Working Group on Bribery in International Business Transactions (Investment Committee)

QUESTIONNAIRE TO COUNTRIES SEEKING PARTICIPATION IN THE WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS AND ACCESSION TO THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS
QUESTIONNAIRE TO COUNTRIES SEEKING PARTICIPATION IN THE WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS AND ACCESSION TO THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

Objective

The objective of this questionnaire is to provide information to assist the OECD Working Group on Bribery in International Transactions (the Working Group) in assessing a country’s application for participation in the Working Group and accession to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention). In replying to the questionnaire, the OECD anti-corruption instruments should be taken into account, i.e. the Convention, the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions (the Revised Recommendation) and the Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials.

If deemed necessary, an applicant country may receive a supplementary questionnaire that deals with issues specific to its particular situation. The applicant country may also be asked to provide copies of legislation and additional information after it has responded to the questionnaire(s).

Replies to the Questionnaire

The replies to the questionnaire and supplementary questionnaire should be sufficiently detailed to permit the Working Group to properly assess the application.

When responding to the questionnaire, the applicant country is requested to provide extracts of the relevant legislation. Case law (including a summary of the facts and rationale of the decision if possible) and any other documents to which the applicant country refers in its answer to the questionnaire should also be provided. With respect to relevant draft legislation and regulations, please specify at what stage in the legislative process the draft law or regulation is.

All information should be submitted in English, French or both, and preferably in electronic format.

Contact Person

Please provide the name and information of a representative(s) of your country who will serve as a contact point.

Inquiries regarding the questionnaire should be addressed to the Secretariat.

Evaluation of an applicant

The Working Group will base its opinion on the assessment of the countries’ responses to the questionnaire(s) and, under certain circumstances, a meeting with experts from the applicant country.

The technical opinion of the Working Group is transmitted to the Council for its decision on whether to invite the country to participate in the Working Group.
1. **General Overview**

1. Please describe your country’s policy with regard to the fight against domestic and foreign bribery, indicating the principal components of this policy and the priorities defined within its framework.

2. Is there a national plan or strategy to fight corruption? If so, please describe its main features and implementation.

3. Is your country a party or signatory to any international anti-corruption instrument(s) or organisation(s)?

4. If your country’s efforts to fight corruption have been reviewed within the last three years at either national or international level (under for instance the GRECO, the Inter-American monitoring procedure etc), please provide a copy of the review(s).

2. **Legal Framework for Combating Domestic and Foreign Bribery**

2.1 **Legislation Relating to the Criminal Offence of Bribery**

5. Does your legal system criminalise and sanction the following offences: (a) active and passive bribery of domestic public officials, (b) bribery of foreign public officials, (c) trafficking in influence, (d) bribery of political parties and candidates, (e) private sector (or commercial) bribery. Please provide translations of the relevant legislation.

6. Describe whether and how your legal system imposes non-criminal sanctions (for instance administrative fines or sanctions or civil sanctions etc.) for the active and passive bribery of domestic and foreign public officials.

7. Does your legal system establish criminal, civil or administrative responsibility of legal persons for the active and passive bribery of domestic and foreign public officials? If it does, describe the basis and nature of the liability and the entities to which it applies. If not, does your legal system establish criminal, civil or administrative responsibility of legal persons for other offences, actions or omissions? Are there any pending reform initiatives in these areas? Please describe briefly.

8. If your country does not currently impose criminal liability for the active bribery of foreign public officials, please indicate whether your country is willing to do so in the future and whether any steps have been taken toward that end.

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1. **Terminology note:** "Active corruption" or "active bribery" is defined as the offence committed by the person who promises or gives the bribe. "Passive corruption" is the offence committed by the official who receives the bribe. This terminology does not imply that the briber has taken the initiative and the recipient is a passive victim. In fact, in a number of situations, the recipient may play a very active part, by inciting the bribe.

Aside the offence of stricto sensu passive (taking) and active (giving) bribery, other forms of corrupt behaviour exist, such as private sector corruption, trading in influence and misuse of public property, closely linked to bribery and commonly understood as specific forms of corruption.
2.2 **Jurisdiction**

9. Please explain the prevailing principles of jurisdiction over criminal offences under your country’s legislation. Please explain in detail how those principles apply to the corruption offences. Please also explain the procedures in place, if any, to allow consultations and eventual transfer of a case to another country, which can also establish jurisdiction over an alleged offence of corruption.

2.3 **Enforcement - Investigation and Prosecution**

10. Please describe how your country ensures detection, investigation and prosecution of offences, in particular the bribery offence(s). Particularly, please explain the organisation of police services, of the prosecutor’s office as well as of the judiciary in relation to the investigation, prosecution and trial of the bribery offence(s).

3. **Ability to Comply with the Revised Recommendation**

3.1 **Disallowance of tax deductibility of bribes**

11. Please explain whether your country disallows tax deductibility of bribes? If there is an express provision in your tax legislation denying such deductions, please explain its enforcement. If there is no express provision, how is non-deduction ensured? Is any guidance and/or training provided to tax inspectors and auditors on how to distinguish between legitimate business expenses and illicit payments?

3.2 **Accounting Requirements, External Audit and Internal Company Controls**

12. Do your country’s accounting standards require entities to maintain adequate records and prohibit the making or keeping of off-the-books transactions or accounts or similar types of behaviour? In providing your response, please address in particular the issues listed in Article V.A of the Revised Recommendation. Please also describe the sanctions that may be applied for violations.

13. Please describe the laws and rules in your country regarding (1) requirements to submit to external audit, (2) auditing standards, (3) mechanisms in place to ensure audits are carried out, (4) independence of auditors, (5) reporting or disclosure obligations of auditors who discover improper or suspicious behaviour, (6) sanctions that may be applied for violations, and (7) internal company controls, including standards of conduct?

3.3 **Mutual Legal Assistance and Extradition**

14. Please describe the mutual legal assistance you are able to render in cases of bribery of domestic and foreign public officials, particularly the conditions for assistance, and the nature and limits on such assistance. Please describe applicable laws, treaties and arrangements.

15. Is bribery of domestic and foreign public officials an extraditable offence under your country’s law and the extradition treaties and arrangements to which your country is a party? Please describe the applicable laws, treaties and arrangements, and the conditions for extradition.

3.4 **Money Laundering**

16. Does your country have a money laundering legislation? Is bribery of a public official a predicate offence for the purpose of your country’s money laundering legislation? Does your country have a system for reporting suspected money laundering transactions? Please indicate whether your country is a
member of the Financial Action Task Force on Money Laundering (FATF) or to a regional Financial Task Force.

4. Economic Factors

17. Please describe the role of your country as an economic actor in its region or sub-region, or in particularly important or sensitive economic sectors, and more specifically:

- Please indicate the share of international trade in goods and services as a percentage of Gross Domestic Product.

- What were the annual foreign direct investment (FDI) inflows/outflows during the past five years (if relevant)? Please indicate the corresponding FDI stocks. Please indicate the share of FDI (in- and outflows) as a percentage of Gross Domestic Product.

- Please provide information on the geographical and sectoral pattern of both international trade and FDI (inward and outward). Please indicate the percentage of your country’s trade and FDI with neighboring countries and regional partners? In what sector is FDI (inward and outward) most prevalent?
ANNEX 1

Criteria for enlargement of the Working Group and for accession to the Convention

(extract of the annex to Council document C(2004)1)

Criteria for enlargement

1. In order to reinforce the principle of openness in line with Article 13 of the Convention, the Group favourably explored the approach whereby new requests for accession would be measured and thoroughly examined against two criteria: “willing and able,” and “mutual benefit.” Under this approach the “major player” criterion would not be retained as an independent measure but the Group would incorporate under “mutual benefit” certain elements considered to be relevant as new candidates are evaluated.

2. As a prerequisite to the new approach, the Group undertook to reach a more accurate common definition of the “willing and able” and “mutual benefit” criteria in order to ensure that the principle of openness would be consistent with the effectiveness of the Convention and the retention of its current standards. This means that a country applying for participation in the Working Group must show:

- that its existing legal framework for combating bribery on a domestic level, including legislation relating to the criminalisation of passive bribery, is satisfactory;
- that it can meet the standards laid down in the Revised 1997 Recommendation, including criminalisation of bribery of foreign public officials (Article III); that it already disallows the tax deductibility of bribes (Article IV); that it has accounting requirements, external audit and internal company controls compatible with the Recommendation (Article V); and that it is able to cooperate with other Parties to the Convention as concerns MLA (Article VII);
- its enforcement capacity, particularly for investigation and prosecution of bribery cases;
- that it is ready and able to submit to the same rigorous monitoring mechanism as the other Parties in the Convention and that it is prepared and able to participate as a lead examiner in peer reviews of other Parties to the Convention;
- whether its companies engaged in international business are involved in transactions where solicitation of bribes by/for foreign public officials could occur;
- that it is a significant economic actor in its geographic region or sub region, or in particularly important or sensitive economic sectors;
- the extent of its GDP derived from international trade and investment activities.

3. This new approach to enlargement would need to be complemented with a more proactive and targeted outreach policy. This latter aspect remains to be fully discussed in the future by the Group.