

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

MANAGING CONFLICT OF INTEREST

FRAMEWORKS, TOOLS,
AND INSTRUMENTS FOR
PREVENTING, DETECTING,
AND MANAGING CONFLICT
OF INTEREST



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

MANAGING CONFLICT OF INTEREST FRAMEWORKS, TOOLS, AND INSTRUMENTS FOR PREVENTING, DETECTING, AND MANAGING CONFLICT OF INTEREST

**Proceedings of the 5th Regional Seminar on
making international anti-corruption
standards operational**

Held in Jakarta, Indonesia on 6–7 August 2007 and hosted by the
Corruption Eradication Commission (KPK) Indonesia

Asian Development Bank

Organisation for Economic Co-operation and Development

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

- Mutual Legal Assistance, Extradition, and Recovery of Proceeds of Corruption in Asia and the Pacific: Frameworks and Practices in 27 Asian and Pacific Jurisdictions. Paris: ADB/OECD, 2008.
- Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries. Manila: ADB/OECD, 2006.
- Denying Safe Haven to the Corrupt and the Proceeds of Corruption: Enhancing Asia-Pacific Cooperation on Mutual Legal Assistance, Extradition, and Return of the Proceeds of Corruption. Proceedings of the 4th Master Training Seminar held in Kuala Lumpur, Malaysia, March 2006. Manila: ADB/OECD, 2006.
- Knowledge-Commitment-Action against Corruption in Asia and the Pacific. Proceedings of the 5th Regional Anti-Corruption Conference held in Beijing, People's Republic of China, in September 2005. Manila: ADB/OECD, 2006.
- Anti-Corruption Policies in Asia and the Pacific: Progress in Legal and Institutional Reform in 25 Countries. Manila: ADB/OECD, 2006.
- Anti-Corruption Action Plan for Asia and the Pacific with country endorsing statements. Manila: ADB/OECD, 2002 (reprinted 2005).
- Curbing Corruption in Tsunami Relief Operations. Manila: ADB/OECD/TI, 2005 (available in English, Bahasa, Sinhala, and Tamil languages).
- Controlling Corruption in Asia and the Pacific. Proceedings of the 4th Regional Anti-Corruption Conference held in Kuala Lumpur, Malaysia, in December 2003. Manila: ADB/OECD, 2005.
- Anti-Corruption Policies in Asia and the Pacific: The Legal and Institutional Frameworks. Manila: ADB/OECD, 2004.
- Effective Prosecution of Corruption. Manila: ADB/OECD, 2003.
- Taking Action against Corruption in Asia and the Pacific. Proceedings of the 3rd Regional Anti-Corruption Conference held in Tokyo, Japan, in 2001. Manila: ADB/OECD, 2002.
- Progress in the Fight against Corruption in Asia and the Pacific. Proceedings of the 2nd Regional Anti-Corruption Conference held in Seoul, Republic of Korea, in 2000. Manila: ADB/OECD, 2001.
- Combating Corruption in Asia and the Pacific. Proceedings of the Manila workshop held in 1999. Manila: ADB/OECD, 2000.

These documents can be downloaded from the Initiative's Web site at <http://www.oecd.org/corruption/asiapacific/publications>

2008 Asian Development Bank, Organisation for Economic Co-operation and Development
All rights reserved

This publication was prepared by the Secretariat of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, composed of Asian Development Bank (ADB) and Organisation for Economic Co-operation and Development (OECD) staff. The findings, interpretations, and conclusions expressed in it do not necessarily represent the views of ADB or those of its member governments or of the OECD or its member countries. ADB and OECD do not guarantee the accuracy of the data included in this publication and accept no responsibility whatsoever for any consequences of their use. The term "country" does not imply any judgment by the ADB or the OECD as to the legal or other status of any territorial entity.

ISBN: 978-971-561-688-1

Publication Stock No.: 041408

Published by the Asian Development Bank
P. O. Box 789, 0980

Contents

Foreword.....	vii
Acknowledgments	ix
Abbreviations	xi
Executive Summary.....	xiii
Keynote Addresses	xix
Opening Address	xx
Welcome Remarks.....	xxv
Welcome Remarks.....	xxvii
Remarks at the Opening Dinner	xxxi
Closing Remarks	xxxvii
Section 1: Conflict of Interest—Historical Origins, Working Definitions, and Conceptual Frameworks	1
Chapter 1 Defining conflict of interest: General, legal, and institutional frameworks and good international practices	3
The United Nations Convention Against Corruption (UNCAC): A fundamental tool to prevent conflict of interest....	5
Conflict of interest: A Historical and comparative perspective	10
Regulating conflict of interest: International experience with asset declaration and disclosure	36
Chapter 2 Learning from case studies: Establishing frameworks for conflict of interest in selected countries and jurisdictions	45
Dealing with conflict-of-interest issues in government and politics: The Canadian experience	47

Managing conflicts of interest in the Republic of Korea: Policies and instruments	59
Asset declaration in the Philippines	64
Conflict of interest in Indonesia: From a legalistic approach to effective institutional change.....	76
Section 2: Implementation and Enforcement—Legal and Regulatory Tools.....	81
Chapter 3 Managing conflict of interest: Implementation and enforcement tools—laws, procedures, and instruments.....	83
Conflict of interest: The challenge to develop tools for implementation and enforcement	85
Private gain from public loss: How Thailand copes with corruption from conflict of interest.....	92
Managing conflict of interest in the public sector: The Hong Kong, China experience.....	117
Conflict-of-interest enforcement in the United States	121
Tracking corruption in the USA: Politics and election financing	128
Section 3: Prevention and Enforcement—Codes of Conduct, Ethics, and Organizational Culture	137
Chapter 4 Codes of conduct in the public sector	139
Codes of conduct and mechanisms to prevent conflicts of interest in the People’s Republic of China	140
Preventing conflicts of interest in the Australian public service	148
Chapter 5 Codes of conduct in the private sector	161
Good corporate governance: Essential to prevent conflicts of interest and fraud—Learning from Pakistan’s experience	163
Compliance enforcement in a multinational business context: The Bayer business model	175

Living business ethics: Good governance equals good business.....	177
Appendices.....	181
Appendix 1: Seminar Agenda.....	183
Appendix 2: List of Participants	189
ADB/OECD Anti-Corruption Initiative for Asia and the Pacific Secretariat	203

Foreword

The Asian Development Bank (ADB)/Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific supports the efforts of Asian and Pacific countries to fight corruption and seeks to counter its adverse impact on sustainable economic growth, political stability, international trade and investment, and poverty reduction in the Asia and Pacific region. To this end, the Initiative provides capacity-building assistance and expert advice to meet the needs of member countries in the region.

The Initiative's member governments are convinced that, to reduce the risk of corruption, conflicts of interest must be identified, avoided, and managed, and the policy frameworks and tools for detecting, avoiding, and managing conflicts of interest must be strengthened in many countries in the Asia-Pacific region.

The Initiative's members therefore requested that a regional seminar focusing on conflict of interest be held. The seminar was conducted on 6–7 August 2007 in Jakarta, Indonesia, in partnership with and hosted by, the Corruption Eradication Commission of Indonesia (KPK), an independent body with a legal mandate to both prevent and curb corruption. The seminar received support from the Canadian International Development Agency, the Danish International Development Agency, the British Embassy in Jakarta, the World Bank, and the Financial Services Volunteer Corps (funded by the United States Agency for International Development).

The seminar brought together more than 150 experts from 23 of the Initiative's 28 Asia-Pacific member countries and jurisdictions—primarily practitioners who investigate and prosecute cases of corruption or administer anti-corruption initiatives, private as well as public. With experts from development institutions, academe, and the public and private sectors, the participants discussed the legal and practical challenges involved in detecting conflicts of interest, various prevention and enforcement frameworks and tools for avoiding or managing conflicts of interest, and case studies from different countries and sectors.

The analyses and conclusions from the seminar are compiled in this publication, which also highlights remaining challenges in the Asia-Pacific countries. Produced jointly by ADB's Regional

Sustainable Development Department and the OECD's Anti-Corruption Division, this publication is intended to be a resource for both practitioners and policy makers in developing new frameworks, tools, and instruments for detecting, avoiding, and managing conflicts of interest and thereby curbing corruption in Asia and the Pacific.

Acknowledgments

The Asian Development Bank (ADB)/Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific and the Indonesian Corruption Eradication Commission (KPK) collaborated closely on the Initiative's 5th Regional Training Seminar. The insights of the participants and the authors of the papers in this volume enriched the discussions and helped shape the conclusions and recommendations of the seminar.

This publication is the result of the collaborative efforts of several individuals. Kathleen Mktan, Director, Capacity Development and Governance Division, ADB; Staffan Synnerstrom, then Governance Advisor, ADB Indonesia Resident Mission; and Sofie Schuette, Centre for International Migration and Development Integrated Expert with KPK, directed and coordinated the seminar. Marilyn Pizarro, ADB consultant, managed the seminar together with the KPK organization committee. The summary of the seminar proceedings and this publication were prepared by Kathryn Nelson, ADB consultant, under the supervision of Kathleen Mktan and benefitted from insights by Janos Bertok, Principal Administrator, OECD Innovation and Integrity Division.

The organizers appreciate the support of the Canadian International Development Agency, the Danish International Development Agency, the British Embassy in Jakarta, the World Bank, and the Financial Services Volunteer Corps (funded by the US Agency for International Development). Without their contributions the seminar would not have been possible.

More generally, the Initiative receives support for its work from ADB, OECD, the American Bar Association's Rule of Law Initiative, the Australian Agency for International Development, the German Federal Ministry for Economic Cooperation and Development, the German Technical Cooperation, the Pacific Basin Economic Council, the Swedish International Development Cooperation Agency, Transparency International, the United Nations Development Programme, and the World Bank.

The term "country" as used in this publication also refers to territories or areas; the designations employed and the presentation

of the material do not imply the expression of any opinion whatsoever concerning the legal status of any country or territory on the part of ADB's Board and members and the OECD and its member countries. Every effort has been made to verify the information in this publication. However, ADB, OECD, KPK and the authors disclaim any responsibility for the accuracy of the information or the effectiveness of the approaches 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.

Abbreviations

ACFE	Association of Certified Fraud Examiners
ADB	Asian Development Bank
APS	Australian Public Service
CEO	chief executive officer
CFO	chief financial officer
COI	conflict of interest
CRP	Center for Responsive Politics
HRMO	human resource management office
ICAC	Independent Commission Against Corruption (Hong Kong, China)
ICAP	Institute of Chartered Accountants of Pakistan
IFRSs	International Financial Reporting Standards
KICAC	Korea Independent Commission Against Corruption
KPK	Komisi Pemberantasan Korupsi (Corruption Eradication Commission, Indonesia)
MPR	Majelis Permusyawaratan Rakyat (People's Consultative Assembly, Indonesia)
NCCC	National Counter Corruption Commission (Thailand)
OECD	Organisation for Economic Co-operation and Development
PIN	Public Integrity Section (United States Department of Justice)
PSA	Public Service Act (Australia)
PSDPA	Public Servants Disclosure Protection Act (Canada)
PSIC	Public Sector Integrity Commissioner (Canada)
RA	Republic Act (Philippines)
SALN	statement of assets, liabilities, and net worth
SECP	Securities and Exchange Commission of Pakistan

TI	Transparency International
UN	United Nations
UNCAC	United Nations Convention Against Corruption
US	United States
USD	United States dollar

Executive Summary

There is growing consensus that managing conflict of interest (COI) is critical to curbing corruption. What COI is and what contributes to its occurrence must be understood if sound institutional and legal frameworks are to be developed and good international practices adopted.

Defining Conflict of Interest

COI is a complex and sometimes elusive concept. It can be an indicator, a precursor, or a result of corruption if left unchecked. While there is no universal definition of COI, most countries and jurisdictions agree that a conflict of interest occurs when public interest is compromised by the private interests of public officials.

Several international organizations have developed guidelines and established protocols to assist in the standardization of definitions and the adoption of preventive and enforcement mechanisms to address COI. The United Nations Convention Against Corruption (UNCAC) also makes specific reference to conflict of interest and emphasizes the importance of transparency and standardization in codes of conduct for public officials, public procurement practices, and the management of public finances. UNCAC also identifies the range of offenses linked to COI such as abuse of power and influence peddling.

Establishing Frameworks for Managing Conflict of Interest

Examples of the impact of high-profile ethics cases show that such cases may trigger legislative reform as the examples of Canada shows; in the Republic of Korea, prominent cases triggered a change in the policy approach and led to the creation of new offices and positions to execute and enforce new laws on COI.

In Canada, the newly created Office of the Public Sector Integrity Commissioner enforces Canada's values-based approach to managing conflict of interest, requiring commitment at all levels—personal, societal, political—within and outside the public sector and legal framework. Legal requirements have been revised, and policies and official codes of conduct for civil servants and other

public office holders have been strengthened to improve guidance on expected behavior.

In 2002 the Republic of Korea established an Independent Commission Against Corruption (KICAC) to implement new policy measures to manage COI, including a new code of conduct for public officials, revised asset registration and disclosure requirements, restrictions on post-employment of retired public officials, and a blind trust system. KICAC has also partnered with the police force and the Board of Audit Inspection to increase transparency and accountability overall, make institutional improvements in corruption-prone areas, improve the management of the public sector, and establish a more centralized approach to protecting whistle-blowers.

The Philippines and Indonesia have also made reforms but have encountered difficulty in meeting new standards of best practice in combating corruption. Practitioners in those countries highlight the challenges of managing COI including: (i) the lack of political will; (ii) limited alignment among the political leadership, government agencies, state institutions, and other relevant organizations on COI principles and practices; and (iii) limited awareness among public service employees and the general public of what constitutes COI.

Both countries are addressing these challenges. The Philippines has established a tracking and monitoring system to better address complaints filed through the asset disclosure and declaration system. Indonesia has established the Corruption Eradication Commission (KPK) to prevent and control corruption, through the monitoring of public officials' wealth and other means.

Managing Conflict of Interest: Prevention and Enforcement Tools

Prevailing social, cultural, political, and economic norms affect the extent to which conflicts—apparent, potential, or real—are dealt with. But while country context may dictate unique perceptions, conditions, and determinants of COI, the challenge to manage COI is universal.

Prevention and enforcement are equally important aspects of promoting good governance and reducing vulnerability to corruption. Universal codes of conduct, asset and interest disclosure regimes, and public education and awareness campaigns should be accompanied by sanctions and enforcement mechanisms.

The Organisation for Economic Co-operation and Development (OECD) approved in 2003 the Recommendation on Guidelines for Managing Conflict of Interest in the Public Service, which provides a comprehensive international benchmark to help governments review and modernize COI policies and practices. The OECD also developed a tool kit to support implementation and reviewed progress made in applying the Recommendation in member countries in putting COI regulations into practice. OECD survey responses received from more than 30 countries reveal challenges in COI implementation and enforcement. While most countries have developed legislation and preventive measures for post-public employment, the prohibitions are mostly general and rarely tailored to specific risk areas, and implementation mechanisms tend to be weak. Measures for supporting, tracking, and ensuring the implementation of decisions on new employment are either lacking or inconsistent. The survey results emphasize that, beyond establishing appropriate legislative and administrative frameworks, managing COI requires targeted implementation and enforcement tools. The OECD has compiled checklists, model codes, and training materials to support the implementation of COI regulations.

Many countries are grappling with the challenge of implementing new laws, procedures, and enforcement instruments. Thailand has passed several laws and regulations targeting COI issues and has established the National Counter Corruption Commission (NCCC) as the primary anti-corruption agency. The legal framework in Thailand suggests that measures for preventing COI are in place. However, NCCC has had limited success in enforcing these laws; the backlog of corruption and malfeasance cases, says the NCCC, has made it difficult to focus specifically on COI issues. Thailand's experience underscores the importance of ensuring that there is sufficient capacity coupled with political will to implement and enforce COI regulations.

Hong Kong, China also has a legal and management framework for addressing COI, featuring an official code of conduct, regulations and guidelines for civil servants, a robust and transparent declaration system, regular awareness training, and sanctions for misconduct, enforced through Hong Kong, China's Independent Commission Against Corruption (ICAC). ICAC credits a robust and flexible enforcement regime, efforts to work with the private

sector and civil society, and consideration of public perceptions for Hong Kong, China's success in implementing new reforms.

The experience of the United States highlights the complexity of COI and suggests that informal monitoring by watchdog groups may be just as important as official monitoring of compliance with regulations and statutes in ensuring adequate enforcement. The Public Integrity Section within the Criminal Division of the US Department of Justice acknowledges that the primary challenge in enforcing statutes in cases of COI violations in the US is determining intent in accordance with the law. In the area of campaign financing, for instance, the tracking efforts of the Center for Responsive Politics (CRP) and other civil society watchdog groups suggest that the intent of campaign contributions to influence policy making is not in doubt. Practitioners indicate that greater transparency via public disclosure requirements does make it easier to identify potential COI in the area of political campaign financing; however, they emphasize that disclosure alone does not necessarily translate into greater accountability.

Codes of Conduct in the Public and Private Sectors

Many countries have incorporated specific provisions into their constitutions, laws, or public administration employee handbooks and training activities to promote ethics and integrity in the public sector. Codes of conduct are deemed to be a useful tool in establishing standards for appropriate behavior. The People's Republic of China and Australia provide two different examples of how a code of conduct can be implemented in the public sector. P.R. China takes a top-down centralized approach designed around a series of control and compliance mechanisms, while Australia maintains a principles-and-values-based approach enforced through a workplace management framework.

In P.R. China, public sector employees must comply with administrative, criminal/legal, and, in many cases, the Party's frameworks. The country has adopted targeted legislation and strict regulations, and has established a management system with inspection, supervision, and education functions. Regulations set specific limits on the exercise of power; require the declaration of assets and income; curb private gains, benefits, and extravagance; and restrict the employment and affiliations of public servants and their relatives.

The People's Congress oversees the system, and disciplinary measures are administered through a centralized legal framework involving the police and the judiciary.

A risk management model guides the Australian Public Service (APS). The APS Code of Conduct is written into the Public Service Act (PSA), which prescribes sanctions for failure to comply with professional principles and standards. However, individual government agencies have autonomy in determining how to interpret the PSA and enforce the Code. Fifteen core values that must be upheld are listed in the Code, which also provides a range of advice and guidance to agencies and their employees to help them meet their obligations under the Code. Chapters outline appropriate ways of dealing with public resources and resolving possible conflicts between public and private interests of public officials in decision making.

Codes of conduct are also necessary in the private sector to combat public sector malfeasance and corporate fraud. The environment in which COI occurs is rapidly changing, blurring the lines between the public and private sectors. Pakistan has made important efforts in meeting international accounting standards: its corporate regulatory framework is supported by oversight bodies and guided by a series of targeted statutes and an enforceable code of conduct. However, practitioners working in Pakistan's financial sector cite ongoing challenges in keeping related party financing at appropriate arm's length and in monitoring COIs, undermining contracting transactions between the public and private sectors.

In the wake of recent corporate corruption scandals, companies are looking beyond legal requirements, as corporate social responsibility, good governance practices, and a culture of ethics and honesty are increasingly recognized as vital to protecting both a company's reputation and its bottom line. After suffering from corporate fraud in the early 1990s, the German-based pharmaceutical multinational Bayer, for instance, developed an approach to instilling a corporate culture of ethics that was based on values and zero-tolerance compliance. Bayer emphasizes that business sustainability depends on compliance with its code of ethics, which permeates everything it does—from its operating policies to employee training, performance measurement, and its core business functions.

These examples support the argument that "good governance equals good business" and demonstrate how codes of conduct

can be leveraged in the private sector to bridge the gap between doing what is legal or lawful and doing what is ethical and right to protect both public and private interests. However, as practitioners emphasize, cultivating an ethics-based corporate culture involves more than establishing guidelines and policies; it requires leading-by-example buy-in from top management to “live business ethics.” Moreover, effective enforcement requires better fraud detection systems, greater whistle-blower protection, and measures that strike a balance between control mechanisms to limit misconduct and incentives to encourage good behavior.

Conclusions and Recommendations

COI has moved to the forefront in the fight against corruption, and managing COI is recognized as a fundamental anti-corruption concept. While challenges remain, a better understanding and awareness of COI aims to strengthen institutional frameworks, inform international practices, and improve the tools and instruments developed to reduce vulnerability to corruption.

Research and experience show that effective political leadership, a strong legal framework, and an independent press are necessary to detect, prevent, and manage COI. In addition, a professional and adequately paid civil service, clear rules on the duties of politicians and officials, and accountability at both national and local levels are important.

In managing COI, prevention is more cost-effective than enforcement; however, they are equally important in promoting good governance and fighting corruption. Universal codes of conduct, asset and interest disclosure regimens, and public education and awareness campaigns to outline fundamental concepts and expectations for ethical behavior must be balanced by clear sanctions and enforcement measures to ensure that both the causes of COI and its effects are adequately addressed.

Keynote Addresses

Opening Address

H. E. Susilo Bambang Yudhoyono
President of the Republic of Indonesia

Bismillahirrahmanirrahiim, Excellencies, distinguished guests, ladies and gentlemen: It is a pleasure for me to welcome you all to Jakarta, especially our guests from overseas. I am so pleased to see many international experts and representatives of countries in the region together with Indonesian experts and stakeholders gathered here to discuss the issue of conflict of interest. It is a concept that I believe every one of us knows well but most probably lacks knowledge of how to implement it. Conflict of interest is a subject that is entirely relevant to our common efforts to fight corruption.

Since my first day in office, anti-corruption has been at the top of my agenda. I have long regarded corruption as public enemy number one. That is why the first thing I did as President was to enter into political contracts of integrity with all members of my Cabinet on anti-corruption. We are now pursuing what is said to be the most aggressive anti-corruption campaign in the history of Indonesia. It is in that very context that I welcome and highly value your deliberations today. And I commend the organizers for taking this constructive initiative. The discussions of conflict of interest begin with our definition and understanding of the management of public and private assets and revenues.

The need to differentiate between public assets and goods, on the one hand, and private interests, on the other, did not really occupy governments until the late 19th century. The notion of separating public authorities and private interests may have been recognized in the “*Rechtsstaat*” concept developed in central Europe as well as in concepts defined in Napoleonic administrative solutions. These concepts still have a strong impact on the judicial and administrative processes in many countries, including Indonesia. The separation between public and private interests is clearly applied to protect public assets from being misused or embezzled. But it also provides a guarantee for fair and impartial public decision-making, which is a cornerstone of a democratic state and good governance.

I, therefore, am convinced that effective management of conflict of interest is not only a matter of protecting public assets or upholding the rule of law, but also very much a precondition for a state—or indeed a government—to enjoy the trust and confidence of its citizens.

The Organisation for Economic Co-operation and Development (OECD) has stated that a conflict of interest arises “when a public official has private-capacity interests which could improperly influence the performance of his or her official duties and responsibilities.” With this definition, a situation implying conflict of interest can possibly emerge at the earliest stage, even before possible inappropriate behavior has taken place. This is extremely important, as it requires public officials to avoid putting themselves in a dangerous position or situation where conflict of interest can be easily suspected.

It is no secret that Indonesia’s history includes a long period where conflicts of interest were neglected, and public duties, authorities, and assets were systematically used for private gain. These practices, applied during more than 30 years, have left a strong legacy, which we now must rectify. At this stage, much of this legacy not only remains but is still perceived by many in Indonesia as the norm. In Indonesia, conflict of interest is seen more as a conflict to be avoided by public officials but not necessarily as corrupt practice. I am, however, pleased that provisions for avoiding conflict of interest as an ethical norm are already present in many Indonesian laws such as the Anti-Corruption Law, the Law on KPK, the Civil Service Law, the Public Prosecution Act, the Law on the Supreme Court, the Capital Market Law, and others.

There is yet a definition of the concept common to all existing laws. I also admit that there is a lack of enforcement mechanisms in the laws, partly explained by the vague definitions. This, I believe, is the challenge. I do strongly believe that the time is therefore ripe to both clarify the concept of conflict of interest in Indonesia and improve our methods and mechanisms for protecting our system against conflict of interest. The concept must be defined in relevant legislation in a coherent way, and feasible protection and enforcement mechanisms must be designed to clarify borderlines and accountabilities. The concept must be developed through a process involving government agencies, many stakeholders, and eventually the Parliament. This is truly a difficult and challenging process,

but we have a strong commitment to incorporate the management of conflict of interest in our overall anti-corruption campaign.

Ladies and gentlemen, let me now elaborate on our strategy for fighting corruption in Indonesia. The basic guideline of my Government's strategy is to run an effective anti-corruption campaign at all levels and we do it *indiscriminately*. Our strategy crosscuts sectors and is broadly targeted at inappropriate behavior in all segments of society, especially our public officials. We are focusing our efforts not only on punitive action through legal enforcement mechanisms but also on preventive measures in the form of improvements in the legal system and a massive public campaign and education on anti-corruption.

We are implementing those measures by following strategic steps. First, we are improving the legal and judicial system in Indonesia. Since 1999, a number of laws targeting corruption have been enacted in Indonesia, and I believe that the KPK will have plenty of opportunity to discuss these new laws and measures in the course of your seminar. Second, we continuously strengthen our capacities and build more effective institutions and anti-corruption bodies involving a wide range of state auxiliary bodies. Third, my Government fully realizes that managing people's expectations is as important as other technical elements. There are many people, including myself, who would have wished for more rapid progress and dreamed that corruption could be eradicated overnight. But we are already going as fast as we can, with encouraging results.

Today, corruption is no longer tolerated. Instead, it is widely seen as a social sin, and subject to investigation and prosecution up to an extent that has never been seen previously in Indonesia. We have managed to create a *fear factor*, making potential perpetrators think many times over before they commit their unlawful acts. Awareness of corrupt practices has increased among our people. I am pleased that our free media are constantly reporting on corruption or suspected corruption. The fact that KPK and other law enforcement agencies have received more than 20,000 complaints or corruption allegations to date confirms this new spirit taking hold in our country. We have also produced a National Anti-Corruption Action Plan for the period 2004 to 2009. The Action Plan, endorsed in February 2005, is considered a living document, meaning that it is open to revisions and adjustments. The preparation for the UN

Convention Against Corruption (UNCAC) was also part of the Action Plan. I am pleased that in March last year the House of Representatives ratified UNCAC. The ratification is a milestone for Indonesia and it will require us to revise our current anti-corruption legislation to bring it in line with the requirements of the Convention.

We also need to revise the Law on KPK on the basis of a ruling by the Constitutional Court requiring that the Anti-Corruption Court be established by a separate law and not, as today, by the Law on KPK, and that all corruption cases go to one court. The ongoing revision of our anti-corruption legislation thus provides a window of opportunity to further strengthen and improve our anti-corruption policies. I am pleased that, in recent years, law enforcement agencies including KPK have made important achievements. KPK, for example, has established itself as a main vehicle for converting our joint endeavor to fight corruption into concrete actions with sustainable outcomes. While KPK initially focused on punitive measures, it now also focuses on its important preventive mandate given by the Law on KPK and reinforced by UNCAC.

Ladies and gentlemen, it is clear that eradicating corruption is a complex and even sometimes dangerous duty. We in Indonesia, at some point, have felt this. At its initial stage, our anti-corruption measures create fear, slow down development processes, and affect the Government's ability to deliver. The long-term challenge here is to build on and improve our quality of governance. To do this, we need to focus on the continued reform of Indonesia's crosscutting government functions. These include areas such as public expenditure, revenue and asset management, and the regulatory process. Other important areas are the preparation of high-quality regulatory instruments and the effective implementation and enforcement of enacted legislation and better human resource and financial management systems for the civil service.

We also need to continue intensifying our awareness-raising campaigns and civic education activities even in these early formative years. We need to improve transparency to widen access for and enable the media to fulfill their important role in fighting corruption. And we need to implement the fundamentals and internationally accepted anti-corruption concepts and standards. It is *true* that we must effectively build our own system against corruption and tirelessly refine our own anti-corruption policies. But we can learn from countries that have a positive record in fighting corruption.

All administrations with an ambition to prevent corruption can adhere to similar, universal principles and concepts. I am convinced that Indonesia can gain momentum by taking the experiences of other countries and international developments into account in refining our own anti-corruption policies. I also do hope that our friends can learn from Indonesia's experiences.

I am convinced that with your invaluable contribution, strong commitment, wisdom, and insight, we can achieve our common goal: a corruption-free society. On that note, and by saying, *Bismillahirrahmanirrahiim*, I declare the seminar on conflict of interest open. I wish you all a successful seminar!

Welcome Remarks

Taufiequrachman Ruki
Chairman, Corruption Eradication Commission (KPK)

Your Excellency Mr. Bambang Yudhoyono, President of the Republic of Indonesia, Members of Parliament, Ministers of the United Indonesia Cabinet, distinguished foreign guests and speakers, ladies and gentlemen: *Assalaamu'alaikum warohmatullaahi wabarokaatuh.*

In the last decade the fight against corruption has gained prominence worldwide and in Indonesia, especially when the UN Convention Against Corruption (UNCAC) was opened for signature in Merida in 2003. Indonesia was part of the Convention. And to mark this important commitment, in early 2006, the Indonesian House of Representatives ratified the Merida Convention, or UNCAC.

In the light of Indonesia's current corruption ranking, our Government feels a strong need to actively promote UNCAC. Accordingly, Indonesia came to Jordan last December to take part in the 1st Conference of the State Parties to the UNCAC. During this conference, Indonesia was elected to be the host of the 2nd State Parties Conference to the Convention to be held in Bali in January 2008.

KPK, as Indonesia's Corruption Eradication Commission, has every interest in raising awareness of anti-corruption concepts as well as in introducing good international anti-corruption practices. For this reason, KPK, in cooperation with the Asian Development Bank (ADB) and the Organisation for Economic Co-operation and Development (OECD), will organize three international seminars prior to the State Parties Conference. These seminars will cover issues related to conflict of interest, asset recovery and mutual legal assistance, bribery, and procurement, which have been the challenging issues in the fight against corruption worldwide.

Today, the first seminar in the series will start with the important issue of conflict of interest. Conflicts of interest can often be found at the root of corruption. Corruption takes place when the personal interest of a decision maker takes precedence over the public interest—when decision makers misuse resources, meant for the public good, for their personal benefit.

I am very pleased to learn that so many prominent speakers and experts from around the world have come here to discuss the problem of conflict of interest and possible remedies. During the next two days, we will share our experiences in dealing with conflict of interest in law and in practice, in both private and public sectors.

I hope this seminar and the two other seminars to follow in September and November can draw together new concepts and ideas related to corruption and promote good practices from all over the world. It is through this knowledge transfer and critical discussion among experts and practitioners that we intend to “breathe life” into the framework provided by the UNCAC.

Your Excellency the President of the Republic of Indonesia, ladies and gentlemen, finally, allow me to express my great appreciation to the major sponsors of this first seminar, namely, the Canadian International Development Agency, the Danish International Development Agency, the British Embassy in Jakarta, the World Bank, the Financial Services Volunteer Corps, and the Department of Foreign Affairs of the Republic of Indonesia. Indeed, we need significant support in the difficult fight against corruption.

Welcome Remarks

Arjun Thapan

Director General, Southeast Asia Department, Asian Development Bank

On behalf of the Asian Development Bank (ADB) and our partners at the Organisation for Economic Co-operation and Development (OECD), it is my privilege to welcome you to this regional seminar on conflict of interest. Let me also thank the Government of Indonesia and Indonesia's Corruption Eradication Commission for hosting today's seminar, as well as our development partners at the Canadian International Development Agency, the Department for International Development of the United Kingdom, the Danish International Development Agency, and the World Bank for supporting this event.

There is a growing consensus that combating corruption is critical to poverty reduction and development effectiveness. Studies have estimated that, in many Asian and Pacific countries, significant public investment is being wasted because of corruption. Corruption also increases the cost of doing business, and keeps countries from achieving their economic growth and employment potential. In fact, the World Bank's investment climate survey shows that more than 36% of firms with interests in East Asia and the Pacific view corruption as a major or severe obstacle to the operation and growth of their business. In South Asia, the proportion is more than 40%.

Ladies and gentlemen, the Asia and the Pacific region has witnessed rapid changes in the last decade. High rates of economic growth have been achieved through new models of cooperation with the business sector, public-private partnerships, and increased mobility of personnel between the two sectors. However, such trends have also multiplied gray zones, where public officials' private interests can unduly influence the way they carry out their official duties. If not adequately identified and managed, conflict-of-interest situations can lead to corruption.

Several countries in the region recognize the need to review and improve their regulations, institutions, and practices, particularly in areas that present specific risks of corruption. Appropriate policies regulating conflict-of-interest situations arising in post-public

employment are attracting growing attention in some of the Initiative's member countries.

The response to these challenges has been encouraging thus far. In December 2003, the United Nations opened its Convention Against Corruption, or UNCAC, for signature. To date, 129 countries, including many in our region, have signed on to UNCAC. This is a clear indication of how seriously the world community takes the issue of corruption. Importantly, UNCAC requires its member states to institute measures and checks against conflict of interest.

International development partners, such as the OECD, have developed Guidelines for Managing Conflict of Interest in the Public Service. These guidelines constitute a set of core principles, policy frameworks, institutional strategies, and practical tools from which countries may benefit when establishing, amending, or reviewing their conflict-of-interest policies. It is encouraging to see that several countries in the Asia and Pacific region such as the People's Republic of China, Thailand, and Cambodia, have begun to develop frameworks for identifying and managing conflict-of-interest situations.

Colleagues, we are all here today because we share a *common* view that corruption in all its forms undermines our efforts to combat poverty. We also share a *common vision* that by working together we can determine the solutions to eradicate the cancer of corruption from our institutions, our politics, and our everyday transactions.

In sharing our experiences today—no matter how different they may be—we hope to find some common ground. And by working in partnership, we will ultimately make governance more efficient and effective across Asia and the Pacific.

The Anti-Corruption Initiative for Asia Pacific under the joint leadership of ADB and the OECD is a promising example of regional cooperation and collaboration to advance the fight against corruption. The Initiative's Action Plan emphasizes three core values—transparency, accountability or integrity, and participation. The growing focus on conflict of interest as a manifestation, as well as cause, of corruption, is most relevant to the objectives of the Initiative's Action Plan endorsed by 28 countries.

We are pleased to note that the Philippines, with the active support of the Initiative, has launched a National Anti-Corruption Program to bolster efforts to combat corruption and institute an anti-corruption performance measurement system.

It is also heartening to note that Thailand is working to institute formal laws regarding abuse of power and to raise awareness about the dangers of conflict of interest in public decision-making. Importantly, Thailand's new Constitution includes specific provisions requiring government officials to be politically impartial and prohibits conflict-of-interest violations.

We should also recognize Vietnam's efforts to enhance the capacity of its inspectorate system. Recently, the Government has scaled up investments in personnel training, equipment, and computerization of regulatory and administrative management to improve the way the inspectorate system functions.

In addition to these countries' progress, ADB's efforts to assist its developing member countries in fighting corruption and improving governance support the Initiative's goals. In July 2006, ADB approved its second Governance and Anti-Corruption Action Plan, which focuses ADB's anti-corruption efforts on three key priorities:

- Improving public financial management;
- Strengthening procurement systems; and
- Combating corruption through preventive enforcement and investigative measures.

Recognizing that a "one size fits all" approach does not work, ADB is working on these priorities with its partner countries at the national, subnational, and sector levels in the formulation of new country partnership strategies and national development plans. I want to emphasize that ADB's focused efforts on procurement and corruption prevention can be successful only when informed by experience on the ground, the sharing of knowledge on conflict of interest, and the specific efforts made to minimize its incidence.

Therefore, today's seminar assumes an important role in advancing the interests of this Initiative's member countries, the international development partners, and civil society in working together to achieve the common goal of fighting corruption.

Ladies and gentlemen, in the next two days we will hear from international experts, we will learn from our country and cultural experiences, and we will find ways of preventing conflict of interest in public decision-making processes. We also look forward to hearing from our colleagues in the People's Republic of China, Thailand, Indonesia, Pakistan, the Republic of Korea, and the Pacific Islands,

who are working to reform institutions and advance legislation to eliminate the conflicts of interest that lead to corruption.

As we move forward to begin that discussion, I want to thank you again for making a commitment to improving governance in your country and across the region. Your presence today and willingness to engage in dialogue across countries and across sectors to address the complexities of conflict of interest reaffirms our common goal of working in partnership to combat corruption and ultimately to reduce poverty. I am looking forward to the discussions today and tomorrow and to continuing our work together in the months to come under the ADB/OECD Anti-Corruption Initiative. Once again, on behalf of ADB and the OECD and our partner countries, we thank the Government of Indonesia for their support and for hosting this conference. Thank you.

Remarks at the Opening Dinner

H. E. Mari E. Pangestu
Minister of Trade, Indonesia

Good evening, Excellencies, ladies and gentlemen. It is an honor for me to welcome you to the dinner tonight. On behalf of the Government of the Republic of Indonesia, let me start by commending the initiative of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific together with KPK (the Corruption Eradication Commission) of Indonesia and the supporting donors for facilitating such an important regional seminar.

I am not going to hold up your dinner too long this evening with a lengthy speech, but nevertheless allow me to make a few remarks about conflict of interest and why dealing with this issue is such an important component of Indonesia's ongoing and comprehensive reform process.

Ladies and gentlemen, I would like to commend the organizers of the seminar for taking on the most fundamental anti-corruption concept—conflict of interest. As Mr. Taufiequrachman Ruki said this morning, conflict of interest is the root of corruption. As we well know, conflict of interest can arise between the interests of a businessperson, those of the public official, and the public interest. The most important should be public interest, of course.

The textbook definition of conflict of interest gives us the first hint as to why. It says a conflict of interest is any situation in which an individual is in a position to exploit a professional or official capacity for personal benefit.

This definition encompasses countless facets of our daily lives. It also tells us that conflict of interest is nothing new. In fact, mankind has struggled with conflicts of interest for thousands of years. More than 2,000 years ago Julius Caesar's wife Calpurnia drew attention to the issue with her famous dictum "The emperor's wife must be beyond reproach." The point she was making about good governance and clean government is as relevant today as it was then. People in a position of power and authority must meet the highest ethical standards, because it is virtually impossible to avoid having conflicts of interest from time to time. It is not enough to deny that a conflict of

interest exists because our actions are proper. The conflict of interest is there even if no laws are broken. We must be beyond reproach; this often means we must recuse ourselves or abstain from the decision-making process. This may seem unnecessary and impractical at times, but I would argue that it is one of the most important building blocks for creating public trust in government institutions.

As an economist, I would also like to illustrate the importance of recusing oneself from the decision-making process when there is a conflict of interest with the theory of the Economic Man. Introduced by John Stuart Mill in the late 19th century, this theory indicates that people act to obtain the highest possible well-being for themselves, given the available information about opportunities and constraints.

The constraints Mill refers to are the laws that hold our society together. These laws ensure that the interest of the individual does not trump the interest of society. But exactly because of the self-interest of Mill's Economic Man, we have to remember that our actions can be drawn into question, regardless of how honorable our intentions are.

So when it comes to dealing with the issue of conflict of interest it is not enough to have the laws and regulations of a country, institution, or corporation that either prevent conflict of interest from arising (e.g., by putting one's assets in a blind trust upon assuming office) or manage the conflict (e.g., by disclosing information, abstaining from decisions, performing independent, third-party evaluations). We also need to learn from the wisdom of our ancestors and act in a way that is beyond reproach. That is why we also need a code of ethics or conduct.

Ladies and gentlemen, as our President emphasized to all of you this morning, Indonesia is conducting an anti-corruption campaign at all levels, which applies to all without exception. We are not only focusing on enforcement but also on preventive measures and a massive public education and awareness campaign. We are also fully aware of the challenges of eliminating corruption—it cannot be done overnight, but is a process that will take time. Nevertheless, it is a process that must be started and maintained, and must include administrative and bureaucratic reforms at all levels.

The Government (and thus by definition those representing the Government!) needs to lead by example in tackling the issue of good governance and corruption, and the right balance must

be struck between setting up minute checks that could weed out all corruption, and more fundamental reforms. It would be difficult to tackle corruption without, for instance, addressing civil service reform. There are no magic bullets, and strengthening governance and combating corruption will take time, and, thus, there has to be a long-term commitment. The key will be institutional reforms, appropriately prioritized and sequenced.

Let me now briefly introduce the key pillars of such a strategy and reflect on our own experience to date in introducing transformational change.

What are the key pillars of a strategy for achieving good governance? *The first pillar is transforming institutions.* This would include strengthening political institutions with reasonable checks and balances, and this in turn will require strengthening both the legislative and executive apparatus and finding accountability for decision making and its checks and balances. In reality, my experience to date on decision making within the executive branch underlines the importance of laying the groundwork for any policy change in order to make informed policy decisions.

This requires groundwork to get the right facts and figures, undertake the impact analysis, map out the “losers and winners” (i.e., different interest groups) from any policy change, and come up with a “balanced” proposal. One is also understandably faced with pressures from various groups, and the challenge to navigate or negotiate with the different competing interests. In this context, the executive must attempt to make balanced decisions without being influenced by particular interest groups to bring the most benefit for the people—often the silent majority.

Other important institutional changes are a sustained effort to strengthen the judiciary, to build an effective public service, and to manage decentralization. Regarding effective public service, one must undertake civil service reform and create adequate institutional capacity in all government ministries. This again will be a long-term task. Civil service reform will include a more merit-based system and an appropriate reward and punishment system, and this can only happen in stages. Short of reforming the whole public service, one has to begin by promoting greater transparency and creating islands of excellence, systems to reduce the discretionary power of officials, and better monitoring systems. At the same time there has to be reward for good performance. Given the length of

time administrative reforms will take, a leader in public office today must be smart enough to determine short-term measures that will signal the seriousness and momentum toward “real change,” and make clear that these short-term measures are installments toward the longer-term goal.

An example of what the Government has done in the recent past is to create “islands of best practices” within the current imperfect system. For instance, a few years ago the Ministry of Finance created the large taxpayers office, a separate office out of which the managing and administering of large taxpayers is done. The office is monitored closely and provides better service, and the officials receive better compensation. In the Ministry of Trade, deregulation and greater transparency is part of the answer. We have reviewed 77 regulations under the Ministry and we have deregulated the ones deemed unnecessary, streamlined the remaining requirements and made them transparent, and determined the number of days and cost needed to process the documents and licenses. Moreover, all this information is made available to the public. We are also beginning to introduce systems of online application to make the process more at arm’s length. Of course, we are still at the beginning of this process and the implementation must be closely monitored for it to be effective, as at the same time we are building the capacity of human resources and systems inside the Ministry.

Another idea that the Government is currently developing is that of special economic zones. These are intended to be certain geographical areas where “islands of excellence” and “islands of best practice” will be created.

The criteria are still being worked out, but the idea is to find short-term solutions to create hubs of economic development. We will not start from zero. We will identify areas that already have infrastructure, access to inputs of production such as labor and supporting industries, a cluster of industries, area for expansion, and, most importantly, an integrated single zone authority that will provide “best practices” in terms of service and systems to serve investors (corruption-free). This will involve the provision of the necessary licenses and permits to operate at the central and local government levels, a service to resolve problems and issues, and an efficient supporting administrative service in various areas such as customs and import and export procedures. It will also require

the best human resources and professionals to provide the service, which could include private sector participants.

The second pillar following from the first is creating an environment conducive to business. Providing such a business-friendly environment has not been the premise of policy in the past, and there is always this saying, “*Kalau bisa dipersulit kenapa harus dipermudah*” (If it can be made more difficult, why make it easier?). This attitude clearly has to change and the program of economic and institutional reforms must be continued to ensure this outcome. However, this also means that the way businesses operate must also change, and leadership from the private sector to operate under today’s different rules of engagement also needs to be developed. Businesses that thrive on preferential treatment or concessions are not the way to go anymore in this new era, and leadership and entrepreneurship to develop Indonesian businesses that can be efficient, effective, and innovative must happen side by side with the improvements in public governance. Both private sector and public sector leadership must play a role in creating the correct understanding of the essence of “conflict of interest,” and the right interpretation of “public-private” partnership or “Indonesia Incorporated.”

The third pillar is leadership at all levels. All the institutional changes and creation of best practices will not happen unless there is an accelerated and major program to upgrade human capital. Education, training, and development of a cadre of young people who will carry on the process will be crucial. Leadership is needed in all areas mentioned—the public sector, political and legislative arenas, the private sector, nonprofit organizations, the press, academe, and so on. Indonesia’s demographic structure is still that of a relatively young population, and this is creating both opportunities and challenges. If we all invest in the leadership of the next generation, we should not be afraid of the future and there will be a revitalized leadership to continue the process and to secure Indonesia’s transformation, as well as its place in a region that is also undergoing massive transformation.

It is incumbent on the leadership in all institutions to take responsibility for investing in human resource development and capacity building to create the next generation of leadership, because the process will take time and we need to have continuation and consistency; otherwise the longer-term goals will not be achieved. That

is why in my ministry we have spent a lot of time thinking through the appropriate program of training, capacity building, and identification of the next generation of leaders in the Ministry. There are constraints on civil service regulations, but the Government is also developing a program of administrative reforms, which tries to find breakthroughs in the system. A number of ministries including the Ministry of Trade are participating in this program.

In closing, I look forward to hearing the results of this seminar—to learn about international best practices, to understand how prevention will always be the key to enforcement, and to learn from each other. I look forward to hearing the parameters for what decision makers can and cannot do when faced with such issues; these will serve as a useful point of reference for all of us.

I want to end my remarks by saying that preventing conflicts of interest is a tireless effort that is a vital part of the anti-corruption drive. Finally, I wish you all a successful seminar and I look forward to your valuable inputs. Thank you for inviting me and enjoy your meal.

Closing Remarks

Hidayat Nur Wahid

Chair, People's Consultative Assembly (MPR), Republic of Indonesia

Bismillah i'rochman i'rochim. Excellencies, distinguished participants, ladies and gentlemen, *Assalammualaikum warachmatullahi wa barakatuh.* It is a great honor for me to be here this late afternoon for the closing ceremony of the international seminar on conflict of interest, a fundamental anti-corruption concept. On behalf of the Indonesian people, I would like to express my deepest gratitude and appreciation to the organizers, the Asian Development Bank, the Organisation for Economic Co-operation and Development, and Komisi Pemberantasan Korupsi; donors and sponsors of this seminar; and all experts who came from all over the world to share their priceless expertise and experience in combating corruption with all of us here, and to see and review corruption or potential corruption from a different angle, as conflict of interest in public service.

If people like you, who have excellent expertise, are blessed with good heart, are dedicated, and have passion to make the world a better place to live, come together and focus, to discuss and try to find alternatives or solutions to urgent issues like the issue of conflict of interest, I believe you can come up with good solutions that are universally applicable to all nations. Today I expect to receive from you all findings, shared experiences, solutions, and recommendations for effectively dealing with conflict-of-interest issues so we can move on to other critical issues like elimination of poverty, improvement of education systems, health care, infrastructure, housing, and public welfare in general.

Ladies and gentlemen, when Indonesia was struck by multidimensional crises in 1997, many people and observers thought that this nation would fall apart. The fact is, this nation got up on her feet and held a general election that was regarded as one of the most democratic elections on the globe, proving that democracy can be upheld in a country where the majority of the citizens are Moslem.

We have also amended our Constitution several times and are not afraid to test our democracy with more amendments to come as necessary. We have made a decision to let our mass media

become one of the freest and most independent in the world. We have made our Parliament function in a democratic environment with “checks and balances.” We have created the most transparent public procurement process for government projects. We are in the process of reforming our bureaucracy and judiciary. We have opened our country to foreign investments to make sure we maintain a competitive advantage in freer global markets. We have established a Constitutional Court to ensure our Constitution is upheld. We have established KPK and the Anti-Corruption Court to prevent and ultimately eradicate corruption. We have ratified the United Nations Convention Against Corruption. We have ratified the United Nations Convention on Civil and Political Rights. We are in the process of adjusting our national laws to the principles of the two conventions. We are reforming our banking systems to be more prudent and supportive to small and medium-scale businesses in order to eliminate poverty. We have established state commissions and organizations to provide a forum for citizens to express their concerns and problems. We are trying to be independent from donors and creditors in our economy.

Ladies and gentlemen, we did, we are doing, and we will do the best we can to ensure that our country has a national integrity system in place—in policy and in practice. The process is evolving, and we will not stop until we get there. We have achieved what took other countries hundreds of years. Yes, our systems are not perfect. Corruption is still everywhere. Performance in our bureaucracy, judiciary, and legislative bodies has yet to be improved. Our economy is still dependent on foreign investment, global capital and money markets, and the successful privatization of our state-owned companies and infrastructure. Our foreign currency savings are still tight. Poverty is still high. Our education and health-care systems are still among the worst in the world. National infrastructure is not well developed enough to spur necessary economic growth. The list of remaining changes is long; however, the more important point is that we have changed and are changing for the better. I believe no one can deny the progress we have made and continue to make.

Distinguished participants, I recognize the value and importance of this seminar on conflict of interest. Your shared experiences, opinions, and recommendations will improve our efforts to establish national integrity systems and move us closer to the goal of “zero corruption.” Combating corruption may be a little bit

easier than establishing “conflict of interest-free” public services. Special attention needs to be focused on establishing a comprehensive system to deal with conflict-of-interest situations, as we have decades of bad habits to overcome.

It will also involve and affect how business in Indonesia is managed. It will change the whole system of government procurement and contracts. It will also change the political structure and dynamics. If conflict of interest in public services is well managed, I believe corruption can be eradicated.

Therefore, efforts to develop a system to manage conflicts of interest in public service require strong political pressure from Parliament, political parties, stakeholders, and civil society. In my position, as the spokesperson of the MPR, or the People’s Assembly, I cannot promise less than doing whatever I can in my capacity to fight for manageable or if possible “conflict of interest-free” public services. As a member of DPR-RI, or Parliament, I will do everything I can, including asking my fellow members of the DPR-RI to make or approve the bills required, to manage conflict of interest in public services.

Ladies and gentlemen, again, thank you very much for your efforts and contributions, ensuring the success of this international seminar on conflict of interest. And by saying, *Alhamdulillah hirobbil alamin*, I officially close this seminar, and hope to see you all again in a much better Indonesia in the near future. *Wassalamualaikum warrachmatullah’i wabarakatuh*.

Section 1:

Conflict of Interest— Historical Origins, Working Definitions, and Conceptual Frameworks

Chapter 1

Defining conflict of interest: General, legal, and institutional frameworks and good international practices

There is growing consensus that managing conflict of interest (COI) is critical to curbing corruption. Thus, understanding what it is and what forces contribute to its occurrence is necessary to developing sound institutional and legal frameworks and good international practices. COI has been identified as an indicator, a precursor, and a result of corruption if left unchecked. *Apparent* and *potential* conflict of interest can be as damaging as actual or *real* conflict. While there is no universal definition for COI, most countries and jurisdictions concur that a conflict of interest occurs when public interests or assets are compromised by private interests. In this chapter, experts from the academe and international organizations consider the historical origins and evolution of COI and grapple with the challenge to define it and appropriately adapt prevention and enforcement mechanisms to address it in various country contexts.

Sir Tim Lankester, President of Corpus Christi College of Oxford University, provides a comparative and historical perspective on the concept of conflict of interest, analyzing how the forces of industrialization and democratization have shaped the norms and expectations of public administration and politics in several developed and developing countries (Britain, the United States, Russia, the People's Republic of China, India, and Singapore). His analysis reveals that,

historically, countries have developed varying ideas and levels of tolerance regarding COI and corruption in general, depending on the level of development, the political and economic system, and ethical and cultural values.

In response, several international organizations have developed guidelines and established protocols to help countries standardize definitions and appropriately adapt prevention and enforcement mechanisms to address COIs. Dmitri Vlassis, Chief, Crime Conventions Section and Division of the United Nations Office on Drugs and Crime (UNODC), describes COI as a complex and sometimes elusive concept and provides an overview of how the United Nations Convention Against Corruption (UNCAC) aims to increase transparency and standardize provisions regarding codes of conduct for public sector officials, legal procurement practices, and management of public finances.

Transparency and standardization are critical elements in establishing sound frameworks and good practices. However, as a number of high-profile corruption cases demonstrate, public officials have found ways to circumvent the process. Richard Messick, Senior Governance Specialist and Co-director of the Law and Justice Thematic Group with the Public Sector, Governance, Poverty Reduction, and Economic Management Division of the World Bank, describes the challenges implicit in regulating COI and implementing disclosure systems, and outlines parameters for effectively introducing measures to improve public sector accountability.

As countries and international organizations shift their focus from prosecution to prevention, COI has moved to the forefront in the fight against corruption and is recognized as a fundamental anti-corruption concept. While challenges still remain, a better understanding and awareness of COI aims to strengthen institutional frameworks, inform international practices, and improve the tools and instruments developed to combat corruption.

The United Nations Convention Against Corruption (UNCAC): A fundamental tool to prevent conflict of interest

Dimitri Vlassis

Chief, Crime Conventions Section, Division for Treaty Affairs

United Nations Office on Drugs and Crime

The International Framework: An Emphasis on Prevention

Increasingly, countries are joining forces to develop strategies to address and prevent common challenges. Multilateral conventions and international protocols are commonly used tools to facilitate international cooperation and consensus. The United Nations Convention Against Corruption (UNCAC) is a critical part of the international legal framework established to prevent and control corruption, as it is the first global instrument with a broad and comprehensive scope ranging from prevention to international cooperation and asset recovery.

With the common goal of prevention at the forefront of the fight against corruption, one area of attention of international efforts has been to determine and isolate root causes. Conflict of interest (COI) has been identified as an indicator, a precursor, and a result of corruption, if left unchecked. Moreover, there is growing consensus that preventing conflict of interest is critical to combating corruption. A comparative study conducted in the European Union further notes that “Most of the time, corruption appears where a prior private interest improperly influenced the performance of the public official...thus conflict of interest prevention has to be part of a broader policy to prevent and combat corruption.”¹

In order to prevent COI, it is necessary to understand what it is and how it can occur. The Council of Europe indicates that “Conflict of Interest arises from a situation in which the public official has a

¹ EU. 2005. Conflict of Interest and Practices in Nine EU Member States: A Comparative Review. Paper prepared for the SIGMA Programme of OECD and the European Union. December.

private interest which is such to influence, or appears to influence, the impartial and objective performance of his or her official duties.” The Organisation for Economic Co-operation and Development (OECD) offers a similar description, defining COI as “...a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interest which could improperly influence the performance of [his or her] official duties and responsibilities.” Importantly, OECD observes that the appearance or perception of a conflict of interest can be as damaging as a documented case of COI, since both foment public mistrust in public sector institutions, which can also lead to corruption. A situation that appears to be a conflict of interest may be enough to undermine public confidence, even if an actual conflict does not exist or it has already been resolved.

COI remains a complex and sometimes even elusive concept. Relationships between the private and public sectors have become increasingly multifaceted and nuanced as a result of the continuously redefined role of the state and the globalization of economies. As public and private interests intersect in ways that are constantly shifting, COI (or its perception) becomes a challenge for practitioners and policy makers alike. At the international level, meeting this challenge has been an effort dating back to the mid-1990s.

International anti-corruption instruments of a legally binding nature, as well as of what is known as “soft law,” include provisions outlining preventive measures, e.g., standards (codes of conduct), guidelines, and tools targeting public sector accountability and conflict-of-interest issues:

- The Inter-American Convention Against Corruption (Article 3: preventive measures);
- The Economic Community of West African States Protocol on the Fight Against Corruption (Article 5: preventive measures);
- The African Union Convention on Preventing and Combating Corruption (Article 7: corruption and related offenses in public service);
- The United Nations Convention against Corruption (Chapter II: preventive measures);
- The International Code of Conduct for Public Officials (Article II: conflict of interest and disqualification);

- The Organisation for Economic Co-operation and Development: Guidelines for Managing Conflict of Interest in the Public Service—Public Sector Transparency and Accountability;
- The Council of Europe: Model Code of Conduct for Public Officials (Article 13: conflict of interest).

It is interesting to note that the first anti-corruption instrument addressing COI was the International Code of Conduct for Public Officials.² The Code of Conduct was a direct product of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, in 1990. The Code of Conduct makes extensive references to COI, outlining the most crucial parameters of the concept and including several measures to deal with it.

Overview of UNCAC Provisions on Conflict of Interest

The UNCAC is a fundamental preventive tool with several specific provisions related to COI. UNCAC emphasizes the importance of transparency and standardization. Several provisions instruct “States Parties” to establish standards to guide public sector officials’ behavior and codify systems to ensure legal procurement practices and management of public finances. UNCAC also outlines guidelines for dealing with the private sector. A summary of the most relevant provisions is included below:

- Public sector (Article 7 §3): Each State Party shall endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Codes of conduct for public officials (Article 8 §6): Each State Party shall take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in General Assembly resolution 51/59 of 12 December 1996...and endeavour to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding their outside activities, employment, investments, assets and substantial gifts or benefits from

² United Nations General Assembly Resolution 51/59, 12 December 1996.

which a conflict of interest may result with respect to their functions as public officials.

- Public procurement and management of public finances (Article 9 §1): Each State Party shall take necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective in preventing corruption. Such systems shall address...measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.
- Private sector (Article 12 §2): Each State Party shall take measures to prevent corruption involving the private sector. Measures to achieve these ends may include...the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.

Consequences of Conflict of Interest

When not prevented, COI can lead to a range of offenses from “simple” abuse of power and influence peddling to obstruction of justice and criminal misappropriation or capture of public assets for personal use or gain. The UNCAC addresses each possible offense in various articles as designated in the list below:

- Embezzlement, misappropriation or other diversion of property in the public sector (Article 17);
- Trading in influence (Article 18);
- Abuse of function (Article 19);
- Illicit enrichment (Article 20);
- Embezzlement in the private sector (Article 22);
- Obstruction of justice (Article 25).

Conclusion

The UNCAC established the Conference of the States Parties to the Convention, a body entrusted with promoting and reviewing its implementation. The Conference held its inaugural session in December 2006 in Jordan and will hold its second session in January 2008 in Indonesia. At its first session, the Conference determined three key priority areas for its work: monitoring of implementation of the Convention, asset recovery, and technical assistance. It is expected that these areas will remain high on the agenda during the second session of the Conference and will continue to guide its work in the foreseeable future. However, the Conference is likely to refocus its efforts on the prevention chapter of the Convention as a crucial element of success in the fight against corruption. When this happens, COI is likely to emerge as an area deserving special care and requiring action at all levels, both domestically and internationally. The UN will continue to work with other international institutions and the continuously growing number of parties to the Convention to prevent conflicts of interest and ultimately reduce corruption in all its forms.

Conflict of interest: A historical and comparative perspective

Sir Tim Lankester

President, Corpus Christi College, Oxford University, United Kingdom

Introduction

Conflict of interest among political leaders and public officials, as we understand it today, has existed as long as there has been public administration.¹ In most premodern societies, the very concept of conflict of interest would not have been recognized. There were a few societies, such as Sasanian Iran and early Tang China, where public officials were expected to administer purely in the interests of the state or of the supreme ruler. Whether they did so is another matter. But in most societies, whether it was 17th century England or 18th century Java, it was automatically assumed that political leaders and officials would take advantage of public office to advance their own personal interests.

It is really only since the advent of the modern industrializing state that the notion has taken hold that public officials and their political masters should be expected to act exclusively in the interests of the state. States with large military ambitions, such as England in the 18th century and Bismarck's and Hitler's Germany, needed an efficient and relatively incorrupt civil service if their ambitions were to be fulfilled. The Soviet Union needed officials who were dedicated wholly to the social and economic transformation envisaged by Lenin and Stalin. When countries in Western Europe and elsewhere democratized and their governments became accountable to their publics, the people as "sovereign" began to insist via the ballot box that politicians and officials should act in the public, as opposed to their own personal, interest.

In most countries, expectations as to the proper duties of politicians and officials have changed over time in the direction of greater transparency and clearer division between their public

¹ This paper deals only with conflict of interest in respect of politicians and non-elected officials. It does not address conflict of interest in the private sector.

duties and private aims. But in countries that have yet to achieve any great measure of democratic control, expectations in this regard remain low; and the same applies to countries that have only recently democratized which have a previous history of corruption and abuse of power.²

The next section offers some definitions and an analytical framework for considering the issues. This is followed by an examination of various countries' experiences, starting with Great Britain over the last few hundred years, and continuing with a brief commentary on the more recent experience of six other countries: US, Russia, People's Republic of China, India, Indonesia, and Singapore. Table 1 provides a snapshot of how Great Britain and these six other countries ranked in terms of how the control of corruption was perceived in 2006 (and ipso facto how they ranked in terms of their control of conflicts of interest). Table 2 shows the data for these countries going back to 1996. The data are taken from the World Bank Institute's recently published Worldwide Governance Indicators (WGIs) and are based on surveys undertaken inside and outside each country.

Table 1: Control of Corruption in Selected Countries

Country	Year	Percentile Rank (0–100)	Governance Score (–2.5 to +2.5)	Standard Error
Singapore	2006	98.1	2.3	0.14
United Kingdom	2006	93.7	1.86	0.15
United States	2006	89.3	1.3	0.15
India	2006	52.9	–0.21	0.13
P.R. China	2006	37.9	–0.53	0.14
Russia	2006	24.3	–0.76	0.12
Indonesia	2006	23.3	–0.77	0.13

² For example, although the Transparency International Corruption Perception Index for 2006 ranked the United Kingdom about 100 places above Russia, according to the TI Global Corruption Barometer 2006 the proportion of British and Russian respondents who felt that their governments' actions against corruption were ineffective was about the same.

Table 2: Control of Corruption, Compared across Selected Countries

Country	Year	Percentile Rank (0–100)	Governance Score (–2.5 to +2.5)	Standard Error
P.R. China	2006	37.9	–0.53	0.14
	2005	30.6	–0.68	0.13
	2004	35.4	–0.57	0.13
	2003	39.8	–0.49	0.13
	2002	42.7	–0.40	0.14
	2000	44.2	–0.36	0.15
	1998	52.4	–0.22	0.15
	1996	56.3	–0.09	0.20
India	2006	52.9	–0.21	0.13
	2005	46.6	–0.33	0.12
	2004	45.6	–0.37	0.13
	2003	44.7	–0.38	0.13
	2002	42.2	–0.41	0.14
	2000	45.6	–0.33	0.15
	1998	47.6	–0.27	0.15
	1996	40.3	–0.36	0.20
Indonesia	2006	23.3	–0.77	0.13
	2005	19.9	–0.87	0.12
	2004	17.0	–0.93	0.13
	2003	14.6	–0.97	0.13
	2002	6.8	–1.17	0.13
	2000	11.2	–1.01	0.14
	1998	10.7	–1.11	0.15
	1996	31.1	–0.55	0.20
Russia	2006	24.3	–0.76	0.12
	2005	25.7	–0.78	0.12
	2004	25.2	–0.77	0.12
	2003	26.7	–0.78	0.12
	2002	20.4	–0.92	0.13
	2000	16.5	–0.94	0.13
	1998	16.5	–0.92	0.15
	1996	23.3	–0.84	0.20

Country	Year	Percentile Rank (0–100)	Governance Score (–2.5 to +2.5)	Standard Error
Singapore	2006	98.1	+2.30	0.14
	2005	99.0	+2.25	0.13
	2004	99.5	+2.44	0.13
	2003	99.0	+2.36	0.14
	2002	99.5	+2.33	0.14
	2000	99.5	+2.25	0.16
	1998	100.0	+2.29	0.16
	1996	97.6	+2.25	0.20
United Kingdom	2006	93.7	+1.86	0.15
	2005	94.7	+1.94	0.15
	2004	94.2	+1.99	0.15
	2003	95.1	+2.08	0.16
	2002	95.1	+2.10	0.16
	2000	96.1	+2.13	0.17
	1998	96.1	+2.12	0.18
	1996	96.1	+2.21	0.20
United States	2006	89.3	+1.30	0.15
	2005	91.7	+1.57	0.15
	2004	92.7	+1.76	0.13
	2003	92.7	+1.74	0.14
	2002	93.2	+1.90	0.14
	2000	92.7	+1.77	0.17
	1998	92.7	+1.70	0.18
	1996	92.2	+1.75	0.20

Source: Kaufmann, D., A. Kraay, and M. Mastruzzi. 2007. *Governance Matters VI: Governance Indicators for 1996–2006*.

Analytical Framework

As seen at least through modern Western eyes, conflict of interest is at the root of the abuse of power by politicians and public officials for private ends. It arises when the personal interests of the politician or official are not fully aligned with the goals of the government or agency with which they are associated. There will always be some (whom we may call the “altruists”) who will dedicate themselves

automatically and unreservedly to these goals. There will be others (the “self-interested”) who, unless there are countervailing mechanisms in place, will allow their personal interests to interfere with their public duties and will use their public position for personal gain. This may take the form of making illicit payments for services rendered; taking advantage of “inside information” for personal financial benefit; providing advice and making decisions in ways that will provide personal benefit; and showing favoritism toward associates or family members in appointments, promotions, and the award of contracts. In a similar way, politicians may take actions that are designed to benefit their party at the expense of the wider public. Where there is abuse of power for personal or purely party gain, we may say that the transgressor has allowed a conflict of interest—i.e., a private or party interest—to interfere with or override his public duties.

The personal interests of politicians and officials can be considered in the narrow sense that they may have a specific, identifiable conflict—e.g., if they own shares in a company bidding for a contract whose award it is their job to decide. Or, their personal interests can be considered in the broad sense that they may have a personal interest that diverges from the aims of their government or agency—e.g., if they are inclined to seek a bribe for providing a service. The broad definition is preferable if one wishes to understand how abuse of power and corruption originate and how to address the issues. The rest of this paper assumes this broad definition.³

³ The broad definition of conflict interest follows that of the “public choice” theorists. See Tullock, Gordon. 1965. *The Politics of Bureaucracy*. Washington, DC: Public Affairs Press; and Downs, Anthony. 1967. *Inside Bureaucracy*. Boston: Little Brown. The broad definition in their work covers not just the situation where the official or politician is seeking financial gain. It also covers nonfinancial conflicts where the official or politician might be working toward a personal policy agenda that is at odds with the official policy agenda. In contrast to the pursuit of personal interests for financial gain, this may not always be at the expense of the public interest—for example, if the official is working for a government whose policies are patently unethical. This analysis deals only with conflicts of interest that result in personal or party financial gain. But even here the conflict may not always be at the expense of the public interest (see the last paragraph in this section). In suggesting that the vast majority of politicians and officials are driven primarily by self interest, “public choice” theorists are apt to underestimate the extent to which politicians and officials in most societies are in fact “altruistic.” Their typology nonetheless provides a useful framework for considering how bureaucracies work.

Politicians are routinely faced with a particular conflict of interest relating to their election or reelection. This is the conflict, on the one hand, between their duties, if elected, to the wider public and, on the other hand, their duties to their political parties and their wish to be elected or reelected. Abuses arise in two principal ways: private individuals or interest groups make payments to politicians or their parties in return for past or future favors; and politicians use these monies, or monies they have embezzled from the state budget, to fund their election campaigns or to bribe voters.

The challenge for governments and civil society is to ensure that there are adequate institutional mechanisms to encourage the “altruistic” and prevent the “self-interested” from pursuing their personal interests at the expense of the public. In the case of officials, these mechanisms might include:

- Appointment and promotion on merit, including having regard to the integrity of the individual;
- Adequate compensation;
- Clear rules for handling specific conflicts of interest (for example, “declaring an interest” when dealing with issues in which the official has a personal interest) and for ensuring ethical behavior in general (for example, competitive tendering for contracts);
- Good management to ensure compliance with the rules;
- “Altruistic” leadership;
- A legal framework that can act as a backstop and punish wrongdoing;
- Oversight by the legislature;
- Oversight by civil society organizations;
- Protection for whistle-blowers;
- Freedom-of-information legislation to allow public access to internal government documents;
- An independent press that investigates abuses of power.

The position in the case of politicians is slightly different. Some of the above mechanisms apply, but not all. Where political leaders are elected, there is the additional incentive for good behavior, and deterrence against bad behavior, provided by the electoral process. And in a presidential system, the legislature can provide

a further check on the abuse of power by the president—provided the legislators themselves are not conflicted. Where civil servants at the most senior levels are professionals rather than political appointees, they too may provide a check on the activities of their ministers.

However, the efficacy of the electoral process in controlling corruption and the abuse of power should not be exaggerated. Voters choose their candidates on the strength of a number of qualities and sometimes without knowing what their qualities are. And once the election is over, voters have to wait for a period of years before they can reward or punish good or bad behavior. They also face a “coordination problem”—in that a single vote has a negligible impact. Parties exist partly to address this “coordination problem” but are not always successful in doing so. Voters will, by definition, fail to punish bad behavior if they have been bribed by politicians to keep them in power.

Where political leaders are not elected, the institutional mechanisms or checks and balances outlined above are likely to be weak or nonexistent. Consequently, unless the leader is an “altruist,” corruption is likely to flourish. If political leaders are elected, and if adequate checks and balances are not in place, corruption can be just as bad or even worse. This is especially true of resource-rich democracies.

Electoral competition, especially in newly emerging democracies, provides a strong temptation for politicians to embezzle public funds in order to indulge in political patronage. The high level of “resource rents” accruing to the government of a resource-rich country allows general taxation to be correspondingly lower. When general taxation is low and “resource rents” are high, the general public has less incentive to scrutinize the actions of their political leaders. The latter therefore find it easier to embezzle public funds for personal and party gain, and instead of attempting to win the support of voters on the basis of commitment to providing good public services, they garner support through patronage and bribery. Adequate checks and balances to prevent corruption are needed in all democracies, but in resource-rich democracies they are all the more important. However, because they are able to secure “resource rents” more easily than revenue from general taxation, political leaders will resist stronger checks and balances.

Consequently, this is not an easy cycle for resource-rich democracies to break.⁴

In poor democratic societies, the low level of revenue resources will also tend to encourage political corruption. If funds are not available to provide for even the most essential public services, conflicts over resources are likely to be intense. Factional groups may organize themselves along ethnic, religious, or class lines in competing for these scarce resources—and for jobs and contracts. Since resources are not sufficient to provide public services to everyone who is legally entitled to them, these factional groups may bribe politicians to ensure preference in the provision of services and jobs and contracts. In return, the factional groups will “deliver the vote,” so that the politician is elected. Until revenue resources and state capacities are improved, or unless large, inclusive political parties exist or can be developed, this co-dependency is likely to persist.⁵

When political leaders, whether elected or not, do abuse their position of power for their own personal gains, it is impossible for them to provide leadership on conflict of interest and corruption issues; and it is all too likely that officials in the various ministries and agencies, even where there has been a tradition of transparency and good conduct, will take their cue from the example that the politicians have set and imitate their behavior.

The mechanisms mentioned above for controlling conflicts of interest are likely to be more effective if:

- the society’s informal norms, codes of conduct, and conventions are supportive of the formal rules;
- there is a tradition of altruism in public life and desire or inclination to serve the public interest;
- informal links between the private sector and politicians and officials are relatively limited ;
- the prevailing ethical system supports individual honesty and integrity;

⁴ See Collier, Paul, and Anke Hoeffler. 2006. Testing the Neocon Agenda: Democracy in Resource-Rich Societies, Mimeo (available on Hoeffler’s Web site).

⁵ This argument is developed in Khan, Mushtaq. 2006. Corruption and Governance in South Asia. In *South Asia 2006*. Europa Publications. It helps to explain why, other things being equal, there tends to be more corruption in poor countries than in richer countries, and why corruption reduces as countries develop.

- there are strong civic values, emphasizing trust and loyalty to the relevant political entity and to the agency for which the politician or official is working;
- the cultural environment is supportive—for example, with reference to how the individual is expected to behave in relation to his family and wider groupings, or how materialistic the society is;
- there is pride in proficient performance at work;
- the rules and controls over which political leaders and officials have discretion can be kept to a minimum;
- the country's recent governance record is relatively good (what political scientists call "path dependence").

If a country is embroiled in serious internal or external conflict, or if there is dramatic political or economic transformation in progress, the difficulties are likely to be much greater.

Societies need to guard against not just the actuality of conflict of interest intruding into official decision-making but also the perception that it may be doing so. For example, a political leader or official may be entirely "altruistic" in the way he behaves, but if he happens to have a financial interest in an issue with which he is dealing, the public may perceive that he is acting in self-interest. So there need to be mechanisms in place to avoid any such perception—e.g., making a declaration of personal assets upon assuming office, establishing "blind trusts" that are managed by an independent trustee, and "declaring an interest" and asking another minister or official to provide advice or make the decision when there is a clear conflict of interest.

The analytical framework outlined above breaks down where the goals and rules of the government or agency lack clarity, are unworkable, or are conflicting. In this case, it is difficult for the official to know exactly what his public duties are. He is likely to be serving the public interest best if he interprets them to the best of his ability so as to produce the best outcome for the public. However, in a situation where it is routine for the official to "bend the rules," it all too easily becomes routine for him to exact bribes or gifts for doing so. The official has secured a personal financial gain, but the public interest may also have been served. This situation arises particularly in command economies when they are in transition to a market economy.

A Comparative Perspective

Great Britain

For most of Britain's history, conflict of interest among rulers and their officials was endemic. Until the 18th century, no one expected the king or his courtiers *not* to take advantage of their position to enrich themselves. There were exceptions who served the Crown relatively altruistically in the interests of the nation. A well-known example is Samuel Pepys, the diarist but also great reformer of the Navy in the 1660s. But even he was not averse to using his position to earn some money on the side through smuggling.

In the early 1700s, the administrative apparatus was a mixture of the medieval and the modern. In some ministries, there was gross nepotism, corruption, incompetence, and negligible salaries supplemented by handsome fees; in other ministries, civil servants worked long hours, were reasonably honest, and were reasonably paid. Gradually, the honest professionals supplanted the corrupt and the incompetent, and the quality of administration across government improved. Several factors contributed:

- Recognition by the King's ministers of the need for efficiency in the collection of taxes if Britain was to be successful in its increasingly expensive foreign wars.
- Growing strength of Parliament: After the "Glorious Revolution" of 1688 when King James II lost his throne and William of Orange was invited to take his place, the Parliament—though representing only the nobility and the landed gentry—became much more powerful in relation to the King and his ministers. It gained control over the collection of taxes, it gained control of the army, and it was reluctant to disburse moneys without good reason—and this reluctance in turn created a degree of accountability that acted as a powerful constraint on administrative malpractice.
- Increased public awareness through the press and lobbyists: There was a growing band of lobbyists, and a flourishing press, which published information on matters of state; together, they began to act as a check on secrecy and malfeasance.
- Independent judiciary's check on executive powers: There was an independent judiciary, which could enforce limits on the executive's power and on its abuse.

By the early 1800s, standards of governance were still a long way from being considered transparent and clean. Further advances took place in the 19th century, in large part as a result of the following factors:

- The extension of the vote to all males, which created a stronger constituency for honest and effective government;⁶
- The influence of political philosophers like Adam Smith, Tom Paine, J. S. Mill, and Jeremy Bentham, who placed emphasis on the limits and efficiency of government;
- The growth, partly through the revival of religious belief, of so-called Victorian values—with their emphasis on honesty, duty, and hard work;
- Reforming political leaders, especially four-time Prime Minister William Gladstone;
- The creation of a professional civil service appointed through competitive examination following the Northcote-Trevelyan report in 1854;
- The spread of education, making people more politically aware and providing the basis for a competent civil service;
- The passing of legislation aimed at curbing corrupt practices in elections (including the introduction of the secret ballot) and in other areas of public life; and
- The establishment of an independent National Audit Office reporting directly to Parliament.

By the early 20th century, public life in Britain was relatively ethical. The control mechanisms that had developed over the previous 200 years, plus a supportive culture, ensured that the misuse of public position for personal or party gain became rather rare. There were a few high-profile scandals such as Prime Minister Lloyd-George's award of peerages (and therefore membership in the House of Lords) to his cronies as a reward for financial support—and this led in 1925 to legislation outlawing such behavior. Probably the most persistent abuse of power was at the local level—in the zoning of land for development and the award of contracts.

⁶ Women did not get the right to vote until 1916.

Government at the national and local levels became more transparent as the 20th century progressed. Government decisions became more open to public scrutiny, the electorate became politically more aware, and the opportunity for politicians and officials to place contracts with their favorites was sharply constrained by the extension of competitive tendering. Britain was generally reckoned to be among the most honest in the world in terms of governance.

Nonetheless, there continued to be the occasional scandal and the press became much more aggressive in spotting relatively minor transgressions. As a consequence, in the early 1990s the public called for more effective measures of control. This demand was sparked by the “cash for questions” scandal, which involved Conservative MPs who accepted cash for asking questions about particular issues in the House of Commons. The amounts were quite trivial (in the hundreds of pounds) but the scandal reinforced the public’s growing distrust of politicians. The biggest concern, in fact, pertained to the funding of political parties. This came to a head under Tony Blair’s premiership when the Labor party first of all received a 1-million-pound donation from the boss of Formula One racing, who, it was alleged, in return received exemption from a ban on promotions by the tobacco industry. Secondly, there were accusations that the Government had awarded peerages in return for donations to the Labor party in contravention of the 1925 Act. There was a 16-month police investigation, but eventually the prosecuting authorities decided not to bring charges against anyone.

Prior to these particular events, in 1994 a new standing Committee on Standards in Public Life was established, chaired initially by a senior judge. This committee produced a series of reports, which, along with pressure from other quarters, led to new or strengthened mechanisms for regulating the conduct of MPs, political parties, ministers, and civil servants. These mechanisms and measures included:

- A new Code of Conduct for MPs, requiring them to act solely in the interests of their constituents and the wider public;⁷

⁷ <http://www.publications.parliament.uk/pa/cm/cmcode.htm>

- The requirement for MPs to give more detail regarding their outside interests in the compulsory Register of Members' Interests;
- The establishment of a Parliamentary Commissioner for Standards with the task of overseeing the Register of Members' Interests and the operation of the Code of Conduct, and investigating specific complaints against individual MPs;
- The establishment of a House of Commons Committee on Standards and Privileges, whose task is to supervise the Parliamentary Commissioner;
- The passage of the Political Parties, Elections and Referendums Act, which requires political parties to report to an independent Electoral Commission on their spending during election campaigns and on the sources of their funding;
- A new Ministerial Code, which sets out in some detail how ministers are expected to conduct themselves in relation to their private interests;⁸
- The appointment of an Adviser on Ministerial Interests (reporting directly to the Prime Minister), whose task is to advise individual ministers on how they should handle potential conflicts of interest and to investigate any alleged breaches of the Ministerial Code (this task was previously undertaken by the Cabinet Secretary or by Permanent Secretaries⁹);
- A new Code of Practice for Ministerial Appointments to Public Bodies (to make sure that ministers make appointments on merit alone) and the appointment of a Commissioner for Public Appointments, whose task is to regulate and monitor such appointments;¹⁰
- A revised Civil Service Management Code, which covers the whole range of management issues, and a separate Civil Service Code, which sets out the values and the standards that civil servants are expected to uphold;¹¹

⁸ http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/ministerial_code/

⁹ In the British system, Permanent Secretaries are the civil service heads of government ministries.

¹⁰ <http://www.ocpa.gov.uk/>

¹¹ <http://www.civilservice.gov.uk/publications/code/index.asp>

- The appointment of Civil Service Commissioners (by the Prime Minister) to audit recruitment by individual ministries to make sure they comply with the principle of selection and promotion on merit and fair and open competition;
- The Freedom of Information Act, 2002, which enables citizens to have access to all government papers—other than those pertaining to an individual staff member—unless the agency in question can demonstrate (to the satisfaction of the independent Information Commissioner) that, in providing the information, the nation's security would be put at risk or that commercial confidentiality would be breached.

The funding of political parties—which is probably the most pressing substantive issue—remains to be adequately tackled. Yet another committee under the chairmanship of a retired Permanent Secretary has recently reported on this issue. This committee recommends caps on donations, reductions in spending on general election campaigns, and some limited public funding (20–25 million pounds per year) for political parties.¹² The Government and the opposition parties have yet to express a view on the proposals.

Thus, it can be seen that over the past 10 years or so, despite the fact that corruption and the abuse of power were already very limited by international standards, the control system has developed quite considerably. This system continues to rely principally on internal self-regulation and independent scrutiny, although there are laws on corruption and other forms of misconduct to support these voluntary measures if necessary. It is too early to say definitively what impact these latest changes have had. The public remain somewhat cynical about politics and politicians, but this may have as much to do with policy failures as with continuing concerns about the abuse of position for personal or party purposes.

United States

Conflicts of interest abound in American politics and public administration, owing principally to the dominance of business in the political and cultural life of the country. Politicians and senior

¹² <http://www.partyfundingreview.gov.uk/download.htm>

officials very often come from the private business sector, and return to it when they have completed their term of office. The rotation of people from the private sector into and out of government is high. Big business is a major funder of election campaigns. "The pursuit of the moneyed life," wrote the sociologist C. Wright Mills, "is the commanding value, in relation to which the influence of other values has declined, so men easily become morally ruthless in the pursuit of money."¹³ In this cultural climate, politicians and officials may be all the more susceptible to accepting favors, and private individuals or organizations to offering them.

In the nation's early years, the ideals and altruism of the Founding Fathers ensured that those appointed to public position were competent and honest. One historian has written that "during the formative years of the American national government its public service was one of the most competent in the world. Certainly it was one of the freest from corruption."¹⁴

This soon changed. Standards in public life declined as the gentlemen and intellectual political leaders of the revolutionary period were replaced by self-interested politicians. The partisan use of patronage became standard practice and access to public office became dependent not on a man's competence and integrity but on his political connections. Contrary to the premise that democracy favors good governance, in the US case in the 19th century the spread of democracy seems to have had the opposite effect. When a reforming minority proposed reforms in the civil service so that appointments would be made by competitive examination, these were routinely opposed as being elitist and antidemocratic.¹⁵

Civil service reform at the federal level was eventually enacted in 1883, but this did not affect the politicians. The railroad boom, the concentration of economic power in the "robber barons," the dominance of self-interested party bosses, and other factors led

¹³ Mills, C. Wright. 1952. *A Diagnosis of Our Moral Uneasiness*. *New York Times Magazine*. Reprinted in *Power, Politics and People*. New York: Ballantine Books.

¹⁴ Van Riper, Paul. 1958. *History of the United States Civil Service*. Evanston, Illinois.

¹⁵ Hofstadter, Richard. 1963. *Anti-intellectualism in American Life*. Vintage Books.

to corruption and abuse of power in the public domain on a large scale. In the 20th century there was a gradual cleansing of public life, thanks to the rise of progressive politicians (such as the two Roosevelts), a more vigilant press, and the recognition that for the US to be a successful world power it needed an efficient and uncorrupt administration.

The American approach, much more than Britain's, was to rely on the law to enforce rectitude, rather than self-regulation. This approach is reflected in a vast array of "ethics legislation," which goes into great detail on the duties and obligations of elected and appointed officials.

Today, political patronage remains more widespread—and accepted—than in most Western democracies. For example, ambassadors are routinely chosen on the basis of a connection with the President—friendship or financial support for his election. And thousands of other senior officials in the federal government are appointed on the basis of their political affiliation. Furthermore, conflicts of interest are not adequately controlled, especially in the area of public procurement, and public spending more generally.

It is rare for the formal rules to be broken, but private businesses often have a major influence on how the rules are formed and implemented. Recent examples include the extensive use of sole-source contracting in Iraq, the pricing of pharmaceutical products under Medicare, and the exorbitant margins paid to the banks for funding guaranteed student loans. In return, politicians receive funding for their election campaigns. Even more so than in Britain, a major concern is the whole question of election funding. Effective restrictions on donations do not exist, and the length and huge expense of electioneering encourages political corruption of the type just mentioned. All that said, the US does have a very tough legal framework and a vigilant press, and its WGI ranking is only just below the top decile—though, as the world's wealthiest nation, it might be expected to have a higher ranking.¹⁶

¹⁶ See Table 1 for more information on the World Bank Institute's WGI rankings.

*Russia*¹⁷

During the Soviet period, the personal goals of all citizens were supposed to be aligned with the goals of the state. In practice, of course, they were not, especially when the state failed to deliver on its promises. Under Stalin, citizens were forced into line or perished in the gulag. In the later period, it was well known that Communist Party leaders took advantage of their positions to advance their own interests and those of their families.

For employees of the state at lower levels, the position was more ambiguous. For the economy to work as well as it did, the formal rules and controls had to be selectively sidestepped by the managers of state businesses with the complicity of officials. In going along with these “informal practices,” officials were arguably acting in the public interest while also often benefiting personally by accepting favors in return. In these circumstances, concepts of public duty and honesty became blurred, and most officials were in one way or another conflicted. Most people were forced by the contradictory demands of the system into breaking the rules for personal ends, though some were more greedy and less honest than others.

The introduction of a market economy and a democratically elected government post-1989 might in theory have put an end to such conflicts. However, it did not, for several reasons. First, the new economic rules were often defective, and it was necessary for the managers of newly privatized businesses to continue to use “informal practices” if they were to survive. Moreover, the “informal norms”—i.e., codes of conduct and ethics—of the earlier period continued to prevail, so that officials and managers saw nothing wrong with continuing with the old “informal practices,” though sometimes in modified form. Thus, opportunities for officials to extract rents from the economy for their own personal benefit—particularly with the sale of state assets—increased enormously. And finally, the checks and balances outlined earlier were grossly inadequate. Essentially, there was no serious attempt by political leaders to control the

¹⁷ This section draws on Ledeneva, Alena. 2006. *How Russia Really Works: The Informal Practices that Shaped Post-Soviet Politics and Business*. Cornell University Press; and Hellman, Joel, and Daniel Kaufman. 2001. Confronting the Challenge of State Capture in Transition Economies. *Finance and Development* 38 (3; September).

abuses, since they themselves were also indulging. Neither the parliament nor the courts, or the press proved effective in stopping them either.

Rent seeking and bribery have been associated with both the formation and the implementation of the rules and policies on a vast scale. Major business interests (the oligarchs) effectively “captured” the state. And there is now a further sinister twist: the Federal Service of Security (formerly the KGB) has effectively gained control of some of Russia’s largest assets.

The interdependence between big money and the political leadership has become endemic and has seriously undermined both the working of the economy and the legitimacy of the state. The oligarchs depend on the politicians for preferential treatment and have a major influence on policy; the politicians rely on the oligarchs for large financial rewards and for their political survival. Thus, conflict of interest in government remains rampant and largely unchecked.

Russia finds itself in a vicious circle because the oligarchs (now joined by the FSB), having won control of the rules and of policies, strongly resist any attempts to reform, and the politicians resist reform because it would weaken their hold on power. The situation has been aggravated, for the reasons explained earlier (by the fact that Russia has become flush with “resource rents”). Although the WGI data show some improvement since the late 1990s, Russia remains in the bottom quartile.

*People’s Republic of China*¹⁸

There are some similarities between the People’s Republic of China (P.R. China) and Russia. Under Mao’s command economy, there were conflicts of interest and corruption at the top; and there were “informal practices” lower down that were outside the formal rules. Following the movement toward a market economy starting in 1978, corruption also began to rise. The coexistence of planning with the free market (especially the coexistence of market and controlled prices) offered huge opportunities for fraud; and

¹⁸ This section draws on He, Z. 2000. Corruption and Anti-Corruption in Reform China. *Communist and Post-Communist Studies* 33 and Sun, Yan. 2005. Corruption, Growth and Reform: The Chinese Enigma. *Current History* (September).

when power was decentralized from Beijing to the regions in the early 1990s, the abuse of power by local officials for personal gain increased dramatically.

The media were discouraged until very recently from exposing corruption; local officials lacked supervision as power from the center weakened; and voting at village and township levels had limited impact because of the practice of vote buying. Moreover, illegal activity in the economic domain was sometimes countenanced if it could be seen to enhance development prospects. As faith in Marxism-Leninism declined, there was nothing to take its place from the point of view of restraining the pursuit of self-interest. With the economy growing so rapidly, officials could get rich quickly by “bending the rules” and giving preferential treatment to favored entrepreneurs. The “informal norms”—codes of conduct and ethical standards—inherited from the Mao period seem to have encouraged this, or at least not discouraged it. The tradition of *guanxi*, the respect for social relations and for reciprocity, may have played a part too.

On the other hand, one of the main causes of the political demonstrations of 1986 and 1989 was disgust with the level of corruption, and as of today, this remains the Chinese public’s greatest concern after unemployment. The central leadership has taken this seriously and has conducted several major national anti-corruption campaigns. Many institutional changes have been attempted, such as requiring officials to declare their income from all sources, stopping them from appointing relatives to posts, and preventing them from setting up “satellite activities” to raise revenues. And there has been a major effort at enforcement with thousands of arrests and exemplary punishments, including the execution of a former regional governor. There have also been attempts at establishing “moral education.”

Despite all these efforts, corruption and the misuse of position by officials remain a major problem; according to the WGI data, corruption has got significantly worse over the past 10 years. Yet, it has not had the adverse effect on economic performance that the textbooks say it should. This is where P.R. China differs from Russia. Political scientists and economists have long been puzzled by these differences.

The most plausible argument seems to be that in P.R. China, unlike Russia, national political leaders have been strongly committed to the successful transformation of the economy and have not

by and large put their personal interests first. Corruption in the main has been below the top level of government. Consequently, P.R. China has avoided the “state capture” by business interests that has blighted Russia. Furthermore, it has been argued that Chinese corruption—because it is primarily at the local level—is of a competitive nature and therefore involves an element of “market clearing.” Unlike monopoly “rent seeking” in central government, “competitive corruption” can ensure the efficient use of the scarce resources that officials control; if one set of local officials is too greedy, businesses can go to another locality.

India

In terms of governance, when India became independent in 1947 it was fortunate in three respects. It had a democratic constitution. It had a professional higher-level civil service well known for its integrity and impartiality. It had political leaders who, influenced by Gandhi, lacked material ambition for themselves and were wholly committed to the economic and political transformation of their country. Where corruption and conflict existed, it was at low levels of government and of a petty kind—involving “speed money” paid by the “common man” for various public services.

Over the following decades, several things changed. The strict controls on imports and investment offered significant “rent-seeking” opportunities, especially in a situation of severe foreign exchange and capital goods shortage. Punitive tax rates encouraged tax evasion and bribery of revenue officials. As the Congress Party ceased to have a near monopoly of power at the center and in the states, it needed increasing amounts of money to fight elections. Other parties also needed money. Factionalism, particularly at the state level, and the competition for limited public resources was a powerful driver of political corruption.¹⁹ Corruption by politicians required the complicity of officials. Although the media have been reasonably effective in exposing political corruption, this factor has not stopped politicians with corrupt reputations or even criminal records from getting elected: voters seem more interested in whether the politician will deliver on his or her promises.

¹⁹ See Khan, Mushtaq. 2006. Corruption and Governance in South Asia. In *South Asia 2006*. Europa Publications.

According to a former Central Vigilance Commissioner of India, the tight legal restrictions on donations to political parties actually exacerbated the situation so that “the vast majority of political funds came in the form of ‘black money’ which was not regulated by the state and was most likely gained by earlier corrupt deals at the expense of the state.”²⁰ As time went on the high ethical standards inherited from Gandhi and from the former Indian Civil Service began to slip. As a consequence of all these factors, by the 1970s high-level corruption had become a significant feature of the Indian landscape among both politicians and officials.

When India liberalized in the 1990s, many assumed that corruption would lessen—particularly as administrative controls on imports and investment were abolished. This, however, does not appear to have happened: if anything, corruption worsened. Politicians and officials have found that there are plenty of other avenues, such as public procurement, the sale of public assets, and the award of licenses, where they can extract bribes.

Other factors that have contributed include:

- The widening gap, at senior levels, between public and private sector salaries.
- Poor civil service management.
- Weak enforcement of the law (and therefore low risk of detection). The Central Vigilance Commission, and its state counterparts, which are charged with conducting investigations into corrupt practices, have a mandate that covers only nonelected officials. Compared with P.R. China’s efforts, their efforts have been weak and they have not been helped by lack of support from politicians and slow action by the courts.
- The fact that many politicians, especially at the state level, have criminal records and yet have not been disbarred from elected office.
- The “get rich quick” mentality that has infected many as India has opened up and the economy has taken off, and made them more likely to pay and accept bribes.

²⁰ Vittal, N. 2002. Corruption and the State: India, Technology and Transparency. *Harvard International Review* 23 (3).

Petty corruption has shown no sign of subsiding. A survey conducted by Transparency International (TI) in 2005 reported that 80% of respondents who had interacted with the police during the previous year had paid a bribe; for land registration and records, the figure was 48%, and for the lower judiciary it was 47%. A large majority of respondents felt that corruption in their day-to-day experience was getting worse. Clearly, therefore, a high proportion of lower-level public servants are conflicted and are pursuing aims outside their public duties.²¹

According to the WGI data, India's record is considerably better than that of P.R. China, Russia, or Indonesia, notwithstanding the fact that it is a considerably poorer country in per capita income terms; and there was a significant improvement between 2005 and 2006. Despite the fact that electoral competition has had some negative effects as noted above, India's better performance is probably a tribute to the fact that it has been democratic for 60 years, the rule of law has more or less prevailed, and there has been an independent press. A recent positive factor was the enactment in 2005 of the Right to Information Act, replacing the much weaker Freedom of Information Act (2002) and for the first time giving Indian citizens extensive rights to access information and documents held by central and state governments.

*Indonesia*²²

There are some similarities between General Suharto's New Order regime and 18th century England. Under the New Order, the executive was extremely powerful but its power was not absolute; there was a mix of people in government—some were professional and honest, others were appointed on the basis of connections rather than merit and were highly corrupt; and while government leaders abused their position for personal gain on a large scale, they were also committed to the nation's success. However, in the last few years of the regime, it deteriorated to something more like

²¹ Transparency International India. 2005. India Corruption Survey. Available on TI India's Web site.

²² The views expressed in this section are largely based on work undertaken by the author in connection with an evaluation of the UNDP's support for governance reform in Indonesia, carried out in January 2007 and available from UNDP.

Yeltsin's Russia, with Suharto (and his family) benefiting hugely from his connections with Indonesia's own "oligarchs" to the detriment of the nation and his own legitimacy. Suharto and many of his colleagues in government were hopelessly conflicted through their close links with the private sector and their revenue-raising activities associated with the military and other branches of government. Moreover, they exploited these conflicts. Suharto's family members and the "oligarchs" effectively "captured the state," similar to what transpired in Russia.

Suharto was forced out of office in 1998 partly on account of growing resentment of corruption. Since then, Indonesia has made impressive strides in terms of institutional reform—the holding of direct (and generally clean) elections for president, for provincial and local officials, and for national and local parliaments; the strengthening of the role of these parliaments; the removal of the military from government; the decentralization of power from Jakarta to local governments; and the setting up of an array of new institutions aimed at reducing corruption and political patronage, e.g. an independent General Elections Commission, a Supreme Audit Agency, an Anti-Corruption Commission, an Anti-Corruption Court, and an Ombudsman's Office.

Yet, progress in actually reducing corruption and in controlling conflicts of interest has been slow. Indonesia has significantly improved its WGI ranking on the control of corruption over the past few years—but it is still in the bottom quartile at about the same level as Russia. There have been hundreds of investigations by the Anti-Corruption Commission and some high-profile convictions; but corruption remains pervasive. In central government it may have diminished, but this is offset by an increase at local levels as power has been devolved from Jakarta. (Businesses complain that having to pay bribes at the local level creates greater uncertainty than paying bribes at the center. However, it is possible that, as in P.R. China, it reduces the risks of "state capture"). The media, with their newfound freedom, as well as other civil society organizations, have played a useful role in exposing corruption; but the national parliament has been disappointing—indeed, as in Russia, there is routine bribery of MPs by the powerful interests who wish to resist reform.

Political leadership on the issue has been variable. President Yudhoyono has a reputation for honesty and has been keen to make progress on the corruption issue; but the same cannot be

said of certain other political leaders. As in Russia, booming natural resource revenues have made embezzlement by politicians and officials that much easier. Senior politicians retain major business interests, and directly or indirectly continue to exercise their authority in respect of these interests. Low civil service and parliamentary salaries also encourage bribe taking.

Worst of all, the court system has performed poorly in bringing the corrupt to justice: relative to the scale of the problem, convictions have been few and some of the sentences derisory. Many senior judges have a history of corruption, and the Supreme Court has made it difficult for the Anti-Corruption Court to function. As in other countries in political transition, the informal norms and practices of the past have tended to carry on into the present—not just from the Suharto period but also from the older tradition of offering gifts in return for services. And finally, there has been resistance to reform from those powerful interests that “captured the state” in the late Suharto period.

In short, democratization has to yet to be accompanied by adequately functioning checks and balances or by a sufficiently supportive political and cultural environment.

Singapore

Singapore is a paradox. It has one of the cleanest governments in the world. Yet, as one scholar has observed, “the line between business and government is systematically blurred.” The ties between politicians, civil servants, and private businesspeople are close. They have careers that involve moving from one sphere to the other; and the structures of ownership provide many opportunities for the abuse of power. In the light of these ties, “it would not be surprising if government was unable to enforce prudential regulation and resist rent-seeking.”²³ In addition, Singapore is effectively a one-party state, there is a lack of transparency in the way government conducts its business, the media are controlled and uncritical,

²³ Hamilton-Hart, Natasha. *Pacific Review* 13 (2). This section draws on her analysis and also that of Tan, Tay Keong. 2003. Masters, Mandarins and Mortals: The Constitution of Singapore’s National Integrity System. In *The Enemy Within: Combating Corruption in Asia*, edited by Simon Tay and Maria Seda. Eastern University Press.

and the rule of law lacks full credibility. And there was a history of quite severe corruption before the 1970s.

All of these conditions would appear to be inimical to clean government. Why then has Singapore done so well? There appear to be several factors:

- Excellent leadership on the whole range of governance issues from former Prime Minister Lee Kuan Yew and his successors;
- Tough anti-corruption legislation and vigorous enforcement;
- Excellent salaries for civil servants and for ministers;
- Strong performance-related management within the civil service;
- Ethical values emphasizing personal integrity, duty to the community, and the rule of law.

These values have not come about automatically; they were encouraged or instilled by Lee Kuan Yew and his associates in preference to some traditional Chinese attitudes that give more emphasis to the family and social networks and show less respect for the law. It is a very small country and therefore it has been relatively easy for political leaders to change the values and practices of the whole society compared with a much larger country like Indonesia.

While Singapore's record in addressing conflict of interest and avoiding corruption is enviable, conventional analysis would suggest that, without the more "normal" checks and balances observed in Europe and elsewhere, there must be a risk that its performance might deteriorate. Much depends on the continuation of an "altruistic" political leadership.

Conclusions

In all seven countries reviewed in this paper, political leaders and officials have encountered, or allowed themselves to encounter, conflicts of interest. Where these have not been held in check, there has been abuse of power for personal or party gain. The following are some tentative lessons from this analysis:

- Societies have different ideas and different degrees of tolerance concerning conflict of interest, depending on the level

of development, the political and economic system, and perhaps different ethical and cultural values.

- Assuming control of conflicts of interest and reducing corruption is a complex process and may take years to achieve. It is harder for countries when they are very poor. Informal norms and practices inherited from the past, and resistance from those who have been the beneficiaries of previous corrupt practices, make reform all the more difficult. Political elites, as well as the wider public, have to see the need for reform.
- Unnecessary regulations and “red tape” should be eliminated. However, contrary to the standard neoliberal view, economic liberalization does not automatically result in less corruption and initially may increase it. Although administrative discretion is reduced, there are still plenty of areas where politicians and officials retain discretion and therefore retain opportunities for rent seeking; and liberalization often produces a “get rich quick” culture, which makes bribery more acceptable.
- Contrary to the neoliberal view, democratization will not automatically reduce corruption. In the early stages of democratization, electoral competition may increase corruption, especially in resource-rich countries, as well as in poor countries, where there is intense competition for limited public resources. High priority needs to be given to developing well-functioning checks and balances.
- There is no magic or unique mix of solutions that will be appropriate or applicable everywhere.
- The three most important ingredients are likely to be effective political leadership that drives institutional reform and changes people’s attitudes, a strong legal framework and enforcement of the law, and a flourishing, independent press.
- Other helpful ingredients are likely to be a professional, well-managed, and adequately paid civil service; clear rules on the duties and obligations of elected politicians and officials and systems in place to ensure compliance; and democratic accountability at both national and local levels.
- All democratic countries need to consider carefully how to better regulate the funding of political parties and spending on election campaigns.

Regulating conflict of interest: International experience with asset declaration and disclosure

Richard E. Messick

Senior Governance Specialist, Co-director, Law and Justice Thematic Group,
Public Sector Governance Poverty Reduction and Economic Management,
The World Bank

Overview of Conflict-of-Interest Regulation

Conflict-of-interest legislation ensures that when government officials decide issues of public policy, their personal interests do not cloud their judgment—that their decisions will be based solely on what is best for the public as a whole. Conflict-of-interest laws achieve this objective in two ways. One way involves banning certain blatant conflicts altogether. Ministers and civil servants will thus be prohibited from awarding government contracts to firms they own or from hiring close relatives. The second way conflict-of-interest law prevents personal concerns from coloring official decisions is by requiring public servants to disclose their private interests. Not all conflicts are immediately obvious. Instead of owning a potential government contractor outright, a minister might own stock in it. Requiring ministers to disclose their shareholdings and other assets will reveal these kinds of less obvious conflicts.

While a conflict-of-interest bill must be tailored to local conditions, certain principles are found in all of them. Any conflict of interest law should:

- distinguish private from public interest;
- provide mechanisms for the disclosure of private interests;
- identify which private interests are incompatible with decision making in the public interest;
- establish procedures for excluding these interests from the decision-making process; and
- create processes for resolving accusations of conflict of interest.

Establishing a System for Asset Disclosure

When establishing an asset disclosure program, assume that all, or almost all, public servants are honest. The primary aim of the agency in charge of income and asset disclosure is thus to help honest officials who are required to disclose do so correctly. Among the actions the agency can take to foster voluntary compliance are seminars for filers, a help line, and a procedure for requesting advisory opinions where the law is unclear. The opinions should be widely disseminated, for they then become a body of law to guide interpretation in future cases.

Once government has gone the extra mile to promote voluntary compliance, it is easier politically for it to bring the enforcement club out of the closet. That club should be of sufficient weight to match the severity of the offense. In other words, the failure to file or a false filing should be treated no less seriously than the solicitation or receipt of a bribe. For example, in Trinidad, in addition to prison time for failure to disclose, the state can require the defendant to forfeit the value of the asset not disclosed.

When beginning a program, start slowly and build up capacity. A common mistake in creating a new agency is to establish it on day one and on day two require thousands of civil servants to file a form with the agency. The agency is unable to meaningfully review so many forms so early in its life. Word quickly spreads to this effect, and people do not take the agency or its mandate seriously. In the first round or iteration of the program, require just a handful of senior officials to file declarations.

Besides requiring officeholders to disclose personal and business assets, it is good practice for officials to disclose

- sources of income;
- positions in profit or nonprofit firms;
- debts;
- gifts;
- payments for travel, advances, reimbursements; and
- the income and assets of spouses and children living in the family home or dependent upon the official for support.

Asset Disclosure in Practice

How does asset disclosure work in practice? Perhaps the best way to find out is to examine the actual form a public official is required to file. Like all senior officials in the executive, legislative, and judicial branches of the American federal government, President George H. W. Bush is required to declare his income and assets, gifts, reimbursements, outstanding debts, and positions held outside government each year. His completed form for each year can be found on a number of Web sites.

Excerpt from Financial Disclosure Report of US President George H. W. Bush

SF 278 (Rev. 3/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: **GEORGE W. BUSH**

SCHEDULE A continued
(Use only if needed)

Page Number: **3 OF 13**

BLOCK A	Valuation of Assets at close of reporting period											BLOCK C								
												Type	Amount							
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr)
1 * RAYMOND JAMES FINANCIAL SER IRA f/b/o LAURA BUSH	X								X		X									
2 * RAYMOND JAMES FINANCIAL SER IRA f/b/o GEORGE W. BUSH				X					X		X		X							
3 * STATE OF TEXAS 401(K) PLAN f/b/o GEORGE W. BUSH					X				X					X						
4 GEORGE W. BUSH QUALIFIED DIVERSIFIED TRUST						X					X									
5 LEASE OF REAL ESTATE MCLENNAN CO. TEXAS			X								X									
6 UNDIVIDED MINERAL INTEREST REEVES CO. TEXAS	X										X		X							
7 1583.226 ACRE RANCH IN MCLENNAN CO. TEXAS							X				X									
8 GWS RANGERS CORP. 100% OWNER											X									
9 * HENRY G. FREEMAN, JR. TRUST																		12,000.00		

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Print Editions Cannot Be Used.

4/99071.1.000 * SEE NOTE

The chart above displays one page from one of the annual reports President Bush has filed—page three of the 13 pages he filed in 2005 listing his assets. There he lists each asset separately along with its value and any income earned from it during the year.

Many know that President Bush owns a ranch in Texas where he often vacations and where he occasionally entertains world leaders. Line seven on figure one shows that this ranch consists of

1,583.226 acres located in McLennan County, Texas, and that its estimated value is between USD1 million and USD5 million. The form shows that in 2005 he earned less than USD1,000 in income from it.

Lines one through six on this page show other assets—his interest in various financial instruments, the retirement plan from when he was governor of Texas, and the ownership of a mineral lease. The asterisk by the entry for line eight, “GWB Rangers Corporation,” directs the reader to a note accompanying the disclosure form. That note explains that GWB Ranger Inc. is the company through which he once owned an interest in a baseball team. He sold that interest and the proceeds of the sale are now held by the company.

The US Office of Government Ethics administers the income and asset disclosure program for President Bush and other officials of the executive branch. Its Web site (www.usoge.gov/home) explains the US program in more detail and contains an instruction book that President Bush and others required to file were given explaining how to fill out the form and whom to call with questions.

Spread of Asset Disclosure Programs

As concerns about conflict of interest have grown, more and more countries have begun requiring senior officials to submit income and asset declarations similar to the one President Bush files. A recent survey of the 148 countries eligible to receive World Bank support of one form or another found that in 104, senior officials must disclose their income and assets in some form. Of these 104 countries, 71 require officials to declare assets to an anti-corruption body or other government entity without disclosing the declarations to the general public, while the remaining 33 require that, in addition to submitting the forms to some official body, the officials should also have them published.

While many countries require public officials to file disclosure documents, where the disclosures are made public, officially designated “fact checkers” are aided in reviewing the accuracy of the filings by a host of nonofficial analysts. In the US, civil society watchdog groups as well as political parties review the forms. The Republican and Democratic parties carefully monitor the forms filed by those from the other party as part of their “opposition research.”

How Disclosure Fosters Better Government

Attention-grabbing stories and investigative reports help to increase transparency as well as document progress made toward standardizing asset disclosure enforcement worldwide. However, these accounts also provide ample evidence that greater transparency in the public sector and stricter asset disclosure requirements are necessary across the globe.

- **United States.** While in office, US Senator from Kentucky Walter “Dee” Huddleston declared income received from a speaking engagement that took place in the Bahamas on dates when Congress was in session. He should have been in Washington, DC, conducting the people’s business. His Republican opponent seized on this discrepancy, and it cost Huddleston reelection.
- **Philippines.** Philippine investigative reporter Tess Bacalla used publicly disclosed asset declaration forms to document the disconnect between low government salaries and the extravagant homes and unexplained property and luxury assets amassed by government workers. In one case, a tax collector with an annual salary of 250,000 pesos, or roughly USD5,000, was living in a mansion with a pool. In another case, a regional director of the tax collection agency had several luxury cars, including SUVs and BMWs, parked in front of his home. Neighbors explained that he and his family were the only ones who used them, yet when Bacalla checked his asset disclosure form, the cars were not listed. Using the motor vehicle registry, she found the cars were falsely registered to friends. As a result of her investigative report, several tax collection agency officials were forced to resign and are currently facing corruption charges, while others have been suspended pending further investigation.
- **Romania.** In a huge criminal-justice shake-up, Romania replaced most of its judges and prosecutors. In 2003, 1,200—nearly a third of the total—quit. The old lot cannot be sacked; the judiciary is independent. A new law makes staying unattractive, by requiring officials and their families to publish their assets and incomes on the Internet. Villas, cars, and other toys are no longer perks of corruption but

Table 1

	Disclosure Required (104)			
	Public (33)		Nonpublic (71)	
East Asia	Indonesia Marshall Is Mongolia	Philippines Thailand Vietnam	Malaysia Palau	PNG Solomon Is. Vanuatu
Eastern Europe/ Central Asia	Albania Bulgaria Croatia Georgia Kyrgyz R Latvia	Lithuania Montene- gro Moldova Romania Russia Ukraine	Armenia Azerbaijan Belarus Bosnia/Herz Kazakhstan	Macedonia Poland Serbia Slovak R Turkey
Latin America	Argentina Belize Bolivia Brazil	Chile Jamaica Nicaragua Paraguay	Antigua/ Barb Colombia Costa Rica Dominica Dominican Rep Ecuador El Salvador Grenada Guyana Guatemala	Haiti Honduras Mexico Panama Peru St Kitts/Nevis St Lucia Trinidad/Tob Uruguay Venezuela
Middle East/ North Africa	Iraq		Algeria Egypt Iran Lebanon	Morocco Tunisia West Bank/ Gaza
South Asia	Bhutan		Bangladesh India Nepal	Pakistan Sri Lanka
Africa	Cape Verde Central Africa R Liberia	Sao Tome/ Pr South Africa	Benin Burkina Faso Burundi Cameroon Chad Dem Rep Congo Equatorial Guinea Gambia Ghana Kenya Madagascar	Malawi Mali Mozambique Namibia Niger Nigeria Rwanda Rep of Congo Tanzania Uganda Zambia

an embarrassment. There has been much ridicule of the excuses made by former untouchables. Mr. Nastase, a former Prime Minister, said his wealth came from his wife's elderly aunt, who had applied previously hidden talents to the property market.

Concluding Thoughts: Dos and Don'ts for Asset Disclosure Laws

- *Require full disclosure:* Remember that the primary purpose of an asset disclosure program is not punitive. Rather, its main purpose is to bolster citizens' confidence in their government by showing that the great majority of public servants live within their means. Full disclosure will put to rest many wild rumors about this or that official.
- *Make disclosures public:* Disclosures should be made public. This is a growing trend as governments recognize that public disclosure helps boost confidence in government, while at the same, giving journalists and civil society groups a role in policing the accuracy of the disclosures.
- *Separate administrative from policing functions:* The agency in charge of income and asset disclosure should not be the primary enforcer, for there is a high risk that its role in helping to ensure voluntary compliance will get lost. Cops and social workers do not mix. The agency can report non-filers to the prosecutor or police, refer allegations of false filings, and conduct some basic checks. In Argentina, the agency in charge cross-checks filings against land records. In Madagascar, it compares filings with tax records. Until recently, the Argentine office posted the names of non-filers or those whose declarations appeared to be inaccurate. This was the office's way of pressuring the judiciary to pursue the case.
- *Clarify legal requirements and roles/responsibilities:* Income and asset disclosure laws have failed in some places because of a lack of clarity about who is required to disclose and to whom, what must be disclosed, what the consequences of an intentional failure to disclose are, and which entity is responsible for prosecuting failures to disclose. One objection to an income and asset disclosure program is that the dishonest will simply hide their assets, putting them in their spouse's name or the name of an unrelated person. The law needs

to be clear that however the asset is formally titled, if the official is the one who enjoys its use and benefit (a common-law trust in Anglo-American legal terminology), the official must disclose it. The law should also specify precisely who is required to disclose, either by type of position (minister, secretary general, judge) or according to pay scale. Terms such as “verify” and “investigate” need to be carefully defined in the law. Prosecutors sometimes claim they alone have the power to investigate and thus stymie personnel in anti-corruption agencies who seek to inquire into the accuracy of a declarant’s statement.

- *Provide appropriate incentives to thwart possible accomplices and simplify prosecution:* One strength of an anti-corruption enforcement strategy built around income and asset disclosure is that it lessens the threat to civil liberties and abuse of enforcement tools that can result from an aggressive campaign to root out bribery. Bribery is a difficult crime to prove, and police and prosecutors often must turn to wiretapping, eavesdropping, sting operations, and other techniques that can easily be abused. The filing of a false declaration is a much easier case to make. It can be made even easier if one provides a bounty for those asked to help an official conceal income or assets—that is, if lawyers, accountants, bankers, and whoever might be approached to help hide assets know that if they turn in the official they get a percentage of what they are being asked to conceal.

Chapter 2

Learning from case studies: Establishing frameworks for conflict of interest in selected countries and jurisdictions

Prevailing social, cultural, political, and economic norms affect the extent to which conflicts—apparent, potential, or real—are dealt with in each country. While country context may dictate unique perceptions, conditions, and determinants of COI, the challenge of managing COI is universal. In this chapter, practitioners from Canada, the Republic of Korea, the Philippines, and Indonesia share their diverse experiences in establishing legal and administrative frameworks to prevent, detect, and prosecute COI in their countries.

Brian Radford, Legal Counsel with the newly created Office of the Public Sector Integrity Commissioner in Canada, and Gae Ok Park, Director of Policy Coordination with the Republic of Korea's Independent Commission Against Corruption (KICAC), provide overviews of recent reforms and new oversight bodies that have bolstered oversight and enforcement efforts to address COI in their respective countries. Radford cites the value of establishing well-structured mechanisms to protect public servants and others who disclose wrongdoing, whereas Park credits partnership across various public sector agencies for increasing transparency and accountability overall, making institutional improvements in corruption-prone areas, improving the management of the public sector,

and establishing a more centralized approach to protecting whistleblowers in the Republic of Korea.

Pelagio Apostol, Deputy Ombudsman for Visayas with the Office of the Ombudsman in the Philippines, and Arief T. Surowidjojo, a lawyer practicing in Indonesia, indicate that despite their countries' long legislative histories aimed at curbing corruption in the public sector, challenges still remain to adequately enforce COI provisions. They observe similar gaps between legislation and enforcement, highlighting the ongoing challenge to effectively implement legislation on a concept that is not well understood. Surowidjojo notes that many conflicts are not intentional and in many cases are not technically illegal, contending that COI occurs in Indonesia in the absence of laws and policies that would specify what constitutes a COI or because management frameworks and enforcement mechanisms are not in place to help prevent such conflicts.

Both countries have made efforts to address these challenges. The Philippines has recently established a tracking and monitoring system to improve its ability to address complaints filed through the asset disclosure and declaration system. In 2002, Indonesia passed a law that established the Corruption Eradication Commission (KPK), which has a mandate to prevent and repress corruption.

In examining these experiences—no matter how different they may be—the aim is to identify common ground and new strategies for addressing COI. These examples provide insight on both good practices being developed and remaining challenges, which may require alternative solutions.

Dealing with conflict-of-interest issues in government and politics: The Canadian experience

Brian Radford

Legal Counsel, Office of the Public Sector Integrity Commissioner, Canada

Preserving Integrity in the Public Sector: International Common Ground

The ability to prevent or effectively deal with conflicts of interest is essential to good governance. The link between integrity and good government, and the resulting need to properly manage conflicts of interest, are international concerns shared by all states. In its 2003 Guidelines for Managing Conflicts of Interest in the Public Service, the Organisation for Economic Co-operation and Development (OECD) emphasizes this link. The Guidelines read:

Serving the public interest is the fundamental mission of governments and public institutions. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. Governments are increasingly expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making and public management. In an increasingly demanding society, inadequately managed conflicts of interest on the part of public officials have the potential to weaken citizen's trust in public institutions.¹

Defining Conflict of Interest

Conflicts of interest take many forms, ranging from behavior that discredits the individuals concerned, to criminal activities. While there is no single definition of conflict of interest, the Canadian context differentiates between real, potential, and apparent conflicts of interest. The Canadian legal framework provides a broad frame of

¹ OECD. 2003. Annex to the Recommendation of the Council on OECD Guidelines for Managing Conflicts of Interest in the Public Service. Preface, Article 1. June.

reference, as there are several laws and policies that aim to prevent and address conflicts of interest. A closer examination of these laws and the jurisprudence on this topic provides the following basic definitions:

- A *real* conflict of interest denotes a situation in which a public official has knowledge of a private interest (economic or otherwise, e.g., friendships and family ties) that is sufficient to influence the exercise of his or her public duties and responsibilities.
- A *potential* conflict of interest entails “foreseeability.” Essentially, when individuals can foresee that a private interest may someday be sufficient to influence the exercise of their duty, but has not yet, they are in a potential conflict of interest.
- An *apparent* conflict of interest exists when there is perception or reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists.

Understanding the Canadian Legal Framework

Preventing, if not eliminating, conflicts of interest is not and will never be the result of a single management action or one particularly effective law. It requires efforts at many levels. At the personal level, where employees of a government must live their core values, it requires zero tolerance for corruption including conflicts of interest. At the social level, ethical conduct has to be a primary societal expectation. At the political level, there must be leadership and willingness to sometimes admit that things have gone wrong and things need to be improved.

Canada is not immune from ethical challenges, and there have been a few high-profile cases in the last few years that have forced the country to reexamine the structure and management of important public organizations. In January 2006, a change in Canadian Government proposed important new legislation and significant changes to address these concerns.

The approach of the federal government in Canada has been to deal with conflicts of interest through numerous laws, regulations, and policies, and as such, the answers are not all found in one single place. Moreover, “different legislation applies to different

positions,” as the nature of governing authority depends on the kind of public office held by an individual, and even then, a mix of governing statutes and policies come into play. The federal public sector in Canada comprises many varied institutions employing close to 400,000 people. The core public administration consists of the “machinery of government” and all of the departments and quasi-independent agencies, such as the Canada Revenue Agency and the Canada Border Services Agency. In addition, there are state corporations that operate at arm’s length from the government. Sorting out the rules and regulations that apply for each group can be quite complicated.

Existing Legislation

Prevention, detection, and compliance mechanisms for dealing with real, potential, and apparent conflicts of interest in the Canadian Government are incorporated into several statutes and policies currently in effect. They include:

- Parliament of Canada Act (contains provisions on conflicts of interest for elected officials);
- Conflict of Interest Act (guides public office holders);
- Federal Accountability Act (omnibus legislation passed in 2006 that establishes several new accountability measures);
- Criminal Code of Canada (contains all criminal provisions pertaining to breach of trust, fraud, etc.);
- Financial Administration Act (governs all financial matters in the federal public sector);
- Public Servants Disclosure Protection Act (new whistleblower protection legislation);
- Canada Elections Act (specific rules governing political parties, donations, fund raising, etc.);
- Lobbyists Registration Act;
- Public Service Employment Act (ensures open and fair competition and access to federal public service jobs);
- Auditor General Act (the Auditor General is an independent agent of Parliament with the mandate to audit federal public sector institutions and report directly to Parliament);
- Access to Information Act (plays an important role in transparency and promotes free press and media).

Important policies and guidelines include:

- The Public Service Code of Values and Ethics;
- Conflict of Interest and Post-Employment Code for Public Office Holders;
- Treasury Board Policies and Guidelines for Ministers' Offices.

Public Servants: The Public Service Code of Values and Ethics

In addition to legal requirements, public servants are bound by an official code of ethics. The Canadian public service operates according to the premise that a professional, nonpartisan public service is an important prerequisite for a stable, democratic system of government. It is of critical importance that the merit principle be respected in appointments to the public service, in an effort to eliminate not only political interference but nepotism and favoritism. Upholding the merit principle in Canada also means ensuring that appointments are based on competence and that the public service is representative of Canada's diversity, including its two official languages.

In 2003, these principles and beliefs were encapsulated in an important foundational document that now guides public servants. The Public Service Code of Values and Ethics enshrines the important principle that the role of the public service is to assist the Government of Canada in maintaining peace, order, and good government. The Constitution of Canada and the principles of responsible government and ministerial responsibility provide the foundation for public service roles, responsibilities, and values. The Code supports public servants and instills four sets of values: democratic, professional, ethical, and people values.

- **Democratic values:** embody the democratic mission of the Canadian Public Service which is to assist ministers and serve the public interest by giving honest and impartial advice, providing all relevant information, and deferring to ministers regarding public policy decisions. In short, public servants are expected to respect and uphold the authority of Parliament.
- **Professional values:** entail competence, excellence, efficiency, objectivity, diligence, and impartiality. How ends are achieved is as important as the achievements themselves.

- **Ethical values:** require transparency, integrity, and honesty to uphold the public trust.
- **People values:** demonstrate respect, fairness, open-mindedness, and courtesy. These values should be reflected in dealings with both citizens and fellow public servants.

The current code will soon be replaced by a new code of conduct that will apply to all federal sector employees, including those working in state agencies and corporations. However, it is expected that these four families of values will remain, as they form the foundation of public service and are tightly woven into the fabric of Canada's constitutional democracy.

In accordance with the Code, public servants are expected to arrange their private affairs in a manner that will prevent real, apparent, and potential conflicts of interest from arising. If a conflict does arise between the private interests and the official duties of a public servant, the conflict should be resolved in favor of the public interest. Specifically, public servants are not allowed to:

- possess private interests that may affect or compromise the government activities in which they participate;
- solicit or accept transfers of economic benefit;
- step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment;
- knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public; or
- directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

Public Office Holders: The Federal Accountability Act and Conflict of Interest Act of 2007

The laws and code of conduct described above provide a strong framework to guide Canada's public service employees. Recently, it was determined that new legislative measures were needed to maintain public trust in higher levels of federal government. As part

of the Federal Accountability Act, a Conflict of Interest Act applicable to federal public office holders took effect in July 2007. Public office holders include ministers for the Government of Canada; members of the ministerial staff and ministerial advisers; and Governor in Council appointees (heads of government departments, commissioners, chief executives of state corporations, etc.).

Under the new legislation, a public office holder is in a conflict of interest when he or she exercises an official duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests. This new Act increases the mandate of the Conflict of Interest and Ethics Commissioner's Office and outlines several targeted objectives:

- To establish clear conflict of interest and post-employment rules for public office holders;
- To minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise;
- To provide the Conflict of Interest and Ethics Commissioner with the mandate to determine the measures necessary to avoid conflicts of interest and to determine whether a contravention of this Act has occurred;
- To encourage experienced and competent persons to seek and accept public office; and
- To facilitate transparent and accountable interactions between the private and public sectors.

Members of Parliament and Senators: The Parliament of Canada Act

Members of Parliament and senators are treated separately and are governed by the Parliament of Canada Act. This Act contains targeted Codes for the prevention and resolution of conflicts of interest pertaining to these public officials: the Conflict of Interest Code of Members of the House of Commons and the Conflict on Interest Code for Senators. For example, provisions stipulate that senators may not receive remuneration for services rendered in connection with a matter before the Senate or the House of Commons or for

influencing a member of either House. Moreover, members of Parliament are prohibited from voting on any issues where they have a direct pecuniary interest.

Deconstructing the Canadian Oversight and Enforcement Framework

Key Offices and Mandated Positions

Canada's approach to enforcement and oversight is multidimensional and involves an intricate network of offices and mandated positions, reflecting the complexity of managing conflicts of interest in the public sector. The Government of Canada has established several oversight bodies, which are required by law to carry out review and investigative functions under their respective mandates and report publicly their findings to Parliament or to a minister. These offices are also required to prepare annual reports concerning their respective areas of responsibility. These include several independent agents of Parliament, who report directly to Parliament:

- The Conflict of Interest and Ethics Commissioner;
- The Office of the Senate Ethics Officer;
- The Auditor General;
- The Public Sector Integrity Commissioner;
- The Access to Information Commissioner; and
- The Public Service Commission (PSC).

An agent of Parliament is nominated by the Prime Minister and subject to approval by both houses of the Canadian Parliament, the House of Commons and the Senate. Agents of Parliament and their offices are independent from the public service. In other words, they do not report through a minister but directly to Parliament.

Other relevant governing bodies and official posts, which execute important functions in the overall management practices of the Government of Canada, include

- The Commissioner for Federal Judicial Affairs;
- The Chief Electoral Officer;
- The Public Prosecutions Office; and
- The Department of Justice.

There are also three key central agencies which have specific mandates to oversee and report on the delivery of programs pertaining to ethics and good governance:

- The Privy Council Office;
- The Treasury Board Secretariat; and
- The Canada Public Service Agency, Office of Public Service Values and Ethics.

Other agencies that carry out specific overview functions include:

- The Commission for Public Complaints Against the Royal Canadian Mounted Police;
- The Military Ombudsman; and
- The Security Intelligence Review Committee.

In addition, all departments, agencies, and federal state corporations have specific accountability and transparency requirements imposed by the statutes described earlier. The Royal Canadian Mounted Police and other police forces are mandated to investigate allegations that are criminal in nature relating to possible cases of corruption involving public office holders and other government officials. Each of the governments of the 10 provinces and three territories have similar values and ethics laws, regulations, and policies under their respective jurisdictions.

Recent Legislative Reforms

Canada recently approved two key pieces of legislation to bolster oversight and enforcement to prevent conflicts of interest: the Federal Accountability Act and the Public Servants Disclosure Protection Act (PSDPA), also known as “whistle-blower protection” legislation.

The Federal Accountability Act received Royal Assent in December 2006. This omnibus legislation amends several statutes and expands or establishes new institutions and oversight bodies. Key measures include:

- Expanded authority of the Auditor General to encompass the entire Canadian federal public sector, which includes core public administration, state corporations, and separate agencies;

- Increased protection for public servants who disclose wrongdoing;
- Stricter rules on lobbying, including a five-year ban on lobbying for ministers, ministerial staffers, “transition team” members, and senior public servants; and
- A new ban on the payment of contingency fees.

Several new offices and positions created under this legislation include:

- The Commissioner of Lobbying (mandated to investigate violations of new lobbying restrictions);
- The Public Sector Integrity Commissioner (administers and enforces the PSDPA);
- The Conflict of Interest and Ethics Commissioner (administers the Conflict of Interest Act);
- The Director of Public Prosecutions under and on behalf of the Attorney General (initiates and conducts prosecutions and appeals on behalf of the Crown);
- The Parliamentary Budget Officer and the Public Appointments Commission (reports budgetary concerns to Parliament); and
- The Procurement Auditor (audits contracting and procurement, and receives certain complaints).

The Public Servants Disclosure Protection Act (PSDPA) is part of an overall strategy to improve detection of wrongdoing in the federal government and protect employees who come forward to report it. Enacted in April 2007, the PSDPA encourages employees in the federal public sector to come forward if they have reason to believe that serious wrongdoing has taken place and provides protection against reprisals. This Act also provides a fair and objective process for those against whom allegations are made. In short, the PSDPA strives to achieve an appropriate balance between the principles of freedom of expression and duty of loyalty to the employer.

Under PSDPA, wrongdoing includes:

- Violation of laws;
- Misuse of public funds assets;

- Gross mismanagement;
- Serious breach of a code of conduct;
- An act or omission that creates a substantial and specific danger to the life, health, and safety of Canadians or the environment; or
- Knowing direction or counseling of a person to commit wrongdoing. Includes any wrongdoing in or in relation to the federal public sector (definition is not restricted to activities of public servants).

PSDPA applies to most of the federal public sector including employees in the core public administration, separate agencies, and most state corporations—roughly 380,000 people.²

A new institution created under the PSDPA is the Public Sector Integrity Commissioner (PSIC), which is an independent agent of Parliament established to investigate disclosures of wrongdoing as well as reprisal complaints. Investigations are expected to be informal and as expeditious as possible and are kept separate from criminal investigations. At the conclusion of its investigation, PSIC reports its findings and makes recommendations for corrective actions to institutional chief executives (heads of government departments, agencies, and state corporations). PSIC has the power to make special interim reports to a minister or board of directors responsible for a government institution or directly to Parliament. In addition, PSIC makes a case report to Parliament within 60 days of confirming a finding of wrongdoing, outlining the findings of wrongdoing and the chief executive's response to any of the PSIC recommendations. PSIC is also required to present an annual report to Parliament. In addition, chief executives within government institutions are required to grant public access to information regarding findings of wrongdoing within their organization and must also prepare public annual reports.

Public servants can disclose possible wrongdoing to their organization's designated senior officer, to their supervisor, or directly to

² The Canadian Forces, Canadian Security Establishment Intelligence Service, and Communications Security Establishment are excluded but must create comparable regimes. Ministers, their staff, and judges are also not covered by the Act.

PSIC.³ Individuals not affiliated with the public service can also report possible wrongdoing to PSIC. Both public servants and nonpublic servants—who have made in good faith a protected disclosure about a wrongdoing or who are witnesses in any investigation conducted under the PSDPA—are protected from reprisals under the Act.

For public servants, a “reprisal” includes any measure that adversely affects the employment or working conditions of the public servant. Complaints of reprisal from public servants will be investigated by PSIC, which can also authorize conciliation between the parties. After investigation, and if the matter has not been resolved through conciliation, if warranted, PSIC will refer cases of possible reprisal against public servants to the new Public Servants Disclosure Protection Tribunal, also established under the PSDPA.

At the request of the PSIC, the Tribunal, which comprises judges from federal or provincial superior courts, will adjudicate reprisal complaints from public servants. The Tribunal has the power to issue a range of orders to remedy victims of reprisals, including returns to duties, reinstatement or payment of compensation, overturning of disciplinary action or measures, reimbursement of expenses or financial losses incurred, and awards of up to USD10,000 (Canadian) for pain and suffering resulting from the reprisal. The Tribunal also has the authority to issue disciplinary action, up to and including termination of employment, against public servants who engaged in acts of reprisal.

Nonpublic servants who believe they have suffered retaliation after providing information to the PSIC are also protected under the Act and may have their complaints dealt with through existing recourse mechanisms applicable to their situation or through the courts. All employers in Canada are prohibited from taking reprisals against employees who have provided information to PSIC and maximum fines of up to USD10,000 or two years’ imprisonment, or both, can be imposed by the courts.

Conclusion

Canada attaches a great deal of importance to identifying and preventing situations that might cast doubt on the integrity of its

³ There is no requirement to exhaust internal avenues before going to the PSIC.

public service, and serious conflicts of interest are a form of wrongdoing. The Canadian framework to prevent and manage conflicts of interest is based on long-standing principles and values that guide current reforms and new governance practices. A well-established management framework and an array of enforcement mechanisms help the public service assess existing conflicts and mitigate new risks. Recent reforms and the establishment of the Office of the Public Sector Integrity Commissioner reaffirm the Canadian Government's commitment to protect the public interest.

Managing conflicts of interest in the Republic of Korea: Policies and instruments

Gae Ok Park

Director of Policy Coordination, Korea Independent Commission Against Corruption

Background on the Republic of Korea's Anti-Corruption Policies: A Paradigm Shift

In the late 1990s, the Republic of Korea reached a turning point, as national consensus rallied around the idea that sustainable development could not be achieved until the country effectively addressed its problems with corruption. The Government realized that it was time to make a fundamental paradigm shift from its conventional "hard policy" approach focused on detection and enforcement to a "softer policy" focused on prevention. Thus, in 2002, the Korea Independent Commission Against Corruption (KICAC) was established to administer this shift and to implement new policy measures accordingly.

In collaboration with the Prosecutors' Office, the police, and the Board of Audit and Inspection, KICAC introduced and implemented new anti-corruption systems and diverse measures to enhance transparency in the Republic of Korea's public sector and Korean society as a whole. Key facets of KICAC's approach include:

- A policy shift from punishment to prevention;
- Institutional improvements in corruption-prone areas;
- More transparent and accountable administration;
- Strengthened ethics in public service and corporate management; and
- A consolidated system for protecting whistle-blowers.

The Connection between Corruption and Conflicts of Interest

In general, the act of "corruption" occurs when a public official seeks illegitimate private gains in the performance of his or her duties or by using his or her public position in an undue or illegal manner to pursue private interests at the expense of public interests. In other

words, corruption occurs in conflict-of-interest situations, i.e., situations involving conflicts between one's duties as a public official and private interests as a private person. Therefore, to prevent corruption, anti-corruption policies and the tools to carry out these policies must help public officials to perform their duties without compromising public interests in conflict-of-interest situations.

Summary of the Republic of Korea's Tools for Preventing Conflict of Interest

The Republic of Korea has developed several tools to address conflict of interest in line with its anti-corruption policies. The primary instruments now in use include the Code of Conduct for Public Officials, registration and disclosure of personal assets of senior public officials, post-employment restrictions, and the blind trust system. The code of conduct and post-employment restrictions are in force under the Anti-Corruption Act, while the Public Service Ethics Act outlines the parameters for the blind-trust system, the registration of personal assets, and restrictions on the employment of senior public officials.

Code of Conduct for Public Officials

All public officials of the Republic of Korea are obliged to comply with the Code of Conduct for Public Officials, which is legally binding as a Presidential decree. This decree outlines behavioral guidelines for public officials to mitigate possible conflicts between public and private interests in performing their official duties. Guidance on how to cope with specific conflict-of-interest situations as well as specific restrictions outlined in the Code are summarized below:

Specific conflict-of-interest situations

- When a public official gives his or her subordinate instructions that may hamper fair performance of public duties. The subordinate public official may refuse to follow the instructions by communicating the reason to the superior official.
- When a public official should consider it difficult to perform his or her duties in a fair manner because they are related to his or her own private interest. The public official may avoid performing the duties involving conflicts of interest.

- When a politician forces or requests a public official to perform his or her duties in an improper way. The public official shall either report the matter to the head of his or her agency or consult with the Code of Conduct Officer before handling the matter.

Prohibition against giving and receiving unfair profits

- A public official shall not use his or her public position to benefit himself or herself or other selected people.
- A public official shall not use any good, office, or solicitation to hinder other public officials from performing their duties in a fair and proper manner for the purpose of benefiting himself or herself or other selected people.
- A public official shall not be involved in transactions of or make investment in marketable securities, real estate, and other financial instruments by using information he or she obtained in the course of performing his or her public duties.
- A public official shall not receive money or other valuables from a duty-related person.

Registration and Disclosure of Personal Assets of Public Officials

The asset registration and disclosure system has been in effect for more than 25 years and has played a crucial role in preventing corruption in the Republic of Korea's public service. Enacted in 1981, the Public Service Ethics Act requires all public officials of Grade 3 and above to register their assets. In 1993, the Act was revised to expand asset registration requirements from Grade 3 or higher to include public officials Grade 4 and above. The revised Act also introduced the asset disclosure system requiring the mandatory disclosure of registered property in the government bulletin by public officials with the rank of Grade 1 or higher, heads of local governments, members of local councils, and their lineal ascendants and descendants as well as spouses.

Currently, the Republic of Korea's senior public officials of Grade 4 or higher are obliged to register their incomes and assets as of the end of the year. Political executives including the President and officials of Grade 1 or higher are also required to disclose their assets and incomes in the government bulletin. All declarations of assets are reviewed by the public service ethics committee.

Restrictions on Employment of Retired Public Officials

Post-employment restrictions aim to prevent cases in which a public official, while performing his or her duties, provides favors to any private sector enterprise in return for future employment. However, such restrictions have been carefully applied in limited cases to avoid interfering with an individual's freedom or right to choose his or her own profession.

According to the Public Service Ethics Act, after a Grade 4 or higher public official retires, he or she will face a two-year restriction on employment at for-profit private enterprises. This restriction also applies to legal persons that are related to the areas of service where he or she worked for three years leading up to retirement.

Additionally, the Anti-Corruption Act stipulates that if a public official is dismissed for corrupt conduct, he or she will face a five-year restriction on employment at public sector organizations as well as private sector enterprises. Similarly, this restriction also applies to legal persons related to the areas of work where he or she worked for three years right before the dismissal.

Enforcement of the Blind-Trust System

In addition to the asset registration and disclosure system, some public officials are subject to the blind-trust system, which has been in force since June 2006. According to this system, high-ranking officials of Grade 4 or higher who work in the Ministry of Finance and Economy or other financial authorities and own stocks worth 30 million won (USD30,000) or more are required to either sell their stocks or put them in bank trust accounts.

Conclusion

In recent years, international organizations such as the UN and OECD have shared their assessments of the implementation of international anti-corruption instruments, thus helping to establish global consensus on combating corruption. Governments now view fighting corruption not merely as the "right thing to do" but as the key to survival in an increasingly competitive global environment. The current Korean administration has also worked hard to prioritize the eradication of corruption in its country. The Republic of Korea recognizes that it must root out corruption not only to establish a

culture of integrity but to increase its competitiveness and standing in the international community. For these compelling reasons, stronger efforts should be made to ensure that public officials meet the higher expectations of ordinary citizens, and that people have confidence in the integrity of public service. The Government is acutely aware that its conflict-of-interest policies will prove more effective and fruitful only if all sectors of society encourage, monitor, and assess the implementation of these policies.

Asset declaration in the Philippines

Pelagio S. Apostol

Deputy Ombudsman for Visayas, Office of the Ombudsman–Visayas, Philippines

History of Legislation on Asset Declaration

The Philippines has a long legislative history focused on combating corruption and promoting ethical behavior in public service. As early as 1955, provisions related to conflict of interest were included in key legislation governing public sector activities. Enacted in 1955, Republic Act 1379 (RA 1379) requires that any property found to have been unlawfully acquired by any public officer or employee shall be forfeited in favor of the State. Further, the Act specified that property acquired by any public officer or employee during his or her incumbency which is found to be inconsistent with his or her salary or other legitimate income shall be presumed *prima facie* to have been unlawfully acquired.

In order to effectively implement RA 1379, several legislative measures requiring greater transparency and disclosure in public service were adopted. In 1960, Republic Act 3019 (RA 3019) was adopted as the Anti-Graft and Corrupt Practices Act of the Philippines. Section 7 of RA 3019 outlined a new requirement of asset declaration to help identify evidence of illegal enrichment. In 1989, this particular section of the Act was modified and expanded by the passage of Republic Act 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees. Section 8 states that public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth, and financial and business interests including those of their spouses and of unmarried children under 18 years of age living in their households. Public access to these written declarations or statements is subject to the following conditions:

- Statements under oath shall be made available for inspection at reasonable hours and for copying or reproduction after 10 working days from the time they are filed as required by law.

- Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.
- Any statement filed under oath shall be available to the public for a period of 10 years after receipt of the said statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.
- It shall be unlawful for any person to obtain or use any declaration filed for any purpose contrary to morals or public policy, or any commercial purpose other than by news and communications media for dissemination to the general public.

Asset disclosure is also mandated by the 1987 Constitution of the Republic of the Philippines. Article XI, Section 17, requires that a public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the members of the Cabinet, the Congress, the Supreme Court, the constitutional commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

Constitutional and Legislative Provisions for Asset Declaration in the Philippines

- 1955—Republic Act 1379 (property holdings and acquisitions);
- 1960—Republic Act 3019: Anti-Graft and Corrupt Practices Act (statement of assets and liabilities required);
- 1987—Constitution of the Republic of the Philippines (statement of assets, liabilities and net worth required and public disclosure allowed);
- 1989—Republic Act 6713: Code of Conduct and Ethical Standards for Public Officials and Employees (granted public access to public officials' assets, liabilities, net worth, and financial and business interests).

Implementation of Asset Declaration Legislation

Coverage of the Laws

All public officials and employees are subject to the requirement of asset declaration, except those who serve in an official honorary capacity, without service credit or pay, temporary laborers, and casual or temporary and contractual workers. This provision is embodied in Section 1, Rule VIII (Review and Compliance Procedure), of the Rules Implementing Republic Act 6713. Section 1 requires filing under oath statements of assets, liabilities, and net worth (SALNs) and disclosure of business interest and financial connections with the public official's chief, or the head of the personnel or administrative division or unit, or the human resource management office (HRMO). Public officials and employees under temporary status are also required to file under oath their SALNs and disclosure of business interest and financial connections in accordance with the guidelines provided under these rules. Public officials and employees are strictly required to fill in all applicable information or make a true and detailed statement in their SALNs.¹

Required Contents of SALN Asset Declaration Record

The contents of the declaration are embodied in Rule VII, Section 1(a), of the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees. Statements must outline assets, liabilities, and net worth, and disclose all business interests and financial connections. The details of these two core requirements are as follows.

The statement of assets and liabilities and net worth (SALN) is a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of the public official's or employee's income, the amounts of his personal and family expenses, and the amount of income taxes paid for the next preceding calendar year.² The SALN must contain information on the following:

- Real property, its improvements, acquisition costs, assessed value, current fair market value;

¹ This provision was revised and clarified by CSC Resolution No. 060231.

² This Act was amended by RA 3047, PD 677, and PD 1288 in 1978.

- Personal property and acquisition costs;
- All other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
- All financial liabilities, both current and long-term.

The disclosure of business interests and financial connections shall contain information on any existing interests in, or any existing connections with, any business enterprises or entities, whether as proprietor, investor, promoter, partner, shareholder, officer, managing director, executive, creditor, lawyer, legal consultant or adviser, financial or business consultant, accountant, auditor, or the like, the names and addresses of the business enterprises or entities, the dates when such interests or connections were established, and such other details as will show the nature of the interests or connections.

In order to capture and uniformly comply with the asset declaration requirement an official form has been prescribed. This form, the Sworn Statement of Assets, Liabilities and Net Worth, Disclosure of Business Interests and Financial Connections, and Identification of Relatives in the Government Service, is in the Annex.

Filing, Review, and Compliance Process

Public officers and employees are required to file their SALNs within 30 days after assuming office, on or before April 30 of every year thereafter, and within 30 days after separation from the service.³ The chief or head of the personnel or administrative division or unit or HRMO evaluates the SALNs for accuracy and appropriate compliance.⁴ In cases of noncompliance, the employees are ordered to comply within three days from receipt of the order without extension.

The chief or head of the personnel or administrative division or unit or HRMO submits a list of employees in alphabetical order who: (i) filed their SALNs with complete data, (ii) filed their SALNs but with incomplete data, or (iii) did not file their SALNs, to the head of office,

³ This is provided in Rule VIII, Section 1(a), of the Rules Implementing Republic Act 6713.

⁴ This is provided in Sections 2, 3, and 5 of Rule VIII (Review and Compliance Procedure).

with a copy furnished to the CSC, on or before May 15 every year and the original copies of the SALNs are transmitted on or before June 30 of every year to the concerned offices. Table 1 provides a snapshot of the reporting process for SALNs, indicating the focal point for the collection of SALNs for each group of public officials.

In August 2006, the SALN Data Bank System was established in the Office of the Ombudsman to capture and analyze data from all SALNs filed at the central office. The system tracks yearly compliance data and identifies lapsed filers as well as yearly percentage increases in net worth. The system is still in its initial implementation stage with the intention of eventual adoption by all area and sectoral offices.

Table 1: Reporting Process for Filing SALNs

Focal Point for SALNs	Public Offices/Positions under Jurisdiction
National Office of the Ombudsman	<ul style="list-style-type: none"> President and Vice-President of the Philippines Chairmen and commissioners of constitutional commissions and offices
Secretary of the Senate	<ul style="list-style-type: none"> Senators
Secretary General of the House of Representatives	<ul style="list-style-type: none"> Congressmen
Clerk of Court of the Supreme Court	<ul style="list-style-type: none"> Justices of the Supreme Court, Court of Appeals, Sandiganbayan, and Court of Tax Appeal
Court Administrator	<ul style="list-style-type: none"> Judges of the regional trial courts, metropolitan circuit trial courts, municipal and special courts
Office of the President	<ul style="list-style-type: none"> National executive officials such as members of the Cabinet, undersecretaries and assistant secretaries, including foreign service officers Heads of government-owned and -controlled corporations with original charters and their subsidiaries, and state colleges and universities Officers of the armed forces from the rank of colonel or naval captain
Deputy Ombudsman	<ul style="list-style-type: none"> Regional officials and employees of departments, bureaus, and agencies of the national Government including the judiciary and constitutional commissions and Offices

Focal Point for SALNs	Public Offices/Positions under Jurisdiction
Deputy Ombudsman	<ul style="list-style-type: none"> Regional officials and employees of government-owned and -controlled corporations and their subsidiaries in the region All other officials and employees of state colleges and universities Regional officers below the rank of colonel or naval captain including civilian personnel of the AFP Regional officials and employees of the PNP Provincial officials and employees including governors, vice-governors and Sangguniang Panlalawigan members Municipal and city officials and employees including mayors, vice-mayors, Sangguniang Bayan/Panlungsod members, and barangay officials
Civil Service Commission	<ul style="list-style-type: none"> All other central officials and employees of departments, bureaus, and agencies of the national Government, including the judiciary and constitutional commissions and offices, as well as government-owned and -controlled corporations Departments, bureaus, and agencies of the national Government, including the judiciary and constitutional commissions and offices, as well as government-owned and -controlled corporations and their subsidiaries Appointive officials and employees of the legislature All other central officers below the rank of colonel or naval captain, as well as civilian personnel of the AFP All other uniformed and non-uniformed central officials and employees of the PNP, BJMP, and BFP

Asset Declaration Enforcement and Sanctions

The Review and Compliance Procedures (Section 4 of Rule VIII) outline the sanctions levied against an officer or employee for failure to submit his or her SALN in accordance with the specified procedures. Conversely, Section 6 provides that the head of office or

the chief or head of the personnel or administrative division who fails to perform his or her duties relative to the processing of SALNs is subject to penalty and may be held liable for neglect of duty. The offense of failure to file SALN is punishable under the Uniform Rules on Administrative Cases in the Civil Service.⁵

- 1st offense: suspension for one month and one day to six months;
- 2nd offense: dismissal from the service.

The officer or employee who violates the requirements of asset declaration can also be criminally or administratively punished under several other laws. The detailed provisions are as follows:

- **Republic Act 6713, Section 11 (a), (b), (c):**
 - Any public official or employee, regardless of whether or not he or she holds office or employment in a casual, temporary, holdover, permanent, or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six months' salary or suspension not exceeding one year, or removal depending on the gravity of the offense, after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he or she shall be prosecuted under the latter statute. Violations of Sections 7, 8, or 9 of this Act shall be punishable with imprisonment not exceeding five years, or a fine not exceeding 5,000 pesos, or both, and, at the discretion of the court of competent jurisdiction, disqualification from public office.
 - Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him or her.
 - Private individuals who participate in conspiracy as coprincipals, accomplices, or accessories with public

⁵ This is specified under SC Resolution No. 99-1936 dated 31 August 1999. Rule IV, Section 52 (B) (8)).

officials or employees in violation of this Act shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them.

- **Republic Act 3019 Section 9 (b):** Any public officer violating any of the provisions of Section 7 of this Act shall be punished by a fine of not less than 1,000 pesos nor more than 5,000 pesos, or by imprisonment not exceeding one year and six months, or by both such fine and imprisonment, at the discretion of the court. The violation of said section proven in proper administrative proceedings shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him or her.⁶
- **The Revised Penal Code (Articles 183 and 171):**
 - Article 183 (perjury) provides for the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period ranging from four months and one day to two years and four months of imprisonment for a statement made upon a material matter before a competent officer authorized to receive and administer an oath, if the statement contains willful and deliberate assertion of falsehood, and the sworn statement containing the falsity is required by law.
 - Article 171 (falsification) stipulates that falsification of records would be subject to a penalty of *prision mayor* ranging from six years and one day to twelve years of imprisonment for untruthful statements made in the narration of facts, and that the person making untruthful statements has a legal obligation to disclose the truth of the facts narrated by him.
- **Uniform Rules on Administrative Cases in the Civil Service for Dishonesty:** Section 52 provides a penalty of dismissal from the service for the first offense.

⁶ This provision was amended by BP Blg. 195, 16 March 1982.

Summary of Philippine Experience with Asset Declaration Violations

The Philippine Government maintains records to track the number of complaints and charges filed related to asset declaration. Three key offices spearhead these efforts: the Office of the Ombudsman, the Presidential Anti-Graft Commission, and the Sandiganbayan (Anti-Graft Court of the Philippines). Their monitoring efforts indicate that the most common violations under investigation of cases involving asset declaration in the Philippines are:

- Non-filing of SALN;
- Non-declaration of assets or improvements;
- Non-declaration of business interests and other financial connections;
- False recording of assets for beneficial use in the name of dummies or other persons;
- Changing of the mode of acquisition of assets;
- Intermingling of illegitimate assets with other legitimate assets;
- Disposal of newly acquired assets at an unrealistic selling price to justify sharp increases in net worth;
- False claim of lottery winnings: almost all filers subject to lifestyle checks claimed that they had won the unexplained wealth from lotteries;
- Increase in liabilities due to bank loans without an actual or existing loan in the bank;
- Recording of non-existing assets during the initial submission of the SALN.

Table 2 below summarizes the number of complaints filed from 2000 to 2007, the actual administrative charges filed pertaining to SALNs, and the petitions for forfeiture filed during the same period of time. Notably, very few complaints result in officially filed charges or petitions.

Conclusion

Asset declaration legislation and related disclosure and tracking systems are critical tools in the fight against corruption in the Philippines. These measures institutionalize transparent and

Table 2: Summary of Complaints and Charges Filed

Year	Receiving Office: Number of Complaints and Charges Filed				
	Ombudsman: Non-filing or Failure to File True SALN	Ombudsman/ Court: Forfeiture/ Petitions for Forfeiture	PAGC: Non-filing of SALN	PAGC: Failure to File True SALN	Total Complaints/ Charges and Petitions
2007	21	14/0	0	7	35/7
2006	40	22/0	1	5	62/6
2005	43	27/4	1	0	70/5
2004	25	18/2	0	3	43/5
2003	22	15/1	0	4	37/5
2002	18	7/1	DNA	DNA	25/1
2001	12	8/0	DNA	DNA	20/0
2000	22	4/0	DNA	DNA	26/0

DNA = data not available; PAGC = Presidential Anti-Graft Commission; SALN = statement of assets, liabilities, and net worth.

Source: Office of the Ombudsman, Philippines, 2007.

accountable practices that help to identify and prevent conflicts of interest. While significant progress has been made in establishing tracking and monitoring systems, challenges still remain to adequately enforce provisions.

Annex: Asset Declaration Form for the Philippines

(Form 1)
1994

**SWORN STATEMENT OF ASSETS, LIABILITIES AND NETWORTH
DISCLOSURE OF BUSINESS INTERESTS AND FINANCIAL CONNECTIONS
AND IDENTIFICATION OF RELATIVES IN THE GOVERNMENT SERVICE**

As of December 31, 19____
(Required by R.A. No. 6713)

Surname _____ First Name _____ M.I. _____ Position/Income _____
Office _____
Address _____ Office Address _____

Spouse Name _____ Surname _____ First Name _____ M.I. _____ Position _____
Office _____

Unmarried Children below 18 years of age:

Name	Date of Birth

1. ASSETS

A. ASSETS, LIABILITIES AND NETWORK

A. REAL PROPERTIES

KIND	LOCATION	YEAR ACQUIRED	MODE OF ACQUISITION	NATURE OF PROPERTY (peripheral, conjugal or community)	ASSESSED VALUE	CURRENT FAIR MARKET VALUE	ACQUISITION COST	
							LAND BUILDING, ETC.	IMPROVEMENTS

Total P _____

B. PERSONAL AND OTHER PROPERTIES

KIND/S	YEAR ACQUIRED	ACQUISITION COST

Total P _____

C. LIABILITIES (Loans, mortgages, etc.)

NATURE	NAME OF CREDITORS	AMOUNT

NETWORTH [Total Assets (1a + 1b) less
Total Liabilities (2)]

Total P _____

Total P _____

B. BUSINESS INTERESTS AND FINANCIAL CONNECTIONS

Do you have any business interest and other financial connections including those of your spouse and unmarried children below 18 years of age living with you in your household? ☐ Yes ☐ No If yes, give particulars.

NAME	NAME OF FIRM/COMPANY	ADDRESS	NATURE OF BUSINESS AND/OR FINANCIAL CONNECTION	DATE OF ACQUISITION OR CONNECTION

C. IDENTIFICATION OF RELATIVES IN THE GOVERNMENT SERVICE

To the best of your knowledge, are you related within the fourth degree of consanguinity or of affinity to anyone working in the government? ☐ Yes ☐ No If yes, give particulars.

NAME	POSITION	RELATIONSHIP	NAME/ADDRESS OF OFFICE

I hereby certify to the best of my knowledge and information, that these are true statements of my assets, liabilities, networth, business interests and financial connections including those of my spouse and unmarried children below 18 years of age and names of my relatives in the governments as of December 31, 19__, as required by and in accordance with Republic Act 6713.

I hereby authorized the Ombudsman or his authorized representatives to obtain and secure from all appropriate government agencies, including the Bureau of Internal Revenue, such documents that may show my assets, liabilities, net worth, business interests and financial connections, to include those of my spouse and unmarried children below 18 years of age living with me in my household covering previous years to include the year I first assumed office in the government.

Date _____, 19__

Signature of Spouse

Signature of Employee

TIN : _____

TIN: _____

Com. Cert No.: _____

Com. Cert No. : _____

Issued at : _____

Issued at : _____

Issued on: _____

Issued on : _____

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 19__
affiant exhibiting his Community Tax Certificate as indicated above.

(Person Administering Oath)

Conflict of interest in Indonesia: From a legalistic approach to effective institutional change

Arief T. Surowidjojo
Lawyer, Indonesia

Context of Conflict of Interest in Indonesia

Conflict of interest (COI) as a concept is not very well understood by the Indonesian people, at least compared with their understanding of the concept of corruption. The media's dramatic publication of hundreds of corruption cases involving the misappropriation of the state budget, coupled with the Corruption Eradication Commission's (KPK's) successful anti-corruption public awareness campaigns, has made the public more aware that the Government is taking serious measures to eradicate corruption. With regard to COI, Indonesian people, in politics, legislation, and daily conversation, are more familiar with the terms in the acronym KKN (for "corruption, collusion, and nepotism"), although most of them do not necessarily understand the basic characteristics of each term or the extent to which each term differs from the other two. Simply put, only a few people understand that COI could be a corrupt act in itself or could lead to an act of corruption.

The Organisation for Economic Co-operation and Development (OECD) defines a COI as a situation that arises "...when a public official has private-capacity interests which could improperly influence the performance of his or her official duties and responsibilities." This definition implies that a conflict of interest exists as soon as it is suspected that inappropriate considerations or conditions *may* influence somebody's performance or decisions, i.e., even before any inappropriate behavior has taken place.¹

Indonesia is aware of the growing global consensus on what constitutes COI and how it should be addressed. National law has attempted to follow international covenants, such as the United

¹ It is noteworthy that this definition could also be applied in the private sector.

Nations Convention Against Corruption (UNCAC), which it ratified in 2006, as well as the parameters and guidelines issued by OECD. However, COI is not defined per se in the prevailing laws and regulations in Indonesia, except in certain economic laws such as the Capital Market Law and briefly also in the Company Law. At present, there are provisions scattered throughout Indonesian laws and regulations, code of ethics and conduct, official oaths, and other implementation and enforcement mechanisms that address COI, including but not limited to the 1945 Constitution, the Public Services Law, the Anti-Corruption Law, the Corruption Eradication Commission Law, the Judiciary Law, the Public Prosecution Law, the Supreme Court Law, and the Legislature Law.

Thus, there is no standard definition or consistent understanding of COI in prevailing laws, regulations, and codes of ethics or conduct. However, in almost all of the written rules adopted by different institutions or organizations in Indonesia, the concept of COI includes restrictions that a public official shall: (i) not intervene in a court proceeding, especially when the official or his or her family member or a party with which he or she is affiliated is involved; (ii) not issue a policy or decision that will benefit his or her personal interest or the interest of his or her family member or a party with which he or she is affiliated; (iii) not be involved in any structure of political party or in practical politics; and (iv) not take or assume any position in other public functions, private companies, or nonprofit organizations unless otherwise stated in the prevailing laws and regulations.

Remaining Challenges

In many cases, COIs occur in Indonesia in the absence of clear laws and policies that would specify what constitutes a COI, or because management frameworks and enforcement mechanisms are not in place to help prevent or manage such conflicts. Many COIs are not intentional and in many cases not technically illegal.

The strong influence of businesspeople in the Cabinet, government agencies, Parliament, and other public sectors in the making of public policies is inevitable. Major companies owned or controlled, directly or indirectly, by high-ranking public officials have won strategic government contracts. There are fears that stringent regulations on COI could deter potential investment, growth, and

the necessary acceleration of development. Indonesia, as a nation in transition, struggles with the dilemma of trying to develop a better investment climate and an environment free of corruption and COI situations, when COI is perceived as a normal way of doing business.

As mentioned earlier, awareness among public service employees as well as the general public regarding COI is relatively low. Moreover, there is a lack of political will, consensus, and alignment among the political leadership, various government agencies, state institutions, and other relevant organizations on COI principles or best practices. However, issuing new laws and regulations to make COI easy to understand, apply, and enforce effectively is not an immediate answer. UNCAC's and OECD's guidelines would work in a country with well-established legal systems and institutional infrastructure, traditions and culture, an effective bureaucracy, a strong Parliament and oversight and other monitoring mechanisms, and actively involved stakeholders including nonprofit organizations. But applying the concept of COI in a nation in transition such as Indonesia requires more strategic measures, i.e., demonstration of strong leadership commitment and established partnerships with employees, business, and nonprofit sectors to increase awareness that COIs compromise good governance, economic development, and social welfare.

Recommendations

Changes in policy or practice are never easy to make, especially when there is a lack of understanding or consensus on basic concepts and issues among key stakeholders. In order to address the challenges described above and move from a legalistic approach to effective institutional change in Indonesia on the issue of COI, more research, realistic expectations, clear rules and guidelines, and targeted efforts to increase public engagement, advocacy, and awareness are required. The list of recommendations below also outlines the government actions that would be required to execute each recommendation.

- **Conduct a study of COI to help map applications:** The Government shall fund a comprehensive study to map COI principles outlined in existing laws and codes of conduct

adopted by public institutions and organizations, to help identify which rules or regulations should be enforced with clear disciplinary actions and penal sanctions, and which should be adopted merely as ethical guidelines to be enforced with administrative or other, lighter sanctions.

- **Set realistic expectations and gradually implement new laws and regulations:** When introducing new laws and regulations on COI, the Government will take a realistic and gradual approach, as Indonesia may not be prepared to meet international best practices or standards, e.g., parameters set out in the Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service, or the UNCAC Law.
- **Clarify and outline sets of rules applicable to various groups of public officials in key areas and establish oversight mechanisms to enforce the rules:** The Government shall take a “zero tolerance” approach to corruption and COIs and establish a set of rules for leaders in the bureaucracy, state commissions, institutions and organizations, legislative bodies, and the judiciary. These rules shall include provisions for the disclosure of direct and indirect business affiliations and stipulations regarding the extent of such business affiliations and activities as they relate to official duties of public office. The Government shall work with KPK to establish independent and accountable oversight mechanisms for monitoring these activities and enforcing these rules.
- **Encourage watchdog groups including civil society to monitor public sector activities and report perceived COI situations, and provide “whistle-blower” protection accordingly:** The Government shall offer protection to all members of society, including nonprofit organizations, that monitor the implementation of public procurement, as whistle-blowers under the KPK Law.
- **Launch a public awareness campaign to “socialize” the COI concept and principles:** The Government shall start disseminating the COI principles to educate the general public and public officials about the full range of conflicts of interest as well as to help them distinguish between severe forms of corruption and simpler ethical dilemmas.

Section 2:

Implementation and Enforcement—Legal and Regulatory Tools

Chapter 3

Managing conflict of interest: Implementation and enforcement tools—laws, procedures, and instruments

Prevention and enforcement are equally important aspects of promoting good governance and reducing vulnerability to corruption. Universal codes of conduct, asset and interest disclosure regimens, and public education and awareness campaigns outlining fundamental concepts and expectations for ethical behavior must be balanced by clear sanctions and enforcement measures to ensure that both the causes of COI and its effects are adequately addressed. This chapter includes an overview of the efforts of the Organisation for Economic Co-operation and Development (OECD) to track key trends and to assist public and private sector officials in putting COI regulations into practice, as well as specific examples from Thailand, Hong Kong, China, and the United States that reveal the unique challenges and the key factors that influence the efficacy of enforcement in these countries.

János Bertók, Senior Governance Specialist with the Innovation and Integrity Division/Directorate for Public Governance and Territorial Development at OECD, shares survey responses received from more than 30 countries that reveal key trends and remaining challenges in COI implementation and enforcement. The survey results emphasize that, beyond establishing appropriate legislative and administrative frameworks, managing COI requires targeted

implementation and enforcement tools. In response to these trends, OECD has compiled checklists, model codes, and training materials to assist public and private sector officials in putting COI regulations into practice.

Practitioners from Thailand, Hong Kong, China, and the United States describe the laws, procedures, and enforcement instruments in use in their countries, and reflect on the unique challenges they face in dealing with COIs. Medhi Krongkaew, Commissioner with the National Counter Corruption Commission (NCCC), touts recent efforts to strengthen enforcement in Thailand, including the passage of several new laws and regulations targeting COI issues and the establishment of the NCCC as the primary anti-corruption agency charged with enforcement. However, he admits that NCCC has rarely been able to enforce these laws, citing a backlog of corruption and malfeasance cases that has made it difficult to focus special attention on COI issues. In contrast, Samuel Hui, Assistant Director of Corruption Prevention with the Independent Commission Against Corruption (ICAC) in Hong Kong, China, credits a robust and flexible enforcement regime, ICAC's efforts to work with the private sector, and consideration of public perceptions for Hong Kong, China's success in implementing new legislative measures.

The examples from the United States highlight the complexity of COI and suggest that informal monitoring by watchdog groups and the media may be just as important as official monitoring of regulations and statutes in ensuring adequate enforcement. Peter Ainsworth, Senior Deputy Chief of the Public Integrity Section within the Criminal Division of the United States Department of Justice, provides an overview of the key statutes addressing conflict-of-interest violations in the US, indicating that the primary challenge in enforcing these statutes is determining intent. Larry Makinson, former Executive Director of the Center for Responsive Politics (CRP), explores the intersection between politics and public administration, where there appears to be no doubt regarding the intent of campaign contributions to influence policy making.

These diverse examples indicate that the success of any country's legislative and administrative frameworks in addressing COI must be measured by the record of enforcement.

Conflict of interest: The challenge to develop tools for implementation and enforcement

János Bertók

Principal Administrator, Innovation and Integrity Division,
Directorate for Public Governance and Territorial Development,
Organisation for Economic Co-operation and Development (OECD)

Definition of Conflict of Interest: Actual, Potential, and Apparent

Conflict of interest (COI) arises when public officials have to make decisions at work that may affect their private interests. The OECD Guidelines for Managing Conflict of Interest in the Public Service define conflict of interest as “a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.” COI situations can be real and immediate when public officials are in a situation where their private interests could bias the way they do their job. COI situations could also be “potential” or “apparent”:

- A *potential* COI exists when a public official may have private-capacity interests that may be such as to cause a COI situation in the future. For example, a public official owns a large number of shares in a forestry company, *which could, in the future*, decide to compete for a timber-production contract with the official’s organization, where the official is currently in charge of all procurement contracts.
- An *apparent* COI exists where it *appears* that an official has a conflict of interest but this is not in fact the case. For example, the senior official with shares in a corporation has actually made formal internal arrangements to stand aside from all decision making (“recusal”) in relation to the contract for which this corporation is competing, in order to resolve the conflict. The arrangements are not known to the public at large, but are satisfactory to the official’s organization.

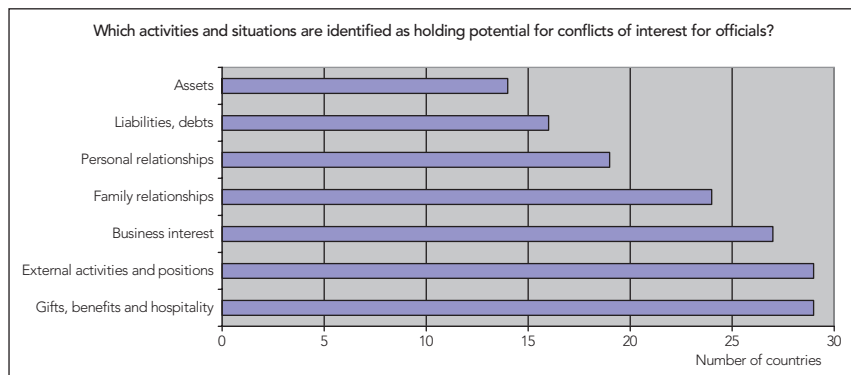
As in chess, placing the King “in check” is a dangerous proposition. However, while simply being “in check” must be resolved, it is not of itself *fatal* unless the conflict cannot be resolved. Similarly, COI situations in the public or private sector are not necessarily corruption itself, but are potentially damaging or politically dangerous and must be identified and managed. A COI situation that is not identified, managed, and resolved appropriately can lead to corruption.

Determinants of Conflict of Interest: Relevance and Context

The environment in which COI occurs is rapidly changing. There are new forms and approaches to delivering and managing public goods and services, blurring lines between public and private sectors and creating new gray areas. Moreover, increasing complexity in society including advances in education, multicultural dynamics, and rising demand for information by the media and general public, also contribute to waning public confidence in public institutions.

The source of COI is any kind of personal bias based on personal relationships (community, ethnic, or religious), material interests, business interests, and professional or political affiliations. Any interest is relevant if it could be reasonably considered to *improperly* influence a public official's performance of duties in the relevant circumstances or context.

Figure 1: Potential Sources of Conflict of Interest



Source: OECD. 2003. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*.

An OECD survey¹ in 30 countries identified the predominant source of COIs to be gifts, benefits, hospitality, and business interests, with secondary employment in the private sector registering as a key indicator.

Governments have for many years been aware of the dangers of personal bias in public decision-making. In the past, however, these concerns principally focused on traditional sources of influence, such as personal or family relationships and gifts or hospitality offered to public officials. Increased cooperation with the private sector in recent years has made the whole issue more complex, multiplying the opportunities for conflicts of interest, such as:

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

Supporting Policy and Practice: OECD Guidelines and Toolkit

The OECD Guidelines provide a framework to help governments and public organizations review existing conflict-of-interest policy and practice for public officials working in public administration. This can generally be achieved by:

- ensuring that public bodies have relevant policy standards for promoting integrity and implement those standards; and
- establishing effective processes for identifying risk and dealing with conflicts of interest in daily work, as well as appropriate accountability mechanisms and management approaches.

¹ OECD. 2003. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*.

Sanctions are included to ensure that public officials take personal responsibility for complying with both the letter and the spirit of such standards, and also encouragement for public officials who consistently demonstrate such compliance.

But following such recommendations in real-life situations is the test. Even identifying a specific COI situation in day-to-day work practice can prove very difficult. And resolving the conflicting interests appropriately in a particular case is something that most people find even more challenging. If public organizations are to be able to follow these recommendations, they need practical instruments to help public officials understand how to apply the COI policy in concrete situations. The OECD has developed and tested a Toolkit for Managing Conflict of Interest to meet this need.

The Toolkit provides a set of practical ways to help managers and officials put COI policy into practice. Instead of outlining a set of complex administrative definitions and processes, the Toolkit provides practical solutions to enable officials to identify, manage, and resolve COI situations. Practical tools include self-tests to identify COI, checklists to detect “areas at risk,” and training materials in the form of detailed case studies. The tools have been adapted to provide applicable solutions, which can be adapted for use in public organizations in different contexts.

One of the tools provides a simple objectivity test that can help determine a COI situation by asking two simple questions:

- Is Joe/Joanna a public official of a relevant kind?
- Does he/she have private interests of a relevant kind?

If the answer to both questions is yes, then Joe/Joanna has a real/actual COI. Essentially, what is “relevant” is context-dependent and is determined by the duties of the official. While the “conflict” is determined by the circumstances, “incompatibility” is determined by the law.

Another simple tool for self-monitoring by public officials is the “G.I.F.T.” test, which asks four simple questions about a gift offered:

- **Genuine:** Is this gift *genuine*, in appreciation for something I have done in my role as a public official, and not sought or encouraged by me?

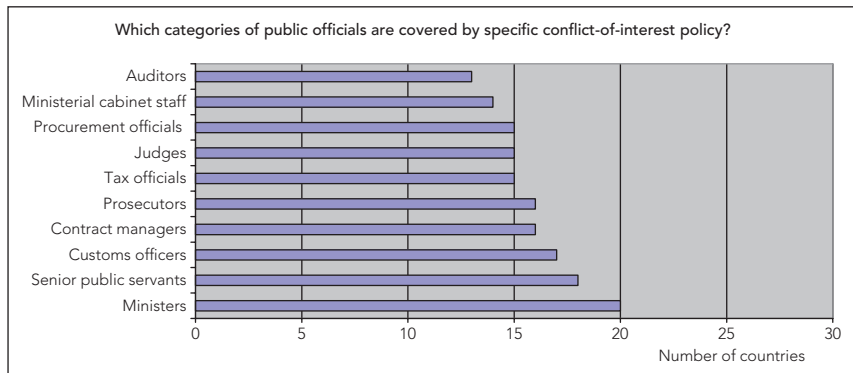
- **Independent:** If I accepted this gift, would a reasonable person have any doubt that I would be *independent* in doing my job in the future, when the person responsible for this gift is involved or affected?
- **Free:** If I accepted this gift, would I feel *free* of any obligation to do something in return for the person responsible for the gift, or for his or her family or friends and associates?
- **Transparent:** Am I prepared to declare this gift and its source, *transparently*, to my organization and its clients, to my professional colleagues, and to the media and the public generally?

Approaches to Enforcement: Description versus Prescription

OECD has compiled checklists, model codes, procedures, self-tests, training materials, case studies, and information on best practices and country experiences to assist public and private sector officials in putting COI regulations into practice. Arguably, there are two major approaches to managing COI: “description,” which employs a principle-based approach, and “prescription,” which assumes a rule-based approach. In either case, guidelines should be enforceable and outline enacted standards or formal procedures.

Implementing restrictions on post-public employment of former public officials offers a key example of the challenge in determining and applying appropriate COI regulations. Most countries

Figure 2: Types of Public Officials and Coverage under COI Policies

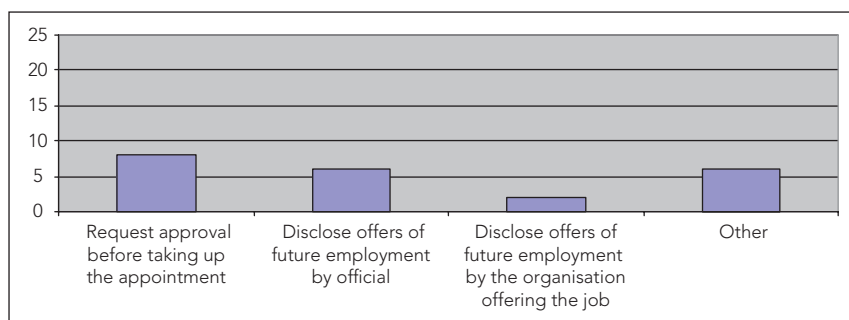


Source: OECD. 2003. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*.

are well aware of the conflicts that can arise and have developed legislation and preventive measures accordingly. A recent OECD survey inventoried the types of government officials covered by COI policies, from auditors and procurement officials to judges and customs officers, ministers and Cabinet staff.

The survey also outlined the procedures used to assist with specific post-public employment cases, which range from informing prospective employers of imposed restrictions and conditions, and disclosing the appointment and the application process, to making requests for the approval of the new appointment.

Figure 3: Procedures Used in Post-Public Employment Cases



Source: OECD. 2007. *Avoiding Conflict of Interest in Post-Public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries*

However, these are rather general prohibitions and rarely tailored to specific risk areas. Moreover, implementation mechanisms are weak. Measures for supporting, tracking, and ensuring the implementation of decisions on new employment are either lacking or inconsistent. In addition, it is difficult to apply or impose traditional disciplinary sanctions in such cases.

Conclusions

In sum, COI is a reality and a challenge affecting public and private sector governance. Considering the volume of transactions between the public and private sectors, and the financial interests at stake, unmanaged COI can in particular distort competition and the allocation of public resources, waste public money, and trigger well-publicized scandals that weaken citizens' trust in public institutions. It is critical to identify COI situations so that real conflicts can

be effectively resolved, apparent conflicts can be managed, and potential conflicts can be prevented. The OECD Guidelines and Toolkit can help review and update policy and practice; however, approaches and arrangements for managing COI should always reflect the social, political, and administrative contexts and seek to strike a reasonable balance between the public interest—protecting the integrity of public decisions—and the private interests of public officials.

Private gain from public loss: How Thailand copes with corruption from conflict of interest

Medhi Krongkaew

Commissioner, National Counter Corruption Commission, Thailand

Introduction

Thailand is lagging behind in the fight against corruption, according to various indices of corruption and in comparison with other countries' anti-corruption efforts. Transparency International (TI 2006) ranked Thailand 63rd among 163 countries around the world in its Corruption Perception Index. This ranking represents a decline in status from 59th among 159 countries in 2005. The World Bank Governance Indicators survey (World Bank 2006) supports this finding, observing that control of corruption has weakened in Thailand. Moreover, the Political and Economic Risk Consultancy (2006) ranked Thailand 7.64 on a scale of 0 to 10 measuring increasing incidence of corruption among 13 countries and economies in East Asia. In comparison, Singapore scored 1.3 and Japan scored 3.01. Only the Philippines, Vietnam, and Indonesia were ranked slightly behind Thailand.

The Government of Thailand takes the problem of corruption seriously and recognizes that, in many cases, corrupt practices have originated from conflicts of interest. In response to growing concerns, the Government has passed several laws and regulations addressing conflict of interest and has established a National Counter Corruption Commission (NCCC). As the primary anti-corruption agency in Thailand, the NCCC has outlined targeted initiatives to accommodate the heightened interest in conflict of interest as a cause or form of corruption.

Defining Conflict of Interest as a Form of Corruption

Corruption is closely related to conflict of interest, as both derive private gain from public loss. Conflict of interest exists when public officials impart their official duties in exchange, either directly or indirectly, for personal gains or benefits at the expense of the

public. Conflict of interest, therefore, can be defined as a *sui generis* case of corruption. Essentially, corruption cannot take place if public officials perform their duties without a *quid pro quo* condition (measured in terms of exchanged benefit to that official) underlying their actions or decisions.

If public officials perform their designated duties in exchange for their public wages and salaries, then no private gain has been accrued.¹ However, a conflict of interest exists when public officials expect to receive or derive other benefits based on how they perform their designated duties—in connection with particular actions or decisions. For example, if a customs officer seizes smuggled goods as part of his official duty and receives a reward from the government, this reward is not an outcome of corruption, nor does it involve corrupt practice. However, if the customs officer does not seize a certain smuggled good because it is not the type that will generate rewards but only attempts to seize smuggled goods with rewards, then this customs officer has committed corruption through conflict of interest.

While there is no universal definition for conflict of interest, most working definitions in use globally make the connection between corruption and conflicts of interest, and vice versa.

- Transparency International (TI) defines corruption as “an act involving behavior on the part of public officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.”² In short, corruption can be understood as the misuse of public power for private benefit.
- In Singapore, where the lack of corruption in the public sector is well known, the word “gratification” is used to stand for corruption in its Prevention of Corruption Act, 1960:

Gratification includes (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether moveable

¹ This is called “fiduciary duty,” or duty that is formally expected from this official position.

² Quoted in Briscoe and Hermans (2001), p. 5.

or immoveable; (b) any office, employment, or contract; (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; (d) any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power and duty; and (e) any offer, undertaking or promise of any gratification within the meanings of paragraphs (a), (b), (c), and (d).³

- The Organisation for Economic Co-operation and Development (OECD) defines conflict of interest as a situation involving a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests that could improperly influence the performance of their official duties and responsibilities.⁴ As such, conflicts of interest can result in improper private gains for the official or other private party as well as public loss of objective, neutral, and fair decision making or public goods or resources.
- Michael McDonald (2007), from the W. Maurice Young Centre for Applied Ethics at the University of British Columbia, defines conflict of interest as a situation in which a person, such as a public official, an employee, or a professional, has a private or personal interest sufficient to *appear* to influence the objective exercise of his or her official duties. The three key elements in this definition are the meaning of private or personal interest, the scope of official duty, and the nature of interference with professional responsibilities.
- The Harvard School of Public Health (2007) offers another definition, distinguishing between “conflict of commitment” and “conflict of interest,” indicating that “conflicts of commitment” are situations in which the external activities of public officials (or members, in the case of university

³ Singapore Prevention of Corruption Act (1960).

⁴ Quoted in Raile (2004), p. 2.

personnel) interfere with the main obligations of those public officials in question, whereas “conflicts of interest” are situations in which public officials may have the opportunity to influence their agency’s decision in ways that could lead to personal gains. In this context, “conflict of commitment” can be considered a mild form of conflict of interest because the outcome does not necessarily result in direct personal benefits.

Raile (2004) outlines examples of common conflicts of interest:

- misusing information gained through one’s position;
- engaging in influence peddling or trafficking;
- representing or advising private parties in relation to matters pending before certain governmental entities;
- employing or contracting with entities regulated by the state;
- serving in more than one government position simultaneously;
- appointing relatives to government positions;
- participating in government processes in which the official, a relative, or a business partner or associate has an interest;
- engaging in business, employment, or other financial relationships with non-governmental entities, the regulation of whose activities falls within the official’s public function;
- misusing public functions to benefit a political organization or partisan political campaign;
- accruing wealth illicitly (wrongdoing presumed when increases in wealth are not commensurate with lawful sources of income).

If personal gain and interference with professional objectivity are the primary conditions or criteria used, it should not be difficult to determine whether or not a conflict of interest exists or has been acted on. One approach is to outline a strict code of conduct and require public officials to declare or disclose their interests and assets. However, if the conflict of interest does not necessarily involve financial or economic gain, it may be difficult to quantify the extent of wrongdoing and thus to determine appropriate sanctions. Besides financial or economic interests, public officials can

have private interests that may conflict with their public duties and the public interest that are:

- political;
- cultural/religious;
- social/familial;
- legal; or
- emotional/ideological.

Whether or not financial private gains result, each of these conflicts of interest has the potential to compromise the public interest and the objectivity of the public office held. Thus, it is necessary to establish laws and regulations that clearly define the various conflicts of interest and target prevention and enforcement measures accordingly.

Thailand's Experience: Conflict-of-Interest Legislation and Enforcement Measures

Thailand's laws related to conflict of interest fall into three broad categories:

- criminal sanctions outlined in the Penal Code of Thailand;
- specific restrictions and regulations targeting specific groups of public officials; and
- new conflict-of-interest laws under the jurisdiction of the National Counter Corruption Commission (NCCC).

The Penal Code of Thailand

This Code outlines and defines the fundamental offenses and specifies the range of penalties and punishments applicable to state officials. Provisions pertaining to conflict of interest are outlined in Part 2, Category 2, Sections 147 to 166. This part of the Penal Code deals with offenses committed by public officials while serving in an official capacity. Key provisions are outlined in detail below:

- **Section 148:** This provision stipulates that if state officials use their power corruptly through coercive or accommodating actions in order to receive properties or other benefits, they

will face a jail term of five to twenty years, a fine of 2,000 to 40,000 baht, or death. This section has a conflict-of-interest component in that it is understood that public officials are making decisions knowingly in exchange for personal gain or benefits.

- **Section 149:** This provision deals with offenses committed by state officials who have received, asked to receive, or agreed to receive properties or other forms of benefits for themselves or others by corrupt means in exchange for a certain action or nonaction, whether within the confines of their official duties or outside them. The penalty for this offense is equally severe, with death as the ultimate punishment. This is the most typical form of corruption via bribery.
- **Section 154:** This provision pertains specifically to tax officials. If tax officials corruptly collect or neglect to collect appropriate taxes from taxpayers, or collect a lower amount of taxes than required, they can face penalty of five years up to life imprisonment, and a fine of 2,000 to 40,000 baht.⁵
- **Section 157:** This provision provides a de facto code of conduct and outlines the expected proper behavior of public officials. Specifically, it stipulates that any public official who is deemed competent who conducts his duty improperly or refrains from conducting his duty properly so as to cause damage to any person will be subject to imprisonment from one to ten years, or fine from 2,000 to 20,000 baht, or both imprisonment and a fine.

Laws Targeting Specific Groups of Public Officials

- **Act on the Offences of Officials in State Organisations or Agencies, B. E. 2502:** This Act actually lifts most of Sections 147 to 166 from the Penal Code and simply provides these provisions with a new section number. The benefit of doing

⁵ Recently a senior tax official in Thailand was indicted on this charge because he purposely refrained from collecting the correct amount of taxes on property transactions from a prominent politician family.

this is unclear, but this Act serves to highlight the importance and gravity of these offenses in such a way that a specific act is called for.

- **Civil Servant Act, B. E. 2535:** Most civil servants in Thailand have to follow the Civil Servant Act B.E. 2535 which prescribes the rules and regulations on employment procedures and disciplinary measures for most civil servants. Relevant provisions on conflict of interest may be found in Section 84, which requires a civil servant to protect the state and public interest. There is a severe disciplinary penalty imposed if this basic provision is violated. Section 96 also specifies that a civil servant must not serve as a manager or in a post with similar duties in a private company.
- **Municipality Act, B. E. 2496:** Various laws on local government in Thailand also contain relevant sections on conflict of interest. For example, Section 18 of the Municipality Act B. E. 2496 stipulates that members of the board of municipalities may not have interests in the contracts under the municipalities' jurisdiction.
- **The Tambon Council and Tambon Administrative Organizations Act, B. E. 2537 and the Provincial Administrative Organisations Act, B. E. 2540:** Both Acts have similar provisions calling for invalidation of the qualifications of any members of the specific organizations referenced if they are found to have private interests in any contracts involving these local organizations. Similar provisions can be found in laws governing other specific government agencies.

Laws under the Jurisdiction of the National Counter Corruption Commission (NCCC)

- **Organic Law on Counter Corruption, B. E. 2542:** This law is the main pillar of the legal power of the NCCC. Conflict of interest is covered in Chapter 9 of this Act with the subtitle Conflicts between Personal Interest and Public Interest. This chapter contains four sections, with Section 100 specifying the following four acts that state officials shall not carry out:
 - being a party to, or having interest in, a contract made with a government agency where the state official

performs duties in the capacity of a state official with the power to conduct supervision, control, inspection, or legal proceedings;

- being a partner or shareholder in a partnership or company that is a party to a contract made with a government agency where the state official performs duties in the capacity of a state official with the power to conduct supervision, control, inspection, or legal proceedings;
 - being a concessionaire or continuing to hold a concession from the State, a state agency, a state enterprise, or local administration or being a party to a contract of a directly or indirectly monopolistic nature made with the State, a government agency, a state agency, a state enterprise, or local administration, or being a partner or shareholder in a partnership or company that is a concessionaire or shareholder in a partnership or company that is a concessionaire or a contractual party in such manner;
 - being interested in the capacity as a director, counsel, representative, official, or employee in a private business that is under the supervision, control, or audit of the state agency to which the state official is attached or where the state official performs duties in the capacity of a state official, provided that the nature of the interest of the private business may be contrary to or inconsistent with public interest or the interest of the government service or may affect the autonomy in the performance of duties of the state official.
- **Act on Offences Relating to the Submission of Bids to State Agencies, B. E. 2542:**⁶ Relevant provisions of this Act include Sections 11–13, which target public officials in collusion with private contractors in bids made to the state or public sector. For example, Section 11 states that any official of a state agency or any person entrusted by a state agency who fraudulently designs, fixes the prices, prescribes conditions, or determines benefits that would

⁶ Annex 2 outlines the full text of the Act.

form the standard in the bid process with the object of preventing fair bid competition, or in order to assist any bidder in unfairly obtaining the right to enter into a contract with a state agency, or in order to prevent other bidders from fairly competing in the bid process, shall be liable to imprisonment for a term from five years to twenty years, or life imprisonment and a fine from 100,000 baht to 400,000 baht.

- **Act on Management of Partnership Stakes and Shares of Ministers, B. E. 2543:**⁷ The main thrust of this Act is to ensure that government ministers do not have conflicts of interest in the management of any company whose stocks or shares these ministers own. For example, Section 4 of this Act stipulates that a minister shall not be a partner or a shareholder in a partnership or company or remain as a partner or shareholder in a partnership or company if that minister's stocks and shares exceed 5%. If the minister would like to receive benefits and become a partner or a shareholder and own more than 5%, he or she must inform the president of the NCCC and transfer his or her stocks and shares to a juristic person to relinquish direct control and thus avoid apparent conflict of interest.

While the above laws appear to provide appropriate measures to prevent conflicts of interest in the public sector, NCCC has rarely been able to enforce these laws. The NCCC has been encumbered by a large backlog of corruption and malfeasance cases, which makes it difficult to focus specific attention on conflict-of-interest issues. However, these circumstances appear to be changing, as the current Commission redefines its work plan.

The Way Forward in Thailand: NCCC's Proposed Agenda and Initiatives

The NCCC is now changing its work program to accommodate heightened interest in conflict of interest as a cause or form of corruption. The following initiatives are now under consideration:

⁷ Annex 3 includes the full text of the Act.

- NCCC commissioners aim to increase focus on prevention to balance its efforts with the current focus on enforcement and punishment. The goal is to spend equal time (50:50) on prevention and enforcement, to better target causes of conflicts of interest.
- The NCCC will work with the State Services Commission of Thailand and the Office of the Ombudsmen to draft official codes of conduct for public officials and politicians. The NCCC has taken keen interest in developing its own code of conduct, which does not just incorporate the necessary level of official duties but also outlines a relatively high level of ethical standards as well.
- The NCCC is leveraging a recent Supreme Court judgment on a government contracting case to set a legal precedent for similar impending cases being investigated.
- The NCCC will invoke the Collusion Law and Stock Management Law with greater frequency. It is hoped that, by being resolute and forthright, the NCCC can send a message to all concerned that it means business in trying to curb the prevalence of conflict of interest in the work of the public sector.
- The NCCC has joined forces with the Government to officially declare the anti-corruption campaign part of the national agenda. They will work together on new ideas to combat corruption rooted in conflict of interest in both the public and private sectors. Annex A outlines draft legislation currently under consideration, which promises to drastically change the way public officials handle business with the private sector.
- The NCCC is developing a new approach to monitoring changes in the income and assets of high-ranking officials. NCCC anticipates a shift from a simple, one-time verification of assets and property to ongoing tracking of both financial and nonfinancial transactions and activities.

Conclusion

Conflict of interest is a critical governance issue challenging the integrity of the public sector and the affairs of the State in Thailand. In the conflict-of-interest equation, private gain equals public loss.

While the public and private sectors have made great strides in stamping out conflict of interest in Thailand, there is still much work to be done. The NCCC is committed to developing appropriate initiatives and advancing public policy through greater use of existing laws as well as through the introduction of new laws. These efforts aim to instill confidence in the public sector and promote good governance in Thailand. NCCC's work has just begun; however, the commissioners are determined to expedite progress and advance the fight against corruption in Thailand in the near future.⁸

References

Briscoe, Andrew, and H. C. L. Hermans. 2001. *Combating Corruption in Botswana*. Gaborone: Friedrich Ebert Stiftung.

Harvard School of Public Health. 2007. *Policies on Outside Professional Activities and Commitments*. Available: <http://www.hsph.harvard.edu/academicaffairs/Conflict.html>

McDonald, Michael. 2007. *Ethics and Conflict of Interest*. W. Maurice Young Centre for Applied Ethics, University of British Columbia.

Political and Economic Risk Consultancy, Ltd. 2006. *Corruption in Asia in 2006*. Hong Kong.

Raile, Eric. 2004. Managing Conflicts of Interest in the Americas: A Comparative Review. In *Conflict of Interest Regulation in Latin America*. Available: http://www.usoge.gov/pages/international/int_files/conflicts_america

Resnik, David B. 2007. Conflicts of Interest in Scientific Research Related to Regulation or Litigation. *Journal of Philosophy, Science and Law* 7 (April 16).

National Counter Corruption Commission. 1999. *Anti-Corruption Laws and Regulations*. Bangkok.

Transparency International (TI). 2006. *Corruption Perceptions Index*.

World Bank. 2006. *World Governance Indicators*. Washington, DC.

⁸ Annex 1 provides more details on the draft conflict-of-interest legislation now under consideration.

Annex A: Conflict-of-Interest Bill under Consideration by the Government of Thailand

The Essence of the Draft Bill on Conflict of Interest Proposed by the Thai Government

The Thai Government led by General Surayud Chulanont was installed in the aftermath of a military coup in September 2006. This administration was charged with the specific task of fighting corruption, which was rampant in the previous government and a primary cause of its downfall. In cooperation with the present National Counter Corruption Commission (NCCC), installed also right after the coup, the Government will do all it can to reduce or eradicate corruption in the public sector of Thailand.

As mentioned elsewhere, the offenses stemming from conflict of interest in official duties are already stipulated in the Organic Law on the Prevention and Suppression of Corruption, B. E. 2542. The Government under General Surayud intends to bolster these provisions with an added impetus, to stimulate the anti-corruption efforts of his government. Therefore, a new draft bill on conflict of interest has been proposed. The goal is to enact it into law before the term of this government ends at the end of 2007, when elections will be held and a new government will be formed.

As of July 2007, this bill was being scrutinized by a select committee in the National Legislative Assembly. It contains only 18 sections. The essence of the important sections of this bill is as follows.

Section 3: This section defines state officials in the usual ways to include anyone who has received regular payments or compensation from the government budget. The revision includes a new definition of “spouse” to mean *de facto* husband or wife, and “relatives” to mean the three generations in relation to the official in question and those of the official’s spouse as well.

Section 5: This is the main section that defines the nature of criminal offenses or corrupt practices under this prospective act. There are five categories of offenses, as follows:

- The usual offenses under Sections 100, 101, and 103 of the Organic Law on Anti-Corruption, which include any state official who is a party to or has interest in a contract in which he or she has supervision, control, or inspection power, or has received property or other benefits within two years after leaving his or her job;
- Corrupt use of information that the state official has while performing his or her official duty;

- Corrupt use of state properties for his or her personal gain or the gain of others who have no rights to the properties;
- Initiation, proposal, or preparation of a state project with the intention of profiting from such project either directly or indirectly (where the state official or a third party benefits or profits); and
- Corrupt use of the power that this state official has to interfere with independent decisions of other state officials in charge, either directly or indirectly.

Section 6: Anyone who is found to benefit from the offenses committed by state officials under Section 5 is deemed to be the accomplice of that state official, and will receive the same penalty unless this accomplice can prove that he or she has no knowledge of the action of that state official. This section aims to ensure that any knowing “nominee” of the offending state official will not escape punishment.

Section 11: Any state contract—civil or administrative—administered by a state official that is found to violate conflict-of-interest provisions will be declared null and void. This provision aims to deter acts of collusion between corrupt officials and contractors.

Section 12: The public can file a petition to the NCCC to stop projects or contracts in violation of conflict-of-interest provisions. This provision expands the current law, which at present allows only 50 members of Parliament or 5,000 members of the electorate or 2 ombudsmen to file petitions.

Section 13: The NCCC will be empowered to implement this prospective Act once it comes into force. A special division will be set up with the NCCC to monitor, advise, and provide counsel to the public and other state officials on compliance with this Act. These efforts will include a campaign to help instill high standards of ethical behavior to help public officials avoid conflict-of-interest violations.

Annex B: Act on Offences Relating to the Submission of Bids to State Agencies, B. E. 2542

Below is the full text of the Act on Offences Relating the Submission of Bids to State Agencies B. E. 2542.

Act on Offences Relating to the Submission of Bids to State Agencies, B. E. 2542 (1999) BHUMIBOL ADULYADEJ, REX. Given on the 19th Day of November B.E. 2542; Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that: Whereas it is expedient to have a law on offences relating to the submission of bids to State agencies; Be it therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Act on Offences Relating to the Submission of Bids to State Agencies, B.E. 2542 (1999)”.

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette [Note: Published in the Government Gazette Vol. 116, Part 120a, dated 29th November, B.E. 2542 (1999)].

Section 3. In this Act: “bid” means the submission of a proposal with the object of acquiring the right to enter into a contract with a State agency pertaining to a purchase, hire, exchange, lease, asset disposal, concession or receipt of other rights; “State agency” means a Ministry, Sub-Ministry, Department, provincial administration, local administration, State enterprise or other State agencies or agencies exercising functions of the State under the law and receiving contributions or investment properties from the State; “political position holder” means:

- (1) Prime Minister;
- (2) Minister;
- (3) member of the House of Representatives;
- (4) Senator;
- (5) other political officials other than (1) and (2) under the law on rules of political officials;
- (6) National Assembly officials of the political division under the law on rules of National Assembly officials;
- (7) local administrators and members of the local assembly.

“NCCC” means the National Counter Corruption Commission.

Section 4. Any person who bids in collusion with others with the object of conferring a benefit to any such persons in the form of a right to enter into a contract with a State agency, by avoiding fair competition or by creating barriers to the offer of other products or services to a State agency or by acquiring an advantage over a State agency in a manner which is not congruous with normal business practice, shall be liable to imprisonment for a term not exceeding three years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Any person who assumes the role of persuading others to participate in the commission of an offence prescribed in paragraph one shall be liable to the penalties under paragraph one.

Section 5. Any person who gives, offers to give or undertakes to give moneys or properties or other benefits to another person for the purpose of a bid, with the object of inducing others to participate in any activity which confers a benefit to any person in the form of a right to enter into a contract with a State agency, or to induce such person to submit a higher or lower bid that is apparently inconsistent with the properties of the product, service or receivable right, or to induce such person to participate in a bid or withdrawal of a bid, shall be liable to imprisonment for a term from one year to five years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Any person who demands, receives or consents to the receipt of moneys or properties or other benefits in connection with the commission of an act under paragraph one shall be deemed as a joint offender.

Section 6. Any person who coerces another person to participate in a bid or not participate in a bid or withdraw a bid or bid as directed, by use of force or any form of threat to incite fear of endangerment to life, body, liberty, reputation or properties of the threatened person or a third party, and as a result thereof the threatened person submits to such coercion, shall be liable to imprisonment for a term from five years to ten years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Section 7. Any person who by deceit or other means constitutes a cause for another person's inability to bid fairly or for such person to bid under a misunderstanding shall be liable to imprisonment for a term from one year to five years and a fine of fifty percent of the highest bid price submitted by the joint offenders or of the value of the contract that has been entered into with the State agency, whichever is the higher.

Section 8. Any person who fraudulently submits a bid to a State agency knowing that the bid price submitted is unusually low such that it is apparently inconsistent with the properties of the product or service, or offers beneficial consideration to the State agency that is much higher than entitled, with the objective of creating

a barrier to fair competition, and such act constitutes a cause for an inability to perform properly under a contract, shall be liable to imprisonment for a term from one year to three years and a fine of fifty percent of the bid price or the value of the contract that has been entered into with the State agency, whichever is the higher.

In the case where an inability to perform properly under a contract under paragraph one causes the State agency to incur additional costs in connection with the completion of the objectives of such contract, the offender shall also indemnify the State agency for such expenses.

In the trial and adjudication of cases relating to the submission of bid to State agencies, if requested, the Court shall also determine the additional costs borne by the State for the State agency under paragraph two.

Section 9. In the case where the commission of an offence under this act is made for the benefit of any juristic person, the managing partner, managing director, executives or authorized personnel in the operation of such juristic person's business or a person responsible for the operations of the juristic person on such matter shall also be deemed as joint principal offenders, unless it can be proven that he/she had no awareness of the commission of such offence.

Section 10. Any official of a State agency having the power or duty to approve, consider or perform any function in relation to a bid on any occasion, and who knows or should have known from the apparent circumstances that an offence under this Act was committed in the bid on such occasion, having failed to act in such manner as to abort proceedings relating to the bid on such occasion, shall have committed an offence of misfeasance in office and shall be liable to imprisonment for a term from one year to ten years and a fine from twenty thousand baht to two hundred thousand baht.

Section 11. Any official of a State agency or any person entrusted by a State agency who fraudulently designs, fixes the price, prescribes conditions or determines benefits that would form the standard in the bid process with the object of preventing fair bid competition, or in order to assist any bidder in unfairly obtaining the right to enter into a contract with a State agency, or in order to prevent other bidders from fairly competing in the bid process, shall be liable to imprisonment for a term from five years to twenty years or life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht.

Section 12. Any official of a State agency who commits an offence under this Act, or commits any act with the purpose of preventing fair competition by favouring any bidder as the person entitled to enter into a contract with a State agency, shall have committed the offence of misfeasance in office and shall be liable to imprisonment for a term from five years to twenty years or life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht.

Section 13. A political position holder or member of a committee or sub-committee in a State agency, not being an official in the State agency, who commits an offence under this Act or commits any act on officials in the State agency having the power or duty to approve, consider or perform any function in relation to a bid in order to induce or compel the acceptance of a bid that involves an offence under this Act, shall be deemed as having committed an offence of misfeasance in office and shall be liable to imprisonment for a term from seven years to twenty years or life imprisonment and a fine from one hundred and forty thousand baht to four hundred thousand baht.

Section 14. The NCCC shall have the power to investigate facts relating to acts which are offences relating to the submission of bids to State agencies under this Act. In the case where circumstances appear to the NCCC or a petition has been filed that a purchase, hire, exchange, lease, asset disposal, concession or grant of any rights of a State agency on any occasion involves an act which constitutes an offence under this Act, the NCCC shall expediently conduct an investigation, and if the NCCC considers that there is substance in the case, the following proceedings shall be taken:

- (1) in the case where the offender is a State official or political position holder under the organic law on counter corruption, the NCCC shall instigate proceedings on such person pursuant to the organic law on counter corruption;
- (2) in the case of persons other than (1), the NCCC shall file a complaint against such person to the investigation officer in order to take further proceedings; the fact-finding investigation report of the NCCC shall form the basis of proceedings taken by the investigation officer;
- (3) in the case where the commission of an offence under this Act is an act of a State official or political position holder under (1) or other persons in connected cases of identical offences, whether as a principal, agent provocateur or aid and abettor, if the NCCC

considers it appropriate to conduct an investigation for further proceedings on all such related persons at one time, the NCCC shall have the power to conduct an investigation of the persons related to the commission of the offence, and upon completion, a documentary report and opinion shall be submitted to the Office of the Attorney-General in order for a case to be filed at the court which has competent jurisdiction over such offenders; in this regard, the report of the NCCC shall be deemed as an investigation file under the law on criminal procedure; however, if the NCCC considers it appropriate for the investigation of such offence to be taken by an investigation officer under the law on criminal procedure, the NCCC shall submit the result of fact-finding investigation to the investigation officer who will take further proceedings.

Proceedings of the NCCC shall not abrogate the rights of persons or State agencies that have suffered losses as a result of an offence in the bid to file petitions or complaints under the law on criminal procedure.

Section 15. In an investigation for criminal proceedings against an offender under this Act, the NCCC shall have the following powers:

- (1) to search for facts and compile evidence in order to acquire facts or prove an offence as well as to instigate legal proceedings to implicate the offender;
- (2) to issue an order for government officials, officers or employees of State agencies to perform as necessary for the compilation of evidence by the NCCC, or summon documents or evidence relating to any person, or summon any person to give a testimony for the purpose of the investigation;
- (3) to file motions at the court of competent jurisdiction for a warrant to enter a place of residence, place of business or other places, including vehicles belonging to any person, between sunrise and sunset or during business hours in order to examine, search, seize or attach documents, properties or other evidence relating to the matter which is subject to the factual inquiry, and if not completed within such time period, those acts may be continued until completion;
- (4) to file motions at the court of competent jurisdiction for an arrest warrant and detention of an alleged offender who appears to be an offender during the factual inquiry or in relation to whom the NCCC resolves that there is substance in the allegations in order that he/she be sent to the Office of the Attorney-General for further proceedings;

(5) to request a police officer or investigation officer to comply with court warrants issued under (3) or (4);

(6) to prescribe rules by publication in the Government Gazette on matters relating to the investigation and inquiry of commission of offences under this Act and coordinate legal proceedings taken by the NCCC, investigation officer and State attorney.

In the exercise of functions under this Act, the President and members of the NCCC shall be administrative officials or senior police officers and shall have identical powers and duties to the investigation officer under the Criminal Procedure Code, and for the benefit of investigations, the NCCC shall have the power to appoint a sub-committee or competent official to exercise the functions of the NCCC. The appointed sub-committee or competent official shall be an investigation officer under the Criminal Procedure Code.

In the case where the NCCC submits an investigation report to the Office of the Attorney-General for further legal proceedings, in relation to proceedings leading to the issue of an order of prosecution or non-prosecution vested in the State attorney under the Criminal Procedure Code, the provisions prescribing powers and duties of the investigation official, National Police Commander or provincial governor shall be deemed as powers and duties of the NCCC.

Section 16. The Prime Minister shall have charge and control of the execution of this Act. Countersigned by: Chuan Leekpai, Prime Minister.

NB:– The reasons for promulgating this Act are as follows. Whereas the procurement of products and services, whether by means of purchase or hire or other methods, of all State agencies are processes which expend budgetary appropriations, loans, financial assistance or revenues of the State agency, which are State funds, and the fact that the grant of rights to operate certain activities through concessions or other similar cases by the State are activities undertaken in the interest of the public, which are functions of the State; therefore, the procurement of such products and services as well as grant of rights must be conducted in a fair and just manner and by means of free competition for the greatest benefit to the State.

However, operations in the past have experienced bid collusions and various circumstances, which were not true competitions to present the greatest benefit to the State agency and have incurred loss to the nation. Moreover, in some cases, political position holders or State officials were involved in or promotes the commission

of an offence or fails to exercise their powers and duties, which worsened this problem. It is therefore appropriate that such acts are prescribed as offences in order to suppress such acts as well as prescribe offences and procedures for implicating political position holders and State officials so as to enhance the efficiency of such suppression measures. It is thus expedient to enact this Act.

Annex C: Act on Management of Partnership Stakes and Shares of Ministers B. E. 2543

Below is the full text of the Act.

Act on Management of Partnership Stakes and Shares of Ministers Act, B. E. 2543 (2000) BHUMIBOL ADULYADEJ, REX. Given on the 1st Day of July B. E. 2543; Being the 55th Year of the Present Reign. His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that: Whereas it is expedient to have a law on management of partnership stakes and shares of Ministers;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29, in conjunction with section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law; Be it therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the "Management of Partnership Stakes and Shares of Ministers Act, B.E. 2543 (2000)".

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette [Note: published in the Government Gazette Vol. 117, Part 66a, dated 12th July, B.E. 2543 (2000)].

Section 3. In this Act: "Minister" means the Prime Minister or an individual Minister in the Council of Ministers; "juristic person" means a juristic person entrusted by the Minister to manage partnership stakes or shares of Ministers under this Act; "NCCC" means the National Counter Corruption Commission.

Section 4. A Minister shall not be a partner or a shareholder in a partnership or company or remain as a partner or shareholder in a partnership or company, except in the following cases:

(1) in a limited partnership, a Minister may be a limited liability partner in an amount not exceeding five percent of the total capital in such partnership;

(2) in a limited company or public limited company, a Minister may be a shareholder in an amount not exceeding five percent of the total amount of issued shares in such company;

Section 5. In the case where a Minister wishes to receive benefits as a partner or shareholder in a partnership or company in an amount, which exceeds the prescription in section 4, the Minister shall proceed as follows:

(1) notify the President of the National Counter Corruption Commission in writing within thirty days as from the date of appointment as a Minister; and

(2) transfer the partnership stakes or shares in such partnership or company to a juristic person within ninety days as from the date of notification to the President of the National Counter Corruption Commission, and upon completion of such transfer of partnership stakes or shares to the juristic person, the Minister shall notify the President of the National Counter Corruption Commission in writing within ten days as from the date of such transfer of partnership stakes or shares.

Section 6. A juristic person to whom a Minister may transfer partnership stakes or shares for management under this Act shall be a juristic person having the powers to manage personal funds under the law on securities and securities exchange or a juristic person which manages assets for the benefit of others as provided by law upon the approval of the NCCC.

Section 7. A juristic person to whom a Minister may transfer partnership stakes or shares for management shall be a juristic person which does not have directors or officers entrusted by such juristic person to act as managers in the administration and management of partnership stakes or shares of Ministers while having benefits or interests with the Minister, spouse of the Minister or a creditor or debtor of the Minister.

Section 8. In the transfer of partnership stakes or shares of Ministers to a juristic person under this Act, the Minister shall transfer the ownership of partnership stakes or shares to the juristic person absolutely, but the management or procurement of benefits relating to the partnership stakes or shares of Ministers, shall be in accordance with the conditions of contract for management of the Minister's partnership stakes or shares.

In a transfer of partnership stakes or shares, which are subject to a charge existing on the date of transfer, such transfer shall not

prejudice the rights of creditors of such obligation, and the creditor of the obligation may not object to such transfer.

Section 9. A contract for management of partnership stakes or shares of a Minister shall be drawn up in accordance with the form prescribed by a Notification of the NCCC which shall at least include details on the following matters:

- (1) details relating to the partnership stakes or shares of Ministers that are transferred to the juristic person;
- (2) details on the method of transfer or disposal of partnership stakes or shares, methods of management of partnership stakes or shares and procurement of benefits in the transferred partnership stakes or shares, the characteristics of which shall not prescribe a framework for the management or procurement of benefits in such manner as to enable the Minister to exercise control of the management or procurement of benefits;
- (3) remuneration and method for payment of remuneration, if any;
- (4) liabilities and limitations to liabilities arising from the management of partnership stakes or shares;
- (5) payment of benefits arising from the management of partnership stakes or shares;
- (6) method for return of transferred partnership stakes or shares and benefits arising from the management of partnership stakes or shares.

In the prescription of a contractual form for the management of partnership stakes and shares of Ministers, the NCCC may prescribe conditions or limits on the scope of oral agreements, which a Minister and juristic person may rightfully enter into.

Entry into an agreement otherwise than under the contractual terms of management of partnership stakes and shares of Ministers pursuant to the form prescribed by the NCCC shall be prohibited.

Section 10. Upon the completion of a transfer of partnership stakes or shares to the juristic person by the Minister, the juristic person shall report the receipt of transferred partnership stakes or shares as well as forward a copy of the contract for management of partnership stakes or shares of Ministers to the NCCC within ten days as from the date of contractual execution. In this event, the NCCC shall proceed with the disclosure of such copy of contract to the public in such manner as it considers appropriate without delay.

Section 11. A Minister is prohibited from committing any act, which has the characteristics of exercising control, or issuing an order relating to the management of partnership stakes or shares or procurement of benefits from the partnership stakes or shares.

Section 12. A juristic person is prohibited from giving consent or proceeding by any means for the purpose conferring the Minister with an opportunity to administer, control or issue orders relating to the management of partnership stakes or shares or procurement of benefits from the partnership stakes or shares, or disclose to any person in such manner as to inform the Minister of the administration or management of partnership stakes or shares received from such Minister, except where the disclosure is in accordance with the law or a report of operations in accordance with the conditions prescribed by the NCCC.

Section 13. A juristic person shall prepare a separate account from the operational accounts of the juristic person, which shows the management of partnership stakes or shares received from a Minister and benefits received from the management of such partnership stakes or shares.

Partnership stakes or shares received by the juristic person from a Minister and benefits received from the management of such partnership stakes or shares are not properties of the juristic person which creditors of the juristic person can seize or attach for the enforcement of debts in both civil and insolvency proceedings, except where the creditors of the juristic person have the right to enforce an obligation attached to the partnership stakes or shares or benefits directly arising from such partnership stakes or shares. The provisions in paragraph two shall apply mutatis mutandis to the dissolution of the juristic person.

Section 14. In the receipt and management of partnership stakes or shares of Ministers under this Act, the juristic person receiving such partnership stakes or shares shall be exempt from the provisions of any law which prohibit the juristic person from becoming a partner or shareholder in other partnerships or companies or where there is a limit on the amount of funds for the management of properties belonging to others.

In the case where there is a law limiting the amount of partnership stakes or shares of juristic persons in other partnerships or companies, the amount of partnership stakes or shares received from the Minister including the benefits arising from the partnership or shares shall not be accounted with the amount of partnership stakes

or shares which the juristic person is entitled in other partnerships or companies.

Section 15. In the case where a juristic person who received partnership stakes or shares from a Minister dissolves or becomes insolvent, once the Minister receives the return of partnership stakes or shares and benefits arising from the management of partnership stakes or shares, if the Minister still wishes to continue receiving benefits from such partnership stakes or shares, the Minister shall notify such intention to the President of the National Counter Corruption Commission within thirty days as from the date of receipt of such returned partnership stakes or shares and proceed to transfer such partnership stakes or shares to another juristic person in accordance with the provisions of this Act.

In the case where the Minister receives additional partnership stakes or shares during the term of office as a Minister, and such partnership stakes or shares exceed the amount prescribed in section 4, if the Minister still wishes to continue receiving benefits from such partnership stakes or shares, the provisions in paragraph one shall apply *mutatis mutandis*.

Section 16. Any juristic person not complying with section 10 or section 13 paragraphs one shall be liable to a fine not exceeding three hundred thousand baht.

Section 17. Any Minister who violates section 11 or any juristic person who violates section 12 shall be liable to imprisonment for a term from one year to ten years or a fine from one hundred thousand baht to one million baht, or both.

Section 18. In the case where a juristic person commits an offence under this Act, the directors, managers or persons responsible for the operations of such juristic person shall be deemed as joint offenders with the juristic person unless it can be proven that such act of the juristic person was committed without his knowledge or consent.

Section 19. A Minister holding office on the date at which this Act comes into force shall proceed to secure compliance with this Act within one hundred and twenty days as from the date at which this Act comes into force.

Section 20. The Prime Minister shall have charge and control of the execution of this Act. [Countersigned by: Chuan Leekpai, Prime Minister]

NB:– The reasons for promulgating this Act are as follows. Whereas section 209 of the Constitution of the Kingdom of Thailand states that a Minister shall not be a partner or shareholder of a partnership or a company or retain his or her being a partner or shareholder of a partnership or a company up to the limit as provided by law; in the case where any Minister intends to continue to receive benefits in such cases, such Minister shall inform the President of the National Counter Corruption Commission within thirty days as from the date of the appointment and shall transfer his or her shares in the partnership or company to a juristic person which manages assets for the benefits of other persons as provided by law; in this connection, such Minister is prohibited from committing any act which has the characteristics of exercising any administration or management relating to the shares or business of such partnership or company. It is therefore necessary to enact this Act.

Managing conflict of interest in the public sector: The Hong Kong, China experience

Samuel Hui

Assistant Director of Corruption Prevention,
Independent Commission Against Corruption,
Hong Kong, China

Overview of Conflict of Interest

Conflict of interest (COI) occurs when “the private interests of a public official compete or conflict with the interest of the government or the official’s public duties.”¹ With rising public expectations regarding the accountability of public officials, COI is now perceived as corrupt behavior in many circumstances. Several emerging factors have heightened concern about possible conflicts of interest in the public sector, including new modes of cooperation with the private sector and increased mobility of personnel between the public and private sectors. In response, new approaches to managing COIs in the public sector have been developed.

The Hong Kong, China Experience

Hong Kong, China’s public sector comprises the civil service, legislative and district councils, as well as quasi-governmental bodies such as statutory, regulatory, or advisory bodies and publicly funded institutions. Assisted by the Independent Commission Against Corruption (ICAC), the Hong Kong, China Government has developed comprehensive regulations and guidelines for civil servants, covering a range of areas from acceptance of advantages, conflict of interest, investments, and activities outside of work, to post-service employment and confidentiality of information. These regulations and guidelines are summarized in a code of conduct for easy reference and compliance by civil servants. In fact, a code of conduct is instrumental in upholding any organization’s commitment to ethical practices, and making clear management’s expectation of the ethical standards of staff.

¹ This definition is used in a Hong Kong, China Government circular on conflict of interest issued to all civil servants in 2004.

A robust declaration system is an important tool for managing conflict of interest. The system should encompass declaration of financial interests (e.g., investments) as well as other personal interests (e.g., family ties). In Hong Kong, China the general public has access to the declaration records of councilors and senior officials, to facilitate public monitoring. Management is required to review all the declarations received and decide on the necessary course of action, which may include the official concerned withdrawing from the decision-making process or divesting himself or herself of the conflicting financial interests. To ensure that public sector staff and management understand how to implement the system, awareness training in the form of seminars and workshops is organized for them throughout the different stages of their career development.

Enforcement Mechanisms

Misconduct in public office may constitute a common-law offense in Hong Kong, China. The offense occurs when a public official, in the course of or in relation to his or her public office, willfully misconducts himself or herself, by act or by omission (e.g., willfully neglecting or failing to perform his or her duty), without reasonable excuse or justification. The criminality of misconduct is judged by its severity, with regard to the responsibilities of the office and the officeholder, the public objects they serve, and the nature and extent of the departure from those responsibilities. Criminal sanctions or disciplinary measures, or both, are imposed in accordance with the severity of the misconduct.

The Hong Kong, China ICAC not only enforces anti-bribery laws but also conducts educational programs, reviews public systems and procedures, and advises on the development of regulations and guidelines, with the aim of preventing corruption and strengthening the ethical culture of the public service. Beyond the public sector, ICAC also works in partnership with the various Chambers of Commerce in Hong Kong, China to operate an Ethics Development Centre to promote business ethics and corporate governance in the business community.

Examples of Misconduct in Public Office Cases in Hong Kong, China—Let the Punishment Fit the Crime

- A directorate officer responsible for managing government property awarded government contracts of USD20 million to a property management company owned by his close relatives. He failed to declare the relationship and awarded contracts to the company, knowing that it did not fully meet the tender prequalification requirements. He was sentenced to 30-month imprisonment.
- A senior police officer was convicted of accepting free sexual services from vice operators. Although he was not performing any official duties at the time, he was deemed to have failed his duty as a senior police officer when taking no action against the vice operators. Moreover, the court opined that the police officer would not have been offered the services if he were not in a position of power. He was sentenced to 2-year imprisonment.
- A legislative councilor acted as a paid consultant to a statutory body but failed to declare his interests in the consultancy service when speaking in the Council on matters concerning the statutory body's interests. He was sentenced to 18-month imprisonment.
- The chairman of the Liquor Licensing Board persuaded applicants to hire his friend as a representing lawyer, improperly provided confidential documents to his friend, and failed to disclose the relationship. He was sentenced to 1-year imprisonment.

Conclusion

While universal standards and practices can be established to guide and monitor public officials' behavior and conduct, the public's perception of COIs and other misconduct changes over time and in response to changing relations between the public and private sectors. Thus, it is necessary to establish a robust system for managing COI, which should be subject to ongoing review to ensure relevance and be clearly communicated to all stakeholders and the general public. Public perception is critical to determining whether or not public officials have acted inappropriately;

however, the onus of declaring potential conflicts is always on the officials themselves. In monitoring their own behavior, public officials are advised to apply the conventional “sunshine test” to determine whether or not an apparent, potential, or real conflict of interest exists.

Conflict-of-interest enforcement in the United States

Peter J. Ainsworth

Senior Deputy Chief, Public Integrity Section, Criminal Division, Department of Justice, United States

Overview of United States Statutes Addressing Conflict of Interest

The spectrum of conflict-of-interest scenarios ranges from the appearance of conflict to the actual incidence of bribery, which is a defined form of corruption in the United States (US) and most other nations around the world. Under US law, bribery and gratuity offenses have been defined for many years in the Criminal Code under Title 18, Section 201. In the wake of the Watergate scandal in the 1970s, the view emerged that greater weapons were needed to ensure good and ethical governance and avoid conflicts of interest. The reform legislation that was passed during this period can be found in Sections 203 through 209 and are known as the US conflict of interest (COI) statutes.

These statutes were created to address concerns raised by federal agency standards-of-conduct and professional association standards-of-conduct regulations. Essentially, these statutes prohibit (i) current government officials¹ from acting in their official capacity in a matter that causes them to gain financially, and (ii) former government officials from returning to office in an attempt to influence the agency's decision on a matter that was pending under their official responsibility while in their former government position.

COI statutes differ from bribery in that they always require action by the current or former official. COI is also considered less egregious than bribery. Penalties for violation of COI statutes are governed by Section 216, which allows for civil and criminal sanctions. Generally speaking, the prosecutor's decision on whether to lay a charge for bribery or a less serious COI statute is dependent upon whether he

¹ Section 202 contains definitions of terms used throughout the conflict-of-interest statutes. For the purposes of this summary, no distinction is made between "employee," "officer," and "official."

or she can prove a *quid pro quo* or evidence of intent. Stated differently, our statutory scheme allows us to prosecute criminally under COI statutes those who have entered into a bribery scheme even when we cannot prove the actual agreement or exchange.

The following summarizes the key restrictions and conditions covering compensation, post-employment, and personal financial interests of public officials and members of US Congress, as outlined in current US law.

Compensation for Members of Congress, Officers, and Others in Matters Affecting the Government, Section 203

Section 203 prohibits specified government officials from directly or indirectly accepting any monies or proceeds derived from compensation paid for services the official provided to the Government. This provision embodies the principal that, except for their government salary, a government official should not share in the proceeds derived from a private source for representation before a federal department, agency, or court. It also penalizes the person who offers or gives such compensation. The statute was designed to avoid the risk that, because of payments made by reason of his or her position, an official may (consciously or unconsciously) give preferential treatment to the payor. It does not matter whether the official is actually influenced. The intent is to ward off the temptation to be influenced.

Activities of Officers and Employees in Claims against and Other Matters Affecting the Government, Section 205

Section 205 prohibits a government official, other than in the proper discharge of his or her official duties, from acting as an agent or attorney for prosecuting any claim against the United States, receiving any gratuity or share in any such claim in consideration of such assistance in prosecuting such claim, or representing anyone before a federal agency or court in connection with a matter in which the United States has a direct and substantial interest.² This statute embodies the principle that a federal official should not serve as a

² Section 205(e)–(g) and (i) provide certain exceptions. Section 205(h) defines “covered matter.”

representative of a private party before the federal Government, whether or not compensation is paid.

The statute differs from Section 203 in that the latter focuses on the taking or offering of compensation for representational services; Section 205 focuses on certain types of representation, with or without compensation. See *United States v. Myers*, 692 F.2d 823, 858 (2nd Cir. 1982) (the defendant congressman in the Abscam prosecution did not violate Section 203 by receiving compensation for merely giving advice about immigration generally, but there would be a violation if he had rendered services before an agency or court).

Section 203 covers officers, employees, members of Congress and federal judges. Section 205 covers only officers and employees. See *United States v. Wallach*, 979 F.2d 912, 919 (2nd Cir. 1992) (Section 203 conspiracy could be found where the defendant received compensation as a federal official for lobbying another agency for a private party).

Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches, Section 207

Section 207 prohibits former government officials from influencing their former colleagues and subordinate employees on matters still pending before that agency. This statute also prohibits the former officials' use of information regarding specific cases gained during their government employment for personal benefit or for the benefit of a client or private employer.

- **Section 207(a)(1) – Lifetime Bar:** A former executive branch official may not knowingly make, with the intent to influence, a representation before a federal agency or court in connection with a particular matter, involving a party, in which the United States has a direct and substantial interest, in which the official participated as an employee, and which matter involved a specific party at the time of such participation.
- **Section 207(a)(2) – Two-Year Bar:** A former executive branch employee, within two years after the termination of their government service, may not knowingly make, with the intent to influence, a representation before a federal agency or court in connection with a particular matter, involving a party, in which the United States has a direct and substantial

interest, which the employee reasonably should have known was actually pending under his or her official responsibility within one year before leaving government service.

- **Section 207(b) – One-Year Bar:** A covered person may not knowingly “represent, aid, or advise” any other person concerning a treaty or treaty negotiation in which the covered person participated on the basis of designated information to which he or she had access and which he or she should have known was so designated.³
- **Section 207(c)-(f) – One-Year Restrictions on High-Level Officials:** Commonly referred to as the “one-year cooling off period,” this section provides a series of one-year restrictions on post-employment representations by specified former high-level officers and employees, which apply without regard to whether the matter involved in the representation was actually pending—or even existed—during the period of government service.

Acts Affecting a Personal Financial Interest, Section 208

Section 208 indicates that a public official may not personally and substantially participate as an official in a particular matter in which, to the official's knowledge, the official, his or her spouse, or other specified persons or entities—including businesses with which the official is negotiating for employment—has a financial interest.⁴ This statute is a mainstay of conflict-of-interest statutes. It prohibits financial self-dealing, and is closely allied to Section 201 on bribery. It was designed to prohibit public officials from advancing or appearing to advance their financial interests at the expense of public interests.

Salary of Government Officials Payable Only by the United States, Section 209

A government official may not receive a salary from any source other than the United States as compensation for his or her services

³ Section 207(b)(2)(A) defines “trade negotiation” and Section 207 (b)(2)(B) defines “treaty.”

⁴ Section 208(b) provides a written-waiver provision for certain fact-specific circumstances.

as an official. This statute prevents the official from receiving large monetary gifts from private sources for a job well done. The aim of the statute is to prohibit two payrolls and two paymasters for the same job. It presumes that there is a natural tendency to favor an outside donor even absent direct pressure to perform in a certain way. The statute alleviates even the appearance of impropriety.⁵

Enforcement in Practice: The Challenge to Determine Intent

The Public Integrity Section (PIN) of the US Department of Justice was established in the 1970s—another outgrowth of the Watergate scandal. The unit was created to provide uniformity, standardization, and objectivity in handling all public corruption cases to include those brought under COI statutes.

As outlined earlier, standards of enforcement are contingent upon how much evidence of corrupt intent can be established. Several examples of cases handled by PIN illustrate this principle.

“Now let’s go out and buy us some votes” – Ben Reyes, Houston, Texas

Ben Reyes was the head of the City Council, in Houston, Texas, the US’ fourth-largest city, for dozens of years spanning the decades of the 1970s through the 1990s. Throughout this time, the local FBI office received numerous allegations that Reyes demanded large sums of money from anyone who wanted to do business with the city. Having failed to make a bribery case on him over the years, the FBI got permission to begin an “undercover operation.” Creating a fictitious company, they bid on a city contract, and then sat back and waited.

True to form, Reyes approached the FBI’s make-believe company and demanded a bribe. Once he was paid for his vote, he demanded more money to bribe the other members of the Council for their votes. The above quote was his precise words as recorded during the investigation. It leaves little room for interpretation; it shows unequivocally that Reyes intended to receive money for votes. Given this clear statement of corrupt intent, PIN prosecuted him under the corruption statutes and asked for the maximum sentence once he was convicted.

⁵ Sections 209(b)–(e) provide certain exceptions.

Friends for life: US versus Harvey, Western District of Virginia

This example is a little more ambiguous. Recently, PIN prosecuted an employee of the Defense Department, a fellow by the name of Harvey, for procurement fraud. Harvey awarded a large government contract to a company owned by a neighbor. The investigation revealed that during the same time that the contract was being performed, Harvey received thousands of dollars from the neighbor which he used to support his own failing businesses. Before the contract expired, Harvey also accepted a job with the neighbor's business. It turned out that the two had known each other since childhood.

Clearly, the evidence of intent here is not nearly as strong as in the Reyes case. While PIN could and did argue that the money given to Harvey was in return for his awarding his friend the contract (a bribery offense), prosecutors were forced to concede that the two were close, that the neighbor had lots of money, and that Harvey was in desperate financial shape. In short, it was more difficult to prove a straight *quid pro quo* bribery scheme since the money may have been given, at least in part, out of a sense of friendship. In accordance with US COI statutes, though, PIN could have charged Harvey with taking "acts affecting a personal financial interest," as prohibited in Section 208. As it turned out, the jury did see this for what it was: a bribery scheme. Nevertheless, the COI statute allowed PIN the option of charging Harvey with another criminal offense alongside the bribery counts.

The Ronald McDonald House, Veterans Administration Hospital, Ohio

Finally, this example entails an investigation that uncovered no evidence of corrupt agreement or intent. A few years ago, PIN was referred an allegation that a government official was negotiating a lease with his own agency. Specifically, the official was a manager at a government hospital. He was also on the board of directors of a charitable foundation that wanted to build a shelter or dormitory on the grounds of the hospital. The structure was to be used by poor families who needed lodging while visiting their children dying of cancer in the hospital.

A quick look at Section 205 shows government officials may not represent someone (in this case the charitable foundation) in

a matter affecting the Government. An even quicker look at the evidence, though, shows that there was not even a hint of criminal intent in this government official's actions. He was motivated solely by charity and was therefore neither criminally nor civilly pursued under the COI statutes. While it is not clear whether there were administrative sanctions levied, the most likely outcome would have been a requirement that he take additional ethics training to better learn the rules.

Conclusion

In summary, the statutory scheme in the United States allows for flexibility in enforcement that turns primarily on the intent of the parties. As a final word of advice, though, no set of COI rules or laws, no matter how sophisticated or flexible, serves as a substitute for common sense in the enforcement of those rules.

Tracking corruption in the USA: Politics and election financing

Larry Makinson

Former Executive Director, Center for Responsive Politics, United States

Overview of Campaign Financing and US Elections

In the United States (US), all federal elections are financed entirely from private contributions, except the presidential election. Candidates receive only a small proportion of campaign funds from political parties and must raise the rest themselves from individual donors and political action committees, or draw on their own personal wealth. US elections are expensive, and getting more expensive every year. Thus, every member of Congress faces a potential conflict of interest simply by running for public office and raising the funds it takes to conduct a campaign. For the US House of Representatives, which requires two-year terms, the average incumbent spent USD1.3 million in 2006 to win reelection. Newcomers who won spent an average of USD1.8 million. In the US Senate, which requires six-year terms, costs vary widely, depending on the size of the state and the level of competition. The top 10 campaigns cost USD15 million or more on the average. Topping the charts, Hillary Clinton spent USD34 million on her most recent senatorial bid, while the most expensive campaign in US history was waged in 2000 by Jon Corzine, a Democrat from New Jersey, at a cost of USD63 million, most of which came from his own personal wealth.

In contrast, presidential primaries and general elections are financed—at least partially—by public funds. The money comes from a voluntary “USD3 checkoff” on federal income tax returns. In the primaries, candidates can receive a maximum of about USD16 million in matching funds. However, if they accept these funds, they must limit their total fund raising to USD40 million. In the general election, another USD75 million in federal funds is awarded to the major party candidates—but if they take it, they may no longer accept private contributions and can spend only USD50,000 in personal funds.

In 2000, George W. Bush declined the federal matching funds in the presidential primaries, raising the money privately instead.

In the process, he vastly out-raised and outspent his Republican opponents who had taken the federal funds and lived within the spending limits. Overall, in the 2000 presidential campaign, Bush spent USD193 million, while Al Gore spent USD133 million. In 2004, Bush again declined federal matching funds for the primaries, as did the top Democratic candidate, John Kerry. In that election, Bush spent USD367 million and Kerry spent USD329 million. In 2008, it is quite possible that both the Democratic and Republican nominees will decline federal funds not only for the primaries but for the general election as well—something that no major party candidate has ever done since the current federal funding system was created in 1976. This could raise the cost of a successful run for the White House in 2008 to USD500 million or more—all of it raised from private sources.

In order to raise the vast amounts of money required to run for office, every candidate must conduct two campaigns—a public campaign aimed at voters and a “phantom campaign” outside public view aimed at potential contributors. When they take office, politicians must then represent two sets of constituents: the “real” constituents and the “cash” constituents. Thus, transparency is crucial, and thanks to the Watergate scandal,¹ the US system is very transparent. Every contribution over USD200 to federal candidates and political parties must be itemized and reported, declaring each donor’s name, address, occupation, and employer.

¹ “Watergate” is a general term for a series of political scandals that began with the arrest of five men who broke into the Democratic National Committee headquarters at the Washington, DC, office/apartment complex and hotel called the Watergate on 17 June 1972. The attempted cover-up of the break-in ultimately led to the resignation of President Richard Nixon. Investigations conducted by the FBI, the Senate Watergate Committee, the House Judiciary Committee, and the press revealed that this burglary was just one of many illegal activities authorized and carried out by Nixon’s staff. They also revealed the immense scope of crimes and abuses, which included campaign fraud, political espionage and sabotage, illegal break-ins, wiretapping on a massive scale, including the wiretapping of the press and regular citizens, and a secret slush fund laundered in Mexico to pay those who conducted these operations. (Source: Wikipedia.org; Dickinson, William B., Mercer Cross, and Barry Polsky. 1973. *Watergate: Chronology of a Crisis*. Washington, DC; *Congressional Quarterly* 8 133 140 180 188. ISBN 0871870592. OCLC 20974031)

Moreover, contribution records and reports are now filed electronically, making this information more accessible and easily disseminated.²

Following the Money Trail: Watchdog Groups and Candidate/Donor Profiling

As election costs soar, so have concerns that increasing contributions from special interest groups have compromised the objectivity of public sector decision making. Civil society watchdog groups have a long history of tracking and raising public awareness regarding the flow of campaign funds. The hope is that greater transparency will lead to greater accountability, ensuring that whether or not corporate or special-interest groups are “paying the bills,” public officials’ decision making remains objective and in the public interest. Before the Internet, the Center for Responsive Politics (CRP) published a comprehensive book on candidates, donors, and contributions called *Open Secrets*. The book was 1,300 pages and cost USD190, with circulation limited to Washington, DC, and major university libraries. In the mid-1990s, the Internet helped to transform the monitoring and reporting process, providing unlimited, free “pages” and limitless distribution.³

Since then, CRP has helped to advance the level of sophistication in reporting, taking the lead in developing candidate and donor profiles and a multilayered trend analysis of the flow of funds and possible links to candidates and public officials’ voting records. CRP collects contribution data from the Federal Election Commission, cleans the data on donors and employers, categorizes contributions by industry and interest group, and produces profiles of politicians, industries, and major donors, which are then disseminated widely through the press and the Internet.

² US senators are not required to file their reports electronically because technically their reports go to the secretary of the Senate, not the Federal Election Commission. Recent attempts to close this loophole, and require senators to file electronically, have been rebuffed in the Senate through arcane parliamentary maneuvering.

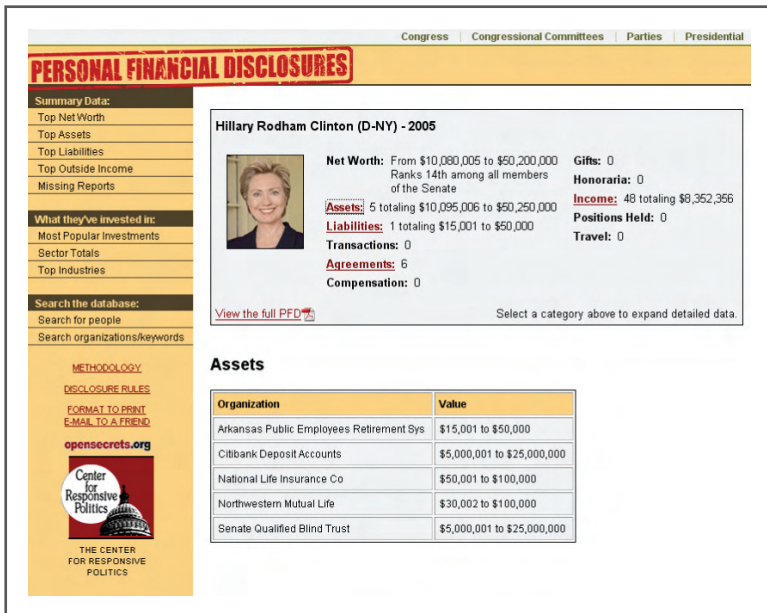
³ The Sunlightfoundation.com/resources site provides an inventory of links and resources on government transparency. This listing provides a broad range of information available for tracking government and legislative information, campaign contributions, and the role of money in politics in the United States.

Dissecting Donations: Linking Dollars to Votes and Power

In addition to profiling candidates and donors, CRP analyzes contribution data to further parse out trends or patterns in giving by geography, industry/sector, political party, and major donors. This analysis is also informed by data gathered from public officials' financial disclosure records—see Figure 1—which provides details on corporate investments as well as the sources of all their assets. Figure 2 shows the most common stock holdings among members of Congress, ranked by the number of members invested in a particular company, with a breakdown by political party, i.e., Democrat investors versus Republican investors.

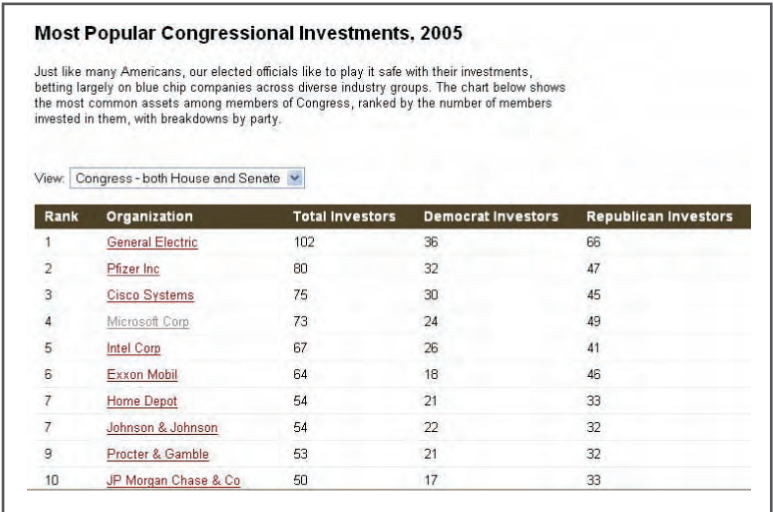
CRP's trend analysis supports conventional wisdom that in Washington "money follows power," revealing a correlation between contributions by industry and partisan control in the Congress. As illustrated in Figures 3 and 4 below, the commercial banking industry contributed roughly equal amounts to Democrats and Republicans while Democrats held majority power in the Congress in the early 1990s. However, contributions to Republicans doubled

Figure 1: Hillary Rodham Clinton's Personal Financial Disclosure Record



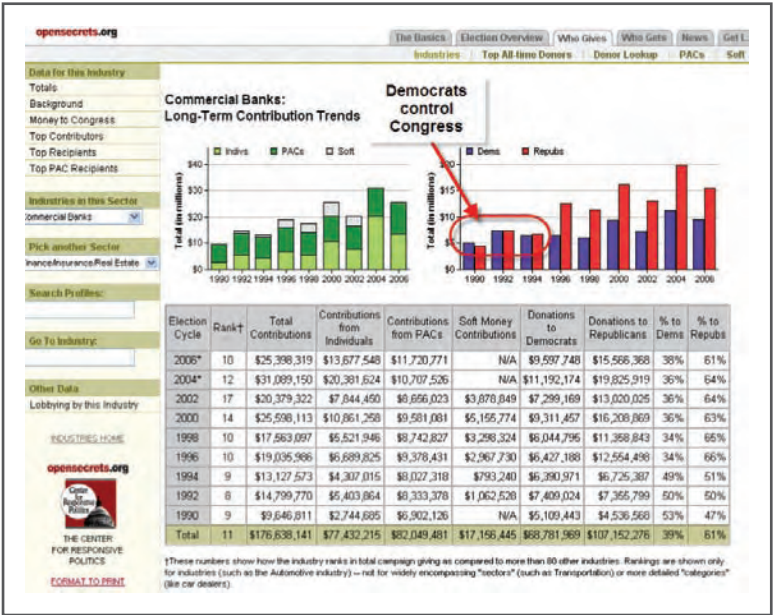
Source: Center for Responsive Politics, 2007.

Figure 2: Summary of the Most Popular Congressional Investments, 2005



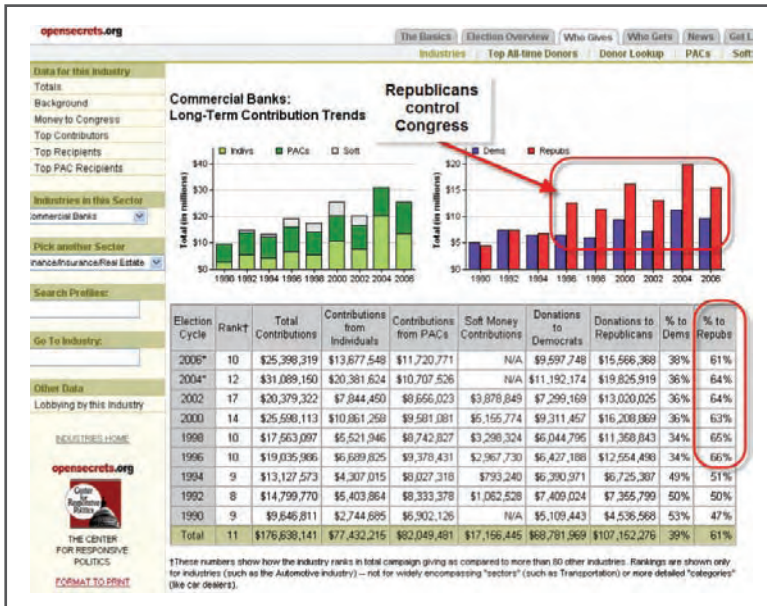
Source: Center for Responsive Politics, 2007.

Figure 3: Democrats Control Congress—Commercial Banks' Contributions Trends



Source: Center for Responsive Politics, 2007.

Figure 4: Republicans Control Congress—Commercial Banks' Contributions Trends



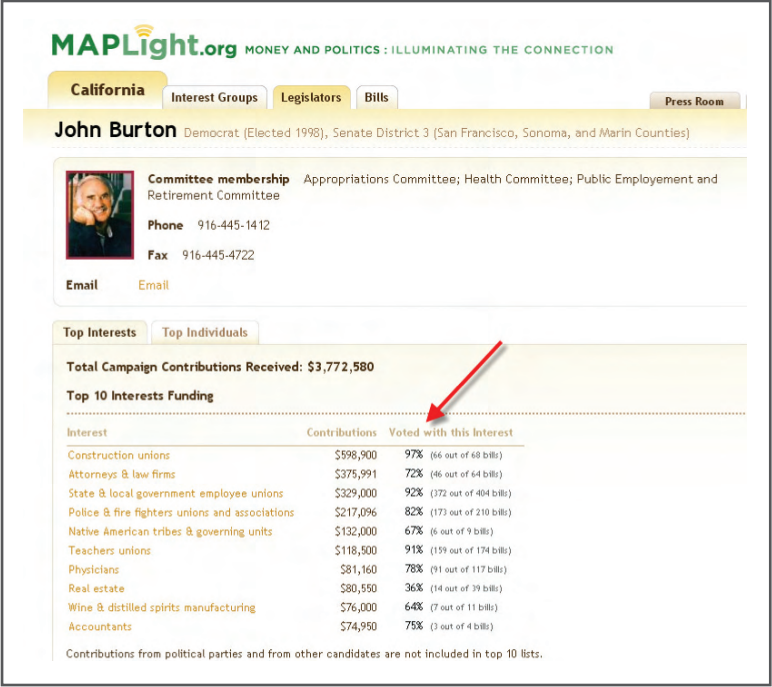
Source: Center for Responsive Politics, 2007.

when Democrats lost control of Congress after the 1994 elections. The implication here is that Republicans' voting records are typically more favorable when it comes to advancing corporate banking interests, and since they now held the majority, there was no longer a need to give so much to Democrats.

Another watchdog site, MapLight.org, also tracks contributions and voting records categorized by special interest. As Figure 5 below reveals, the data suggest that there is a strong correlation between contribution levels and voting—the higher the campaign contributions, the higher the percentage of votes cast in favor of the special interest.

While transparency does make it easier to identify potential conflicts of interest, disclosure alone does not necessarily translate into greater accountability. Incumbents still get the cash, but not without asking. On almost every night in Washington, DC, money is being raised and interests discussed at USD1,000-a-plate fund-raising events. The data indicate that corporations and interest groups base their contributions on members' voting records: every vote is scrutinized by interest groups and loyalty is rewarded.

Figure 5: Making the Link between Contribution Levels and Voting Records



Source: MAPLight.org, 2007.

Thus, incumbents have a huge advantage over challengers in raising money. Competition in what is supposed to be a democracy is increasingly rare—especially in the House of Representatives. In fact, in more than 60% of US Congressional districts in 2006, the winner outspent the loser by 10-to-1 or more.

A Codependent Two-Way Street to Nowhere, USA?

In addition to providing cash to feed the election coffers, companies and other special interest groups regularly organize events to build relationships and secure face time with Congressional members and staff to discuss and lobby on behalf of their issues. Public officials' survival in office is dependent upon—and thus motivated by—keeping such “cash constituents” happy. Conversely, special-interest groups are motivated to become politically active when it affects their bottom line. For example, Microsoft Corporation, the world's top computer software company, is now one of the biggest

campaign contributors in Washington—an astounding fact when you consider that Microsoft is a relatively new player on the political scene. Before 1998, the company and its employees gave virtually nothing in terms of political contributions. However, when the Department of Justice launched an antitrust investigation into the company's marketing of its popular Windows software, things changed. The company opened a Washington-based lobbying office, established a political action committee, and soon became one of the most generous political contributors in the country. The move eventually galvanized an entire industry, as computer and Internet companies quickly moved to emulate Microsoft's political savvy.

However, Congress has recently approved ethics and lobbying reform legislation to increase disclosure and significantly curb special interests' lobbying activities, especially gifts, organized charity events, and recreational travel. The new legislation requires federal lobbyists to disclose political contributions and public officials to declare earmarking during the appropriations process. These reforms also prohibit public officials from accepting free admission at events held by charities that retain lobbyists and requires that eligible charities—not individuals or other organizations—provide reimbursement for transportation and lodging.

Conclusions: Democracy or "Dollarocracy"?

The data suggest that there is a more than casual link between campaign dollars and public officials' voting records. Special-interest groups monitor voting records and make contributions accordingly, and public officials court special interests to remain in office. In short, money follows power, and power can be sustained only by more money. It is a vicious circle. Such institutional corruption can be more dangerous than individual corruption—even when no laws are broken. While transparency is absolutely essential and recent legislative reforms indicate progress, significant change in election financing and the business of policy making and appropriations is still required. Independent government agencies are needed to monitor elections and enforce the laws. Civil society and nongovernment organizations are needed to analyze contribution data and political voting records and appropriations. And a vigilant free press is critical to deliver the facts—and their implications—to the public. If any of those ingredients are lacking, you may not have the democracy you think you do.

Section 3:

Prevention and Enforcement—Codes of Conduct, Ethics, and Organizational Culture

Chapter 4

Codes of conduct in the public sector

Codes of conduct are a useful tool used throughout the world to establish standards for ethical and appropriate behavior in public administration. Many countries have incorporated targeted provisions into their constitutions, their laws, or public administration employee handbooks and training activities. In this chapter, practitioners from the People's Republic of China (P.R. China) and Australia provide two different but equally successful approaches to implementing a code of conduct to guide their respective countries' public sector employees.

As noted earlier, prevailing social, cultural, political, and economic norms affect the extent to which conflicts—apparent, potential, or real—are dealt with in various countries. Prevailing norms also determine what approaches—formal or informal—may prove most effective. Song Dajun, Deputy Director General for Administrative Supervision and Inspection with the Ministry of Supervision in P.R. China, relates his country's top-down centralized approach designed around a series of control and compliance mechanisms, while Mike Jones, Senior Executive Advisor with the Australian Public Service Commission (APSC) based in Jakarta, describes the principles-and-values-based approach enforced through a workplace management framework guiding the APS.

These examples demonstrate how political, social, and cultural mores influence how conflict of interest is perceived and handled. P.R. China's code of conduct emphasizes what public sector employees *must not do*, whereas Australia's code of conduct emphasizes what public sector employees *must do*. While vastly different approaches, both offer effective examples of how to implement and enforce a code of conduct to prevent conflicts of interest from occurring in the public sector.

Codes of conduct and mechanisms to prevent conflicts of interest in the People's Republic of China

Song Dajun

Deputy Director General for Administrative Supervision and Inspection,
Ministry of Supervision, People's Republic of China

The Rationale for Legislation on Conflict of Interest: Standardizing Codes of Conduct

Public servants are expected to serve the national or public interest and perform their duties honestly and diligently. They are not expected to benefit or derive private gains from their public position or office. They are expected to avoid conflicts that may arise between their private interests and public functions. However, in reality, as human beings, public servants also have their own private interests.

Public servants may have personal affiliations or interests in private companies. Whether any inappropriate behavior occurs or not, the *apparent* temptation is there and such conditions may lead the public to question the impartiality of public decision making on issues or activities related to these private interests. Similarly, if public servants' spouses, children, or other relatives would be allowed to work under their direct leadership, they would be difficult for the public servants to manage objectively to avoid nepotism or special treatment. Consequently, *potential* conflicts between public and private interests surely exist. There are also several examples of *real* conflicts, which are presented as reasonable or legitimate connections that inevitably lead to corruption. These examples underscore the need to identify and maintain a clear division between public and private interests to preserve the integrity of government and to ultimately combat corruption.

Conflicts of interest and corruption are caused by abuse of public power. Legislation and regulations help to standardize the expected code of conduct in establishing a comprehensive and effective legal system to control the exercise of power. Laws help to standardize professional ethics and to set clear parameters for

public servants' official conduct. Within a strict legal system, there is little incentive for public servants to give in to the temptation of corruption. Thus, developing legislation to promote government integrity and to formulate codes of conduct for public servants is a fundamental first step toward preventing conflicts of interest and eradicating corruption at its source.

Status of Legal and Regulatory Framework in the People's Republic of China

The Chinese Government has enacted targeted legislation on integrity, implemented regulations pertaining to ethics, and formulated official codes of conduct for public officials, demonstrating its commitment to preventing conflicts of interest in its public sector. Described in greater detail in the following section, the legal and regulatory framework broadly comprises three key components:

- General principles and requirements (codes of conduct, regulations on integrity, guidelines regarding limits on economic and social activities);
- Specific regulations (pertaining to gifts, parameters for domestic and foreign official business, family activities and interests, and employment restrictions); and
- Articles and provisions within other laws (provisions outlining disciplinary punishment, additional employment restrictions, and rules on consumption).

In 2005, the Chinese Government promulgated the Implementing Program for Building and Perfecting a System for the Punishment and Prevention of Corruption with Equal Emphasis on Education, Institution, and Supervision. This program emphasizes the need to accelerate the implementation of legislation on government integrity. The Government aims to establish a basic legal framework for the prevention and punishment of corruption by 2010 to standardize the official conduct of public servants and guarantee their integrity.

Key Aspects of Conflict-of-Interest Legislation and Regulation

Over the years, the Chinese Government has established several systems, mechanisms, and regulations to prevent conflicts of interest. Collectively, these efforts target four key areas: exercise

of power; declaration of assets and income; prohibitions regarding private gains, benefits, and extravagance; and restrictions on employment and affiliations of public servants and their relatives. Key concepts and provisions are described in greater detail below.

Control Mechanisms Regarding Exercise of Power.

- **Democratic Centralism:** The Government's major policy decisions, important appointments and dismissals of personnel, key project arrangements, and utilization of mass capital must be collectively discussed and decided at the leadership level.
- **Inspection Tour System:** Central and provincial government inspection tour groups check whether the lower levels of government and their public servants exercise their powers correctly and perform their duties honestly and diligently.
- **Conversation System:** The main leaders at the higher levels of government and the heads of supervisory bodies hold regular face-to-face meetings with leaders from the lower levels of government to assess the performance of duties, to recommend proposals and outline requirements, to encourage those in new positions to respect democratic centralism and act ethically, and to caution or warn those who have a tendency to violate relevant provisions.
- **Inquiry and Query System:** Lower levels of government are encouraged to make inquiries with the higher levels of government regarding the decisions of the latter and their implementation.
- **System of Reporting on Work and Integrity:** Public servants are obligated to report regularly regarding their performance of duties and their integrity.
- **Transparency of Government Affairs:** Government affairs are open to the public. The public can obtain access to information on issues of concern or vital interest.¹ The informa-

¹ In April 2007, the Regulations on Disclosure of Government Information were enacted and will enter into force in May 2008. The regulations prescribe the scope, content, methods, and procedures of making government information open to the public.

tion publicized may include basic briefings of administrative bodies, decision making procedures and implementation, supervision methods, and process and results.

Declaration and Disclosure Requirements

- **Regulations on Income Declaration and Disclosure of Relevant Interests:** Public servants above the county (division) level have to regularly declare their income, including their wages, bonuses, allowances, subsidies, income from consulting, lecturing, writing, editing, painting, etc. They are required to provide information regarding the marital status, the living arrangements of their spouse and children (e.g., if living abroad), any activities or business interests being pursued abroad, and other relevant matters.

Restrictions and Regulations on Private Gains, Benefits, and Extravagance

- **Restrictions on Abuse of Power and Improper Benefits:** It is clearly prescribed that public servants are forbidden to abuse their public functions to seek improper benefits for those who demand they do so ("demander"). Public servants are forbidden to accept a demander's properties or money through business transactions; to accept shares without contributing; to cooperate with demanders to run any business without funding; to gain benefits by entrusting the demander with investment in securities, futures, or other investment; to obtain properties or money through gambling; or to enable their relatives to get paid in name without any fulfillment of work.
- **Restrictions on Accepting Gifts and Money:** Public servants are forbidden to accept cash, securities, and vouchers from organizations and persons related to the performance of their duties. They are not allowed to accept gifts in official activities that may compromise their objectivity and impartiality. If they are unable to refuse a gift, they must declare receipt and relinquish the item.
- **Regulation on Official Consumption:** The principles, scope, standards, and methods for official functions and receptions

have been strictly formulated. It is forbidden to use public funds to gather public officials for dinners or to arrange private receptions among public officials. Likewise, there are clear principles outlined regarding the use of official vehicles, their scope of equipment, formulation, and conditions for change. It is prohibited to use official vehicles beyond the standards prescribed and for personal purposes. Subsidies for the use of mobile phones have also been standardized in line with officials' rank. Officials are entitled to these subsidies for official business but must pay for personal calls themselves.

- **Restrictions on Private Gains and Extravagant Spending:** Public servants are prohibited from using public funds for travel to take part in entertainment and leisure activities disguised as meetings or training, or for any kind of private travel. Government entities are not allowed to build, expand, or redecorate their office building above the standards prescribed.

Regulations on Employment/Public Office and Familial Affiliations

- **Part-time Jobs and Post-employment.** Public servants are not allowed to engage in business or run enterprises, or to take part-time jobs while in office. Retired public servants above the county (division) level are forbidden to take jobs in private companies, foreign-invested enterprises, or intermediary organizations within their former jurisdictions, and to run businesses or represent private or foreign companies within their former jurisdiction within three years after resignation or retirement.
- **Spouse's and Children's Employment and Business Activities.** Spouses and children of public servants above the county (department) level are not allowed to run enterprises or engage in business within the public servant's jurisdiction that may cause conflicts of interest. They are not allowed to assume high positions in foreign companies or Sino-foreign companies within the public servant's jurisdiction or area of administration. They cannot obtain personal benefits in exchange for using the influence or power of the public servant to facilitate the running of others' business. Public

servants cannot provide conveniences for the spouses and children of other public servants to run businesses and obtain improper benefits. Spouses and children of officials at the provincial (ministerial) level cannot run businesses in the fields of real estate, advertisement, law, and entertainment within the officials' areas of administration.

- **Regulations on Evasion:** Public servants are not allowed to take positions under the same leadership and in the same agency as their relatives by marriage, directly genetic, within three generations of collateral blood and affinity, or to have such relatives as direct subordinates. They are not allowed to perform duties of supervision, personnel management, auditing, and financial management in an agency where a relative is in the lead position. They are not allowed to work as lead officials in governments of the village, county, city where they grew up. Public servants should evade affairs related to their private interests or the interests of their relatives, or affairs that may influence their impartiality in performing official duties.

Conflict-of-Interest Management: Training, Inspection, and Enforcement

The Chinese Government has taken a hands-on approach to prevention and enforcement through targeted training, supervision and inspection systems, and clear disciplinary measures.

Education, Training, and Public Awareness

The Chinese Government has employed various methods to educate public servants regarding their responsibility to adhere to legal requirements and uphold good governance. The primary goal is to ensure legal awareness, professional ethics, and honesty and integrity in public service. Every year, Chinese supervisory bodies organize regular integrity training programs and activities. Key concepts pertaining to integrity are outlined in all programs, and targeted training materials have been compiled. Best practices as well as cases of corruption are discussed to encourage ethical behavior and provide warning regarding enforcement measures and punishment. The media also play an important role in promoting public awareness and instilling a culture of integrity in communities,

families, schools, enterprises in both rural and urban areas, communicating the message that integrity is glorious and corruption is shameful.

Supervision and Inspection Systems

The Chinese Government has made great efforts to establish a sound system of supervision and inspection, featuring multiple layers and channels to monitor parliamentary activities, administrative functions, judicial proceedings, and political party activities. The People's Congress oversees the system, reviewing administrative and judicial activities, making inquiries, conducting inspections, and addressing improper practices. Supporting the Peoples' Congress, administrative supervisory bodies carry out specific inspection functions related to public servants' activities, while separate audit bodies oversee the implementation of budgets. The courts oversee the judicial supervision system, bringing administrative cases to trial and monitoring investigative activities.

Civil society organizations, the media, and the general public also play a key role in monitoring public sector activities through advocacy, political participation, and investigative reporting. Hotlines and reporting centers have been established throughout the country to provide the public with official mechanisms through which to report abuse.

Disciplinary Measures/Punishment Mechanisms

The Regulation on Disciplinary Punishment of Public Servants clarifies the classification, jurisdiction, and procedures of disciplinary punishment. Meanwhile, P.R. China has established a working mechanism within which the supervisory bodies, the police, and the judiciary cooperate with and support each other. Public servants who seek personal gains by abusing their official power are investigated and punished accordingly. On the basis of the findings of investigations organized by the supervisory bodies, the public servants who violate the disciplinary regulations or codes of conduct will be given disciplinary punishment of various kinds ranging from a warning, a demerit, or a serious demerit, to demotion, removal from office, and dismissal. If they violate the criminal law, their cases will be transferred to the judiciary for prosecution and trial.

Conclusion

Preventing conflicts of interest is a complex and challenging task. Legislation and regulations are required to identify and define conflicts of interest, to standardize expectations regarding official conduct, and to formalize approaches to prevention and enforcement. Moreover, the legal and regulatory framework must be supported by effective systems and mechanisms to assist with training, supervision, inspection, and enforcement functions. P.R. China has made significant progress in combating conflicts of interest within its borders and hopes to continue to contribute to the international dialogue on lessons learned, successful practices, and remaining challenges, in the fight against corruption in all its forms.

Preventing conflicts of interest in the Australian public service

Mike Jones

Senior Executive Advisor, Australian Public Service Commission (APSC), Jakarta

The APS has embraced an environment of considerable change over the last decade and a half. It has undergone significant reform to meet the increasing expectations that the Government, the Parliament and the community have of its performance. Through these reforms the APS has committed itself to achieving better standards of service for its clients, ensuring public money is spent efficiently and effectively and being held accountable for the results it achieves.

But in pursuing these objectives, the APS has retained its focus on its central purpose: serving the public good, satisfying public interest, and delivering to the community their entitlements in a manner which reflects the public purpose. This means preserving the essential values of public administration—such as ethical behaviour, impartiality, equity and merit while simultaneously striving for best practice in service delivery.¹

Overview of the Australian Public Service

Australia has a three-tiered system of government comprising the federal level, i.e., the Australian Government (230,000 staff); the states and territories, each with their own legislature (1.6 million staff); and local levels of government featuring roughly 700 local councils (166,000 staff). At the federal level, 146,000 of the 230,000 government employees are employed under the 1999 Public Service Act (PSA). Individuals employed under the PSA are referred to as Australian Public Service (APS) employees. The APS includes agencies that range widely in size from those employing around 20,000–25,000 people (Centrelink, ATO, and Defense) to agencies employing fewer than 100 people. The arrangements outlined in this paper apply to APS employees.

¹ Australian Public Service Commission. 1996. Public with Your Service? In *Ethics in the Public Sector: Current Issues and Practice*. Public Management Occasional Paper No. 14, OECD, p. 2.

Expectations, Context, and Purpose: Legislation and APS Values and Code of Conduct

In the APS, conflicts of interest are managed within a professional-principles-and-standards approach to managing workplace culture, behavior, and performance. This risk management model is articulated through the PSA, which mandates the APS Values and Code of Conduct. This legislation imposes responsibilities and obligations on agency heads and senior executives and staff, and provides sanctions for failure to comply with these professional principles and standards. Real and apparent conflicts of interest are also managed through this framework.

The PSA balances the concept of accountability to the Government, the Parliament, and ultimately the Australian people, with that of devolving powers and responsibilities to individual agency heads. Responsibility for employment and human resource matters is devolved and delegated to individual APS agencies, providing the flexibility they need to develop management practices to suit their business needs. This responsibility is supported in practice by the binding and enforceable set of APS Values and Code of Conduct written into the PSA. Moreover, the PSA is accompanied by a set of accountability measures to monitor progress and outcomes in each agency across the service.

APS employees work in an environment where they are trusted to do the right thing and expected to exercise their judgment in line with the APS Values to deliver services. This requires skills in ethical judgment and decision making. The focus is on individuals, ensuring that their behavior is in accordance with the expected principles and standards, as outlined through the APS Values and Code of Conduct.² In short, public servants are expected to act in good faith, making informed decisions consistent with the APS Values and Code of Conduct.

APS Values and Code of Conduct³

There are 15 APS values framed against relationships with the Government and the Parliament, the general public, others in the

² Section 10 and 13 of the Public Service Act outline specific expectations for employee behavior.

³ The APS Values and Code of Conduct are outlined in detail in Annex 1 of this paper.

workplace, and an individual's personal behavior. The Code of Conduct is built around 13 key elements, supporting the standard of personal behavior required of all APS employees and agency heads. All employees are bound by, and must be familiar with, the Code of Conduct. Ignorance is no excuse. The Code includes a requirement that employees must "at all times behave in a way that upholds the APS Values and the integrity and good reputation of the Australian Public Service."⁴ This creates a link between the Code of Conduct and the Values, and means that a failure to uphold the Values can be a breach of the Code.

The Code is legally enforceable and establishes directly the grounds on which an agency head is able to initiate misconduct proceedings against an APS employee. Among other elements, the Code of Conduct covers areas that go to the heart of the probity expected of APS employees, including the requirement to behave honestly and with integrity, to act with care and diligence, and to comply with all applicable Australian laws in the course of APS employment in Australia or while on duty overseas. APS employees must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment. Moreover, they must not misuse Commonwealth resources, inside information, or their duties, status, power, or authority in order to gain, or seek to gain, a benefit or advantage for themselves or any other person. In short, they must at all times and in all places behave in a way that upholds the APS Values and the integrity and good reputation of the APS.

Implementation: Guidance, Processes, and Procedures in Practice

Each agency in the APS is responsible for embedding the Values and Code of Conduct in its everyday activities and decision making. This may be challenging for both small and large organizations. However, the key to ensuring all employees understand their obligations is for agency leaders to demonstrate a commitment to the Values and Code, not just through their own behavior but through policies and systems established to reinforce values-based decision making. For example, the Department of Immigration and Citizenship provides all its employees with information on the behaviors

⁴ Section 13 of the Public Service Act 1999 sets out the APS Code of Conduct.

expected of departmental managers and leaders. Likewise, the Department of Health and Aging reinforces the behaviors expected of its employees through awareness-raising and training programs.

Agencies also reflect the APS Values and Code of Conduct in management frameworks, operating systems, and corporate documents. For example, the performance management system in the Australian Customs Service concentrates not just on *what* is achieved but on *how* it is achieved. Behavior is regarded as equally important as other outputs and outcomes.

Agencies also have assurance mechanisms that help prevent or reduce misconduct and inappropriate behavior. For example, the Australian Taxation Office (ATO) has established a centralized system where employees can raise concerns, knowing that they will be heard and the issues addressed. The ATO uses this system to monitor, analyze, and report the issues raised; this aids evaluation and exposes systemic issues and areas where improvement is needed. The system also includes a quality control mechanism to ensure that cases are dealt with fairly and consistently.

Enforcement and Sanctions

Investigating Suspected Misconduct

The legislative framework contains a core set of procedures for dealing with suspected breaches of the Code. Agency heads are required to establish procedures for determining whether an APS employee in their agency has breached the Code with regard to the basic requirements published by the Public Service Commissioner.⁵

The procedures must have due regard for procedural fairness. People whose interests will be adversely affected by a decision need to be given an opportunity to be heard (to state their case and to hear the case against them) and decision makers must act without bias or self-interest. No person can determine a case in which he or she has a direct interest.

Agency heads must take reasonable steps to ensure that every employee in their agency has ready access to the procedures. Sanctions need to have substance but should be fair, consistent, and proportionate to the nature and severity of the breach. Taking

⁵ This requirement is outlined in Section 15(3).

action is primarily aimed at protecting the integrity of the APS and maintaining public confidence. While the Commission has published guidance on how to handle misconduct, agencies have considerable discretion to set up their own arrangements.

Sanctions

The Public Service Act provides for sanctions that may be imposed by an agency head where an employee is found to have breached the Code of Conduct. The sanctions take the form of termination, reduction in classification, reassignment of duties, reduction in salary, deduction from salary via a fine, or reprimand.⁶

When it is certain that a breach has occurred, employers may impose more than one sanction or, alternatively, they may decide not to impose a sanction at all. In some cases, just a warning and counseling (and possibly targeted training) are sufficient. The person's behavior should continue to be regularly monitored—for example, through the performance management cycle. Moreover, review procedures are made available to employees who have been found to have breached the Code.

Managing Conflicts of Interest

Conflicts of Interest

Conflicts of interest are managed through the same process. The Values and Code include provisions relating to real and apparent conflicts of interest and the same sanctions that apply to breaches of the Code apply in relation to conflicts of interest. Relevant legislative provisions covering conflicts of interest include the following.

Public Service Act 1999, Section 10 (1) (APS Values)

- The APS is apolitical, performing its functions in an impartial and professional manner;
- The APS has the highest ethical standards;
- The APS is openly accountable for its actions, within the framework of ministerial responsibility to the Government, the Parliament, and the Australian public; and

⁶ Sanctions are clearly outlined in Section 15 of the PSA.

- The APS delivers services fairly, effectively, impartially, and courteously to the Australian public and is sensitive to the diversity of the Australian public.

Public Service Act 1999, Section 13 (APS Code of Conduct)

- An APS employee must behave honestly and with integrity in the course of APS employment;
- An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
- An APS employee must not make improper use of inside information or the employee's duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person; and
- An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.

Practical Guidance for Managing Conflicts of Interest

The Australian Public Service Commission provides a range of advice and guidance to agencies and their employees to help them meet their obligations under the APS Values and Code of Conduct. The Commission's publication *APS Values and Code of Conduct in Practice: Guide to Official Conduct for APS Employees and Agency Heads* includes chapters pertinent to employees managing conflicts between their personal interests and those of the Government. For example, Chapter 9 deals squarely with conflict of interest, including advice in relation to avoiding and managing conflicts of interest as well as declaring interests. Specific issues addressed include conflicts pertaining to:

- financial interests;
- personal interests;
- confidential or proprietary information;
- the employee's official position;
- the employee's outside positions or memberships (boards and committees); and
- staff selection.

Agency Procedures and Practices

Agency heads are responsible for determining what action should be taken where there is a conflict of interest. Agencies use the Commission's guidance to develop their own internal policies and practices for managing real or potential or perceived conflicts of interest. Agencies' procedures outline how conflicts are identified and managed, and how stakeholders are informed. Procedures specify employees' responsibilities to declare real or apparent conflicts of interest and clarify managers' responsibilities in dealing with conflicts of interest. Agency practices include:

- Annual completion of declarations of financial and other related interests (agency heads and senior executive staff);
- Deliberate consideration of real or possible conflicts of interest in work planning and performance appraisal discussions;
- Awareness-raising sessions conducted during employee induction;
- Specific training conducted in relation to the APS Values and Code of Conduct; and
- Consideration of possible conflicts of interest and management responsibilities in leadership development courses.

APS agencies take seriously employees' failure to appropriately manage conflicts of interest and, where breaches of the Code of Conduct are found, agency heads sanction the employees involved.

The Australian Experience

Levels of Misconduct

Levels of misconduct are very low in the APS. Of 146,000 employees, only 1% (1,490) were investigated for breaches of the Code of Conduct in 2005–2006. Of all employees investigated, just over three quarters were found to have breached the Code.⁷ Bearing in mind that employees may be investigated simultaneously for more

⁷ Statistical information has been culled from Australian Public Service Commission. 2006. State of Service Report, 2005–2006.

than one breach of the Code, 1,800 breaches relating to probity issues were investigated in 2005–2006. Of these cases:

- 930 involved allegations of employees not behaving honestly and with integrity—upon investigation, 76% were found to have breached the Code;
- 777 were investigated for not declaring conflicts of interest (real or perceived), and of these 80% were found to have breached the Code;
- 99 were investigated for having made improper use of inside information or their position, and of these 36% were found to have breached the Code;
- 3 people were investigated for inappropriate conduct on overseas duty, and 2 of these were found to have breached the Code.

How Is Misconduct Discovered?

There are a number of ways breaches of the Code come to light. Agencies are required to provide information about misconduct in response to the State of the Service Report survey conducted annually. Responses to the 2005–2006 survey indicate that:

- 60% of investigations were conducted as a result of agency compliance or monitoring systems such as audits;
- 24% involved matters identified by supervisors or managers;
- 23% involved matters identified by work colleagues;
- 3% resulted from whistle-blower reports;
- 9% resulted from complaints from the public or other stakeholders; and
- 10% occurred as a result of information from other sources, including notification from another agency, state police, external contractors, or specialist groups within an agency.

Sanctions

Sanctions filed range in severity from a reprimand or warning to termination of employment. Most employees receive reprimands. In 2005–2006, 92 employees from 19 agencies were terminated as a consequence of misconduct investigations. Fifty-two employees in 16 agencies were reduced in classification and 197 in 17 agencies

had their salary reduced. These are termed “high-impact” sanctions, as they obviously have a significant effect on the people involved.

Conclusion

The Australian Public Service’s Values and Code of Conduct are not mere rhetoric and are legally enforceable. An element of the Code stipulates that all APS employees must uphold the APS Values, and sanctions can be, and are, imposed for breaches of the Code of Conduct. Agency heads and the Senior Executive Service (SES) are required to promote, as well as adhere to, the Values, and all APS managers are accountable for their management decisions and the extent to which they abide by the Values and the Code of Conduct.

In addition to APS managers, all APS employees are expected to reflect these values in their decisions and be accountable for them in their behavior and overall performance. The Values are the principles that guide decision making in the APS. They guide the behavior and actions of APS employees, and embody the enduring principles of good public administration.

In effect, the APS Values and Code of Conduct provide the test by which to judge whether APS employees are making decisions that are consistent with a common values framework and are otherwise appropriate and fair. In the light of the fact that the overall goal is establishing a public service that is responsive, efficient, and guided by values, rather than regimented by centralized prescription, leaders at all levels must exemplify the APS Values. Moreover, agencies should nurture cultures that are consistent with the APS Values and Code of Conduct.

Last but not least, it is also necessary to establish mechanisms for monitoring and ensuring compliance with the Values and the Code. If these elements are in place, then, it is hoped that the application of, and compliance with, the APS Values and Code of Conduct will become second nature, embedded in the way in which APS agencies and individual employees go about their business.

The Values and related Code give the Government the confidence that it is served by professional employees who will be responsive to its needs but also provide it with robust and balanced advice. The Values and Code also give the community the confidence that the APS as a whole and individual APS agencies operate with integrity.

Annex I: The Australian Public Service (APS) Values and Code of Conduct

The Australian Public Service:

- is apolitical, performing its functions in an impartial and professional manner;
- is a public service in which employment decisions are based on merit;
- provides a workplace that is free from discrimination and recognizes and utilizes the diversity of the Australian community it serves;
- has the highest ethical standards;
- is openly accountable for its actions, within the framework of ministerial responsibility to the Government, the Parliament, and the Australian public;
- is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
- delivers services fairly, effectively, impartially, and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- has leadership of the highest quality;
- establishes workplace relations that value communication, consultation, cooperation, and input from employees on matters that affect their workplace;
- provides a fair, flexible, safe, and rewarding workplace;
- focuses on achieving results and managing performance;
- promotes equity in employment;
- provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
- is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government; and
- provides a fair system of review of decisions taken in respect of employees.

Agency heads are bound by the Code of Conduct in the same way as APS employees and have an additional duty to promote the APS Values.

The Code of Conduct requires an employee to:

- behave honestly and with integrity in the course of APS employment;
- act with care and diligence in the course of APS employment;
- when acting in the course of APS employment, treat everyone with respect and courtesy, and without harassment;

- when acting in the course of APS employment, comply with all applicable Australian laws;
- comply with any lawful and reasonable direction given by someone in the employee's agency who has authority to give the direction;
- maintain appropriate confidentiality about dealings that the employee has with any minister or minister's member of staff;
- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
- use Commonwealth resources in a proper manner;
- not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment;
- not make improper use of inside information, or the employee's duties, status, power, or authority in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person;
- at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS;
- while on duty overseas, at all times behave in a way that upholds the good reputation of Australia; and
- comply with any other conduct requirement that is prescribed in the regulations.

Annex II: APS Guide to Official Conduct for APS Employees and Agency Heads

The Australian Public Service Commission provides a range of advice and guidance to agencies and their employees to help them meet their obligations under the APS Values and Code of Conduct.

The Commission's publication *APS Values and Code of Conduct in Practice: Guide to Official Conduct for APS Employees and Agency Heads* (www.apsc.gov.au/values/conductguidelines.htm) includes chapters pertinent to employees managing conflicts between their personal interests and those of the Government:

- Chapter 2 deals with an employee's relationships with the Government and Parliament, and responsibilities when dealing with them. Chapter 13 deals with handling the potential conflicts involved in being an APS employee and being politically active.
- Chapter 3 deals with the appropriate handling of information and the separation of personal views from those expressed (or which could be seen to be expressed) on behalf of the Government.

- Chapters 5 and 6 deal with managing relationships with the public, including stakeholders.
- Chapter 8 deals with appropriate use of Commonwealth resources.
- Chapter 9 deals squarely with conflict of interest. The Commission has recently released a circular providing guidance to agencies and employees on circumstances in which written declarations of personal interest would be required (www.apsc.gov.au/circulars/circular071.htm).
- Chapter 10 deals with employees' responsibilities in relation to gifts and benefits (which, if not appropriately handled, may give rise to a perception of conflict of interest or, in worse cases, openness to receiving bribes). This is also covered in Chapter 14 on working overseas.
- Chapters 11 and 12 deal with outside and post-separation employment (which, if not handled appropriately, may give rise to a perception of conflict of interest). The Commission has recently released a circular providing further guidance on the management of possible conflicts of interest and other probity issues when employees leave the APS to take up employment in fields that are aligned to their APS responsibilities (www.apsc.gov.au/circulars/circular073.htm).

Annex III: Australian Public Service Commission's Role (APSC)

The Australian Public Service Commission does not have a "policing" role:

- The Commission provides an important central role within the APS: promoting the APS Values, evaluating agencies' performance and compliance, and helping to build the capability of the APS.
- The Public Service Commissioner has both statutory powers (under the Public Service Act 1999) and policy responsibilities.
- The Commissioner reports annually to Parliament on the state of the Service, including an evaluation of the extent to which agencies have incorporated the APS Values and the adequacy of their systems and procedures for ensuring compliance with the Code of Conduct.
- The Commission produces a range of guidance material and advice, and provides a range services to help agencies meet their obligations and embed the APS Values in their cultures and practices.

Chapter 5

Codes of conduct in the private sector

The environment in which COI occurs is rapidly changing. Today, there are new forms and approaches to delivering and managing public goods and services, blurring the lines between public and private sectors. This in turn has made it more difficult to define, detect, and manage COI. Good governance standards, ethical business practices, and transparent disclosure systems are necessary in both the public and private sectors to combat public sector malfeasance and corporate fraud.

In the wake of recent corporate corruption scandals, corporate social responsibility, good governance practices, and a culture of ethics and honesty are increasingly recognized as vital to protecting both a company's reputation and its bottom line. In this chapter, practitioners working in the private sector share their diverse experiences in establishing regulatory frameworks and codes of conduct to minimize corporate fraud and establish an organizational and corporate culture of ethics.

Asad Ali Shah, Partner with Deloitte Pakistan and Council Member of the Institute of Chartered Accountants of Pakistan, presents an overview of corporate fraud and shares Pakistan's experience in regulating the financial sector to minimize and prevent corruption. Hans-Josef Schill, President Director of PT Bayer, Indonesia, outlines Bayer's approach to instilling a corporate culture of ethics that is based on values and zero-tolerance compliance and that directly links business sustainability to compliance in a multinational business context. Cliff Rees, Senior Partner with PricewaterhouseCoopers, relates the challenges of conducting business in Indonesia, where the lack of sound regulations and adequate law enforcement, coupled with cultural resistance to change, results in actions

that may not necessarily be illegal but would be considered unethical. All three emphasize the need to strike an appropriate balance between control mechanisms to limit misconduct and incentives to encourage good behavior.

Their experiences support the argument that “good governance equals good business” and demonstrate how codes of conduct can be leveraged in the private sector to bridge the gap between doing what is legal or lawful and doing what is ethical and right to protect both public and private interests.

Good corporate governance: Essential to prevent conflicts of interest and fraud— Learning from Pakistan’s experience

Asad Ali Shah

Partner, Deloitte Pakistan, and Council Member of the Institute of Chartered Accountants, Pakistan

Introduction

This paper outlines the implications of fraud for private sector organizations and emphasizes the importance of establishing antifraud programs and controls to deter fraud as a prerequisite for achieving core business objectives. The analysis is based on the results of an international survey and Pakistan’s experience in addressing fraud and conflict of interest in the private sector through its corporate laws and governance frameworks.

Overview of Fraud and Conflict of Interest

A conflict of interest occurs when a person or organization acts on behalf of another individual or organization, and has, or appears to have, a hidden bias or self-interest in the activity undertaken. This hidden bias or self-interest is actually or potentially adverse to the interests of the individual or organization being represented and is not made known to the individual or organization being represented. When a person’s conflict of interest results in economic or financial loss to the individual or organization on whose behalf the person is acting, then fraud has occurred. Conflict of interest can exist on its own, or can be an intricate part of other forms of fraud such as bribery and illegal gratuities. Actions resulting from conflict of interest generally constitute the most costly form of fraud, since these happen at a senior management level of governance.

While the term “fraud” is not generally defined in most jurisdictions nor specifically defined in criminal law, everybody seems to know what it is (except those who commit it, and purport to have no idea that what they are doing is wrong!). It is like an elephant, easier to recognize than to define. The International Standard on Auditing

(ISA 240)¹ offers a simple definition: Fraud is an intentional act committed by one or more individuals in management—those charged with governance, employees, or third parties—involving the use of deception to obtain an unjust or illegal advantage.

Measuring the Cost of Fraud and Conflict of Interest: Mission Impossible?

Determining the true cost of fraud and abuse is an impossible task, because fraud is a crime based on concealment. Some cases of fraud are never detected or the perpetrators are caught only after fraud has occurred for several years. Many cases that are detected are never reported for a variety of reasons, including the desire to preserve the company's reputation. Moreover, incidents that are reported are often not prosecuted. Finally, there is no agency or organization specifically charged with gathering comprehensive fraud-related information. These factors combined make it very difficult to estimate the true cost of fraud. Thus, the measure is just that: an estimate.

A 2004 survey conducted by the Association of Certified Fraud Examiners (ACFE) in the United States examined occupational fraud and found that, on the average, US organizations lose 6% of their revenue, or an estimated USD660 billion a year—about USD4,500 for every worker—to fraud. This study determined that 59% of frauds occur because of weaknesses in internal controls, and 95% of US companies report employee theft.

Not surprisingly, it is much less expensive to prevent embezzlement than it is to investigate it. It is estimated that for each USD1 lost due to fraud, an organization loses an additional USD4. These calculations are conservative, and do not take into account other losses the organization will ultimately suffer, including its good name or reputation. To put it another way, each loss caused by internal or external fraud costs at least five times the original amount:

¹ The International Auditing and Assurance Standards Board (IAASB), under the aegis of the International Federation of Accountants, issues International Standards on Auditing (ISAs), which are followed by professional accountants and auditors in most jurisdictions around the world. ISA 240 outlines the standard regarding "The Auditor's Responsibility to Consider Fraud and Error in an Audit of Financial Statements."

- One dollar in actual cash or property value is lost;
- A second dollar is spent identifying how the crime was committed;
- A third dollar is spent identifying who committed the crime;
- A fourth dollar is spent prosecuting the person who committed the crime; and
- A fifth dollar is spent suing the person who committed the crime for the recovery of the money taken.

Fraud also takes its toll on net income or profits. If a company's profit margin is 10%, revenues must increase by ten times the loss to recover the loss of net income. So, if losses equal USD6 million, the company must generate USD60 million in revenues to recover the net loss in income.

Figure 1: How Fraud Affects Net Income

Revenues	USD 100	100%
Expenses	90	90%
Net Income	USD 10	10%
Fraud	6	
Remaining	USD 4	

To restore income to \$10, \$60 more of revenue will be needed to generate \$6 of income.

The same 2004 ACFE survey reveals that occupational fraud and abuse is a widespread problem affecting practically every organization, regardless of size, location, and industry. Most common fraud (over 90%) involves misappropriation of assets. Key incidences include theft or misuse of assets such as stealing inventory, cash, payroll fraud, and skimming revenues. The asset that is most frequently targeted is cash. Other forms of corruption, in which fraudsters wrongfully use their influence in a business transaction in order to procure some benefit for themselves or another person, contrary to their duty to employer or the rights of another, include kickbacks and other conflicts of interest. The filing of fraudulent financial statements is the least commonly reported type of fraud but is the costliest. Comparatively, the median loss for asset misappropriation is USD93,000, while the median loss for financial statement fraud is over USD1 million.

This survey also provides a demographic profile of those committing fraud, indicating that losses caused by men are nearly four times those caused by women; losses caused by managers are four times those caused by employees; and losses caused by executives and owners are 16 times those of their employees. These statistics may be correlated on the basis of the ratio of men to women in managerial positions. While the occurrence of employee fraud is most frequent, the cost of fraudulent financial reporting is much higher. Small businesses are the most vulnerable to fraud and abuse. Financial statement fraud causes a decrease in market value of stock of approximately 500 to 1,000 times the amount of the fraud. Essentially USD7 million in fraud can be equated to a \$2 billion drop in stock value.

The findings of this survey and other empirical evidence make it abundantly clear that it is imperative for organizations to establish robust fraud prevention mechanisms and processes to safeguard their assets and shareholder interests.

Preventing Fraud: The Case for Establishing Effective “Whistle-blower” Systems

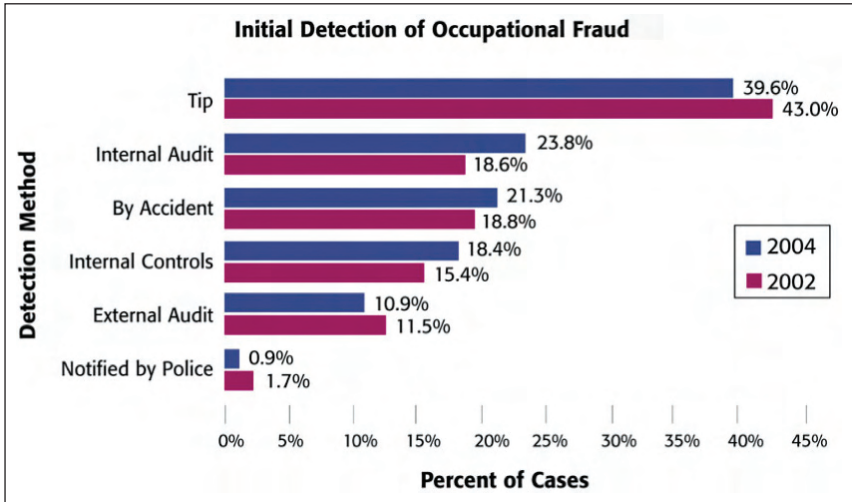
Who Detects Fraud

As shown in Figure 2 below, the most common method of detecting fraud is an employee, customer, vendor, or anonymous source informing authorities. Among the cases that were detected by such whistle-blowing, 60% came from employees, 20% from customers, 16% from vendors, and 13% from anonymous sources. Organizations with fraud hotlines and anonymous reporting cut their fraud losses in half. Among the cases of fraud committed by owners and executives, which tend to be most costly, over half were identified by a tip-off. Internal controls, internal and external audits, notifications by employees, and background checks are some leading ways to uncover fraud. Thus, it is imperative that organizations establish effective processes to encourage employees and third parties to report irregularities. Key measures include establishing fraud hotlines and policies to protect whistle-blowers.

Fraud Triangle: What Conditions Lead to Fraud

The conditions that lead to fraud can be illustrated by three points of a triangle: perceived opportunity and suitable targets at

Figure 2: Who Detects Fraud



Source: Association of Certified Fraud Examiners (ACFE), 2004.

the base of the triangle feed the supply of motivated offenders at the apex. Perceived opportunity arises when favorable circumstances exist, e.g., there is an absence of controls, or management is able to override controls. Management or other employees may have an incentive or be under pressure, and thus motivated to commit fraud. And those involved in a fraud are invariably those who can rationalize a fraudulent act as being consistent with their personal code of ethics. Some individuals possess an attitude or personality characteristic that allows them to make a value judgment to knowingly and intentionally commit a dishonest act. Thus, to prevent fraud, it is necessary to reduce the opportunities for fraud and educate the public on ethics to ultimately reduce the supply of motivated offenders.

Pakistan's Experience

Pakistan's Regulatory Framework

The corporate regulatory framework in Pakistan is guided by three key entities—the Securities and Exchange Commission of Pakistan (SECP), which regulates all corporate entities and administers corporate laws; the State Bank of Pakistan, which regulates

the banking sector; and the Institute of Chartered Accountants of Pakistan (ICAP), the primary regulator of those licensed to work as accountants in Pakistan.

Pakistan law contains several statutes that address conflict-of-interest issues and outlines a comprehensive framework of disclosure requirements. Key provisions of the Companies Ordinance 1984² that aim to mitigate conflict of interest and fraud are listed below:

- Loans to directors (S-195);
- Prohibition against the chief executive officer (CEO) engaging in a competing business (S-203);
- Provisions regarding investment in (including loans to) associated companies (S-208);
- Disclosure of interest by directors (S-214);
- Provisions regarding the interest of other officers (S-215);
- Prohibition against voting by interested directors (S-216);
- Declaring a director to be lacking fiduciary behavior (S-217)
- Disclosure to members of a director's interest in contracts appointing CEO and the corporate secretary (S-218);
- Registration of contracts, arrangements, appointments in which directors are interested (S219);
- Registration of directors' shareholdings (S220);
- Disclosure by directors of their shareholdings (S-221);
- Submission of statements of beneficial ownership (S-222);
- Prohibition against short selling (S223);
- Provisions related to trading by directors, CEO, officers, and principal shareholders (S-224);
- Provisions related to the employees' provident fund (S-227);
- Maintenance of proper books of account by all companies (S-230);

² The purpose of the Companies Ordinance 1984 is to ensure the viability and growth of corporate enterprises, the protection of investors and creditors, the promotion of investment, and the development of the economy and matters arising out of or in connection with enterprises that render immediate action necessary. This law confers the power of enforcement on the Securities and Exchange Commission of Pakistan (SECP), formerly known as the Corporate Law Authority (CLA). Source: Asian Development Bank. 2000. *Financial Management and Governance Issues in Pakistan: Accounting and Auditing in Pakistan*, p. 18.

- Preparation of financial statements in line with applicable International Financial Reporting Standards (IFRSs) and mandatory requirements of the Ordinance (233, 234).

Pakistan's Accounting Framework: Consistent with International Best Practices

In Pakistan, listed companies are required to comply with the International Financial Reporting Standards issued by the International Accounting Standards Board (IASB) as notified by the SECP. Except for IFRS-1 and IFRS-4, SECP has issued official notifications regarding all the IFRSs for compliance in Pakistan. ICAP has also developed a strategy, whereby Pakistan is expected to become fully compliant with IFRSs by 2009. Additionally, Pakistan has issued two simplified financial and reporting standards for small and medium-sized entities.

Pakistan's Code of Corporate Governance

The SECP has issued a Code of Corporate Governance, which outlines best practices in governance that all listed companies and banks must comply with. This Code was drafted by ICAP's Committee and is enforced by SECP through its Rules of Stock Exchange. Relevant requirements are summarized below:

- At least 25% of the board must comprise nonexecutive directors and at least one independent director.
- A board director must not serve on the boards of more than 10 listed companies, must be a taxpayer, and must not default on loans.
- The board must define the responsibilities of the chairman and CEO.
- The board must approve the mission, vision, strategy, statement of ethics and business practices, and all major policies. A statement of ethics is required to be signed annually by all board members and employees.
- The board is required to exercise certain powers, approve the key policy framework, and issue certain statements.
- The chief financial officer (CFO) and the CEO must certify all financial statements before they are endorsed by the audit committee and approved by the board.

- The board shall establish a sound system of internal controls and issue a statement that the internal control is sound in design and effectively implemented.
- The Code includes the stipulation that all significant matters must be brought before the board.
- The Code includes the requirements to establish an audit committee, with nonexecutive directors in the majority. It also outlines the minimum requirements for the “terms of reference” of the audit committee and the minimum number of meetings, including meetings the committee must have with external and internal auditors without the presence of management.
- The board is required to establish an internal audit function.
- The audit committee is required to monitor and recommend the appointment of external auditors.
- External auditors are required, at a minimum, to rotate the engagement partner every five years. The Code also imposes restrictions on non-audit services to be provided by the external auditors. Further, the external auditors must obtain a satisfactory rating of quality control, and comply with ethical standards of the International Federation of Accountants.
- The board shall approve the terms and appointments of the CFO, the corporate secretary, and the head of internal audit.
- The CFO and the corporate secretary may be removed only with the approval of the board.
- The CFO and the corporate secretary must attend all board meetings.
- The board must ensure the veracity and fairness of financial statements, and provide necessary statements regarding key issues, e.g., related-party disclosures.³

³ Related-party disclosures are covered under IAS 24. The objective is to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances with such parties. Source: <http://www.iasplus.com>

Compliance with the Code Requirements

On the whole, the accounting and reporting framework in Pakistan is considered in line with International best practices. According to the results of recent surveys, more than 90% of the listed companies were found to be compliant with the requirements of the Code of Corporate Governance. ICAP has adopted all international standards on auditing to ensure that audits are effective and that financial reporting by listed companies is reasonably reliable. The enforcement of IFRSs and the disclosure requirements for listed companies and banks is considered effective. Moreover, SECP's monitoring of the financial reporting and ICAP's quality assurance reviews, oversight of the audit, and disciplinary process have resulted in improved compliance. SECP monitoring has resulted in effective disciplinary measures imposed on several companies' managers, directors, and auditors. In the last few years, more than 25 companies' auditors have been penalized by SECP, while actions taken against defaulting directors and officers have been manifold. Additionally, ICAP has taken disciplinary action against several defaulting audit firms, including the imposition of severe penalties, such as removal from membership.

While reasonable success has been achieved in establishing and enforcing financial reporting and disclosure requirements for listed companies, Pakistan is still challenged by related-party financing and conflicts of interest undermining corporate transactions. Practices such as awarding contracts to preferred vendors, kickbacks, and double bookkeeping are still pervasive.

Many stakeholders have commended the regulators' role in improving the quality of financial reporting during the last few years. The Reports on the Observance of Standards and Codes (ROSC)⁴ indicated that a majority of the interviewed stakeholders praised the initiatives undertaken by the SECP, the State Bank of Pakistan, and ICAP geared toward improving the quality of financial reporting in Pakistan. Stakeholders viewed that mandatory application of

⁴ The ROSC reports are prepared and published at the request of the member country. They are used to help sharpen the institutions' policy discussions with national authorities, and in the private sector for risk assessment. Short updates are produced regularly and new reports are produced every few years. Source: <http://www.imf/rosc.html>

IFRSs, monitoring and enforcement of standards, and introduction of quality control review (QCR)⁵ were important steps toward establishing a sound corporate financial reporting regime.

The Way Forward: Reflections and Recommendations

Recent efforts in Pakistan to promote good corporate governance practices and to enhance transparency, integrity, and accountability in the private sector have bolstered the regulatory and administrative framework for preventing corporate fraud and conflict of interest. Building on this progress, Pakistan should further strengthen its legal framework and more specifically its enforcement mechanisms. Pakistan should also aim to: (i) strengthen fraud reporting procedures, (ii) establish and evaluate antifraud programs and controls, and (iii) conduct more research in emerging markets to determine the ongoing impact of fraud on the economy.

Key short-term measures to strengthen fraud reporting should include establishing more hotlines to assist in fraud detection, appointing a designated official to centralize the collection and documentation of complaints, and providing better mechanisms to allow for anonymity and greater protection of whistle-blowers.

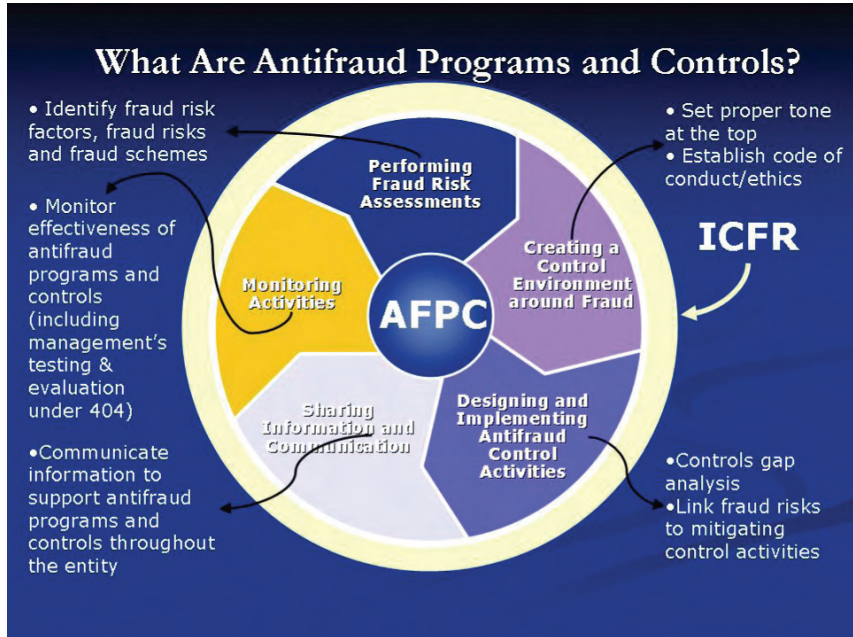
Corporate antifraud programs and controls should establish processes to identify and measure existing risks of fraud, to mitigate potential risks, and to implement and monitor appropriate internal controls via appropriate oversight processes, e.g., internal control over financial reporting.

Prevention: Developing a Corporate Culture of Honesty and Ethical Behavior

As outlined in Figure 3 below, detection and enforcement measures should be supported by preventive measures such as establishing a code of conduct and expected ethics and sharing information to support antifraud efforts throughout the organization. Research in moral development strongly suggests that honesty can best be reinforced when a proper example is set from the

⁵ The QCR process was established by the Institute of Chartered Accountants of Pakistan in accordance with the Quality Assurance Board's (QAB) policies and procedures to ensure quality and uniform standards in the accounting industry.

Figure 3: Antifraud Programs and Controls



AFPC = antifraud programs and controls, ICFR = internal control over financial reporting.

top down. Directors and officers set the “tone at the top” for ethical behavior within any organization. Management cannot act one way and expect others within the organization to behave differently. Management must show employees through its words and actions that dishonest or unethical behavior will not be tolerated.

In addition to leading by example, management must create a positive work environment that rewards good behavior and values its employees. Research indicates that wrongdoing occurs less frequently when employees feel valued than when they feel abused, threatened, or ignored. Negative factors that increase the risk of fraud include:

- Perceived apathy of top management;
- Lack of rewards for appropriate behavior;
- Negative feedback or lack of recognition for job performance;
- Perceived inequities in the organization;
- Autocratic, rather than participative, management;

- Low organizational loyalty or feelings of ownership;
- Unreasonable budget expectations or other financial targets;
- Less-than-competitive compensation (low salaries);
- Poor training and promotion opportunities; and
- Poor communication practices or methods.

Organizations can combat these factors and cultivate a work environment that promotes good corporate governance by:

- setting an appropriate tone at the top (leading by example);
- creating a positive workplace environment;
- engaging in fair and transparent hiring and promotion practices;
- providing training (fraud awareness, ethical values, fraud reporting);
- establishing a code of conduct that instills core values;
- clearly communicating and enforcing disciplinary measures; and
- enforcing a policy of zero tolerance for wrongdoing.

Conclusion

Pakistan's experience offers insights for other countries interested in strengthening their own corporate regulatory and administrative frameworks to promote good corporate behavior and to reduce corporate fraud and conflict of interest. Governments should take a holistic approach to establishing a comprehensive legal framework, which can be effectively enforced and monitored by capable regulators in a coordinated manner. Working in tandem, government and the private sector can develop a culture of honesty and ethical behavior and promote good corporate governance practices through prevention as well as enforcement measures. These efforts will ultimately help minimize corporate fraud and ensure profitability and productivity in the long term.

Compliance enforcement in a multinational business context: The Bayer business model

Hans-Josef Schill
President Director of PT Bayer Indonesia

Overview of Bayer's Business Model

Ensuring Sustainability and Promoting Compliance to Combat Corporate Fraud

The Bayer Group, with its headquarters in Leverkusen, Germany, is a successful multibillion-dollar global company (sales in 2006: 29 billion euros) employing more than 106,000 employees worldwide. Its core competencies are in the fields (subgroups) of health care, nutrition, and high-tech materials. As a global company with a diverse business portfolio, the Bayer Group is exposed to numerous legal risks, particularly in the areas of product liability, competition and antitrust law, patent disputes, tax assessments, and environmental matters. In the 1990s, Bayer experienced some violations in these areas and was forced to pay hefty fines.

In response, Bayer launched its first corporate compliance program (CCP) in 1999 and published the second edition of its handbook emphasizing enforcement and information in 2004. Bayer's comprehensive program ensures global responsibility through its network of compliance officers and committees per subgroup, as well as local responsibility through its network of compliance officers and committees working within each individual organization or subsidiary.

From the outset, Bayer's program has been anchored in a zero-tolerance approach to corrupt practices. The program is implemented from the top down, involving high-level management support both globally and locally to implement an array of policies that promote a corporate culture of ethical behavior. Specific policies related to corporate fraud include: antitrust, anti-bribery, anti-corruption, avoidance of conflicts of interest, and antiharassment and antidiscrimination policies. Other policies and provisions that promote corporate social responsibility include: antidrug policies, occupational hazards/workplace safety guidelines, environmental considerations, and the protection of intellectual property rights.

Bayer's policies extend to internal transactions and activities, as well as external transactions involving the public sector. No personal favor of any kind shall be offered or rendered to any domestic or foreign public official. This prohibition applies to any kind of gift or other incentive except for customary token gifts that are of nominal intrinsic value.

Focusing on Training and Developing a Culture of Compliance

Bayer's policies and expectations regarding behavior are communicated to staff through ongoing personal face-to-face training, which takes an international approach and includes ongoing dialogue or "permanent discussion" throughout all levels of the company.

Training efforts reiterate the connection between business success or sustainability and compliance with good governance policies, sending a clear and simple message: forgo business or any activity associated with noncompliance with these policies. The connection between performance measurement and compliance is also communicated to top-level managers. As actions may speak louder than words, managers are held responsible for eventual cases of noncompliance in their area of responsibility.

Bayer's approach to enforcement is just as comprehensive and rigorous, and involves dedicated staff, investigational power, uniform standards, and a global compliance network. At the same time, Bayer makes an effort to simplify information and procedures in handling assumed cases of noncompliance and provides a global hotline for easy and confidential reporting in multiple languages.

Living business ethics: Good governance equals good business

Cliff Rees

Senior Partner, PricewaterhouseCoopers

Almost all the respondents said they are willing to pay more for shares of companies with “good” governance, and in the case of Indonesia, they said, a 27% premium on the average is appropriate for such a company.

—Robert Felton, McKinsey & Co.

There is significant evidence from a large and growing body of academic research that there is at minimum a neutral, and quite likely a positive, relationship between responsible corporate practices and financial performance.

—Sandra Waddock, Boston College

Defining Ethics: In Theory and In Practice

Defining ethics can be difficult, as ethics means different things to different people and may mean different things depending on the cultural and or organizational context. What is ethics? Ethics involves the principles or standards governing the conduct of communities, groups, organizations, and individuals. Ethics entails more than morality, which is primarily concerned with general outcomes of good and bad, or right and wrong.

Ethics also involves self-restraint: *not doing what you have the power to do*. In other words, an act is not proper simply because it is permissible or you can get away with it. Ethics may involve as well *not doing what you have the right to do*—there is a big difference between what you have the right to do and what is right to do—and *not doing what you want to do*. An ethical person often chooses to do more than the law requires and less than the law allows.

Unethical Behavior and Associated Risks

In a corporate setting, unethical behavior may involve a range of misconduct or deceptive behavior extending externally to breaches

of international or local laws, or to violations of environmental laws and standards. Such misconduct may also involve nondisclosure of material information during proposals or negotiations or the breaking of promises or agreements with clients or external partners. Unethical behavior can also be directed inward, violating an organization's values, standards of conduct, or minimum requirements relating to the treatment of employees.

Unethical behavior carries both tangible and intangible risks that can compromise a company's reputation and organizational culture and expose an organization and its board of directors to possible litigation, civil and criminal sanctions, and prosecution.

Cultural Challenges of Doing Business in Indonesia

Indonesia's corporate climate is challenged by a lack of sound regulations, particularly in relation to corporate governance and accounting standards and practices. There is also inadequate law enforcement and a pervasive apathy and attitude that "This is the way things are done around here," which create a comfort zone resistant to change, exacerbating apathy and heightening frustration for those attempting to conduct business.

The following three examples of unethical scenarios illustrate the everyday challenges facing Indonesia's private sector.

- A government official, who is also one of your big clients, calls you regarding a vacant position in your company. He asks whether you can help his son in the recruitment process.
- A charity foundation owned by one of your shareholders asks your company to donate to their charity project. Unfortunately, your company has a policy that prohibits you from giving donations that are unrelated to the company's service area.
- You operate an automotive dealer company. In the vehicle validation process (e.g., new-vehicle documents, licensing) you are using an agent. Recently you discovered that your agent bribes government officials to obtain the validation.

Cultivating an Ethics-Based Corporate Culture

Cultivating an ethics-based corporate culture involves more than establishing guidelines and policies. As Figure 1 below illustrates, a well-written code of conduct and standard sound policies and practices regarding corporate social responsibility and employee recognition are just the “tip of the iceberg” and may not prove effective if below the surface the corporate culture is parochial, highly authoritarian, hierarchical, centralized, or challenged by low individualism/“communal” proclivities geared toward preserving social harmony and avoiding conflict.

An ethics-based corporate culture should include a zero-tolerance policy for misconduct, guided by a clear articulation of the company’s values and supported from the top down. This support includes buy-in from leadership in adhering to these values as well as political endorsement from a range of internal stakeholders. Ethics can be further instilled via a robust internal control system, which also provides rewards as necessary. As with any new corporate practice, it is advisable to manage the change process carefully.

Conclusion

Recent high-profile corporate ethics scandals provide a somber reminder of the link between a company’s ethics and its bottom-line profitability and sustainability. One need look no further than the headlines foretelling the downfall of Enron, Worldcom, HIH, and Titan. Apparently, the bigger they are, the harder they fall.

In contrast, promoting good governance will ultimately promote good business, as an ethically run company makes choices that are not compromised by the past, encourages others, improves relationships with colleagues and business partners, reduces costs, increases long-term profits, and increases confidence in business dealings.

Appendices

Appendix 1: Seminar agenda

ADB/OECD Anti-Corruption Initiative 5th Master Training Seminar

Conflict of Interest: A Fundamental Anti-Corruption Concept

6–7 August 2007

Mandarin Oriental Hotel, Jakarta, Indonesia

Day 1–Monday, 6 August 2007

08:30–08:45 **Welcome remarks on behalf of the ADB/OECD
Anti-Corruption Initiative**

Mr. Arjun Thapan

Director General, Southeast Asia Department, Asian
Development Bank (ADB)

09:00 Buses leave Mandarin Hotel for the State Palace

10:00–11:00 **Opening and keynote address**

Welcome remarks

Mr. Taufiequrachman Ruki

Chairman, Commission for Eradication of Corruption,
Indonesia

Keynote address

H. E. Susilo Bambang Yudhoyono

President of the Republic of Indonesia

13:00–14:30 **General legal and institutional frameworks; good
international practices**

Chair: Mr. Piers Cazalet

Counsellor, Political/Economic, British Embassy, Jakarta

Speakers:

The concept of conflict of interest; how it is universally defined and how it is promoted in the context of UNCAC and other global anticorruption efforts.

Mr. Dimitri Vlassis

Chief, Crime Conventions Section
United Nations Office on Drugs and Crime (UNODC)

Conflict of interest in politics and administration in a comparative and historical perspective

Sir Tim Lankester

President, Corpus Christi College, Oxford University, United Kingdom

International experiences of applying the conflict-of-interest concept

Mr. Richard E. Messick

Senior Governance Specialist, Co-director, Law and Justice Thematic Group, Public Sector Governance Poverty Reduction and Economic Management, The World Bank

14:45–16:15 **Conflict-of-interest issues in selected countries and jurisdictions**

Chair: Mr. Weldon Epp

Chargé d’Affaires, Canadian Embassy, Jakarta

Speakers:

Conflict-of-interest issues in Canadian government and politics

Mr. Brian Radford

Legal Advisor, Public Sector Integrity Office, Canada

Conflict-of-interest policies and instruments in the Republic of Korea

Mr. Gae Ok Park

Director, Policy Coordination Team, Korea Independent Commission Against Corruption

The experience of asset declaration in the Philippines

Mr. Pelagio Apostol

Assistant Ombudsman, Office of the Ombudsman of the Philippines

16:30–18:00 **Conflict of interest as applied in Indonesian legislation and practices**

Presentation of a study on how conflict of interest is applied in Indonesian legislation and practices

Chair: Mr. Nono Anwar Makarim

The Aksara Foundation

Presenter: Mr. Arief T. Surowidjojo

Lawyer, Indonesia

Discussant 1: Mr. Christianto Wibisono

Economist, Indonesia

Discussant 2: Ms. Eva K. Sundari

Member of Parliament (DPR), Indonesia

19:00 *Dinner hosted by the Government of Indonesia*

Dinner speech by H. E. Mari E. Pangestu

Minister of Trade, Republic of Indonesia

Day 2–Tuesday, 7 August 2007

09:00–10:30 **Implementation and enforcement: Laws and instruments**

Chair: Ms. Kathleen Moktan

Director, Capacity Development and Governance Division,
ADB, and the ADB/OECD Anti-Corruption Initiative for Asia
and the Pacific

Speakers:

*Management of conflict of interest in the public sector:
Generic law, procedures for compliance, checklists, tests,
and other tools*

Mr. Janos Bertok

Senior Governance Specialist, Innovation and Integrity
Division, Directorate for Public Governance and Territorial
Development, Organisation for Economic Co-operation
and Development (OECD)

*Private gain from public loss: How Thailand copes with
corruption from conflict of interest*

Mr. Medhi Krongkaew

Commissioner, National Counter Corruption Commission,
Thailand

Compliance mechanisms in Hong Kong, China

Mr. Samuel Hui

Assistant Director of Corruption Prevention, Independent
Commission Against Corruption, Hong Kong, China

10:45–12:00 **Implementation and enforcement mechanisms in politics,
administration and business**

Chair: Mr. Joel Hellman

Governance Advisor, World Bank Office, Indonesia

Speakers:

Conflict-of-interest enforcement in the US

Mr. Peter J. Ainsworth

Deputy Chief for Litigation, Public Integrity Section,
Criminal Division, US Department of Justice

Detecting conflict of interest in politics and election financing in the US

Mr. Larry Makinson

Center for Responsive Politics
United States

13:30–14:30 **Implementation and enforcement: Codes of conduct in the public sector**

Chair: H. E. Sri Mulyani Indrawati

Minister of Finance, Republic of Indonesia

Speakers:

Preventing conflict of interest in the administration through a code of conduct and ethics legislation: Experience of the People's Republic of China

Mr. Song Dajun

Deputy Director General for Administrative Supervision and Inspection, Ministry of Supervision, People's Republic of China

Preventing conflict of interest in the Australian Public Service

Mr. Mike Jones

Senior Executive Advisor, The Australian Public Service Commission

14:45–16:15 **Implementation and enforcement: Codes of conduct in the private sector**

Chair: H. E. Mari E. Pangestu

Minister of Trade, Republic of Indonesia

Speakers:

Enforcement of guidelines for good corporate governance: The experience of Pakistan

Mr. Asad Ali Shah

Partner, Deloitte M. Yousuf Adil Saleem & Co., Chartered Accountants, Pakistan

*Enforcement of guidelines for good corporate governance
in a multinational company*

Mr. Hans-Josef Schill

President Director of PT Bayer Indonesia

Business ethics in practice

Mr. Cliff Rees

Senior Partner, PricewaterhouseCoopers

Discussant: Mr. Jos Luhukay

16:15–16.45 **Conclusions on behalf of KPK**

Mr. Erry Riyana Hardjapamekas

Vice-Chairman, Commission for Eradication of Corruption,
Republic of Indonesia

**Conclusions on behalf of ADB/OECD Anti-Corruption
Initiative for Asia and the Pacific**

Ms. Kathleen Muktan

Director, Capacity Development and Governance Division,
ADB, and the ADB/OECD Anti-Corruption Initiative for Asia
and the Pacific

16:45–17:00 **Closing remarks**

Mr. Hidayat Nur Wahid

Chair of the People's Consultative Assembly (MPR),
Republic of Indonesia

17:30 **Press Conference**

Appendix 2: List of participants

Member Countries and Jurisdictions of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

Speakers

H. E. Susilo Bambang YUDHOYONO
President of the Republic of Indonesia

Peter J. AINSWORTH
Deputy Chief for Litigation, Public Integrity Section
Criminal Division, US Department of Justice

Pelagio APOSTOL
Deputy Ombudsman for Visayas
Philippines

János BERTÓK
Principal Administrator, Innovation and Integrity Division of OECD
Public Governance and Territorial Development Directorate

Song DAJUN
Deputy Director General for Administrative Supervision and
Inspection Ministry of Supervision
People's Republic of China

Weldon EPP
Chargé d' Affaires, Canadian Embassy
Jakarta, Indonesia

Joel HELLMAN
Senior Governance Advisor
World Bank, Indonesia

Samuel HUI
Assistant Director of Corruption Prevention
Independent Commission Against Corruption (ICAC)
Hong Kong, China

Sri Mulyani INDRAWATI
Minister of Finance
Indonesia

Michael JONES
Senior Executive Advisor
The Australian Public Service Commission

Medhi KRONGKAEW
Commissioner, National Counter Corruption Commission (NCCC)
Thailand

Tim LANKESTER
President, Corpus Christi College
United Kingdom

Jos LUHUKAY
Partner, Indo Consult
Indonesia

Nono Anwar MAKARIM
Lawyer
Indonesia

Larry MAKINSON
Former Executive Director, Center for Responsive Politics
United States

Richard E. MESSICK
Senior Public Sector Specialist, Co-director, Law and Justice
Thematic Group Public Sector Governance, Poverty Reduction and
Economic Management
The World Bank

Gae Ok PARK
Director, Policy Coordination Team,
Korea Independent Commission Against Corruption
Republic of Korea

Marie Elka PANGESTU
Minister of Trade
Indonesia

Brian RADFORD
Legal Advisor, Public Sector Integrity Office
Canada

Clifford D. REES
Senior Partner, PricewaterhouseCoopers

Hans Josef SCHILL
President Director, PT Bayer Indonesia

Asad Ali SHAH
Partner, Deloitte M.Yousuf Adil Saleem & Co. Chartered Accountants
Pakistan

Dajun SONG
Deputy Director General, Ministry of Supervision
People's Republic of China

Eva K. SUNDARI
Member of Parliament
Indonesia

Arief T. SUROWIDJOYO
Lawyer
Indonesia

Arjun THAPAN
Director General, Southeast Asia Department
Asian Development Bank

Dimitri VLASSIS
Chief, Crime Conventions Section
Division for Treaty Affairs, United Nations Office on Drugs and Crime
(UNODC)

Hidayat Nur WAHID
Chair of the People's Consultative Assembly (MPR)
Indonesia

Christianto WIBISONO
Economist, Chairman Global Nexus Institute
Indonesia

Member Countries and Jurisdictions of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

BANGLADESH

Md. Matiar RAHMAN
Joint Secretary (Committee & Development), Cabinet Division

A. K. M. Abdul Awal MAZUMDER
Additional Secretary, Governance and Budget

Nur Ahmed
Senior Assistant Chief, Cabinet Division

BHUTAN

Ugyen WANGDI
Chief Legal Officer, Office of the Anti-Corruption Commission

CHINA, PEOPLE'S REPUBLIC OF

Dan XIANGDONG
Director, Ministry of Supervision

Wang WEIMIN
Division Chief, Ministry of Supervision

Wang NING
Division Chief, Ministry of Supervision

FIJI ISLANDS

Ralulu CIRIKIYASAWA
Principal Auditor, Surcharge and Compliance
Ministry of Finance and National Planning

INDIA

Rahul SARIN
Additional Secretary, Department of Personnel & Training
Ministry of Personnel, Public Grievances and Pensions

INDONESIA

Juwono SUDARSONO
Minister of Defense

Taufiequrachman RUKI
Commissioner, Corruption Eradication Commission (KPK)

Erry Riyana HARDJAPAMEKAS
Commissioner, Corruption Eradication Commission (KPK)

Amien SUNARYADI
Commissioner, Corruption Eradication Commission (KPK)

M. Syamsa ARDISASMITA
Deputy of Information & Data, Corruption Eradication
Commission (KPK)

Waluyo
Deputy of Prevention & Committee, Corruption Eradication Commission (KPK)

Sujanarko
Director, Corruption Eradication Commission (KPK)

Mochamad JASIN
Director, Corruption Eradication Commission (KPK)

Eko S. TJIPTADI
Director, Corruption Eradication Commission (KPK)

M. SIGIT
Director, Corruption Eradication Commission (KPK)

Tina T. Kemala INTAN
Director, Corruption Eradication Commission (KPK)

Nurhadi
Director, Corruption Eradication Commission (KPK)

Iswan ELMU
Director, Corruption Eradication Commission (KPK)

Ade RAHARDJA
Director, Corruption Eradication Commission (KPK)

Nandi Pinta ILHAM
Staff, Corruption Eradication Commission (KPK)

Eddy SURYADI
Staff, Corruption Eradication Commission (KPK)

Nurhadi
Staff, Corruption Eradication Commission (KPK)

Abdullah HEHAMAHUA
Penasihat KPK

Suryohadi DJULIANTO
Penasihat KPK

Junino JAHJA
Deputy PIPM, Staff, Corruption Eradication Commission (KPK)

Mustafa ABUBAKAR
Managing Director, Bulog (Board of Logistic Affair)

Fredy TULUNG
Expert, Ministry of Communication and Information

Suradji

Deputy of Investigation, BPKP (Finance & Development Supervisory Board)

Adnan PANDUPRAJA

Member, Commission of National Police

Denny INDRAYANA

Chairman, Indonesian Court Monitoring

Ahmad Fuad RAHMANY

Chairman, Indonesia Capital Market and Financial Institution Supervisory Agency

KYRGYZ REPUBLIC

Ruslan IMANBEKOV

Expert, Department of Analysis of Normative-Legal Base
National Agency of the Kyrgyz Republic on Corruption Prevention

MACAO, CHINA

Ivo Donat Firmo MINIERO

Chief Investigation Officer, Commission Against Corruption

Seak KONG Chow

Senior Investigation Officer, Commission Against Corruption

MALAYSIA

Abd. Latif OSMAN

Head, Community Education Division
Anti-Corruption Agency of Malaysia (ACA Malaysia)

MONGOLIA

Batsaikhan JANJAA

Head of the Monitoring and Evaluation Division
Anti-Corruption Agency

NEPAL

Rajendra Kumar POKHAREL

Joint Secretary
Commission for the Investigation of Abuse of Authority (CIAA)

PALAU

Secilil ELDEBECHEL
Director, Bureau of Public Service System
Ministry of Finance

PAPUA NEW GUINEA

Timothy GITUA
Senior Inspector-Office In Charge, Fraud and Anti-Corruption Unit
Police Force of Papua New Guinea

SAMOA

Philip PENN
Deputy Governor
Central Bank of Samoa

SRI LANKA

Mallika LIYANAGE
Deputy Director General
Commission to Investigate Allegations of Bribery or Corruption

THAILAND

Ruenvadee SUWANMONGKOL
Director, Legal Affairs Bureau
Ministry of Justice

Achana VUTTHISOMBOON
Senior Officer
National Counter Corruption Commission (NCCC)

Sathima CHINTANASERI
Officer
National Counter Corruption Commission (NCCC)

VIETNAM

Huu Loc NGUYEN
Deputy Director General
Government Inspectorate of Vietnam

Observers

AFGHANISTAN

Wali Ahmad HAMIDZADA
Director General, Civil Service Management Department
Independent Administrative Reform & Civil Service Commission

Qasim Mohammad HASHIMZAI
Deputy Minister of Justice, Afghanistan

Arian M. SHARIFI
Director of Communications
Ministry of Finance

NEGARA BRUNEI DARUSSALAM

Leslie Dominic Pau Chiang HO
Senior Special Investigator
Anti-Corruption Bureau

Salamat LIMAN
Senior Special Investigator
Anti-Corruption Bureau

International Organizations and Experts

AMERICAN BAR ASSOCIATION—RULE OF LAW INITIATIVE, ASIA DIVISION (ABA-ASIA)

John Andrew BONAME
Regional Anti-Corruption Advisor

ASIAN DEVELOPMENT BANK

Edgar A. CUA
Country Director
Indonesia Resident Mission (IRM)

Staffan SYNNERSTROM
Governance Advisor
Indonesia Resident Mission (IRM)

Jean Marie LACOMBE
Head, Portfolio Management
Indonesia Resident Mission (IRM)

Sandie HITOJO
Senior Control Officer
Indonesia Resident Mission (IRM)

Soerwarto H. S.
Senior Project Officer
Indonesia Resident Mission (IRM)

Purnima RAJAPAKSE
Principal Country Specialist
Indonesia Resident Mission (IRM)

Bobur ALIMOV
Project Implementation Specialist
Indonesia Resident Mission (IRM)

Robert VALKOVIC
Indonesia Resident Mission (IRM)

Hari SUDEWA
Assistant Procurement Analyst
Indonesia Resident Mission (IRM)

Olga SUYATMO
Procurement Officer
Indonesia Resident Mission (IRM)

Andre EGLOFF
Integrity Specialist, Office of the Auditor General

Alfredo PASCUAL
Southeast Asia Department

Ramsey R. OMAR
Administrative Officer
Indonesia Resident Mission (IRM)

Kathryn NELSON
Governance and Anti-Corruption Specialist (Staff Consultant)

AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT (AUSAID)

Joanna PERRENS
Contracting Manager, AIPRD

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY (CIDA)

Kimberly HEUCKROTH
Head of Mission

Renaldy MARTIN
Program Officer (Development)

DANISH INTERNATIONAL DEVELOPMENT AGENCY (DANIDA)

Ary NUGROHO
Program Manager

EUROPEAN COMMISSION (EC)

Novianty E. MANURUNG
Project Officer

FINANCIAL SERVICE VOLUNTEER CORPORATION (FSVC)

Greg ALLING
Country Director

THE ASIA FOUNDATION

Davaasuren BAASABKHUU
Program Officer

Douglas RAMAGE
Representative

Frida RUSTIANI
Program Officer

THE BRITISH EMBASSY

Ari SARADIH
Counselor

THE WORLD BANK

Joachim Von AMSBERG
Country Director, Indonesia

Vishnu JUWONO
Governance Consultant

TRANSPARENCY INTERNATIONAL (TI)

Pascal FABIE
Regional Director for Asia Pacific

UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

Sauna FLYNN
Researcher and Policy Analyst (Public Administration Reform and
Anti-Corruption)
UNDP Regional Centre in Bangkok

Mohammad Younus PAYAB
Deputy Project Manager for the Accountability and Transparency,
Project ACT
UNDP Afghanistan

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL
ORGANIZATION (UNESCO)

Malama MELEISEA
Director and UNESCO Representative
UNESCO Office, Bangladesh

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
(USAID)

Robert CUNNANE
Director, USAID Indonesia

Representatives from the Private Sector, Civil Society, and Academe

Hambun ANYANG
Assistant to the Head of Tanjung Pura University, Pontianak

H. Elfi Sahlan BEN
Assistant to the Head of Andalas University, Padang–West Sumatera

Frans Umbu DATTA
Head of Nusa Cendana University

Darmi M. DAUD
Head of Syiah Kuala University, Aceh

Ir. Mohammad Nuh, DEA
Head of Institute Technology, Surabaya–East Java

Hj. Kencana DEWI

Head of Sriwijaya University, Palembang–South Sumatera

Vincent DIDIEK

Assistant to the Head of Unika Soegiyopranata, Semarang–Central Java

Fasich

Head of Airlangga University

Erry FIRMANSYAH

President Director of Jakarta Stock Exchange

Agung HERTANTO

Executive Director of Masyarakat Transparency Indonesia

Hendrik HATTU

Assistant to the Head of Patimura University, Ambon–Maluku

Jenni Maria KALANGI

Executive Director, British Chamber of Commerce in Indonesia

Hj. Dahlia LUBIS

Assistant to the Head of IAIN, North Sumatera

Mahyuni

Monevin Chairman of Mataram University

Idrus A. PATURUSI

Head of Hasanuddin University

Neal ROBERTS

Attorney, Roberts Law Firm, United States

Fathur ROKHMAN

Assistant to the Head of Semarang State University, Central Java

H. Hariadi SAID

Head of Gorontalo State University

Ganbaatar SAINKHUU

President, Confederation of Mongolia Trade Union

Ir. Djoko SANTOSO

Head of Bandung Institute Technology, West Java

Henry SINGARASA

Head of Palangkaraya University

Arie SISWANTO

Assistant to the Head of Satya Wacana Christian University
Salatiga–Central Java

Mark SMITH

Director of AmCham Indonesia

Mohamad SOBARY

Executive Director of Partnership for Governance Reform in
Indonesia

Kemal STAMBOEL

Vice Chairman, Board of National Communication Information
Technology

Sudjarwadi

Head of Gadjah Mada University, Yogyakarta

Ir. Yogi SUGITO

Head of Brawijaya University, Malang–East Java

Bambang WIDJOJANTO

Lawyer

Gede Putu WIRAWAN

Assistant to the Head of Udayana University, Bali

Yanuar, M.S.

Assistant to the Head of Riau University

Organizing Committee/Secretariat

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

Asian Development Bank

Capacity Development and Governance Division

Regional and Sustainable Development Department ADB

P.O. Box 789

0980 Manila, Philippines

Kathleen MOKTAN

Director

kmoktan@adb.org

Marilyn PIZARRO

Consultant

mpizarro@adb.org

Indonesian Corruption Eradication Commission
Komisi Pemberantasan Korupsi (KPK)
Jl. H.R. Rasuna Said, Jakarta-12920, Indonesia

Sofie SCHUETTE
CIM Integrated Expert

Dian PATRIA
Research & Development Directorate

Giri SUPRAPDIONO
International Cooperation Specialist

Dian ANDRIANY
Dian WIDIARTI
Doni MUHARDIANSYAH
Muadz D' FAHMI
Rosma Ali YUSUF
Adhi Setyo TAMTOMO
Luthfi SUKARDI
Ida FIRDAUS
Johan BUDI
Dedie A. RACHIM
Muhamad Ide AMBARDI
Jermia T. DJATI
Joko SANTOSO
Ramdhani
Nugroho Ary SETIAWAN
Ginanjari
Dani RUSTANDI
Harismoyo

ADB/OECD Anti-Corruption Initiative for Asia-Pacific Secretariat

I. Asian Development Bank (ADB)

Capacity Development and Governance Division
Regional and Sustainable Development Department
P.O. Box 789, 0980 Manila, Philippines
Fax: +632 636 2193

Kathleen Moktan
Director
Phone: +632 632 6651
kmoktan@adb.org

Marilyn Pizarro
Consultant
Phone: +632 632 5917
mpizarro@adb.org

II. Organisation for Economic Co-operation and Development (OECD)

Anti-Corruption Division
Directorate for Financial and Enterprise Affairs
2, rue André-Pascal
75775 Paris Cedex 16, France
Fax: +33 1 44 30 63 07

Frédéric Wehrlé
Coordinator, Asia-Pacific
Phone: +33 1 45 24 18 55
frederic.wehrle@oecd.org

Joachim Pohl
Project Coordinator, Anti-Corruption Initiative for Asia-Pacific
Phone: +33 1 45 24 95 82
joachim.pohl@oecd.org

Managing Conflict of Interest

Conflict of interest (COI) is recognized as a key factor contributing to corruption in its myriad forms. However, policies and regulatory frameworks to detect and manage COIs are weak in many countries. Conscious of the urgent need to strengthen these frameworks, the Indonesian Corruption Eradication Commission and the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific called for a technical seminar to gain insights on the challenges that face countries in this area, and to share solutions and good practices to address corruption arising from COIs.

This book captures the analyses and conclusions drawn during the seminar *Conflict of Interest: A Fundamental Anti-Corruption Concept*, which was held on 6–7 August 2007, in Jakarta, Indonesia. The seminar brought together experts from across the globe and 23 of the 28 Asia-Pacific member countries and jurisdictions. This publication aims to serve as a resource for both practitioners and policy makers to support the development of new frameworks, tools, and instruments for detecting and manage COIs in order to curb corruption in the Asia and Pacific region.

Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org/Publications

OECD Anti-Corruption Division
2, rue André Pascal
75775 Paris Cedex 16, France

www.oecd.org/corruption/asiapacific
Publication Stock No. 041408
ISBN 978-971-561-688-1



Printed in the Philippines