

DOING BUSINESS ABROAD – INTERNATIONAL LEGAL OBLIGATIONS AND PENALTIES RELATING TO CORRUPTION

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Introduction

1. Since the poorest nations have long been associated with the highest levels of corruption, the international community has sought to combat corruption by criminalizing the corruption of foreign officials in addition to addressing domestic corruption and the civil law remedies that states should make available to wronged parties. One short example of the calls to combat corruption is contained in the following extract from a letter published in the London Financial Times on 12 September 2006 from the Secretary-General of the OECD:

“If governments are serious about development, it’s time they got serious about corruption. Corruption harms people, economies and the environment. It discourages investment and reduces trust in government. A bribe to win a contract can lead to losses running into hundreds of millions of dollars in a poor country due to de-railed development programmes and inappropriate investment decisions.

Fighting corruption concerns both developed countries, home to many multinational companies that may be tempted to pay bribes to get contracts, and developing countries, whose officials may be tempted to accept bribes. Corruption distorts markets and creates unfair trading conditions. It prevents companies from competing for business on a “level playing field” where contract decisions are based on product quality and delivery capacity, rather than on who pays the biggest bribe. It undermines people’s ability to earn an honest living.”

2. This note provides extracts of material relating to the corruption of foreign officials.

Sources of Obligations

3. The USA led the way with the Foreign Corrupt Practices Act 1977 (“FCPA”) following the scandal of the bribery by Lockheed of foreign officials in Japan and the Netherlands to gain contracts. It is therefore in the USA that there is the greatest experience of the enforcement of criminal penalties for the bribery of foreign persons abroad. Indeed, some western countries until recently encouraged bribery by their nationals of foreign persons by allowing such bribes to be set off as expenses for tax purposes.
4. Since 1998 however, the tide has turned outside the USA with the adoption of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the “OECD Convention”); and in 1999 the Council of Europe adopted the Criminal Law and the Civil Law Conventions on Corruption. Parties to these conventions have to differing extents adopted national laws to give effect to the relevant conventions. The FCPA itself was amended to take account of the OECD



Convention. Parties' implementation of their obligations is reported upon by OECD working parties and by the non-governmental organisation Transparency International. The reports of these bodies are useful in assessing the progress that states have made in legislating against corruption and in their practical implementation, including enforcement of the provisions. Finally, the UN Convention against Corruption, adopted by the UN in 2003 has been adopted by many states, but more recently the UK and US for example, adopted it in 2006.

The Foreign Corrupt Practices Act 1977

5. The FCPA contains the following provisions.

§ 78m. Periodical and other reports

(a) Reports by issuer of security; contents

Every issuer of a security registered pursuant to section 78l of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 78l of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

...

(b) Form of report; books, records, and internal accounting; directives

(2) Every issuer which has a class of securities registered pursuant to section 78l of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and



(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

§ 78dd-1 [Section 30A of the Securities & Exchange Act of 1934].

Prohibited foreign trade practices by issuers

(a) Prohibition

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78I of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;



(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

...

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (g) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or



(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

§ 78dd-3. Prohibited foreign trade practices by persons other than issuers or domestic concerns

(a) Prohibition

It shall be unlawful for any person other than an issuer that is subject to section 30A of the Securities Exchange Act of 1934 or a domestic concern, as defined in section 104 of this Act), or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or



(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

...

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.



The OECD Convention

6. Extracts from the OECD Convention provide as follows.

“Article 1

The offence of bribery of foreign public officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.”

...

“Article 4

Jurisdiction

1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.

...

4. Each Party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps.”

...



“Article 8

Accounting

1. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.”
7. The Convention includes an approved commentary that provides important assistance in considering the terms of the Convention. Amongst other things, it provides for an exception of “facilitation payments”:

“Small “facilitation” payments do not constitute payments made “to obtain or retain business or other improper advantage” within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. However, criminalisation by other countries does not seem a practical or effective complementary action.”

The Council of Europe Conventions

8. The 1999 Conventions address criminal and civil law sanctions. A further 2003 criminal law convention addresses the corruption of arbitrators and is not addressed in this note.
9. The **1999 Criminal Law Convention** includes the following:

Article 2 – Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.



Article 3 – Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 5 – Bribery of foreign public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

Article 7 – Active bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8 – Passive bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

Article 12 – Trading in influence

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the



influence is exerted or whether or not the supposed influence leads to the intended result.

Article 14 – Account offences

Each Party shall adopt such legislative and other measures as may be necessary to establish as offences liable to criminal or other sanctions under its domestic law the following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in Articles 2 to 12, to the extent the Party has not made a reservation or a declaration:

- a creating or using an invoice or any other accounting document or record containing false or incomplete information;
- b unlawfully omitting to make a record of a payment.

Article 15 – Participatory acts

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

Article 17 – Jurisdiction

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:
 - a the offence is committed in whole or in part in its territory;
 - b the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;
 - c the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.
10. The **1999 Civil Law Convention** contains the following.

Article 1 – Purpose

Each Party shall provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend



their rights and interests, including the possibility of obtaining compensation for damage.

Article 3 – Compensation for damage

- 1 Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

...

Article 8 – Validity of contracts

- 1 Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.
- 2 Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

Article 9 – Protection of employees

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

The UN Convention against corruption

11. The UN Convention was adopted by the UN in 2003 and has been adopted by a large number of states including the UK, which adopted it in 2006. It is a comprehensive commitment to combat domestic and foreign corruption in the public and private sectors. Its provisions are not reproduced save for article 16 in order to avoid repetition of the provisions already reproduced under the OECD and Council of Europe Conventions.

Article 16

Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official



himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

OECD reviews

12. In accordance with the OECD Convention, the OECD has carried out a number of reviews of the application by states of their convention obligations which are a good source of information on different countries' positions on corruption. The Phase 2 review of the UK is dated October 2008 and emphasises the UK's poor record of implementation of its obligations under the OECD Convention. Its findings include the following.
 - (a) Deficiencies in the UK's laws on bribery of foreign public officials and on corporate liability for foreign bribery have hindered investigations.
 - (b) There are systemic deficiencies including (i) the uncertainty of whether the informed consent of the principal to its agent receiving a bribe was a defence; (ii) the effect of the use of a non-UK national intermediary to pay a bribe abroad; and (iii) the requirement that the government appointed Attorney-General consent to the prosecution of foreign bribery cases
 - (c) The UK has allocated significant financial resources and nationwide jurisdiction to a specialised unit of the City of London Police for foreign bribery investigations.
 - (d) The UK achieved only its first conviction in September 2008 for foreign bribery in international business transactions¹.
 - (e) The UK intended to introduce a Bribery Bill remedying deficiencies in the law.
13. The OECD Working Party was affected by the untimely termination by the UK of its investigation into corruption by BAE Systems plc in December 2006 largely on grounds of national security. It did not have time to more than note a development

¹ A retired managing director pleaded guilty in a plea bargain and received a 5 month suspended prison sentence for paying £83,000 of bribes in 2007-8 in Uganda.



just before the publication of its report when international construction company Balfour Beatty agreed a settlement of civil proceedings brought by the prosecuting authorities disgorging £2.25 million proceeds of bribery in Egypt.

Important UK developments in 2009

14. Since the OECD's report there have been 3 important areas of development in the UK: a Bribery Bill designed to correct legislative flaws has started its Parliamentary process; the Serious Fraud Office (SFO) has published guidance designed to encourage self-reporting of overseas bribery; and the SFO has shown some improvement in its enforcement record.
15. The Bribery Bill repeals the existing law on bribery and replaces it with offences of bribing another person; being bribed; bribing a foreign public official; and failure by a commercial organisation to prevent bribery. The bribery offences apply to bribery of public or private persons and where the person has a close connection with the UK, whether or not the relevant acts of bribing or receiving a bribe took place in the UK. The offence of bribing a foreign official extends to cases where the briber intends to obtain or retain business or an advantage in the conduct of business and excludes only advantages that the public official is permitted or required by local law to accept. That means that the making of facilitation payments (ie payments to foreign public officials to perform their functions) is an offence under the Bill.
16. The Bill's corporate offence, which applies to companies carrying on business or part of their business in England, Wales or Northern Ireland, is made out where:
 - (a) a person performing services on behalf of a commercial organisation bribes another person;
 - (b) the bribe was in connection with the business of the commercial organisation; and
 - (c) a responsible person within the commercial organisation was negligent in failing to prevent the bribe².
17. It is a defence to prove that the commercial organisation had in place adequate procedures designed to prevent the payment of bribes in connection with its business, unless the negligence is that of a senior officer.

² This limb was criticised by the Parliamentary scrutiny committee, which recommended its removal in the light of the corporate defence of having adequate procedures.



18. The Serious Fraud Office has published guidelines on “adequate procedures”, providing the following examples of matters that it will take into account when assessing a corporate’s culture:
- a clear statement of an anti-corruption culture fully and visibly supported at the highest levels in the corporate.
 - a Code of Ethics.
 - principles that are applicable regardless of local laws or culture.
 - individual accountability.
 - a policy on gifts and hospitality and facilitation payments.
 - a policy on outside advisers/third parties including vetting and due diligence and appropriate risk assessments.
 - a policy concerning political contributions and lobbying activities.
 - training to ensure dissemination of the anti-corruption culture to all staff at all levels within the corporate.
 - regular checks and auditing in a proportionate manner.
 - a helpline within the corporate which enables employees to report concerns.
 - a commitment to making it explicit that the anti-bribery code applies to business partners.
 - appropriate and consistent disciplinary processes.
 - whether there have been previous cases of corruption within the corporate and, if so, the effect of any remedial action.
19. The Serious Fraud Office’s guidelines on overseas corruption are intended to promote self-reporting of overseas corruption by corporates. The carrots that the SFO holds out are the prospect of a negotiated civil settlement and the opportunity to manage jointly with the SFO the issues and publicity. The civil approach has the benefit within the EU of avoiding the mandatory debarment provisions under the EU Public Sector Procurement Directive. The sticks held out in the event of a failure to self-report are the prospects of an SFO investigation and of criminal prosecution of the corporate and individuals. The guidelines provide detailed guidance on matters such as the SFO’s approach to negotiated settlements and the provisions that it would consider as part of a settlement.



20. As to enforcement, British bridge building company Mabey & Johnson was sentenced in September 2009 on charges of corruption and breaching UN sanctions following a plea bargain. The corruption charges relate to the bribing of officials in Jamaica and Ghana in the 1990s, and the sanctions charges to payments to Saddam Hussein's regime between 2001 and 2002.
21. Mabey & Johnson self-reported and co-operated with the SFO. The Director of the SFO, Richard Alderman said
"These are serious offences and it is significant that Mabey & Johnson has cooperated with us to get to this landmark point. This has enabled this case to be dealt with in just over a year and is a model for other companies who want to self-report corruption and have it dealt with quickly and fairly by the SFO."
22. The court ordered Mabey & Johnson to pay a total of just over £6.6 million, comprising a fine of £3.5 million; a confiscation order of £1.1 million; £350,000 prosecution costs; the £250,000 costs of an ongoing monitor; and reparations. The company is paying reparations of £658,000 to Ghana, £139,000 to Jamaica and £618,000 to Iraq. The company has also been instructed to submit an internal compliance programme to a monitor.
23. In a further enforcement development, the SFO announced in October 2009 that it was seeking the necessary permission from the Attorney-General to prosecute BAE Systems plc on charges of overseas corruption relating to transactions in Africa and Eastern Europe including the Czech Republic, Romania and Tanzania. This move reportedly follows plea bargain negotiations having stalled, with BAE unwilling to agree a fine said to be sought in the region of £0.5 to £1 billion.

Transparency International

24. Transparency International is an international organisation dedicated to raising awareness of the evils of corruption and to helping to bring about its end. It publishes an annual report on OECD Convention enforcement. Its 2009 report identifies the number of prosecution and investigations for foreign bribery in participating Convention states in 2008. The summary is at Appendix 1. The great majority of these countries have only a very few investigations or prosecutions pending in 2008 concerning bribery of foreign officials. The USA stands out with 120 prosecutions in 2008 and 110 investigations underway. Germany also stands out with 110 prosecutions in 2008 and more than 150 investigations. France, Hungary



and Switzerland follow. The UK had 4 prosecutions in 2008, with none the previous year.³

25. Transparency International also issues a “Bribe Payers’ Index” each year based on surveys of business executives, producing a ranked list of 30 of the leading exporting countries according to the propensity of entities with their headquarters in those countries to bribe when operating abroad. A copy of the table from the 2008 survey is annexed to this note at Appendix 2. It is the result of a survey of over 11,000 executives in 125 countries, who were asked about the propensity of foreign entities to bribe when operating in the respondent’s country. The scale ranges from 1 (bribes are common) to 7 (they never occur) and are then converted to a 1-10 score that appears on the table.

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³ The OECD report published in October 2008 reported 1 successful prosecution and 131 allegations of foreign bribery received by the UK’s Serious Fraud Office, and a total of 25 open investigations at August 2008.

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APPENDIX 1

Transparency International Table of Foreign Bribery Prosecutions and Investigations 2007-08

COUNTRY	ENFORCEMENT				SHARE OF WORLD EXPORTS % FOR 2007 (UNCTAD)
	CASES		INVESTIGATIONS		
	To end 2008	2007	To end 2008	2007	
1. Argentina	1	1	0	0	0,36
2. Australia	6	1	1	s	1,06
3. Austria	0	0	2	2	1,25
4. Belgium	3***	2**	s	s	2,90
5. Brazil	1	u	4	s	1,06
6. Bulgaria	3	3	1	0	0,14
7. Canada	1	1	1	s	3,14
8. Chile	0	0	0	0	0,45
9. Czech Republic	0	0	4	1	0,73
10. Denmark	13	13**	1	0	0,97
11. Estonia	0	0	0	0	0,09
12. Finland	2	1	4	3	0,64
13. France	17	17**	9	16	4,11
14. Germany	110	>43	>150	>88	8,80
15. Greece	0	0	0	1 or 0	0,38
16. Hungary	24	23	≥1	1	0,58
17. Ireland	0	0	4	4**	1,23
18. Israel*	0	-	0	-	0,44
19. Italy	2	2	s	3	3,44
20. Japan	2	1	2	u	5,15
21. Korea (Republic of)	9	9**	u	1	2,20
22. Mexico	0	0	0	0	1,80
23. Netherlands	7	7	4	3	3,69
24. New Zealand	0	0	6	s	0,20
25. Norway	5	4	u	u	1,04
26. Poland	0	0	0	0	0,88
27. Portugal	0	u	2	u	0,41
28. Slovak Republic	0	0	u	0	0,32
29. Slovenia	0	0	1	0	0,17
30. South Africa*	0	-	1	-	0,44
31. Spain	3	2	2	0	2,11
32. Sweden	2	1	6	15	1,34
33. Switzerland	16	16	s	36	1,31
34. Turkey	0	0	0	1	0,72
35. United Kingdom	4	0	approx. 20	20	4,56
36. United States	120	103	110	69	9,84

* First year covered in report

** Number corrected from last year's report.

*** Belgium has brought ten additional cases on behalf of the EU

u - unknown

s - some

NOTE: In past years the year given in the column heading was the year of publication of the report. In this year's report, the year given reflects the year for which the data was collected; 2009 data was taken into consideration for Finland and Sweden



APPENDIX 2

Transparency International Bribe Payers' Index 2008

Rank	Country/Territory	BPI 2008 score
1	Belgium	8.8
1	Canada	8.8
3	Netherlands	8.7
3	Switzerland	8.7
5	Germany	8.6
5	Japan	8.6
5	United Kingdom	8.6
8	Australia	8.5
9	France	8.1
9	Singapore	8.1
9	United States	8.1
12	Spain	7.9
13	Hong Kong	7.6
14	South Africa	7.5
14	South Korea	7.5
14	Taiwan	7.5
17	Brazil	7.4
17	Italy	7.4
19	India	6.8
20	Mexico	6.6
21	China	6.5
22	Russia	5.9

Scores range from 0 to 10. The higher the score for the country, the lower the likelihood of companies from this country to engage in bribery when doing business abroad

