

ADB-OECD Anti-Corruption Initiative for Asia-Pacific
Combating Corruption In the New Millennium

4th ADB-OECD Conference on Combating Corruption
in the Asia-Pacific Region

and

4th Steering Group Meeting of the ADB-OECD Anti-Corruption
Action Plan for Asia and the Pacific

Hotel Shangri-La
Kuala Lumpur, Malaysia
1-5 December 2003

DRAFT AGENDA

Organized by

THE SECRETARIAT OF THE ADB-OECD ANTI-CORRUPTION INITIATIVE FOR ASIA-PACIFIC

in cooperation with the

ANTI-CORRUPTION AGENCY OF MALAYSIA

1-2 December 2003

4th Steering Group Meeting of the ADB-OECD Anti-Corruption Action Plan for Asia and the Pacific

(entry Sabah room):

Registration

Participants receive basic orientation and documentation, including background papers, list of participants, conference badges etc.

(ECC1 room)

Briefing for chairs, facilitators and speakers

Introduction of chairs, facilitators and speakers, and final information with regard to relevant organisational arrangements

Details of the agenda for the meeting are being finalized.

3 - 5 December 2003

4th ADB-OECD Conference on Combating Corruption in the Asia-Pacific Region

3 December 2003

09h00 – 10h00
(Sabah room)

Opening ceremony

Welcoming remarks: - Senior representative, ADB
- Mr. Richard Hecklinger, Deputy Secretary-General, OECD

Keynote address: - The Prime Minister of Malaysia

10h00 – 10h30

COFFEE BREAK

10h30 – 12h30
(Sabah room)

Evaluating past and designing future anti-corruption work in Asia and the Pacific

Speakers: - ADB/OECD Secretariat: *Comparative analysis from stocktaking reports and project evaluation*
- Government of Malaysia: *Overview of Malaysia's AC strategy and its efforts to implement the Action Plan*
- Report from 2 other endorsing countries on their anti-corruption strategy under the Action Plan

Chair: - ADB/OECD Secretariat

For anti-corruption measures to be efficient and purposeful they need to be designed against the background of past efforts, on-going reform and a country's general policy orientation; expected results from these efforts should be measurable against pre-defined set benchmarks. In this spirit, and in accordance with the Action Plan's implementation mechanism, endorsing countries have started to undertake a regular review of their progress made in implementing priority areas for reform selected under the Action Plan.

During this session, Action Plan countries will discuss the results from this assessment, share lessons and good practices identified in this context, and highlight areas under prevention, detection and prosecution where capacity building is required.

12h30 – 14h00

LUNCH

14h00 – 17h00
(Kedah, Selangor 1, and Perak rooms)

Capacity building workshops 1: Preventing corruption

(3 hours are foreseen for these sessions. Coffee and soft drinks will be available outside the conference rooms between 15h00 and 16h00)

The review exercise undertaken by endorsing countries has highlighted two important preventive measures where further capacity building is particularly required. This includes on one hand the development and implementation of comprehensive conflict of interest policies ensuring that the integrity of public officials is not compromised by their potential involvement in private sector activities.

On the other hand, and in light of recent events, Asian countries have become increasingly concerned with ensuring that local enterprises, including subsidiaries of foreign companies, do not make use of gaps in their accounting rules to hide bribes that might have been paid in order to obtain or retain business.

References in the Action Plan:

Pillar I: The need to “establish ethical and administrative codes of conduct that proscribe conflicts of interest [...] and establish prohibitions or restrictions governing conflicts of interest.”

Pillar II: Countries are committed to “promote corporate responsibility and accountability [...] through the provision of adequate internal company controls [...] the protection of employees reporting corruption, and staff training;” and “the existence and thorough implementation of legislation requiring transparent company accounts [...]”.

WORKSHOP 1 A: Conflict of interests

Conflicts of interest both in the public and private sectors have become a major matter of public concern world-wide. Especially with new forms of relationships developing between the public and private or non-profit sectors, giving rise for example to increasingly close forms of collaboration such as public/private partnerships, self-regulation, interchanges of personnel and sponsorships, and the emerging of new forms of employment in the public sector with a potential to change traditional employment obligations and loyalties, growing public concern has put pressure on governments to ensure that the integrity of official decision-making is not compromised.

While conflicts of interest are not *ipso facto* corruption, there is increasing recognition that, if inadequately managed, they can result in corruption. The proper objective of an effective conflict of interest policy is not the simple prohibition of all private-capacity interests on the part of public officials, even if such an approach were conceivable. The immediate objective should be to maintain the integrity of official policy and administrative decisions and of public management generally, recognising that an unresolved conflict of interest may result in abuse of public office.

This session aims to identify the mechanisms that need to be in place to achieve this objective, i.e. effective processes for identifying risk and dealing with emergent conflicts of interest, appropriate external and internal accountability mechanisms, and management approaches – including sanctions – that aim to ensure that public officials take personal responsibility for

complying with both the letter and the spirit of such standards. The group will work with relevant existing international standards, in particular the recently adopted "OECD Guidelines on Managing Conflicts of Interest in the Public Sector", to identify elements of a purposeful conflict of interests policy and its effective implementation.

(Workshop coordinator: Mr. Janos Bertok, OECD Governance and the Role of State Division)

WORKSHOP 1 B: Bribery and Fraud Prevention Programs in the Private Sector

In the past, and certain business cultures, fraud and bribery were considered as essential for effective commercial operations. However, prominent scandals such as Enron, WorldCom and a host of others, have proved that this attitude is no longer appropriate nor bears it any economic interest for the private sector. Consequently, the attention of policy makers and business executives alike has been drawn to the necessity to develop and implement formal corporate bribery fraud prevention programs and strategies.

Effective bribery and fraud prevention is based on the actions of the board, the audit committee of the board, and the entire corporate management team and has the double effect to prevent fraud and bribery and to increase rapidity in detecting such practices should they nevertheless occur.

This workshop, by making use of existing international standards and guidelines, and concrete examples from the private sector, will present an approach to developing the type of best of breed program to prevent fraud and bribery in business transactions, emphasizing in particular the role of internal fraud examiners, auditors and board oversight committees.

(Workshop coordinator: Mr. Steve Olson, Pacific Basin Economic Council)

19h00

DINNER

Dinner talk by Government of Malaysia, Speaker: Hon. Dato' Seri Utama Dr. Rais Yatim, Minister in the Prime Minister's Department

4 December 2003

09h00 – 12h00

(Kedah, Selangor 1, and Perak rooms)

Capacity building workshops 2: Detecting corruption

(3 hours are foreseen for these sessions. Coffee and soft drinks will be available outside the conference rooms between 11h00 and 12h00)

Detecting corruption is a complex undertaking as techniques to hide the crime and its proceeds become more sophisticated by the day. Asian countries are often confronted with a lack of resources for effective techniques that contribute to detecting corruption where it occurs.

In this context, the Action Plan countries' review exercise shows that there is a strong need to develop policies that allow to better protect and therefore make full use of information coming from within the system itself, e.g. from employees that detect or have a suspicion about wrongdoing on the job. The review exercise also indicates a need for Asia-Pacific countries to develop particular knowledge and techniques to detect corruption in selected sectors where corruption continues to pose a serious problem, in specific the sector of public procurement.

References in the Action Plan:

Pillar I: The necessity to take "measures which ensure that officials report acts of corruption and which protect the safety and professional status of those who do".

Pillar II: Countries are committed to "review [...] laws and regulations governing public licenses, government procurement contracts or other public undertakings so that access to public sector contracts could be denied as sanction for bribery of public officials".

Pillar III: The need "to support NGOs that promote integrity and combat corruption by [...] documenting and reporting cases of corruption", and strengthens the importance of "protection of whistle-blowers".

WORKSHOP 2 A: Drafting and implementing of whistleblower protection laws

Whistle blowing, the act of raising concerns about misconduct within an organisation, is a key element of any governance system's transparency and accountability framework. Every year, employees, managers, corporate executive officers and public officials witness wrongdoing on the job. Some speak out and their action may ultimately save ethics and resources. Similarly, many acts of corruption are discovered thanks to hints from whistleblowers. But rather than receiving praise for their integrity, whistleblowers often suffer retaliations and are targeted for harassment, intimidation, demotion, and dismissal. There is a growing awareness today about the need to set up specific guidelines and facilitate institutional improvements with the aim to provide legal protection and support to those willing to blow the whistle on corruption and other wrong-doings that they might detect in their working environment.

Many countries offer general protection mainly in their public service framework, where the most commonly provided safeguards are legal protection and anonymity. In certain countries, citizens have access to services, such as complaint procedures, an Ombudsman or Inspector General, and help desks or special telephone lines. In addition, a comprehensive whistleblower protection policy needs to consider mechanisms to protect employees in the private sector where a different regulatory framework applies, and the establishment of sanctions for those that harass or intimidate potential whistleblowers.

This session will aim to identify the key elements to be included in any meaningful whistleblower protection law, aiming both at the public and private sectors, and to draw guidelines for ensuring such policies' effective enforcement.

(Workshop coordinator: t.b.d.)

WORKSHOP 2 B: Techniques for detecting corruption in public procurement

In most, if not all countries of the world, public procurement continues to be associated with an important risk of corruption. This despite the fact that most countries have adopted rather well defined rules and procedures in this regard, i.e. that embody principles of fair competition, transparency and efficiency. Obviously, rules and regulations are only part of the solution. The real challenge lies in the implementation of these, and in generating respect for their underlying principles in the business community as well as public service. Detecting and curbing corruption in public procurement requires therefore efficient controls and educational measures towards all actors involved in the transaction, underpinned by strong political will.

This session will discuss methods to understand and detect specific corruption practices in public procurement, and identify the traces these practices are likely to leave. This system, which relies on a practice of record-keeping, aims to contribute both to the *prevention* of corruption by helping to understand the specificities of corruption in procurement in a given country and sector, and to the *detection* of patterns and actual acts of corruption in procurement. It should result in the development of a meaningful and appropriate audit and investigation line to counter corruption in public procurement.

(Workshop coordinator: ADB)

12h30 – 14h00

LUNCH

14h00 – 17h00

(Kedah, Selangor 1, and Perak rooms)

Capacity building workshops 3: Prosecution of corruption

(3 hours are foreseen for these sessions. Coffee and soft drinks will be available outside the conference rooms between 15h00 and 16h00)

While most countries in Asia and the Pacific do have an adequate legislative framework as a basis for investigation and prosecution of corruption, enforcement of these laws continues to pose challenges. This is often due to lack of capacity and appropriate state of the art investigation tools, insufficient prosecution standards, and weak coordination between law enforcement agencies and slow cooperation with foreign jurisdictions. Improving techniques for investigating complex international financial transactions that might reveal acts of corruption or be used to hide the proceeds of corruption, and speedy cooperation between judicial authorities in different countries are therefore crucial for the effective investigation and prosecution of

corruption.

References in the Action Plan:

Pillar II: Strengthen “investigative and prosecutorial capacities by fostering inter-agency cooperation, ensuring that investigation and prosecution [...] have effective means for gathering evidence [...], and by providing appropriate training and financial resources.”

Pillar II: Strengthen “bi- and multilateral co-operation in investigation and other legal proceedings by developing systems which [...] enhance (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) cooperation in searching and discovering of forfeitable assets as well as prompt international seizure and repatriation of these forfeitable assets.”

WORKSHOP 3 A: Developing expertise in forensic accounting to help investigate and prosecute bribery

Bribery, fraud, graft and money laundering are among the hardest crimes to prosecute, and as fraud and corruption perpetrators become more ingenious, the expertise required to unravel their schemes increases. Effective investigation and prosecution of such types of crime today is literally impossible without an in-depth understanding of accounting, finance, and banking procedures and it is therefore key to provide law enforcement with the proper weapons and techniques to keep up with the evolving sophistication of financial crimes.

This session will identify the necessary technical tools and skills required to keep up with the fast evolving techniques used by financial criminal networks. Particular emphasis will be put on the technique of forensic accounting as an important tool to gather documentary evidence in support of a prosecution for fraud, bribery and other types of financial crime. In this context, the session will also discuss the need and aim to establish guidelines to improve cooperation between the different actors involved in this phase of the investigation and prosecution line, including public services and non-governmental bodies such as financial institutions, trade associations, regulatory bodies, and international specialised institutions.

(Workshop coordinator: ACA Malaysia)

WORKSHOP 3 B: Improving procedures to obtain Mutual Legal Assistance and repatriation of proceeds of corruption

Making use of international financial networks and hiding from prosecution in foreign jurisdictions is a growing practice of criminals, and those engaged in acts of corruption are no exception to this. Criminals have access to enhanced methods of travel and communication through which they can flee from detection and prosecution and conceal the evidence of and profits from their crimes. As criminals continue to perfect their techniques and are quick to take advantage of national boundaries to shield themselves from justice, law enforcement authorities encounter growing difficulties in succeeding in the prosecution of this type of crime.

Mutual legal assistance is an important mechanism through which the international community can more effectively trace and suppress transnational crimes such as international corruption and bribery. Efficient cooperation between authorities from different jurisdiction plays a decisive role for prosecutors when investigating into corruption. International treaties and bilateral agreements or exchanges of letters ensuring the provision of legal assistance in criminal matters between two or more countries, as well as spontaneous provision of information, or informal channels of contact between judicial authorities are keywords in this context.

By working through a hypothetical case study, the session will aim to identify the different formal and informal procedures and processes that need to be followed to provide or request and obtain international legal assistance in corruption matters, obstacles and difficulties one could expect to encounter when dealing with such cases, and possible ways to avoid these.

(Workshop coordinators: Mr. Bernard Bertossa, Prosecutor General, Switzerland)

19h00

DINNER

5 December 2003

09h00 – 10h30
(Sabah room)

Workshop reporting

Speakers: Chairs of the 6 workshops

Chair: ADB/OECD Secretariat

The final session will collect and discuss the knowledge gained during the 6 capacity building workshops held over the previous 1 ½ days on issues related to the prevention, detection and prosecution of corruption. In particular, workshop chairs are expected to propose a set of recommendations and good practices identified during the discussions in his/her group. Upon discussion of these in plenary, these will be included in the conference conclusions and recommendations for anti-corruption work in Asia and the Pacific to be presented in the final session.

10h30 – 11h00

COFFEE BREAK

11h00 – 12h00
(Sabah room)

Conference recommendations and closing

Speakers: Senior official Malaysia
Senior official ADB
Senior official OECD

LIST OF CONTACTS

Anti-Corruption Agency of Malaysia
Headquarters, Level 7, Block D6
Federal Government Administration Centre
Kuala Lumpur, Malaysia

Mr. Dato' Zulkipli bin Mat Noor
Director General
Anti-Corruption Agency of Malaysia

Tel: +603-8886 7000/8888 9563
Fax: +603-8888 9562
Email: kp@bpr.gov.my

Mr. Haji Mustafar Haji Ali
Director
Research and Planning Division

Tel: +603-8886 7017/8888 9564
Fax: +603-8888 9568
Email: mustafar@bpr.gov.my and
bprupkd@po.jaring.my

Ms. Jamilah Hanafi
Assistant Director
International Relations Branch
Research and Planning Division

Tel: +603-8886 7129
Fax: +603-8888 9568
Email: jamilah@bpr.gov.my

Asian Development Bank
Regional and Sustainable Development Department
PO Box 789
Manila, Philippines 0980

Mr. Jak Jabes
Director
Governance and Regional Cooperation Division
Tel: +63-2-632 5749
Fax: +63-2-636 2193
Email: jjabes@adb.org

Ms. Marilyn Pizarro
Consultant
Governance and Regional Cooperation Division
Tel: +63-2-632 5917
Fax: +63-2-636 2193
Email: mpizarro@adb.org

Organisation for Economic Co-operation and Development
Directorate for Financial, Fiscal and Enterprise Affairs
2, rue André Pascal
F-75775 Paris Cedex 16, France

Mr. Frédéric WEHRLE
Co-ordinator Anti-Corruption Initiatives
Anti-Corruption Division
Tel: +33-1-4524 1855
Fax: +33-1-4430 6307
Email: frederic.wehrle@oecd.org

Ms. Gretta FENNER
Manager Anti-Corruption Initiative for Asia-Pacific
Anti-Corruption Division
Tel: +41.43.3001160 and +33-1-4524 7601
Fax: +33-1-4430 6307
Email: gretta.fenner@oecd.org