OECD Anti-Bribery Convention
OECD Guidelines for Multinational Enterprises

Frequently asked questions for 2011 Jessup Competitors

As part of its 50th Anniversary celebration and the Initiative to Raise Global Awareness of Foreign Bribery, the Organisation for Economic Co-operation and Development (OECD) is pleased to announce its partnership with the International Law Students Association (ILSA) for the 52nd Philip C. Jessup International Law Moot Court Competition. The following information is provided to competitors to assist in their research for the Compromis. The OECD will not respond to individual requests.

What is the Anti-Bribery Convention?

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions entered into force on 9 December 1999. It currently has 38 States Parties, including the 33 OECD members and 5 non-members (Argentina, Brazil, Bulgaria, Estonia and South Africa).

In November 2009, the States Parties adopted a new Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions. The Recommendation strengthens the existing legal framework of the Convention by introducing stronger provisions for combating facilitation payments, protecting whistleblowers and improving communication between public officials and law enforcement authorities.

Does the Anti-Bribery Convention have travaux préparatoires?

While some background documents were produced in the context of the negotiations leading to the Convention, there are no official travaux préparatoires to the Anti-Bribery Convention.

What is the Working Group on Bribery in International Business Transactions (WGB)?

The Working Group on Bribery was established in 1994 by the Committee on International Investment and Multinational Enterprises (CIME). In 1999, when the Anti-Bribery Convention entered into force, the WGB was established as the framework for ‘a programme of systematic follow-up to monitor and promote the full implementation of this Convention’ (Article 12). The mandate of the WGB was further extended in the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials (Paragraph XIV). Despite being institutionally linked to the Investment Committee, in the framework of its role in the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the WGB has been functionally independent since 1997. In this context, the Working Group is solely responsible for conducting work in the Anti-corruption Output Area and its mandate is not linked to that of its notional parent body, but is unspecified in duration since it is derived directly from the Convention. The WGB is effectively the Conference of States Parties to the Anti-Bribery Convention and includes countries which are not members of the OECD, or Parties to the OECD Convention.
For further information on the Mandate of the WGB:

- 1997 Revised Recommendation on Combating Bribery in International Business Transactions, C(97)123/FINAL
- 2009 Recommendation on Further Combating Bribery of Foreign Public Officials

How is the Convention enforced?

As mentioned above, Article 12 of the Convention provides for a ‘programme of systematic follow-up to monitor and promote the full implementation’ of the Convention.

Monitoring is subject to specific agreed upon Principles and takes place in three phases of examination:

- Phase 1 evaluates the adequacy of a country’s legislation to implement the Convention
- Phase 2 assesses whether a country is applying this legislation effectively
- Phase 3 focuses on enforcement of the Convention, the 2009 Anti-Bribery Recommendation, and outstanding recommendations from Phase 2.

All evaluations are published on the OECD website.

Has the ICJ ever presided over a dispute relating to breach of the Anti-Bribery Convention?

No.

What is Mutual Legal Assistance (MLA)?

MLA, extradition and recovery of proceeds of corruption are essential mechanisms in the prosecution and sanctioning of transnational crime, including bribery of foreign public officials. MLA is a formal process to obtain and provide assistance in gathering evidence for use in criminal cases, transfer criminal proceedings to another State or execute foreign criminal sentences. In some instances, MLA can also be used to recover the proceeds of corruption. Article 9 of the Anti-Bribery Convention sets out the obligations of States Parties with respect to MLA for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of the Convention, specifically that a Party is required to provide prompt and effective assistance to other Parties to the fullest extent possible under its laws and relevant treaties and arrangements. A requested Party must 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.

What is a National Contact Point (NCP)?

The NCP is a government office responsible for encouraging observance of the MNE Guidelines in a national context and for ensuring that the Guidelines are well known and understood by the national business community and by other interested parties. The NCP gathers information on national experiences with the Guidelines, handles enquiries, discusses matters related to the Guidelines and assists in solving problems that may arise in this connection. When issues arise concerning implementation of the Guidelines in relation to specific instances of business conduct, the NCP is expected to help resolve them. Generally, issues are dealt with by the NCP in whose country the issue has arisen. Any person or organisation may approach a National Contact Point to enquire about a matter related to the Guidelines.

For more information, see:

- OECD Anti-Corruption Convention: www.oecd.org/daf/nocorruption/convention