

The OECD fights foreign bribery

One of the priority areas in the OECD's work is the fight against corruption. Over the last ten years, the OECD has become the leading source of anti-corruption tools and expertise in areas including business, taxation, export credits, development aid, and governance. The OECD has paved the way for an end to bribery international business transactions through the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,¹ which has established rigorous anti-bribery laws and measures in 36 countries.

What is the OECD?

The Organisation for Economic Co-operation and Development (OECD) is a unique forum where the governments of 30 market democracies work together to address the economic, social, and governance challenges of globalisation as well as to exploit its opportunities. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice, and co-ordinate domestic and international policies.

The OECD Anti-Bribery Convention

This Convention, and other related OECD international legal instruments², require all 30 OECD countries³ and six non-OECD economies⁴ to implement a comprehensive set of legal, regulatory and policy measures to prevent, detect, investigate, prosecute, and sanction bribery of foreign public officials⁵. The Convention requires Parties to establish tough sanctions—including fines and imprisonment—for bribery of foreign public officials, also referred to as “foreign bribery”. These sanctions must apply to both individuals and companies who commit foreign bribery, according to the Convention. It also requires that countries’ courts confiscate bribes and any profits obtained through foreign bribery. According to the Convention, Parties must work together to ensure its effective application—for example, in gathering and exchanging evidence, or through extradition.

The OECD Anti-Bribery Convention is making a difference. Since its entry into force in 1999, there have been important changes to strengthen national anti-corruption laws in every country party to the Convention. There has also been a marked increase in the number of foreign bribery investigations and prosecutions. At the beginning of 2007, there were more than 100 ongoing investigations into foreign bribery cases. Prison sentences have been handed down in several countries and individuals and companies that committed foreign bribery have been penalised with fines of up to USD 28 million.

Monitoring countries' implementation of the Convention

The OECD Anti-Bribery Convention's peer review mechanism sets it apart from other anti-corruption tools. In signing and ratifying the Convention, countries agree to be part of this monitoring process. Each country must undergo systematic and thorough evaluation of its

¹ The text of the Convention is available at www.oecd.org/corruption.

² The Revised Recommendation of the Council on Combating Bribery of Foreign Public Officials in International Business Transactions and the Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials

³ The Member countries of the OECD are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

⁴ The six Parties to the OECD Anti-Bribery Convention who are not OECD Member countries are Argentina, Brazil, Bulgaria, Chile, Estonia, and Slovenia.

⁵ A foreign public official is anyone who holds an appointed or elected office of a foreign country or international organisation, or anyone who exercises a public function or undertakes activities in the public interest in a foreign country. The OECD Anti-Bribery Convention applies to bribery of public officials of *any* foreign country—not only countries that are party to the Convention.

implementation and enforcement of anti-bribery laws and policies by the entire group of States Parties to the Convention. In addition, each country must take an active role in evaluating other States Parties. Representatives of each of the 36 States Parties make up the *OECD Working Group on Bribery in International Business Transactions*. The Group meets in Paris four to five times a year, and works together year-round to ensure that each country is meeting its commitments as laid out in the Convention. The self-assessment and mutual evaluation of countries' work to implement the OECD Anti-Bribery Convention has unfolded in two phases.

Phase 1

All the States Parties of the OECD Convention have undergone the first phase of evaluation process. Phase 1 examinations are an initial review of each country's national laws and other legal texts to determine whether they meet the standards set in the Convention. In this phase, each country submits legal texts and other detailed information on all the aspects of their legal system relevant to the Convention, which are then reviewed by two other countries in the Working Group. Phase 1 reports cover the findings of this evaluation, assess the degree to which countries' legislation is in compliance with the Convention, and in some cases, identify outstanding areas where further attention should be given in the second phase of evaluation.

Phase 2

The second round of monitoring is considerably more far-reaching than the initial phase. Once it is determined whether a country has met the standards set by the Convention "on paper," the Working Group then evaluates how well each country is performing in applying the laws and other measures to fight foreign bribery. While the first phase of evaluation focused on laws and other legal texts, Phase 2 examinations consist of comprehensive written questionnaires, months of preliminary research, and a one-week visit to the country being evaluated by a team of examiners from two countries from the Working Group and the OECD Secretariat.

Intensive question and answer sessions with representatives of several government ministries, auditors, accountants, entrepreneurs, journalists, representatives of civil society organisations, and others, along with the written answers provided by government officials inform the examining team on the country's experience, knowledge and preparedness to fight foreign bribery. The team examines how prosecutors, judges, the police, tax officials, and other civil servants are fulfilling their obligations to contribute to the collective effort to prevent, investigate, prosecute and sanction foreign bribery.

The Working Group's findings, as well as its specific recommendations on how to improve implementation of the Convention, are captured in a report for each country.⁶ The examined country must take action in response to the Group's findings and recommendations. These recommendations for improvement might include strengthening legislation, raising awareness, training personnel in specialised methods to fight foreign bribery, or imposing tougher sanctions against individuals and companies. Each country makes an oral follow-up report on its progress one year after the Phase 2 examination. A written follow-up report is submitted two years after the Phase 2 examination.

In cases where the Working Group finds serious deficiencies in a country's implementation and enforcement of the Convention, a second Phase 2 evaluation, a *Phase 2bis* review, is conducted. If a country continues to fail to meet its commitments, other more stringent measures can be taken by the Working Group. The Working Group may require the country to report back regularly on progress in rectifying the problem. Working Group members may hold face-to-face meetings with officials of the evaluated country—including ministers and senior officials—to reinforce the importance of effective implementation and the steps the country should take to meet the standards of the Convention. Finally, the Working Group may opt to make a formal,

⁶ All Phase 1 and Phase 2 country reports are available on-line at www.oecd.org/corruption.

public statement that the country in question is not sufficiently in compliance with the OECD Convention and Recommendations and make a request for immediate action to correct the situation.

tour de table

In addition to the two distinct phases of evaluation, all countries report on their latest inquiries, investigations, and cases at every meeting of the Working Group. This frequent, oral reporting, referred to as a *tour de table*, provides a unique opportunity for all countries to be kept up-to-date with the latest news of progress and share experiences, challenges, and good practices.

This international, mutual evaluation process and the peer pressure generated within the Working Group have stimulated and guided governments to take concrete action to promote integrity in the corporate sector, prevent corruption and investigate and prosecute cases of foreign bribery.

global relations and other work areas

While the main focus of the Working Group is centred on monitoring the implementation of the OECD Convention and Recommendations, it also has other important areas of work. The OECD is a global leader in forging alliances and building networks that include transition economies, developing countries and emerging economies from all regions of the world. Relations with non-OECD economies to promote the OECD Convention and the fight against corruption span the globe—this is especially important as the OECD Convention remains open for accession by major emerging economies and other non-member countries.

The *Anti-Corruption Network for Transition Economies* supports the anti-corruption efforts of 20 countries in Eastern Europe and Central Asia. The *Asian Development Bank/OECD Anti-Corruption Initiative for Asia-Pacific* brings together 27 Asian and Pacific economies to define common objectives in building sustainable legal and institutional frameworks to fight corruption and work together to reach these goals. The OECD also works with governments of the Middle East and North Africa, and with Latin American countries to promote anti-corruption activities and to provide constructive forums where government, business, and civil society voices can be heard, questions and concerns can be discussed, and sound policies can be developed and reviewed.

The OECD's Working Group on Bribery also takes on projects in specific analytical areas related to the fight against corruption. For example, the Working Group recognised that public procurement—the purchase of goods and services by governments—is a critical risk area for corruption and bribery. The Group recently analysed the means and techniques of corruption in public procurement and will formulate recommendations on how best to address bribery in public procurement.

By monitoring the implementation of OECD Anti-Bribery Convention by the 36 participating countries, reaching out globally to support anti-corruption efforts in developing and emerging economies, and analysing key topics in the fight against corruption, the OECD Working Group on Bribery is major actor in the global combat against corruption.