

Shaping a New World: Combating Foreign Bribery in International Business Transactions

Conference Conclusions

Through the adoption of international laws and standards on foreign bribery set out under the OECD Anti-Bribery Convention, the UNCAC (article 16) and now the G20 Anti-Corruption Action Plan, the fight against foreign bribery has gained significant momentum. The KPK/OECD International Conference on Foreign Bribery helped propel this momentum; common challenges and good practices were identified and professional networks were strengthened. The following conclusions from the conference help the international anti-corruption community forge ahead in fighting foreign bribery with a mutual understanding of how to achieve its goals.

1. Foreign bribery distorts competitive markets, hampers sustainable economic development and undermines good governance. By criminalising foreign bribery countries are not only sending a strong signal to the international community that their companies are prohibited from engaging in corrupt business dealings abroad, but are also discouraging foreign companies from engaging in corrupt activities in their countries.
2. The prevention, detection and sanctioning of foreign bribery requires a holistic, multi-disciplinary approach involving all stakeholders and international and regional networks. International organisations, the multilateral development banks, the private sector and civil society have all played their own complementary roles in this fight against foreign bribery.
3. Membership in - or close engagement with - the OECD Working Group on Bribery is one of the most significant common elements for G20 members that have taken proactive steps to criminalise foreign bribery.
4. Regional initiatives such as the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and the Anti-Corruption Network for Central Asia and Eastern Europe could be the basis of effective technical assistance delivered to individual countries and regionally, where horizontal issues have been identified.
5. Solutions need to be urgently sought to overcome the ever-present challenges that countries are facing in obtaining and providing mutual legal assistance (MLA). Countries are increasingly seeking new ways to share information informally as a precursor to formal information-sharing.

6. While countries are required under international standards to make bribery a predicate offence to money laundering, anti-money laundering mechanisms have not, as yet, proven to be an effective source of detection of foreign bribery.
7. Given the complex and clandestine nature of foreign bribery, innovative techniques are required for its detection. Countries are increasingly applying intelligence-based approaches to investigating bribery and relying on special investigative techniques, such as wire-tapping and covert operations. There is also a trend to establish and strengthen specialised bodies for investigating and prosecuting corruption.
8. There is a growing trend to establish corporate liability. Those countries that do have corporate liability are increasingly looking for more creative and effective approaches to ensure that they apply to the diffuse and decentralized decision-making structures of today's enterprises.
9. The private sector has joined the fight against foreign bribery with the help of organisations such as the International Chamber of Commerce. More recently, the OECD adopted the Good Practice Guidance on Internal Controls, Ethics and Compliance - the first international instrument adopted by an inter-governmental organisation directed to the private sector on how to prevent and detect foreign bribery.
10. Some countries have adopted defences that would exonerate companies from liability for transnational bribery offences in cases where the companies can show that they had adequate and effective internal control systems in place.
11. Debarment and cross-debarment could be one of the most effective and relevant sanctions. Information held by the multilateral development banks on foreign bribery could be a useful source of information for national law enforcement authorities.
12. The bribery of foreign public officials is not just a way of obtaining so-called legitimate business interests; it is also a gateway to other serious transnational crimes, such as terrorism, illegal logging, and the trafficking in drugs, human beings and endangered species.

The KPK/OECD International Conference on Foreign Bribery was opened by His Excellency Susilo Bambang Yudhoyono, President of the Republic of Indonesia, and also included the participation of ten Indonesian Ministers, the Commissioners of the KPK and the Deputy Secretary General of the OECD. The conference was attended by over 400 participants from 38 countries, including representatives from over ten international organisations and bodies involved in the fight against corruption.
