REVISED OECD RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS - Adopted by the Council on May 23, 1997

V. Accounting Requirements, External Audit and Internal Company Controls*. The Council* ***recommends*** *that Member countries take the steps necessary so that laws, rules and practices with respect to accounting requirements, external audit and internal company controls are in line with the following principles and are fully used in order to prevent and detect bribery of foreign public officials in international business.*

For each recommendation: Review the country's relevant laws, rules, regulations, and/or standards and provide a summary of the country's requirements that are particularly relevant to the objectives of the recommendation. Compare the country's requirements to the appropriate benchmark and identify differences to the extent the country's requirements differ from the benchmark. Evaluate and explain how the country's requirements meets the objectives the recommendation or indicate where the country's requirements do not fulfill the objectives of the recommendations. State what the country is doing or plans to do (including action plan with a timetable) to enhance its requirements in order to fully implement the recommendation; and explain how compliance is monitored.

Council Recommendation	**Benchmarks**
A. Adequate Accounting Requirements	
i) Member countries should require companies to maintain adequate records of the sums of money received and expended by the company, identifying the matters in respect of which the receipt and expenditure takes place. Companies should be prohibited from making off-the-books transactions or keeping off-the-books accounts.	1) No off-the-books accounts 2) No off-the-books transactions 3) All transactions fully identified, described adequately and accurately, and properly classified in the accounts. 4) No recording of non-existent transactions 5) No false documentation 6) Adequate audit trail 7) Requirements consistently applied to subsidiaries and affiliates, as appropriate.
ii) Member countries should require companies to disclose in their financial statements the full range of material contingent liabilities.	Accounting standards should be high-quality standards, which are globally recognized, and meet or exceed the International Accounting Standards (IASs). IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*, which includes requirements for disclosure of material contingent liabilities, may be of particular interest along with the complete set of IASs.
iii) Member countries should adequately sanction accounting omissions, falsifications and fraud.	Provide effective, proportionate and dissuasive civil administrative or criminal penalties for such omissions and falsifications in respect of books, records, accounts and financial statements (Article 8, paragraph 2).
B. Independent External Audit	
i) Member countries should consider whether requirements to submit to external audit are adequate.	All commercial companies that have significant export/import operations.
ii) Member countries and professional associations should maintain adequate standards to ensure the independence of external auditors which permits them to provide an objective assessment of company accounts, financial statements and internal controls.	Auditor independence standards should be high-quality standards, which are globally recognized, and meet or exceed IFAC's standards included its *Code of Ethics for Professional Accountants*.

Council Recommendation	**Benchmarks**
iii) Member countries should require the auditor who discovers indications of a possible illegal act of bribery to report this discovery to management and, as appropriate, to corporate monitoring bodies. *iv) Member countries should consider requiring the auditor to report indications of a possible illegal act of bribery to competent authorities.*	Auditing standards should be high-quality standards, which are globally recognized, and meet or exceed the International Standards on Auditing (ISAs). ISA 250, 730, and 400, which require auditors to: consider laws and regulations in an audit of financial statements, communicate their findings to management and others charged with corporate governance, and understand the accounting and internal control systems, respectively, may be of particular interest along with the complete set of ISAs.
C. Internal Company Controls	
i) Member countries should encourage the development and adoption of adequate internal company controls, including standards of conduct. *ii) Member countries should encourage company management to make statements in their annual reports about their internal control mechanisms, including those which contribute to preventing bribery.* *iii) Member countries should encourage the creation of monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards.* *iv) Member countries should encourage companies to provide channels for communication by, and protection for, persons not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors.*	Institute a legal requirement that companies must maintain an adequate system of internal controls. Develop or adopt a framework for an adequate system of internal control that meets or exceeds the recommendations of recognized internal control studies (*The Combined Code: Committee on Corporate Governance*, (1998, U.K.), *CoCo: Guidance on Control-Control and Governance* (1995, Canada), *COSO: Internal Control-Integrated Framework*, (1992, U.S.)). An important aspect of an internal control system is the existence of procedures that, if properly designed, will help ensure compliance with applicable laws and regulations but the framework should not be overly prescriptive but rather should allow for judgment and customization. Certain components of internal control frameworks are particularly effective in the prevention of illegal acts including bribery. Such internal control components are integral to effective corporate governance practices and include the following: 1) "Tone at the Top" or control environment 2) Code of corporate conduct (see below for further detail) 3) Conflicts of interest 4) Monitoring 5) Management reporting on effectiveness 6) Assigning responsibilities 7) Monitoring bodies independent of management, such as audit committees. Code of corporate conduct measures include: 1) Making the provisions of the code known (education and training function) 2) Seeing to it that the code is effectively implemented, including providing channels for communications (compliance function) 3) Imposing sanctions in the event the rules are contravened (disciplinary function) See the OECD report entitled, *Bribery and Codes of Conduct: An Analysis* (March 2000), pages 6 and 7, for a list of common code attributes.

	Management reporting about internal control is a key element that can help keep management and others in the company focused on the importance of such control procedures. In addition, such reporting will keep those to whom the company is accountable informed about its internal control activities. The creation of corporate monitoring bodies, independent of management and the company, is a fundamental component of good corporate governance practices. The requirements should address overall principles of corporate governance at least to the extent of requiring the inclusion of directors independent of management and the company as members of the governing body. Providing appropriate channels for communication is a key component of internal control and corporate compliance programs that is particularly effective in the identification of illegal acts including bribery and is an integral part of good corporate governance practices.

Guidelines for Assessing Countries' Implementation of the Accounting, Auditing and Internal Control Provisions of the Convention and the 1997 Revised Recommendations

Prior to its peer review, each country should gather and document its standards and requirements relating to accounting, auditing, and internal company controls that are relevant to the detection and prevention of bribery offences discussed in Article 8.1 of the Convention and the 1997 Revised Recommendations. An evaluation should be performed to determine whether these standards and requirements are effective by comparing the country's standards and requirements to the benchmarks set forth below for each OECD Recommendation. Where the country's standards or requirements do not meet the benchmarks or otherwise fulfill the objectives of the Convention and Recommendations, the country should provide the peer review team with an action plan outlining the improvements to be made to remedy the deficiency. The action plan should include information on who will be responsible for the action, the timing and frequency, and how compliance will be monitored.

V. A. Adequate Accounting Requirements

i) Member countries should require companies to maintain adequate records of the sums of money received and expended by the company, identifying the matters in respect of which the receipt and expenditure takes place. Companies should be prohibited from making off-the-books transactions or keeping off-the-books accounts.

Benchmark: A country's requirements for books and records should include or address the following items:

- No off-the-books accounts
- No off-the-books transactions
- All transactions fully identified, described adequately and accurately, and properly classified in the accounts
- No recording of non-existent transactions
- No false documentation
- Adequate audit trail
- Requirements consistently applied to all subsidiaries and affiliates, domestic and foreign

Importance and Value: Appropriate requirements for adequate books and records ensure accountability for the use of corporate assets and reduce the risk of making off-the-books transactions or keeping off-the books accounts, which is how illegal payments, such as bribes, might be executed.

Starting Point: Information may be contained in the country report from the Phase 1 evaluation by the OECD Working Group on Bribery. (http://www.oecd.org/daf/nocorruption/report.htm)

Questions and Considerations:
1) Is there a legal requirement for companies to maintain books and records?
2) Do the books and records requirements contain provisions that address the prevention and detection of bribery, and include each of the above benchmarks?
3) To which companies do the books and records requirements apply? Please indicate specifically which companies are exempted.
4) Are the requirements consistently applied to all subsidiaries and affiliates, domestic and foreign?
5) Are the books are records requirements appropriate in light of the increasing use of electronic records?

ii) Member countries should require companies to disclose in their financial statements the full range of material contingent liabilities.

Benchmark: Accounting standards should be high-quality standards, which are globally recognized, and meet or exceed the International Accounting Standards (IASs). IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*, which includes requirements for disclosure of material contingent liabilities, may be of particular interest. Having adequate disclosure requirements for material contingent liabilities will help countries achieve the objectives of Article 8 and Recommendation V.A.ii. however, those requirements alone may not be adequate and may need to be part of a comprehensive set of accounting standards that promote financial transparency and accountability, such as the ISAs.

Importance and Value: Requiring companies to disclose material contingent liabilities may help expose companies that engage in illegal activities and help users of financial statements understand the full range of potential liabilities and the potential impact on companies related to such activity including losses, which might flow from conviction of the company or its agents for bribery.

Starting Point: If the country has an up-to-date comparison of its accounting standards to the IASs, this would be a good starting point. For some countries, information on these differences may be obtained from the GAAP 2000 Survey of National Accounting Rules in 53 Countries, available at www.IFAD.net. If such a comparison does not exist, or further details are needed, the country could begin with the questionnaire developed by the World Bank and the International Forum on Accountancy Development (IFAD).

Questions and Considerations:
1) Do the accounting standards include a requirement to address disclosure of the full range of material contingent liabilities? For example, similar to IAS 37, do the standards include:
   - appropriate recognition criteria and measurement bases to apply to contingent liabilities?
   - requirements to disclose sufficient information in the notes to the financial statements to enable users to understand the nature, timing and amount of contingent liabilities?
2) Do the accounting standards require consideration of both qualitative and quantitative factors? Even though the amount of a bribe may not be material, the consequences may, nonetheless, be severe.
3) Does the country have a comprehensive set of accounting standards that promote financial transparency and accountability, such as the IASs?
4) Is a comparison available between national accounting standards and the IASs? To the extent that differences exist, how are these differences being addressed?

5) Which companies are required to prepare financial statements in accordance with the comprehensive set of accounting standards? Please indicate specifically which companies are exempted, if any.
6) Who is responsible for the setting of national accounting standards?
7) Given that, under the EU directive, listed companies in the EU must adopt IAS by the year 2005, what is the plan for transition to IAS? How are companies addressing system needs?
8) What plans are in place to train auditors and corporate accountants under IAS? Will training under local rules continue? Is government funding of training programs required?

V. B. Independent External Audit

i) Member countries should consider whether requirements to submit to external audit are adequate.

Benchmark: All commercial companies that have significant export/import operations should be required to have an external audit.

Importance and Value: A legal requirement for audited financial statements can help provide assurance that the various requirements of the Convention for books and records, internal controls and financial statement disclosures are effectively implemented and maintained.

Questions and Considerations:

1) Which companies are required to submit to an external audit? Please indicate specifically which companies are exempted.
2) What mechanism is in place to ensure that companies required to submit to an external audit, do so?

ii) Member countries and professional associations should maintain adequate standards to ensure the independence of external auditors which permits them to provide an objective assessment of company accounts, financial statements and internal controls.

Benchmark: Auditor independence standards should be high-quality standards, which are globally recognized, and meet or exceed IFAC's standards included in its *Code of Ethics for Professional Accountants.* The code is available at http://www.ifac.org/Guidance/index.tmpl.

Note: IFAC's standards are being revised as a result of the June 2000 Exposure Draft, *Independence - Proposed Changes to the Code of Ethics for Professional Accountants*, which proposes revisions to the independence rules for the world's accountants and features a new conceptual framework approach to independence.

Importance and Value: Independent auditors in conducting audits of financial statements should be and appear to be free of any interest which might be regarded, whatever its actual effect, as being incompatible with integrity, objectivity and independence.

Starting Point: If the country has an up-to-date comparison of its auditor independence standards to IFAC's standards this would be a good starting point. If the country does not have an existing comparison it could begin with the questionnaire developed by the International Forum on Accountancy Development (IFAD) available at www.IFAD.net.

Questions and Considerations:

1) Do auditor independence standards exist for the country that meet or exceed IFAC's standards included in its *Code of Ethics for Professional Accountants*?
2) How is compliance monitored?
3) Who is responsible for the setting of national auditor independence standards?
4) Given that IFAC standards are in the process of being revised as a result of the June 2000 Exposure Draft, *Independence - Proposed Changes to the Code of Ethics for Professional Accountants*, which proposes revisions to the independence rules and features a new conceptual framework approach to independence, what process is in place to monitor and implement changes that meet or exceed IFAC's revised standards included in its *Code of Ethics for Professional Accountants*?
5) What process is in place to monitor and implement standards equal to or exceeding International Standards on Auditing, including recent proposed revisions?

iii) Member countries should require the auditor who discovers indications of a possible illegal act of bribery to report this discovery to management and, as appropriate, to corporate monitoring bodies.

iv) Member countries should consider requiring the auditor to report indications of a possible illegal act of bribery to competent authorities.

Benchmark: Auditing standards should be high-quality standards, which are globally recognized, and meet or exceed the International Standards on Auditing (ISAs). The following standards may be of particular interest, along with the complete set of ISAs:

1) ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements* (requires auditors to consider laws and regulations in an audit of financial statements),
2) ISA 730, *Communications of Audit Matters With Those Charged With Governance* (requires auditors to communicate their findings to management and others charged with corporate governance),
3) ISA 400, *Risk Assessment and Internal Control*), (requires auditors to understand the accounting and internal control systems).

The existence of auditing standards particularly relevant to illegal acts, including bribery, will help countries achieve the objectives of Article 8 and Recommendations V.B.iii. and V.B.iv., however those standards alone may not be adequate and may need to be part of a comprehensive set of auditing standards. The procedures included in the specific auditing standards referenced above should be combined with other auditing standards (i.e., the complete set of ISAs), to help reduce the risk of bribery occurring and not being properly reported in the financial statements.

Importance and Value: Auditing standards in relation to illegal acts including bribery typically include measures to detect material misstatements in financial statements, which could result from illegal acts, and require reporting of known illegal acts including bribery to appropriate corporate governing bodies, such as an audit committee or corporate supervisory board. In addition, auditing standards typically require the auditor to obtain an understanding of the financial reporting internal control system, which may include internal control procedures designed to properly report in financial statements the consequences of compliance and material

noncompliance with applicable laws and regulations, and report any detected material weaknesses to the appropriate level within the company. Together with other auditing standards, these procedures help reduce the risk of bribery occurring and not being properly reported in the financial statements.

Starting Point: If the country has an up-to-date comparison of it's auditing standards to International Standards on Auditing, this would be a good starting point. If such a comparison does not exist, the country should consider using the questionnaire developed by the World Bank and IFAD.

Questions and Considerations:
1) Similar to ISAs 250, 730 and 400, do the auditing standards in relation to illegal acts, including bribery, include measures to:
   - detect material misstatements in financial statements, which could result from illegal acts?
   - require reporting of known illegal acts including bribery to appropriate corporate governing bodies, such as an audit committee or corporate supervisory board?
   - obtain an understanding of the financial reporting internal control system, which may include procedures designed to properly report in financial statements the consequences of compliance and material noncompliance with applicable laws and regulations and report any material weaknesses to the appropriate level within the company?
2) Do generally accepted auditing standards exist, such as the ISAs, which must be applied in an examination of the financial statements?
3) Who is responsible for the setting of national auditing standards?
4) Is a comparison available between national auditing standards and the ISAs? To the extent that differences exist, how are these differences being addressed?
5) What is the auditors' responsibility in the event that management fails to take appropriate action with respect to the discovery of a possible illegal act or bribery which has been reported by the auditor?

V. C. Internal Company Controls

i) Member countries should encourage the development and adoption of adequate internal company controls, including standards of conduct.

ii) Member countries should encourage company management to make statements in their annual reports about their internal control mechanisms, including those which contribute to preventing bribery.

iii) Member countries should encourage the creation of monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards.

iv) Member countries should encourage companies to provide channels for communication by, and protection for, persons not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors.

Benchmark: Implement a system of internal control, and follow good corporate governance practices (see the OECD Principles of Corporate Governance) to help ensure than an organization's objectives are properly established, executed and monitored.

i) Develop a framework or adequate system of internal control that meets or exceeds the recommendations of recognized internal control studies (*The Combined Code: Committee on*

Corporate Governance, (1998, U.K.), *CoCo: Guidance on Control-Control and Governance* (1995, Canada), *COSO: Internal Control – Integrated Framework*, (1992, U.S.)).

ii) Code of corporate conduct measures include:

- Making the provisions of the code known (education and training function)
- Ensuring the code is effectively implemented, including providing channels for communications (compliance function)
- Imposing sanctions in the event the rules are contravened (disciplinary function)

See the OECD report entitled, *Bribery and Codes of Conduct: An Analysis* (March 2000), pages 6 and 7, for a list of common code attributes.

iii) Reporting of management's assessment of the effectiveness of the internal control system should take place. The Financial Executives Institute (FEI) has issued an example of such a report that is available at [*to be inserted*].

iv) A key principle of corporate governance that is essential to the function of the internals controls is appropriate oversight by a corporate monitoring body, such as an audit committee, that includes members independent of management and the company.

v) Channels of communications should exist that provide for communication by, and protection for, persons not willing to violate professional standards or ethics under instructions or pressure from superiors.

Other key corporate governance practices and internal control components include:

- "Tone at the Top" or control environment
- Conflicts of interest
- Monitoring
- Assigning responsibilities

<u>Importance and Value</u>: Implementing an effective system of internal control, and following good corporate governance practices (e.g., the *OECD Principles of Corporate Governance*) help ensure that an organization's objectives are properly established, executed and monitored. An important aspect of an internal control system is the existence of procedures, which if properly designed, will help ensure compliance with applicable laws and regulations.

<u>Questions and Considerations:</u>

1) Do laws and regulations include requirements for companies to have internal controls?
2) Which companies are required to have an adequate system of internal controls? Please indicate specifically which companies are exempted.
3) Do the requirements, frameworks developed in response to the requirements, or common practices, of companies' internal control systems meet the recommendations of recognized internal control studies (*The Combined Code: Committee on Corporate Governance*, (1998, U.K.), *CoCo: Guidance on Control-Control and Governance* (1995, Canada), *COSO: Internal Control – Integrated Framework*, (1992, U.S.))?
4) Is the legal requirement for a company to maintain an adequate system of internal controls explicit enough?

5) Do companies follow the leading practices for corporate compliance, as outlined by the International Chamber of Commerce, Transparency International, the OECD ("Principles of Corporate Governance") or other internationally recognized sources?
6) Is management required to report on the effectiveness of Internal Controls to the audit committee or board of directors, or in the annual report?
7) Are companies required to have independent audit committee or supervisory boards?
8) What provisions are made to encourage companies to have code of conduct and corporate compliance programs including communication channels to report violations?