



## APPENDIX C

### TI Report Card on Enforcement of OECD Convention

#### Questionnaire for TI National Chapters in OECD Signatory States

7.7.04

Questionnaire for: (Name of national chapter)

Date:

#### I. Current Status of Enforcement

##### A. Prosecutions brought

Please list all cases involving allegations of bribery of foreign public officials brought by prosecutors in your country since the OECD Convention became effective in your country. The list should cover as far as possible all cases relating to bribery of foreign public officials, whether brought under laws dealing with corruption, or under other laws, such as laws dealing with fraud, money laundering, and tax evasion or accounting violations.

**Total number of cases:** \_\_\_\_

**For each case** please list if possible the following:

- (1) Name of case, including principal parties
- (2) Date and court where filed
- (3) Summary of principal charges, including name of the country whose officials were allegedly bribed
- (4) Penalties or other sanctions sought
- (5) If case concluded, please indicate disposition: conviction, settlement, dismissal or other disposition. If case pending, please indicate current status, including trial or appeal dates if known.

Comments and sources, if possible:

## **B. Investigations under way**

Please provide available information on government investigations of allegations of bribery of foreign public officials which were commenced since the OECD Convention became effective in your country.

**If information unavailable, please indicate: \_\_\_\_\_**

**Total number of known investigations: \_\_\_\_**

**For each investigation**, where possible, please list the following:

- (1) Names of parties
- (2) Date when investigation started
- (3) Name of country whose officials were allegedly bribed
- (4) Current status, including likelihood case will be brought

Comments and sources, if possible:

## **C. Serious allegations**

Please provide information about serious allegations of foreign bribery by companies or individuals based in your country, that (a) have been published in reputable international or domestic publications since the OECD Convention became effective in your country, and (b) with respect to which, as far as you know, no investigation or prosecution has been undertaken.

**Total number of serious allegations: \_\_\_\_**

**For each matter**, where available, please list the following:

- (1) Names of companies and/or individuals involved
- (2) Date of publication:
- (3) Nature of allegations
- (4) Name of country whose officials were allegedly bribed

Comments and sources, if possible:



## II. Actions to Promote Enforcement

### A. Government Commitment to Enforcement

How would you assess your government's commitment to enforcing foreign bribery laws?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

### B. Organization of Enforcement

1. Does the government have a centralized national office for foreign bribery enforcement?

Yes\_\_\_ No\_\_\_

2. If enforcement is not centralized, what level of coordination and supervision does the government provide for foreign bribery enforcement?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

### C. Available Resources

How would you assess your government's provision of staffing and resources for foreign bribery enforcement?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

### **D. Complaint Procedure**

How would you assess your government's efforts to provide and publicize procedures for reporting foreign bribery complaints, such as hotlines and websites?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

### **E. Whistleblower Protection**

How would you assess the level of whistleblower protection for foreign bribery complaints?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

### **F. Public Awareness**

How would you assess your government's efforts to create public awareness that foreign bribery has become a crime?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

### **G. Accounting and Auditing Requirements**

How would you assess accounting and auditing requirements intended to prevent practices for hiding foreign bribery (such as the prohibition of off-the-books account or the use of other practices for hiding foreign bribery)?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

### **H. Private Sector Efforts**

How would you assess the use of corporate anti-bribery compliance programmes in your country?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

### I. Statutory and Other Legal Obstacles

1. Are there significant inadequacies in the legal framework for foreign bribery prosecutions in your country?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. If so, please indicate if these include:

- Short statutes of limitation: Yes \_\_\_\_\_ No \_\_\_\_\_
- Jurisdictional limitations: Yes \_\_\_\_\_ No \_\_\_\_\_
- Restrictive dual criminality requirements: Yes \_\_\_\_\_ No \_\_\_\_\_
- Lack of criminal liability for corporations: Yes \_\_\_\_\_ No \_\_\_\_\_
- Other, please indicate: \_\_\_\_\_

Comments and sources, if possible:

### J. Actions Needed in Your Country

Please list, in order of importance, the most important actions the government in your country should take to promote enforcement and compliance. Please consider the actions listed above, but feel free to add other actions.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

### III. Current and Anticipated Level of Enforcement

1. How would you assess the current level of foreign bribery enforcement in your country?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

2. How do you expect your government's enforcement of foreign bribery to change in the coming three years?

*Please choose one of the following:*

<b>1</b>	<b>2</b>	<b>3</b>
<i>Decreasing Enforcement</i>	<i>No change</i>	<i>Increasing enforcement</i>

Comments and sources, if possible:

Report prepared by :

\_\_\_\_\_ (signature)

Name of respondent:

Affiliation:

Professional experience:

### Appendix

#### **List of persons consulted (with affiliation), if possible:**

Inclusion of this information is not required, but would be helpful.

#### **List of references and sources** used in responding to this questionnaire

Inclusion of this information is not required, but would be extremely beneficial in helping us to build a database that could be of use to TI-S and other National Chapters.

# Guidelines for Responding to TI Report Card Questionnaire

## On OECD Convention Enforcement

The information below is intended to explain the purpose of individual questions and to provide relevant background. We have not provided explanations for questions which seem self-explanatory. If additional information would be useful, please contact Gillian Dell by e-mail at: [gdell@transparency.org](mailto:gdell@transparency.org)

### I. Current Status of Enforcement

- A. Prosecutions brought: Our interest is in prosecutions alleging bribery of foreign officials. Such prosecutions are most likely to be brought under the law prohibiting foreign bribery. In some countries foreign bribery cases might also be brought under other laws, such as laws dealing with fraud, money laundering, tax evasion, and accounting violations: if possible also include such cases.
- B. Investigations under way: We recognize that practices regarding disclosure of investigations vary considerably, and that you may not be able to obtain the requested information. In some countries it may be possible to obtain information on the number of cases under investigations, but not the names of companies or individuals under investigations. Often information regarding major investigations becomes available through the media, even if not directly from prosecutors. Investigations reported in response to this question should not include investigations that have resulted in prosecutions reported under the previous question.
- C. Serious Allegations: The purpose of this question is to determine whether governments have failed to investigate or prosecute serious allegations of foreign bribery. By “serious allegations” we mean allegations that have been reported in reputable publications or other media (important newspapers in your country or in prominent international publications, such as the Financial Times, the Wall Street Journal, or the Economist), not rumors or gossip. Please report those allegations that in your judgment appear sufficiently serious to justify investigation by law enforcement officials.

### II. Actions to Promote Enforcement

- A. Government Commitment to Enforcement: The purpose of this question is to determine whether government leaders have conveyed a clear message that foreign bribery will no longer be tolerated. In some countries the message has been ambivalent or even negative. The clearest message is conveyed by bringing foreign bribery cases against prominent companies. Other examples of government commitment to enforcement include (1) the establishment of an office to investigate and prosecute foreign bribery, or (2) public statements by government leaders or senior law enforcement officials addressed to business groups, bar associations and similar groups.
- B. Organization of Enforcement: Foreign bribery cases are complex, time-consuming and require trained lawyers, investigators and forensic accountants. Prosecutors may be reluctant to bring foreign bribery cases because they have limited staffs and a large backlog of domestic cases. The reluctance to bring foreign bribery cases will be even greater where responsibility for investigation and prosecution is left to regional or local offices. To overcome such obstacles, some governments have assigned responsibility for foreign bribery cases to a specialized office. Where responsibility for foreign bribery enforcement is not centralized, another option for governments is to take steps to supervise and coordinate foreign bribery enforcement by decentralized offices.
- C. Available Resources: Foreign bribery cases require experienced staffs including investigators, forensic accountants and prosecutors. Substantial funding will be needed because foreign bribery cases generally take years to complete, as evidence must be obtained not only from the country whose officials were allegedly bribed, but also from other countries through whose banks funds were laundered and ultimately deposited. In this question we seek your perception of the

adequacy of staffing and funding. Where a centralized office for foreign bribery enforcement has been established, some factual data may be obtainable. Where foreign bribery enforcement is handled by offices with broader responsibility, the resources available for foreign bribery enforcement may not be quantifiable, but would depend on the managerial discretion of the heads of the various offices, i.e. how much of their total resources are likely to be assigned to foreign bribery cases. Any useful information indicating the basis for your response is also requested.

- E. Whistleblower Protection. This refers to whistleblower protection available to persons reporting foreign bribery complaints to your government under the complaint procedure referred to under Section D above. Such protection could be specifically provided under the complaint procedure for foreign bribery. Whistleblower protection could also be available under rules of broader scope providing protection to persons reporting violations of laws and regulations to your government.
- F. Public Awareness: Target audiences for awareness-raising that foreign bribery is a crime include: (a) companies engaged in international trade; (b) lawyers, bankers and accountants working with companies engaged in international trade; (c) the media; and (d) civil society groups interested in monitoring corruption and business ethics.
- G. Accounting and Auditing Requirements: Such accounting and auditing requirements could be provided under the law prohibiting foreign bribery, under laws and regulations covering corporate reporting and disclosure, or under professional standards published by accounting and auditing organizations. Information should be obtainable from accounting and auditing firms in your country.
- H. Private Sector Efforts: This refers to the adoption by companies in your country of corporate compliance programs that specifically prohibit foreign bribery. Anti-bribery compliance programs should be differentiated from corporate ethics policies that do not call for specific action to prevent foreign bribery. Information on the use of anti-bribery compliance programs should be obtainable from business organizations such as chambers of commerce. The extent to which companies have adopted anti-bribery compliance programs is a good indicator of business community belief that the prohibition of foreign bribery will be enforced.
- I. Statutory and Other Legal Obstacles. This refers to obstacles to foreign bribery enforcement resulting from restrictive statutory provisions or court decisions. The four most common obstacles are discussed below. Feel free to identify others that you consider important.
  - a. Statutes of Limitation: Because bribery is always conducted in secrecy, statutes of limitations can be a serious obstacle to foreign bribery enforcement. Statutes of limitation are particularly problematic if they begin to run from the time the bribery occurred, instead of from the time of discovery of the bribery. Adequate statutes of limitation do not begin to run until at least three years from the time of discovery or ten years from the occurrence of the bribery.
  - b. Jurisdictional Limitations: Jurisdictional limitations are not obstacles to enforcement if (1) the territorial basis for jurisdiction is applied broadly so that even limited physical connection between the foreign bribery and your country is sufficient to permit your courts to accept jurisdiction; and (2) nationality jurisdiction applies i.e. bribery acts of nationals of your country should be covered even when performed abroad.
  - c. Dual Criminality Requirements: Dual criminality requirements are not considered an obstacle if the bribe is unlawful in your country and in the country where it occurred. Dual criminality requirements would represent an obstacle to foreign bribery enforcement if any differences in statutory provisions prevent your courts from taking action.
  - d. Corporate liability: The prohibition of foreign bribery can be more effectively enforced, if corporations can be prosecuted; and not merely individual officers, directors and employees. Most OECD countries have adopted corporate liability. However, there are some countries that have not yet done so.
- J. Actions Needed in Your Country: This section seeks to determine priorities for action. Please list three to five top priorities, which could include but need not be limited to those listed in II. A to I,

above. We are particularly interested in learning whether the same actions are identified as top priorities by a majority of NCs.