

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

STRATEGIES FOR BUSINESS, GOVERNMENT, & CIVIL SOCIETY TO FIGHT CORRUPTION

IN ASIA AND THE PACIFIC

Proceedings of the 6th Regional Anti-Corruption
Conference
for Asia and the Pacific



ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

STRATEGIES FOR BUSINESS, GOVERNMENT, AND CIVIL SOCIETY TO FIGHT CORRUPTION IN ASIA AND THE PACIFIC

**Proceedings of the 6th Regional Anti-Corruption Conference
for Asia and the Pacific**

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Corrupt Practices Investigation Bureau (CPIB) Singapore

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- Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries, Manila: ADB/OECD, 2006.
- Denying Safe Haven to the Corrupt and the Proceeds of Corruption: Enhancing Asia-Pacific Co-operation on Mutual Legal Assistance, Extradition, and Return of the Proceeds of Corruption. Proceedings of the 4th Master Training Seminar. Manila: ADB/OECD, 2006.
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- Anti-Corruption Policies in Asia and the Pacific: Progress in Legal and Institutional Reform in 25 Countries. Manila: ADB/OECD, 2006.
- Anti-Corruption Action Plan for Asia and the Pacific with country endorsing statements. Manila: ADB/OECD (2002; reprinted 2005).
- Curbing Corruption in Tsunami Relief Operations. Manila: ADB/OECD/TI, 2005 (available in English, Bahasa, Sinhala, and Tamil languages).
- Controlling Corruption in Asia and the Pacific: Proceedings of the 4th Regional Anti-Corruption Conference. Manila: ADB/OECD, 2005.
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- Progress in the Fight against Corruption in Asia and the Pacific: Proceedings of the 2nd Regional Anti-Corruption Conference. Manila: ADB/OECD, 2001.
- Combating Corruption in Asia and the Pacific: Proceedings of the Manila workshop held in 1999. Manila: ADB/OECD, 2000.

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Contents

Foreword	7
Main abbreviations and acronyms	9
Introduction	11
Acknowledgments and editorial remarks	12
Keynote addresses	13
Welcome Remarks by Senior Minister Ho Peng Kee	15
Opening Statement by Lawrence Greenwood	19
Opening Statement by Mario Amano	25
Closing Remarks by Peter Ho	29
Concluding Remarks by Patrick Moulette	33
Chapter 1 Combating corruption in business transactions—a priority for governments, business, and civil society	35
The Business Case for Fighting Corruption (<i>John Bray</i>)	38
Efforts of the Business Community to Fight Corruption (<i>David Lyman</i>)	47
Singapore's Experience in Fighting Bribery in Business (<i>Soh Kee Hean</i>)	53
P.R. China's Campaign against Commercial Bribery (<i>Wang Huangeng</i>)	59
A Global Framework for the Fight against Corruption in Business Transactions—the United Nations Convention against Corruption (<i>Kuniko Ozaki</i>)	65
Civil Society's Contribution to Curbing Bribery in Business (<i>Peter Rooke</i>)	69

Chapter 2 The role of international criminal law standards in combating bribery	75
Implementing the OECD Anti-Bribery Convention (<i>William Loo and Christine Uriarte</i>)	77
Setting Global Standards — the Criminalization Chapter of the United Nations Convention against Corruption (<i>Kuniko Ozaki</i>)	87
Effective Anti-Corruption Enforcement: Another Flight of Fancy? (<i>Mathew Joseph</i>)	91
Chapter 3 Corporate compliance programs and integrity systems	101
Corporate Compliance Programs and Integrity Systems: Singapore's Experience (<i>Juthika Ramanathan</i>)	107
Chapter 4 Conflict of interest—the soft side of corruption	113
OECD Guidelines, Toolkit, and Emerging Concerns (<i>János Bertok</i>)	115
Conflict of Interest in Indonesia: Business as Usual (<i>Arief T. Surowidjojo</i>)	121
Auditors' Conflicts—Independence in the Audit of Financial Statements (<i>Navita Srikant</i>)	131
Conflict of Interest in the Transport Sector (<i>William Paterson</i>)	137
Chapter 5 Working together to combat corruption: International and regional initiatives.....	141
The APG and its Role in Combating Corruption in Asia and the Pacific (<i>Ong Hian Sun</i>)	143
APEC Business Principles and UN Global Compact as Examples of Regional and Global Cooperation in the Fight against Corruption (<i>Peter Rooke</i>)	149
Translating Regional and Global Initiatives into Local Action—Insights from the Republic of Korea (<i>Geo-Sung Kim</i>)	153
Implementing the Extractive Industry Transparency Initiative (EITI) in Timor-Leste (<i>Manuel de Lemos</i>)	155
13th International Anti-Corruption Conference—Global Transparency: Fighting Corruption for a Sustainable Future (<i>Kathleen M. Moktan</i>)	157

Chapter 6 Private-to-Private Corruption: The Last Piece of the Puzzle	161
Rethinking the Definition of Corruption (<i>Jermyn Brooks</i>)	163
Combating Corruption in the Private Sector—the ICAC of Hong Kong, China (<i>Li Bo-lan Rebecca</i>).....	165
Singapore's Strategies to Fight Corruption in the Private Sector (<i>Koh Teck Hin</i>)	171
Chapter 7 Fighting corruption and the sustainable development agenda	177
The Philippines' Experience with Donor Supported National Anti-Corruption Efforts (<i>Merceditas N. Gutierrez</i>)	179
Republic of Korea's Experience as a Provider of Anti-Corruption Technical Assistance (<i>So-yeong Yoon</i>)	183
Why Corruption Matters to Donors and their Role in Curbing Corruption (<i>Marcel van den Bogaard</i>)	191
Annexes	195
List of Participants	197
Agenda	211
ADB/OECD Anti-Corruption Initiative for Asia-Pacific Secretariat Contacts	217

Foreword

Created in 1999, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific supports its members in strengthening their policies, legislation, institutions and practices to fight corruption. The Initiative offers experts in Asia and the Pacific opportunities to work with colleagues from around the globe to address emerging challenges in the fight against corruption, and to seek solutions.

Expansion of Asian and Pacific economies and strengthened economic ties among countries bring increased attention to the negative impact of bribery in business. The members of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific thus dedicated the 6th Regional Anti-Corruption Conference for Asia and the Pacific on 26–28 November 2008 to *Fighting Corruption in Asia-Pacific: Strategies for Business, Government, and Civil Society*.

The conference, hosted by the Government of Singapore and its Corrupt Practices Investigation Bureau (CPIB), brought 150 experts from 35 countries to a regional forum to assess the role of businesses, governments, and civil society in the fight against corruption, notably the supply of bribes. Workshop discussions addressed six topics: the role of international criminal law standards; conflict of interest; corporate compliance programs and integrity systems; international and regional Initiatives to combat corruption; private-to-private corruption; and the role of the fight against corruption for sustainable development.

Main abbreviations and acronyms

ACRA	Accounting and Corporate Regulatory Authority (Singapore)
ACT	Anti-Corruption and Transparency Task Force
ACTT	Anti-Corruption Task Team (of the OECD DAC GOVNET)
AML	anti-money laundering
APCAC	Asia-Pacific Council of American Chambers of Commerce
APEC	Asia-Pacific Economic Cooperation
APG	Asia-Pacific Group on Money Laundering
ASEAN	Association of Southeast Asian Nations
AusAID	Australian Agency for International Development
CEO	Chief Executive Officer
CFT	combating the financing of terrorism
Col	conflict of interest
CPI	Corruption Perceptions Index
CPIB	Corrupt Practices Investigation Bureau (Singapore)
DAC	Development Assistance Committee of the OECD
EITI	Extractive Industries Transparency Initiative
EUR	euro
FATF	Financial Action Task Force
FCPA	Foreign Corrupt Practices Act
FIU	financial intelligence unit
GDP	gross domestic product
GNI	gross national income
GOVNET	Network on Governance (of the OECD Development Assistance Committee DAC)
IACC	International Anti-Corruption Conference
ICAC	Independent Commission against Corruption (Hong Kong, China)

ICC	International Chamber of Commerce
IDR	Indonesian rupee
KPK	Komisi Pemberantasan Korupsi—Corruption Eradication Commission (Indonesia)
MNC	multinational corporation
MOU	memorandum of understanding
NGO	non-government organization
OAS	Organization of American States
ODA	official development assistance
OMB	Office of the Ombudsman (Philippines)
PACI	Partnering against Corruption Initiative
PHP	Philippine peso
SEC	Securities and Exchange Commission (United States)
SFO	Serious Fraud Office (United Kingdom)
SGD	Singapore dollar
SME	small and medium-sized enterprise
TI	Transparency International
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
US	United States
USAID	United States Agency for International Development
USD	United States dollar
WEF	World Economic Forum

Introduction

Recent corporate corruption scandals, many of which involved major multinational enterprises, have brought the spotlight onto business bribery. Several countries in Asia-Pacific have already responded by initiating anti-corruption campaigns targeting this phenomenon. To further these efforts and to exchange experience, the members of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific dedicated the 6th Regional Anti-Corruption Conference for Asia and the Pacific on 26–28 November 2008 to *Fighting Corruption in Asia-Pacific: Strategies for Business, Government, and Civil Society*.

The conference, hosted by the Government of Singapore and its Corrupt Practices Investigation Bureau (CPIB), brought together 150 experts from 35 countries. In addition to plenary sessions, the conference consisted of six workshops on the role of international criminal law standards; conflict of interest; corporate compliance programs and integrity systems; international and regional initiatives to combat corruption; private-to-private corruption; and the role of the fight against corruption for sustainable development.

The conference saw presentations by representatives of business, governments, civil society, and international organizations that were followed by lively debates and exchanges of ideas. Most presentations were reproduced in this publication, in hopes that the ideas and knowledge contained therein would be disseminated to a wider audience.

Acknowledgments and editorial remarks

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific thanks the Corrupt Practices Investigation Bureau (CPIB) of Singapore, host of the 6th Regional Anti-Corruption Conference for Asia and the Pacific, for its gracious hospitality and excellent preparation. Special thanks also go to the conference participants, particularly the expert speakers whose insights and experience enriched the meeting discussions and informed its outcomes.

The conference was organized by CPIB—including Phua Meng Geh, who managed the event—and the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific Secretariat: Kathleen Moktan, Director, Capacity Development and Governance Division, ADB; Marilyn Pizarro, Consultant, ADB; Christine Uriarte, General Counsel, OECD Anti-Corruption Division; William Loo, Legal Analyst, OECD Anti-Corruption Division; and Joachim Pohl, then–Project Coordinator, Anti-Corruption Initiative for Asia-Pacific, OECD Anti-Corruption Division.

The Initiative is also grateful to its partners for their financial and intellectual support: the Australian Agency for International Development, German Federal Ministry for Economic Cooperation and Development, German Technical Development Cooperation, Swedish International Development Cooperation Agency, Asia-Pacific Group on Money Laundering, the American Bar Association/Rule of Law Initiative, Pacific Basin Economic Council, Pacific Islands Forum Secretariat, Transparency International, United Nations Development Programme, World Bank, and Asia-Europe Foundation.

The term “country” in this publication also refers to territories or areas; the designations employed and the presentation of the material do not imply the expression of any opinion whatsoever concerning the legal status of any country or territory on the part of ADB’s Board and members or the OECD and its member countries. Every effort has been made to verify the information in this publication. However, ADB, OECD, and the authors disclaim any responsibility for the accuracy of the information. ADB’s Board and members and the OECD and its member countries cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

Keynote addresses

Welcome Remarks by Senior Minister Ho Peng Kee

Opening Statement by Lawrence Greenwood

Opening Statement by Mario Amano

Closing Remarks by Peter Ho

Concluding Remarks by Patrick Moulette

Welcome Remarks

Associate Professor Ho Peng Kee, Senior Minister of State for Law and Home Affairs, Singapore

I am happy that Singapore is organizing this ADB/OECD Regional Anti-Corruption Conference for Asia-Pacific for the first time. I understand that there are participants and speakers from more than 50 countries and international organizations. Let me first extend a very warm welcome to all our overseas participants to Singapore.

We are living in an increasingly interconnected global world. The financial crisis of 2008 began with, what to most of us, was an event in the US that had little relevance to us. I am referring to the US subprime mortgage crisis. Within a year, the crisis had escalated to a colossal global financial meltdown requiring government interventions in financial sectors all over the world. The financial crisis is the perfect illustration of how corporate governance in the private sector can lead to events that have wide social and economic impact. This brings me to the theme for today's conference—"Fighting Corruption in Asia-Pacific: Strategies for Business, Government, and Civil Society".

In many countries, anti-corruption efforts have always focused on the public sector, as it affects how a country is governed and how its public services are administered—these, of course, have a direct impact on the development of the country. However, increasingly, the lines between the public and private sectors are no longer clear. With outsourcing, functions previously undertaken by public agencies may, today, be undertaken by private companies. This may include essential services such as provision of utilities, healthcare, transport, or even security. The public would also have interest in how private entities are run, as some of these are publicly listed companies with members of the public as shareholders. The activities of private companies today provide the engine of growth and they have a significant impact on the lives of individuals. Private sector activities in many instances are not really "private". Therefore, efforts in good governance and anti-corruption must go beyond the public sector to reach the private sector; activities of the private sector are not isolated unto themselves but have an increasing impact on the man in the street. There are two main approaches to this—through systemic structures put in place by government, and through internal controls put in place within the private sector. I

would now like to share with you Singapore's efforts, starting with government-led systemic structures.

Government-led structures

In Singapore, we put a lot of emphasis on administrative efficiency. Processes which are streamlined and efficient ensure better services for the public. They also reduce opportunities for corruption and abuse. If government services take a long time to deliver and require multiple processes and steps, then the likelihood of corruption and malpractice will multiply. In this regard, the Singapore government has implemented electronic services to deal with many government transactions. Through such services, members of the public can search and access government information as well as conduct a wide range of transactions. These include applying for licenses and permits, making reports, and filing tax returns.

There is also an online business license service whereby businesses that require multiple licenses need not send separate applications to different departments. Using an online system, the applicant would just need to file a single application, which will be routed to different government departments for the issue of different licenses. Such electronic processes have cut down processing time drastically and reduced the need for the public to deal with officers from multiple government departments. A benefit of this arrangement is that opportunities for corruption and abuse can be reduced.

The government also aims to engage the public in a continual process to improve the system; for example, the public is invited to provide feedback under the "Cut Red Tape" and "Cut Waste" movement. The business community is also consulted through the Pro Enterprise Panel on how the government can be more business-friendly. These links allow the public to tell the government directly about problems and even suggest possible solutions; they show measures that can enhance quality of service to the public, and also reduce likelihood of abuse.

To improve transparency, the Singapore Government has an electronic portal that allows private sector entities to bid to supply goods and services to the government. Today, all government procurement is done through the Internet. The procurement specifications are posted on the Internet for all to see, including international businesses who wish to take part. This ensures transparency and reduces opportunities for corruption and abuse in public-private sector transactions.

Internal control measures

I will now move on to internal control measures. In 2004, the Accounting and Corporate Regulatory Authority was formed to ensure that companies, businesses, and auditors observe relevant standards and comply with legal requirements. The Authority works with government agencies and professional bodies to maintain high auditing standards and helps companies adopt good disclosure and corporate governance practices. The private sector was also actively involved in the process of setting the prescribed accounting and governance standards through the Accounting Standards Council formed in 2007, and the Council of Corporate Disclosure and Governance formed in 2002.

Internal controls and governance in private companies is essential if the private sector is to run smoothly and without problems. Governance and controls must go beyond mere rhetoric. Companies must implement concrete measures to ensure good governance and controls. This is the only way for companies to sustain and thrive; otherwise, when the going gets tough, they will just fold over and collapse. Corporate governance cannot be taken for granted. The primary responsibility rests with the companies themselves, backed by an appropriate level of interaction with government agencies. In this current climate of the financial crisis, it is even more important that adequate attention be paid to such issues.

Working together

It is thus clear that anti-corruption agencies cannot act alone. Fighting corruption has to be a whole-of-government effort involving the improvement of administrative processes within the public sector as well as improvement of corporate governance standards within the private sector. Both the public and private sectors have key roles to play. It is therefore important for anti-corruption agencies to partner with external parties in their anti-corruption efforts. The prevention of corruption in the private sector requires more than investigative and outreach efforts from anti-corruption agencies. The commitment of stakeholders has to be secured—private entities must be encouraged to implement systems of good governance from within. This entails putting in place a framework of systemic processes incorporating checks and balances that guide behaviour in the organization. A well-designed self-regulatory corporate governance framework would reduce the possibility of improper or criminal behaviour. More importantly, just as the public service has built up its ethos and core values, a culture of ethical values must be cultivated in the private sector.

Anti-corruption agencies must therefore reach out to this sector by understanding corporate practices and fostering close working relationships. I am pleased to note that this conference includes workshops on corporate governance, private sector corruption, and conflict of interest. These will provide insights on the work to be undertaken in the private sector. This conference provides a useful platform for dialogue with other stakeholders such as businesses, civil society, and international organizations.

The past few years have seen an increase in international platforms centering on anti-corruption. Since the coming into force of the United Nations Convention against Corruption, a number of Conferences of the State Parties and related working group meetings have been held. There are also various international meetings held to facilitate discussions between anti-corruption agencies. These include meetings to discuss follow-up action for the Memorandum of Understanding between anti-corruption agencies of ASEAN member countries and meetings under the International Association of Anti-Corruption Authorities, to name a few.

I am happy to note that this conference seeks to work with the various platforms by exploring how international and regional initiatives can play a part in raising awareness and commitment to fight corruption in the region. As chair of the APEC Anti-Corruption Task Force for 2009, Singapore is committed to contributing to this process of dialogue and co-operation. Singapore has also been an active member of this ADB/OECD Anti-Corruption Initiative since 2001, and we continue to play an active part.

I note that, our Corrupt Practices Investigation Bureau, or CPIB, has devoted enormous resources alongside the ADB/OECD Secretariat to put together the programme and administrative arrangements. I am also told that CPIB has been receiving increasing numbers of requests for study and training visits and that our Civil Service College has also organized many courses on governance and anti-corruption. All these programs will contribute to the exchange of ideas and knowledge on anti-corruption at the international level.

At this conference, a wide array of experts and professionals from government agencies, international organizations, civil society, and the private sector are linked by a common interest: to fight corruption. I urge everyone to use the opportunity to enhance your networks and share your experience and expertise. I am sure that the interaction will energize you and spur you further on in your anti-corruption efforts.

Opening Statement

Lawrence Greenwood Jr.
Vice President, Asian Development Bank

On behalf of the Asian Development Bank, it is my privilege to welcome you to the 6th Regional Anti-Corruption Conference. I would like to begin by commending each and every one of you, for your steadfast commitment to combating corruption in Asia and the Pacific.

From the outset, I would like state that ADB welcomes the theme of this year's conference—which emphasizes the need for the private sector, civil society, and governments to work together to combat corruption. Such a comprehensive approach is needed first and foremost because the root of corruption is the complex web of engagement between the private and public sectors. Corruption is not simply a public sector issue. Corrupt transactions, by definition, require the participation of more than one actor. After all, "it takes two to tango" and for every briber offering money there is a bribee asking for it. Thus, it will take the concerted effort of all stakeholders—public, private, and civil society—to successfully fight the scourge of corruption. That effort means changing attitudes, strengthening institutions, adjusting regulation, resetting incentives, and, more generally, reconsidering how a government interacts with its citizens in ways that minimize the opportunity for corruption.

Secondly, there is a growing appreciation that corruption can significantly undermine sustainable development, inclusive growth and poverty reduction, resulting in significant social and economic tensions that have important implications for a very broad range of stakeholders, not the least of which are the poor who forgo basic social services and economic opportunity due to corruption. Though it is not easy to measure the overall impact of corruption, let us look at a few examples from recent studies:

- A recent paper that estimated the effect of corruption on economic growth and GDP per capita calculated the total effect of corruption as follows: an increase of corruption by about one index point reduces GDP growth by 0.13 percentage points and GDP per capita by USD 425.¹
- More than USD 1 trillion is paid in bribes each year, according to ongoing research at the World Bank Institute. The same research showed that countries that tackle corruption and improve their rule of

law can increase their national income by as much as four times in the long term.²

- According to Transparency International, corruption equals a full 3% of the world's gross domestic product.³
- Studies of the impact of corruption upon government procurement policies in several Asian countries reveal that these governments have paid from 20% to 100% more for goods and services than they would have otherwise.

Finally, looking at corruption from the perspective of all stakeholders allows us to better identify the “win-win” dynamics that can help create a stronger and broader consensus to fight corruption. For example, citizens might be more supportive of tax increases to support higher civil service pay if they better understood that this was a far more efficient (and equitable) means than direct bribery (which also comes out of citizens' pockets) to compensate underpaid government officials. Business might be more supportive of anti-bribery laws if they better understood that businesses from countries with stronger enforcement of anti-bribery laws are asked less frequently to pay bribes than businessmen of countries with weak enforcement. Likewise, citizens that still fear “exploitation” by foreign investors would fear less if they understood that such exploitation is only possible to the extent that national officials are corruptible. When Lee Kwan Yew in the 1960s invited foreign multinational corporations—MNC, then a dirty three-letter word—to invest in Singapore, there was no question who was in charge. Mr. Lee's uncompromising stance against corruption made that possible. I hope this conference will explore how we can create and take advantage of these win-win opportunities to accelerate the fight against corruption.

The Role for Multilateral Cooperation

Although national action will be the most important key to success, clearly multilateral cooperation such as we see in this conference will play an important role in facilitating and promoting this comprehensive approach to fighting corruption. The OECD Anti-Bribery Convention concluded in 1997 was one of the first international efforts to address the supply side of corruption by requiring signatories to criminalize and prosecute bribe giving. Thirty-seven countries have now signed on to this historic accord. The United Nations Convention against Corruption (UNCAC) addresses both sides of the corruption problem. Currently, 140 countries, including many in our region, are signatories to the UNCAC, a clear indication of how seriously the world community takes the issue of corruption.

The Extractive Industries Transparency Initiative (EITI) is another important multilateral effort focusing on both supply and demand sides of the corruption equation by requiring transparent reporting of extractive resource revenues from companies, both private and state-owned, to governments and then strengthening civil society monitoring of those revenues to ensure that the revenues of extractive industries are used to foster economic growth and development. I am happy to say that in February of this year, ADB joined the growing coalition of countries, development institutions, international corporations, and civil society organizations that have endorsed the EITI.

Progress and Challenges

Last, but certainly not least, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, a path-breaking multilateral undertaking, continues to grow in importance. We are seeing significant progress under the Initiative. The number of countries endorsing the Anti-corruption Action Plan for Asia and the Pacific has grown from 25 at the time of our regional conference in September 2005 in Beijing to 28 this year, with an additional four countries participating as active observers. Twenty countries from Asia and the Pacific have ratified or acceded to the UNCAC, and an additional 12 have signed. The recently held 13th International Anti-corruption Conference was attended by more than 1,500 participants from more than 130 countries, representing the public sector, the private sector, and civil society.

However, despite these significant efforts, barriers to progress remain: prevailing practice, ineffective legal and regulatory frameworks, and institutional weaknesses. It is a matter of concern, that progress on the World Bank's world-wide governance indicators has been limited in Asia and the Pacific. In fact, these indicators suggest that control of corruption in the region has deteriorated rather than improved over the past 10 years.

In addition, legislation in many countries does not yet extend to areas such as foreign bribery or political corruption, and regulations are too often ambiguous. Furthermore, not enough attention has been paid to reforming the law enforcement agencies, whose cooperation is essential to the success of anti-corruption agencies. And, although the contributions of civil society in raising public awareness, encouraging reforms and monitoring progress are well-known, some countries remain wary of fully engaging civil society as a partner in fighting corruption. Building capacities and partnerships across the region is crucial to address these ongoing challenges.

The Role of the Asian Development Bank

ADB is staunchly committed to this task. ADB's long-term strategic framework recognizes the profound harm that corruption inflicts upon development, and particularly on the poor, and reaffirms our commitment to strengthen systems that emphasize prevention and utilize the international framework embodied in the UNCAC.

ADB launched its Second Governance and Anticorruption Action Plan (GACAP II) in the summer of 2007 and became the first multilateral development bank to require, in partnership with its client governments and development partners, governance risk assessments designed to identify critical weaknesses in public financial management, procurement, and anti-corruption systems that could compromise a country's own development efforts. We are using those assessments to help identify concrete measures that can help to mitigate governance risks in our country strategies, sector work, and individual projects.

ADB has a very robust program of projects and technical assistance aimed at improving governance and fighting corruption in partnership with our developing member countries. In 2007, we undertook USD 3.3 billion worth of loans, which included components aimed at improving governance and USD 40.1 million of technical assistance in the same area.⁴ These programs focused in particular on public financial and economic management, combating corruption, public administration reform, and reforms in the infrastructure and financial sectors. Programs of particular note include: the Good Governance Programme in Bangladesh, which supports UNCAC implementation and strengthens the Anti-Corruption Commission; the Second Development Policy Support Program in Indonesia and the Commune Council Development Project in Cambodia, both of which put a strong emphasis on strengthening Public Financial Management; and the Local Government Financing and Budget Reform Cluster in the Philippines, with its emphasis on transparent inter-governmental fiscal arrangements and financial management.

The Way Forward: Effective Partnerships and Continued Resolve

Given the complexities of the global age, corruption cannot be handled through stand-alone efforts. This battle requires state-of-the-art knowledge and tools and, above all, firm resolve. Judging by the commitment of the 28 member countries of the ADB/OECD Anti-corruption Initiative, we can be optimistic that progress will continue.

On behalf of ADB, I would like to express our appreciation to the OECD for its strong and ongoing partnership in and contributions to this Initiative. I would also like to thank all the development partners who have provided their strong support.

In particular, I want to extend our deep appreciation to the Government of Singapore and the Corrupt Practices Investigation Bureau, our hosts for this year's conference. Singapore has been a role model in Asia and the Pacific and, by holding this conference, it has yet again shown leadership in tackling corruption in the region.

We deeply appreciate the government's efforts to make this important event a success. The proceedings and outcomes of this conference will further cement coordination among member countries, and with the international governance and anti-corruption experts. We are confident that this will be a milestone in the journey toward a transparent Asia that is free of poverty and corruption.

NOTES

- ¹ Dreher and Herzfeld, 2005.
- ² World Bank Institute, 2004 and ongoing.
- ³ TI Anti-Corruption Handbook: corruption is defined as all instances where "entrusted power is used for private gain".
- ⁴ ADB. 2008. Governance Thematic Report 2006–2007.

Opening Statement

Mario Amano
Deputy Secretary-General, OECD

It is an honor to be here today and share the opening of the 6th Regional Anti-Corruption Conference for Asia and the Pacific with my distinguished colleagues from Singapore and the Asian Development Bank.

I am deeply grateful to the Government of Singapore for hosting this conference, and for its tremendous efforts to ensure a program of highly relevant topics to Asia and the Pacific. Singapore is an anti-corruption success story, demonstrated by its high ranking on Transparency International's Corruption Perceptions Index year after year. It is fitting that it is the host country for this important event in 2008.

I am very proud that the OECD and the Asian Development Bank are partners in this conference. Our two organizations have been working together for almost 10 years on this Initiative. I believe that our blend of expertise and perspectives gives Asia and the Pacific a unique opportunity in the fight against corruption. The OECD looks forward to continuing this valuable partnership as we embark on the next decade.

I am pleased to see that so many key actors in the fight against corruption in the region have come together for this important conference.

It gives me great pleasure to address the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, whose member countries have been making such important efforts to fight corruption. Countries have implemented wide-reaching awareness campaigns to increase knowledge of corruption and its damaging effects. Technical assistance programs are underway, and government-wide Action Plans have been put in place to guide reform efforts.

Additionally, 22 of the Initiative's 28 members have signed, ratified, or acceded to the United Nations Convention against Corruption. This shows a broad, sincere commitment to fighting corruption, and an acknowledgment of the importance of international standards and collective action.

Your attendance here shows the reach and impact of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, which will celebrate its 10th anniversary in 2009. Over the past decade, members of the Initiative have

worked hard to fight corruption in the region, and the Initiative has supported you through policy dialogue and analysis, and capacity building.

The Action Plan, adopted in 2001, has provided a roadmap to guide and support members' country-level reform efforts. It sets goals and standards, adapted to the regional context, that encourage the establishment of effective and transparent systems, and promote integrity. It has led to individual and collective efforts to reduce economic, political, and social corruption.

This demonstrates how effectively the Initiative creates an environment of trust among its members, and encourages progress. The thematic reviews on priority issues in the region are a key output. The 2007 review on mutual legal assistance, extradition, and recovery of proceeds of corruption is a particular success story. This helpful publication has been widely distributed within the region and beyond. Officials in many countries and organizations use it to inform and facilitate their daily work.

Some of you may ask why the OECD, with its emphasis on helping governments foster prosperity and fight poverty through economic growth and financial stability, is involved in fighting corruption, and how it came to be a partner in the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. The OECD recognizes that corruption goes to the core of sustainable economic development. It can derail development plans. It aggravates the potential for infrastructure projects to go wrong with tragic consequences, when contracts obtained through bribery result in the construction of bridges and dams that collapse, or factories that poison lakes and rivers. It diverts public funds from health care, the construction of hospitals and schools, and the purchase of children's schoolbooks.

The OECD believes that to successfully combat corruption, a holistic multi-dimensional approach such as set out in the ADB/OECD Anti-Corruption Initiative's Action Plan—with education to promote citizens' expectations of clean government and civil servants' pride in being honest; decent public sector salaries, regulatory reform to reduce opportunities for corruption; civil society activism to insist on clean government, and more—is necessary. It also means having an effective legal and law enforcement regime to prevent, detect, and punish corrupt activities.

The Initiative has chosen as the theme for the 6th Regional Anti-Corruption Conference the supply side of bribery in business transactions. An effective fight against bribery in business transactions requires equal emphasis on the supply of bribes by domestic and foreign companies and the demand for bribes from public officials.

Fighting bribery in business transactions also has significant importance for the region. As many economies are quickly expanding and becoming major forces in international business, they have a strong interest in addressing corruption that threatens fair competition and undermines the level playing field for business.

This conference will provide participants with valuable opportunities to exchange experiences on reducing the supply of bribes in business transactions. It will do this by exploring a wide variety of issues such as criminalization, managing conflicts of interest in the public and private sectors, internal company controls, corruption between private sector agents, and sustainable development.

Combating the supply of bribes also happens to be the focus of the OECD Anti-Bribery Convention. This is because the 30 OECD member countries and the 7 non-member countries that are State Parties to the Convention felt that they had a unique opportunity to deter companies from their countries from bribing foreign public officials in international business transactions.

Since they have been monitoring implementation of the Convention for almost 10 years, they have learned many lessons along the way. Their evaluation reports document the challenges they have faced and recommend steps for overcoming these challenges.

The countries that belong to the Convention have also analyzed the trends and patterns in the challenges that they have faced. This has enabled them to mutually support each other in finding solutions. It is in this same spirit that the countries that joined the OECD Anti-Bribery Convention are keen to share experiences with members of the Initiative facing similar challenges in implementing international standards, such as the United Nations Convention against Corruption (UNCAC). For this reason, I am pleased that three parties to the OECD Anti-Bribery Convention—Australia, Japan, and the Republic of Korea—are also members of the Initiative.

Although its focus is broad, the UNCAC includes important provisions to combat the supply of bribes. Like the OECD Anti-Bribery Convention, it requires signatories to establish an offense of bribing a foreign public official. It also requires signatories to establish an offense of bribing a domestic public official.

The OECD also shares the UNCAC's focus on corruption and sustainable development. The OECD Development Assistance Committee's Network on Governance works with donor countries to incorporate anti-corruption efforts into development activities. The OECD introduced anti-corruption provisions in bilateral development aid in 1996, and the DAC GOVNET strengthened support

for country-led anti-corruption strategies with the publication of the Principles for Donor Action in 2003. In 2007, DAC Ministers agreed on a Collective Action Agenda for Improving Governance to Fight Corruption which proposes a harmonized approach among donors, and recognizes the role that both aid donors and recipients can play to fight corruption.¹

Public sector integrity is also a major area of anti-corruption work at the OECD. A 2008 Recommendation of the OECD Council on Enhancing Integrity in Public Procurement² aims to help governments review and prevent corruption throughout the entire public procurement cycle. The Recommendation provides principles for enhancing integrity in public procurement drawn from good practices in OECD and non-OECD countries.

Another area of anti-corruption work at the OECD concerns the use of tax measures to prevent and detect bribery. A 1996 Recommendation of the OECD Council provides for the non-deductibility of bribes,³ which is an important disincentive for corruption in business transactions. It also provides tax officials with a basis for detecting and reporting bribes. The OECD Bribery Awareness Handbook for Tax Examiners⁴ helps tax examiners detect and identify bribes. It is available in several languages, including Chinese, Japanese, and Korean.

This conference represents an important opportunity for concerned individuals, countries, organizations, companies, and other key stakeholders to come together to delve into the most important anti-corruption issues of today.

I am pleased that you have brought your energy, ideas, and commitment to the table today. I believe that the next 2 days will bring many fruitful exchanges, innovative ideas, and productive partnerships.

In closing, I would like to share with you my wish that you will leave this conference with renewed faith in the power of your collective action as members of this Initiative to make a real impact on corruption in the region. I congratulate you on nearing the 10th anniversary of this Initiative, and remind you to stay positive and to be proud of every achievement that you have made and will continue to make as you face the challenges of fighting the terrible scourge of corruption.

NOTES

¹ www.oecd.org/dataoecd/2/42/39618679.pdf

² www.oecd.org/dataoecd/62/24/41549036.pdf

³ www.oecd.org/document/46/0,3343,en_2649_34551_2048174_1_1_1_1,00.html

⁴ www.oecd.org/dataoecd/20/20/37131825.pdf

Closing Remarks

Peter Ho, Head, Civil Service, and Permanent Secretary for Foreign Affairs, Singapore

This is the 6th Regional Anti-Corruption Conference for Asia and the Pacific organized by the ADB/OECD Anti-Corruption Initiative. I am quite struck by the diversity of participation in the conference. We have participants not only from the anti-corruption agencies, but also from other government departments. These include audit and procurement agencies, regulatory agencies, Ombudsman's office, and so on. International organizations, civil society (including Transparency International), and private sector organizations are also represented.

Getting different government agencies to set aside turf issues and work together is a big challenge. But it is a vital part of good governance—even if it is easier said than done. As the world becomes more complex, policy issues and challenges become more interconnected. But the traditional allocation of responsibilities of government to ministries and agencies creates a silo effect. When issues span more than one agency, timely and effective responses are difficult to achieve. What is required is that government officials cooperate with officials from other agencies in solving problems from a whole-of-government viewpoint. This includes fighting corruption. For instance, the officers from anti-corruption agencies proactively offer ideas and insights they have gathered from their work to help government agencies strengthen their processes and systems to prevent corruption.

Indeed, this need to adopt a comprehensive appreciation of issues is not only relevant to government. In the private sector, civil society, and the international organizations, many issues cut across the whole of the organization. Regardless of structure, staff have to be aware of cross-cutting issues that are strategic to their organization. For instance, the people doing finance or marketing must also know how the other parts of the organization work to be effective. Anti-corruption is something that should be vital to any organization, so it is important that key actors understand not just the “why”, but also the “how” of dealing with this problem.

The theme of this conference—Fighting Corruption in Asia and the Pacific: Strategies for Business, Government, and Civil Society—is a reflection of the point that different parties are required to work together in the fight against corruption.

In recent months, the subject of regulation has often been raised. In the eyes of many, the financial crisis was caused largely by inadequate regulation of the financial sector. In the context of anti-corruption, what this means is that regulators and corporations have to ensure that the right processes are put in place, coupled with an appropriate degree of regulation, so that the opportunities for corruption are reduced in the first place.

The role of government is to set out a broad anti-corruption framework through legislation, administrative policies, and regulations. Government must also ensure that there is a strong enforcement agency capable of dealing with those who commit corruption. But policies should neither be intrusive nor impede the free market and the entrepreneurial spirit that are vital for the modern day economy. The private sector also has a role to play. Indeed, it is the responsibility of the private sector and individual entities to put in place internal systems of governance in their organizations, because they know best how they operate. It is only through an integrated approach involving the public and private sectors that a successful anti-corruption framework can be implemented, encompassing both preventive and enforcement measures.

During the conference, speakers touched on the “supply side” of the corruption problem—using the term to refer to those companies and persons who pay bribes to public officials. The “supply side” cannot be neglected if effective corruption control is to be achieved. Of course, this is not meant to imply that the entire private sector is the culprit, on account of the corrupt acts of some of its elements. In fact, the private sector is the vital engine of growth in all economies. Nonetheless, tough action must be taken against the “supply side” in tandem with the traditional tough action against the “demand side”—those who receive bribes. This approach has been embraced by Singapore since the beginning and is increasingly adopted by many countries around the region, as was evident from the discussions at this conference.

In the course of the workshops, we have also heard from regulators, international organizations and private-sector entities about possible approaches to deal with corruption. What has emerged is how similar these approaches are to the anti-corruption measures adopted by governments. Firstly, just as governments need to have political will to deal with corruption, there must be willingness by private-sector organizations to deal with the risks of corruption. Each organization must develop its internal anti-corruption policies. Next, organizations should look at implementation issues, such as training, for its anti-corruption measures. A proper system of internal audit and control, as well as a reporting mechanism, must be established. Finally, follow-up measures such as investigation and enforcement against the corrupt activity or breach of procedure must be carried through.

The success of these measures turns on the willingness and commitment of the concerned organization. As pointed out by many of the speakers, for anti-corruption agencies to successfully deal with private sector corruption, a culture of intolerance of corruption has to be developed in the larger community. The private sector must in turn commit to work with the government to fight corruption. This is why knowledge sharing through conferences such as this is so important—it allows different sectors to learn from each other and to further cooperation toward the common objective of tackling corruption.

I hope all of you had excellent opportunities to learn from the workshops, as well as opportunities to socialize and to network. If you are not coming on official business, I do hope that you will still come again to Singapore for holidays. In fact, next year, Singapore will be chairing APEC and will host the APEC Anti-Corruption Task Force, where we will further explore the issue of public-private sector governance through a workshop. We welcome your participation in the workshop.

To our overseas participants and speakers, I wish all of you a safe journey home.

Concluding Remarks

Patrick Moulette, Head, Anti-Corruption Division, OECD

On behalf of the OECD, I would like to express our gratitude to the Singaporean government for hosting this very well-organized and productive event.

I also thank the ADB for our ongoing, fruitful relationship that supports the fight against corruption in Asia and the Pacific. This meeting has shown how much can be accomplished when our organizations work together—with our partners and member economies—to identify key challenges and seek solutions.

Of course, I am grateful to all the participants for bringing your energy, ideas and commitment to this important regional meeting. Your work in your home countries, your dedication to collective action, and your support of your neighbors' reform efforts are resulting positive change that can be felt across the region and around the world.

Finally, I thank all our partner and donor organizations. I hope that the conversations you have heard and actions you have seen over these past two days have shown that your contributions and support are making a real difference in fighting corruption in Asia and the Pacific.

This meeting has been a great opportunity for experts and key officials “on the ground” in the fight against corruption to come together and discuss the key issues in this important area. We have seen time and again how important a regional perspective is in considering these issues.

The workshop on international criminal law standards reinforced the importance of a solid legal framework—based on international standards—for the investigation and prosecution of foreign bribery offenses. Without this strong foundation, these efforts cannot succeed.

However, effective implementation is of paramount importance as well. The OECD Working Group on Bribery's monitoring mechanism shows how peer pressure and mutual trust can push countries forward toward meaningful change.

Finally, this conference was a demonstration of how international and regional initiatives can bring key players together for discussions and actions that

truly move the fight against corruption forward. I thank you all for being part of the fight.

Chapter 1

Combating corruption in business transactions—a priority for governments, business, and civil society

Corruption increases the cost of doing business. In addition to its social costs, it has an adverse impact on a country's business and investment climate. The need to fight corruption is universally acknowledged, and many governments have put comprehensive legal systems in place to do so. However, enforcement remains inadequate, with some notable exceptions. This could soon change, as governments in Asia and the Pacific increasingly understand the importance of fighting corruption to foster economic prosperity.

Government efforts to curb bribery to improve the business climate

The economic case for fighting bribery and corruption is a strong driver behind efforts to eradicate bribery from business—for example, in Singapore and P.R. China.

Singaporean law criminalizes both bribery of public officials and bribery among private sector entities. In addition to enforcing these criminal law provisions, Singapore engages in a comprehensive set of measures to prevent corruption, showing companies the risk of engaging in bribery. For example, the government is open to receiving allegations of individual bribery cases from the business sector, and to hearing businesses' views on how red tape adds to corruption risks. Singapore's preventive efforts put emphasis on leaders in business and on auditors.

P.R. China has engaged in a vast campaign against bribery in business. The campaign was launched in 2006 in response to a perceived increase in

corruption in some industries. As in Singapore, this effort is driven by the negative effects that bribery and corruption can have on social stability and economic prosperity. The government of P.R. China understands that the transition of its economic system to a market economy can bring corruption risks. Therefore, system reforms are a key component of its campaign against business bribery. Future parts of the campaign will prioritize preventive measures, and investigations of cases that have a particularly damaging effect on social stability and the business climate.

International instruments support and drive anti-bribery efforts

An increasing number of countries worldwide address transnational bribery, thus confirming the detrimental effects of this phenomenon. This issue is at the core of the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions. The Convention requires its signatories to criminalize the bribery of foreign public officials by companies operating in or from their territories. By the end of 2008, 38 countries had become parties to this international instrument, which has set the global standards on this issue since the Convention's adoption in 1997. A rigorous peer review monitoring mechanism continually assesses how countries are upholding their commitment to fight bribery in international business. The review mechanism also provides for international exchange of good practices.

Since its entry into force in 2005, the UN Convention against Corruption (UNCAC) has added significant momentum to the global anti-corruption movement. It complements requirements under the OECD Anti-Bribery Convention, further supporting intergovernmental efforts to fight bribery in business. The UNCAC is likewise instrumental in fostering a business climate that discourages corruption. Its wide-ranging provisions require states to: implement effective criminal laws that deter bribery; establish preventive mechanisms against corruption; and ensure that the financial sector is not vulnerable to laundering and transfer of illicit assets derived from corruption.

The effectiveness of the UNCAC, however, will depend on its thorough implementation. An effective review mechanism must be put in place, and many countries will require technical assistance to meet the Convention's standards.

Business and civil society are allies in the fight against bribery

The economic case for fighting corruption appeals not only to governments but also to individual companies and the business sector overall. Companies and their representatives can be tempted to pay bribes to retain contracts or to gain other short-term advantages in their business. However, they increasingly realize that they can be victimized as targets of bribe solicitation, or when they lose contracts to corrupt competitors. This awareness has led companies to take action individually and collectively to reduce corruption in business transactions.

Many companies have understood that ethics and compliance are essential preconditions for their long-term interests and sustainability of their operations. To ensure that companies that adopt strict anti-corruption policies do not face disadvantages, the business sector has created alliances that help companies resist engaging in bribery. These include the ICC Rules of Conduct, the TI Business Principles for Countering Bribery, the World Economic Forum Partnering Against Corruption Initiative, and the UN Global Compact. The ICC has also issued assistance and guidance for companies aiming to bolster their frameworks to reduce their exposure to corruption risks, guidelines for whistleblower protection, and a comprehensive corporate practices manual are among these products.

Civil society has significantly contributed to mobilizing governments to fight bribery in business, and civil society organizations facilitated and advocated for anti-corruption efforts within the business sector. Transparency International (TI), for example, has played an important role in the fight against transnational bribery in business since 1993.

Although significant advances were achieved during the past decade, TI's annual surveys suggest that the business sector may still be relatively corrupt compared to other parts of society, and that companies seem to be more inclined to bribe in transnational business operations than in their home markets. Civil society thus continues to pressure businesses to improve their compliance mechanisms, and plays an active role in catalyzing the formulation of business standards against bribery and corruption.

The Business Case for Fighting Corruption

John Bray
Director, Analysis, Control Risks

A review of the last 10 to 15 years shows that there is much to celebrate in the international campaign against corruption. Our Singaporean hosts, the Corrupt Practices Investigation Bureau (CPIB), have set a high standard for national anti-corruption agencies. At an international level, the Organisation for Economic Co-operation and Development (OECD) has made a major contribution through its follow up on the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention). Since 1999, the Asian Development Bank (ADB) and the OECD have successfully promoted the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. At a global level, we now have the 2003 United Nations Convention against Corruption (UNCAC), which includes measures against both public and private sector corruption.

However, despite these advances, the hardest part may still lie ahead. The intellectual battle has been won. At a policy level, no one now seriously contests the importance of combating corruption. In most countries, well-drafted laws are now in place, and the remaining gaps are being filled. We have the basis of an international framework. The challenge now is *implementation*: how can we apply these new laws and frameworks so that they really make a difference in the lives of ordinary people?

Successful implementation is not the task of government agencies alone. It also demands the active participation of business and civil society—and here it is hard to avoid a strong sense of “disconnect”. Government officials talk to each other at international conferences. At the same time, there are now a number of commercial conferences for business people concerned with the fight against corruption and fraud. However, the two worlds rarely come together. If the anti-corruption agenda is to be truly meaningful, it is essential that they do so. The purpose of this paper is to point the way to a closer mutual understanding, and to help bridge the public–private sector divide.

Business requires an “enabling environment”

From a responsible business perspective, the overall message is very clear: the legal advances made in the last 10 years are very welcome, but they are not enough.

For companies, the most important role of government is to provide an equitable “enabling environment” which allows the private sector to flourish. A key ingredient of this enabling environment is a well-designed legal system, which works in practice as well as theory, thus helping protect honest companies from corrupt competitors. However, all too often, domestic anti-corruption laws are enforced inconsistently, or not at all. Meanwhile, despite the OECD Anti-Bribery Convention, many leading trading nations—with the notable exceptions of the US and, increasingly, Germany and France—are still slow to enforce their extra-territorial anti-bribery laws.¹

These shortcomings have a direct impact on business. In *International Business Attitudes to Corruption*,² a survey of 350 international companies conducted by Control Risks and Simmons & Simmons in 2006, 43% of respondents reported that they had failed to win business in the last 5 years because a competitor had paid a bribe, and one-third had lost business to bribery in the previous year. Smaller local companies lose out as much as, or more than, the major international firms. In its *World Development Report 2005*,³ the World Bank argued that smaller companies suffer even more than larger ones from investment climate constraints such as lack of confidence that courts will uphold property rights.

We know the reason for these failures: lack of political will. All too often, politicians have other priorities—and this is true both in industrialized and in developing countries. Sometimes this is simply the result of complacency. In other cases, politicians believe that their careers are more likely to be advanced through various forms of political patronage, a practice which itself often borders on corruption, and they do not wish to damage the interests of their supporters. In both cases, the result is that law enforcement and anti-corruption agencies do not get the resources that they need to do their jobs effectively.

Promote the economic case for anti-corruption initiatives

Anti-corruption specialists are not—and should not be—politicians, but they must be able to make the case for the budgets they require to do their work properly. To overcome the lack of political will, there needs to be more emphasis on the economic case for anti-corruption initiatives. A major part of the economic argument relates to the need to provide a secure investment climate.

In the 2006 Control Risks survey, more than 35% of respondents reported that they had been deterred from an otherwise attractive investment because of the host country's reputation for corruption. Countries with poor governance standards are less likely to be able to attract the high-quality companies that they need to advance their economic development.

Similarly, the major trading nations—like the individual companies based in their territories—need to be sensitive to “brand reputation”. If companies from particular jurisdictions become known for a complacent attitude to bribery in foreign markets, they may be able to win short-term advantages. However, in the longer term, both their reputations and the wider national interest will suffer.

Singapore understands the economic and reputational case very well; its high standards of governance and low levels of corruption are essential ingredients that enhance the country's appeal to the many international companies who operate in its territory. Hong Kong, China likewise understands the business case, and acts on it. Its Independent Commission Against Corruption (ICAC) is, per head of population, one of the best-resourced agencies in the world.

However, in many other parts of Asia and the Pacific, continuing governance failures suggest that governments have yet to embrace the economic case for combating corruption wholeheartedly. The task of ensuring that they do so falls to an alliance of different interests: anti-corruption specialists, business associations, individual companies and—ultimately—individual citizens.

There is an economic case for tackling corruption. Ultimately, there is a political one as well and, without being partisan in a political party sense, we need not be shy of making it. Governments that fail to protect their citizens from corruption are not fulfilling their proper role. Continuing failure will bring their legitimacy into question.

Promote the business case: ethics and compliance “add value”

The wider economic arguments are important but—particularly when addressing commercial audiences—it is important to emphasize that the business case for combating corruption applies to individual companies as well as national economies.

Responsible business leaders take changes in the law very seriously, and this is a key part of the “business case”. However, it is not the only one. Similarly, personal values also are an important, indeed vital, driver for high standards of

ethics—but still far from being the only one. As much as anything, the business anti-corruption case rests on the need for long-term *sustainability*.

Companies that pay bribes may be able to make short-term gains, but bribery is not a sustainable business model. First, by paying bribes, companies immediately incur demands for more, like “throwing meat to dogs”. Secondly, if they do not secure the benefit they supposedly have paid for, they are in no position to complain: they certainly have no recourse in the courts to enforce illicit contracts. Thirdly, times change, the officials and politicians who accept bribes move on or die, and their successors may or may not be susceptible to the same blandishments.

In late 2008, times are certainly changing. In periods of plenty, fraud and corruption are more likely to pass unnoticed. By contrast, malpractice is more likely to be detected during a recession when every dollar counts. Companies cannot survive unless they retain the confidence of their shareholders and customers, and they are in a better position to do so if they can point to high standards of ethics and legal compliance.

The links among strategic vision, internal governance, and commercial value are now better understood in the financial markets where it has become common to refer to “environmental, social, governance” (ESG) factors when assessing companies’ worth.⁴ ESG includes the extent to which companies have effective ethics and compliance systems. The business case for taking anti-corruption initiatives is: in contemporary commercial parlance, they add value.

Be realistic about business problems

The overall business case is clear: high standards of ethics and legal compliance make for greater commercial sustainability. Nevertheless, it is important to be realistic about the challenges that individual companies face when applying these standards, particularly when their competitors are dancing to a different tune.

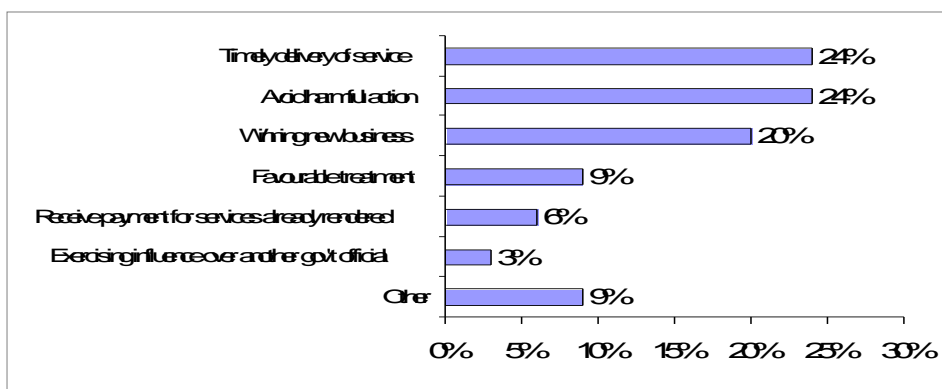
It has been common to refer to companies as representing the “supply side” of corruption, whereas corrupt officials represent “demand”. Another pair of contrasting terms refers to “active” corruption where the briber takes the initiative, and “passive” corruption where the recipient makes the demand. And still another way of expressing the same phenomenon is to think of “seduction” where a company seeks to corrupt an official in order to secure a contract, and “extortion” where the company faces a demand for a payment in order to avoid some kind of penalty. An example of extortion would be a case where a

fire safety inspector threatens to close down a factory for spurious safety reasons unless he or she receives a bribe.

The “active” or “seduction” variety of corruption is a reality, and governments—and their citizens—are fully entitled to do all that they can to crack down on the companies concerned. Nevertheless, in practice it is often hard to discern which side is “active” and which side is “passive”. Business leaders may be reluctant to take the anti-corruption agenda seriously, unless there is a full appreciation of the kinds of problem that they face.

Recent research by Trace International, a US-based non-profit membership organization focusing on corruption, offers some interesting pointers in this regard. In 2007, Trace set up an internet Bribeline⁵ offering companies the opportunity to make anonymous reports of cases where they had faced demands for bribes. The fact that the reports are anonymous means that they cannot be used as a basis for prosecution. Nevertheless, Trace believes that it is useful to know if the same problem keeps recurring in a particular jurisdiction. Even if the evidence is imperfect, it serves as an indicator of the need for action.

In Bribeline's first year, there were 148 reports of bribery demands in P.R. China, and of these, 20% were concerned with companies' attempts to win new business⁶. However, 24% of the demands were backed by a threat to inflict some kind of harmful action: the hypothetical case of the fire safety inspector threatening to close down a factory would be an example. In another 24% of the cases reported, officials were seeking extra payment for the timely delivery of some service, such as the issuing of a vital official document.

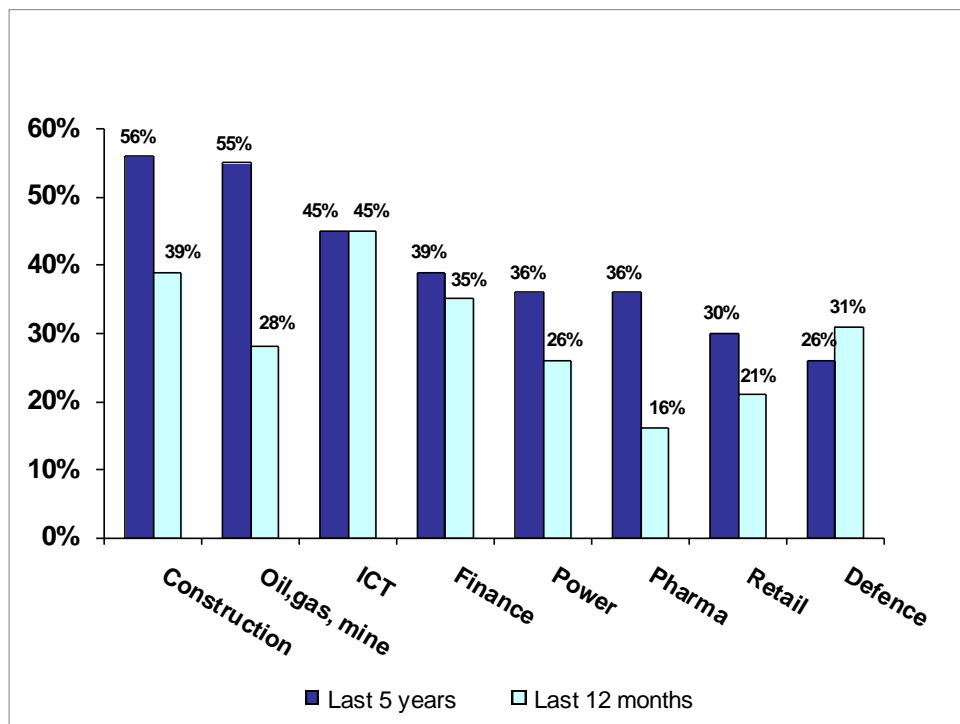


Nature of bribery demands reported by Trace International Bribeline, 2007-2008.
Source: Trace International Bribeline 2008—sample of 148 cases in P.R. China.

To their credit, the Chinese authorities are working hard to crack down on all kinds of business corruption. In order to win the support of their various business communities, governments need to show understanding of the many cases where companies see themselves as victims rather than instigators of corruption-related crime — and to do something about them.

Specific challenges in specific sectors

A further aspect of the need to move beyond generalities is the importance of understanding the different kinds of problems faced by different commercial sectors. The *Control Risks International Business Attitudes to Corruption* survey showed that companies in the construction sector were most likely to believe that they had lost business to a corrupt competitor, followed by the oil, gas, and mining sectors. Two main factors are at play: in both sectors the high value of projects—often running into the hundreds of millions or billions of dollars—increases the temptations of bribery; and both involve negotiations with government officials who have extensive discretionary power and may be susceptible to bribery.



Source: *International Business Attitudes to Corruption*. Control Risks and Simmons & Simmons, 2006.

Other commercial sectors face different kinds of problems:

- Companies in the information and communications technology (ICT) sector, such as those dealing with mobile phones, may come under pressure to pay bribes when applying for licenses but can operate relatively freely once the license has been granted.
- International companies working in the finance sector are tightly regulated and therefore less likely to operate in high-risk regions, not least because of the risk of being caught up in money-laundering scams.
- The integrity issues faced by pharmaceuticals are different: license applications may be difficult. At the same time, pharmaceutical companies have often been accused of offering various forms of bribes to doctors in order to market their products.
- Retail companies are perhaps more likely to be caught in private-to-private corruption than private-to-public corruption.
- Finally, the defense sector is in a class of its own. The large amounts of money involved increase the temptations for bribery, and the fact that national security considerations come into play makes for an intrinsic lack of transparency.

Business anti-corruption initiatives

Many of the most exciting anti-corruption initiatives involve business associations operating at the international, national, and sectoral levels.

At the international level, Transparency International has developed a set of *Business Principles for Countering Bribery*,⁷ along with guidelines for how to apply them. The International Chamber of Commerce has recently revised and updated its *ICC Rules of Conduct and Recommendations to Combat Extortion and Bribery*.⁸ The World Economic Forum has its *Partnering Against Corruption Initiative*,⁹ The UN Global Compact has adopted transparency as its “Tenth Principle”.¹⁰ All four organizations recently published a joint statement on *The Business Case against Corruption*, which is available on their respective websites.

Other initiatives are associated with specific commercial sectors. For example, the International Federation of Consulting Engineers (FIDIC), which is based in Lausanne, has developed a set of guidelines for a Business Integrity Management System (BIMS).¹¹ Similarly, in the UK, the Anti-Corruption Forum (ACF) is an alliance of companies and membership organizations concerned

with civil engineering and construction, which develops workshops, conferences, and training materials on how to tackle corruption.¹² The strength of such organizations lies in the fact that their members share a common professional background and have a realistic technical appreciation of the problems that they face.

Conclusion: how can government agencies advance the business anti-corruption agenda?

Ten or fifteen years ago, it was hard to enter into a serious conversation with business leaders about corruption. This is much less true today. Corruption remains a sensitive topic, but among the various business communities in Asia and the Pacific and beyond, there is a much greater realization of the seriousness of the problem and the need to tackle it.

So how can governments promote the business anti-corruption agenda? Three immediate opportunities spring to mind:

- The first task of government is the same as it has always been: to establish an equitable legal and regulatory framework to combat corruption, and to apply it fairly and indiscriminately.
- Second, national and multinational agencies must set a good example with their own practices. The ADB's internal integrity and external procurement programs are an important set of role models.
- Third, government agencies can contribute to awareness raising in their respective business communities, and may be able to provide technical advice. For example, Hong Kong, China's ICAC rightly places a strong emphasis on education and corruption prevention, as well as investigation and prosecution.

Governments cannot and should not bear the entire burden of promoting anti-corruption standards in the private sector. Business associations led by people with firsthand private sector experience typically are better placed to understand the problems faced by their members, to educate them and to devise solutions. Government agencies can endorse and support such initiatives, but they should not expect to run them.

To advance the anti-corruption agenda, we need to talk—but not about generalities. Business people look for concrete solutions to specific problems. Successful business people are promoted for their skill in problem solving. To the extent that companies provide the “supply side” of corruption, they are part of the problem. If business skills are harnessed properly, companies can be—and must be—part of the solution.

NOTES

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- ¹² www.anticorruptionforum.org

Efforts of the Business Community to Fight Corruption

David Lyman, Member, ICC Anti-Corruption Commission; Board Member, ICC Thailand Chapter; and Chairman and Chief Values Officer, Tilleke & Gibbins, Bangkok, Thailand

The first time I entered into Anti-Corruption endeavours was in 1977, when the Asia-Pacific Council of American Chambers of Commerce (APCAC) appointed me to develop arguments against the draft Foreign Corrupt Practices Act (FCPA) that the US Congress had developed in reaction to several major corruption scandals involving bribes paid by American corporations to non-American public officials outside the United States. APCAC chose me because I was an American lawyer with a legal practice in Bangkok and was a past president of the American Chamber of Commerce Thailand.

I was soon to realize that the FCPA, with some tweaking a year or so later, was actually a good law. It was the first significant law against bribery of foreign public officials adopted by a major industrialized nation. Over the years, it spawned an avalanche of conventions, legislations, self-governing rules and codes of conduct guiding the conduct of business in corrupt environments. It was then my privilege to have attended in Manila in 1999 the first gathering of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. So it is most heartening indeed to see 9 years later that this Initiative is thriving.

Perceptions on corruption change

A few years ago, a friend and colleague of mine when asked about integrity, ethics, accountability, and corruption responded, "I wouldn't know. I've lived in Thailand for the past 40 years".

Well, the good news in Thailand is that Thailand has begun its climb upwards on TI's Perception of Corruption Index; this progress is due to some recent constitutional changes, which have established several independent anti-corruption agencies, and to the expansion of the court system to address and deal specifically with corruption and abuse of power by government officials. Corruption is still a most serious problem in the Land of Smiles—up to 60% of the costs of some procurement projects are estimated to have been diverted by

corrupt persons; today, corruption of policy is considered a more pressing problem.

While I doubt that Thailand can achieve the corruption-free status of Singapore in the near term, attitudes and the exposure of corruption in the Thai public sector change. One driver behind this change is the private sector that increasingly considers that corruption—be it bribery or extortion—can no longer be tolerated as inevitable. The United States FCPA (1977), the OECD Anti-Bribery Convention (1999), the UN Convention against Corruption (UNCAC, 2003) and a number of regional conventions have largely contributed to this change in perception.

Private sector efforts to cope with corruption

The International Chamber of Commerce (ICC), headquartered in Paris, France, pioneered and spearheaded many of the private sector's activities to cope with corruption matters through self-regulation.¹

Background

Today, the ICC is the global voice of virtually all sectors of international business. Founded in 1919, and enjoying consultative status with the UN since 1945, the ICC operates through chapters in 84 countries. It espouses self-regulation of business through a series of voluntary self-imposed rules, standards, and codes. The ICC supports the ICC International Court of Arbitration as well as a number of bureaus, councils, and some 16 Commissions of which Anti-Corruption is one.

The Anti-Corruption Commission started in 1977 when it issued its first report and its Rules of Conduct and Recommendations—Combating Extortion and Bribery.² The UN failed to take up the ICC's recommendation for an anti-corruption convention, and—in 1997, 20 years after the ICC's Rules of Conduct were issued—OECD eventually stepped in and adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

ICC Rules

Since 1977, the ICC Rules have been updated several times. Addressed to the private sector, civil society, and enterprises, they are simple in concept and consist of only nine Articles that cover

- prohibition of bribery and extortion (both public–private and private-to-private)

- agents and other intermediaries
- joint ventures and outsourcing agreements
- political and charitable contributions and sponsorships
- gifts, hospitality, and expenses
- facilitation payments
- corporate policies
- financial recording and auditing
- responsibilities

Fighting Corruption handbook

The Commission continued its efforts and published, in 1999, a handbook for managers entitled *Fighting Corruption—A Corporate Practices Manual*. The manual provides detailed practical guidance for compliance with the ICC Rules of Conduct and the OECD Convention. It was substantially revised and updated in 2003, and the newest and again expanded edition is due out in December 2008. For whatever it may be worth, I authored the chapters on Money Laundering, but deliberately omitted the “how-to” instructions.

Whistle-blowing

The Commission remains busy. In July of this year, 2008, the Commission issued its Guidelines on Whistle Blowing. Such Guidelines are a first by any world business organization. These Guidelines seek to help companies establish and implement internal whistle-blowing programs to promote disclosure of questionable or illegal corporate conduct, and concurrently to protect whistle-blowers from retribution. Experience demonstrates that absent insider disclosures, many instances of fraud and malfeasance would go undetected, often causing substantial damage and losses.

ICC/WEF/TI/UN Global Compact—the Business Case against Corruption

Four principal multi-industry organizations focus on anti-corruption: the ICC since 1977; the World Economic Forum (WEF) with its PACI initiative created in 2004; Transparency International (TI), a civil society organization dedicated to fighting corruption, founded in 1993 by several former World Bank executives; and the UN Global Compact with its 10th Principle on Corruption adopted in 2004. Their first joint meeting was in April 2007 at the ICC Headquarters in Paris. At that meeting, these four sister organizations agreed to pool their ideas and principles to issue a joint publication entitled *Clean Business is Good Business*—

The Business Case against Corruption.³ The compilation of this work was released on 15 July 2008.

RESIST project

A second joint project by these anti-corruption affinity groups—which represent the vast bulk of the global private sector—is now under way. Called “RESIST”—for “Resisting Extortion and Solicitation in International Transactions” and still in draft form, this Initiative will create a training tool that provides practical guidance on how to respond to an inappropriate demand by a client, business partner, or public authority. It is designed to help companies reduce their exposure to corruption and find ways to react to solicitations in a legally and ethically acceptable manner, which, of course, makes good business sense. Real-life scenarios are presented in two main categories—how to prevent and how to react to (i) solicitations in the context of the procurement process and (ii) solicitations in the context of the implementation process and daily operations. The RESIST tool should be ready for publication in 2009.

UNCAC and OECD Conventions

During this conference, there will be numerous discussions on these monumental anti-corruption agreements and their local implementation by individual nations. Therefore I will not dwell on them other than to say that they are wholeheartedly supported and promoted by the ICC and its allies in the war on corruption. The key to the success of these conventions is geographic coverage. The broader their adoption and implementation, the more effective they become.

Closing

Let me leave you with three ideas:

First, read the book *ILLICIT—How Smugglers, Traffickers and Copycats are Hijacking the Global Economy* by my old friend, Moises Naim, editor of the *Foreign Policy* journal. It will scare the hell out of you, and it should. It is about corruption and a trade war we are not winning, yet.

Second, my title in my law firm is “Chairman and Chief Values Officer” abbreviated as “CVO”. Why Chief Values Officer? We witness one corporate scandal after another; we witness self-serving actions and attitudes supporting the greed factor of far too many managers and corporate officers who should know better; their disregard of moral and ethical values for the sake of maximizing profit at almost any price requires someone senior in an organization

to keep it on the straight and narrow to do what is right. That is my job as CVO. The full definition and/or job description is set forth in Item No. 35 of my third idea for you.

Third, the CD-ROM I previously mentioned containing all of the anti-corruption materials I have covered this morning and many more, all assembled in one place. Copies have been prepared for you and are available after this session.

Conclusion

Corruption has been with us since the days of Pharaoh in ancient Egypt, and it is not going to go away. None of us will be out of work any time soon. But globally organized anti-corruption endeavours in earnest are relatively new phenomena. These efforts will falter and probably fail without the unrelenting commitment and never ending cooperation of global, regional and local governments, and judiciaries, together with civil society and the world's private sector, all acting in concert. That is where you and I can make ourselves useful and our presence felt.

As a lawyer I cannot leave you without one piece of free legal advice which I actually learned during my days in the US Navy: "Don't let the bastards get you down."

NOTES

- ¹ A full overview of the activities of the ICC Anti-Corruption Commission, in depth analysis, and full texts of referenced conventions and guidelines is available at www.iccwbo.org.
- ² The 2005 revision of the document is available at www.unglobalcompact.org/docs/issues_doc/7.7/2005_ICC_Anti-Corruption_Rules_FINAL.pdf
- ³ www.unglobalcompact.org/docs/news_events/8.1/clean_business_is_good_business.pdf

Singapore's Experience in Fighting Bribery in Business

Soh Kee Hean, Director, Corrupt Practices Investigation Bureau, Singapore

The theme for this conference "Fighting Corruption in Asia and the Pacific: Strategies for Business, Government, and Civil Society" reminds us that corruption is a problem which must be tackled from multiple angles. I shall therefore touch on the nature of corruption, what it takes for anti-corruption enforcement, and what can be done to curb corruption in the private sector. I must say up-front that I have never been in business. I think some of my fellow panel members have not been in business, either. My perspectives are based on what Singapore's Corrupt Practices Investigation Bureau (CPIB) has seen, what people tell us, what I hear, and what we gather from cases that CPIB has handled.

Nature of corruption

Sometimes, we refer to the private sector as the "supply side" and public sector as the "demand side" of corruption. While this is generally accurate, it can overly generalize and lead us to overlook some facts of corruption. Private companies can and do bribe other private companies, so that private companies are on both the demand and supply side. We cannot ignore this conduct. In Singapore, unlike some countries, enforcement action can be taken where private companies bribe other companies or where private individuals bribe other private individuals. Consistent action within the private sector will keep these issues top-of-mind and set the standards expected from businesses.

In many instances, the demand and supply sides are represented by the public sector and private sector, respectively. In economic terms, demand and supply have a close relationship. Does demand drive supply or supply drive demand? Sometimes this is a chicken and egg issue—which came first? Was it the bribe demand that came first, leading to bribe supply? Or was it the supply that came first and enticed the demand? In reality, we have seen cases where the government official was the greedy one, who sticks his hand out to press businesses for bribes. Then again, we have seen cases where businesses actively offer bribes to entrap government officials to do their bidding. So who came first?

This is ripe for an academic argument—but it really does not matter. Both sides are equally devious and must be dealt with decisively.

Indeed, in Singapore law, both are equally culpable. We do often prosecute both parties, and on many occasions, both receive similar sentences by the court. If the law only criminalizes one side, you can never eradicate corruption. If you try to deal with one side first followed by the other in sequential order, you will also never be able to reduce corruption. Our experience in Singapore is that you need to deal with both sides simultaneously.

Enforcement issues

Prosecuting both parties, however, entails difficult challenges. If both sides are accused, who are your prosecution witnesses? We need to be thorough in investigation work—and amass all the evidence we can get by way of interviews with witnesses, interested parties, involved parties; gathering physical, documentary, and computer evidence; and following the money trail. Without comprehensive evidence, we will not be able to deal with both the supply and demand sides of the corruption equation.

We sometimes take it for granted that anti-corruption agencies will be effective. When we look at an agency fighting both demand and supply sides, we need to be sure that all aspects of each situation are clear. The agency must understand how the public sector operates and how the private sector does its business. The private sector is large and varied, with different industry types. Anti-corruption agencies need to be capable of learning quickly, and understanding situations in order to take effective action. No agency can be expert in understanding different fields of business, so it is incumbent on any agency to develop its officers' ability to learn fast and to establish links with experts in various business fields who can serve as resources when the need arises.

When there is a crime or corruption, companies must know where to lodge reports. We now receive feedback from various means, including business people providing reports from their homes via the internet. As long as we make it easy for people to lodge complaints, we can ensure there will be enforcement. Of course, there will be those who report to us when they perceived corruption that, in truth, did not exist. For example, in a government tender, the losing bidder may believe that he lost the competition due to corruption. The CPIB would investigate the matter, but would likely find no wrongdoing. If the complaint was malicious, then we can take action against the complaining party; at times, however, complaints are made when a company loses business and does not understand why.

Curbing corruption in the private sector

When we talk about the private sector being the supply side of the corruption equation, we need to recognize that the private sector is large, and only a minority of actors within the sector use corruption to further their aims. Collectively, the private sector can contribute toward anti-corruption efforts in the economy. Companies can highlight areas of government red tape which impede efficiency and provide excuses for corruption. There are examples of companies that walk away from business opportunities when bribes are demanded and report to the authorities.

In Singapore, there is a Pro Enterprise Panel. This is chaired by Head of the Civil Service, Mr. Peter Ho, and consists of members from industry and civil service. Since its formation in 2000, the Pro Enterprise Panel has reviewed 1,700 suggestions from businesses, and accepted 54% for implementation. This has helped businesses which encountered red tape to work out solutions with relevant government agencies. In turn, the agencies have attained a better understanding of business needs, thereby enhancing their regulatory functions. The panel also looks at industry proposals that do not fit neatly under any government agency. Its work contributes to increased efficiency and has the side benefit of reducing corruption opportunities.

Where the usual infrastructure may be inadequate, civil society also helps to highlight potential problem areas, suggest improvements and report corruption cases.

Good corporate governance reduces corruption tendencies. There is literature that links corporate governance to the level of corruption—I have seen research papers such as those by researchers of the Lee Kuan Yew School of Public Policy touching on this issue.

Corporate governance has to be more than just pronouncements in the media, written company policy statements, or codes of ethics and posted on company websites. Implementation is the key. Writing down statements is the easy part. If companies pay lip service rather than practice what they lay down, company policy statements are of no use. They will be susceptible to abuse, malpractice, crime, and corruption. So when gauging corporate governance, the criteria used must be based on actionable and observable behaviour and conduct, and not just on the written word.

Corporate governance also does not mean writing volumes of rules and rigidly applying them. There has to be a sufficient level of control, without stifling enterprise and the free market principles that are essential for the private sector to thrive. Singapore will see Integrated Resorts with Casinos open at the end of

2009. This involves a lot of money, and businesses operating in this context have to comply with regulations. There is, of course, potential for abuse and corruption. However, the answer is not to overregulate and control everything down to the last detail because that will make it hard for businesses to operate. The answer is establishing an appropriate level of regulation and good internal corporate governance.

The quality of governance depends greatly on the top: the Board of Directors. The Board can steer the company on a long and steady path of growth. The Board and the CEO have a balance of power so that both can play complementary roles. However, we have seen instances where there is a “superstar” CEO who can override the Board. We have seen Boards subservient to the CEO or to a strong individual, and therefore not capable of performing their role. After the collapse of Lehman Brothers, various commentaries and criticisms against Lehman’s Board have been voiced — how the majority of members were aged in their 60s and 70s and not able to understand the complex business and risk exposure of the company. If the Board does not understand the business, it will be difficult to ensure its sustained profitability and viability. However, these critics are often made in hindsight. Hindsight is useful but we need to be proactive. How do we set things right proactively?

Recently, the Singapore Institute of Directors has enhanced training for its members, who serve on various Boards. It is a good Initiative and recognizes the importance of training. Modern business can be complex and we cannot assume that all Directors will know their roles when they are appointed to a Board. They need some orientation to understand the business they are in and the contribution expected of them.

A guidebook for use by audit committees in Singapore was recently developed—it contains useful tips for audit committees to ensure they can discharge their responsibilities. Audit committees are important features of good corporate governance. They need to know their role and play their role well. They need to stop abuses. The Guidebook will be a useful resource. At the same time, I think companies should not wait until something is “broken” before making changes. The companies should have inbuilt mechanisms to constantly review their processes and controls to fine-tune and adjust according to changes going on around them. Audit committees can have such a proactive role as well.

I came across this saying: “The accomplice to the crime of corruption is frequently our own indifference.” Companies can bear in mind that if they do not focus on the issues of anti-corruption and abuse, if they do not proactively review what they do before problems crop up, they lay the seeds of future problems through their indifference.

Singapore knows low levels of corruption. Therefore, an attitude of indifference, as well as complacency, is a real danger. Public officials may think that there is no corruption, and companies may ignore the potential dangers. If we let our guard down, corruption will take root and it will be hard to eradicate. Therefore, both the public sector and the private sector need to constantly keep the issue of corruption in focus and do what it takes to keep it at bay.

Summing up

Singapore law allows us to take action against Singapore companies who commit corruption overseas. Recently I met an official from International Enterprise Singapore, the government agency spearheading the development of Singapore's external economic capacities. She said that Singapore businesses sometimes complain that they come across as "stupid and silly" when other foreign companies bribe their way to contracts overseas—and they do not do so because Singapore law forbids them from bribing foreign public officials. When our officers meet business leaders, we are also asked about this issue. On the surface, it appears as if Singapore companies will lose competitiveness because of our extra-territorial provision that forbids them from paying bribes or facilitation payments.

This is appealing logic, but bribery cannot sustain business in the long run. In the longer run, the company that spends its time bribing its way will not be as competitive as a company that focuses on developing its products and services and fine-tuning its competitive edge. Those who bribe will be found and dealt with. We have seen examples in various parts of the world where large corporations have kept slush funds to pay bribes—in a matter of time, they are found and the company and personnel are dealt with severely.

Singapore is associated with integrity. It has been an effort to build up this branding, and it has helped Singapore on a macroeconomic level. Some foreign businesses are prepared to employ Singaporeans in senior positions such as Chief Financial Officers, because Singaporeans are known for their integrity.

I think all companies around the world should adopt good governance practices and behave responsibly within their home country, where they comply with their domestic laws, and overseas—regardless of whether they are covered by an extraterritorial provision like companies incorporated in Singapore. That way, the private sector as a whole contributes to fighting corruption.

Anti-corruption agencies need to continue to sharpen their capabilities to fight corruption in both the public and private sectors. We cannot neglect either sector or the fight will be lost.

P.R. China's Campaign against Commercial Bribery

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P.R. China's efforts to curb commercial bribery: Concept, components, and achievements

As market competition increases, P.R. China is seeing rampant commercial bribery in some fields and industries. Commercial bribery poses a major threat to social stability and economic growth. Therefore, the Central Government launched a comprehensive anti-commercial bribery campaign in 2006. Special task forces were set up in 31 provinces and 39 central departments. The campaign has already seen results and the government is ready to push this work forward. The campaign involves three components: self-examination and self-correction; investigation; and reform and system innovation.

Self-examination and self-correction

The first component involves *self-examination and self-correction*. All enterprises are required to carry out an in-depth self-examination and self-correction campaign to correct improper trading practices that breach business ethics and market rules, and undermine fair play. Anti-commercial bribery efforts are focused on six major fields and nine areas where commercial bribery has been rampant: construction; land transfer; property right transactions; procurement and sales of medical supplies; material procurement; resource development and distribution; bank credit, securities, and futures; commercial insurance; publishing; sports; telecommunications; electricity; quality control; and environmental protection.

Joint self-examination by the dealers and the supervisors has been conducted in different areas and fields, to uncover improper trading practices and loopholes in the current supervision and management systems. Over 2.6 million enterprises and institutions, together with 49 competent supervisory departments and corresponding industries, have launched self-examination and self-correction campaigns, turning in RMB 1.2 billion (approximately USD 175 million) of illegitimate income. By virtue of such campaigns, the dealers

have gradually built up their awareness of trading in accordance with the laws and regulations, and the "latent rule" of securing trading opportunities and commercial profit by means of gift giving and bribery is being corrected in some areas and fields.

Investigation

Case investigation is the second component of the campaign. We have delivered heavy punches at commercial bribery and resolutely curbed its spread. Judiciary, administrative, and law enforcement departments at all levels have determinedly cracked down on commercial bribery cases that violate laws and regulations and involve provision or acceptance of improper benefits.

Special attention is given to cases in which civil servants engage in power-for-money deals, solicitation or acceptance of bribes in commercial activities, and where public interests are seriously damaged. As of September 2008, a total of 54,298 commercial bribery cases involving a total amount of RMB 11.685 billion (approximately USD 1.7 billion) have been dealt with. As a result, commercial bribery in public procurement and sales of medical supplies has significantly declined.

Reform and system innovation

The third component of the campaign covers *reform and system innovation*. Commercial bribery results from the still-imperfect market economy system of P.R. China. To combat commercial bribery, we must accelerate reform, perfect laws and regulations, and strengthen market supervision.

To fight commercial bribery, we have recently accelerated reforms on: the system of administrative approval; financial management system; investment management system; property right transactions; land transfer; goods procurement; and tendering and bidding for construction projects. Credit scaling standards and dealers' credit documents have been set down in government organs in customs, taxation, quality inspection, finance, fiscal management, justice, tourism, and others. The bribery inquiry system of procurement organs and construction departments, as well as the "blacklist" system at industrial and commercial administrations, have laid an important foundation for strengthening market supervision, playing a significant role in combating commercial bribery.

Focus of the next stages of the campaign against commercial bribery

The next stages of P.R. China's campaign against commercial bribery will focus on case investigation on the one hand, and establishment of preventive measures on the other hand.

Prioritizing investigation

Investigations of commercial bribery cases will prioritize important cases and cases involving cross-border commercial bribery. The first priority concerns investigation into important cases; cases are considered important if commercial bribery occurs in certain sectors, involves certain individuals, or has a particular impact on society. In this respect, efforts are concentrated to curb commercial bribery in project construction; land transfer; and the financial sector. Special attention is also paid to cases that involve public servants—leaders in particular—who abuse their authority of approval, execution, and jurisdiction to engage in collusion with businessmen, power-for-money deals, solicitation or acceptance of bribes, and other bribery cases seriously encroaching the public interests. Severe penalties will be imposed on those who take or offer bribes.

Specific priority will also be given to investigation of cross-border commercial bribery. In accordance with the United Nations Convention against Corruption and other international conventions, effective measures will be taken to severely penalize commercial bribery committed by Chinese economic organizations abroad, including outside the Chinese mainland, or bribery committed by foreign economic organizations (or those organizations outside mainland) in the Chinese mainland. International mechanisms for law-enforcement cooperation, judicial assistance, extradition, and repatriation of criminals, as well as corruption-related property recovery, should be established and improved to severely punish bribery of multinational companies in China and criminals that flee overseas.

Prioritizing prevention of commercial bribery

Prevention of commercial bribery at the source is the second main priority of the campaign against commercial bribery. Preventive work mainly includes three tasks: accelerating the establishment of a market credit system; reform of the public management system; and legal reform.

Building a market credit system will involve information disclosure and information sharing on market credit. A legal framework should integrate enterprise and personal credit data. Departments of industry and commerce,

taxation, customs, commerce administrations, and financial institutions and public societies currently hold this information. All information will gradually be unified in a national enterprise credit information system and personal credit information system. Laws will regulate when that credit information can be disclosed, limited only by state security, commercial secret, and personal privacy.

Enterprises and individuals that have a record of malpractice must be treated in accordance with regulations with market access consequences and exit management systems. Market entities that default on credit will lose opportunities in business, public service, and bank credit.

System reform and management innovations will notably deepen reform of the administrative approval system. The goal is to further reduce and the number of items that need approval and standardize the process, reducing government intervention in microeconomic operations. The mechanisms of censoring and testing of the new administrative approval items, dynamic management on the approval items and thorough supervision on the administrative approval process will be established or improved.

Reforms with respect to public financial management, as well as the structure and implementation of government-funded projects, will be accelerated. Rules on public bidding and transfer of land for commercial and industrial use will be more thoroughly applied. Also, licenses for mineral exploration and mining will be assigned through public tendering. A system of market trading of state-owned property rights of enterprises, and a corresponding monitoring system will be established. Furthermore, we will expand the scope of government procurement, deepen the reform of the state-owned assets-management system, and establish a mechanism for enterprise regulation, stimulation, and sanctions adapted to a modern enterprise system.

We shall also intensify the management of cash and foreign currency and establish an early warning system against financial risk. In addition, an early warning mechanism for high-value capital outflow and a system for sharing system financial information should be established and improved. Finally, anti-money laundering measures should be improved by integrating certain non-financial institutions into supervision system.

Upgrading the legal system is the third priority area in preventing commercial bribery. Further research will be conducted on the relevant articles for penalising commercial bribery in the Criminal Law. Other areas of regulation will also be addressed. Laws need to be drafted or amended. These include notably: the Law of the Licensed Pharmacist; Regulations on the Implementation of the Bidding Law; Regulations on Government Investment and Regulations on

the Implementation of Government Procurement Law; Anti-unfair Competition Law; Environmental Protection Law; Construction Law; the Drug Control Law; Regulations for the Supervision and Administration of Medical Devices; Regulation on the Implementation of Audit Law; and Regulation on the Supervision of Important Construction Projects.

A Global Framework for the Fight against Corruption in Business Transactions—the United Nations Convention against Corruption

Kuniko Ozaki
Director, Division for Treaty Affairs (UNODC)

Integrity is the basis for legitimate government and an attractive business environment. Corruption rots government, furthers organized crime and terrorism, and scares away investment. The United Nations Convention against Corruption (UNCAC) provides the first global framework to address these challenges. It strives toward universal adherence, and in late November 2008 had 128 States Parties and 140 signatories. For the States participating in the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific it is—along with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions—the essential legal framework. Fifteen members of the ADB/OECD Initiative are States Parties and seven more are signatories.

The UNCAC is based on four pillars: prevention, criminalization, international cooperation, and asset recovery. All are highly relevant for economic development. Only full implementation of the entire Convention will guarantee a transparent business environment, which is best described by the elements delineated in the Convention itself: transparency and efficiency in national decision-making, fair competition, integrity in procurement systems and financial institutions, a ban on bribery in all domestic and international investment decisions, efficient law enforcement, swift international cooperation and the denial of safe havens for funds of illegal origin. These elements, when fully implemented as characteristics of the national system, create a comparative advantage for all countries who wish to attract foreign investment.

UNCAC as a driver and catalyst for improving business and investment climate

Three key provisions show how the UNCAC works toward a favorable business climate.

First, the Convention obliges States Parties to establish a wide range of criminal offenses, thus developing an internationally agreed set of conduct that must be criminalized. It requires States Parties to establish as a criminal offense, *inter alia*, the bribery of foreign public officials in order to obtain an undue advantage in relation to the conduct of international business (article 16, paragraph 1). When the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was adopted in 1997 and entered into force in 1999, the criminalization of foreign bribery was still pioneer work and controversial in many instances. Now, only 10 years later, it is an evolving global standard. Since bribes can amount to between 5% and 30 % of overall project costs in some business sectors, the universal implementation of the foreign bribery offense is among the core principles supporting good business and economic development.

Second, the Convention directly affects the business community in many ways. Article 12 requires States Parties to take measures to prevent corruption in business transactions, asks for cooperation between private companies and law enforcement agencies, and requires codes of conduct in the private sector to strengthen integrity, prevent conflicts of interest and safeguard good commercial practices; it aims to ensure that companies have independent internal auditors to prevent off-the-book accounts, recording of nonexistent expenditures, use of false documents, and destruction of financial records. States Parties must also disallow the tax deductibility of bribes.

Third, the Convention contains several provisions concerning the financial sector. States must establish a comprehensive regulatory and supervisory regime, ensure that the authorities dedicated to combating money-laundering have the ability to cooperate and exchange information at the national and international levels, implement measures to detect and monitor the cross-border movement of cash, have effective suspicious transaction reporting systems in place, and require financial institutions to maintain adequate records and apply enhanced scrutiny to the accounts of politically exposed persons (articles 14 and 52). The Convention contains innovative provisions on asset recovery and the prevention of transfers of proceeds of corruption in Chapter V, which call for close cooperation with the private sector as an essential element for success.

Effectiveness will depend on implementation

The UNCAC provides a comprehensive and, in many instances, innovative framework for the fight against corruption. However, much will depend on its full implementation. The Conference of the States Parties has the mandate to enhance the capacity of and cooperation among States Parties. Leading up to

the third session of the Conference, which will be held in November 2009 in Qatar, the most important and most challenging development is the establishment of a mechanism to review of implementation of the Convention. Based on its mandate from the Conference of the States Parties, the Open-ended Intergovernmental Working Group for Review of Implementation is preparing terms of reference for a mechanism to review implementation of the Convention, for consideration and possible adoption by the Conference at its third session. This work draws on 33 proposals submitted by States, among them four States that are participants in the ADB/OECD Initiative. Further, 29 countries from all regions have volunteered to test a variety of implementation review methods in a voluntary pilot program run by UNODC, among them five participants in the ADB/OECD Initiative. The program will report its findings to the Conference of the States Parties at its third session.

Technical assistance and international cooperation assist States Parties in implementation efforts

UNODC provides technical assistance to States for assessment of their national systems and development of new legislation to implement the Convention. The Office has developed a number of tools—such as the Legislative Guide, a Commentary to the Bangalore Principles on Judicial Conduct, and the Mutual Legal Assistance Request Writer Tool—to help States make the Convention operational. Further, UNODC assists States Parties in building institutional capacity and provides training to practitioners for the application of the norms implementing the Convention.

On 13 October 2008, UNODC signed an agreement with Interpol to establish the International Anti-Corruption Academy. The Academy will be the world's first educational institute dedicated to fighting corruption. The Academy will conduct training courses and anti-corruption education for up to 600 students per year from law enforcement agencies, the judiciary, governments and the private sector, as well as intergovernmental and non-governmental organizations. It will be open by the end of 2009.

With special regard to Chapter V of the Convention, UNODC cooperates with the World Bank under the joint Stolen Asset Recovery Initiative (StAR Initiative), launched on 17 September 2007. Activities under this initiative include promoting the implementation of the Convention, and assisting in building capacity and lowering barriers for asset recovery worldwide. The work of the StAR Initiative has proven successful in a number of pilot countries including Bangladesh, Haiti, Indonesia, and Nigeria.

In an interdependent world, governments alone cannot win the fight against corruption. The Convention, although binding for Member States as subjects of public international law, applies a multi-stakeholder approach and gives important roles to the business community and civil society. The private sector has a stake in stepping up its integrity policies and measures, and its systems of checks and balances. UNODC therefore works closely with business sector entities in their process of self-regulation.

At the second Conference of the States Parties to the UNCAC, a number of representatives of the business community came together in a forum organized by UNODC jointly with a number of international organizations including the OECD. The representatives expressed broad support for a shared-responsibility approach that involves all stakeholders: governments, the business community, intergovernmental organizations, and civil society. The forum adopted the Bali Business Declaration, in which the private sector called upon governments to ratify and implement the Convention and urged the Conference of the States Parties to establish an effective mechanism to review its implementation. Further, the business community itself committed to work toward the alignment of business principles with the fundamental values enshrined in the Convention and to develop mechanisms to review companies' compliance with those business principles. Finally, it called for strengthening public-private partnerships for combating corruption in business.

UNODC is also closely cooperating with the United Nations Global Compact in the implementation of the 10th principle. The 10th principle, announced during the Global Compact Leaders Summit on 24 June 2004, reads: "Businesses should work against corruption in all its forms, including extortion and bribery." The 3rd meeting of the Working Group on the 10th Principle, co-convened by UNODC and the Global Compact Office in Vienna on 5–6 June 2008, adopted a work program. It includes activities to: collect best practices; ensure that the policies of major companies' headquarters are applied to their subsidiaries, suppliers, and subcontractors; develop an inventory of anti-corruption tools and resources; and expand multi-stakeholder dialogue networks involving public counterparts.

The fight against corruption is one of the main tools for creating a good business climate and fostering economic development. Full ratification and implementation of the UNCAC is a challenging, yet necessary milestone, and it involves a variety of activities and actors.

Civil Society's Contribution to Curbing Bribery in Business

Peter Rooke, Senior Adviser, International Group, Transparency International

At a time when the world economy is in crisis, it is particularly important to maintain focus on the links between business and corruption. Corruption increases the cost of doing business and the cost of goods and services to the customer. The temptation to resort to bribery to gain business is increased when times are bad.

The 2007 Global Corruption Barometer¹ survey (conducted by the Gallup organization for Transparency International) showed that the business sector was perceived as the most corrupt of 14 sectors surveyed in Hong Kong, China and Singapore, 3rd most corrupt in Thailand and 4th in Malaysia. Asia and the Pacific average for the business sector was 5th out of 14 sectors, not a very satisfactory score.

Much business corruption involves enterprises in their home country, but an important issue is the impact of corrupt behaviour in the international marketplace—the bribing of foreign public officials and other forms of cross-border corruption.

The most recent TI Bribe Payers Index (BPI),² launched on 9 December 2008—International Anti-Corruption Day—seeks to gauge the impact of transnational enterprises on corruption in developing countries. The BPI surveys the perceived behaviour of enterprises from 30 leading exporting countries, together representing 82% of world trade, from the perspective of the host country. It is notable that transnational companies tend to be more likely to bribe overseas than in their home market. This is particularly true in the case of companies from countries that score well on various indices of corruption, including the TI Corruption Perception Index.³ This is a regrettable example of double standards.

I have drawn attention to these two TI surveys, as they show that business is seen to be relatively corrupt and that business behaviour overseas is seen as worse than at home in many cases.

Transparency International

I should perhaps say a brief word about my organization, Transparency International. TI is the leading global anti-corruption NGO with national chapters in over 90 jurisdictions, including 20 in Asia and the Pacific. Transparency International is non-profit and independent. TI's funding comes from a wide range of sources: governments, foundations and, increasingly, corporations.

Transparency International's strategy is to build coalitions with other stakeholders, particularly from government and business, to work together to curb corruption and to promote accountability and integrity.

Cross-border corruption a key issue

Since its beginning in 1993, Transparency International has seen curbing business corruption across national borders as a key issue, for which responsibility is shared between business on the supply side and public officials on the demand side.

However, enforcement of anti-corruption laws was traditionally directed almost exclusively at the corrupt official. Many exporting countries subsidized foreign bribery through allowing tax deductibility of bribes and through their export credit schemes.

Fifteen years later, governments and international organizations have developed a legal framework criminalizing bribery of foreign public officials, as well as greatly increasing international cooperation in law enforcement and technical assistance in preventing and sanctioning corruption. The business community has also focused much more attention on the need to curb corruption.

OECD Convention at a crossroads

All major industrialized countries have ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention). However, on the Convention's 10th anniversary in 2007, OECD Secretary-General Angel Gurría said that much more needed to be done to fight international corruption. "Some countries are still holding back on implementing the Convention," he said. "They have almost no investigations. They have brought no cases to court. They are not being pro-active. This needs to change."⁴

UN Convention impact limited

The provisions on criminalizing bribery of foreign public officials in the UN Convention against Corruption (UNCAC) are very similar to those in the OECD Anti-Bribery Convention, but the reach of the UNCAC itself is much wider—the UNCAC is a truly global instrument, and it has great potential. However, the Convention is not yet fully implemented and does not yet have a follow-up or monitoring mechanism.

In Asia and the Pacific, an important priority is for countries which have not yet ratified the UNCAC to do so urgently. I would single out in particular India, Japan, Singapore, and Thailand as important countries; most are taking preparatory steps, but have yet to ratify the UNCAC. In all countries, effective implementation will require much effort, both making necessary changes to laws and institutions and putting resources into both corruption prevention and enforcement.

OECD Anti-Bribery Convention outreach

It is significant that the OECD Convention has recently been opened to additional States Parties, with a particular focus on the Russian Federation, India, and P.R. China. Indeed, the OECD Working Group on Bribery has from the outset pursued a vigorous outreach policy. One important outcome was, of course, the launch of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific.

While justified criticism has been levelled at the slow pace of implementation of the OECD Anti-Bribery Convention in many countries, more than 150 investigations into foreign bribery are currently under way. There have also been some high-profile convictions, notably that of the German engineering company Siemens which was fined over USD 300 million in 2007 and its Chairman and CEO pressured to resign.

Companies engaging in bribery not only run the risk of being subject to criminal sanctions. Blacklisting—the exclusion from business opportunities—particularly by international financial institutions such as the World Bank and ADB, is increasing as well. In many cases, it is a particularly effective sanction.

Government role in prevention of business corruption and enforcement

Governments have responsibility for enforcing criminal anti-corruption laws. It is very important that bribe payers, particularly from businesses, bear the

same risk of sanctions as those who take bribes—and that extortion is also effectively curbed. In some cases, laws need to be strengthened and in many cases, enforcement needs to be more even-handed.

Because much corruption occurs at the interface between business and government, governments have a responsibility—and an opportunity—to minimize the risk of corruption in public procurement and in other business dealings with the public sector. Examples to do so, as we heard from Senior Minister Ho, are electronic licensing, e-procurement and electronic customs clearance.⁵

I understand that the majority of cases now brought by Hong Kong, China's Independent Commission Against Corruption are against business. Yet, many anti-corruption agencies do not include private sector corruption in their mandates. Private-to-private corruption can have many of the adverse consequences of bribery of public officials, and I am pleased to see that one of the workshops is addressing this important area.

Given the difficulties in detecting and prosecuting corruption, it is very important that governments provide effective protection for public interest disclosures, or "whistle-blowing," and for witnesses in corruption cases. This is at least as much a question of changing organizational culture as of improving laws and regulations.

Nongovernment stakeholders, including the media and civil society, can play an important role in curbing corruption. To tap this potential, these stakeholders need to benefit from effective freedom of information that should be narrowly limited only by essential national security concerns and other fundamental public interests. The Extractive Industries Transparency Initiative (EITI) is a practical example of increased transparency of revenues from oil, natural gas, and mineral extraction. More countries in Asia and the Pacific could usefully participate in EITI.

Corporate codes and standards

While the role of government in curbing business corruption is important, the primary responsibility must rest with business itself.

Implementing adequate anti-corruption codes and compliance are a core business responsibility. Many leading multinational enterprises have had such codes for some time; given the absence of comprehensive international standards, however, consistency is limited.

However, we should applaud the pioneering work of the International Chamber of Commerce and, in this region, PBEC, the Pacific Basin Economic Council. Both have developed very similar anti-bribery rules, which in the case of PBEC are mandatory for all its members.

The addition of an anti-bribery principle to the UN Global Compact in 2004, following TI's advocacy, was also an important step. The Global Compact brings together more than 4,700 corporations worldwide, including many in Asia and the Pacific, to commit to improved corporate social responsibility. It addresses the problem, highlighted by John Bray, of getting business and government to interact in the same anti-corruption forums.⁶

A Steering Committee convened by TI developed the Business Principles for Countering Bribery, which was launched in 2003. Multinational enterprises including General Electric (GE), Rio Tinto, Shell, and Tata Group—as well as representatives of the accounting profession, academia, trade unions, and NGOs—participated in this process. The Business Principles have been translated into many languages and launched in more than 30 countries. A very important aspect is the emphasis on effective compliance programs. These are supported by a very comprehensive Guidance Document and a Six-Step Implementation Plan. A Small Business Edition of the TI Business Principles was launched earlier in 2008 to cater to the needs of small and medium-sized enterprises (SMEs), a very important sector accounting for 80%–90% of businesses in most countries.

The World Economic Forum's Partnership Against Corruption (PACI) Principles, follow the TI Business Principles very closely, as does the recently adopted APEC Code of Conduct for Business in this region.

While a proliferation of standards may be seen as an unnecessary complication, there is in fact close cooperation between the various standard-setting bodies, as David Lyman has mentioned.⁷

Apart from leading work to develop the TI Business Principles for Countering Bribery, TI has pioneered the development of tools to curb corruption in public procurement linked with corporate codes and compliance mechanisms. Tools such as the TI Integrity Pact and the TI Project Anti-Corruption System (PACS) have been used successfully in many countries in Asia and elsewhere.

Recognising that business enterprises find it very hard to resist paying bribes if competitors do so, TI works with important industry sectors to encourage a self-regulatory approach to curbing corruption among key competitors. Such sectors include construction and engineering, defense procurement and others.

NOTES

- ¹ www.transparency.org/policy_research/surveys_indices/gcb
- ² www.transparency.org/policy_research/surveys_indices/bpi
- ³ www.transparency.org/policy_research/surveys_indices/cpi
- ⁴ See www.oecd.org/document/37/0,3343,en_2649_34487_39656933_1_1_1_1,00.html for the full text of the speech.
- ⁵ See Senior Minister Ho's presentation on p. 15 in this volume.
- ⁶ See John Bray's presentation on p. 38 in this volume.
- ⁷ See David Lyman's presentation on p. 47 in this volume.

Chapter 2

The role of international criminal law standards in combating bribery

Countries can significantly reduce corruption in business transactions by accepting a zero-tolerance policy toward companies and individuals that engage in corrupt acts. Criminal law is a key deterrent to bribery and corruption. However, legal offenses must cover all forms of corrupt behaviour, and must be reinforced by effective procedural measures, such as mutual legal assistance and the confiscation of proceeds of corruption.

International standards call for broad criminalization of bribery and corruption

Global standards for criminalization of bribery are put forward in international anti-corruption instruments, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Anti-Bribery Convention) and the United Nations Convention against Corruption (UNCAC). These standards can shape national criminal law on bribery and corruption in Asia and the Pacific.

Both the OECD Anti-Bribery Convention and the UNCAC require countries to establish the offense of bribery of a foreign public official; thus far, few countries in Asia and the Pacific have done so. Increased transnational business, closer economic ties among countries, and regional and international economic integration make sanctioning of transnational bribery even more urgent.

Sanctions imposed on individuals who carry out bribe transactions may not deter bribery, especially in high value business transactions. Therefore, the OECD and UN Conventions further require countries to establish liability of legal persons for corruption and bribery.

Implementation of the standards is challenging

The standards embodied in these Conventions need to be translated into national laws and adequately enforced. Implementing—not merely acceding to or ratifying—these Conventions is therefore the real goal. Unfortunately, implementation remains a challenge, both in Asia and the Pacific and beyond.

It is with this difficulty in mind that the monitoring mechanism under the OECD Convention was created. This process of peer pressure and review has caused numerous countries to make significant changes so as to bring their legal systems up to the Convention's standards. The monitoring process is also responsible for the increased number of investigations and prosecutions of foreign bribery that have seen companies pay hundreds of millions of euros in fines and confiscation. This experience of treaty implementation through monitoring can be usefully shared in Asia and the Pacific.

UNCAC's Chapter II sets out 11 different offenses of corruption, bribery, and related crimes. These form the core of the Convention, and provide the point of reference for mutual legal assistance, asset recovery and other mechanisms.

Only 73% of countries which filed reports under the UNCAC self-assessment process consider that they have fully implemented the Convention's mandatory provisions on criminal law; more than one-third of reporting Parties had not yet criminalized bribery of foreign public officials.

Technical assistance and international experience is available to support implementation

An UNCAC support program provides technical assistance to help Parties fully implement its criminal law provisions. Many countries have requested legislative assistance, model legislation, and legal advice.

The monitoring process under the OECD Anti-Bribery Convention provides particularly valuable information to support implementation. The countries that have ratified the OECD Anti-Bribery Convention—the first instrument to require its Parties to criminalize foreign bribery and sanction legal persons for bribery abroad—have collected almost 10 years of experience in translating international standards into national law. This is valuable, especially as the standards in the OECD Anti-Bribery Convention and the UNCAC are very similar in substance.

Implementing the OECD Anti-Bribery Convention

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The OECD Anti-Bribery Convention² came into force in February 1999. Since then, the 38 Parties to the Convention have taken steps to implement the treaty and to monitor its implementation by all Parties. This paper will describe the experience of the Parties to the Convention in this regard. Ultimately, the paper hopes to spark discussion on how this experience can be shared with Asian and Pacific countries, so as to assist them in implementing international standards on the criminalisation of bribery.

Key features of the OECD Anti-Bribery Convention

The OECD Convention has a relatively narrow focus in that it is primarily concerned with the payment of bribes to foreign public officials in international business transactions. Parties to the OECD Convention are required to enact criminal offences outlawing such conduct (among other things). Expressed in more technical jargon, the Convention deals with the supply side of (i.e., active) bribery of foreign public officials that arises in the context of international business. This focus was chosen to stem the flow of bribes from companies in OECD countries.

Within this relatively narrow context, however, the OECD Convention covers a very broad range of conduct. It concerns not only giving, but also offering and promising bribes. It covers bribes to a foreign official given directly or indirectly through an intermediary. It includes bribes given to an official for the benefit of a third party. It covers bribes not only in money but also in any other form.³

The breadth of the OECD Convention can also be seen in the definition of a “foreign public official”. The OECD Convention does not only cover bribery of officials in the executive branch of government; it also includes officials holding legislative, administrative or judicial office, whether appointed or elected. Also covered are persons exercising a public function, including for a

public agency or public enterprise. Officials and agents of public international organisations are also included.⁴

A key feature of the OECD Convention is that both individuals and companies ("legal persons") may be held liable for transnational bribery. Parties must take such measures as may be necessary, in accordance with their legal principles, to establish the liability of legal persons for the bribery of a foreign public official. They must also ensure that both individuals and companies who bribe are punished with effective, proportionate and dissuasive sanctions. Parties must also be able to seize and confiscate bribes and the proceeds of bribery.⁵

Beyond the core criminal offences, the OECD Convention also contains a number of complementary features that enhance the fight against transnational bribery. Parties are required to make laundering the proceeds of transnational bribery a crime. False accounting associated with transnational bribery must be punished. Parties must assist one another by providing mutual legal assistance and extradition where appropriate. They must also have sufficiently broad jurisdiction to prosecute offences that take place wholly or partly in their territories, and offences that take place abroad when committed by a national. Statutes of limitation must allow an adequate period of time for investigation and prosecution.⁶

Commonalities between the OECD Convention and the UNCAC

These key features in the OECD Convention are very similar to several provisions in the UN Convention against Corruption (UNCAC). A comparison of the relevant provisions of the OECD Convention and the UNCAC is included in the Annex. It is immediately apparent that the bribery offences in the two Conventions employ very similar language. Both criminalise the "promise, offering, or giving" of an "undue advantage", whether "directly or indirectly/through intermediaries", "for an official or another person or entity/third party" in relation to the official's "performance/exercise of official duties". For the transnational bribery offence, both Conventions refer to "the conduct of international business".

The similarities between the provisions on liability of legal persons are equally striking. Both instruments require "criminal, civil or administrative liability" "in accordance/consistent with its legal principles" and with "effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions". The complementary provisions on jurisdiction, money

laundering and false accounting in the OECD Convention also have comparable counterparts in the UNCAC.

Monitoring the Implementation of the OECD Anti-Bribery Convention

Apart from these substantive provisions, one of the most important features of the OECD Convention is its mechanism to monitor its implementation. The OECD Convention requires Parties to co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of the Convention.⁷ In lay terms, this means that each Party must participate in a process for ensuring that all Parties do what the OECD Convention requires of them.

The monitoring process is carried out within the OECD Working Group on Bribery in International Business Transactions. The Working Group consists of all 38 Parties to the Convention and meets four times per year at OECD Headquarters in Paris, France. Delegates from the Parties may include prosecutors, officials from law enforcement and Ministries of Justice, and diplomats.

The Working Group carries out its monitoring function through a peer review process that comprises two phases (so far). In Phase 1, the Working Group examines whether each Party's domestic legislation conforms to the OECD Convention. The examination looks at all aspects of the Convention described above, i.e., it covers laws on the foreign bribery offence, corporate liability, money laundering, false accounting, etc. Phase 1 also looks at compliance with the 1996 OECD Council Recommendation on the non-tax deductibility of bribes.⁸

For each country assessment, two Parties are designated as examining countries. A questionnaire is sent to the examined country to collect relevant information. With assistance from the OECD Secretariat, the two examining countries analyse the legislation of the examined country and prepare a draft report for the Working Group. The Group then discusses and adopts the report, taking into account the views of the examined country. It also makes recommendations to the examined country.

In Phase 2, the Working Group goes beyond looking at legislation and studies the legal and institutional structures for enforcing these laws, as well as other measures for applying and implementing the OECD Convention. The procedure is largely similar to Phase 1—all aspects of the Convention are covered, two Parties are again designated as lead examiners for each country review, and a questionnaire is sent to the examined country to collect information. Phase 2 also covers the implementation of other OECD anti-bribery

instruments, including the 1997 Revised Recommendation of the OECD Council, which covers measures for detecting and preventing the bribery of foreign officials.⁹ In Phase 2, the examiners and the Secretariat pay a five-day fact-finding on-site visit to the examined country. During the visit, the examining team meets with the police, prosecutors, judiciary, and government officials from relevant ministries (e.g., Ministries of Justice, Interior, Foreign Affairs, and Finance). To obtain different perspectives, the team also meets with the business sector, civil society, practising lawyers, the auditing and accounting professions, legislators, and academics.

After gathering the necessary information, the examining team prepares a draft Phase 2 report for the Working Group. The Group then discusses and adopts the Phase 2 report, and also makes recommendations to the examined country. Countries are required to present regular follow-up reports to the Working Group detailing their progress in implementing the recommendations.

As of December 2008, 37 of 38 Parties to the OECD Convention have completed their Phase 1 examinations and all but two have completed Phase 2.¹⁰ The examination reports and recommendations are published on the Internet.¹¹ Phase 3 of the monitoring process is expected to begin in 2010.

Impact of the monitoring process

The monitoring process has identified a wide range of weaknesses within Parties' legislation. Some are straightforward, e.g., non-coverage of offering or promising a bribe, absence of liability of legal persons for foreign bribery, or very low sanctions. Other issues are much more complex. For instance:

- Bribing through intermediaries: Who constitutes an intermediary? Does the offence cover intermediaries who are not aware that they are being used to bribe?
- Bribes benefiting third parties: Who constitutes a third party? Does the offence cover a bribe that is transferred directly from the briber to a third party, i.e., by-passing the bribed official?
- Definition of a foreign public official: Is a person employed by a state-controlled enterprise considered a public official?
- Corporate liability: Are state-owned or -controlled companies liable for foreign bribery? When is a company liable for bribery by persons acting on its behalf? Should liability for bribery be triggered by the acts of any employee, or only by the acts of senior management and directors? What if one company bribes for the benefit of another member of the same corporate group, such as a subsidiary or a parent company?

What if bribery occurs even though the company has internal controls for preventing such acts? What if a country's constitution does not permit *criminal* liability of legal persons?

- Confiscation of the proceeds of corruption: How are the proceeds of corruption quantified, especially if the proceeds are derived from a contract for services (e.g., for building a bridge) that was obtained through bribery?
- Jurisdiction: When should a country exercise jurisdiction to prosecute foreign bribery that takes place abroad? What if the corrupt act is carried out by a foreign subsidiary abroad?
- Mutual legal assistance and extradition: Does bank secrecy impede the provision of mutual legal assistance? Does the requirement of dual criminality prevent co-operation if the requested state does not have a foreign bribery offence?

As a result of the monitoring process, many Parties to the OECD Convention have improved their legislation for fighting foreign bribery. For example, some Parties have established liability against companies and other legal persons for foreign bribery, while others have eliminated loopholes in their foreign bribery offences. Additional legislative changes include extending jurisdiction to prosecute nationals for foreign bribery committed anywhere in the world, and expressly prohibiting the tax deduction of bribe payments.

The monitoring process has also identified issues relating to the application and enforcement of the relevant laws. The Working Group has found instances in which a Party has not given sufficiently high priority to investigating and prosecuting foreign bribery cases. This often results in allegations that are not investigated or prosecuted, or in the early termination of investigations and prosecutions. In other cases, the Working Group has observed inadequate resources and skills for investigating foreign bribery. There were also examples in which Parties did not designate a specific agency to investigate and prosecute foreign bribery cases, resulting in allegations that were neglected.

The enforcement aspect of the monitoring process has also seen results. The number of foreign bribery investigations and prosecutions has increased steadily. As of October 2008, there have been at least 65 convictions for foreign bribery (roughly half in the United States) and 200 ongoing investigations (albeit some in very preliminary stages) among the 38 Parties. In one case, one jurisdiction levied fines and confiscation of over EUR 201 million against a single company. The same company then received further criminal and administrative penalties of USD 1.6 billion in a second jurisdiction.

Progress can also be seen in specific countries. For example, the Working Group noted in 2005 that one country had not designated a specific body for investigating and prosecuting foreign bribery cases. Consequently, a number of serious allegations were not being investigated. By 2008, the same country had designated a specific body to deal with foreign bribery cases and spent significant resources investigating such cases. It also had increased investigations and obtained its first conviction for foreign bribery.

Overall, it is fair to say that the monitoring process has had significant impact in improving both the laws relating to foreign bribery and the enforcement of those laws. Although there is room for improvement in most Parties, it is important to bear in mind that the OECD Convention has been in force for only 10 years and that its implementation remains work in progress. It is also important to recall that before 1999 most Parties did not have an offence of foreign bribery, and virtually all Parties allowed tax deduction of bribes. This makes a compelling case for a continuing, rigorous monitoring of the Convention's implementation.

Sharing the OECD's experience with Asia-Pacific countries

The knowledge and experience accumulated through the OECD Convention's monitoring process could be useful to Asia-Pacific countries. Because there are many commonalities between the OECD Convention and the UNCAC provisions on criminalisation of bribery, experience in implementing the OECD Convention is relevant to the implementation of the UNCAC. This will be particularly important to roughly half of the Initiative's members that are Parties to the UNCAC and will be required to implement the standards in the UN Convention.

Even for members that are not yet Parties to the UNCAC, meeting the criminalisation standards in the UN Convention is an important goal. Demonstrable compliance with these standards sends a strong message that a country has an effective anti-corruption framework. This, in turn, can help build a foundation for sustainable development by attracting investment into the country. It also makes that country's companies more welcome in foreign markets. Sound bribery offences are also crucial to recovering stolen assets from overseas, since obtaining domestic convictions and confiscation orders are vital to recovery. Compliance with international standards on criminalising bribery can have positive effects in many areas.

There are several ways to share the OECD experience and knowledge with members of the ADB/OECD Initiative. The Initiative's thematic review in 2009

will look at the bribery offences in its member countries and draw on the experience under the OECD Convention. This will be similar to the earlier thematic review on extradition, mutual legal assistance, and asset recovery.¹² In addition, all of the Working Group's evaluations reports are available on the internet.¹³ The 2006 *Mid-Term Study of Phase 2 Reports*¹⁴ contains a wealth of information about cross-cutting issues that Parties to the Convention have had to overcome. Also available are technical publications such as *Corruption: Glossary of International Criminal Standards*,¹⁵ which compares the OECD Convention, the UNCAC and the Council of Europe Criminal Law Convention on Corruption.

The OECD can also share its experience through technical events and conferences, such as this 6th Regional Conference of the ADB/OECD Initiative in Singapore. Other avenues can also be explored if there are sufficient interest and resources, e.g., missions by experts to interested countries to discuss common challenges, and regional expert workshops with the Initiative's members.

Conclusion

Since the OECD Convention came into force in 1999, the Parties to the Convention have rigorously monitored its implementation. As a result, the Parties have accumulated a wealth of knowledge on the criminalisation of foreign bribery in many countries. Given the similarities between the OECD Convention and the UNCAC, this body of information will be extremely useful to members of the ADB/OECD Initiative as they implement the UN Convention. By sharing this experience, it is hoped that the Initiative's members can avoid many of the mistakes and obstacles that arose in the Parties to the OECD Convention.

Annex: Comparison between the UNCAC and the OECD Anti-Bribery Convention

Bribery Offences

UNCAC		OECD Convention
<p><i>Article 15 Bribery of national public officials</i></p> <p>1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</p> <p>(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;</p> <p>(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.</p>	<p><i>Article 16 Bribery of foreign public officials and officials of public international organisations</i></p> <p>1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.</p> <p>2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.</p>	<p><i>Article 1 The offence of bribery of foreign public officials</i></p> <p>1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.</p>

Liability of Legal Persons

UNCAC	OECD Convention
<p><i>Article 26 Liability of legal persons</i></p> <p>1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.</p> <p>2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.</p> <p>3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.</p> <p>4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.</p>	<p><i>Article 2 Responsibility of Legal Persons</i></p> <p>Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.</p> <p><i>Article 3 Sanctions</i></p> <p>1. The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. [...]</p> <p>2. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.</p> <p>[...]</p> <p>4. Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.</p>

NOTES

- ¹ The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries.
- ² The full name of the Convention is: "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction". All OECD anti-bribery instruments are available at: www.oecd.org/daf/nocorruption
- ³ OECD Anti-Bribery Convention, Article 1(1).
- ⁴ *Ibid.*, Article 1(4)(a).
- ⁵ *Ibid.*, Articles 2 and 3.
- ⁶ *Ibid.*, Articles 4-11.
- ⁷ *Ibid.*, Article 12.
- ⁸ The full name of this OECD Council recommendation is: "Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials".
- ⁹ The full name of this OECD Council recommendation is: "Revised Recommendation of the Council on Combating Bribery in International Business Transactions".

- ¹⁰ South Africa, which became a Party to the Convention in June 2007, has undergone its Phase 1 examination and is scheduled for Phase 2 in 2009. Israel became a Party in December 2008 and will soon undergo Phase 1 examination.
- ¹¹ www.oecd.org/topic/0,3373,en_2649_34855_1_1_1_1_37447,00.html
- ¹² The Report of the thematic review is available at www.oecd.org/dataoecd/28/47/37900503.pdf
- ¹³ www.oecd.org/document/24/0,3343,en_2649_34859_1933144_1_1_1_1,00.html
- ¹⁴ www.oecd.org/dataoecd/19/39/36872226.pdf
- ¹⁵ www.oecd.org/dataoecd/59/38/41194428.pdf

Setting Global Standards — the Criminalization Chapter of the United Nations Convention against Corruption

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The United Nations Convention against Corruption is the first global instrument against corruption, with 128 States Parties and 140 signatories to date. More than half of the States participating in the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific are States Parties to the Convention, and a number of others are in the ratification process. The Convention is therefore the essential legal framework for their anti-corruption efforts, together with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention is based on four pillars: prevention, criminalization and law enforcement, international cooperation, and asset recovery. For various reasons, Chapter II on criminalization and law enforcement can be considered the core chapter of the Convention.

Criminalisation chapter: The core of the UNCAC

First, it is important to note that the Convention does not contain a definition of corruption, but provides a frame of reference through a wide range of 11 criminal offenses. Five are mandatory: bribery of national and foreign officials (Articles 15 and 16 para. 1), diversion of property by public officials (article 17), laundering of proceeds of corruption (Article 23), and obstruction of justice (Article 25). Additionally, six non-mandatory offenses are regulated, such as trading in influence (Article 18), illicit enrichment (Article 20) and bribery and embezzlement in the private sector (Articles 21 and 22).

Second, these 11 offenses do not only provide the basis for effective international criminalization of corruption. They also serve as the point of reference for the other chapters of the Convention — they provide the range of offenses for which international cooperation must be provided and to which the asset recovery provisions of Chapter V apply. They define the conduct that must be established as an extraditable offense (Article 44), and set parameters for cases in which full mutual legal assistance must be afforded (Article 46). Further, if

such conduct generates proceeds of crime, the Convention regulates the kind of mechanisms that States must have in place for the confiscation of such proceeds (Article 31) and for international cooperation for the purposes of confiscation (Articles 54 and 55). The proceeds of the conduct defined in those 11 offenses must be returned or disposed of according to Article 57 of the Convention. Given their role in the facilitation of international cooperation, the 11 offenses of the Convention have a central role as emerging global standards in criminal law.

Third, the 11 offenses regulated in the Convention are complemented by a number of provisions on enforcement. States are, *inter alia*, obliged to establish rules on the liability of legal persons (Article 26) and on the protection of witnesses, experts and victims (Article 32), and to establish a sufficiently wide jurisdiction for the adjudication of the offenses (Article 42). These complementary provisions ensure that the 11 offenses of the Convention are not symbolic, and can be used efficiently and effectively by law enforcement and the judiciary for the prosecution of offenders.

Implementing the Convention may be difficult

Implementing the Convention and making the criminalization and law enforcement provisions operational is not an easy task.

Information-gathering is first step toward informed decision-making, and full ratification and implementation of the Convention. It also highlights States' challenges and technical assistance needs. In order to initiate the process of gathering information on the implementation to the Convention, UNODC developed a self-assessment checklist addressing specific issues, embedded in a user-friendly software application. The results were very encouraging. In November 2008, 73 States, including eight States participating in the ADB/OECD Anti-Corruption Initiative, had submitted their self-assessment reports.

In its resolution 2/1, the Conference of the States Parties welcomed the development of the self-assessment checklist. It further requested the Secretariat to explore the option of expanding the self-assessment checklist to create a comprehensive information-gathering tool. An expert group meeting was held in Vancouver, Canada, on 15–17 April 2008, on the formulation of comprehensive software to gather information on the implementation of the five crime-related international legal instruments that fall under the mandate of UNODC: The United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime and the three Protocols thereto. After being consulted and test-run with Member States, the final version of the

comprehensive, computer-based tool will be presented for endorsement to the Conference of the States Parties at its third session.

Self assessment status on criminal standards

Considering the central role of Chapter II of the Convention, full implementation is essential for the implementation of the other parts of the Convention. The self-assessment reports on Chapter II seem positive at first glance: 73% of the reporting Parties consider the criminalization chapter fully implemented. This is a very high number, especially compared to the reported figures regarding the asset recovery chapter. However, on specific articles much remains to be done: 10 States Parties reported partial or non-criminalization of the offense of bribery of national public officials with all elements regulated in Article 15 of the Convention. In addition, the complex provision on money laundering provided particularly challenges, resulting in 16 States Parties that reported partial or non-implementation of Article 23. It is particularly serious that 24 States, more than one-third of the reporting Parties, reported partial or non-criminalization of foreign bribery in Article 16 paragraph 1.

The self-assessment checklist requests States Parties to report on their technical assistance needs and provide information on technical assistance already provided. This makes the self-assessment reports a valuable tool for the planning and coordination of technical assistance on the global and country levels. Of those States Parties that reported partial or non-implementation, 68% requested technical assistance. The types of technical assistance most frequently requested (both generally and for the provisions on criminalization) were legislative assistance, model legislation and legal advice, followed by the development of an action plan for the implementation of the relevant provisions and a site visit by an anti-corruption expert.

UNODC has provided technical assistance for the implementation of the Convention, anti-corruption policies, and judicial reform to a number of countries that also participate in the ADB/OECD Initiative. These countries include Bangladesh, Fiji Islands, Indonesia, Kyrgyz Republic, Thailand, and Vietnam. UNODC launched a mentor program in 2007, with the objective to provide top-level and long-term specialized expertise through the placement of anti-corruption experts within government institutions tasked with the control and prevention of corruption. Beneficiary countries that also participate in the ADB/OECD Initiative are the Kyrgyz Republic and Thailand.

The Fiji Islands, Indonesia, Mongolia, and the Philippines are participating in the Voluntary Pilot Programme for the Review of Implementation of the

Convention run by UNODC. In the Pilot Programme, 29 countries from all regions are testing a variety of review methods, based on a peer review methodology. The program is gathering experience for the establishment of a mechanism to review UNCAC implementation. This experience will be reported back to the Conference of the States Parties at its third session. Further, the program entails an important technical assistance component. Taking the self-assessment as a starting point, countries are discussing their implementation gaps, technical assistance needs and technical assistance opportunities in detail with their reviewing partner countries and the Secretariat. At the request of the country under review, priorities for further action or an action plan can be developed.

Technical assistance to foster implementation

The Conference of the States Parties has established an Open-Ended Intergovernmental Working Group on Technical Assistance. In its resolution 2/4, titled "Strengthening coordination and enhancing technical assistance for the implementation of the Convention", the Conference renewed the mandate of the Working Group to advise and assist the Conference in the implementation of its mandate on technical assistance. The Working Group will hold its second intersessional meeting on 18-19 December 2008. It will review States' needs for technical assistance, give guidance on priorities for technical assistance and on coordination of activities, and discuss the mobilisation of necessary resources.

Implementing the Convention is a complex and challenging task. It is essential to support the Conference of the States Parties on the way toward its third session in Qatar in November 2009. It will be necessary to raise the number of ratifications, to collect more accurate and more comprehensive information, to prepare the establishment of a strong and efficient mechanism for the review of the implementation of the Convention, and to join forces in providing technical assistance toward the highest standards of quality and coordination. Good practices and the exchange of experience in the implementation of the Convention are an important part of this task. International criminal law standards are not set when a Convention enters into force; setting international criminal law standards is a dynamic process that requires full and ongoing commitment of States and the international community.

Effective Anti-Corruption Enforcement: Another Flight of Fancy?

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The advent of transnational crime and corruption has seen the dawn of the bewitching hour for all States. However, States must not take the attitude, as did the witches in Shakespeare's *Macbeth*, that "Fair is foul, foul is fair." States must always use effective but fair means to pursue and apprehend criminals involved in transnational crime.

Never has our common agenda in Asia and the Pacific been so symbiotic, mutually beneficial, and convergent—from combating piracy, drug trafficking, people smuggling, money laundering to bribery and corruption—all calling for greater regional and bilateral cooperation.

Developments over the past 20 years have resulted in several international treaties aimed at combating corruption or bribery. As a result, States more often than not have had to enact or amend domestic legislation to give effect to the anti-corruption treaty—in addition to revising or modifying how such crimes are investigated and prosecuted.

Naturally, fulfilling international obligations does not end with simply enacting legislation. Treaties are just words on a piece of paper. Effective compliance requires the substantive backing of a well-structured system of enforcement. The aim of this paper is to address the issue of enforcement, by illustrating the dichotomy between balancing domestic interests, which usually tend to promote economic interests of a State, especially developing economies. The ultimate objective is not to offer an exhaustive analysis of the international law relating to corruption, but rather to engender debate and discussion by highlighting some of the more vexed issues which have become apparent over the years.

Bribery in the international context—the phenomenon of globalization

Historically, the notion that certain regions of the world are more "corrupt" than others has been well documented. In the course of his impeachment trial

for corruption, Warren Hastings, the first Governor of Bengal, argued before the House of Lords that the socio-political nature of Asia meant that the act of accepting bribes was perfectly acceptable, and that he should not be judged based on moral standards of the West. Hastings was acquitted.²

There is also the notion that only the lower echelons of a bureaucracy allow themselves to be tempted by corrupt payments. The corollary of this, of course, is that senior officials are in fact immune to such temptation and impervious to such attempts at inflection on their character.

Even a cursory glance at the events of the past 20 years would result in a universal rejection of the above presumptions. Centuries-old bias and stereotyping have to be discarded in light of numerous high-profile corruption scandals. From Marcos to Montesinos, Abacha to Chiluba, Heads of State, military rulers, intelligence chiefs, corporate executives, National Olympic Committee officials, cricket and football stars, probably no job or post has been immune to the pervasive reaches of the corrupt act. Indeed, it may well be that every person has a price at which she or he can be "bought". However, the dilemma for the global law enforcement community is that for many, the price is all too easily payable. Moreover, the phenomenon of globalization has created a borderless world, and cross-border transactions and interactions are commonplace. Likewise, improvements in technology facilitate the ease with which large sums of money can be moved around without raising suspicion. This has created more opportunities for bribery to occur at all levels.

It is not surprising, therefore, that the corresponding period has seen the advent of numerous international legal instruments, such as:

- 1996 Organization of American States Inter-American Convention Against Corruption (OAS Convention);
- 1997 Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention)
- 2000 United Nations Convention Against Transnational Organized Crime (UNTOC); and
- 2003 United Nations Convention against Corruption (UNCAC).

Let us now consider some key aspects of these Conventions.

Multilateral initiatives — “Put your money where your mouth is”

Monitoring

The OAS Convention, which entered into force in 1997, marked a major triumph in the fight against corruption. At the time, it was distinctive in that it included developed and developing countries, and displayed what can be regarded as a defiant rejection of corruption, given the various political upheavals which were plaguing the developing countries of the Americas region at that time. Compared with some later initiatives, the OAS Convention was ahead of its time in some aspects: It applied not only to active bribery (the giving of the bribe) but also to passive bribery (the receiving of the bribe), and required States to enact legislation criminalising such acts. Nevertheless, some critics view the OAS Convention as flawed, given its weak monitoring of implementation, which has only in the past five years picked up pace.

The OECD Anti-Bribery Convention, which entered into force in 1999, has the central focus on combating bribery of foreign public officials through the use of domestic law,³ establishing the jurisdiction of domestic courts for offenses by their nationals which occur abroad—but does not apply to bribery which is purely domestic, and does not require legislation to criminalize bribery of a State's own public officials. However, unlike the OAS Convention, implementation of the OECD Anti-Bribery Convention is monitored closely. Monitoring is carried out by the OECD Working Group on Bribery, and takes place in two phases: Phase 1 monitoring assesses whether States Parties have in place legislation in conformity with the Convention's standards; Phase 2 assesses whether legislative and institutional frameworks are effective in practice.

Article 5 of the OECD Anti-Bribery Convention forbids any state, in investigating allegations of corruption, from taking into consideration “national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.” Therefore, States are required to develop and implement “hard” coordinated anti-corruption policies and legal frameworks to combat bribery of foreign public officials in accordance with the fundamental principles of their own legal systems. There is no requirement to establish or promote “soft” anti-corruption practices on the ground to prevent corruption. Furthermore, the periodic evaluation of anti-corruption laws and procedures is only discretionary and is also subject to the usual resource and time constraints that usually plague such evaluation processes.

The Convention against Corruption (UNCAC), approved by the Vienna negotiating ad hoc Committee, was adopted by the UN General Assembly by

resolution 58/4 of 31 October 2003. The UNCAC had the distinction of becoming the first legally binding, international anti-corruption instrument. Conceived and born out of the growing realization that corruption allows organized crime and terrorism to flourish, reduces foreign direct investment, and is an obstacle to social and economic development, it would not be surprising to expect the UNCAC to contain robust provisions on implementation and a strong review mechanism. In a most heavy and telling omission fraught with significance, the UNCAC does not actually contain any explicit review mechanism at all. Instead, its Article 63 (7) merely states is that the Conference of States Parties “shall establish, *if it deems necessary*, any *appropriate* mechanism or body to assist in the effective implementation of the convention.” The use of such discretionary language appears to be an attempt by the negotiating States to display an ideological new bottle but which actually contained no new wine. Is the UNCAC therefore going to be a case where the paper rhetoric does not match the ground reality? Only time will tell.

The issue of enforcement

Let us move away from the issue of *monitoring* implementation to the issue of *enforcement*. It is necessary to begin with UNTOC. The UNTOC was envisaged as a means to remove some of the problems which had hindered international law enforcement efforts against certain crimes commonly associated with organized criminal groups. For this purpose, it establishes a wide range of cooperation measures and technical assistance provisions. Corruption was one of the four key organized crimes that UNTOC identifies. UNTOC not only requires States to adopt laws to criminalize active and passive bribery, but also emphasizes that States “*shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions*”.⁴

Unfortunately, the UNTOC is not without defects. Its Article 9(1) provides that a State Party is to take measures “appropriate and consistent with its legal system”. Effectively, this means that States can avail themselves of an “exception” and avoid effective enforcement on constitutional grounds. Indeed, in some countries, Heads of State and Heads of Government and even other high-ranking officials enjoy immunity from criminal prosecution. This can thwart effective prosecution and also the tracing, seizure, and forfeiture of proceeds of corruption, especially if the immunities are absolute or broadly defined.

The UNCAC arrived soon thereafter, perhaps to address some of these issues. The UNCAC requires States to specifically provide for *enforcement* measures, such as the adoption of a code of conduct for public officials and the

establishment of anti-corruption units. Improving upon the OECD Anti-Bribery Convention, the UNCAC requires the criminalization of both active and passive corruption. Further, it also provides for the lifting of bank secrecy in relevant cases and establishes an extensive jurisdictional basis, specifically including passive personality jurisdiction.⁵

Having had a look at the parameters established by some recent international instruments, we now turn to a case study illustrative of some of the involved issues.

Case study—The BAE saga

The December 2006 decision by the UK's Serious Fraud Office (SFO) to abandon an investigation into alleged corruption involving BAE Systems and the Government of Saudi Arabia to procure lucrative defense contracts sparked large-scale media uproar.

On 14 December 2006—and no doubt aware of Article 5 of the OECD Anti-Bribery Convention—Attorney-General Lord Goldsmith informed the House of Lords that the SFO investigation into BAE was being discontinued. He explained that the decision had been taken after the SFO had considered that proceeding with the investigation would jeopardize the UK's national security interests in that it would damage important security ties with Saudi Arabia.

It appears that the UK authorities faced a dilemma: On the one hand, the investigation could have been halted without any difficulty based on domestic law; on the other hand, the strict requirements of the OECD Anti-Bribery Convention would not permit such an abrupt halt.

As mentioned above, the OECD Anti-Bribery Convention makes it clear that neither considerations such as national economic interest nor potential effects on relations with other States should influence the decision of whether or not to prosecute. Therefore, while it is debatable whether or not the decision to stop the investigation was a genuine case of protecting national security interests or simply a commercial decision, the fact remains that the resulting widespread media coverage, in the UK and abroad, brought into sharp focus the potential conflict between the interests of the State versus its international treaty obligations.

Whether or not the UK has complied with its obligations under the OECD Anti-Bribery Convention can be debated.⁶ However, perhaps more importantly, one needs to consider what kind of impact the BAE case has had in the global fight against corruption. It would appear extremely difficult to avoid the

conclusion that the SFO decision may well have significantly weakened the UK's role and image in the worldwide fight against corruption. However, is this necessarily a new position? The UK's apparent failure to properly enforce laws prohibiting the bribery of foreign public officials had been identified as a weakness before: the OECD previously adversely cited the UK on the grounds that no prosecutions had been brought in the UK since the Convention was ratified in 1999!

However, this begs the question of whether prosecutions themselves or even conviction rates should be the sole or key criteria of a successful anti-corruption enforcement policy. I leave this difficult issue for further discussion during our workshop deliberations, to benefit from the collective wisdom of all the participants in this conference.

By way of comparison, and perhaps a model from which we in Asia and the Pacific can borrow from and adapt: the US Department of Justice and the Securities and Exchange Commission (SEC) actively police the US Foreign Corrupt Practices Act (FCPA). Authorities in the US have also been quick to apply the FCPA jurisdiction extra-territorially to non-US companies.

Going forward

As some commentators have pointed out, "it is one thing to tell the world that one's nation is participating in an international convention, and another matter altogether to actually live up to the convention itself."⁷ Essentially, States Parties to a Convention have to take on board the idea that signing that Convention is just the beginning, not the end.

As the experiences in other jurisdictions that have implemented international anti-corruption initiatives show, there is a futility of purpose when there is little or no impact on the ground—this is pure lip service. The question is: how can we remedy this situation? How can we ensure that this does not happen?

It would seem that the answer to these questions has been with us, but we may have inadvertently let it slip by. Firstly, during the drafting of the UNCAC, Norway submitted a proposal for a two-phase evaluation based on the mechanism practiced for the OECD Anti-Bribery Convention. The first phase would focus on ensuring that domestic legislation is in line with the Convention, and a second phase would consist of a study of enforcement measures put in place.

This proposal is not novel as far as previous Conventions are concerned. Where it does get interesting, however, are Norway's proposals for noncompliance, which included measures such as targeted technical assistance, as well as suspension from the Convention. However, this proposal did not garner much support, and never made it past the drafting stage for a variety of reasons. This was unfortunate. Recent lessons show that Norway's proposal, though seemingly far-reaching at the time, would not be such a bad thing from today's perspective—especially in relation to a soft-targeted technical-assistance-and-capacity-building approach, as opposed to a hard “name-and-shame” approach.

Additionally, the role that the UNCAC accords to civil society is weak: a mechanism may be established to “assist in the effective implementation of the Convention”, but *only* if “it deems it necessary”.⁸ This allows States a large degree of leeway to decide if and how far to incorporate the Convention into domestic law. Notwithstanding its weaknesses, the monitoring mechanism practiced for the OECD Anti-Bribery Convention demonstrates that peer review and mutual evaluation can help raise public awareness. Likewise, the role of NGOs, such as Transparency International (TI), cannot be underestimated. Its lobbying and monitoring efforts around the world have kept alive the ideal of wiping out corruption on the global agenda, and have ensured that this does not remain a pious hope.

Conclusion

In his message to the Third Global Forum on Fighting Corruption and Safeguarding Integrity, former UN Secretary-General Kofi Annan said, “Corruption impoverishes national economies, undermines democratic institutions and the rule of law, and facilitates the emergence of other threats to human security, such as organized crime, human trafficking, and terrorism”.

The formal or “official” position of companies is, of course, that bribes are unacceptable. When it comes to doing business, however, many companies will no doubt acknowledge (albeit in hushed tones) their fear that they will lose the deal to someone who does pay “facilitation payments” or “tea money”.

Problems with enforcing the OECD Anti-Bribery Convention demonstrate the challenges of reducing corruption in practice. Although focused, widely ratified, and equipped with a well-planned monitoring system, it has yet to produce significant changes in reality. Likewise, the lack of consensus on developing a monitoring mechanism for the UNCAC, as seen at the UNCAC

conference in Bali in January 2008,⁹ translates into a lack of incentive for effective enforcement.

Therefore, what is required will be a sustainable, consistent, and coordinated effort not only by States to reaffirm their commitments under the respective Conventions, but also a considered effort by businesses to ensure that all transactions are corruption-free. Then, the issue will really turn on how far government coordination extends. If it extends to impressive lawmaking but not to effective law enforcement, then we are no better off than when the question of drafting a convention against corruption was raised for the first time during the Vienna negotiations for the Convention against Transnational Organized Crime almost a decade ago.

Let me conclude now—it has been said that the 21st century will be the century of *change*. It is believed that more things will change in more places in the next 10 years than in the past 100 years. We are already witnessing the tumultuous changes that the US subprime crisis brings and that has now already changed into an almost unprecedented global financial crisis. What will *not* change, however, is the scourge of corruption and the global threat it poses to developed and developing countries alike.

Corruption poses a serious threat to democracy, the rule of law, human rights, international peace and security—and strikes at the core values of the United Nations. International cooperation has never been so critical to preserve international peace and security.

It needs to be emphasized that international initiatives, regional treaties, and UN Conventions do not solve the corruption problem. Political commitment, lawmaking, and rigorous and unrelenting law enforcement are crucial, if these impressive documents should not remain just pretty words on paper. All States must play their part, and the UN's role in providing technical assistance and capacity building through its Global Program against Corruption is a critical step in the right direction—together with the work of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific.

We have heard of the three “T”s of the 21st century—Trade, Technology, and Terrorism—and that all three are deeply interconnected. They also bring the world to an important T-junction. There is also for us, here in Asia and the Pacific and in the world at large, a fourth T—THREAT of corruption. If we make a wrong turn, the road will lead to disaster. In the global fight against corruption, international initiatives combined with effective domestic legislation and efficient law enforcement have never been so critical to ensure international stability, regional peace, and security — AND a better life for all.

NOTES

- ¹ The views expressed by the writer are his personal views and do not reflect the views of the Attorney-General's Chambers of Singapore or of the Government of Singapore.
- ² The Impeachment of Warren Hastings, Papers from a Bicentenary Commemoration, 1989, Edinburgh University Press.
- ³ Art 1(1) of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention). The full text of the Convention is available at www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html
- ⁴ Art 9(2) of the UNTOC.
- ⁵ Art 42 of the UNCAC.
- ⁶ The report regarding the UK by the OECD Working Group on Bribery, the body that assesses the implementation of the OECD Anti-Bribery Convention, is available at www.oecd.org/document/24/0,3343,en_2649_34859_1933144_1_1_1_1,00.html
- ⁷ Luz Esta Nagle, 'The Challenges of Fighting Global Organized Crime in Latin America', 26 Fordham International Law Journal (2003), 1649, at 1665.
- ⁸ Art 63(7) of the UNCAC.
- ⁹ TI has labelled this development as a 'major setback'. See www.transparency.org/news_room/latest_news/press_releases/2008/2008_02_01_uncac_final

Chapter 3

Corporate compliance programs and integrity systems

All stakeholders must contribute to the fight against corruption in business. Businesses, which are often the source of bribes and illicit payments, also have a role in reducing corruption—and have begun to act accordingly. Individual companies are taking action, and some industries in specific countries have taken collective steps as well. This chapter summarizes anti-corruption action at the individual-company level, which was discussed in the workshop on Corporate compliance programs and integrity systems. (Chapter 5 presents the workshop on collective action by businesses).

In the wake of numerous corporate scandals and in an ever-changing regulatory environment, business leaders are becoming more aware of the legal and reputational risks associated with corruption. This workshop addressed the components of effective corporate compliance programs and tools to assist business, large and small, to design and implement appropriate integrity systems.

Three overall themes—“three ‘Ts’”—stood out.

- “Tone at the top.” In business, as in government, strong leadership and personal commitment from the top are essential.
- “Tone in the middle.” Statements of principle from company leadership are not sufficient. Companies also need effective ethics and compliance systems to ensure that middle management endorses and applies anti-corruption policies.
- “Trust.” Companies need the trust of governments and customers to secure their social “license to operate.” They also need the trust of their employees if their anti-corruption strategies are to be taken seriously.

Rebecca Li of Hong Kong's Independent Commission Against Corruption (ICAC) chaired the workshop. The other participants included

- One company practitioner: Eddie How, Regional Head of Business Integrity, Shell Eastern Petroleum Pte Ltd, Singapore.
- Two consultants: Neil Thamotheram, PriceWaterhouseCoopers, (Thailand), and Peter Coleman, Deloitte (Singapore);
- One civil society representative: Jermyn Brooks, Director, Private Sector Programs, Transparency International; and
- One regulator: Juthika Ramanathan, Accounting and Corporate Regulatory Authority (ACRA), Singapore.

1. Drivers: why do companies need to develop compliance and integrity programs?

Recent events have highlighted the need for integrity in business.

The scandals surrounding the collapse of Enron led to calls for higher standards of senior management accountability, both in the US and internationally. The Enron affair undermined public trust in major companies, and governments and companies themselves are still working to rebuild confidence. One important outcome was the 2002 US Sarbanes-Oxley Act (SOX) which has led to important corporate governance reforms. Other countries have introduced their own corporate governance reforms; Japan's measure, passed into law in 2006, is known informally as "J-Sox".

A second, related driver has been tighter enforcement of the US Foreign Corrupt Practices Act (FCPA). The FCPA applies to both US companies and individuals, and foreign companies listed in the US. All OECD countries now have legislation similar to the FCPA in place—criminalizing bribery of foreign public officials anywhere in the world (for instance, in Asia and the Pacific). Enforcement of such legislation has increased in OECD countries because of the monitoring mechanism under the OECD Anti-Bribery Convention.

Many countries are now stepping up their anti-corruption efforts. The clearest example is Siemens, which was convicted of foreign bribery and subjected to millions of euros in fines and confiscation in the US and Germany.

Asia-Pacific countries are also cracking down on companies that bribe. Juthika Ramanathan's presentation on Singapore's Accounting and Corporate Regulatory Authority (ACRA) and Mr. Wang Huanggeng's view from the Chinese Ministry of Supervision present ongoing initiatives to combat private sector corruption.

Finally, high ethical standards are good business, enabling companies to attract and retain the best staff; win the respect of customers and suppliers; and ultimately operate profitably and sustainably.

2. What are the keys to good compliance programs?

Transparency International, the International Chamber of Commerce and the World Economic Forum's Partnering Against Corruption Initiative have issued guidelines for effective compliance programs. Key factors include:

- Strong leadership. Business leaders must make clear, through action as well as words, that high standards of ethics are essential to their companies' success.
- Codes of ethics. Companies' ethics codes must take into account their specific industries and cultures. Shell's Statement of General Business Principles is an example.
- Implementation. Statements of principle are not enough. Company compliance programs must include training, risk assessments, and audits.

Peter Coleman of Deloitte emphasized the importance of "whistle-blowing." Companies must provide concerned employees with a secure means of communication to report suspected ethical lapses to senior management. Whistle-blowing systems must be properly publicised within the company, but also be truly confidential.

Eddie How explained how Shell's integrity system works. The Business Integrity Division receives extensive resources, and Mr. How's sole responsibilities are related to business integrity.

The main elements of successful compliance programs apply to both companies and public sector agencies. Clare Wee of the ADB's Integrity Division cited similar components in the workshop on Fighting Corruption and the Sustainable Development Agenda.

3. Some problem situations

The workshop briefly addressed how to deal with problem situations. What can companies do if they believe that competitors are winning contracts through bribery? Or if they discover evidence of internal corruption?

Several important factors should guide companies' actions in these situations, including the quality of evidence and the likely attitude and responsiveness of the host government.

Where companies uncover evidence of internal corruption, they may be reluctant to report to government agencies they believe to be corrupt. Similarly, companies are often reluctant to report cases of bribery by their competitors, particularly if the evidence is incomplete. They may choose to stop competing for projects in the same jurisdiction, rather than reporting their suspicions.

4. Challenges

Challenges in promoting corporate compliance and integrity systems include

- poor ethical standards at the senior level: the “tone at the top” is not always as positive as it should be;
- ensuring compliance at the middle-management level is always demanding, especially in high-risk countries;
- major companies (such as Shell) can afford business integrity divisions; this is more difficult for smaller firms with limited resources;
- honest companies have to develop strategies to win business in the face of competition from corrupt rivals.

5. Emerging best practice for business: Selected resources

- Business Anti-corruption Portal, in addition to providing country information, includes flow charts explaining the due diligence process etc. www.business-anti-corruption.com/Home.asp
- Control Risks and Simmons & Simmons. 2007. Facing up to Corruption. A Practical Business Guide, offers a combination of analysis and advice www.control-risks.com/pdf/Facing_up_to_corruption_2007_englishreport.pdf
- International Chamber of Commerce Rules of Conduct and Recommendations to Counter Extortion contains a set of principles that can be used as a model for individual company codes www.iccwbo.org/policy/anticorruption/
- OGP—International Association of Oil & Gas Producers is a leading industry association. The OGP has published a number of reports on issues related to corruption. These include Guidelines on Reputational Due Diligence www.ogp.org.uk/pubs/356.pdf and OGP Training

Template. Combating Corruption www.ogp.org.uk/pubs/352.pdf

- TRACE International is a US-based membership organization, originally set up to vet and validate commercial agents and other intermediaries. Most of its resources are now restricted to members, but a number of "articles and publications" are publicly accessible www.traceinternational.org
- Transparency International Business Principles for Countering Bribery include a guidance document and a six-step implementation process www.transparency.org/global_priorities/private_sector/business_principles
- Transparency International Anti-corruption Training Manual is designed specifically for the infrastructure, construction and engineering sectors. The manual aims to help users achieve a better understanding of corruption and how to avoid it. It can be used by individuals, and by companies as part of their corporate training www.transparency.org/tools/contracting/construction_projects/section_b
- UN Global Compact—"Business Against Bribery" is a book-length report with examples of best practice in due diligence and other areas www.unglobalcompact.org/Issues/transparency_anticorruption/Publications_x_Documents.html
- World Bank: "Towards a More Systematic Fight Against Corruption—the Role of the Private Sector" presents an e-discussion from July 2006 siteresources.worldbank.org/CGCSRLP/Resources/ediscussion.pdf
- World Economic Forum—Partnering Against Corruption Initiative www.weforum.org/en/initiatives/paci/index.htm

The workshop on *Corporate compliance programs and integrity systems* presented a number of perspectives on ethical business behaviour. The drivers that motivate companies to develop compliance and integrity programs include (i) increased regulation resulting from high-profile corporate scandals; (ii) stricter enforcement of the US Foreign Corrupt Practices Act (FCPA) including against non-US companies listed on US stock exchanges; (iii) stricter enforcement of foreign bribery in other parties to the OECD Anti-Bribery Convention; (iv) legal reforms in emerging markets; (v) the financial crisis and the decreasing public trust in companies; and (vi) the business case — unethical behaviour is not sustainable in the current business environment.

Challenges include how to operate in an environment with corrupt competitors, internal corruption within a company and/or a group of companies, and how to address the specific needs of SMEs. The role of the public sector was

also debated; speakers stated that legal frameworks should address private-to-private corruption and that corporate disclosure requirements can help to strengthen the regulatory framework. Participants concluded both policy and regulation are needed, in addition to voluntary initiatives designed and implemented by the private sector. The fight against corruption requires that the private and public sectors, as well as civil society, work together.

Corporate Compliance Programs and Integrity Systems: Singapore's Experience

Juthika Ramanathan, Chief Executive, Accounting and Corporate Regulatory Authority (ACRA), Singapore

The Accounting and Corporate Regulatory Authority (ACRA) of Singapore is responsible for the registration and regulation of companies, businesses, limited liability partnerships, and public accountants and accounting entities. Hence, ACRA plays a direct role as the regulator of corporate bodies, overseeing their incorporation and operational affairs including compliance with relevant legislation such as the Companies Act. In its oversight of the auditing profession, ACRA also indirectly works toward ensuring corporate compliance with disclosure requirements and the integrity of the financial reporting regime.

ACRA's vision is for Singapore to be the trusted and best place for business. Our mission is to provide a responsive and trusted regulatory environment for businesses and public accountants. Essential to achieving this mission is continually strengthening the integrity of our regulatory framework through constant review and refinement of our legislation and policies, as well as effective corporate regulatory actions.

A disclosure-based regime

Singapore operates a disclosure-based regime based on a regulatory strategy involving an informed market that reacts to relevant information. On a fundamental level, company directors have the duty to act in the best interests of the corporate entity. These include disclosure obligations, which are primarily the responsibility of directors, who rely on information and advice given by others such as advisors or employees under certain conditions. Annual audits required of larger companies contribute to ensuring the integrity of the information that is conveyed to shareholders and other stakeholders (such as creditors)—and help guarantee that corporations are equipped with a system of internal controls which assure effective corporate compliance with relevant obligations.

Government bodies and relevant laws

ACRA and other bodies administer several pieces of legislation, which contribute to upholding the integrity of the disclosure-based regime in Singapore. Apart from ACRA, the other relevant regulatory bodies are:

- Singapore Exchange, which regulates listed companies;
- Monetary Authority of Singapore, which supervises financial markets;
- Commercial Affairs Department and the Corrupt Practices Investigation Bureau, which investigate and enforce relevant laws; and
- Insolvency and Public Trustees Office, which administers insolvency laws.

The role of ACRA

ACRA administers business legislation such as the Companies Act, Business Registration Act, and the Limited Liability Partnerships Act. The upcoming Limited Partnership Act will also be administered by ACRA (the Bill was first read in Parliament in October 2008). ACRA also administers the Accountants Act and oversees the registration and regulation of public accountants. One of the objectives of corporate regulation is to minimize corporate misdeeds, including but not limited to corruption.

The Companies Act and directors' duties

Directors are key players in controlling companies. A natural starting point in regulating corporations is to ask what duties are imposed on these leaders.

Under the Companies Act, directors have a duty to "at all times act honestly" (Companies Act, section 157) and to disclose any "conflict of interests" to the other directors (section 156). An officer or agent of a company shall not make improper use of any information acquired by virtue of his position to gain an advantage for himself or others, or cause detriment to the company (section 157). Two other mechanisms aim to regulate conduct of directors and provide adequate transparency. First, certain transactions—such as loans to directors, loans to persons connected to the directors of a lending company, or payments to directors for loss of office are prohibited—unless shareholders approve of such transactions or the transactions fall under the exceptions provided in law. Second, a company must keep a register to reflect the directors' shareholdings or interests in shareholdings in the company or related corporations.

Having laws in place is just a starting point. ACRA also undertakes to facilitate compliance with these legal obligations through several initiatives to

ensure a high level of awareness. For example, a letter sent to every newly appointed director details the legal obligations of directors. Talks and seminars are also regularly conducted by ACRA to raise awareness of these and other compliance issues.

The Companies Act and corporate transparency

Transparency is an enemy of corruption. Various laws are in place to achieve transparency of company affairs. The Companies Act requires that companies maintain accounting records for 5 years (Companies Act, section 199). Directors must ensure that true and fair accounts compliant with Financial Reporting Standards are presented to shareholders (section 201). Failure to do so is an offense punishable with up to 2 years in prison (section 204). Companies are required to file their accounts with ACRA, and these can be viewed by the public (section 197). Public companies are legally obliged to have adequate internal controls (section 199(2A)).

Adding to the transparency of corporate affairs is the legal obligation to maintain various registers, some of which the public may inspect, including:

- Register of members;
- Register of directors, managers, secretaries and auditors;
- Register of directors' shareholdings;
- Register of substantial shareholders;
- Register of debenture holders; and
- Register of charges.

Minute books must be kept with records of all general meetings and directors' meetings. Failure to do so is an offense (Companies Act, section 188). The minute books are open to inspection by members (section 189). Other information filed with ACRA, and therefore available to the public, includes

- basic company information such as the constitution of the company and the particulars of its shareholders and directors;
- charges created by the company and changes in status;
- financial data on the company; and
- application to winding up or deletion from the corporate registry.

Auditing: Companies' obligations

Quality auditing and corporate financial reporting form the foundation of market confidence, which leads to a climate that promotes international investment and growth. Singaporean law therefore requires all companies to

maintain accounting records, and conduct annual audits. Private companies with a turnover below SGD 5 million and dormant companies are exempt from these obligations. These audits provide independent assurance that the accounts present a true and fair view, and that internal controls are adequate.

The integrity of accounts of listed companies is particularly important. As such, the audit of their accounts also is more significant. Since 2004, listed companies are required have an Audit Committee to facilitate audits and ensure their effectiveness.

Auditing: Auditors' obligations

Auditors may uncover wrongdoings such as corrupt acts. The law requires that auditors report any breach of law or offense of fraud or dishonesty (Companies Act, section 207[9A]). Obstructing an auditor from doing so is a crime (Companies Act, section 207[10]).

Auditing: Maintaining professional standards

ACRA plays a role in the maintenance of high standards for professionals qualified to conduct audits. The standard is maintained through registration requirements consisting of a mixture of technical knowledge and experience.

Audit quality is the cornerstone of market confidence, ensuring reliability of the financial information upon which the market makes capital allocation decisions. ACRA regards the Practice Monitoring Program as an important regulatory instrument that promotes audit quality.

Essentially, the Practice Monitoring Program is a mechanism for ACRA to assess the quality of the work of Singapore auditors. The program also serves to provide quality assurance to the market by ascertaining whether public accountants have complied with internationally recognized standards, methods, procedures and other requirements prescribed under Singaporean law. It also aims to determine the tone at the top of the audit firm. This assurance gives users of financial reports increased confidence in audit opinions.

Financial Reporting: Maintaining confidence in Singapore's financial reports

ACRA believes that compliance with accounting standards promotes confidence in Singapore's corporate financial reports and facilitates a transparent and informed market. High-quality corporate financial reporting by directors is vital to maintaining a trusted business environment.

ACRA conducts the financial surveillance program to monitor and take necessary enforcement action on compliance of Singapore incorporated companies' financial statements with requirements as specified in the Companies Act and the Financial Reporting standards.

ACRA carries out its financial surveillance program with a risk-based approach targeted at listed companies. It emphasizes the importance of directors taking ownership of the quality of corporate financial reporting.

Dealing with noncompliance

Inevitably, there will be instances of noncompliance. What is important is that such instances are dealt with in a swift and just manner. Typically, noncompliance might lead to:

- belated compliance where defaulters approach ACRA voluntarily;
- complaints, which ACRA will act upon;
- discovery and enforcement action by ACRA financial surveillance.

Conclusion

Trust is essential for the wheels of business to turn smoothly. Hence, the integrity of corporate officers and of the information they provide to investors cannot be overstated. ACRA recognizes this and will continue to work toward maintaining a trusted environment for business.

Chapter 4

Conflict of interest—the soft side of corruption

The intersection of the public and private sectors creates opportunities for bribery—but corruption does not always manifest itself as a financial crime. Conflicts of interest occur when private interests compromise official, public, or organizational interests. This workshop defined conflict of interest, and presented emerging issues in identifying and managing real and potential conflicts. The session addressed country-specific approaches to managing conflicts of interest, and showed that the relationship between conflict of interest and corruption is highly subjective issue. The perspectives of the private sector, and the legal and auditing professions were presented.

The session opened with a discussion on what conflict of interest is, how the definition and practical implications have evolved, and why it matters in today's context. Rules, laws, and policies are not enough: understanding the issues and ensuring capacity to implement the rules, laws, and policies are equally—if not more—important. In many cases, conflict of interest standards exist or are included within specific legislation, but they are not enforceable.

The session also discussed the situation in Indonesia, where conflict of interest is not specifically defined (except in the capital market law) and is not well understood. The UNCAC now provides Indonesia with an opportunity to revisit the issue.

The conflict of interest inherent in independent audit services and how conflict of interest can manifest in a sector context were also examined. In both cases, it was agreed that conflict of interest is natural. While conflict of interest cannot be avoided, it can be managed.

OECD Guidelines, Toolkit, and Emerging Concerns

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Conflict of interest: a major concern

Conflict of interest in both the public and private sectors has become a major matter of public concern worldwide. There is a growing expectation from an increasingly informed and educated citizenry that governments will ensure that public officials perform their duties in a fair and unbiased way, so that decisions are not improperly affected by self-interest or considerations of personal gain. The public sector is increasingly commercialized and works in increasingly close relationship with the business and nonprofit sectors, giving rise to the potential for new forms of conflict between the individual private interests and public duties of public officials.

Corruption and conflicts of interest are related phenomena; they are “two sides of the same coin.” Corruption can arise from a conflict of interest which has been inadequately identified or managed. In a rapidly changing public sector environment, conflicts of interest will always be an issue for concern. A too-strict approach to controlling the exercise of private interests may be conflict with other rights, or be unworkable or counterproductive in practice, or may deter some people from seeking public office altogether. Therefore, a modern conflict of interest policy seeks to strike a balance by identifying risks to the integrity of public organizations and public officials, prohibiting unacceptable forms of conflict, managing conflict situations appropriately, making public organizations and individual officials aware of the incidence of such conflicts, and ensuring effective procedures are deployed for the identification, disclosure, management, and promotion of the appropriate resolution of conflict of interest situations.

OECD Guidelines and Toolkit for Managing Conflict of Interest

The OECD Guidelines for Managing Conflict of Interest in the Public Service responded to a growing demand to ensure integrity and transparency, and reduce bias and abuse of office in the public sector. The OECD Guidelines help government institutions develop and implement an effective conflict-of-interest policy that fosters public confidence in the integrity of public officials and official decision making. The Guidelines provide a practical framework of reference for reviewing existing policy solutions and for modernizing mechanisms used to manage conflict-of-interest situations in line with identified good practices. The Guidelines, which were approved as an OECD Recommendation in 2003, provide a comprehensive benchmark for countries, against which it will be possible to compare, assess, and evaluate policy effectiveness.

The Guidelines developed a simple and practical definition of "conflict of interest" to assist effective identification and management of such conflicting situations, namely, "a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities."

The Guidelines present set of core principles with standards and procedures for identifying and resolving conflicts (Part 1. Developing the Policy Framework) and management measures for putting the Policy Framework into practice (Part 2. Implementing the Policy Framework). Key elements of successful implementation include a clear and objective definition of conflict of interest, demonstrated leadership commitment, practical management systems, coordination of preventive measures, such as reviewing "at-risk" areas for potential conflicts, and positive enforcement (e.g., control, monitoring, and management strategies) to promote a public service culture where conflicts of interest are properly identified and resolved or managed without unduly inhibiting the effectiveness and efficiency of public organizations.

The Guidelines also support partnership with employees and recommend "a new partnership with the business and non-profit sectors" (in the form of awareness-raising, citizen involvement, and proactive safeguards against potential conflicts, etc.) in accordance with clear public standards defining the parties' responsibilities for integrity.

Identifying a specific conflict of interest in practice can be difficult. Resolving the conflicting interests appropriately in a particular case is something that most people find even more challenging. To provide hands-on support, the

OECD Toolkit for Managing Conflict of Interest in the Public Sector presents specific techniques, resources, and strategies for identifying, managing, and preventing conflict-of-interest situations more effectively; and increasing integrity in official decision making, which might be compromised by a conflict of interest. This Toolkit provides nontechnical, practical help to enable officials recognize problematic situations and help them ensure that integrity and reputation are not compromised. The tools themselves are provided in generic form. They are based on examples of sound conflict-of-interest policy and practice drawn from various OECD member and nonmember countries. They have been designed for adaptation to suit countries with different legal and administrative systems.

The OECD reviewed progress made by member countries in implementing the Recommendation and reported on trends in recent developments for modernizing conflict-of-interest policy and practice as well as the impact of the Guidelines. The review process also identified emerging concerns, namely, post-public employment and lobbying.

Post-public employment

There is increased concern about movement. Increased mobility of personnel between the public and the private sectors has supported labor-market dynamism. When officials leave public office—either permanently or temporarily—to work for private or nonprofit sectors, however, concerns of impropriety (such as the misuse of “insider information” and position) can put trust in the public service at risk. Consequently, many countries are making it a priority to review and modernize arrangements to effectively prevent and manage conflict of interest in post-public employment. Most post-public employment offenses occur when public officials use information or contacts acquired while in government to benefit themselves, or others, after they leave government. However, despite the use of the term “post-public employment,” these offenses can also occur before officials actually leave government. Major post-public employment problem areas involve public officials when they

- seek future employment outside the public service;
- conduct post-public employment lobbying back to government institutions;
- switch sides in the same process;
- use “insider information” such as commercially sensitive information; and
- are reemployed in the public service, for example, to do the same tasks.

The challenge for governments is to strike an appropriate balance between fostering public integrity through adequate post-public employment instruments and preserving a reasonable measure of employment freedom to attract experienced and skillful candidates for public office. Survey findings show that the vast majority of OECD countries have established basic post-employment standards to avoid conflicts of interest. Several countries have even strengthened restrictions in the past years. However, only a few countries have tailored standards to risk areas, for example, when regulators or procurement officials move to the private sector. In addition, enforcing established standards and imposing suitable sanctions remain a challenge for many countries. Ensuring compliance with post-public employment measures can indeed be particularly difficult because most post-public employment offenses are committed by public officials who, by leaving the public sector, move somewhat beyond administrative government control.

To help policy makers, the OECD developed Principles for Managing Post-Public Employment Conflict of Interest that provide a point of reference for reviewing and modernizing post-public employment policy and practice. The Principles were designed to support efforts to prevent actual or potential conflict of interest in public office, such as by requiring that “public officials should not enhance their future private sector employment prospects by giving preferential treatment to potential employers” in decision making. In reviewing their actual arrangements, policy makers may consider systematically examining the extent to which existing regulations, policies, and practices can meet the requirements of the principles as a first step.

Moreover, the Post-Public Employment Good Practice Framework provides options for implementation of the Principles. The Framework addresses strategic aspects of managing a post-public employment system and provides a structure for developing coherent and comprehensive post-public employment policy and practice. Selected elements of good practices are also presented in the Framework to give concrete examples of options that could be considered benchmarks. Key pillars of the Post-Public Employment Good Practice Framework include:

- The post-public employment system contains the instrument(s) needed to deal effectively with its current and anticipated post-public employment problems and emerging concerns.
- The post-public employment instrument(s) is linked, where feasible, with instrument(s) dealing with conflict of interest in the public sector and with the overall values and integrity framework.

- The post-public employment system covers all entities for which post-public employment is a real or potential problem and meets the distinctive needs of each entity.
- The post-public employment system covers all important risk areas for post-public employment conflict of interest.
- The restrictions—particularly the length of time limits imposed on the activities of former public officials—are proportionate to the gravity of the post-public employment conflict of interest threat that the officials pose.
- The restrictions and prohibitions contained in the post-public employment system are effectively communicated to all affected parties.
- The authorities, procedures, and criteria for making approval-decisions in individual post-public employment cases and for appeals against these decisions are transparent and effective.
- The enforcement sanctions for post-public employment offenses are clear and proportional, and are timely, consistently, and equitably applied.
- The effectiveness of the policies and practices contained in each post-public employment system is assessed regularly and, where appropriate, is updated and adjusted to emerging concerns.

Dealing with post-public employment problems has been a relatively recent challenge in many countries. However, even countries with established post-public employment frameworks have faced newly emerging concerns—driven by constantly evolving sociopolitical contexts—that have forced governments to adjust existing regulations, policies, and practices. The OECD report draws attention to reviewed elements of good practices—identified at the subnational and national levels—to help decision makers by outlining alternative options as valuable benchmarks and sharing experiences and lessons learned.

Conflict of Interest in Indonesia: Business as Usual

Arief T. Surowidjojo

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Conflict of interest: a major concern

Indonesia does not have a specific law on Col. Rather, the concept is used in various laws and regulations, without one all-purpose definition. Conflict of interest is defined in the Law on Depository Insurance Agency and in the Law on Capital Markets, for the respective purposes of these acts. However, the definitions used in those acts are not sufficient in discussing issues of Col in the context of governance, clean government, and wider anti-corruption efforts.

If a more precise definition of Col is included in the law, it is more likely that law enforcers will enforce it. But while definition is compromised, or could give rise to different interpretations, a loophole is opened; and regardless of how narrow the loophole is, the concept of Col is rendered ineffective and useless in a corrupt environment.

It has to be said that conflict of interest is notoriously difficult to define; this can be observed in the drafting of Col laws in other jurisdictions. The conflict of interest law in force in the Czech Republic from 1992 to 2006 confuses conflict of interest with actual corrupt conduct, as follows:

“A conflict between the public interest and personal interest is understood to be conduct [of a public functionary] or failure [of a public functionary to act] which undermines trust in his/her impartiality, or by which a public functionary misuses his/her position in order to obtain unauthorized benefit for him or herself or another individual or legal entity.”¹

This law is not the only example of confused drafting; the United Nations guide for Anti-Corruption Policies states that:²

“Most forms of corruption involve the creation or exploitation of some conflict between the professional responsibilities of a corrupt individual and his or

her private interests. The acceptance of a bribe creates such a conflict of interest."

In reality, conflict of interest is a situation, not an action — and it is clear that a public official may find him or herself in a conflict of interest situation without actually behaving corruptly. As Speck points out,³ "The concept of conflict of interest does not refer to actual wrongdoing, but rather to the potential to engage in wrongdoing." Indeed, it is all but inevitable that a public official will face situations where the public interest s/he has been elected or appointed to serve will conflict with other interests to which s/he is subject."

The Policy Brief on the OECD Guidelines for Managing Conflicts of Interest in the Public Sector⁴ states that the concept of conflict of interest arises in a multiplicity of situations, such as

- A public official having private business interests in the form of partnerships, shareholdings, board memberships, investments, government contracts, etc.;
- A public official having affiliations with other organizations (e.g., a senior public official sits on the board of a nonprofit organization that receives funding from the official's agency); and
- A public official leaving office to work for a regulated private company or a chief executive taking up a key position in a government agency with a commercial relationship with his/her former company.

Background on Indonesia: Good news...

After 10 years of undertaking spirited—albeit restrained—reform efforts in all sectors, Indonesia has made several praiseworthy achievements, especially in that relatively short timeframe. These achievements include:

- Amending the 1945 Constitution several times, producing improved governance and democratic systems with much weight on the role of the State in supporting the still-developing democratisation process, securing the wealth of citizens, promoting social justice, and protecting the human rights of Indonesia's diverse communities.
- Holding, in a commendably peaceful manner, the first direct general elections in 2004 for the parliament, regional representatives, president and vice president; this was followed by dynamic regional elections for regional parliaments, as well as the regional representatives, governors, majors and regents in more than 400 provinces, cities, and regencies. Although there were disputes on the election results, these were finally settled by the Courts, and Indonesia's famous street demonstrations

that inevitably happened due to the suits turned out to be manageable.

- Creating 30 new state institutions, commissions, and agencies needed to support good governance and anti-corruption systems since the start of reformation in 1998.
- Taking serious and rigorous efforts in the prevention and eradication of corrupt practices to answer the Indonesian public's cry for drastic action. The independent Corruption Eradication Commission (KPK), established in 2004, leads these efforts. That corruption cases were (and for the moment, still are) independently adjudicated by a special Anti-Corruption Court contributed to the effectiveness of the anti-corruption efforts. The special anti-corruption Court sits with a majority of ad hoc judges and decides corruption cases processed by the KPK.
- Creating an open economic environment that boosts investment in a balanced way, taking into consideration socially responsible policies. Modern laws and regulations now exist in the areas of corporation, capital markets, tax, foreign investments, environmental protection, oil and natural gas, mining, infrastructure, anti-monopoly, independent judiciary, and other key areas. Fortunately, Indonesia has not neglected to enact laws and regulations that cater to public interests in the areas of labour, consumer protection, human rights protection, land issues, disclosure of public information, and the like.
- Initiating a comprehensive bureaucratic reform of hundreds of thousands of ineffective public jobs, and applying merit-based programs for public officials. These began with internal reforms within the Department of Finance, the Financial Audit Board, and the Supreme Court.
- Safeguarding the freedom of the press, thereby positioning the Indonesian media among the freest media in the world. The media voices the people's opinions, and directly impacts the performance of the government, parliament and judiciary.
- Applying regional autonomy policies in a country with thousands of islands and a population of more than 220 million. This provides all citizens across Indonesia with equal opportunities and a chance to progress and develop.

...and setbacks

In Transparency International's Corruption Perception Index 2007, Indonesia ranks 144 out of 180; its index is 2.3.⁵ The Political and Economic Risk

Consultancy (PERC) ranked Indonesia as the third most corrupt country among 13 Asian economies.⁶ The International Finance Corporation (IFC) in 2007 ranked Indonesia's investment climate as 123 out of 178.⁷

For the last 10 years after reformation, 82 corruption cases were investigated across the country. Corruption cases investigated and indicted by KPK are basically those involving funds of IDR 1 billion, or those that otherwise adversely affect the economy or state finances, and thus attract significant public concern. Despite the rigorous efforts and effectiveness of the KPK in preventing and combating corruption, corruption is still pervasive across the country. Corruption takes many forms, and includes petty bribery in the provision of basic public services—processing national identity cards and driving licenses, for instance—but also more expensive processes such as land conveyance, construction licenses, business licenses, government tenders; corruption occurs even in the area of public policy making by the parliament or executives.

Reform efforts are perceived to be half-hearted. Lack of funding, political pressure and interests, absence of leadership in many sectors, and cultural constraints often prevent good blue prints from being effectively translated into action.

Despite a genuine aspiration to distribute wealth of the country equally among citizens in rural and remote areas, the regional autonomy programs have resulted in the uncoordinated development and wrong implementation of thousands of local policies. Some of these measures even reinvent or copy the corrupt practices that were standard procedures of Suharto's cronies during the "New Order" administration. Local formal and informal leaders and activists—who seek to secure their region's access to local natural and other resources, following four to five decades during which these resources had been exploited by the central government—receive complaints from the private sector and the public on this proliferation of corrupt practices in the regions.

The country's leadership is in question. Crises call for tough and firm decisions, even though they might sometimes be unpopular. It is a widely made criticism that few days after winning the 2004 election, the current administration began to take decisions with a view to winning the 2009 election. The current administration has been praised for its anti-corruption agenda, although the success of the KPK in the establishment of corruption-prevention measures and sending corrupt public officials to jail is not linked to the performance of the current administration but rather to the dedication and integrity of the KPK, its commissioners, and its staff.

Most worrying among the reform failures is that the judiciary does not really support the reform of the judiciary. The results have been very underwhelming,

even though good laws have been enacted; police, prosecutors, and judges have been trained; resources are available; new systems, technology and governance systems have been introduced. The decisions of the courts indicate that either the quality of the judiciary is still low or that the level of corruption in the law enforcement agencies is still high.

The current global financial crisis will affect the ability of Indonesia to deal with its economic and financial issues; this will also affect the result of the general election in 2009. Economic and political turmoil will also influence how efforts to eradicate corruption and to fight for a clean government will be implemented in the near future.

Regulating conflict of interest

Based on its legal tradition of civil law, Indonesia tends to regulate everything through legislative and executive means. After reformation in 1998, Government and Parliament have promulgated 375 laws, the Government has issued 12 government regulations in-lieu-of-law as well as 927 government regulations; 252 Presidential Regulations, 913 Presidential Decrees, and 45 Presidential Instructions have been issued. Thousands of Ministerial Decisions, Instructions and Directives, and other decisions, instructions, rules, and guidance issued by public officials below the Minister level—plus legal products of state commissions, committees, and boards, either issued to facilitate the implementation of the higher laws and regulations, or simply issued to regulate at that level—have also been put in place.

Conflict of interest is regulated in various laws and regulations, and decisions of legislative, executive, and judicative bodies, and mostly in nonbinding codes of conduct or ethics issued by such bodies. The concept of conflict of interest is present in numerous legal documents such as the

- Indonesian Constitution of 1945, as amended several times;
- Decrees of the People's Consultative Assembly;
- Law on General Election;
- Law on the Ratification of UN Convention against Corruption;
- Law on Regional Autonomy;
- Law on Judicial Commission;
- Law on Supreme Court;
- Law on Power of Judiciary;
- Law on Money Laundering;
- Law on the Commission on Eradication of Corruption;

- Law on Governing of Clean Government and Free from Corruption, Collusion, and Nepotism;
- Law on Indonesian Police Force;
- Law on Public Prosecutor;
- Law on Bribery;
- Law on Corruption;
- Law on the Presidency; and
- Law on the State Ministries.

The laws and regulations basically deal with conflict of interest in respect to: official oaths of public officials; public officials taking on multiple functions; codes of ethics of public officials; conflicts of interest in public function (i.e., issuing a policy in favor of affiliates' interests, having business interests in any company or organization); not taking roles in political parties; not practicing a profession while being a public official (lawyers, public accountants, etc.).

The pace of making new laws and regulations in Indonesia's transformation from a long-repressed to a democratic society is still sadly unmatched by the capacity of institutions and agencies to implement laws and regulations. Reform and anti-corruption efforts can be expected to produce real results only in one of two decades from now.

Since 2007, efforts to regulate conflict of interest have continued and resulted in the promulgation of the Law on Presidency; the Law on State Ministry; the Law on General Election (amended); and the Law on the Composition and Position of the Parliament and Regional Representative Board; this last law was being discussed in Parliament in November 2008.

Most common conflicts of interest

In Indonesia, the most common conflict of interest situations involve:

- A public official designs, sets up, or issues a public policy, or makes a decision favorable to a business he/she directly or indirectly owns or controls, or that he/she expects to acquire or control;
- A public official designs, sets up, or issues a public policy or makes a decision favorable to a business of his affiliates (political, religious, family, ethnic, place of living, association, professional), regardless of whether or not there is a conflict of economic or financial interest in such an act;
- A public official puts himself in a position that potentially triggers a conflict between his public duties and his personal interests; the official

may not necessarily intend to engage in unethical conduct, and policies or mechanisms for preventing or managing such potential conflicts may or may not be in place;

- A public official receives money, goods, or services without incurring any immediate obligation to design, set up or issue a favorable policy or decision; however, such gifts still give rise to a psychological situation, where the public official feels “obliged” to return the favor in the future;
- A public official holds a position, role or interest in a corporation whose business depends on the policies or decisions of the official or his/her fellow public officials;
- A public official holds multiple positions, which may create a conflict or potential conflict between them.

The practice of dealing with conflict of interest: Business as usual

During the Suharto regime, corrupt acts involving collusion, cronyism, and conflicts of interest were standard conduct of most public officials. Family members and cronies of the Suharto Government controlled tenders for public procurement of goods and services. Suharto family members and his cronies marked up prices of goods and services, and issued businesses licenses, especially in the area of natural resources and infrastructure. The parliament, executive and judiciary, mass media and political parties were government controlled, and criticizing Suharto or his policies meant inviting trouble.

One would expect that reformation—which brought free, direct, and transparent general elections; a free press, academia, and public; as well as good governance and systems of checks and balances—would also bring clear regulations of conflict of interest, including effective prevention, and sanctions for perpetrators. Although progress has been made, collusion still compromises many government tenders, projects are still being marked-up and many public officials still hold multiple positions.

Conflict of interest is still pervasive where public officials have direct or indirect business interests in big corporations. Mr. Jusuf Kalla, Indonesia's Vice President, has interests in several corporations, including the Bukaka Group and the Bosowa Group. Mr. Aburizal Bakrie, currently Coordinating Minister of People's Welfare (formerly the Coordinating Minister for Economic Affairs) has interests in several corporations including Bumi Resources, KPC, and Bakrie Telecom. Both individuals have won several government projects in toll road projects, transportation, gas, mining, power generation, and telecommunication

amounting to several billion USD. Messrs. Kalla and Bakrie are respectively chair and co-chair of the Golongan Karya (Golkar) Party, a party that supported Suharto's repressive regime for the last 32 years of his administration.

For the last several years, the Bakrie group has been trying to convince the Government that a mud explosion in Sidoarjo, East Java, that paralyzed thousands of hectares of land was a natural disaster and not a technical error caused by an oil operation of one of their affiliates. If it were declared as a national natural disaster, the operator of the mines would be freed from any liabilities. In a more recent case, shortly after the global economic crisis started to affect the Indonesian capital markets, Bumi Resources, a member of Bakrie Group, encountered difficulties in servicing its debts. Media reports suggest that the Bakrie Group tried to influence the Minister of Finance and the Capital Markets authority to suspend trading of Bumi's shares during the negotiations with a buyer. The Bakrie Group is considering initiating legal action against an Indonesian media company. Tempo Magazine, in its November 2008 edition, reported "Jusuf Kalla from the offices of the Vice President said clearly: what's wrong with the Government helping [Bakrie Group]? He was quoted to say that the Bakrie Group is a national asset."

In another interesting case, one member of Parliament reported to KPK that he and his fellow Parliamentarians received money for the purpose of winning the election of the Senior Deputy Governor of the Central Bank. The Senior Deputy Governor refused to admit it, but media reports suggest that a member of the banking industry may have made the payments, hoping to get favorable decisions in the future.

Establishing an appropriate prevention program

Reformists in the government and other stakeholders are aware that conflict of interest problems will not disappear through passage of a single regulation. Comprehensive measures are necessary. The Government initiated regulatory reform in 2007, starting with the Department of Finance, the Supreme Audit Board, and the Supreme Court. One of the main programs will be organizational reform, which will involve launching programs to increase discipline amongst public officials, including avoiding multifunction and increasing public officials' salaries to reduce abuses arising from conflict of interest situations.

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific held a regional technical seminar on Preventing and Managing Conflict of Interest in Jakarta in August 2007. Since then, KPK and development partners have been in

communication to prepare a more comprehensive study with the purpose of: mapping COI rules and regulations; increasing public knowledge of the concept of preventing COI; issuing a new and more effective rule specifically on COI; establishing oversight agencies on COI in practice; and setting out effective disciplinary measures against non-complying public officials. The study is expected to be completed in 2009, and has the potential to contribute significantly to government reform programs.

Policy recommendations

Indonesia has ratified the UN Convention against Corruption (UNCAC), and a domestic law for its implementation has been enacted. The UN Convention contains important provisions on conflict of interest that reflect global governance and business standards. Policy efforts should start with a mapping activity on the laws and regulations that must be adjusted to the principles of the Convention. Subsequently, pressure needs to be exerted to force Government and Parliament to comply with the UN Convention.

The process to adjust the laws and regulations as set out above needs considerable time and effort. Pending the completion of these efforts, there should be a general rule applied to all public officials or prospective public officials, obliging them to

- prior to election and appointment processes, declare and register publicly all business and other interests that he/she and family and affiliates own or control;
- update any changes to such interests that intervene in the course of their function in public office;
- declare arising conflicts of interest to a responsible body;
- abstain from making any decision in a potential direct or indirect conflict of interest situation;
- subject themselves to an investigation by the responsible body when a conflict of interest occurs; and
- comply with the recommendations or disciplinary actions administered by the responsible body.

Socialization to, and oversight measures taken by, stakeholders are important. The current laws and regulations appear sufficient to make public all important information that relates to national interests. For example, all information on the government procurement of goods and services shall be made public, including pricing policies and benchmarking processes to the open market. The public shall be able to point out when a process is not in line

with the benchmarks generally available in the market, and the body or agency in charge of monitoring conflict of interest shall be able to follow up any reports from the public, and take necessary measures or actions.

NOTES

- ¹ See Quentin Reed: *Sitting on the Fence, Conflict of Interest and How To Regulate Them*. U4 Issue 6.2008. Available at www.cmi.no/publications/file/?3160=sitting-on-the-fence
- ² United Nations Office on Drugs and Crime: *United Nations Anti-Corruption Toolkit*, pp. 15–16. The document is available at www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf
- ³ Quoted after Quentin Reed: *Sitting on the Fence, Conflict of Interest and How To Regulate Them* (see note 1 above).
- ⁴ September 2005. Available at www.oecd.org/dataoecd/31/15/36587312.pdf
- ⁵ The CPI is available at www.transparency.org/policy_research/surveys_indices/cpi
- ⁶ www.asiarisk.com
- ⁷ The index is available at www.doingbusiness.org/economyrankings/

Auditors' Conflicts—Independence in the Audit of Financial Statements

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Expert views can be valuable, and help people formulate opinions. Quite often, however, these experts face conflicts of interest between their professional obligations and their own self-interest to provide good advice.

"Integrity needs no rules" and such conflict is difficult to define: a situation which can cause conflict for one person may not be a problem for another. The majority of professionals are unaware of the gradual accumulation of pressures on them to slant their conclusions—a process which has been characterized as *moral seduction*.

Given what we now know generally about motivated reasoning and self-serving biases in human cognition—and specifically about the incentive and accountability matrix within which auditors work (Bazerman, Morgan, & Loewenstein, 1997)—we should view personal testimonials of auditor independence with scepticism.

Evidence has suggested that intentional corruption is probably the exception, and that unconscious bias is far more pervasive. This distinction between conscious corruption and unconscious bias is important, because the two respond to different incentives and operate in different ways.

Most professionals feel that their decisions are justified and that concerns about conflicts of interest are overblown by ignorant outsiders who malign them unfairly. Perhaps the most notable feature of the psychological processes at work in conflicts of interest is that they can occur without any conscious intention to indulge in corruption. Psychological research on the impact of motivated reasoning and self-serving biases questions the validity of this assumption. The evolution of several audit-related professional services over time and the impact of non-audit fees have also played a significant role in the discussion between Independence and conflict of interest.

In 1978 the SEC required companies to disclose any non-audit services their auditors performed for them if and when the fees paid to the auditor for non-audit services were at least 3% of the audit fees paid. However, this

requirement was repealed in 1982 by the SEC, which concluded that the required disclosure “was not generally of sufficient utility to investors to justify continuation,” despite evidence showing that knowledge of a consulting relationship creates a perceived lack of auditor independence.

Non-audit services proved to be yet another important growth area for accounting firms. The Public Oversight Board Panel on Audit Effectiveness Reports and Recommendations in 2002 reported that by 1999, fees for non-audit services had grown to 66% of revenues and 70% of profits for the major accounting firms.

Much has been written and spoken about the loss of public confidence in financial reporting during the late 1990s and early 2000s, and the auditor's performance of this gatekeeper role. A few factors could be taken into consideration to understand this significant erosion of trust:

- The rise of non-audit, consulting services: Revenues from activities—such as systems design, tax planning, assistance with data processing procedures, and a host of other high-margin advisory services—became increasingly important. In many cases, clients were paying their auditors more for consulting than for the financial statement audit. As a consequence, firms began to see the lower-margin audit as a hindrance to more lucrative consulting engagements.
- Downward pressure on auditing fees: Firms faced considerable pressure to keep the audit fee low, or risk losing both their audit and (more profitable) non-audit relationships with clients. In a growing market, clients viewed the audit opinion as merely another standardized commodity to be purchased as economically as possible.
- Increased reliance on more cost-efficient means of auditing: The tactic of using the audit to gain entry to other work, coupled with the difficulty in raising audit fees, meant that the costs of auditing had to be controlled. That, in turn, led to more emphasis on risk-based auditing, the theory under which auditors plan their work based on judgments about which aspects of the client's business are the most likely prone to error or fraud. In the areas of perceived low risk, the auditor relies more heavily on internal controls and management representations. Though theoretically strong, this process—if not judiciously applied—can have disastrous consequences, particularly if the underlying judgment about risk turns out to be incorrect. An example of this is WorldCom.

What is independence?

Various legal and other definitions are available for “independence. The Code of Ethics for Professional Accountants, issued by International Federation of

Accountants (IFAC), distinguishes independence of mind and independence of appearance. Per their definition, "independence" is:

- **Independence of mind** - the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity and exercise objectivity and professional scepticism; and
- **Independence in appearance** - the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional scepticism had been compromised."

The code further identifies five specific threats to auditor independence:

- **Self-interest threats** – Partner or associate benefiting from a financial interest in an audit client.
 - i. Direct financial interest or materially significant indirect financial interest in a client,
 - ii. Loan or guarantee to or from the concerned client,
 - iii. Undue dependence on a client's fees and, hence, concerns about losing the engagement,
 - iv. Close business relationship with an audit client, or potential employment with the client, and
 - v. Contingent fees for the audit engagement.
- **Self-review threats** – Reviewing of any judgment or conclusion reached in a previous audit or non-audit engagement, or when a member of the audit team was previously a director or senior employee of the client.
 - i. When an auditor has recently been a director or senior officer of the company, and
 - ii. When auditors perform services that are themselves subject matters of audit.
- **Advocacy threats** – When an auditor promotes, or is perceived to promote, a client's opinion to a point where people may believe that objectivity is being compromised (e.g., when an auditor deals with shares or securities of the audited company, or becomes the client's advocate in litigation and third-party disputes).
- **Familiarity threats** – When auditors form relationships with the client where they end up being too sympathetic to the client's interests. This can occur in many ways:
 - i. Close relative of the audit team working in a senior position in the client company,
 - ii. Former partner of the audit firm being a director or senior employee of the client,
 - iii. Long association between specific auditors and their specific client counterparts, and

- iv. Acceptance of significant gifts or hospitality from the client company, its directors or employees.
- **Intimidation threats** – When auditors are deterred from acting objectively with an adequate degree of professional scepticism. Basically, this could occur because of threat of replacement over disagreements with the application of accounting principles, or pressure to disproportionately reduce work in response to reduced audit fees.

Regulation in the Indian Context

Various countries have created regulations on auditor conflict and independence. In India, both the Companies Act of 1956 and the Chartered Accountants Act of 1949 provide restrictions to ensure independence of auditors.

Following are few key examples from Indian regulatory context on the independence of chartered accountants (CA) as auditors: Section 226 of the Companies Act prohibits the appointment of a CA as auditor if there exists certain relationships or indebtedness to the Company or the auditor is a shareholder, while section 334 of the Companies Act also provides for special resolutions to be adopted if the appointed auditor has relationships with any director or managers in the company.

Under the CA Act, the areas of restrictions are: fees and kind of fees that can be paid to the auditor which are not success based, services that can be provided (liquidator, internal auditor, management consultant, etc.) and if substantial interest or director or in the employment as an officer in the company either himself or through partner or relative.

Resolving Conflict of Interest

Given the cognitive and political barriers to solving the problems created by conflicts of interest, it is unlikely that society will ever entirely eliminate them. Nevertheless, that does not mean that it is impossible to limit their reach.

Auditor independence is the cornerstone upon which the audit profession has been built, and indeed, discharges its duty to its clients and the market at large. The key characteristic of this independence is the state of mind of the auditor. This must include integrity, strength of character to stand up for what is right, and freedom from undue influence with a positive independent outlook. Understandably, as we see all manner of corporate collapse, including a global audit firm, the question of audit independence must be challenged.

A number of theories have been written and talked about in this context:

- Auditors should perform audits and no other services.
- An audit firm should be hired for a fixed period, perhaps 5 years.
- All parties involved in the audit, executives and staff alike, should be prohibited from taking jobs with the firms they audit.
- Auditors should make a set of independent assessments, rather than simply ratify the accounting of the client firm.
- The auditor should be chosen not by company management but by the audit committee of the board of directors.

Conclusion

Abraham Lincoln once said: “You cannot build character and courage by taking away a man's initiative and independence”. This saying holds true in the auditing world as well: initiative is required by auditors to take right decisions, keeping in mind the facts—and walking the lane of independence is a very essential characteristic of this profession.

However, like so many other professional issues this issue requires rigorous debate, robust research and, ultimately clears professional judgment. Structures and processes will certainly support both the fact and perception of auditor independence, but in the final analysis it is the integrity of the auditor which ensures that correct judgment calls are made.

Conflict of Interest in the Transport Sector

William D. O. Paterson, Consultant, former Lead Infrastructure Specialist with the World Bank

In the realm of business, public officials commonly interact or deal with suppliers, contractors, and consultants in the private sector on a regular basis in the performance of their ordinary duties. These situations of interaction, which in themselves are natural and a necessary part of business dealings, can also have the potential for officials to experience a conflict between private interests and the public interest, which may lead to corrupt activity.

It is important when reviewing situations where conflict of interest can arise, to distinguish this situation from actual corrupt behavior because corrupt behavior does not necessarily follow from the situation. The aim in managing and controlling conflicts of interest is therefore to reduce the likelihood of conflict of interest situations, and to avoid a conflict situation leading to corrupt behaviour.

In this presentation, we will be considering the kind of situations that arise in an important public sector, which is also one of the most vulnerable to corruption—the transport sector.

Sources of conflict of interest

In most transactions between the public and private sectors, there is a familiar array of controls over various facets of the transaction—through internal control systems, internal audit, external audit, and increasingly through a third party monitor not employed by the government. However, provisions to limit the private interests of officials participating in the process are much less common in many developing countries.

In the case of the transport sector, and many other infrastructure sectors also, public officials will often be qualified technical professionals in the sector. As such, they will usually have a network of peers, developed partly through their academic and professional training, and partly through trade and professional associations, which run in parallel to their public employment. Furthermore, some may well come from extended families with financial interests in supply, construction or consulting firms—or have strong geographical or political ties to a region—that may induce indirect benefits or cause indirect influence over

decisions. Guidelines for when an official should recuse themselves from certain situations or decisions are therefore important but difficult to devise.

Conflict of interest situations can also arise for any third party group brought in to monitor the situation, especially if the private sector or public officials capture the situation in a scheme to cover corrupt activities and to co-opt or influence the third party monitor. Third party monitors may be provided with transportation, accommodation, entertainment, or even direct remuneration of varying levels—usually through the private sector—in order to influence their judgment. While some of these may begin as simple administrative arrangements, they may easily be extended in scope or amount as bribes, and in some forms may later be used for blackmail or coercion purposes, in order to maintain secrecy over the scheme and influence over the decisions being made.

The following threat areas need to be addressed by provisions to control conflict of interest:

1. *Recruitment and appointment of staff:* A critical tool in corrupt schemes is often the use of patronage to place individuals who are well connected to local officials or influential firms into management staff positions responsible for business decisions such as procurement, payment authorization, budget allocation, etc. Thus, staff recruitment should include provisions for declaration and review of the commercial and political ties and interests of a recruit or appointee. For transparency, this information might also be disclosed within appropriate guidelines.
2. *Professional or technical associations:* A declaration of membership and positions of responsibility held in technical and professional associations, or nonprofit organizations that may receive government funding, should be made and updated regularly for mid-level and senior staff. Ideally, membership in such organizations may reduce the risks when there are strong ethical and professional standards in the organization; however, in other situations the participation could induce opportunities for market sharing and cartel-type behaviour if allowed to pass unchecked.
3. *Security concerns:* In areas of security risk, a mechanism of internal transparency is needed to ensure that staff do not compromise quality and decisions out of concern for safety and security, and that the actions taken to address the risks are appropriate and duly disclosed.
4. *Assets and private interests:* The practice of requiring staff in decision-making positions to make regularly updated declarations of financial

assets and commercial interests has been growing, and provides a crucially important tool for transparency and control of potential conflicts of interest. The effective application of asset declarations, however, also requires careful attention by management to ensure that staff actually recuse themselves from situations where a conflict of interest might arise, and that this is not left to become a pro forma exercise.

5. *Post-public-employment issues*: Significant opportunities for conflict of interest arise with former public officials who take up employment in organizations which work in the same sphere or may be retained by the government to provide services of some kind. Specific provisions for a “cooling-down” period and arms-length relationships are necessary for the rules to be clear and accepted.

For the private sector, there are many stages in the value chain or project cycle where a potential conflict of interest could be exploited. General facilitation through small or large gifts, hospitality and entertainment, including sporting events such as golf, have all been used to develop a spontaneous and reliable relationship with public officials which is expected to yield payback through favors in critical stages of the project cycle. The stages that are the most vulnerable are those where significant discretion is involved or where transparency is lacking in the processing of information.

Specific vulnerabilities arising from conflict of interest

In procurement, the most vulnerable stages are usually the prequalification, evaluation, and contract award stages. In addition to controls to ensure fair competition and transparency, specific actions should be taken to ensure that individual public staff involved in evaluations and decisions are fair and independent—and free from commercial interest or connection with any of the competing firms, with a specific declaration of any specific connections which might constitute a conflict of interest. In the implementation stage, the potential for conflicts of interest is almost as high, because a firm can exploit relationships with supervising staff to have deficient work accepted or to inflate contract variations, using the savings or proceeds to benefit both the supervisor and the supplying firm.

As noted earlier, even third parties who are intended to provide an independent monitoring function can be vulnerable if key provisions are not made to prevent or minimize conflict of interest situations. For inspectors and supervisors, provisions should preserve the independence of mobility to, from and around the site, subsistence and work operations.

For auditors, a conflict of interest situation arises, especially for a firm which has been incumbent for some time, in the judgment distinguishing substantial variances from minor ones, and in the hope for continuity of business from year to year.

Similarly, even financing agencies can face conflicts of interest in the oversight of programs, through pressure to expedite clearances or financing to enhance portfolio performance, perhaps at the expense of quality or governance issues.

Preventing and managing conflict of interest

An interesting example, where constructive forces of partnership counter-balance the potential for conflicts of interest, is the multi-stakeholder monitoring group in the Philippines road sector. There, a partnership between civil society, nongovernment organizations, the private sector, and the public implementing agency was formed to tackle an array of quality and governance issues. The partnership structure facilitates access to information and sites, and constructive responses. To preserve impartiality as a watchdog, however, the public agency was excluded from critical executive actions such as voting by the board.

These situations, which commonly arise in infrastructure sector processes, require special attention when developing conflict of interest provisions, especially when adapting general provisions to control of conflict of interest. As the OECD Gifts and Gratuities Checklist expresses,¹ the test of evaluating a gift or situation comprises the following aspects: Is the advantage a genuine appreciation and not solicited? Will I maintain independence in my job in the future? Am I free of obligation to do anything in return? And am I prepared to declare it transparently to my colleagues?

NOTES

¹ More information on this concept is available in *Managing Conflict of Interest in the Public Sector: A Toolkit*. OECD 2005, p. 43. A free read-only version is available at browse.oecdbookshop.org/oecd/pdfs/browseit/4205121e.pdf

Chapter 5

Working together to combat corruption: International and regional initiatives

With the growth of multinational enterprises and transnational economic ties, governments and businesses have created regional and global alliances to respond to corruption and related crimes. Through these initiatives, governments and businesses seek to jointly address common challenges and to minimize risks in a sensitive environment. These programs can address corruption in general, or on industry-specific issues. These international initiatives play an important role in driving reform. However, their impact largely depends on implementation at the country level, which is often driven or supported by civil society.

Joint government action at the regional level

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific is an example of regional dialogue on anti-corruption in Asia and the Pacific. Its work is supported by the Asia-Pacific Group on Money Laundering (APG), an Initiative partner, which pursues regional cooperation in the fight against money laundering—a crime with close links to corruption. A recent APG study on the links between corruption and money laundering shows these offenses may have mutually reinforcing effects: corruption undermines anti-money-laundering efforts, and money laundering helps the corrupt benefit from the crime. In turn, efforts to reduce vulnerabilities for money laundering or corruption are doubly beneficial. Closer cooperation between financial intelligence units and anti-corruption bodies will therefore lead to even more effective efforts.

Joint anti-bribery programs in the business sector

Businesses also work together on the regional level to fight bribery and corruption. The APEC Business Advisory Council (ABAC) has developed a Code

of Conduct for Business based on work by civil society and the international business community (notably TI, the ICC, and the WEF). The code, which APEC leaders endorsed in September 2007, sets out comprehensive yet concise standards addressing bribery risks. It is also intended to assist small and medium-sized enterprises, which typically have fewer resources for integrity measures.

The Global Compact operates at the international level. It is open to companies in all industries from all countries. Participating companies commit to respect 10 principles in their business operations, including to “work against corruption in all its forms, including extortion and bribery”. The Extractive Industries Transparency Initiative (EITI) is another global effort focuses on the extractive Industries, where corruption is particularly rife and damaging.

Implementation of regional programs at the country level

Regional Initiatives are a catalyst for reform and change, but countries must translate these regional programs' into local action in order to enjoy their full benefits. For example, the K-PACT, a joint effort by all stakeholders of Korean society and government to counter corruption in the country, facilitated Korean companies' involvement in the Global Compact. A national network for the Global Compact was also created.

The EITI also requires efforts at the country level to achieve its goals. In Timor-Leste, a country rich in natural resources and a participant in EITI, all parts of society and government cooperate in implementing the EITI work program. EITI provides a framework for this cooperation and the international exchange of experience, while leaving ownership and responsibility to the country level. EITI is a tool in a process rather than an end in itself. Working toward its goals provided Timor-Leste with an opportunity to build a multi-stakeholder collaboration.

The 13th IACC

The IACC is a biennial event that brings together governments, private sector entities, civil society organizations, academia, the media and international organizations in the fight against corruption. The 13th IACC held in Athens, Greece, was designed around four themes: peace and security, corruption in the natural resources and energy sectors, climate change and corruption, and sustainable globalization. The 14th IACC, which will be held in Thailand in 2010, will be an opportunity to showcase best practices in Asia and the Pacific.

The APG and its Role in Combating Corruption in Asia and the Pacific

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First of all, I would like to thank the Asian Development Bank and the Organisation for Economic Co-operation and Development for inviting me to speak at this conference. It is indeed an honor for me to share my thoughts on pertinent issues with regard to combating corruption in my capacity as the Co-Chairman of The Asia-Pacific Group on Money Laundering (APG).

Background on the APG

The APG is an international organization consisting of 38 member countries/jurisdictions and a number of international and regional observers including the United Nations, International Monetary Fund (IMF), and World Bank. The APG is closely affiliated with the Financial Action Task Force (FATF), an inter-governmental body that develops and promotes policies to combat money laundering and terrorist financing. All APG members commit to effectively implement the FATF's 40+9 Recommendations,¹ which essentially encompass guidelines to put together a basic framework to detect, prevent, and suppress money laundering and the financing of terrorism.

The APG's key roles include

- Assessing compliance by APG member jurisdictions with the global AML/CFT standards through a robust mutual evaluation program.

The purpose of the mutual evaluation program is to monitor the degree of compliance by member countries with the FATF's 40+9 Recommendations through periodic on-site evaluations by a panel of legal, financial and law enforcement experts. It provides feedback on the robustness and effectiveness of a country's domestic anti-money laundering and counter-financing of terrorism framework.

- Coordinating technical assistance and training with donor agencies and countries in Asia and the Pacific to improve compliance by APG members with the global AML/CFT standards.

The APG organizes capacity-building workshops and technical assistance forums to encourage countries to implement the FATF's 40+9 Recommendations.

- Participating in and cooperating with the international anti-money laundering network, primarily with the FATF and with other regional anti-money laundering groups.

The APG, the FATF and the other regional anti-money laundering bodies constitute an affiliated global network to combat money laundering and the financing of terrorism.

- To contribute to the global development of anti-money laundering and counter-terrorism financing standards by active Associate Membership status in the FATF.

In June 2006, APG was granted Associate Membership in FATF to deepen the cooperation between APG and FATF. This membership gives APG direct access to the policy-making and standard-setting process of FATF.

Another key APG work area is research and analysis into money laundering and terrorist financing trends and methods, to better inform APG members of systemic and other associated risks and vulnerabilities.

This includes studying typologies on corruption, on which APG has conducted extensive research since 2003. In fact, FATF and APG are currently co-drafting a research paper on anti-corruption. This paper focuses on the links between corruption and money laundering, which traditionally have been studied in isolation.

You may be wondering what a regional anti-money laundering body has to do with combating corruption. Corruption is actually inextricably linked to money laundering. It has become increasingly obvious that despite the distinct nature of these two forms of criminality, they are in fact inseparable.

The link between corruption and money laundering

The APG has identified three main areas² of crossover between corruption and money laundering. They are:

1. Corruption generates enormous profits to be laundered.
Corruption generates more than USD 1trillion of illicit funds annually, which are laundered both domestically and increasingly in the international financial system.
2. Corruption facilitates numerous money laundering and terrorist financing methods and supports predicate criminal activities.

The machine of money laundering often requires the lubricant of corruption to function effectively. An example of corrupt assistance to facilitate money laundering is when corrupted public officials provide identification documents that establish false identities. Such identities are then used to operate bank accounts and conduct other financial transactions.

3. Systemic corruption undermines effectiveness of legislation, regulations, and enforcement of anti-money laundering and counterterrorism-financing matters.

Systemic corruption may block AML investigations, impede suspicious transacting reporting systems, and undermine good governance standards. For the most serious and large-scale instances of corruption-related money laundering, there is a real danger that high-ranking political officials will be able to sabotage the proper functioning of the AML system. This might take the form of cabinet-level officials withholding permission to prosecute even once sufficient evidence for a prosecution has been gathered.

Corruption-related money laundering: Methods and trends in Asia and the Pacific

According to a typology study conducted by the APG,³ laundering the proceeds of corruption in Asia and the Pacific was achieved in a myriad of ways, particularly the common use of cash for bribes, with proceeds of corruption remaining in the form of cash and concealed in homes or business premises. In fact, third parties are also commonly used, including family members or affiliated companies which receive corrupt payments in a variety of forms and subsequently deposit proceeds of corruption into financial institutions.

APG research also reveals a trend that gatekeepers—such as accountants and lawyers—are being used to conceal the origin of corrupt payments, including disguising such payments as consultancy fees. Gatekeepers are also being used to manage the subsequent investment of corrupt funds into assets including real estate, stocks, bonds, or mingling within legitimate businesses.

Common corruption vulnerabilities in Asia and the Pacific

APG also found in a study that countries in the region face nine common vulnerabilities:

1. Low pay and poor conditions of those in the public sector produce a systematic vulnerability to corruption.
2. Financial expertise in identifying corruption typologies is lacking.
3. APG member jurisdictions with cash-based economies face great difficulties in distinguishing money from legitimate and illegitimate sources.
4. Absence of a dedicated anti-corruption body and a lack of vigorous media scrutiny keep corrupt acts hidden.
5. Weak political will of senior managers and the government to develop a robust anti-corruption culture lead to low levels of prevention and enforcement.
6. Concerns exist that Politically Exposed Persons (PEPs) may block anti-money laundering investigations, impede the suspicious transaction reporting system, and undermine good governance standards.
7. It is difficult to keep investigations secret in small jurisdictions where tipping off is a constant danger.
8. Law enforcement and prosecutors are often more interested in pursuing the predicate crime rather than money laundering or corruption offenses.
9. Finally, because corruption-related money laundering often necessitates international action, such investigations tend to be complex, time-consuming, and expensive—and require considerable expertise.

The corruption/money laundering paradigm of international cooperation is similar to the problem of investigating transnational financial crimes in general. The multiple layers of obstacles and complexities arising from tracing, freezing, and recovering the proceeds of corruption internationally make this even more complicated. Given the significant sums of corrupt proceeds that have been laundered, there is an extra dimension to providing effective international cooperation in this field.

Facing these challenges, how can we protect our communities and businesses from the menace of corruption and money laundering in the new environment of pervasive exposure to international criminals?

APG strategies in combating corruption in the region

Improving international cooperation

APG has always advocated close international cooperation to combat the common threat of transnational corruption and money laundering. International cooperation could be promoted through benchmarking effective systems for mutual legal assistance, extradition, and seizure of assets and the denial of safe havens for criminals and the proceeds of their crime. APG also actively encourages its members to sign and ratify regional and global treaties and conventions aimed at facilitating international cooperation in fighting money laundering and corruption.

Improving coordination between financial intelligence units and anti-corruption bodies

AML/CFT systems hold considerable potential to counter corruption; this potential is currently underutilized. Legislation, establishment of financial intelligence systems, and creation of specialized anti-money laundering bodies equip countries with potent anti-corruption instruments. However, an excessively narrow conception of the proper function of the AML/CFT system that generally provides for little interaction between Financial Intelligence Units (FIUs) and anti-corruption bodies is largely responsible for missing this opportunity.

Using AML/CFT freezing and seizure provisions for asset recovery

AML/CFT provisions on asset freezing and seizure can be of use for anti-corruption purposes in both domestic and international cases. The ability to bring money laundering charges against corrupt officials and those abetting them can bring conviction-based asset confiscation procedures into play. Nonconviction based and civil mechanisms are perhaps even more effective; these mechanisms allow a reduced burden of proof for stripping illicit gains from those involved in money laundering and corruption. Confiscation in this manner acts as deterrent and penalty, and confiscated assets may provide resources to bolster capacity.

Aligning anti-corruption and AML/CFT strategies

The first step to capitalising on potential synergies between AML/CFT and anti-corruption measures is to encourage joint training and enhanced links between Financial Intelligence Units and anti-corruption bodies. UNODC and the Commonwealth have already adopted this principle in many of their technical

assistance programs, but further reinforcement along these lines is needed. In particular, anti-corruption bodies should be trained to know how to follow up financial intelligence gathered by FIUs.

Conclusion

Today I have shared with you information on APG's work, its research findings on trends and vulnerabilities in respect to corruption-related money laundering issues in the region and some of its strategies to combat such crimes. The APG is working on training its member jurisdictions to prevent and detect corruption as well as to successfully prosecute those responsible for offering and accepting bribes and laundering the proceeds. However, there is still a strong sense that more needs to be done to promulgate an anti-corruption culture.

Of course, APG is not alone in the battle against corruption and money laundering, nor are the law enforcement agencies. Workshop 3 highlighted how the private sector can work on corporate compliance programs and integrity systems.⁴ To bring down crime, we need to work hand in hand together with the private sector. We have to act together as a group to fight against the criminals. Criminals in this new age are tenacious in probing our systems for gaps and creative in devising new methods to overcome safeguards.

Therefore, it is crucial that we keep abreast of the latest developments through more interaction and discussion. Indeed, active collaboration and partnership among the private sector, industry experts, and international enforcement agencies is critical to maintaining the integrity and credibility of Asia and the Pacific.

NOTES

¹ See www.fatf-gafi.org

² APG Scoping Paper.

³ APG Scoping Paper.

⁴ See these presentations on p. 99 and following in this volume.

APEC Business Principles and UN Global Compact as Examples of Regional and Global Cooperation in the Fight against Corruption

Peter Rooke, Senior Adviser, International Group, Transparency International

APEC Code of Conduct for Business

The Asia Pacific Economic Cooperation (APEC) is an inter-governmental economic organization bringing together leading economies on both sides of the Pacific. Many of the countries that are members of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific are APEC members.

APEC was slow to address corruption directly; it starting instead with work on developing transparency principles for general application and then adapting them to specific situations, from customs to clearance to direct investment and procurement. However, partly in response to pressure from the APEC Business Advisory Council (ABAC), which was advocating development of an APEC Anti-Corruption Convention, APEC Leaders agreed in 2004 to endorse the APEC Course of Action on Fighting Corruption and Ensuring Transparency. One of the key priorities of the Action Plan is to encourage APEC member economies to ratify the UNCAC. APEC Leaders also decided to establish the APEC Anti-Corruption and Transparency Task Force (ACT). ACT meets twice a year at Senior Officials Meetings leading up to the Leaders meeting late in the calendar year.

TI has participated as an observer in all ACT meetings. When Australia hosted APEC in 2007, TI was actively involved in the development of the APEC Code of Conduct for Business, which APEC Leaders endorsed in September that year. The Code of Conduct used as a basis the TI Business Principles for Combating Bribery, the ICC Rules on Combating Bribery and Extortion, and the World Economic Forum Partnering Against Corruption (PACI) principles as well as brief principles developed by ABAC. TI successfully advocated for the Code to include strong provisions on implementation. TI is also very pleased to see that the Code contains a clear prohibition on facilitation payments, on the ground

that they are illegal under the domestic laws of most countries although not expressly prohibited by the United States Foreign Corrupt Practices Act (FCPA) or the OECD Anti-Bribery Convention.

The Code — which fits on one page of paper — is titled “Business Integrity and Transparency Principles for the Private Sector” and begins with the statement: “The enterprise shall prohibit bribery in any form.”¹ It requires enterprises to develop a comprehensive program to counter bribery.

The Scope and Guidelines address:

- charitable contributions;
- gifts, hospitality, and expenses;
- facilitation payments (as I mentioned); and
- political contributions.

The Program Implementation Requirements cover

- business relationships;
- communication;
- leadership;
- financial recording and auditing;
- human resources;
- monitoring and review;
- raising concerns and seeking guidance;
- training; and
- organization and responsibilities.

The ACT plans a pilot rollout of the Code in Australia, Chile, and Vietnam, focusing on the SME sector. SMEs are considered to need particular help in addressing integrity issues due to their relative lack of resources and their greater vulnerability to corruption pressures in many cases.

UN Global Compact

An example of a global initiative with great resonance in Asia and the Pacific is the UN Global Compact.

The Global Compact is an initiative of former UN Secretary-General Kofi Annan. Launched in July 2000 as a policy platform and framework for companies committed to sustainability and responsible business practices, the Global Compact originally consisted of nine principles covering human rights, labor and environmental issues. On 9 December 2004, International Anti-Corruption Day, a

Tenth anti-corruption Principle was added, following advocacy by TI and others. The Tenth Principle reads:

“Business should work against corruption in all its forms, including extortion and bribery”.

The Global Compact membership consists currently of around 4,700 businesses and 1,500 other stakeholders, including NGOs, academic and research institutions, and others. Many of the businesses are SMEs but they also include a large number of MNCs.

In Asia and the Pacific, membership is unevenly spread among countries. P.R. China tops the list with 187 members, India has 172, and Indonesia and the Republic of Korea have 142 each. However, there are only 18 Global Compact members in Malaysia, 16 each in Thailand and Vietnam, and 73 in Japan.

Countries with larger numbers of members have established National Networks with designated Contact Points. My colleague Geo-Sung Kim from TI Korea will share the experience of establishing a National Network in Korea.²

Global Compact membership entails the obligation to uphold the Ten Principles and to report progress regularly to the Global Compact Secretariat. Failure to report over time leads to expulsion; several hundred members met this fate in 2007 and again in 2008. However, the fact that there are currently 4,700 members in good standing is encouraging.

The Global Compact gives guidance on implementation. In the case of the Tenth Principle on anti-corruption, suggested implementation steps are

- Introduce and implement effect zero-tolerance policies and programs, and adopt a company ethics code;
- Train employees to ensure that an ethical culture is developed within the company and integrated in management systems;
- Adopt internal reporting procedures;
- Be accountable and transparent in all company transactions;
- Cooperate with authorities investigating and prosecuting cases of corruption;
- Engage in collective business action with industry peers;
- Check with human resources and other relevant departments to see if the following exist:
 - an employee-training program on how to identify bribery and corruption;
 - a code of business conduct and ethics that includes a requirement for employees to review and sign off on the code regularly;

- an ethics “hotline” for reporting suspected violations (as well as use statistics);
- an investigation procedure that addresses violations, including information on investigation results.

As David Lyman mentioned in his presentation,³ the Global Compact has signed a memorandum of understanding to cooperate with TI, the ICC and the World Economic Forum to promote anti-corruption standards, and it has also signed a memorandum of understanding with UNODC.

Such cooperation between the main international standard-setting bodies in relation to anti-corruption standards for business is essential to engage business effectively. As John Bray said so eloquently,⁴ companies need a clear business case to take action on corruption. One of the first fruits of the cooperation between the Global Compact, TI, the ICC, and the World Economic Forum is the booklet “Clean Business is Good Business: the Business Case Against Corruption”⁵.

Lastly, TI is working with the Global Compact to develop reporting indicators for the Tenth Principle so that Global Compact members can report appropriately on their anti-corruption compliance efforts in the sustainability reports, which more and more companies are issuing.

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- ¹ The “Business Integrity and Transparency Principles for the Private Sector” are available at www.apec.org/apec/news__media/2007_media_releases/060907_aus_bizcodeconduct.MedialibDownload.v1.html?url=/etc/medialib/apec_media_library/downloads/taskforce/act.Par.0002.File.v1.1
- ² See Mr. Geo-Sung Kim's presentation on p. 145 in this volume.
- ³ See Mr. Lyman's presentation on p. 47 in this volume.
- ⁴ See Mr. Bray's presentation on p. 38 in this volume.
- ⁵ www.unglobalcompact.org/docs/news_events/8.1/clean_business_is_good_business.pdf

Translating Regional and Global Initiatives into Local Action—Insights from the Republic of Korea

Geo-Sung Kim, Chairperson, Transparency International Korea

Transparency International Korea has been inviting major players from the public and private sectors to build a coalition for promoting transparency and fighting against corruption. As a result, the Korean Pact on Anti-Corruption and Transparency, K-PACT, proposed by TI-Korea in 2004, was signed on 9 March 2005.

Article 16 of the K-PACT states: The private sector “should participate in the UN Global Compact based on ten principles of the human rights, labor standards, environment, and anti-corruption areas.” K-PACT aims to empower the movement for change in the private sector itself.¹

At the time of the K-PACT signing ceremony, not one single participant in the UN Global Compact came from Korea. Now, in the fourth year of K-PACT, 144 participants in the UN Global Compact come from the Republic of Korea. This result is partly due to the K-PACT Initiative, but other forces also contributed to this progress, such as the fact that the UN Secretary General, Mr. Ban Ki-Moon, is a Korean national.

As a board member of the UN Global Compact Korea Network, I am pleased to inform you that the Network's major activities focus mainly on promoting anti-corruption strategies and enhancing transparency in the private sector. Korea has also witnessed some failure stories, including three bribery cases involving the chief executive officers of companies that participate in the UN Global Compact.

As you may know, TI developed the concept of a “National Integrity System” (NIS) as part of its holistic approach to countering corruption. The NIS consists of the principal institutions and actors that contribute to integrity, transparency, and accountability in a society. A national integrity system includes several elements: the legislature, executive, judiciary, public sector, law enforcement, electoral management body, ombudsman, audit institution, anti-corruption agencies, political parties, media, civil society, and business. Each

element can be seen as a pillar underpinning rule of law, sustainable development, and quality of life.²

However, we also need to look at the foundation of the national integrity system—namely, the political-institutional, sociopolitical, and socioeconomic foundations. In that sense, TI-Korea emphasizes the importance and the need of youth integrity promotion. There are 13 NGOs and 13 academic institutions in the Korean participants of UN Global Compact. I hope those academic institutions can also play important roles for better corporate governance in the future.

In some countries, it is very difficult to find the ADB/OECD Anti-Corruption Action Plan for Asia and the Pacific in translation into the local languages. But more importantly, regional or global initiatives must be translated into local actions. For that purpose, I would like to stress the importance of building a coalition in each economy to implement those regional and global promises. Without those measures of implementation, these promises will remain useless.

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¹ More information on the K-PACT is available at www.pact.or.kr/english

² For a graphical depiction of this concept, please see www.transparency.org/policy_research/nis

Implementing the Extractive Industry Transparency Initiative (EITI) in Timor-Leste

Manuel de Lemos, Director, Secretariat of State for Natural Resources, Timor-Leste

Timor-Leste, a petroleum-rich country, is expected to accrue substantial revenues from oil and gas production in the decades to come. In many countries, resource endowments resulted in poverty, corruption, and conflict. To avoid such a resource curse, and to utilize the potential revenues to foster growth and reduce poverty, the government of Timor-Leste was among the first to express its commitment to the Extractives Industry Transparency Initiative (EITI) at the first EITI Global Conference in London in June 2003.

In addition to more efficiently collecting the revenues from the exploitation of natural resources, the engagement in EITI demonstrates Timor-Leste's national commitment to transparency and good governance; promotes accountability; and is expected to improve sovereign ratings through EITI's systematic framework for collaboration. The engagement in EITI also underscores the government's acknowledgement of the important role civil society plays in these regards.

This contribution explains the concept and mechanisms of EITI¹ and describes the current status of Timor-Leste in this process.

Goals and concept of EITI

EITI was launched at the World Summit for Sustainable Development in Johannesburg in 2002 to improve transparency and accountability and to strengthen governance in the extractive industries, especially in petroleum, gas, and mining of mineral resources. For this purpose, EITI sets a global standard for companies to publish the tax and royalty payments they make and for governments to disclose the revenues they receive. EITI provides a robust mechanism for monitoring and reconciling the reported payments and revenues under the oversight of a multi-stakeholder group.

EITI builds on a coalition of governments, companies, civil society, investors, and international organizations. Institutionally, EITI is overseen by an Executive Board—with members who represent both implementing and supporting governments, civil society, and companies—and assisted by a global Secretariat located in Oslo, Norway.

Reaching EITI compliance

A country that participates in EITI first undergoes a process of candidature that comprises a series of steps of preparation; disclosure of information of revenues and payments; and public dissemination of this information.

At the end of this process, which must be completed within 2 years, stands an external validation. Validation is an essential element of the EITI global standard. It provides an independent assessment of progress and identifies measures to strengthen the EITI process. Only countries that meet all Validation Indicators are awarded the EITI Compliant status. The Validation is carried out by an independent validator who applies a defined assessment methodology.

If the EITI International Board² considers a country to have met all the indicators in the Validation grid, the country will be recognized as EITI Compliant. If a country has made good progress, but does not meet all of EITI requirements, the country may apply to retain its Candidate status for a limited period. Where validation shows that no meaningful progress has been achieved, the Board will revoke the country's Candidate status.

Status of Timor-Leste in regard to EITI

The government of Timor-Leste was among the first to commit to the principles and criteria of EITI in June 2003. To guide the full implementation of EITI in Timor-Leste, a tripartite EITI Working Group was established comprised of representatives of relevant government ministries and agencies, extractive industry companies, and civil society. In September 2007, the Working Group agreed on and published its work plan³.

In late November 2008, the Timor-Leste EITI Working Group was in the process of finalizing a template for a first Timor-Leste EITI Report which is due to be released in early June 2009.

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- ¹ More detailed information on EITI, its mechanisms, and participants is available at <http://eitransparency.org>
- ² At the biannual EITI International Conference, held in Doha, Qatar on 16-19 February 2009, the Secretary of State of Timor-Leste, Mr. Alfredo Pires, has been appointed member of the International Board of EITI for 2009-2011. Mr. Pires is the first member of the International Board from an Asian-Pacific country.
- ³ The work plan is available at [www.timor-leste.gov.tl/EMRD/ETI/TL%20EITI%20Workplan%20Final%20\(English\).pdf](http://www.timor-leste.gov.tl/EMRD/ETI/TL%20EITI%20Workplan%20Final%20(English).pdf)

13th International Anti-Corruption Conference—Global Transparency: Fighting Corruption for a Sustainable Future

Kathleen M. Muktan, Director, Public Management, Governance and Participation Division, Regional Sustainable Development Department, Asian Development Bank¹

We have just heard examples of regional and global initiatives that bring governments, the private sector, and civil society together in the fight against corruption. What is clear is that fighting corruption is everyone's problem; no one segment of society can solve this problem alone. The 13th International Anti-corruption Conference (IACC) is a biannual event that also recognizes this point and brings together governments, private sector entities, civil society organizations, academia, the media, and international organizations. The 13th IACC was held in Athens in early November 2008, just a few weeks prior to this 6th Regional Anti-Corruption Conference for Asia and the Pacific. This contribution brings the key messages emerging from the 13th IACC to Asia and the Pacific.

Exploring the threats of corruption to a sustainable future

The 13th IACC gathered 1,300 people from 135 countries to explore how corruption undermines all facets of sustainability by fostering conflict and violence, distorting natural resource use, aggravating climate change and hampering our response to it, and deepening global inequities. The conference was designed around four themes of particular current relevance:

- peace and security, including exploring linkages between human rights and the anti-corruption agenda;
- corruption in the natural resources and energy sectors;
- climate change and corruption; and
- sustainable globalization, recognizing that corruption is a core development issue and that efforts toward sustainable economic development are continuing to be undermined by corruption.

There was also considerable discussion around an emerging issue: the still-unfolding global financial crisis and impending recession.

Global Financial Crisis: Throughout the conference the looming threat of a prolonged and painful recession, particularly in developing countries, was a theme that permeated virtually every panel and discussion. It was recognized that the new level of interconnectivity between economies and the truly global nature of business in the 21st century has resulted in a crisis that began in the mortgage sector but has now impacted credit and equity markets and the global economy more broadly. The contagion has spread quickly to Asia and the Pacific, in spite of steps taken to strengthen financial market regulation following the 1997 Asian Currency Crisis. It was also noted that the poor are not able to bear the cost of greed and mismanagement by financial professionals half a world away.

Sustainable development, including strengthening governments and reducing vulnerability to corruption, must remain at the top of the global agenda. The conference concluded that the financial crisis and the climate change challenge have the same roots: humanity's unsustainable practices. The solution is to continue to strengthen governance, and reduce corruption, although the impact of the crisis may reduce the resources available to implement this solution.

Peace and Security: The conference recognized that corruption undermines stability: it keeps states from functioning effectively and promotes an unequal distribution of wealth and opportunities. Corruption also enables terrorism; organized crime; state capture; illegal trafficking in arms, drugs and human beings; and facilitates human rights violations.

The conference brought together the human rights and anti-corruption community, recognizing that there is an opportunity to gain from the natural synergy that exists between the two communities and their respective agendas. One speaker noted that the list of the 10 most corrupt countries in the world looks remarkably similar to the list of the 10 worst violators of basic human rights. It was noted that the human rights framework—including the rights to freedom of expression, freedom of association, and freedom of assembly—is underutilized in the fight against corruption, further concluding that an empowered citizen is the best actor to fight corruption.

Recognizing the difficulty faced by many anti-corruption advocates—whether working in civil society, or the private or public sector—a resolution was passed expressing deep concern and calling upon the Nigerian Government and the global community to take urgent action to guarantee the physical safety of Mr. Nuhu Ribadu, former Chair of Nigeria's Economic and Financial Crimes Commission who fears for his life as a result of investigations that he has led. Mr. Ribadu inspired many delegates from member countries of the

ADB/OECD Anti-Corruption Initiative when he addressed the Initiative's regional seminar on Asset Recovery and Mutual Legal Assistance in Bali last year². This is a stark reminder that much needs to be done to ensure the safety of all those who participate in anti-corruption activities.

Corruption in the Natural Resource and Energy Sectors: The oil and gas industry was identified as extremely vulnerable to corruption. It was also noted that, if left unchecked, corruption in this sector can have dire consequences, including quickly increasing rather than reducing poverty. Examples included the case of the President of Equatorial Guinea; records indicate he has purchased a home worth USD 36 million in the US, and one credit card receipt shows USD 250,000 for a single day's shopping... Equatorial Guinea has with the highest economic growth rate, and a significant portion of the population lives on less than USD 1 per day. Imagine the schools, hospitals, public health facilities that USD 36 million would finance. These consequences were discussed, along with strategies and partnerships available to mitigate them, including the EITI. Better enforcement and awareness of land and resource rights were identified as ways to improve the governance of natural resources.

Climate Change and Corruption: The climate change agenda is particularly vulnerable to corruption: carbon credit schemes; resettlement of displaced populations; protecting forests and biodiversity; managing increasingly strained water resources; and the impact of increasing competition for decreasing natural resources—corruption threatens to exacerbate environmental problems and to undermine attempts to manage them. Recognising the threat that corruption plays to the climate change agenda is a tremendous opportunity, and may lead to significant benefits.

In response, the 13th IACC recommended that anti-corruption mechanisms be built into both the governance and implementation procedures of any future Kyoto-based system. The conference also recognized that climate change is more than just an environmental or technical issue; it is also an issue of social justice. The conference recognized that there are convincing arguments to develop an active partnership between those with expertise and capacity in fighting corruption and those who are planning the global responses to climate change.

Sustainable Globalisation: The UNCAC was identified as the most promising available instrument to set common standards at the country level and to pursue cross-border corruption issues. There was a call for governments to adopt a transparent and participatory review mechanism at the next Conference of the States Parties (to be held in Doha, Qatar in 2009), noting the decision of the government of Qatar to invite civil society to participate in the conference. The

OECD Anti-Bribery Convention was also highlighted, noting the continuing fallout from the UK Government's decision to terminate the investigation into alleged corruption in the BAE-Saudi-Arabia Al-Yamamah arms deal.

The issue of asset recovery was discussed with a call for increased transparency as assets are recovered and returned. Conference participants also noted the corrosive effective of political corruption, and identified political corruption as the greatest threat to democratic governance in the 21st century. Disclosure and civil society oversight were identified as vital mitigating measures.

Conclusions: The conference identified four primary conclusions:

- the anti-corruption movement needs to strengthen interdisciplinary cooperation, to link, for example, corruption and human rights, or corruption and climate change;
- the long term importance of the UNCAC was stressed;
- there is a need for better resource governance; and
- greater civil society engagement is required.

As a participant, ADB took back three key messages:

- sustainable development requires not only economic growth but also respect for the environment, peace and security, and the recognition of basic human rights—and corruption undermines each of these;
- policy prescriptions with respect to climate change need to go beyond technical solutions to address the issues of people, power, equity, and accountability;
- there is scope to use supply chain management and voluntary programs to support ethical business behaviour.

The 14th IACC will be held in Bangkok in 2010. The conference will provide an excellent opportunity for Asia and the Pacific to showcase experience, lessons and progress made in the regional fight against corruption.

NOTES

¹ This presentation is based on the Summary Report from the 13th IACC as posted on the conference's website www.13iacc.org

² The website www.oecd.org/corruption/asiapacific/capacitybuilding provides information on this seminar and access to the proceedings that contain Mr. Rubadu's presentation.

Chapter 6

Private-to-Private Corruption: The Last Piece of the Puzzle

Bribery and corruption involving public officials have been on the international policy agenda for decades. Corrupt practices within and between enterprises ("private-to-private corruption"), on the other hand, have only recently emerged as an area of concern. Private-to-private corruption's harmful effect on the business and investment climate, and on the public interest more generally, is increasingly acknowledged—especially as private enterprises provide more public services. The inclusion of a non-mandatory offense of private-to-private corruption in the UN Convention against Corruption testifies to the global recognition of the increasing importance of tackling private-to-private corruption.

Few jurisdictions in Asia and the Pacific have taken comprehensive measures to counter private-to-private corruption (Hong Kong, China and Singapore are notable exceptions). These jurisdictions' experience in addressing private-to-private corruption through preventive measures and law enforcement provides valuable insights on both challenges and effective approaches.

In Hong Kong, China where private-to-private corruption has been a criminal offense for decades, there is a high level of community awareness of this crime's detrimental effects. Until the mid-1980s, the majority of corruption cases reported to the Independent Commission Against Corruption (ICAC) involved public officials. Because of more rigorous enforcement, private-to-private corruption cases have since outnumbered public-sector corruption by about two to one.

ICAC has investigated a wide range of private-to-private corruption cases: bribery has been used to manipulate share prices, to the detriment of honest investors; in the banking industry exposed banks to financial risks; to obtain an advantage over honest competitors; and to conceal poor quality construction.

Because cases of private-to-private corruption are particularly difficult to investigate, ICAC uses the full scope of powers and investigative means, including granting immunity to informants. However, enforcement remains a challenge; prevention is therefore particularly important. ICAC established the Hong Kong Ethics Development Centre, in cooperation with partners from the private sector, to provide consultancy services to the business sector and to advise businesses on potential weaknesses and preventive measures.

Like Hong Kong, China, Singapore aims to reduce private-to-private corruption's negative impact on the business and investment climate; on public service delivery; on fair competition; and on public safety. Singapore has a similar empirical experience with private-to-private corruption cases, suggesting that these patterns are widespread, if not universal.

Singapore's anti-corruption agency, CPIB, prosecutes private-to-private corruption cases vigorously, and also sponsors a broad program of education and prevention measures.

Rethinking the Definition of Corruption

Jermyn Brooks, Director of Private Sector Programs, International Secretariat

The traditional definition of corruption—the abuse of public power for private gain—requires the involvement of public officials. This is reflected in the OECD Anti-Bribery Convention, and laws such as the FCPA; and this focus on public sector has informed much of the global fight against corruption. While criminal law addresses public corruption, often only civil law is available to fight private-to-private corruption.

Efforts by both independent and corporate lawyers focus on protecting companies from legal risk and curbing regulatory reach, with the result that private-to-private corruption is frequently ignored.

Companies themselves, however, generally do not distinguish between public and private corruption. Companies sanction employees similarly for public and private corruption, encourage whistle-blowing for both types of offenses, and have common mandates for notifying authorities. Corporations therefore use the same methods for fighting corruption in public- and private-sector relationships.

Businesses face significant opportunities to commit corrupt acts. Two areas of particular risk are the purchasing function (vulnerable to fraud, kickbacks and misuse of gifts, and hospitality) and sales and marketing (especially the granting of favors, offering bribes and misuse of gifts and hospitality). SMEs are also especially vulnerable to extortion. Countermeasures must rest on strong corporate integrity policies including anti-corruption standards, training and enforcement, and effective whistle-blower protections.

Private-sector anti-bribery practices should include the following six steps:

- assessment of the corruption risks specific to the business;
- development of detailed anti-bribery policies;
- implementation of these policies;
- self-monitoring of the effective implementation of the policies;
- public reporting on the policies and related programs;

- where appropriate to enhance the credibility of the programs, independent assurance of the effectiveness of these efforts.

Private-to-private corruption is clearly a significant problem facing businesses today. It is time to embrace a more modern definition of corruption: the abuse of entrusted power for private gain.

Some international business anti-corruption initiatives have taken this definition on board. TI's Business Principles for Countering Bribery, the PACI Principles and the ICC's Code of Conduct address illegitimate payments to all partners.

Combating Corruption in the Private Sector— the ICAC of Hong Kong, China

Li Bo-lan Rebecca, Assistant Director, Independent Commission
Against Corruption, Hong Kong, China

In many countries, the offense of bribery is confined to the conduct of public officials and those who seek to corrupt them. Since its inception in 1974, the Independent Commission Against Corruption (ICAC) in Hong Kong, China has been empowered by legislation to investigate corruption offenses in the private, as well as the public, sector.

In the early days after the ICAC was put in place, the community was more concerned with corruption in the public sector. In the first 15 years after it commenced operation, over 50% of the corruption complaints ICAC received related to public-sector corruption. In the first 10 years, the proportion went from 87% in 1974 down to 65% in 1983. This downward trend has continued, and now private-sector corruption complaints exceed public-sector complaints.

Since the mid-80s, the ICAC has been pursuing corruption in the private sector as vigorously as in the public sector. Over the years, the ICAC has allocated more and more of its investigative resources to private-sector corruption, as the volume of complaints relating to the private sector has increased. Since 1989, private-sector corruption has taken up more than 50% of the complaints received by the ICAC. As at the end of October 2008, 65% of the complaints received in 2008 related to private-sector corruption.

Different manifestations of private-sector corruption

I would now like to talk about the different forms of corruption that Hong Kong, China's ICAC has encountered in the private sector. In Hong Kong, China corruption in the private sector has usually involved a third party corrupting an employee to gain an advantage in relation to the affairs or business of the corrupted employee's principal. Various factors can trigger this behavior, but it is usually prompted by the desire for monetary gain. The third party is invariably looking to obtain an advantage over his competitors in the dealings he has with the employer of the person he is bribing. But, of course, corruption has many

faces and is not limited to this simple situation. Although this may be the most common form of private-sector corruption, there are many other forms as well.

Corruption is used also to facilitate other crimes, such as fraud, which may be committed by the senior management of a company. Senior management of companies may also bribe employees of other companies to benefit from that other company which will have a much wider effect on society. This occurred, for instance, when the management of a listed company bribed a fund manager to make him purchase a large block of shares; this was done in order to keep the price of the listed company's shares high and maintain market confidence in the company. When the activities of the corrupt management were uncovered, the share price of the listed company dropped and many innocent investors in the company suffered a loss.

Another example is where a company may use bribery to conceal poor standards in the performance of its work; this happens in the construction industry.

A further area in which the ICAC has encountered corruption that has had serious consequences for an institution is in the banking industry. Bank staff who are bribed to approve large loans which are insufficiently secured can put the financial position of the bank at risk.

Thus, corruption can manifest itself in various forms, some of which may affect only the particular company that is the victim of it; others may involve a large group of people; and some forms may affect virtually the whole community. Some say that the true victim of corruption is society. Although this is more readily apparent with public-sector corruption, it is equally true of corruption in the private sector.

Investigating private-sector corruption

What all these different forms of private-sector corruption have in common is that, as with public-sector corruption, they are committed in secret and therefore very difficult to investigate.

Hong Kong, China's Prevention of Bribery Ordinance—its anti-corruption law—gives the ICAC special powers to support its investigation of corruption. We have found that in order to investigate corruption properly, we need to make use of every investigative tool available. These involve powers to obtain, on the authority of the ICAC Commissioner, access to bank records and the records of other financial institutions, as well as access to the records held by government departments. Our High Court has granted additional powers to compel suspects

and other involved persons to provide us with information. We are also empowered to obtain Production Orders in respect to the records of the Inland Revenue Department and to apply for the search warrants in respect of any premises.

Legislation also allows ICAC to apply to a judge to use electronic surveillance as an evidence-gathering tool and telephone interception as an intelligence-gathering tool. These tools are particularly useful in undercover operations. One of the lessons we have learned over the years is that being proactive in our operational work can yield great successes in fighting corruption. This has required the ICAC to learn how to: gather intelligence on corruption and effectively analyze it; develop and handle informants; and make imaginative use of the intelligence they generate.

ICAC uses its own forensic accounting experts and persons with technical expertise in computer forensics. Both of these specialist areas have become increasingly important in the investigation of private-sector corruption.

However, even with all these special investigative techniques and expertise available to us, we still find it difficult at times to obtain the evidence required for a successful prosecution. Thus, we often seek the assistance of someone with inside knowledge of the corruption that is taking place in order to penetrate the secrecy surrounding the corrupt conduct. If an insider is willing to become an informant and assist us, the Secretary for Justice—who is responsible for all prosecutions in Hong Kong, China according to the Basic Law—will consider granting this informant partial or full immunity to enable him to testify against the main suspect of the investigation.

The importance of corruption prevention

Since its inception, the ICAC has recognized that along with enforcement, it is equally important to work with the community to ensure zero tolerance for corruption. It therefore has adopted a three-pronged strategy in combating corruption that consists of enforcement, prevention, and education.

In combating private-sector corruption, success did not come easily, because there was strong resistance from the business community in the beginning. This resistance was partly due to a misconception that the ICAC was opposed to all business rebates and commissions—even ones accepted as normal and proper. However, through ICAC's corruption prevention and community education activities, we were able to dispel this misconception. Today the business community is supportive of ICAC and has become one of its key partners in the fight against corruption.

The establishment of the Hong Kong Ethics Development Centre (EDC) is a testimony of the change in attitude of the business sector—from initial suspicion of the ICAC and hesitation to working with it, to active partnership in anti-corruption activities. ICAC set up the EDC in 1995 to promote business and professional ethics as the first line of defense against corruption. Six leading chambers of commerce in Hong Kong, China are represented on the advisory committee that steers the work of the EDC. The EDC provides a wide range of consultancy services on corporate ethics programs. The EDC also partners with various professional bodies and chambers of commerce in Hong Kong, China to disseminate ethical governance messages to their members. Upon request, ICAC also provides any business with assistance in developing specific practices and procedures to prevent corruption.

The rule of law

At the very basic level, corruption is all about treating people unequally—unfairly obtaining an advantage at the expense of the honest, decent citizen. The law protects the concept of equality of treatment: it is a fundamental human right and, as such, it is a core component of the rule of law. Of course, it is also the rule of law that ensures the protection of the rights of every individual citizen. Anti-corruption legislation works in support of the right to equality of treatment by ensuring that Hong Kong, China's citizens are protected from the effects of corruption.

In one of Hong Kong, China's leading cases on one of its more unusual anti-corruption offenses—illicit enrichment by government officials—our Court of Appeal discussed whether an aspect of this offense which reverses the burden of proof was in accord with human rights law. The Court of Appeal upheld this provision. The Court declared that the public had a right to protection against corruption and the equal-protection-clause in our Bill of Rights Ordinance guaranteed this right. The Court said, "If the law only protected persons accused of corruption, but failed to protect members of the general public from the evils and perils of corruption, then it would deny them equal protection."

Conclusion

I hope that this information and experience demonstrates the need for a private-sector corruption offense. Hong Kong, China's experience has certainly taught it the need for such an offense and I am sure that many other countries have learned the same lessons from fighting corruption. Indeed, the importance of having a private sector corruption offense was recognized by the drafters of

the UN Convention against Corruption (UNCAC). Like Hong Kong, China, the authors of this Convention realized that in order to effectively eradicate corrupt practices from a society, it is necessary that the citizens of that society do not tolerate corruption in the private sector and that the private sector not be treated any differently from the public sector. This is why the UNCAC encourages the creation of a private-sector bribery offense.

The mission of the ICAC may have a slightly different emphasis now compared to its mission when it first started its work. However, this mission is still to combat corruption within the whole of Hong Kong, China's society so that every citizen can feel free of this evil.

Singapore's Strategies to Fight Corruption in the Private Sector

Koh Teck Hin, Deputy Director (Operations), Corrupt Practices Investigation Bureau, Prime Minister's Office, Singapore

Singapore's approach to fighting corruption

In the 1940s and 1950s, corruption was more or less a way of life in Singapore. Through persistent efforts in combating corruption since 1959, when Singapore attained self-government, the Government has managed to curb corruption. The Government made hard-hitting and decisive changes that were pertinent in saving our nation from corruption. The political leaders took it upon themselves to set good examples for public officers to follow. They created, by sheer personal example, a climate of honesty and integrity, making it known to public officers and the society in no uncertain terms that corruption in any form would not be tolerated.

Administrative measures

Alongside the statutory measures dealing with corrupt offenders, strict rules and regulations govern the conduct of public officers to ensure a high standard of discipline. For government officials, the Instruction Manual (IM) stipulates that each officer has to conduct himself in a manner which upholds the integrity of the Public Service. He or she must not act in such a way that gives rise to public perception that he or she has obtained special advantage through his or her official position or connections. Each officer has a duty to exercise care to preserve his or her ability to be fair and impartial. He or she should avoid becoming beholden to any party because of past favors or special concessionary treatment.

Generally, the government instruction manual requires public officers to report any corrupt act that comes to their knowledge, and regulates the wrongdoing of public servants. It also obligates public servants to declare any conflict of interest, gifts received, etc.

Other measures exist to address specific areas: For instance, when a successful bidder for a government procurement contract signs the contract for

delivery of goods or services, the bidder will be reminded that bribing public officers administering the contract may render their contracts to be terminated. A clause to this effect forms part of the standard contract conditions. A contractor found to indulge in corruption is prosecuted. In addition, this contractor is debarred from future government contracts for up to 5 years.

These rules help uphold good conduct of public officials and help deter the private sector from committing corruption. Applied to the interface between public and private sectors, they help reduce corruption tendencies.

Corruption in the private sector

CPIB is empowered to investigate corruption in both the public and private sectors.

Why deal with private-sector corruption?

There are good reasons why CPIB also deals with corruption in the private sector:

First, corruption in the private sector affects public interest. Some people used to think erroneously that private-sector corruption is a private affair between the giver and the taker. However, consider the following: When a supermarket purchaser takes bribes from a supplier, the supplier will inevitably mark up its cost to cover the bribes. As a result, the supermarket, which purchased the goods at a higher price will sell it an even higher price. The public suffers in the end.

Second, Singapore is a small nation without natural resources. It has to depend on trade and foreign investment. To attract investment, Singapore has to ensure that business costs are low. Corruption, however, increases business cost regardless of whether it takes place in the private or public sector.

Third, the private sector is a key pillar of Singapore's economy and drives national economic growth. Singapore needs a level playing field for all, and the private sector must be clean to attract foreign businesses to work and invest in Singapore.

The private and public sectors are also intertwined, which is another reason why it matters that CPIB watches over the private sector as well. As the government outsources more and more of its traditional functions to the private sector, many private companies are now performing functions that the government used to carry out. Corruption in segments of the private sector that

are involved in strategic functions can also impact key areas of government and society at large.

Lastly, many private-sector enterprises have huge public shareholdings. If the enterprise is not well run and commits crimes, its share price may be affected—this has consequences for the public interests.

Types of private-sector cases

Private-sector corruption cases can come in various forms. A selection of cases that we have seen in the private sector illustrates this variety:

- Some cases involved contracts or procurement of services or supplies. An example of a recent case involves senior staff management of a car company for receiving expensive gifts in return for awarding agency contracts.
- Other cases involve corrupt offenders who were in charge of supervising contractors or suppliers, for example, but did not check the quality of work or product delivered and overlooked deficiencies. This can result in serious repercussions, for example in building works.
- There are those who have access to sensitive data and divulge it to unauthorized persons in return for rewards. These cases for instance involve people working in areas where there are storehouses of data about customers. These individuals abuse their access to this data by passing it on to persons such as illegal moneylenders who are looking for their debtors, and private investigators tracing whereabouts of persons of interest.
- There are those who are in positions of authority such as a Chief Executive Officer or General Manager, who took bribes in return for granting approval to the bribe givers in various matters.
- In some cases, corruption occurs in conjunction with other offenses. For example, the corrupt may also “cook” the company’s books to hide corrupt transactions. They may manufacture false invoices to reflect fictitious transactions. Once uncovered, CPIB will deal with these as well, as CPIB officers are also empowered to investigate other crimes uncovered in the course of a corruption investigation.

Preventive measures in the private sector

The private sector is a key pillar of Singapore’s economy. Corruption in the private sector increases business costs and reduces investment. Thus, CPIB takes proactive action against corruption through the following measures:

- Giving anti-corruption prevention talks and working with private companies to disseminate anti-corruption messages.
- Taking a total enforcement approach by dealing with givers and receivers bribes in a private-sector transaction. Enforcement actually has preventive value.
- Facilitating complaints by civic-minded members of the public through different means, including e-mails, and safeguarding them through protection of informers by law.
- Conducting thorough investigations and securing evidence, including documentary and computer evidence, against corrupt offenders in the private sector to ensure a high conviction rate, which gives confidence to the public to come forward.
- Debarring contractors who engage in bribery involving government contracts and terminating such contracts.

Code of governance for private companies

The private sector in Singapore is large and comprises a wide variety of different industry types. How clean the private sector is depends largely on its internal state of affairs. Efficient company systems and processes promote productivity and reduce opportunities for malpractice and corruption.

Singapore's Code of Corporate Governance, under the purview of the Monetary Authority of Singapore and the Singapore Exchange, serves as a guide for private companies' conduct. It addresses the following matters:

- Board matters—on responsibilities, separation of duties between Chairman and CEO, Independent Directors, access to information.
- Remuneration—on a formal and transparent procedure, and disclosure of remuneration policy.
- Audit and accountability—on an audit committee to review internal controls, financial review, operational and compliance controls.
- Communication with shareholders—on timely and regular engagement and communication with shareholders.

The Code of Corporate Governance is a broad guide for companies, and individual companies have to build their specific systems and measures to enhance good corporate governance.

Charity sector

A governance code has also been introduced in the charity sector, after a series of malpractices in charity organizations were uncovered. For instance,

not long ago, the CPIB prosecuted the CEO of the National Kidney Foundation for using a false document, resulting in a three-month jail sentence. The Government has since reviewed the laws, and a Commissioner of Charities was established to oversee all charity organizations; also, a Code of Governance was promulgated for the charity sector. The Code is a set of principles and standards accepted as an industry's best practices, which stakeholders in the charity sector aim to adopt as an exercise of good faith.

Tough punishment

To successfully combat corruption, in addition to adopting strict and effective enforcement, we need tough punishments meted out on convicted offenders to serve as a deterrent to the "like-minded".

Punishment can be severe and depends on the impact and severity of the act. In fact, many private-sector cases have resulted in jail sentences comparable to those applied for public-sector corruption.

We have a case whereby the Assistant General Manager of a public listed recycling firm was sentenced to eight years in jail for bribing various staff from various companies to the tune of SGD 1.8 million in return for certain favors. The accused in this case had claimed in his defense that he was merely following the CEO's instructions. However, the court did not accept this excuse; it viewed it seriously and meted out an 8-year sentence.

In another case, an ex-Assistant Vice President of a foreign bank operating in Singapore was sentenced to a 15-week jail term following a conviction for taking a SGD150,000 bribe as a reward for recommending loan applications. However, on appeal, his jail term was increased to 15 months by the Chief Justice, who felt that the sentence meted out by the lower court does not reflect the potential harm that the act had caused. The accused was in a senior position and breached the trust that the bank had placed upon him, and his corrupt act undermined the integrity of the banking profession and Singapore's aim to be a financial hub.

Apart from criminal sanctions, the Prevention of Corruption Act (PCA) also provides for civil recourse for recovery of bribe money. This was tested in court recently. The CPIB had prosecuted a facilities manager in a large private company for taking about SGD 300,000 as bribes in return for awarding contracts. He was convicted and sentenced to 10 months in jail and ordered to pay to the State a penalty of about SGD 300,000, equal to the amount of bribes he had pocketed. After the prosecution, his company brought a civil suit against him to recover the amount of bribes he had accepted during his incumbency.

The accused appealed to the court, on the grounds that he had been ordered to pay back the equivalent of the bribe as a penalty and cannot be required to pay a second time, and on a second occasion, through the civil suit. The Court of Appeal dismissed his appeal stating that the law expressly provided for two distinct provisions—a criminal proceeding to disgorge benefits, and civil proceedings to recover the bribe money. Hence, there can be a double disgorgement. This sends a clear message to corrupt offenders: they will be made to pay heavily for their corrupt activities; this constitutes a further deterrence against corruption.

Conclusion

It is imperative to deal with corruption in the public and private sectors, as there is a great linkage between the two sectors. Singapore has dealt with both sectors for a long time.

In Singapore, we are glad that many established companies have codes of conduct and measures that govern their official staff. This makes it more difficult for employees in private-sector companies to dabble in corrupt activities and then claim ignorance. CPIB has also engaged and reached out to the private sector to raise their awareness on corruption issues.

Effective laws and clean government institutions are key elements in reducing corruption from greasing contracts between the public and private sectors. Private enterprises can also help to prevent and reduce corruption by adopting ethical business conduct, practicing good governance, and maintaining standards of goods and services in the marketplace.

I have shared the experience we encountered in Singapore. It may not be replicated anywhere else, as every country has its unique character and circumstances. Nonetheless, corruption is a common problem that we all face. We therefore have scope for sharing and learning from each other and together—we will fight the disease of corruption and make the world a better place to live in.

Chapter 7

Fighting corruption and the sustainable development agenda

Corruption inflicts profound harm upon development, and particularly on the poor. Countries in Asia-Pacific thus emphasize measures for improving governance and fighting corruption in order to lay a sound basis for further economic and social development. Development partners support these efforts. To enhance the impact of their work, they coordinate their efforts through the OECD Development Assistance Committee (DAC). Increasingly, development partners also address the risks of corruption in their own programs and projects, both collectively and individually.

Experience from the Philippines shows how a low-income country can achieve significant progress in strengthening the capacity of its anti-corruption institutions with assistance from development partners. The Philippines has recently established a comprehensive legal framework to fight corruption. However, limited implementation capacity prevented the country from fully reaping the fruits of these reform efforts.

The Philippines' Office of the Ombudsman's program to strengthen capacity has benefited from support and assistance from development partners. The Ombudsman has comprehensively build capacity through specialized training, corruption resistance reviews, and corruption vulnerability assessments.

The Republic of Korea's testimony provides a concrete example of bilateral cooperation and technical assistance in the region. Not long ago, Korea was itself a recipient of development assistance, but thanks to its economic prosperity and recent experience in anti-corruption law and policy making, Korea now helps other countries in Asia and the Pacific in these areas.

Five years after the creation of its independent anti-corruption agency, Korea began providing technical assistance to other countries in the region. It

started a 3-year bilateral cooperation program with the Indonesia Corruption Eradication Commission (KPK), through which the Anti-Corruption and Civil Rights Commission has transferred its corruption prevention tools such as the *Integrity Survey*, *Anti-Corruption Initiatives Assessment* and the *Corruption Impact Assessment* to its Indonesian counterpart. Korea plans to increase its anti-corruption capacity-building efforts in Asia and the Pacific in cooperation with other international organizations.

Development partners have realized that corruption is a symptom of wider unresolved problems, and hence assist in strengthening recipient countries' governance systems. These efforts seek to strengthen horizontal accountability through anti-corruption agencies, and vertical accountability through civil society and the media. Forums such as the OECD Development Assistance Committee Governance Network (DAC-GOVNET) help to coordinate development partners' approaches and thus strengthen their positive impact.

Development partners also remain concerned with stemming the supply of bribes from their home countries to partner countries. They can act proactively by engaging private sector, reinforcing the need for corporate social responsibility, and advocating for support to initiatives such as the Kimberly process, EITI, and the like.

Donors also remain concerned with the integrity of their own operations, as the example of the Asian Development Bank shows. ADB, a key development partner in Asia and the Pacific, pursues two policy goals: supporting member countries' efforts to bolster their anti-corruption frameworks, and seeking to eliminate corruption from its lending and technical assistance programs. To do so, ADB established a comprehensive policy to support anti-corruption efforts in its member countries; its Integrity Division ensures that the ADB's own operations adhere to ethical standards. The Integrity Division investigates allegations, provides training, promotes awareness, and conducts project procurement-related audits. All multilateral development banks have now largely harmonized their definitions of corrupt practices, and coordinated sanctions for corrupt practices. Some important differences remain, however, such as publishing blacklists of contractors that have engaged in corruption.

The discussion among workshop participants pointed to particular challenges, notably how development partners should respond when corrupt regimes resist fighting corruption. They debated whether disengaging from these countries was an appropriate response. Civil society and other stakeholders can call for stepped up accountability. The discussion also underscored the importance of assessing the impact of development partners' anti-corruption initiatives in countries through stronger monitoring and evaluation mechanisms.

The Philippines' Experience with Donor Supported National Anti-Corruption Efforts

Merceditas N. Gutierrez, Ombudsman of the Philippines

I would like to share with you the efforts of the Office of the Ombudsman of the Philippines in fighting corruption; what the office has done and continues to do toward sustaining our development agenda; and the ultimate goal of reducing to a considerable extent, if not eliminating, corruption in our country.

The Office of the Ombudsman (OMB), created under the Constitution of the Republic of the Philippines, is the country's lead agency in the fight against corruption. It is independent and mandated to act on any complaint filed in any form or manner against government officials and employees for any act or omission that appears to be illegal, unjust, improper, or inefficient. It investigates, prosecutes, and imposes administrative sanctions.

Two other bodies support the Office of the Ombudsman: The Commission on Audit, also an independent and constitutionally mandated office, has the duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of government expenses and expenditure, or uses of public funds and property. The Anti-Money-Laundering Council investigates suspicious bank transactions, triggers the freezing of accounts alleged to contain proceeds of unlawful activities, and initiates filing of complaints for money laundering.

The Philippines has established a legal framework that penalizes various forms of fraud and corruption. The relevant laws include:

- The Anti-Graft and Corrupt Practices Act, which penalizes acts or omissions such as trading in influence, certain forms of gift-giving, abuses of official functions, conflicts of interest, as well as corruption linked to government contracts;
- The Revised Penal Code, which criminalizes bribery, malversation, and various forms of fraud;
- The Plunder Law, which punishes amassing wealth, in the amount of at least PHP 50 million (about USD 1.03 million), through a series or combination of corrupt schemes;

- The Code of Conduct and Ethical Standards, which enumerates and penalizes prohibited acts by public officials and employees, such as acts related to conflict of interest and solicitation of gifts;
- The Anti-Money-Laundering Act, which allows the forfeiture of proceeds of unlawful activities, including violations of the Anti-Graft Act and the Plunder Law.

To enhance its effectiveness in the fight against corruption, the Office of the Ombudsman engages in various capacity-building measures, some of which are financially supported by development partners, such as

- Specialized trainings on contract fraud, lifestyle checks, trial advocacy, legal writing and legal research, legal tax accounting, and conduct surveillance; this training is provided to OMB prosecutors and investigators under the *Millennium Challenge Account-Philippine Threshold Program-Technical Assistance Project* (MCA-PTP-TAP); surveillance equipment was also donated to the Office of the Ombudsman.
- With the support of the *USAID—Rule of Law Effectiveness (ROLE) Programme*, the Office of the Ombudsman launched its program *Legal Resource for Public Accountability*, a digital database of anti-corruption laws, jurisprudence and legal analyzes that is equipped with research functions. The CD Lecture Series on Prosecuting Corruption is a training manual for new investigators and prosecutors on bribery, malversation, conduct disadvantageous to the government and causing undue injury to the government.
- The World Bank supported the Office of the Ombudsman in the development of case-flow management software in the Office of the Special Prosecutor (OSP), and has also supported advance field investigators training.
- The Philippine-Australia Human Resources Development Foundation (PAHRDF) assisted and funded trainings of personnel of the Office of the Ombudsman for the completion of the Recruitment and Selection Manual of the Office. PAHRDF also conducted trainings on monitoring and evaluation of projects in the Office of the Ombudsman.
- With funding from the European Commission and USAID, the office of the Ombudsman has conducted corruption resistance reviews and corruption vulnerability assessments of agencies that carry out high-volume procurements through the Integrity Development Review (IDR). The IDR is a compendium of diagnostic tools—self-assessment scorecards for managers; feedback surveys of employees; and corruption vulnerability assessments—for measuring the robustness of

corruption resistance mechanisms, and for identifying the vulnerabilities of government agencies to corruption. It seeks to design and implement safeguards to prevent corruption in the public sector. The purpose of the review is to institutionalise reform measures in these agencies to reduce incidences of corruption. The following are post-IDR reforms in revenue-generating procurement agencies:

- The Department of Public Works and Highways (DPWH)
 - Streamlined processing of contractors' and consultants' billing;
 - Posted list of accounts payable on DPWH website; and
 - Installed online complaints desk at DPWH website.
- The Bureau of Internal Revenue (BIR)
 - Revalidated audit and collection cases;
 - Supported capacity building of internal audit personnel for internal control;
 - Integrated code of conduct provisions into contracts with external parties; and
 - Audited financial controls and systems of Bids and Awards Committee (BAC) decisions.
- The Bureau of Customs (BOC)
 - Decreased "Red Lane" selections from 80% to 20%;
 - Decreased face-to-face contact with brokers;
 - Passed acceptance testing and implementation readiness for Electronic Manifest, Selectivity, Warehouse Entry, and Hold and Alert Systems;
 - Piloted implementation of e-payment/bank-to-bank of customs duties;
 - Pilot tested End-to-End Import and Assessment Systems; and
 - Installed X-ray machines.

To address red tape and to provide a level playing field for business, and to create an improved business environment, the Philippine Government adopted corruption prevention initiatives, as illustrated by the following examples:

- Philippine Bidding Documents and the Generic Procurement Manual were issued to standardize the bidding process in government procurement projects.
- The Government Procurement Policy Board (GPPB) issued uniform guidelines for blacklisting manufacturers, suppliers, distributors, contractors, and consultants for certain offenses including any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his or her favor.

- To increase public oversight and enhance active participation of civil society organizations, the Office of the Ombudsman and Procurement Watch Inc. issued guidelines on Bid and Awards Committee (BAC) Observers' Feedback and Complaint Handling Mechanism to handle feedback from civil society observers in the procurement process.
- Likewise, the President constituted the Procurement Transparency Group (PTG), with civil society representation, to monitor and evaluate big-ticket government procurement contracts.
- To help ensure the most cost-efficient project design and avoid overpricing of infrastructure projects, guidelines for the Construction Performance Evaluation System (CPES) for roads, bridges, housing, buildings, ports and harbors, irrigation, and flood control projects were issued.
- An Executive Order was issued mandating the installation of internal audit units in government agencies to ensure the faithful discharge of their mandates. The Generic Internal Audit Manual was also developed to standardize internal audit practice in government.
- The majority of government entities have already installed the Electronic-New Government Accounting System (E-NGAS)
- The National Competitiveness Council was created and is composed of representatives from the private sector and relevant government agencies.
- The Department of Trade and Industry (DTI) is spearheading the Philippine Business Registry Project to eliminate red-tape by harmonising processes among agencies involved in business registration. The project also aims to reduce documentary requirements for business registration.

We intend to craft a law that would criminalize corruption in the private sector. We have been undertaking reforms in the public sector for business to thrive, and the next step is to look at businesses and their conduct and dealings with government that lead to bribery and corruption.

Republic of Korea's Experience as a Provider of Anti-Corruption Technical Assistance

So-yeong Yoon, Deputy Director, Anti-Corruption International Cooperation Division, Anti-Corruption and Civil Rights Commission, Republic of Korea

With the progress of globalization, interdependence among states is increasing. It is vital to the economic growth and sustainability of a country to maintain mutually beneficial relationships with other countries. Corruption has become a global issue that undermines economic development, the rule of law, democratic governance, and social stability. As such, it is closely interlinked with diverse diseases plaguing almost every part of the world such as poverty, environmental destruction, exhaustion of natural resources, and terrorism, which cannot be tackled by any country alone. Under such recognition, the international community has recently been stepping up collaborative efforts for the common goal of fighting corruption.

Since the United Nations Convention against Corruption (UNCAC) entered into force in December 2005, the demands for technical cooperation for the fight against corruption have increased. Chapter 6 of the UNCAC deals with technical assistance to combat corruption, especially training and technical assistance for developing and transition countries.

Korea: From an aid recipient to a donor

In the aftermath of the Korean War in 1950, the Republic of Korea was one of the poorest nations in the world. Korea received development aid funds estimated at more than USD 10 billion by the 1980s. This overseas aid served as one of the driving forces behind Korea's development.

Today, Korea is the world's 12th largest economy and a member of the OECD. The volume of Korea's official development assistance (ODA) to developing countries has steadily grown since 1987. In 2007, Korea's ODA recorded more than USD 680 million.

The Government of the Republic of Korea is fully aware of its humanitarian responsibility as a member of the international community, and perceives it as its

moral obligation to return the development assistance it once received and contribute to the achievement of the Millennium Development Goals (MDGs). For this reason, it aims to increase its ODA in proportion to its Gross National Income per capita (about USD18,732 in 2006) to meet the global standard. To better coordinate with other donor countries in achieving the MDGs, Korea has been making preparations to join the OECD Development Assistance Committee (DAC) by 2010.

A realistic model in establishing good governance

The unique experience of Korea in overcoming extreme poverty and achieving economic growth—and making a transition from an aid recipient to a donor in just a few decades—can be useful to other countries. The international community rates Korea's development experience as a realistic model in establishing good governance, appropriate for developing countries sharing similar experiences.

The 1997 Asian financial crisis brought about the bankruptcy of major Korean companies which had received preferential treatment from the government, resulting in poor financial structure and excessive corporate debt. Korea's foreign exchange reserves were drained, and the country was on the brink of defaulting on its foreign loans.

Fortunately, Korea managed to overcome the crisis through relief loans from the International Monetary Fund (IMF) and a series of drastic domestic reforms. Through this experience, however, Koreans realized that corporate malpractices were one of the main causes of the economic crisis, and the Korean government began to take a wide range of anti-corruption measures including improvement of corporate governance and accounting transparency.

In the late 1990s, Korean civil society groups came together to form the Citizens' Coalition for Anti-Corruption Legislation. This audacious move of civil society—coupled with the government's strong anti-corruption platform—led to the enactment of the Anti-Corruption Act in July 2001 and the creation of the Korea Independent Commission Against Corruption (KICAC) in January 2002.

In February 2008, the KICAC was consolidated with the Ombudsman of Korea and the Administrative Appeals Commission to form the Anti-Corruption and Civil Rights Commission (ACRC).

Recently, the ACRC has been receiving numerous calls from other countries for technical assistance, and international organizations such as UNDP, the UN, and TI have suggested that Korea should play a more active role in the

global fight against corruption, commensurate with its economic standing. In response to such calls, the ACRC began efforts to provide anti-corruption technical assistance to other countries in late 2006.

Bilateral cooperation with Indonesian KPK

Since 2007, the ACRC has been implementing a 3-year bilateral cooperation program with the Indonesian Corruption Eradication Commission (KPK) pursuant to the Memorandum of Understanding (MOU) Regarding Mutual Cooperation on Combating Corruption, which was signed by the heads of the two commissions in December 2006 in Jakarta, Indonesia. Both heads of state, then-Korean President Roh Moo-hyun and incumbent Indonesian President Susilo Bambang Yudhoyono, witnessed the signing ceremony at the Indonesian presidential palace. The MOU was initially proposed by KPK, Indonesia's anti-corruption body, which sought an opportunity to share anti-corruption strategies and instruments, and strengthen cooperation with the ACRC.

The provisions agreed in the MOU include (i) exchange of anti-corruption policies, experiences, and human resources between the two organizations; (ii) joint research projects; (iii) organization of bilateral seminars and symposiums; (iv) collaborative development of anti-corruption training programs; (v) establishment of a Cooperation and Co-ordinating Committee that implements and coordinates cooperation activities pursuant to the MOU; and (vi) designation of liaison officers who are responsible for facilitating cooperation between the two organizations.

At the first meeting of the bilateral Cooperation and Co-ordinating Committee in Seoul on 22 May 2007, both parties agreed on a work program, which includes technical assistance, staff exchange, and organization of training workshops.

In implementing the bilateral agreement, the ACRC has been focusing on transferring its corruption prevention tools (such as the Integrity Survey, Anti-Corruption Initiatives Assessment, and Corruption Impact Assessment) to its Indonesian counterpart. KPK officials were seconded to the ACRC on three occasions to explore the possibility of adopting these tools.

In 2007, the ACRC helped introduce its Integrity Survey to Indonesia. Similar to TI's Corruption Perceptions Index (CPI), the Integrity Survey is a kind of "naming and shaming" policy, intended to discourage corrupt practices and encourage good behaviour by exposing wrongdoers to public humiliation.

However, unlike surveys based on mere perceptions, the Integrity Survey is a reliable tool to assess the levels of corruption and corruption factors in public organizations by surveying average citizens and public officials who have had first-hand experience with public service. The purpose of this system is to assist public organizations in setting up effective measures to prevent corrupt practices in corruption-prone areas and to encourage them to step up their anti-corruption efforts.

The outcome of implementing the Integrity Survey is extremely encouraging. Public institutions near the bottom of the ranking reinforce their efforts to improve their anti-corruption systems, while top performers strive continuously to maintain their good reputation. Moreover, the survey areas are so specific that each public institution can discover and correct problems in a cost-effective way; the surveys cover over 1,000 areas of government service, including the awarding of contracts and licensing.

The ACRC has been conducting the Integrity Survey since 2002, surveying more than 90,000 people who recently experienced services provided by over 300 public institutions in Korea.

KPK conducted a pilot integrity survey in 2007 to measure the integrity levels of 30 central government agencies after in-depth consultations with the ACRC. Building upon the success of that pilot survey, the Indonesian anti-corruption body is planning to carry out the integrity survey every year while expanding the assessment program to some 100 central and local government agencies in Indonesia in 2008. The ACRC will continue to offer advice and consultation to KPK in order to better tailor the measurement system to the specific situation of Indonesia.

The ACRC is also transferring its *Anti-Corruption Initiatives Assessment (AIA)* to Indonesia according to the agreement made at the 2nd session of the Cooperation and Coordinating Committee, held in Jakarta on 17 July 2008.

The AIA is a comprehensive annual review of anti-corruption measures undertaken by public-sector organizations. It determines whether their anti-corruption efforts and outcomes effectively meet the objectives of the government's anti-corruption policy. The fundamental goal of the AIA is to promote each organization's efforts to counter corruption and disseminate best practices. The assessment framework consists of two factors: "anti-corruption frameworks", which cover anti-corruption systems and policies, the leader's commitment, and institutional improvement; and "anti-corruption performance", which includes compliance with the code of conduct, promotion of whistle-blowing, and educational and promotional activities.

In October 2008, three KPK officials were seconded to the ACRC for 2 weeks to study its AIA system, which is expected to be introduced to Indonesia as early as 2009.

The ACRC is planning to assist Indonesia in 2009 in adopting the *Corruption Impact Assessment*, an analytical mechanism designed to identify and remove corruption risk factors from new and existing legislation. Under Korea's Anti-Corruption Act, each government agency of Korea which intends to revise or introduce legislation must submit a "corruption assessment report" to the ACRC. Then, the ACRC reviews the proposed legislation to determine if any of its elements might contribute to the occurrence of corrupt practices.

Following the Korea-Indonesia MOU—the first of its kind that Korea has ever signed with a foreign country—the ACRC plans to step up cooperation with anti-corruption agencies in other countries that have recently asked ACRC for assistance in building their anti-corruption capacity and institutions.

Joint technical assistance project with UNDP

Since 2007, the ACRC has been conducting a technical assistance program jointly with UNDP. The ACRC concluded an MOU with UNDP in August 2007 to conduct anti-corruption technical assistance programs for countries in Asia and the Pacific including Bhutan and Bangladesh. The joint project was proposed by UNDP, which contributed USD 935,580 for this project.

Under the MOU, effective for 2 years starting from 2007, the ACRC provides comprehensive consulting services including: establishing a survey model to assess the status of corruption in each country; supporting the development of national anti-corruption strategies; assisting in the establishment of a model to review and assess national anti-corruption policies and systems; and providing education and training to anti-corruption officials.

Cooperation with Bhutan

Bhutan was the first country that Korea's ACRC assisted in the framework of the joint technical assistance program. The ACRC held a joint workshop in Bhutan's capital, Thimphu, with the UNDP's Regional Center in Colombo and the Bhutanese government from 20-21 August 2007 to help the Asian kingdom address corruption in its society. About 200 Bhutanese senior public officials—including Prime Minister Lyonpo Kinjang Dorji, Chairperson of the Anti-Corruption Commission (ACC) Neten Zangmo, social leaders, and UNDP officials—participated in the 2-day event. As agreed at the inception meeting, the ACRC

produced and handed over to the ACC a technical guide to its major anti-corruption measures.

For 2 weeks from 31 July 2008, the ACRC organized an anti-corruption training program for Bhutanese public officials. Ten public officials from Bhutanese anti-corruption agencies including the ACC, Attorney-General's Office, and the High Court, attended the training program at the ACRC Anti-Corruption Training Center and the International Cooperation Center of the Korea International Cooperation Agency.

The capacity-building program was designed to work out effective, concrete strategies to implement anti-corruption systems applicable to the Kingdom of Bhutan. It was organized as twelve modules on anti-corruption measures including corruption prevention systems, institutional improvement, anti-corruption education, a code of conduct for public officials, registration of public officials' assets, and e-procurement. Experts from the Ministry of Public Administration and Security, Board of Audit and Inspection, and Korea Institute of Public Administration, as well as the ACRC, delivered the lectures. The Bhutanese officials also visited the Public Procurement Service (PPS) and the Seoul Metropolitan Government to learn how Korea is using electronic technology as a powerful tool to enhance transparency in the processing of civil applications and government contracts. The main outcome of the training program was a draft Action Plan for preventing and deterring corruption in accordance with the local circumstances.

In response to requests made by Bhutanese participants in the training program, the ACRC experts visited Bhutan in mid-November 2008 to provide on-site consulting on institutional improvement, the Integrity Survey, and anti-corruption education to the Bhutanese ACC.

Cooperation with Bangladesh

The technical assistance project for Bangladesh started with a project inception meeting and a workshop, organized between 30 June and 2 July 2008 in Colombo, Sri Lanka, jointly with the UNDP Regional Centre in Colombo.

The workshop brought together senior officials of the Bangladesh government and UNDP experts; representatives from civil society groups in Bangladesh and Sri Lanka also attended. This workshop provided participants with the opportunity to discuss and share various anti-corruption measures and efforts of Korea, Bangladesh, and Sri Lanka.

At the working group meeting following the workshop, the three parties agreed to transfer to Bangladesh Korea's know-how on system improvement,

monitoring and evaluation, and information communication technology. The agreements reached on that day included the training of Bangladesh public officials in Korea in October 2008.

The training course for Bangladesh covered a range of topics including institutional improvements, Corruption Impact Assessment, and electronic solutions to prevent corruption to meet the needs of the Bangladesh anti-corruption authorities.

Future work

The ACRC plans to make greater efforts to assist countries in Asia and the Pacific in building their anti-corruption capacity, in close cooperation with international organizations and donor agencies. It will also willingly respond to calls from the international community to share its expertise and knowledge in preventing corruption.

As part of such efforts, the ACRC is planning to host an APEC Anti-Corruption Capacity Building Workshop in October 2009. In October 2008, the APEC Budget and Management Committee approved the ACRC's proposal to host this workshop. The purpose of the workshop is to establish and implement a systematic approach for national anti-corruption strategies and build anti-corruption capacity. The ACRC is planning to invite government officials from 30 or more countries, including 21 APEC member economies, as well as international experts.

Why Corruption Matters to Donors and their Role in Curbing Corruption

Marcel van den Bogaard, Senior Policy Officer, Good Governance Division, Human Rights, Good Governance and Humanitarian Aid Department, DMH/GB, Ministry of Foreign Affairs of the Netherlands¹

Previous and later presentations have addressed the fight against corruption from the perspectives of governments, businesses, civil society, and others. I will add the perspective of the donors that cooperate in the OECD Development Assistance Committee. I will address three topics: why corruption matters to donors; how donors incorporate anti-corruption interventions into their broader support for governance; and the contribution that donors can bring to support efforts aimed at tackling the supply side of corruption.

Why corruption matters to donors

Why does corruption matter to donors? Donors have an interest in combating corruption for the simple reason that corruption constitutes risks to them. These risks may be grouped into three major categories.

The first risk is what we call the fiduciary risk. It constitutes the risk that donor funds are not used for their intended purposes. The recent increase in aid volume exacerbates this concern.

A second risk is the so-called developmental risk: corruption undermines the achievement of economic growth and poverty reduction by its corrosive effects on governmental performance and private investment.

The third risk is reputational risk: Providing aid to countries governed by corrupt leaders tarnishes donors' reputations and consequently undermines the case for aid and its popular support. In the current crisis in the financial sector, this last element has become rather prominent in the domestic debate in donor countries on the level of funds to be allocated to development assistance. In times of economic hardship, it is increasingly difficult to make the case for development assistance if serious doubts exist as to the proper use of these funds and to the lack of political will in developing countries to seriously tackle corruption.

How donors incorporate anti-corruption interventions into the broader support for governance

Donors' response to corruption has undergone a series of changes over time.

In the past, many donors responded to the occurrence of corruption by ring-fencing, i.e., by building extensive safeguards into the management of donor-funded projects. Two circumstances led donors to abandon this approach in favor of efforts to strengthen country systems.

The first driver behind this change is linked to the modalities of aid delivery: the traditional supply-driven structure of projects—offered and initiated by donors—was gradually replaced by donor support of demand-driven programs, i.e., programs that developing countries requested. Later, the Paris Declaration on Aid Effectiveness² triggered and accelerated the provision of sector-specific and general budget support.

The second driver that triggered donors' shift toward strengthening country systems resulted from donors' awareness that corruption in a developing country is both a symptom and an outcome of unresolved problems in the country's wider governance system, and that success of reforms depends on national ownership and political will.

Both these drivers shifted the focus of donors' response to corruption from ring-fencing to the strengthening of country systems. In this effort, donors initially endeavoured to strengthen institutions of horizontal accountability, i.e., government agencies that oversee, control, redress, and, where required, sanction other government agencies.

This approach brought rather disappointing results in terms of reducing corruption. Support to anti-corruption commissions, for example, often remained unsuccessful due to problems elsewhere in the wider governance system and the lack of political will to tackle these governance issues. A partisan judiciary or the granting of executive clemency neutralised efforts by anti-corruption commissions in certain cases.

These meager results made donors support other accountability relationships like vertical accountability, toward parliaments, for example, and societal accountability, toward stakeholders in society. In recent years, this approach has led donors to become active in democratic reform by supporting political institutions and processes, by supporting the judicial sector, and by strengthening public-sector capacity through better systems for public finance

management, including the administration of revenues and procurement systems.

Nowadays, donor interventions address not only the supply side of governance but also the demand side of governance: grassroots monitoring of public expenditures; support to civil society as a countervailing power that influences governance reforms; and support to media. These are examples of typical interventions in this respect. Transparency, accountability, citizen participation, and legitimacy are the goals that donors pursue.

Eventually, however, all efforts will stand and fall with the commitment to reform by the governments of developing countries.

Donors' contribution to tackling the supply side of corruption

I should also touch upon how donors can support efforts aimed at tackling the supply side of corruption. Corruption is a two-way street: for every bribe taker there is a bribe payer. Regrettably, some transnational corporations based in OECD member countries contribute to fuelling corruption when they offer bribes to politicians and bureaucrats in developing countries. Donors should also tackle this supply side of corruption to remain credible development partners.

Apart from supporting the work of the OECD Working Group on Bribery to monitor the implementation and enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials, donors can take additional measures to tackle the supply side of corruption. This includes measures to promote the UN Convention against Corruption (UNCAC) and to raise awareness of the work of the Financial Action Task Force (FATF) and of the issues of money laundering and other illicit financial flows.

Donors can also venture into efforts on the "home front" by proactively involving the private sector—including both transnational corporations and small and medium-sized enterprises—and by reminding companies of their corporate social responsibilities. Joint activities among governments, civil society, and the private sector should receive strong support, notably the Kimberly Process, the Publish-What-You-Pay campaign, and the Extractive Industries Transparency Initiative (EITI).

Donors should also contribute to processes of mutual legal assistance that include developing countries, and the freezing and recovery of assets deposited in OECD countries.

By undertaking action in these areas, donors can contribute to drying out the sources of bribes prevalent in the business sector. These efforts will also boost

the perception of donors as reliable partners in the struggle against poverty as promoted by the recently adopted Accra Action Agenda.

NOTES

- ¹ Representing the OECD Development Assistance Committee Network on Governance Anti Corruption Task Team (OECD DAC GOVNET ACTT).
- ² For information on the Paris Declaration visit www.oecd.org/dac/effectiveness

Annexes

List of Participants Conference Agenda

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Agenda

Wednesday, 26 November 2008

9:00–9:45	Opening Remarks by Guest of Honour
	Associate Professor Ho Peng Kee, Senior Minister of State for Law & Home Affairs, Singapore
	Opening Remarks by ADB and OECD
	Lawrence Greenwood, Vice President (Operations 2), ADB Mario Amano, Deputy Secretary-General, OECD
10:15–12:30	Opening Plenary:
	Combating corruption in business transactions
	Corruption has an adverse impact on the business and investment climate in Asia and the Pacific, increases the costs of doing business and correspondingly, the cost of public service delivery. The challenge is to reduce corruption in business transactions by reducing the incentives and increasing the risks associated with corrupt activity.
	The plenary session will set the stage for the workshops that follow, by discussing the perceived corruption risk in the region and the impact of corruption on the business and investment climate in Asia and the Pacific. It will look at current strategies for reducing corruption, and the importance of fighting the supply-side of corruption. It will also look at the need for business, government, and civil society to share responsibility for finding solutions.
	Chair: Patrick Moulette, Head, Anti-Corruption Division, OECD
	Speakers: John Bray, Director (Analysis), ControlRisks
	Soh Kee Hean, Director, Corrupt Practices Investigation Bureau (CPIB), Singapore
	Wang Huangeng, Deputy Director-General of the Reporting Center, Ministry of Supervision, People's Republic of China
	Kuniko Ozaki, Director, Division for Treaty Affairs, United Nations Office on Drugs and Crime
	David Lyman, Chairman & Chief Values Officer, Tilleke & Gibbins International Ltd., Bangkok
	Peter Rooke, Senior Adviser, International Group, Transparency International

14:00–17:00 Workshop session

<p>  Workshop 1 Combating bribery: the role of international criminal law standards </p> <p>Corruption undermines competition and increases the costs of doing business. An effective legal and regulatory framework informed by international legal instruments and based on international standards, which recognizes corruption and bribery as criminal acts, is necessary to support government efforts to reduce corruption.</p> <p>This workshop will: discuss the issue of bribery within the Asia and Pacific context; discuss international legal standards and their enforcement (in particular UNCAC); present the challenges facing governments as they attempt to implement anti-corruption and anti-bribery offenses; and explore options for involving civil society in the legislative process. In addition, it will explore how experience implementing the OECD Anti-Bribery Convention could assist Asia and the Pacific countries implement international criminalization standards.</p> <p>Chair: Hamid Sharif, Principal Director, Central Operations Services Office, ADB</p> <p>Rapporteur: Andrew Boname, Regional Anti-Corruption Advisor, ABA Rule of Law Initiative</p> <p>Speakers: William Loo, Anti-Corruption Division, OECD Kuniko Ozaki, Director, Division for Treaty Affairs, UNODC Mathew Joseph, Deputy Principal Senior State Counsel, Attorney-General's Chambers, Singapore Jaswant Singh, Deputy Senior State Counsel, Attorney-General's Chambers, Singapore</p>	<p>  Workshop 2 Conflict of interest – the soft side of corruption </p> <p>The intersection between the public and private sector can create opportunities for bribery, but corruption does not always manifest as a financial crime. Conflict of interest occurs when private interest compromises public interest.</p> <p>The workshop will define conflict of interest, discuss various regulatory approaches for managing conflict of interest, and discuss how conflict of interest manifests at the sector level.</p> <p>Chair: Koh Teck Hin, Deputy Director (Operations), CPIB, Singapore</p> <p>Rapporteur: Janet Maki, Ombudsman, Cook Islands</p> <p>Speakers: Janos Bertok, Principal Administrator, Directorate for Governance and Territorial Development, OECD Arief T. Surowidjojo, Lawyer, Indonesia Navita Srikant, Partner, Ernst & Young, India William Paterson, World Bank</p>
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Thursday, 27 November 2008

9:15–12:30 Workshop session

Workshop 3

Ethical business practices:
Corporate compliance programs
and integrity systems

In the wake of numerous corporate scandals and an ever-changing regulatory environment, business leaders are becoming more and more aware of legal and reputational risks associated with corruption.

The workshop will discuss components of effective corporate compliance programs and tools to assist businesses, large and small, in designing and implementing appropriate integrity systems. It will also examine the application of these systems in practice, including in relation to public procurement contracting.

Chair: Li Bo-lan Rebecca, Hong Kong, China

Rapporteur: John Bray, ControlRisks

Speakers:

Neil Thamotheram, PriceWaterhouseCoopers Thailand

Juthika Ramanathan, Chief Executive, Accounting and Corporate Regulatory Authority, Singapore

Eddie How, Regional Head of Business Integrity (APME), Shell Eastern Petroleum Pte Ltd, Singapore

Jermyn Brooks, Director, Private Sector Programs, Transparency International

Workshop 4

Working together to combat
corruption: international and
regional initiatives

Individual companies may not always be in the best position to withstand pressure to offer bribes. Regional and international initiatives provide a forum for private sector, public sector, and civil society actors to come together with a common goal of reducing vulnerability to corruption.

The workshop will present lessons learned and assess how international and regional initiatives contribute to raise awareness and commitment to fight corruption in the region.

Chair: Peter Ryan, Director for Intellectual Exchange, Asia-Europe Foundation

Rapporteur: Abdul Razak Hamzah, Senior Superintendent, Anti-Corruption Agency, Malaysia

Speakers:

Ong Hian Sun, Director, Commercial Affairs Department, Singapore & Co-Chair, Asia Pacific Group on Money Laundering

Peter Rooke, Transparency International

Manuel de Lemos, Director, Secretariat of State for Natural Resources, Timor-Leste

Kathleen Mktan, ADB

14:00–17:00 Workshop session

<p>Workshop 5 Private sector corruption: last piece of the puzzle</p> <p>The general inclination is to think of corruption occurring involving private and state owned actors, in the case of influence peddling, offering and receiving bribes etc. However, corruption also occurs within the private sector. This corruption can be more difficult to address as it falls outside the remit of typical public sector integrity mechanisms.</p> <p>The workshop will examine how corruption manifests in private-to-private transactions, tools, and options available to address this form of corruption and the linkages with the rule of law.</p> <p>Chair: Joel Turkewitz, Lead Governance Specialist, World Bank</p> <p>Rapporteur: tbd</p> <p>Speakers: Jermyn Brooks, Director, Private Sector Programs, Transparency International Ho Wah Lee, Director, Fraud Services, KPMG, Singapore Li Bo-lan Rebecca, Assistant Director, Operations Department, ICAC Hong Kong, China Koh Teck Hin, Deputy Director (Operations), CPIB, Singapore Melinda Quintos De Jesus, Executive Director, Center for Media Freedom and Responsibility</p>	<p>Workshop 6 Fighting corruption and the sustainable development agenda</p> <p>The development community recognizes the profound harm that corruption inflicts on development, and particularly on the poor. A number of bi- and multilateral donors with programs in Asia and the Pacific coordinate their efforts through the OECD Development Assistance Committee (DAC) Governance Network.</p> <p>This workshop will focus on key corruption issues that impact on sustainable development in Asia and the Pacific (e.g., in mineral extraction, oil and gas industries, and forestry), and follow-up discussions at the 13th IACC in Athens. It will look at the issue of facilitation payments and how they weaken development. It will also discuss how donors incorporate anti-corruption into the broader support for governance, and how they can support efforts aimed at drying out the sources of bribes prevalent in the business sector.</p> <p>Chair: Tony Prescott, Anti-Corruption Specialist, AusAID</p> <p>Rapporteur: Pauline Tamesis, UNDP</p> <p>Speakers: Marcel van den Bogaard, DAC GOVNET ACTT Merceditas Gutierrez, Ombudsman, Philippines So-yeong Yoon, Deputy Director, Anti-Corruption, International Cooperation Division, Anti-Corruption and Civil Rights Commission (ACRC), Korea Clare Wee, Director, Integrity Division, ADB Anthony Kevin Morais, Deputy Public Prosecutor at Attorney General Chambers attached to ACA, Malaysia</p>
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Evening: *Asia-Pacific Premiere of "Ethicana"*

Friday, 28 November 2008

9:15–10:45 Closing plenary

Part I: Report and conclusions from workshops

Rapporteurs from each of the six workshops will present issues identified during the workshop, the impact of these issues on anticorruption efforts and specific actions.

Chair: Kathleen Moktan, ADB

Speakers: Rapporteurs of workshops 1 to 6

10:45–11:15 Refreshments

11:15–12:15 Closing plenary

Part II: The way forward

■ Presentation and discussion of the draft conference conclusions;

■ Adoption of conference conclusions and recommendations.

Panel: Soh Kee Hean, Director, CPIB, Singapore

Kathleen Moktan, ADB

Joachim Pohl, Project Co-ordinator, Anti-Corruption Initiative for Asia-Pacific, OECD

12:15–12:45 Closing remarks

Kathleen Moktan, ADB

Patrick Moulette, OECD

Peter Ho, Head Civil Service, Singapore

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BLURB

Strategies for Business, Government, and Civil Society to Fight Corruption in Asia and the Pacific

Bribery is bad for business, so why do businesses continue to bribe? What roles do business, government, and civil society have in the fight against corruption—and notably in the fight against bribery in business? The 6th Regional Anti-Corruption Conference for Asia and the Pacific gathered experts from countries and jurisdictions of Asia and the Pacific, OECD member countries, leading enterprises and businesses associations, civil society, and development partners to respond to these questions and to share their experiences in fighting bribery in business.

The conference, organized by the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific in late November 2008, explored (i) possible drivers and incentives for anti-corruption reform; (ii) the role of criminal law standards and corporate compliance mechanisms; (iii) the risks and countermeasures against private-to-private corruption; (iv) preventing and managing conflicts of interest; (v) international initiatives to counter bribery; (vi) how development partners can become involved in the fight against bribery and corruption.

The Asian Development Bank (ADB)/Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific supports its 28 member countries and jurisdictions in their efforts to establish sustainable safeguards against corruption as set out in the Anti-Corruption Action Plan for Asia and the Pacific. For more information, please visit www.oecd.org/corruption/asiapacific