Anti-Corruption Policies in Asia and the Pacific

The Legal and Institutional Frameworks for Fighting Corruption in Twenty-one Asian and Pacific Countries

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

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Contents

Abbreviations

ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
ICC	International Chamber of Commerce
INTOSAI	International Organisation of Supreme Audit Institutions
IOSCO	International Organization of Securities Commissions
KICAC	Korea Independent Commission Against Corruption
NGO	Nongovernmental organization
OECD	Organisation for Economic Co-operation and Development
PBEC	Pacific Basin Economic Council
SOE	State-owned enterprise
USD	United States dollars

Countries having endorsed the Anti-Corruption Action Plan for Asia and the Pacific: Australia; Bangladesh; Cambodia; Cook Islands; Fiji Islands; Hong Kong Special Administrative Region of the People's Republic of China (hereinafter Hong Kong, China); India; Indonesia; Japan; Republic of Kazakhstan; Republic of Korea; Kyrgyz Republic; Malaysia; Mongolia; Nepal; Pakistan; Republic of Palau; Papua New Guinea; Philippines; Samoa; Singapore; Vanuatu; and Viet Nam (status as of 7 July 2004).

Foreword

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

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

The international donor community, in particular members of the Initiative's Advisory Group[1], strongly supports participating countries' efforts to build sustainable anti-corruption mechanisms.

In the framework of this Initiative, the participating governments have decided to take stock of their relevant legal and institutional provisions in order to gain a comprehensive and structured overview of the region's anti-corruption framework and to supplement the regular review procedure on specific national priority reform efforts under the Action Plan. Based on self-review, this stocktaking exercise aims to assist participating governments in better understanding the main challenges that their countries face, learning from their neighbors' experience, and identifying measures to further enhance anti-corruption efforts. The exercise

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

also serves as a benchmark for participating countries to assess achievements under the Action Plan and to identify areas in which further reform efforts are most crucially needed. In the future, the report will be regularly updated with information on new policies and practices developed and implemented in the region.

This report is based on a project that was coordinated by Jak Jabes, Director for Governance and Regional Cooperation, ADB, and Frédéric Wehrlé, Coordinator for Anti-Corruption Initiatives, Anti-Corruption Division, OECD, and was prepared by Joachim Pohl, Legal Expert, Anti-Corruption Division, OECD, under the supervision of Gretta Fenner, Project Manager of the Anti-Corruption Initiative for Asia-Pacific, Anti-Corruption Division, OECD.

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

Editorial Remarks

This report has been drafted by the Secretariat of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. It compiles information provided by the governments that have endorsed the Anti-Corruption Action Plan for Asia and the Pacific through self-assessment reports and through publicly available information on the relevant institutions' official websites. Additional information provided by international organizations of which governments of endorsing countries are members have also been exploited, such as the International Organization of Supreme Audit Institutions and the Financial Action Task Force, and official and public reports of the OECD Working Group on Bribery of Foreign Public Officials in International Business Transactions. The information contained in this report was collected until 30 June 2004, and therefore information on the Republic of Palau and Vietnam, both of which endorsed the Action Plan on 5 July 2004, is not yet included.

The participating countries' individual stocktaking reports, on which this report is based, are available for download at the Initiative's website at http://www1.oecd.org/daf/asiacom/

This report was approved by the Steering Group at its fifth meeting in Manila, Philippines on 7 July 2004.

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

The term "country" as used in this report also refers, as appropriate, 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.

For convenience, monetary values mentioned in the document have been converted from the respective national currencies to United States dollars (USD), either by the reporting countries themselves or according to the approximate exchange rates as of October 2003.

Every effort has been made to verify the information contained in this report and correctly reflect the countries' self-assessment reports that were submitted to the Secretariat in the course of the stocktaking exercise. However, the authors disclaim any responsibility regarding the accuracy of the information or the effectiveness of the regulations and institutions mentioned in this report. ADB's Board and members and the OECD and its member countries cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

Executive Summary

As the harmful effects of corruption on economic development, political stability and social welfare today are apparent throughout the world, combating corruption enjoys high priority among governments and societies throughout the Asia-Pacific region. To strengthen regional cooperation in this endeavor, 23 countries have joined the Asian Development Bank (ADB)/ Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific. While the Initiative's Action Plan has since triggered a broad range of legal and institutional anti-corruption reforms in participating countries, the battle against corruption is far from being won.

To gain a comprehensive understanding of the particular challenges that the Asia-Pacific region is facing in this endeavor, this report reviews legal instruments and institutional mechanisms, anti-corruption policies and trends in the following 21 countries: Australia; Bangladesh; Cambodia; Cook Islands; Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Republic of Kazakhstan; Republic of Korea; Kyrgyz Republic; Malaysia; Mongolia; Nepal; Pakistan; Papua New Guinea; Philippines; Samoa; Singapore; and Vanuatu.

The report provides a tool to measure progress over time and serves to disseminate good practices and experiences throughout the region. The Anti-Corruption Action Plan for Asia and the Pacific, endorsed by all these countries, serves as a reference standard for this analysis.

The report shows that the focus of anti-corruption reform is unique to every country. As promoted by the Action Plan, anti-corruption strategies and policies reflect the countries' perceived needs, their level of economic development, and their social and political structures. At the same time, certain priorities and trends are prevalent throughout the region. The report highlights selected practices and particularly innovative projects and aims to assess the overall situation of the fight against corruption in the region.

In line with the Action Plan, the study is divided into three chapters: Chapter 1 discusses institutional, organizational and legal tools to prevent corruption in the public sector, political sphere and private sector. Chapter 2

presents the region's prevalent types of sanctions for corruption and related crimes and analyzes the procedures and institutions for the detection, investigation and prosecution of corruption. Acknowledging the fact that anti-corruption measures require support from a broad range of actors, Chapter 3 examines efforts undertaken by Asian and Pacific governments to inform and educate the public about corruption, allow for external scrutiny of public action and involve nongovernmental actors in the implementation of anti-corruption measures.

Eliminating systemic weaknesses and strengthening integrity

Corruption prevention in the public sector is considered a central precondition of a reliable and efficient public administration and combines a number of parallel measures aimed at eliminating systemic weaknesses at different levels. Reform in the Asia-Pacific region often targets the integrity and competence of public officials by introducing regulations for staff selection and revising human resources policies. Most countries subscribe to the principle of meritocracy for hiring and promoting public servants and prescribe the public advertisement of vacant posts to foster a competent and independent public service and prevent cronyism and nepotism. Most of them further apply special procedures to especially senior positions; adequate remuneration is also an issue of concern throughout the region. The implementation of such reform is, however, often impeded by macroeconomic realities.

A growing number of countries have adopted codes of conduct to foster impartiality and integrity in public service. To ensure their thorough implementation, these codes often include disciplinary provisions and are accompanied by significant changes in the regulatory environment and by staff training. Codes of conduct usually regulate the receiving of gifts and hospitality and prohibit bribes and other forms of abuse of public goods. They further regulate a public servant's involvement in economic and political activities as part of a set of measures to prevent conflict of interest situations. To reduce the level of decisional discretion, some countries have centralized important decision-taking processes and introduced modern information technology in particularly corruption-prone sectors such as public procurement and tax or business permit administration. With the spread of the internet around the world, these latter measures have become more prevalent in many countries of the region.

In light of the numerous recent corruption scandals involving high-ranking politicians in Asia and the Pacific, curbing corruption in the political sphere enjoys high public attention and is recognized as a decisive element in the fight against corruption. A number of countries have reacted to these incidents by setting up regulations that strive for the transparency and integrity of politicians and elected officials and in the financing of political parties. However, it remains difficult to evaluate the concrete impact of these measures, and politicians in Asia – as around the world – continue to enjoy a high level of immunity to such measures.

Compared to the public administration, the private sector has been significantly lower on the agenda of governments' efforts to prevent corruption. Preventing corruption in the private sector relies on standards for company management and business transactions imposed and supervised by the government, and on self-regulatory initiatives instigated by the private sector. Most countries have or are currently in the process of enacting regulations governing company accounting, internal control and disclosure of information. However, their enforcement sometimes seems ineffective, mainly because audit mechanisms have been rather recently enacted and loopholes and ambiguity in relevant rules remain.

Measures initiated by governments to foster ethical business, such as the promotion of company compliance systems, remain rare. By contrast, the business sector – at least the largest and internationally active companies – aware of its own interest in curbing corruption, has attempted to develop preventive systems aimed at enhancing ethics and reducing the risk of bribe giving in business transactions. Efforts to promote ethical business through regional cooperation and policy dialogue – for instance, in the framework of the Pacific Basin Economic Council or the International Chamber of Commerce – have contributed to this development.

Effective prosecution and sanctioning of corruption

A comprehensive anti-corruption strategy must pay equally strong attention to repressive tools. All countries covered in this report have established legislation sanctioning corrupt practices; money laundering legislation is also in place or being established in most countries. Legal instruments criminalizing corruption in some countries further include provisions allowing for the confiscation of ill-gotten assets and the proceeds

of corruption, which may serve as an important financial disincentive. However, legal loopholes remain in many countries, the interpretation of certain regulations is considered ambiguous and some forms of corruption, such as foreign bribery or political corruption, are not yet covered. Only a few countries' money laundering legislations provide for corruption as a predicate offence, which constitutes an effective deterrent to corruption. Finally, the responsibility of legal persons for corruption has not been defined in most countries.

Review and reform of legislation is thus an important concern throughout the region, with a particular focus on money laundering. Other important on-going legal reform addresses procedural means to detect and investigate corruption. A growing number of countries are in the process of establishing whistleblower and witness protection laws and programs, so as to encourage and better protect citizens as an important source of information leading to the detection of corruption. Other attempts to facilitate investigation and prosecution of corruption include amending rules governing the collection of evidence and its presentation in court and improving the mechanisms applicable to obtaining and providing international legal assistance. In this context, the repatriation of the proceeds of corruption is an issue of great concern, as corrupt officials continue to misappropriate important amounts of public funds and store them in foreign jurisdictions. While some progress in this area has resulted from bilateral and ad-hoc repatriation arrangements, progress in institutionalizing these procedures is seen as crucial for many countries of the region.

The organizational structure of law enforcement has also been a focus of reform in many countries. In an attempt to better cope with the complexity of corruption and related crimes, existing law enforcement structures have often been complemented by specialized anti-corruption agencies. These are either given an independent status or integrated into existing law enforcement bodies, and are explicitly tasked with combating corruption. Their responsibilities in this field vary, however, as they are equipped with different degrees of power to investigate and prosecute. Some agencies are responsible for awareness raising, educational measures or research, while in other countries they merely supervise and coordinate the work of involved government agencies. Capacity enhancement within these types of institutions currently enjoys high priority throughout the region.

Despite the sometimes far-reaching responsibilities of these anti-corruption agencies, cooperation with law enforcement bodies, such as police and the public prosecutors, remains crucial even in a centralized system. Reform of these latter institutions has received significantly less attention in recent years.

Civil society as an important actor and resource

Nongovernmental actors, such as the media, business associations, nongovernmental organizations (NGOs), academics and trade unions, may play a crucial role in generating public discussion about corruption. As final beneficiaries of public service, citizens are also an important source of information on wrongdoing and potential gaps and loopholes in laws, regulations and institutions. The legal framework for civil society to operate and a government's willingness to listen to and cooperate with nongovernmental actors must therefore encourage civic actors to function in these roles. The media are particularly dependent on a legal framework allowing for free discussion, access to relevant information and press freedom so as to exercise their watchdog role and continue to act as an important source of information that may lead to the detection of corruption. The Action Plan strongly encourages governments to involve civil society actors in the fight against corruption.

Whereas policies in some countries still reflect caution about the extent of civil society implication in this reform process, civil society's contribution to anti-corruption efforts has increased significantly in a growing number of countries of the region. Awareness raising campaigns have contributed to putting the fight against corruption at the top of political agendas. Grassroots advocacy work has had an important impact on the development of access to information legislation. Independent actors are in some countries employed to conduct public perception surveys or to participate in scrutinizing certain particularly delicate government operations. A few countries also provide financial support to anti-corruption NGOs.

Overall, significant efforts in the fight against corruption can be observed in Asian and Pacific countries. Legal gaps and loopholes continue to exist, however, and the capacity of anti-corruption institutions remains insufficient in many countries. Regional fora such as the ADB/OECD

Initiative, through which experts and policy makers can exchange experience, foster the promotion of good practices and make use of capacity building instruments, play an important role in advancing the anti-corruption agenda region-wide. Tools such as the present report are crucial in evaluating reform over time and ensuring continuous progress. Cooperation with nongovernmental actors from the private sector and civil society must be strengthened so as to make use of all available resources. Finally, the continuous involvement and active support from the international donor community, such as that provided by the Asian Development Bank and other development partners of this Initiative, remain essential for the success of the reform in which Asian and Pacific countries have engaged.

CHAPTER 1

Preventing Corruption

A. Preventing corruption in public administrations
B. Curbing corruption in the political sphere
C. Regulating the business sector and fostering ethical business

Preventing Corruption

Corruption and bribery thrive on systemic weaknesses. Efforts to prevent corruption aim at eliminating these weaknesses and enhancing integrity and transparency. This goal is common to corruption prevention in the key sectors – public administrations, the political sphere and the business sector. The means of putting this objective into practice, however, differ among these sectors, due to the variety of regulatory frameworks and operational environments.

Despite large differences in the problems prevalent in the various countries and the existing remedies, recent efforts to prevent corruption target similar areas across the region. Most countries that have endorsed the Anti-Corruption Action Plan, for example, attribute an important role to administrative reform. The various strategies to prevent corruption address integrity, effective procedures and transparent rules. Corruption in the political sphere attracts growing attention in more and more countries covered by this report. The demand for the accountability of political leaders and the transparency of political parties has begun to trigger reform in those areas. Private business has also become a focus of anti-corruption reform: besides being object of state oversight, this sector has started its own initiatives to curb corruption.

A. Preventing corruption in public administrations

Prevention of corruption in the public service ranks high on many countries' reform agendas. So far, varying levels of effort and achievement have taken place. Reforms aim at ensuring the competence and integrity of public officials as individuals. Administrative rules and procedures and the overall management and oversight of public administration are also under review, with a particular focus on the reform of public procurement. Corruption prevention in the political sphere also seems to draw growing attention these days. Due to the special status of elected officials and the different regulations to which they are consequently subject, however, these measures are dealt with in a separate section of this report (*see* section B below).

I. Integrity and competence of public officials

The integrity and competence of public officials are fundamental prerequisites for a reliable and efficient public administration. Many countries in the region and beyond have thus adopted measures that aim to ensure integrity in the hiring and promoting of staff, provide adequate remuneration and set and implement clear rules of conduct for public officials.

1. Hiring and promotion of public officials

Openness, equal opportunity and transparency in hiring and promoting public officials are essential to ensure an honest, competent and independent public service. Corrupt practices in this crucial process take many forms: for example, nepotism and cronyism – the use of public power to obtain a favor for a family member or other affiliate – are common in a number of countries. Unclear eligibility criteria and insufficient publication of vacant positions make it difficult to attract talented candidates to the public service.

Defining the criteria, procedures and institutional framework by law is an essential precondition for transparent and fair selection and promotion procedures. Most if not all countries subject to this survey have enacted such laws. These usually prescribe the advertisement of vacant positions in the press or other media. In Korea, Singapore and the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter Hong Kong, China), the internet is gaining importance as a means of informing the public of job opportunities. The eligibility criteria are usually based on merit, examination results, performance or demonstrated abilities (Australia; Hong Kong, China; India; Japan; Kazakhstan; Korea; Kyrgyz Republic; Mongolia; Nepal; Pakistan; Papua New Guinea; Philippines; Singapore). Bangladeshi legislation prescribes merit-based promotion only with respect to senior positions. While discrimination in most countries is formally proscribed, these provisions are not always followed in practice, as some countries have frankly reported.

With the aim of enhancing the transparency of eligibility criteria and recruitment procedures, Samoa published a Recruitment and Selection Manual for the Public Service. Australia's Public Service Commissioner regularly updates the commission's directions on recruitment and promotion, and evaluates to what extent the agencies follow its regulations. Korea established a monitoring mechanism to increase the transparency of appointment procedures likely to be subject to corrupt behavior; all selection processes are documented in detail on the internet and thus open to public scrutiny. Australia; Hong Kong, China; Papua New Guinea and the Philippines have also designed specific complaint procedures enabling applicants or public officials to submit grievances concerning appointments or promotions to independent bodies: to the Merit Protection Commissioner in Australia, the Chief Executive in Hong Kong, China and the Public Service Commission or the Ombudsperson Commission in Papua New Guinea.

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

Some countries have established specific organizational or institutional schemes for appointment procedures to diminish the risk of nepotism and cronyism. Bangladesh, Korea, Malaysia, Nepal and Pakistan have centralized recruitment systems. Other countries have opted for a decentralized system: the Fiji Islands has decentralized recruitment of public officials below senior executive services. In Singapore, all decisions on hiring and promotion are taken by a board, and the Fiji Islands and Vanuatu have commissioned such boards for appointments to certain positions. Bangladesh, India and Pakistan entrust departmental promotion committees with implementing the rules on civil servants' promotions; in Bangladesh, decisions on promotion to senior positions are taken by a high-level committee known as Superior Selection Board. In Australia, an independent commission can be convened to make recommendations to the responsible agency head on the filling of certain positions.

To counter the increased risk of undue influence over appointments to senior positions, some countries govern the appointment by a specific regime. In Nepal, India and Pakistan, independent central bodies with constitutional status appoint civil servants to senior positions. Relevant provisions in Malaysia require a centralized body's approval of appointments to such senior positions, while those in Hong Kong, China require an independent body's advice and endorsement of the appointment to such senior positions. Malaysia has entrusted its anti-corruption agency with ascertaining that candidates for appointment or promotion to important posts in the public and private sectors have not been involved in corruption. Appointment to the highest positions in some public administrations is subject to the approval of parliament: for example, Indonesia's attorney general, chief justice and chief of the police department are appointed by the president, whose decision is subject to parliamentary approbation. By contrast, Pakistan's prime minister is entitled to appoint any person to a post in the federal service, without the decision's being subject to aproval by another state body; this entitlement is used only infrequently, however.

2. Remuneration of public officials

Inadequate remuneration renders posts in the public service unattractive to talented people and can diminish officials' resistance to corruption. Adequate remuneration of public officials is thus often seen

as helping to prevent corruption. Many countries periodically review and adjust public officials' salaries. These adjustments often take into account changing costs of living, overall economic development or comparable private sector salaries. In some countries, this involves the review of salary bases and, where the state budget allows, routine pay adjustments (Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kazakhstan; Malaysia; Papua New Guinea; the Philippines; Singapore). Some countries have given priority to particularly vulnerable sectors: Indonesia and the Kyrgyz Republic have prioritized salary adjustments in their law enforcement agencies; Pakistan has done likewise in certain units of its law enforcement agencies. The Philippines has increased remuneration of its judiciary to attract more competent staff, and current efforts in the Philippine Congress also aim to upgrade the salaries of certain positions in the Office of the Ombudsman. Bangladesh and the Cook Islands periodically review the salary structure within their public service to ensure equity and appropriate remuneration, and Samoa plans to establish a Remuneration Tribunal to review salaries and wage parity in the public sector.

3. Regulations on conflicts of interest and conduct in office

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

Today, many countries in the region have laid down guidelines for the public sector in codes of conduct or laws (regarding codes of conduct for politicians, *see* section B.II. below): Australia, India, Korea, Malaysia, Pakistan, Papua New Guinea, Samoa, and Vanuatu have passed codes of conduct, and Indonesia, Mongolia, and the Philippines specific conflict of interest or anti-corruption laws. The Kyrgyz Republic, Singapore and Hong Kong, China have issued public service regulations, and Bangladesh has rules of conduct for public servants. These frameworks usually address conflicts of interest, commonly defined as situations in which personal considerations influence an official in the exercise of his or her function. They also commonly restrict or regulate public officials' economic or political activities and the acceptance of gifts or hospitality, both of which are major sources of conflict of interest. Many of them also provide for disciplinary measures to enforce the proscribed conduct.

Rapid changes in the public services' working environment require regular review of their codes of conduct. New models of cooperation with the business sector, public-private partnerships and increased mobility of personnel between the public and private sector illustrate such emerging risk areas. In order to react swiftly to these challenges and exploit the particular expertise in this field, Korea, Malaysia and Hong Kong, China have enjoined their anti-corruption agencies' advisory branches to partake in the current update and enforcement of codes of conduct. Cambodia, Cook Islands, Fiji Islands, the Kyrgyz Republic and Pakistan are planning or working on the establishment or substantive reform of codes of conduct.

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

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

Many conflict-of-interest regulations address public officials' engagement in political or economic activities: Bangladesh, India, Japan, the Kyrgyz Republic, Nepal and the Philippines limit or prohibit public officials from engaging in political activities. Australian law allows such engagement, but an official standing for election has to resign from the official function for the duration of the campaign as well as the term of elected office.

A number of countries restrict or forbid public officials' engagement in private sector enterprises or investment (Bangladesh; Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kyrgyz Republic; the Philippines; Singapore). Nepal, Indonesia and Singapore require public officials to obtain a superior's or the ministry's approval before taking up a post as a company director or holding shares in private companies. Hong Kong, China; Indonesia and the Philippines prohibit investment or involvement in business linked to the official's sphere of activity. Indian regulations oblige officials to report the employment of a near relative in an organization with which the public official is associated. Kyrgyz Republic

law requires shareholders to transfer their shares into trust governance during the time of their public service employment.

b. Regulations concerning gifts and hospitality

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

These provisions require handing over the gift to a fund (Kazakhstan) or reporting the gift to supervisors (Japan and Nepal; India and Malaysia for gifts exceeding a certain value). In Japan, citizens can access information concerning gifts of a value exceeding approximately USD 170 upon individual request. In Mongolia, gifts should be reported to the finance department or handed over if the amount of the gift exceeds the value of the recipient's monthly salary; the recipient of the gift may purchase it back from the finance department.

Such regulations often exempt minor gifts. Whether a gift is minor is determined either in relation to a fixed threshold or to specific circumstances. Fixed ceilings for acceptable values of gifts differ among countries, partly reflecting their economic situation. The ceilings are set at USD 10 in Kazakhstan, USD 25 in Korea, USD 50 in Japan and USD 125 in Malaysia, to mention a few examples. Since fixed amounts can be ineffective to curb petty corruption, the Philippines' code of conduct bans "manifestly excessive" gifts, thus opting for a definition relative to specific circumstances. Malaysia requires gifts to be reported regardless of their value, if the background of the gift is doubtful.

c. Conflict of interest arising from post-service employment

Conflicts of interest may threaten the public interest even *after* an incumbency in public office. Thus, some countries impose restrictions on professional activities of former public officials for a certain period or under certain conditions: Hong Kong, China requires a retired civil servant who intends to take up any employment or engage in any business activity within two years of retirement to obtain prior approval from the government. A sanitization period of six months counting from cessation

of active service is normally imposed on senior officials. Australian law does not prescribe fixed restrictions on activities after public sector employment; the legally non-binding code of conduct nevertheless points out the risk of a conflict of interest and encourages individual agencies to define relevant guidelines; waiting periods are explicitly recommended. In Bangladesh, prior approval from the government is required if the civil servant is on pre-retirement leave.

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

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

An increasing number of countries recognize the importance of training in ethics and corruption issues. Anti-corruption awareness is part of regular staff training programs in Bangladesh; India; Japan; the Philippines; Singapore and Hong Kong, China. In Singapore and Hong Kong, China, the anti-corruption agencies conduct such training. The Kyrgyz Republic currently prepares staff training programs.

e. Enforcement of codes of conduct

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

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

4. Duties to report on assets and liabilities

Measures to curb corruption in the public administration go beyond keeping an eye on public officials at work. As wealth is often apparent, a number of countries screen public officials' assets and liabilities with the aim of detecting unjustified wealth as an indicator of corrupt behavior. Some countries require all public officials to regularly disclose information about their assets and liabilities (Bangladesh, Fiji Islands, India, Kazakhstan, Malaysia, Nepal, Pakistan, the Philippines, Singapore, Vanuatu); Cambodia has drafted a similar bill. Nepal and the Philippines extend screening to the officials' families in order to prevent and detect a formal transfer of assets.

Australia, Indonesia, Japan, Korea and Papua New Guinea oblige only higher grades of officials to file such declarations. Singapore public officials must report their holdings in investments and properties as well as personal assets and shareholdings in closed companies; they are also required to annually declare that they are debt-free. Hong Kong, China requires senior officials or those occupying sensitive posts to declare their investments and properties on a regular basis. In Kazakhstan, not just officials but all citizens who have made a large purchase must file an income declaration. The Kyrgyz Republic is currently preparing legislation requiring high-level officials and their next of kin to report income and property holdings.

While many countries require public officials to submit such reports, in most it remains unclear whether these declarations are scrutinized and how the gathered information is used. The Philippines, for one, makes the information available to the public. The country has also established a partnership between government agencies and NGOs to scrutinize the lifestyle of public officials to detect ill-gotten wealth.

II. Public management system

The above-mentioned measures address the integrity and competence of the public service at the level of the individual public servant. In addition, most countries strive to immunize the public administration against undue interference at the institutional level. The measures taken aim at harmonizing and clarifying procedures and at reducing discretion. Where this is impossible or impractical, ways of controlling or varying the contacts

between public officials and citizens are employed to prevent corruption. Particularly corruption-prone sectors, such as public procurement, are brought under specific regimes and procedures that assure oversight and transparency. Audit and other forms of scrutiny and survey add to the efforts to increase accountability of the public service.

1. Prevention of undue influence

Institutional and organizational settings largely determine to what extent administrative procedures are subject to undue interference and corruption. Discretion and unclear laws and regulations create opportunities for corruption to proliferate. Besides making efforts to improve the transparency of legal provisions (*see* section A. III. below), countries in the region strive to depersonalize administrative processes and diminish client relations that may give rise to unjustified preferential treatment and the solicitation of bribes. Depersonalized on-line procedures and regular rotation of officials are among the measures most frequently applied to counter these risks.

a. e-government

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

Australia; Hong Kong, China; Korea; Malaysia; Pakistan; the Philippines and Singapore undertake extensive efforts to implement e-government. In Korea, for instance, citizens can monitor in real time the progress of an on-line application for permits and licenses. In Pakistan, the entire tax department is currently being restructured and information technology introduced, with the purpose of reducing contact between tax collectors and taxpayers. In India and the Philippines, documents related to public procurement must now be made available on-line.

Cambodia also enhances the use of information technology to provide administrative services.

b. Rotation of officials

Regular and timely rotation of assignments reduces insularity and may thus help curb corruption. Certain countries rotate public officials according to a fixed schedule, on certain occasions or under certain circumstances. Routine rotation of public officials occurs in Bangladesh; Fiji Islands; Hong Kong, China; India; Indonesia; Kazakhstan; Korea and Singapore. In other countries, officials are rotated only at a certain level or when specific conditions apply: Vanuatu rotates personnel at the level of director; the Philippines subjects certain officials of the national police and international revenue office to regular rotation of posts; Papua New Guinea rotates police officers; and Malaysia, where such a system is already practiced in some agencies, has prepared a bill that requires officials who work in direct contact with citizens to change their posts regularly. Pakistan has also adopted measures to systematically minimize and randomize personal contacts between public officials and clients. To better prevent abuse of discretion, Nepal's anti-corruption agency has taken the initiative of drafting a procedural manual to be distributed to all government departments that are especially exposed to contact with citizens.

2. Public procurement

Public procurement is an especially corruption-prone area. To keep corruption at bay, procurement systems must be based on transparency, competition and objective criteria in decision making. Throughout the region, reform of public procurement procedures has been widely identified as a priority. Most countries have enacted statutes governing public procurement (Australia; Bangladesh; Fiji Islands; Hong Kong, China; India; Indonesia; Kyrgyz Republic; Malaysia; Mongolia; Nepal; Papua New Guinea; Pakistan; the Philippines; Samoa; Singapore; Vanuatu). Some are currently reforming public procurement procedures. Bangladesh has recently issued procurement guidelines and tasked a particular government division *inter alia* to monitor and evaluate government procurement processes. Samoa is developing manuals to standardize procurement and enhance transparency.

Current reform efforts in the region focus primarily on introducing procurement via the internet (Australia, India, Japan, Korea, Malaysia, Pakistan, the Philippines). The Asia-Pacific Economic Cooperation's (APEC's) Government Procurement Experts Group defined the promotion of e-procurement systems as one of its focuses in 2003. Another current field of reform is the standardization and centralization of public procurement – with certain exceptions like Indonesia, where public procurement is currently being decentralized. Relevant international standards, such as APEC's Non-Binding Principles on Government Procurement, adopted in 1999, and the World Trade Organization Agreement on Government Procurement, influence the reform process in some countries.

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

In some countries, the awarding of tender is subject to public monitoring, as in Korea and the Philippines. Korea assures transparency of the bidding procedures through public disclosure via the internet of documents such as bidding notices and information on the final selection of the contractor. Nepal publishes the reasons for acceptance of any tender either on the notice board or in the newspaper. Australia extensively uses the internet for public tenders, including the provision of information on awarded public tenders. In some countries, members of civil society organizations, academics or technicians monitor procurement procedures and decisions. In the Philippines, two observers sit in the board entrusted with the awarding of tenders: one from a duly recognized private group in the sector or discipline relevant to the procurement at hand, the other from a nongovernmental organization.

Some countries' laws contain specific provisions to prevent conflicts of interest in public procurement. For instance, in the Philippines, certain family ties between a department's personnel and a company disqualify the company from bidding. A similar regulation is in place in Malaysia.

Review and appeal mechanisms play a crucial role, both to ensure legal recourse and remedies and to deter corruption. Such review requires that proper records of the entire procurement process be kept and retained for a predetermined period and that independent scrutiny mechanisms be in place. Criteria for the review and appeal of procurement decisions have rarely been reported, however. Bangladesh, Japan, Korea, Malaysia and Pakistan keep records of the whole procurement procedure and actions and decisions taken. Hong Kong, China; Japan; Korea; Malaysia and Pakistan have established complaint procedures. Only Hong Kong, China; Korea and Pakistan, however, have mechanisms to challenge procurement decisions and to provide for redress.

In order to further strengthen the application of these rules in practice, a growing number of countries – for instance Fiji Islands, Japan, Indonesia, Kazakhstan and the Philippines – are establishing or have adopted sanctions for foul bidding and disciplinary procedures against public officials involved in wrongdoing in the procurement process. In addition, Japan holds public officers liable for potential damages. With respect to foul bidding, penal sanctions are usually less effective than banning companies from entering into future contracts with the government. Consequently, some jurisdictions exclude bribe-paying firms from business with the government for a certain period of time or apply other administrative sanctions (Japan, Korea, the Philippines, Singapore). Korea, the Philippines and Singapore provide for the suspension of the contractor convicted of bribery from bidding on future government contracts. In Hong Kong, China, an administrative guideline orders that a firm involved in corruption be removed from a list of approved contractors. In Korea, moreover, enterprises that are sanctioned for foul conduct in the procurement process are named in the official gazette and cited in the nationwide finance information system; similarly, a list of blacklisted companies in Pakistan is published on the procurement authority's website. Korea further makes use of "integrity pacts" in public procurement contracts, as does Pakistan for procurement of a value above USD 170,000. These pacts, initially developed by Transparency International, include, for instance, a clause

barring the company from business with the government if it fails to comply with the pact's provisions.

3. Auditing procedures and institutions

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

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

Regulations concerning the appointment and dismissal of the audit institution's head further ensure the institution's independence. In Korea and Malaysia, the institution's director is appointed by the head of state, in Mongolia by the parliament and in Hong Kong, China by the chief executive. Usually, the head of the supreme audit institution holds office for a fixed term; removal from office follows specific impeachment procedures and is permitted only under certain conditions. In some countries, immunity provisions apply, excluding heads of audit institutions from prosecution for any action taken in the performance of their duties

(Korea, Nepal, Papua New Guinea). While many countries allow the audit institutions to recruit their staff themselves, Malaysia and Nepal have entrusted civil service commissions and similar bodies with this task.

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

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

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

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

Considering their limited resources, most countries' audit boards must prioritize their audits in respect of certain administrative bodies,

depending on different criteria for selection. It is noteworthy that in Korea, for instance, citizens themselves may initiate an audit, for instance concerning alleged waste or administrative mistakes.

Regulations explicitly requiring the public disclosure of audit reports exist in only a few countries, such as the Fiji Islands; Hong Kong, China; India; Japan; Mongolia; Nepal and Vanuatu. However, many others grant such access on a voluntary basis (Bangladesh, Malaysia, the Philippines), some making use of the institutions' internet sites. Malaysian law proscribes the publication of audit reports.

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

4. Increasing public administration's accountability through surveys

Auditing allows inspection and assessment of administrative entities' documented – but only the documented – action. Surveys among citizens who have had contact with these entities complement auditing. They help identify corruption-prone areas in need of institutional reform and, when published, generate public debate about the problem. A number of countries of the region have consequently undertaken such surveys to assess the causes and extent of corruption in particular departments of the public administration. The Korea Independent Commission Against Corruption (KICAC), for instance, periodically assesses the level of integrity of individual government agencies. These assessments are also intended to stimulate the public administration to address identified problems voluntarily. Malaysia has also launched a regular evaluation program of its public sector.

III. Transparent regulatory environment

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

Consequently, most countries reviewed in this report constantly assess their regulatory environment with the aim of improving and streamlining it, especially with an eye on corruption-prone sectors. Mongolia, for instance, has recently streamlined its regulations on licensing of private business activities. Many countries have even institutionalized this review, entrusting a specific body with screening the existing procedures and issuing recommendations for reform where required. Hong Kong, China; India; Korea; Malaysia; Nepal; the Philippines and Singapore have entrusted their apex anti-corruption agencies' advisory branches with this task. In Japan, the office of the auditor-general is responsible for suggesting reforms to the Government. In India, a genuine Department of Administrative Reform constantly reviews procedures and submits recommendations. In Papua New Guinea, the Public Sector Reform Management Unit reviews the structure of public sector organizations. A number of countries recognize the important role of civil society in reforming the regulatory framework. For instance, Fiji Islands, Korea and Singapore rely on consultation with representatives from the private sector or NGOs to learn about inefficient procedures and administrative weaknesses encountered by the public.

B. Curbing corruption in the political sphere

Extortion and acceptance of bribes are by no means limited to public officials. On the contrary, numerous corruption scandals that were uncovered over the last decade involved high-ranking politicians and often seriously undermined political and social stability in the given countries. A number of countries have reacted to these incidents by setting up regulations that strive for the transparency and integrity of political parties, politicians and elected senior officials.

I. Funding of political parties and electoral campaigns

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

The particular status of political parties – private associations with close links to the public sphere – is reflected in the legislative models that countries have adopted. Some countries such as Hong Kong, China; Kazakhstan and the Philippines do not subject political parties to a special legal regime; instead, general laws on civic associations rule the parties' legal status and obligations. In general, these laws do not provide for accounting obligations, disclosure of financial sources or auditing. The regime of political parties as common civilian organizations entails other consequences relevant to party financing. In Hong Kong, China, political parties are generally registered as societies or as companies. Political parties registered as societies are required to submit financial reports to the police upon request; when registered as companies, they are required to submit

annual returns to the Companies Registrar, providing information on their total amount of indebtedness and share capital. In Kazakhstan, parties may run businesses as sources of funds.

Australia, India, Indonesia, Japan, Korea, Mongolia, Pakistan and Papua New Guinea regulate the status and obligations of political parties by law; in Nepal, the status of political parties is regulated by the Constitution and a specific political party act. Only some of these countries (Australia, India, Japan, Papua New Guinea, Singapore) have specifically regulated the financing of political parties. These countries require parties to disclose their income; all of them except Singapore make these declarations publicly available. Australia, Japan, Papua New Guinea and Singapore consequently ban anonymous contributions, at least if the donations pass a certain threshold. Japan further draws a clear line between "participating financially" and "buying access or influence": its laws limit the yearly donations of a single donor to a political party. Australia, Papua New Guinea and Singapore also require contributors to disclose their donations to political parties if they pass a fixed limit.

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

II. Codes of conduct applicable to elected politicians

Regulations on dismissal and disciplinary measures applicable to public officials do not likewise apply to elected politicians, except in Pakistan, where politicians have the status of public officials in some respects. Immunity

regulations sometimes even preclude criminal prosecution of politicians (*see* chapter 2, section B.III. below). Codes of conduct for politicians and similar measures have thus been developed in some countries.

Such codes of conduct and laws for politicians take their inspiration from instruments that have been developed for public administration, such as reporting duties, public service codes of conduct and certain disciplinary measures. Reporting obligations of elected deputies – and, in addition, cabinet members in some countries – regarding income or wealth exist in Bangladesh, Cook Islands, India, Kazakhstan, Malaysia, Mongolia, Papua New Guinea, Pakistan, the Philippines and Vanuatu. Pakistan, the Philippines and Vanuatu make the information acquired from such reporting publicly available. Codes of conduct for elected deputies have been passed in, for example, Fiji Islands, Japan, Mongolia and Vanuatu. These codes deal with issues such as conflicts of interest and gift-taking. The Philippines forbids high state officials and their relatives, as well as members of congress, to be involved in certain business activities.

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

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

C. Regulating the business sector and fostering ethical business

Efforts to ensure an effective public service, transparency and integrity aim at immunizing public servants against accepting or extorting bribes. Yet the Action Plan's comprehensive approach also seeks to dry up the sources of bribes, often prevalent in the business sector. Approaches to curbing corruption in this sector follow dual principles of enforcement and partnership. On the one hand, governments impose standards for company management, transparency rules, reporting obligations and auditing requirements; governments also provide for effective supervision and mechanisms to enforce compliance with these rules. Equally important, on the other hand, are governments' efforts to foster and strengthen the private sector's own initiatives to enhance internal control mechanisms and to establish and promote corporate ethics and compliance systems.

I. Business regulation and supervision

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

In this respect, most countries have enacted regulations governing corporate accounting, internal controls and straightforward requirements for disclosure of relevant information. In a number of countries, mechanisms established to supervise the implementation of such rules involve regular examination of companies' books and external audits. Most countries that have not yet established such regulations and supervisory measures are at present in the process of bringing their existing regulations in line with relevant international standards on accounting and disclosure, such as those developed by the International Accounting Standards Board.

Australia, Singapore and Hong Kong, China have set up or tasked standing commissions or committees to recommend possible improvements in corporate governance, financial reporting and improved transparency. Efforts primarily address internal control and accountability mechanisms and aim at improving the veracity of companies' books and records. Some countries use penal sanctions to deter fraudulent financial reporting (Bangladesh; Fiji Islands; Hong Kong, China; Japan; Korea; Malaysia; Singapore).

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

II. Fostering ethical business

Business actors themselves have increasingly come to understand their vital interest and role in fighting and eradicating corruption. Bribery not only raises moral concerns; it also runs counter to the long-term interest of business, because it increases costs and risks, undermines efficiency, lowers country credit rankings, and deters investors. Some private sector companies recognize that responsibility for preventing corruption in business resides primarily with company management. They have thus tried to develop and implement compliance programs to complement the compulsory standards imposed and enforced by the respective countries' authorities. In recent years, a number of companies operating throughout the region have adopted corporate compliance programs. These include company codes of conduct, regular ethics training and the establishment of specialized compliance and ethics departments.

A few countries' governments actively support these efforts taken by the business sector and assume an active role in further promoting business ethics and corporate compliance programs. Hong Kong, China; Indonesia; Japan; Korea; and Singapore, for instance, have established or tasked special committees or their anti-corruption commissions to analyze and recommend guidelines. Hong Kong, China's anti-corruption commission and Singapore's Corporate Governance Commission have developed guidelines and best practices for corporate codes of conduct. Although compliance with these guidelines is not mandatory in either country, companies listed in Singapore have to disclose and explain in their annual reports where they have deviated from the code. Korean companies and authorities make use of "integrity pacts" to curb corruption in public procurement. These pacts, developed by Transparency International, include voluntary commitments by both the bidding companies and the involved authorities to refrain from corrupt practices. Some countries' anti-corruption agencies play an active role in developing compliance codes and in providing training. In Hong Kong, China, the anti-corruption agency offers seminars and develops and disseminates guidelines to companies on preventing corruption. Similarly, Malaysia is engaged in integrity and ethics training targeting company executives. Under a program specifically targeting state-owned enterprises, the Korean KICAC identifies and proposes improvements to particularly corruption-prone regulations and procedures. Cooperatively, the companies propose concrete amendments and improvements to these regulations. KICAC reviews them and provides support to the companies for implementation.

The relatively cautious efforts governments have made so far in promoting business ethics and corporate compliance programs are complemented by the efforts of regional business organizations, such as the Pacific Basin Economic Council (PBEC), an association of senior business leaders representing more than 1,200 businesses in 20 Asian and Pacific economies. On 21 November 1997, the PBEC Steering Committee and Board of Directors adopted the PBEC Statement on Standards for Transactions between Business and Governments, which includes PBEC recommendations for action for business and government. In 1999, to further promote integrity, transparency and accountability in transactions between enterprises and public bodies, the PBEC adopted a Charter of Transactions Standards, which member companies have been encouraged to adopt. This Charter contains a number of principles relevant to the fight against corruption, including the requirements that no business

enterprise should offer or promise any advantage to a public official or his/her relatives to induce any actions by that official for the express intention of offering a business advantage, and that demands for such improper inducements should be refused. Furthermore, PBEC member companies should ensure that financial transactions are properly and accurately recorded in appropriate books of account available for inspection by their boards of directors, a corresponding supervisory body and auditors. They should also assure that there are no "off the books" or secret accounts, and that any documents properly and accurately record the transaction to which they relate. They are further encouraged to establish independent auditing systems in order to bring to light any transactions that contravene the principles of the Charter. Finally, business enterprises should develop and implement codes of conduct consistent with the Charter. Such codes should encourage employees or agents who find themselves subjected to, or pressured by, improper inducements to report such illicit conduct immediately to senior corporate management.

The International Chamber of Commerce (ICC) actively promotes its "Rules of Conduct to Combat Extortion and Bribery in International Business". These rules are considered good commercial practice and are intended as a method of self-regulation by international business. Business enterprises are encouraged to implement these rules voluntarily. The rules address *inter alia* the use of agents and subcontracts, a common means to channel illicit payments. The ICC Rules of Conduct also address bribery within the private sector. In a number of countries, the national chambers of commerce have prepared model codes of conduct for their member companies.

Finally, international organizations such as OECD and the World Bank lead an Asian Roundtable on Corporate Governance involving both policy makers and business leaders from the region. ADB provides technical assistance to improve corporate governance in its developing member countries.

CHAPTER 2

Sanctioning and Prosecuting Corruption and Related Offenses

A. Criminalizing bribery, money laudering and illicit enrichment
B. Detecting, investigating and prosecuting corruption

Sanctioning and Prosecuting Corruption and Related Offenses

Corruption will not be overcome if preventive measures are not accompanied by effective deterrents. A comprehensive legal framework acts as a deterrent forcorruption and enables prosecution. To this end, countries must criminalize all forms of corruption and related offenses, such as money laundering, and establish efficient mechanisms and institutions capable of enforcing these regulations. Reform in this sector has been propelled mostly by international efforts that address such issues. Important progress has thus been achieved, for example, in the fight against money laundering, a priority for the international community. Yet various loopholes in anti-corruption legislation remain.

Efforts in Asia and the Pacific with respect to law enforcement have focused on the establishment of centralized and specialized institutions responsible for tackling corruption or money laundering. On the other hand, few countries have undertaken the reform of existing procedural and institutional provisions in recent years.

A. Criminalizing bribery, money laundering and illicit enrichment

Criminalizing bribery and money laundering not only clearly draws the line between acceptable and unacceptable behavior by way of sanctions; it is also the key precondition for various procedural measures, such as the confiscation of ill-gotten gains and international legal assistance (*see* section B.II.2.c below on the dual criminality rule). All parties to the Action Plan, like most countries around the world, have established legal provisions addressing corrupt practices, and recent international trends show a move toward amending such provisions to include transnational bribery where this is not yet the case. In many countries, however, loopholes or ambiguous regulations continue to impede efforts to prosecute bribery effectively. Reform efforts to ensure that laws and regulations are as concise and comprehensive as possible therefore remain crucial to the efficient deterrence of corruption.

I. Criminalizing active and passive bribery

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

1. Scope of the penal provisions

All endorsing countries have criminalized active and passive bribery of domestic public officials and most countries have clearly defined the constituent elements of the offense. Singapore and Hong Kong, China are also among the few jurisdictions that have penalized active and passive bribery of members of parliament.

However, differences in the scope of criminalization exist when it comes to bribery of foreign public officials. Active bribery of foreign public

officials is criminalized in only a few countries, namely Australia, Japan, Korea and Singapore.

In all countries covered by this report, perpetration entails fines and/or prison terms. As regards the monetary sanctions, most countries have limited the maximum fine to a fixed sum. Taking into account that the impact of monetary sanctions depends on the wealth of the individual, the fine up to this ceiling is often determined in relation to the amount paid as a bribe. In Korea, for instance, those who accept or solicit bribes are sentenced to a fine of up to USD 8,000 or an imprisonment of up to five years, and the larger the bribe received or paid, the more severe the punishment becomes.

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

In many cases of bribery or corruption, it is a legal person who has the economic interest in the corrupt behavior. As criminal prosecution against individuals does not sufficiently deter such practices, some countries hold legal persons criminally liable, or impose administrative or civil liability, for the bribery or corruption. In order to implement these sanctions thoroughly, they are made independent of the conviction of the natural person who has committed the act. Such provisions are in place in Australia, Japan and Korea; in Japan and Korea, however, these provisions are limited to legal persons involved in active bribery of foreign public officials. Since the imprisonment of a legal person is not possible, a fine is imposed on the legal person in addition to (and not on the condition of) a possible conviction and consequent sanction of the natural person committing the offense. As mentioned above, some countries punish bribery attributed to legal persons by administrative and civil sanctions; such sanctions include disqualification form bidding on government contracts.

3. Disqualification to hold public office

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

positions in the public service and prohibited from engaging in certain business activities for three years.

4. Confiscation of proceeds

Confiscation of the proceeds of a crime constitutes an important additional deterrent that often has a greater impact than fines or prison terms. Threatening confiscation also entails preventive effects, as it makes committing the crime less attractive.

Some countries, such as Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Nepal; Pakistan; the Philippines and Singapore, allow or require confiscation of the bribe or other relevant proceeds. The authority to freeze assets during the investigation phase complements these provisions in most countries. The implementation of this provision, however, is rendered difficult when the bribe has been converted or consists in an intangible advantage, such as the appointment to an important post. Countries apply different solutions to this problem: Korea allows the judge to order the confiscation of property equivalent in value if the bribe has been converted. Japan, by contrast, limits confiscation to the bribe. In Japan and Korea, rules on confiscation of proceeds extend to legal persons.

II. Criminalizing money laundering

Ill-gotten gains are usually passed through other transactions to camouflage their origin. Third parties are often involved, thereby considerably aiding corrupt individuals in their criminal behavior. Criminalizing money laundering deters such conduct and thus constitutes an important instrument against corruption. This issue looms large on the agenda of most parties to the Action Plan. As a result, legal provisions have recently come into force, or are being prepared, in Nepal and Pakistan. Since a number of countries from Asia and the Pacific have committed themselves to regional or international initiatives, such as the Financial Action Task Force and the Asia/Pacific Group on Money Laundering, most of the existing laws adopt similar standards.

To facilitate the detection of money laundering, a number of countries, such as the Cook Islands; Fiji Islands; Hong Kong, China; Indonesia; Japan; Korea; the Philippines, Samoa and Singapore require financial intermediaries to exercise vigilance. In this context, certain countries have been actively cooperating with the Basel Committee on Banking Supervision, an international body aiming at promoting sound banking supervisory systems. Hong Kong, China; India;

Indonesia; Korea; Malaysia; and Singapore were closely associated with the drafting of the committee's Core Principles for Effective Banking Supervision. A number of Pacific countries – among them the Fiji Islands, Papua New Guinea, Samoa and Vanuatu – have recently launched a regional initiative, the Association of Financial Supervisors of Pacific Countries, aimed at strengthening banking supervision in their countries. Some countries, such as Cook Islands and Fiji Islands, aim to amend their laws in order to meet the relevant international standards for anti-money laundering legislation. Indonesia and the Philippines passed amendments to their respective anti-money laundering laws in October and March 2003, respectively.

Reporting mechanisms that impose an obligation on financial organizations and professions to declare suspicious transactions may serve as a useful additional tool in detecting potential offenders. A number of countries, such as Bangladesh; Cook Islands; Fiji Islands; Hong Kong, China; Indonesia; Japan; Korea; Pakistan; the Philippines; Samoa and Singapore have established such a reporting obligation. The reports are processed by specialized anti-money laundering agencies, the central bank or other institutions that trigger investigations when necessary. In order to reduce disincentives to such reporting, most countries have specifically excluded the application of administrative, criminal or civil sanctions for false accusations made in good faith.

In order to act as a deterrent for corruption, the anti-money laundering legislation must provide for corruption as a predicate offense. This is not yet or not fully the case in many countries.

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

III. Criminalizing illicit enrichment

Detecting an act of bribery, and especially providing sufficient evidence of such an act in court, is a particularly difficult endeavor. Concealed assets held under the name of a family member or other agents are difficult to detect and confiscate. By contrast, unexplained wealth and luxurious lifestyles of, say, public officials or politicians are relatively easy to discover. Consequently, some countries have criminalized the public officials' very possession of unexplained wealth; monitoring systems and procedural rules complement these provisions.

Illicit enrichment – wealth of public officials that is manifestly out of proportion to his or her present or past official emolument – is criminalized in Bangladesh; Hong Kong, China; India; Malaysia; Nepal; Pakistan; the Philippines and Singapore. To enhance the effectiveness of this provision, India, Malaysia, Nepal, Pakistan and the Philippines have shifted the burden of proof to the accused. Papua New Guinea is preparing similar legal provisions. When a public officer or employee during his incumbency has acquired property that is manifestly disproportionate to his or her salary level and other lawfully earned income, such assets are presumed *prima facie* to have been unlawfully acquired, unless the official can justify their legitimacy. Such assets may be frozen during investigation and confiscated after conviction.

To give criminalization of illicit enrichment even more effect, governmental and civil society actors in the Philippines have engaged in systematic monitoring of public officials' lifestyles to detect cases of unexplained wealth and subsequently trigger prosecution.

B. Detecting, investigating and prosecuting corruption

Laws and penal codes are only as effective as their enforcement. Consequently, law enforcement agencies equipped with sufficient means to detect, investigate and prosecute corruption are a crucial precondition to effective criminalization. Acknowledging the importance of effective prosecution and its inherent difficulties, Bangladesh, Japan, Malaysia, Nepal, Pakistan, Papua New Guinea and the Philippines have targeted this issue as a priority area for reform under the Action Plan. Until now, reforms in law enforcement and prosecution have mainly centered on establishing specialized institutions whose sole task is to combat corruption. Existing institutions and their ability to fight corruption have rarely been the focus of recent reform.

The clandestine nature of corruption and the absence of an individual victim that could trigger an investigation render the detection of corruption particularly difficult. Perpetrators, especially very senior officials, politicians or executives, are often able to employ powerful methods of camouflaging their illicit activities or obstructing investigations. Use of financial havens and anonymous, quick transfer of assets, combined with the slow processes of international legal assistance, further delay or inhibit prosecution. Moreover, immunities may shield perpetrators from conviction. Under these circumstances, successful investigation, prosecution and sanctioning of corruption require independent and competent law enforcement agencies and powerful investigative methods and techniques.

I. Law enforcement agencies

The success or failure of law enforcement agencies depends on three key factors: the competence and skills of their staff, their independence and ability to resist undue interference and influence, and the efficient cooperation of all actors and agencies involved in the proceedings.

1. Competent law enforcement agencies

Recent developments in corporate law and the rapid evolution of international economic operations and transactions, as well as advanced technological breakthroughs, open new possibilities not only for doing business but also for criminal activities. Corruption and other financial crimes take particular advantage of these developments. To prosecute financial crimes effectively in this rapidly changing environment, law enforcement agencies have to continuously train their staffs in legal, economic and technical matters and related investigative techniques. The Fiji Islands; Hong Kong, China; Kazakhstan; Malaysia; Nepal; Pakistan; and the Philippines make intensive efforts to conduct specialized training programs for prosecutors dealing with these crimes. The anti-corruption agencies of Hong Kong, China; Korea; Malaysia; the Philippines; and Singapore engage in cooperation and partnerships with other countries' peer organizations, including the active exchange of experience in these matters.

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

2. Independence and protection against undue influence

The powerful role of law enforcement agencies renders them particularly vulnerable to undue influence. Independence of prosecution and effective protection against political or administrative interference are preconditions to successful conviction of high-profile criminals. Most countries have adopted special organizational schemes to enhance the independence and competence of the law enforcement authorities entrusted with investigating and prosecuting corruption: they have established either a centralized, specialized anti-corruption agency or specialized units within the prosecutors' offices.

A growing number of parties to the Action Plan have opted for a centralized anti-corruption agency. In fact, anti-corruption agencies seem to be a current trend in the region: Malaysia, Nepal, Singapore and Hong Kong, China have been working with this model for decades; Indonesia, Korea, the Kyrgyz Republic,

and Pakistan have established them more recently; and Cambodia and Mongolia are taking steps to create them. In Bangladesh, an act establishing an independent Anti-Corruption Commission passed in 2004. Although the Philippines, India and Vanuatu have not opted for explicit anti-corruption agencies, they have set up similar specialized institutions. In Papua New Guinea, the Philippines and Vanuatu, the ombudspersons have a mandate similar to that of anti-corruption agencies. The Philippines' ombudsperson is also equipped with the requisite investigative means. India has set up decentralized vigilance institutions, responsible for the prevention and investigation of corruption cases.

Like supreme audit institutions, most countries' anti-corruption agencies enjoy a constitutional status that aims to ensure their independence. Their directors are appointed directly by the head of government or head of state in a number of countries (Bangladesh; Hong Kong, China; Malaysia; Pakistan; Singapore). Certain immunity regulations also aim to protect the independence of these institutions.

Because a number of anti-corruption agencies have been inspired by the models of similar agencies in Australia; Hong Kong, China; and Singapore, they have several features in common. Usually, they investigate upon receiving information on alleged corruption cases and related misconduct in the public or private sectors. The agencies of Hong Kong, China; the Philippines and Singapore are also empowered to investigate any other significant offense uncovered in the course of a corruption investigation; Bangladesh's agency will have similar powers once it has taken up its duties. In such cases, the anti-corruption agencies investigate the allegations and then transfer the files to the public prosecutor or the competent court for prosecution. In this function, the agencies either support or act as a substitute for other law-enforcement agencies and may prepare disciplinary action. None of the countries covered by this report has mandated its anti-corruption agency to rule on cases themselves. Because they have a complementary role, the success of the anti-corruption agencies' work largely depends on good cooperation and communication with, and the proper functioning of, other law-enforcement agencies, especially the police, public prosecutors and the courts.

As mentioned earlier, most anti-corruption agencies also perform research and counseling services for the legislature and/or government (Hong Kong, China; Korea; Malaysia; Nepal; the Philippines; Singapore). Some

also provide training for the public service (Hong Kong, China; Korea; Philippines; Singapore), the private sector (Hong Kong, China; Korea) and non-governmental organizations (Philippines).

Countries that have not opted for a centralized, specialized anti-corruption agency have set up alternative institutions to assure specialized competence in detecting and investigating corruption. India, for instance, has established vigilance commissions at the federal and state level and vigilance officers in each government department. These institutions complement and supervise the federal investigation authority in matters related to corruption. Japan has created specialized investigation departments within the prosecutors' offices in major cities. These offices, staffed with specialists, investigate financial crimes.

3. Effective cooperation of law enforcement agencies

Irrespective of the institutional setup a country has chosen, effective cooperation of the involved actors determines whether prosecution is successful. Improvement of cooperation between existing law enforcement agencies is thus a current priority in many countries of the region: such measures include, in the Philippines, the establishment of formalized information exchange between relevant law-enforcement agencies so as to enhance their cooperation, the setting up of inter-agency consultative bodies and ad-hoc task forces and/or the organization of joint training programs. Papua New Guinea is setting up an anti-corruption alliance that pools and coordinates resources of different law enforcement agencies. Korea is operating an anti-corruption policy coordination body composed of ten related agencies, such as ministries and supervisory bodies.

II. Investigative tools

The capacity of law enforcement agencies to investigate corruption is strongly determined by the procedural means and mechanisms set forth under the law. Thus, in order for an investigation to be successful, such laws must take into account the characteristics of corruption and provide adequate means. Considering the particular difficulties in detecting corruption, information plays a vital role. At a later stage of the investigation, specific instruments for obtaining evidence become important.

1. Sources of information

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

a. Reporting obligations

Reporting obligations are a common tool to collect information about alleged crimes and misconduct. As mentioned above, most countries' laws set forth reporting obligations with respect to the detection of money laundering. The extent to which the countries make use of such reporting obligations to detect corruption differs widely. Fiji Islands and Indian law, for instance, makes it mandatory for any person, regardless of occupation or professional status, to report to a magistrate or officer of the law any act of corruption committed by a public servant. Failure to do so is a criminal offense. In Hong Kong, China; Japan; Malaysia; and Singapore, only public officials are under the obligation to report acts or attempted acts of corruption. In Singapore and Hong Kong, China, this duty is not contingent upon the context in which the public servant has gained knowledge of the incident, i.e., whether in his or her official capacity or when off duty. By contrast, in addition to limiting the reporting obligation to public servants, Japanese law further limits it to incidents that have occurred while the reporting official was acting in his or her official capacity. These reporting obligations are enforced by penal or disciplinary sanctions.

b. Rewards and exclusion from criminal prosecution upon disclosure

In addition to or in place of reporting obligations, some countries – under the condition that the received information proves to be true – reward informants either with cash or by absolving them from penal sanctions, thereby creating an incentive to disclose corrupt practices. Nepalese law, which contains no reporting obligations with respect to corruption, provides for the offering of rewards for

relevant information, as does Pakistani law. In Korea, these rewards for reports on corruption reach up to approximately USD 160,000. In some countries, the informant is absolved from criminal responsibility for participation in a crime if he or she discloses the act and the other persons involved. Mongolia, Nepal and the Philippines, for instance, grant such privileges to bribers and their accomplices in bribery cases against public officers, so that they may freely testify about corruption in the public service. Korea's anti-corruption act allows mitigating or remitting penal and disciplinary sanctions against whistleblowers who are themselves involved in the disclosed act. Cook Islands and Malaysia have enacted similar provisions for any person engaged in money laundering.

c. Confidentiality and immunity provisions – whistleblower protection

Fear of retaliation is the main disincentive to what is commonly called "blowing the whistle" and to reporting on others' misconduct and corruption. With the aim of eliminating this obstacle to effective detection, legal and physical protection of "whistleblowers" is gaining growing attention in the region and worldwide. Such protection can take many forms: a guarantee of confidentiality or anonymity, immunity against defamation, and reinstatement after dismissal.

Many countries grant an informant confidentiality or anonymity (Cook Islands, Fiji Islands, India, Korea, Kyrgyz Republic, Malaysia, Nepal, Papua New Guinea, the Philippines, Singapore). The Kyrgyz Republic and Papua New Guinea run trust hotlines, enabling citizens to make anonymous reports. Aware that citizens do not always trust guarantees for protection, Korea and Hong Kong, China have penalized the disclosure of the informer's identity or any information that leads to his or her discovery. Furthermore, they have given responsibility for receiving and processing informers' reports to their anti-corruption agencies because these institutions benefit especially from the public's trust.

In practice, confidentiality cannot always be assured, and despite the regulations, whistleblowers run the risk of being identified. Material protection of the informant's rights and personal security are thus important complements to confidentiality. Such protection may comprise immunity against criminal proceedings for false accusations and defamation; Malaysia and Singapore exempt informers from administrative, criminal or civil charges if the information was disclosed in good faith. Material protection in some countries also includes protection against discrimination or dismissal – a particularly

important feature, as employees who report on corruption at the workplace are particularly vulnerable to reprisal. Yet only Korea and some Australian jurisdictions have enacted specific provisions concerning corruption under which dismissal and other discriminatory action are subject to reinvestigation. Indonesia, Japan and Nepal are preparing bills to address this lack. In Papua New Guinea and the Philippines, civil society is pushing for whistleblower protection laws, sometimes with the support of or jointly with certain public authorities, such as the Office of the Ombudsman and some legislators in the Philippines. Pending approval of specific whistleblower legislation, the Indian Government has made public a resolution as an interim arrangement for acting on complaints from whistleblowers; this resolution looks toward the designation of a specific agency to which public officials and employees of corporations and state-owned enterprises can deposit complaints and provides for redress and physical protection of whistleblowers.

d. Witness protection

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

2. Special investigative means and procedural provisions

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

a. Access to bank accounts

Investigations into corruption often necessitate access to bank accounts to trace bribes and obtain incriminating evidence. Bank secrecy regulations can hamper investigation and prosecution. Hence, the Action Plan explicitly points

to the importance of empowering law enforcement authorities to order that bank secrecy be lifted for bank, financial or commercial records. The anti-money laundering agency in the Philippines and the National Accountability Bureau in Pakistan, for example, are empowered to access information about bank accounts. The Cook Islands' Financial Intelligence Unit also has broad powers to obtain information from a financial institution. In Hong Kong, China; Korea; Malaysia and Nepal, search of bank records and seizure of documents is permitted. In Hong Kong, China; Korea and Malaysia, a prior judicial ruling is required. Japan's law enforcement agencies are empowered to access public officials' bank accounts to check for suspicious activity.

b. Rules of evidence

Codes of penal procedures contain strict rules about the admissibility of evidence in court. Meant to protect the defendants' rights, these rules sometimes constitute insurmountable obstacles to prosecution; this is particularly true for the prosecution of corrupt individuals and has led some countries to modify these regulations to facilitate prosecution. Indonesia, for instance, has expanded the types of evidence allowed in corruption cases, admitting hearsay and the content of electronic communications as evidence. India, Indonesia and Nepal have also enacted a provision shifting the burden of proof in corruption cases to the suspect. Nepal, Singapore and Hong Kong, China similarly hold any government official with unexplainable assets liable, a measure that also represents a considerable change in the rules on the burden of proof. In the Philippines, when a public officer or employee has acquired property during his incumbency that is manifestly disproportionate to his or her salary level and other lawfully earned income, such property is presumed *prima facie* to have been unlawfully acquired and is confiscated unless the official can prove its legitimacy.

c. International legal assistance in criminal procedure

Corruption and related offenses, such as laundering a bribe and its proceeds, often have a transnational character. Thus, in many cases, international judicial cooperation is a crucial precondition to successful prosecution. International legal assistance may involve the taking of evidence, the confiscation and repatriation of the illicit assets and the extradition of suspected perpetrators.

According to the countries' reports, regional cooperation in this respect is still very limited and unsatisfactory. Some countries, such as the Philippines, have

entered into a number of agreements to combat money laundering. In the absence of such agreements, Hong Kong, China, as well as Japan and Korea, provide legal assistance only on a case-by-case basis and on the condition of reciprocity. Fiji Islands, Malaysia, Singapore and Vanuatu have recently enacted legislation that allows their governments to negotiate with other countries to establish such agreements or other arrangements in corruption proceedings. Informal networks and exchange of information, as fostered in particular by the regular meetings of the ADB/OECD Anti-Corruption Initiative's Steering Group, and by complementing initiatives such as the International Anti-Corruption Agency Forum for the Asia-Pacific region, in which are represented anti-corruption agencies of Hong Kong, China; Malaysia; Korea; Singapore; and New South Wales, Australia, further contribute on a practical level to enhancing the provision of mutual legal assistance in corruption matters.

As a prerequisite for granting legal assistance, the crime being investigated by the authorities of the requesting state usually has to constitute a criminal offense in the requested country (dual criminality rule, hence the importance of comprehensive penal provisions on bribery). Korea also requires that the granting of judicial assistance to a foreign country not entail the risk of violating Korea's sovereignty, national security, peace and order or established customs. As a general rule, even when these conditions are present, the decision to grant legal assistance is still discretionary (as in Australia, for instance).

III. Impeachment procedures and limitation of immunities

In many countries, members of parliament and other high-ranking civil servants enjoy immunity privileges. While such privileges are meant to protect them from arbitrary prosecution and interference, they can also represent serious obstacles to the prosecution of corruption. To enable law enforcement agencies and the public to hold these individuals accountable and to revoke their mandate in case of alleged corruption, some countries' constitutions provide for impeachment procedures. The Philippine constitution, for example, allows removal from office of the president, the vice-president, the ombudsperson and the members of the Supreme Court and the constitutional commissions upon impeachment for, and conviction of, *inter alia*, bribery and corruption. Nepal's constitution provides for similar impeachment procedures for a selected number of senior officials. However, despite the existence of such regulations, experience shows that their enforcement remains difficult in practice; as in many

countries worldwide, lack of political will is often seen as the root cause. Some exceptions exist to the immunities provisions, however: in Pakistan, the anti-corruption law recognizes legislators as "public office holders" against whom criminal proceedings can be initiated, and Malaysia maintains that no special immunities apply to politicians.

CHAPTER 3

Active Public Involvement in the Fight against Corruption

A. Policy dialogue and cooperation between governmental and nongovernmental actors
B. Raising awareness and educating the public about corruption issues
C. Public scrutiny and access to information

Active Public Involvement in the Fight against Corruption

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

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

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

A. Policy dialogue and cooperation between governmental and nongovernmental actors

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

In Pakistan, civil society organizations take part in the National Anti-Corruption Strategy Project, an advisory body to the government consisting of members from the public sector, civil society, business, media and academic institutions. This body is responsible for developing a comprehensive national anti-corruption policy and providing relevant recommendations to the government. In this function, it has contributed in a major way, for instance, to the recent promulgation of the Freedom of Information Ordinance, promoting transparency in government operations. In Papua New Guinea, the business sector, civil society organizations and government representatives cooperate in a formal consultative committee. Another example of collaboration between governments and nongovernmental actors in processes of institutional and procedural reform is civil society's active involvement in the Philippine government's efforts to reform the country's procurement system. In this endeavor, an NGO has been tasked by the government with conducting an analysis of existing procurement procedures. On the basis of this analysis, the NGO has advocated reforms to the government and provided training to relevant public institutions in order to strengthen their capacity in this area. The organization continues to monitor selected bidding contracts. In Samoa, a steering group on the implementation of the public service reforms includes not only government officials and politicians, but also a number of private sector representatives.

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

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

B. Raising awareness and educating the public about corruption issues

The second key function of nongovernmental actors in the fight against corruption is education and awareness raising about corruption issues among the general public. This role is being recognized in a growing number of countries, such as Cambodia, Fiji Islands, Indonesia, Korea, Malaysia, Pakistan, Papua New Guinea, the Philippines, Singapore and Vanuatu. The governments of these countries have started supporting civil society in this function. In Korea, support from government to civil society organizations' anti-corruption activities may even include financial support. Cambodia has reported that cooperation is taking the form of anti-corruption education in public schools: after a survey had found a low level of awareness about the impact of corruption among the younger generation, a nongovernmental research institute was tasked to develop an educational program on ethical and governance issues. This program is taught to children and young adults in the national public schools, enlisting the cooperation of the Ministry of Education. Similar cooperation has taken place in schools in Malaysia and Vanuatu. Other countries, such as the Fiji Islands, Kazakhstan, Korea, Pakistan and the Philippines have reported about efforts to introduce similar approaches, including encouraging teachers to educate their students about ethics issues at schools and in higher education. In the framework of Malaysia's National Integrity Plan, which is based on the results from a national survey on public perceptions of corruption completed in January 2003, the Government has established the Malaysian Institute of Integrity, through which it aims to enhance awareness about corruption and the need for transparency in the public service. Korea, Papua New Guinea and the Philippines have partly delegated this function to their anti-corruption agencies and/or the ombudsperson's office. In Pakistan, the involvement of teachers in spreading education about ethics issues has been one of many components of the overall awareness campaign, which encompasses the use of mass media (investigative documentaries, case studies of successful prosecution cases, serials, etc.), interaction with public office holders, and the introduction of changes in the curriculum being taught at schools through a consultative process involving teachers and the Ministry of Education.

In addition to these projects in the educational system, which aim to instill ethical behavior and attitudes within the population from an early age, other countries have also engaged in more general anti-corruption campaigns addressing the entire population. Hong Kong, China's and Korea's anti-corruption agencies, for instance, conduct regular media campaigns on corruption issues. Kazakhstan publishes corruption level indices enabling the public to compare regions, branches and departments as to their ethical behavior. At the same time, this project sets an incentive for these targeted institutions and branches of the state to change their behavior. Indonesia undertakes such campaigns together with a coalition of nongovernmental actors, including representatives from the private sector and international civil society representatives, to facilitate within the Indonesian population an understanding of, and support for, the government's governance reform. Several projects have been launched in this area, including the dissemination of information brochures and books and the broadcasting of anti-corruption campaigns on radio and television.

C. Public scrutiny and access to information

The third key role the public plays in the fight against corruption is to monitor and scrutinize actors and hold them accountable. This scrutiny is a powerful means of preventing corruption and a key supplement to legal provisions and institutions. Its two preconditions – free discussion and access to relevant information – are not sufficiently prevalent in some countries, however.

I. Public scrutiny, monitoring and discussion of corruption

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

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

II. Access to information

A particularly important precondition for enabling citizens to scrutinize public administration, government, political parties and elected politicians is a meaningful right to access information. However, it is only recently that a number of countries have implemented such reforms, oftentimes triggered and supported by civil society actors. Reluctance to grant freedom of information is still widespread, justified by state security, privacy or tradition.

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

1. Routine publication of information

A number of jurisdictions – such as Hong Kong, China; Korea; Malaysia; the Philippines and Singapore – use information technology, especially the internet, to grant easy, quick, cheap and direct public access to a growing number of documents. Such information includes reports on audits, budget documents and legal material. The scope of such public information differs significantly among and within the countries and depends on the policy of every single department or institution. Although state-owned enterprises (SOEs) are a part of the public administration in a broader sense, they usually do not publish information. One of the few exceptions, Kazakhstan, plans to publish annual reports of SOEs in the future.

2. Access to files upon request

Until recently, the public service culture in many countries favored secrecy. This attitude persists in certain countries today; state security is generally cited as a justification. These countries stand firm about giving their citizens access to information, even though their constitutions usually postulate a fundamental right to information. Nonetheless, often as a result of civil society pressure, more and more countries have adopted freedom of information legislation (Australia, India, Japan, Korea, Pakistan). Fiji Islands, Indonesia, and Nepal are preparing respective bills, and in the Philippines, several related bills have also been filed with the Congress. In some countries, such legislation has been implemented at community level first, or, as in India, at the provincial level, and has later been extended to the federal level.

a. Legal instruments granting citizens' access to information

Even though the relevant constitutional provisions are similar in most countries of the region, their legal instruments governing access to information

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

b. Scope and limits of freedom of information

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

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

Along with national security concerns, legislation often excludes state-owned enterprises, on the ground that their "legitimate interest" or secrets have to be protected. Secrecy laws further restrict the scope of access to information. In fact, the creation of secrecy laws is just as strong a trend in the region as the adoption of disclosure laws. Indonesia, Malaysia and Singapore, for example, have enacted such provisions recently or are in the process of doing so.

In addition to the statutory limitations on access to information, ambiguous wording gives governments and administrations wide leeway when deciding whether to release requested information. This sometimes means that access to information related to corruption is blocked on the basis of national secrecy or protection of individual privacy. In India, marking a paper as confidential exempts it from public scrutiny, no matter whether the content justifies withholding it. A number of other obstacles may impede access to information: in Japan, fees; in

the Philippines, poor records keeping and sometimes obligations to state the reason for the request.

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

APPENDIX

Anti-Corruption Action Plan for Asia and the Pacific[2]

[2] Endorsed on 30 November 2001 in Tokyo (Japan) by: Bangladesh, Cook Islands, Fiji, India, Indonesia, Japan, Korea, Kyrgyz Republic, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, Philippines, Samoa, Singapore, and Vanuatu; in May 2002 in Manila (Philippines) by Kazakhstan; in March 2003 in Jakarta (Indonesia) by Cambodia; in written procedure in April 2003 by Hong Kong, China; and in October 2003 by Australia; and in July 2004 in Manila (Philippines) by the Republic of Palau and Viet Nam. Other ADB and OECD member countries from Asia and the Pacific are invited to endorse the Action Plan.

Preamble[3]

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

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

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

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

RECOGNIZING that national anti-corruption measures can benefit from existing relevant regional and international instruments and good practices such as those developed by the countries in the region, the Asian Development Bank (ADB), the Asia-Pacific Economic Co-operation (APEC), the Financial Action Task Force on Money Laundering (FATF), the Organisation for Economic Co-operation and Development (OECD), the Pacific Basin Economic Council (PBEC), the United Nations and the World Trade Organisation (WTO)[4].

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

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

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

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

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

Pillars of Action

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

PILLAR 1–DEVELOPING EFFECTIVE AND TRANSPARENT SYSTEMS FOR PUBLIC SERVICE

Integrity in Public Service

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

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

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

- Prohibitions or restrictions governing conflicts of interest;
- Systems to promote transparency through disclosure and/or monitoring of, for example, personal assets and liabilities;
- Sound administration systems which ensure that contacts between government officials and business services users, notably in the area of

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

Accountability and Transparency

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

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

PILLAR 2 – STRENGTHENING ANTI-BRIBERY ACTIONS AND PROMOTING INTEGRITY IN BUSINESS OPERATIONS

Effective Prevention, Investigation and Prosecution

Take effective measures to actively combat bribery by:

- Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat the offence of bribery of public officials;

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

Corporate Responsibility and Accountability

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

- Promotion of good corporate governance which would provide for adequate internal company controls such as codes of conduct, the establishment of channels for communication, the protection of employees reporting corruption, and staff training;
- The existence and the effective enforcement of legislation to eliminate any indirect support of bribery such as tax deductibility of bribes;
- The existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery, in respect of the books, records, accounts and financial statements of companies; and
- Review of laws and regulations governing public licenses, government procurement contracts or other public undertakings, so that access to public sector contracts could be denied as a sanction for bribery of public officials.

PILLAR 3 – SUPPORTING ACTIVE PUBLIC INVOLVEMENT

Public Discussion of Corruption

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

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

Access to Information

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

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

Public Participation

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

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

Implementation

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

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

Implementation Plan

INTRODUCTION

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

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

CORE PRINCIPLES OF IMPLEMENTATION

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

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

IDENTIFYING COUNTRY PRIORITIES

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

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

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

REVIEWING PROGRESS IN THE REFORM PROCESS

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

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

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

PROVIDING ASSISTANCE TO THE REFORM PROCESS

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

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

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

Providers of technical assistance will support participating governments' anti-corruption efforts by building upon programmes and initiatives already in place, avoiding duplications and facilitating, whenever possible, joint ventures. The Secretariat will continue to support this process through the Initiative's web site (www1.oecd.org/daf/asiacom) which provides information on existing and planned assistance programmes and initiatives.

MECHANISMS

Country Representatives

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

Regional Steering Group

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

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

Consultations in the Steering Group will take place on the day preceding the Initiative's annual meeting. This shall allow the Steering Group to report on progress achieved in the implementation of the policy objectives laid out in the Action Plan, present regional good practices and enlarge support for anti-corruption efforts among ADB regional member countries.

Secretariat

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

Advisory Group

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

Funding

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