



## Report to the President

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January 2006

# INTEGRITY DIVISION: 2005 ANNUAL REPORT

Office of the Auditor General

Asian Development Bank

## ABBREVIATIONS

|         |   |  |
|---------|---|--|
| ADB     | - | Asian Development Bank   |
| BPHR    | - | Human Resources Division   |
| BPMSD   | - | Budget, Personnel and Management Systems Department  |
| COSO    | - | Central Operations Services Office   |
| CV      | - | curriculum vitae   |
| DICON   | - | Data on Individual Consultants   |
| DMC     | - | developing member country  |
| EA      | - | executing agency   |
| FIDIC   | - | Fédération Internationale des Ingénieurs-Conseils (International Federation of Consulting Engineers) |
| ICC-FIB | - | International Chamber of Commerce Financial Investigation Bureaus                                    |
| IS      | - | international shopping   |
| MDB     | - | multilateral development bank  |
| NGO     | - | nongovernmental organization   |
| OAG     | - | Office of the Auditor General  |
| OAGI    | - | Integrity Division   |
| PHP     | - | Philippines pesos  |
| PMU     | - | project monitoring unit  |
| PPRA    | - | Project Procurement-related Audit  |
| RCCC    | - | Royal Commission For Corruption Control  |
| TA      | - | technical assistance   |
| UNCAC   | - | United Nations Convention against Corruption   |
| VAT     | - | value added tax  |

## NOTE

In this report, \$ refers to United States dollars.

## CONTENTS

|  | <b>Page</b> |
|--|-------------|
| I. MISSION   | 1           |
| II. 2005 ACCOMPLISHMENTS                               | 1           |
| A. Allegations of Fraud and Corruption                 | 1           |
| B. Project Procurement-related Activities              | 6           |
| C. Education and Awareness                             | 6           |
| D. Strengthening Key Institutions                      | 8           |
| E. Enhancing OAGI Capacity                             | 8           |
| F. Revision of Investigation Guidelines and Procedures | 10          |
| G. Publication of Information                          | 10          |
| III. CHALLENGES  | 12          |
| A. Workload and Resources                              | 12          |
| B. Corrupt Environments                                | 14          |
| C. Cross Debarment and Criminal Referrals              | 15          |
| D. Debarment List Disclosure Policy                    | 16          |

## APPENDIXES

1. Status of Reported Fraud and Corruption Allegations as of 31 December 2005
2. Significant Cases Involving ADB-Financed Activity Concluded in 2005
3. Significant Cases Involving ADB Staff Concluded in 2005
4. Project Procurement Audits Conducted in 2005
5. How to Report Fraud and Corruption

## I. MISSION

1. The Asian Development Bank's (ADB) Anticorruption Policy (the Policy), approved in July 1998,<sup>1</sup> designates the Office of the Auditor General (OAG) as the initial point of contact for allegations of fraud or corruption among ADB-financed projects or ADB staff. ADB established the Anticorruption Unit in OAG in September 1999 to handle all matters related to such allegations. Effective 1 January 2005, the Anticorruption Unit became the Integrity Division (OAGI).

2. Under the Policy, OAG (through OAGI) has several responsibilities to fulfill the Policy's objective to ensure that ADB-financed activities and ADB staff adhere to the highest standards of ethical conduct. OAGI fulfills these responsibilities through

- screening allegations of fraud or corruption and assessing the need for further investigation;
- investigating allegations;
- conducting project procurement-related audits (PPRAs) to help prevent and detect fraud or corruption; and
- collaborating with the Budget, Personnel and Management Systems Department (BPMSD) to provide fraud and corruption awareness training for ADB staff.

3. Pursuant to the Policy, OAGI contributes to strengthening key institutions, such as supreme audit institutions and executing agencies (EAs), to advance transparency in developing member countries (DMCs). In addition, OAGI works to strengthen its own capacity to address integrity issues and fulfill its mission effectively. OAGI also publishes information about the Policy and ADB's measures to fight corruption.

## II. 2005 ACCOMPLISHMENTS

### A. Allegations of Fraud and Corruption

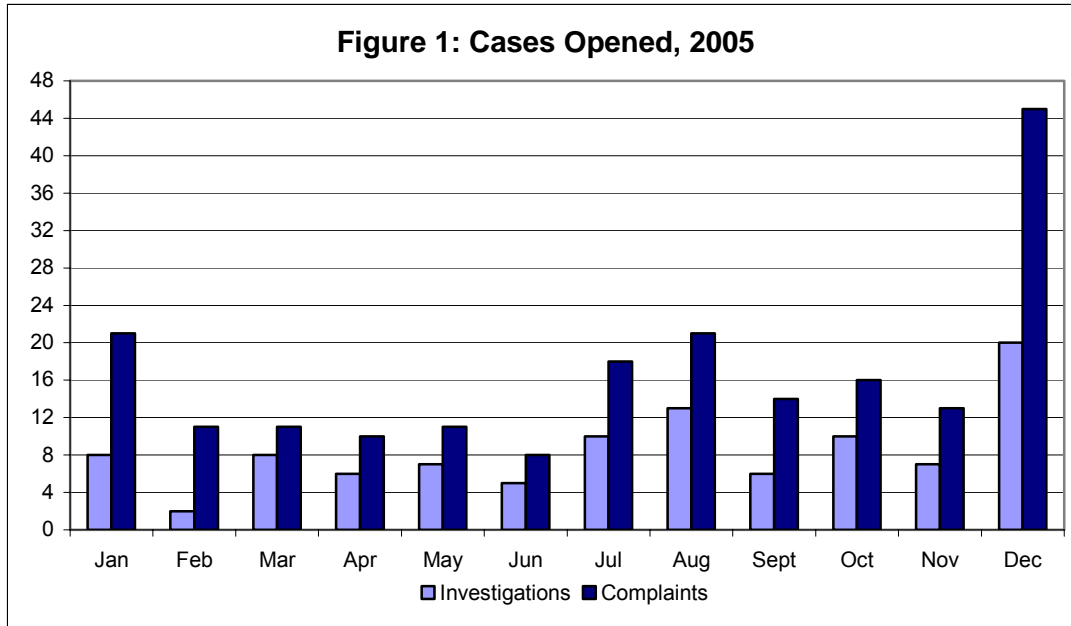
#### 1. Investigations

4. In 2005, OAGI received 199 complaints (concerns or allegations of fraud or corruption related to ADB-financed activity or staff). After screening,<sup>2</sup> OAGI opened 102 investigations and closed 59 complaints after concluding further investigation was not warranted. As of 31 December 2005, OAGI was still screening 38 complaints received in 2005. Figure 1 illustrates the number of complaints and investigations OAGI opened during each month this year. OAGI has opened a total of 565 investigations since ADB adopted the Policy in 1998. Appendix 1 provides a summary of the status of allegations received since the Policy was adopted.

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<sup>1</sup> Board Paper R89-98, 2 July 1998, as clarified by Board Paper 185-04, 11 November 2004.

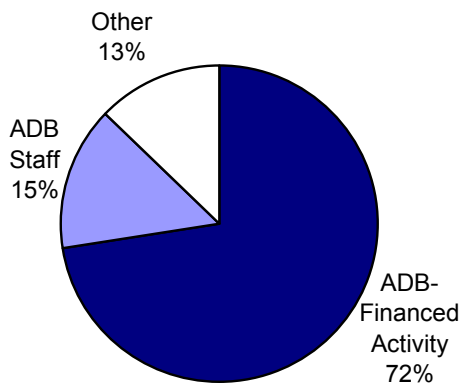
<sup>2</sup> OAGI screens complaints to determine whether the complaint is relevant to OAGI's mandate (i.e., related to ADB-financed activities or staff), credible, verifiable, and material. Complaints meeting these criteria are converted into investigations to review the concerns or allegations further.



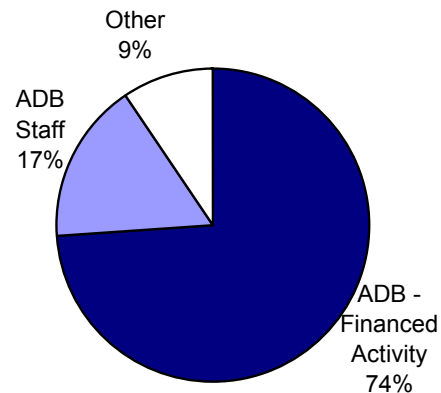
5. During 2005, OAGI presented investigative findings on 31 cases to ADB's Integrity Oversight Committee.<sup>3</sup> Appendix 2 provides a summary of these cases. OAGI referred 11 cases (involving 11 staff members) to BPMSD for disciplinary action.<sup>4</sup> Appendix 3 provides a summary of cases involving ADB staff completed this year. OAGI closed 94 cases in 2005, including 55 for which OAGI did not find support for the allegation or evidence sufficient to demonstrate that the Policy was violated.

6. Investigations involve allegations related to ADB-financed activity, ADB staff, and other matters (e.g., general ADB administration or former ADB staff). Figure 2 shows the percentage of investigations in each category in 2005, and Figure 3 shows the data since ADB adopted the Policy. Investigations are classified in a single primary category although they may involve multiple allegations in different categories.

**Figure 2: Case Subject, 2005**  
(% of Investigations)



**Figure 3: Case Subject, 1998-2005**  
(% of Investigations)



<sup>3</sup> Cases include investigations opened in earlier years but completed in 2005.

<sup>4</sup> BPMSD is responsible for all disciplinary actions related to ADB staff.

7. Cases related to ADB staff members often concern abuse of ADB benefits, but may also involve other allegations under the Policy. This year, OAGI continued to investigate cases arising from an OAGI investigation begun in 2003 to review a sample of staff compliance with ADB's rental subsidy rules. As of 31 December 2005, nine staff members had separated from ADB as a result of the OAGI rental subsidy investigations conducted since 2003. OAGI intends to conduct an investigative audit in 2006 focusing on rental subsidy, dependency allowance, and educational benefits.

8. OAGI engages investigating firms on a retainer basis to assist in investigating allegations of fraud and corruption. This arrangement allows OAGI to issue work orders for investigations on a case-by-case basis, pursuant to ADB's Integrity Guidelines and Procedures. OAGI, through the Auditor General, issued a total of 24 work orders to firms contracted on a retainer basis this year compared with 15 work orders issued in 2004.

9. OAGI frequently conducts investigative missions to interview informants, witnesses, and suspects. These missions may include examination of the business operations and financial records of ADB bidders and suppliers, review of bid documents and other fact-finding efforts. In 2005, OAGI completed a total of 10 investigative missions to Afghanistan, Bangladesh, India, Indonesia, Nepal, People's Republic of China (PRC), and Singapore.

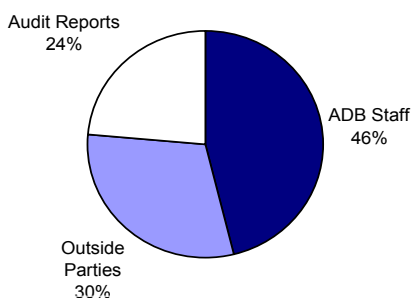
10. OAGI maintains a fraud and corruption-reporting system that includes a discrete telephone line, facsimile machine, and e-mail address to ensure that the identity of the complainant and the information provided to OAGI remains confidential. Information on how to report concerns about potential fraud or corruption in ADB-financed activity or ADB staff is provided in Appendix 5. OAGI operates a secure server and subnetwork (integrated with ADB's administrative network), with its own firewall and encryption capability, to protect sensitive or confidential information. To strictly control access to its records, OAGI maintains a biometric access device for its file room. The fingerprint-reading device strictly limits access to OAGI documents and files to OAGI staff. In 2005, OAGI secured the offices of its entire professional and national officer staff with an enhanced security system requiring personal keycards or biometric access restricted only to OAGI staff.

#### **OAGI Investigative Mission: Melamchi Water Supply Project**

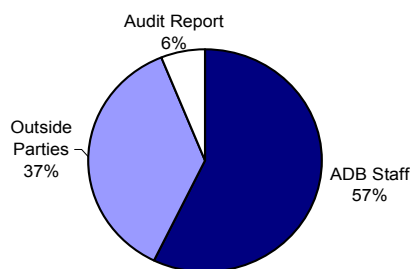
An OAGI investigative mission in May examined the preliminary findings of the Nepalese Royal Commission for Corruption Control (RCCC) on allegations of fraud and corruption related to the ADB-financed Melamchi Water Supply Project. The RCCC had concluded that an inflated project cost estimate resulted in corruption according to Nepal's Corruption Control Act of 2059 and faulted Melamchi officials' actions to obtain a new balance sheet in the name of clarification. OAGI undertook a mission to Kathmandu to interview 37 persons, including government officials, officials of the implementing agency, consultants, contractors, ADB staff, RCCC members, the Commission for the Investigation of Abuse of Authority, the National Vigilance Center, and complainants, and to review bid and other project documents. OAGI determined that the award of the contract was in accordance with ADB's procurement guidelines and the relevant loan documents. OAGI has not found or received any evidence of collusion or other corrupt or fraudulent practice as defined under the Policy among those involved in the bidding process, nor did it find the cost estimate to be inappropriate.

11. Allegations of fraud or corruption are referred to OAGI from ADB staff, external parties, and audit reports (see Figures 4 and 5). Since the Policy was adopted, ADB staff referrals have resulted in 57% of the 565 total investigations. OAGI believes its ongoing efforts to increase staff awareness of the Policy contributes to the high percentage of ADB staff case referrals. However, OAGI recognizes the need to continue its efforts to ensure outside parties are aware of ADB's efforts to fight fraud and corruption through OAGI's work and the Policy. Audit reports (including PPRAs) are increasingly becoming an important source of allegations with 24 case referrals in 2005, compared with one case referral in 2004 and three case referrals in 2003.

**Figure 4: Source of Allegations, 2005**  
(% of Investigations)



**Figure 5: Source of Allegations, 1998-2005**  
(% of Investigations)



## 2. Sanctions

12. OAGI presents investigative findings, recommendations for reinstatement, and requests to close investigations to the Integrity Oversight Committee (formerly the Oversight Committee on Anticorruption) pursuant to the ADB Integrity Guidelines and Procedures (see paragraph 39). Table 1 outlines the cases considered by the Integrity Oversight Committee in 2005 and their decisions. Table 2 indicates sanctions imposed by ADB since adoption of the Policy.

13. The Integrity Oversight Committee determines if firms or individuals involved in ADB-financed activities violated the Policy and may impose sanctions.<sup>5</sup> The Integrity Oversight Committee consists of three members, and three alternate members who fill any vacancies that may occur due to absences or conflict of interest. Members are nominated by the Auditor General and approved by the President annually. The principal director of Central Operations Services Office and an assistant general counsel advise the Integrity Oversight Committee.

<sup>5</sup> Information about ADB's sanction policy, principles and procedures may be found in the Integrity Guidelines and Procedures, available at <http://www.adb.org/Documents/Guidelines/Integrity-Guidelines-Procedures>.

**Table 1: Cases Considered by Integrity Oversight Committee in 2005**

|  |
|--|
| 31 cases to consider OAGI investigative findings   |
| 40 firms debarred for periods ranging from 1 to 7 years                                      |
| 2 firms and 1 individual reprimanded   |
| 22 individuals debarred for periods ranging from 2 to 7 years                                |
| 11 individuals debarred indefinitely   |
| 7 cases to consider reinstatement of eligibility (upon expiry of minimum sanction period)    |
| 8 firms and 3 individuals reinstated or removed from ineligible list                         |
| 1 case to discuss amnesty to of certain entities prepared to cooperate with an investigation |
| 3 cases approved for OAGI to terminate the investigation                                     |

**Table 2: Sanctions (since 1998)**

| <u>As of 31 December 2005</u>                                       | <u>Firms</u> | <u>Individuals</u> |
|---|--------------|--------------------|
| Total Declared Ineligible to Participate in ADB-financed activities | 146          | 148                |
| Number Whose Ineligible Terms Have Been Completed                   | 29           | 17                 |
| Currently Ineligible to Participate in ADB-financed activities      | 117          | 131                |

### 3. Appeals

14. ADB's Integrity Guidelines and Procedures allow individuals and other entities to appeal an Integrity Oversight Committee's decision to the Sanction Appeals Committee (formerly the Review Committee on Anticorruption). Appeals must be based on new information that would have been relevant to the Integrity Oversight Committee's decision and such new information was not known, or could not reasonably have been known to the appellant at the time OAGI sought explanations from it during the investigation. The Sanction Appeals Committee may reduce or lift sanctions as well as require the Integrity Oversight Committee to reconsider a case. The Sanction Appeals Committee is comprised of three vice presidents.

15. This year, the Sanction Appeals Committee considered three cases involving a total of four firms and three individuals. In two cases, the Sanction Appeals Committee confirmed that new information and facts provided by the appellant provided a basis for appeal. The Sanction Appeals Committee reduced the sanctions imposed on one firm from 3 years to 18 months, and on another firm from 7 years to 3½ years. An individual's sanction period was also reduced from indefinitely to 3½ years.

16. For the remaining case, involving two firms and two individuals, the Sanction Appeals Committee determined that there was no basis for appeal. During the course of this unsuccessful appeal, OAGI determined that new misrepresentations had been made by the sanctioned firm in its appeal and recommended to the Integrity Oversight Committee that the sanction be extended a minimum of 3 years (i.e., doubling the original sanction period).

17. In addition, the Auditor General, as Secretariat to the Sanction Appeals Committee, received one appeal in 2005 that was subsequently declined for failure to provide a basis for appeal.

## **B. Project Procurement-related Audits and Other Activities**

18. OAGI conducts project procurement-related audits (PPRAs) to identify and address potential internal control weaknesses that may allow fraud or corruption in ADB-financed projects. The overall objective of these audits is to detect and substantiate any fraudulent and corrupt practices relating to procurement of goods and services through review of a project's procurement and financial management practices. This year, OAGI conducted four PPRAs. Appendix 4 provides summaries of the audits and their recommendations.

19. OAGI intends to conduct five PPRAs in 2006. One professional staff member has been assigned to work primarily on PPRAs in 2006. This specialization will enable OAGI to conduct PPRAs more efficiently, refine its planning and procedures for such audits, and enhance OAGI capacity through the development of OAGI staff with specialized skills.

20. OAGI began a forensic review of audited financial statements of all ADB-financed projects in the People's Republic of China. In February, OAGI briefed the Director General and the Deputy Director General of the China National Audit Office on the forensic review and identified opportunities for closer cooperation in preventing and detecting fraud and corruption in ADB-financed projects. As a result of the forensic review of the audited financial statements, OAGI proposed improvements to internal controls and opened two cases for further investigation. OAGI also conducted a 1-day workshop to various EAs, presenting the forensic review findings and recommendations, and sharing OAGI's PPRA experience.

## **C. Education and Awareness**

### **1. ADB Staff**

21. Education and awareness of the Policy, its impact on ADB's operational activities, as well as punitive measures for failing to comply with the highest ethical standards, are essential to deterring fraud and corruption and creating a culture of compliance. Increasing awareness of the Policy among ADB staff will help them to better detect, deter, and bring to OAGI's attention fraud and corruption.

22. This year, OAGI presented an overview of the Policy and procedures to professional staff, national officers, and administrative staff at four induction programs for new ADB staff; and, to ADB resident mission staff in Cambodia, Mongolia, PRC, and Viet Nam. The Human Resources Division (BPHR) organized half-day training workshops, which targeted professional staff, national officers, and administrative staff of operational departments. The workshops present the Policy, the mission and function of OAGI, how to report allegations or concerns, and case studies. OAGI also participated in 10 orientation meetings for new ADB staff in 2005.

These sessions ensure that all new staff is aware of the Policy and OAGI's work from the start of their careers with ADB.

23. In September, OAGI led a discussion with eight Indonesia Resident Mission staff members on anticorruption issues to enhance their ability to identify and address fraud and corruption issues. OAGI also provided guidance on some recent anticorruption issues derived from OAGI's experience from successful investigations.

24. OAGI made presentations on ADB's Principles of Behavior and Conduct to PRC and Viet Nam Resident Mission staff in January and July, respectively. These presentations continued the series of presentations began in 2004 in conjunction with BPMSD and the Office of the General Counsel to present ADB's principles of behavior and conduct to reinforce the increased emphasis on staff accountability under ADB's Human Resources Strategy.

## **2. Government Officials, Contractors, and Others**

25. OAGI continued to present an anticorruption segment as part of the series of "Use of Consulting Services" seminars organized by ADB's Consulting Services Division. These seminars support the effective administration of ADB projects and are generally attended by officials of EAs responsible for administering ADB projects. This year, OAGI participated in seminars held in Bangladesh, Cambodia, Indonesia, Mongolia, and the PRC. OAGI explained the Policy to the participants and discussed due process under ADB's Integrity Guidelines and Procedures.

26. OAGI also meets with individual EAs to provide capacity building assistance on anticorruption issues. In August, OAGI presented the Policy and related procedures to EA officials who have been involved with two ADB road-rehabilitation projects in Indonesia. OAGI sought to raise awareness of the Policy by sharing examples of procurement-related fraud and explaining the consequences of failing to comply with the Policy. Approximately 90 government officials attended the presentation. In September, OAGI met with officers of the Indian Ministry of Railways, which is the EA on an ADB-financed project, to discuss the Policy and related procedures.

27. OAGI encourages dialogue with nongovernmental organizations (NGOs), industry groups and other civil society organizations to broaden the awareness and understanding of the Policy and procedures. In June, OAGI met with representatives of Transparency International-USA to discuss ADB's Integrity Guidelines and Procedures. In September, OAGI attended the International Federation of Consulting Engineers (FIDIC) annual conference in Beijing. OAGI made a presentation on governance and integrity issues in the context of the anticorruption policies as part of business integrity management workshop. OAGI is a frequent speaker at the FIDIC annual conference, and views its participation as an important opportunity to promote further dialog between the multilateral development banks (MDBs) and the consulting industry.

28. In October, the Auditor General conducted a North American speaking tour on ADB's anticorruption initiatives and the key challenges and issues facing ADB in implementing the Policy. In coordination with ADB's North American Representative Office, the Auditor General spoke at public events and government briefings in four cities -- Ottawa, Boston, Washington, and Seattle. The Auditor General made presentations at the North-South Institute, National Press Club of Canada, Law and Business Schools at Harvard University, National Press Club of the United States, Heritage Foundation and Daniel J. Evans School of Public Affairs at the University of Washington. The Auditor General also met with staff from the United States

Senate Foreign Relations Committee, House of Representatives, and Department of the Treasury to discuss OAGI activities, policies, procedures, and accomplishments. He also met with Canadian and American journalists, NGOs, and other multilateral or bilateral development organizations.

#### **D. Strengthening Key Institutions**

29. Providing assistance to strengthen supreme audit institutions is an important component of ADB's policies on governance and anticorruption. OAGI seeks opportunities to work with supreme audit institutions in DMCs to enhance public accountability, a key element of good governance, and reduce waste and abuse of public funds, thus contributing to combating corruption. In addition to exchanging best practices with supreme audit institutions, OAGI provides training in forensic accounting and other investigative techniques to financial analysts and project implementation officers affiliated with supreme audit institutions. In June, OAGI conducted its fraud awareness presentation and a fraud and corruption detection workshop to auditors of the Mongolia National Audit Office.

30. In August, the President, acting under authority delegated by the ADB Board of Directors, approved *Technical Assistance for Strengthening the Regional Training Capability of Members of the Asian Organization of Supreme Audit Institutions*, to be financed by the Japan Special Fund and administrated by OAGI. The technical assistance (TA) intends to improve the auditing capability of targeted supreme audit institutions<sup>6</sup> through audit workshops and training, including translating English audit-course materials into local languages. The TA will be implemented over 36 months, starting in August 2005, and it is a continuation of a series of technical assistance to supreme audit institutions ADB has undertaken since 1989.

#### **E. Enhancing OAGI Capacity**

31. The OAG Anticorruption Unit was elevated to become the Integrity Division of OAG in 2005, with a new senior staff position of Director. The elevation of the Anticorruption Unit to the Integrity Division provided greater recognition to OAGI's activities. It further strengthened the supervision, management, and autonomy of its activities. ADB authorized OAGI six professional staff positions, three national officers and two administrative assistants for 2005. One professional staff member joined OAGI in January 2005 to fill a vacancy from 2004 and a new professional staff member joined in June 2005. A new national officer joined in August 2005.

32. In October, OAGI staff attended a 2½-day training course on computer forensics and forensic document examination organized by BPHR and OAGI and provided by Ferrier Hodgson. An ADB staff member from the Office of Information Systems and Technology, and a staff member of the Manila office of the United States Agency for International Development also attended. The course sought to develop practical skills and knowledge on such topics as principles of handwriting examination, identifying document fraud, and preservation of evidence. An introduction to computer forensics was also provided. Participants had practical training in forensic document examination and hard-drive removal as an essential measure in preserving data for computer forensics.

33. OAGI works with the investigative offices of the other MDBs to strengthen relationships among the MDBs and to share best practices. In February and June, OAGI participated in the

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<sup>6</sup> The targeted supreme audit institutions include Afghanistan, Azerbaijan, Cambodia, Kazakhstan, Kyrgyz, Laos, Maldives, Myanmar, Mongolia and Viet Nam.

MDB Investigators Forum, which included the heads or senior representatives from the African Development Bank's Office of the Auditor General, European Bank for Reconstruction and Development's Office of the Chief Compliance Officer, Inter-American Development Bank's Office of Institutional Integrity, and World Bank's Department of Institutional Integrity. The Forum improved the understanding of the distinctions among the MDBs' approaches to fighting corruption. Common issues were identified and best practices shared. In October and November, the Forum reached consensus on terms and definitions of fraud and corruption, as well as investigative principles and guidelines, which the Forum members will encourage their respective institutions to adopt. Harmonized terms, definitions, and investigative principles and guidelines will move the MDBs toward common practices in addressing fraud and corruption to effectively respond to the omnipresent barrier to each institution's development goals and fight corruption.

34. OAGI continued to strengthen its relationship with other international organizations and civil society groups. In April, OAGI hosted and participated in the seventh meeting of the International Group for Anti-Corruption Coordination, an organization established to strengthen coordination and collaboration among anticorruption offices of international organizations. The meeting was held in Bangkok in conjunction with the 11th United Nations Congress on Crime Prevention and Criminal Justice. The agenda focused on corruption prevention and control in disaster emergency relief. OAGI made a presentation of issues from a regional MDB's perspective. Other issues included the United Nations Convention Against Corruption (UNCAC), and principles of cooperation and information exchange among investigating bodies of international organizations. OAGI generally participates in conferences, meetings, seminars, and workshops only when it is a resource (e.g., speaker or active participant) to the event.

35. Also in April, OAGI represented ADB at the International Conference on Promoting Financial Accountability in Managing Funds related to Tsunami, Conflict and other Disasters held in Jakarta. More than 80 international delegates representing supreme audit institutions, UN agencies, World Bank, other donors and Audit Board of the Republic of Indonesia. The conference was organized by the Government of Indonesia in partnership with ADB, funded by ADB and coordinated by ADB Institute and ADB Indonesia Resident Mission. OAGI chaired a working group focused on procurement risks and controls. OAGI also attended the Expert Meeting on Corruption Prevention in Tsunami Relief in Jakarta. This meeting was organized jointly by ADB, the Organisation for Economic Co-operation and Development, and Transparency International in cooperation with the Government of Indonesia.

36. In June, OAGI participated in the Sixth Annual International Investigators Conference in Washington, DC, hosted by the Inter-American Development Bank. A broad range of organizations, including various United Nations organizations and MDBs, attended the conference. OAGI participated as panelists for segments on disclosure of interests and third party accountability.

37. Also in June, OAGI participated in the Corruption Monitoring Workshop sponsored by the United Nations Office on Drugs and Crime and hosted by the Center for the Study of Democracy in Sofia, Bulgaria. The impetus for the meeting was the impending entry into force of UNCAC.<sup>7</sup> Provisions of the UNCAC require compliance monitoring and other corruption measurement mechanisms by ratifying countries.

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<sup>7</sup> UNCAC was adopted in December 2003. Ecuador became the 30th country to ratify the UNCAC on 15 September 2005; as a result, UNCAC entered into force on 14 December 2005.

38. In October, OAGI attended the International Chamber of Commerce Financial Investigation Bureaus (ICC-FIB) conference that introduced its upcoming online data resource. The resource will allow members (including OAGI) to quickly check whether ICC-FIB has received any reports or information on commercial crime by suspects of their investigations.

#### **F. Revision of Investigation Guidelines and Procedures**

39. In September, ADB approved revised anticorruption investigation guidelines and procedures (the Integrity Guidelines and Procedures). The revisions incorporate Policy clarifications such as changes to ADB's fraud and corruption-related terms and definitions and the scope of OAGI's work that the Board of Directors approved in November 2004.<sup>8</sup> The Integrity Guidelines and Procedures replace ADB's anticorruption procedures, formerly Chapter 800 of ADB's Audit Manual, and are publicly available on OAGI's website.<sup>9</sup> The Integrity Guidelines and Procedures may be further revised in 2006 when ADB is expected to adopt revisions to its administrative orders pertaining to the staff code of conduct and disciplinary measures.

40. In addition to the Policy clarifications and organizational changes, the Integrity Guidelines and Procedures incorporate guidelines for investigations promulgated at the Fourth International Investigators Conference in 2003, an annual meeting of international organizations (such as MDBs, United Nations investigative bodies, and other international financial institutions) investigators in which OAGI actively participates. The Integrity Guidelines and Procedures also clarify ADB's intent to protect whistleblowers and witnesses based on feedback in the Government Accountability Project's (a Washington, DC-based NGO) report, *Challenging the Culture of Secrecy: A Status Report on Freedom of Speech at the Asian Development Bank*, as well as from discussions between OAGI and the Director and other officers of the Government Accountability Project held in June 2004.

#### **G. Publication of Information**

41. In January, OAGI published the *Annual Report on the Major Activities of the Anticorruption Unit 2004* on the Internet (<http://www.adb.org/integrity>). Throughout the year, OAGI maintained and enhanced its website to provide transparency on how ADB addresses allegations of fraud and corruption related to ADB-financed activities.

42. OAGI distributed to internal and external stakeholders about 1500 copies of its brochure on the Policy, which it first published in 2001 to fulfill a requirement of the Policy. In addition to an overview of OAGI's procedures, the brochure provides some background on the development of the Policy, as well as the roles of the Integrity Oversight and Sanction Appeals Committees.

43. Via *ADB Today*,<sup>10</sup> OAGI issues advisories to ADB staff. The advisories provide guidance on the application of anticorruption sanctions, notify staff of other issues related to the Policy and updates to sanction lists, and warn staff to be cautious of advance fees and other fraudulent e-mail schemes. OAGI advised staff of a fraudulent "Asian Development Foundation" grant scheme.

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<sup>8</sup> Board Paper 185-04, approved 11 November 2004.

<sup>9</sup> <http://www.adb.org/Documents/Guidelines/Integrity-Guidelines-Procedures>.

<sup>10</sup> *ADB Today* is ADB's internal daily newsletter that includes news and official announcements for staff.

44. ADB does not publicly disclose the names of firms and individuals ineligible to participate in ADB-financed activities pursuant to the Policy (see paragraph 60). OAGI shares that information on a confidential basis with other MDBs and international organizations as well as others with a demonstrated need to know. ADB staff may access the list of sanctioned entities to ensure compliance with the sanctions.

45. To ensure that ADB resources do not support any entity or individual involved in or supporting money laundering or terrorism, OAGI periodically reviews internationally disseminated lists of such entities and identifies those that appear to be from ADB-member countries. These lists, last updated in September, are made available to ADB staff with the list of sanctioned individuals and firms under the Policy.

### III. CHALLENGES

#### A. Workload and Resources

46. ADB’s member countries, civil society groups and media organizations are increasingly demanding improved corporate governance and more effective use of aid resources. These demands include expectations for MDBs, such as ADB, to step up their fight against corruption. To meet these demands, ADB must address a wide range of issues, including strengthening compliance with corporate governance standards, ensuring whistleblower protection, pursuing more aggressively allegations of fraud and corruption in ADB-financed activities, and strengthening ADB oversight and supervision in the implementation of ADB-financed projects. ADB’s ability to address these issues depends significantly on OAGI fulfilling effectively its responsibilities under the Policy and strengthening its capacity to meet increasing expectations.

47. The increasing expectations and growing awareness of the importance of fighting corruption have led to growth in volume and complexity of OAGI’s workload. OAGI receives an increasing number of allegations of fraud or corruption each year as illustrated in Figure 6. In 2005, OAGI received 199 complaints, an increase of 44% compared with 138 complaints received in 2004. OAGI believes that the increase in complaints may be attributed to the OAGI’s awareness-building activities among staff, heightened media coverage of corruption issues and capacity building efforts with key institutions and government officials in ADB’s DMCs. As a result of PPRAs conducted by OAGI or other ADB staff, multiple complaints involving a single project are increasingly being forwarded to OAGI. For example, in December 2005, OAGI opened 17 investigations as a result of an audit conducted by resident mission staff on a project; additional investigations are also expected to be opened in 2006.

Figure 6: Complaints Opened, 2003-2005

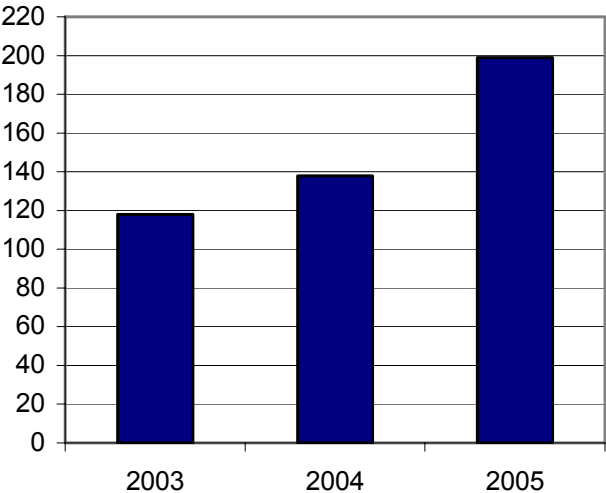


Figure 7: Open Investigations, 2003-2005

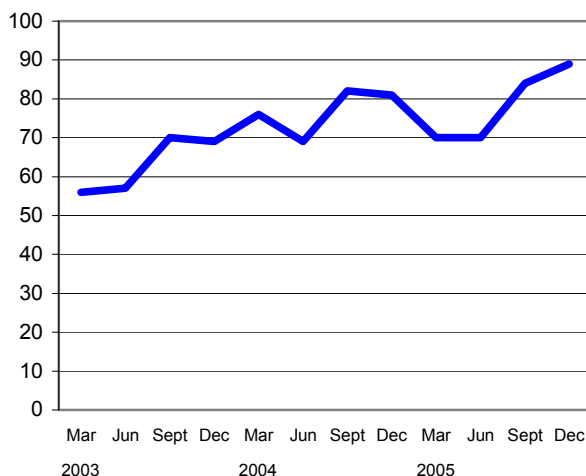
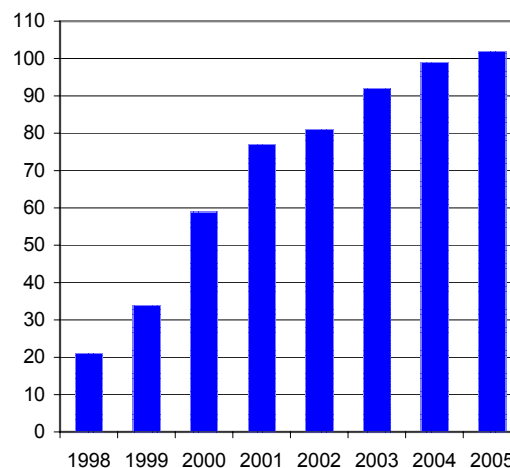


Figure 8: Investigations Opened, 1998-2005



48. The increase in allegations received by OAGI has resulted in an increase in OAGI's open investigations as shown in Figure 7. In addition, OAGI's increasing collective experience and skill, as well as the complexity of cases, lead to more thorough and time-intensive investigations and use of new investigative techniques. At the end of 2005, there were 89 open investigations, compared with 81 investigations open at the end of 2004 and 69 open investigations at the end of 2003. OAGI averaged 77 open investigations in 2005, an increase of 6% compared with an average of 72 open investigations in 2004.<sup>11</sup>

49. As a result of the increasing number of allegations, the number of investigations opened after screening increased as well in 2005 (see Figure 8). OAGI opened 102 investigations in 2005, an increase of 3% compared with 99 investigations opened in 2004. One reason for the slight increase in investigations opened compared with the significant increase in allegations received was that with OAGI's growing experience, it has improved its ability to identify and prioritize allegations during the screening process to ensure the most efficient use of OAGI resources with respect to investigations. As awareness of the Policy and OAGI's work grows, OAGI also receives more allegations that are vexatious or lack credibility in addition to the increase in legitimate concerns of fraud or corruption. Nonetheless, the increasing number of allegations and OAGI's efforts to strengthen its diligence in and depth of investigating cases has resulted in a steadily growing number of open investigations (see Figure 7). At times, it has been necessary for OAGI to delay beginning investigations due to insufficient resources.

50. In addition to the growth in volume of investigations, their growing complexity places greater demands on OAGI's resources. OAGI continues to be challenged to effectively

- investigate fraud or corruption issues related to large, high-profile suspects or projects;
- ensure the fair, reasonable, and appropriate application of the Policy in accordance with its principles and intent, including determining whether actions are errors made in good faith or with illicit motive, evaluating responsibilities of

<sup>11</sup> Based on open investigations at the end of each month.

various parties to a bid, proposal or contract, and assessing variations of contracts of ineligible entities; and

- advise EAs considering the termination of contracts that are the subject of allegations of fraud or corruption.

51. In addition to the growth in volume and complexity of its cases, OAGI expects its workload in other areas to increase in 2006. The Policy requires OAG to randomly audit ADB projects to monitor financial compliance and conduct PPRAs to improve project oversight. ADB's Audit Committee of the Board of Directors has requested that OAGI conduct more project procurement-related audits. OAGI conducted four such audits in 2005 and plans to conduct five such audits in 2006. OAGI also intends to conduct an investigative audit in 2006 focusing on staff benefits such as rental subsidy, dependency allowance, and educational benefits. OAGI's experience in conducting investigations involving ADB staff indicates that such cases generally require significant devotion of OAGI resources compared to investigations involving ADB-financed activities.

52. OAGI also faces stronger operational demand for OAGI's anticorruption expertise. In 2005, OAGI commented on or proposed changes to ADB operational and administrative policies to strengthen anticorruption measures. OAGI commented on policy revisions regarding ADB's business travel, institutional procurement, the definition of full-time employee in the consultant selection process, staff benefits, the staff code of conduct and other administrative orders. OAGI believes it will need to devote increasing resources to providing operationally relevant recommendations and assisting operational departments and their procurement teams. These recommendations may involve identifying strengths and weaknesses of internal and government controls in such areas as procurement and supervision, as well as options for strengthening project design to include anticorruption measures.

53. OAGI will continue to strengthen the supervision and management of OAGI activities and staff, as well as carefully planning future resource requirements. As OAGI gains experience in conducting complex investigations, it will prioritize and streamline investigations. OAGI will seek to more fully use existing resources as staff that joined in 2005 gain experience and appropriate investigations for retainer firms are identified. Best practices learned from other MDBs will also be adopted.

## **B. Corrupt Environments**

54. ADB's projects are frequently located in environments and industry sectors where fraudulent and corrupt activities, as defined by ADB, are institutionalized and pervasive. For example, OAGI investigated allegations arising from one project and found evidence of bribery, extortion, collusive bidding/bid rigging, phantom bidders, fake tender advertisements, conflicts of interest, defective pricing, rigged specifications, leaking of bid information, tampering with bidding documents, bid evaluation manipulation, forging of authorization letters, and false bid securities. OAGI has opened a total of 14 investigations since 2003 arising from this project. As of 31 December 2005, these investigations had led to the debarment of 26 entities. A procurement review undertaken by ADB operational staff as part of their oversight of another project identified 30 allegations of fraud and corruption for investigation by OAGI in 2006. As of 31 December 2005, OAGI had opened 12 investigations relating to this project.

55. No matter how aggressively OAGI pursues allegations of fraud and corruption, it requires the assistance of EAs, implementing agencies and other government officials in ADB's member countries to effectively fight corruption in ADB's projects. At the same time, OAGI must consider both ADB Charter<sup>12</sup> provisions prohibiting the interference in sovereign matters of its members, and the protection of ADB's privileges and immunities under the Charter and the ADB Headquarters Agreement. For the Policy to be effective, anticorruption capacity building in ADB member countries should occur in tandem with ADB's enforcement of the Policy. Accordingly, OAGI will continue in 2006 to maintain its presence in member countries with project procurement-related audits, investigative missions as appropriate, and presentations to government officials, ADB resident mission staff, and private-sector participants in ADB-financed activities.

### **C. Cross Debarment and Criminal Referrals**

56. OAGI and the Auditor General realize from discussions with ADB's Board of Directors, as well as the recent high levels of donor scrutiny regarding how well MDBs address fraud and corruption, that enhancing ADB's existing procedures is still needed. Two of the most important issues are cross debarment (all MDBs imposing a sanction on an entity when just one does so) and criminal referrals (referring administrative findings to legal and judicial authorities). OAGI does neither of these routinely, though the Policy and the Integrity Guidelines and Procedures allow both. The issues are complex.

57. Before MDBs establish a consistent practice of cross debarment, there should be standard policies, terms, definitions, and procedures among the MDBs, as well as uniform sanction policies. In 2005, the investigative offices of the MDBs met and reached consensus on standard policies, terms, definitions and procedures to encourage each institution to adopt; however, adopting and implementing those will take some time. In addition, discussion on uniform sanction policies is likely to be far more difficult to achieve because of some institutions' long-established practices. Without the adoption and successful implementation of standard sanctions, ADB's Integrity Oversight Committee will find it difficult to determine appropriate remedial actions. Also to be considered is a key principle of ADB's administrative due process to treat large and small firms alike. Cross debarment may have a disproportionate impact on small firms, including putting them out of business, which is contrary to ADB objectives, while large firms are much more likely able to weather such a storm.

58. Making criminal referrals a practice blurs the line between an MDB's administrative process and legal and judicial processes. For ADB, one of the critical issues is its adherence to a principle of administrative due process, includes treating everyone fairly and equally. ADB has defined fraud and corruption terms and applies these definitions throughout its operations; however, ADB's 64 member countries have varying enforcement perspectives and legal definitions of fraud and corruption. Also, OAGI has concluded that some member countries' legal and judicial systems may lack the capacity to consistently address cases following principles of good governance: transparency, accountability, and reliable predictability. Until OAGI can refer all cases, thereby treating all entities equally, it has established a practice that it should not routinely make such referrals, but considers this option on a case-by-case basis. OAGI does not discourage legal and judicial processes by its member countries and, when asked, has found ways to support its members' legal or judicial efforts related to fraud and corruption cases.

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<sup>12</sup> ADB was established in 1966 under the Agreement Establishing the Asian Development Bank (the "ADB Charter").

59. To address these issues, OAGI will continue to discuss these and other relevant concerns with its counterparts at other MDBs at working group meetings on MDB anticorruption issues, annual International Investigators Conferences, and International Group for Anti-Corruption Coordination meetings, and with representatives of ADB's member countries.

#### **D. Debarment List Disclosure Policy**

60. Some ADB member countries, NGOs, and other stakeholders have questioned ADB's policy not to publicly disclose the names of sanctioned individuals and entities. As noted in paragraph 44, ADB staff have access to the list of debarred entities, and OAGI shares the information with other MDBs, international organizations, and others with a demonstrated need to know. The Auditor General and OAGI have often considered and continue to reassess the benefits and weaknesses of publicizing ADB's Anticorruption Sanctions List, and concluded that, under the present circumstances, ADB can best implement its Policy by retaining the current practice that those names are not publicized. OAGI has posted on the internet a detailed explanation of this decision (<http://adb.org/Integrity/issues.asp>), and will continue to engage stakeholders to help them better understand the rationale for maintaining this policy.

**STATUS OF REPORTED FRAUD AND CORRUPTION  
INVESTIGATIONS AS OF 31 DECEMBER 2005**

| Year Received/Status    | Total      | Loan       | Technical Assistance | ADB Staff | Other     |
|-------------------------|------------|------------|----------------------|-----------|-----------|
| <b>1998 &amp; 1999:</b> | <b>55</b>  | <b>32</b>  | <b>6</b>             | <b>10</b> | <b>7</b>  |
| <b>2000:</b>            | <b>59</b>  | <b>35</b>  | <b>5</b>             | <b>14</b> | <b>5</b>  |
| <b>2001:</b>            | <b>77</b>  | <b>58</b>  | <b>6</b>             | <b>7</b>  | <b>6</b>  |
| <b>2002:</b>            | <b>81</b>  | <b>54</b>  | <b>10</b>            | <b>12</b> | <b>5</b>  |
| <b>2003:</b> Open       | 5          | 3          | 0                    | 1         | 1         |
| Closed                  | 87         | 49         | 17                   | 10        | 11        |
| <b>Total</b>            | <b>92</b>  | <b>52</b>  | <b>17</b>            | <b>11</b> | <b>12</b> |
| <b>2004:</b> Open       | 19         | 14         | 3                    | 2         | 0         |
| Closed                  | 80         | 36         | 13                   | 23        | 8         |
| <b>Total</b>            | <b>99</b>  | <b>50</b>  | <b>16</b>            | <b>25</b> | <b>8</b>  |
| <b>2005:</b> Open       | 65         | 45         | 4                    | 3         | 13        |
| Closed                  | 37         | 12         | 2                    | 12        | 11        |
| <b>Total</b>            | <b>102</b> | <b>57</b>  | <b>6</b>             | <b>15</b> | <b>24</b> |
| <b>Cumulative</b>       |            |            |                      |           |           |
| <b>Open</b>             | <b>89</b>  | <b>62</b>  | <b>7</b>             | <b>6</b>  | <b>14</b> |
| <b>Closed</b>           | <b>476</b> | <b>276</b> | <b>59</b>            | <b>88</b> | <b>53</b> |
| <b>Cumulative Total</b> | <b>565</b> | <b>338</b> | <b>66</b>            | <b>94</b> | <b>67</b> |

| CLOSED INVESTIGATIONS |            |                           |                        |                   |
|-----------------------|------------|---------------------------|------------------------|-------------------|
| Year Closed           | Total      | Closed – Without Sanction | Closed – With Sanction | Referred to BPMSD |
| 1998                  | 21         | 12                        | 5                      | 4                 |
| 1999                  | 34         | 24                        | 7                      | 3                 |
| 2000                  | 58         | 40                        | 8                      | 10                |
| 2001                  | 76         | 61                        | 12                     | 3                 |
| 2002                  | 79         | 58                        | 17                     | 4                 |
| 2003                  | 82         | 65                        | 16                     | 1                 |
| 2004                  | 77         | 46                        | 14                     | 16                |
| 2005                  | 37         | 28                        | 5                      | 4                 |
| <b>Total</b>          | <b>476</b> | <b>334</b>                | <b>87</b>              | <b>45</b>         |

## **SIGNIFICANT CASES INVOLVING ADB-FINANCED ACTIVITY CONCLUDED IN 2005**

### **Case 03-061-0501 – False Advertisement and Collusion**

1. OAGI received allegations from a resident mission that an implementing agency submitted a false advertisement in single stage two-envelope procurement and the winner of the tender was prearranged. OAGI confirmed from public sources that the advertisement was false. OAGI determined that an arranger who assisted the implementing agency in preparing the tender had fabricated the advertisement to appear as if it had been properly advertised in a local newspaper as required by ADB's procurement guidelines. This arranger also used the identities of six bidders to create the appearance of a competitive bidding process. OAGI was unable to positively identify the arranger. However, OAGI established the connection between the arranger and one of the six bidders and other proof of collusion.

2. The Integrity Oversight Committee (formerly the Oversight Committee on Anticorruption) declared one collusive bidder and its principal director ineligible to participate in ADB-financed activities for a minimum of 5 years and approved further investigation.

3. OAGI also determined that the implementing agency failed to conduct proper due diligence and submitted a false advertisement as part of its bid evaluation report to ADB. The Oversight Committee recommended that OAGI and the resident mission inform the project's central project management unit about the findings of fraud and collusion. The central project management unit was cautioned that ADB may cancel portions of a loan if a fraudulent or corrupt practice occurs as defined by the ADB Anticorruption Policy (the Policy) and the borrower did not take appropriate actions to remedy the situation.

### **Case 03-085-0504 – Submission of False Documents**

4. OAGI reviewed allegations of misrepresentation of experience and submission of false documents in bid documents submitted by a joint venture formed by a lead firm and an associate firm. OAGI determined that the lead firm misrepresented the qualification and experience in the curriculum vitae (CVs) of 10 proposed experts, failed to disclose eight current contract commitments as required under the request for bid proposals, and provided false financial information. OAGI concluded that the associate firm did not misrepresent any information in the bid documents.

5. The Integrity Oversight Committee declared the lead firm ineligible to participate in ADB-financed activities for a minimum of 3 years.

### **Case 04-026-0504 – Unauthorized Use of Expert's CV**

6. OAGI investigated a concern of possible tampering of a proposal submitted by a consortium in a tender to select consultants for an ADB-financed project. The Executing Agency (EA) conducted an inquiry into the potential bid manipulation by the project's deputy director on behalf of the consortium. As a result of its inquiry, the EA suspended and removed the project's deputy director and disqualified the consortium's proposal.

7. OAGI determined that the consortium had signed a CV and included an expert in its proposal without the authorization of the expert. The lead firm of the consortium claimed that it obtained permission to include the expert's CV in the proposal from an intermediary but admitted it did not request permission directly from the expert. The intermediary, who earlier

stated that he had obtained permission from the expert for inclusion of the CV in the proposal, subsequently retracted his statement. OAGI also concluded that an associate firm had failed to review the proposal.

8. The Integrity Oversight Committee declared the lead firm ineligible to participate in ADB-financed activities for a minimum of 3 years, and sent a reminder to the associate firm that ADB expects all bidders, consultants, and other parties to ADB-financed contracts and projects to conduct adequate due diligence to ensure all representations to ADB are accurate.

#### **Case 04-032-0509 – Submission of False Information in Sanction Appeal**

9. In August 2004, the Integrity Oversight Committee debarred a firm and its official representative for collusion. The firm and its official representative appealed the sanctions and presented findings of an investigative report as the basis for appeal. The firm also denied having knowledge of the circumstances under which their bid documents had been prepared.

10. OAGI determined that the firm's appeal contained false information. The Integrity Oversight Committee declared the firm and the official representative ineligible to participate in ADB-financed activities for an additional 3 years, thus doubling the original sanction period.

#### **Case 04-034-0512 – Collusion**

11. OAGI received an allegation of collusion among three bidders in a tender for a contract under an ADB-financed project. OAGI determined that the three bidders --Firms A, B, and C -- submitted identical bids, including total amounts and the prices for each individual item. In addition, Firms B and C submitted verbatim letters declining to extend the validity of their respective bid securities.

12. The three bidders claimed that they submitted the same bid with the intention to form a joint venture, as each bidder was incapable of supplying the large quantity alone. They did not execute a formal joint venture or consortium arrangement as they were unsure of the proper procedure. The bidders also claimed they were unaware of the appropriate procedures for a consortium bid. The bidders discussed the bid security extension issue together and drafted one letter of declination, which Firms B and C each submitted to the EA.

13. The Integrity Oversight Committee determined that the bidders had colluded in violation of the Policy. The Integrity Oversight Committee, taking the firms' cooperation during the investigation into consideration, declared the bidders ineligible to participate in any ADB-financed activities for a minimum period of 3 years.

#### **Case 04-043-0510 – Collusion**

14. OAGI investigated an allegation of collusion relating to a single two-envelope international shopping (IS) procurement of computer and electronic equipment to be financed under an ADB loan. Five firms submitted bid proposals to supply the equipment. The sub-project management unit disqualified three bidders on commercial grounds, and one bidder on technical grounds. It recommended awarding the contract to the remaining bidder.

15. OAGI determined that the lowest responsive bidder, and three other rejected bidders submitted identical specifications, types, brands, and manufacturers' authorization letters for all 50 items to be procured under this tender. The four suspect firms also made two identical

typographical errors and proposed one unit of overhead projector with an identical serial number. OAGI's investigation found the lowest evaluated responsive bidder (the "mastermind") colluded with an agent of a suspect. The mastermind further borrowed the identities of two other suspects: one with its knowledge (the non-collusive bidder), and one without its knowledge (the collusive bidder).

16. The Integrity Oversight Committee determined the mastermind had engaged in collusive practices and declared the firm and its principal director ineligible to participate in ADB-financed activities for a minimum of 7 years and indefinitely, respectively. The Integrity Oversight Committee also declared the collusive bidder and its principal directors each ineligible to participate in ADB-financed activities for a minimum of 5 years.

#### **Case 04-047-0507 – Misrepresentation of Employment Status and Other False Claims**

17. OAGI received an allegation from a resident mission that an NGO submitted a false CV on behalf of a proposed consultant. The CV stated that the consultant was a full-time employee of the NGO. The consultant confirmed to OAGI that the statement of full-time employment status, and other CV details were incorrect. In addition, the consultant's signature had been forged and the NGO had included the consultant's CV in the bid proposal without authorization.

18. The Integrity Oversight Committee determined that NGO's submission of the CV and misrepresentation of full-time employment status was a fraudulent practice intended to influence the selection process. The Integrity Oversight Committee declared the NGO ineligible to participate in ADB-financed activities for a minimum of 3 years.

#### **Case 04-048-0512 – Misrepresentation**

19. OAGI received an allegation of a fraudulent practice by a firm when submitting a bid for an ADB-financed project. OAGI's investigation revealed that the firm submitted and signed the CV of one of its proposed experts without his authorization.

20. The Integrity Oversight Committee determined that the firm's unauthorized submission and signing of the expert's CV was a fraudulent practice intended to influence the selection process. The Integrity Oversight Committee declared the firm ineligible to participate in any ADB-financed activities for a minimum of 3 years.

#### **Case 04-052-0509 – Collusion**

21. OAGI received an allegation from a resident mission that Firm A colluded with two already sanctioned firms—Firms B and C—in a single two-envelope IS procurement of agricultural equipment for a university. OAGI determined that Firm C and a joint venture formed by Firms A and B submitted identical specifications, types, brands, and manufacturers' authorization letters for a number of items. In addition, the three firms made identical typographical errors in their respective bid submissions. The principal of Firm A admitted that she lent Firm A's and her own identities to a syndicate for the false bid submissions by the syndicate.

22. The Integrity Oversight Committee declared Firm A ineligible to participate in ADB-financed activities for a minimum of 7 years and its principal director indefinitely. OAGI informed the two previously sanctioned firms that, although their sanction periods were not extended

further as a result of OAGI's findings, their involvement in this case might affect their ability to be reinstated in the future at the end of their minimum sanction period.

#### **Case 04-054-0502 – Corruption**

23. OAGI received an allegation that a consultant inappropriately solicited, on behalf of a project manager, the services of an expert on the condition that the expert forgo a portion of his salary for the operational cost of implementing a TA project. OAGI concluded that the source of the allegation was credible, the information was convincing, and the consultant was an accessory in an attempt to inappropriately divert TA funds.

24. The Integrity Oversight Committee declared the consultant ineligible to participate in ADB-financed activities for a minimum of 2 years. In addition, the Committee recommended that ADB's operational staff should address the concern regarding the project manager's actions with the EA, including potentially removing the project manager from any future ADB-financed related projects.

#### **Case 04-069-0504 – Collusion**

25. OAGI received allegation of collusion among three participating bidders in a single stage two-envelope IS procurement of equipment for one of the implementing agencies of an ADB-financed project. OAGI's investigation found that the implementing agency invited six firms to participate in the bid, but only three firms responded. OAGI determined that the three firms submitted identical specifications, types, brands, and manufacturers' authorization letters for 22 out of the 30 items procured under the tender and presented identical price variances for 28 out of 30 items. Letters submitted by the bidders also exhibited identical word choices and similar sentence constructions.

26. Based on the preponderance of evidence presented by OAGI, the Integrity Oversight Committee determined that the three firms colluded. The Integrity Oversight Committee declared the three bidding firms as well as their principal directors ineligible to participate in ADB-financed activities for a minimum of 7 years. The Integrity Oversight Committee did not find sufficient evidence that the implementing agency's representatives were involved in the collusion.

#### **Case 04-073-0501 – Unauthorized Representative/Signatory**

27. OAGI investigated certain concerns that a program in a certain university is illegitimate and the party who signed the contract is unauthorized. Mr. A, a university official, is allegedly not authorized by the dean to represent the University to sign the contract. OAGI also found that proceeds of the contract would be credited to Mr. A's personal account.

28. Mr. A disclosed that the personal bank account was opened by his staff as a matter of expediency, but was later changed in the amended contract, upon request of the ADB resident mission. He also emphasized that the complaint may be politically motivated due to the election of the dean, which he was also pursuing.

29. The dean confirmed that he never authorized the signing of the contract, as the university was not accredited or licensed by the Department of Higher Education to run the program as outlined in the contract.

30. OAGI established that an internal dispute between the dean and Mr. A exists which resulted in misunderstanding on how to implement the program. The Integrity Oversight Committee decided that letters of concerns be sent to the university, copy furnished to the present dean, assistant dean and the EA.

#### **Case 04-085-0501– Misrepresentation of Work Experience**

31. OAGI received an allegation that a contractor firm submitted a false performance certificate in a tender to build a power substation. The contractor firm claimed it had built a comparable substation in another country. However, OAGI confirmed that no substation of comparable capacity was built in that country. The authorized representative of the contractor acknowledged that he falsified the performance certificate.

32. The Integrity Oversight Committee declared the authorized representative and the contractor firm ineligible to participate in ADB-financed activities for a minimum of 3 years.

#### **Case 04-090-0502 – Misrepresentation of Availability**

33. OAGI investigated an allegation that a consultant was simultaneously working on two TA projects. The consultant began working as an individual consultant under one TA project. After 2 weeks working under the contract, the consultant asked for leave to work as subcontractor on a second TA project under which he had a prior commitment. The consultant's leave resulted in postponement of the first TA project of 1.5 months. OAGI found that the consultant misrepresented his availability by not informing the project officer that he had a subcontracting work under another TA project prior to signing the contract for the new TA.

34. The Integrity Oversight Committee determined that the consultant committed fraudulent act under the Policy and declared him ineligible to participate in ADB-financed activities for a minimum of 3 years.

#### **Case 04-091-0512 – Submission of False Claim**

35. OAGI received an allegation that a firm submitted falsified documents in invoices submitted for reimbursement under an ADB-financed loan. OAGI found that two of the firm's invoices included 26 airline tickets and related boarding passes for eight experts that have been tampered with. In its response to OAGI's request for clarifications, the firm confirmed that while it submitted the tickets and boarding passes of one particular airline, the experts actually flew with other airlines. The firm stated that it submitted the tickets as back ups to claim the ceiling amounts per the contract, avoiding unpractical contract amendments to cover for some other insufficient allowances. However, the contract required that actual ticket stubs and other supporting documents be submitted to substantiate travel expenses.

36. The Integrity Oversight Committee determined that the submission of the falsified documents was a fraudulent practice as defined by the Policy and declared the firm ineligible to participate in ADB-financed activities for a minimum of 3 years.

#### **Case 04-092-0502 – Copyright Infringement**

37. OAGI received an allegation that a staff consultant had submitted a report prepared under a previous engagement. The staff consultant had been notified by the ADB project officer that the previous report was not to be used in the current assignment. The Integrity Oversight

Committee concluded that the consultant had committed a fraudulent practice and declared the staff consultant ineligible to participate in ADB-financed activities for a minimum of 2 years.

#### **Case 04-093-0506 – Submission of Falsified Financial Information**

38. OAGI investigated an allegation of the submission of falsified financial information in a tender for a power rehabilitation project financed by ADB, and requested clarifications from the two subject firms. However, the firms did not reply to OAGI and refused delivery of inquiry letters.

39. The Integrity Oversight Committee directed OAGI to review all available information and attempting to contact the firms through other means such as their auditors and ADB's resident missions. The Integrity Oversight Committee also determined that if there were no response to OAGI's additional inquiries, the two firms would each be declared ineligible to participate in ADB-financed activities for a minimum of 7 years. The Integrity Oversight Committee also endorsed OAGI's recommendation to publish the names of the firms on OAGI's website if refused delivery. OAGI was unable to contact the two firms, and thus, posted the names of the two firms on OAGI's website.

#### **Case 05-003-0507 – Misrepresentation of Employment Status and Other Statements**

40. OAGI received allegations of misrepresentation of employment status and falsified signatures in a consulting service proposal of a non-government organization (NGO). OAGI determined that the NGO submitted and signed the CV of one expert without the expert's consent and authorization. The expert confirmed that the signature was not his and that he did not authorize the NGO to sign the CV on his behalf. The expert also stated that his CV contained inaccurate information regarding his academic background and employment history.

41. OAGI also found that four other experts had certified that the NGO employed them continuously for 12 months as regular full-time staff. OAGI's review, however, revealed that none of the five experts worked for the NGO as of the date of the proposal. The experts claimed that they misinterpreted the 12-month employment period as not necessarily continuous.

42. Five individuals founded the NGO in the 1970s. The same founders also established a private limited consulting company, in which three of the founders remained presently shareholders. The founders also established another NGO (NGO B) to provide education and training services.

43. The Integrity Oversight Committee declared the NGO, its founders, NGO B as well as the consulting firm ineligible to participate in ADB-financed activities for a minimum of 3 years. The Committee also declared the four experts ineligible to participate in ADB-financed activities for a minimum of 2 years.

#### **Case 05-008-0506 – Unauthorized Use of the ADB Logo**

44. OAGI received an allegation that a consultant listed in the ADB Data on Individual Consultants (DICON) system was using the ADB logo on his business card. During OAGI's investigation, the expert denied representing himself as an ADB employee but admitted using the ADB logo in his business cards. The consultant claimed he was unaware that use of the ADB logo in this manner was prohibited. OAGI found evidence that the expert had been warned previously in 1999 for misusing ADB's logo in the same manner.

45. The Integrity Oversight Committee determined that the expert had committed a fraudulent practice through his misrepresentation of an association with ADB by using ADB's logo in his business cards when soliciting business opportunities. The Integrity Oversight Committee declared the consultant ineligible to participate in ADB-financed activities indefinitely and to be removed permanently from the DICON system.

#### **Case 05-011-0506 – Misrepresentation of Employment Status**

46. OAGI received an allegation that a consultant had claimed to be a full-time employee simultaneously with two firms. The consultant confirmed that he was a full-time employee of Firm A and claimed to have made a mistake by also claiming to be a full-time of Firm B.

47. The Integrity Oversight Committee did not find the expert's explanation credible and declared him ineligible from participating in ADB-financed activities for a minimum for 2 years. The Integrity Oversight Committee reprimanded Firm B for its failure to review information submitted on its behalf to ADB.

#### **Case 05-021-0509 – Misrepresentation of Qualifications and Experience**

48. OAGI received an allegation that a consultant had posted false credentials on ADB's DICON system. The consultant claimed to have graduated with bachelor and master degrees from well-known universities. The consultant also indicated different birth dates in his registration. OAGI confirmed with the universities that the consultant was not a graduate. The consultant was unable to substantiate his certifications and his date of birth.

49. The Integrity Oversight Committee determined that the consultant committed a fraudulent practice by misrepresenting his educational background and providing an incorrect date of birth on the DICON. The Integrity Oversight Committee declared the consultant ineligible indefinitely.

#### **Case 05-030-0510 – Collusion and Coercion**

50. OAGI received allegations from a resident mission of coercion and collusion in a tender for flood rehabilitation works. The resident mission determined that there was sufficient e basis for the allegations to request the EA to cancel the tender. OAGI and one of its investigative retainer firms fielded missions to the project site and interviewed 15 firms that purchased bid documents for the tender but did not submit a bid. OAGI also interviewed the five bidders suspected of collusion and the EA officials.

51. Fourteen firms and other interviewed sources confirmed that armed persons were present on the day of bid submission, preventing them from submitting their bids. They identified the owner of one of the five bidding firms (Company A) as the leader of the armed group and who was instructing bidders not to deposit their proposals. The EA also expressed concerns that obstructions may have taken place outside their premises.

52. The Integrity Oversight Committee determined that Company A and its owner engaged in a coercive practice. However, evidence was insufficient to show collusion with the other four bidders. The Integrity Oversight Committee declared Company A ineligible to participate in ADB-financed activities for a minimum of 7 years, and debarred the owner of Company A indefinitely.

### **Case 05-032-0510 – Submission of False Performance Bond**

53. OAGI received an allegation from an EA that a winning bidder had submitted a submitted falsified performance bond and advance payment bond. The commercial bank – that allegedly issued the bonds – confirmed that it did not issue the bonds. OAGI requested a response from the firm to the inquiry findings that the firm had engaged in fraudulent practices through the submission of fraudulent performance and advance payment bonds in its bid. The firm did not respond.

54. The Integrity Oversight Committee declared the firm ineligible to participate in ADB-financed activities for a minimum of 7 years.

### **Case 05-037-0508 – Submission of Falsified Receipts**

55. OAGI received an allegation that falsified accommodation receipts were submitted to ADB for reimbursement by the consulting firm on behalf of the consultant engaged on an ADB TA. OAGI requested an explanation from the consulting firm of certain discrepancies in the receipts. The consulting firm determined that the consultant had submitted fraudulent claims for his accommodation expenses over a period of 14 months. The consultant admitted falsifying the receipts. OAGI concluded that the consulting firm was not involved in the falsification of the receipts and was unaware of the consultant's fraudulent actions.

56. The Integrity Oversight Committee declared the consultant ineligible to participate indefinitely in ADB-financed activities.

### **Case 05-040-0511 – Collusion**

57. OAGI received an allegation of collusive bidding in a single two-envelope IS procurement of survey equipment under an ADB-financed loan. Twenty-three firms purchased bidding documents, but only five submitted bid proposals. After an initial screening process, OAGI found no conclusive evidence to establish that the Project Management Unit (PMU) or any of the suppliers were involved in this alleged collusive bidding. However, OAGI determined that three bidders submitted identical specifications, types, brands, and manufacturers' authorization letters for all 12 items procured under this tender. The three bidders made 18 identical typographical errors.

58. Based on the preponderance of evidence presented by OAGI, the Integrity Oversight Committee concluded that the three bidders colluded and declared them each ineligible to participate in ADB-financed activities for a minimum of 7 years. Their respective principal directors were also declared ineligible to participate indefinitely in ADB-financed activities.

59. The Integrity Oversight Committee also requested that OAGI caution the EA of the need for due diligence and ADB's ability to cancel a portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or a beneficiary of ADB financing is engaged in corrupt, fraudulent, collusive, or coercive practices, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation.

### **Case 05-041-0510 – Misrepresentation of Product Specifications**

60. OAGI investigated an allegation that that the recommended winner of an ADB-financed contract misrepresented its product specifications in a tender for the supply of brand B-1

medical equipment. Firm A submitted a bid on behalf of the Firm B, the manufacturer of brand B-1, to supply B-1 medical equipment.

61. OAGI found that Firm A's specifications were different from the specifications published on the brand B-1 website. OAGI investigated the matter further by contacting Firm C, brand B-1's representative office in the country. Firm C provided the same information submitted by Firm A, and when OAGI requested an explanation on the specification differences, Firm C explained that brand B-1 medical equipment has production tolerance and they considered the tender specifications were met considering the limits of those tolerances, although Firm C stated that the medical equipment cannot be manufactured precisely. Firm C admitted that it made a mistake when submitting the specification for the working length, as brand B-1 does not meet the specification.

62. OAGI concluded that the actual specifications of brand B-1 do not meet the tender requirements, and the claimed specifications were created to appear to meet the specifications required in the tender. The Integrity Oversight Committee declared Firms A and C ineligible to participate in ADB-financed activities each for a minimum of 3 years. The Integrity Oversight Committee decided to reprimand Firm B for its failure to ensure that its distributor represents accurate information on its products.

#### **Case 05-042-0511 – Submission of False Certificate of Experience**

63. OAGI received an allegation that a joint venture, composed of 5 firms -- Firms A, B, C, D, and E -- submitted a false certificate of experience in its bid proposal for an ADB project. OAGI determined that the lead partner of the joint venture, Firm A, submitted a false certificate of experience for the joint venture to qualify for consideration for the project. Firm A admitted and apologized for submitting the false certificate. Firm A provided evidence of corrective action such as dismissal of the employee responsible for preparing the false certificate, issuing a demerit to his supervisor, and adopting rules on the preparation of bidding materials.

64. The false certificate that Firm A prepared was based on information provided by Firms B and C. However, these firms either failed to review the joint venture bid submission or did not correct the false certificate if they reviewed the bid materials. Firms D and E also failed to review the information submitted by the joint venture.

65. OAGI concluded that Firm A's action on behalf of the joint venture was a fraudulent act as defined by ADB. The Integrity Oversight Committee declared Firm A ineligible to participate in ADB-financed activities for a minimum of 5 years, Firms B and D each ineligible for 3 years, and Firms C and E each ineligible for a minimum of 1 year.

#### **Case 05-043-0510 – Overbilling**

66. OAGI investigated concerns of overstated bills by a firm that provided health services to ADB staff and dependents. OAGI determined that the firm billed ADB for services not rendered. OAGI interviewed patients and requested a medical professional reexamine some of them. The interviews and examinations revealed that treatments were not given to the extent to which the health services firm billed ADB. OAGI also interviewed some of the firm's employees, who expressed surprise and confirmed some inconsistencies in the procedures billed.

67. Following the principle that firms are responsible for the actions of their employees and representatives, the Integrity Oversight Committee determined that the firm engaged in

fraudulent practices and obtained monetary benefits in over-billing ADB. The Integrity Oversight Committee declared the firm ineligible to participate in ADB-financed activities for a minimum of 7 years.

#### **Case 05-044-0508 – Submission of False Invoice and Conflict of Interest**

68. OAGI received concerns from an ADB internal source about a potential conflict of interest between the performance of duties by an ADB staff consultant and her affiliation with an ADB supplier. OAGI's investigation determined that the consultant submitted a false invoice to the ADB Controller for \$650 for certain materials to be used at an ADB-sponsored conference. The actual price for the materials was about \$220. The false invoice was prepared by the consultant with the knowledge and approval of the individual owner of the supplier and another affiliate. The staff consultant, owner, and affiliate agreed to divide the excess amount of \$430 between the staff consultant and the supplier.

69. OAGI concluded that the staff consultant did not disclose (i) the relationships among the staff consultant, the owner of the supplier and an affiliate of the firm, nor (ii) the intention for the firm and the staff consultant to benefit financially from expenditure for the conference materials. OAGI also concluded that the staff consultant (a) used ADB computers and facilities to manage the supplier's ADB operations as well as to produce transcriptions for other ADB projects for which she received compensation from the firm, (b) facilitated payments to the firm on ADB related-projects, and (c) conducted business development activities on behalf of the firm.

70. The Integrity Oversight Committee declared the staff consultant, individual owner of the supplier and affiliate ineligible to participate indefinitely in ADB-financed activities. The Integrity Oversight Committee also declared the firm ineligible to participate in ADB-financed activities for a minimum of 3 years.

#### **Case 05-045-0511 – Misrepresentation of Employment Status and Other Experience**

71. OAGI received an allegation that two different CVs of a consultant had been submitted by two different consulting firms, Firms A and B (the latter firm in association with Firm C) in their bid proposals for the same ADB project. OAGI requested clarification from the consultant and the two consulting firms. OAGI confirmed that the CV submitted by Firm A was correct.

72. Firms B and C are associated firms. Firm C prepared the bid submission including the expert's CV on his behalf and put forth Firm B as the responsible consulting firm in the bid proposal. OAGI determined that the CV submitted by Firm B contained a false statement of full-time employment status with Firm B and other employment details from the consultant's experience from different times, and that projects had been combined to present a more unified and impressive experience.

73. The Integrity Oversight Committee declared Firms B and C each ineligible to participate in ADB-financed activities for a minimum of 3 years. The Integrity Oversight Committee also reprimanded the consultant for failing to review the CV submitted on his behalf.

#### **Case 05-070-0512 – Collusion**

74. A resident mission received allegations that a firm misrepresented its work experience in a prequalification application for a tender in an ADB-financed project. The firm's application

indicated among its construction experience that it had worked as a subcontractor for similar projects with three different construction companies.

75. While two of the questioned contractors confirmed that the firm rendered “unofficial” subcontracting works, the third contractor could neither confirm the authenticity of the work certificate submitted by the bidder nor the existence of such “unofficial” subcontract to the extent of work indicated. The bidder was unable to substantiate the work experience referenced in its proposal under such allegedly “unofficial” subcontract.

76. The Integrity Oversight Committee determined that the bidding firm submitted a falsified certificate and misrepresented its work experience. The Integrity Oversight Committee declared the firm ineligible to participate in any ADB-financed activities for a minimum period of 2 years.

## **SIGNIFICANT CASES INVOLVING ADB STAFF CONCLUDED IN 2005**

### **Case 04-009-BPHR: Unauthorized possession of ADB property**

1. OAGI investigated a concern that an ADB staff member retained property that was part of the assets foreclosed by ADB and other secured creditors. OAGI confirmed that the property was excluded from the foreclosure list and that the property was retained in the staff member's residence. OAGI forwarded its findings to the Budget, Personnel and Management Systems Department (BPMSD), and the Human Resources Division (BPHR) conducted the preliminary inquiry. The property was recovered by BPHR. Upon completion of the disciplinary proceedings, ADB found that misconduct occurred when the staff member took possession of the property without any formal accounting in ADB's records. As a disciplinary sanction, the staff member was suspended without pay for 3 weeks.

### **Case 04-022-BPHR: Submission of Improper travel expense claim**

2. OAGI conducted a focused integrity review of ADB-authorized missions to participate in meetings and conferences for which some or all travel expenses were paid for by third parties. OAGI reviewed the travel reimbursement claims made by the staff members to determine if third parties had also paid any travel expenses that ADB paid. OAGI directly verified with conference or meeting organizers if any gift or honorarium was given to the ADB-staff member, and what travel expenses the organizers actually paid.

3. OAGI determined that an ADB staff member received \$100 as cash stipend to cover incidental expenses, duplicating the miscellaneous ("lump-sum") expenses that ADB paid to the staff member. Initially, the conference sponsor indicated the payment was an honorarium. However, the sponsor later clarified the purpose of the payment, which agreed with disclosures in the conference materials.

4. The staff member explained to OAGI that the circumstances of his travel incurred certain incidental expenses for which the staff member considered the relatively small stipend to cover. ADB's business travel policy states, "A lump-sum allowance is paid to each mission traveler to cover all the miscellaneous items of expenses." ADB paid the staff member the total travel expenses for subsistence, visa cost, and miscellaneous ("lump sum") expenses authorized under ADB's travel procedures for that mission. Upon filing his claim for ADB payment, the staff member certified, that he had "not received and will not claim reimbursement of these expenses from any other source."

5. OAGI confirmed the staff member was not given any gifts or honoraria, and did not identify any other concerns from its investigation. OAGI concluded that the staff member improperly accepted the \$100 from a sponsor while also claiming reimbursement for incidental expenses from ADB. ADB recovered the \$100 and BPMSD determined that the appropriate action was a non-disciplinary written reprimand, which was issued by the staff member's head of office.

**Case 04-061-BPHR: Improper rental subsidy claims**

6. As part of its integrity review of staff members receiving rental subsidy, OAGI determined that a staff member received rental subsidy for property owned by his brother-in-law. OAGI found that the brother-in-law of the staff was living with the staff member in the rented property.

7. Upon completion of disciplinary proceedings, ADB found that the staff member had violated an administrative order prohibiting the receipt of rental subsidy for property owned by close relatives and that he failed to substantiate actual payment of rent for the past 6 years. ADB dismissed the staff member. The staff member was required to pay ADB \$80,129 plus interest in restitution.

**Case 04-063-BPHR: Submission of False Rental Subsidy claims**

8. As part of its integrity review of staff members receiving rental subsidy, OAGI determined that a staff member was living with the owner of the property rented by the staff member. OAGI referred the matter to BPMSD for further inquiry.

9. The staff member indicated that in view of a loan provided by his mother to the lessor that was used to purchase the rented property, he had forwarded the rental payments to his mother as repayment of the loan. However, there was no evidence in writing regarding the loan arrangement, and there were also discrepancies between the actual amount transferred to his mother and the rental amount that he indicated that was paid in accordance with the lease contract.

10. Following completion of ADB's disciplinary proceedings, the staff member was found ineligible for rental subsidy for the property in view of the amendment of AO 3.04 in February 2004 that disqualified staff from the rental subsidy benefit in situations where a close relative has financial interests in the rented property. The staff member was also found to have failed to establish with sufficient evidence that he had actually paid rental fees to the owner in accordance with the lease agreement. ADB dismissed the staff member<sup>13</sup> and recovered \$19,885 rental subsidy that he had inappropriately received.

**Case 04-068-BPHR: Submission of Improper Rental Subsidy Claims**

11. OAGI investigated concerns that a staff member was paying an unusually high rental amount. In 2001, the staff member agreed to rent the property for PHP103,000 per month, although the predecessor renter had only paid a monthly rent of PHP84,000. The staff member also agreed to rental increases in 2002 and 2003 in excess of the amounts specified in the lease. Accordingly, the monthly rent for the staff member's property was PHP134,000 in 2003. An ADB broker provided an estimate to OAGI of the market value for the monthly rental of the property at PHP95,000, which is significantly below PHP134,000 staff member was paying. OAGI initiated its inquiry by requesting a copy of staff member's bank statements and requested his explanation on the higher than 5% increase in yearly rent from 2001 to 2004.

12. The staff member provided his bank statements and explained that he agreed with the landlady on the increase of rent because of major improvements to the property. In addition, staff member also explained that he originally withheld 1-month rent from the owner because

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<sup>13</sup> In accordance with ADB Administrative Order 2.04, the staff member was allowed to resign, which was regarded as tantamount to termination.

the work was not yet completed. The staff member and the owner eventually agreed that the staff member would withhold a 1-month rental payment to be used to do any future repairs of the property. Further investigation by OAGI revealed that the staff member failed to provide supporting documents on some of the repairs.

13. At the conclusion of formal disciplinary proceedings, ADB held that the staff member committed misconduct when in retaining a significant portion of the rental payment to serve as a “repair fund” that was entirely at his disposal, and that he did not substantiate a significant number of purchases using the “repair fund”, and that the items he presented as repair expenses were inappropriate payments under ADB’s rental subsidy rules. The circumstances surrounding the staff member’s agreement to the rent increases beyond the escalation limit were further viewed as deliberate and recurring. In view of these considerations, ADB dismissed the staff member.

#### **Case 04-074-BPHR: Misconduct**

14. OAGI reviewed allegations of misconduct by an ADB staff member based on a complaint sent to the Director General, BPMSD and the Auditor General. OAGI determined that the staff member accepted a loan from a beneficiary of ADB-financing and failed to make repayments of the loan. OAGI also determined that the staff member borrowed money from subordinate ADB staff members. In addition, the staff member had failed to comply with ADB’s mission travel and leave policies by failing to charge annual leave in conjunction with mission travel; misused mission travel resources in twice deceptively deviating from the most direct route, and unjustifiably claiming per diem and subsistence allowance; using an ADB vehicle for personal use; obtaining excessive cash advances for mission travel; and not appropriately maintaining personal finances.

15. While the available evidence and the explanations that were provided in the course of disciplinary process warranted further proceedings, the staff member’s impending retirement prevented the completion of such proceedings. Nonetheless, ADB found that there were sufficient grounds for concluding that the staff member’s actions amounted to unsatisfactory conduct for which a reprimand was imposed.

#### **Case 04-098-BPHR: Submission of false life insurance claim**

16. OAGI obtained evidence that an ADB staff member falsified documents claiming the death of his spouse to collect life insurance and other benefits from ADB, and that the staff member increased the spouse's life insurance coverage shortly prior to the false claim. Upon completion of the disciplinary proceedings, ADB summarily dismissed the staff member.

#### **Case 04-099-BPHR: Misrepresentation of age**

17. OAGI investigated an allegation that an ADB staff member submitted false documents to ADB with a misrepresentation of staff member’s age. OAGI obtained copies of the staff member's children's birth certificates and marriage certificate from the relevant government records offices. During an interview with OAGI, the staff member asserted that a deceased relative had altered the documents provided to ADB 20 years prior and denied any wrongdoing. OAGI, through one of its investigative retainer firms, obtained the staff member's high school records indicating the staff member was at least 4 years older than he claimed to be. The retainer firm interviewed a relative of the staff member, who stated that the staff member was

the oldest of a number of siblings, and that the staff member's sister was born 4 years before the birth date claimed by the staff member.

18. Based on available evidence, OAGI's finding was that it was more probable than not that the staff member misrepresented his age to ADB. ADB gave evidentiary weight to the staff member's school record which constituted the most credible evidence that the staff member's actual age is older than that he declared to ADB. Considering that on the balance of probabilities, the staff member was already beyond ADB's retirement age, the staff member was terminated immediately and was given a non-disciplinary written reprimand for having submitted incorrect documents relating to his age.

#### **Case 05-012-BPHR: Various misconduct (including receipt of improper gratuity)**

19. OAGI received allegations against an ADB staff member that included harassment, retaliation, receiving kickbacks from a supplier, procurement fraud, misuse of rental subsidy, and other misconduct. OAGI investigated the concerns related to fraudulent and corrupt practices, as defined by ADB, including kickback and procurement fraud, and misuse of rental subsidy.

20. OAGI's investigation did not substantiate concerns of procurement fraud but found evidence that a supplier reimbursed the ADB staff member for the purchase of an airline ticket that the staff member's spouse used to travel from Asia to Europe. OAGI referred its findings to BPMSD, which found the staff member committed misconduct. Following the completion of the disciplinary process, ADB found that the staff member committed serious misconduct that warranted the sanction of dismissal. The staff member was dismissed.

21. In conjunction with an audit of ADB financial records, OAGI also found evidence that the staff member submitted fraudulent receipts and misrepresented information in conjunction with rental subsidy claims. In view of the staff member's termination for his acceptance of an improper gratuity from a supplier, no further action was taken on this issue.

#### **Case 05-016-BPHR: Submission of False Medical Insurance Claims**

22. OAGI received an allegation that an ADB staff member submitted false medical insurance claims due to irregularities in the staff member's claims. At the request of OAGI, the medical insurance provider reviewed the staff member's claims filed from 2003 to 2005 and determined that false claims totaling PHP 37,040.00 had been submitted. Several receipts were tampered with and billed amounts altered.

23. Following the completion of disciplinary proceedings, ADB summarily dismissed the staff member and disqualified the staff member from voluntary continuation of coverage option under the ADB group medical insurance plan. The amount of fraudulent medical claims paid was deducted from the staff member's final pay.

**Case 05-035-BPHR: Misrepresentation of Expense Claim**

24. OAGI investigated a concern that an ADB staff member made a false statement to support a reimbursement claim for legal expenses related to an accident involving a rental car while on mission. In his reimbursement request, the staff member stated that he had been driving the car when the accident occurred. However, OAGI established through court records that his spouse was driving the car at the time of the accident. OAGI referred the inconsistency regarding the identity of the driver to BPMSD. In view of the staff member's sincere apology for the miscommunication with relevant ADB staff during the course of his reimbursement request, ADB determined that the initiation of formal disciplinary proceedings was no longer necessary.

**Case 05-057-BPHR: Violation of Code of Conduct provisions on conflict of interest**

25. OAGI received an allegation of a conflict of interest between the ADB staff's interest as vice chair of the board of directors of a support foundation for a non-profit private university and the performance of his duties as an ADB staff member. OAGI's preliminary inquiry revealed that the staff member engaged in repeated and deliberate misconduct in advancing his personal interests as vice chair of the board of directors of the support foundation for the university. In addition, OAGI determined that he had an arrangement for prospective employment with the support foundation.

26. OAGI found evidence that the staff member (i) solicited financial and other support from ADB on behalf of a prospective employer, (ii) disclosed internal ADB documents to unauthorized persons, (iii) disclosed the ADB password to a proprietary internet database to unauthorized persons outside of ADB, (iv) performed extensive work on personal matters during office hours, (v) misused the ADB diplomatic pouch, and (vi) engaged a dependent of an ADB staff member to work on a proposal by the university support foundation to ADB for financial support. In addition, OAGI found evidence of other misappropriation of ADB resources for personal use and other misconduct.

27. Following the completion of the disciplinary proceedings, ADB found that the staff member's actions constituted serious and blatant misconduct that warranted the penalty of summary dismissal.

## PROJECT PROCUREMENT-RELATED AUDITS CONDUCTED IN 2005

### Loan 1486-BAN (SF): Forestry Sector Project

1. OAGI, with support of a team of consultants, conducted a project procurement-related audit (PPRA) of the project from May to August 2005, including review of 296 contracts totaling \$8.17 million. The PPRA found various irregularities, including: bid splitting, complementary bidding, misappropriation of funds, false supporting documents, non-existence assets or assets not registered, kickbacks, and fictitious bidders. OAGI determined that these irregularities arose due to a lack of internal controls and inadequate supervision and monitoring of procurement and contract implementation. In addition, project personnel exhibited a lack of ownership in the project and did not possess the requisite skills for proper project implementation. Project personnel also lacked awareness of ADB's procurement guidelines, the Government's procurement guidelines and ADB's Anticorruption Policy (the Policy).

2. The PPRA team presented its findings to the Secretary of the concerned Ministry and respective ADB resident mission's staff, and is currently preparing a final report for distribution. As a result of OAGI's preliminary recommendations, the Bangladesh Resident Mission established a project management unit (PMU). OAGI's final recommendations may include, among other things, suspension of disbursement of selected contracts, withdrawal of financing of selected contracts, cancellation of the loan, and/or request the concerned government to reimburse ADB the amount of funding that had been diverted for unauthorized purposes.

### Loan 1709-PNG: Road Maintenance and Upgrading Sector Project

3. OAGI, with three consultants, a staff from the government's auditor general's office, and a ADB staff member from operations, audited of the project from September to December 2005. The PPRA included a review of seven contracts worth \$36.2 million (\$25 million disbursed), and three newly awarded contracts worth \$17.5 million.

4. The audit found that improvements should be made in control of the procurement process as well as disbursement of funds, thus OAGI would recommend that overall control needs to be strengthened, procedures have to be closely followed, and contractors' representations of their capacities and experience need to be confirmed prior to award of contracts. The audit also found various project implementation issues, which would be brought up to the attention of operations. The audit team briefed the concerned Secretary of the concerned Ministry, and is currently preparing a final report for distribution.

### Loan 1736-MON (SF) - Cadastral Survey and Land Registration Project

5. OAGI collaborated with the Mongolian National Audit Office, and a team of consultants conducted a PPRA of the Cadastral Survey and Land Registration Project financed by ADB Loan 1736-MON (SF). The audit detected several indications of potential procurement fraud and corruption schemes involving collusive bidding, pre-arranged bidding, fraudulent misrepresentation of bid information, false bid security, and bid evaluation manipulation, conflicts of interest and weak internal controls.

6. The audit also found evidence that the procurement process was manipulated to give the appearance of competition and that the winners might have been pre-arranged in most contracts reviewed. The audit found that none of the procurement packages (including direct

purchase) complied with the requirements in ADB's procurement guidelines and the loan agreement.

7. The audit revealed shortcomings in the fiduciary oversight by the Executing Agency (EA). The overall control environment was weak and inadequate for deterring fraud, corruption, and conflicts of interest. Furthermore, insufficient oversight by the EA, and its failure to recognize the inherent conflict in the project manager's private interests and his official office raises the risk that PMU's approvals, authorizations, verifications, and asset security might have been overridden.

8. OAGI recommended strengthening project oversight, reporting and internal controls. In addition, OAGI recommended that the borrower establish a mechanism to identify and control potential or actual conflict of interests among staff and their relationships with contractors/bidders/suppliers. OAGI has presented the draft audit report to the Mongolian Auditor General and intends to present the audit report to the Mongolian Resident Mission, Mongolian Ministry of Infrastructure and Urban Development, Administration Affairs, Geodesy and Cartography (the EA), and Mongolian Ministry of Finance. As of 31 December 2005, OAGI had opened two investigations arising from potential violations of the Policy identified by the audit; additional investigations are under consideration.

#### **Loan 1810-INO(SF): Decentralized Health Services Project**

9. OAGI conducted a PPRA of the project to: (i) identify whether the procurement process of contracts awarded followed ADB's guidelines and the relevant loan agreement, (ii) identify whether implementation of contracts was in accordance with contract specifications, and (iii) ensure ADB's funds had been used for their intended purposes. OAGI conducted the PPRA from July to November 2005 with the support of a consulting firm. The audit team reviewed 247 contracts totaling 159,138,475,000 rupiah, representing 78% of the total loan value and 27% of the total contracts financed under the ADB-financed loan.

10. Regarding financial and record management, the audit noted that the project's accounting system and internal controls were generally adequate. However, the audit found that the project's procurement process was manipulated to falsely appear competitive. Similarities between bid prices indicate that the bidders probably colluded and may have obtained the estimated contract price details. Similarities between the winning and losing proposals signal the possibility of collusive practices and contracts having pre-arranged winners. Instances of conflict of interest among bidders were noted when the bid evaluation committees should have disqualified those bidders or sought approval before qualifying those bidders. The audit also found possible falsified documents, inconsistent bid evaluations, and nonconformity with ADB procurement guidelines. OAGI expects to conduct investigations of fraud, corruption, and abuse identified by the audit.

11. The audit team recommended that the EA, in consultation with ADB and implementing agencies, implement control procedures to help prevent and detect fraudulent and collusive practices, and to ensure that the procurement process is transparent and complies with ADB rules.

## HOW TO REPORT FRAUD OR CORRUPTION

Contact the Integrity Division of the Office of the Auditor General (OAGI) to report concerns related to any ADB-financed activity. Confidentiality will be protected.

When reporting concerns, please provide as much information and detail as possible, including who, what, when, where, why, and how. For further guidance, see our website at “What to Report” (<http://adb.org/Integrity/whatto.asp>).

- Telephone + 63 2 632 5004
- Confidential fax + 63 2 636 2152
- Secure and confidential e-mail:  
[integrity@adb.org](mailto:integrity@adb.org) or [anticorruption@adb.org](mailto:anticorruption@adb.org)
- Web-based complaint form: <http://adb.org/Integrity/complaint.asp>
- Postal address:

Integrity Division (OAGI)  
Office of the Auditor General  
Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila, Philippines

- In Person: OAGI staff is on the third floor, North Core, of ADB headquarters