



# Anticorruption and Integrity

Asian Development Bank



# **Anticorruption and Integrity**

December 2007

Asian Development Bank

© 2007 Asian Development Bank  
All rights reserved. Published 2007.  
Printed in the Philippines.  
Publication Stock No. 090107

Cataloging-in-Publication Data

Anticorruption and integrity.  
[Manila]: Asian Development Bank, 2007.  
56 p.

1. Corruption. 2. Governance. 3. Development Projects. 4. Asian Development Bank.

JF1525 C66 A58 2007

350.994 A58 2007

The views expressed in this book are those of the authors and do not necessarily reflect the views and policies of the Asian Development Bank (ADB) or its Board of Governors or the governments they represent.

ADB does not guarantee the accuracy of the data included in this publication and accepts no responsibility for any consequence of their use.

Use of the term "country" does not imply any judgment by the authors or ADB as to the legal or other status of any territorial entity.

# Contents

INTEGRITY PRINCIPLES AND GUIDELINES (NOVEMBER 2006)	1
I. INTERNATIONAL FINANCIAL INSTITUTIONS PRINCIPLES AND GUIDELINES FOR INVESTIGATIONS	3
Preamble	3
General Principles	4
Definitions	7
Rights and Obligations	7
Procedural Guidelines	11
Investigative Findings	13
Referrals to National Authorities	13
Review and Amendment	13
Publication	13
II. SANCTIONS	14
Basis for Remedial Action	14
Determining Remedial Action	15
Imposing Remedial Action	16
Appeals	19
Reinstatement	19
Disclosure	21
ANTICORRUPTION POLICY (2 JULY 1998)	19
I. INTRODUCTION	25
II. ADB'S RESPONSE	28
III. DEFINITIONS OF CORRUPTION	29
IV. THE COSTS OF CORRUPTION	31
V. ADB'S POSITION ON ANTICORRUPTION ISSUES	35
Objective no. 1: Supporting competitive markets and efficient, effective, accountable, and transparent public administration	35
Objective no. 2: Supporting promising anticorruption efforts on a	

	case-by-case basis and improving the quality of dialogue on governance issues	38
	<b>Objective no. 3:</b> Ensuring ADB projects and staff adhere to the highest ethical standards	41
VI.	<b>CONCLUSIONS AND RECOMMENDATIONS</b>	<b>46</b>
VII.	<b>APPENDIXES</b>	<b>48</b>

---

# Integrity Principles and Guidelines

November 2006

---

# I. INTERNATIONAL FINANCIAL INSTITUTIONS

## PRINCIPLES AND GUIDELINES FOR INVESTIGATIONS

### PREAMBLE

The following Institutions have jointly endorsed these common principles and guidelines for investigations conducted by their respective investigative units:<sup>1</sup>

- African Development Bank Group
- Asian Development Bank
- European Bank for Reconstruction and Development
- European Investment Bank Group
- Inter-American Development Bank Group
- World Bank Group

These principles and guidelines are intended to be used as guidance in the conduct of investigations in conjunction with the policies, rules, regulations, and privileges and immunities applicable in the Organization.<sup>2</sup>

For ADB: These principles and guidelines shall apply to the Integrity Division of the Office of the Auditor General (OAGI), its staff, and any party OAGI or the Auditor General authorizes or the President appoints to perform investigations that OAGI would otherwise perform.

For the purpose of this document, use of the term “Organization” includes reference to all institutions that are part of or related to the above-mentioned Institutions. The investigative units of each Organization are hereinafter referred to as the “Investigative Office.”

<sup>1</sup> The designated investigative units are the Office of the Auditor General of the African Development Bank Group, the Integrity Division of the Asian Development Bank, the Office of the Chief Compliance Officer of the European Bank for Reconstruction and Development, the Inspectorate General of the European Investment Bank Group, the Office of Institutional Integrity of the Inter-American Development Bank Group, the Department of Institutional Integrity of the World Bank Group. The management of the International Monetary Fund (IMF) supports and encourages these efforts to fight corruption in project lending and dealings with private firms. Unlike the other Organizations, the IMF does not engage in project lending or lending to the private sector. It maintains procedures tailored to the circumstances of the IMF to deal with potential issues of staff misconduct and safeguard the use of Fund resources.

<sup>2</sup> These guidelines are not intended to confer, impose, or imply any duties, obligations, or rights actionable in a court of law or in administrative proceedings on the Organization carrying out the investigation. Nothing in the guidelines should be interpreted as affecting the rights and obligations of each Organization per its rules, policies, and procedures, nor the privileges and immunities afforded to each Organization by international treaty and the laws of the respective members.

## GENERAL PRINCIPLES

1. Each Organization shall have an Investigative Office responsible for conducting investigations.
2. The purpose of an investigation by the Investigative Office is to examine and determine the veracity of allegations of corrupt or fraudulent practices as defined by each institution including with respect, but not limited, to projects financed by the Organization, and allegations of Misconduct on the part of the Organization's staff members.

For ADB: Corrupt and fraudulent practices under ADB's Anticorruption Policy (Board Paper R-89-98, approved 2 July 1998) are defined as follows (Board Paper R179-06, *Anticorruption Policy: Harmonized Definitions of Corrupt And Fraudulent Practices*, approved 8 September 2006):

- A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- A fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- A coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

Misconduct that OAGI might investigate is limited to

- abuse (theft, waste, or improper use of assets related to ADB-financed activity, either committed intentionally or through reckless disregard), pursuant to Administrative Order (AO) 1.02, Organizational Bulletin, applicable to the Office of the Auditor General (OAG);
- a conflict of interest, which is any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, as defined under the Anticorruption Policy (Board Paper R185-04, *Anticorruption Policy: Proposed Clarifications and Related Changes to Consulting and Procurement Guidelines*, approved 11 November 2004); and
- any other misconduct as referred to in paragraph 11 as defined under ADB's AOs that OAGI would investigate at the request of the President or Director General, Budget, Personnel and Management Systems Department.



3. The Investigative Office shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity. In particular, the Investigative Office shall perform its duties independently from those responsible for or involved in operational activities and from staff members liable to be subject of investigations and shall also be free from improper influence and fear of retaliation.
4. The staff of the Investigative Office shall disclose to a supervisor in a timely fashion any actual or potential conflicts of interest he or she may have in an investigation in which he or she is participating, and the supervisor shall take appropriate action to remedy the conflict.
5. Appropriate procedures shall be put in place to investigate allegations of Misconduct on the part of any staff member of an Investigative Office.
6. Each Organization shall publish the mandate and/or terms of reference of its Investigative Office as well as an annual report highlighting the integrity and antifraud and corruption activities of its Investigative Office in accordance with its policies on the disclosure of information.

For ADB: Pursuant to its Anticorruption Policy, ADB will work to ensure all its projects, activities, and staff adhere to the highest ethical standards. To help achieve this, the Anticorruption Policy designates OAG as the initial point of contact for allegations of fraud, corruption, and abuse among ADB-financed projects or its staff. ADB established OAGI (originally the Anticorruption Unit) to handle all matters related to such allegations.

OAGI, its staff, and any party OAGI or the Auditor General authorizes or the President appoints to perform investigations that OAGI would otherwise perform, shall assess allegations and conduct investigations under these principles and guidelines promptly, thoroughly, and confidentially, and recommend administrative action for ADB to take to address such concerns.

Under its Terms of Office approved by the President 21 December 2004, OAGI will

- be the initial point of contact for all alleged incidents of fraud, corruption, or abuse among any ADB-financed or supported activity, including its staff;
- conduct independent and objective investigations of fraud, corruption, abuse known to or identified by OAGI, where appropriate coordinating with or advising Management, the Budget, Personnel and Management Systems Department (BPMSD), Office of the General Counsel (OGC), or other departments/offices in a manner that does not compromise OAGI's independence and objectivity;
- conduct ADB-financed procurement-related audits to help prevent and detect fraud, corruption, or other forms of abuse;
- advance awareness of ADB's Anticorruption Policy and procedures;

- provide training related to the Anticorruption Policy and procedures, including corruption and fraud awareness and internal control mechanisms to detect and deter corruption and fraud, to ADB staff and other parties to ADB-financed or supported activities, in coordination with BPMSD and other departments/offices, as appropriate;
- formulate and promulgate guidelines and procedures relating to its investigative and audit activities for the President's approval;
- consult and collaborate with other multilateral development banks, international institutions, or other relevant parties to exchange ideas, practical experience, and insight on how best to address fraud, corruption, and abuse internally and externally; and
- support ADB efforts to strengthen its developing member countries' supreme audit institutions' audit and fraud detection capacities.

Annually, or as the President may otherwise request, OAGI will submit through the Auditor General a report to the President summarizing the activities of OAGI. The report will include statistical summaries and summaries of significant fraud and corruption cases that OAGI screened and investigated. OAGI shall make the report available through ADB's website.

7. The Investigative Office shall take reasonable measures to protect as confidential any nonpublic information associated with an investigation, including the identity of parties that are the subject of the investigation and of parties providing testimony or evidence. The manner in which all information is held and made available to parties within each Organization or parties outside of the Organization, including national authorities, is subject to the Organization's rules, policies, and procedures.

For ADB: OAGI will ensure it retains its information and records under adequate physical, electronic, and procedural controls. OAGI will limit the circulation of information regarding an investigation strictly to those with a need to know. Depending on the nature of the case, OAGI may disclose certain evidence to the subject of an investigation (a party about which an allegation has been made or for which credible information exists to reasonably suspect that the party might have committed a corrupt or fraudulent practice, abuse, or other misconduct) in a manner that considers the need to protect whistleblowers (any party that conveys in good faith a concern, allegation, or evidence of a corrupt or fraudulent practice, abuse or other misconduct subject to investigation under these principles and guidelines) and witnesses (parties that are not the subject of a preliminary examination or investigation that the Investigative Office requests provide information regarding a matter under investigation).

Only OAGI, the Auditor General, and the President may access OAGI files and records. OAGI, the Auditor General, or the President may determine that OAGI files and records may be shared, unedited, or redacted, as appropriate, with other parties.

8. Investigative findings shall be based on facts and related analysis, which may include reasonable inferences.
9. The Investigative Office shall make recommendations, as appropriate, to the Organization's management that are derived from its investigative findings.
10. All investigations conducted by the Investigative Office are administrative in nature.

## DEFINITIONS

11. Misconduct is a failure by a staff member to observe the rules of conduct or the standards of behavior prescribed by the Organization.

For ADB: ADB's AO 2.02 explains staff duties, rights, and responsibilities, as well as misconduct.

12. The standard of proof that shall be used to determine whether a complaint is substantiated is defined for the purposes of an investigation as information that, as a whole, shows that something is more probable than not.

For ADB: ADB may refer to this standard of proof as preponderance of evidence.

## RIGHTS AND OBLIGATIONS

### Witnesses and subjects

13. A staff member who qualifies as a "whistleblower" under the rules, policies, and procedures of the Organization shall not be subjected to retaliation by the Organization. The Organization will treat retaliation as a separate act of Misconduct.

For ADB: ADB will extend this right, within the limits of its abilities, to any party that conveys in good faith a concern, allegation or evidence of fraud, corruption, or abuse. Because ADB is an independent international financial institution and its Anticorruption Policy and procedures are administrative mechanisms, ADB is very limited in the steps it can take to protect the interests of whistleblowers and witnesses who are not ADB staff.

OAGI will use its best efforts to encourage and protect whistleblowers and witnesses and will protect their identities from unauthorized disclosure throughout and following an investigation. OAGI shall maintain the confidentiality of any information that could, in its judgment, compromise whistleblowers or witnesses. OAGI will pursue all reasonable steps, including recommending BPMSD to pursue disciplinary action related to ADB staff, to ensure whistleblowers and witnesses acting in good faith with allegations or evidence of fraud, corruption, or abuse are not subject to retaliation or punishment.

Retaliation against a whistleblower or witness is any act detrimental to the whistleblower or witness that a preponderance of evidence shows was taken because of the whistleblower's complaint or witness's cooperation with an OAGI investigation. When a whistleblower or witness claims and OAGI can establish that the whistleblower's or witness's action related to an OAGI investigation was a contributing factor to the alleged retaliation, the burden of proof shall shift to the subject alleged to have acted against the whistleblower or witness.

ADB is not required to investigate allegations of retaliation reported more than 1 year after the date on which the complainant becomes aware of the alleged retaliation.

Management and staff should be aware of the personal security risks to themselves, contractors, consultants, and local counterparts when they encounter instances of fraudulent and corrupt practices. In cases where a staff member's personal safety or career prospects are at risk, OAGI will encourage ADB management to take appropriate measures to remedy the situation.

14. The Organization may require staff to report suspected acts of fraud, corruption, and other forms of Misconduct.

For ADB: ADB staff are obligated to report allegations or evidence of fraudulent and corrupt practices related to ADB-financed activity, including its staff, to OAGI. Staff members who feel that they have been subject to retaliation or otherwise treated unfairly as a consequence of having reported such concerns, provided evidence, or cooperated with OAGI can request an administrative review under ADB's AOs.

15. The Organization shall require staff to cooperate with an investigation and to answer questions and comply with requests for information.

For ADB: ADB staff have a duty to cooperate fully in any preliminary examination or investigation when requested by OAGI to do so. Such cooperation includes, but is not limited to, the following:

- Staff members must make themselves available to be interviewed and must reply fully and truthfully to all questions asked.
- Staff members that are subjects of an investigation may request the accompaniment of another staff member during interviews conducted as part of an Investigation so long as such request does not delay or impede the Investigation; however, such accompanying staff members may not be from BPMSD; the Security, Immunities and Community Relations Section of the Institutional Services Division, Office of Administrative Services; OAG; or Office of the General Counsel. Staff members may consult, at their own expense, with outside legal counsel regarding a matter under

Investigation, but may not be accompanied by such legal counsel in ADB premises or during interviews conducted as part of an Investigation.

- Staff members must provide OAGI with any items requested that are within the staff member's control including, but not limited to, documents and other physical objects.
- A staff member who is the subject of an investigation must allow his or her financial information to be provided directly to OAGI when requested. Upon OAGI's request, the subject must provide written authorization addressed to his or her financial institution to this effect that waives any privacy or confidentiality rights the subject may otherwise have related to the information to be disclosed.
- Staff members must cooperate in any testing requested by OAGI, including but not limited to fingerprint identification, handwriting analysis, use of a breathalyzer, and physical examination and analysis.
- Staff members are obligated to preserve and protect the confidentiality of all information discussed with OAGI and BPMSD.

If a staff member does not comply with any obligation to cooperate, ADB may draw an adverse inference from such refusal. In such cases, OAGI may refer the matter to BPMSD to consider disciplinary action. This shall include not responding timely and fully to OAGI inquiries or providing documents or other evidence that OAGI requests, destroying or concealing evidence, or misrepresenting facts during, or otherwise inhibiting, an OAGI investigation.

16. Each Organization should adopt rules, policies and procedures and, to the extent that it is legally and commercially possible, include in its contracts with third parties, provisions that parties involved in the investigative process shall cooperate with an investigation.

17. As part of the investigative process, the subject of an investigation shall be given an opportunity to explain his or her conduct and present information on his or her behalf. The determination of when such opportunity is provided to the subject is regulated by the rules, policies, and procedures of the Organization.

### Investigative Office

18. The investigation should be conducted expeditiously within the constraints of available resources.

19. The Investigative Office should examine both inculpatory and exculpatory information.

20. The Investigative Office shall maintain and keep secure an adequate record of the investigation and the information collected.

For ADB: OAGI will retain

- Files of investigations related to projects for 10 years from receiving the complaint;
- Files of investigations related to ADB staff for 5 years after the staff member separated from ADB, subject to the staff member attaining an age or there being circumstances that ADB would not consider rehiring the staff member;
- Contracts related to retained audit and investigative consultants for 5 years after the termination of contract;
- Correspondence, including interoffice memos and recommendations to management, for 5 years; and
- Annual reports to the President permanently.

21. The staff of the Investigative Office shall take appropriate measures to prevent the unauthorized disclosure of investigative information.

22. The Investigative Office shall document its investigative findings and conclusions.

23. For purposes of conducting an investigation, the Investigative Office shall have full and complete access to all relevant information, records, personnel, and property of the Organization, in accordance with the rules, policies, and procedures of the Organization.

For ADB: AO 1.02, Organizational Bulletin, applicable to OAG, as well as OAGI's Terms of Office, provide OAGI full and unrestricted access to information and records relating to all ADB activities. OAGI may examine any and all ADB files, records, books, data, papers, and any other materials related to ADB's business, as and when deemed necessary; and take temporary physical possession of any material, and make copies.

24. To the extent provided by the Organization's rules, policies and procedures, and relevant contracts, the Investigative Office shall have the authority to examine and copy the relevant books and records of projects, executing agencies, individuals, or firms participating or seeking to participate in Organization-financed activities or any other entities participating in the disbursement of Organization funds.

25. The Investigative Office may consult and collaborate with other Organizations, international institutions, and other relevant parties to exchange ideas, practical experience, and insight on how best to address issues of mutual concern.

For ADB: OAGI will share information with other international organizations and representatives or agencies of ADB member countries that request and have a need to know such information in the interest of cooperation, harmonization, and transparency. When it does so, OAGI will require recipients of such information to protect the confidentiality of such information and use it only for the purpose for which OAGI disclosed the information.

26. The Investigative Office may provide assistance to and share information with other Investigative Offices.

## PROCEDURAL GUIDELINES

### Sources of Complaints

27. The Investigative Office shall accept all complaints irrespective of their source, including complaints from anonymous or confidential sources.

28. Where practicable, the Investigative Office will acknowledge receipt of all complaints.

### Receipt of Complaint

29. All complaints shall be registered and reviewed to determine whether they fall within the jurisdiction or authority of the Investigative Office.

### Preliminary Evaluation

30. Once a complaint has been registered, it will be evaluated by the Investigative Office to determine its credibility, materiality, and verifiability. To this end, the complaint will be examined to determine whether there is a legitimate basis to warrant an investigation.

For ADB: At the conclusion of a preliminary evaluation, OAGI staff will recommend and the Auditor General or the Auditor General's designee will determine if the case warrants investigation or if OAGI should close the case. If OAGI closes a case at the conclusion of screening, it will document the reasons and decision of the Auditor General or the Auditor General's designee, and retain the case information in OAGI's fraud and corruption database. If OAGI determines and the Auditor General or the Auditor General's designee concurs that a case warrants investigation, OAGI will document its plan to verify the allegation and obtain endorsement of that plan by the Auditor General or the Auditor General's designee.

If a complaint involves ADB staff, OAGI may coordinate succeeding investigative actions with BPMSD, considering relevant AOs. OAGI shall do this at its discretion and in a manner that does not influence OAGI's independence and objectivity.

## Case Prioritization

31. Decisions on which investigations should be pursued are made in accordance with the rules, policies, and procedures of the Organization; decisions on which Investigative Activities are to be utilized in a particular case rest with the Investigative Office.
32. The planning and conduct of an investigation and the resources allocated to it should take into account the gravity of the allegation and the possible outcome(s).

## Investigative Activity

33. The Investigative Office shall, wherever possible, seek corroboration of the information in its possession.
34. For purposes of these guidelines, Investigative Activity includes the collection and analysis of documentary, video, audio, photographic, and electronic information or other material, interviews of witnesses, observations of investigators, and such other investigative techniques as are required to conduct the investigation.

**For ADB:**     At its discretion, OAGI may gather documentary, video, photographic, computer forensic, or tape-recorded evidence without notice to the subject of an investigation, provided such activities are consistent with ADB's rules.

35. Investigative Activity and critical decisions should be documented in writing and reviewed with managers of the Investigative Office.
36. Subject to the Organization's rules, policies, and procedures, if, at any time during the Investigation, the Investigative Office considers that it would be prudent, as a precautionary measure or to safeguard information, to temporarily exclude a staff member that is the subject of an investigation from access to his or her files or office or to recommend that he or she be suspended from duty, with or without pay and benefits, or to recommend placement of such other limits on his or her official activities, the Investigative Office shall refer the matter to the relevant authorities within the Organization for appropriate action.
37. To the extent possible, interviews conducted by the Investigative Office should be conducted by two persons.
38. Subject to the discretion of the Investigative Office, interviews may be conducted in the language of the person being interviewed, where appropriate using interpreters.
39. The Investigative Office will not pay a witness or a subject for information. Subject to the Organization's rules, policies, and procedures, the Investigative Office may assume responsibility for reasonable expenses incurred by witnesses or other sources of information to meet with the Investigative Office.



40. The Investigative Office may engage external parties to assist it in its investigations.

For ADB: OAGI, with the Auditor General's concurrence and in consultation with the Central Operations Services Office, will select any such external investigative experts based on criteria. OAGI will coordinate all investigative work performed by such experts.

## INVESTIGATIVE FINDINGS

41. If the Investigative Office does not find sufficient information during the investigation to substantiate the complaint, it will document such findings, close the investigation, and notify the relevant parties, as appropriate.

For ADB: Both the Director, OAGI, and Auditor General must endorse closing an investigation.

42. If the Investigative Office finds sufficient information to substantiate the complaint, it will document its investigative findings and refer the findings to the relevant authorities within the Organization, consistent with the Organization's rules, policies and procedures.

43. Where the Investigative Office's investigative findings indicate that a complaint was knowingly false, the Investigative Office shall, where appropriate, refer the matter to the relevant authorities in the Organization.

44. Where the Investigative Office's investigative findings indicate that there was a failure to comply with an obligation existing under the investigative process by a witness or subject, the Investigative Office may refer the matter to the relevant authorities in the Organization.

## REFERRALS TO NATIONAL AUTHORITIES

45. The Investigative Office may consider whether it is appropriate to refer information relating to the complaint to the appropriate national authorities, and the Investigative Office will seek the necessary internal authorization to do so in cases where it finds a referral is warranted.

## REVIEW AND AMENDMENT

46. Any amendments to the Guidelines will be adopted by the Organizations by consensus.

## PUBLICATION

47. Any Organization may publish these Principles and Guidelines in accordance with its policies on the disclosure of information.

## II. SANCTIONS

### BASIS FOR REMEDIAL ACTION

48. Any failure to adhere to ADB's Anticorruption Policy may form the basis for ADB to impose a remedial action or sanction. The Anticorruption Policy requires all parties to ADB-financed activity to maintain the highest ethical standards.

49. The Anticorruption Policy establishes that corruption means the abuse of public or private office for personal gain. The Anticorruption Policy further described corrupt and fraudulent practices to comprise corrupt, coercive, collusive, and fraudulent practices defined as follows:

- a) A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- b) A fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- c) A coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- d) A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

50. Although conflicts of interest might not constitute a corrupt or fraudulent practice, they relate to maintaining high ethical standards and have led to abuse of position. Therefore, ADB has defined a conflict of interest under its Anticorruption Policy as any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

51. In addition, ADB considers an obstructive practice to demonstrate a failure to maintain the highest ethical standards required by ADB's Anticorruption Policy. An obstructive practice is deliberately destroying, falsifying, altering or concealing information or evidence material to an investigation being conducted under these principles and guidelines; making false statements to investigators to materially impede such an investigation; threatening, harassing, or intimidating any party to prevent that party from disclosing its knowledge of matters relevant to an investigation or from pursuing an investigation; or any act intended to materially impede the exercise of ADB's rights of access to information.

52. ADB may determine that other international financial institutions' or legal or regulatory bodies' decisions that a party has failed to adhere to appropriate ethical standards (any established system of principles, rules, or duties, including the laws or regulations of a state) constitutes that party's failure to maintain the highest ethical standards required by ADB's Anticorruption Policy.

53. Any party shall be considered responsible for any act or attempted act that would serve as a basis for remedial action by another party, including employees, agents, or representatives, acting in the capacity of representing the party, regardless of whether the act has been specifically authorized.

## DETERMINING REMEDIAL ACTION

### Governments or Borrowers

54. If investigative findings indicate that an official of a government or borrower engaged in a corrupt or fraudulent practice, abuse, or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy, OAGI will report its findings to Management. OAGI will work with Management and operational departments to assess ways that ADB may respond pursuant to the Anticorruption Policy and other ADB rules, policies, and procedures.

### ADB Staff

55. If investigative findings indicate that an ADB staff member engaged in a corrupt or fraudulent practice, abuse, or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy and OAGI concludes that BPMSD should consider disciplinary action under AO 2.04, OAGI will report its findings to BPMSD. BPMSD is solely responsible for the disciplinary process under AO 2.04. OAGI may advise and support BPMSD throughout any disciplinary process.

56. In cases where ADB staff are the subject of an investigation, OAGI may recommend and the Auditor General and Director General, BPMSD, may approve granting amnesty from remedial action under the Anticorruption Policy and these procedures, when appropriate, to parties other than ADB staff prepared to cooperate with OAGI's investigation.

### Bidders, Consultants, Contractors, Suppliers, or Other Third Parties to ADB-financed Activity

57. If investigative findings indicate that any bidder, consultant, contractor, supplier or other party to ADB-financed activity engaged in a corrupt or fraudulent practice, abuse or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy, OAGI will present its findings, and explain the basis for such findings, to any individual or any principal firm that might be subject to a remedial action and provide the party an opportunity to respond before OAGI presents its case to the Integrity Oversight Committee.<sup>3</sup> OAGI will notify any firm that might be subject to a remedial action that the Integrity Oversight Committee may impose a remedial action on the subject firm's officers, directors, and associated firms. At OAGI's discretion, it may present investigative findings to those associated parties; however, not doing so shall not preclude the Integrity Oversight Committee from imposing a remedial action on them.

58. In cases involving a bidder, consultant, contractor, supplier or other related party to ADB-financed activity, the Integrity Oversight Committee may grant amnesty from remedial action under the Anticorruption Policy and these procedures, when appropriate, to parties (other than ADB staff) prepared to cooperate with OAGI's investigation.

---

3 OAGI does not control administrative actions that may result from its findings related to borrowers and current ADB staff. Therefore, in those cases, OAGI cannot determine the timing of ADB presenting its findings or the opportunity for such parties to respond to those findings.

59. OAGI shall provide the Integrity Oversight Committee a report of its investigation, supported with all relevant documentation. OAGI will recommend to the Integrity Oversight Committee a remedial action that ADB may impose.

## IMPOSING REMEDIAL ACTION

60. The Integrity Oversight Committee consists of three regular voting members and three alternate members, who fill any vacancies that might occur among the regular members due to absence or conflict of interest. The Auditor General will nominate and the President shall appoint members among ADB's senior staff, including one as Chair, to serve for a specified period.<sup>4</sup> The head, or a representative designated by the head, of the Central Operations Services Office, and an Assistant General Counsel may advise the Integrity Oversight Committee. Committee decisions will be by majority vote. OAGI serves as the Secretariat to the Integrity Oversight Committee.

61. The Integrity Oversight Committee shall determine if there is a preponderance of evidence, based on OAGI's report and any other information the Integrity Oversight Committee might request, to demonstrate that a party did not adhere to ADB's Anticorruption Policy and if there is a basis to consider remedial action. The Integrity Oversight Committee may make operational recommendations related to the cases it considers.

62. OAGI, as Secretariat to the Integrity Oversight Committee, will communicate the Integrity Oversight Committee's decisions, including any remedial action, to the subject(s) of such decision(s) and, where relevant, to Management or operational departments. In all cases where the Integrity Oversight Committee has decided to impose a remedial action, OAGI will notify the relevant party of a right to appeal subject to the criteria outlined in these principles and guidelines. Where OAGI finds it impossible to notify a subject of an Integrity Oversight Committee decision, OAGI will publish that decision on the ADB website following procedures outlined hereunder.

63. OAGI, in collaboration with Management and departments/offices concerned, will ensure controls are in place to enforce Integrity Oversight Committee decisions.

64. The Integrity Oversight Committee may determine that ADB will impose sanctions on a party for any failure to adhere to ADB's Anticorruption Policy. Sanctions that the Integrity Oversight Committee may impose include reprimands and debarment of parties. When debarred, a party is ineligible to participate in ADB-financed activity, though usually without effect upon existing contractual obligations. The Integrity Oversight Committee may recommend the cancellation of existing contractual obligations. In addition to their punitive nature, sanctions ensure responsiveness to ADB's goal of maintaining the highest ethical standards among the activities it finances (including all parties involved in those activities) and its staff.

65. When determining sanctions, the Integrity Oversight Committee will consider a number of factors:

- a) ADB will ensure due process, fairness, and consistency without the exhaustive legal process that is available to parties accused of corruption or fraud under legal or judicial systems.

---

<sup>4</sup> Terms will normally be 12 months, but the Auditor General and/or President may specify a different term.

- b) ADB procedures are administrative in nature and neither a legal nor judicial, nor a quasi-legal or quasi-judicial process.
- c) It is not ADB's objective to put entities out of business, although the risk that this might occur shall not prevent ADB from imposing an appropriate sanction.
- d) Since entities other than individuals change ownership, organizational structure, and leadership, the justification for declaring a firm ineligible might change after a period of time.
- e) As a change in character for individuals may be less likely, ADB may consider not engaging further any individual who has committed any corrupt or fraudulent practice, abuse, or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy.

66. Considering these factors, ADB will debar entities other than individuals indefinitely only in the event of extraordinary circumstances (e.g., repeated violations of ADB's Anticorruption Policy). Debarment of entities other than individuals will be limited to a specified minimum period after which ADB, through the Integrity Oversight Committee, may "reassess" the sanction period in order to extend (e.g., if the party is known to have engaged in other corrupt or fraudulent practices, abuse or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy during its sanction period) or end the sanction period.

67. The following will guide the Integrity Oversight Committee when it determines debarment periods:

- a) Minimum debarment period: 1 year
- b) Maximum debarment period for first violation
  - i) individuals: indefinitely
  - ii) other entities: 7 years
- c) Debarment period for subsequent violation:
  - i) individuals: indefinitely
  - ii) other entities: up to 10 years

68. Other than in cases for which ADB debars an individual indefinitely, all debarment periods will be a minimum period,<sup>5</sup> at the end of which time the Integrity Oversight Committee will consider reinstating the individual or other entity as outlined in these principles and guidelines.

69. When determining a sanction, the Integrity Oversight Committee shall consider, where possible, precedent cases, recognizing that the specific circumstances of each case are unique. It may also consider mitigating and aggravating circumstances relevant to the case.

- a) Mitigating factors may include, but are not limited to, the reasons the corruption, fraud or other misconduct occurred, due diligence demonstrated by the party, internal controls and procedures that might deter and detect the type of corruption, fraud or

---

<sup>5</sup> This footnote is not in original text and is added to clarify that the term "minimum period" refers to the debarment period imposed (according to paragraph 67), which may be extended, but *may not* be reduced. For e.g. in cases where reinstatement is denied, the debarment period maybe extended.

other misconduct that occurred, and the degree to which the party was aware of ADB's policies and procedures.

- b) Aggravating circumstances may include, but are not limited to, failing to cooperate with an investigation, retaliation against a whistleblower or witness, and knowingly acting contrary to ADB policies or procedures.

70. The Integrity Oversight Committee may also consider, among others:

- a) whether the party continued the corrupt or fraudulent practices or other misconduct after becoming aware of OAGI's investigation;
- b) the degree of cooperation shown during investigation or any attempt to conceal corrupt or fraudulent practices or other misconduct;
- c) evidence of restitution and steps taken to address the concerns;
- d) the nature of the corrupt or fraudulent practices or other misconduct and the circumstances and manner under which the fraud and/or corruption was committed (i.e., attempted fraud or corruption versus committed fraud or corruption);
- e) the reasons furnished by the party in defense to the corrupt or fraudulent practices or other misconduct;
- f) the background of the party, or an entity's directors, officers, or other principals; and
- g) if another multilateral development bank or international organization debarred the party.

71. In cases involving an association of parties (including joint ventures), the Integrity Oversight Committee will impose a sanction on the party that engaged in the ethical misconduct, if such accountability can be determined. In cases where the associated parties are closely related, sanctions may be imposed on more than one party. A related party is one that has

- a) the ability, directly or indirectly, to control or significantly influence another party;
- b) a familial relationship;
- c) common or related ownership, management, or control; or
- d) an agreement or dependency for a specific or limited purpose, such as a joint venture, with another party.

72. In assessing related parties, major shareholding, control of or influence over a firm might not necessarily be related to a specific percentage ownership.

73. The Integrity Oversight Committee may determine circumstances warrant applying sanctions also to the principals (owners, directors, officers, or major shareholders) of a firm, as well as related parties, including affiliated or associated firms or joint venture partners, if it determines that circumstances warrant doing so. In reaching its decision, the Integrity Oversight Committee will consider

- a) management and organizational structure,
- b) if the related party was involved in or influenced the corrupt or fraudulent practice, abuse or other misconduct, or other failure to adhere to ADB's Anticorruption Policy that was the subject of the investigation, or was the intended beneficiary of such acts; and
- c) the potential influence of the subject of the investigation might have on a related party.

## APPEALS

74. A bidder, consultant, contractor, supplier, or other third party subject to a sanction may appeal the Integrity Oversight Committee's decision to the Sanction Appeals Committee within 90 days from the date of OAGI's notice of the Integrity Oversight Committee's decision. Any such appeal must be in writing, and clearly and concisely state the reason(s) for the requested review of the Integrity Oversight Committee's decision. The Sanction Appeals Committee will consider only appeals that include new information to the extent that:

- a) such information was not known, or could not reasonably have been known, to the party at the time that explanations were sought by OAGI; and
- b) such information would have been relevant to the decision of the Integrity Oversight Committee.

75. The Sanction Appeals Committee shall consider appeals of the Integrity Oversight Committee's decisions by a party upon which the Integrity Oversight Committee has imposed a sanction, subject to the criteria noted in the Investigation Procedures. The Sanction Appeals Committee may reduce or lift sanctions ADB has imposed on the basis of the appeal. It may also require the Integrity Oversight Committee to reconsider a case if the Sanction Appeals Committee determines the appeal has a significant impact on parties besides the one making an appeal.

76. The Sanction Appeals Committee consists of three vice presidents.<sup>6</sup> The Auditor General is Secretariat to the Committee. The vice president with the longest vice-presidential tenure will chair the Sanction Appeals Committee. The Auditor General shall nominate members to comprise the Committee and will be present in an advisory capacity. The General Counsel may be present in an advisory capacity.

77. The Sanction Appeals Committee will render its decision only on the basis of a consensus of all members. Should the Chair of the Sanction Appeals Committee determine the committee is unable to reach a consensus, the Chair will request the President's involvement. The President will help to resolve the differences and allow the Sanction Appeals Committee to reach a unanimous decision or, if that is still not possible, shall make a final decision.

78. Decisions of the Sanction Appeals Committee on any appeal shall be final, binding and not subject to further appeal.

## REINSTATEMENT

79. Debarred parties are responsible to seek reinstatement; however, OAGI may attempt to notify parties of the opportunity to request reinstatement approximately 45 days before the end of the minimum sanction period.

---

<sup>6</sup> If there are only three incumbent vice presidents and the Secretariat determines it is not possible to convene a meeting of three vice presidents within a reasonable time period, the Chair may appoint a head or deputy head of department or office to serve as the third committee member.



80. Requests for reinstatement shall:

- a) be in writing, addressed to the Director, OAGI, as secretariat to the Integrity Oversight Committee;
- b) refer to the reason for the sanction; and
- c) provide a basis for which ADB should consider their reinstatement.

81. OAGI will assess the credibility of any request for reinstatement, and will assess the merits of reinstating a party. Factors that OAGI may consider may include:

- a) the reason(s) a sanction was imposed;
- b) restitution;
- c) changes in management or ownership;
- d) verifiable mechanisms to improve business governance;
- e) effective administrative, civil or criminal action initiated by the debarred party as a result of sanctions imposed by ADB;
- f) any other information indicating that the party engaged in corrupt or fraudulent practices after being sanctioned by ADB, including sanctions imposed by other Organizations; and
- g) results of administrative or criminal investigations.

82. At the conclusion of its review or investigation, OAGI will prepare a report to the Integrity Oversight Committee with a recommendation regarding reinstatement of the party. The Integrity Oversight Committee may decide to either reinstate eligibility or extend the sanction for a specified minimum time (after which the party may again apply for reinstatement).

83. In cases where ADB debarred an entity's principals (e.g., owners, directors, officers, or shareholders), or related parties in conjunction with imposing a sanction on an entity that violated ADB's Anticorruption Policy or procedures, OAGI's review, report, and recommendations, and the decision of the Integrity Oversight Committee may also address ADB's sanction of those entities.

84. OAGI will communicate in writing the Integrity Oversight Committee's decision, including any basis of a decision to deny reinstatement or extend a sanction for a specified additional minimum period. If the Integrity Oversight Committee decides to extend a sanction for a specified additional minimum period, the party may appeal the decision to the Sanction Appeals Committee within 90 days of the date of ADB's notice of the decision, subject to the criteria outlined in the Investigation Procedures.

85. OAGI may unilaterally initiate an assessment of the merits of reinstating a party or otherwise removing the party from the list of ineligible parties. OAGI may do this to prevent obsolescence of ADB's list of debarred parties.



## DISCLOSURE

86. The list of parties ADB debars is not published, in accordance with ADB's Public Communications Policy. OAGI will inform parties that ADB declares ineligible that ADB currently does not make public their names and that an attempt to participate in ADB-financed activities while ineligible will result in an extension of the sanction period and a notice on ADB's website, including that party's name.

87. In the interest of cooperation, harmonization, and transparency, OAGI may determine that other international organizations and representatives or agencies of ADB member countries have a need to know the names of parties declared ineligible to participate in ADB-financed activity, or other information related to OAGI investigations. When it does so, OAGI will require recipients of such information to protect it and use it only for the purpose for which OAGI disclosed the information.

88. If OAGI finds it impossible to communicate with the subject of an Integrity Oversight Committee decision (e.g., if the subject refuses to accept correspondence, or has moved and cannot be located), the Integrity Oversight Committee may approve posting the information, including the name of the subject on ADB's website.

---

# ADB's Anticorruption Policy

2 July 1998

---

## ABBREVIATIONS

ADB	Asian Development Bank
BPMSD	Budget, Personnel and Management Systems Department
COSO	Central Operations Services Office
DMC	developing member country
GDP	gross domestic product
IMF	International Monetary Fund
MDB	multilateral development bank
NGO	nongovernment organization
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OGA	Office of the General Auditor
OGC	Office of the General Counsel
SPD	Strategy and Policy Department
TA	technical assistance

## NOTE

Since the document was prepared, the Office of the General Auditor has become the Office of the Auditor General.

In this report, “\$” refers to US dollars.

This document has been edited for publication.

## I. INTRODUCTION

1. The problem of corruption, here defined as the misuse of public or private office for personal gain, has been one of the most enduring dilemmas confronting governments throughout history. Although differences may exist in the nature and scope of corrupt behavior, and the extent to which anticorruption measures are enforced, the phenomenon can be found at all times and within virtually every political system. It can also be found within the private sector. Indeed, the linkage between public and private sector corruption is an area of particular concern for both developed and developing countries in the Asia and Pacific region.

2. Historically, concern about corruption has tended to run in cycles, in which revelations of official abuses prompted anticorruption campaigns and administrative countermeasures that subsequently faded from view until the next round of scandals provided further impetus for reform. The desire to reduce or eliminate corruption was at the core of many enduring innovations for good governance. The major public administration reforms of the late nineteenth and early twentieth centuries—such as the introduction of a meritocratic civil service system, and professional management of government ministries and departments, or the creation of more formalized budget, procurement, and audit processes and agencies—had their roots in the desire to avoid earlier abuses of graft and political patronage.

3. Recently, the effort to combat corruption has moved to the center of the debate about good governance and economic growth. The impetus behind this move has come from many sources. On the donor side, the end of the Cold War has reduced the willingness of countries providing aid to overlook financial improprieties in light of broader geopolitical interests. Donor fatigue has placed increasing pressure upon foreign assistance agencies to demonstrate that they are delivering maximum value for the money. Many multinational corporations have come to believe their interests are better served by open and transparent competition. At the extremes, the negative example of a handful of “kleptocratic” regimes has underscored the danger of political and social collapse if widespread corruption is allowed to fester unchecked.

4. On the recipient side, in countries throughout the Asia and Pacific region, the citizenry has served notice that it is no longer willing to tolerate gross abuses of the public trust for private gain. The liberalization of the press in many parts of the world has enabled journalists to write more freely about official indiscretions. Improvements in education and increased information flow between countries have made their public more aware of anticorruption efforts in other countries and less willing to tolerate systematic abuses at home. The rise of new global nongovernment organizations (NGOs) dedicated to fighting corruption has helped bring and keep the issue in the spotlight in both the developed and the developing world.

5. Many of these dynamics are likely to exist for at least the next decade or more, resulting in a fundamental change in the context within which multilateral development banks (MDBs) operate. Pressure for more active measures against graft and corruption is no longer likely to be isolated and sporadic. Like questions relating to the environment or women in development, influential and well-connected constituencies both within and outside of the MDB community will press hard to ensure that issues of corruption and good governance remain an important and ongoing element of the development debate.

6. In response to these pressures, many international organizations are adopting more robust anticorruption measures:

- (i) At a Summit of the Americas in May 1994, the Organization of American States (OAS) pledged to outlaw cross-border bribery and the “illicit enrichment” of officials in the hemisphere. In March 1996, 21 member states of OAS signed the Caracas Convention, which calls for energetic collective action in four principal areas: preventative measures and international cooperation, transnational bribery, illicit enrichment, and extradition. The Caracas Convention is now in force between the countries that have ratified it: Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, Peru, and Venezuela.
- (ii) The Organisation for Economic Co-operation and Development (OECD) Ministerial Council approved a resolution encouraging its member states to end the tax deductibility of foreign bribes and commissions for their multinational corporations in May 1996. A year later, it approved a full set of recommendations for criminalizing transnational bribery, enacting stricter accounting requirements and external and internal audit controls, tighter public procurement, and enhanced international controls. In December 1997, OECD ratified a convention making the bribery of foreign officials a criminal offense, on a par with the bribery of local government officials in the country where the corporation is based.
- (iii) The International Chamber of Commerce recently approved revised rules of conduct that prohibit bribes and recommended that its member associations around the globe, and their member corporations, adopt and apply these tighter rules.
- (iv) In December 1996, the United Nations General Assembly passed the Declaration Against Corruption and Bribery in International Commercial Transactions.

7. One of the most forceful proponents of a tough stance on anticorruption issues is the World Bank’s President, James Wolfensohn. At the annual meetings of the World Bank and the International Monetary Fund (IMF) in October 1996, Wolfensohn characterized corruption as a “cancer” on the global economy and emphasized that it was time to “put teeth” into the World Bank’s efforts to address it. The Managing Director of IMF, Michel Camdessus, was equally blunt, noting that IMF officials will henceforth regard it as their duty to press for anticorruption reforms in countries seeking to borrow money. In the wake of the annual meetings, a working group was established under the Development Economics Vice Presidency of the World Bank to develop an integrated anticorruption strategy. The final report, along with accompanying staff guidelines, was endorsed by the World Bank’s Board of Executive Directors on 2 September 1997.

8. The World Bank’s approach envisions a balanced strategy to combat corruption resting upon four pillars: (i) preventing fraud and corruption in World Bank-financed projects; (ii) helping countries that request World Bank support in their efforts to reduce corruption; (iii) taking corruption more explicitly into account in country assistance strategies, policy dialogue, analytical work, and the choice and design of projects; and (iv) adding voice and support to international efforts to reduce corruption.<sup>1</sup>

---

<sup>1</sup> See World Bank. 1997. *Helping Countries Combat Corruption: The Role of the World Bank*, Washington DC.

9. In August, IMF took the unprecedented step of suspending the second tranche of an Enhanced Structural Adjustment Facility when one of its member countries failed to demonstrate that it was pursuing adequate measures to reduce the problem of corruption. The World Bank has strongly supported IMF's move and warned that its own lending will be "substantially reduced" failing decisive action on the part of that government.<sup>2</sup> At the annual meetings of the World Bank and IMF in Hong Kong, China in September 1997, the commitment of both institutions to combat corruption was strongly reaffirmed.

10. The 1997 summit of the Group of Seven industrial nations in Denver, United States, placed particular emphasis upon the role of the MDBs in combating corruption. The communique from the preliminary meeting of finance ministers and central bankers in April maintained, "in view of the corrosive effects of bribery and corruption generally on the achievement of sustainable economic development, growth, and stability, we welcome the increased attention to these problems on behalf of international financial institutions and the OECD." In June, the final summit statement urged IMF and the MDBs to strengthen their activities to help countries fight corruption, including measures to ensure the rule of law, improve the efficiency and accountability of the public sector, and increase institutional capacity and efficiency. The international financial institutions were also encouraged to promote good governance in their respective areas of competence and to collaborate fully with the World Bank's effort to establish procurement guidelines that meet the highest standards for transparency and rigor.

11. Many of the developing member countries (DMCs) of the Asian Development Bank (ADB) have played an integral role in the growing anticorruption movement. In East Asia, several countries that have enjoyed high growth rates in the past have expressed concern that perceptions of corruption can hamper their ability to attract future investment. In 1995, the People's Republic of China passed legislation requiring leading Communist Party cadre levels above the country level to declare their income. Thailand's Prime Minister pledged in January 1997 to clean up the Customs Department, which was creating numerous "hidden costs" for foreigners seeking to do business in Thailand. That same month, the President of the Philippines characterized "the nightmare of corruption in public service" as one of the country's most persistent afflictions and ordered all government departments to submit monthly progress reports on their fight against corruption within their offices.

12. On the South Asian subcontinent, the problem of corruption has become one of the most pressing issues confronting government leaders today. In Pakistan, the Prime Minister has made the effort to clean up government one of the key goals of his new administration. India's President recently characterized corruption as one of the greatest challenges now confronting his country.<sup>3</sup>

2 Cited in Oxford Analytica. 1997. *Asia Pacific Daily Brief*, 14 August. Other problems cited by IMF include the failure to prosecute the perpetrators of a multimillion dollar financial fraud; irregularities surrounding the award of contracts for two power projects; and the use of extrabudgetary funds to purchase a presidential jet and build an international airport in the president's hometown.

3 K.R. Narayanan. 1997. "Next an India for All, Tolerant and Uncorrupt," editorial, *International Herald Tribune*, 13 August.

## II. ADB'S RESPONSE

13. As a major multilateral development institution and one of the leading sources of development funding in Asia, ADB welcomes this emphasis on combating corruption as part of its broader work on issues of governance and capacity building. ADB's Board paper, *Governance: Sound Development Management*, recognizes the importance of accountability for public officials, and transparency and predictability in government operations—critical principles in the fight against corruption.<sup>4</sup> The policy's emphasis upon strengthening the essential prerequisites for effective public administration is designed to ensure that the fundamental building blocks for transparent, predictable, and accountable administration are in place. These building blocks include an appropriate legal framework and effective enforcement mechanisms; a professional, competent, motivated, and meritocratic civil service; transparent procurement practices; effective internal control systems; and a well-functioning independent audit office. Participation, the fourth major principle in the ADB's governance policy, is also of relevance. The experience of Hong Kong, China, and Singapore demonstrates that public support is a critical asset in the long-term struggle against official malfeasance.

14. At the broadest level, ADB's stance on anticorruption issues is intended to reduce the burden that widespread, systemic corruption exacts upon the governments and economies of the region. More specifically, ADB's approach is centered upon three objectives:

- (i) supporting competitive markets and efficient, effective, accountable, and transparent public administration as part of ADB's broader work on good governance and capacity building;
- (ii) supporting promising anticorruption efforts on a case-by-case basis and improving the quality of our dialogue with the DMCs on a range of governance issues, including corruption; and
- (iii) ensuring that ADB projects and staff adhere to the highest ethical standards.

15. The third and fourth sections will set the stage for the discussion of these objectives by addressing the definitional questions that have surrounded the topic and the costs that corruption imposes upon development. The remainder of the paper will consider the nature of ADB's response. The fifth section outlines ADB's position on anticorruption issues and describes the current ADB programs with significant anticorruption components. It also highlights the implications of the ADB's anticorruption policy for current ADB operations. The last section concludes by highlighting specific next steps for ADB to take in implementing this policy.

---

4 R151-95: *Governance: Sound Development Management*, 17 August.

### III. DEFINITIONS OF CORRUPTION

16. The term “corruption” is used as a shorthand reference for a large range of illicit or illegal activities. Although there is no universal or comprehensive definition as to what constitutes corrupt behavior, the most prominent definitions share a common emphasis upon the abuse of public power or position for personal advantage. *The Oxford Unabridged Dictionary* defines corruption as “perversion or destruction of integrity in the discharge of public duties by bribery or favor.” The *Merriam Webster's Collegiate Dictionary* defines it as “inducement to wrong by improper or unlawful means (as bribery).” The succinct definition utilized by the World Bank is “the abuse of public office for private gain.” This definition is similar to that employed by Transparency International (TI), the leading NGO in the global anticorruption effort:

“Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.”<sup>5</sup>

17. These definitions are useful but, in the ADB's judgment, they do not give adequate attention to the problem of corruption in the private sector or to the role of the private sector in fostering corruption in the public sector. As a shorthand definition, ADB defines corruption as “the abuse of public or private office for personal gain.” A more comprehensive definition is as follows:

Corruption involves behavior on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed.

18. A list of illicit behavior typically referred to as “corruption” is presented in Box 1. This catalogue is not exhaustive and is intended to illustrate the areas of greatest interest and concern to ADB. Some types of corruption are internal, in that they interfere with the ability of a government agency to recruit or manage its staff, make efficient use of its resources, or conduct impartial in-house investigations. Others are external, in that they involve efforts to manipulate or extort money from clients or suppliers, or to benefit from inside information. Still others involve unwarranted interference in market operations, such as the use of state power to artificially restrict competition and generate monopoly rents.

19. More narrow definitions of corruption are often necessary to address particular types of illicit behavior. In the area of procurement fraud, for example, the World Bank defines corrupt practice as “the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.” Fraudulent practice is defined as “a misrepresentation of facts in or to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders ... designed to

5 See World Bank 1997, p. 8. See also Transparency International. 1996. *The TI Sourcebook*, edited by Jeremy Pope. Berlin: TI, p.1. The World Bank definition includes the activities of private agents who subvert public policies and processes for competitive advantage.



establish bid prices at artificial, noncompetitive levels and to deprive the Borrower of the benefits of free and open competition.”<sup>6</sup>

20. It is often useful to differentiate between grand corruption, which typically involves senior officials, major decisions or contracts, and the exchange of large sums of money; and petty corruption, which involves low-level officials, the provision of routine services and goods, and small sums of money. It is also useful to differentiate between systemic corruption, which permeates an entire government or ministry; and individual corruption, which is more isolated and sporadic. Finally, it is useful to distinguish between syndicated corruption in which elaborate systems are devised for receiving and disseminating bribes, and nonsyndicated corruption, in which individual officials may seek or compete for bribes in an ad hoc and uncoordinated fashion.

### **Box 1. An illustrative list of corrupt behaviors**

- The design or selection of uneconomical projects because of opportunities for financial kickbacks and political patronage.
- Procurement fraud, including collusion, overcharging, or the selection of contractors, suppliers, and consultants on criteria other than the lowest evaluated substantially responsive bidder.
- Illicit payments of "speed money" to government officials to facilitate the timely delivery of goods and services to which the public is rightfully entitled, such as permits and licenses.
- Illicit payments to government officials to facilitate access to goods, services, and/or information to which the public is not entitled, or to deny the public access to goods and services to which it is legally entitled.
- Illicit payments to prevent the application of rules and regulations in a fair and consistent manner, particularly in areas concerning public safety, law enforcement, or revenue collection.
- Payments to government officials to foster or sustain monopolistic or oligopolistic access to markets in the absence of a compelling economic rationale for such restrictions.
- The misappropriation of confidential information for personal gain, such as using knowledge about public transportation routings to invest in real estate that is likely to appreciate.
- The deliberate disclosure of false or misleading information on the financial status of corporations that would prevent potential investors from accurately valuing their worth, such as the failure to disclose large contingent liabilities or the undervaluing of assets in enterprises slated for privatization.
- The theft or embezzlement of public property and monies.
- The sale of official posts, positions, or promotions; nepotism; or other actions that undermine the creation of a professional, meritocratic civil service.
- Extortion and the abuse of public office, such as using the threat of a tax audit or legal sanctions to extract personal favors.
- Obstruction of justice and interference in the duties of agencies tasked with detecting, investigating, and prosecuting illicit behavior.

<sup>6</sup> In the movement to harmonize ADB procurement standards with those of the World Bank on the topic of corruption, these definitions may also be adopted by ADB. See the last section of this paper.

## IV. THE COSTS OF CORRUPTION

21. Corruption has not always been perceived as having a negative impact upon development. In earlier decades, arguments were advanced that it could have beneficial effects. In countries where public sector wages are often low and in some cases may not even be enough to live on, some maintained that it was natural for civil servants to augment their salaries by other means. It was alleged that corruption could advance economic efficiency by helping restore artificial and administratively determined prices to market-clearing levels. Others maintained that corruption played a useful redistributive role, transferring resources from wealthy individuals and corporations to those of more modest means, or that it could serve as a tool of national integration by allowing ruling elites to entice or co-opt fractious political, ethnic, or religious groups. Finally, some scholars have argued that corruption is a natural stage of development. They note that it was generally widespread in many advanced countries until recently, when it was reduced (but not eliminated) through the gradual imposition of public sector reforms over the last century.

22. Robert Klitgaard, one of the most astute students of the problem of corruption in development, notes that these arguments have several common features.<sup>7</sup> First, they often refer to the benefits stemming from specific illicit acts and do not consider the systemic impact of corruption. Although a given incident or transaction may have positive results, it may also generate negative externalities that degrade the performance of the system as a whole and compromise the economy's long-term dynamic efficiency.

23. Second, many of the alleged benefits from corruption, such as streamlining government transactions or enhancing civil service pay, only appear as such against the background of a public sector that is failing to perform effectively. The experience of economies such as Singapore indicates that patient and persistent efforts toward improved public sector management, by streamlining customs procedures or by paying wages that are competitive with the private sector, for example, are likely to result in greater benefits over time than tolerating relatively high levels of corruption to compensate for these deficiencies.

24. Third, corruption encourages people to avoid both good regulations and bad. There is no guarantee that an importer who bribes a customs official to expedite the clearance of badly needed medication one week will not bribe the official to expedite the clearance of illegal narcotics the next.

25. The task of evaluating the practical impact of corruption upon a country's development is a complicated one that is now being subject to increasing scholarly attention. Although there are instances when illicit acts can improve the economic rates of return, the bulk of the evidence indicates that corrupt actions typically generate far more costs than benefits. A study of corruption in one African country, for example, concluded that corruption intensified ethnic conflict, ruined the efficiency of municipal government and federal agencies, crippled the merit system of hiring and promotion, and generated an "atmosphere of distrust which pervades all levels of administration." A study of an

7 Robert Klitgaard. 1988. *Controlling Corruption*. Berkeley and Los Angeles: University of California Press, p. 32.

Asian country found that in none of the cases under consideration was the money raised through corruption “directly and productively invested.”<sup>8</sup> An extensive study of corruption in another Asian country concluded:

Graft and corruption has strongly affected development efforts negatively, belying the so-called “revisionist hypothesis” prevalent in the West which considers corruption as either a necessary step in the development process or a means of speeding it up. Instead [our research] found that corruption leads to the favoring of inefficient producers, the unfair and inequitable distribution of scarce public resources, and the leakage of revenue from government coffers to private hands. Less directly, but no less perniciously, corruption leads to loss of confidence in government.<sup>9</sup>

26. Upon closer inspection, many of corruption’s alleged distributive, efficiency, and political benefits turn out to be illusory. Rather than enhancing a more equitable distribution of income, corruption distorts the allocation of social resources away from those who are legally entitled to them and toward the rich, the powerful, and the politically well connected. Rather than compensating civil servants for poor pay, corruption undermines the merit system and compromises service professionalism and esprit de corps. At times, it can even foster additional inefficiencies within the public sector.<sup>10</sup> Instead of cementing political loyalties, corruption more often breeds public cynicism and resentment toward the political process and those associated with it.

27. Many studies of the cost of corruption in individual cases paint a disturbing picture of resources lost, squandered, or devoted to suboptimal uses:

- (i) Some estimates calculate that as much as \$30 billion in aid for Africa has ended up in foreign bank accounts. This amount is twice the annual gross domestic product (GDP) of Ghana, Kenya, and Uganda combined.<sup>11</sup>
- (ii) Over the last 20 years, one East Asian country is estimated to have lost \$48 billion due to corruption, surpassing its entire foreign debt of \$40.6 billion.<sup>12</sup>
- (iii) An internal report of another Asian government found that over the past decade, state assets have fallen by more than \$50 billion, primarily because corrupt officials have deliberately undervalued them in trading off big property stakes to private interests or to international investors in return for payoffs.<sup>13</sup>

---

8 The African citation is from Herbert Werlin. 1979. “The Consequences of Corruption: The Ghanaian Experience,” in Monday U. Ekpo, ed. *Bureaucratic Corruption in Sub-Saharan Africa: Toward a Search for Causes and Consequences*. Washington DC: University Press of America, p. 253. The second citation is from Kang Sintaek. 1978. “Conclusions and Recommendations,” in a paper prepared for the Fourth Working Meeting on Bureaucratic Behavior and Development, Hong Kong, China, August, cited in Klitgaard. 1988. p. 37.

9 Ledivina V. Carino and Josie H. de Leon. 1983. *Final Report for the Study of Graft and Corruption, Red Tape and Inefficiency in Government*, cited in Klitgaard. 1988. p. 38.

10 In one African country, for example, each imported container shipment is inspected three times by custom officers because of the opportunity for graft and speed payments, rather than conducting a spot check based upon the previous history of the importer, as is the practice in many other countries.

11 Michelle Celarier. 1996. “The Search for the Smoking Gun,” *Euromoney* (September): 49.

12 Philippine Government estimate, cited from *Reuter Newswire*. 1997. “Philippines Corruption a ‘Nightmare’ -Ramos,” 11 January. See also *Philippine Star*. 1997. “Commission on Audit: P1.2 B Lost to Graft Each Year,” 12 June.

13 Internal report, cited from *Business Week*. 1993. “The Destructive Costs of Greasing Palms,” 6 December, p.133.

- (iv) In one South Asian country, recent government reports indicate that \$50 million daily is misappropriated due to mismanagement and corruption. The Prime Minister stated publicly recently that the majority of bureaucrats and the administrative machinery from top to bottom are corrupt.<sup>14</sup>
- (v) In one North American city, businesses were able to cut \$330 million from an annual waste disposal bill of \$1.5 billion by ridding the garbage industry of Mafia domination. A particular problem was the permeation of regulatory bodies by organized crime.<sup>15</sup>
- (vi) Studies of the impact of corruption upon government procurement policies in several Asian countries reveal that these governments have paid from 20% to 100% more for goods and services than they would have otherwise.<sup>16</sup>
- (vii) Corruption can cost many governments as much as 50% of their tax revenues. When customs officials in a Latin American country were allowed to receive a percentage of what they collected, there was a 60% increase in customs revenues within 1 year.<sup>17</sup>
- (viii) Some estimates of the role of corruption in a European country concluded that it has inflated this country's total outstanding government debt by as much as 15% or \$200 billion. In one city, anticorruption initiatives have reduced the cost of infrastructure outlays by 35-40%, allowing the city to significantly increase its outlays for the maintenance of schools, roads, street lamps, and social services.<sup>18</sup>

28. Although almost impossible to value accurately, the indirect costs of corruption can often dwarf its direct costs. Scarce resources are squandered on uneconomical projects because of their potential to generate lucrative payoffs, and priority sectors such as education or health suffer disproportionately. Legitimate entrepreneurial activity is hindered or suppressed. Public safety is endangered by substandard products and construction. Capital is redirected toward more transparent and predictable investment sites. Individuals who would not otherwise engage in illicit behavior decide they have no alternative, and intellectual energy is diverted from more productive pursuits to figuring out ways to "get around the system." In extreme cases, the legitimacy of the public sector itself is called into question, and governments may be confronted with political instability or collapse.

29. Although corruption is costly, its impact upon development is not uniform. Some countries can tolerate relatively high levels of bribery and graft and continue to maintain respectable rates of economic growth, whereas others cannot. Several factors influence the extent to which corruption serves as a brake upon the process of development. At the most basic level, a state's natural resource base and the sources of its comparative advantage play a critical role in its ability to attract investment.<sup>19</sup> A second factor is the form in which corruption is practiced. In some countries, corruption is highly routinized. Payoffs are generally known in advance and concentrated at the top

<sup>14</sup> *The News*. 1997. 28 March.

<sup>15</sup> *The Financial Times*. 1997. 6 June.

<sup>16</sup> Thinapan Nakata. 1978. "Corruption in the Thai Bureaucracy. Who Gets What, How and Why in Its Public Expenditures." *Thai Journal of Public Administration* 18 (January): 120-128; Clive Gray. 1979. "Civil Service Compensation in Indonesia." *Bulletin of Indonesian Economic Studies* 15 (March): 85-113; and Robert Wade. 1982. "The System of Administrative and Political Corruption: Canal Irrigation in India." *Journal of Development Studies* 18 (April): 287-328. Cited in Klitgaard. 1988. pp. 39-40.

<sup>17</sup> *Business Week*. 1993. "The Destructive Costs of Greasing Palms." 6 December, pp. 134-135.

<sup>18</sup> *Business Week*. 1993. "The Destructive Costs of Greasing Palms." 6 December, p. 135.

<sup>19</sup> States with rare or valuable natural resources can generally attract more investment than those seeking to compete as a source of low wage, labor-intensive manufacturing. Ironically, such resource-rich countries also often enjoy lower growth rates than their poorer counterparts. See Philip R. Lane and Aaron Tornell. 1996. "Power, Growth and the Voracity Effect." *Journal of Economic Growth*, 1 (June): 213-241.

in a “one-stop” fashion. Such an approach may reduce transaction costs and add a measure of predictability to investment decisions, making the country inherently more attractive than others where many different officials can demand unspecified and unanticipated payments. Finally, the extent to which money remains in the country and is invested in productive economic activity, or flows abroad into foreign bank accounts, will also have an impact upon a nation’s ability to tolerate relatively high levels of corruption and still enjoy decent rates of economic growth.

30. In spite of these caveats, the most recent and innovative empirical research demonstrates that—even correcting for variables such as bureaucratic efficiency—countries that tolerate relatively high levels of corruption are unlikely to perform as well economically as they would have otherwise. In a study of over 70 countries during the late 1970s and early 1980s, IMF economist Paolo Mauro found that corruption “is strongly negatively associated with the investment rate, regardless of the amount of red tape.” Mauro’s model indicates that a one standard deviation improvement in the “corruption index” will translate into an increase of 2.9% of GDP in the investment rate and a 1.3% increase in the annual per capita rate of GDP growth.<sup>20</sup>

31. This analysis is supported by other recent studies. Using data from 39 industrial and developing countries that controlled for income, education, and policy distortion, two World Bank researchers found that countries that were perceived to have relatively low levels of corruption were always able to attract significantly more investment than those perceived to be more prone to corrupt or illicit activity. This result held true for both countries where corruption was highly syndicated and predictable, and countries where it was not.<sup>21</sup> Another recent study, which utilized econometric analysis to examine the impact of corruption upon foreign direct investment in East Asia, found that perceptions of corruption had a strong and negative impact upon the flow of foreign investment. According to the study’s findings, East Asia is no different from any other region in this regard.<sup>22</sup>

---

20 Paolo Mauro. 1995. “Corruption and Growth.” *Quarterly Journal of Economics*. (August): 681–711. The citations are from pages 695 and 683, respectively. It should be noted that many of these cross-country econometric studies are based on levels of perceived (versus actual) corruption, and that such studies can have problems in desegregating corruption’s effects from those of other variables related to the quality of governance.

21 The analysis was conducted by Jose Eduardo Campos and Sanjay Pradhan in conjunction with the 1997 World Development Report. Washington DC: World Bank, pp. 102–109.

22 Shang-Jin Wei. 1997. “How Taxing is Corruption on International Investors.” *Working Paper* 6030, National Bureau of Economic Research, Cambridge, MA.

## V. ADB'S POSITION ON ANTICORRUPTION ISSUES

32. In light of the discussion above, ADB affirms that corrupt and illicit behavior is a serious brake upon the development process. ADB rejects the argument that corruption's beneficial effects outweigh its negative consequences, or that it is inappropriate for international financial institutions to address such issues. ADB notes that experience drawn from the Asia and Pacific region and elsewhere demonstrates that significant progress can be made in the struggle against corruption if the proper legal, institutional, and policy reforms are in place. ADB welcomes the growing focus upon anticorruption issues as part of its broader effort to advance the principles of transparency, predictability, accountability, and participation under its governance policy.

33. At the broadest level, ADB's stance on anticorruption issues is intended to reduce the burden that widespread, systemic corruption exacts upon the economies of the region and the development of ADB's DMCs. In keeping with Article 36(2) of the Charter, ADB initiatives regarding corruption will be grounded solely upon economic considerations and concerns of sound development management. They will not involve interference in the political affairs of a DMC or be influenced by its political character.

34. More specifically, ADB's approach is centered upon three basic objectives:

- (i) supporting competitive markets and efficient, effective, accountable, and transparent public administration as part of ADB's broader work on good governance and capacity building;
- (ii) supporting promising anticorruption efforts on a case-by-case basis and improving the quality of our dialogue with the DMCs on a range of governance issues, including corruption; and
- (iii) ensuring that ADB projects and staff adhere to the highest financial and ethical standards.

---

### **Objective no. 1: Supporting competitive markets and efficient, effective, accountable, and transparent public administration**

---

35. As a matter of policy, the major thrust of the Bank's anticorruption effort will address this problem as a part of its broader work on governance and capacity building. ADB's approach seeks to be proactive and to place a premium upon continuous efforts to upgrade the efficiency of markets and the quality of the public sector as a whole. This focus upon prevention over prosecution reflects the belief that most priority governance initiatives have significant positive externalities in the struggle against corruption. Long-term success is more likely to come through patient and persistent economic, legal, and institutional reforms rather than short-term and largely reactive efforts to punish wrongdoers.<sup>23</sup>

---

<sup>23</sup> The detection and prosecution of illicit activities has been an important part of successful anticorruption efforts. However, the most effective approaches have combined efforts toward prosecution with an even stronger emphasis upon prevention. ADB's own experience and comparative advantage fall strongly on the side of prevention.



36. There are two priority areas where ADB will concentrate its broader governance effort: policy dialogue directed toward economic liberalization and public administration reform. Regarding the former, ADB can use its dialogue with the DMCs to advance policy recommendations that will help eliminate market distortions and reduce opportunities for rent seeking on the part of firms or officials. The liberalization of licensing regimes, the opening up of access to foreign exchange markets, the reduction of administered prices, the expansion of credit opportunities for small farmers and businesspeople, the removal of subsidies and soft loans to favored companies, and the introduction of a clear distinction between production and regulatory functions are all ways in which policy changes can level the playing field and reduce opportunities for corrupt or illicit behavior. ADB is already pursuing many of these initiatives in its dialogue with the DMCs (Box 2).

### **Box 2. Examples of ADB loans and grants supporting market liberalization and policy reforms**

**Loan 1444 and TA 2587: Kyrgyz Road Rehabilitation Project and Institutional Strengthening of the Road Sector:** In June 1996, the Board approved a loan for \$50 million to the Kyrgyz Republic for road rehabilitation. A component of this project and its associated technical assistance (TA) were designed to open the transport sector to competition, so that customers are free to choose between competing alternatives on the basis of price and quality of service, and there is no government discrimination (through regulations, price controls, discriminatory licensing practices, or other interventions) between government-owned and private operators of transport services.

**Loan 1506: Gujarat Public Sector Resource Management Program:** In December 1996, the Board approved a loan of \$250 million and an additional TA grant to the Indian state of Gujarat to improve the quality of its public sector management, to support the disinvestment of selected state enterprises, and to improve its infrastructure. A critical objective of the Bank's policy dialogue was to reverse the impact of past policies and regulations that discriminated against private sector participation in infrastructure, including a lack of transparency of the decision-making system; the absence of regulations governing entry, evaluation of bids, and tenders; problems related to pricing and regulatory issues in monopolistic conditions; and weakness of the legal system, dispute resolution, and arbitration. The goal was to reduce the involvement of the public sector in the direct provision of certain goods and services, while reorienting and strengthening its regulatory role in ensuring a level playing field for public-private sector operations.

37. There are several ways in which the ADB's work in enterprise reform and financial markets development, along with its private sector operations, is contributing to increased competitiveness, transparency, and accountability. ADB is supporting a range of policy-based reforms in many countries that are intended to amend banking regulations to allow greater competition and to reduce directed lending while strengthening the capacity of regulatory agencies. This is also true in the area of capital markets, where ADB is seeking to enhance disclosure practices and improve market surveillance. Through its private sector operations, ADB invests in catalytic projects such as ratings agencies, which provide transparency in the capital market by publishing independent judgments on the investment quality of debt instruments, thus helping investors make informed investment decisions. ADB is also becoming increasingly involved in strengthening corporate governance in the private companies and investment funds where it has an equity interest. In the wake of the financial crisis that has affected many countries in the Asian and Pacific region, these efforts are being rapidly expanded. ADB is also considering providing support for new initiatives in areas such as money laundering.

38. Particular care must be taken in dealing with issues of privatization. There are often powerful financial and economic rationales for the state divesting from activities where it has little comparative advantage. Preliminary research also indicates that, when done properly, privatization can also help lower the level of corruption.<sup>24</sup> However, in many countries the privatization process has often been fraught with allegations of bribery, theft, and embezzlement. To avoid this problem, it is critical that transparent, unbiased, and fully contestable procedures be utilized in the sale of state assets. When the sale involves a natural monopoly, it is also important that capable, independent regulatory agencies be established to provide adequate oversight prior to privatization. Issues of best practice involving corporate governance will also be an important component of ADB loans and TA grants addressing issues of privatization, corporatization, and public enterprise management.

39. Many basic public administration reforms during the late nineteenth and early twentieth centuries came about in response to official malfeasance. By focusing as a first priority upon comprehensive public sector reform, ADB can help its DMCs effect changes that will make corrupt behavior more difficult to engage in and more readily detected once it occurs. A breakdown of broader reform initiatives with significant anticorruption components is presented in Appendix 1.

40. Turning first to the executive branch, there are several priority areas where efforts to upgrade the quality of a country's public administration will pay significant dividends in the struggle against corruption. Efforts to strengthen information systems, particularly those relating to financial management, should enhance transparency and accountability, and strengthen the capacity of governments to monitor their expenditures. Measures to strengthen internal audit functions and to ensure adequate control over disbursements can play the dual role of helping monitor and improve performance while making theft and embezzlement more easily detected. Procurement reform, which ADB is already pursuing in a number of DMCs, can reduce costs while simultaneously making it more difficult to perpetrate fraud and abuse.

41. Another area where significant progress can be made is civil service reform. As ADB's Board paper, *Governance: Sound Development Management* notes, the cumulative effect of poor salaries, low morale and productivity, uncertain prospects for career development, and insufficient linkage of merit to promotion can foster pervasive corruption among public officials.

42. ADB can support a number of initiatives to redress these problems. Measures to strengthen establishment management and control for civil service positions will help ensure that there are no "ghost employees" on the payroll. Efforts to decompress pay scales and improve employment conditions throughout the civil service will lower the incentive for illicit behavior. Initiatives to reduce the number of exemptions and special allowances will make remuneration more transparent. Measures to improve procedures for recruitment and promotion should help avoid abuses of patronage, nepotism, and favoritism, and help to foster the creation of an independent, meritocratic civil service. Efforts to draft and enforce a code of ethics will clarify what is expected of civil servants and ensure adherence to appropriate norms of behavior.

24 Daniel Kaufmann and Paul Siegelbaum. 1996. "Privatization and Corruption in Transition Economies." *Journal of International Affairs* 50 (2): 419–458.



43. Finally, one can improve the efficiency and effectiveness of the public sector while simultaneously reducing opportunities for corruption by narrowing its scope for intervention. Within ministries, agencies, and departments, one of the best approaches is the re-engineering of business processes. As procedures are simplified and streamlined, the need for “speed money” payments to expedite services disappears. At a broader level, deregulation, commercialization, and privatization can, under appropriate circumstances, achieve similar objectives. As the sphere of state activity decreases, then as a general rule the opportunity for soliciting bribes will also go down.

44. Several “good governance” initiatives relating to the legislative and judicial branches can also help in the fight against corruption. One important means to enhance accountability is to strengthen the parliament’s oversight function and improve the capacity of parliamentary institutions, such as supreme audit agencies, to function effectively. Measures for legal and judicial reform, such as efforts to reduce judicial backlogs through alternate dispute resolution techniques, or to improve courtroom management to ensure cases can be tried in a timely fashion, or to enhance the independence and professionalism of the judiciary, will all have positive externalities in the struggle against corruption. The same is true for efforts to reduce critical skill gaps in areas such as accounting and audit.

45. These initiatives are noncontroversial and widely recognized to be the building blocks of solid public sector management. ADB is already pursuing a number of such initiatives within its existing portfolio of loans and TA grants (Box 3). They will serve as the core of the ADB’s anticorruption effort as part of its broader program for strengthening governance and capacity building.

---

**Box 3. Examples of ADB loans and grants for good governance with anticorruption components**

---

**RETA 5688: Regional Long-Term Audit Training Program for Members of the Asian Organization of Supreme Audit Institutions:** This initiative for \$1.0 million was approved by the Board in June 1996. It envisions a 5-year program to strengthen regional training programs for supreme audit institutions and to upgrade the training and technical audit skills of individual audit institutions.

**TA 2186: Strengthening the Legal Framework for Customs Administration in the People’s Republic of China:** This TA program for \$646,000 was approved by the Board in October 1994. Its objectives were to assist the Customs General Administration (CGA) in (i) proposing new effective legislation and regulations relating to border control of international property rights, antidumping countervailing duties, anticommercial fraud measures, and external auditing; (ii) establishing a legal information system for customs legislation and regulations; and (iii) training for CGA staff in implementing these measures.

**TA 2616: Public Administration Reform in Sri Lanka:** In July 1996, the President approved a grant of \$275,000 to the Government of Sri Lanka to help reverse a lengthy decline in the quality and capability of the public sector. Two of the goals of this initiative were to rationalize public sector cadres and to enhance the accountability of government employees by introducing results-based management systems and procedures.

**Loan 1513: Support for the Public Sector Reform Program in the Republic of the Marshall Islands:** In January 1997, the Board approved a loan of \$12 million to support the implementation of a public sector reform program intended to stabilize the Government’s financial situation, improve the efficiency of its public sector, and enhance its ability to provide an enabling environment for private sector growth. Third tranche conditions in the loan place a premium upon making procedures for issuing business and foreign investment licenses more transparent and predictable. They also provide for the establishment of the Office of the Ombudsman to ensure the fair and independent arbitration of disputes between the Government and public at large.

---

**Objective no. 2: Supporting promising anticorruption efforts on a case-by-case basis and improving the quality of dialogue on governance issues**

---

46. ADB may also be called upon to assist its DMCs in pursuing explicit anticorruption programs. Such assistance could include efforts to develop a national anticorruption strategy; improve the ability of the courts to try corruption cases; respond to requests from legislators and government officials for legal or TA in drafting anticorruption statutes or professional codes of conduct; strengthen the legal mechanisms for review of administrative action, e.g., the creation of an ombudsman or provision for judicial review; or improve the capacity of anticorruption agencies to detect or prosecute illicit behavior.

47. ADB will give careful consideration to any request from a DMC for assistance in developing an anticorruption effort. Since these activities are likely to be politically delicate and require detailed knowledge of the particular circumstances surrounding each case, ADB will provide staff with flexibility and discretion in pursuing such initiatives on a case-by-case basis. ADB assistance should be guided by three principles: (i) the assistance must be requested by the DMC government; (ii) the request must be consistent with ADB's broader country operational strategy and ongoing efforts in the field of governance and capacity building; and (iii) the request should fall in an area where ADB has or can provide relevant expertise.

48. In a similar fashion, ADB will consider supporting regional anticorruption efforts; workshops, seminars, conferences, and training activities; research and publications dealing with anticorruption issues; and possible collaboration with local and international NGOs whose mission or work program advances such initiatives.

49. Staff should exercise caution in addressing several sets of initiatives that will typically remain beyond ADB's scope of involvement. They include efforts to influence the domestic debate within its DMCs regarding a particular anticorruption strategy or set of anticorruption initiatives; anticorruption programs that are highly politicized and targeted at a particular individual or political party; and initiatives that are largely cosmetic in nature and designed to foster the illusion of progress without the substance. ADB should not provide assistance to any anticorruption measure unless there is an understanding with its DMC over the nature and scope of these initiatives and their importance within that country's overall development strategy.

50. ADB has several mechanisms for engaging in dialogue with its DMCs on issues of governance (including corruption), ranging from the country operational strategy and the country assistance program discussions, to country portfolio review missions, to project appraisal, implementation, and review missions. ADB staff charged with country strategy and program formulation, including the drafting of the country strategy and program documents, as well as staff responsible for loan or TA projects, should address corruption in the context of broader governance and capacity-building issues. They should be knowledgeable about issues of corruption and its impact within their particular geographic and/or sectoral sphere of operations. They will use these mechanisms to discuss and recommend ways in which ADB can help advance the principles of sound development management, including measures that would help combat corruption, in any country where corruption affects ADB projects and the country's general prospects for economic growth.

51. The country portfolio review missions and project review missions provide a useful venue for discussing the policies and practices that impede the efficient implementation of ADB projects. Under most circumstances, staff who suspect that corruption may have occurred or be occurring within a given ADB project should follow the procedures outlined in paragraph 64 and report the matter to the Office of the General Auditor (OGA), who will determine the optimal course of action. In rare cases where rapid follow-up actions may be needed, staff can address such issues explicitly with the relevant company, executing agency, or appropriate investigative agencies after clearance from their director and the Office of the General Counsel (OGC). Any discussion with a given firm or government agency should, however, be limited to a specific ADB operation or set of operations.

52. Consistent with the ADB's *Media Guidelines*, the President, vice-presidents, and heads of offices or departments can speak to the press about issues of corruption as they deem necessary in the conduct of ADB operations. Other ADB staff are free to discuss issues of corruption in general terms, provided they follow the procedures prescribed in the *Media Guidelines*. However, they should not speak to the press about either specific examples of corruption among ADB suppliers or in DMCs, or the general level of corruption within a company or nation without previously receiving clearance from the vice-president concerned or, in his or her absence, ADB's chief information officer.

---

**Objective no. 3: Ensuring ADB projects and staff adhere to the highest ethical standards**

---

53. If ADB efforts to reduce illicit behavior between its DMCs and suppliers and contractors are to be credible, it is essential that ADB staff be beyond reproach, and the ADB's internal regulations and procedures support the highest ethical standards. Toward this end, the third pillar of the ADB's anti-corruption policy calls for more robust internal measures to enhance the integrity of ADB operations. These measures will take place along five dimensions: (i) maintaining the integrity of ADB lending and TA operations; (ii) strengthening the ADB's procurement policy; (iii) updating the ADB's Code of Conduct and creating independent internal reporting mechanisms to address allegations of corruption among ADB staff or within ADB operations; (iv) improving the quality of oversight and management of ADB loans and TA grants; and (v) ensuring that all ADB staff are familiar with the anticorruption policy and act in a manner consistent with both the letter and the spirit of this policy.

### **1. Maintaining the integrity of ADB lending and TA operations**

54. If there is credible evidence of corruption in an ADB-financed loan or TA grant, ADB will address the issue in consultation with the relevant country during project review or country portfolio review missions. Breaches of specific loan regulations or covenants could result in a decision by Management to blacklist the firm involved, suspend disbursements, or cancel the loan.

55. In keeping with the evolving practice of IMF and the World Bank, Management and staff will consider issues of corruption more explicitly in the formulation of the country strategy and program. Cases may occur in which corruption has reached such proportions that it poses a significant impediment to the probity of ADB operations or the attainment of a country's fundamental development objectives. Under such circumstances, Management could elect to lower or suspend ADB lending and TA operations to that country after consultation with the country and the Board.

56. Conversely, situations may also exist where a given country has made significant progress in improving the efficiency, effectiveness, and integrity of its public and private sectors. Under such circumstances, Management may elect to accelerate the lending program or provide additional TA resources to ensure sustainability of the reforms.

57. In light of the complex and highly differentiated nature of corruption, it is important that ADB Management and staff be granted some degree of flexibility in dealing with individual cases within the parameters laid out in this policy. While acknowledging the need for fairness and consistency in its operations, and strongly affirming the importance of a "zero tolerance" policy when credible evidence of corruption exists among ADB staff or projects, ADB notes that different types of corruption will require different responses. There is a need for careful judgment based on accurate information and the specifics of the situation. ADB's anticorruption effort will place particular emphasis upon the implementation of practical and cost-effective prevention control measures, in a fashion consistent with the Charter principle of "economy and efficiency."

## 2. Procurement reform

58. An Anticorruption Task Force chaired by the Central Operations Services Office (COSO) was recently convened to examine ADB procurement policy. The Task Force considered various anticorruption measures adopted by the World Bank in July 1996, in which it is required that borrowers, bidders, suppliers, and contractors "observe the highest standard of ethics" during the procurement and execution of contracts.<sup>25</sup> In implementing this approach, the World Bank will

- (i) reject a proposal for an award if it determines that the bidder recommended for the award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (ii) cancel the portion of the loan allocated to a contract for goods or works if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the borrower or a beneficiary of the loan during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to the World Bank to remedy the situation;
- (iii) declare a firm ineligible, either indefinitely or for a stated period, to be awarded a World Bank-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a World Bank-financed contract; and
- (iv) have the right to require that in contracts financed by a World Bank loan a provision be included requiring suppliers and contractors to permit the World Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the World Bank.

<sup>25</sup> R96-112/1 *Proposed Amendments in the Bank's Loan Documents for the Purpose of Making Them More Effective in the Fight Against Fraud and Corruption*, International Bank for Reconstruction and Development, 23 July 1996.

59. Similar provisions were introduced in the World Bank's *Guidelines for Selection and Employment of Consultants*. On 2 September 1997, the World Bank's Board agreed to an amendment to procurement guidelines to accommodate a "no bribery pledge" in the bid form, which can be inserted into World Bank-financed projects at the request of the borrower and will obligate firms to observe local laws with respect to the bribing of government officials.

60. The Task Force considered these and other measures, which were discussed with Management. In line with the recommendation of the Group of Seven industrial nations, and having taken into account the advantages of harmonizing practice among the MDBs with regard to procurement and the engagement of consultants, ADB will introduce anticorruption provisions effectively identical to those adopted by the World Bank for the rejection of proposals, loan cancellation, declaration of ineligibility, and inspection rights, as set forth in the previous page. ADB will also introduce an optional "no bribery pledge" in the bid form that will be similar to that of the World Bank. Following the adoption of the anticorruption policy paper by the Board, changes to this effect will be incorporated in the ADB's *Guidelines for Procurement* and the *Guidelines on the Use of Consultants by the Asian Development Bank and its Borrowers* and submitted to the Board for approval. The text for these changes is provided in Appendix 2. The guidelines will further be supplemented by provisions in the ADB's *Loan Regulations* allowing ADB to cancel loans where there is evidence of corruption or fraud in connection with the award of a contract being financed by ADB.<sup>26</sup> The text of these changes is provided in Appendix 3.

61. In addition to introducing these new measures, existing ADB guidelines will be applied more rigorously and systematically to ensure greater fairness and transparency in the procurement process. Particular attention will be devoted to eliminating delays and requests for extensions in the prequalification, bid evaluation, contract award, advance payment, project start-up, and progress payment phases. Greater effort will also be devoted to scrutinizing the number and scope of change orders, including the introduction of random audits, with the aim of ensuring the appropriateness of such requests. When the contract is to be financed wholly or partly by ADB, the contract documents shall include an undertaking by the contractor that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, will be given or received in connection with the procurement process or in the contract execution.

62. With regard to the ADB's private sector operations, procurement issues are most relevant in the financing of infrastructure projects. In a fashion consistent with the Working Paper, *Review of Private Sector Operations*, sponsors for infrastructure projects must have been selected by the host government in a transparent manner, preferably through competitive bidding. If it is a negotiated project, the engineering, procurement, and construction contract for the project must be competitively bid.

### 3. Updating code of conduct and creating independent internal reporting mechanisms

63. OGC, in consultation with the Budget, Personnel and Management Systems Department (BPMsD), drafted amendments of Section 4 of Administrative Order No. 2.02 to extend its scope to cover matters concerning business affiliations and private activities, financial interests, investments and trading activities, and the disclosure of financial and business interests. The purpose of these

---

<sup>26</sup> OGC 1986. *Ordinary Operations Loan Regulations*. ADB, Manila. OGC. 1982. *Special Operations Loan Regulations*. ADB, Manila.



amendments was to prevent the occurrence of a conflict, or the appearance of such a conflict, among staff members between their personal interests and their duties and responsibilities as staff members. On 28 May 1998, Management endorsed these changes, and Section 4 has now become a comprehensive Code of Conduct applicable to all staff members of ADB.

64. Additional measures are necessary to ensure that the ADB's internal policies and procedures for addressing issues of corrupt or illicit behavior are consistent with those of the other MDBs and evolving best practice. Currently, there are no publicized independent channels whereby incidents of corruption can be reported for investigation. Under this policy, OGA will serve as the initial point of contact for allegations of fraud and corruption in ADB projects or among staff. In consultation with the Strategy and Policy Department (SPD), OGC, BPMsD, COSO, and other relevant departments, OGA will consider appropriate measures to be adopted under this policy to ensure that all ADB staff and projects adhere to the highest standards of ethical conduct.

65. In the event that ADB staff or external parties are not satisfied by OGA's preliminary finding on a particular case, they can bring it to the attention of Management, who can determine if the case should be resubmitted to OGA for further review, sent to an independent investigator or audit firm for examination, or dismissed if no further action is warranted. A subset of potential cases could also qualify for consideration by the Inspection Committee, provided that they met the criteria for inspection outlined in *Establishment of an Inspection Function* and the *Inspection Procedures* approved by the Inspection Committee on 9 October 1996.<sup>27</sup>

#### 4. Improving the quality of oversight

66. ADB will undertake a number of measures to enhance the quality of project monitoring and audit. These measures will improve the overall quality and effectiveness of ADB-financed projects, thereby ensuring the integrity of ADB operations and making corrupt or illicit behavior more difficult to perpetrate and more readily detected should it occur.

67. The capacity of OGA will be strengthened to enable it to address anticorruption issues effectively. Specialized training in forensic accounting and other investigative techniques will be provided, and be extended to select financial analysts and project implementation officers. Additional staff with specific skills in these areas will be recruited. Ongoing OGA efforts to streamline internal work procedures to free up greater resources for audits of high-risk and high-impact areas will continue. OGA will devote more time to conducting audits of project procurement-related activities, which will help prevent and detect corruption or other forms of fraud. In collaboration with supreme audit institutions in the ADB's DMCs, OGA will also begin a series of random audits of ADB projects to monitor financial compliance and physical progress. OGA will strengthen its exchange of information with supreme audit institutions in ADB DMCs, and—working in collaboration with other ADB departments—it will play an active role in assessing the need to upgrade the audit capability of such institutions. OGA will also consider ways in which project audit reports can be made more accessible and user-friendly to operations staff. The effectiveness of these measures will be evaluated after the first year and additional steps will be considered as needed.

<sup>27</sup> Doc. R225-95, *Establishment of an Inspection Function*. 10 November. Since many areas where corruption is most likely to occur (such as procurement or the selection of consultants) fall beyond ADB Inspection Committee's mandate, staff anticipate that relatively few cases of alleged corruption are likely to be brought before the Committee.

68. In the context of the recommendations of the Task Force on Improving Project Quality, more resources are already being made available to improve the frequency, duration, and quality of project administration missions.<sup>28</sup> Care will be taken to broaden the technical expertise of these missions and to ensure that staff with relevant qualifications participate, particularly in the financial, managerial, and policy areas. Although it may not be possible to upgrade the quality of supervision for all projects across the board, additional resources will be directed toward upgrading the supervision of projects that are particularly at risk and to initiating a program of random audits to monitor project implementation.<sup>29</sup>

69. The relevant sections in the *Project Administration Instructions* and the *Loan Disbursement Handbook* will be revised to require that qualified accountant(s) be recruited by the executing or implementing agency and that robust internal control systems and accounting systems be in place for a project before loan disbursement can be made. Consideration will be given to designing and utilizing appropriate efficiency indicators to monitor financial and physical progress on a quarterly basis, and any variances between targeted efficiency performance and actual performance must be justified. The quality of the ADB's management information systems will be enhanced to provide managers with more timely information for monitoring project processing, loan administration, and the status of mission budget utilization.

70. When there is compelling evidence that corrupt or illicit activities have hampered the effectiveness of ADB projects or lowered their rate of return, this problem should be explicitly noted in ADB documentation, including project supervisory reports, project completion reports, project evaluation reports, performance audit reports, and other relevant documents so that appropriate remedial action can be considered. Managers and staff should avoid using opaque or euphemistic language that may obscure the nature of the problem.<sup>30</sup>

## 5. Advancing staff awareness

71. These measures will be ineffective if ADB staff are unfamiliar with the provisions of ADB's Anticorruption Policy and Code of Conduct or fail to exercise due diligence in the performance of their duties. While it is not the intention of this policy to turn ADB staff into "police officers," or to make the objective of reducing corruption paramount over other development goals, all departments and staff have a compelling obligation to ensure the integrity of ADB operations within their respective areas of responsibility. ADB staff will be required to familiarize themselves with the content of this policy and staff guidelines, and be prepared to respond appropriately as required.

72. The integrity of ADB staff is one of the institution's greatest assets, and staff violations of the ADB's Code of Conduct or other relevant guidelines will be dealt with severely. Any allegation of corrupt or illicit behavior by ADB staff should be turned over to OGA, who—in conjunction with the relevant ADB departments—will determine the credibility of the accusations and the need for further investigation. Credible claims will be investigated promptly, thoroughly, and confidentially by OGA and BPMsD who can draw upon additional expertise within or outside of ADB as needed. In

---

28 ADB. 1995. *Report of the Task Force on Improving Project Quality*. Manila, pp. 22–26.

29 Guidelines will be issued for implementation of the proposed Anticorruption Policy. Prior to this, staff will examine the ways in which ADB operations can be streamlined and cost-effective measures for strengthening project monitoring and supervision can be introduced.

30 For an excellent example of how the topic of corruption can be dealt with candidly yet diplomatically in Bank documents, see Post-Evaluation Office. 1997. *Special Study on Issues Pertaining to the Engagement of Consultants in Bank Loan Projects and Their Effect on Project Performance*. ADB, Manila.

accordance with the disciplinary procedures outlined in Administrative Order No. 2.04, staff found guilty of such behavior will be subject to a number of sanctions, including reassignment, demotion, suspension without pay, restitution and/or forfeiture of pay, termination, and summary dismissal.<sup>31</sup> These sanctions will apply equally to situations in which staff improperly and unlawfully enrich themselves and/or those close to them, and circumstances in which they induce others to do so.

73. To advance staff awareness, SPD, OGC, OGA, and BPMSD will collaborate in producing a series of internal training workshops and seminars to inform staff about ADB's policy and to address the issues and options involved in assisting the efforts of DMC governments, suppliers, and contractors to combat corruption.

---

<sup>31</sup> Section 5 of Administrative Order No. 2.04 provides for appeals procedures to the Appeals Committee and ultimately to the Administrative Tribunal.



## VI. CONCLUSIONS AND RECOMMENDATIONS

74. This paper recommends a number of concrete measures for establishing ADB's anticorruption policy. These measures can be broken down along three lines: revisions of ADB policy and staff guidelines, new programming and project management initiatives, and internal administrative changes.

75. The following policy recommendations are submitted for consideration and approval by the Board:

- (i) Adopt the approach and recommendations contained within this document as a policy paper and as a Management directive in the form of staff instructions.
- (ii) Approve the revisions to the ADB's guidelines for procurement and on the use of consultants and the proposed amendment to ADB's ordinary and special operations loan regulations as set forth in Appendixes 2 and 3.
- (iii) Consider additional changes in the *Project Administration Instructions* and *Loan Disbursement Handbook* to strengthen financial controls and improve reporting requirements.

76. The paper recommends the following changes in ADB programming and project management:

- (i) Continue to expand ADB's assistance on issues of governance and capacity building, with particular attention to promoting market liberalization and public administration reform.
- (ii) Give increased emphasis to strengthening key institutions for advancing transparency and accountability in the DMCs (such as supreme audit agencies, procurement agencies, regulatory agencies, ombudsman offices, etc.) as part of ADB's broader emphasis upon governance and capacity building.
- (iii) Where appropriate, support regional initiatives and research on advancing accountability and transparency in the Asia and Pacific region through TA grants.
- (iv) Upgrade the quality of supervision during project implementation and strengthen project review missions, with particular emphasis upon those projects most at risk.
- (v) Develop a series of training seminars, workshops, etc., on the ADB's anticorruption policy and how staff can best advance integrity within ADB operations and in collaborative work with the DMCs.
- (vi) Publish a simplified brochure and other information materials describing the ADB's anticorruption policy for public dissemination.

77. Finally, the paper recommends the following administrative changes in ADB operations at the department/office level:

- (i) Enforce current procurement guidelines more rigorously to avoid unnecessary delays, extensions, and excessive change orders.
- (ii) Designate OGA as the initial point of contact for alleged incidents of corruption among

ADB projects and staff, and instruct OGA to work out appropriate procedures for performing this function in consultation with relevant ADB departments.

- (iii) In consultation with BPMSD, consider increasing OGA's staff complement to enable it to better fulfill its responsibilities under this policy.
- (iv) In consultation with BPMSD and COSO, consider cost-effective ways to strengthen project monitoring and supervision, and any additional resources that may be necessary to perform these tasks.
- (v) Direct OGA and BPMSD to collaborate in providing training in forensic accounting and other investigative techniques to select OGA staff, financial analysts, and project implementation officers.
- (vi) Direct OGC and BPMSD to conduct a series of seminars and/or other informational activities to inform ADB staff about the revisions to Administrative Order No. 2.02; Section 4 regarding the staff Code of Conduct, which were endorsed by Management on 28 May 1998.

78. To monitor and coordinate the ADB's efforts with respect to anticorruption initiatives and programming, the departments and offices concerned will be requested to provide SPD, OGA, and OGC (in respect of legal frameworks and legal issues of relevance to other areas of action) with periodic appraisals on ways in which they are implementing the policy's provisions.

79. After Board approval of the ADB's operational policy on anticorruption issues, a Board paper will be circulated in due course analyzing the ADB's experience with the Anticorruption Policy, proposing modifications to the operational approach as necessary, and indicating more specific budgetary and other resource implications.

## VII. APPENDIXES

- 1 Breakdown of Governance and Capacity-Building Initiatives with Anticorruption Elements
- 2 Proposed Revisions to ADB's Guidelines for Procurement Related to Anticorruption
- 3 Proposed Amendment to Ordinary and Special Operations Loan Regulations

## Appendix 1

### Breakdown of Governance and Capacity-Building Initiatives with Strong Anticorruption Elements

Target Entity	Type of Intervention	Example
<b>Executive Branch</b> Civil Service Commission  Ministry of Finance/ Ministry of Development  Various executive branch ministries, agencies, and departments	<ul style="list-style-type: none"> <li>Revise pay and benefits to ensure comparability with alternative employment opportunities</li> <li>Strengthen measures for establishment monitoring and control</li> <li>Develop and widely publicize civil service code of ethics</li> <li>Strengthen management control and information systems</li> <li>Strengthen expenditure monitoring and control</li> <li>Support strengthening procurement guidelines</li> <li>Streamline and reengineer business processes to reduce opportunities for the payment of speed money</li> <li>Institute measures to make the agency/citizen interface more transparent and user-friendly, through name tags, document requirements, posted fee schedules, etc.</li> </ul>	TA 2616 to Sri Lanka for Public Administration Reform  TA 2538 Improved Budget Management in Micronesia  Loan 1506 for India Gujarat Public Sector Resource Management Program  TA 2701 Institutional Strengthening of the National Office for Procurement Evaluation in Viet Nam  TA 2186 Strengthening the Legal Framework for Customs Administration in the People's Republic of China  TA 2459 Technical Assistance to Nepal for Efficiency Enhancement of Customs Operations
<b>Legislative Branch</b> Supreme Audit Agency  Parliamentary research institutions  Ombudsman Office, etc.	<ul style="list-style-type: none"> <li>Enhance capacity and independence of Supreme Audit Agency</li> <li>Strengthen capacity of Parliament to serve independent watchdog function</li> <li>Strengthen access of citizens for independent redress of grievances</li> </ul>	RETA 5688 Regional Long-Term Audit Training Program for Members of the Asian Organization of Supreme Audit Institutions  TA 2463 for Institutional Strengthening of the Office of the Auditor General in Fiji Islands  USAID/CRS Efforts to Strengthen Parliamentary Capacity in Economies in Transition  TA 2599 Civil Service Reform Implementation for Marshall Islands UNDP Project on Policy Coordination and Governance in the South Pacific
<b>Judicial Branch</b> Reducing judicial backlog  Strengthening primary institutions: the judiciary and Ministry of Justice  Strengthening secondary institutions: law schools and local legal research	<ul style="list-style-type: none"> <li>Develop mechanisms for alternative dispute resolution</li> <li>Support continuing education for judges and lawyers</li> <li>Introduce updated court management and information systems</li> </ul>	TA 2521 for Alternative Dispute Resolution in India  TA 2727 Restructuring and Capacity Building in Mongolia's Ministry of Justice
<b>Civil Society</b> Business-government councils	<ul style="list-style-type: none"> <li>Provide feedback loops between business and government on general good governance issues</li> </ul>	

## Appendix 2

### Proposed Revisions to ADB's Guidelines for Procurement Related to Anticorruption<sup>38</sup>

In keeping with evolving best practice among multilateral development banks, Sections 2.14, 2.15, and 2.16 of ADB's *Guidelines for Procurement* will be modified as follows:

#### Fraud and Corruption

2.14 It is the ADB's policy to require that borrowers (including beneficiaries of ADB loans) as well as bidders/suppliers/contractors under ADB-financed contracts observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of any thing of value to influence the action of any such official in the procurement process or in contract execution; and
  - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the borrower, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, noncompetitive levels and to deprive the borrower of the benefits of free and open competition;
- (b) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contracts in question;
- (c) will cancel the portion of the loan allocated to a contract for goods or works if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the borrower or of a beneficiary of the loan during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;
- (d) will declare a firm ineligible, either indefinitely or for a stated period, to be awarded an ADB-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, an ADB-financed contract; and
- (e) will have the right to require that, in contracts financed by an ADB loan, a provision be included requiring suppliers and contractors to permit ADB to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by ADB.

---

38 Similar provisions will be inserted into ADB's *Guidelines on the Use of Consultants by the Asian Development Bank and its Borrowers*.

2.15 With the specific agreement of ADB, a borrower may introduce, into bid forms for large contracts financed by ADB, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the bidding documents. A footnote should also be inserted into documents where such a pledge has been inserted, noting that it has been placed there at the request of the borrower.

2.16 When the contract is to be financed wholly or partly by ADB the contract documents shall include an undertaking by the contractor that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, have been given or received in connection with the procurement process or in the contract execution.

## Appendix 3

### Proposed Amendment to the Ordinary and Special Operations Loan Regulations

Section 8.03 of the Ordinary Operations Loan Regulations and the Special Operations Loan Regulations will be amended to read as follows. The relevant revisions have been underlined.

Section 8.03. **Cancellation by ADB.** If (i) the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the Loan for a continuous period of thirty (30) days, or (ii) at any time ADB determines, after consultation with the Borrower, that any amount of the Loan will not be required for the purposes of the Project, or (iii) at any time ADB determines, with respect to any contract to be financed out of the proceeds of the Loan, that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan during the procurement/consultant selection or the execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, or (iv) at any time ADB determines that the procurement of any contract to be financed out of the proceeds of the Loan is inconsistent with the procedures set forth or referred to in the Loan Agreement, or (v) by the date specified in the Loan Agreement as the closing date for withdrawals an amount of the Loan shall remain unwithdrawn from the Loan Account, ADB may by notice to the Borrower and the Guarantor, if any, terminate the right of the Borrower to make withdrawals with respect to such amount or contract. Upon giving of such notice, the amount of the Loan or the relevant portion thereof shall be canceled.