The Working Group on Bribery in International Business Transactions ('Working Group') held one of its regular consultations with the private sector and civil society on 13 October 2011 in Paris in keeping with the 2009 Anti-Bribery Recommendations, according to which, the Working Group must regularly engage the private sector and civil society on issues related to the fight against foreign bribery.

This consultation featured remarks from Professor Mark Pieth, Chair of the Working Group on Bribery and presentations from Heidi Olsen, Corporate Compliance Officer of Statoil; Stéphane Bonifassi, a Lawyer from the law firm, Lebray & Associés in Paris and a Member of the IBA Anti-Corruption Committee; and Charles E. Duross, Deputy Chief of the Fraud Section of the United States Department of Justice; thereby offering a business, legal and prosecution perspective to the forum for discussion.

The consultation focussed on the challenges of multi-jurisdictional anti-bribery enforcement. This topic was chosen by the Working Group in response to requests from the private sector, which has noted that the increased enforcement of foreign bribery cases in multiple jurisdictions presents a new challenge for compliance.

Comments made by representatives from the private sector focused on the challenges of handling simultaneous multi-jurisdictional investigations. Participants considered the principle of double jeopardy, (which forbids that a defendant be tried again on the same or similar charges following a legitimate acquittal or conviction in one jurisdiction), acknowledging that this principle did not exist in all Working Group jurisdictions. Concern was expressed as to how companies could do business—and respond to investigations and/or prosecutions (often simultaneously)—in multiple jurisdictions that have different substantive laws, enforcement procedures, penalties and available resources. Participants also noted that multijurisdictional anti-bribery enforcement can include actions taken by agencies other than law enforcement, such as debarment from competition for public procurement contracts, which can add to the numerous factors companies must be aware of when investigated or prosecuted for an illegal act.

Emphasis was placed by both representatives from the private sector and law enforcement on the need for certainty and fairness towards investigated and/or prosecuted companies. A law enforcement authority representative added that the consultation topic is indicative of progress made in enforcing anti-bribery laws but recognised the need for fairness. A law enforcement authority representative added that the consultation topic is indicative of progress made in enforcing anti-bribery laws.

In response, the possibility of developing a concept of single jurisdiction was extensively considered. This discussion included reference to the International Bar Association’s Report of the IBA Legal Practice Division Task Force on Extraterritorial Jurisdiction, which includes a chapter on multi-jurisdictional enforcement of anti-bribery and anti-corruption laws. Possible criteria for the development of this concept include holding prosecutions in a single jurisdiction, according to the home country where the official was bribed, the home country where the company is domiciled, the first country to take up prosecutions, location of evidence, and availability of prosecutorial resources. Consideration was given
as to the best forum in which to come up with such a concept, including the OECD, World Bank and IMF collaborative efforts. Concern was expressed as to the feasibility of developing such a single-jurisdiction concept, given the differences in jurisdictions and the time that it would take to develop such a concept.

Participants also expressed concerns as to the increasing texts on compliance policies and codes available to companies. These policies and codes are used to prevent the kind of corrupt behaviour that would result in an investigation or prosecution by law enforcement. The multiplicity of possible compliance codes is a cause for concern for companies, leading to confusion as to which policies and codes to implement and increasing the cost of compliance for companies. Furthermore, many of the participants expressed concerns with the ‘legalisation of compliance codes’, in that companies have taken these codes to mean the word of the law, thereby forgetting that they are under an obligation to adopt compliance codes according to the specific needs of the company. Discussions were raised around the applicability of compliance certificates in a court of law. Suggestions were made as to whether to focus on an ‘industry approach’ toward compliance codes. Some felt that the creation of industry-specific compliance codes would only add to the volume of compliance documents already available. During the discussion, it was emphasised that compliance programs should be part of the ‘DNA of a company’, with compliance procedures to permeate the company's everyday work.

The issues and concerns raised by the Consultation participants highlight the many challenges that yet remain for businesses and governments, as well as possible solutions and the need for continuing this dialogue.

**Related references:**

Agenda for the consultation:
http://www.oecd.org/document/16/0,3746,en_2649_34855_48749968_1_1_1_1,00.html

International Bar Association’s Report of the IBA Legal Practice Division Task Force on Extraterritorial Jurisdiction:
http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx

OECD Good Practice Guidance on Internal Controls, Ethics and Compliance: