

29 April, 2019

Mr. Drago Kos, Chair  
OECD Working Group on Bribery in International Business Transactions  
Re: Review of the 2009 OECD Anti-Bribery Recommendation

Dear Chair Kos and Members of the Working Group:

The Institute of Internal Auditors (IIA) thanks you for the opportunity to share comments on the Organisation for Economic Co-operation and Development's (OECD) review of the 2009 "Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions."

The IIA has aided sound governance and risk management efforts in public- and private-sector organizations for 78 years. Our more than 200,000 members are part of a global voice that encourages strong internal controls and an enterprise-wide approach to risk management.

The IIA fully supports the OECD Anti-Bribery Convention and its related instruments to address the serious effects of bribery. The IIA's Audit Executive Center, an exclusive membership of heads of audit, issued "Ensuring Compliance with the OECD's Anti-Bribery Recommendation" in 2010 to help audit executives create and provide recommendations to enhance the effectiveness of ethics and compliance programs.

This 10<sup>th</sup> anniversary of the release of the 2009 Anti-Bribery Recommendation is an appropriate time to review for improvements to reflect how the world has changed over the past decade. What clearly strikes The IIA is that the critical role internal audit plays in detecting and deterring bribery and corruption is absent from both the 2009 Recommendation and its Annex II, "Good Practice Guidance on Internal Controls, Ethics, and Compliance."

Given the increased need for organizations to look beyond financial reporting threats to the litany of issues the current geopolitical culture and advances in digital technology are generating, The IIA believes the

addition of internal audit in these documents is a necessary and valuable step, and will align the Recommendation with recent OECD findings.

The OECD's own 2017 study undertaken by the Working Group and reported in "The Detection of Foreign Bribery" shows internal audit as the source of detection in 22 percent of bribery schemes discovered through self-reporting. In the section on fraudulent use of official development assistance, the report points out that "corruption risk must be assessed throughout the project cycle" and states that systems "should provide for internal audit services and access to investigatory capacity, within or outside the agency, to respond to audit findings."

Internal audit, as an independent and objective assurance and consulting activity designed to add value and improve the organization, serves a vital role in supporting good governance within the organization. This includes providing assurance on the accuracy of financial reporting and regulatory compliance. When internal audit is allowed to operate at the highest levels, in conformance with The IIA's International Professional Practices Framework (IPPF), the only globally recognized standards for the professional practice of internal auditing, it becomes a trusted advisor to executive management and the governing body, providing assurance as well as insight and foresight on risk management and control issues across the organization. Internal audit can be used as an instrument on both the supply and demand side of bribery, increasing the arsenal against bribery and corruption.

In these circumstances, internal audit can provide significant assistance to external audit, as well. A well-resourced and independent internal audit function not only provides reliable work upon which external audit should depend, it also brings transparency to internal control and governance processes that support external examination beyond financial reporting and related processes.

Regulators around the world have stepped up their attention to corporate governance – or more accurately, a deficiency thereof – which can lead to misconduct and corruption, as The IIA reported in its April 2019 edition of "Tone at the Top." For an organization to avoid criminal charges, monetary penalties, and other punishments, it must be able to show it understood the compliance risks in its operations and took appropriate steps to mitigate those risks. Internal audit can act as a clear guard against the solicitation and receipt of bribes in the work it does evaluating the culture of the organization.

Internal auditors are uniquely positioned to see across an entire organization, connect the dots, and bring critical information to management and governing bodies to support good decisions, and help an organization mitigate risks and be successful. Internal auditors not only identify and investigate red flags in high-risk areas, their observations can be used by organizations to develop anti-bribery and anti-corruption programs and prioritize initiatives. Internal audit can provide assurance on the effectiveness and efficiency of existing anti-bribery and anti-corruption programs, as well.

The IIA recommends that the best way to include in the 2009 Anti-Bribery Recommendation the additional protection and foresight internal audit provides is to add a new section under Recommendation X. Adding "Independent Internal Audit" with a short list of considerations (as shown in the attached Public Consultation Response) will clarify the confusion that often exists

between the respective roles of internal and external audit, and reflect more clearly the Three Lines of Defense model used globally to understand and organize measures aimed at managing risk.

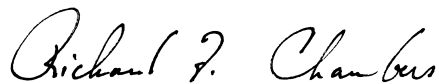
In addition, The IIA offers thoughts on General Question 1, articulates in Question 7 details of how internal audit can be added to the Annex II “Good Practice Guidance on Internal Controls, Ethics, and Compliance,” and offers responses to several other questions related to standards and external audit.

Heads of audit and internal audit activities are increasingly seen as the independent voices in an organization, providing a 360-degree view of uncertainties that may impact goals. It is important that this critical document encourages the 44 Parties to the OECD Anti-Bribery Convention to better incorporate and leverage internal audit.

The OECD’s “Detection of Foreign Bribery” report references academic research by Elizabeth Hart, Ph.D., assisted by OECD, in which it is recommended: “A direction toward an appropriate OECD integrity standard or guideline might be to examine in more detail the various functions carried out by internal auditors, to establish more clearly the linkages between these functions, on the one hand, and integrity/anti-corruption objectives, on the other.” The IIA would welcome the opportunity to assist with an endeavor such as this or with any effort by the Working Group to expand its recommendations regarding internal audit.

Please do not hesitate to reach out to Francis Nicholson, The IIA’s Global Advocacy Managing Director ([francis.nicholson@theiia.org](mailto:francis.nicholson@theiia.org)), should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Richard F. Chambers".

Richard F. Chambers, CIA, QIAL, CGAP, CCSA, CRMA  
President and CEO  
The Institute of Internal Auditors

## **Response from The Institute of Internal Auditors**

### **Public Consultation Document Review of the 2009 OECD Anti-Bribery Recommendation**

#### **Questions:**

#### **GQ1: What are your general impressions concerning the effectiveness and implementation of the 2009 Anti-Bribery Recommendation?**

The OECD describes the 2009 Anti-Bribery Recommendation in its “Detection of Foreign Bribery” report as focusing on “accounting and external audit requirements, as well as the importance of encouraging companies to develop, adopt and publish internal controls, ethics and compliance programmes.” While the components of the Recommendation are sound, the list itself is fundamentally incomplete without internal audit. Assessing the effectiveness of an organization’s system of internal control, ethics, and compliance to anti-bribery and corruption programs must include independent assurance that only internal audit provides.

The IIA recommends the best way to include in the 2009 Anti-Bribery Recommendation the additional protection and foresight internal audit provides is to add a new section under Recommendation X. Adding “Independent Internal Audit” with a short list of considerations will clarify the confusion that often exists between the roles of internal and external audit, and reflect more clearly the Three Lines of Defense model used globally to understand and organize measures aimed at managing risk.

As a provider of independent and objective assurance, internal audit must conform to globally recognized standards. The IIA believes the Recommendation would be further strengthened by specifically referencing The IIA’s “International Standards for Professional Practice of Internal Auditing.” Conformance with The IIA’s Standards is essential in meeting the responsibilities of internal auditors and the internal audit activity. The Standards, part of The IIA’s International Professional Practices Framework (IPPF), include attribute standards that address both individual and organizational independence and objectivity, proficiency and due diligence, and quality assurance. Additionally, IIA performance standards further direct practitioners on managing the internal audit activity, as well as planning and executing the engagement. Implementation guidance provides additional direction for applying the Standards. This comprehensive, tested, and proven set of professional canons provide what practitioners need to conduct high-quality internal audit and serve as a measure of internal audit’s independence, objectivity, competence, and quality.

The IIA also recommends “internal audit” be added throughout the Recommendation wherever there is a reference to the role of external audit in preventing and detecting foreign bribery.

**Suggested additions:** Section X heading should insert “Internal Audit” after accounting requirements and the subheading for “Independent Internal Audit,” followed by these related recommendations inserted after “Adequate accounting requirements”:

- i) Member countries should encourage companies and publicly funded organisations to support independent and objective assurance on internal controls, ethics and compliance programs or measures designed to prevent and detect foreign bribery. This assurance is provided by a robust and appropriately resourced professional internal audit activity;
- ii) Member countries should encourage companies and public organisations to use their internal audit activity to assure a code of conduct and anti-bribery and anti-corruption policy endorsed by the governing body, with well-documented policies and detailed underlying procedures, are in place.
- iii) Member countries should consider requiring publicly traded companies to annually report on the existence and effectiveness of an internal audit function and, in the absence of such a function, explain their approaches to providing assurance on controls designed to deter, prevent, and detect bribery of foreign public officials;
- iv) Member countries should support and promote conformance to internal audit Standards articulated in The Institute of Internal Auditors' "International Standards for the Professional Practices of Internal Auditing";
- v) Member countries, in an effort to assure illegal activities are properly reported, should support and promote conformance to all components of the International Professional Practices Framework (IPPF) promulgated by The IIA, including its Code of Ethics and Core Principles. Conformance to such codes helps fuel identification of root causes that pertain to people and processes.

### **Q7. How could the Good Practice Guidance on Internal Controls, Ethics, and Compliance (GPG) annexed to the 2009 Anti-Bribery Recommendation be revised to reflect evolving global standards?**

In addition to changes to Recommendation X, The IIA recommends Annex II guidance for businesses be amended to add internal audit as another of the "fundamental elements that should be included in companies' anti-bribery compliance programs to effectively prevent and detect bribery."

This would also be an appropriate place to supplement mention of global Standards by including the "International Standards for Professional Practice of Internal Auditing."

The current format of Section A in Annex II would require some rewriting to fully reflect the inclusion of internal audit's role in this approach. As mentioned in our letter, The IIA would be most willing to assist the Working Group if it does agree to undertake such a discussion and incorporation. However, below are a few suggested additions to the current language. Another factor that might need amplification and discussion is the impact that organizational culture has on effective anti-bribery programs and internal audit's ability to provide assurance on culture and conduct.

Suggested additions shown in red:

#### ***Introduction***

This Good Practice Guidance (hereinafter "Guidance") is addressed to companies for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programmes or measures for preventing and detecting the bribery of foreign public officials in their international business transactions (hereinafter "foreign bribery"), and to business organisations and

professional associations, which play an essential role in assisting companies in these efforts. It recognises that to be effective, such programmes or measures should be interconnected with a company's overall compliance framework. It is intended to serve as non-legally binding guidance to companies in establishing effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery.

This Guidance is flexible, and intended to be adapted by companies, in particular small and medium sized enterprises (hereinafter "SMEs"), according to their individual circumstances, including their size, type, legal structure and geographical and industrial sector of operation, as well as the jurisdictional and other basic legal principles under which they operate.

### ***A) Good Practice Guidance for Companies***

Effective internal controls, ethics, and compliance programmes or measures for preventing and detecting foreign bribery **are supported by a properly resourced professional internal audit activity that is in conformance with The Institute of Internal Auditors' "International Professional Practices Framework," which includes the "International Standards for the Professional Practice of Internal Auditing."** The programme or measures should be developed on the basis of a risk assessment addressing the individual circumstances of a company, in particular the foreign bribery risks facing the company (such as its geographical and industrial sector of operation). **A comprehensive anti-bribery and anti-corruption program should include entity-level, process-level, and transaction-level controls.** Such circumstances and risks should be regularly monitored, re-assessed, and adapted as necessary to ensure the continued effectiveness of the company's internal controls, ethics, and compliance programme or measures.

Companies should consider, *inter alia*, the following good practices for ensuring effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery:

1. strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery;
2. a clearly articulated and visible corporate policy prohibiting foreign bribery;
3. compliance with this prohibition and the related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the company;
4. oversight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority;
5. incorporating within **the internal audit activity an assessment of anti-bribery and anti-corruption measures in all audits, as appropriate. Internal audit to consider the fraud risk assessments, whistleblower statistics, ethics reports, etc., into audit planning for understanding the risk and control health. The head of audit should provide an annual report to the governing body on the effectiveness of the anti-bribery and anti-corruption measures.**

6. ethics and compliance programmes or measures designed to prevent and detect foreign bribery, applicable to all directors, officers, and employees, and applicable to all entities over which a company has effective control, including subsidiaries, on, *inter alia*, the following areas:

- i) gifts offered and received;
- ii) hospitality, entertainment and expenses;
- iii) customer travel;
- iv) political contributions;
- v) charitable donations and sponsorships;
- vi) facilitation payments; and
- vii) solicitation and extortion;

7. ethics and compliance programmes or measures designed to prevent and detect foreign bribery applicable, where appropriate and subject to contractual arrangements, to third parties such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter “business partners”), including, *inter alia*, the following essential elements:

- i) properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of business partners;
- ii) informing business partners of the company’s commitment to abiding by laws on the prohibitions against foreign bribery, and of the company’s ethics and compliance programme or measures for preventing and detecting such bribery; and
- iii) seeking a reciprocal commitment from business partners.

8. a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of foreign bribery or hiding such bribery;

9. measures designed to ensure periodic communication, and documented training for all levels of the company, on the company’s ethics and compliance programme or measures regarding foreign bribery, as well as, where appropriate, for subsidiaries;

10. appropriate measures to encourage and provide positive support for the observance of ethics and compliance programmes or measures against foreign bribery, at all levels of the company;

11. appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company’s ethics and compliance programme or measures regarding foreign bribery;

12. effective measures for:

- i) providing guidance and advice to directors, officers, employees, and, where appropriate, business partners, on complying with the company’s ethics and compliance programme or measures, including when they need urgent advice on difficult situations in foreign jurisdictions;
- ii) internal and where possible confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employees, and, where appropriate, business partners, willing to report breaches of the law or professional standards or ethics occurring within the company, in good faith and on reasonable grounds; and

iii) undertaking appropriate action in response to such reports;

13. periodic reviews of the ethics and compliance programmes or measures, designed to evaluate and improve their effectiveness in preventing and detecting foreign bribery, taking into account relevant developments in the field, and evolving international and industry standards.

14. combined assurance through alignment and collaboration on activities of key players, including risk, compliance, ethics, internal audit, quality assurance, and anti-fraud teams.

## **29. What recommendation(s) could be envisaged to further strengthen whistleblower protection?**

Code of business conduct and ethics programs, including “whistleblower” programs, are an important component of a healthy organizational culture and effective governance, including in deterring corrupt practices. Internal audit can and should provide assurance on the effectiveness of whistleblower programs, including how these programs are administered and how policies protecting whistleblowers are carried out. Trends from whistleblower programs must be considered in identifying potential problem areas, offering further transparency for whistleblowers.

Internal audit can be a valuable resource to the governing body for ensuring effective whistleblower programs. Because internal auditors generally have a working knowledge of all parts of an organization and a high degree of independence, they are often well-positioned to handle whistleblower information competently and objectively.

## **32. What recommendation could be envisaged to enhance detection and reporting of foreign bribery by external auditors and accountants?**

Changes The IIA recommends — adding a subsection under Recommendation X as well as recommended changes to Annex II — will enhance detection and reporting of foreign bribery. The OECD’s 2017 study undertaken by the Working Group and reported in “The Detection of Foreign Bribery” shows internal audit as the source of detection in 22 percent of bribery schemes discovered through self-reporting. Including internal audit where possible in the Recommendation will take the work of detecting and reporting foreign bribery to a new level. A thorough understanding of the remuneration philosophy and its influence on human behavior is critical.

## **38. What recommendation could be envisaged to strengthen the independence of external auditors in practice so that they can provide an objective assessment of company accounts, financial statements and internal controls?**

External auditors provide an important service to ensure investor confidence by providing reasonable assurance on the accuracy of financial reporting by publicly traded companies. Audit quality is driven by a number of factors including the external auditor’s independence, and its knowledge of the business and its risks. The external auditor also must understand the strength of governance within the organization and how it is influenced by risk appetite, corporate culture and the strength, independence, and reliability of the organization’s internal audit function.



The roles and responsibilities of external auditors should include a discussion on the role of internal audit and its ability to influence and support good governance and provide assurance on the reliability of financial reporting. Recognizing the inherent limitations in the scope and depth of external audit work, it is critical that external audit recognize and use the results of the critical work performed by internal audit when it is independent, appropriately resourced and follows The IIA's *Standards*. External auditors need to have a holistic view of the risk, opportunity and control landscape – to this end, the collaboration and coordination with internal audit is key.

**53. What further steps could the Working Group take to enhance cooperation with international organisations (including international financial institutions and others such as the G20), non-governmental associations and the business community?**

Internal audit's global reach within the organization, and knowledge of organizational culture, is an opportunity to seal off both the supply side and the demand side of bribery with effective internal controls. The OECD's "Detection of Foreign Bribery" report references academic research by Elizabeth Hart, Ph.D., assisted by OECD, in which it is recommended: "A direction toward an appropriate OECD integrity standard or guideline might be to examine in more detail the various functions carried out by internal auditors, to establish more clearly the linkages between these functions, on the one hand, and integrity/anti-corruption objectives, on the other." The IIA would welcome the opportunity to assist with an endeavor such as this or with any effort by the Working Group to expand its recommendations regarding internal audit.