
Chapter 1

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

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

Government efforts to curb bribery to improve the business climate

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

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

P.R. China has engaged in a vast campaign against bribery in business. The campaign was launched in 2006 in response to a perceived increase in corruption in some industries. As in Singapore, this effort is driven by the negative effects that bribery and corruption can have on social stability and economic prosperity. The government of P.R. China understands that the transition of its economic system to a market economy can bring corruption risks. Therefore, system reforms are a key component of its campaign against business bribery. Future parts of the campaign will prioritize preventive measures, and investigations of cases that have a particularly damaging effect on social stability and the business climate.

International instruments support and drive anti-bribery efforts

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

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

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

Business and civil society are allies in the fight against bribery

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

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

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

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

The Business Case for Fighting Corruption

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

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

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

Business requires an “enabling environment”

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

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

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

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

Promote the economic case for anti-corruption initiatives

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

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

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

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

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

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

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

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

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

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

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

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

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

Be realistic about business problems

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

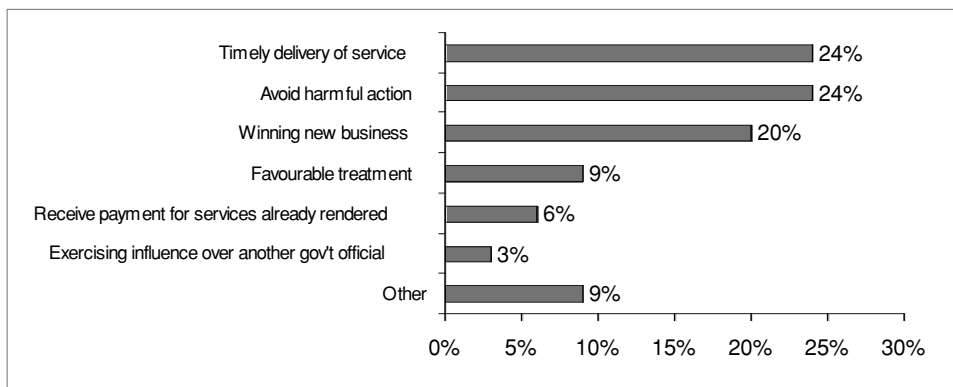
It has been common to refer to companies as representing the “supply side” of corruption, whereas corrupt officials represent “demand”. Another pair of contrasting terms refers to “active” corruption where the briber takes the initiative, and “passive” corruption where the recipient makes the demand.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

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

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

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

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

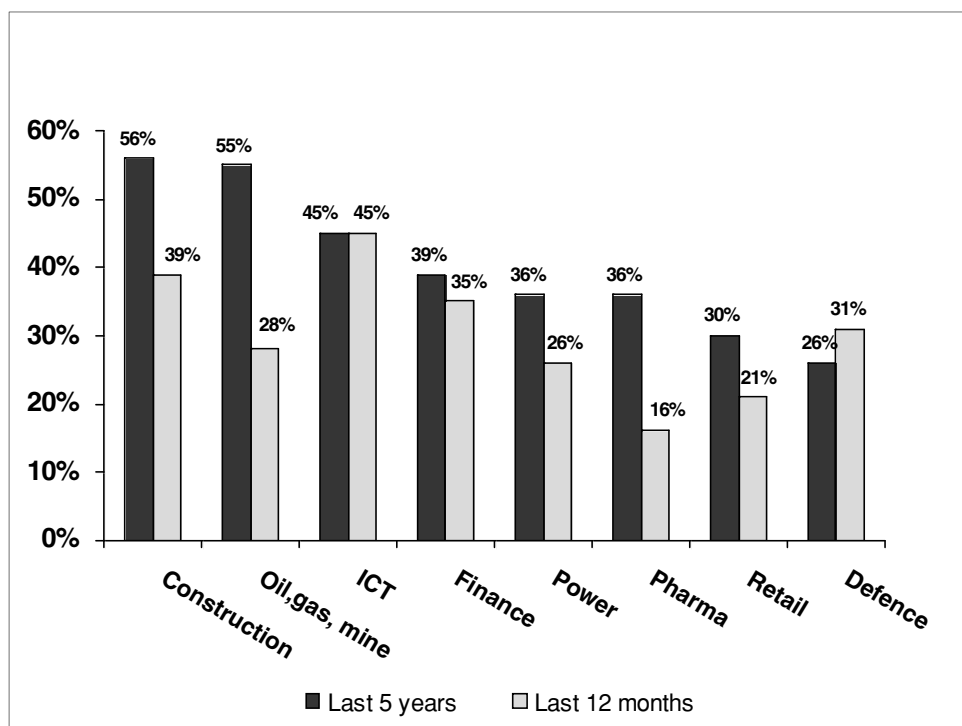


Nature of bribery demands reported by Trace International Bribeline, 2007-2008.
Source: Trace International Bribeline 2008—sample of 148 cases in P.R. China.

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

Specific challenges in specific sectors

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



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

Other commercial sectors face different kinds of problems:

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

Business anti-corruption initiatives

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

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

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

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

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

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

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

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

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

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

NOTES

- ¹ Heimann, Fritz and Dell, Gillian. Progress Report 2008. Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Berlin: Transparency International.
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See also Control Risks and Simmons & Simmons. 2007. *Facing up to Corruption. A Practical Business Guide*. www.control-risks.com/pdf/Facing_up_to_corruption_2007_englishreport.pdf
- ³ World Bank. 2004. *A Better Investment Climate for Everyone. World Bank Development Report 2005*. Washington and New York: World Bank and Oxford University Press. www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/08/01/000011823_20050801104043/Rendered/PDF/2882902005E.ver.010.pdf
- ⁴ Grene, Sophia. 2008. Investing in doing good can be good risk management, *Financial Times*. 2 November.
www.bribeline.org
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- ⁸ International Chamber of Commerce. 2005. *ICC Rules of Conduct and Recommendations to Combat Extortion and Bribery*.
www.iccwbo.org/policy/anticorruption/
- ⁹ www.weforum.org/pdf/paci/PACI_Principles.pdf
- ¹⁰ www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle10.html
- ¹¹ www.fidic.org
- ¹² www.anticorruptionforum.org

Efforts of the Business Community to Fight Corruption

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

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

Perceptions on corruption change

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

Well, the good news in Thailand is that Thailand has begun its climb upwards on TI's Perception of Corruption Index; this progress is due to some recent constitutional changes, which have established several independent anti-corruption agencies, and to the expansion of the court system to address and deal specifically with corruption and abuse of power by government officials.

Corruption is still a most serious problem in the Land of Smiles—up to 60% of the costs of some procurement projects are estimated to have been diverted by corrupt persons; today, corruption of policy is considered a more pressing problem.

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

Private sector efforts to cope with corruption

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

Background

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

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

ICC Rules

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

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- prohibition of bribery and extortion (both public-private and private-to-private)
 - agents and other intermediaries
 - joint ventures and outsourcing agreements
 - political and charitable contributions and sponsorships
 - gifts, hospitality, and expenses
 - facilitation payments
 - corporate policies
 - financial recording and auditing
 - responsibilities

Fighting Corruption handbook

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

Whistle-blowing

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

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

Four principal multi-industry organizations focus on anti-corruption: the ICC since 1977; the World Economic Forum (WEF) with its PACI initiative created in 2004; Transparency International (TI), a civil society organization dedicated to fighting corruption, founded in 1993 by several former World Bank executives; and the UN Global Compact with its 10th Principle on Corruption adopted in 2004. Their first joint meeting was in April 2007 at the ICC Headquarters in Paris. At

that meeting, these four sister organizations agreed to pool their ideas and principles to issue a joint publication entitled *Clean Business is Good Business—The Business Case against Corruption*.³ The compilation of this work was released on 15 July 2008.

RESIST project

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

UNCAC and OECD Conventions

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

Closing

Let me leave you with three ideas:

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

Second, my title in my law firm is “Chairman and Chief Values Officer” abbreviated as “CVO”. Why Chief Values Officer? We witness one corporate scandal after another; we witness self-serving actions and attitudes supporting the greed factor of far too many managers and corporate officers who should

know better; their disregard of moral and ethical values for the sake of maximizing profit at almost any price requires someone senior in an organization to keep it on the straight and narrow to do what is right. That is my job as CVO. The full definition and/or job description is set forth in Item No. 35 of my third idea for you.

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

Conclusion

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

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

NOTES

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

Singapore's Experience in Fighting Bribery in Business

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

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

Nature of corruption

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

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

businesses for bribes. Then again, we have seen cases where businesses actively offer bribes to entrap government officials to do their bidding. So who came first? This is ripe for an academic argument—but it really does not matter. Both sides are equally devious and must be dealt with decisively.

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

Enforcement issues

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

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

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

party; at times, however, complaints are made when a company loses business and does not understand why.

Curbing corruption in the private sector

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

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

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

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

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

Corporate governance also does not mean writing volumes of rules and rigidly applying them. There has to be a sufficient level of control, without stifling enterprise and the free market principles that are essential for the private sector to thrive. Singapore will see Integrated Resorts with Casinos open at the end of 2009. This involves a lot of money, and businesses operating in this context have to comply with regulations. There is, of course, potential for abuse and corruption. However, the answer is not to overregulate and control everything down to the last detail because that will make it hard for businesses to operate. The answer is establishing an appropriate level of regulation and good internal corporate governance.

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

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

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

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

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

Summing up

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

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

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

I think all companies around the world should adopt good governance practices and behave responsibly within their home country, where they comply with their domestic laws, and overseas—regardless of whether they are covered

by an extraterritorial provision like companies incorporated in Singapore. That way, the private sector as a whole contributes to fighting corruption.

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

P.R. China's Campaign against Commercial Bribery

Wang Huangeng, Deputy Director-General, Ministry of Supervision,
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P.R. China's efforts to curb commercial bribery: Concept, components, and achievements

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

Self-examination and self-correction

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

Joint self-examination by the dealers and the supervisors has been conducted in different areas and fields, to uncover improper trading practices and loopholes in the current supervision and management systems. Over 2.6 million enterprises and institutions, together with 49 competent supervisory departments and corresponding industries, have launched self-examination and

self-correction campaigns, turning in RMB 1.2 billion (approximately USD 175 million) of illegitimate income. By virtue of such campaigns, the dealers have gradually built up their awareness of trading in accordance with the laws and regulations, and the “latent rule” of securing trading opportunities and commercial profit by means of gift giving and bribery is being corrected in some areas and fields.

Investigation

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

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

Reform and system innovation

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

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

Focus of the next stages of the campaign against commercial bribery

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

Prioritizing investigation

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

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

Prioritizing prevention of commercial bribery

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

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

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

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

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

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

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

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

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

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

Kuniko Ozaki

Director, Division for Treaty Affairs (UNODC)

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

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

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

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

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

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

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

Effectiveness will depend on implementation

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

Technical assistance and international cooperation assist States Parties in implementation efforts

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

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

With special regard to Chapter V of the Convention, UNODC cooperates with the World Bank under the joint Stolen Asset Recovery Initiative (StAR

Initiative), launched on 17 September 2007. Activities under this initiative include promoting the implementation of the Convention, and assisting in building capacity and lowering barriers for asset recovery worldwide. The work of the StAR Initiative has proven successful in a number of pilot countries including Bangladesh, Haiti, Indonesia, and Nigeria.

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

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

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

The fight against corruption is one of the main tools for creating a good business climate and fostering economic development. Full ratification and

implementation of the UNCAC is a challenging, yet necessary milestone, and it involves a variety of activities and actors.

Civil Society's Contribution to Curbing Bribery in Business

Peter Rooke, Senior Adviser, International Group, Transparency International

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

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

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

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

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

Transparency International

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

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

Cross-border corruption a key issue

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

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

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

OECD Convention at a crossroads

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

UN Convention impact limited

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

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

OECD Anti-Bribery Convention outreach

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

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

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

Government role in prevention of business corruption and enforcement

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

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

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

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

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

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

Corporate codes and standards

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

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

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

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

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

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

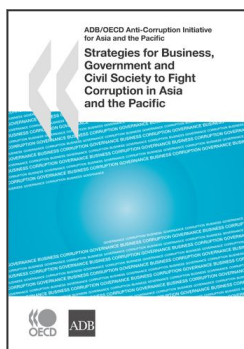
While a proliferation of standards may be seen as an unnecessary complication, there is in fact close cooperation between the various standard-setting bodies, as David Lyman has mentioned.⁷

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

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

NOTES

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



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