

# Foreword

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

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

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

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

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

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

# Acknowledgments

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

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

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

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

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

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# Abbreviations

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

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

# Executive Summary

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

## Defining Conflict of Interest

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

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

## Establishing Frameworks for Managing Conflict of Interest

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

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

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

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

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

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

## **Managing Conflict of Interest: Prevention and Enforcement Tools**

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

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

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

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

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

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

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

## Codes of Conduct in the Public and Private Sectors

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

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

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

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

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

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

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

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

## Conclusions and Recommendations

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

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

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

# Keynote Addresses

# Opening Address

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Welcome Remarks

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Taufiequrachman Ruki  
Chairman, Corruption Eradication Commission (KPK)

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

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

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

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

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

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

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

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

# Welcome Remarks

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Arjun Thapan

Director General, Southeast Asia Department, Asian Development Bank

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Remarks at the Opening Dinner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Closing Remarks

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Hidayat Nur Wahid

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

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

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

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

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

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

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

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

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

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

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

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

