



OECD Africa Academy for Tax and Financial Crime Investigation



**Bribery and Corruption Investigations (Specialty) Pilot Programme**  
13-17 November 2023, Nairobi, Kenya

# Prosecuting Bribery

## Evidence: *Investigation planning*

- Burden and standard of the proof, meeting the required offence elements, considering likely defences
- Overseas evidence and international cooperation – the importance of early engagement and considering reliable international partners
- Resourcing and organisation – marshalling large quantities of investigative enquiries and information, identifying relevant evidence (on review which might be very early), limiting scope
- Absent defendants/witnesses
- Presentation issues: jury comprehension, marshalling paperwork, case summaries

# Exercise

- ▶ Identify which criminal offence(s) would apply from your own country against a public official who has accepted a bribe (10 mins)
- ▶ Identify which criminal offence(s) would apply in your own country against a person paying a bribe to a public official (10 mins)
- ▶ Discuss with your group - what are the similarities and differences? (10mins)
- ▶ One person per country will be selected to feedback to the room on the elements of the offences (what do you need to prove?)

## Evidence: *Case Analysis*

Can you prove your case?

- Diagrams
- Timelines
- Good vs bad fact
- Identifying evidence relevant to each offence element
- Developing your case theory

# Exercise

- ▶ Individually read the case study (10 mins)
- ▶ In your groups, create a timeline of events (30 mins)
- ▶ Using your list of offence elements, create a table with one column of 'good' facts and one column of 'bad' facts (15 mins)
- ▶ Appoint one spokesperson per group to feedback to the room

## Evidence: *Use of Inference*

You will not always find direct evidence of the bribe and may need to rely on inference that one has been paid.

- What do they do with their salary?
- Unexplained assets (wealth assessment)
- Irrational decision making in the face of reasonable objections
- Attempts to conceal source of funds

## Evidence: *Reasonable lines of enquiry*

- Digital material – infrastructure for handling, problems involving quantity, management/audit trails, determining relevance and evaluation, commercial impact for suspect
- Third party material – reasonable lines of enquiry, unjustifiable intrusion
- Sensitive material which needs to be withheld in the public interest – applications to withhold, alteration of presentation of the case or discontinuance

# Charging Corruption

Consider the possible charges:

- Alternative sections within corruption statutes
- Misconduct in Public Office/Embezzlement
- Fraud
- Extortion/Blackmail
- Money Laundering

Any others?

When choosing charges consider:

- Likely sentence – do the charges reflect the seriousness of the offending?
- Case Presentation and simplification
- Public interest
- Alternatives to prosecution

Any questions?