecting foreign bribery, both on a regular basis and upon specific developments, taking into account the company's evolving risk profile, such as:
- i. changes in the company's activity, structure and operating model,
 - ii. results of monitoring and auditing,
 - iii. relevant developments in the field,
 - iv. evolving international and industry standards, and
 - v. lessons learned from a company's possible misconduct and that of other companies facing similar risks based on relevant documentation and data.
15. in cases of mergers and acquisitions, comprehensive risk-based due diligence of acquisition targets; prompt incorporation of the acquired business into its internal controls and ethics and compliance programme; and training of new employees and post-acquisition audits;
16. external communication of the company's commitment to effective internal controls and ethics and compliance programmes.

B. Actions by Business Organisations and Professional Associations

Business organisations and professional associations may play an essential role in assisting companies, in particular SMEs, in the development of effective internal control, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. Such support may include, inter alia:

- 1. dissemination of information on foreign bribery issues, including regarding relevant developments in international and regional forums, and access to relevant databases;

2. making training, prevention, due diligence, and other compliance tools available;
3. general advice on carrying out due diligence; and
4. general advice and support on resisting extortion and solicitation, including, where appropriate, by promoting collective action.

Professional associations that exercise regulatory powers over certain professions may also play a significant role in adopting and implementing robust ethics standards for their members, including by setting out frameworks on actions to be taken by their members to prevent bribery or when confronted with suspected acts of foreign bribery and related offences committed by clients or employers.

Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions

Adopted by the Council on 25 May 2009

THE COUNCIL,

Having regard to Article 5, b) of the Convention on the Organisation for Economic Co- operation and Development of 14 December 1960;

Having regard to the Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials [C(96)27/FINAL] (hereafter the "1996 Recommendation"), to which the present Recommendation succeeds;

Having regard to the Revised Recommendation of the Council on Bribery in International Business Transactions [C(97)123/FINAL];

Having regard to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions to which all OECD Members and eight non-Members are Parties, as at the time of the adoption of this Recommendation (hereafter the "OECD Anti-Bribery Convention");

Having regard to the Commentaries on the OECD Anti-Bribery Convention;

Having regard to the Recommendation of the Council concerning the Model Tax Convention on Income and on Capital (hereafter the "OECD Model Tax Convention") [C(97)195/FINAL];

Welcoming the United Nations Convention Against Corruption to which most parties to the OECD Anti-Bribery Convention are State parties, and in particular Article 12.4, which provides that "Each State Party shall disallow the tax deductibility of expenses that constitute bribes";

Considering that the 1996 Recommendation has had an important impact both within and outside the OECD, and that significant steps have already been taken by governments, the private sector and non-governmental agencies to combat the bribery of foreign public officials, but that the problem still continues to be widespread and necessitates strengthened measures;

Considering that explicit legislation disallowing the deductibility of bribes increases the overall awareness within the business community of the illegality of bribery of foreign public officials and within the tax administration of the need to detect and disallow deductions for payments of bribes to foreign public officials; and

Considering that sharing information by tax authorities with other law enforcement authorities can be an important tool for the detection and investigation of transnational bribery offences;

On the proposal of the Committee on Fiscal Affairs and the Investment Committee;

I. **RECOMMENDS** that:

(i) Member countries and other Parties to the OECD Anti-Bribery Convention explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner. Such disallowance should be established by law or by any other binding means which carry the same effect, such as:

- prohibiting tax deductibility of bribes to foreign public officials;
- prohibiting tax deductibility of all bribes or expenditures incurred in furtherance of corrupt conduct in contravention of the criminal law or any other laws of the Party to the Anti-Bribery Convention.

Denial of tax deductibility is not contingent on the opening of an investigation by the law enforcement authorities or of court proceedings.

(ii) Each Member country and other Party to the OECD Anti-Bribery Convention review, on an ongoing basis, the effectiveness of its legal, administrative and policy frameworks as well as practices for

disallowing tax deductibility of bribes to foreign public officials. These reviews should assess whether adequate guidance is provided to taxpayers and tax authorities as to the types of expenses that are deemed to constitute bribes to foreign public officials, and whether such bribes are effectively detected by tax authorities.

(iii) Member countries and other Parties to the OECD Anti-Bribery Convention consider to include in their bilateral tax treaties, the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention, which allows "the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing)" and reads as follows:

"Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use."

II. **Further RECOMMENDS** Member countries and other Parties to the OECD Anti-Bribery Convention, in accordance with their legal systems, to establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities.

III. **INVITES** non-Members that are not yet Parties to the OECD Anti-Bribery Convention to apply this Recommendation to the fullest extent possible.

IV. **INSTRUCTS** the Committee on Fiscal Affairs together with the Investment Committee to monitor the implementation of the Recommendation and to promote it in the context of contacts with non-Members and to report to Council as appropriate.

Recommendation of the Council on Bribery and Officially Supported Export Credits

As adopted by the OECD Council on 13 March 2019

THE COUNCIL

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co operation and Development of 14 December 1960;

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

RECOGNISING that the Anti-Bribery Convention and the United Nations Convention against Corruption (UNCAC) are mutually supporting and complementary, and that ratification and implementation of the UNCAC supports a comprehensive approach to combating bribery in international business transactions;

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

CONSIDERING that combating bribery in international business transactions is a priority issue, as demonstrated by the importance placed on the fight against corruption in international fora including the

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

NOTING that the implementation of this Recommendation by Members and non Members having adhered to it (hereafter the “Adherents”) in no way mitigates the responsibility of the exporter and other parties in transactions benefiting from official support to: (i) comply with all relevant laws and regulations, including those for combating bribery in international business transactions, or (ii) provide the proper description of the transaction for which support is sought, including all relevant payments;

On the proposal of the Working Party on Export Credits and Credit Guarantees:

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

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

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

- The term “equivalent measures” includes, for example, resolutions of bribery violations using deferred prosecution agreements (DPAs) or non-prosecution agreements (NPAs), as well as those resulting from any formal admission or voluntary self reporting, where such measures exist. The terms of any equivalent measures agreed to with the relevant legal authority may be taken into consideration by an Adherent when considering subsequent actions.
- “Multilateral Financial Institutions” are the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the World Bank Group.
- The term “relevant parties” may refer to the applicant, buyer, borrower and any party with which an Adherent has or intends to have a contractual relationship. In this context, “party with which an Adherent has or intends to have a contractual relationship” refers to any party in an export credit transaction with which the Export Credit Agency (ECA) has or intends to have a direct contractual relationship arising from a written contract or similar binding declaration in which there is a manifestation of mutual assent of the Adherent and the party to enter into a loan, guarantee and/or insurance relationship not including reinsurance, co-financing or counterguarantee partners.

General measures to deter bribery

IV. **RECOMMENDS** that each Adherent:

1. Inform exporters and, where appropriate, other relevant parties about the legal consequences of bribery in international business transactions under its legal system, including national laws prohibiting bribery of foreign and domestic public officials and, where applicable, national laws prohibiting bribery in the private sector.
2. Encourage exporters, and, where appropriate, other relevant parties to develop, apply and document appropriate management control systems that prevent and detect bribery.
3. Raise awareness that parties involved in international business transactions should also comply with all relevant laws and regulations prohibiting bribery in the country or jurisdiction where they are conducting business.
4. Promote responsible business conduct among parties involved in applications for official export credit support.
5. Develop, apply and document appropriate management control systems within its export credit system that seek to deter bribery in international business transactions and that are supported by adequate training for staff, reporting mechanisms and internal audit procedures.
6. Develop and implement policies and procedures, in accordance with national laws on such disclosure, for disclosing credible allegations or evidence that bribery was involved in the award or execution of the export contract to law enforcement authorities, where such policies and procedures do not already exist.

Screening

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

1. Start the screening as early as possible in the risk assessment process.
2. Require that, where necessary, the parties involved in an application provide all information necessary to undertake the screening and, if relevant, any subsequent enhanced due diligence.
3. Require exporters and, where appropriate, other relevant parties to provide a declaration that, in the transaction neither they, nor any natural or legal person acting on their behalf in connection with the transaction, such as agents, have been engaged or will engage in bribery:
 - a) For exporters and relevant parties conducting business in the Adherent's country or under its jurisdiction, such a declaration should cover bribery of foreign and domestic public officials and, where prohibited under the Adherent's national laws, bribery in the private sector.
 - b) For any other relevant parties, such a declaration should cover bribery of foreign and domestic public officials.
4. Require exporters and, where appropriate, other relevant parties to declare whether they or any natural or legal person acting on their behalf in connection with the transaction, such as agents:
 - i. are currently under charge in any court or, to the best of their knowledge, are formally under investigation by public prosecutors for violation of laws against bribery of any country; and/or
 - ii. within a five-year period preceding the application, have been convicted in any court for violation of laws against bribery of any country, been subject to equivalent measures, or been found as part of a publicly-available arbitral award to have engaged in bribery.

5. Verify or require a declaration that exporters and, where appropriate, other relevant parties, and any natural or legal person acting on their behalf in connection with the transaction, such as agents, are not listed on the publicly-available debarment lists of one of the Multilateral Financial Institutions (MFIs).
6. Require exporters and, where appropriate, other relevant parties to declare that the commissions and fees paid, or agreed to be paid, to any natural or legal person acting on their behalf in connection with the transaction, such as agents, is, or will be, for legitimate services only.
7. Require, upon demand, the disclosure of: (i) the identity of any natural or legal person, such as agents, acting on behalf of the exporter and, where appropriate, other relevant parties in connection with the transaction; (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons; and (iii) the country or jurisdiction in which the commissions and fees have been paid, or agreed to be paid.

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

Enhanced due diligence

VI. RECOMMENDS that Adherents:

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

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

Evaluation and decision

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

1. Inform their law enforcement authorities promptly if, before official export credit support has been provided, they become aware of a credible allegation or evidence that bribery was involved in the award or execution of the export contract.
2. Refuse to provide official export credit support if the screening, due diligence and/or the enhanced due diligence concludes that bribery was involved in the transaction and/or if the declarations required in accordance with paragraph V of this Recommendation are not provided.
3. Decide, in the event that support is to be provided, whether this should involve conditions to fulfil prior to, or after, the final commitment for official support, including, for example:
 - a) warranties, in appropriate documentation, that the Adherent will be informed of any material changes to the declarations provided in accordance with paragraph V of this Recommendation;
 - b) warranties, in appropriate documentation, that exporters and, where appropriate, other relevant parties and any natural or legal person acting on their behalf in connection with the transaction, such as agents, have complied and will comply with all relevant laws and regulations prohibiting bribery in the country or jurisdiction where they are conducting business; and
 - c) rights to audit or review a party's management control systems, the transaction for which support is provided, including all relevant payments, etc.

Post-final commitment

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

1. Inform their law enforcement authorities promptly if they become aware of a credible allegation or evidence that bribery was involved in the award or execution of the export contract.

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

Reporting and monitoring

IX. RECOMMENDS that Adherents:

1. Publish national ECA bribery and other related policy statements or principles relevant to the implementation of this Recommendation.
2. Monitor and evaluate, over time, the experience with this Recommendation at a national level, and share experiences and good practices with the other Adherents.
3. Continue to enhance and improve procedures at a national level to deter and combat bribery in international business transactions, and to encourage their ECAs to allocate appropriate resources for this purpose.
4. Report to the ECG ex post information concerning any transactions where bribery was involved in the award or execution of an export contract resulting in a conviction for violation of laws against bribery or equivalent measures against one of the parties involved in the transaction or where one of these parties was found as part of a publicly-available arbitral award to have engaged in bribery, including the party concerned and the appropriate action(s) taken by the Adherent, consistent with its national laws on such disclosures.
5. Build a body of experience on the application of this Recommendation through regular reporting and exchanges of information on actions taken by Adherents to combat both bribery of foreign and domestic public officials and bribery in the private sector, in respect of international business transactions benefiting from official export credit support, with the aim of improving common practices, developing guidance, and promoting a uniform implementation of this Recommendation.

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

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

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

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

1. Serve as a forum for exchanging information on international anti-bribery activities, involving relevant stakeholders, including the Working Group on Bribery in International Business

Transactions, on how the Anti-Bribery Convention and the 2009 Recommendation are being taken into account in national official export credit systems;

2. Monitor international anti-bribery activities and emerging trends that may impact international business transactions benefitting from official export credit support;
3. Collate and map the information exchanged and continue to build a body of experience on the practical application of this Recommendation, with a view to considering further steps to deter and combat both bribery of foreign and domestic public officials and bribery in the private sector, in respect of international business transactions benefitting from official export credit support; and
4. Monitor the implementation of this Recommendation and to report thereon to Council no later than five years following its adoption and regularly thereafter, notably to review its relevance and applicability, and whether it requires amendments in the light of experience gained by Adherents.

Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption

Adopted on 16 November 2016

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

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

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

HAVING REGARD to the OECD Policy Paper on Anti-Corruption Setting an Agenda for Collective Action [DCD/DAC/GOVNET(2006)3/REV2] and the Development Assistance Committee's study Working Towards More Effective Donor Responses to Corruption which calls for more effective

coordinated and collective responses from international development agencies to cases of corruption involving aid;

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

RECOGNISING that corruption poses serious threats to development goals and that international development agencies have a common interest in managing and reducing, to the extent possible, the internal and external risks to which aid activities are exposed, in order to obtain effective use of aid resources;

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

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

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

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

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

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

RECOGNISING that there are a number of good practices among donor agencies and standards already developed by the OECD and others, on which this Recommendation seeks to build and that aid donors have developed an array of policies and practices to address the associated risks

as documented through the 2015 OECD study “Building Donors’ Integrity Systems: Background Study on Development Practice” [DCD/DAC/GOVNET/RD(2015)2/RD10];

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

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

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

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

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

1. **Code of Conduct** (or equivalent), which should:
 - i) Be applicable to public officials engaged in any aspect of development co-operation work and the management of aid funds;
 - ii) Be decided on and endorsed by the highest authority within the international development agency, disseminated to all staff and communicated on an ongoing basis;

- iii) Clearly establish what practices should be avoided and embraced with regard to corruption and anti-corruption, using specific examples of corrupt practices to reduce possible differences in understanding across social, cultural and institutional settings.
2. **Ethics or anti-corruption assistance/advisory services**, which should:
- i) Assure human and financial resources are available to provide ethics and anti-corruption advice, guidance and support to staff in a safe, confidential, independent and timely manner;
 - ii) Ensure that staff providing such advisory services are trained and prepared to discuss sensitive matters (i.e. such as how to respond to evidence or suspicions of corruption, and related issues) in a safe and non-threatening environment in order to build a strong, shared understanding of acceptable and unacceptable behaviours;
 - iii) Build trust between staff responsible to providing advice in anti-corruption with the rest of personnel, in particular when reporting channels are also responsible for investigation.
3. **Training and awareness raising on anti-corruption**, which should:
- i) Include ethics and anti-corruption training, including for locally-engaged staff in partner countries. Opportunities for interactive training, including discussions of scenarios and exploration of possible responses, should be put in place for making codes of conduct and other anti-corruption rules practically applicable and meaningful across different social, cultural, and institutional settings;
 - ii) Clarify the roles and responsibilities of different staff and tailor the extent and specialisation of training according to the exposure to corruption risk of each role, particularly in face of resource constraints;
 - iii) Assure that training of all staff involved in posts that are more directly involved in dealing with corruption risks (such as programme design, management, procurement and oversight) goes beyond the internal ethics and reporting regime, to include corruption risk identification, assessment and mitigation approaches as well as main international obligations to which their country has committed to.
4. **High level of auditing and internal investigation** in order to ensure a proper use of resources and prevent, detect and remedy corruption risks, with the following functions provided for:
- i) Internal audit services. Detailed standards for internal auditors are available through relevant international professional associations and should serve as guidance as appropriate;
 - ii) External audit, including of the agencies as well as of the projects/activities the agencies fund, conducted by relevant authorities (i.e. Supreme Audit Institutions, independent external audits). Detailed standards for external auditors are available through relevant international professional associations and should serve as guidance as appropriate;
 - iii) Access to investigatory capacity, within or outside the agency, to respond to audit findings;
 - iv) Systematic and timely follow-up of internal audit findings as well as findings from independent external audits to assure that weaknesses have been addressed and any sanctions implemented;

- v) Communication to staff about audit and investigation processes and outcomes, within confidentiality limits, to build trust, reduce perceptions of opacity and take into account lessons learned.
5. **Active and systematic assessment and management of corruption risks** in an ongoing way and at multiple levels of decision making, which should:
- i) Integrate corruption risk assessment into all programme planning and management cycles in formalised ways, informing relevant hierarchical levels within the international development agency, assuring analysis and review of corruption risk throughout the project cycle and not as a stand-alone exercise at the project design phase;
 - ii) Provide guidance or frameworks appropriate for different levels of corruption risk analysis with a view to help programme managers identify how corruption might directly affect the desired outcomes of the activity, including more detailed assessment than a broad political economy analysis, such as a careful examination of assumptions regarding obstacles and opportunities for anti-corruption and identifying adequate anti-corruption measures;
 - iii) Use tools like risk registers or matrices at the outset of a development intervention, and update them regularly throughout implementation, with necessary adjustments to anti-corruption measures;
 - iv) Strengthen integration between agency control functions, including auditors and controllers, and programme management functions and other relevant stakeholders for the purposes of more effective corruption risk assessment and management;
 - v) Build an evidence base for corruption risk management by sharing experience internally and among other international development agencies about the content and form of corruption risk assessments and management tools, ways that risk management is built into the project cycle, and the impact of these processes.
6. **Measures to prevent and detect corruption enshrined in ODA contracts**, which should:
- i) Ensure that funding for projects financed by ODA are accompanied by adequate measures to prevent and detect corruption and that implementing partners, including other government agencies, government of developing countries, NGOs and companies that have been convicted of engaging in corruption are denied such funding as appropriate;
 - ii) Ensure that persons applying for ODA contracts be required to declare that they have not been convicted of corruption offences;
 - iii) Establish mechanisms to verify the accuracy of information provided by applicants and ensure that due diligence is carried out prior to the granting of ODA contracts, including consideration of applicant's corruption risk management system, such as companies' internal controls, ethics and compliance programmes and measures, in particular where international business transactions are concerned;
 - iv) Verify publicly available debarment lists of national and multilateral financial institutions during the applicant's selection process; include such lists as a possible basis of exclusion from application to ODA funded contracts;

- v) Ensure that ODA contracts specifically prohibit implementing partners (whether from the international development agency's own country, local agents in developing countries or from third countries) and their possible sub-contractors from engaging in corruption.

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

- i) Be applicable for all public officials involved in development co-operation and implementing partners who report in good faith and on reasonable grounds suspicion of acts of corruption;
- ii) Remind public officials involved in the disbursement of aid, including implementing partners, of their obligation to report corruption including foreign bribery;
- iii) Issue clear instructions on how to recognise indications of corruption and on the concrete steps to be taken if suspicions or indications of corruption should arise, including reporting the matter as appropriate to law enforcement authorities in the beneficiary country and/or the international development agency's home country;
- iv) Assure broad accessibility of secure reporting mechanisms, beyond the staff of the international development agency to include implementing partners to the extent possible;
- v) Communicate clearly about how confidential reports can be made, including providing training if necessary, and streamlining channels to reduce confusion if different reporting mechanisms exist for different stakeholders;
- vi) Provide alternatives to the normal chain of management or advice services such as independent advisors, ombudsperson and, where relevant, access to law enforcement authorities;
- vii) Ensure protection for whistle-blowers, including protection from retaliation when reporting suspicion of corruption, including allegations of bribery paid by the donors' own staff or implementing partners;
- viii) Follow up on reported incidents of suspected corruption in a timely manner;
- ix) Communicate clearly and frequently about the processes and outcomes of corruption reporting, to build trust and reduce any perception of opacity around corruption reports and investigations.

8. Sanctioning regime, which should:

- i) Include, within ODA contracts, termination, suspension or reimbursement clauses or other civil and criminal actions, where applicable, in the event of the discovery by international development agencies that information provided by applicants to ODA funds was false, or that the implementing partner subsequently engaged in corruption during the course of the contract;
- ii) Respond to all cases of corruption;
- iii) Put in place a sanctioning regime that is effective, proportionate and dissuasive;
- iv) Include clear and impartial processes and criteria for sanctioning, with checks and balances in decision making to reduce the possibility of bias;
- v) Allow sharing information on corruption events, investigations, findings and/or sanctions, such as debarment lists, within the limits of confidentiality and/or other

legal requirements, to help other international development agencies and other actors implementing aid to identify and manage corruption risks.

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

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

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

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

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

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

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

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

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

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

