



## About the new *Recommendation for Further Combating Bribery of Foreign Public Officials in International Business*

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### What is the new Anti-Bribery Recommendation?

The new *Recommendation for Further Combating Bribery of Foreign Public Officials* (Anti-Bribery Recommendation) was released on 9 December 2009, when the OECD marked the tenth anniversary celebration of the entry into force of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (OECD Anti-Bribery Convention).

The Recommendation was adopted by the OECD in order to enhance the ability of the 38 States Parties to the Anti-Bribery Convention to prevent, detect and investigate allegations of foreign bribery.

### What changes does the new Recommendation bring?

The new Recommendation strengthens the OECD framework for fighting foreign bribery by calling on the 38 States Parties to the OECD Anti-Bribery Convention to, *inter alia*:

- Adopt best practices for making **companies** liable for foreign bribery so that they cannot be misused as vehicles for bribing foreign public officials and they cannot avoid detection, investigation and prosecution for such bribery by using **agents and intermediaries, including foreign subsidiaries**, to bribe for them;
- Periodically review policies and approach on **small facilitation payments**. These are legal in some countries if the payment is made to a government employee to speed up an administrative process;
- **Improve cooperation** between countries for the sharing of information and evidence in foreign bribery **investigations and prosecutions** and the seizure, confiscation and **recovery of the proceeds** of transnational bribery, through, for instance, improved or new agreements between the States Parties for these purposes;
- Provide effective channels for public officials to **report** suspected foreign bribery internally within the public service and externally to the law enforcement authorities, and for **protecting whistleblowers** from retaliation; and
- **Working with the private sector** to adopt more stringent internal controls, ethics and compliance programmes and measures to prevent and detect bribery.

### How will the Recommendation's implementation and enforcement be monitored?

The Recommendation will now make up part of the overall OECD framework for fighting foreign bribery, which includes its principal instrument—the OECD Anti-Bribery Convention—and the 2009 *Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions*. The implementation and enforcement of all three instruments is

strictly monitored by the OECD Working Group on Bribery (Working Group), which is made up of representatives from all 38 States Parties.

### **How does the Working Group on Bribery's monitoring process work?**

The OECD's rigorous evaluation process, which Transparency International calls the "gold standard" of monitoring, encourages States Parties to honour their commitments to uphold the Convention. To date, the Working Group's peer-review monitoring process has comprised of two phases. The first phase includes an in-depth evaluation of each State Party's legislation, institutions, policies and practices for complying with these instruments.

In the second phase, examiners from the Working Group make an on-site visit that involves relevant representatives from the government, civil society and private sector in the country being evaluated. The resulting country reports, which are published and uploaded onto the OECD website in their entirety, summarise the findings of the Working Group and provide hard-hitting recommendations on how States Parties should improve compliance with the Convention. The State Party that is examined does not have to agree to the recommendations. Phase 2 also includes regular follow-up reviews to check up on progress made by States Parties in the implementation of the Working Group's recommendations. In addition, the Working Group's meetings four times a year include a roundtable discussion on new developments by the States' Parties in implementing the OECD anti-bribery instruments.

A new third phase, which is being finalised, will begin in 2010.

### **What happens if a country fails to implement the OECD anti-bribery instruments?**

Continued failure by a State Party to adequately implement the OECD anti-bribery instruments may result in strong pressure by the Working Group to rectify the problem, such as sending a high-level mission to the country in question, a letter to the country's relevant ministers, or by issuing a formal public statement.

### **Who are the 38 States Parties to the Convention that agreed to the new Recommendation?**

The 38 States Parties to the OECD Anti-Bribery Convention are the 30 OECD member countries and the following non-OECD countries: Argentina, Brazil, Bulgaria, Chile, Estonia, Israel, Slovenia and South Africa.

*More information about the new Recommendation, the Anti-Bribery Convention and the work of the OECD Working Group on Bribery is available online at: [www.oecd.org/daf/nocorruption](http://www.oecd.org/daf/nocorruption)*