

## 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 text of the Foreign Corrupt Practices Act ("FCPA"), the foreign bribery statute of the United States, may be accessed at the following internet addresses (in English or in 45 other languages):

<http://www.justice.gov/criminal/fraud/fcpa/docs/fcpa-english.pdf>

<http://www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html>

*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.*

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| <p><b>2. What is the statute of limitations for investigating and prosecuting foreign bribery?</b> Please indicate the criteria for suspension, interruption or extension of the statute of limitations?</p>  |
| <p><u>Response:</u>. The FCPA’s anti-bribery and accounting provisions do not specify a statute of limitations for criminal actions. Accordingly, the general five-year limitations period set forth in 18 U.S.C. § 3282 applies to substantive criminal violations of the FCPA.</p> <p>In cases involving FCPA conspiracies, the government may be able to reach conduct occurring before the five-year limitations period applicable to conspiracies under 18 U.S.C. § 371. For conspiracy offenses, the government generally need prove only that one act in furtherance of the conspiracy occurred during the limitations period, thus enabling the government to prosecute bribes paid or accounting violations occurring more than five years prior to the filing of formal charges.</p> <p>There are at least two ways in which the applicable limitations period is commonly extended. First, companies or individuals may enter into a tolling agreement with the Department of Justice (“DOJ”) that voluntarily extends the limitations period. Second, under 18 U.S.C. § 3292, the government may seek a court order suspending the statute of limitations posed in a criminal case for up to three years in order to obtain evidence from foreign countries. Generally, the suspension period begins when the official request is made by the U.S. government to the foreign authority, and ends on the date on which the foreign authority takes final action on the request.</p> <p>In civil cases brought by the Securities and Exchange Commission (“SEC”), the statute of limitations is set by 28 U.S.C. § 2462, which provides for a five-year limitation on any “suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture.” The five year period begins to run “when the claim first accrued.” The five-year limitations period applies to SEC actions seeking civil penalties, but it does not prevent the SEC from seeking equitable remedies, such as an injunction or the disgorgement of ill-gotten gains, for conduct pre-dating the five-year period. In cases against individuals who are not residents of the United States, the statute is tolled for any period when the defendants are not “found within the United States in order that proper service may be made thereon.” Furthermore, companies or individuals cooperating with SEC may enter into tolling agreements that voluntarily extend the limitations period.</p> <p>See <i>A Resource Guide to the Foreign Corrupt Practices Act</i>, pages 34-35. This joint publication of the U.S. Department of Justice and the U.S. Securities and Exchange Commission may be accessed at this internet address: <a href="http://www.justice.gov/criminal/fraud/fcpa/guide.pdf">http://www.justice.gov/criminal/fraud/fcpa/guide.pdf</a></p> |

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| <p><b>3. Please describe the form of jurisdiction available over the foreign bribery offence (i.e. territorial or nationality jurisdiction).</b></p>   |
| <p><u>Response:</u></p> <p>The FCPA’s anti-bribery provisions can apply to conduct both inside and outside the United States. Issuers and domestic concerns—as well as their officers, directors, employees, agents, or stockholders acting on behalf of issuers or domestic concerns—may be prosecuted for using the U.S. mails or any means or instrumentality of interstate commerce in furtherance of a corrupt payment to a foreign official.</p> <p>A company is an “issuer” under the FCPA if it has a class of securities registered under Section 12 of the Exchange Act or is required to file periodic and other reports with SEC under Section 15(d) of the Exchange Act. In practice, this means that any company with a class of securities listed on a national securities exchange in the United States, or any company with a class of securities quoted in the over-the-counter market in the United States and required</p> |



to file periodic reports with SEC, is an issuer. A company thus need not be a U.S. company to be an issuer. Foreign companies with American Depository Receipts that are listed on a U.S. exchange are also issuers. Officers, directors, employees, agents, or stockholders acting on behalf of an issuer (whether U.S. or foreign nationals), and any co-conspirators, also can be prosecuted under the FCPA.

A “domestic concern” is any individual who is a citizen, national, or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that is organized under the laws of the United States or its states, territories, possessions, or commonwealths or that has its principal place of business in the United States. Officers, directors, employees, agents, or stockholders acting on behalf of a domestic concern, including foreign nationals or companies, are also covered.

The statute defines “interstate commerce” as “trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof....” The term also includes the *intrastate* use of any interstate means of communication, or any other interstate instrumentality. Thus, placing a telephone call or sending an e-mail, text message, or fax from, to, or through the United States involves interstate commerce, as does sending a wire transfer from or to a U.S. bank or otherwise using the U.S. banking system, or traveling across state borders or internationally to or from the United States.

Those who are not issuers or domestic concerns may be prosecuted under the FCPA if they directly, or through an agent, engage in *any* act in furtherance of a corrupt payment while in the territory of the United States, regardless of whether they utilize the U.S. mails or a means or instrumentality of interstate commerce. Thus, for example, a foreign national who attends a meeting in the United States that furthers a foreign bribe scheme may be subject to prosecution, as may any co-conspirators, even if they did not themselves attend the meeting. A foreign national or company may also be liable under the FCPA if it aids and abets, conspires with, or acts as an agent of an issuer or domestic concern, regardless of whether the foreign national or company itself takes any action while in the United States.

In addition, under the “alternative jurisdiction” provision of the FCPA enacted in 1988, U.S. companies or persons may be subject to the anti-bribery provisions if they act outside the United States. The 1998 amendments to the FCPA expanded the jurisdictional coverage of the Act by establishing an alternative basis for jurisdiction, that is, jurisdiction based on the nationality principle. In particular, the 1998 Amendments removed the requirement that there be a use of interstate commerce (e.g., wire, email, telephone call) for acts in furtherance of a corrupt payment to a foreign official by U.S. companies and persons occurring wholly outside of the United States.

See *A Resource Guide to the Foreign Corrupt Practices Act*, pages 11-12.

**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:**

Yes. Under general legal principles, the United States holds legal persons criminally responsible for the bribery of a foreign public official, as it does for any other crime. The United States Code provides that the "the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." 1 U.S.C. § 1. Prior to the 1998 amendments, the FCPA applied only to "issuers," a term that, in general, refers to publicly-traded companies or companies that must file periodic and other reports with the SEC (see above), see 15 U.S.C. § 78dd-1, and "domestic concerns," a term that was defined to include "any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship." See 15 U.S.C. § 78dd-2(h)(1)(B). The 1998 amendments expanded the FCPA's coverage to any legal person, wherever incorporated, that takes any act in furtherance of an unlawful bribe while in the territory of the

United States.

See U.S. Response to Phase 1 Questionnaire, pages. 7-8. This questionnaire, part of the OECD’s evaluation of the United States’ implementation of the OECD Anti-Bribery Convention, can be found at the following address: <http://www.justice.gov/criminal/fraud/fcpa/docs/response1.pdf> For more information on principles of corporate liability for antibribery violations, see also the abovementioned *Resource Guide to the Foreign Corrupt Practices Act*, at pages 27-30.

**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:

a) The FCPA provides for different criminal and civil penalties for companies and individuals.

**Criminal Penalties:** For each violation of the anti-bribery provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to \$2 million. Individuals, including officers, directors, stockholders and agents of companies, are subject to a fine of up to \$250,000 and imprisonment for up to five years.

For each violation of the accounting provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to \$25 million. Individuals are subject to a fine of up to \$5 million and imprisonment for up to 20 years.

Under the Alternative Fines Act, 18 U.S.C. § 3571(d), courts may impose significantly higher fines than those provided by the FCPA—up to twice the benefit that the defendant obtained by making the corrupt payment, as long as the facts supporting the increased fines are included in the indictment and either proved to the jury beyond a reasonable doubt or admitted in a guilty plea proceeding. Fines imposed on individuals may not be paid by their employer or principal.

When calculating penalties for violations of the FCPA, DOJ focuses its analysis on the U.S. Sentencing Guidelines (“Guidelines”) in all of its resolutions. The Guidelines provide a very detailed and predictable structure for calculating penalties for all federal crimes, including violations of the FCPA.

See *A Resource Guide to the Foreign Corrupt Practices Act*, page 68.

**Civil Penalties:** Although only DOJ has the authority to pursue criminal actions, both DOJ and SEC have civil enforcement authority under the FCPA. DOJ may pursue civil actions for anti-bribery violations by domestic concerns (and their officers, directors, employees, agents, or stockholders) and foreign nationals and companies for violations while in the United States, while SEC may pursue civil actions against issuers and their officers, directors, employees, agents, or stockholders for violations of the anti-bribery and the accounting provisions.

For violations of the anti-bribery provisions, corporations and other business entities are subject to a civil penalty of up to \$16,000 per violation. Individuals, including officers, directors, stockholders, and agents of companies, are similarly subject to a civil penalty of up to \$16,000 per violation, which may not be paid by their employer or principal.

For violations of the accounting provisions, SEC may obtain a civil penalty not to exceed the greater of (a) the gross amount of the pecuniary gain to the defendant as a result of the violations or (b) a specific dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from \$7,500 to \$150,000 for an individual and \$75,000 to \$725,000 for a company. SEC may obtain civil penalties both in actions filed in federal court and in administrative proceedings.

See *A Resource Guide to the Foreign Corrupt Practices Act*, page 69.

**Collateral Consequences:** In addition to the criminal and civil penalties described above, individuals and companies who violate the FCPA may face significant collateral consequences, including suspension or debarment from contracting with the federal government, cross-debarment by multilateral development banks, and the suspension or revocation of certain export privileges.

Enhanced compliance and reporting requirements as well as the appointment of a compliance monitor may be part of criminal and civil resolutions of FCPA matters.

See *A Resource Guide to the Foreign Corrupt Practices Act*, pages 69-72.

The U.S. generally recovers benefits of bribery to the payor through either criminal forfeiture by the DOJ or civil disgorgement of profits to the SEC. In terms of tracing assets, the Department, for example, uses a variety of resources, including the use of agents and financial analysts from the FBI, agents from the Internal Revenue Service--Criminal Investigation, and agents from FinCEN. The SEC employs personnel with accounting and auditing backgrounds, among others. The SEC and the Department also trace assets by gathering evidence via subpoenas, such as bank records, international wire transfers, credit reports, brokerage accounts, loan records, and other financial information. In the context of companies that are cooperating with the Department and the SEC, in many instances the tracing and quantifying of the assets is done by the company itself. But tracing assets can be difficult and time consuming, even where the companies are cooperating. In some cases, the benefits to the payor have been traced through bank records, books and records of the company, and the like.

Foreign officials cannot be charged under the FCPA, making it more difficult to freeze, seize, and forfeit benefits in their possession, as they are not subject to criminal forfeiture. For those reasons, generally the U.S. has not sought recovery of bribes paid to foreign officials, although there have been exceptions where the foreign officials participated in money laundering within the jurisdiction of the United States. They were indicted and criminal forfeiture was sought in the indictment in both cases.

Since 2001, wholly foreign corruption, including bribery, has been a predicate to the money laundering offense under 18 U.S.C. § 1956(c)(7)(B)(iv). Moreover, the United States can and does assist foreign governments in recovering the proceeds of corruption regardless of whether the corruption in question falls within the jurisdiction of the FCPA. First, the U.S. can provide formal and informal assistance in tracing assets and obtaining evidence in support of a foreign confiscation. Second, the U.S. can open its own investigation and seek confiscation of assets based upon foreign or transnational corruption. On several occasions, the United States has instituted forfeiture actions to recover the proceeds of corruption.

See Response of the United States, Questions Concerning Phase 3 OECD Working Group on Bribery, May 3, 2010, pages 33-34, found at: <http://www.justice.gov/criminal/fraud/fcpa/docs/response3.pdf>

b) Since the entry into force of the Convention through December 31, 2013, the United States has recorded criminal convictions with sanctions of 57 natural persons and 32 legal persons on foreign bribery charges, and four natural persons and 17 legal persons on accounting related charges. In addition, one natural person and 54 legal persons have been subject to discontinued prosecutions with sanctions on foreign bribery charges, and 53 legal persons on accounting related charges. With regard to administrative civil proceedings, 42 natural persons and 59 legal persons were sanctioned in foreign bribery cases, and 45 natural persons and 102 legal persons on foreign bribery related accounting charges. (Source: U.S. submission for 2013 to OECD Working Group on 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.**

Response:

Interagency Engagement: DOJ and SEC share enforcement authority for the FCPA's anti-bribery and accounting provisions. They also work with many other federal agencies and law enforcement partners to investigate and prosecute FCPA violations, reduce bribery demands through good governance programs and other measures, and promote a fair playing field for U.S. companies and issuers doing business abroad.

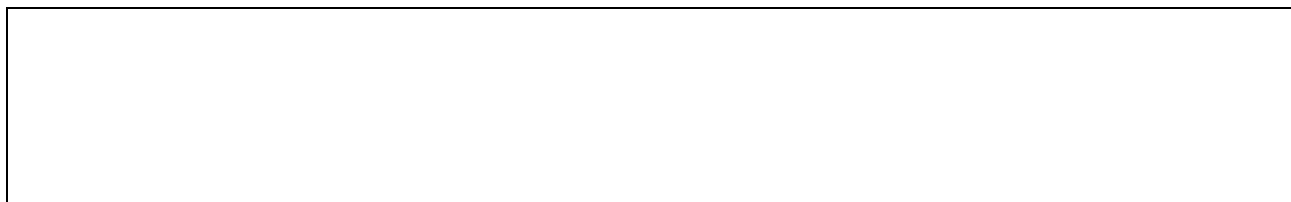
DOJ's FCPA Unit regularly works with the Federal Bureau of Investigation (FBI) to investigate potential FCPA violations. In addition, the Department of Homeland Security, the Internal Revenue Service-Criminal Investigation, and the U.S. Postal Inspection Service regularly investigate potential FCPA violations. A number of other agencies are also involved in the fight against international corruption, including the Department of Treasury's Office of Foreign Assets Control, which has helped investigate a number of FCPA investigations.

Besides enforcement efforts by DOJ and SEC, the U.S. government is also working to address corruption abroad and level the playing field for U.S. businesses and issuers through the efforts of the Departments of Commerce and State. Both Commerce and State advance anti-corruption and good governance initiatives globally and regularly assist U.S. companies doing business overseas in several important ways. Both agencies encourage U.S. businesses to seek the assistance of U.S. embassies when they are confronted with bribe solicitations or other corruption-related issues overseas.

For more detailed information, see *A Resource Guide to the Foreign Corrupt Practices Act*, pages 4-7.

Both the Departments of Commerce and State provide training to U.S. and Foreign Commercial Service officers and Foreign Service officers on the FCPA and related international initiatives. In turn, officers provide general information to the business community on these issues. U.S. government officials from DOJ, SEC, Commerce and State also meet with NGOs and speak at private sector events with organizations and schools on the FCPA and other related international anticorruption issues. Employees of both Departments of State and Commerce are required to report credible suspicions of foreign bribery.

For more details, see Response of the United States, Questions Concerning Phase 3 OECD Working Group on Bribery, May 3, 2010, pages 54-56, found at: <http://www.justice.gov/criminal/fraud/fcpa/docs/response3.pdf>



**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:

In general, every federal executive branch officer and employee is required by the executive branch standards of ethical conduct to “disclose waste, fraud, abuse, and corruption to appropriate authorities.” 5 C.F.R. 2635.101(11). This requirement is also one of the Principles found in Executive Order 12674. Who that appropriate authority is will depend upon the nature of the activity in question. If the matter is a suspected violation of a criminal statute, appropriate authorities include an Office of an Inspector General and/or the Department of Justice. There are no specific procedural requirements involved in making that report; the duty is to report. However, having said that, if the matter involves a specific statute with its own reporting mechanism, then officers and employees are to use that reporting mechanism.

For more details, see Response of the United States, Questions Concerning Phase 3 OECD Working Group on Bribery, May 3, 2010, pages 56-57, found at: <http://www.justice.gov/criminal/fraud/fcpa/docs/response3.pdf>

The Whistleblower Protection Act (WPA), 5 U.S.C. § 2302(b), prohibits taking or failing to take a personnel action as a result of disclosure of information by any employee or applicant which the employee or applicant reasonably believes evidences a violation of the law. 5 U.S.C. § 1212 provides that the Office of Special Counsel (“OSC”) is responsible for protecting government employees, former employees, and applicants for employment from violations of the WPA and investigates allegations of retaliation through the Investigation and Prosecution Division. If retaliation occurs, OSC can take corrective action to remediate any discriminatory or disciplinary action. OSC reports on such investigations and remedial actions to Congress on an annual basis. OSC also maintains a Disclosure Unit (DU) that serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from federal employees, former employees, and applicants for federal employment. 5 U.S.C. § 1213. Federal employees are advised of their ability to resort to their OIGs and OSC.

See Response of the United States, Questions Concerning Phase 3 OECD Working Group on Bribery, May 3, 2010, page 57, found at: <http://www.justice.gov/criminal/fraud/fcpa/docs/response3.pdf>

Concerning private sector whistleblowers, the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010 both contain provisions affecting whistleblowers who report FCPA violations. Sarbanes-Oxley prohibits issuers from retaliating against whistleblowers and provides that employees who are retaliated against for reporting possible securities law violations may file a complaint with the Department of Labor, for which they would be eligible to receive reinstatement, back pay, and other compensation. Sarbanes-Oxley also prohibits retaliation against employee whistleblowers under the obstruction of justice statute.

In 2010, the Dodd-Frank Act added Section 21F to the Exchange Act, addressing whistleblower incentives and protections. Section 21F authorizes SEC to provide monetary awards to eligible individuals who voluntarily come

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

forward with high quality, original information that leads to an SEC enforcement action in which over \$1,000,000 in sanctions is ordered. The awards range is between 10% and 30% of the monetary sanctions recovered by the government. The Dodd-Frank Act also prohibits employers from retaliating against whistleblowers and creates a private right of action for employees who are retaliated against.

Furthermore, retaliation against a whistleblower may also violate state, local, and foreign laws that provide protection of whistleblowers.

Additional information regarding SEC’s Whistleblower Program, including answers to frequently asked questions, is available online at <http://www.sec.gov/whistleblower>.

See *A Resource Guide to the Foreign Corrupt Practices Act*, pages 82-83.

**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:

a)

DOJ: The Fraud Section of the DOJ Criminal Division in Washington, D.C. is the body responsible for all criminal prosecutions and for civil proceedings against non-issuers under the FCPA. Such prosecutions are often staffed by an attorney from the Fraud Section and an Assistant United States Attorney based in the judicial district with venue over the offense. The Fraud Section’s FCPA Unit consists of more than 20 experienced attorneys who primarily investigate FCPA violations and related offenses. In combination with other attorneys assigned to FCPA cases from other Units within the Fraud Section and Assistant United States Attorneys, the FCPA Unit oversees cases involving dozens of prosecutors. Its budget is large enough to permit travel to judicial districts around the country as well as international travel to gather evidence.

SEC: The SEC Enforcement Division is responsible for civil enforcement of the FCPA with respect to issuers. The SEC may apply to a court for an injunction, civil penalty, and disgorgement of ill-gotten gains plus pre-judgment interest against an issuer and those acting on behalf of the issuer for a violation of the FCPA’s anti-bribery, books and records, and internal controls provisions. In 2010, SEC’s Enforcement Division created a specialized FCPA Unit, with attorneys in Washington, D.C. and in regional offices around the country, to focus specifically on FCPA enforcement. The Unit investigates potential FCPA violations; facilitates coordination with DOJ’s FCPA program and with other federal and international law enforcement partners; uses its expert knowledge of the law to promote consistent enforcement of the FCPA; analyzes tips, complaints, and referrals regarding allegations of foreign bribery; and conducts public outreach to raise awareness of anti-corruption efforts and good corporate governance programs. In addition, the SEC has many other trained investigative and trial attorneys in the SEC’s Enforcement Division who pursue FCPA cases. The FCPA Unit also has in-house experts, accountants, and other resources such as specialized training, state-of-the-art technology and travel budgets to meet with foreign regulators and witnesses.

Investigative Agencies: The lead investigative agency for most FCPA matters is the Federal Bureau of Investigation (“FBI”), an agency of the Department of Justice. Other investigative agencies, however, have participated and have





even taken the lead in some FCPA cases.

b)

DOJ: Fraud Section attorneys receive regular training in complex prosecution techniques, white collar crime prosecutions, and other matters.

SEC: The SEC's FCPA unit staff and other SEC investigative staff receive annual specialized training in investigation and litigating FCPA-related cases.

Investigative Agencies: The FBI International Corruption Unit provides annual training on FCPA investigations to agents from the FBI and other law enforcement agencies nationwide.

See Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United States, pages 13-15 and U.S. Response to Phase 2 Questionnaire, pages 3-5, found at:

<http://www.justice.gov/criminal/fraud/fcpa/docs/response2.pdf>

**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:

a) The United States relies on three main channels for seeking international co-operation in foreign bribery cases: (1.) formal requests for co-operation in criminal matters based on international treaties, letters rogatory or letters of requests from ministries of justice; (2.) requests based on memoranda of understanding; and (3.) requests through informal means.

A number of treaties are available for seeking international co-operation. The United States is party to 80 bilateral treaties on mutual legal assistance in criminal matters (MLATs) and 133 on extradition. All bilateral MLATs have provisions on proceeds of crime. In addition, as a party to the UNCAC and the OECD Anti-Bribery Convention, it may also use these multilateral conventions to seek co-operation. Requests under bilateral treaties, if available, are preferred, though the United States has made a number of requests under multilateral instruments. In addition, the United States may execute requests made in the absence of a treaty, e.g. requests through letters rogatory or letters from ministries of justice.

The SEC can seek co-operation in foreign bribery cases through memoranda of understanding (MOUs) signed with its counterparts in other jurisdictions. These include the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMoU), to which 103 securities and derivatives regulators are signatories. The MMoU allows the SEC to request information such as documents held by a securities regulator, bank and brokerage account information, and witness testimony. The SEC may use the information obtained in its civil or administrative proceedings and share it with self-regulatory organizations and criminal authorities. In addition, the SEC has bilateral information-sharing MOUs with 20 securities authorities. See Phase 3 Report on

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

Implementing the OECD Anti-Bribery Convention in the United States, pages 54-55.

b) The United States may also provide or seek assistance through informal channels, such as direct communication between law enforcement and/or prosecutors in other jurisdictions. In many cases such informal requests have been very successful. Informal requests are used as a first step before resorting to other channels. The U.S. has obtained and provided information to and from multilateral financial institutions, such as the World Bank. In some cases, informal assistance is not possible, e.g. when the evidence sought requires formal authentication or the requested state does not permit informal requests.

See Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United States, page 56.

**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 FCPA was enacted in 1977 and the United States continues its aggressive efforts to enforce its foreign bribery and related laws. For more information on U.S. efforts to enforce the FCPA, please see the above referenced *Resource Guide* . In addition, the United States has worked hard to implement the recommendations of its October, 2010 Phase 3 review by the OECD Working Group on Bribery. The Working Group concluded in December, 2012, that the United States had fully implemented seven recommendations, partially implemented two, and had not yet implemented one recommendation. One recommendation, to consolidate and summarize all publicly available information on the FCPA, was fulfilled by the November, 2013 publication of *A Resource Guide to the U.S. Foreign Corrupt Practices Act*.

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

Response:  
 The United States was an original signatory to the OECD Anti-Bribery Convention and has always been an active

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





member of the OECD Working Group on Bribery. We urge other major exporting countries in the G20 that are not yet Parties to the Anti-Bribery Convention to join the efforts of the other major exporting countries of the world in the OECD Working Group on Bribery as full participants and accede to the OECD Anti-Bribery Convention as soon as possible so as to share in developing best practices in implementation and enforcement of foreign bribery laws and efforts to eliminate foreign bribery and corruption.

The United States delegation to the OECD WGB plans to attend and participate in all 2014 WGB Plenary meetings. The Department of Justice and staff of the Securities and Exchange Commission engages in technical assistance regarding the detection, investigation, and prosecution of foreign bribery with numerous counterparts from around the world and will continue to participate in such assistance in the future.

Various U.S. Government agencies hold meetings with representatives of the U.S. and foreign business communities, investor groups, and interested non-profit from a wide range of business sectors, sizes, and geographic locations organizations to raise awareness and discuss the FCPA.