

**MENA-OECD
INVESTMENT
PROGRAMME**

**BUSINESS ETHICS AND ANTI-BRIBERY POLICIES
IN SELECTED MIDDLE EAST AND NORTH AFRICAN COUNTRIES¹**

**- MENA TASK FORCE ON BUSINESS INTEGRITY AND
COMBATING BRIBERY OF PUBLIC OFFICIALS -**

- Working Group 1 -

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¹ This report includes Algeria, Bahrein, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, The National Palestinian Authority, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, and Yemen.

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FOREWORD

1. Countries from the MENA region have been growingly concerned about their failure to attract important amounts of foreign and local investment. Corruption, bribery and the lack of transparency in business transactions have added to the multitude of risks to investment and trade in the region. MENA countries' inability to attract and retain investment has impaired the ability to deal with mounting demographic and economic problems and hampered the fundamental socio-economic development and welfare of the populations.
2. Enhancing integrity in business transactions and reducing bribery of public officials will help overcome part of the development problem. Specific measures to promote private sector transparency, accountability and ethics and to effectively deter bribery of public officials in business transactions are feasible ways to improve the attractiveness of the region among local and foreign business groups.
3. Based on these considerations, the Working Group 1 on Open and Transparent Investment Policies of the MENA OECD Initiative on Governance and Investment for Development's Investment Program decided to establish a Task Force on Business Integrity and Combating Bribery of Public Officials. Open to senior governmental anti-corruption experts or their representatives from all interested Middle Eastern and North African countries as well as to senior representatives of the MENA business sector and civil society, the Task Force aims to assist participating governments in enhancing their investment climate by taking targeted measures to improve transparency and accountability in the private sector and to more effectively sanction bribery of public officials in business transactions. Eleven countries and jurisdictions of the Middle East and North Africa have joined the Task Force: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Morocco, the National Palestinian Authority, Qatar, and Yemen.
4. The Working Group 1 programme aims at proving support to the MENA countries for upgrading their investment policy standards, helping them to attract more investment, maximising the benefits of investment and strengthening the capacity of policy-makers in the MENA region. With the support of OECD countries and other partners, creation of a multi-stakeholder dialogue, experience-sharing and capacity-building in the region are essential to complete these goals. Improving integrity in business transactions in the MENA region may play a major role in creating a competitive economic environment and in attracting more investment.
5. The present report intends to support the work of MENA governments in this respect by providing them with a comprehensive and structured overview of the region's anti-bribery framework. Based on information that is publicly available, or that has been provided by MENA governments and partner international organizations in the framework of the MENA Task Force on Business Integrity and Combating Bribery of Public Officials, this report takes stock and reviews policies, legislation and initiatives addressing business ethics and bribery in business transactions with public officials in seventeen MENA countries and jurisdictions as of the first quarter of 2006. It aims to assist MENA governments in better understanding the main challenges which their countries currently face and to allow them to learn

from the experience of neighbouring countries and to identify measures that might enhance the effectiveness of their current anti-bribery efforts.

6. The approach used in this study is a general one. It presents a preliminary overview of the main developments in the area of business ethics and combating bribery in 17 Middle Eastern and North African countries and jurisdictions. As such, it includes processes and measures aimed at bolstering the ability of domestic and foreign investors to resist and prevent bribery. It also includes the legal conditions governing the activity of private sector intermediary agents or agencies in their relation with public officials in the context of public procurement and other public decision-making. Due attention is also paid to the general legal and institutional framework for prohibiting bribery of public officials.

7. The approach is further thematic and comparative to allow identifying similarities and differences between MENA countries. Practice, policies and measures are examined under a set of criteria, as they are typically used in similar analyses of anti-bribery policies of OECD and non-OECD countries. The preliminary study is thus divided into three sections: Section 1 presents an overview of policies and initiatives aimed at fostering business ethics as such measures may bolster the ability of relevant actors to resist and prevent corruption in business deals with public officials. Section 2 covers MENA regimes to prohibit and sanction bribery of public officials in business transactions. Section 3 addresses the structures in place and supporting rules to enforce anti-bribery laws and other relevant legislation.

8. This preliminary report has been drafted by the Secretariat of the OECD, based on a project directed and coordinated by Dr. Frédéric Wehrlé, Principal Administrator, MENA Anti-Bribery Program, Anti-Corruption Division, Directorate for Financial and Enterprises Affairs, OECD. It is based on extensive research work undertaken by Dr. Ali Sawi, Professor of Political Science, Cairo University, Egypt, and Dr. Carole Doueiry Verne, Assistant Professor of Business Management, University of Saint Joseph, Beirut, Lebanon, both under contract to the OECD. While all reasonable care has been taken in the preparation of this preliminary study, it should be stressed that readily available information is not always complete and that, in a rapidly and continuously evolving legal, economic and political environment, some of the information contained in this report may fast require updating.

9. The preliminary findings, interpretations, and conclusions expressed in this report do not necessarily represent the views of the OECD and its member countries, and the OECD does not guarantee the accuracy of the data included in this publication and accepts no responsibility whatsoever for any consequences of their use. The term “country” as used in this report also refers, as appropriate, to territories or jurisdictions and does not imply any judgement by the OECD or its member countries as to the legal or other status of any territorial entity.

EXECUTIVE SUMMARY

10. In a region where bribery in business transactions does occur, as elsewhere in the world, preventing and curbing the occurrence of bribery in connection with the obtaining of a government procurement contract, a public decision or any other undue advantage has been widely acknowledged as an important objective for Middle Eastern and North African governments.

11. Over the past decade, MENA governments have made vigorous efforts to prevent and deter more effectively bribery of their own public officials. These reforms have included various strategies to prevent corruption in the public sector, addressing integrity of public servants, more effective administrative procedures and transparent rules. They have also included, in some countries, amendments to the existing legal framework for prohibiting and sanctioning bribery of public officials with the aim of improving the original laws and correcting the faults, the creation of specialized anti-corruption agencies empowered to investigate alleged acts of bribery, and the establishment of anti-money laundering mechanisms. As part of these efforts, ten MENA countries (Algeria, Djibouti, Egypt, Jordan, Morocco, Qatar, Saudi Arabia, Syria, United Arab Emirates) had either signed or ratified the United Nations Convention against Corruption (UNCAC) as on 1 January 2006.

12. Despite these positive achievements, there is room on a number of points for improvement to the legal environment and supporting rules and institutions for combating the occurrence of bribery of public officials in the conduct of business. Based on the preliminary findings of the review of MENA anti-bribery policies, further efforts appear to be required in terms of measures aimed at preventing the occurrence of bribery of public officials right from the outset, of measures aimed at prohibiting and sanctioning bribery of public officials, and of measures aimed at investigating, prosecuting and punishing the offence of bribery of public officials more effectively.

Preventing and deterring the occurrence of bribery of public officials in business transactions

13. An increasing number of MENA governments have acknowledged the fact that there is more to the fight against bribery of public officials than simply the judicial aspect. As part of their larger effort to combat bribery of public officials, many MENA countries have thus resorted to the regulation of the activity of intermediation and agency services to companies in government procurement and public decision-making, developed corporate accounting and auditing standards and practices with the aim of improving the transparency of commercial transactions, and developed necessary legal frameworks against money-laundering.

14. MENA regulation of the activity of intermediation and agency services to companies in government procurement and public decision-making has involved, in many countries, sectoral prohibitions –targeting sensitive industries- and, where intermediation is generally allowed, the regulation of intermediation and agency work is often associated with specific requirements in order to ensure transparency and integrity in the process; non compliance with such requirements, especially when combined with bribery, can lead to severe sanctions. In addition, many national penal codes prohibit the

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actions of receipt or the passing of rewards to public officials for purposes of influencing their decisions in the discharge of their public functions (trading in influence).

15. Whereas regulation of the activity of intermediation has been often dictated by MENA governments' efforts to combat bribery of their own public officials, corporate accounting and auditing standards and practices have been developed with the broader aim of improving the transparency of commercial transactions. In a growing number of countries, requirements have been established so that the financial statements of some companies, depending on their structure and size, are subject to auditing. To preserve the independence of auditors in performing their duties, the laws and regulations of an increasing number of countries have also established a list of requirements as to education, membership and duties deemed to be incompatible. In some countries, non compliance with the accounting and auditing requirements by either the corporations or the accountants and auditors may now entail severe punishment.

16. Such measures aimed at promoting adherence to international standards of accounting and auditing for private companies have sometimes been complemented by measures aimed at promoting the integrity of relevant private corporations. Such measures have included the promotion of the development of business codes of conduct and/or public information activities or public education programmes – including school and university curricula - on business ethics. In some countries, such initiatives have been complemented by business ethics initiatives in the private sector (e.g. development of codes of conduct for the promotion of the use of good practices in the contractual relations of businesses with the State, training of corporate managers in business ethics).

17. In order to prevent the use of their financial institutions for money-laundering purpose, many countries have also made significant efforts to develop and implement necessary legal frameworks against money-laundering. Such frameworks have established obligations whereby the professions closest to the point which such transactions occur are required to exercise vigilance and report suspicious transactions to competent authorities.

18. Despite these positive achievements, there is room on a number of points for improvement to the legal environment and supporting rules and institutions for combating the occurrence of bribery of public officials in the conduct of business. While MENA legal provisions on the activity of intermediation and other agency activities in connection with government procurement and public decision-making often meet high standards, regulations of such activities sometimes appear to be rather complex, opening the door for interpretations of legislative intent and for sometimes unpredictable decisions by those in charge of implementing the legislation. There is generally no across-the-board rule relating to the conditions under which an intermediary may –or may not – intervene during a tendering or public decision making process or to the conditions under which an awarding authority can exclude a bidder. OECD countries' experience in the latter area suggests that mandatory suspension from competition from public contracts may have a strong deterrent effect on would-be corrupt companies.

19. Although a large number of countries have made significant efforts to develop and implement necessary institutional frameworks against money-laundering, such frameworks can achieve concrete results however only if the anti-money laundering legislation provides for bribery as a predicate offence.

20. While important progress has been achieved in corporate accounting, auditing and disclosure requirements, further improvements could be achieved in some countries by issuing a modern legislative framework that includes an appropriate regulatory framework for practicing auditors, addressing weaknesses in professional education and training arrangements, introducing qualification examinations for auditor licensing, and developing an enforcement mechanism to ensure compliance with applicable

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accounting and auditing standards. In other countries, further improvements in terms of compliance could be achieved by strengthening oversight of both the profession and corporations and by streamlining of the body of the law.

21. Greater efforts are also required to promote the development of standards and procedures designed to safeguard the integrity of relevant private entities, in particular through the adoption of specific measures aimed at encouraging the development and implementation of business codes prohibiting bribery and other related illicit practices in business transactions and by undertaking public education programmes, including school and university curricula, that contribute to business ethics and non-tolerance of bribery. As part of their larger effort to improve the transparency of commercial transactions and combat bribery of public officials, MENA countries should also ensure that the tax deductibility of expenses that constitute bribes should be disallowed.

Prohibiting and sanctioning bribery of public officials in business transactions

22. Active and passive bribery of public officials is criminalised throughout the region and the legal provisions relevant to this matter often meet high standards. Bribing a foreign public official does not seem to be punishable in most, if not all, MENA countries, however.

23. Bribery of public officials and employees is a serious offence. Sanctions can be pretty harsh in some countries, up to 25 years of imprisonment. On an average, imprisonment sanctions range between two and 10 years throughout the region. Many laws also contemplate the confiscation of the bribe; they also often provide for complementary civil or administrative sanctions for the offenders. Some even contemplates corporate criminal liability. Furthermore, tender laws of many countries provide for the disqualification of bidders who have been guilty of bribery crimes.

24. Many MENA anti-bribery provisions are broadly drafted as to reach large categories of public officials. For example, in Egypt, the definition of public officials cover any person performing a public service or employed in governmental agencies, as well as members of national or local representative councils either elected or appointed, members of the judiciary, and board members, employees and managers of any enterprise in which the state is a shareholder. A review of the statutes also generally confirms a broad interpretation of what constitutes a bribe or any other undue advantage: the bribe may be material or immaterial.

25. In addition to the prohibition of active and passive bribery of public officials, a large number of countries have resorted to the prohibition of illicit enrichment as part of their larger effort to combat bribery of public officials. The anti-money laundering legislation of an increasing number of countries also provides the possibility for courts to hold liable persons involved in the laundering of assets or money derived from bribery.

26. Despite these positive achievements, there is room on a number of points for improvement to the legal regime for prohibiting and effectively sanctioning the occurrence of bribery of public officials in the conduct of business. The first area for improvement relates to the primary focus of anti-bribery laws of many MENA countries on public officials and employees. In most countries, the prohibition against bribery is to ensure first and foremost that the government will function properly and that no public employee will use his or her position or influence to obtain any personal benefit or gain. The non-punishability of the briber, when he/she reports the bribery offence voluntarily to the competent authorities before its discovery or even after its discovery, is illustrative of this approach. Such provisions, which exist

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in a number of Middle Eastern countries, present a potential for misuse and may impact adversely on a country's ability to effectively prevent the giving of bribes to public officials in the conduct of business.

27. The fact that passive bribery is often punished more severely than active bribery is another illustration of it. In some countries, the sanctions provided for active bribery of public officials appear to be much too modest for being dissuasive. The same could be said about the unavailability of confiscation of the proceeds of bribery. Experience of OECD countries suggests that, as confiscation of the proceeds of bribery hits directly entrepreneurs' pocket books, the existence of such provisions, when effectively applied, can be a powerful measure.

28. In addition to this uneven treatment of the two parties involved, most MENA laws do not adopt the principle of criminal liability of legal persons (e.g. corporations), except, in some countries, with specific economic crimes that fall outside the scope of bribery. OECD countries' practice shows that establishing corporate liability for the offence of bribery may have a strong deterrent effect on the would-be corporate bribers.

Investigating, prosecuting and punishing bribery of public officials

29. Most MENA laws provide for a wide variety of traditional means of investigation. These include methods designed to induce people to reveal information and to ensure that evidence is found and preserved and measures to ensure that suspects or persons likely to be in possession of information are present. More sophisticated means of investigation (e.g. undercover work, use of informers) are available in some countries. Further more, in some countries, legal provisions have been modified in respect to access to bank information. A growing number of countries have opted for specialised anti-corruption agencies or departments with a view of enhancing both detection and prosecution of corruption. Many countries have also established an obligation incumbent on their own public officials to report criminal activities, as it may provide intelligence. Some Middle Eastern and North African laws provide for a broad interpretation of the notion of the territoriality of the offence. Some countries also recognize the concept of extraterritoriality, thus exposing their nationals who would have violated the bribery laws of another country, to criminal prosecution in their home country.

30. These measures represent important tools in investigating, prosecuting and convicting offenders; however, there is still room on a number of points for improvement. In many countries, in the absence of effective protection of those public officials who have become aware of criminal behavior and want to disclose it to the public authorities, such measures may have little effectiveness in bringing to light acts of corruption with a view to the punishment of the offenders. In some countries, the exercise of extra-territorial jurisdiction is sometimes subject to procedural requirements that may make it especially difficult in sensitive cases of bribery of public officials committed abroad. Also much formality still prevails in the region as to the sharing of information with third countries, thus impeding the effectiveness of international judicial cooperation.

31. As a result of a certain inclination on the part of some MENA prosecutors to primarily prosecute those who take bribes, for reasons which have to do with both moral considerations and efficiency of prosecution, sanctions more often affect the recipients of the bribe (i.e. the public official) than the bribers. Immunity privileges applicable to high-ranking civil servants and members of parliaments, while they are meant to protect from arbitrary prosecution and political interference, may also represent obstacles to the prosecution of bribery of public officials. Effective enforcement of MENA anti-bribery provisions is also sometimes impeded due to insufficient training of personnel investigating and prosecuting economic crimes such as bribery of public officials.



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INTRODUCTION

32. It is widely acknowledged that countries of the Middle East and North Africa suffer from corruption of their own public officials that pervades many of the business transactions that take place in the region. This has increasingly been characterised by many MENA governments as a key problem: as of today, virtually all MENA governments acknowledge that bribery of public officials is an impediment to economic growth and investment.

33. Greater awareness of the fact that bribery is harmful to business seems to have been generated within the business community of MENA countries as well. A survey conducted in 2000 in nine countries and jurisdictions (Egypt, the West Bank and Gaza, Israel, Jordan, Lebanon, Saudi Arabia, Tunisia, and the United Arab Emirates) by the Council on Foreign Relations Study Group on Middle East Options, a US-based non-governmental organisation, revealed that business people throughout the region consider corruption as the third-most important hurdle to their operations after high tariffs and taxes.

34. The legislative and organisational reforms undertaken by a growing number of countries of the Middle East and North Africa during the past years bear witness to the attention that governments have devoted to fighting corruption of their own public officials. As MENA countries now consider ways to promote rapid and lasting economic growth, further reforms, specifically targeting bribery of public officials in the conduct of business, have increasingly become higher on their public agenda.

A. PREVENTING BRIBERY OF PUBLIC OFFICIALS IN THE CONDUCT OF BUSINESS

35. MENA public authorities have increasingly realised the importance of an integrated approach including both judicial and preventive measures in wining the fight against bribery of their own public servants.

1. Public measures designed to prevent and deter the occurrence of bribery of public officials in the conduct of business

36. With the objective to prevent the occurrence of bribery of public officials in the conduct of business, some countries have regulated specific actions of the corporate sector in connection with government procurement which may harbour bribery. Furthermore, a growing number of countries, as part of their larger effort to combat bribery of their own public officials, have resorted to the regulation of the activities of banks and non-banking financial institutions in order to prevent the use of financial channels for the laundering of bribes given to public officials and the proceeds of bribery. Other measures taken by MENA governments to prevent corruption of public officials involving the private sector include measures aimed at ensuring transparency and accountability of commercial operations.

a) MENA regulations of actions of intermediation and other agency activities in connection with government procurement and other public decision-making

37. As intermediation consists of the activity of those middlepersons who interpose themselves between the official decision-makers and a company who seek a public decision and who intervene on behalf of the latter to facilitate the conclusion of a business deal –often a public procurement contract– between the company and a given public authority, or to obtain favourable public decisions, such activity has been viewed by many MENA countries as a potential corruption-prone area. As a result of this, a large

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number of Middle Eastern and North African countries have resorted to the regulation of the activity of intermediation and agency to companies in government procurement and public decision making. As suggested by the legislative history of those regulations, the purpose of their enactment has often been specifically dictated by the larger effort to combat bribery in business deals with public officials.

- i) Prohibition of the exercise of intermediation and agency in government procurement and public decision-making

38. With the objective to prevent the occurrence of bribery right from the outset by regulating actions which may harbour bribery, some countries have established a general prohibition of the exercise of intermediation and agency in government procurement. Others – the majority- have established such ban only in connection with specific sectors or projects, often the defence or petroleum industry².

39. Only a few Arab countries, such as Syria and pre-war Iraq, have resorted to a general prohibition of the exercise of intermediation in government procurement. Under such prohibition, government entities are required not to deal with intermediaries in the process of procurement; they can only accept offers that come directly from manufacturers and suppliers. For example, under article 2 of Syria’s legislative decree No. 51 of 30 September 1979 Prohibiting Intermediation in Government Procurement, “all natural and legal persons are prohibited from pursuing the parties enumerated in the preceding article 1 for purposes of guiding them in connection with their conclusion of any commercial, industrial or agricultural contracts or in relation to their calls for bidding and in other forms of contracting, either by intermediation or lobbying or under any other denomination or veil covering it, either personally or through intermediary, or any other form”.

40. Yet, this general prohibition is often subject to exceptions. Syria’s horizontal ban on dealing with intermediaries under legislative decree No. 51 is combined with an exception of what Syrian law calls “stable agents”. Stable agents are defined as duly registered agents whose primary business activity consists in intervening on behalf of a bidder or any seeker of public decision before a government authority in order to facilitate the conclusion of any public procurement order or to obtain any favourable public decision, as opposed to agents who have registered at the occasion of a particular tender. Similarly, pre-war Iraqi State departments’ and organisations’ prohibition from dealing with intermediaries in the procurement process and the requirement to only accept offers that came directly from manufacturers and suppliers was combined, under law No. 51 of 2000 Organizing Commercial Agencies, with an exception for situations where such direct dealings were not possible; in such cases departments were required to obtain an approval to deal with or through an intermediary.

41. Sector-specific prohibition usually targets the defence sector. For example, intermediation in military procurement was prohibited in general in Jordan pursuant to article 3(e) of Law No. 44 of 1985 governing Agents and Commercial Intermediaries (replaced since 2001 by a new Commercial Agents and Middleman Law). Similarly, in Saudi Arabia, intermediation in military procurement has been prohibited under the Council of Ministers’ Resolution No. 1275 of 12.9.1395 Hjj. “Rejecting the Principle of Intermediation and Payments of all Kinds of Commissions with Respect to the Supply of Armaments Contracts” and Royal Decree No. M/2 of 21.1.1398 Hjj. “Regulating Agent’s Commissions and Relation Between a Foreign Contractor and his Saudi Agent” (cancelled and replaced by a July 2001 decision of the Saudi Council of Ministers) which, under its article 4 prohibits intermediation in “contracts of armaments”.

² The following discussion relies primarily on Abdulhay Sayed’s commentary on MENA provisions governing the activity of commercial agents and intermediaries. Sayed, *Corruption in International Trade and Commercial Arbitration*, (Kluwer Law International, 2004).

42. Prohibition of intermediation may sometimes be enacted in connection with specific projects, as past practice in countries such as Kuwait and the United Arab Emirates indicates, apparently as a result of internal struggles among potential beneficiaries of expected corrupt proceeds within the public administration. Such sudden prohibition of intermediation takes the form of particular executive decrees or circulars that are promulgated at the occasion of the conclusion of a particular tendering process. Uncertainty however looms as to the legal status of such executive decrees or circulars.

43. Where prohibition of intermediation exists (either general, project-related or sectoral), countries' legislation and regulation often require, as an additional safeguard to prevent occurrence of bribery, that suppliers sign declarations to the effect that no intermediary is involved and that the price offered to the government agency does not include commissions to be paid to any intermediary. Such is the case, for example, in Syria pursuant to two Executive Orders dated May 1986 (Executive Orders No. 41/B/2231/15 of 3 May 1986 and No. 53/B/2530/15 of 21 May 1986). In countries such as Algeria and Saudi Arabia, such declaration is inserted as a clause in the contract that the awarded supplier is required to sign with the government.

44. Thus, the model "Public Works Contract" approved by the Saudi Council of Ministers and to be used, under Resolution No. 136 of 13 June 1988, by Saudi Government purchasing entities in the framework of certain public procurement contracts contains a no-commission declaration requirement, worded as follows: "Without prejudice to the provisions of the other laws, the contractor must declare and acknowledge that he/she has neither paid nor promised to pay any money or other benefit in order to obtain this contract and if it is established otherwise a deduction must be made of that which he/she had paid or promised to pay from any entitlements to the contractor in addition to the right vested in the employer to cancel the contract without compensation and also the responsibility of the contractor and his/her employee for such behaviour".

ii) Specific legal requirements targeting the occurrence of bribery in the procurement process

45. Subject to exceptions which may be established by other domestic laws, in particular, as noted above, in the area of armaments contracts, agencies to companies or intermediation are allowed under the laws and regulations of several countries and jurisdictions of the region (Algeria, Bahrain, Egypt, Jordan, Kuwait, Palestinian Authority, Qatar, Saudi Arabia, Syria, and United Arab Emirates). Yet, with the clear goal of preventing bribery in the intermediation process, permission to exercise the activity of intermediation is often associated with two requirements: first, intermediaries are required to be duly registered; second, the proceeds resulting from the intermediaries' activities, namely commissions to which they are entitled, must be disclosed by the intermediaries, for example to the audit authorities.

46. The first requirement, i.e. the obligation that intermediaries have to be duly registered, exists under laws of many countries and jurisdictions of the region (Bahrain; Kuwait; the National Palestinian Authority under the Law on Commercial Agents No. 2 of January 2000; Qatar; and the United Arab Emirates, under UAE Federal Law No. 18 of 1981 Concerning Commercial Agencies, as amended). Thus, in Kuwait, under Law No. 25 of 1996 regarding the disclosure of commissions in connection with government contracts, all contracts entered into with a government agency (as defined in article 1 of the law) must contain a provision that expressly states whether or not the supplier of the government agency has paid or will pay a commission to an intermediary and, where such payment has been or will be made, the supplier must have an accredited agent with actual or elected domicile in Kuwait. Similar provisions exist in other Arab Gulf countries (Bahrain, Kuwait, Qatar, United Arab Emirates but not in Saudi Arabia) where it is a common feature of laws and regulations governing intermediation in government procurement to only allow nationals/residents of such countries to exercise agency activity or intermediation.

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47. The second requirement, i.e. the obligation to disclose any commissions that are paid to an intermediary in connection to a specific decision or procurement contract, is for instance illustrated by Article 14 of Egypt’s Law No. 120 Regulating the Activities of Commercial Agents and Certain Activities of Commercial Intermediaries, dated 26 July 1982, which provides as follows: “The Ministries and organs of the Government, the Units of local governments, the Public Institutions and the Companies and the Units of the Public Sector shall, when making contracts, include in the tender a provision concerning the amount of the commission or brokerage payable to the commercial agent or commercial intermediary when the contract is awarded, as well as the person(s) who will receive the sum, and requiring to deposit such sum for the account of the person entitled thereto in a bank operating in the Arab Republic of Egypt which is subject to the Central Bank’s supervision and in the currency agreed by the parties.”

48. In Kuwait, under article 3 of the 1996 Law on Disclosure of Commissions Offered for Government Contracts, the intermediary must submit to the government contracting authority within thirty days after payment of the commission a detailed written declaration stating the amount of the commission and the government authority must notify the “Diwan Al-Muhasabah” [Audit Bureau] to that effect as soon as the declaration is submitted with a copy thereof”.

iii) Sanctions associated with the regulation of intermediation and agency work

49. Civil, administrative and/or penal sanctions are often associated in MENA countries with the regulation of intermediation in connection with government procurement. Most often sanctions are primarily fines, but they can also consist of temporary imprisonment. When non-compliance with legal requirements is combined with bribery, sanctions may consist of long prison sentences. In addition, public procurement regulations of several MENA countries provide for the withdrawing of the contract or even, such as in Egypt and Saudi Arabia, the suspension from competition for public contracts of enterprises which have failed to comply with the legal requirements.

50. Non-compliance with the registration and disclosure requirements or with the prohibition of intermediation is sanctioned by fines, or sometimes even by temporary imprisonment as it is the case in countries such as Egypt (under article 16 of Law No. 120 of 1982), Iraq (under articles 6 and 15-21 of the Commercial Agency Law No. 51 of 2000), Jordan and Kuwait (articles 4 and 5 of Kuwaiti Law No. 25/1996 on Disclosure of Commissions Offered for Contracts Concluded by the Government). For example, in Jordan, under the (former) 1985 Law governing agents and commercial intermediaries (replaced since 2001 by the Commercial Agents and Middleman Law), non-compliance with the prohibition to use intermediation in military procurement was sanctioned with imprisonment for at least three years. In Kuwait, under articles 4 and 5 of the 1996 Law on Disclosure of Commissions Offered for Government Contracts, inaccurate or false disclosure or concealment of a commission paid to an intermediary may be sanctioned with a civil penalty equalling the value of the commission and/or a criminal penalty of imprisonment of up to three years.

b) *Other measures to prevent the occurrence of bribery: non-tax deductibility of bribes and corporate accounting and auditing requirements*

i) Non tax-deductibility of bribes

51. Most MENA legal systems do not include expressed provisions to make it impossible for individuals to obtain tax benefits or deductions for payments that would constitute bribery or other inappropriate payments to public officials (domestic and foreign). For example, Algeria’s tax legislation,

Lebanon's tax law, as well as the United Arab Emirates' and Yemen's fiscal provisions do not provide specifically for the non-deductibility of bribes paid to public officials.

52. Yet, in some countries, such payments may not be deductible as they do not fall within the conditions that have to be satisfied for tax deduction. For example, bribes to a foreign official are not tax deductible in Morocco. In other countries, the field of bookkeeping of business and tax liabilities may be governed by domestic legislation and other regulations in such a way that any possibility of paid bribes to be claimed as tax allowances may be limited.

ii) Corporate accounting and auditing standards

53. The requirements of the law as to corporate accounting and auditing, which exist in many MENA countries, may play an important complementary role in deterring bribery of public officials. In particular, requirement that certain companies undergo regular independent auditing may build an important safeguard into the system of deterrence of bribery of public officials.

54. A growing number of countries have developed accounting and auditing standards and practices with the aim of improving the transparency of commercial transactions. Such countries include Algeria, Bahrain, Egypt, Lebanon, Jordan, Oman, Morocco, the United Arab Emirates, Saudi Arabia and Yemen. Among these countries, significant efforts have been done in an increasing number of them to align corporate financial reporting requirements with the International Accounting Standards (IAS) and the International Audit Standards.

55. In Egypt, all companies registered under Company Law 159/1981 are required to prepare annual audited financial statements in compliance with the accounting and auditing standards enshrined in the Accounting Practice Law 133/1951. In Lebanon, Ministerial Order No. 1/6258 (1996), completed by Decree 8089 issued in 1996, requires that most companies (all holding, offshore, limited liability and joint stock companies regardless of type, size, and number and turnover of employees; all branches of foreign companies operating in Lebanon; and all sole proprietorships and partnerships whose total number of employees exceeds 25 or that have annual turnover above LBP 750 million –about EUR 410,000) present audited financial statements in conformity with the International Accounting Standards (IAS). Moroccan auditing standards are also largely inspired by the IAS, although certain lesser disclosure standards as compared to the IAS reduce the usefulness and transparency of Moroccan financial reports.

56. Gulf countries have also made significant efforts to align corporate financial requirements with international standards. In Bahrain, pursuant to the Commercial Companies Law Decree no. 21 of 2001, all companies subject to the Law are required to file annual audited financial statements, which are to be prepared in accordance with (IAS), and audited in accordance with International Standards on Auditing (ISA). In Kuwait, shareholding companies, closed shareholding companies and limited liability companies are all required by statute to have an annual audit in accordance with International Standards on Auditing (ISA). In Oman, Joint stock companies, as well as limited liability companies having more than 10 shareholders or capital of over US \$ 130,000 are required to have statutory annual audits in accordance with the International Accounting Standards (IAS) pursuant to Royal Decree No.77 of 1986; other limited liability companies must also have statutory audits if required by their Articles of Association or if requested by shareholders holding at least 20% of the capital of the company. In Saudi Arabia, pursuant to the Companies Law and the Department of Zakat & Income Tax, an annual audit is required for most types of companies; all companies registered in accordance with the Companies Law are required to file their audited financial statements with the Ministry of Commerce within six months of their financial year end.

57. Furthermore, in many countries, listed companies are required to prepare financial statements: in Bahrain, pursuant to the directives of the Bahrain Stock Exchange, which stipulate that listed companies file audited quarterly financial statements for publication; in Egypt, pursuant to the Capital Market Law 95/1992, which requires all listed companies to prepare financial statements in compliance with the IAS; in Kuwait, where, since 1995, publicly trade companies are required to be audited by two separate firms and to submit audited financial statements to the Kuwait Stock Exchange within three months of the company's year-end; in Lebanon, pursuant to the Beirut Stock Exchange (BSE) directives, all listed companies should file annual and semi-annual financial statements; in Morocco, pursuant to various laws and rules (the Law on the Securities Commission, the Law on Stock Exchange of 21 September 1993, and circulars issued by the Securities Commission), where publicly-listed companies are also subject to annual and semi-annual information requirements; in Saudi Arabia, where publicly-listed companies are required to file audited quarterly financial statements.

58. To preserve the independence of auditors in performing their duties, the laws and regulations of certain countries have established a list of requirements as to education, membership, and duties deemed to be incompatible. The regulatory framework for the accountancy profession is provided, in Lebanon, by the Act of Regularization of the Certified Public Accountants' Practice (issued in 1994); in Egypt, by the Accounting Practice Law 133/1951; in Kuwait, by Law No. 5 of 1981, which governs the auditing profession; by the Law on Chartered Accountants of 8 January 1993 in Morocco; and by Federal Law No. (22) of 1995 Regarding the Organization of the Auditing Profession in the United Arab Emirates. Such laws often strictly regulate access to the profession and organize a monopoly for its members and increasingly (e.g. in Lebanon, Morocco and the United Arab Emirates) include a system of disciplinary sanctions that may go as far as termination of membership.

59. In some countries, non compliance with the accounting and auditing requirements may entail severe punishment. For example, Morocco's legal and regulatory framework calls for criminal fines as high as MAD 400,000 (equivalent to EUR 37,000) for members of management bodies for violations of accounting rules, publication requirements, or filing rules at the clerk's office of the commercial court. Statutory auditors are also subject to heavy fines: penalties range from one month to two years of prison and/or fines of MAD 8,000 to 100,000 (equivalent to EUR 750 to 9,200). An issuer that does not comply with financial information publication requirements (article 31 of the law on the Securities Commission) is subject to a fine of MAD 20,000 to 500,000 (EUR 1,900 to 46,000); Morocco's Securities Commission may also decide to suspend a listed company or delisting a company for failure to comply with the disclosure requirements. With respect to auditing standards, Morocco has adopted a rather strict legal and regulatory framework to ensure compliance as well (principle of the civil and criminal liability of statutory auditors introduced by the law on corporations).

60. Nevertheless such measures to improve the transparency of commercial transactions can achieve credibility only if an adequate supervisory mechanism is in place to enforce them effectively. In some countries, such as Lebanon and Morocco, in the absence of a quality assurance mechanism, the supervision body (the Lebanese Association of Certified Public Accountants in Lebanon; the Institute for Chartered Accountants in Morocco) is not in the position to ensure that its members comply with the country's legal and regulatory framework for accounting and auditing. Elsewhere, such as in Egypt, no effective mechanisms exist for imposing sanctions on accountants and auditors who fail to comply. Furthermore, where rules of independence and causes of incompatibility are stipulated for auditors, they often remain vague and subject to interpretation. Oversight of companies is also often weak.

61. As a result of this, there are still MENA companies which do not comply with accounting and auditing requirements and civil or criminal liability of accountants and auditors have been very rare. For

example, recent reviews by Egypt's Capital Market Authority revealed that an important number of Egypt's listed companies had not complied with disclosure requirements and audit reports frequently were not in compliance with required reporting format. An IMF Report on the *Observance of Standards and Codes (ROSC): Accounting and Auditing in Egypt*, issued in August 2002, noted that, due to some ambiguity in the legal provisions about the civil or criminal liabilities of parties responsible for supplying misleading or incorrect information in audited financial statements, Egyptian accountants and auditors faced virtual immunity for their professional misconduct.

c) *MENA measures to prevent the use of financial channels for the giving of bribes and the laundering of the proceeds of bribery*

62. Many countries in the Middle East and North African region have made significant efforts to develop and implement necessary legal frameworks against money-laundering. Not only a growing number of countries have legislation that now makes it an offence to launder the proceeds of crimes, but, with the view to facilitating the detection of money-laundering transactions, many of these have established under their law and regulations obligations whereby the professions closest to the point which such transactions occur – namely the financial institutions – are required to exercise vigilance and report suspicious transactions to competent authorities. Such obligations now exist in countries such as Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Lebanon, Oman, Qatar, Saudi Arabia, Tunisia, the United Arab Emirates and Yemen.

63. MENA countries' measures to prevent money-laundering may serve as a useful additional tool in preventing the occurrence of bribery of public officials in business transactions, as bribery and money-laundering are closely linked: the money paid as a bribe is often channelled through money-laundering circuits. In Bahrain, due diligence obligations for institutions are enshrined in Bahraini law through the framework Decree Law No. 4 of 2001, completed by Ministerial Order No. 7 of 2001 on "Obligations Governing Institutions Concerning the Prohibition and Combating of Money Laundering" issued by the Ministry of Finance, and several orders issued by the Bahrain Monetary Agency and the Ministry of Commerce and Industry. Pursuant to these rules and orders, institutions are required to establish "know-your-customer" procedures, maintain adequate records and other internal controls, and report suspicious transactions to Bahrain's Anti-Money Laundering Unit established at the Ministry of Interior under the provisions of Ministerial Order No. 102 of 2001.

64. In Djibouti, due diligence obligations for financial institutions are enshrined in Djibouti's September 2002 Law on money laundering, confiscation and international co-operation with regards to the proceeds of crime. Egypt's anti-money laundering law No. 80 of 2002 also regulates the know-your-customer policy and requires banks to report suspicious transactions to the newly-established financial intelligence unit set up at the Central Bank; since its creation the Unit has witnessed an increase in the number of suspicious transactions reports from Egyptian financial institutions.

65. Iraq's new anti-money-laundering law includes provisions requiring banks to collect detailed personal information from customers seeking to make transactions greater than EUR 3,800. In Jordan, pursuant to the anti-money laundering regulations issued by the Central Bank of Jordan, banks are required to report suspicious transactions to the Suspicious Transactions Follow-Up Division (STF) established in 2004 within the Banking Supervision Department of the Central Bank of Jordan, establish internal control systems, appoint a compliance officer, provide continuous training for staff, monitor anti-money laundering compliance by internal audit departments, and keep transaction records for a minimum of five years. In Lebanon, pursuant to Law Number 318, enacted in April 2001 and amended in 2003, the Bank of Lebanon issued a first official set of regulations concerning control of financial and banking operations in

May 2001. As in Bahrain, Djibouti, Egypt and Jordan, at the heart of Lebanon's detection system is a specialized unit, the Special Investigation Commission (SIC), Lebanon's financial intelligence unit.

66. Other countries that have enacted laws and regulations providing supporting mechanisms and structures include Oman, where, under the Money-laundering Law enacted by decree No. 34/2002, financial institutions are required to report transactions that they suspect of being in violation of that law; in Qatar, where banks, pursuant to the 2002 anti-money laundering law, are required to report suspicious behaviours; Saudi Arabia, where new guidelines to the Kingdom's financial sector for detecting money-laundering activities were issued in May 2002 by the Saudi Arabian Monetary Agency and an anti-money laundering legislation enacted in August 2003; Tunisia, where financial intermediaries are required, under Law n° 2003-75 of 10 December 2003 on international efforts against terrorism and money-laundering, to implement "know-your-customer" policies and establish internal controls; the UAE, where Federal Law No. 4 of 2002 also provides supporting mechanisms and structures, including a Financial Intelligence Unit established within the Central Bank, to enforce the prohibition of money-laundering; and Yemen, where, pursuant to the 2003 Act of Anti-Money Laundering and an executive bylaw approved by the government in August 2005, financial institutions refer persons to the public prosecutor on charges of laundering money.

67. As of January 2006, Morocco was also moving towards the strengthening of its anti-money laundering system, with the drafting of an anti-money laundering bill. The bill, based on the Financial Action Task Force (FATF) Forty Recommendations and Egmont Group guidelines, reportedly included, among other provisions, a suspicious transaction reporting scheme and the creation of a Financial Intelligence Unit (FIU). In the interim, the Central Bank has already mandated "know your customer" requirements and the reporting of suspicious transactions by financial institutions.

68. Such measures and structures to prevent and detect laundering operations in connection with bribery of public officials can achieve concrete results however only if the anti-money laundering legislation provides for bribery as a predicate offence. This is not yet the case in all countries. Exceptions include Bahrain's law which makes it an offence to launder the proceeds of any criminal activity, thus including bribery of public officials; Egypt's law which specifically provides for bribery as a predicate offence (article 2 of Executive Regulations of the Anti-Money Laundering Law); Tunisia's Law n° 2003-75 of 10 December 2003, which makes it an offence to launder the proceeds of crimes and other criminal offences; the UAE Federal Law No. 4 of 2002, which specifically makes bribery of UAE public officials a predicate offence for the purpose of the application of the money laundering legislation; and Yemen, where the bribery of public officials as a predicate offence for money-laundering has been established under Crime and Penalty Law No. 12 of 1994 and Law No. 6 of 1995 on the prosecution of persons holding high-ranking public office of the executive or other authority of the State.

2. *The insertion of business ethics in MENA business sector*

69. With the exception of the bigger businesses which have been exposed to the business ethics environment in OECD countries and the affiliates of companies headquartered in OECD countries, business ethics appear to be still unfamiliar or ambivalent for many people. There is no commonly used term in Arabic for the concept of business ethics. The Arabic equivalent *Ekhlak El-Maha'ne* (professional morality) is an adaptation of the widely used term for the concept of "religious morality".

70. The results of a survey conducted in 2001/2003 in Lebanon to assess the sense of ethics in Lebanese businesses are an indicator of this. The survey encompassed a sample of 63 companies chosen from various business sectors (plastic, cement, food, cosmetic, etc.) and including services (banks,

insurance companies, and hotels). The survey indicated that the concept of business ethics was unfamiliar or ambivalent for many entrepreneurs. In some companies, the senior management confused the concept of business ethics with the notion of quality – the International Standards of Quality. In other organisations, the concept of business ethics was mixed with modern marketing concepts, such as promoting the firm’s products or services without having to resort to harming the competitors’ reputation. Only a few enterprises surveyed had a code of ethics.

a) Fostering ethical business: Measures undertaken by MENA governments

71. Most of the awareness-building measures taken by MENA governments seem so far to have approached the fight against bribery in rather general terms, with a strong emphasis on integrity of the public service or from a broader corporate governance perspective. Where awareness-building about ethics and integrity has taken place, it has aimed essentially at the countries’ own public officials. Only in a few countries governments have encouraged the development of good practices, including standards of conduct among their own corporate sector. Among those countries which have developed or encouraged the development of business codes, standards and good practices prohibiting corruption, bribery and other related illicit practices in business transactions are countries such as Egypt, Jordan, the United Arab Emirates and Yemen.

72. Some governments in the Middle East have agencies, departments or committees whose specific purpose is to combat bribery of public officials, for example: the Central Audit Agency and Administrative Control Agency in Egypt; Iraq’s Commission on Public Integrity; the General Intelligence Department’s Anti-Corruption Department and the Higher Anti-Corruption Committee in Jordan; the Central Inspection and the Office of the Minister of State for Administrative Reform (OMSAR) in Lebanon; and the Anti-Corruption Unit with the Ministry of Defence in the United Arab Emirates. One of the roles of Syria’s Central Control and Inspection Authority is also to combat corruption of public officials. Yet, many of these agencies primarily focus on corruption in government departments and often have indirect relations to business ethics insofar as business is sometimes involved as culprits in the use of corruption for promoting its interests.

73. For example, Iraq Commission on Public Integrity’s preventive initiatives have primarily targeted the public sector through the development of a Code of Conduct spelling out specific ethical principles that must be followed by government employees and of a set of regulations requiring senior government officials to disclose their personal financial interests, and the promotion of adherence to international standards of accounting and auditing for units of government. Lebanese OMSAR’s activities have also so far primarily targeted corruption in public administrations by initiating proposals directed at ministries and public institutions such as, in 2002, a draft law on combating corruption or, in 2001, a “Code of Conduct for Ministers and Council Ministers Regulating Conflict of Interest and Internal Controls for Council of Ministers”.

74. Only a few initiatives of these institutions have specifically targeted the corporate sector. Iraq Commission on Public Integrity’s activity to promote adherence to international standards of accounting and auditing for public and private companies has been so far the Commission’s only initiative aimed at encouraging business ethics and transparency in business transactions. By contrast, a larger number of activities implemented by Egypt’s Administrative Control Authority (ACA) have aimed at promoting the participation of the private sector in the government’s efforts to defend the values of integrity. Jordan’s Anti-Corruption Department has also engaged in some activities with the private sector.

MENA-OECD INVESTMENT PROGRAMME

b) Fostering ethical business: Measures undertaken by MENA corporate sector

75. The relatively cautious efforts governments in the Middle East and North Africa have made so far in promoting business ethics have been barely complemented by business ethics initiatives in the private sector. Hardly a handful of MENA firms have ethical codes although there are some beginnings, especially among firms involved in multinational business. For most of the latter firms, their policies in this area seem to take into account the legal obligations imposed in countries other than their home country, i.e. mainly OECD countries.

76. There is few business ethics initiatives led by MENA-based business associations as well. With a few notable exceptions, business confederations and local chambers of commerce tend to play only a little role in promoting business ethics and encouraging the development of ethical codes and other corporate measures aimed at preventing the giving of bribes on Middle Eastern and North African markets. If business ethics initiatives exist, they often come from outside the region.

77. An illustration of this is the work undertaken in the region by the Centre for International Private Enterprise (CIPE), a Washington-based non-governmental organisation. For instance, a roundtable about Good Governance was organized in Amman (Jordan) on October 6, 2002. It aimed at building public-private partnership in the Middle East in countries such as Egypt, Morocco, and Tunisia. Another meeting, jointly organized by CIPE, the Global Corporate Governance (GCGF) and the Jordanian Forum for Economic Development (JFED) in 2003 assembled representatives of both public administrations and the private sector to discuss corporate governance in Jordan. These initiatives outside the Middle East provide interesting examples of the way business associations and think tanks in countries with more sophisticated business ethics programs may provide an impetus for the development of interest in the subject in the Middle East and North Africa.

78. Local exceptions include the Lebanese Chamber of Commerce, Industry and Agriculture and the Moroccan Confederation of Employers, both of which have drawn up codes of ethics on corporate governance, and the Dubai Chamber of Commerce and Industry. The latter, who has over 65 000 members, established in 2004 a Dubai-based Ethics Resource Centre whose purpose is to raise the level of awareness of business ethics, corporate responsibility and standards of good corporate governance. The Chamber is also engaged in integrity and ethics training through an “Ethics Management Certification Program”. This program, which includes modules on how to design and implement an ethics management program, develop and effectively implement codes of business conduct, and set-up internal control mechanisms, targets company executives and managers who will be responsible for the implementation of their organisation’s standards and commitment to responsible conduct.

79. Another local exception is the work undertaken in the framework of the Arab Business Council. Formed in June 2003, it incorporates business leaders and CEOs from 16 different Arab countries committed to working in partnership with the Arab governments in order to address corruption and favoritism in business transactions.

c) The role of the media, the academia and of civil society in promoting both public sector and corporate ethics

80. The role of mass media in exposing business corruption in the Middle East and North Africa often depends on the extent of freedom of the press in the respective countries and on the ties between government and business. In some MENA countries, there are still often rather strict controls against criticism of government. As usually big business corruption cases involve government officials in one way

or another, the contribution of the press to exposing business corruption remain rather limited in such countries. In addition, whistleblowers – those who expose corruption to the public – are still a vulnerable group in a number of countries of the Middle East and North Africa.

81. Yet, where governments have publicly expressed their commitment to fight bribery and corruption of their public officials, the media have been more active, especially when combined with greater autonomy of the local press or TV networks. For example, readers of Jordanian newspapers have been informed of domestic corruption cases in which Jordanian public officials have been involved. Qatar-based Al-Jazeera has become an increasingly popular source of views and facts on issues of public interest, including corruption. Elsewhere, for example in Egypt, Lebanon, Morocco, the United Arab Emirates and Yemen, cases of corruption of public officials, including cases of public officials having allegedly received bribes from foreign companies in order to obtain public contracts, have been growingly exposed by the local media. In addition, many Arab newspapers now expose cases of corruption taking place not only in their country but also in other Arab or foreign countries as well. These dispatches have very likely raised awareness in the public of MENA countries by showing that bribery and corruption is neither limited to others, nor taboo.

82. The many pages allocated for lawsuits and investigations by the press, be they daily, government, independent or opposition newspapers, have raised some concerns among law enforcement agencies and the judiciary of some MENA countries to the extent that, in some circles, the expression “public opinion cases” has appeared in order to describe press influence on litigation, often without due respect to constitutional provisions according to which defendants are innocent until proven guilty. To address these concerns, the press in the Arab countries is growingly equipped with particular codes of ethics. In Algeria, for example, there is a “Code of Ethics: National Union of Journalists – Charter of Personal and Professional Ethics”; in Egypt, the Supreme Council of the Press adopted a code of ethics for the profession as early as 1983; in Jordan, the Jordan Press Association has issued a “Code of ethics for Jordanian journalists”, in Lebanon, the profession is regulated by the “Lebanon Charter of Professional Honor”; in Qatar, Al-Jazeera has developed its own “Code of Ethics”; in Tunisia, the Association of Tunisian Journalists has also issued a code of ethics. In the National Palestinian Authority, principles and guidelines were being established in 2004 in order to assist Palestinian investigative journalists in their task.

83. The work undertaken by some specialised anti-corruption agencies, such as Egypt’s Administrative Control Authority (ACA), which has led to the prosecution of several prominent businessmen and public officials over the past five years, or Jordan’s Anti-Corruption Department (ACD), which has uncovered almost a hundred of corruption cases since it was set up in 1996, may also contribute to building awareness about corruption of public officials in business transactions.

84. Civil society organizations have also been playing an increasing role in countries like Algeria, Bahrain, Jordan, Kuwait, Lebanon, Morocco, the National Palestinian Authority and Yemen. The contribution from non-governmental actors to ethical businesses and corruption reduction in business transactions has taken various forms, from raising awareness about the general issue of corruption (Algeria) to establishing, jointly with the government, special commissions to study corruption (Bahrain, Morocco). Bringing to light examples of corruption in areas such as the judiciary, public administration, and tax collection, and the media and organizing public marches and implementing advertising campaigns on television and billboards have also been actions undertaken by civil society groups (Lebanon, Morocco). Branches of Transparency International have been established or being formed in Algeria, Bahrain, Jordan, Lebanon, Morocco, the National Palestinian Authority and Yemen.

85. These actions have been barely complemented by initiatives in the academia. Apart from in a few private institutions, such as the University of St. Josef in Beirut, business ethics does not appear to be institutionalized in the academia in the Middle East and North Africa. Business ethics courses are not systemically taught, very little research is being conducted; there are not specific, local publications on the issues.

86. Notable exceptions include Egypt, where the ethical dimensions of business management, corporate finance, accounting and auditing are increasingly taught in the undergraduate programs of business schools/commerce faculties; in Iraq, where since 2004, officials at the Ministry of Education have been developing curriculum material on ethics and character development for school children to encourage students to become responsible members of civil society and to take a stronger stand against corruption; and in the United Arab Emirates. In the UAE, business ethics has become since 2005 a mandatory course in all business colleges and schools, and the Ministry of Education does not accredit any business certificate unless the curriculum includes this new course. In Lebanon, a meeting, aimed at the introduction of a "Charter of Young People Against Corruption" into the curricula of 12 public and private schools, was held in the Ministry of Administrative Development in October 2004. Discussions dealt with the preparation steps preceding the introduction of the program into the curricula of pilot schools as from 2005.

B. MENA COUNTRIES REGIME TO PROHIBIT AND SANCTION BRIBERY OF PUBLIC OFFICIALS IN BUSINESS TRANSACTIONS

1. *The legal framework*

87. The national penal codes of MENA countries generally contain the panoply of bribery offences that are encountered and generally condemned under OECD countries' legal systems. Passive bribery of public officials, i.e. the receipt of a bribe by a public official, and active bribery of public officials, i.e. the giving of a bribe to a public official, are penalised in most, if not all, MENA countries. In addition to the anti-bribery provisions of Middle Eastern and North African criminal codes, there is a significant number of other provisions in either criminal legislation or other laws and regulations with punishments for acts similar, or close to bribery. Among these are those which penalize the actions of receipt or the passing of rewards to public officials for purposes of influencing their decisions in the discharge of their public functions.

a) MENA countries' anti-bribery laws

88. The offence of passive corruption for actions in compliance with the public official's normal duties - i.e. the receipt of any undue advantage of pecuniary or any other nature by a public official, when such advantage is granted to the official in order to perform an act *within his or her normal duties* - is penalized in all Middle Eastern and North African countries: in Algeria, under article 126 of the Penal Code; in Morocco, under articles 248 and 249 of the criminal law; in Tunisia under article 85 of the Penal Code; and in Egypt, under article 103 of the Penal Code and article 18 of Law No. 62 of 1975 Pertaining to Illegal Profit-Making. Similar provisions can be found in Djibouti, under article 200 of the Penal Code; in Jordan, under article 171 of the Penal Code; in Lebanon, under article 352 of the Penal Code; in Syria, under article 341 of the Penal Code; and in Yemen under article 153 of the Penal Code.

89. Provisions prohibiting passive bribery for actions in compliance with a duty are also a common feature of criminal laws of Arab Gulf countries. Such provisions exist in Bahrain, under article 186 of the

Penal Code (Amiri Decree No. 15 of 1976); in Iraq, under article 2 of the Revolutionary Command Council (RCC) Resolution No. 163 (as amended by Resolutions No. 703 of 1983 and No. 813 of 1986); in Kuwait, under article 43 of the Kuwaiti Penal Code of 1970; in Oman, pursuant to articles 155 to 158 of the Penal Code; in Qatar, under articles 109 to 111 of the criminal law; in Saudi Arabia, under the Law Governing the Fight Against Bribery of 1992; and in the United Arab Emirates, under articles 234 to 239 of the Federal Penal Code.

90. The receipt of any undue advantage by a public official when such advantage is granted to the official *in order to refrain from acting as required or to violate the duties of his/her office* is also penalised in most MENA countries, including in Algeria, under article 126 of the Penal Code; in Bahrain, under article 190 of the Penal Code; in Egypt, under article 104 of the Penal Code; in Djibouti, under article 200 of the Penal Code; in Jordan, under article 163 of the Penal Code of 1970; in Kuwait, under articles 35 to 43 of the Penal Code of 1970; in Oman, pursuant to articles 155 to 158 of the Penal Code; in Saudi Arabia, under Article 3 of the Law Governing the Fight Against Bribery; in Syria, under article 342 of the Penal Code; in Tunisia, under article 85 of the Penal Code; and in the United Arab Emirates, pursuant to the Federal Penal Code.

91. Active corruption, i.e. the giving of bribes or any other undue advantage to public officials, is equally penalized. For example, active bribery is punishable in Algeria, under article 129 of the Penal Code; in Bahrain, under the Amiri Decree No. 15 of 1976 as amended by Decree No. 4 of 1982, Decree No. 1 of 1986 and Decree No. 6 of 1993; in Djibouti, under article 212 of the Penal Code; in Egypt, under article 107^{bis} of the Egyptian Penal law; in Iraq; in Jordan, under article 172 of the Penal Code of 1970; in Qatar, pursuant to articles 109 to 111 of the Criminal Law; in Tunisia under article 91 of the Penal Code; in Saudi Arabia under article 8 of the Law Governing the Fight Against Bribery; in Syria, under its Penal Code; and in Yemen under article 154 of the Crimes and Punishments Law No. 12 of 1994 (penal code).

b) Measures against trading in influence

92. The actions of receiving or giving rewards to public officials for the purpose of influencing the official's decision-making in the discharge of his/her public function - usually called "influence peddling", "trading in influence" or "influence-trafficking" - are penalized in many MENA countries. Such actions are considered a criminal offence under, for example, Algeria's law (art. 128 of the Penal Code), Bahrain's Penal Code (art. 202 ff.), Djibouti's penal code (articles 201, 213 and 214), Egypt's penal code (art. 106^{bis}), Kuwait's Law No. 31 of 1971 amending the Penal Code (art. 35), Lebanon's penal code (art. 128), Morocco's penal code (art. 250), Saudi Arabia's penal law, Syria's penal code (art. 346), and Tunisia's penal code (art. 87 as modified by Law n° 98-33 of 23 May 1998). Trading in influence is often included in the same provision of the penal code where public officials are concerned, since the offence of bribery of public officials and the offence of influence peddling are closely related and the boundary between the two offences is sometimes fluid.

93. The offence specifically targets the act of influencing public officials through a triangular relationship between the briber, the trader in influence (who actually receives the bribe in order to obtain a favourable public decision), and the public official who grants an advantage to the briber. This may –albeit not exclusively– include the intermediation, where the agent indicates to the company which is willing to grant valuable advantages that he or she is able to exert influence on a public official to obtain a decision favourable to the company.

94. Yet, some countries restrict the criminal offence of influence peddling to civil servants. Such is the case in Bahrain under articles 202 and 203 of the penal code. Saudi law also criminalizes influence

peddling only if it resorted to by a public official. Other countries - such as Algeria under article 128 of the Penal Code and Tunisia under article 87 of the Penal Code - penalize influence peddling, when committed by a civil servant, more severely than influence peddling committed by a person who is not a public official. Other countries, such as Djibouti, penalize influence peddling when committed by a civil servant or an intermediary the same way (a maximum of 5 years of imprisonment and a fine of up to EUR 4,700 may apply to both situations).

c) Other measures for combating bribery of public officials

95. In addition to the prohibition of active and passive bribery of public officials and of influence peddling, a large number of Middle Eastern and North African countries have resorted to the prohibition of illicit enrichment. Most MENA countries' legislation makes illicit enrichment by public officials, including elected representatives, a criminal offence. As suggested by the legislative history of those regulations, the purpose of their enactment has often been specifically dictated by the larger effort to combat bribery of public officials.

96. Countries that make illicit enrichment by public officials include Algeria, Egypt, Jordan, Iraq, Lebanon, Saudi Arabia, and Yemen. For example, in Algeria, pursuant to Order No. 156-66 of June 1996, acts of illicit enrichment by public officials, including by elected representatives, may be sanctioned under various criminal offences, such as treachery, transfer of public funds, abuse of power, and acceptance of commissions from contracts. In Saudi Arabia, the offence of illicit enrichment by public officials is provided for in Royal Decree n°. 16 on the investigation of sources of enrichment. In Yemen, illicit enrichment by public officials is covered by Crime and Penalty Law No. 12 of 1994, Law No. 6 of 1995 on the prosecution of persons holding high-ranking public office, Presidential Decree No. 3 of 1996 on Establishment and Terms of Reference of Public Property Courts, Judiciary Act No. 1 of 1991 and the Law on financial responsibility and accountability; the offence of illicit enrichment by elected representatives is regulated by the General Elections Law and the Local Authority Law No. 24 of 2000.

97. As bribery and money-laundering are often closely linked, the anti-money laundering legislation of an increasing number of countries (e.g. Bahrain, Egypt, the Emirates, and Yemen) also provides the possibility for courts to hold liable persons involved in the laundering of assets or money derived from bribery. For example, in Bahrain, Legislative Decree no.4 of the year 2001 provides for strict penalties in connection with the laundering of assets or money derived from "any criminal activity" – including bribery; such penalties include imprisonment for a period of up to seven years and a fine of up to BHD 1 mio (over EUR 2 mio). Similarly, in the Emirates, Federal Law No. 4 of 2002 provides for strict penalties (a prison term of up to seven years or a fine of up to BHD 300,000/EUR 67,000) for the commission of any act involving the transfer, movement or deposit of property or concealment or disguise of its true nature with the knowledge that such property is derived from an offence relating to bribery. In Yemen, the bribery of public officials as a predicate offence for money-laundering was established under Crime and Penalty Law No. 12 of 1994 and Law No. 6 of 1995 on the prosecution of persons holding high-ranking public office of the executive or other authority of the State.

2. Main features of the anti-bribery laws

98. There are three common elements to the offence of bribery under most MENA laws: the recipient of the bribe as a "public official" with "official duties", the substantive element (i.e. the gift or promise) and the requisite criminal intent.

a) *The elements of the offence*

i) The moral element

99. As in many countries in the world, an awareness of breaking the criminal law – the criminal intent – is generally required by Middle Eastern and North African legislators. Such requirement exists, for instance, under the legislation of Bahrain, Dubai (Penal Law of 1970), Egypt, Jordan, Morocco, Kuwait, Lebanon, Qatar and of Tunisia (article 37 of Tunisia’s Penal Code). In these countries, the law systematically sets the criminal gift or gratification in context with a deed requested, offered or mediated. Consequently, gifts, promises or gratification which have been given or taken without consideration, for example in line with common practice, are not considered as bribery.

100. Yet, in countries such as Bahrain, Jordan, Morocco, the National Palestinian authority and in Dubai, it seems that the offence of active bribery is not perpetrated simply by the making of offers or promises to a public official, whether such offers or promises have been accepted or not by the public officials. A corruption pact appears to be required, i.e. a meeting of minds between the briber and the recipient of the bribe. Although this pact is not an actual “contract” which would set out the details of how the public decision is bought, it requires proof that the briber knew that the purpose of his/her proposal was to buy a public decision or omission, and that the public employee was aware that he would receive an unlawful advantage in return for taking or refraining from the decision. For example, under the law of the Palestinian National Authority, absent an official’s acceptance of the bribe, the offence of active bribery does not exist. By contrast, the *mere offer* of a bribe is punishable under the criminal legislation of Egypt which expressly prohibits the mere *offering* of a bribe.

101. As the experience of OECD countries with legislation that contain similar provisions shows, proof of the existence of a pact can be a delicate matter. For this reason, a number of OECD countries have amended their legislation so that, for the offence to exist, it is sufficient that there be proof, on the one hand, of the offers or promises; on the other, of their purpose, i.e. the performance of or refraining from an action connected with an official’s duties. The attitude of the public official in respect of the offers or promises does not need to be elucidated.

ii) The material elements

102. In addition to proving the moral element of the offence, MENA laws also require that the material elements of the offence be proven if a conviction is to be secured. A review of anti-bribery provisions of MENA countries suggests an often broad interpretation of what constitutes a bribe: many such provisions apply to any benefit or advantage. As in OECD countries, the advantage may be material (such as a gift in cash or in kind) or immaterial (such as the obtaining of employment or promotion for one of the officials relatives). Provisions of this kind can be found in Bahrain (article 186 of the Penal Code), Egypt (article 107 of the Penal Code), Jordan (under articles 248 to 251 of the Penal Law and articles 35-37 of the Justice Court Law), Kuwait (article 38 of the Kuwaiti Penal Law of 1960), Morocco and Qatar (article 109 of the Qatari Penal Law of 1971).

103. Middle Eastern and North African laws generally do not expressly permit promotional gifts, good-will presents, courtesies, etc. In practice and sometimes in law, socially accepted gifts are however permitted, on certain occasions (e.g. the Islamic New Year or the end of Ramadan) and if such gifts are of minor value. In addition, as in many OECD countries, the size of a gift may have significance in the decision of a prosecutor to initiate or not criminal proceedings: the value of a gift (for example the offering of cigarettes to a public official by an individual who requests an official act or decision during a meeting

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with this official) might be so minute as to preclude it from being considered a benefit by law enforcement authorities for the purpose of the implementation of the anti-bribery provisions.

104. Most MENA laws also do not make a distinction between the benefit which an official obtains for himself and the benefit requested or accepted for another party. For example, articles 103, 103^{bis}, 104 and 104^{bis} of the Egyptian penal code apply anti-bribery principles to “every public official requesting [a benefit] for himself or for another” and article 107 states that “any benefit obtained by the recipient of the bribe, or by the person designated by him [to receive the bribe] or knowing and agreeing to it, shall be considered a promise or a gift.”

105. A review of criminal and other provisions of MENA laws also suggests an often broad interpretation of what a public official means: many MENA anti-bribery provisions are broadly drafted as to reach large categories of public officials. For example, in Egypt, under Article 111 of Egyptian penal law, the definition of public officials covers any person performing a public service or employed in governmental agencies, as well as members of national or local representative councils either elected or appointed, members of the judiciary, and board members, employees and managers of any enterprise in which the state is a shareholder. The Egyptian courts have also decided that some organisations, given their nature, purposes or the like, are public and consequently that their employees are considered public officials. For example, a boat pilot working in the Suez Canal has been considered as a public official, given the fact that the Suez Canal Authority administered a public utility, i.e. canal traffic.

106. In Jordan, pursuant to article 169 of the Penal Code, a public official means any public servant in the administrative or judicial branch, any officer in, or member of, the civil or military authorities, and any employee or worker in the general or country administration. Furthermore, pursuant to the interim Economic Crimes Law No. 40 of 2003, employees of the following entities are considered as public officials: public institutions, ministries and government departments, lower and upper house, municipalities, rural councils and “councils of joint services”, unions and syndicates, associations and clubs, banks and public companies, specialised loan institutions, political parties, any entities that are regulated by the Law on Public Funds and any entities being funded in part by the State budget.

107. In Oman, under decree No. 72/2001, the definition of public official in national legislation was expanded to cover all those working in private institutions or associations of a public utility nature or in companies or private institutions in which an administrative unit of the State has, in any form, a share in their capital or financial resources.

b) Applicable sanctions

108. Penal sanctions are always associated with the provisions governing the giving or receiving of bribes in MENA countries. Sanctions primarily include prison terms. These are often associated with fines as well as, in countries such as Bahrain, Egypt and Kuwait, with the confiscation of the bribe. The level of sanctions applicable to the offenders varies greatly between countries in the region. Some impose rather harsh punishment with prison terms of up to 25 years (in Egypt); in other countries, such as in Bahrain, active bribery of a public official entails a minimum imprisonment of 3 months. In countries such as Lebanon, Morocco, the United Arab Emirates, the level of applicable imprisonment sanctions ranges between two months and 10 years. In Djibouti, any individual, who has offered, promised, paid a bribe to a public official in order to obtain an improper advantage, or any public official who has received a bribe, is liable to 10 years of imprisonment and of a fine of EUR 24,000.

i) Applicable penalties for the public official

109. Generally, bribes that have the purpose of instigating a public official to act within the duties of the office are punished less severely than bribes that instigate a public official to violate his or her duties. Such is the case under the legislation of countries such as Bahrain, Egypt, Jordan Oman, Tunisia, the UAE and Yemen. This is due to the fact that the latter offence is considered to involve not only the acceptance of an undue reward by a public official, but is also to be designed to cause such official to violate the duties of office. Legislation in many MENA countries considers this as an aggravating circumstance. Notable exceptions include Algeria's and Djibouti's penal codes where such distinction does not exist.

110. In Bahrain, Tunisia and the United Arab Emirates, whereas a ten years imprisonment may apply to a civil servant who violates his duties, a 5 years imprisonment sentence applies if he/she acts within the duties of the office. In Egypt, under articles 103 and 103^{bis} of the penal law, sanctions in the form of imprisonment and a fine of at least EGP 1,000 (approx. USD 161 or EUR 130) may apply to a civil servant having acted within the duties of his/her office; if the bribe was intended to make the official abstain from a function of his or her position or to violate his or her duties, then articles 104 and 104^{bis} provide that, in addition to the prison sentence, the official will be punished by a doubled fine.

111. In Jordan, whereas a 2 years imprisonment may apply to a public official who acted within the duties of the office, a temporary hard labour sentence will apply to the civil servant who violated his or her duties (articles 170 and 171 of the penal code). In Oman, the punishment also depends on whether the bribery was for actions in compliance or in non-compliance with a duty. Whereas the granting of an advantage to the official in order to perform an act within his normal duties subjects the official to imprisonment of between 3 months and 3 years, the giving of an advantage to the official to refrain from acting as required, or to violate the duties of the office, subjects the public official to a sentence of an imprisonment term of up to ten years (articles 155 to 158 of the Omani penal code).

112. The legislation of some MENA countries also makes a distinction depending on whether or not the public official who takes the bribe exercises judicial functions. In those countries, the offence, when it concerns a judge or any other official exercising judicial functions, is penalized more severely than bribery of other public officials. Thus, in Djibouti, when the offence of passive bribery concerns a "magistrate", the term of imprisonment is raised to fifteen years (against ten years for the other public officials) and the fine to EUR 34,000 (against EUR 24,000); In Tunisia, members of the judiciary convicted of involvement in bribery can be imprisoned for 20 years. Notable exceptions exist in countries such as Algeria or Jordan (articles 170 and 171 of the Jordanian penal code) where such distinction does not exist.

ii) Applicable penalties for the briber

113. As compared to policies developed by OECD countries, the statutes of MENA countries often differ in two respects. First, MENA criminal legislation often penalize passive bribe – i.e. the solicitation or acceptance of a bribe by a public official – more severely than active bribery (i.e. the giving of bribes to public officials). Second, many penal codes in MENA countries foresee for bribers who come forward and report their wrongdoing to be exempted for prosecution and condemnation. This uneven treatment of the two parties involved is often the expression of the lawmakers' view that the primary focus of anti-bribery laws should be on the public official. As suggested by the legislative history of such provisions, the purpose of the enactment was to address what was seen at the time as wide-spread corruption in government and public administrations, hence the importance of effectively sanctioning those that had deviated from the public interest and committed "crimes against the public office".

114. Thus, for example, in Bahrain, active bribery is punished less severely than accepting or receiving the bribe: under the relevant provisions of the Amiri Decree No. 15 of 1976 as amended by

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Decree No. 4 of 1982, Decree No. 1 of 1986 and Decree No. 6 of 1993, accepting or receiving a bribe may be punished by up to ten years of imprisonment, whereas offering or giving a bribe to a public official may be punished by 3 months of imprisonment. Under Tunisia’s penal code, passive bribery may be punished by up to ten years of imprisonment, whereas offering, promising or giving any undue pecuniary or other advantage to a Tunisian public official, directly or through an intermediary, may be punished by up to 5 years of imprisonment (article 91 of the Penal Code). In Yemen, under articles 153 and 154 of the Crimes and Punishments Law No. 12 of 1994 (penal code), accepting or receiving a bribe may be punished by up to seven years of imprisonment, whereas offering or giving a bribe to a public official may be punished by 3 years of imprisonment.

115. Exceptions to this rule include Algeria where, pursuant to article 129 of the Penal Code, bribers are subject to the same punishment as the public official (up to 10 years of imprisonment); Djibouti where, pursuant to article 212 of the penal code, bribers are subject to the same punishment as the public official (10 years of imprisonment and a fine of EUR 24,000); Egypt, where, pursuant to article 107^{bis} of the Penal Code, the briber and the intermediary are considered as accomplices in the offence of bribery and, as such, are subject to the same punishment (25 years of imprisonment) as the public official; and Jordan, pursuant to article 172 of the penal code.

116. Furthermore, bribers who come forward and report their wrongdoing to relevant authorities may be exempted from prosecution and condemnation pursuant to many MENA countries’ legislation. This might explain why relatively few bribery prosecutions in the Middle East and North Africa have so far directly involved large companies. When investigations are launched, it seems not unusual that the employee or the company’s representative accused of paying a bribe succeeds to negotiate exemption in exchange for his/her cooperation in what local authorities deem the more important prosecution of the government official alleged to have received the bribe. Notable exceptions include Algeria’s, Djibouti’s and Morocco’s penal codes which do not contain any provision providing for “pardon from punishment”.

117. Countries that provide for exemption from punishment to the briber include Bahrain, Egypt, Jordan, Kuwait, Lebanon, the National Palestinian Authority, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates and Yemen. Some legislation provides for two ways to obtain the exemption from punishment: reporting the bribery or confessing to it. The difference between the two bases for exemption (reporting the bribery or confessing it) is that reporting the bribery takes place before the discovery of the offence, whereas confessing the bribery occurs after the discovery of the offence, the apprehension of the defendants and the launching of criminal proceedings. For example, in Egypt, article 107^{bis} of the penal code provides that the “briber or the intermediary should be exempted from punishment if he/she reports the crime to the authorities or confesses to [the crime]”. Similarly, in Jordan, under article 172 of the penal code, “a person who bribes and an intermediary shall be exempted from punishment if they inform [about the offence] the competent authorities or confess [the offence] before the case is referred to court”. In these countries, the penal law does not establish any special detailed or formal conditions as to the confession; it is described without any restriction in terms of time or place or way to do it.

118. Similar provisions exist in Gulf countries: under Bahrain’s Penal Code, which provides that bribers who notify the public authorities of the offence before it has been referred to the adjudicating jurisdiction will be exempted from punishment (article 193 of penal law n°. 15 of 1976); under the Kuwaiti Penal Code of 1970, which provides for the exemption from condemnation of both the briber and the intermediary; as well as in Oman; Saudi Arabia, and the United Arab Emirates.

119. Other countries that provide exemption from punishment to the briber are Lebanon (pursuant to article 353 § 2 of the penal code which provides that bribers and accomplices have the opportunity to be exempted from punishment if they notify the public authorities of the offence, even after it has been committed, but before it has been referred to the adjudicating jurisdiction); the National Palestinian authority; Syria; Tunisia (under article 93 of the penal code, which provides that bribers or intermediaries who notify the public authorities of the offence before the bringing of criminal charges will be exempted from punishment) and Yemen (under article 151 of the Penal Code).

120. The priority which is given to the sanctioning of public officials rather than of those who give the bribe, e.g. local and foreign business representatives and companies, is also illustrated by the fact that, in many MENA countries, the criminal penalties on the briber are limited essentially to a fine and imprisonment, whereas various Middle Eastern and North African laws and regulations contemplate professional disqualifications for public officials found guilty of bribery crimes: for example, under articles 25 and 27 of the Egyptian Penal Law, which contemplate the deprivation of the public official's rights and privileges, including the exclusion from eligibility to public office for up to 10 years; under Jordan's penal code (deprivation of the public official's rights and privileges for up to ten years); under Kuwaiti laws; under Oman's decree No. 7/74 of 1994 which provides for permanent dismissal from office; under article 13 of the Saudi Arabian Law Governing the Fight Against Bribery, which allows the Council of Ministers to reconsider the ban on public service after five year's from the public official's completion of punishment; and under article 84 of the Tunisian Penal Code which provides for the indefinite exclusion from eligibility to public office.

121. By contrast, criminal provisions specifically targeting the bribe-giver for the suspension or prohibition of industrial or commercial activities, including from participation in public contracts, or for professional disqualifications are rather rare. It is only indirectly, under the terms of, for example, the laws and regulations governing the activity of intermediation in public decision-making or public procurement contracts, that a company and its representatives, determined to have committed bribery or other acts of fraud, may be threatened with temporary exclusion from public contracts or the suspension of intermediation privileges. In other countries, such as Algeria and Djibouti, such sanction is only supplementary and optional, under the general provisions governing the penal law.

iii) Corporate liability for the offence of active bribery and confiscation of the bribe and of the proceeds of the bribery of a public official

122. In addition to this uneven treatment of the two parties involved, most MENA countries' laws do not adopt the principle of criminal responsibility of legal persons (e.g. corporations) for bribery -although liability of legal persons exists in some countries, such as Algeria, Bahrain and Egypt, for other types of economic offences which fall outside the scope of the offence of bribery. For example, in Algeria, pursuant to article 5 of Order No. 22-96 of 9 July 1996, companies committing breaches, such as making false statements or failing to obtain the required licenses, may be penalized by fines. In Bahrain, pursuant to Legislative Decree no.4 of the year 2001 with respect to the "Prohibition of and Combating Money Laundering", in cases where the offence of money laundering is committed by a corporate body and notwithstanding the liability of any natural person, the corporate body shall be liable to the punishment of a fine prescribed in this Law in addition to confiscation of the property which is the subject matter of the offence. In Egypt, pursuant to article 16 of Law No. 80 of 2002 promulgating anti-money laundering law (as amended by Law No. 78 for the year 2003), in cases where the offence of money laundering is committed by a legal entity, the legal entity shall be jointly liable for the payment of any financial sanctions and damages if the crime was committed by a person who works therein in the name and on behalf of the entity.

123. Notable exceptions include pre-war Iraqi law which provided corporate criminal liability under article 80 of the penal code and articles 213 and 214 of the Companies law, the Saudi Arabian Law for Combating Bribery of 1992 (article 19) and the United Arab Emirates Federal Penal Code (article 65) which both provide for such corporate criminal liability, and Yemen’s law (Crime and Penalty Law No. 12 of 1994, Presidential Decree Law No. 37 of 1992 on Supervision and Control over Foreign Companies and Businesses together with its Executive Act issued by Presidential Decree No. 192 of 1999).

124. Elsewhere, in other MENA countries, while employees of a company who have bribed a public official may be sanctioned for their act, the corporation may not. Some Middle Eastern courts have issued decisions holding that corporate entities are *not* criminally responsible for bribery crimes committed by their employees: for example, the Egyptian Court of Cassation has long held that the individual employees who commit the crime, not their corporate employer, are personally responsible for bribery activity.

125. Given that bribing public officials in commercial transactions frequently involves legal entities with complex structures within which it is sometimes difficult to identify a particular individual responsible for the decision-making process, the absence of corporate liability may undermine the effectiveness of punishment of acts of bribery committed by companies. Most OECD countries until recently had also ruled that legal persons could not be held criminally responsible for offences committed by their employees or representatives. Recognizing that a comprehensive and effective anti-bribery policy however needs to pay equal attention to the responsibility of corporations for the behaviour of their representatives in the business world, they have started to establish corporate criminal liability for the offence of giving bribes to public officials.

126. Confiscation, hitting directly offenders’ pocket books, can prove to be a powerful measure and may counterbalance a situation where primary penalties applicable to the bribers tend to be modest or not particularly dissuasive. Some MENA countries require judges to order the confiscation of the bribe: such requirement exists under the criminal law of countries such as Algeria (article 133 of the penal code), Egypt (article 110 of the penal code), the Emirates, Kuwait, Oman, and Saudi Arabia. Thus, for example, article 110 of the Egyptian penal provides that “in all cases, confiscation will be ordered for what the briber or the intermediary paid as a bribe”. Other countries, such as Syria, make it an optional sanction. In Morocco, a bill, adopted in January 2004 by the Council of Ministers reportedly included, among other provisions, a provision on the confiscation of bribes as an ancillary measure.

127. Fewer countries’ laws provide for confiscation of the proceeds derived from the bribery; notable exceptions include Yemen pursuant to article 161 of the Crimes and Punishments Law No. 12 of 1994 (penal code). Furthermore, some countries’ laws provide for the restitution of the bribe in instances where bribers and intermediaries assist law enforcement authorities in proving bribery: such is the case, for example, under the Kuwaiti penal code of 1960. Such provisions, where they exist, may impact adversely on a country’s ability to deter effectively the giving of bribes to public officials.

3. *Specific measures for disqualifying and excluding corporations from government procurement contracts*

128. Tender laws of several MENA countries (e.g. Egypt, Kuwait, Saudi Arabia, Syria, and the United Arab Emirates) contain provisions that foresee the disqualification of bidders found guilty of bribery connected with the public procurement contract or of non-compliance with regulations prohibiting intermediation. Under those provisions, companies determined to have committed acts of bribery in order to win the public contract or which have failed to comply with the disclosure and other legal requirements

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relating to intermediation, face the risk of having the contract withdrawn or of temporary or indefinite exclusion from new government procurement contracts.

a) Disqualification from government procurement contracts

129. Legal provisions that enable a government authority to withdraw an order from an awarded contractor have been established in a number of MENA countries such as Egypt, Kuwait, Saudi Arabia, Syria, and the United Arab Emirates. In some countries, such provisions are mandatory, i.e. government entities are required to withdraw an order from an awarded contractor in the event of bribery, fraud and “manipulation”; in other countries, bribery or non-compliance with the registration and disclosure requirements or the prohibition of intermediation remains a discretionary, not an automatic, criterion that justify withdrawing a contract.

130. The first category of countries include Saudi Arabia where, pursuant to Article 82 of the Tender and Auction Law, any enterprise determined to have offered or attempted to offer a bribe to any government employee connected with the public contract *will have* its contract terminated (Order No. 185 dated 20/2/1386 Hjj.). Similar mandatory provisions are contained in the Kuwaiti Ministry of Public Works standard contract (article 63(1)g) and in Syria’s Organising Decree No. 195/T dated 25 July 1974 regulating contracts and tenders of public establishments, companies and enterprises (article 47(a) (3)).

131. The second category includes countries such as Egypt, Tunisia and the United Arab Emirates. In Egypt, under article 29 of the Procurement Law of 1998, which is inspired by the UNCITRAL Model Law on Procurement of Goods and Construction and the World Bank’s Model Laws of Procurement, “the contracting agency *may* declare the contract null and void and retain the final deposit if (a) the contractor has used fraud or manipulation in dealing with the contracting agency, or (b) the contractor has been involved himself or through a third party, directly or indirectly, in bribing an official of a department governed by this law”. In Tunisia, under article 122 of Decree n° 2002-3158 of 17 December 2002 Regulating Public Procurement Contracts, the contracting agency may declare the contract null and void if the contractor is determined to have been involved himself or through a third party, directly or indirectly, in bribing in connection with the public contract.

132. In the United Arab Emirates, under regulations such as Financial Order No. 16 of 17 November 1975 Regulating Purchases and Works Contracts Methods, the Ministry “*may* terminate the contract... in cases of deceit, fraud, bribery...”(art. 95). Under the Kingdom’s Federal Armed Forces Tender Law of 1986, disqualification *may* also be decided by relevant authorities to sanction enterprises determined to have either offered or attempted to offer “an express or implied bribe to a public servant” connected with the public procurement contract or to a consultant engineer or any of his assistants, or that have offered or given to any of these persons any gifts, gratuity or present for the purpose of inducing them to carry out or refrain from carrying out any act detrimental to the Armed Forces” (articles 83(f) and 85(b) of the UAE Federal Decree No. 12 of 1986 of the Deputy Supreme Commander of the Armed Force regulating tenders and auctions in the armed forces).

b) Suspension from new competition for public contracts enterprises determined to have committed bribery

133. Measures that permit authorities to suspend from new competition for public contracts enterprises determined to have committed, directly or through the intermediary, acts of corruption to win the government contract are contained in tender laws and similar regulations of countries such as Egypt and Saudi Arabia. In a number of countries the awarding authorities have apparently rather large latitude in

their assessments of facts that might justify such a sanction. Yet, some countries’ legislation, such as Kuwait’s 1996 Law on Disclosure of Commissions Offered for Government Contracts and Saudi Arabia’s Law on Tender and Auction, makes mandatory the company’s temporary or indefinite exclusion from government contracts for failure to comply with legal requirements.

134. For example, in Egypt, pursuant to article 29 of the 1998 Procurement Law, public procurement authorities are required to remove from the register of contractors and suppliers companies determined to have bribed in order to get the contract. The same provision states that the company shall not be re-entered unless the charge was invalid, the company found innocent, or the reason for removal no longer existing. Similarly, in Saudi Arabia, under Article 82 of the Tender and Auctions Law, enterprises determined to have offered or attempted to offer a bribe, either personally or through an intermediary, to any Government officer or employee who is connected with the work, the subject-matter of the contract will be excluded from the “Contractors and Suppliers Lists”.

C. INVESTIGATION, PROSECUTION AND SANCTIONING OF BRIBERY OF PUBLIC OFFICIALS

135. Only a few countries have opted for specialized anti-corruption agencies or departments. Even in countries where specialized anti-corruption agencies exist, these special services usually do not have monopoly on the investigation of bribery offences and supplying cases for prosecution, nor do they have a monopoly in receiving information relevant to suspected bribery coming from various government departments or individuals. Whether the competent or primary law enforcement authorities are specialized anti-corruption departments or the ordinary services of the judicial system, MENA criminal procedure laws single out the Parquet (or the public prosecution authorities) as the sole body responsible for setting actions in motion and for the pursuit thereof.

1. *The conduct of criminal proceedings*

a) *The instigation of public proceedings: actors and the underlying principles*

136. Criminal procedure of MENA countries is generally based on the obligation to prosecute, a rule which is enshrined in many legislations. Yet, an exception to the obligation is allowed by the principle of discretionary prosecution, which is contained in many countries’ laws (e.g. Algeria, Bahrain, Morocco, Tunisia, United Arab Emirates). Under this principle, the prosecuting authorities decide whether to bring a prosecution or discontinue proceedings. Prosecution means instigating public proceedings and referring the case to an investigating magistrate (where they exist, as in Algeria, Bahrain and Tunisia) or to a court; closure, on the other hand, means putting an end to the procedure that might have been initiated and results in no public proceedings.

137. The absence of a direct victim, the lack of serious and consistent evidence, the insignificance of the harm done, but also other discretionary considerations external to the case itself may all lie behind a decision to shelve the case. For example, in the Emirates, in instigating and prosecuting criminal actions, the duty of the Public Prosecutor is to uphold the law and to act in the interests of justice. The Prosecutor therefore has full authority to decide that it is unjust to continue the case, returning the prosecution petition back to the police or releasing the suspect.

138. In contrast, the principle of mandatory prosecution, enshrined in the law of other countries, is that all offences that come to the attention of the prosecuting authorities should be systematically prosecuted

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and punished. Some countries' codes do not contain any provisions relating expressly to the principle of either discretionary prosecution or mandatory prosecution.

139. The powerful role of the prosecuting authorities of MENA countries renders them particularly vulnerable to undue influence, especially in light of the fact that, as in many countries of the world, prosecution is not simply a judicial but also an executive branch function: In Algeria, Djibouti, Jordan, Lebanon, Morocco, Syria, Tunisia, public prosecution is under the Ministry of Justice; in Egypt, Kuwait, the National Palestinian Authority and the United Arab Emirates, the public prosecution system is headed by the Attorney-General who is either appointed by Presidential Decree (National Palestinian Authority) or overseen by the Ministry of Justice (Kuwait and UAE); in Yemen, pursuant to Law No. 1 of 1991 concerning the Judicial Branch, members of the public prosecution are subordinated to their supervisors according to rank, up to the Attorney General followed by the Minister of Justice; in Saudi Arabia, investigation and prosecution fall under the Ministry of Interior. In Bahrain, members of the public prosecution answer to their superiors according to rank up to the Attorney General, then the Minister of Justice who is responsible for supervising and monitoring the office of the public prosecution and its members.

140. Aside from the central role of the executive branch who oversees the work of members of the public prosecution – and as such can determine the direction, pace and outcome of a case of bribery of public officials -, the statutes of limitation as they apply to the offence of either passive or active bribery of public officials may further impede the effectiveness of prosecution. Secret commissions, the use of false invoices, multiple intermediaries, and so on, may make it very difficult to unmask this type of carefully concealed crime.

141. Criminal laws of some MENA countries and jurisdictions lay down that the statute of limitations for public proceedings is three years for misdemeanours and ten years for a felony. Such is the case, for example, in Bahrain, Egypt, the National Palestinian Authority, and the United Arab Emirates. In Oman, the statute of limitations for public proceedings is five years for misdemeanours and ten years for felony actions. To alleviate the problems of detection and give adequate time for investigation and prosecution, time limits in other countries – such as in Jordan and Kuwait, where the statute of limitations for public proceedings is ten years, and in Saudi Arabia where, apparently, there is no time bar – try to take better account of the complexity of cases involving active and passive bribery of public officials. In most – if not all- legislation, the statute of limitations runs from the date of which the act was committed.

b) Disclosure to investigative agencies and prosecuting authorities

142. In application of the central role given to public prosecutors in the region, it is the task of prosecutors to centralize complaints which are made directly to them or first lodged with the police services, or collect from public authorities information or reports relating to crimes and offences of which they may have knowledge.

143. A potentially powerful tool in MENA countries' system of detecting bribery offences is the obligation incumbent on their own public officials to report criminal activities, as it may provide intelligence. Such obligation exists under the criminal law of countries such as Algeria, Bahrain, Djibouti, Egypt, Kuwait, Tunisia and the United Arab Emirates. For example, Article 29 of Tunisia's Code of Criminal Procedure provides that "any constituted authority, any public official or employee who, in the exercise of his duties, becomes aware of an offence is required to report this fact immediately to the State prosecutor, together with all relevant information, records and documents".

144. Yet, in the absence of effective protection of those public officials who have become aware of a criminal behaviour and want to disclose it to the public authorities, such measures may have little effectiveness: information will remain dry if informers fear repression or retaliation. Aware of this problem, Iraq’s anti-corruption agency offers protection of the identity of persons (e.g. public employees but also private sector employees and individuals) who have become aware of criminal behaviours and report them to the Agency. As of end of 2004, the agency’s investigators had opened over 120 cases based on tips from informants; the Commission has been given the power to reward whistleblowers with 25 per cent of the funds recovered by the government from corrupt practices they have identified.

145. In other countries, the law often requires specific public departments and other public agencies to report allegations or evidence of corruption to the relevant authorities. Thus, for example in Iraq, pursuant to Coalition Provisional Authority Order number 77 amending the Board of Supreme Audit Law No. 6 of 1990, the Board of Supreme Audit, an independent government institution whose task is to monitor the use of public resources, is required to “report all allegations or evidence of corruption, fraud, waste, abuse or inefficiency in the disbursement and use of public funds to the Inspector General of the relevant ministry or, where appropriate, directly to the Commission on Public Integrity”, i.e. Iraq’s anti-corruption agency.

146. Yemen’s Supreme Audit Institution – the Central Organisation for Control and Auditing (COCA)-, which is responsible for the auditing of central government, local authorities, government fully-and-partially owned enterprises, agencies, programs & other activities including subsidized units, is required, when sufficient evidence is gathered pointing to prosecutable cases of corruption, to refer them to the public funds prosecution office, as well as the President’s office. 55 cases of corruption of public officials were disclosed by COCA over the first half of 2005. Similar requirements exist on Djibouti’s Chamber of Accounts and Fiscal Discipline whose role is to verify and audit all public establishments for transparency and accountability and take necessary legal sanctions.

147. In addition, or as alternative to these disclosing requirements, many MENA countries have opted for a system of rewards and exemption from criminal prosecution upon disclosure by bribers for reasons which have to do with both moral considerations (safeguarding public interest) and efficiency of prosecution. As indicated earlier in this report, countries that provide for exemption from punishment to the briber are numerous and include Bahrain, Egypt, Jordan, Kuwait, Lebanon, the National Palestinian Authority, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates and Yemen. Such exemption from punishment goes however beyond general defences in penal codes and can be used to circumvent liability by a defendant.

148. A growing number of countries have opted for specialized anti-corruption agencies or departments with a view of enhancing detection of corruption and thus of bringing to light acts of corruption with a view to the punishment of the offenders: Egypt, Iraq, Jordan and the United Arab Emirates. The Administrative Control Authority, Egypt’s government agency that investigates corruption of public officials, has been operating for decades; Jordan’s Anti-Corruption Department, a branch of the Intelligence Service, was set up in 1996; the Emirates’ Anti-Corruption Unit, located in the UAE Defence Ministry, has been established more recently, in 2001; Iraq’s Commission on Public Integrity, an independent body reporting directly to the interim National Assembly and the chief executive, was established in January 2004. As of the first quarter of 2006, Algeria’s draft Anti-Corruption Law prepared by the Ministry of Justice reportedly included a provision foreseeing the establishment of a similar specialized, anti-corruption agency (“*Office National de Prevention et de Lutte contre la Corruption*”).

149. These institutions have several features in common: their role primarily consists of exposing and investigating alleged corruption cases and reported misconduct in the public sector, or sometimes even in

the private sector, and referring matters to either the Public Prosecutor or relevant courts when such investigation reveals acts of bribery and other related offences. For example, the responsibilities of Egypt’s Administrative Control Authority include the detection and prevention of administrative and financial violations, occurrence of crimes on duties and abuse of authority; studying press articles and other media coverage of issues revealing misconduct in public services; examining complaints received from citizens or concerned public authorities. Iraqi Commission on Public Integrity to combat is empowered to receive anonymous complaints from individual citizens and investigate allegations of government corruption. None of these institutions are mandated to rule on cases themselves: for example, Egypt’s Administrative Control Authority refers its allegations to the Supreme State Security Courts, which are responsible for sanctioning cases of bribery of public officials; Iraq’s Commission on Public Integrity refers violations of corruption laws to Iraqi criminal courts; Jordan’s Anti-Corruption Department sends cases through the prosecutor to relevant courts.

150. Yet, some features distinguish one institution from the other. Work of Jordan’s Anti-Corruption Department and of Iraq’s Public Integrity Commission primarily targets passive bribery of public officials : Iraqi Commission on Public Integrity’s mandate is to investigate cases of suspected corruption among government employees, such as soliciting or accepting bribes, showing favouritism or unlawful discrimination, misusing public funds and other abuses of position or authority for private gain; the Anti-Corruption Department of Jordan’s General Intelligence Department focuses on monitoring cases of corruption in the public sector. By contrast, the mandate of Egypt’s Administrative Control Authority is somewhat broader in scope as it is charged with supervising procedures in government organs, public sector enterprises, utilities, associations, as well as the private sector or any other entity entrusted with public sector contracts, and within this framework, to disclose, investigate and, if need be, apprehend both active and passive bribery offenders.

c) Jurisdiction over the offence of bribery

151. Most MENA criminal laws provide that domestic criminal law applies to bribery offences committed within the territory of the country, irrespective of the nationality of the perpetrator. Such is the case, for instance, in Algeria, pursuant to article 3 of the Penal Code.

152. Some laws (e.g. in Egypt, Jordan, Kuwait, Oman, Syria and the UAE) provide for a broad interpretation to the notion of territoriality of the offence. For example, in Egypt, pursuant to paragraph 1 of article 2 of the penal code, Egyptian criminal law applies to “any person who commits outside the country an act which makes him a principal or an accessory of an offence committed wholly or partially in Egypt.” Accordingly, the fact that one of the constitutive elements of an act committed on Egyptian soil could, at least theoretically, be enough to found the jurisdiction of the Egyptian criminal courts. A similar provision exists under Article 8 of Jordan’s criminal procedure Law No. 9 of 1961 as amended by Law No. 16 of 2001.

153. Similarly, Syrian criminal law is applicable not only to an offence committed on the territory of Syria but also to an offence deemed to have been committed there because one of its “constituting elements” took place there. Syrian criminal law seems also to recognize Syrian territorial jurisdiction in respect of offences committed abroad on the grounds of their being closely connected with or inseparable from offences committed in Syria. The same holds true under Oman and UAE criminal laws. For example, the latter applies to offences deemed to have been committed in the Kingdom because either one of their constituting elements took place in the Emirates or they are closely connected with or inseparable from offences committed in the Emirates.

154. Some countries, such as Algeria, Egypt and Tunisia, also recognize the concept of extraterritoriality, thus exposing their nationals who would have violated the bribery laws of another country, to criminal prosecution in their home country. For instance, pursuant to article 583 of Algeria’s code of criminal procedure, Algerian criminal law is applicable to offences committed by Algerian nationals outside the Algerian territory if the offences in question are punishable under the legislation of the country where they are committed. In Egypt, pursuant to article 3 of the penal code, “any Egyptian who, while he/she is outside Egypt, commits an act considered a felony or misdemeanour under this law shall be punished according to its provisions if he/she returns to Egypt, provided that the act committed was punishable under the law of the country where the act was committed”. Similarly, pursuant to article 307^{bis} of Tunisia’s code of criminal procedure, Tunisian criminal law applies to crimes and offences, including the offence of bribing a public official, committed outside Tunisia by Tunisian nationals.

155. The exercise of extra-territorial jurisdiction is nevertheless sometimes subject to procedural requirements that can make it especially difficult to apply in sensitive cases of bribery of public officials abroad by the country’s own nationals. Indeed, under MENA laws that recognize the concept of extraterritoriality, prosecution of offences committed abroad is often the sole preserve of the Public Prosecutor’s Office; also, the laws, as Algeria’s and Tunisia’s criminal code procedures, often require that this exercise be preceded by the lodging of a complaint by the victim or an official denunciation on the part of the country where the offence was committed. Such procedural requirements may affect the effectiveness of extra-territorial jurisdiction in respect of the offence of bribery of public officials: in view of the nature of the offence concerned, foreign authorities may be reluctant to report the activities of their own public officials.

156. The requirement that prosecution can only take place upon the requisition from the Public Prosecutor’s office may create a further obstacle to jurisdiction and therefore effective prosecution: there is a risk that considerations of national economic interests, or of the possible effect on relations with the foreign state, may influence the prosecutor’s decision whether or not to proceed.

2. *Gathering evidence*

a) Investigative techniques and supporting mechanisms

157. Most MENA criminal procedure laws provide for a wide variety of traditional means of investigation. These include methods designed to induce people to reveal information (interrogatories, direct interviews, hearing of witnesses, the use of experts to make technical findings and examinations); methods designed to ensure that evidence is found and preserved, such as searches and seizures); and, finally, measures to ensure that the suspects or any person likely to be in possession of information are present (preventive detention, release on bail, police supervision, etc.).

158. More sophisticated means of investigation that police departments and magistrates in charge of bribery cases may resort to in order to establish material facts are provided for in a smaller group of countries. Egypt, Iraq and Jordan, for example, have equipped their specialized anti-corruption agencies with special investigative tools in order to uncover evidence of corruption. For example, under a Royal Decree of 1996, Jordan’s Anti-Corruption Department is allowed to conduct under-cover investigations of corruption cases and collects relevant evidence. In Iraq, the newly-established Commission on Public Integrity (CPI) can rely on the services of specially trained and highly skilled investigators who are empowered to investigate corruption cases that are brought to its attention by concerned citizens, referred to CPI by the Inspector General offices or developed based on CPI’s own initiatives.

159. Furthermore, in some countries, legal provisions have been modified in respect to access to bank accounts, as bank secrecy regulations can seriously hamper investigation and prosecution. In these countries, professional secrecy is not anymore an obstacle to legal proceedings. Such is the case in countries like Jordan where, pursuant to article 72 of the Banking Law No. 28 of 2000, banks are prohibited from providing directly or indirectly any information regarding all accounts, deposits, trusts, and safe-deposit boxes of their customers, “*except upon a decision issued by a competent judicial authority in a current litigation*”. Still, under the regulations of some other countries, such as Lebanon’s 1956 Law on Bank Secrecy, a general prohibition remains on banks’ managers and employees from revealing client names, or information regarding client assets and holdings, to law enforcement or judicial authorities (unless when the request for information is issued by a judicial power in an action for unjust enrichment brought pursuant to Decree No.38/1953 and the Law of 14 April 1954).

160. In other countries, such as Algeria and Bahrain, efforts to combat money-laundering have been accompanied by lifting banking secrecy regulations. Thus, for instance, in Bahrain, pursuant to article 7 of Decree Law no.4 of 2001, no institution, for the purpose of Bahrain’s anti-money laundering legislation, can plead before the investigation magistrate or the competent Court, secrecy or confidentiality in respect of accounts, identification of customers or record keeping provided under the provisions of any Law.

161. The enforcement of the above means of investigation is however restricted in many countries due to insufficient training of personnel in investigating and prosecuting economic crimes such as bribery of public officials. In those countries, the effective administration of the legal systems still awaits the further development of standards and more experience related to the investigation and prosecution of financial and economic crimes to provide the desirable levels of professionalism at the judicial level. For example, in many Arab countries, the determination of judicial police training needs still reflects in large part the continuing dominance of the militaristic model of policing. Training needs are often oriented towards the achievement of political stability and internal security rather than towards professional law enforcement and economic crime prevention. A second feature of police and judicial training is that it tends to rely on classic methods of instruction, concentrating on theory rather than practice and on acquiring information rather than skills.

b) Judicial co-operation: Mutual legal assistance, extradition and enforcement cooperation

162. International cooperation often plays a vital role in securing evidence of the offence of active bribery of public officials. In particular, the tracing of money abroad is often a necessary measure in many cases of corruption in business transactions. Similarly, magistrates of MENA countries may be solicited by foreign authorities for investigations of bribery offences having ramifications in their own country.

163. Much formality still prevails in the region as to the sharing of information with third countries. Except when an agreement provides for direct exchange of documents between judicial authorities, many MENA countries’ domestic legislations do not allow enforcement authorities to share information directly with law enforcement authorities of other countries. Most MENA laws require their law enforcement authorities to send their requests for mutual assistance through diplomatic channels; requests for assistance from third countries follow the reverse route. Such requirement exists, for example, under article 723 of Algeria’s criminal procedural code and under article 331 of Tunisia’s criminal procedural code.

164. Aside from the fact that the requirement to have documents to be sent and returned via diplomatic channels may cause important delays in obtaining or providing mutual assistance, the exercise of legal assistance is often subject to procedural requirements that can make judicial cooperation especially problematic in the context of the fight against public officials in commercial transactions. In addition to the

fact that the sharing of information with third countries is subject, under most if not all MENA laws, to the condition of reciprocity (for example under article 725 of Algeria’s criminal procedure code or under Oman’s penal law), MENA countries may refuse to execute a request for assistance from a foreign country on the basis of considerations of national economic interest, the potential effect upon relations with another State, the identity of the natural or legal persons involved, or – as under article 723 of Algeria’s criminal procedural code and article 333 of Tunisia’s criminal procedural code - of “any other considerations”.

3. Punishment of the offence of bribery of public officials

a) Persons found guilty of the bribery offence

165. It is difficult to assess the extent to which anti-bribery laws are actually implemented. In most countries no official data are available on the anti-bribery work of the judicial system. Such information may however be essential for evaluating –and developing, if necessary – a policy in this area. Yet, prosecutors in some Middle East countries regularly investigate allegations of bribery and, where justified, bring appropriate charges; and local courts – at least in some Middle Eastern countries – regularly impose sanctions for violations of the anti-bribery provisions. At least some of these cases have involved, in countries such as Egypt, Lebanon, Jordan, and the United Arab Emirates, prosecution of high level Middle Eastern government officials and, sometimes, businessmen.

166. For example, according to official statistics, Jordan’s Anti-Corruption Department handled 13 cases of bribery of public officials in 2004, compared to 20 and 15 cases in 2003 and 2002, respectively; some of them, which were referred to the public prosecution authorities, involved the giving of bribes by entrepreneurs to government officials and public employees. Among the bribery cases referred to court in 2002, one involved, for example, two owners of contracting companies after attempting to bribe a Jordan Electric Power Company employee with the objective of reducing their companies’ electricity bills.

167. In Egypt, in 2002 alone, as many as 48 high-ranking officials -- including former cabinet ministers, provincial governors and MPs -- were convicted of influence peddling, profiteering and embezzlement. More recently, at the end of 2004, an Egyptian court sentenced a close aide to a former Minister to 10 years in prison for being guilty of taking USD 110,000 in bribes in connection with imports of insecticides and allowing French and Japanese companies to dominate the market. In Kuwait, as of the second quarter of 2005, there were a number of cases at the inquiry or investigation stage and trials underway involving current or former government officials accused of malfeasance in connection with public procurement contracts.

168. In Lebanon, during 2004, the judiciary took several actions against public officials allegedly involved in corruption. Examples include an investigation into the Lebanese-American Agriculture Cooperation Project at the Ministry of Agriculture, as well as investigations resulting in legal actions for mismanagement of the energy sector, including allegations of squandering public funds, abuse of power, corruption in fuel tenders and contracting, and neglect of duty.

169. In Morocco, according to official statistics issued by the Ministry of Justice in 2002, more than 300 cases of bribery and other related offences (embezzlement, taking advantage of authority, smuggling private or public funds, taking or receiving any benefit from a contracting deal) were referred to the Special Court of Justice between 1998 and 2002, which, until its dismantlement in 2004, assumed the responsibility of sanctioning such offences committed by public employees or members of the Judiciary. According to the Ministry of Justice (“Reform of the Judiciary in Morocco, 2002, p. 40), many of these cases were, qualitatively, important cases.

b) Sentences handed down by the courts

170. Generally speaking, sanctions more often affect the recipients of the bribe (i.e. the public officials) than the bribers. This should be seen in the light of a certain inclination on the part of certain MENA prosecutors to prosecute only those who take bribes and not those who pay bribes, for reasons which have to do with moral considerations (the importance of taking a firm stand against dubious practices against the risk of reprehensible habits taking hold in the country's public service) but most of all with efficiency of prosecution: in some cases, where the active briber is the only witness against the public official, the decision not to prosecute the former and to grant him "pardon from punishment" enables prosecutors to secure his or her cooperation in the proceedings and thus obtain the conviction of the corrupt public official.

171. This happened, for example, in a recent bribery case in Egypt involving a judge and several other defendants, including a businessman who had arranged payment of bribes to the judge in exchange for lenient sentences or acquittals for defendants in his court. Although the businessman and the judge were given prison sentences of 15 to 25 years for the active and passive bribery offences of which they were convicted, the court acquitted seven defendants in accordance with Egypt's criminal code provision that pardons individuals involved in bribery if they bring it to the attention of the authorities before the initiation of criminal proceedings or present crucial evidence in court.

172. Apart from the modest level of sanctions applied to those who pay bribes, it is further observed that, in some countries, conviction of high level Middle Eastern government officials is sometimes rare. This might have to do with immunity privileges applicable to high-ranking civil servants and members of parliament. While such immunity privileges are meant to protect from arbitrary prosecution and interference, they can also represent serious obstacles to the prosecution of bribery of public officials.

173. For instance, in pre-war Iraq, under article 40 of the 1990 Interim Constitution (repealed by the 2004 Interim Constitution), members of the Revolutionary Command Council (the top decision-making body of the state which exercised both executive and legislative powers), including the President of the RCC (i.e. the President of the Republic of Iraq), had "full" immunity, and no measures could be taken against them without prior permission by the RCC itself: pursuant to Article 38(d) and (f) of the 1990 Constitution, prosecution of any member of the RCC, minister or vice-president, was the sole preserve of the RCC. Similarly, pursuant to State Consultative Council Law No. 106 of 1989, the judiciary was banned from hearing all appeals based on "acts of sovereignty", as found in presidential and RCC orders, decrees, and in actions based on presidential instructions. In Lebanon, the Higher Council for Prosecuting Ministers and Presidents has reportedly never conducted investigations or prosecutions since its formal establishment after the civil war.

174. Aware of these problems having to do with immunities or jurisdictions of exception, the Moroccan authorities decided in 2004 to dismantle the more than three decade old special court of Justice. The Rabat-based Special Court of Justice was a jurisdiction of exception set up in 1972 to sanction fund misused by civil servants or magistrates when the amount of money embezzled or misappropriated equalled or was higher than MAD 25,000 (nearly EUR 2,800). Article 8 of the law establishing the Special Court required that the exercise of prosecution be preceded by the Minister of Justice's written instruction or order to do so. Part of the ongoing reforms of the justice system in Morocco, the dismantling of the Court that was long criticized by anti-corruption activists in Morocco, was expected to lead to the creation of a new High Court of justice which would be empowered to judge Government members in case of complaints against them by citizens.

175. Other constraints may have to do with governments' interference in the judicial proceedings, as elsewhere in the world. In some countries, it has been reported that governments would refuse to execute the sentences rendered against ministers, governors and others with responsible positions in public authorities. The latter problem is partially a consequence of the fact that court decisions are published haphazardly in many countries of the region.

176. Elsewhere, interference from the executive may relate to the absence of effective rules providing for the independence of the judiciary. In Lebanon, Tunisia and Yemen, for example, although the Constitution provides for such independence, the principle of immovability of judges is not foreseen in the law and judges may be transferred at any moment. Moves are underway in those countries and in others such as Algeria, Jordan, Morocco and the National Palestinian Authority, to ensure greater impartiality of judges. For example, at the very end of 2005, the Yemeni President proposed several amendments to the law governing how the magistrature operates, with the aim of "favouring the administrative and economic independence of the judicial authority" of the country.

177. Most Arab laws, as elsewhere in the world, also provide for executive clemency. For example, according to media reports, the former head of Dubai Customs and Port Authority who was tried – along with five other customs officials –, convicted, and sentenced in 2001 to 27 years in prison on charges of corruption and embezzlement, was subsequently pardoned by the public authorities and released.

CONCLUSION

178. An efficient anti-bribery legal system is an essential basis for attracting investors and for a functioning economy. This efficiency depends on the quality and consistency of laws passed by Parliament and the means for their enforcement, as well as on political will. The national penal codes of MENA countries generally contain the panoply of bribery offences that are encountered and generally condemned under OECD countries' legal systems. Further efforts may be required to enhance the legal environment in terms of effectiveness.

179. Aware of this, a growing number of countries are engaged in a reform process to improve and correct the original laws on corruption. In Jordan, for example, an ad hoc committee was established in June 2005 with the mandate to draft a new anti-corruption law. At the beginning of 2006, Yemen was seeking to introduce new laws to combat corruption and control bids and tenders to curtail bribery and embezzlement of public funds. Similarly, Algeria and Morocco were drafting anti-corruption laws aimed at codifying all the measures taken in this field in line with the UN convention on corruption, which both countries signed in 2003 and 2004; a new code of criminal procedure already entered into force in Morocco in October 2003. In the Emirates, an anti-corruption law concerning the public sector, which could increase the penalties against those convicted of corruption, was being considered.

180. Requiring companies to keep records that accurately and fairly reflect financial transactions in reasonable detail would also prevent practices that are often associated with improper transactions with public officials. Business actors themselves have to come to understand their vital interest in fighting and eradicating bribery. Governments should actively encourage and support business efforts in promoting business ethics.

181. Many of the difficulties existing in Middle Eastern and North African countries are not unique to the region. Few emerging markets have a clear, efficient anti-corruption policy at an early stage in the process. Even OECD countries only recently came to realize that bribery of public officials and other types

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of economic crime are highly complex issues and that there was a need to undertake a series of legislative and organisational reforms aimed at enhancing the effectiveness of their combat against bribery in business transactions.

182. The process is an evolutionary one, depending upon changes in the business culture, in corporate and public sector attitudes and styles, as much as changes to laws and enforcement mechanisms. Policies to further enhance corporate ethics, integrity in business transactions and to deter more effectively the bribing of government officials and employees, will reinforce broader efforts to integrate MENA countries into the global economy.