The Role of the OECD Convention in Combating Bribery of Foreign Public Officials

by

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Introduction

The world is fast becoming a true global marketplace. Where international transactions were once the purview of large multinational enterprises, companies of all sizes are now selling goods, rendering services and licensing intangibles across national borders. A number of factors contribute to this rapid expansion in world trade. Clearly, technology makes it easier to buy, sell and ship goods around the world and to service customers and clients at a distance. Many developing countries now have emerging middle classes and this is fueling the demand for state-of-the-art goods and services. International financial institutions and financial markets find it beneficial to facilitate the flow of funds around the world and to minimize fluctuations in currency exchange rates. Finally, many nations are eliminating trade barriers by signing treaty agreements and by forming international alliances, such as the European Union (EU) and the Organization for Economic Cooperation and Development (OECD).

Even as national borders become less of an impediment to trade, businesses engaging in international transactions still face a number of challenges. Besides differences in currencies, language and laws, each country has its own distinct business practices. The culture, economics and social structures of a region shape how individuals conduct negotiations and their attitudes concerning what they are entitled to receive. In some localities, government officials expect gratuities to facilitate the issuance of necessary documents and assure the timely handling of goods or transactions. In other words, bribes are an ordinary and necessary cost of doing business in those jurisdictions.

In spite of international and regional efforts to curb this practice, bribery of foreign public officials is still a serious international political, economic, and legal problem (Walsh 1998; Butler 2000; Economist 1999; Borrus 1995). There is also evidence that bribery activities corrupt economic systems by distorting competition, undermining development, reducing transparency in financial reporting, and destabilizing democratic governments (George, Lacey, and Birmele 2000; Mauro 1995; Hamra 2000).[i] Further, bribery activities are not limited to the newly emerging nations of Asia, Africa, and South America but are a global phenomenon also affecting developed countries including member nations of the European Union (EU), the United States, Canada, Australia, and Japan (Drozdiak 1999; Gantz 1998).

In response to pervasive bribery activity and its potentially negative economic effects, the OECD,[ii] which includes all EU member nations, has recently initiated a number of anti-bribery activities. In November 1997, 34 nations signed the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the *OECD Convention*).[iii] The *OECD Convention* became effective in February 1999 and now requires signatory nations to enact or harmonize domestic legislation to be in accord with the Convention's bribery provisions. Previously, most countries had laws making it a crime for citizens or businesses to bribe their own officials (George, Lacey, and Birmele 2000). The OECD Convention goes further by obligating signatory nations to make bribery of foreign public officials a criminal act on an extraterritorial basis.[iv]

The purpose of this paper is to assess the potential impact of the *OECD Convention* on bribery activities. The first section of the paper defines bribery and discusses its extent, costs and consequences. The following section traces the steps leading up to the *OECD Convention* and details specific provisions of that Convention. Next, the anti-bribery convention simultaneously adopted by the EU is discussed. The concluding section addresses the need for further international efforts to combat bribery of government officials, as well as the need to assess the impact of the current efforts of the OECD and EU.

The Nature of Bribery

A bribe is a business transaction, albeit an illegal or unethical one, that has the effect of corrupting economic and governance systems as it bestows an unfair advantage upon those paying the bribe. One "buys" something when the bribe is paid. A key element that distinguishes unacceptable payments is the corruption of a relationship of trust (Rose-Ackerman 1999). In the public sector, a bribe is an inducement that influences a public official to perform his or her duties in a manner contrary to the course that might otherwise be adopted. When a company pays a public official to influence that official's decisions, the company corrupts a relationship of trust between the public and that official (Rose-Ackerman 1999). Bribes are paid for two reasons: to obtain government benefits and to avoid costs (Rose-Ackerman 1997a).

One distinctive element of bribery is the *quid pro quo*–the sense that the office is abused in exchange for the benefit conferred (Nichols 1999). Two types of benefits may be conferred on bribe-givers: (1) "according-to-rule" and (2) "against-the-rule" benefits (Oldenburg 1987). According-to-rule benefits confer something on the bribe-giver that the bribe-giver should have received under the rules; the bribe-taker acts in a manner that he or she should have done anyway. Schollhammer (1977) defines "according-to-rule benefits" as grease or "lubrication" payments. Such payments involve relatively small sums of money or gifts to low-ranking officials to facilitate or expedite the performance of normal official duty. The abuse of office occurs when the bribe-taker acts on the bribe-giver's request before the requests of others or when the bribe-taker refuses to use his or her office in the absence of illegal payments (Nichols 1999). In the latter case, extortion has occurred. Examples of this type of behavior include paying more than the required fee, or making a side payment to a government official or a member of his family, to guarantee issuance of import permits or visas for expatriate employees or to insure timely installation of utility services.

Another form of bribery is the "against-the-rule benefit" which is exemplified by the award of a contract to a party who should not have won the contract (Oldenburg 1987). The abuse of office here, usually occurring in exchange for large sums of money, involves the discretion of the public official. Bribes paid to secure this type of benefit are referred to as "kickbacks" or "grand corruption" (Hamra 2000; Nichols 1999). When the payment involves relatively large sums of money given with the aim of enticing the official to commit an illegal act to the advantage of the person making the payment "subornation" occurs. Subornation is a request for officials "to look the other way," not to do their jobs, do the job more quickly, or even knowingly break the law (Cateora and Graham 1999). The degree of abuse tends to rise with the rank of the official involved. Payments to local bureaucrats are generally small and classified as "petty," whereas payments to government ministers are usually substantial and constitute grand corruption or fraud (Rose-Ackerman 1997b). Typical examples of grand bribery include payments to secure contracts for military equipment or government infrastructure, such as airports, bridges and roads. Often the contractor recovers the cost of the bribe by supplying inferior products and/or by artificially inflating the contract price.

A second distinctive element or dimension of bribery is the role assumed by the party accepting (or seeking) the payment. Are they acting to enrich themselves or are they legitimately fulfilling their obligations to their government? In other words, are they agents or principals? Technically, only payments made to agents are classified as bribes (Rose-Ackerman 1999). Agents and principals have divergent interests. Agents who feel they are not adequately compensated for their efforts or who view their position as an entitlement are motivated to seek bribes. Information asymmetry and a lack of adequate controls also gives them a great deal of discretionary power. Opportunities for bribery depend on the size of the rents in the control of public agents, the discretion they have in allocating them, and their lack of a sense of accountability to society (Cartier-Bresson 2000). A market for bribery thus exists when people trade public goods illegally against payoffs, at the risk, albeit slight, of paying a penalty (Cartier-Bresson 2000).

Table 1 – Classification of Payments

	Quid Pro Quo Present	**No Explicit Quid Pro Quo**
Payment to Principal	Market Price	Gift
Payment to Agent	Bribe	Tip

Table 1, which is based on the work of Rose-Ackerman (1999), distinguishes four categories of payments that a business might make to (or on behalf of) a government official -- bribes, gifts, tips, and market prices. A bribe occurs in the presence of an agency relationship and the expectation of a quid pro quo. Gifts differ from market prices by the lack of an explicit quid pro quo. Many gifts are purely altruistic transfers with no expectation of a material reward. With tips, the quid pro quo is vague and service is usually delivered before the tip is paid. Although a bribe is not demanded at the current time, a tip may be given to ensure preferential treatment during future transactions.

Extent, Costs and Consequences of Bribery

Precise measures of the extent or costs of bribery are difficult, if not impossible, to obtain. Generally, neither bribe-givers nor bribe-takers disclose the existence or extent of their activities (Nichols 1999). However, estimates based on World Bank data indicate that five percent of exports to developing countries or $50 to $80 billion annually goes to corrupt officials (Moss 1997). Another World Bank survey of 3,600 firms doing business in 69 countries showed that 40 percent of the firms were paying bribes (Omestad 1997). Further, U.S. government data for the period May 1994 until April 1998 indicate that bribes were used to influence the outcome of 239 international contract competitions totaling $108 billion (George, Lacey, and Birmele 2000).

Another indication of the extent of the bribery problem is the number of bribery scandals reported by the press during the decade of the 1990s. These scandals have involved government officials in all parts of the world and at all levels of government. For example, Prime Minister Roh Tae Woo of South Korea admitted to amassing a $650 million slush fund as a result of bribes received from numerous American and European companies (Nakarmi 1995; Asiaweek 1995).[v] In the mid-1990s, investigators in Italy unraveled a web of corruption that ranged from inflated procurement contracts to kickbacks on expense accounts and bribes for military exemptions (Bohlen 1995).[vi] In Germany, a scandal erupted concerning alleged bribes offered by a German businessman to former Canadian Prime Minister Brian Mulroney and others to secure the sale of 34 Airbus jets worth C$1.8 billion (VonWaldersee 1995). In Singapore, five companies, including Siemens AG of Germany, were accused of paying millions of dollars to a government official to win a big contract to supply telecommunications equipment. Singapore prohibited all five firms from doing business there (Andrews 1997).

Historically, bribery has been a particular problem in countries that have unstable economies and/or governments. High inflation and uncertainties about the future prompt people to amass private slush funds and to transfer them to bank accounts denominated in more stable currencies. In turn, the prevalence of bribery perpetuates economic and governmental instability. In Brazil, Fernando Collor de Mello, the nation's first elected president since the end of military rule, was thrown out of office in 1992 on charges of diverting several million dollars in campaign contributions to his private use (Goering 1996). In Bulgaria, bribery and corruption are so widespread that they are slowing the pace of economic reform (Sergueva 2000). In Argentina, Repso, the Spanish-Argentine energy company, allegedly made improper payments to Argentine politicians to secure support for favorable treatment (EFE News Service 2000). In Nigeria, public servants have become corrupt to the point of regarding their government appointments as a business from which they are entitled to extract income beyond their public service salary (Harsch 1993).

The scope and mounting costs of bribery in international business have reached a critical point where they are having a detrimental impact on international trade and finance. Various economic studies indicate several negative effects on resource allocation and distribution (Cartier-Bresson 2000; Rose-Ackerman 1999; Kaufman 1998). First, contract costs are inflated for both the bribe-maker and for the principal whom the bribe-taker is supposedly serving as an agent. Second, because the bribe is essentially secret and contrary to both local and international law, the risk of default is high. In a contract corrupted by bribery, neither the bribe-maker or taker has a third party (e.g., a court of law) to whom they can appeal in the event of a dispute (Cartier-Bresson 2000). This can then lead to other illegal, and often violent, activities to extract contractual compliance.

Recent empirical research suggests that bribery and other forms of corruption reduce investment and economic growth. For example, Mauro (1995) studied corruption in 67 countries during the period 1960-1985 and found that corruption was negatively correlated with both investment and economic growth. Wei (1997) examines the effects of tax increases and the level of corruption on multinational firm investment in 45 nations. His results indicate that an increase in the corruption level from that of Singapore, which has a low corruption rating, to that of Mexico, with a relatively high degree of corruption, would be tantamount to raising the tax rate by 21 percentage points.

Transparency International (TI), a non-profit organization formed in 1993 by former World Bank officials, now publishes annually a Corruption Perceptions Index (CPI) and a Bribe-Payers Index (BPI). These indices are based on surveys and impound a number of factors. A key factor in the CPI is bribe taking by public officials. According to the most recent TI survey (Transparency International 2000), the ten most corrupt countries are: Nigeria, Yugoslavia, Ukraine, Azerbaijan, Indonesia, Angola, Cameroon, Russia, Kenya, and Mozambique.[vii] Based on the BPI, those countries whose firms were perceived as most inclined to offer bribes are: China, South Korea, Taiwan, Italy, Malaysia, and Japan.

Clearly, bribery seems to be most prevalent in countries with governments that impose restrictions on foreign trade and investment, yet their market structures do not demand transparency and accountability in financial transactions. Restrictive and non-competitive market conditions pose barriers to entry, and a lack of quality information, such as audited financial statements, introduces unpredictability into capital markets.[viii] This uncertainty inevitably undermines investor confidence, increases systemic risk, engenders market volatility and becomes a barrier to the free flow of capital (Williams and Beare 1999). Thus, businesses resort to bribery to reduce the uncertainty created by systemic risk and to remove or reduce barriers to entry.

Another negative effect of bribery and corruption is they distort the allocation of resources by government agencies. Illegal payments tilt the composition of public spending towards projects that facilitate the collection of bribes (e.g., defense spending), at the expense of priority programs (Mauro 1997; Cartier-Bresson 2000). Bribery also leads to deficit spending by government officials because contracts are not awarded to the lowest bidder and the contracts granted include clauses that facilitate kickbacks or graft that inflate project costs. Bribery also distorts relative prices. Bribery causes excessive amounts of money to flow into a government with no commensurate increase in output (Nichols 1999). Indeed, bribery has a more insidious effect on the economy than excessive taxes because bribery must be done in secret (Shleifer and Vishny 1993). Bribery renders price, a fundamental piece of information in a market, less meaningful.

Bribery and other forms of corruption also pose a direct threat to the international financial system. Where bribery of a foreign public official is a crime, those who receive bribes usually must launder the money before a personal benefit can be enjoyed (Nichols 1999).[ix] In 1989, the G7 nations and the President of the European Commission recognized the significance of the threats of money laundering and started a process that led to the creation of the Financial Action Task Force on Money Laundering (FATF). The FATF, an inter-governmental body with a membership of 26 countries, includes the major financial center nations of Europe, North America, and Asia. The FATF develops and promotes policies to combat money laundering. The FATF Secretariat works closely with the OECD on combating bribery in international business transactions. Failure to launder bribe monies increases the risk of detection and prosecution . Money laundering, a type of off-the-book fraud, disrupts financial markets because most market participants shun financial institutions tainted by the reality and/or perception of involvement in handling illegal funds. IMF studies have also shown that countries used by money launderers face inexplicable changes in money demand, increased risks for the safety of the banking sector, and increased volatility of international capital flows and exchange rates (Carlson 2000; Nichols 1999).

The electronic transfer of funds, especially over the Internet, further exacerbates the problems posed by money laundering. The globalization and digitization of international finance means that it is now easier to launder illegally obtained monies. Often the only act necessary to transfer funds across borders is the click of a mouse. Once illegally obtained funds enter the financial system they can be instantly disbursed to numerous locations (Glynn, Korbin, and Naim 1997).

The deleterious effects of bribery and corruption are not limited to the economic sphere. Bribery also undermines democratic values. In those countries where bribery is a way of life, citizens may come to believe that the government is simply for sale to the highest bidder. Corruption undermines claims that government is substituting democratic values for decisions based on ability to pay. Military takeovers are frequently justified as a response to the corruption of democratic rulers (Rose-Ackerman 1997b). Such deleterious effects have been observed in highly corrupt countries in Central and Eastern Europe, Asia, and Africa (Buscaglia 1996; Gray and Jarosz 1995).

Development and Adoption of the OECD Convention

Due to the growing concerns about the impact of bribery on the global economy and on the political stability of many regions, the United States (US) made a proposal in 1989 that OECD member nations adopt provisions similar to the US *Foreign Corrupt Practices Act* and make bribery a criminal act (Gantz 1998). After lengthy analysis of the nature of corruption in international business and consideration of potential measures to combat bribery, OECD nations agreed in 1994 on an initial *Recommendation of the*

Council on Combating Bribery in International Business Transactions (Earle 1996). This was the first multilateral consensus that bribery of foreign officials should be a forbidden and sanctioned behavior (Almond and Syfert 1997). The Council concluded that to combat corruption extant national legislation should be enforced. The OECD then established a working group to evaluate the effectiveness of the 1994 *Recommendation* (Earle 1996). This working group found that the *Recommendation* was ineffective in combating bribery because it was not legally binding (Zagaris and Ohri 1999).

In 1996, the OECD adopted the *Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials* (OECD 2000b). The resolution requires that all member nations reject or abolish corporate tax deductions for bribery payments made by businesses. Initially, France and Germany, who, in 1996, still permitted such tax deductions, resisted elimination of the deduction by arguing that foreign bribes should be criminalized before removal of the tax deduction. However, resistance began to erode when, in December 1996, Norway passed legislation that disallowed the deductibility of bribes to both foreign persons and public officials and then Denmark followed suit (George, Lacey, and Birmele 2000).

In 1997, the OECD member nations took a further step in fighting corruption by adopting a *Revised Recommendation of the Council on Combating Bribery in International Business Transactions.* The *Revised Recommendation* reaffirmed the OECD commitment to criminalize bribery and stated that a Convention, rather than a model code, was the appropriate instrument to achieve that goal. OECD member nations agreed to immediately open negotiations on an international convention to criminalize bribery with a treaty to be available for signature by the end of 1997. The *Revised Recommendation* also called for member countries to criminalize bribery of foreign public officials by submitting a proposal to their respective legislative bodies by April 1, 1998 and seeking enactment by December 31, 1998.

Finally, in November 1997, all 30 member nations and 4 non-member nations (Argentina, Brazil, Bulgaria, and Chile) signed the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.* Article 15 of the OECD Convention states that it will enter into force 60 days after the date upon which five of the ten member nations which have the ten largest export shares,[x] and which represent by themselves at least 60 percent of the combined total exports of those ten countries, have deposited their instruments of ratification. The OECD Convention entered into force in February 1999 exactly 60 days after Canada deposited its instrument of ratification (George, Lacey, and Birmele 2000).

Scope and Coverage of the OECD Convention

OECD member nations have bound themselves to prevent bribery by multinational firms by criminalizing "active" bribery of other countries' officials, whether or not those countries are signatories to the *OECD Convention* (Sacerdoti 2000). The 1997 Convention distances itself from the traditional model of penal law conventions in that its norms are not self-executing. This means that a rule that criminalizes bribery of foreign public officials (in Article 1) must be written (or rewritten) and added to the criminal code of signatory nations (Sacerdoti 2000).[xi] Table 2 reports progress towards that goal.

[Insert Table 2 Here]

Thus, the *OECD Convention* allows signatory nations to pass legislation at different ends of a rather broad spectrum. Some nations may enact legislation with more lenient standards than others thereby putting the nations with stricter standards at a disadvantage. Companies that are located in countries with tougher legal standards will be at a competitive disadvantage.[xii]

Article 1–The Offense of Bribery

Article 1 obligates each signatory nation to make it a criminal offense "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" to obtain or retain business or "other improper advantage." The focus is on "active" or the "supply-side" of bribery. "Active" bribery refers to the act of offering or making the bribe while "passive" bribery refers to the act of receiving the bribe (Miller 2000). Moreover, it is irrelevant whether the bribe goes to a third party (such as a relative or an institution), provided that it is the quid pro quo for the improper conduct of the public official (Corr and Lawler 1999). The term "improper advantage" means something to which a company was not clearly entitled, for example, an operating permit for a factory that fails to meet legal requirements.

It is not, however, illegal under the *OECD Convention* to make small "facilitation" payments. Such payments are made to induce public officials to perform non-discretionary routine functions such as issuing licenses and permits. It also is not an offense if any "advantage" was permitted or required by the written law or regulation of the foreign public official's country. These two exceptions are tailored after two exceptions in the U.S. Foreign Corrupt Practices Act: the legality-in-the-host-country defense and the "grease payments" exception (Posadas 2000).[xiii]

In addition, any person who participates in inciting, aiding, abetting, or authorizing an act of bribery also commits a criminal offense (Miller 2000). For example, when a parent company authorizes a foreign subsidiary to pay a bribe, this can lead to the application of a nation's anti-bribery law against the parent firm and/or any of its responsible managers (Sacerdoti 2000).

The term "foreign public official" includes any person in a foreign country who holds a legislative, administrative, or judicial office, or who exercises a public function, including a public agency or enterprise. The term also extends to officials of public international organizations (e.g., World Bank). The Convention Commentaries indicate that a company is deemed "public" if the state can exercise a dominant influence on it through any means available. Thus, an official of a utility company or other state-controlled enterprise may be deemed a "foreign public official." Significantly, the definition excludes political party officials. It is open to question whether this creates a loophole that will weaken the *OECD Convention* (Gantz 1998). In certain political systems, particularly communist regimes, the government and the party are one-in-the-same.

Articles 2 and 3–Responsibility of Legal Persons and Sanctions

Article 2 of the *OECD Convention* establishes that each nation state shall take measures, in accordance with its own laws, to establish the liability of legal persons (i.e., both natural persons and corporations) for the bribery of a foreign public official. The *OECD Commentaries* indicate that where criminal responsibility is not applicable to legal persons under a nation's legal system "that [country] shall not be required to establish such criminal responsibilities." If legal persons are not subject to criminal penalties under a nation's laws, such country must ensure that their legal subjects are exposed to non-criminal measures, such as civil liability. This situation may present a loophole for nations that do not have criminal bribery laws (Miller 2000).

Article 3 sets forth sanctions for the bribery of a foreign public official. Signatory countries must make any bribe of a foreign public official punishable by "effective, proportionate, and dissuasive" criminal penalties. The range of penalties must be comparable to that applicable to the bribing of the signatory nation's own public officials.

In the case of natural persons, penalties must include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.

Article 3 also requires each signatory country to make a bribe and the proceeds of a bribe of a foreign public official (including property the value of which corresponds to that of the proceeds) subject to seizure and confiscation. Additional civil or administrative sanctions that may be imposed include: exclusion from entitlement to public benefits, disqualification from participation in public procurement or from the practice of other commercial activities, and placement under judicial supervision.

Article 4–Jurisdiction

Another crucial aspect of the *OECD Convention* is jurisdiction. Predominantly civil law countries, such as France, Italy, and Germany, exercise jurisdiction on the basis of nationality, meaning that the country has jurisdiction anywhere its nationals are located (Gantz 1998). Common law nations, such as Canada, the United States, and Australia, exercise jurisdiction over criminal matters on a territorial basis.[xiv] Thus, the *OECD Convention* offers alternative bases for jurisdiction in that: (1) each signatory nation shall take measures necessary to acquire jurisdiction when an offense is committed in whole or in part in its territory; and (2) each signatory nation shall enact measures necessary to obtain jurisdiction over its nationals when an offense is committed abroad.

The Convention also requires signatory nations to exercise jurisdiction without regard to considerations of national economic interest, potential effect upon relations with another nation, or the identity of the natural or legal persons involved.

Article 7–Money Laundering

This provision of the *OECD Convention* is crucial for successful enforcement and for prevention of bribery by making the hiding of bribes and their proceeds more risky and difficult (Sacerdoti 2000). In those nations where bribery of a domestic public official is a predicate offense for money laundering, bribery of a foreign public official is also to be made a predicate offense for money laundering legislation.

The ratification and implementation of the *OECD Convention* means that local laws against money laundering including reporting and disclosure obligations, and seizure and confiscation of funds, will be enforced in banking centers such as Luxembourg and Switzerland. The enforcement of Article 7 applies to the bribe before payment is made and after the money has moved and become available to the bribe-taker.

Article 8–Accounting and Auditing

The *OECD Convention* considers accounting provisions a necessary complement to the successful enforcement of anti-bribery provisions. In this regard, the Convention follows the approach taken by the U.S. Foreign Corrupt Practices Act (Posadas 2000). Article 8 establishes two accounting requirements for each signatory nation. The first requirement is to enact such measures, as are necessary regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards. Second, countries must provide effective, proportionate, and dissuasive civil, administrative, and criminal penalties for omissions and falsifications involving books, records, accounts, and financial statements.

The record-keeping, accounting and auditing standards provision is aimed at prohibiting: (1) the establishment of off-the-books accounts; (2) the making of off-the-books or inadequately identified transactions; (3) the recording of non-existent expenditures; (4) the entry of liabilities with incorrect identification of their object; and (5) the use of false documents, for the purpose of bribing foreign public officials or concealing such bribery where it has occurred. The accounting provision of the Convention also requires companies in signatory nations to establish a system of internal controls aimed at the prevention and detection of the diversion of large sums of money used for bribery schemes.

Implementation of Article 8 has some immediate consequences. First, companies, especially those required to issue financial statements, must consider the potential liability they face under the *OECD Convention* and domestic laws, in addition to the risks and losses if convicted of a bribery offense (Miller 2000). The potential losses include payment of fines, imprisonment of key personnel, litigation costs, loss in market value of corporate stock, and loss of reputation.

Also, the *Commentaries* state that Article 8 has implications for execution of the professional responsibilities of auditors regarding indications of bribery. This is consistent with the position taken by the European Commission, in its Green Paper in 1996, on the role, position, and liability of the statutory auditor within the European Union. According to the European Commission, auditors must satisfy growing expectations, not only in the more conventional areas in relation to the accuracy of financial statements and the continuity and solvency of companies, but also in relation to the existence of fraud and compliance with legal obligations (European Union 1996). Simply put, auditors may be liable if they have not detected bribery of a foreign public official by properly examining a company's books and records (Sacerdoti 2000).

Many OECD member nations are in the process of, or are considering, designing audit guidelines for tax examiners (Millet-Einbinder 2000). The Audit Guidelines are being created on the basis that they should:

- Clearly specify the rules on burden of proof;
- Identify business sectors where suspicious payments are more likely to occur;
- Provide examples enabling tax examiners to identify risk (i.e., contracts with foreign governments at all levels, important cash transactions, large miscellaneous expenses and recurring payments to persons who are not normal suppliers); and

- Provide clear guidance as to whether under domestic law the tax examiner is under obligation to inform the criminal prosecutor.

Another important step numerous signatory nations are taking is concluding arrangements to improve information exchange dealing with commissions, fees, and similar payments (Millet-Einbinder 2000). Such information will essentially establish an audit trail and facilitate the efforts of both independent and tax auditors to identify payments of bribes to foreign public officials. It may also serve as a deterrent to bribery activity.

Article 9–Mutual Legal Assistance

The mutual legal assistance provision requires each signatory nation to provide prompt and effective legal assistance, for criminal as well as non-criminal cases. A nation receiving a request from another signatory country shall inform the latter, without delay, of any additional information or documents needed to support the request for assistance. The OECD Convention also states that a mutual legal assistance request may not be refused on the ground that assistance would violate a bank secrecy law.

Article 12–Monitoring

One significant aspect of the *OECD Convention* is the mechanisms for facilitating monitoring and compliance. The heart of the monitoring effort is peer or country evaluations. These assessments are formal, systematic, detailed reviews and judgments by the entire OECD membership of aspects of each signatory nation's bribery laws and their implementation (Pieth 2000). While any monitoring mechanism is only as effective as the will of the participants to make it work, there should be a strong incentive for the countries, driven by their firms and competitive circumstances, to pressure other parties to comply with the Convention to establish a level playing field (Gantz 1998).

The Convention is enforced through a program of systematic review to promote full implementation. This is accomplished through a rigorous peer-review process involving two evaluative phases. Phase 1, just concluded, concentrates on the legal implementation of the Convention. The OECD Working Group chose two examining countries to provide the OECD their opinion on the standard of implementation (Pieth 2000). A summary of Phase I results is outlined in Table 2.

The overall Phase I assessment of nations' compliance with the Convention was positive. The OECD Working Group, however, identified certain deficiencies in its review of some countries, as well as specific issues of varying magnitude that need to be addressed by virtually all of the nations reviewed. Two of the issues of a general nature are the applicability of the Convention to a nation's internal law where it has represented that the Convention will compensate for possible loopholes in the bribery offense and the lack of a definition of "foreign public official" (Quinones 2000).

The second phase of monitoring, aimed at application or enforcement of implementing legislation, will start in 2001. It will include on-site visits by examination teams, which will examine enforcement infrastructure, as well as actual enforcement activities. Phase 2 will also focus on how countries have implemented Article 2 of the Convention requiring the establishment of the liability of legal persons (e.g, corporations), including assessing the comparative effectiveness of non-criminal liability and the different thresholds for criminal and non-criminal liability (Quinones 2000). This phase will concentrate not just on bribery itself but on other issues, especially the tax treatment of bribery payments and on accounting rules (Pieth 2000).

The Phase 2 emphasis on the tax deductibility of bribes is important as the Convention ultimately failed to include a provision eliminating the tax deductibility of bribes. Despite this failure, signatory nations have made significant progress in denying tax deductibility. A close look at Table 2 reveals that Luxembourg is presently the only signatory nation that allows a tax deduction for bribes paid to public officials of foreign governments.

Role of the European Union in Combating Bribery

On May 26, 1997, European Union members signed the *Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of the Member States of the European Union* (Gantz 1998). This Convention criminalizes the offer or receipt of corrupt payments with regard to public officials of EU member nations and EU officials. The *EU Convention* is more limited in scope than the *OECD Convention* in that it applies only within the EU. For example, the *EU* Convention would not cover the bribery of a Chilean official by a Spanish citizen. Further, neither Chile, nor other nations whose citizens or companies are doing business in the European Union, are eligible to accede to the *EU Convention*. In addition, the definition of bribery in the *EU Convention* does not contain the limiting clause "in order to obtain or retain business" as does the *OECD Convention*. Moreover, the EU instrument addresses the international cooperation problem of corruption, but not its accounting aspects (Posadas 2000).

Much of the leadership in the implementation of the *OECD Convention* came from member nations of the EU. A goal of the EU in the *OECD Convention* was to ensure that the OECD legal rules were compatible with those set forth in the *EU Convention*. Because of the EU's authority and mandate to design and implement both foreign and justice policy for its members, the size and power of its members, and its ability to influence groups such as the OECD, the EU was able to determine critical policy issues in the *OECD Convention* (Zagaris and Ohri 1999). The EU's role presages the growing role of regional economic groups in setting economic and legal policy.

Conclusion

Bribery of public officials is not a new phenomenon. History is replete with numerous examples of individuals who were given the authority and responsibility of acting as agents for local or national governments, and then violated the public trust by demanding and accepting bribes. In many cultures these behaviors were condoned, or at least tolerated within certain limits.

One potential solution to the problem of bribery is the enactment and rigorous enforcement of international rules. The OECD and the EU took important steps to combat bribery of public officials with the ratification of their 1997 Conventions. All signatory nations to these two Conventions have now enacted conforming legislation to implement Convention provisions. Most have also changed their tax laws to disallow deductions for bribes. The OECD is now studying issues related to detection of bribery and enforcement of existing rules.

While no one expects that any set of rules will totally eliminate the seeking or taking of bribes – this would require a fundamental change in human nature – there are hopes that a uniform set of rules could significantly curtail corrupt behaviors, as long as those rules are both enforceable and enforced. The empirical question for future study is whether or not the rules promulgated under the *OECD* and *EU Conventions* have decreased, increased or not changed the incidence bribery of public officials. Further, what cultural, economic and/or legal factors have influenced the success (or failure) of these provisions?

Endnotes

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i. In the early literature on the effects of bribery and corruption, some authors argued that corruption might raise economic growth through two mechanisms (Leff 1964; Huntington 1968). First, bribery enables individuals and businesses to avoid bureaucratic delay. Second, government employees who are permitted to collect bribes will work harder (Mauro 1995). Shleifer and Vishny (1993) argue that bribery and other corruption practices do, in fact, lower economic growth. Mauro (1995) demonstrates empirically that bribery and other corrupt practices are negatively associated with investment rates and economic growth.

ii. The OECD is an international organization of states based in Paris. Its goals are the pursuit of global economic growth and stability. The 30 members of the OECD account for 2/3's of the world's goods and services. Member countries include: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

iii. The 34 signatory nations to the OECD Convention include the 30 OECD member nations and four non-member nations: Argentina, Brazil, Bulgaria, and Chile.

iv. The OECD Convention follows the corporate accountability approach or model of the U.S. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213 and the Foreign Corrupt Practices Act Amendments of 1988, Pub. L. No. 100-418. These laws essentially make it illegal for American businesses operating outside the United States to pay bribes to foreign officials. Firms are also expected to maintain necessary internal controls to assure that such payments were not disguised or hidden in the accounting records.

v. Former Prime Minister Roh Tae Woo ultimately went to prison for the commission of bribery.

vi. In 1991 Luca Magni, a small businessman, sparked the Italian corruption scandals by complaining to Milan prosecutors of kickbacks he had to pay to get a cleaning contract at a nursing home. The subsequent investigations eventually involved a wide spectrum of politicians and businesses. Italy has seen some benefits from a "Clean Hands" campaign including a reduction of 40% to 50% in construction costs (Edmonson, Sansoni, Miller, and Bernier 1995).

vii. The ten least corrupt nations are: Finland, Denmark, New Zealand, Sweden, Canada, Iceland, Norway, Singapore, the Netherlands, and the United Kingdom.

viii. Financial reports, and the audited financial statements they contain, influence the allocation of capital in society, which in turn affects many other aspects of economic life, not just investor decision-making (e.g., labor negotiations, trade policies, fiscal policies, etc.). In the European Union, company laws define the scope and content of financial reports, but generally, financial reports comprise audited financial statements prepared in accordance with accepted accounting standards. This requirement was mandated for inclusion in member nation company laws by the Fourth Directive of the European Commission. Hence, audited financial statements constitute an essential part of the financial reporting system that is required for effective corporate governance (Baker and Wallage 2000).

ix. Money laundering generally occurs in three stages, but can be accomplished using only one or two steps. In the first stage, the money launderer introduces illegally obtained funds into the financial system by making many small cash deposits into bank accounts, purchasing money orders, or moving the funds to the financial systems of other nations with fewer controls. The second or "layering" stage entails financial transactions intended to remove the connection between the funds and their origin. The layering stage often involves the movement of monies through several locations, often in different jurisdictions, conversion of funds into different currencies or the use of business entities to disguise the transfers as payments for goods or services. The third stage entails the integration of funds back into the legitimate economy by investing in real estate, luxury vehicles, collectibles, or business ventures (Carlson 2000). The International Monetary Fund (IMF) has estimated aggregate global money laundering at between 2% and 5% of global gross domestic product. Using 1996 data, this indicates a range between US$590 billion and US$1.5 trillion (Carlson 2000).

x. These ten nations are the United States, Germany, Japan, France, the United Kingdom, Italy, Canada, Korea, the Netherlands, and Belgium-Luxembourg. The five nations that deposited their instruments of ratification bringing the OECD Convention into force are the United States, Canada, United Kingdom, Japan, and Germany.

xi. OECD negotiators had to take note that different criteria inspired the criminal penal codes of different states on a number of important matters, such as bases of jurisdiction and obligatory or discretionary character of criminal prosecution. The Convention's method is to combat bribery through equivalent national measures. This allows signatory nations to craft their own legislation on the condition they attain the prescribed goal (Sacerdoti 2000).

xii. A study by the U.S. government shows that American businesses, which must adhere to the U.S. Foreign Corrupt Practices Act, lost $30 billion in contracts from mid-1997 to mid-1998 (Nathan 1999).

xiii. Some commentators have noted that the "legality-in-the-host-country" affirmative defense could play a useful role in the international context. For example, cultural-legal embedded norms, such as the Korean custom of ttokkap ("rice cake expenses"), may provide a defense against liability. However, it is unclear whether this was the intention of the OECD Convention, the drafters of the Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Posadas 2000).

xiv. The United States has amended the Foreign Corrupt Practices Act, adding the nationality link to territorial jurisdiction, so that U.S. citizens and companies outside the country are now subject to the prohibition of bribing foreign public officials (15 U.S.C. §78dd-2 (1999)) (Gantz 1998).

References

Adler, M. 2000. Finland cleanest country, Nigeria most corrupt in survey. *Agence France-Press* (September 13): 4-5.

Almond, M. and S. Syfert. 1997. Beyond compliance: corruption, corporate responsibility and ethical standards in the new global economy. *North Carolina Journal of International Law and Commercial Regulation* 22: 389-447.

Andrews, E. 1997. 29 nations agree to outlaw bribery. *The New York Times* (November 21): A1.

Asiaweek. 1995. Following the money: Prosecutors attempt to trace Roh's slush fund (December 1): 39.

Baker, C.R. and P. Wallage. 2000. The future of financial reporting in Europe: Its role in corporate governance. *International Journal of Accounting* 35 (2): 173-187.

Bohlen, C. 1995. Bribery as a way of life in Italy. *The New York Times* (December 10): 21.

Borrus, A. 1995. A world of greased palms. *Business Week* (November 6): 36-38.

Buscaglia, E. 1996. Corruption and judicial reform in Latin America. *Policy Studies* 17: 273-294.

Butler, K. 2000. Arms and building trades lead the worldwide boom in corruption. *The Independent (London)* (January 11): 15.

Carlson, J. 2000. "Money laundering and corruption: Two sides of the same coin," in *No Longer Business As Usual.* Paris: Organization for Economic Cooperation and Development, pp. 127-136.

Cartier-Bresson, J. 2000. "The causes and consequences of corruption: Economic analyses and lessons learnt," in *No Longer Business As Usual.* Paris: Organization for Economic Cooperation and Development, pp. 11-28.

Cateora, P.R. and J. L. Graham. 1999. *International Marketing, 10th ed.* New York: Irwin McGraw-Hill.

Corr, C. and J. Lawler. 1999. Damned if you do, damned if you don't? The OECD Convention and the globalization of anti-bribery measures. *Vanderbilt Journal of Transnational Law* 32 (November): 1249-1344.

Drozdiak, W. 1999. Scandals threaten Kohl's legacy: Charges of bribery in party beset ex-German leader. *The Washington Post* (November 27): A16.

Earle, B. 1996. The United States foreign corrupt practices act and the OECD anti-bribery recommendation: When moral suasion won't work, follow the money argument. *Dickinson Journal of International Law* 14: 207-242.

Economist. 1999. A global war on bribery. (January 16): 22.

Edmonson, G., S. Sansoni, K. Miller, and L. Bernier. 1995. Europe's new morality. *Business Week* (December 18): 26-30.

EFE News Service. 2000. Argentina energy Repsol-YPF denies bribing argentine politicians (September 22).

European Union. 1996. Green Paper on the role, the position, and the liability of the statutory auditor within the European Union. *Official Journal of the European Communities* (October 28): C321.

Gantz, D. 1998. Globalizing sanctions against foreign bribery: The emergence of a new international legal consensus. *Northwestern Journal of International Law & Business* 18: 457-497.

George, B. K., K. Lacey, and J. Birmele. 2000. The 1998 OECD Convention: An impetus for worldwide changes in attitudes towards corruption in business transactions. *American Business Law Journal* 37: 485-525.

Glynn, P., S. Kobrin, and M. Naim. 1997. "The globalization of corruption," in *Corruption and the Global Economy,* ed. by K. Elliott, Washington, D.C.: Institute for International Economics, pp. 7-30.

Goering, L. 1996. Corruption a hurdle democracy can't jump. *The Ottawa Citizen* (November 28): A10.

Gray, C. and W. Jarosz. 1995. Law and the regulation of foreign direct investment: The experience from central and eastern Europe. *Columbia Journal of Transnational Law* 33: 1-40.

Hamra, W. 2000. Bribery in international business transactions and the OECD convention: Benefits and limitations. *Business Economics* 35 (Fall): 33-48.

Harsch, E. 1993. Accumulators and democrats: Challenging state corruption in Africa. *Journal of Modern African Studies* 31 (1): 31-48.

Huntington, S.F.P. 1968. *Political Order in Changing Societies.* New Haven: Yale University Press.

Kaufman, D. 1998. "Research on corruption: Critical empirical issues," in *Economics of Corruption,* ed. by Arvind Jain, Boston: Kluwer Academic Publishers, pp. 129-176.

Leff, N. 1964. Economic development through bureaucratic corruption. *American Behavioral Scientist* 1964: 8-14.

Mauro, P. 1995. Corruption and growth. *Quarterly Journal of Economics* 112 (August): 681-712.

Mauro, P. 1997. "The effects of corruption on growth, investment, and government expenditure," in *Corruption and the Global Economy,* edited by K. Elliott, Washington, D.C.: Institute for International Economics, pp. 83-108.

Miller, L. 2000. No more "this for that?" The effect of the OECD convention on bribery of foreign public officials in international business transactions. *Cardozo Journal of International and Comparative Law* 8 (Spring): 139-160.

Millet-Einbinder, M. 2000. "No more tax breaks for bribes," in *No More Busines As Usual.* Paris: Organization for Economic Cooperation and Development, pp. 67-76.

Moss, N. 1997. Who bribes wins. *The European* (December 11): 26-7.

Nakarmi, L. 1995. The slush fund that is shaking up Seoul. *Business Week* (November): 60-1.

Nathan, S. 1999. U.S.: Tie loans to corruption; Weigh bribery in aid decisions. *USA Today* (February 17): 3B.

Nichols, P.M. 1999. Are extraterritorial restrictions on bribery a viable and desirable international policy goal under the global conditions of the late twentieth century? Increasing global security by controlling transnational bribery. *Michigan Journal of International Law* 20 (Spring): 451-476.

OECD. 2000a. *What is OECD?* (visited December 18, 2000) http://www.oecd.org/about/general/index.htm.

OECD. 2000b. *Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Officials* (visited December 18, 2000)<http://www.oecd.org/daf/cmis/bribery/bribrecm.htm>.

OECD. 2000c. *Revised Recommendation of the Council on Combating Bribery in International Business Transactions,* (visited December 18, 2000) <http://www.oecd.org/daf/cmis/bribery/bribrecm.htm>.

Oldenburg, P. 1987. Middlemen in third-world corruption: Implication of an Indian case. *World Politics* 39: 508-537.

Omestad, T. 1997. Bye-bye to bribes: The industrial world takes aim at official corruption. *U.S. News and World Report* (December 22): 39-43.

Palmrose, Z.V. 1988. Public accounting firms and the acquisition of nonaudit services by public and closely held companies. *Auditing: A Journal of Practice and Theory* 8 (1): 63-71.

Pieth, M. 2000. "From ideal to reality: Making the new global standard stick," in *No Longer Business As Usual.* Paris: Organization for Economic Cooperation and Development, pp. 51-65.

Table 2 - Analysis of OECD Convention Ratification, Implementing Legislation and Tax Deductibility of Bribes

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Argentina	2/8/2001	Draft legislation to implement the OECD Convention will be submitted to Parliament in March 2001. The legislation will establish bribery of foreign public officials as a predicate offense of money laundering.	N/A
Australia	10/18/1999	Legislation to implement the Convention went into effect on 12/18/99. The Working Group concluded that Australian law conforms to Convention standards.	In 2000, the Taxation Laws Amendment Act was enacted. Bribes paid to public officials are no longer tax deductible expenses.
Austria	5/20/1999	Implementing legislation took effect on 10/01/98. Austrian legislation conforms to Convention standards except for the criminal responsibility of legal persons. This will be reviewed by mid-2002.	Since October, 1998, bribes paid to foreign public officials have not been tax deductible.
Belgium	7/27/1999	The Bribery Prevention Act of 1999, which establishes the criminal liability of legal persons, went into force on 08/03/99. Implementing legislation meets most Convention standards. The Working Group raised questions about the meaning of foreign public official and extraterritorial jurisdiction.	A law denying the tax deductibility of bribes paid to obtain or maintain public contracts took effect in April 1999. Bribes paid for non-public contracts may be deductible provided they are reasonable, are necessary to fight foreign competition, and are recognized as a normal customary practice in the relevant country.

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Brazil	8/24/2000	Implementing legislation has not yet been enacted. The Brazilian Congress is expected to act on such legislation in 2001.	Tax deductibility of bribes paid to foreign public officials is prohibited.
Bulgaria	12/22/1998	Implementing legislation took effect in January 1999. To meet Convention standards, Bulgaria must expand the scope of the definition of bribery, reduce or eliminate certain defenses, provide for the responsibility of legal persons, and provide for confiscation in addition to seizure of bribes and/or its proceeds.	Bulgarian tax law does not allow the deductibility of bribes paid to foreign public officials.
Canada	12/17/1998	The Corruption of Foreign Public Officials Act took effect in February 1999. The Working Group concluded that Canada meets the requirements set by the Convention.	No tax deduction can be made in respect of an outlay made or an expense incurred for the purpose of bribing a foreign public official or conspiring to do so.
Chile	Not yet ratified	The ratification bill is expected to be sent to the President in mid-2001.	N/A

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Czech Republic	1/21/2000	Implementing legislation took effect in June 1999. A new Act on Auditors went into effect on 01/01/01. Under this law, auditors must notify the supervisory authorities of any company suspected of acts of bribery. Overall, Czech legislation conforms to Convention standards. However, Czech law allows for an "effective repentance" defense and does not provide for the criminal responsibility of legal persons. Czech authorities plan to introduce legislation to remedy these deficiencies.	The Czech Republic does not permit the tax deductibility of bribes paid to foreign public officials. Deductibility is not permitted even in cases where the bribe could be treated as a gift.
Denmark	9/5/2000	Legislation to implement the Convention came into force in May 2000. The results of the OECD Working Council evaluation of Denmark's legislation have not yet been released.	As of 01/01/98, legislation took effect denying the tax deductibility of bribes to foreign public officials.
Finland	12/10/1998	Finland implemented legislation that went into force 01/01/99. Finnish legislation conforms to Convention standards.	Finland does not have a statute concerning the tax deductibility of bribes paid to foreign officials. Bribes paid to domestic public officials are not tax deductible on the basis of case law and the practice of tax authorities. The same approach is expected to apply to bribes of foreign public officials.

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
France	7/31/2000	France implemented legislation that took effect on 09/29/00. The results of the OECD Working Council evaluation of France's legislation have not yet been released.	The French Parliament passed legislation denying the tax deductibility of bribes to foreign public officials in December 1997. Such bribes are no longer tax deductible as of 09/29/00.
Germany	11/10/1998	Germany enacted an Act on Combating Bribery of Foreign Public Officials in International Business Transactions that took effect on 02/15/99. German legislation has been deemed to conform to OECD standards. German law, however, does not establish criminal responsibility of legal persons. Non-criminal fines may be imposed on legal persons.	Germany prohibits a tax deduction for bribes paid to foreign public officials.
Greece	2/5/1999	Greece's implementing legislation, the Act Ratifying the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions took effect on 02/05/99. Overall, Greece's implementing legislation meets OECD standards but some questions remain. For example, the law does not provide a definition of "foreign public official." Greek law also does not criminalize liability of legal persons.	Greece prohibits the deduction for tax purposes of bribes to foreign public officials.

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Hungary	12/4/1998	Amendments were made to the Hungarian Criminal Code to implement OECD Convention requirements. The amendments took effect on 03/01/99. Problems exist, however, with the amendments. First, the Criminal Code provides a defense in the case of a bribe being given upon the initiative of a public official. Second, Hungarian law does not provide for the criminal liability of legal persons for bribery. Also, it is uncertain whether confiscation provisions can be applied efficiently in all bribery cases. Hungary is working on legislation to remedy these loopholes.	Tax deductions for bribes of foreign public officials are prohibited.
Iceland	8/17/1998	Implementing legislation took effect on 12/30/98. The OECD Working Group concluded that Icelandic legislation conforms to OECD Convention Standards.	Iceland prohibits the tax dedu ctibility of bribes paid to foreign public officials.
Ireland	Not yet ratified	The Prevention of Corruption bill is expected to be passed by both houses of Parliament in 2001. The bill would ratify the OECD Convention and implement legislation.	It is the view of the Revenue Commissioners, on the basis of legal advice, that bribes paid to foreign public officials are not tax deductible.

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Italy	2/15/2000	The Italian Parliament enacted implementing legislation which is scheduled to take effect mid-2001. Italy has not yet been evaluated by the OECD Working Group.	Italy prohibits the tax deductibility of bribes paid to foreign officials.
Japan	10/13/1998	The Japanese Diet enacted implementing legislation which took effect on 02/15/99. The OECD Working Group noted several loopholes in implementing legislation. First, Japan has a "main office" exception which may result in a significant percentage of bribery cases not being prosecuted. Second, the definition of "public enterprise" under Japanese law is inconsistent with the Convention's definition. There is also uncertainty as to whether, in some instances, a foreign public official has a payment directed to a third party, it would be considered bribery.	Japan prohibits the tax deductibility of bribes paid to foreign public officials.

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Korea	1/4/1999	Korea's implementing legislation-the Act on Preventing Bribery of Foreign Public Officials took effect on 02/15/99. Korean legislation allows an exception for "grease payments." More legal guidance is needed on what constitutes a small payment. The Korean law also does not cover the case where a third party receives the benefit of a bribe.	Korea does not permit the tax deductibility of bribes to foreign public officials.
Luxembourg	Not yet ratified	Legislation is now under consideration by the Parliament.	Presently, Luxembourg allows tax deductions for bribes paid to foreign public officials. Legislation is under consideration to deny their tax deductibility.
Mexico	5/27/1999	Mexico enacted an amendment to the Federal Penal Code, which came into force on 05/18/99, to implement the OECD Convention. Overall, the Working Group deems Mexico's law to conform with the OECD Convention. The Mexican legal definition of "foreign public official" could lead to inconsistent application of the law. The Working Group was concerned that fines for natural persons may be insufficient.	Mexico does not permit the tax deductibility of bribes to foreign public officials.

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Netherlands	1/12/2001	Implementing legislation was passed by Parliament in late 2000. The Netherlands has not yet been evaluated by the Working Group.	Bribes of foreign public officials are not deductible for tax purposes.
New Zealand	Not yet ratified	Implementing and ratification legislation is under consideration by Parliament. Ratification is expected in early to mid-2001.	Legislation that would disallow tax deductions for bribes paid to foreign public officials is expected to be introduced in Parliament by mid-2001.
Norway	12/18/1998	Norway's implementing legislation-amendments to the Norwegian Penal Code-came into force on 01/01/99. The maximum sanction for bribery of a foreign public official-one year in prison-does not meet OECD Convention standards. The statute of limitations also does not meet OECD standards.	Norway disallows the tax deductibility of bribes paid to foreign public officials.
Poland	9/8/2000	Implementing legislation went into force on 02/04/01.	Poland denies the tax deductibility of bribes paid to foreign public officials.
Portugal	11/23/2000	Despite ratification of the OECD Convention, Portugal has not yet passed necessary amendments to its criminal code to implement the OECD Convention.	Portugal denies the tax deductibility of bribes paid to foreign public officials.

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Slovak Republic	9/24/1999	Implementing legislation, including amendments to the Penal Code, took effect on 09/01/99. Slovak legislation does not yet conform to OECD Convention standards. Identified deficiencies involve not including a pecuniary advantage to a third party in the definition of bribery, the legal concept of "effective regret," the responsibility of legal persons, the equality of sanctions for bribery of domestic and foreign public officials, and the statute of limitations.	The Slovak Republic does not permit the tax deductibility of bribes to foreign public officials.
Spain	1/14/2000	Spain has enacted implementing legislation which conforms to OECD Convention standards except for: no definition of "foreign public official" in the Spanish Penal Code, the failure to establish the criminal responsibility of legal persons and inadequate sanctions.	Spain does not permit a tax deduction for bribes of foreign public officials.
Sweden	6/8/1999	Implementing legislation became effective on 07/01/99. Swedish law conforms to OECD Convention standards except the effectiveness of sanctions and the "public interest" requirement to prosecute certain bribery cases.	Sweden does not allow a tax deduction for bribes paid to foreign public officials.

NATION	RATIFICATION DATE	BRIBERY LEGISLATION STATUS	TAX DEDUCTIBILITY OF BRIBES
Switzerland	5/31/2000	Implementing legislation has been enacted. The OECD Working Group concluded that Switzerland's legislation conforms to OECD Convention standards except in regard to criminal sanctions against legal persons for bribery.	As of 01/01/01, Switzerland denies a tax deduction for bribes paid to foreign public officials.
Turkey	7/26/2000	Implementing legislation was submitted to the National Assembly in late 2000 but has not yet been enacted.	Turkey denies tax deductions for bribes paid to foreign public officials.
United Kingdom	12/14/1998	The United Kingdom maintains that existing law, specifically the Prevention of Corruption Act 1906, allows it to meet the requirements of the OECD Convention. The OECD Working Group has urged the enactment of a modern, comprehensive law. Such legislation is now under consideration.	United Kingdom law does not permit a tax deduction for bribes paid to foreign public officials.
United States	12/8/1998	Implementing legislation, in the form of amendments to the Foreign Corrupt Practices Act (FCPA) took effect on 12/10/98. Generally, the FCPA implements OECD standards. However, the books, records, and internal controls provisions apply only to publicly traded firms.	United States law does not allow tax deductions for bribes paid to foreign public officials. If such payments are made, they also lead to loss of Foreign Tax Credits and deferral under Subpart F.