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

ANTI-CORRUPTION POLICIES IN ASIA AND THE PACIFIC

PROGRESS IN LEGAL AND INSTITUTIONAL REFORM IN 25 COUNTRIES

Australia – Bangladesh – Cambodia – P.R. China – Cook Islands – Fiji Islands – Hong Kong, China – India – Indonesia – Japan – Republic of Kazakhstan – Republic of Korea – Kyrgyz Republic – Malaysia – Mongolia – Nepal – Pakistan – Palau – Papua New Guinea – the Philippines – Samoa – Singapore – Thailand – Vanuatu – Vietnam

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Contents

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Abbreviations and Acronyms

ABA	American Bar Association
ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CPIB	Corrupt Practices Investigation Bureau (Singapore)
CVC	Central Vigilance Commission (India)
FACT	Foundation for a Clean and Transparent Thailand
FATF	Financial Action Task Force
GOPAC	Global Organization of Parliamentarians against Corruption
ICAC	Independent Commission against Corruption (Hong Kong, China)
ICC	International Chamber of Commerce
INTOSAI	International Organization of Supreme Audit Institutions
IOSCO	International Organization of Securities Commissions
KICAC	Korea Independent Commission against Corruption
K-PACT	Korean Pact on Anti-Corruption and Transparency
MACA	Malaysia Anti-Corruption Academy
MLA	mutual legal assistance
NCCC	National Counter Corruption Commission (Thailand)
NCCT	non-cooperative countries and territories
NEAPAC	North East Asian Parliamentarians against Corruption
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
PBEC	Pacific Basin Economic Council
SEAPAC	South East Asian Parliamentarians against Corruption
SOE	state-owned enterprise
TI	Transparency International

UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
USD	United States dollars

Foreword

Over the last decade, societies have come to realize the extent to which corruption and bribery have undermined their welfare and stability. Governments, the private sector, and civil society alike have consequently declared the fight against corruption to be of the highest priority.

In the Asia-Pacific region, 27 countries have expressed their commitment to the fight against corruption by endorsing the Anti-Corruption Action Plan within the framework of the Asian Development Bank (ADB)/Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific, a first-of-its-kind partnership among all stakeholders from Asian and Pacific countries. The Action Plan comprehensively promotes the region's objectives and priorities for reform to develop effective and transparent systems for public service, strengthen anti-bribery initiatives, promote integrity in business operations, and support citizens' involvement. Acknowledging that each country has different needs, the Action Plan leaves the responsibility for defining, assessing, and implementing strategies with the countries. Efforts at the national level are consolidated through regional policy dialogue and high-level training seminars. The international donor community, in particular members of the Initiative's Advisory Group,[1] strongly supports participating countries' efforts to build sustainable anti-corruption mechanisms.

Governments participating in the Initiative have decided to take stock of their relevant legal and institutional provisions to gain a comprehensive and structured overview of the region's anti-corruption framework and to supplement the regular review of specific national priority reform efforts

[1] American Bar Association/Asia Law Initiative, Australian Agency for International Development, Pacific Basin Economic Council, Swedish International Development Cooperation Agency, Transparency International, United Kingdom Department for International Development, United Nations Development Programme, World Bank.

under the Action Plan. Based on self-review, this stocktaking exercise seeks to assist participating governments in better understanding the main challenges that their countries face, learning from their neighbors' experience, and identifying measures to further enhance anti-corruption efforts. The exercise also serves as a benchmark for participating countries to assess achievements under the Action Plan and to identify areas that require reform most urgently. Finally, the review supports the Initiative's member countries in identifying areas that require particular attention in the endeavor to achieve the standards of the United Nations Convention against Corruption.

Since the publication of the first edition of this report in July 2004, manifold reforms have been achieved that strengthen the endorsing countries' legal and institutional frameworks to curb corruption. Also, four additional countries have joined the ADB/OECD Anti-Corruption Initiative for Asia-Pacific in this period and have taken stock of their safeguards against corruption. The present second edition of the report *Anti-Corruption Policies in Asia and the Pacific* acknowledges these developments. As such, it provides a comprehensive and up-to-date picture of the legal and institutional frameworks that are in place in the Initiative's then 25 member countries as of the first quarter of 2006. The report allows the reader to monitor these countries' progress in establishing safeguards against corruption through the implementation over time of the Anti-Corruption Action Plan for Asia-Pacific.

To the extent that each country has defined priorities for reform to combat corruption in its national anti-corruption strategy and under the Action Plan, the country reports reflect these priorities and so does the present document. That the following text may mention certain provisions in some countries does not exclude the possibility that similar measures are in place in others; however, in these cases the respective information was not available to the Secretariat of the ADB/OECD Initiative at the time the report was drafted.

This report was prepared by the Secretariat of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. It compiles information provided by the governments that have endorsed the Anti-Corruption Action Plan for Asia and the Pacific through self-assessment reports and through publicly available information. The countries' self-assessment reports are available for download at the Initiative's website at http://www.oecd.org/corruption/asiapacific. Additional information made available by international organizations with governments of endorsing countries as members has also been used, along with public reports of

ADB and the OECD Working Group on Bribery, the Financial Action Task Force, and the Asia-Pacific Economic Cooperation (APEC).

This publication is the result of the collaborative efforts of several individuals. The project was directed by Frédéric Wehrlé, Coordinator for Asia-Pacific, Anti-Corruption Division, OECD, and Jak Jabes, then Director of the Capacity Development and Governance Division at ADB, assisted by Marilyn Pizarro, Consultant, ADB and the report was prepared by Joachim Pohl, Project Coordinator, Anti-Corruption Initiative for Asia-Pacific, Anti-Corruption Division, OECD.

While all reasonable care has been taken in the preparation of this report, it should be stressed that readily available information is not always complete and that, in a rapidly and continuously evolving legal, economic, and political environment, some of the information contained in this report may quickly require updating.

A prior version of this report was discussed by the Steering Group at its seventh meeting in Beijing, People's Republic of China, on 27 September 2005. The information in this report is as of 28 February 2006. The Group approved this report in written procedure on 20 April 2006.

The term "country" as used in this report 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 and the OECD and its member countries. Every effort has been made to verify the information in this report and to correctly reflect the countries' self-assessment reports that were submitted to the Secretariat in the course of the stocktaking exercise. However, the authors disclaim any responsibility for the accuracy of the information or the effectiveness of the regulations and institutions mentioned in this report. 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.

The Secretariat of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific expresses its sincere gratitude to the participating governments and to the members of the Advisory Group for their efforts in providing comprehensive and detailed information, thus contributing to the overall progress of anti-corruption efforts in Asia and the Pacific.

For convenience, monetary values have been converted from the respective national currencies to United States dollars, either by the reporting countries themselves or according to the approximate exchange rates as of January 2006.

Executive Summary

The fight against corruption remains high on the political agenda of Asian and Pacific countries. Citizens and governments alike are increasingly aware of the evils of corruption and alert to the necessity of taking effective action against it. To address the issue of corruption more effectively, 27 countries have joined the Asian Development Bank (ADB)/ Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific and have committed to reform their legal and institutional frameworks to strengthen safeguards against corruption and to implement internationally recognized standards.

The ADB/OECD Anti-Corruption Initiative has triggered a broad range of legal and institutional reforms in its member countries. Guided by the Initiative's Action Plan, countries have engaged in important reforms with a view to strengthening anti-corruption measures and enhancing good governance, transparency, and accountability in public service. Since the first edition of this report in 2004, these reforms become more sophisticated, specialized, and comprehensive. They have also revealed major legal gaps and loopholes that continue to exist, and the still insufficient capacity of anti-corruption institutions in many countries.

A strategic approach to combating corruption and promoting good governance

A look at the type of anti-corruption reforms that countries have engaged in over the past two years leads one to observe that more and more countries understand corruption and governance as cross-cutting issues and consequently seek to address them through a holistic approach. This means that individual reform projects are increasingly embedded in long-term anti-corruption strategies, which are seen as integral parts of national development and poverty reduction programs. They also usually

encompass both preventive and repressive measures or alternatively provide for close coordination between different projects in the areas of prevention and prosecution. Furthermore, they increasingly seek support and "buy-in" from concerned non-governmental stakeholders.

National anti-corruption programs seeking to meet such a level of comprehensiveness were recently developed, for instance, in Indonesia, Kazakhstan, Malaysia, Mongolia, Nepal, Pakistan, and Thailand. In Korea, to cite another example, various stakeholders from government, political parties, business, and civic groups have recently adopted a joint action plan that defines the specific goals and roles of each of these stakeholder groups in promoting transparency and combating corruption. The fact that a growing number of countries are seeking to streamline their legislation with a view to replacing formerly separate pieces of relevant legislation with a comprehensive anti-corruption law is a further indicator of this trend.

This holistic approach is reflected by the Anti-Corruption Action Plan's three pillars—Pillar I outlines preventive measures in the public sector; Pillar II addresses issues related to law enforcement and to private sector accountability; and Pillar III promotes cooperation with non-state actors from civil society, the media, and the private sector. The Action Plan consequently enjoys high popularity and growing recognition in the region and beyond for its ability to guide and foster anti-corruption reform. Since the last Regional Anti-Corruption Conference for Asia-Pacific, in late 2003, four countries—People's Republic of China, Palau, Thailand, and Vietnam—have endorsed the Action Plan, and the Initiative's Steering Group has further welcomed Brunei Darussalam and Sri Lanka as new observer countries.

Similar to the Action Plan, the United Nations Convention against Corruption addresses the full scope of institutional and legal settings that need to be in place to effectively combat corruption, ranging from prevention and criminalization to international cooperation and asset recovery. At the start of 2006, 16 member countries of the ADB/OECD Initiative had signed the UN Convention, and many others were actively preparing for ratification by reviewing the compliance of their anti-corruption structures with the UN Convention.

Achievements and challenges in Asia and the Pacific

Despite this general trend towards a more strategic and integrated approach to anti-corruption and governance reform, differences can be observed in the level of attention that is paid to certain aspects of the

fight against corruption. Preventive measures in the public sector, and reform efforts that seek to enhance the effectiveness of corruption prosecution, receive generally high attention to the disadvantage of government efforts that involve or target non-state actors. This phenomenon, already observed two years ago at the time of the previous edition of this report, has not altered to a great extent.

Enhancing integrity and transparency in the public sector has been identified by all of the Initiative's member countries as crucial to successfully preventing and combating corruption and, as such, has remained a cornerstone of their anti-corruption policies. Over the past few years, a number of parallel measures have been implemented to strengthen safeguards against corruption in the public sector. Such measures have often sought to bolster the integrity and competence of public officials by introducing regulations for staff selection and human resources policies. Most countries subscribe to the principle of meritocracy for hiring and promoting public servants and prescribe the public advertisement of vacant posts to prevent cronyism and nepotism. Most of them further apply special procedures for recruitment to senior positions. Ensuring adequate remuneration of public servants as a means to battle petty corruption is another issue of particular concern throughout the region. The implementation of such reform is, however, often impeded by economic realities in the concerned countries.

Recent measures to prevent corruption at the level of the individual public servant include the adoption of codes of conduct to clarify standards of integrity in the public service. To ensure their effectiveness, these codes often encompass disciplinary provisions and are accompanied with staff training. Codes of conduct usually focus particularly on conflict-of-interest situations and regulate the receiving of gifts and hospitality, prohibit bribery and other forms of abuse of public authority, and regulate public servants' involvement in economic and political activities. Obligations to report personal assets and liabilities have been and are being adopted by a growing number of governments to discourage and detect corruption.

Preventive measures at the organizational level have been another focus of reform over the past few years. Reforms include approaches that reduce opportunities for corruption and limit discretion in public decision making, as well as initiatives aimed at increasing transparency, notably in particularly corruption-prone areas like public procurement. As to the latter, some countries have centralized corruption-prone decision-taking processes or confine them to panels. Ever more countries are extending the use of modern information technology to dehumanize routine

administrative procedures. Reviews of licensing requirements have taken place in other countries with the objective of reducing the number of licenses and permits. Aside from "traditional" instruments for reviewing public expenditure and public management such as regular auditing, some countries increasingly resort to innovative means (e.g., user surveys or systematic scrutiny of administrative regulations or practices) to detect institutional weaknesses and corruption-prone areas.

Corruption in particularly vulnerable sectors like public procurement and tax collection have been identified as a priority by a majority of the countries and have been addressed to a varying extent. Five countries have entirely overhauled their procurement frameworks since 2002, and three others were engaged in similar reforms at the start of 2006. Some challenges remain in this area, such as the thorough implementation of the reforms and regulation in the related sector of granting major licenses for the exploitation of markets or natural resources.

Curbing corruption in the political sphere has also increasingly been recognized as a decisive element in the fight against corruption. Some countries have taken steps to address this sensitive but crucial area of corruption in state leadership. Measures to serve this purpose have included the development of new regulations aimed at both strengthening the integrity of politicians and elected officials and enhancing transparency in the financing of political parties. Where such measures have been adopted, their implementation and enforcement often remain a challenge, however.

Compared with reforms aimed at strengthening integrity in the public service, corruption prevention in the private sector has been significantly lower on governments' reform agendas. Only in a few countries have governments encouraged the development of good practices, including standards of conduct, in their corporate sector. The relatively cautious efforts governments in Asia-Pacific have made so far in promoting business ethics have been barely complemented with measures aimed at improving the transparency of commercial transactions. Where they exist, regulations governing company accounting and auditing, internal control, and disclosure of information rarely serve the purpose of preventing and detecting bribery and corruption. As part of the larger effort to improve the transparency of commercial transactions and combat corruption of public officials, greater efforts are also required to eliminate any indirect support of corruption such as the tax deductibility of bribes.

Few business ethics initiatives have been led by Asia-Pacific–based business associations as well. With some notable exceptions like the Pacific Basin Economic Council, business organizations and local

chambers of commerce tend to play only a small role in promoting business ethics and encouraging the development of ethics codes and other corporate measures aimed at preventing the giving of bribes to public officials. If business ethics initiatives exist, they often come from outside the region.

Effective prosecution and sanctioning of corruption

Significant progress has been achieved over the past few years as regards anti-corruption legislation and law enforcement. Not only do all 25 countries and jurisdictions have legislation sanctioning corrupt practices, but many of them have taken steps to review their anti-corruption legislation to ensure that it better complies with international standards. In addition to legal provisions specifically targeting corruption, there are a significant number of other provisions in either criminal legislation or other laws and regulations with punishments for acts similar or linked to corruption. The anti–money laundering legislation of an increasing number of countries also provides the possibility for courts to hold liable persons involved in the laundering of assets derived from corruption.

Some forms of corruption, such as bribery through intermediaries, bribery of foreign public officials, or political corruption, are punishable in only a few countries, however. Furthermore, Asia-Pacific legislation often penalizes passive bribery—i.e., the solicitation or acceptance of a bribe by a public official—more severely than active bribery (i.e., the giving of bribes to public officials). This uneven treatment of the two parties involved is often the expression of the lawmakers' view that the primary focus of anti-corruption laws should be on the public official. The attention given to the sanctioning of public officials rather than of those who give the bribe is also illustrated by the fact that most Asia-Pacific countries' laws do not adopt the principle of responsibility of legal persons (e.g., corporations) for corruption—although liability of legal persons exists in some countries for other types of economic offences that fall outside the scope of the offence of corruption.

A number of countries have also made efforts to reform and strengthen procedural means to detect and investigate corruption, a crucial complement to sanctions, notably given the low conviction rate in this area of crime in various countries. Whistle-blower and witness protection laws and programs have been established or expanded in this regard, to encourage and better protect citizens as an important source of information leading to the detection of corruption. Many

countries have also made it incumbent on their public officials to report corrupt activities, as reporting may provide intelligence. Other attempts to facilitate investigation and prosecution of corruption include amending rules governing the collection of evidence and its presentation in court and improving the mechanisms applicable to obtaining and providing international legal assistance. In this context, the repatriation of the proceeds of corruption is an issue of great concern, as corrupt officials continue to misappropriate significant amounts of public funds and store them in foreign jurisdictions. While some progress in this area has resulted from bilateral and ad-hoc repatriation arrangements, progress in institutionalizing these procedures is seen as crucial for many countries in the region.

The institutional settings of the law-enforcement system have also been a focus of reform in many countries. In an attempt to better cope with the complexity of corruption and related crimes, law-enforcement structures have been strengthened through the establishment, in a growing number of countries, of specialized agencies explicitly entrusted with combating corruption. Their responsibilities and powers vary, notably when it comes to their involvement in investigating and prosecuting cases. In addition to their role as law-enforcement bodies, some agencies are responsible for awareness raising, educational measures, or research, while in other countries they supervise and coordinate the work of other government agencies. Despite the sometimes far-reaching responsibilities of these anti-corruption agencies, sufficient resources and organic cooperation with other law-enforcement bodies, such as police and public prosecutors, remain crucial. These matters, as well as the reform of law-enforcement bodies, continue to require significant attention in many countries.

Civil society as an important actor and resource

Civil society's contribution to anti-corruption efforts has increased significantly in a growing number of countries in the region. The contribution of non-governmental actors to corruption reduction has taken various forms, from raising awareness about the general issue of corruption to establishing, jointly with the government, special commissions to study corruption. Bringing to light examples of corruption in certain areas of government, organizing public marches, and implementing advertising campaigns on television and billboards have also been undertaken by civil society groups. In some countries, such actions have contributed to putting the fight against corruption at the

top of the political agenda; in other countries, grass-roots advocacy has had an important impact on the development of access to information legislation. Where governments have publicly expressed their commitment to fight bribery and corruption of their public officials, the media have been particularly active as well, especially when combined with greater autonomy of the local press or broadcasting networks.

However, policies in some countries in the region still reflect caution about the extent of civil society involvement in anti-corruption reform. Some encouraging developments have taken place over the past two years, though. In a growing number of countries, governments have admitted non-governmental organizations (NGOs) to the process of monitoring certain administrative processes, especially in the area of public procurement; in other countries, independent actors have been employed to conduct public perception surveys. In some countries financial support for anti-corruption NGOs is provided by governments.

Overall, significant efforts in the fight against corruption can be observed in Asian and Pacific countries. Legal gaps and loopholes continue to exist, however, and the capacity of anti-corruption institutions remains insufficient in many countries. There is clearly no room for indifference; on the contrary, countries do understand that there is a continuous need to engage with greater fervor in the fight against corruption. For this, countries need to ensure that anti-corruption strategies involve and commit all concerned stakeholders more systematically.

In all this, valuable knowledge can be gained through exchange of experience with counterparts from other countries. To further advance the fight against corruption and pursue this struggle in a determined way, cooperation with partners from around the world, and above all from within the region, under the umbrella of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, remain a crucial factor.

Chapter 1
Preventing corruption in public administrations, the political sphere, and the business sector

Corruption and bribery thrive on systemic weaknesses. Efforts to prevent corruption aim at eliminating these weaknesses to reduce opportunities for corruption; at enhancing transparency to render attempts of corruption visible; and at strengthening integrity to make it clear that corrupt behavior is intolerable. This goal is common to corruption prevention in the key sectors—public administrations, the political sphere, and the business sector. The means of putting this objective into practice, however, differs among these sectors, because of the variety of regulatory frameworks and operational environments.

Despite the differences in the extent and forms of corruption prevalent in the 25 jurisdictions that have endorsed the Anti-Corruption Action Plan, there are significant similarities in the priorities for corruption prevention across the region. Most endorsing countries, for example, attribute an important role to administrative reform. Corruption in the political sphere is attracting growing attention in many Asian and Pacific countries, and public demand for accountability of political leaders and political parties has begun to trigger reform in this area. Private business has also become a focus of anti-corruption reform; besides being the object of state regulation and oversight, this sector has started its own initiatives to curb corruption.

The prevention of corruption in the public service ranks high on many countries' reform agendas. So far, varying levels of effort have taken place, and achievements vary widely. Reforms aim at ensuring the competence and integrity of public officials as individuals. Administrative rules and procedures and the overall management and oversight of public administration are also under review, with a particular focus on the reform of public procurement. Corruption prevention in the political sphere is dealt with in a separate section of this report (*see section B below*) given the special status of elected officials and the resulting differences in the regulatory regimes.

A. Preventing corruption in public administrations

I. Integrity of public officials

The integrity of public officials is a fundamental prerequisite for a reliable, honest, and efficient public administration. Many countries in the region and beyond have thus adopted measures that seek to ensure integrity in the hiring and promotion of staff, provide adequate remuneration, and set and implement clear rules of conduct for public officials.

1. Hiring and promotion of public officials

Openness, equal opportunity, and transparency in hiring and promoting public officials are essential to ensuring an honest, qualified, and independent public service. Clear eligibility criteria and wide publication of vacant positions are preconditions for attracting talented candidates to the public service. Corrupt practices in this crucial process take many forms: for example, nepotism and cronyism—the use of public power to obtain a favor for a family member or other affiliate—are common in a number of countries.

Defining the criteria, procedures, and institutional framework by law is an essential precondition for transparent and fair selection and promotion procedures. Most if not all countries in this survey have enacted such laws. P.R. China passed its first civil servant law in April 2005. Such laws usually prescribe the advertisement of vacant positions in the press or other media. In Korea, Singapore, Thailand, and the Hong Kong Special Administrative Region of P.R. China (hereinafter, Hong Kong, China), the

Internet is gaining importance as a means of informing potential candidates of job opportunities. Eligibility is usually based on merit, examination results, performance, or demonstrated abilities (in Australia; P.R. China; Hong Kong, China; India; Japan; Kazakhstan; Korea; Kyrgyz Republic; Mongolia; Nepal; Pakistan; Papua New Guinea; the Philippines; Singapore and Thailand). P.R. China plans to establish standardized selection systems in the public sector. Bangladeshi legislation prescribes merit-based promotion only for senior positions. While discrimination is formally proscribed in most countries, these provisions are not always followed in practice, as some countries have frankly reported.

With the aim of enhancing the transparency of eligibility criteria and recruitment procedures, Samoa published a recruitment and selection manual for the public service. Australia's Public Service Commissioner regularly updates the commission's directions in recruitment and promotion, and evaluates to what extent the agencies follow its regulations. Korea and Thailand established a monitoring mechanism to increase the transparency of appointment procedures likely to be subject to corrupt behavior. In Korea, all selection processes are documented in detail on the Internet and thus open to public scrutiny. The Kyrgyz Republic has recently introduced the obligation to publicly announce recruitment decisions.

Australia; Hong Kong, China; Papua New Guinea; the Philippines; Nepal; and Thailand have all designed specific complaint procedures enabling applicants or public officials to submit grievances concerning appointments or promotions to independent bodies: to the Merit Protection Commissioner in Australia; the Chief Executive in Hong Kong, China; and the Public Service Commission or the Ombudsman Commission in Papua New Guinea.

Some countries have established specific organizational or institutional schemes for appointment procedures to diminish the risk of nepotism, cronyism, or other forms of corruption. Bangladesh, P.R. China, Korea, Malaysia, Mongolia, Nepal, Pakistan, and Thailand have centralized recruitment systems. Other countries have opted for a decentralized system: the Fiji Islands has decentralized the recruitment of public officials below the senior executive level. In Singapore, all hiring and promotion decisions are taken by a board, and the Fiji Islands and Vanuatu have commissioned such boards for appointments to certain positions. Bangladesh, India, and Pakistan entrust departmental promotion committees with responsibility for implementing the rules on civil servants' promotions; in Bangladesh, promotions to senior positions are decided by a high-level committee known as the Superior Selection Board. In

Australia, an independent commission can be convened to make recommendations to the responsible agency head on the filling of certain positions. In Mongolia, a civil service council provides an opinion on the recruitment of officials.

Some countries prohibit outright appointments that are susceptible to nepotism. In the Kyrgyz Republic and the Philippines, the employment of an officer who would be under the direct supervision of his or her next of kin is not allowed. In situations where this type of restriction is considered impractical and is therefore excluded from these rules, Philippine law requires that the particular appointment be reported to supervisory entities.

To counter the increased risk of undue influence over appointments to senior positions, some countries govern the appointment by a specific regime. In P.R. China, India, Nepal, and Pakistan, independent central bodies with constitutional status appoint civil servants to senior positions. A similar mechanism exists in Thailand. Relevant provisions in Malaysia require a central body to approve appointments to such senior positions, while those in Hong Kong, China require an independent body to advise on and endorse appointments to such senior positions. Malaysia has entrusted its anti-corruption agency with the task of ascertaining that candidates for appointment or promotion to important posts in the public and private sectors have not been involved in corruption. Bangladesh similarly requires candidates to be approved by the anti-corruption commission before appointment to higher positions.

Appointment to the highest positions in some public administrations is subject to the approval of parliament: for example, Indonesia's Attorney General, Chief Justice, and Chief of the Police Department are appointed by the President, whose decision is subject to parliamentary approbation. In Nepal, constitutional positions such as the head of the Commission for the Investigation of Abuse of Authority (CIAA), the head of the Public Service Commission, the Auditor General, and the Attorney General are appointed upon recommendation of the Constitutional Council; this council is composed of the Prime Minister, the Chief Justice of the Supreme Court, the Speaker of the House of Representatives, the Chairman of the State Council, and the Leader of the opposition party in the House of Representative. By contrast, Pakistan's Prime Minister is entitled to appoint any person to a post in the federal service without needing the approval of another state body; this entitlement is used only infrequently, however.

2. Remuneration of public officials

Inadequate remuneration renders posts in the public service unattractive to talented candidates and can diminish officials' resistance to corruption. Adequate remuneration of public officials is thus often seen as helping to prevent corruption. Many countries periodically review and adjust public officials' salaries. These adjustments often take into account changing costs of living, overall economic development, or comparable salaries in the private sector. In some countries (P.R. China, Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kazakhstan; Malaysia; Nepal; Papua New Guinea; the Philippines; Singapore; Thailand), this involves the review of salary bases and, where the state budget allows, routine pay adjustments.

Some countries have given priority to particularly vulnerable sectors: Indonesia and the Kyrgyz Republic have prioritized salary adjustments in their law-enforcement agencies; Pakistan has done likewise in certain units of its law-enforcement agencies. Indonesia also pays higher than regular salaries to officials working in a tax office that deals with major taxpayers. The Philippines has increased the remuneration of its judiciary to attract more competent staff, and current efforts in the Philippine Congress also aim to upgrade the salaries of certain positions in the Office of the Ombudsman. Bangladesh and the Cook Islands periodically review the salary structure within their public service to ensure equity and appropriate remuneration. Vietnam is implementing a new and comprehensive remuneration system, and Cambodia and Thailand are also reviewing their remuneration schemes for public officials. Samoa plans to establish a remuneration tribunal to review salaries and wage parity in the public sector, and Mongolia's National Program for Combating Corruption identifies the raising of public officials' salaries and benefits as a priority.

3. Regulations on conduct in office and conflicts of interest

Instituting and enforcing impartiality and integrity require clear guidelines. Comprehensive and explicit codes of conduct and swift action in disciplining those who violate the rules are the cornerstones of sustaining high ethical standards in the public sector.

Today, many countries in the region have laid down guidelines for the public sector in codes of conduct or laws (regarding codes of conduct for politicians, *see section B.II. below*; on codes of conduct for the judiciary, *see Chapter 2 B.I. below*): Australia, P.R. China, India, Japan, Korea, Malaysia, Pakistan, Papua New Guinea, Samoa, and Vanuatu have passed

codes of conduct, and Indonesia, Mongolia, the Philippines, Thailand, and Vietnam specific conflict-of-interest, civil service, or anti-corruption laws that regulate the matter. Hong Kong, China; the Kyrgyz Republic; Singapore; and Thailand have issued public service regulations, and Bangladesh and Nepal have rules of conduct for public servants. The Kyrgyz 2004 Law on Civil Service also contains regulations on conflict of interest. Cambodia is currently developing codes of conduct for the public service.

These frameworks usually address conflicts of interest, commonly defined as situations in which personal considerations are likely to influence an official in the exercise of his or her duties. The regulations commonly restrict or regulate public officials' economic or political activities and the acceptance of gifts or hospitality, both of which are major sources of conflict of interest. Many of them provide for disciplinary measures to enforce the prohibitions.

Rapid changes in the working environment surrounding the public service require regular review of these codes of conduct. New models of cooperation with the business sector, public-private partnerships, and increased mobility of personnel between the public and private sectors illustrate such emerging risk areas. To react swiftly to these challenges and to make use of the particular expertise in this field, Hong Kong, China; Korea; and Malaysia have enjoined their anti-corruption agencies' advisory branches to take part in the updating and enforcement of codes of conduct. Japan has passed, in March 2005, a revision of the 1999 ethics code for public service officials. Cambodia, Cook Islands, Fiji Islands, the Kyrgyz Republic, and Pakistan are planning or working on the establishment or substantive reform of codes of conduct.

a. Conflicts of interest regarding the exercise of economic or political activities

Three different schemes are applied to avoid or manage conflict of interest. One relies on transparency, another on incompatibility, and the third combines both these principles. Systems of transparency require the involved official to disclose conflicting interests; if a side activity creates the conflict, authorization may be required. Systems of incompatibility prohibit activities that typically breed a conflict of interest.

Many conflict-of-interest regulations address public officials' engagement in political or economic activities. Bangladesh, India, Japan, the Kyrgyz Republic, Nepal, Pakistan, Papua New Guinea, the Philippines, and Thailand limit or prohibit public officials from engaging in political

activities. In Pakistan, public officials are not permitted to engage in political activities in the first two years following their retirement. Australian and Mongolian law allows such engagement, but an official standing for election has to resign from the official function for the duration of the campaign as well as the term of elected office.

A number of countries (Bangladesh; P.R. China; Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kyrgyz Republic; Mongolia; Papua New Guinea; the Philippines; Singapore; Thailand; Vietnam) restrict or forbid public officials' engagement in private sector enterprises or investment. Pakistan requires public officials to take a temporary leave of absence from their post whenever they take on business responsibilities in the private sector. Indonesia, Nepal, and Singapore require public officials to obtain a superior's or the ministry's approval before taking up a post as a company director or holding shares in private companies. Hong Kong, China; Indonesia; and the Philippines prohibit investment or involvement in business linked to the official's sphere of activity. Indian regulations oblige officials to report the employment of a near relative in an organization with which the public official is associated. Kyrgyz Republic law requires shareholders to transfer their shares into trust governance during the time of their public service employment.

b. Regulations concerning gifts and hospitality

Gifts or hospitality are sometimes abused to camouflage corruption and are prone to generate conflicts of interest. Thus, most countries' codes of conduct prohibit or restrict the acceptance of gifts and hospitality by public servants. Kazakhstan, Korea, and the Philippines also regulate to what extent officials' family members may accept gifts and hospitality. Here again, systems of transparency and interdiction coexist and are sometimes combined.

P.R. China prohibits public officials from accepting gifts and hospitality that may affect the performance of official duties. In Nepal, civil servants are not allowed to accept any kind of gift, charity, and hospitality without prior approval by the government. Many countries (Japan, India, Malaysia, and Thailand for gifts beyond a certain value) require the gift to be reported to supervisors. Singapore requires its public officials to declare all gifts received in the course of official duties, regardless of the value. In Indonesia, gifts have to be reported to the anti-corruption agency, and in Mongolia, gifts must be reported to the finance department or handed over if the amount of the gift exceeds the value of the recipient's monthly salary; the recipient of the gift may purchase it back from the finance

department. In Kazakhstan, the gift must be handed over to a fund. In Bangladesh, only higher-ranking officials have to report gifts. In Japan, information concerning gifts of a value exceeding approximately USD 170 can be accessed by citizens at their request.

Such regulations often exclude minor gifts. Whether a gift is minor is determined in relation to either a fixed threshold or specific circumstances. Fixed ceilings for acceptable values of gifts differ among countries. The ceilings are set at USD 10 in Kazakhstan, USD 25 in Korea, USD 50 in Japan, USD 80 in Thailand, and USD 125 in Malaysia, to mention a few examples. Since fixed amounts can be ineffective in curbing petty corruption, some countries have opted for a definition relative to specific circumstances: The Philippines' code of conduct bans "manifestly excessive" gifts. Malaysia requires gifts to be reported regardless of their value, if the background of the gift is doubtful. These relative definitions call for close monitoring of their interpretation in practice.

c. Conflict of interest arising from post-service employment

Conflicts of interest may threaten the public interest even *after* an incumbency in public office. Thus, some countries impose restrictions on professional activities of former public officials for a certain period or under certain conditions: Hong Kong, China requires a retired civil servant who intends to take up any employment or engage in any business activity within two years of retirement to obtain prior approval from the Government. A sanitization period of six months from cessation of active service is normally imposed on senior officials, and even stricter rules apply to certain categories of staff or personnel of certain services. Hong Kong, China is currently in the course of further strengthening this framework. Vietnam also prohibits public officials from doing business in an area linked to their former assignment in the public sector for a certain period of time. Australian law does not prescribe fixed restrictions on activities after public sector employment; the legally non-binding code of conduct nevertheless points out the risk of a conflict of interest and encourages individual agencies to define relevant guidelines; waiting periods are explicitly recommended. In Bangladesh, prior approval from the Government is required if the civil servant is on pre-retirement leave. In P.R. China, former public officials are not allowed to take on positions in the private sector or conduct economic activities in the two years following their departure from the public service.

d. Guidance and training on ethical conduct and risks of corruption

Enacting rules of conduct does not by itself suffice to bolster ethical behavior in the public service; leadership, clear guidance, and awareness programs are a crucial complement to such regulations. Australia in this respect provides detailed practical advice on how to deal with conflicts of interest and ethics issues in brochures and on websites.

An increasing number of countries recognize the importance of training in ethics and corruption issues for public officials. Anti-corruption awareness is part of regular staff training programs in Bangladesh; P.R. China; Hong Kong, China; India; Japan; the Philippines; Singapore; and Thailand. In Hong Kong, China; Pakistan; and Singapore the anti-corruption agencies conduct such training. P.R. China and Vietnam train cadres and public officials in ethical conduct, and the Kyrgyz Republic is currently preparing similar staff training programs.

e. Enforcement of codes of conduct

Disciplinary sanctions are most commonly applied to enforce codes of conduct. These measures are in addition to penal sanctions; sometimes their specific procedural regimes even allow timelier and more dissuasive responses than criminal sanctions. Disciplinary sanctions often encompass dismissal from office, as is the case in Nepal, Pakistan, the Philippines, and Thailand.

The Kyrgyz Republic, Malaysia, Nepal, and the Philippines have added certain incentives to their arsenal to implement codes of conduct. Public officials who have been involved in corruption or abuse of power are disqualified from promotion and appointment to important posts in the public sector and certain institutions; they may not receive salary supplements. In Malaysia, the anti-corruption agency oversees the selection of eligible officials.

4. Duties to report on assets and liabilities

Measures to curb corruption in the public administration go beyond keeping an eye on public officials at work. As wealth is often apparent, a number of countries screen public officials' assets and liabilities with the aim of detecting unjustified wealth as an indicator of corrupt behavior. Some countries (Bangladesh, Fiji Islands, India, Kazakhstan, Kyrgyz Republic, Malaysia, Mongolia, Nepal, Pakistan, the Philippines, Singapore, Vanuatu) require all public officials to regularly disclose information about

their assets and liabilities; Cambodia's anti-corruption bill contains similar provisions. The Kyrgyz Republic, Nepal, and the Philippines extend screening to the officials' families to prevent and detect a formal transfer of assets.

Australia, P.R. China, Indonesia, Japan, Korea, Papua New Guinea, Thailand, and Vietnam oblige only officials at higher levels to file such declarations. Vietnam extends the obligation to managers of state-owned enterprises. Thailand and Vietnam extend the scope of this obligation to the officials' family members. Singapore public officials must report their investment and property holdings as well as personal assets and shareholdings in closed companies; they are also required to declare each year that they are debt-free. Hong Kong, China requires senior officials or those occupying sensitive posts to declare their investments and properties regularly. In Kazakhstan, not just officials but all citizens who have made a large purchase must file an income declaration.

While many countries require public officials to submit such reports, in most cases it remains unclear whether these declarations are scrutinized, how the information is used, and whether failure to report or wrongful reporting does in practice entail sanctions. In this respect, the Philippines, for one, makes the information available to the public. The country has also established a partnership between government agencies and NGOs to scrutinize the lifestyle of public officials to detect ill-gotten wealth. Pakistan's asset declaration system has recently been overhauled; an automated system now scrutinizes the declarations. In Nepal, the National Vigilance Centre scrutinizes asset declarations of public officials. Vietnam discloses the information contained in asset declarations to a limited public when the concerned official is appointed or promoted. Nepal, Pakistan, and Vietnam sanction wrongful reporting.

II. Public management system

The above-mentioned measures address the integrity and competence of the public service at the level of the individual public servant. In addition, most countries strive to immunize the public administration against undue interference at the institutional level. The measures aim at harmonizing and clarifying procedures and at reducing discretion. Where this is impossible or impractical, ways of controlling or varying the contacts between public officials and citizens are employed to prevent corruption. Particularly corruption-prone sectors, such as public procurement, are brought under specific regimes and procedures that

assure oversight and transparency. Audit and other forms of scrutiny and survey add to the efforts to increase accountability in the public service.

1. Prevention of undue influence and reduction of powers for discretionary decision making

Institutional and organizational settings largely determine to what extent administrative procedures are subject to undue interference and corruption. Different means have been adopted to reduce opportunities for corruption. Countries in the region strive to depersonalize administrative processes and reduce instances where close and regular public-private contacts are necessary, as these may give rise to unjustified preferential treatment and the solicitation of bribes. Depersonalized online procedures and regular rotation of officials are among the measures most frequently applied to counter these risks. Close inspection of procedures and their modification by law, or even their abolition where possible, also contributes to reducing discretionary decision making and opportunities for soliciting or offering illicit payments. The Action Plan in this respect calls on the endorsing countries to abolish overlapping and ambiguous regulations.

a. e-government

More and more countries make use of information technology to provide certain services to the public. This approach, often referred to as "e-government", can help reduce opportunities for corruption in several ways: online transactions depersonalize and standardize the provision of services and leave little room for payment or extortion of bribes; in addition, the use of computers requires standardized and explicit rules and procedures, and thus reduces abuse of discretion and other opportunities for corruption. Moreover, computerized procedures make it possible to track decisions and actions and thus serve as an additional deterrent to corruption.

Australia; Hong Kong, China; Korea; Malaysia; Pakistan; the Philippines; Singapore; and Thailand are undertaking extensive efforts to implement e government. In Korea, for instance, citizens can monitor in real time the progress of an online application for permits and licenses. In Pakistan, the entire tax department is currently being restructured and information technology introduced, to reduce contact between tax collectors and taxpayers. In India and the Philippines, documents related to public procurement must now be made available online. Cambodia is also enhancing the use of information technology to provide administrative

services. Thailand has introduced the Government Fiscal Management Information System (GFMIS), an online, real-time fiscal management system, to ensure efficiency, accountability, and transparency through online, real-time surveillance of the Government's entire financial processes.

b. Rotation of officials

Regular and timely rotation of assignments reduces insularity and may thus help curb corruption. Certain countries rotate public officials according to a fixed schedule, on certain occasions, or under certain circumstances. Public officials are routinely rotated in Bangladesh; P.R. China; Hong Kong, China; Fiji Islands; India; Indonesia; Kazakhstan; Korea; Nepal; Singapore; and Thailand. In other countries, officials are rotated only at a certain level or when specific conditions apply: Vanuatu rotates personnel at the level of director; the Philippines subjects certain officials of the national police and international revenue office to regular rotation of posts; Papua New Guinea rotates police officers; and Malaysia, where such a system is already practiced in some agencies, has circulated a government directive that requires officials who work in direct contact with citizens to change their posts regularly. Vietnam rotates public officials that do not have management functions. Pakistan has also adopted measures to systematically minimize and randomize personal contacts between public officials and clients.

c. Reduction of discretion and streamlining of administrative procedures

As discretionary decision making can create opportunities for corruption to proliferate, some countries have undertaken particular efforts to reform administrative procedures in order to abolish procedures or reduce discretionary powers that had formerly been accorded to public officials. Malaysia has established a task force to review and streamline administrative procedures. P.R. China has also significantly streamlined its public licensing system and halved the number of public licenses. In Thailand, the Act on Administrative Procedure (2001) defines rules of administrative procedures to promote, among others, effective law enforcement and prevention of corruption in public administrations. Administrative Courts, set up under the Act on Establishment of Administrative Courts and Administrative Court Procedure (1999), provide a mechanism to subject the discretionary decisions to judicial review.

Some countries prioritize such measures in sectors considered as being particularly vulnerable. In Mongolia, for instance, tax procedures were recently reformed with a view to reducing discretionary decisions. Further measures in this respect include, for instance, extending the validity period of business permits in Malaysia to reduce the number of administrative procedures or make them redundant. Malaysia has also established one-stop centers for certain administrative procedures to reduce the number of involved public officials that could solicit or be offered bribes. In order to help prevent the abuse of discretion, Nepal's anti-corruption agency initiated the drafting and adoption of procedural manuals for all government departments that are in close contact with citizens.

2. Public procurement, privatization, and public licensing

Public procurement is a particularly corruption-prone area. To keep corruption at bay, the Action Plan requires that procurement systems must be based on transparency and promote fair competition. That indeed implies the existence of a comprehensive legal framework that defines transparent and fair procedures and provides for procurement-specific instruments to foster and oversee the integrity of implied individuals as well as for sound verification mechanisms. Taking account of the economic significance of procurement for overall public expenditure—procurement in some countries in the region attains 20 per cent of government expenditure—governments throughout the region have identified the reform of public procurement procedures as a priority.

A majority of countries (Australia; Bangladesh; Fiji Islands; Hong Kong, China; India; Indonesia; Kyrgyz Republic; Malaysia; Mongolia; Palau; Papua New Guinea; Pakistan; the Philippines; Singapore; Thailand) have comprehensive statutes or regulations for public procurement. Some of these frameworks are the fruit of recent efforts to establish or substantially modernize the area of procurement. Mongolia passed a new procurement framework in 2000 and is again working on other substantial major reforms. The Philippines established new procurement rules in 2002; P.R. China in 2003; Bangladesh, the Kyrgyz Republic, and Pakistan in 2004. A similar reform process has started in Kazakhstan in 2002. The Fiji Islands, Thailand, and Vietnam are preparing new procurement legislation or regulations. Some of the recently adopted laws and regulations have been strongly inspired by the model law on public procurement of the United Nations Commission on International Trade Law (UNCITRAL). Notably, Bangladesh, the Kyrgyz Republic, Mongolia, and Pakistan have introduced major elements of this model law into their national legislation. Regulations on

public procurement in Cambodia, the Cook Islands, India, Malaysia, and Nepal to date remain fragmented and are spread over a number of legal documents. Cambodia and Nepal are planning to remedy this situation by establishing comprehensive legal frameworks for public procurement.

Other current reform efforts in the region (in Australia, India, Japan, Korea, Malaysia, Pakistan, the Philippines, Thailand) focus primarily on introducing procurement via the Internet or expanding such services where they already exist. The Procurement Experts Group of the Asia-Pacific Economic Cooperation (APEC) defined the promotion of e-procurement systems as an area of focus in 2003. ADB's and the World Bank's programs for evaluating and supporting the reform of government procurement frameworks promote these reform processes in some countries.

Most of the existing frameworks for public procurement (those in Australia, Cambodia, P.R. China, Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Korea; Mongolia; Nepal; Pakistan; the Philippines; Singapore; Thailand) require the publication of important projects, e.g., in the official gazette or daily newspapers, or on the Internet; Mongolia, however, exempts from this rule the procurement of armaments as well as equipment and services related to national security. Japan has standardized the qualifications for bidders. The selection process follows statutory rules or regulations, some of which (those in Bangladesh; Fiji Islands; Hong Kong, China; Malaysia; the Philippines; Thailand) entrust to a board the responsibility for awarding or advising on the awarding of contracts.

In some countries, as in Korea, the Philippines, and Thailand, the awarding of tender is subject to public monitoring. Korea ensures the transparency of the bidding procedures through the public disclosure via the Internet of documents such as bidding notices and information on the final selection of the contractor. Australia extensively uses the Internet for public tenders, including the provision of information on awarded public tenders. In Thailand, procuring agencies have to make available on request information on individual procurement proceedings, the selected supplier, and the reasons for the decision. In some countries, members of civil society organizations, academics, or technicians monitor procurement procedures and decisions. In the Philippines, two observers sit on the board entrusted with the awarding of tenders: one from a duly recognized private group in the sector or discipline relevant to the procurement at hand, the other from a non-governmental organization.

Some countries' laws contain specific provisions to prevent conflicts of interest in public procurement. For instance, in Bangladesh and the Philippines, certain family ties between a department's personnel and a

company disqualify the company from bidding. A similar regulation is in place in Malaysia.

Review and appeal mechanisms play a crucial role, both in ensuring legal recourse and remedies and in deterring corruption. Such a review requires that proper records of the entire procurement process be kept for a predetermined period and that independent scrutiny mechanisms be in place. The criteria for the review and appeal of procurement decisions have rarely been reported, however. Bangladesh, Japan, Korea, Malaysia, Pakistan, and Thailand keep records of the whole procurement procedure and actions and decisions taken. Hong Kong, China; Japan; Korea; Malaysia; Pakistan; and Thailand have established complaint procedures. Hong Kong, China; Korea; Pakistan; and Singapore have mechanisms for challenging procurement decisions and obtaining redress.

To further strengthen the application of these rules in practice, a growing number of countries—for instance, Fiji Islands, Japan, Indonesia, Kazakhstan, the Philippines, and Thailand—are establishing or have adopted procurement-specific sanctions for foul bidding and disciplinary procedures against public officials involved in wrongdoing in the procurement process. In addition, Japan holds public officers liable for potential damages.

With respect to foul bidding, banning companies from entering into future contracts with the Government can be a useful complement to penal sanctions. Consequently, the Action Plan promotes the adoption of laws and regulations providing for the denial of access to public sector contracts as a sanction for the bribery of public officials. Some jurisdictions (Japan, Korea, the Philippines, Singapore, Thailand) exclude bribe-paying firms from business with the government for a certain period of time or apply other administrative sanctions. In Korea, Nepal, the Philippines, Singapore, and Thailand the contractor who is convicted of or found to be involved in bribery may not bid on future government contracts. In Hong Kong, China, an administrative guideline requires the removal of a firm involved in corruption from the list of approved contractors. In Korea, moreover, enterprises that are sanctioned for foul conduct in the procurement process are named in the official gazette and cited in the nationwide finance information system; similarly, a list of blacklisted companies in Pakistan is published on the procurement authority's website. Korea further makes use of "integrity pacts" in public procurement contracts, as does Pakistan for procurement of a value above USD 170,000. These pacts, initially developed by Transparency International, include a clause barring the company from business with the government if it fails to comply with the pact's provisions.

Granting high-value licenses and concessions and privatizing major state-owned assets entail risks for corruption similar to those for public procurement, as the numerous major corruption cases in this field attest. Licenses for the exploitation of natural resources (petrol, timber, or minerals, for instance) and licenses for the provision of public infrastructure (telecommunications, water, or energy) are particularly prone to improper conduct, given the financial importance of such deals. Similar risks are prevalent in the privatization of major public sector assets as state-owned enterprises, public service providers, or industries. Given the economic importance and value of such transactions, the granting of licenses or privatization would ideally be subject to procedures similar to those applied for public purchases of similar economic significance. Yet, in most countries, the mechanisms under which such licenses for exploitation are granted have not attracted much attention. Legal frameworks do often lack essential elements to counter the risk of corruption in this area. Reforms in this area are evinced by efforts made in some countries: the P.R. China, for instance, has passed a specific licensing law in 2005, and Vietnam's recently adopted anti-corruption law contains basic procedural rules for the privatization of state- owned enterprises. The P.R. China increasingly subjects the accord granting of land-use rights to public bidding and auction procedures.

3. Management of public funds and fiscal transparency

To varying degrees, large-scale corruption has beset most countries in the region in the past, depriving the state of important resources needed to strengthen economic development and alleviate poverty. Risks of so-called grand corruption arise in the collection of taxes and in the management and control of state expenditure. Consequently, the Action Plan emphasizes the importance of "measures and systems to promote fiscal transparency" for the prevention of corruption.

To date, not all countries have established a comprehensive legal framework for revenue collection, budget planning, and fiscal management and control but some countries are undertaking reforms in this matter. Existing frameworks employ different instruments to bolster fiscal transparency. Documentation on the setting up of the budget in Hong Kong, China, for instance, is publicly available on the Internet, and the Kyrgyz Republic also publishes its state budget on the Internet. In Nepal, the state budget is also made available to the public upon approval by the parliament. In Singapore, the execution of the budget by the Government is subject to review by a parliamentary committee. P.R. China

has, over the past years, reformed its public finance system in matters of taxation and tax collection, budgeting, and public expenditure. Thailand's online, real-time fiscal management system, Government Fiscal Management Information System (GFMIS), has been introduced to ensure efficiency, accountability, and transparency through online-, real-time surveillance of the Government's entire financial processes.

International organizations have developed standards that are direct towards improving fiscal transparency. The OECD, for instance, has developed "best practices for budget transparency" based on the experience of the OECD member countries. This document sets out references for a high degree of accountability and transparency in this domain of fiscal and budget transparency. Similarly, the IMF has published a "Code of Good Practices on Fiscal Transparency". ADB conducts country government assessments to assist countries in identifying specific challenges and possible improvements in their fiscal management systems.

4. Auditing procedures and institutions

Public administrations are working in an evolving environment, which, along with new challenges, creates new corruption risks. Regular monitoring and oversight are therefore essential in ensuring the integrity of the administration. Effective oversight is generally deemed to require outside scrutiny, by independent audit institutions, among others. Such institutions play a critical role, as they help promote sound financial management and accountable and transparent government, and thereby contribute to both preventing and detecting corrupt practices. Full independence of audit institutions—in terms of personnel and budget, wide-reaching authority, and adequate investigative powers, including calling witnesses and seizing documents—is essential to the proper functioning of such institutions.

All reporting countries have established institutions that externally audit the government, its administrative bodies, and various other entities, such as state-owned enterprises. The institutional provisions, mechanisms, and authority of these audit institutions vary from country to country, yet the adherence of a number of the endorsing parties to the International Organization of Supreme Audit Institutions (INTOSAI) has fostered the adoption of similar standards throughout the region. Most countries have established a central supreme audit institution and various decentralized internal audit procedures. In most countries (Bangladesh; Cambodia; Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kyrgyz Republic; Nepal; Pakistan; the Philippines; Thailand), the supreme audit institutions

enjoy constitutional status; this status and the provisions for it are aimed at ensuring their independence from the government.

Regulations concerning the appointment and dismissal of the audit institution's head further ensure the institution's independence. In the Cook Islands, Korea, and Malaysia, the institution's director is appointed by the head of state, in Hong Kong, China by the Chief Executive, in Mongolia by the Parliament, in Nepal by the Constitutional Council, and in Thailand by the Senate. Usually, the head of the supreme audit institution holds office for a fixed term; removal from office follows specific impeachment procedures and is permitted only under certain conditions. In some countries (Korea, Nepal), immunity provisions apply, excluding heads of audit institutions from prosecution for any action taken in the performance of their duties. While many countries allow the audit institutions to recruit their staff themselves, Malaysia and Nepal have entrusted civil service commissions and similar bodies with this task.

In most countries, the audit institutions' budget is subject to special regulations, guaranteeing autonomy and preventing arbitrary cutbacks. Limited financial resources and restricted powers and independence, however, threaten the effectiveness of the institutions in many countries.

The authority of the audit institutions usually extends to all government ministries and agencies (Bangladesh; P.R. China; Cook Islands; Hong Kong, China; Indonesia; Japan; Korea; Nepal; Pakistan; the Philippines; Thailand). In addition, most countries have extended the institutions' authority to state-owned enterprises (in Bangladesh, Cambodia, Indonesia, Korea, Nepal, the Philippines, Thailand) or even further to state-owned and state-controlled enterprises, government funds, banks, and local public bodies (in Hong Kong, China; Indonesia; Japan; Korea; Nepal; Pakistan; Papua New Guinea; the Philippines; Thailand). In several countries, including Papua New Guinea, the institutions' oversight extends to foreign aid and grants as well.

The scope of the audit covers both the legality and effectiveness of public spending. Most audit institutions have the power to access all public records and, with the exception of Mongolia, to examine any public officer. However, this power or the power to call witnesses or to seize documents does not in all countries take precedence over a concerned department's denial as, for instance, in Malaysia. In addition to their auditing function, the supreme audit institutions in a few countries are empowered to take executive or punitive action. Audit boards in Japan, Mongolia, and Papua New Guinea are entitled to initiate or carry out disciplinary action when an official has caused a "grave loss" or violated a law or budgetary rules.

Most countries' audit institutions perform two different forms of audit: a financial audit of governmental and administrative entities, and selective reviews. The financial audit ensures that the government's financial and accounting transactions have been properly carried out, while the selective reviews ensure the proper functioning of the internal audit systems (in Hong Kong, China; the Philippines; Thailand).

Considering their limited resources, most countries' audit boards must prioritize their audits in respect of certain administrative bodies, depending on different criteria for selection. It is noteworthy that in Korea, for instance, citizens themselves may initiate an audit, for instance, concerning alleged waste or administrative mistakes.

Regulations explicitly requiring the public disclosure of audit reports exist in only a few countries, such as the P.R. China; Fiji Islands; Hong Kong, China; India; Japan; Mongolia; Nepal; and Vanuatu. However, many others (Bangladesh, Malaysia, the Philippines, Thailand) voluntarily grant such access, some through the institutions' Internet sites. In Thailand, the authorities disclose the audit reports upon request. Malaysian law proscribes the publication of audit reports.

Some governments (Cook Islands; Hong Kong, China; Japan; Korea; Mongolia; Nepal; Pakistan; the Philippines; Thailand) have expanded the audit institutions' tasks from merely auditing to recommending—similar to the function of advisory branches of some anti-corruption agencies—possible improvements in procedures or institutions within public administration. However, in some cases, such as Mongolia, this role is limited to analyzing the efficiency of examined institutions. Such an expansion of roles aims to exploit the institution's knowledge and experience to reform inefficient and corruption-prone provisions and mechanisms.

5. Greater accountability for public administration through surveys and systematic analysis

Auditing allows the inspection and assessment of the documented—but only the documented—action of administrative entities. Surveys among citizens who have had contact with these entities complement auditing. The survey results help identify corruption-prone areas in need of institutional reform and, when published, generate public debate about the problem.

A number of countries in the region have consequently undertaken such surveys to assess the causes and extent of corruption in particular departments of the public administration. The Korea Independent Commission against Corruption (KICAC), for instance, periodically

assesses the level of integrity of individual government agencies. These assessments are also intended to push the public administration to address identified problems voluntarily. Malaysia has also launched a regular evaluation of its public sector. The Thai Office of the Civil Service Commission prepared the introduction of a transparency index in early 2006; it will serve as a benchmark for government sectors' action and performance.

The Independent Commission against Corruption (ICAC) in Hong Kong, China has statutory power to examine the practices and procedures of public agencies with a view to reducing corruption risks arising from their institutional setting or procedures. Under this mandate, the ICAC conducts about 90 corruption prevention reviews a year with priority given to public procurement, public works, law enforcement, and licensing and regulatory systems.

III. Transparent regulatory environment

A clear and unambiguous regulatory environment is the third key element for effective, transparent, and honest public administration, since clear and verifiable rules and procedures leave less room for corrupt practices. Ambiguities in statutes regulating private economic activities are particularly problematic.

Consequently, most countries reviewed in this report constantly assess their regulatory environment with the aim of improving and streamlining it, especially with an eye on corruption-prone sectors. P.R. China addresses one area per year, with government and Party organs, the monetary and financial sector, and law enforcement as priorities. Mongolia has recently streamlined its regulations for the licensing of private business activities. Many countries have even institutionalized this review, entrusting a specific body with the responsibility for screening procedures and recommending needed reforms. Hong Kong, China; India; Korea; Malaysia; Nepal; and the Philippines have given this task to the advisory branches of their apex anti-corruption agencies. In Singapore, review of corruption-prone procedures in the public sector is performed by the anti-corruption agency (CPIB). ICAC in Hong Kong, China reviews public institutions and their procedures with a view to eliminating corruption risks; the Commission is also empowered to impose reforms where it finds weaknesses. Singapore's Corrupt Practices Investigation Bureau (CPIB) conducts review on procedures of public sector organizations, before recommending preventive measures to the organizations concerned.

The recommendations are not legally binding. In Japan, the office of the auditor-general is responsible for suggesting reforms to the Government. In India, a genuine Department of Administrative Reform constantly reviews procedures and submits recommendations. In Papua New Guinea, the Public Sector Reform Management Unit reviews the structure of public sector organizations. A number of countries recognize the important role of civil society in reforming the regulatory framework. For instance, the Fiji Islands, Korea, and Singapore rely on consultations with representatives from the private sector or NGOs to learn about inefficient procedures and administrative weaknesses encountered by the public.

B. Curbing corruption in the political sphere

Extortion and acceptance of bribes are by no means limited to public officials. On the contrary, numerous corruption scandals that were uncovered over the last decade involved high-ranking politicians and often seriously undermined political and social stability in the given countries. Many countries have thus recently begun to tackle this sensitive issue, partly following growing public pressure, and initiated reform at various levels: These reforms concern notably the setting up of regulations that strive for the transparency and integrity of political parties, politicians, and elected senior officials, on the one hand, and codes of conduct for elected officials and parliamentarians, on the other. In addition, parliamentarians themselves have taken the initiative to improve their accountability to the electorate, as witnessed by the establishment of the North East Asian and South East Asian chapters of the Global Organization of Parliamentarians Against Corruption (NEAPAC and SEAPAC) in May 2003 and April 2005, respectively.

I. Funding of political parties and electoral campaigns

Bribes paid to influential decision makers are often disguised as donations to political parties or electoral campaigns. Disclosing, controlling, restricting, and auditing the funds of political parties and electoral campaigns are thus crucial means of detecting and preventing high-level corruption and avoiding inappropriate practices in the political arena. A considerable number of countries subject the budgets of political parties and the funding of electoral campaigns to reporting obligations and, in some cases, public scrutiny. As the financing of political parties and the financing of election campaigns are distinct matters in most of the countries' legal systems, they are subject to different provisions.

The particular status of political parties—private associations with close links to the public sphere—is reflected in the legislative models that countries have adopted. Some countries like Hong Kong, China; Kazakhstan; and the Philippines do not subject political parties to a special legal regime; instead, general laws on civic associations rule the parties' legal status and obligations. In general, these laws do not provide for accounting obligations, disclosure of financial sources, or auditing. The regime of political parties as common civilian organizations entails other consequences relevant to party financing. In Hong Kong, China, political

parties are generally registered as societies or as companies. Political parties registered as societies are required to submit financial reports to the police upon request; when registered as companies, they are required to submit annual returns to the Companies Registrar, providing information on their total indebtedness and share capital. In Kazakhstan and Mongolia, parties may run businesses as sources of funds.

Australia, India, Indonesia, Japan, Korea, Mongolia, Pakistan, Papua New Guinea, and Thailand have specific laws to regulate the status and obligations of political parties; Nepal regulates basic elements in the constitution. Only some of these countries (Australia, India, Japan, Korea, Papua New Guinea, Singapore, Thailand) specifically regulate the financing of political parties. These countries require parties to disclose their income; all of them except Singapore make these declarations publicly available, as suggested in the Action Plan. Australia, Japan, Papua New Guinea, Singapore, and Thailand consequently ban anonymous contributions, or at least those that exceed a certain threshold. Japan further draws a clear line between "participating financially" and "buying access or influence": its laws limit the yearly donations of a single donor to a political party. Australia, Papua New Guinea, and Singapore also require contributors to disclose their donations to political parties if they pass a fixed limit. Korea, Pakistan, and Thailand require political parties to set up annual accounts, subject them to audit, and make the audit reports publicly available. In Thailand, the Election Commission can fine or even dissolve a party that does not abide by the financing rules.

The funding of electoral campaigns is subject to a different set of regulations, which are usually part of a country's election laws. These statutes (such as those of Bangladesh; Hong Kong, China; India; Indonesia; Kazakhstan; Korea; Malaysia; Nepal; Pakistan; Papua New Guinea; the Philippines; Thailand) impose limitations on campaign expenditures and require each candidate or party to maintain records of sources of funds and their expenditure. Reports must be submitted for scrutiny to the competent authority, usually the election commission. In many jurisdictions, as in Hong Kong, China; Korea; Mongolia; and the Philippines, these reports may be inspected by the public, at least for a certain period of time after an election. This is not routinely the case in Cambodia and Nepal, however. The Cook Islands has recently removed the obligation of political parties to provide information on their funding and campaign expenditures.

The consequences of failure to report or wrongful reporting, as well as of non-compliance with the rules on campaign financing, differ from country to country. The Indonesian Presidential Elections Law goes as far

as allowing the disqualification of candidates who are proved to have accepted funds from unidentified sources.

To promote widespread understanding and avoid any ambiguity regarding the legal framework for the financing of political parties or election campaigns, some countries actively disseminate information on this framework and the corresponding obligations. Hong Kong, China, for instance, explains the respective legal provisions in brochures that are distributed widely before elections.

II. Codes of conduct for elected politicians

Regulations on dismissal and disciplinary measures applicable to public officials do not apply as well to elected politicians, except in Pakistan, where politicians in some respects have the status of public officials. Immunity regulations sometimes even preclude the criminal prosecution of politicians (*see chapter 2, section B.III. below*). Codes of conduct for politicians and similar measures have thus been developed in some countries. Such codes of conduct and laws for politicians take their inspiration from instruments that have been developed for public administration, such as reporting duties, public service codes of conduct, and certain disciplinary measures.

Obligations of elected deputies—and also cabinet members in some countries—to report personal assets exist in Australia, Bangladesh, Cook Islands, Fiji Islands, India, Indonesia, Japan, Kazakhstan, Malaysia, Mongolia, Nepal, Papua New Guinea, Pakistan, the Philippines, Singapore, Thailand, and Vietnam. The Kyrgyz Republic has enacted similar duties in 2005 for politicians and their close relatives. Pakistan, the Philippines, Vanuatu, and Vietnam make the information acquired from such reporting publicly available, and in the Kyrgyz Republic, declarations have to be published in the media, but no agency is mandated to verify the declarations. In Vietnam, candidates who submit untruthful asset declarations can be disqualified from public office.

Codes of conduct for elected deputies have been passed in Japan, Mongolia, and Vanuatu, among other countries. The Thai Constitution requires the establishment of moral and ethical standards for the prevention of corruption by which holders of political positions must abide. These codes and standards deal with issues such as conflicts of interest and gift taking. The Philippines forbids high state officials and their relatives, as well as members of Congress, from being involved in certain business activities. In Thailand, members of the cabinet are prohibited

from holding shares or management positions in private enterprises during their tenure. Shares must be held and managed by an investment company, as prescribed in the Act on Managing Partnerships and Shares of the Ministers (2000). Australia and Korea require parliamentarians to disclose their financial interests before debating an issue related to those interests, and Australia prohibits deputies from voting on issues that could give rise to conflicts of interest. The Australian code of conduct requires parliamentarians to disclose gifts exceeding a certain value limit, as well as sponsored travel.

The enforcement of these codes of conduct encounters particular problems: in some countries, administrative bodies are not considered competent to terminate the mandate of elected politicians. In Papua New Guinea and Vanuatu, however, conviction for serious breaches of the leadership code can result in dismissal from office and disqualification from standing for election or being appointed to certain senior positions for three years (Papua New Guinea) or ten years (Vanuatu). The Philippines' Ombudsman is entitled to apply certain disciplinary measures to some elected officials.

Some countries apply sanctions against elected officials for breaches of the code of conduct or other behavior induced by corruption. Violations of the code of conduct applicable to parliamentarians in the Fiji Islands may entail loss of status. In India, violators may be reprimanded or admonished, imprisoned, suspended, expelled, or disqualified from membership on the grounds of defection. In Japan, those who violate the code of conduct are admonished to abide by the standards of conduct, to refrain from presenting themselves at the House for a certain period, or to resign from the chairmanship of committees. In Thailand as well, non-compliance with the moral and ethical standards is sanctionable.

In Bangladesh, India, and Papua New Guinea, elected deputies may be dismissed from parliament if they act or vote against the directives of their party: such behavior is considered to have been induced by bribery. According to the constitution of India, a member of the legislature is disqualified from his mandate if he or she voluntarily gives up membership or votes contrary to the party's directives. Papua New Guinea's Integrity of Political Parties and Candidates Law prescribes, among others, a penalty of dismissal from parliament and a by-election for members who vote against their party, for instance, on the budget or constitutional matters, or when electing the prime minister.

C. Regulating the business sector and fostering ethical business

Efforts to ensure an effective public service, transparency, and integrity are aimed at rendering public servants immune to bribes. The comprehensive approach of the Action Plan moreover seeks to dry up the sources of bribes, which are often prevalent in the business sector. Business actors themselves have increasingly come to understand that fighting corruption is in their vital interest. On the one hand, bribe solicitation and distorted markets increase the costs and risks of doing business. On the other hand, there is growing concern about bribery and bribe solicitation in transactions between private sector enterprises. Efforts to address this emerging issue that is commonly referred to as private-to-private corruption have so far been limited.

The role of governments in addressing corruption in the private sector follows the dual principles of enforcement and partnership. On the one hand, governments impose standards for company management, transparency rules, auditing requirements, and reporting obligations; they also provide for effective supervision and mechanisms to enforce compliance with these rules. Equally important, on the other hand, are governments' efforts to foster and strengthen the private sector's own initiatives to enhance internal control mechanisms and to establish and promote corporate ethics and compliance systems.

I. Business regulation and supervision

1. Accounting and auditing

Requiring companies to keep records that accurately and fairly reflect financial transactions in reasonable detail would prevent practices that are often associated with improper transactions, such as disguising the nature of an inappropriate transaction in financial records, or, while correctly stating the amounts of transactions, failing to record details that would reveal a possible illegality or impropriety.

In this respect, most countries have enacted regulations governing corporate accounting, internal controls, and straightforward requirements for the disclosure of relevant information. In a number of countries (Australia; Hong Kong, China; India; Japan; Korea; Malaysia; Singapore; Thailand), mechanisms established to supervise the implementation of

such rules involve the annual examination of companies' books by external auditors. India and Malaysia, for instance, require all companies to have their books and accounts audited each year. In Indonesia, this requirement is limited to listed companies and larger enterprises with assets worth more than USD 2.5 million. In India, some larger companies have to establish internal audit committees as well.

In some countries (e.g., Australia, India, Korea, Malaysia, Singapore, Thailand), accounting and auditing rules follow the relevant international standards, such as those developed by the International Accounting Standards Board. P.R. China seeks to bring its relevant regulations closer to these standards and to strengthen enforcement in this area. Australia; Hong Kong, China; and Singapore have set up or tasked standing commissions or committees to recommend possible improvements in corporate governance, financial reporting, and transparency. Efforts primarily address internal control and accountability mechanisms and are aimed at improving the veracity of companies' books and records. Some countries (Bangladesh; Fiji Islands; Hong Kong, China; Japan; Korea; Malaysia; Singapore; Thailand) use penal sanctions to deter fraudulent financial reporting.

External auditors are particularly well placed to detect improper or illegal transactions in the course of their missions. Reporting obligations can make this information available to the company's board, to the shareholders, or to law-enforcement bodies. Only a very few countries make use of this important source of information on possible corruption cases. Indonesia and Malaysia require auditors to report irregularities in the books to the company's board of directors; illegal acts have to be reported to the registrar of companies. Singaporean legislation requires auditors of private companies to report any breach of accounting regulations to the registrar; auditors of public companies also have to report bribery cases that they come across in the exercise of their mandate. Indian law also requires external auditors to report fraud on or by the companies that they audit. Thai law requires auditors to report inaccurate financial statements found in the course of audits.

2. Denial of tax deductibility of bribes and dubious payments

Most countries allow companies to deduct business expenses from taxable profit as a matter of principle. Business expenses include a plethora of different categories, some of which are particularly prone to disguise bribe payments. Thus, ironically, some countries' tax regulations financially support bribery, dubious gift giving, and "entertainment".

Australia expressly prohibits the deduction of bribes from taxable income. From 2006 on, the Fiji Islands' legislation explicitly prohibits the deduction of bribes from taxable income. Japan also endeavors to clarify the prohibition to deduct bribes from taxable profit through an explicit interdiction in the relevant law. A precise definition of allowed deductions is required to avoid the tax deduction of bribe payments disguised as "commissions", a common scheme to camouflage bribes. The detection of such camouflaged bribes requires particularly vigilant scrutiny of tax returns for secret or excessive commissions. "Entertainment" expenses are a second area of concern, and many countries consequently prohibit public officials from accepting entertainment (*see above section on codes of conduct for public officials*). Malaysia explicitly forbids the tax deductibility of entertainment expenses. P.R. China, Korea, and Thailand allow the deductibility of entertainment expenses up to certain limits.

Many countries do not explicitly prohibit the tax deduction of bribes. Instead, the delimitation of deductible expenses follows the lines drawn by the criminal code and declares payments that would fulfill a criminal offence as non-deductible. As very few of the countries in this report have penalized bribery of foreign public officials, bribes paid on foreign markets can be legally deducted from taxable income.

3. Regulation and supervision of financial institutions

Financial institutions are often abused as intermediaries in corruption schemes. The regulation and supervision of financial institutions and their practices is thus an important means of preventing and detecting corruption, especially at high levels. Most countries in the region have established specialized supervisory bodies. Here again, international cooperation and mutual assistance foster the adoption of common standards; most securities commissions in the region have adhered to the standards of the International Organization of Securities Commissions (IOSCO). The competent authorities of Australia; Hong Kong, China; and India have also signed IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, under which they have committed themselves to providing mutual assistance in fulfilling their statutory functions of financial supervision. Thailand was, in the beginning of 2006, preparing to sign the Multilateral Memorandum. Pakistan also endeavors to adhere to its provisions and in this respect is strengthening its legal framework.

4. Information campaigns about changes in anti-bribery legislation

In the anti-corruption field, rapidly changing legal environments and new obligations on companies or public officials often require raising awareness within the business sector to ensure full and swift implementation. To some extent, business sector organizations are making efforts, but governments can play a valuable role in catalyzing and complementing their measures. Australia, for instance, conducts a specific program to raise awareness about the offence of bribery of foreign public officials that it introduced to comply with the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Australia's program is meant to instill knowledge about the offence and companies' obligations in the matter both in the country's private sector and in business leaders in the country and abroad.

II. Fostering ethical business

Bribery runs counter to the long-term interest of business, because it increases costs and risks, undermines efficiency, lowers country credit ratings, and keeps away investors. Some companies have taken an active role in fostering ethical business, notably by implementing compliance programs to complement the compulsory standards imposed and enforced by the authorities of their countries. A number of companies operating throughout the region have thus adopted corporate compliance programs that include corporate codes of conduct, regular ethics training, and the establishment of specialized compliance and ethics departments.

The implementation of these programs, however, has been rather slow. Support for the development and implementation of measures that seek to foster business ethics has come mainly, and to a varying extent, from outside the business sector itself. While some governments back these efforts, support also comes from regional and global initiatives.

1. Government support in strengthening business ethics

The governments of a few countries actively support the efforts taken by the business sector and assume an active role in further promoting business ethics and corporate compliance programs. Hong Kong, China; Indonesia; Japan; Korea; Singapore; and Thailand, for instance, have

established or tasked special committees or their anti-corruption commissions to analyze and recommend guidelines. The anti-corruption commission of Hong Kong, China and Singapore's Corporate Governance Commission have developed guidelines and best practices for corporate codes of conduct. Although compliance with these guidelines is not mandatory in either country, companies listed in Singapore and Thailand have to disclose and explain in their annual reports where they have deviated from the code. ICAC in Hong Kong, China, gives advice on preventing corruption to private sector companies and organizations to assist them in improving their internal control procedures; about 300 requests for such assistance reach the ICAC every year.

In Korea, the private, public, and political sectors and civil society have concluded the Korean Pact on Anti-Corruption and Transparency (K PACT), which has assigned specific roles to each of these sectors in achieving the common goal in 2005. Private sector leaders have committed to strengthen ethical management, enhance transparency in accounting, improve corporate governance, and, as part of social accountability, take an active part in the United Nations (UN) Global Compact. The enterprises that have endorsed K-PACT have also agreed to an evaluation of their efforts under this commitment.

In Nepal, the Federation of Nepalese Chambers of Commerce and Industry (FNCCI) has adopted a business code of conduct to strengthen ethics in the business community. The Thai National Good Governance Committee has been set up to promote a corporate governance culture among companies listed in Thailand.

The anti-corruption agencies in some countries play active roles in developing corporate ethics codes and in providing training. In Hong Kong, China, the anti-corruption agency offers seminars, develops and disseminates guidelines to companies on preventing corruption, and provides companies with a model corporate code of conduct and free assistance in adapting this code to specific needs. Similarly, Malaysia is engaged in integrity and ethics training for company executives. The country's Anti-Corruption Agency has moreover begun dispatching some of its staff to major companies and institutions to assist them in ethics and anti-corruption matters. Under a program specifically for state-owned enterprises, KICAC in Korea identifies and proposes improvements in regulations and procedures that are particularly corruption-prone. The companies, for their part, cooperate by proposing concrete regulatory amendments and improvements. KICAC reviews the proposals and supports the companies in implementation. A business ethics centre has recently been established for this purpose.

2. Regional initiatives to foster business ethics

The relatively cautious efforts of governments so far in promoting business ethics and corporate compliance programs have been barely complemented by Asia-Pacific business ethics initiatives. With a few notable exceptions like the Pacific Basin Economic Council (PBEC), business associations in the region tend to play only a limited role in promoting business ethics. On 21 November 1997, the PBEC steering committee and board of directors adopted the PBEC Statement on Standards for Transactions between Business and Governments, which includes actions recommended for business and government by PBEC. In 1999, to further promote integrity, transparency, and accountability in transactions between enterprises and public bodies, the PBEC adopted the Charter of Transactions Standards, and has encouraged its member companies to adopt it.

The PBEC charter contains a number of principles relevant to the fight against corruption, including requiring business enterprises to desist from offering or promising any advantage to a public official or to the official's relatives to induce actions that will benefit the business, and also to refuse any such improper inducements. Furthermore, PBEC member companies are expected to ensure that financial transactions are properly and accurately recorded in appropriate books of account, which are to be open to inspection by their boards of directors, a corresponding supervisory body, and auditors. They should also see to it that there are no "off the books" or secret accounts, and that any documents properly and accurately record the transaction to which they relate; establish independent auditing systems to bring to light any transactions that contravene the principles of the charter; and develop and implement codes of conduct consistent with the charter. The codes should encourage employees or agents to report any improper inducements immediately to senior corporate management.

3. Global initiatives to foster business ethics

Other initiatives do exist; however, they often come from outside the region, for instance, from the International Chamber of Commerce (ICC), the OECD, the UN in the framework of the Global Compact, or civil society organizations like Transparency International. The ICC actively promotes its Rules of Conduct to Combat Extortion and Bribery in International Business. These rules are considered good commercial practice and are intended as a method of self-regulation by international business. Business

enterprises are encouraged to implement these rules voluntarily. The rules address, among others, the use of agents and subcontracts, a common channel for illicit payments. The ICC rules of conduct also address bribery in the private sector. In a number of countries, the national chambers of commerce have also prepared model codes of conduct for their member companies.

The OECD, in cooperation with the World Bank, organizes the Asian Roundtable on Corporate Governance. This forum comprises Asian policymakers, regulators, and business leaders from countries like Australia; Bangladesh; P.R. China; Hong Kong, China; India; Indonesia; Japan; Korea; Malaysia; Pakistan; the Philippines; Singapore; Thailand; and Vietnam, as well as regional and international experts. It is aimed at improving corporate governance in Asian countries. The roundtable, in 2003, developed and published a White Paper on Corporate Governance in Asia putting forth six key recommendations for corporate-governance reform. The paper addressed such issues as the promotion of standards and practices for accounting, audit, and non-financial disclosure; the involvement of company directors in internal control systems and the review of financial transactions; and the strengthening of regulations for banks and other financial institutions.

In many of these areas, ADB provides technical assistance to improve corporate governance in its developing member countries. Recent projects include the institutional strengthening of corporate governance in the financial sector in the Kyrgyz Republic, the promotion of good governance issues in private sector development projects in countries like Cambodia and P.R. China, and the strengthening of the financial system and its governance in Indonesia in the context of a review of the country's money-laundering regime.

Transparency International (TI) has developed, in partnership with multinational corporations and other stakeholders, Business Principles for Countering Bribery and detailed implementation guidelines. The principles address, for example, such practices as bribery through agents or other intermediaries and the high-risk practices of "facilitation payments" and political and charitable donations. The principles have been translated into several Asian languages and launched nationally in cooperation with chambers of commerce and other stakeholders.

The Partnership against Corruption Principles on Countering Bribery developed by the World Economic Forum are based on TI's principles for countering bribery. Key companies in the Asia-Pacific region, as well as multinational companies doing business in the region, have joined the partnership. Finally, the UN Global Compact, which has been endorsed

by many multinational companies in the Asia-Pacific, contains a strong anti-bribery principle. All these initiatives contribute to the ongoing efforts of private sector organizations and governments in the region to strengthen business ethics and corporate conduct.

Chapter 2
Sanctioning and prosecuting corruption and related offenses

Corruption will not be overcome if prevention does not go with effective deterrence. A comprehensive legal framework deters corruption and enables prosecution. To this end, countries must criminalize all forms of corruption and related offences, such as money laundering, and establish efficient mechanisms and institutions capable of enforcing these regulations. Reform in this sector has been propelled mostly by international efforts that address such issues. Important progress has thus been achieved, for example, in the fight against money laundering, a priority for the international community. Yet various loopholes in anti-corruption legislation remain. Efforts in Asia and the Pacific with respect to law enforcement have focused on the establishment of centralized and specialized institutions responsible for tackling corruption or money laundering. On the other hand, few countries have improved the definition of offences or the procedural and institutional provisions in recent years.

A. Criminalizing bribery, illicit enrichment, and money laundering

Criminalizing bribery and money laundering not only draws a clear line between acceptable and unacceptable behavior through sanctions, it is also the key precondition for various procedural measures, such as the confiscation of ill-gotten gains and international legal assistance (*see section B.II.2.e below on the dual criminality rule*). All parties to the Action Plan, like most other countries around the world, have established penal provisions for corrupt practices, including notably "active" bribery and corruption (i.e., the giving or promising of an undue advantage) and "passive" bribery (i.e., the acceptance or solicitation of such an advantage). Recent international trends show a move towards covering transnational bribery where this is not yet dealt with, and to include offences such as illicit enrichment. But, despite efforts to improve the legislation, for instance, in P.R. China and Vietnam, many countries' criminal laws and criminal procedure laws still contain loopholes or ambiguous regulations that impede the effective prosecution of bribery. In many countries, reforms seeking to modernize these laws—which sometimes reflect the situation when they were drafted a century ago—remain crucial to the effective deterrence of corruption.

I. Criminalizing active and passive corruption

Criminalizing active and passive bribery has a triple function: it sets clear rules as to what behavior is acceptable, it enables law-enforcement agencies to take punitive and remedial action, and, last but not least, it is a precondition for sanctioning other actors involved, for instance, in money laundering. To be effective, laws against bribery must clearly define the scope of the offence, identify the actors punishable for its perpetration, and set forth the consequences for violation.

1. Scope of penal provisions

While all endorsing countries have criminalized certain forms of active and passive bribery of domestic public officials, the scope of criminalization of corruption differs widely from country to country. In many countries, the offence of bribery requires the abuse of the official's

function; undue payments or other advantages given or solicited for behavior that conforms to the official's duties is not criminalized in some countries. Also, giving or accepting an advantage through intermediaries is criminalized only in some countries, such as Vietnam. That country has also introduced, as a corruption offence, the harassment of a citizen when done with a view to solicit bribes.

Active bribery of foreign public officials is criminalized in only a few countries, namely, Australia, Japan, Korea, and Singapore. P.R. China also seeks to contain foreign bribery by its major companies abroad but has not yet enacted the legislation. Hong Kong, China and Singapore are among the few jurisdictions that have penalized active and passive bribery of members of parliament. Bribery and corruption between private sector entities, commonly referred to as private-to-private corruption, is not an offence in almost all countries that have endorsed the Action Plan.

In all countries covered by this report, corruption offences entail fines or prison terms, or both. The maximum penalties for corruption and bribery vary significantly between countries and can be very high in some countries. Some forms of passive bribery entail capital punishment in the P.R. China, and merit lifetime imprisonment under Indonesian law. Some countries (e.g., P.R. China, Indonesia) foresee significantly harsher penalties for soliciting or accepting bribes than for giving bribes, and P.R. China even exempts some forms of active bribery from criminal punishment.

In Malaysia, corruption can result in up to 20 years' imprisonment. In Nepal, bribery is punishable by up to ten years' imprisonment and a fine equivalent to the amount of the bribe. The Kyrgyz Republic punishes bribe taking with five to eight years' imprisonment; active bribery might entail only three years' imprisonment. In India, corruption, whether active or passive, entails six months' to seven years' imprisonment; the maximum penalty is seven years, for habitual offenders. In Singapore, imprisonment of up to five years is imposed on corruption offences. If the corrupt behavior pertains to public procurement, the maximum penalty in Singapore reaches seven years' imprisonment. In Korea, corruption is punishable with up to five years' imprisonment and a fine up to USD 8,000. In Thailand, active and passive bribery may lead to imprisonment of up to five years and/or a fine not exceeding USD 265. This penalty may be doubled if the offence involves a wrongdoing committed by the president, member of a sub-committee, a competent official or any person entrusted by the National Counter Corruption Commission (NCCC) or the holder of a similar function as defined by the law.

2. Criminal responsibility and civil and administrative liability of legal persons

In many cases of bribery or corruption, it is a legal person who has the economic interest in the corrupt behavior. Where criminal prosecution against individuals does not sufficiently deter such practices, some countries hold legal persons criminally liable, or impose administrative or civil liability, for bribery or corruption. To implement these sanctions thoroughly, they are made independent of the conviction of the natural person who has committed the act. Despite its widely acknowledged dissuasive potential, this instrument is not yet used in many countries. Australia, Indonesia, Japan, Korea, and Vietnam have established the criminal liability of legal persons to some extent; in Japan and Korea, these provisions are limited to legal persons involved in the active bribery of foreign public officials. Since a legal person cannot be imprisoned, a fine is imposed.

As noted above, some countries impose administrative and civil sanctions against legal persons to discourage bribery and corruption in dealings with state entities. Such sanctions include disqualification from bidding on government contracts, and withdrawal of business permits or contracts and licenses granted through bribery. Such measures are in place in some countries in the field of public procurement (*see section A.II.2.*).

3. Disqualification from public office

As complementary sanctions to fines and imprisonment, regulations disqualifying offenders from holding public office have been enacted in some countries (Fiji Islands, Korea, Malaysia, Mongolia, Papua New Guinea, Pakistan, Vanuatu; Kazakhstan is also working to establish such regulations). In Korea, for instance, a person who resigns or is dismissed from office for corruption is disqualified from taking up a job in any public institution, and even some private businesses, for five years. Papua New Guinea and Vanuatu apply such sanctions to very senior officials. In Mongolia, a person convicted of bribery may be disqualified from holding certain positions in the public service and prohibited from engaging in certain business activities for three years.

4. Confiscation of proceeds

The confiscation of the proceeds of a crime constitutes an important additional deterrent that might have as great an effect as a fine or prison

term. The threat of confiscation is also a preventive measure, as it makes the crime less attractive.

Some countries like Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Nepal; Pakistan; Papua New Guinea; the Philippines; Singapore; and Thailand allow or require confiscation of the bribe or other proceeds. The authority to freeze assets during investigation complements these provisions in most countries. This provision, however, becomes difficult to implement when the bribe has been converted into another form or consists of an intangible advantage, such as an appointment to an important post. Countries apply different solutions to this problem. If the bribe is no longer in its original form, Korea allows the judge to order the confiscation of property of equivalent value. Japan, by contrast, limits confiscation to the bribe. In Japan and Korea, rules on the confiscation of proceeds extend to legal persons.

II. Criminalizing illicit enrichment

Detecting an act of bribery or corruption, and especially collecting sufficient evidence of such an act in court, is difficult, given some countries' outdated and restrictive rules on admissible evidence. These difficulties and the resulting weak deterrent effect of the penal provisions on corruption have led some countries to criminalize the very possession of unexplained wealth by public officials. Unexplained wealth and luxurious lifestyles are relatively easy to uncover among public officials or politicians. Monitoring systems, such as the abovementioned requirement to declare assets, and procedural rules, such as a partial reversal of the burden of proof, are effective deterrents.

Illicit enrichment—wealth of public officials that is manifestly out of proportion to their present or past official salaries—is a criminal offence in Bangladesh; Hong Kong, China; India; Malaysia; Nepal; Pakistan; the Philippines; and Singapore. Papua New Guinea is preparing similar legal provisions. To facilitate prosecution and make this provision even more effective, India, Malaysia, Nepal, Pakistan, the Philippines, and Thailand have partly shifted the burden of proof to the accused. When a public officer or employee during his incumbency has acquired property that is manifestly disproportionate to his or her salary level and other lawfully earned income, such assets are presumed to have been unlawfully acquired, unless the official can justify their legitimacy. In some countries, such assets may be frozen during investigation and confiscated after conviction.

To give criminalization of illicit enrichment even more effect, governmental and civil society actors in the Philippines have engaged in systematic monitoring of public officials' lifestyles to detect cases of unexplained wealth and subsequently trigger prosecution. Indonesia has set up a Public Servants' Wealth Audit Commission for the same purpose. The Thai Office of the National Counter Corruption Commission monitors unexplainable wealth.

III. Criminalizing money laundering and enforcing the law

Ill-gotten gains are usually passed through a series of transactions to camouflage their origin. Third parties are often involved, thereby considerably aiding corrupt individuals in their criminal behavior. Criminalizing money laundering deters such conduct and thus constitutes an important instrument against corruption provided that the anti–money laundering legislation includes corruption as a predicate offence for money laundering. At present, only a limited number of countries (Australia, India, Indonesia, Korea, Malaysia, Singapore, Thailand) have included corruption in the list of predicate offences for money laundering. At the start of 2006, a bill pending in P.R. China sought to correct this omission.

Anti–money laundering activities loom large on the agenda of most parties to the Action Plan. As a result, legal provisions have recently come into force (in the P.R. China, the Cook Islands, India) or are being prepared (Pakistan). Nepal has recently prepared a draft anti–money laundering ordinance. Mongolia is now reforming its anti–money laundering framework, and Palau has recently passed an amended law on banking regulation. Since a number of countries from Asia and the Pacific have committed themselves to international or regional initiatives, such as the Financial Action Task Force (FATF) (Hong Kong, China; Japan; Singapore) and the Asia/Pacific Group on Money Laundering, most of the existing laws adopt similar standards. As a result of this reform process, the endorsing countries that used to be on the FATF list of non-cooperative countries and territories (NCCT) are no longer on the list.

Criminal sanctions for money laundering vary from country to country. In Indonesia, those convicted can be imprisoned for 5 to 15 years; legal persons can also be punished for money laundering. Singapore incarcerates individuals convicted for money laundering for up to seven years; Malaysia, for up to five years (up to seven years in specific cases); and India, for three to seven years. In Thailand, imprisonment for 1 to 10

years and/or fines ranging from USD 530 to USD 5,300 are possible. Thailand imposes fines ranging from USD 5,300 to USD 26,500 on legal persons; the legal persons' management can be sentenced to 1 to 10 years' imprisonment and/or fines ranging from USD 530 to USD 5,300 unless they prove that they were not involvement.

Some countries also have laws that provide for the confiscation of the proceeds of money laundering, such as the recently adopted Proceeds of Crime Bill of Papua New Guinea.

To help detect money laundering, countries like the Cook Islands; Fiji Islands; Hong Kong, China; Indonesia; Japan; Korea; the Philippines; Samoa; and Singapore require financial intermediaries to exercise vigilance. Certain countries have been actively cooperating with the Basel Committee on Banking Supervision, an international body that promotes sound banking supervisory systems. Hong Kong, China; India; Indonesia; Korea; Malaysia; Singapore; and Thailand were closely associated with the drafting of the committee's Core Principles for Effective Banking Supervision. Several Pacific countries—among them, the Fiji Islands, Papua New Guinea, Samoa, and Vanuatu—have launched a regional initiative, the Association of Financial Supervisors of Pacific Countries, to strengthen banking supervision in their countries. The Fiji Islands and other countries intend to amend their laws to meet international standards for anti–money laundering legislation. Indonesia and the Philippines amended their anti–money laundering laws in October and March 2003, respectively. Informal banking and money transfer systems that exist in some countries parallel to the formal banking sector nonetheless remain a challenge in the fight against money laundering.

Reporting mechanisms that oblige financial organizations and certain professions to declare suspicious transactions may serve as a useful additional tool in detecting potential offenders. Countries like Bangladesh; Cook Islands; Fiji Islands; Hong Kong, China; Indonesia; Japan; Korea; Pakistan; the Philippines; Samoa; Singapore; and Thailand have established such a reporting obligation for financial institutions. In Singapore, accountants of public companies are required to pass on to the country's financial intelligence unit suspected money laundering activities detected during their mission. The reports are processed by specialized anti–money laundering agencies, financial intelligence units, the central bank, or other institutions, which initiate investigations when necessary. To reduce disincentives to such reporting, most countries have specifically excluded from administrative, criminal, or civil sanctions false reports made in good faith.

Some countries have extended the criminalization of money laundering to legal persons acting as intermediaries, such as banks. Penal sanctions in such cases are by nature limited to fines. However, considering the wealth of some of these actors, it is doubtful whether the fines, which are comparatively low, are a sufficient deterrent. The Cook Islands, Samoa, and Thailand have therefore passed a provision that extends individual responsibility to the legal persons' representatives who act in an official capacity and have knowledge of the suspicious transaction. Indonesia applies administrative sanctions (revocation of business license or dissolution) to companies involved in money laundering.

B. Detecting, investigating, and prosecuting corruption

Whether or not laws and penal provisions deter corruption depends essentially on the effectiveness of law enforcement. Many Asian and Pacific countries seek to improve the effectiveness of law enforcement through institutional reform, as well as through reforms of criminal procedures that bolster the powers of law-enforcement agencies and adapt them to emerging requirements. International legal cooperation is also attracting increasing attention.

I. Law-enforcement agencies

The landscape of law-enforcement agencies in the fight against corruption has changed significantly over the past decades in many Asian and Pacific countries. Specialized institutions that deal exclusively with corruption have been established in many countries to centralize knowledge and capacity, taking over from law-enforcement agencies that have been perceived as corrupted themselves especially by a particularly protected status.

The success or failure of law-enforcement agencies in enforcing anti-corruption legislation depends on various factors, such as adequate means and powers, independence and ability to resist undue interference and influence, skills of their staff, and the efficient cooperation of law-enforcement agencies involved.

1. Institutional set-up for anti-corruption law enforcement

Many Asian and Pacific countries have developed over time a complex set of law-enforcement agencies that contribute to the investigation, prosecution, and adjudication of corruption offences. In more and more Asian and Pacific countries, one or more specialized anti-corruption agencies share the task with investigators and prosecutors. Hong Kong, China; Malaysia; Nepal; Singapore; and Thailand have established such specialized agencies decades ago, and Bangladesh, Indonesia, and Pakistan have done so more recently. Cambodia and the Kyrgyz Republic, on the other hand, have taken first steps towards creating such institutions, and Mongolia and Papua New Guinea are considering the establishment of a specialized anti-corruption body.

Some countries have not gone as far as creating an agency with a comprehensive mandate to bring the corrupt to court, but seek to achieve specialization within existing prosecutorial bodies. P.R. China has established within its procuratorates, anti-corruption and anti-bribery working bureaus and, in 1995, the General Bureau against Corruption within the Supreme People's Procuratorate. A specialized economic crime investigation department has also been set up in the Ministry of Public Security. These agencies support the law-enforcement authorities in the investigation and prosecution of complex cases that concern high-ranking officials. Japan has created specialized investigation departments within the prosecutors' offices in major cities. These offices, staffed with specialists, investigate financial crimes. The Fiji Islands has established a special unit tasked to investigate corruption allegations.

Some countries have limited the mandate of the specialized anti-corruption agencies. While the Philippines' Office of the Ombudsman, for instance, is empowered to enforce anti-corruption legislation against all officers or employees of the Government, or of any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations, it shall give priority to cases involving high-ranking government officials or cases involving grave offences or large assets. Indonesia's Corruption Eradication Commission (KPK) is also mandated to try high-level cases and to take over excessively protracted or otherwise manipulated case investigations. The Ombudsman of New South Wales (Australia) can also focus on cases of particular importance and leave other cases to other law-enforcement agencies.

Korea's Independent Commission against Corruption (KICAC), established in 2002, does not yet have a law-enforcement function, but in November 2004, a bill establishing a Corruption Investigation Office with an investigative role under KICAC was passed by the State Council. The mandate of this Office may be limited to investigations against high-ranking officials, according to the bill.

Differences also exist as to the regional organization of specialized agencies. India has established a decentralized system of vigilance commissions that comprises has vigilance commissions at the federal and state level and vigilance officers in each government department. Other countries that have set up strongly centralized anti-corruption agencies have recently moved towards establishing additional branch offices in the regions. Malaysia, Nepal, Pakistan, and the Philippines have taken such steps recently. Malaysia, in addition, has begun to deploy staff of its anti-corruption agency to major companies to support and advise them in their efforts to improve governance and anti-corruption mechanisms.

The powers of these specialized agencies vary from country to country. Bangladesh's Anti-Corruption Agency, the Independent Commission against Corruption (ICAC) of Hong Kong, China, Malaysia's Anti-Corruption Agency, Nepal's Commission for the Investigation of Abuse of Authority (CIAA), Singapore's Corrupt Practices Investigation Bureau (CPIB), and Thailand's National Counter Corruption Commission (NCCC) investigate corruption cases and are vested with the power to initiate prosecution.

In India, the CVC Act 2003 has broadened the mandate and powers of the Central Vigilance Commission (CVC): it is now entitled to supervise investigations into corruption cases conducted by the competent Delhi Special Police Establishment and the Central Bureau of Investigation; it may also inquire into cases where government officials are suspected to have acted in a corrupt manner. The Philippines' Office of the Ombudsman is also equipped with the requisite investigative means within its mandate to deal with major corruption cases. Korea's KICAC, established in January 2002, did not have an investigative role at the start; this might soon change, as deliberations about broadening its mandate to include a prosecutorial function are under way. The powers of Vanuatu's ombudsman are limited to inquiring into certain corrupt behaviors and reporting to the public; it has no role in criminal investigations, however.

The agencies of Hong Kong, China; the Philippines; and Singapore are also empowered to investigate any other significant offence uncovered in the course of a corruption investigation; Bangladesh's agency has similar powers.

Most anti-corruption agencies investigate the allegations and transfer the files to the public prosecutor or the competent court for prosecution. In this function, the agencies either support or act as a substitute for other law-enforcement agencies and may prepare disciplinary action. Nepal's Commission for the Investigation of Abuse of Authority (CIAA) also acts as a prosecutor in court. None of the countries covered by this report has mandated its anti-corruption agency to rule on cases itself. The anti-corruption agencies depend largely for their success on good cooperation and communication with, and the proper functioning of, other law-enforcement agencies, especially the police, public prosecutors, and the courts, because of their complementary role.

In many countries, these general law-enforcement agencies have not yet benefited from particular attention and reform. Some countries' agencies lack the staff and resources to successfully continue the prosecution of corruption cases, and in some other countries, corruption within the court system itself constitutes a serious obstacle to anti-corruption law- enforcement.

Some countries have established special courts or specialized sections within courts that try high-level corruption cases to counter this risk. The Philippines has established the Sandiganbayan and Thailand's 1997 Constitution sets up within the Supreme Court of Justice the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions. Nepal has established a special court that hears corruption cases; appeals against its decision are hear by the Supreme Court.

Irrespective of the institutional set-up a country has chosen, the effective cooperation of the actors involved determines whether prosecution succeeds. The improvement of cooperation between law-enforcement agencies is thus a current priority in many countries in the region. Such measures include, in the Philippines, the establishment of formalized information exchange between relevant law-enforcement agencies to enhance their cooperation, the setting up of inter-agency consultative bodies and ad-hoc task forces, and the organization of joint training programs. Similar activities are planned in P.R. China, which looks forward to increasing and institutionalizing cooperation among its law-enforcement agencies. Papua New Guinea has set up an anti-corruption alliance that pools and coordinates the resources of different law-enforcement agencies. Korea is operating an anti-corruption policy coordination body composed of 10 related agencies, such as ministries and supervisory bodies.

As mentioned earlier, most anti-corruption agencies (those in Hong Kong, China; Korea; Malaysia; Nepal; the Philippines; Singapore; and Thailand) also perform research and counseling services for the legislature or the government. Some also provide training for the public service (those in Hong Kong, China; Korea; the Philippines; Singapore; Thailand), the private sector (those in Hong Kong, China; Korea; and Singapore), and non-governmental organizations (the Philippine anti-corruption agency).

2. Independence and protection against undue influence

The powerful role of law-enforcement agencies renders them particularly vulnerable to undue influence. Independence of prosecution and effective protection against political or administrative interference are preconditions to the successful conviction of high-profile criminals. In this respect, the Bangalore Principles of Judicial Conduct (2002) intend to set standards for the ethical conduct of judges and provide the responsible bodies with guidance in establishing a framework for judicial conduct. Such codes of conduct exist, with varying scope, in the region, for instance, in Australia, Bangladesh, P.R. China, Malaysia, Pakistan, and

the Philippines. In June 2004, the Philippines embraced the Bangalore Principles and adopted a new code of judicial ethics in line with them.

Most countries have further adopted special organizational schemes that seek to enhance the independence and competence of the law-enforcement authorities entrusted with investigating and prosecuting corruption. Such measures grant them constitutional status or budgetary independence. Some agencies' directors are appointed directly by the head of government or head of state (those in Bangladesh; Hong Kong, China; Malaysia; Pakistan; Singapore). Immunity regulations also seek to protect the independence of these institutions.

3. Training of law-enforcement staff

Recent developments in corporate law and the rapid evolution of international economic operations and transactions, as well as advanced technological breakthroughs, open new possibilities not only for doing business but also for criminal activities. Corruption and other financial crimes take particular advantage of these developments. Law-enforcement agencies have to keep pace with these developments to remain successful in prosecuting financial crimes in this rapidly changing environment. This requires notably that law-enforcement agencies continuously train their staff in legal, economic, and technical matters and related investigative techniques.

P.R. China; the Fiji Islands; Hong Kong, China; Kazakhstan; Malaysia; Nepal; Pakistan; the Philippines; and Thailand all make intensive efforts to conduct specialized training programs for prosecutors dealing with corruption crimes. In Singapore, a group of prosecutors is specialized to deal with corruption cases. Forensic accounting, forensic engineering, and other indispensable modern investigation techniques enjoy particular attention in Hong Kong, China; Malaysia; Nepal; Papua New Guinea; and Singapore in dealing with the growing need to analyse complex financial data or evidential circumstances related to potential corruption cases. Malaysia has established, in 2005, the Anti-Corruption Academy (MACA), which is dedicated to systematic training in these areas. MACA will offer training courses for law-enforcement personnel from abroad. The anti-corruption agencies of Hong Kong, China; Korea; Malaysia; the Philippines; Singapore, and Thailand cooperate and form partnerships with other countries' peer organizations, including the active exchange of experience, and commonly run training programs in these matters.

The international community has also provided training opportunities and courses for prosecutors, judges, and other experts, particularly for

those countries in need or short of financial resources. The Asia Law Initiative of the American Bar Association (ABA Asia), for instance, regularly provides training in corruption-related matters to prosecutors and experts from a number of the endorsing countries.

Regular staff training alone, however, is not sufficient to enhance capacity within law-enforcement agencies. As low wages and heavy workloads make it difficult to attract highly qualified candidates, countries like Kazakhstan, the Philippines, and Singapore pay particular attention to improving the working conditions, career development, and social and economic situation of the prosecutorial agencies' staffs so as to attract highly qualified personnel and prevent the outflow of the workforce to the private sector.

II. Investigating and prosecuting corruption

Asian and Pacific countries adopt different enforcement policies and strategies to cope with the particular difficulties of effectively deterring corruption offences. These policies partly echo the gravity of the sanctions attached to the various corruption offences as noted above. P.R. China, for instance, focuses on high-ranking corrupt officials and punishes them severely. Other countries impose lesser sanctions but apply them broadly. Indonesia's legislation gives explicit priority to the prosecution of corruption offences over other offences. Different enforcement strategies also exist for dealing with active and passive bribery: Not only are the sanctions for giving bribes lighter in some countries than those available for taking bribes, the prosecution of bribe takers also appears to enjoy higher priority in some countries than the prosecution of those who give bribes.

The clandestine nature of corruption and the absence of an individual victim that could trigger an investigation render the detection of corruption particularly difficult. Perpetrators, especially very senior officials, politicians or executives, are often able to employ powerful methods of camouflaging their illicit activities or obstructing investigations. The use of financial havens and anonymous, quick transfer of assets, combined with the slow processes of international legal assistance, further delays or inhibits prosecution. Moreover, immunities may shield perpetrators from conviction.

The capacity of law-enforcement agencies to cope with these challenges and to successfully investigate corruption is strongly determined by the procedural means and mechanisms set forth under

the laws on criminal procedure. Such laws must take into account the characteristics of corruption and the ever-changing environment of crimes, and provide adequate means to respond. Very regular review of the adequacy of the regulations on law enforcement is thus a condition for meeting emerging challenges in bringing the corrupt to court.

1. Sources of information

The clandestine nature of corruption renders the inflow of information from external sources essential. Reporting obligations and rewards systems may provide intelligence; however, sources of information remain dry if informers fear repression or retaliation. Those who have become aware of criminal behavior and want to disclose it to the public authorities may run the risk of being identified by the accused. Similarly, a person claiming knowledge of an offence who is called to give evidence during a preliminary investigation or at the trial stage may fear retaliation by the accused, particularly if the services responsible for administering the criminal law cannot guarantee that the identity of the witness will remain secret in the course of the proceedings.

a. Reporting obligations, rewards, and exemption from criminal prosecution

Reporting obligations are a common tool for collecting information about alleged crimes and misconduct. As mentioned above, most countries' laws set forth reporting obligations with respect to the detection of money laundering. The extent to which the countries make use of such reporting obligations to detect corruption differs widely. The Fiji Islands' and Indian law, for instance, makes it mandatory for any person, regardless of occupation or professional status, to report to a magistrate or officer of the law any act of corruption committed by a public servant. Failure to do so is a criminal offence. In Hong Kong, China; Japan; Malaysia; Singapore; Thailand; and Vietnam, only public officials are under the obligation to report acts or attempted acts of corruption. In Malaysia, a public official who is offered a bribe but fails to report this incident may be convicted and imprisoned for up to 10 years.

In Hong Kong, China; Singapore; and Thailand this duty is not contingent on the context in which the public servant has gained knowledge of the incident, i.e., whether in his or her official capacity or when off duty. By contrast, in addition to limiting the reporting obligation to public servants, Japanese law further limits it to incidents that have

occurred while the reporting official was acting in his or her official capacity. Indonesia requires only senior officials to report attempts of bribery to the anti-corruption agency. Such reporting obligations come with penal or disciplinary sanctions, in some countries like Vietnam.

Some countries have established specific reporting obligations that apply to particularly vulnerable sectors like public procurement. Hong Kong, China; Korea; Samoa; Singapore; and Thailand impose a legal obligation on the procurement agency's personnel to disclose attempts by bidders to unduly influence procurement decisions. Korea, in addition, provides a channel for anonymously passing on information on corrupt practices in procurement through special complaint and kickback report centers that receive complaints from the public.

In addition to or in place of reporting obligations, some countries—if the information received proves to be true—reward informants either with cash or by absolving them from penal sanctions, thereby creating an incentive to disclose corrupt practices. Nepalese and Vietnamese laws, which contain no reporting obligations with respect to corruption, provide for the offering of rewards for relevant information, as does Pakistani law. In Korea, these rewards for reports on corruption go as high as about USD 160,000, and a significant increase of the limit up to about USD 2 million is planned. The P.R. China and Thailand also intend to establish a system for rewarding whistle-blowers; in P.R. China, this would be in addition to the rewards now granted by local authorities.

In some countries, the informant is absolved from criminal responsibility for participation in a crime if he or she discloses the act and the other persons involved. Mongolia, Nepal, and the Philippines, for instance, already grant such privileges to bribers and their accomplices in bribery cases against public officers, so that they may freely testify against corruption in the public service. Korea's anti-corruption act allows the courts to mitigate or remit penal and disciplinary sanctions against whistle-blowers who are themselves involved in the disclosed act. The Cook Islands and Malaysia have enacted similar provisions for persons engaged in money laundering.

b. Protection of sources of information: Whistle-blower and witness protection

Fear of retaliation is the main disincentive to what is commonly called "blowing the whistle" and to reporting on others' misconduct and corruption. With the aim of eliminating this obstacle to effective detection, legal and physical protection of "whistle-blowers" is gaining growing

attention in the region and worldwide, and has been subject to recent reforms in countries like the Fiji Islands, Korea, and Thailand. India is also preparing a comprehensive whistle-blower protection law, and has, in April 2004, as a matter of urgency passed an executive order that provides basic protection. Nepal, too, has recently prepared a draft whistle-blowers protection bill, which was under the cabinet's consideration in early 2006. P.R. China strives to improve its legal system to protect the rights and interests of those who report offences. Whistle-blower protection can take many forms: a guarantee of confidentiality or anonymity, immunity against defamation, or reinstatement after dismissal.

Many countries (P.R. China, Cook Islands, Fiji Islands, India, Korea, Kyrgyz Republic, Malaysia, Nepal, Papua New Guinea, the Philippines, Singapore, Thailand) grant informants confidentiality. Aware that citizens do not always trust guarantees of protection, P.R. China; Hong Kong, China; and Korea have penalized the disclosure of the informer's identity or any information that leads to his or her discovery. A bill that would similarly guarantee protection against disciplinary action or reprisals is currently pending in the Philippines.

As institutional support for the protection mechanism, some countries have entrusted special agencies with the task of receiving complaints and testimonies of corruption. Hong Kong, China; Korea; and Singapore have given their anti-corruption agencies responsibility for receiving and processing informers' reports. Nepal's CIAA and Thailand's Office of the Ombudsman receive complaints of corruption from the public. The Kyrgyz Republic and Papua New Guinea, as well as some local authorities in P.R. China, run trust hotlines, enabling citizens to make anonymous reports.

In practice, confidentiality cannot always be assured, and, despite the regulations, whistle-blowers run the risk of being identified. Material protection of the informant's rights and personal security are thus important complements to confidentiality. Such protection may comprise immunity against criminal proceedings for false accusations and defamation; Malaysia, Singapore, and Thailand exempt informers from administrative, criminal, or civil charges if the information was disclosed in good faith. Material protection in some countries also includes protection against discrimination or dismissal—an important feature, as employees who report on corruption in the workplace are particularly vulnerable to reprisal. Yet only Korea and some Australian jurisdictions have enacted specific provisions concerning corruption under which dismissal and other discriminatory action are subject to re investigation. Indonesia, Japan, and Nepal are preparing bills to address this lack. In Papua New Guinea and the Philippines, civil society is pushing for

whistle-blower protection laws, sometimes with the support of or jointly with certain public authorities, such as the Office of the Ombudsman and some legislators in the Philippines. Pending the approval of specific whistle-blower legislation, the Indian Government has made public a resolution as an interim arrangement for acting on complaints from whistle-blowers; this resolution looks towards the designation of a specific agency where public officials and employees of corporations and state-owned enterprises can lodge complaints, and provides for redress for and physical protection of whistle-blowers.

Witness protection laws and programs pursue the same aim as whistle-blower protection systems, but become useful at a later stage of the criminal proceedings. Granting protection to witnesses in court or judicial proceedings is considered by many countries in the region, and worldwide, as constituting an important complement to the instruments mentioned above. So far, Hong Kong, China; Korea; the Philippines; and Thailand have enacted protection laws or programs for witnesses whose personal safety or well-being may be at risk; Indonesia and Malaysia are preparing similar bills. Such laws and programs, where they exist (as in Thailand), most often provide for police protection, relocation, and provision of a new identity to the witness and to family members if they are also endangered or likely to be threatened or harassed.

2. Investigative means and procedural provisions

Some countries have equipped their law-enforcement agencies with special investigative tools for gathering evidence of corruption. In addition, provisions of the penal procedure have been modified, particularly in respect of access to bank accounts and rules on evidence admissible in court.

a. Special investigative means

Many countries permit the use of special investigative techniques, notably technical devices like telephone interception, to gather evidence of corruption offences. In Malaysia, for instance, such investigative means include search and seizure, and telephone interception. In Singapore, corruption offences are classified as "serious offences". This paves the way for special procedural powers such as arrest of a suspect without a warrant and access to tax information on a suspect and his or her relatives.

b. Access to bank accounts

Investigations into corruption often necessitate access to bank accounts to trace bribes and obtain incriminating evidence. Bank secrecy regulations can hamper investigation and prosecution. Hence, the Action Plan explicitly points to the importance of empowering law-enforcement authorities to order that bank secrecy be lifted for bank, financial, or commercial records. Hong Kong, China; India; Indonesia; Korea; Malaysia; Nepal; Pakistan; Singapore; and Thailand permit authorities to search bank records and seize documents. In Singapore, the competent Corrupt Practices Investigation Bureau (CPIB) may access the bank accounts not only of a suspect but also of his or her relatives. In Hong Kong, China; Korea; and Malaysia, a judicial ruling is required before bank information can be accessed. Japan's law-enforcement agencies are empowered to access public officials' bank accounts to check for suspicious activity.

A bill pending in the Philippines strives to empower the Office of the Ombudsman to access bank information. In some countries like the Philippines and the Cook Islands, access to bank accounts is permitted for investigations into money laundering.

c. Suspicion to trigger investigations

The above-mentioned difficulties in detecting corruption often impede investigations at a very early stage. Without tangible grounds for suspecting corruption, law-enforcement agencies are most often not permitted to open an investigation. Some countries like Thailand have thus enacted specific procedural provisions that permit law-enforcement agencies to initiate investigations into corruption on the mere grounds of unexplained wealth.

d. Rules of evidence

Codes of penal procedures contain strict rules about the admissibility of evidence in court. Meant to protect the defendants' rights, these rules sometimes constitute insurmountable obstacles to prosecution; this is particularly true for the prosecution of corrupt individuals. Some countries have therefore modified these regulations to facilitate prosecution. Indonesia, for instance, has expanded the types of evidence allowed in corruption cases, admitting hearsay and the content of electronic communications as evidence. India, Indonesia, Nepal, Malaysia, and

Singapore have also enacted provisions that shift to the suspect the burden of proof for some elements of the corruption offence.

In the Philippines, when a public officer or employee has acquired property while in office and it is manifestly disproportionate to his or her salary level and other lawfully earned income, such property is presumed to have been unlawfully acquired and is confiscated unless the official can prove its legitimacy.

e. Mutual legal assistance and extradition

As in other regions of the world, the fight against corruption in the Asia-Pacific has taken on an international dimension. Countries in this region increasingly need to gather evidence abroad and to seek the return of fugitives for trial in corruption cases. Many would also like to ensure the repatriation of proceeds of corruption that have been exported. Extradition and mutual legal assistance (MLA) are therefore more important now than ever before.

Asia-Pacific countries have adopted different types of legal frameworks to address the need for effective extradition and MLA in corruption cases. Some are based on bilateral treaties, of which there are more than 70 among the member countries of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. More recently, Asia-Pacific countries have placed greater emphasis on multilateral instruments. A growing number of countries have signed or ratified the United Nations Convention against Corruption. Several countries are also signatories to the ASEAN Mutual Legal Assistance Treaty. In addition, Asia-Pacific countries have enacted domestic legislation that complements these treaty-based arrangements. For example, most member countries of the Initiative that are also part of the Commonwealth have designated other Commonwealth countries as extradition partners without treaties. Member countries of the Pacific Islands Forum have done likewise. In the absence of treaties or standing arrangements based on legislation, requests for cooperation will be considered individually in most countries.

Whether based on treaties or legislation, these schemes of cooperation often appear sufficiently broad to cover most corruption and related offences. For example, when the severity of the offence is a prerequisite for cooperation, the threshold is relatively low. Most countries only require the crime to be punishable by one year's imprisonment in the requesting or requested state; this would cover most corruption and related offences. Moreover, although many countries require dual criminality for extraditions and MLA, most

arrangements use a conduct-based definition of dual criminality, which enhances the range of offences eligible for assistance.

There are also commonalities among Asia-Pacific countries in the grounds for denying international cooperation. Under many arrangements, an Asia-Pacific country may refuse cooperation that would impair its "essential interests". Since that term is not well defined, it is conceivable that a requested state may take into account factors like considerations of national economic interest, the potential effect on relations with another state, and the identity of the parties involved. This would, in turn, reduce the effectiveness of extradition and MLA. Similarly, while most arrangements deny cooperation in cases involving political offences, what amounts to such offences is not always clear. To address this uncertainty, some arrangements expressly state that corruption can never constitute a political offence.

Other grounds for denying cooperation exhibit more variation. For instance, several countries readily grant extradition or MLA in corruption cases involving their nationals. Others refuse to do so, either on a discretionary or on a mandatory basis. In some cases, a requested state that refuses to extradite for this reason must prosecute the national. More often, prosecution in place of extradition is only discretionary. Similarly, Asia-Pacific countries take different approaches when cooperation is requested in relation to an offence that may attract too severe a penalty (such as death). These range from an absolute bar to cooperation unless the requesting state provides sufficient assurances that the penalty will not be carried out.

Many schemes for cooperation in Asia-Pacific also incorporate procedures that expedite cooperation in corruption cases. To promote effective oversight and to maximize economies of scale, many member countries of the Initiative now use central authorities to send, receive, and handle requests for assistance. In urgent cases, these procedures are often sufficiently flexible to permit oral requests for assistance and communication outside normal channels. In addition, several member countries of the Initiative offer simplified means of extradition, such as endorsement of arrest warrants and extradition by consent. Others try to attain the same goal by reducing or eliminating evidentiary requirements so as to avoid protracted hearings.

In addition to streamlined procedures, several Asia-Pacific jurisdictions have taken practical measures to facilitate international cooperation. Several countries allow officials of a requesting state to attend the execution of MLA requests. This could prove useful in corruption cases that have complex financial aspects. Some jurisdictions have appointed

liaison personnel to provide advice and to act as contact points for both incoming and outgoing requests for assistance. These measures could significantly improve the efficiency and effectiveness of international cooperation.

In many respects, the framework in Asia-Pacific for tracing, seizing, and confiscating proceeds of corruption is similar to other forms of MLA. The legal basis for doing so is found in many bilateral and multilateral treaties, as well as domestic legislation for non–treaty partners. Many of these arrangements were created recently and include fairly modern features to expedite assistance, such as allowing the direct registration of foreign freezing and confiscation orders. Less common are provisions for sharing and repatriating confiscated assets. Most arrangements require the requesting and requested states to negotiate each case individually, and thus provide little guidance.

III. Impeaching public officials and limiting immunities

In many countries, members of parliament and other high-ranking civil servants enjoy immunity privileges. While such privileges are meant to protect them from arbitrary prosecution and interference, they can also represent serious obstacles to the prosecution of corruption. To enable law-enforcement agencies and the public to hold these individuals accountable and to revoke their mandate in case of alleged corruption, some countries' constitutions provide for impeachment procedures. The Philippine constitution, for example, allows the president, the vice-president, the ombudsman, and the members of the Supreme Court and the constitutional commissions to be removed from office if impeached for, and convicted of, bribery and corruption, among other offences. Nepal's Constitution provides for similar impeachment procedures for incumbents of certain positions established therein. However, despite the existence of such regulations, experience shows that they are difficult to enforce in practice. In many countries worldwide, lack of political will is often seen as the root cause. Some exceptions to the immunities provisions exist, however. In Pakistan, the anti-corruption law recognizes legislators as "public office holders" against whom criminal proceedings can be initiated, and Malaysia maintains that politicians have no special immunities. Politicians in Korea have likewise pledged to limit legislators' immunity rights.

Chapter 3
Involving the public in the fight against corruption

The fight against corruption cannot be won without citizens' support, participation, and vigilance. The media, civic and business associations, trade unions, and other non-governmental actors play a crucial role in fostering public discussion of corruption and increasing awareness about the negative effects of corruption. They also screen and scrutinize governmental action—both in their daily life and through formal arrangements institutionalized for this purpose—thereby contributing to the detection and prevention of corruption, and the collection and channeling of input from citizens towards the government's anti-corruption efforts.

Two factors determine the extent to which non-governmental actors can contribute their valuable resources to governments' efforts to combat corruption. On the one hand, the legal framework for civil society to gather and operate can create advantages or, in some countries, obstacles and disincentives. On the other hand, a government's and an administration's general attitude towards cooperating with non-governmental actors may be more or less cooperative, open, and fruitful.

So far, not all the countries covered by this report have developed the cooperative and supportive relationship with non-governmental actors that they have committed themselves to under the Action Plan. Yet, more and more countries acknowledge the important role that non-governmental actors can play. They are engaged in improving the relevant legal and institutional conditions and have initiated some specific projects of cooperation and dialogue with civic organizations on the issue of corruption.

A. Engaging in policy dialogue and cooperation between governmental and non-governmental actors

Civil society's contribution to a country's fight against corruption can take various forms, from awareness raising and educational programs to active and officially recognized participation in the analysis of legislation or institutional procedures. Concerning the latter, civil society can advocate reforms that are perceived to be most crucially needed. In this respect, some governments have actively engaged in cooperation with non-governmental actors, seeking to make use of civil society's expertise and resources.

In Pakistan, civil society organizations take part in the National Anti-Corruption Strategy Project, an advisory body to the Government consisting of representatives from the public sector, civil society, business, media, and academic institutions. This body is responsible for developing a comprehensive national anti-corruption policy and providing relevant recommendations to the Government. In this function, it has contributed in a major way, for instance, to the recent promulgation of the Freedom of Information Ordinance, promoting transparency in government operations.

In Kazakhstan, a permanent National Commission on Democracy and Civil Society has been established towards the end of 2004. This consultative body's role is to enhance civil society participation in public affairs and to increase the transparency of public bodies.

In Korea, the private, public, and political sectors and civil society have concluded the "Korean Pact on Anti-Corruption and Transparency" (K-PACT) in 2005. This legally non-binding agreement designates specific roles to each of these sectors in achieving the common goal to each of these sectors. In this pact, civil society commits to various tasks such as education against corruption, but also takes the role of assessing the performance of the other sectors in their respective roles.

Nepal's CIAA has developed programs that engage civil society organizations in monitoring the work of government offices in the administrative districts with a view to streamline the government service delivery system and curb corruption. Local coordination forums that bring together representatives of government line agencies, the business community, and civil society organizations have been established. These local forums also conduct awareness-raising programs and training and play a role in reporting corruption cases.

In the Philippines, government and civil society actors have formally engaged in joint steps to combat corruption in the public sector. This coalition aims to monitor the lifestyle of public officials and employees, to detect and eradicate possible corruption and graft. The civil society actors in this coalition assume the task of gathering information on the lifestyle of government officials. Such information is then validated by the participating agencies and investigated by the Office of the Ombudsman. When evidence warrants, that office files the appropriate charges before the proper court, and institutes forfeiture proceedings.

Another example of collaboration between governmental and non-governmental actors in the Philippines is civil society's involvement in institutional and procedural reform. When the Philippine Government endeavored to reform the country's procurement system, it requested an NGO to analyze the procurement procedures. On the basis of this analysis, the NGO then advocated reforms to the Government and provided training to relevant public institutions to strengthen their capacity in this area. The organization continues to monitor selected bidding contracts.

In Papua New Guinea, the business sector, civil society organizations, and government representatives cooperate in a formal consultative committee. In Samoa, a steering group for the implementation of public service reforms includes not only government officials and politicians but also a number of private sector representatives. Thailand has established the Foundation for a Clean and Transparent Thailand (FACT) to enhance a culture of transparency and reduce acceptance of corruption.

Civil society actors have also made major contributions to legislative reform in various other countries in the region. Freedom-of-information legislation in countries like Indonesia, Japan, Korea, and Pakistan has, to a large extent, been the result of NGOs' advocacy work. They continue to play a crucial role in helping the public to better understand and make use of these new legal provisions.

B. Raising awareness and educating the public about corruption issues

The second key function that non-governmental actors take on in many countries in the fight against corruption is educating the general public and raising awareness about corruption issues and countermeasures. This role is being recognized by the governments of a growing number of countries, such as those in Cambodia, Fiji Islands, Indonesia, Korea, Malaysia, Nepal, Pakistan, Papua New Guinea, the Philippines, Singapore, Thailand, and Vanuatu. The governments of these countries have started supporting civil society in this function. In Korea, government support for the anti-corruption activities of civil society organizations includes financial support.

In the framework of Malaysia's National Integrity Plan, which is based on a national survey of public perceptions of corruption completed in January 2003, the Government has established the Malaysian Institute of Integrity, through which it aims to enhance awareness of corruption and the need for transparency in the public service. Korea, Papua New Guinea, and the Philippines have partly delegated this function to their anti-corruption agencies or the ombudsman's office. The anti-corruption agencies in Hong Kong, China; Korea; and Thailand, for instance, conduct regular media campaigns on corruption issues. In Nepal a weekly radio program has been launched to raise awareness against corruption, and a forum of journalists has been formed to organize media campaigns against corruption. The forum also conducts various training programs on investigative journalism.

Kazakhstan publishes corruption-level indices, enabling the public to compare regions, branches, and departments as to their ethical behavior. At the same time, this project gives these targeted institutions and branches of the state an incentive to change their behavior. Indonesia undertakes such campaigns together with a coalition of non-governmental actors, including representatives from the private sector and international civil society representatives, to improve public understanding of, and support for, the Government's governance reform. Several projects have been launched in this area, including the dissemination of information brochures and books, and the broadcasting of anti-corruption campaigns on radio and television. Singapore's anti-corruption agency CPIB publishes corruption cases relating to public officials and private sector cases of public interest, in the mass media. The CPIB also gives prevention and

educational talks to public organizations and private organizations with public interest.

Many countries conduct particular education programs for the youth to instill ethical behavior and attitudes within the population from an early age. In Cambodia, cooperation is taking the form of anti-corruption education in public schools as a survey had found a low level of awareness about the impact of corruption among the younger generation. A nongovernmental research institute was tasked to develop an educational program on ethical and governance issues. This program is taught to children and young adults in the national public schools, enlisting the cooperation of the Ministry of Education. Similar cooperation has taken place in schools in P.R. China, Malaysia, Thailand and Vanuatu. Other countries, such as the Fiji Islands, Kazakhstan, Korea, Pakistan and the Philippines have reported about efforts to introduce similar approaches, including encouraging teachers to educate their students about ethics issues at schools and in higher education. In Pakistan, the involvement of teachers in spreading education about ethics issues has been one of many components of the overall awareness campaign, which encompasses the use of mass media (investigative documentaries, case studies of successful prosecution cases, serials, etc.), interaction with public office holders, and the introduction of changes in the curriculum being taught at schools through a consultative process involving teachers and the Ministry of Education.

C. Promoting public scrutiny and access to information

The third key role of the public in the fight against corruption is monitoring and scrutinizing public officials and holding them accountable. This scrutiny is a powerful means of preventing corruption and a key supplement to legal provisions and institutions. Its two preconditions—free discussion and access to relevant information—are not sufficiently prevalent in some countries, however.

I. Promoting public scrutiny, monitoring, and discussion of corruption

Civil society actors may indeed contribute a large share to monitoring and investigating government and business activities and thereby deter corruption. Appreciation of this indispensable instrument for combating corruption has not yet gained much ground among political leaders in some of the countries. However, the above-mentioned example from the Philippines, where an NGO has been tasked by the Government to monitor bidding procedures, shows the added benefits that can be obtained from public scrutiny of a country's efforts to combat corruption.

The media are particularly important non-governmental actors in scrutinizing the work of governments and public administrations. By screening government, political figures, and the business sector, they may perform an important watchdog function. They may trigger investigations and thereby bring about the detection of corrupt acts. Media reports about corruption further contribute greatly to educating the public. Frank reporting requires a free and independent press and access to information. In some countries, an improvement in these preconditions would render the fight against corruption more successful.

II. Providing access to information

A particularly important precondition for citizens' scrutiny of public administration, government, political parties, and elected politicians is a meaningful right to access information. However, it is only recently that a number of countries have implemented such reforms, often triggered

and supported by civil society actors. Reluctance to grant freedom of information is still widespread, justified by state security, privacy, or tradition.

Access to information is generally thought of as going beyond the routine publication of documents; effective control also requires that governmental or administrative institutions disclose files for scrutiny upon request. Governments and legislators have been reluctant in the past—and some still are—to grant this right, which is often guaranteed by the constitution. In the recent past, however, more and more governments have come to realize that providing information is part of their function, and now permit access to certain files that were considered confidential in the past.

1. Routine publication of information

Some jurisdictions—Hong Kong, China; India; Korea; Malaysia; Nepal; the Philippines; Singapore; and Thailand, among others—use information technology, especially the Internet, to grant easy, quick, cheap, and direct public access to a growing number of documents. Such information includes reports on audits, budget documents, and legal material. The scope of such public information differs significantly among and within the countries and depends on the policy of every single department or institution. Although state-owned enterprises (SOEs) are a part of the public administration in a broader sense, only a few countries like Vietnam do disclose information on SOEs. Kazakhstan plans to publish annual reports of SOEs in the future.

2. Access to files upon request

Until recently, the public service culture in many countries favored secrecy. This attitude persists in certain countries today; state security is generally cited as a justification. These countries stand firm about limiting their citizens' access to information, even though their constitutions usually postulate a fundamental right to information. Nonetheless, often as a result of civil society pressure, more and more countries (Australia, India, Japan, Korea, Pakistan, Thailand) have adopted freedom-of-information legislation. The Fiji Islands, Indonesia, and Nepal are preparing their respective bills, and in the Philippines, several related bills have also been filed with Congress. In P.R. China, efforts to provide the public with government information have made important progress at local levels. In

some countries, such legislation has been implemented at the community level first, or at the provincial level, as in India, and has later been extended to the federal level.

a. Legal instruments granting citizens access to information

Even though the relevant constitutional provisions are similar in most countries in the region, the legal instruments governing access to information vary considerably. In some countries, the lack of relevant legislation prevents this right from being exercised and legally enforced. Faced with this difficulty, the Philippines' Supreme Court, for instance, ruled that the constitutional guarantee is self-executing, thereby providing a relatively broad right of access to information until the recently filed bill has been passed.

b. Scope and limits of freedom of information

Countries that have passed freedom-of-information legislation have done so to a varying extent. Whether such legislation provides for effective ways to access information is determined by three main factors: the scope of exceptions, exclusions, and secrecy laws; the existence of independent appeal procedures and penalties; and requirements imposed on the requesting citizen, such as fees.

Laws regulating freedom of information usually set access to files as a global rule, which is then limited by a number of exclusions and exceptions. Exclusions mostly refer to entire state bodies that do not fall under the legal guarantee and do not specify the nature of the information excluded from public access or the topic to which it must relate. Exemptions of this kind are found in, for example, the legal provisions in Bangladesh, India, and Pakistan, where all information relating to the military and police forces, including budget and finance, are excluded from the rules of access to information. By contrast, the laws and regulations of Japan and Thailand exempt from disclosure only specified information that may harm security and related matters. In Japan, if a particular document contains classified information, the part that is not classified must be disclosed.

Along with national security concerns, legislation often excludes state-owned enterprises, on the grounds that their "legitimate interest" or secrets have to be protected. Secrecy laws further restrict the scope of access to information. In fact, the creation of secrecy laws is just as strong a trend in the region as the adoption of disclosure laws. Indonesia,

Malaysia, Singapore, and Thailand, for example, have enacted such provisions recently or are in the process of doing so.

In addition to the statutory limitations on access to information, ambiguous wording gives governments and administrations wide leeway when deciding whether to release requested information. This sometimes means that access to information related to corruption is blocked on the basis of national secrecy or protection of individual privacy. In India, marking a paper as confidential exempts it from public scrutiny, whether or not the content justifies withholding it. A number of other obstacles may impede access to information: in Japan, fees; in the Philippines, poor record keeping and sometimes obligations to state the reason for the request.

Discretion and sometimes unclear regulations mandate that appeal procedures, penalties, and remedies be in place. Such appeal systems are either judicial- or tribunal-based; sometimes both remedies are permitted. Unlike court procedures, tribunals, information commissions, or the ombudsman usually provide an inexpensive and quick appeal procedure. Their effectiveness, however, largely depends on the degree of independence and the powers vested in these institutions. In Japan, a decision of the Information Disclosure Committee does not overrule the decision of the administration, but is made public. In Pakistan, the Ombudsman's decision overrules the decision of the affected department. However, not all countries permit review by independent bodies; some countries have regulated only an administrative appeal procedure.

Annex
Anti-Corruption Action Plan for Asia and the Pacific

Action Plan

Preamble[1]

WE, governments of the Asia-Pacific region, building on objectives identified at the Manila Conference in October 1999 and subsequently at the Seoul Conference in December 2000;

CONVINCED that corruption is a widespread phenomenon which undermines good governance, erodes the rule of law, hampers economic growth and efforts for poverty reduction and distorts competitive conditions in business transactions;

ACKNOWLEDGING that corruption raises serious moral and political concerns and that fighting corruption is a complex undertaking and requires the involvement of all elements of society;

CONSIDERING that regional cooperation is critical to the effective fight against corruption;

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[1] The Action Plan, together with its implementation plan, is a legally non-binding document which contains a number of principles and standards towards policy reform which interested governments of the region politically commit to implement on a voluntary basis.

RECOGNIZING that national anti-corruption measures can benefit from existing relevant regional and international instruments and good practices such as those developed by the countries in the region, the Asian Development Bank (ADB), the Asia-Pacific Economic Co-operation (APEC), the Financial Action Task Force on Money Laundering (FATF), the Organisation for Economic Co-operation and Development (OECD), the Pacific Basin Economic Council (PBEC), the United Nations and the World Trade Organization (WTO)[2].

CONCUR, as governments of the region, in taking concrete and meaningful priority steps to deter, prevent and combat corruption at all levels, without prejudice to existing international commitments and in accordance with our jurisdictional and other basic legal principles;

WELCOME the pledge of representatives of the civil society and the business sector to promote integrity in business and in civil society activities and to support the governments of the region in their anti-corruption effort;

WELCOME the pledge made by donor countries and international organizations from outside and within the region to support the countries of the region in their fight against corruption through technical cooperation programs.

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[2] In particular: the 40 Recommendations of the FATF as supported by the Asia/Pacific Group on Money Laundering, the Anti-Corruption Policy of the ADB, the APEC Public Procurement Principles, the Basel Capital Accord of the Basel Committee on Banking Supervision, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Revised Recommendation, the OECD Council Recommendation on Improving Ethical Conduct in the Public Service, the OECD Principles on Corporate Governance, the PBEC Charter on Standards for Transactions between Business and Government, the United Nations Convention on Transnational Organised Crime and the WTO Agreement on Government Procurement.

Pillars of Action

In order to meet the above objectives, participating governments in the region endeavour to take concrete steps under the following three pillars of action with the support, as appropriate, of ADB, OECD and other donor organizations and countries:

Pillar 1 – Developing effective and transparent systems for public service

Integrity in Public Service

Establish systems of government hiring of public officials that assure openness, equity and efficiency and promote hiring of individuals of the highest levels of competence and integrity through:

- Development of systems for compensation adequate to sustain appropriate livelihood and according to the level of the economy of the country in question;
- Development of systems for transparent hiring and promotion to help avoid abuses of patronage, nepotism and favouritism, help foster the creation of an independent civil service, and help promote a proper balance between political and career appointments;
- Development of systems to provide appropriate oversight of discretionary decisions and of personnel with authority to make discretionary decisions;
- Development of personnel systems that include regular and timely rotation of assignments to reduce insularity that would foster corruption;

Establish ethical and administrative codes of conduct that proscribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity through:

Prohibitions or restrictions governing conflicts of interest;

Systems to promote transparency through disclosure and/or monitoring of, for example, personal assets and liabilities;

- Sound administration systems which ensure that contacts between government officials and business services users, notably in the area of taxation, customs and other corruption-prone areas, are free from undue and improper influence.
- Promotion of codes of conduct taking due account of the existing relevant international standards as well as each country's traditional cultural standards, and regular education, training and supervision of officials to ensure proper understanding of their responsibilities;
- Measures which ensure that officials report acts of corruption and which protect the safety and professional status of those who do.

Accountability and Transparency

Safeguard accountability of public service through effective legal frameworks, management practices and auditing procedures through:

- Measures and systems to promote fiscal transparency;
- Adoption of existing relevant international standards and practices for regulation and supervision of financial institutions;
- Appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on performance and decision making;
- Appropriate transparent procedures for public procurement that promote fair competition and deter corrupt activity, and adequate simplified administration procedures.
- Enhancing institutions for public scrutiny and oversight;
- Systems for information availability including on issues such as application processing procedures, funding of political parties and electoral campaigns and expenditure;
- Simplification of the regulatory environment by abolishing overlapping, ambiguous or excessive regulations that burden business.

Pillar 2 – Strengthening Anti-Bribery Actions and Promoting Integrity in Business Operations

Effective Prevention, Investigation and Prosecution

Take effective measures to actively combat bribery by:

- Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat the offence of bribery of public officials;
- Ensuring the existence and effective enforcement of anti–money laundering legislation that provide for substantial criminal penalties for the laundering of the proceeds of corruption and crime consistent with the law of each country;
- Ensuring the existence and enforcement of rules to ensure that bribery offences are thoroughly investigated and prosecuted by competent authorities; these authorities should be empowered to order that bank, financial or commercial records be made available or be seized and that bank secrecy be lifted.
- Strengthening of investigative and prosecutorial capacities by fostering inter-agency cooperation, by ensuring that investigation and prosecution are free from improper influence and have effective means for gathering evidence, by protecting those persons helping the authorities in combating corruption, and by providing appropriate training and financial resources.
- Strengthening bi- and multilateral cooperation in investigations and other legal proceedings by developing systems which – in accordance with domestic legislation – enhance (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) cooperation in searching and discovering of forfeitable assets as well as prompt international seizure and repatriation of these forfeitable assets.

Corporate Responsibility and Accountability

Take effective measures to promote corporate responsibility and accountability on the basis of existing relevant international standards through:

- Promotion of good corporate governance which would provide for adequate internal company controls such as codes of conduct, the establishment of channels for communication, the protection of employees reporting corruption, and staff training;
- The existence and the effective enforcement of legislation to eliminate any indirect support of bribery such as tax deductibility of bribes;
- The existence and thorough implementation of legislation requiring transparent company accounts and providing for effective,

proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery, in respect of the books, records, accounts and financial statements of companies;
- Review of laws and regulations governing public licenses, government procurement contracts or other public undertakings, so that access to public sector contracts could be denied as a sanction for bribery of public officials.

Pillar 3 – Supporting Active Public Involvement

Public discussion of corruption

Take effective measures to encourage public discussion of the issue of corruption through:

- Initiation of public awareness campaigns at different levels;
- Support of non-governmental organizations that promote integrity and combat corruption by, for example, raising awareness of corruption and its costs, mobilising citizen support for clean government, and documenting and reporting cases of corruption;
- Preparation and/or implementation of education programs aimed at creating an anti-corruption culture.

Access to information

Ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals, through:

- Establishment of public reporting requirements for justice and other governmental agencies that include disclosure about efforts to promote integrity and accountability and combat corruption;
- Implementation of measures providing for a meaningful public right of access to appropriate information.

Public participation

Encourage public participation in anti-corruption activities, in particular through:

- Cooperative relationships with civil society groups such as chambers of commerce, professional associations, NGOs, labor unions, housing associations, the media, and other organizations;
- Protection of whistle-blowers;
- Involvement of NGOs in monitoring of public sector programs and activities.

Implementation

In order to implement these three pillars of action, participating governments of the region concur with the attached Implementation Plan and will endeavour to comply with its terms.

Participating governments of the region further commit to widely publicise the Action Plan throughout government agencies and the media and, in the framework of the Steering Group Meetings, to meet and to assess progress in the implementation of the actions contained in the Action Plan.

Implementation Plan

1. Introduction

The Action Plan contains legally non-binding principles and standards towards policy reform which participating governments of the Asia-Pacific region (hereinafter: participating governments) voluntarily commit to implement in order to combat corruption and bribery in a coordinated and comprehensive manner and thus contribute to development, economic growth and social stability. Although the Action Plan describes policy objectives that are currently relevant to the fight against corruption in Asia and the Pacific, it remains open to ideas and partners. Updates of the Action Plan will be the responsibility of the Steering Group.

This section describes the implementation of the Action Plan. Taking into account national conditions, implementation will draw upon existing instruments and good practices developed by countries of the region and international organizations such as the Asian Development Bank (ADB), the Asia-Pacific Economic Co-operation (APEC), the Organisation for Economic Co-operation and Development (OECD) and the United Nations.

2. Core principles of Implementation

The implementation of the Action Plan will be based upon two core principles: i) establishing a mechanism by which overall reform progress can be promoted and assessed; ii) providing specific and practical assistance to governments of participating countries on key reform issues.

The implementation of the Action Plan will thus aim at offering participating countries regional and country-specific policy and institution-building support. This strategy will be tailored to policy priorities identified by participating countries and provide means by which participating countries and partners can assess progress and measure the achieved results.

Identifying Country priorities

While the Action Plan recalls the need to fight corruption and lays out overall policy objectives, it acknowledges that the situation in each country of the region may be specific.

To address these differences and target country-specific technical assistance, each participating country will endeavour, in consultation with the Secretariat of the Initiative, to identify priority reform areas which would fall under any of the three pillars, and aim to implement these in a workable timeframe.

The first consultation on these priorities will take place in the framework of the Tokyo Conference, immediately after the formal endorsement of the Action Plan. Subsequent identification of target areas will be done in the framework of the periodical meetings of the Steering Group that will be set up to review progress in the implementation of the Action Plan's three pillars.

Reviewing progress in the reform process

Real progress will primarily come from the efforts of the governments of each participating country supported by the business sector and civil society. In order to promote emulation, increase country responsibilities and target bilateral and international technical assistance, a mechanism will be established by which overall progress can be promoted and reviewed.

The review process will focus on the priority reform areas selected by participating countries. In addition, there will be a thematic discussion dealing with issues of specific, cross-regional importance as identified by the Steering Group.

Review of progress will be based on self-assessment reports by participating countries. The review process will use a procedure of plenary review by the Steering Group to take stock of each country's implementation progress.

Providing assistance to the reform process

While governments of participating countries have primary responsibility for addressing corruption related problems, the regional and international community as well as civil society and the business sector have a key role to play in supporting countries' reform efforts.

Donor countries and other assistance providers supporting the Action Plan will endeavour to provide the assistance required to enhance the capacity of participating countries to achieve progress in the priority areas and to meet the overall policy objectives of the Action Plan.

Participating governments of the region will endeavour, in consultation with the Initiative's Secretariat, to make known their specific assistance requirements in each of the selected priority areas and will cooperate with the assistance providers in the elaboration, organization and implementation of programs.

Providers of technical assistance will support participating governments' anti-corruption efforts by building upon programs and initiatives already in place, avoiding duplications and facilitating, whenever possible, joint ventures. The Secretariat will continue to support this process through the Initiative's web site (http://www.oecd.org/corruption/asiapacific) which provides information on existing and planned assistance programs and initiatives.

3. Mechanisms

Country Representatives

To facilitate the implementation of the Action Plan, each participating government in the region will designate a contact person. This government representative will have sufficient authority as well as adequate staff support and resources to oversee the fulfillment of the policy objectives of the Action Plan on behalf of his/her government.

Regional Steering Group

A Steering Group will be established and meet back-to-back with the Initiative's annual conferences to review progress achieved by participating countries in implementing the Action Plan. It will be composed of the government representatives and national experts on the technical issues discussed during the respective meeting as well as representatives of the Initiative's Secretariat and Advisory Group (see below).

The Steering Group will meet on an annual basis and serve three main purposes: (i) to review progress achieved in implementing each country's priorities; (ii) to serve as a forum for the exchange of experience and for addressing cross-regional issues that arise in connection with the implementation of the policy objectives laid out in the Action Plan; and (iii) to promote a dialogue with representatives of the international community, civil society and the business sector in order to mobilize donor support.

Consultations in the Steering Group will take place on the day preceding the Initiative's annual meeting. This shall allow the Steering

Group to report on progress achieved in the implementation of the policy objectives laid out in the Action Plan, present regional good practices and enlarge support for anti-corruption efforts among ADB regional member countries.

Secretariat

The ADB and the OECD will act as the Secretariat of the Initiative and, as such, carry out day-to-day management. The role of the Secretariat also includes to assist participating governments in preparing their self-review reports. For this purpose, in-country missions by the Secretariat will be organised when necessary.

Advisory Group

The Secretariat will be assisted by an informal Advisory Group whose responsibility will be to help mobilize resources for technical assistance programs and advise on priorities for the implementation of the Action Plan. The Group will be composed of donor countries and international donor organizations as well as representatives of civil society and the business sector, such as the Pacific Basin Economic Council (PBEC) and Transparency International (TI), actively involved in the implementation of the Action Plan.

Funding

Technical assistance programs and policy advice in support of government reforms as well as capacity building in the business sector and civil society aiming at implementing the Action Plan will be financially supported by international organizations, governments and other parties from inside and outside the region actively supporting the Action Plan.

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