

Consultation of External Stakeholders on the Draft Revised Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions

Comments from ACCA to the OECD Working Group on Bribery
Our Reference: TECH CDR1985
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For further enquiries please contact:

Jason Piper
Head of Tax and Business Law
jason.piper@accaglobal.com

Aleksandra Zaronina
Head of SME
[Aleksandra Zaronina-Kirillova](mailto:Aleksandra.Zaronina-Kirillova@accaglobal.com)

Rachael Johnson
Head of Risk Management and Corporate Governance
[Rachael Johnson](mailto:Rachael.Johnson@accaglobal.com)

Alex Metcalfe
Head of Public Sector
[Alex Metcalfe](mailto:Alex.Metcalfe@accaglobal.com)

SPECIFIC COMMENTS

The comments which follow should be read in conjunction with and as supplementary to the commentary provided by the two responding bodies of which ACCA is a member, BIAC and IFAC. We support the responses of both bodies, which reflect our views.

Draft revised Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transaction

Addressing the Demand Side

Recommendations XII, XIII and XIV Small facilitation payments (SFPs) have a proportionately greater impact on smaller enterprises than they do larger ones. The exposure of SMEs to SFPs in a cross border context has expanded significantly over the past ten years, but in any event the benefits of a policy which reduces their prevalence will in many cases be felt equally by domestic businesses.

We welcome the call for periodic reviews, and would suggest that an annual assessment on policy effectiveness and the potential for improving their approach to reducing financial crime is critical to making progress.

In order to fully benefit from transparency and the accountability which flows from it, public and corporate sector should be obliged to assess their policies and practices around SFPs and disclose the outcomes. We would in addition urge larger businesses to lead the way in enforcing the internal controls and programmes which look to reduce the incidence of SFPs.

Sanctions and Confiscation

Item XV Continuous learning and training for law enforcers is key to effective action. Governments should share resources and information as freely as possible.

It is hugely important that public statements are accessible so that organisations can learn from each case and enablers be called out. Public information and access to it are crucial for beating bribery and all other financial crime, both through the direct lessons learnt by those implementing anti-bribery measures and through the broader raising of awareness in society about the harm that bribery can do and the consequences for those found guilty of involvement.

Organisations in both public and corporate sectors should be encouraged to allocate more resources to informing stakeholders about anti-bribery rules and the consequences for not reporting wrongdoings. All eyes are on the public sector to lead by example, so they in particular should publicise rules and why they exist. We would welcome further incentives for all stakeholders to help people to understand how serious the implications of ignoring or enabling can be not only to the persons committing the offence of bribery but also to society at large.

International Cooperation

We welcome the recommendation to consider the use of technologies for greater efficiency. We would encourage governments and international organisations to consider specific measures such as common information formats and standardised processes to assist not only the administration of individual cases but also to improve comparison and analysis of trends in international bribery and would welcome direct reference to such measures in the Recommendation.

Reporting Foreign Bribery

In today's digital world, policy makers should embrace the opportunities to get the public involved in combatting financial bribery and corruption. The message should be that everyone has a role in helping to identify risk and potential harm. If everyone feels they can make a difference by reporting and raising any wrongdoing that they see or suspect we can build more trust in society.

We welcome the recognition of the importance of the need more public information on what the consequences of committing financial crimes are and the penalties and fines individuals and organisations face. Governments also need to inform the public better on what bribery does to bottom lines, society, trust, and reputation, and how that all affects livelihoods and the local economy.

Protection of Reporting Persons

The experience of our members as relayed to us is that this is a key area for improving the effectiveness of the fight against bribery and corruption. However it is also an area where understanding of the importance of the role played by reporting persons, and corresponding need for their protection, is often limited. Item xii of Recommendation XII, raising awareness, is key to the effectiveness of all the other items set out.

Accounting Requirements, External Audit, and Internal Controls, Ethics and Compliance: D Incentives for compliance

ACCA fully supports providing incentives and recognising proactive risk governance in this respect. In particular we would advocate helping smaller organisations with less resources learn how to build a more conscious culture. As with so many elements of the fight against bribery, publicity for the support available will be vital to the take-up of any measures, especially among smaller businesses.

Public Advantages, including Public Procurement

XXIV We support the recommendation to suspend or debar companies determined to have bribed foreign officials in contravention of that member country's national laws, as well as the other recommendations laid out in this section. In relation to the Recommendation of the Council on Public Procurement, we support the implementation of principles contained in the Recommendation but would urge further steps to better protect the procurement process from bribery and corruption.

Firstly, while we support the development of e-Procurement systems, once they have been established, the validity of procurement contracts should be contingent on being published to such a platform. This ensures that all public contracts have full visibility, transparency and accountability. In addition, and as mentioned in our report on New Models of Public Procurement, these e-Procurement systems must publish reusable data generated from the system for monitoring and oversight using the Open Contracting Data Standard.

This subsequent data must be more than 'meaningful' as described in the Recommendation – it must be accompanied with subsequent measures to fully protect against incidences of bribery and corruption. Firstly, data gathered should be made available to finance professionals so that they can employ red flag analysis to identify and predict occurrences of corruption and bribery in the procurement process. The data must also be made available to Supreme Audit Institutions early-on in the procurement process so that they can audit procurement cycles and help detect potential incidences of corruption. Supreme Audit Institutions must also be given the mandate to do this – to monitor cycles early and to ensure audits are commonplace in all procurement processes.

Finally, despite the pressures that COVID-19 placed on governments to procure quickly, emergency contracting procedures should still contain adequate transparency safeguards to prevent corruption. Emergency contracting should be done on a case-by-case basis and

must maintain proper audit trails for swift auditing to take place in an attempt to detect and prevent corruption. Procurement activity must still be disclosed despite the urgency using open data standards to help both reduce corruption and detect over-charging of essential goods and services. Emergency procedures should only be in place until a more stable solution can be found as processes with fewer controls in place inevitably heightens the risk of fraud and corruption.

Annex II: Good Practice Guidance on Internal Controls, Ethics and Compliance

We welcome the draft revised Annex, and recognise the acknowledgement of the increased importance of international trade to SMEs, and with it the increased exposure to risks associated with the cross-border bribery of public officials. The explicit endorsement of adoption of proportional and appropriate measures will be an important element in highlighting to SMEs the relevance of the Recommendation and the Annex to their policies and processes.

A) Good Practice Guidance for Companies

We welcome in particular the emphasis on effective measures, and the periodic reviews and testing of the ethics and compliance programmes or measures. It is particularly important that businesses ensure that any process or policy is rooted in an understanding by employees of the reasons for it. Over-familiarity or a lack of appreciation of risk can lead to a “tick-box” culture where process takes precedence over outcomes. As many of our members have told us, these are completely ineffective at detecting bad behaviour.

Boards, board committees and senior management bear ultimate responsibility for these risks, but culture change is both top down and bottom up. We would welcome more emphasis in the Annex on measures to ensure enterprise wide accountability. Businesses of all sizes should be open to such messaging. Investors are increasingly raising their expectations in this area and companies face potential difficulties if they are not improving risk controls in and making sure wrongdoings are caught. For example, in our research we have found more shareholders ask for proof that whistleblowing policies are transparent and effective.

Just as developments in technology can assist law enforcement in pursuing and prosecuting offences of bribery, the rapid digitalisation of the global economy has increased both the risks to businesses and the tools available to them to combat those risks. Increasing international commerce has created even more potential for bribery and corruption. The risk

for financial crimes is also increasing due to the many companies now crossing over multiple sectors and the pervasive threats this presents. An explicit reference to the importance of digital technologies, for example at item 7, “a system of financial and accounting procedures” would strengthen the relevance of the recommendations.

B) Actions by Business Organisations and Professional Associations

We welcome and endorse all the proposed actions, and look forward to working with all stakeholders to implement them.