

## **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:** The Bribery Act 2010 criminalises the promising, offering, giving and taking of bribes in the UK and abroad. In addition to this general provision there is a business specific offence of bribery of foreign public officials. The legislation that preceded the Bribery Act –the Proceeds of Crime Act(s) - also applied to foreign bribery. Prosecutors have also used other statute and common law offences to sanction foreign bribery.



*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 or prosecuting foreign bribery.

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

Response: There is nationality (extra-territorial) jurisdiction for Bribery Act offences relating to individual offending. The corporate offence of failing to prevent bribery provides jurisdiction over offences committed in the UK or abroad on behalf of UK incorporated organisations or foreign organisations that carry on business in the UK. The relevant offences that preceded the coming into force of the Bribery Act also had extra-territorial effect.

**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: Legal as well as natural persons can be held criminally responsible for foreign bribery offences.

**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: Bribery Act offences can be sanctioned with up to 10 years prison sentence and/or an unlimited fine. Proceeds of Crime (POCA) legislation allows for the confiscation of the bribe and the proceeds of bribery.

The OECD collects and collates enforcement data relevant to the OECD Bribery Convention. It can be found here <http://www.oecd.org/daf/anti-bribery/dataonenforcementoftheanti-briberyconvention.htm> The UK can and does prosecute foreign bribery offences that are not relevant to the OECD Bribery Convention (business to business and the taking of bribes overseas) however because offences are not the subject of the OECD Bribery Convention the data is not collected and shared.



## 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:

Information on the Bribery Act is available on government websites, including BusinessLink, the UK Government's on-line resource for businesses. The Business Anti-Corruption Portal ([www.business-anti-corruption.com](http://www.business-anti-corruption.com)) contains country-specific pages describing the risk of bribery to businesses and includes compliance- and bribery-related information targeted at SMEs. UK Trade and Investment (UKTI) also maintains a website called —Overseas Business Risk which mentions the Bribery Act and includes country-specific pages on bribery risks in over 90 countries.

To facilitate awareness-raising, the FCO has created a Bribery Toolkit that contains a copy of the Bribery Act, Guidance to Posts on how to respond to questions concerning the Bribery Act, and information on officers' obligations to report allegations of bribery. The guidance in the Toolkit emphasises the importance of international anti-bribery efforts by mentioning the UK-specific recommendations made by the Working Group. UKTI (UK Trade and Investment) also regularly conducts courses for officers working in overseas missions on the OECD Guidelines for Multinational Enterprises, the Anti-Bribery Convention and the Bribery Act.

The FCO has also tasked its overseas missions to provide information to businesses on the Bribery Act and to support companies dealing with bribe solicitations and corruption risks. The FCO clearly instructs companies that it is illegal to pay bribes. UKTI's website explains that officials may be able to take up justified complaints of discriminatory treatment, bribe solicitation or extortion with procurement agencies, ministries and local authorities. The SFO has also prepared a letter which companies can provide to foreign officials to discourage them from soliciting facilitation payments.

The SFO (Serious Fraud Office) has begun to discuss specific foreign bribery-related issues with individual companies. The advice relates to either a specific transaction or a company's measures to prevent bribery.

In 2009, ECGD revised its anti-bribery and corruption procedures to comply with the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits. Accordingly, ECGD informs its clients of the legal consequences of bribery and encourages applicants to develop appropriate management control systems to combat bribery. Clients are required to provide an anti-corruption declaration, and disclose information on charges or convictions for bribery offences, as well as on the use of agents and commission fees. ECGD states that it always informs law enforcement authorities if there is credible evidence that bribery was involved in the award or execution of an ECGD-supported contract, and internal procedures have been established to facilitate this reporting. ECGD trains staff on its anti-bribery and corruption procedures, with refresher training conducted around every 18 months.

HMRC training for tax professionals includes exercises aimed at ensuring awareness of potential bribes. For example this includes a specific training activity in which "a company with substantial contracts abroad claims a deduction in its accounts for commissions" the commissions are found by the caseworker to be bribes and subsequently disallowed.

As regards procurement, training for procurement professionals centres on the EU public procurement rules and knowledge of the obligation to exclude suppliers for offences including corruption is a part of the training. New EU directives have recently been adopted. The Government expects to update guidance and advice covering exclusion as part of its implementation of the directives in due course.

**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.<sup>1</sup>*

Response:

7(a). Yes. Information on reporting channels is summarized at <https://www.gov.uk/whistleblowing>.

7(b). The Public Interest Disclosure Act 1998 provides protection for whistleblowers. The UK Government conducted a public consultation to review the UK whistleblower framework in 2013. The government response to this consultation was published in June 2014 and commits to a package of measures to address the issues identified (a summary of those measures taken from the government response is given below). Details of the consultation and the government response can be found at: <https://www.gov.uk/government/consultations/whistleblowing-framework-call-for-evidence>.

Summary of measure to improve the UK whistleblower framework taken from the government response to the recent consultation:

1. Improved Guidance for individuals

The lack of comprehensive guidance available for whistleblowers at the moment from the Government has been highlighted through the call for evidence as insufficient.

The Government would like to work with those who are required to navigate the framework more regularly, to contribute to and drive the content of the guidance, to ensure that the information we assemble and publish is actually of benefit to those who need to use it.

This may include for example, information on how to blow the whistle, plugging the gap where employers do not have policies and giving examples of what reasonable belief that one of the categories of disclosure has happened, is happening, or is likely to happen may look like, the ways individuals should disclose for the disclosure to be protected and clarifying issues such as the invalidity of gagging clauses.

We will identify the relevant bodies and convene a working group to achieve this.

2. Best practice guidance/ non-statutory code of conduct.

The protections as currently drafted, do not stipulate a business should have a process or guidance in place for dealing with whistleblowing. We do not want to mandate this, but evidence suggests central guidance would assist business in creating policies for dealing with whistleblowing and help instil a consistent level of best practice across organisations.

To support this, we will also create a model whistleblowing policy which can be adopted by business.

Again, we will identify the relevant bodies to produce the guidance and model policy.

3. Making clear the position in relation to cost awards.

Respondents strongly oppose the introduction of ET fees and view it as an unfair disadvantage that whistleblowers have to fund their case without financial assistance.

Following an unsuccessful challenge via judicial review to the introduction of these fees, the Government guidance now says that 'the general position is that, if you are successful, the respondent will be ordered to reimburse you'. We will take steps to make sure people are aware of this.

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

#### 4. Assessment of the current whistleblowing ET1 referral system

The Government will carry out some analysis of the current ET1 referral system to establish its effectiveness and to understand if improvements need to be made. This will be carried out with both HMCTS and those bodies on the prescribed persons list.

#### 5. The introduction of a duty to report.

The protections do not stipulate that prescribed persons need to do anything with or about any disclosures they receive. This undermines the system and creates a lack certainty for the whistleblower in relation to what may or may not be done in respect of a disclosure they have made.

The Government will introduce a duty on prescribed persons to report annually.

We will consult on the detail of the matters which should be included within this report, including matters such as number of disclosures received, numbers investigated, and of those claims investigated, the number of organisations which had a whistleblowing policy in place. We will also consult on how these reports should be published.

#### 6. Update the prescribed persons list

The list which is maintained through Statutory Instrument contains bodies which are prescribed, for having disclosure made to them.

This is published online at gov.uk for ease of reference. The gov.uk information is currently out of date and not an accurate reflection of all the prescribed bodies contained in the list.

BIS will commit to ensuring this information is updated online promptly following any changes made by Statutory Instrument and implement a system to ensure this is updated each time the list is amended.

This will be helpful to those seeking to rely on it but also show that the Government is committed to keeping the information relevant.

We will also commit to reviewing this on an annual basis going forward with Other Government Departments, to ensure the bodies on the list are correct.

#### 7. Include relevant groups currently excluded from the protections

We believe there is a clear case for student nurses to be brought into the scope of the whistleblowing framework due to the employment relationship and the nature of the detriment suffered. We also consider other student arrangements similar to student nurses should be included. The Government will therefore bring this group into scope through secondary legislation.

For the remaining groups, the Government will not be making any changes at this point but will continue to look at this area with the view to consulting if further changes are considered necessary.

#### 8. No introduction of financial incentives

While we have made clear through this response document that the culture surrounding whistleblowing needs to change, we remain unconvinced that the introduction of financial incentives, would change the cultural landscape in a positive way.

Going beyond the overall whistleblowing framework, in due course, the Government may consider whether the use of financial or other incentives would be beneficial as a way to encourage openness and to enhance the support provided to those who report wrongdoing in specific organisations or in very specific types of cases.

#### 9. Explore options to celebrate those employers who embrace whistleblowing in their organisations.

The Government would like to see the celebration of whistleblowing as a positive tool to aid business. The Government will identify opportunities to celebrate those organisations that embrace whistleblowing and effectively use it as a tool to prevent malpractice.

**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:

8(a) The lead authorities involved in the investigation and prosecution of corruption and foreign bribery (the SFO and City of London Police) have a broad range of powers to enable them to fulfil their responsibilities. In fact, the SFO has significantly greater power than the police to obtain documents in foreign bribery cases. Under Section 2 of the Criminal Justice Act 1987 (CJA), the SFO Director may issue a written notice requiring a person under investigation or any other person to provide relevant information or documents. Failure to comply with a notice without reasonable excuse is an offence and may also result in the issuance of a search warrant.

The range of investigative tools available to the SFO is listed at <http://www.sfo.gov.uk/about-us/history--legislation/section-2--and-legislative-tools.aspx>.

In addition, HMRC may (but is not obliged to) disclose information for the purposes of assisting criminal investigations or proceedings whether in the UK or abroad.

8(b) In addition to the general investigator training programme aimed at all investigators, SFO staff have received specific awareness training in investigating and prosecuting foreign bribery. This training was delivered by 'in-house' lawyers with specialist expertise in this area and has been supplemented by further training delivered by an external specialist aimed specifically at enabling participants to develop sound practices for investigating bribery and corruption cases.

**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.<sup>2</sup>*

Response:

9(a) MLA requests are governed by the Crime (International Co-Operation) Act 2003. Amendments to the Act in 2006 made available search and seizure for all — indictable offences under UK law, which includes foreign bribery and all Bribery Act offences. The statute does not generally require dual criminality, except where the request concerns fiscal offences or the use of search and seizure powers. The UK does not separately require a treaty to effect mutual legal assistance. Banking secrecy is not a ground for refusing an MLA request.

Information on MLA can be found at <https://www.gov.uk/mutual-legal-assistance-mla-requests> with detailed guidance available at <https://www.gov.uk/government/publications/mla-guidelines-for-foreign-authorities-2012>.

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

9(b) Informal assistance (“Police to Police” cooperation, “Mutual Assistance”, “Mutual Administrative Assistance” or “pre-MLA”) is included in the detailed guidance cited above. This approach can be an easier and quicker way to obtain information, as it does not require a Letter of Request and in many countries” legal systems, intelligence collected by UK law enforcement agencies is directly admissible as evidence in criminal trials. The following agencies can receive intelligence enquiries directly from law enforcement officers in foreign jurisdictions (in some cases this will be subject to a data sharing agreement or memorandum of understanding): Europol via the National Crime Agency (NCA); Interpol via NCA; UK Visas & Immigration; HMRC; Police Forces. If direct contact between a foreign police force and a UK police force has not already been established, the NCA is the appropriate contact point and will forward requests to the relevant police force or other law enforcement agency who will then execute the request, subject to any data sharing agreement.

**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”.<sup>3</sup>**

Response:  
 The UK remains committed to active enforcement against foreign bribery.  
 The UK Department for International Development is currently considering a possible increase in the funding for the City of London Police Overseas Anti-Corruption Unit. This unit investigates allegations of UK citizens and companies being involved in overseas corruption, especially foreign bribery. To date, there have been 8 successful prosecutions, and the unit has around 25 cases currently under investigation, and a number of individuals charged and awaiting trial.

**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.

<sup>3</sup> G20 Anti-Corruption Action Plan 2013 – 2014, Point 2.



Response:

The UK will continue to be an active member of the OECD working group on bribery.

