

QUESTIONNAIRE

Country self-assessment report on implementation and enforcement of G20 commitments on foreign bribery

G20 countries are invited to complete the questionnaire, below, on the implementation and enforcement of G20 commitments on foreign bribery.

Part I questions are drafted directly from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence endorsed by G20 Leaders in St. Petersburg, and its background note on Enforcement of Foreign Bribery Offences. Part II questions are drafted from the G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration.

Responses to this questionnaire could be compiled into a summary on the "state of play" in G20 countries on steps taken to date to implement the aforementioned commitments, as well as plans for future actions in this area.

I. Implementation of the Guiding Principles on Enforcement of the Foreign Bribery Offence in G20 Countries

Note 1: This section of the questionnaire is drafted from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence and the background note on Enforcement of Foreign Bribery Offences.

A. A robust legislative framework

In your jurisdiction:

1. Is there a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery, including offering, promising or giving of a bribe, bribery through intermediaries, and bribes paid to third party beneficiaries?

- *If your jurisdiction criminalises foreign bribery, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your jurisdiction does not have a foreign bribery offence:*
 - *Please note whether an offence has been "drafted" , "submitted for government review" , or "adopted but not yet entered into force" .*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

In the Eighth Amendment to the China's Criminal Law, which was adopted by the Standing Committee of China's National People's Congress (NPC) on February 25, 2011 and took effect on May 1, 2011, a paragraph is added to Article 164 to provide that:
Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any

employee of a company or enterprise, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge, he or she shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever, for the purpose of seeking illegitimate commercial benefit, gives money or property to any foreign public official or official of an international public organization shall be punished in accordance with the provisions of the preceding paragraph.

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding paragraph.

Any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment.

Note 2: For questions 2 through 11, jurisdictions without a foreign bribery offence should include updates on plans to address the following issues in efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

2. What is the statute of limitations for investigating and prosecuting foreign bribery? Please indicate the criteria for suspension, interruption or extension of the statute of limitations?

Response:

There is no statute of limitations for investigating and prosecuting foreign bribery in particular. The statute of limitations for prosecuting criminal cases may be referred to, and linked to the possible sentence. When the cases are put on file in the prosecutorial organs, the prosecution can be extended.

3. Please describe the form of jurisdiction available over the foreign bribery offence (i.e. territorial or nationality jurisdiction).

Response:

Both territorial and nationality jurisdiction.

4. Please indicate whether your jurisdiction has a corporate liability regime for the offence of foreign bribery.

If your jurisdiction does not have a corporate liability regime for the offence of foreign bribery, please provide a timeline for implementation of corporate liability.

Response:

Currently, three laws and regulations have particular stipulation related to business bribery: the Criminal Law of the PRC (9 bribery crimes), Law of the PRC Against Unfair Competition, and Interim Provisions on Banning Business Bribery. Besides, the Company Law of the PRC, Pharmaceutical Administration Law of the PRC, Construction Law of the PRC, and Foreign Trade Law of the PRC also have some related stipulations. According to these laws and regulations, Chinese legal persons who commit briber shall bear civil, administrative or criminal liabilities.

5(a) Please describe the sanctions and confiscation measures available for natural and legal

persons for the crime of foreign bribery.

5(b) Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

- *Where possible, please provide references to the relevant provisions and/or the full text, if possible.*

Response:

Criminal offense of giving bribery to foreign officials or officials of international organizations is newly added into the Amendment 8 to the Criminal Law of the PRC. Those who commit this crime shall bear sentences of less than 3 years or custody; if the bribe is large, the sentence shall be between 3 and 10 years, at the same time, fines shall be given.

The amended Procedural Law effective since Jan 1, 2013 has added the special procedure for the confiscation of illegal proceeds, ie, for the major criminal cases involving bribery and no show of the suspects or defendants within a year since wanted, the illegal proceeds and assets shall be confiscated.

B. Effective detection and domestic coordination

In your jurisdiction:

6. What steps have been taken to engage with relevant agencies, such as overseas missions, broader tax administrations, trade promotion, public procurement and export credit agencies, as well as with the private sector, on issues related to implementation and enforcement of the foreign bribery offence? Where possible, please cite specific examples.

Response:

According to relevant laws, besides public security organs, organs of discipline inspection, prosecution and commercial issues also have the obligation to investigate business bribery. For instance, organs of prosecution are responsible for investigating bribery crimes committed by public officials. Different organs well coordinate with each other. The public security system is cooperating with other relative organs to maximize the efforts in combating business bribery. For instance, as to the business bribery in public health, the Ministry of Public Security is working together with the National Health and Family Planning Commission of the PRC and the Supreme People's Procuratorate to establish a mechanism of preventing of treating business bribery in the sector of public health. Practice show that joint efforts will yield twice the result.

7(a) Are appropriate reporting channels available for whistleblowers in both the private and public sectors?

7(b) Are appropriate protections available for whistleblowers in both the private and public sectors?

Where possible, specific reference should be made to implementation of the G20 Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation.

Response:

China encourages citizens to report on solicitation of bribes via phone calls, letters and emails. Investigation will be immediately launched if the competent authority finds the report credible.

Article 41 of the Chinese Constitution, Article 254 of the Criminal Law of China, Item 3 of Article 109 of the Criminal Procedure Law of the PRC, Article 6 of the Administrative Supervision Law of the PRC, and Regulation on Complaint Letter and Visits all have the stipulation of protecting reporters. For instance, Item 3 of Article 109 of the Criminal Procedure Law of the PRC says: "The public security organ, the people's procuratorate and the people's court shall insure the safety of reporters, complainants and informants as well as their close relatives. If the reporters, complainants or informants wish not to make their names and acts of reporting complaining or informing known to the public, these shall be kept confidential for them." Item 3 of Article 3 of the Regulation on Complaint Letters and Visits says: "Any organization or individual shall not conduct revenge on complainants." Item 1 of Article 44 says: "if staff in administrative organs disclose or transfer.

C. Effective investigation and prosecution

In your jurisdiction:

8(a) Please describe the investigative powers granted to law enforcement authorities to proactively and effectively investigate and prosecute foreign bribery.

8(b) Please describe the specialized training on detecting, investigating and prosecuting foreign bribery provided and/or planned to be provided to law enforcement authorities.

Response:

Administrative and judicial organs investigate cases of business bribery committed by both domestic and foreign enterprises, and cases of business bribery committed by both Chinese enterprise in other countries and regions as well as foreign enterprises in China.

From 11 to 13 September 2012, "Training on Preventing and Tackling Transnational Business Bribery" as held in the Chinese Academy of Discipline Inspection and Supervision. The training program was organized by the State-owned Assets Administration and Supervision Commission and the Ministry of Commerce, and supported by the Ministry of Foreign Affairs and the Ministry of Supervision. 110 secretary of discipline inspection and deputy general manager from 55 central companies attended that program.

9(a) Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.

9(b) Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system.

Where possible, specific reference should be made to implementation of the G20 High-Level Principles on Mutual Legal Assistance.

- Response:
Competent foreign authority of issuing legal assistance request formally issue requests to China's counterpart (Department of Legal Assistance of the Ministry of Justice)
- **The Ministry of Justice of China (MOJ) receives and assesses those requests.**
- **The MOJ transfers the assessed requests to the Supreme People's Procuratorate or the Ministry of Public Security for investigation.**
- **The MOJ gives feedback to its foreign counterparts who have issued the requests.**

On 15 August 2014, the first APEC ACT-NET meeting was held in Beijing and set the secretariat (2014-2015) in the Ministry of Supervision of China (MOS), marking the launching of ACT-NET. Consisting of staff from anti-corruption and law enforcement agencies of APEC economies, the ACT-NET is a part of APEC Anti-Corruption Working Group (ACWG). It aim at becoming an important informal channel for multi-lateral law enforcement cooperation in Asia Pacific, in this way to enhance communication, exchanges and capacity building of anti-corruption and law enforcement agencies in this region, and advance pragmatic cooperation of combating corruption, bribery, money-laundering and illegal trade. The MOS will make relentless efforts to strengthen exchanges with all other APEC economies as secretariat. So far, all economies have set their focal points. In December this year, the ACT-NET will hold a seminar on international asset recovery and fugitive repatriation across Asia Pacific in China. We believe that the ACT-NET will forcefully promote the efficiency of international cooperation in asset recovery and fugitive repatriation.

II. Implementation of Foreign Bribery Provisions in the 2012-2013 G20 Anti-Corruption Action and the St Petersburg Declaration

Note 3: This section of the questionnaire is drafted from the 2012-2013 G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration. It also seeks updates from G20 countries on next steps for fighting foreign bribery.

10. Please specify next steps for continuing “ efforts to adopt and enforce laws and other measures against foreign bribery” .

Response:

The Chinese government attaches great importance to combating all kinds of crimes including transnational business bribery. Since 2005, China has been conducting a special campaign against business bribery. From July 2005 to December 2011, thanks to the campaign, 102,000 cases of business bribery were investigated, with an amount of 26.06 billion RMB. In 2011, the Amendment VIII to the Criminal Law of the PRC added a new crime of bribing foreign officials and officials of

international organizations. We hope that foreign investors could follow China's laws and regulations and do business with honesty. At the same time, we also require Chinese enterprises to strictly follow local laws and regulations when they do overseas business. We are also serious in cracking down on transnational business bribery. We are making efforts in fighting against business bribery committed by foreign investors in China and Chinese enterprises overseas.

11. Please specify next steps for engagement with the OECD Working Group on Bribery with a view to explore possible adherence to the OECD Anti-bribery Convention as appropriate.

Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2014;
- Co-organize or attend meetings on foreign bribery; and/or
- Engage in technical assistance activities on the issue of implementation and enforcement of the foreign bribery offence;
- Open discussion for Membership in the WGB, with a view to acceding to the OECD Anti-Bribery Convention.

Response:

Since 2007, the MOS has been participating the review conferences of OECD Anti-Bribery Convention and activities of OECD Anti-Bribery Working Group as an observer. In 2010, the MOS co-hosted with OECD an anti-bribery technology workshop in Beijing. In August 2014, the MOS co-hosted with OECD APEC High-Level Seminar on "Combating Business Bribery" in Beijing. We will continue to take part in activities organized by OECD Anti-Bribery Working Group as an observer, and seek opportunity to carry out relevant trainings together with OECD