



**Improving Transparency in Reconstruction, Aid Flow
and Reforms in Lebanon**

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**Leveraging OECD Convention on Combating Bribery of
Foreign Public Officials in International Business
Transactions**

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Lebanon's Possible Usage of the Convention

1 - Background & Ratification Status

The United States of America were the first country to pass a law, the "Foreign Corrupt Practices" of December 6, 1977, allowing to condemn American firms that had paid bribes abroad

As a consequence, the American firms complained arguing that this law would put them at a disadvantage vis-à-vis other international firms in concluding foreign deals

1 - Background & Ratification Status

Hence, at the end of the 90's, the USA urged the OECD to start discussions on the criminalization of corruption of foreign public officials

The outcome of these discussions is the 'OECD Convention on combating bribery of foreign public officials in international business transactions'

1 - Background & Ratification Status

The Convention was signed in 1997 and entered into force on 15 February 1999

The Convention is open for signature to ALL countries, that had joined the Working Group (WG) on Bribery

There are presently 36 Parties to the Convention, representing many of the world's largest trading partners

**all 30 OECD countries,
+ 6 non-OECD countries
(Argentina, Brazil, Bulgaria,
Chile, Estonia and Slovenia)**

2- Scope & Loopholes – Main two ideas

General scope of the Convention:

- ❑ It deals only with the **offering of a bribe** (active bribery) and not with the acceptance of a bribe (passive bribery) which falls under the jurisdiction of the country of residency of the person who accepted the bribe

- ❑ It requires that bribery of foreign public officials be punishable, by effective, proportionate and dissuasive **criminal penalties** comparable to those applicable to the parties' public officials

2- Scope & Loopholes – Definition of the offence

What is the offence?

The Convention defines the bribery of foreign public officials as **“the voluntary giving (promising or offering) of something of value to a foreign public official in order to obtain or retain business or other improper advantage in the conduct of international business” ...**

2 – Scope & Loopholes – Elements to point out in the definition

... whether or not the company concerned was the best qualified bidder or was otherwise a company which could properly have been awarded the business

"other improper advantage" refers to something to which the company concerned was not clearly entitled to, for example, an operating permit for a factory which fails to meet the statutory requirements...

...whether the offer or promise is made or the pecuniary or other advantage is given on that person's own behalf or on behalf of any other natural person or legal entity

...irrespective of the value of the advantage, its results, perception of local customs, the tolerance of such payments by local authorities, or the alleged necessity of the payment to obtain or retain business or other improper advantage

2- Scope & Loopholes – Definition of the ‘ Foreign Public officials’

Who are the ‘foreign public officials’?

- Any person that holds an office (whether elected or appointed) or any person exercising a public function for a foreign country

- "Public function" includes any activity in the public interest

- Could be an officer of a public enterprise, the head of a government designated monopoly, or senior officers of any company over which the government exercises control

2- Scope & Loopholes – Definition of the corruptors

Who are the corruptors?

- Natural and legal persons of countries having ratified the Convention

- Parties are obliged to establish corporate liability (liability of “legal persons”) for foreign bribery

2- Scope & Loopholes - Civil and criminal sanctions

What are the sanctions?

The Convention provides for civil and criminal sanctions. They should be comparable to the sanctions applicable to the bribery of the Party's own public officials:

- For natural persons: it includes deprivation of liberty
- For legal persons: effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions
- The bribe and the proceeds of the bribe are subject to seizure and confiscation
- Additional administrative sanctions might be considered

2- Scope and Loopholes – A multidisciplinary approach

Money Laundering

Obligation to include in its related law the offence of the bribery of foreign public officials

Taxation

Prohibition of tax deductibility of bribes as 'annex expenditures'

Accounting

Prohibition of establishing off-the-book accounts

2- Scope & Loopholes – Two main gaps

1st loophole

“Small facilitation payments“

- Expressly excluded from the scope of the Convention by the commentaries
- Made to induce public officials to perform their functions
- Might be addressed within a program of Good Governance

2nd loophole

Bribery made by a local subsidiary registered in the host country

- The convention covers only legal entities registered in a Party
- Unless it is proven that the local entity acted under direct instructions from its mother company

3 - Monitoring & Follow Up – Peer review based on...

Self-evaluation

Parties' responses to questionnaires give a basis for assessing the implementation of the Convention

Mutual evaluation

Each party will be examined in turn by the WG on Bribery on the basis of a report which provides an objective assessment of the Party's progress in implementing the Convention

3- Monitoring & Follow Up – A two phases procedure...

Phase 1

A comprehensive assessment of the conformity of the country's anti-bribery laws with the Convention through:

- Country's replies to an evaluation questionnaire
- Consultations within the WG on Bribery
- Adoption of a report including conclusions

Phase 2

Study of the structure in place to enforce the laws and rules implementing the Convention and to assess their application in practice through:

- Country's replies to an evaluation questionnaire
- On-site visit to meet with government officials, law enforcement authorities, business, trade unions and civil society
- Consultations within the WG on Bribery
- Adoption of a report including recommendations

4- Lebanon's possible usage of the Convention – One day maybe...

We will adhere to the Convention...

- Positive result:** binding our companies and businessmen that work overseas with the provisions of the Convention
- Limited effect:** no direct effect on fighting local corruption (within our borders)
- Obstacle:** Parties must facilitate mutual legal assistance and cannot invoke bank secrecy to deny it

4- Lebanon's possible usage of the Convention – Here and now...

We can use Phase 2 of the Monitoring procedure ...

- To define and address local challenges and raise awareness
- To monitor foreign entities' behavior delivering aid to Lebanon, especially in the current reconstruction and reforms era
- To provide information to the WG on Bribery on any suspected bribery paid by a company resident in any of the Parties, to Lebanese public officials
- To open a constructive and continuous dialogue between the Lebanese civil society and the civil societies of the Parties

References

For further details on the Convention:

www.oecd.org

For information on the Ministry's activities:

www.finance.gov.lb

Thank you for your attention