

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?

- The Article 3 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions (FBPA) criminalizes foreign bribery.
- Article 3 of the FBPA
 - (1) Any person who has promised, given, or expressed his/her intent to give a bribe to a foreign public official in relation to any international business transaction with intent to obtain any improper advantage for such transaction shall be punished by imprisonment with prison labor for not more than five years or by a fine not exceeding twenty million won. In such cases, if the pecuniary advantage obtained by such offense exceeds ten million won, the offender shall be punished by imprisonment for not more than five years or by a fine not exceeding an amount equivalent to double the pecuniary advantage.
 - (2) Of cases under paragraph (1), any case falling under any of the following subparagraphs shall be excluded therefrom:
 1. Where such payment is permitted or demanded pursuant to any applicable Act and subordinate statutes of the country to which a foreign public official belongs;
 2. Where any person promises, gives, or expresses his/her intent to give a small amount of money or any other advantage to a foreign public official, who performs daily routine duties, with intent to encourage the official perform his/her duties in a fair manner.
 - (3) In cases where any person who has committed an offense under paragraph (1) is punished by imprisonment with prison labor, a fine of a prescribed amount shall be imposed concurrently.

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?

- According to the article 249(1)4 of the Criminal Procedure Act, the statute of limitations for foreign bribery is 7 years.
- The article 253 of the Criminal Procedure Act stipulates three grounds of suspension of the statute of limitations period.

Article 253 (Suspension of Limitation Period and Its Effect)

- (1) The limitation period shall cease to toll on the institution of the public prosecution, and begin to toll when a judgment dismissing a public prosecution or a judgment indicating a violation of jurisdiction becomes finally binding.
- (2) When a public prosecution is instituted against one of several accomplices mentioned in the preceding paragraph, the tolling of the limitation period shall be suspended as to the other accomplices, and shall begin to toll again when a judgment on the case concerned becomes finally binding.
- (3) The limitation period shall be suspended during the period, for which an offender stays abroad for the purpose of escaping criminal punishment.

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

Both territorial and nationality jurisdiction are available over the foreign bribery offence.

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.

- Korea has a corporate liability regime for the offence of foreign bribery.
- Article 4 of the FBPA

If the representative, an agent, an employee, or a servant of a legal entity has committed an offense under Article 3 (1) in the course of performing the business of the legal entity, not only shall such offender be punished accordingly, but the legal entity shall also be punished by a fine not exceeding one billion won. In such cases, if the pecuniary advantage obtained by such offense exceeds 500 million won, the legal entity shall be punished by a fine not exceeding an amount equivalent to double the pecuniary advantage: Provided, That the foregoing sentences shall not apply to cases where the relevant legal entity had not neglected to take reasonable care or supervision in order to prevent offenses.

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.*

5(a)

- The offender shall be punished by imprisonment for not more than five years or by a fine not exceeding an amount equivalent to double the pecuniary advantage [Article 3(1) of FBPA].
- Any bribe given in the course of committing an offense and owned by the offender (including a legal entity subject to the punishment under Article 4) or knowingly acquired by any person other than the offender shall be confiscated (Article 5 of FBPA).

5(b)

- 13 cases have resulted in a criminal conviction or acquittal.
- 12 cases have resulted in a criminal conviction and 1 case has resulted in an acquittal.
- 17 natural persons and 4 legal persons were convicted of foreign bribery.

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.*

- The Korean government encourages competent authorities to actively participate in meetings of the OECD Working Group on Bribery and FATF and to take active measures to raise awareness among law enforcement authorities on the liability of legal persons.
- In April 2012, the Ministry of Justice introduced the Compliance Officer System in the Commercial Act so as to raise awareness of the private sector, and hosted seminars and conferences with the Federation of the Korean Industries and the Korea Federation of SMEs to provide education about the FBPA.
- In addition, the Ministry of Justice provides training on the FBPA to prosecutors, investigators and prospective lawyers at the Legal Research and Training Institute and the Judicial Research and Training Institute every year.
- National Tax Service has amended Guideline for Managing Tax Audit to report possible foreign bribery cases.
- The ACRC published the 「Best Practice Casebook on Ethical Management」 in November 2013. It has also consistently distributed the 「OECD Anti-Bribery Convention Guidebook」 to the both public and private sector participants of the ethical management program*since 2011. Also, in order to raise awareness of the liability of legal persons for violations of the OECD Anti-Bribery Convention, the ACRC provides detailed explanation on this issue to corporations, thereby urging businesses to abide by the convention.
- In addition, the ACRC signed MOUs with the Korea Chamber of Commerce and Industry regarding the support programs for ethical management in April 2012 and with the Federation of Korean Industries on the cooperative activities to encourage the voluntary efforts of businesses for ethical management in July 2013.
- In 2014, the ACRC also participated in the Academy for Better Company (ABC) organized by the Federation of Korean Industries to encourage private industries to prevent foreign bribery.

- Furthermore, in 2011, the ACRC published an OECD Anti-Bribery Guidebook that has been distributed among public organisations, organisations related to the public service and business councils. The Guidebook has also been distributed among foreign diplomatic representations in conjunction with the Ministry of Foreign Affairs and Trade (MOFAT). MOFAT also distributes information and guidelines to its embassies on the Anti-bribery Convention and the FBPA, in which companies are advised to contact the economic counsellor at the relevant Korean embassy when faced with bribe solicitation.

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.¹

7(a)

- The ACRC, Investigative agencies, the administrative agency concerned or its supervisory body, and the representative or employer could receive reports of the bribery of foreign public officials both from public and private sectors.

7(b)

- The Act on the Protection of Public Interest Whistleblowers ('WPA') was enacted on 29 March 2011 and entered into force on 30 September 2011. The WPA covers both public and private sector whistleblowers who report "public interest violations" including Foreign Bribery in good faith and on reasonable grounds.

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.

8(a)

- In accordance with the Korean laws, the investigation and prosecution rights for foreign bribery cases include arrest, detention, seizure, search, inspection, etc., identical to that of a normal crime. MLA can be utilized to collect evidences existing in foreign countries.
- The Prosecution Service of Korea has strengthened the capacity for gathering intelligence for foreign criminal cases through the exchange of human resources with the National Tax Service and the Financial Services Commission. Prosecutors and officials from competent authorities, including the National Tax Service and the Korea Customs Service have closely cooperated in the cases of tax crime and financial crime. For example, some prosecutors and officials from the National Tax Service and the Korea Customs Service have been dispatched to the FIU under the Financial Services Commission so as to collect and analyze the information on suspicious transactions, while some officials from the National Tax Service are working at the Special Investigation Department, the Financial & Tax Crime Investigation Department, etc. of the Prosecutors' Offices

¹ Available online here: <http://www.oecd.org/corruption/48972967.pdf>

to back up their investigation

- According to the Act on Regulation of Punishment of Criminal Proceeds Concealment, financial institutions are obliged to report to competent law enforcement authorities without delay when they become aware of the fact that the properties they accept with respect to the financial transactions are criminal proceeds, etc. or that the concerned counter-party of the said transaction commits an act of concealment and disguise of criminal proceeds.

8(b)

- The Ministry of Justice provided two special training sessions on international criminal law which dealt with FBPA on August 28, 2013 and October 7, 2013 in Judicial Research and Training Institute.

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.²

9(a)

- For foreign bribery cases, related treaties and domestic laws are applied for MLA procedures.
- Outgoing MLA procedures
 - MLA request is filed by the MLA requesting authority
 - Filed MLA request is transferred to the Ministry of Justice
 - MLA request is reviewed by the Ministry of Justice
 - A letter is written under the name of the Ministry of Justice
 - MLA request is transferred to the requested country via diplomatic channels
 - Requested country executes the MLA request and returns its result
 - The result of the MLA request is transferred to the requesting authority
- Incoming MLA procedures
 - MLA request is received
 - The received MLA request is reviewed
 - The MLA request is transferred to the authority related with its execution
 - The MLA request is executed
 - The result of the MLA request is transferred to the Ministry of Justice
 - A letter is written under the name of the Ministry of Justice
 - The result of the MLA is transferred to the requesting country
 - Verification and approval
- For prompt and effective MLA, the Republic of Korea directly transfers the MLA request via EMS to the six countries (the US, Canada, Japan, Hong Kong, Australia, Switzerland) without using diplomatic channels as agreed with those countries. The MLA request can be delivered to the central authority of the requested country within approximately 3 days when using EMS, reducing the period of time required for the execution of the request and allowing prompt contact between the persons in charge of the request. Such method allows effective execution of the MLA request.

² Available online here: <http://www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf>

9(b)

- Official MLA is comprised of complex procedures and processes. Since it is difficult to directly contact the forefront investigation agencies, establishing close and prompt cooperation system between the investigation agencies is not an easy task.
- As such, informal assistance is generally allowed to obtain crime related information as long as it does not violate the Act on International Judicial Mutual Assistance in Criminal Matters and other related treaties.
- Cases where informal assistance is prohibited
 - When it is clear that an official MLA is necessary (To obtain evidences and use seizure-search-inspection, etc., as evidences for criminal procedures, and when cases require legal force or a warrant from the court)
 - If the MLA for the case is restricted by the Act on International Judicial Mutual Assistance in Criminal Matters

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".³

- Legislative improvements
 - On November 25, the FBPA revision bill was tabled and is currently under discussion in the National Assembly in order to punish the person who offers a bribe to a third party or who takes a bribe even with such knowledge thereof. When above mentioned revision bill passes into law, it is assumed that diverse forms of foreign public official bribery through a third party may become punishable.
 - Furthermore, another FBPA revision bill is also under discussion in the National Assembly. The revision bill is to abolish the exemption provision of facilitation payment. If legislative procedure for abolishing the above provision is completed, the act of giving a small amount of money as facilitation payment will be punished pursuant to the FBPA. It is expected that the 2009 recommendation of OECD WGB will be implemented completely.
- Making full use of the authority to confiscate the bribe and proceeds
 - In Korea, various legal authorities for confiscation of the bribe and proceeds are granted to investigative agencies to ensure they are making full use of the authorities when they confiscate the bribe and proceeds or collect the equivalent value thereof in practice.
- Increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations
 - As an effort to promote information sharing between countries and competent authorities and build their capacity, the Ministry of Justice signed the Treaty on Mutual Legal Assistance in Criminal Matters with over 70 countries. Moreover, the Supreme Prosecutors' Office and the World Bank have signed an MOU to share information and establish a cooperative system for transnational bribery cases in February 2011, and the Korean FIU also signed MOUs with the FIUs in 56 countries. Thus, Korea is constantly making best efforts to increase strength of gathering diverse information from various countries and organizations.

³ G20 Anti-Corruption Action Plan 2013 – 2014, Point 2.

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.

- Attend meetings of the WGB in 2014;
- Attend meetings on foreign bribery;
- Implement recommendations from OECD WGB Phase 3 implementation review