



GOBIERNO DE CHILE
MINISTERIO DE RELACIONES EXTERIORES



Banco Interamericano
de Desarrollo



Technical Meeting
on
Co-operation in Bribery Investigations and
Prosecutions

(Restricted to Invited Experts only)

28 September 2006
Santiago de Chile, Chile

Draft Outline

**Organisation for Economic Co-operation and Development
in co-operation with the**

Inter-American Development Bank and

the Government of Chile

**and the contribution by
the Organization for American States, and
the United Nations Office for Drugs and Crime**

Draft Outline

Co-operation in bribery investigations and prosecutions

Objectives

The objectives of the technical meeting are to:

- 1) Discuss among practitioners most effective means to detect, investigate and prosecute bribery, in particular involving international bribery.
- 2) Identify hindrances in detection, investigation and prosecution, including unclear statutory definitions of jurisdiction over legal liability of persons.
- 3) Identify practices, mechanisms and strategies to facilitate and enhance international co-operation both between countries Party to the OECD Convention and with Parties to other anti-corruption conventions.

Target Audience

Invited experts only.

The technical meeting will primarily address public officials engaged in the investigation and prosecution of bribery cases. Officials from the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Finance, Public Prosecutor's Office, Supreme Court and Experts dealing with Mutual Legal Assistance or Extradition requests will also be able to attend.

Methodology

The one day program will take the form of short presentations by experts and subsequent short interventions by the floor. Participants will provide analysis of case studies. The participants will be given sufficient time to engage in detailed discussions on the topics identified.

Prior to the Technical Meeting, participants will be asked to prepare case studies and analysis of how the case studies would be investigated in their jurisdictions, what obstacles to successful prosecution do they foresee and what types of mutual legal assistance would they seek in conducting the prosecution.

Translation will be provided in English and Spanish.

General Structure of the technical meeting

Theme 1: The Complexity of the Bribe will consider two sub-items

- Session 1: What are the obstacles to successful prosecutions?
- Session 2: Legal Liability of parties

Theme 2: The need for effective international co-operation

- Session 3: Formal provisions and structures for international co-operation and exchange of information and evidence
- Session 4: Overcoming Obstacles to Success: What should be the next step?

Venue

The technical meeting will take place in the:

Hotel Plaza el Bosque Park & Suites
www.plazaelbosque.cl
Ebro 2828, Las Condes, Santiago de Chile
Telephone: 56 2 498 1800

Draft Outline

**Co-operation in bribery
investigations and prosecutions**

9:00 - 9:30	OPENING REMARKS by <i>Ambassador Luis WINTER</i> , Director, Special Politics, Ministry of Foreign Relations, Chile <i>Steve ZIMMERMANN</i> , Chief, Office of Institutional Integrity, Inter-American Development Bank <i>Patrick MOULETTE</i> , Head, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, OECD
9:30 – 13:00	THE COMPLEXITY OF BRIBERY
	Chair: <i>Patrick MOULETTE</i> , Head, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, OECD Discussants: <i>Professor Mark PIETH</i> , Professor for Criminal Law, University of Basel, Switzerland <i>Mr. José GRINDA GONZALEZ</i> , Public Prosecutor, Special Public Prosecutor's Office for the repression of Economic Crimes Related with Corruption, Spain <i>Steve ZIMMERMANN</i> , Chief, Office of Institutional Integrity, Inter-American Development Bank <i>Mr. Mark MENDELSON</i> , Deputy Chief, U.S. Department of Justice
Session 1	<i>Obstacles to the successful detection, investigation and prosecution of alleged bribery crimes.</i>
<p>The first part of the meeting will, building notably on the exchanges during the prior day Conference, explore further most effective means to detect, investigate and prosecute bribery. While corruption always existed, its forms evolved, using new and sophisticated techniques available in open societies.</p> <p>The first session will be an opportunity to identify obstacles and difficulties encountered by investigators and enforcement authorities to detect and identify the bribery offence, a rather complex matter in particular when involving a trans-national component. Different elements contributing to the complexity of cases will be discussed, including the use of agents and intermediaries as well as the links with other offences such as money laundering or accounting fraud.</p>	

Attention will be drawn to the difficulties arising in connection with legal persons. Particularly in grand corruption cases, the latter often deliberately encourage or even instruct employees or others with whom they are involved to engage in bribery for the purpose of a business transaction.

Consideration will also be given to the overall working relations between the different public agencies that may come across evidence of corruption, the reporting channels and eventual collaboration and co-operation between public agencies.

Presentation of both domestic and foreign cases will illustrate difficulties and help determine suitable solutions during the general discussion. Observations and considerations having guided the adoption of international principles to sanction legal persons for bribery acts will be presented and the various systems developed to establish their liability will be debated.

11:00 – 11:30 **Coffee break**

Session 2: *Clarification of the Legal Liability of Persons as a barrier to successful prosecutions*

Factors which may interfere in the decision to launch criminal proceedings may relate to considerations such as the identity of the persons allegedly involved, or other interests in relation to another country involved in the offence. When it comes to legal persons, problems may arise in relation to specific exceptions or defences that only apply to corporate liability as well as to prosecutorial discretion. The second session will focus discussion on the need to clarify the legal liability of persons in order to ensure success of bribery prosecutions.

13:00 – 14:30 **Lunch**

14:30 – 17:30 **THE NEED FOR EFFECTIVE INTERNATIONAL CO-OPERATION**

Chair:

Sandra Valle, Senior Interregional Advisor, Legal Advisory Section, Division for Treaty Affairs, UNODC

Discussants:

Dr. Günther Puhm, Senior Public Prosecutor, Oberlandesgericht München, Germany

Mr. Jorge Garcia Gonzalez, Chief, Office of Legal Cooperation, Department of International Legal Affairs, Organization of American States

Carolina Yumi de Souza, Coordinator-General of Asset Recovery – Asset Recovery and International Cooperation Department – Ministry of Justice, Brazil

Dr. Diego Solerno, Ministry of Foreign Affairs, Argentina

Mr. Christian Finsterbusch, Lawyer of the Directorate of Juridical Matters of the Ministry of Foreign Affairs, Chile

Session 3	<i>Formal provisions and structures for international co-operation and exchange of information and evidence</i>
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Corruption cases very often have a transnational character. Indeed, the briber and the person receiving the bribe may be from different countries. Also, even if the actors are from the same countries, they may purposely transfer the bribe via several foreign financial centers to hide the deed. Criminals often use sophisticated methods of travel and communication to conceal evidence of and profits from their crimes. As criminals continue to perfect their techniques, law enforcement authorities throughout the world must unite and find ways so that national boundaries do not act as shields behind which criminals can hide from justice.

International legal assistance and/or cooperation among jurisdictions are frequently key for investigating and prosecuting corruption cases. Legal assistance covers seeking and providing extradition as well as mutual legal assistance i.e. obtaining and transmitting information.

This session will discuss the varying principles that apply to extradition and MLA and elaborate on remedies to redressing possible impediments with particular attention to the increased use of mutual legal assistance and exchange of information at both the national and international levels. Consideration will be given to the consequences of regulating the liability for legal persons on the provisions of MLA. Where the Party provides for the administrative liability of legal persons, the issue is whether MLA can be provided should the requesting Party uses criminal liability (and the reverse issue where the Party has criminal liability). Discussion will also focus on the choice of mechanisms, i.e. administrative, judicial, informal, or other mechanisms. Expert panellists will make presentations on the nuts and bolts of how to complete requests for international cooperation for the various permutations of types of information, jurisdiction and requesting mechanism.

16:00 – 16:30 Coffee break

Session 4:	<i>Overcoming Obstacles to Success: What Should be the next steps?</i>
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Co-operation is often claimed difficult and unsuccessful. Defective legal framework, numerous material conditions and lengthy procedures are among the reasons put forward. A clear view of the legal framework, provisions, conditions and formal procedures is crucial to the success of requests for international legal assistance, the collection of evidence abroad, and repatriation of proceeds of corruption. However, is this sufficient?

Based on the discussion in the prior sessions, this one will try to identify the primary obstacles to successful investigation and prosecution of bribery and corruption cases and what types of intervention and assistance are necessary in the future to enhance the capacity to obtain information in cases involving multiple jurisdictions and to maximize the likelihood of prosecutorial success. Particular attention will be paid to the relevance and usefulness of existing international legal instruments.

A remedy that may be contemplated is the possibility of establishing and operating informal networks of contacts. If such networks could possibly facilitate co-operation between relevant authorities in different countries of the region and thus facilitate efficient provision of MLA, how should they be set up or operate. Consideration may, in that context, be given to whether any differentiations apply between countries Party to the OECD Convention and parties to other anti-corruption conventions of the region.

17:30 – 18:00	CONCLUSIONS
	<p data-bbox="456 374 1295 443"><i>Steve ZIMMERMANN</i>, Chief, Office of Institutional Integrity, Inter-American Development Bank</p> <p data-bbox="456 456 1315 526"><i>Patrick MOULETTE</i>, Head, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, OECD</p>
<p data-bbox="229 542 1375 748">Participants will be invited to make suggestions as to possible follow up action to this technical meeting on national, sub-regional or regional level. The concluding session will subsequently aim at summarizing the main findings of the presentations and discussions having taken place during the meeting. The organisers may, depending on the exchanges during the day, propose the format in which a meeting report could be drafted in order to facilitate the participants their reporting back to local authorities and staff.</p>	