Working Group on Bribery in International Business Transactions (CIME)

PARTICIPATION IN THE OECD WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

This note is intended for governments of non-OECD countries interested in receiving information about the conditions for joining the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Working Group on Bribery in International Business Transactions.
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Information Note

The OECD first put corruption on its agenda in 1989 and later evolved two basic objectives for its work: to fight corruption in international business and to help level the competitive playing field for all companies. After several years spent analysing the nature of corruption in international business and studying the measures that countries might take to combat it, OECD countries adopted several anti-corruption instruments. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, negotiated and signed at the end of 1997 by 34 OECD and associated countries, is the centrepiece of OECD efforts to fight international corruption. The Convention came into force on 15 February 1999.

This note is intended for those governments of non-OECD countries interested in receiving information about the conditions for joining the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Working Group on Bribery in International Business Transactions.

Part I describes the key elements of the Convention.

Part II indicates the procedure and the criteria for becoming a party to the Convention and accede to the Working Group.

Part III outlines the work carried out by participants in the Working Group.

Part IV contains a questionnaire to non-members seeking participation in the Working Group and the Convention.
## I. Key elements of the Convention

| The target: cut off the supply of corruption | The Convention provides a framework to criminalise corruption in international business transactions. For the first time, countries pledge to punish those accused of bribing officials of foreign countries, including officials in countries that are not part of the Convention, for the purpose of obtaining or retaining international business. |
| Why focus on bribery of foreign officials? | Governments bear the responsibility for sanctioning the violation of public trust that the bribery of officials implies. Whereas most countries have laws against bribery of domestic public officials, corruption taking place abroad goes mostly unpunished. Curbing the supply side of international corruption makes sense for OECD countries since collectively they represent:  
- almost all major international corporations,  
- more than two thirds of world-wide trade, and  
- over 90 per cent of foreign direct investment. |
| Criminalisation is key | Criminalising such behaviour has forceful dissuasive value but also serves to trigger the application of other laws and rules. A criminal offence may have serious civil, tax and administrative consequences as well. |
| The standards set by the Convention allow countries to move in a co-ordinated manner | The Convention contains the following provisions requiring the Parties to adopt wide-ranging rules:  
- national legislation should make the bribe of foreign public officials a crime;  
- “bribery” and “foreign public officials” are defined broadly to take account of the fact that functions exercised by the State vary from country to country;  
- penalties must be “effective, proportionate and dissuasive”, comparable to penalties applicable to domestic public officials (including prison term);  
- territorial jurisdiction is to be interpreted broadly and nationality jurisdiction is to be established if this accords with national legal principles;  
- where there is no criminal liability of companies, countries will impose dissuasive non-criminal sanctions, including monetary fines;  
- accounting and auditing standards are required to prohibit the establishment of off-the-book accounts and other techniques for hiding bribery;  
- mutual legal assistance must be provided in connection with criminal investigations and other proceedings; “bank secrecy” may not be asserted to deny mutual legal assistance and extradition is to be provided for. |
| Monitoring to ensure implementation | The legislation adopted by countries to implement the Convention is subject to a rigorous monitoring process to ensure that it meets the standards sent by the Convention. A Party may use various approaches to fulfil its obligations, but the monitoring process will ensure that there is a functional equivalence among measures taken by Parties to the Convention and that effective enforcement takes place. Reports will be issued to the OECD Council and subsequently made available to the public. |
| Complementary actions | The Convention is the centrepiece of a broader programme set forth in a series of OECD Recommendations. Signatories to the Convention also commit to implement these Recommendations and, in particular, to:  
- eliminate tax deductibility of bribes,  
- improve transparency through stronger bookkeeping and auditing standards,  
- introduce sanctions in the area of public procurement,  
- co-operate internationally. |
| Why countries join the Convention | to send a strong and clear signal to all trading partners that as Parties to the Convention they will take action against bribery in international business transactions,  
- to foster a better climate for international investment,  
- to build a strong alliance with other governments eager to achieve honest government,  
- to reinforce and support national anti-corruption programmes,  
- to complement or reinforce the measures taken to fight corruption by other institutions. |
| Who can join? | The Convention is open to accession by any country that becomes a full participant in the OECD Working Group on Bribery and that is willing and able to assume its obligations. The procedure and criteria for joining the Convention are addressed in more detail in the following section. |
II. Procedure and Criteria for joining the Convention

**Strengthening concerted action via extended membership**

Ministers of participating states have declared on different occasions their intention to seek to secure the accession of the broadest range of non-OECD countries to the Convention.

The Convention (Article 13) and the related Commentaries (paragraph 37) explicitly set the conditions and provide some indications regarding the procedure for non-members to accede to the Convention. It is specified that the Convention is open to non-members who become full participants in the OECD Working Group on Bribery in International Business Transactions (the “Working Group”) in accordance with OECD procedures for becoming a full participant in OECD subsidiary bodies.

**Role of the OECD**

The OECD is the depository of the Convention and provides the institutional framework (through the Working Group) for carrying out monitoring and surveillance of the effective implementation of the Convention. The OECD, via its Council, decides whether to invite a non-member to become a full participant, or an observer, in the Working Group on Bribery. This fully takes account of the specific goals and objectives of the Convention on Combating Bribery of Foreign Public Officials in International Business and the Working Group.

**Procedure for joining the Working Group and the Convention**

- Governments of a non-member country interested in associating themselves to the OECD anti-corruption effort must be willing and able to fully meet all obligations and commitments inherent in joining the Working Group and in acceding to the Convention. The willingness of a country to join the Working Group and accede to the Convention should be based on a complete understanding of those obligations and commitments.

- To that effect, the OECD Secretariat provides a full set of information to all non-members including: (i) the conditions for joining the Convention; (ii) a questionnaire relating to certain economic indicators as well as the existing legal framework for combating bribery; and (iii) some background documentation on other OECD initiatives to fight against corruption and promote high ethical standards and good governance.

- Non-member governments wishing to join the OECD Convention combating bribery in international business transactions should formally apply to the OECD to become a full participant in the OECD Working Group on Bribery in International Business Transactions.

**Criteria to evaluate the eligibility of an applicant**

In the decision making process, the OECD Council normally asks for a technical opinion based on an assessment of how well the applicant country meets some Council criteria, in particular those relating to “major player” and “mutual benefit”.

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In applying these criteria, certain economic as well as institutional/legal factors will be assessed:

- To make an assessment of the "major player" criteria, the countries’ economic situation will be considered. This evaluation will look at the role of a country’s companies in international investment and trade. Companies may be meaningful competitors in the “global” economy but they may also be relevant actors on a regional scale, or in particularly important or sensitive sectors. Defence, aviation, construction or telecommunications are examples.

- The appraisal of "mutual benefit" will be based on the applicants’ institutional/legal framework. The existing legal framework for combating bribery on a domestic level, including legislation relating to the criminalisation of passive bribery will be considered. Another element is whether a country disallows, or is willing to discontinue tax deductibility of bribes and to what extent it already can adhere to the standards laid down in the Revised 1997 Recommendation. The assessment will also focus on the country’s enforcement capacity, particularly investigation and prosecution of bribery cases.

The formulation by the Working Group of its technical opinion of a country’s eligibility to participate in its work and accede to the Convention will, to a large extent, be guided by the “major player” and “mutual benefit” criteria but other factors can, when relevant, also be taken into account.

The Working Group will base its opinion on the assessment of the countries’ response to a questionnaire 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.

- Where the assessment process results in a positive evaluation and upon approval by the OECD Council, the Secretary General will invite the non-member to participate in the Working Group for an initial period to be determined.

- At the end of that an initial period, the country may be ready to become a full participant in the Working Group. Based on the countries’ progress in implementing anti-corruption provisions and its record of attendance at the Working Group meetings, the Working Group will forward a recommendation to the OECD Council for action.

- Upon approval by the OECD Council of this progress assessment, the Secretary General will invite the non-member to become a full participant in the Group and to accede to the Convention.

It is not expected that all countries serious about fighting corruption will want to join the Convention and the Working Group or that accession to the Convention and membership in the Working Group would be appropriate in all cases. Nevertheless, there might be a shared desire to further intensify
actions to improve links and co-operation in the fight against corruption. To that effect, additional regional conferences might be organised. The scope of the information sharing process through new or extended anti-corruption networks may also be expanded and the collaboration with different bodies active in the field of anti-corruption might also be intensified. Other possible actions might include adherence to an “Anti-Corruption” Declaration which could serve to underpin a country’s domestic reform efforts as well as to signal the adherence to the principles embodied by the Convention.
III. The implications of membership in the Working Group

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<tr>
<th>Commitments of Working Group Observers</th>
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<tr>
<td>As an observer in the Working Group, a non-member agrees to:</td>
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<tr>
<td>• Participate in the meetings of the Working Group and ad hoc meetings at expert level to which the country is invited.</td>
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<td>• Take measures to ensure that upon signature of the OECD Convention, it will be able to ratify and fully implement the obligations arising from the Convention, including the preparation of draft legislation.</td>
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<tr>
<td>• Contribute financially to the work of the Working Group ¹</td>
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<th>Ratification and implementation of the Convention and related instruments</th>
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<tr>
<td>As full participant in the Working Group, non-members agree to:</td>
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<td>• Sign and ratify the Convention and adhere to the related OECD Recommendations.</td>
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<td>• Enact legislation that implements the obligations of the Convention in national law.</td>
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<td>• Take part in all the activities of the Working Group, including the process of self-and mutual evaluation to assess implementation of the Convention and the Recommendations.</td>
</tr>
<tr>
<td>• Contribute financially to the work of the Working Group ²</td>
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− Laws adopted to make bribery of foreign officials a crime must meet the standard set by the Convention and must be effectively enforced.

− In addition, non-members will have to adopt the necessary measures to implement the 1997 Revised Recommendation and the 1996 Recommendation on tax deductibility.

− The Working Group will subsequently carefully monitor the progress of the applicant country in ratifying and implementing the Convention and the related instruments.

The Working Group is composed of government officials, essentially from the Ministries of Justice or Economics and Finance, from all countries committed to implementing the anti-corruption instruments.

The main activities of the Group are:

- monitoring implementation of the Convention and related Recommendations,
- examining specific issues relating to bribery in international business

¹ Observers are generally expected to make a maximum contribution of FF 10 000.
² Participants are generally expected to make a minimum contribution of FF 15 000.
transactions;

- engaging in outreach events to broaden awareness of the Convention and its objectives.

  - The Working Group meets in plenary session three or four times a year. Informal ad hoc meetings, at expert level, are also organised to discuss or find solutions to particular issues and problems. The Working Group also regularly consults with business organisations and representatives of the private sector, civil society, and international organisations to build partnerships and ensure the full involvement of major stakeholders. Conferences and regional events are sponsored to appeal to non-signatory countries and other relevant segments of society to associate themselves with the Convention and take effective measures to fight bribery and corruption.

All participants in the Working Group on Bribery are expected to attend these different meetings and to contribute actively to them.

Participation in the Working Group on Bribery does not give access to involvement in other OECD activities or OECD bodies.
IV. QUESTIONNAIRE TO NON-MEMBERS SEEKING PARTICIPATION IN THE WORKING GROUP AND THE OECD CONVENTION ON COMBATING BRIBERY

Objective

The principal objective of this questionnaire is to provide information to the Working Group on Bribery to assist it in evaluating a country’s application for participation in the Working Group and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Evaluation by the Secretariat and assessment by the Working Group

Based on the responses provided to the questionnaire, the OECD Secretariat will make a preliminary assessment to be submitted for consideration to the Working Group. The preliminary assessment will help determine:

- The country’s participation in international/regional investment and trade, including sectors in which such activities are predominant;
- Actions taken by the non-member to fight corruption both at home and abroad, including legislation relating to the criminalisation of bribery and the denial of tax deductibility of bribes;
- The mutual benefit of associating the non-member to the work of the Working Group;
- The impact of the participation of the non-member on the work of the Working Group.

The Working Group may decide to organise an informal meeting with experts from the applicant country to discuss the answers to the questionnaire in further depth.

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

Scope

The replies to the questionnaire should be precise and provide sufficient detail to permit an assessment of the factors relevant to an applicant’s participation in Working Group and the Convention.

Concerning a country’s institutional/legal framework for combating bribery and corruption, replies should identify whether relevant laws or regulations are effectively in force or pending (and in what stage of the legislative process). Countries may provide copies of relevant laws, regulations or administrative guidance if possible, in English or French.

Confidentiality

Answers to this questionnaire, as well as any reports based on them, will be confidential.

Submission of replies

Replies to the questionnaire can be submitted at any time convenient to the applicant country.

Replies should be submitted in either English or French and preferably in electronic format.
A. PARTICIPATION IN INTERNATIONAL TRADE AND INVESTMENT

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

- What were annual foreign direct investment (FDI) inflows/outflows (for past five years, if relevant)? FDI stocks?

- Please provide information on the geographical and sectoral pattern of both international trade and FDI (inward and outward). What percentage of inter-regional trade does your country account for? In what sector is FDI (inward and outward) most prevalent?

B. INSTITUTIONAL/LEGAL FRAMEWORK

- Does your country have national legislation that makes active and passive corruption of domestic public officials a criminal offence? What authorities are responsible for enforcement, including investigation and prosecution of such offences? Please cite the relevant texts of existing legislation.

- Does your national legislation recognise the concept of corporate criminal responsibility (liability of legal persons)?

- Does your existing fiscal legislation allow for the possibility of income tax deductions for bribes (or commissions, or fees) made to domestic and/or foreign public officials?

- Is your country a Party (or signatory) to any international anti-corruption instrument? If so, which one?

- Does your country have existing money laundering legislation? Is the offence of bribery under your national laws a predicate offence for the application of money laundering legislation?

- Is your country able, under its laws, treaties and arrangements, to provide mutual legal assistance for the purpose of criminal investigations and proceedings?
The Organisation for Economic Co-operation and Development (OECD) groups 29 member countries in an organisation that provides governments a setting to discuss, develop and perfect economic and social policy. OECD governments compare experiences, seek answers to common problems and work to co-ordinate domestic and international policies that increasingly in today’s globalised world must form a web of even practice across nations. Their exchanges may lead to agreements to act in a formal way - for example, by establishing legally-binding codes for free flow of capital and services, agreements to crack down on bribery or to end subsidies for shipbuilding. But more often, their discussion makes for better informed work within their own governments on the spectrum of public policy and clarifies the impact of national policies on the international community. And it offers a chance to reflect and exchange perspectives with other countries similar to their own.

The OECD has been a leader in the global fight against bribery and corruption in international business practices. Making use of the Secretariat-wide expertise and cultivating synergies with other international initiatives - both public and private, the OECD has provided a unified and comprehensive front against corruption. The OECD addresses corruption from the perspective of both the recipients of illicit payments, by promoting public ethics and good governance, and the providers of illicit payments, by taking actions against bribe givers.

The OECD Anti-Corruption Unit, (ACU) located in the Directorate for Financial, Fiscal and Enterprise Affairs, serves as the focal point within the OECD Secretariat to respond to the need to fight bribery and corruption in international business transactions. The OECD Public Management Service (PUMA) assists Member countries to develop and maintain an effective framework for promoting integrity and high standards of conduct on the part of public officials. The Centre for Co-operation with Non-Members (CCNM) assists in this work by being the focal point for the development and pursuit of policy dialogue between the OECD and non-member economies.

For further information about the OECD’s work on fighting corruption in international business transactions please consult the OECD webpage http://www.oecd.org/daf/nocorruption/

Information on Public Ethics can be found under http://www.oecd.org/puma/ethics/