

RESPONSES TO THE CONSULTATION PAPER ON THE REVIEW OF THE OECD ANTI-BRIBERY INSTRUMENTS

Comments from Emmanuel S. Ionnides (Jurist)

Question 1

The general impressions concerning the effectiveness and implementation of the OECD anti-bribery instruments:

Undoubtedly, they are instruments of an international legal status with strong characteristics of ethical capitalism. Austere and definitely sufficient if Member States demonstrate political will to enforce the principles involved. The instruments stand attractive to those non-Parties willing to assume a responsible position in the betterment of the international principles involved. The mere fact that Members have increased over the past decade is indeed supporting evidence of its international recognition. Their effectiveness and implementation cannot be further assessed by evaluating their canons and norms, but merely by evaluating how often Members demonstrate the political will to implement them as well as to make it publicly known that they have done so when needs arise and with an easily identifiable high degree of reciprocity and with respect to comity. In this respect, a public record of reported incidents with cause of action outlined and relevant methodology implemented would serve as an aid to persuade the international community to balance the need to uphold the rule of law with the wider public interest.

Question 2

Additional insights on specific issues raised in this Consultation Paper, including suggestions regarding the effectiveness of the OECD anti-bribery Instruments:

6. Statute of Limitations - par. 56 – line 6:

“...The period usually begins to run on the day on which the crime was committed...”

It is suggested that the period should usually begin to run either on the day on which the crime was committed, **or on the day on which suspicions arose that it was committed.** This would hopefully serve as a catalytic deterrent against those being hopeful that when 15 years or so have passed that criminal actions are then time barred.

7. Money Laundering – par. 60 – lines 7-8:

“...corporate vehicles are widely used to facilitate the commission of crimes, including money laundering, since they often offer the opportunity to conceal beneficial ownership and control.”

It is not clear to which legal persons the text refers to. Does it refer to any legal persons, or does it intend to refer to offshore jurisdictions where public records are not kept and flat annual tax fees are established.

Question 3

Suggestions regarding the effectiveness of the OECD anti-bribery instruments:

On the occasion of the feature article “SWIFT response to preventing terrorist financing” of the INTERNATIONAL BAR NEWS, “Game, set and match to Brussels”, February 2008 Issue, pp. 12-14, it is suggested that the instruments ought to lay emphasis on the need of the central bankers to report suspicious bank transfers outside of the sphere of suspicion of terrorist activity and for the purposes of regulating bribery crimes as well.