



2006 TI Progress Report on OECD Convention Enforcement

Questionnaire for TI National Chapters in OECD Signatory States

6.12.05

Questionnaire for: (Name of country)

Date:

I. Current Status of Enforcement

A. Prosecutions brought for foreign bribery

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.

If information unavailable, please indicate: _____

Is there adequate public access to information about foreign bribery cases?

Yes ___ No ___

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.

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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

C. Serious allegations

Please provide information about serious allegations of foreign bribery or related offences 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. *Please take into account information provided in the Volcker Report on the UN Oil for Food Programme with respect to allegations of kickbacks by companies in your country.*

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

II. Actions to Promote Enforcement	
A. Organization of Enforcement	
1. Is there a centralized national office or unit for foreign bribery enforcement?	
Yes____	No____
2. If foreign bribery enforcement is not centralized, what level of coordination and supervision is provided for foreign bribery enforcement?	
<i>Please circle one of the following:</i>	
<i>UNSATISFACTORY</i>	<i>SATISFACTORY</i>
Explanation for choice, including any difference from last year:	
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B. Available Resources	
How would you assess staffing and resources for foreign bribery enforcement?	
<i>Please circle one of the following:</i>	
<i>UNSATISFACTORY</i>	<i>SATISFACTORY</i>
Explanation for choice, including any difference from last year::	
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C. Complaint Procedure	
How would you assess your government's efforts to provide publicly-known and accessible procedures for reporting foreign bribery allegations, such as hotlines and websites?	
<i>Please circle one of the following:</i>	
<i>UNSATISFACTORY</i>	<i>SATISFACTORY</i>
Explanation for choice, including any difference from last year:	

D. Whistleblower Protection

1. How would you assess the level of whistleblower protection in law and in practice in the public sector for foreign bribery complaints?

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year:

Please list written sources:

Please list government authorities or other persons consulted:

2. How would you assess the level of whistleblower protection in law and in practice in the private sector for foreign bribery complaints?

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year:

E. Public Awareness

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

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year:

F. 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 circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year:

G. Private Sector Efforts

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

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year (at least 1 paragraph):

H. 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:

- Inadequate definition of foreign bribery Yes _____ No _____
- Short statutes of limitation: Yes _____ No _____
- Jurisdictional limitations: Yes _____ No _____
- Lack of (criminal) liability for corporations: Yes _____ No _____
- Inadequate sanctions: Yes _____ No _____

3. Please list any additional inadequacies:

- _____
- _____

Explanation for choice, including any difference from last year (at least 1 paragraph):

I. Actions Needed in Your Country

1. Your suggestions

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) _____

III. Current and Anticipated Level of Enforcement

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

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

2. Did your government's enforcement efforts increase since last year?

Please choose one of the following:

1	2	3
<i>Decreased enforcement</i>	<i>No change</i>	<i>Increased Enforcement</i>

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

Please choose one of the following:

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

Report prepared by :

_____ (signature)

Name of respondent:

Affiliation:

Professional experience:

Appendix

List of persons consulted (with affiliation) :

List of references and sources used in responding to this questionnaire :

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Guidelines for Responding to 2006 TI Progress Report Questionnaire On OECD Convention Enforcement

Please return the completed Questionnaire by **28 February 2006** to Gillian Dell, Programme Manager, Transparency International, <gdell@transparency.org>

The information below is intended to explain (1) the structure of the Questionnaire, (2) the methodology and (3) the purpose of individual questions. If additional information would be useful, please contact Gillian Dell by e-mail at: gdell@transparency.org

Part 1 Structure of Questionnaire

The questionnaire is divided into three parts:

- The first part seeks information on the number of foreign bribery prosecutions and investigations underway in your country. We also ask whether there have been serious allegations of foreign bribery on which no action has been taken.
- The second part inquires whether, based on your knowledge, your government has taken various actions that are important to promoting foreign bribery enforcement.
- The third part asks for your assessment of the current status and the future prospects for foreign bribery enforcement in your country.

Part 2 Methodology

1. Steps in Preparation of Response to Questionnaire

- **Expert responses.** The responses to the Questionnaire should reflect the professional judgment of the Respondent, an experienced lawyer familiar with criminal law enforcement in your country. The Questionnaire should be signed by the Respondent and the Respondent's professional qualifications and experience should be briefly summarized.
- **Written sources:** The Respondent is requested to list any written sources at the end of the Report in the Appendix.. In particular, Respondents are requested to consult **OECD Working Group Phase 1 and 2 country reports**, to the extent available and if sufficiently up to date. These reports can be found on the OECD website at the link: http://www.oecd.org/document/24/0,2340,en_2649_34859_1933144_1_1_1_1,00.html
- **Consultations with well-informed persons:** The Respondent is requested to consult with law enforcement officials and other well-informed persons, in order to enhance the validity of the responses. A list of the persons consulted should be included at the end of the Report in the Appendix. If the Respondent sees a need to preserve their anonymity, then the positions and institutions of the persons consulted should be listed.
- **Consultation with government:** When the Questionnaire has been completed, the Respondent is requested to obtain feedback from one of the government's official representatives to the OECD Working Group on Bribery. Their inputs should be taken into account but the final product should reflect the Respondent's own judgment. It would be desirable to make an appointment well in advance to meet with this person or to speak with them on the phone and to send them the Respondent's responses to the Questionnaire ahead of that meeting. If assistance is needed in identifying the person to contact in a given country, please contact Gillian Dell.

2. **Grading.** Most of the questions call for a simple choice between satisfactory and unsatisfactory.

3. **Explanations.** All but the first few and last few questions provide space for "Explanation" of the response. **Please understand that an explanation of your responses to these questions is very important**, since this greatly enhances the quality of the responses by providing the factual basis and reasoning behind the answers. For all those countries where a report was prepared last year, the explanation should account for any changes in the rating from last year.

Part 3 Explanation of individual questions

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. 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. *It is extremely important to indicate the disposition of the case.* Please also indicate if the legal system makes adequate or inadequate provision for access to information about 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.*

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. In addition, in connection with section I.C of the report, please consult with the Volcker Report on the UN Oil for Food Programme with respect to allegations of kickbacks by companies in your country. The report can be found at the following website: <http://www.iic-offp.org/story27oct05.htm>

II. Actions to Promote Enforcement

- A. 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, in 13 out of 24 responsibility for foreign bribery cases has been assigned 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.
- B. 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.
- C. Complaint Procedure. One of the best ways of uncovering evidence of foreign bribery is through reports or complaints made to law enforcement authorities by persons with inside knowledge of such practices. For this to occur, there must be channels for reporting that are relatively easy to use for those with information, that protect their anonymity and that deliver the information to government authorities able to process it. Reasons for difficulty of access may include complicated procedures or highly decentralized systems where it is difficult to determine the right place to report. With a decentralized system, good access may exist in some parts of the jurisdiction and not in others.

- D. 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. In contrast with the 2005 questionnaire, the question now distinguishes between whistleblower protection in the public sector and whistleblower protection in the private sector. However, it does not distinguish between the amount of protection provided where the whistle is blown via internal channels and where it is blown via external channels.
- E. 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. Note that the question refers only to efforts made in the previous year.
- 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. Account should be taken of completeness and clarity of the provisions, including whether there are loopholes. The question also refers to how these requirements are applied in practice. 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. Inadequate Definition of Foreign Bribery Offence: Article 1 of the Convention establishes the offence of bribery of a foreign public official, including offer of any advantage to a foreign public official, including through intermediaries, in order to obtain any advantage in the conduct of international business. The provision includes an extensive definition of foreign public official.
 - b. Statutes of Limitation: Because bribery is always conducted in secrecy, short 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.
 - c. 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.
 - d. Corporate Liability: The prohibition of foreign bribery can be more effectively enforced, if corporations and not merely individual officers, directors and employees can be prosecuted or subject to non-criminal penalties. Most OECD countries have adopted corporate liability. However, there are some countries that have not yet done so.
 - e. Inadequate Sanctions: For the prohibition of foreign bribery to be effective the criminal and non-criminal sanctions must be strong enough to be dissuasive. Examples of non-dissuasive sanctions are suspended criminal sentences or monetary sanctions so low that the potential benefits of bribery outweigh the potential costs.
- 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 National Chapters.

