

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

Comments from Asian Development Bank (Capacity Development and Governance Division, Regional and Sustainable Development Department)

Our observations are as follows.

(1) We endorse the view put forward in the Review, in that we think that the effectiveness of the OECD's anti-bribery instruments should be assessed at various levels. First, the instrument has been quite effective in triggering the development of a wide range of legal and institutional instruments to combat bribery by the Parties to the Convention. Second, the instrument has been effective in triggering a substantial increase in the number of investigations and prosecutions of foreign bribery cases by the Parties to the Convention. Third, we would assume that the effectiveness of the instrument has been enhanced by the establishment of various other but related initiatives to combat corruption. Examples of these are the UNCAC, the OECD-ADB Anti-Corruption Initiative, the Stolen Asset Recovery initiative, but also the much tougher stance that individual countries have taken on corruption, including in the context of ODA.

At the same time, however, it has to be acknowledged that the effectiveness of the instrument in terms of the number of actual convictions has been unfortunately low.

(2) - (3) Given the fact that the purpose of the Convention is to "target the supply side of the bribery of foreign public officials" and that "the role of the foreign public officials in bribery transactions is not dealt with" (cf. paragraph 132), we would like to endorse the suggestion made in paragraph 133, namely "for all Parties and non-Parties to the Convention (...) to sign, ratify and implement the UNCAC as well as regional anti-corruption conventions [since] this would significantly help to provide an effective legal framework for criminalising the passive bribery of foreign public officials [i.e., because UNCAC addresses both the supply and demand side of bribery].

As we are not actively involved in the direct implementation of the instruments, it is difficult for us to comment with any greater degree of clarity. We hope that these are of some value. Please let us know if further clarification is required.