

**ASIAN DEVELOPMENT BANK**



**ANNUAL REPORT  
ON THE  
MAJOR ACTIVITIES  
OF THE  
ANTICORRUPTION UNIT  
2003**

**Office of the Auditor General**

**January 2004**

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## APPENDIXES

1. Summary Status of Reported Fraud and Corruption Allegations as of 31 December 2003
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## I. MISSION

1. ADB's 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 and corruption among ADB-financed projects or its staff. ADB established an Anticorruption Unit (OAGA) within OAG in September 1999 to handle all matters related to such allegations.

2. Under the Policy, OAG has several responsibilities to fulfill the Policy's objective to ensure ADB-financed activity and its staff adhere to the highest standard of ethical conduct. OAG fulfills these responsibilities through OAGA

- determining the credibility of allegations and the need for further investigation, and ensure allegations are investigated promptly, thoroughly, and confidentially,
- conducting project procurement-related activities to help prevent and detect corruption or other forms of fraud, and
- collaborating with the Budget, Personnel and Management Systems Department to provide training in forensic accounting and other investigative techniques for ADB staff.

3. Pursuant to the Policy, OAGA works to strengthen key institutions, such as supreme audit institutions, to advance transparency in developing member countries. In addition, OAGA works to strengthen its own capacity to address anticorruption issues and fulfill its mission effectively. OAGA also publishes information materials to describe the Policy and anticorruption procedures.

## II. 2003 ACCOMPLISHMENTS

### A. Allegations of Fraud and Corruption

#### 1. Investigations

4. In 2003, OAGA received 161 complaints (concerns or allegations of fraud or corruption related to ADB-financed activity). In screening<sup>2</sup> those, OAGA closed 49 complaints after determining no investigation was warranted. As of 31 December 2003, OAGA was still screening 21 complaints, and had opened 91 investigations to review further the concerns and allegations.<sup>3</sup> Figure 1 illustrates the number of complaints and investigations OAGA opened throughout 2003.

5. Including the 91 investigations opened in 2003, OAGA has begun a total of 363 investigations since ADB adopted the Policy. Appendix I provides a more detailed summary of allegations.

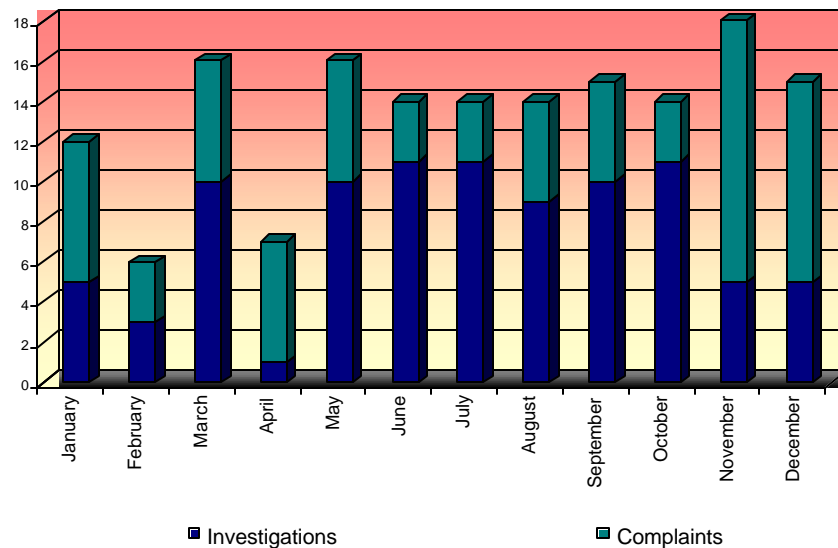
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<sup>1</sup> Board Paper R89-98, 2 July 1998.

<sup>2</sup> Upon receiving any concern or allegation, OAGA first will evaluate whether a complaint is within OAGA's mandate (i.e., related to ADB-financed activity or staff), credible, verifiable, and material.

<sup>3</sup> With full implementation of case management software (see paragraph 12), OAGA was able in 2003 to improve the way it classifies and tracks concerns and allegations. Previous years' classification indicated the number of investigations opened and did not include complaints that OAGA screened without investigating further.

**Figure 1: Cases Opened (2003)**



6. Of the 91 investigations it opened in 2003, as of 31 December, OAGA

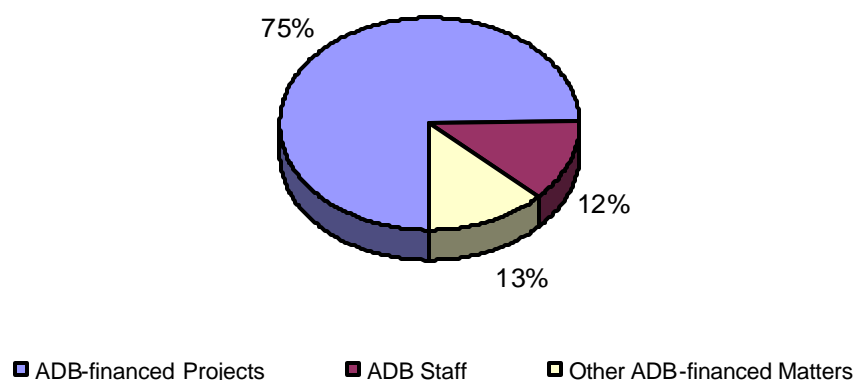
- closed 37 cases, including 33 cases for which OAGA did not find support for the allegation or evidence sufficient to demonstrate that there was a violation of the Policy,
- referred 3 cases (involving 4 staff) to the Human Resources Division (BPHR) (one case is closed), and
- presented investigative findings on 6 cases to ADB's Oversight Committee on Anticorruption (3 cases are closed, while 3 remain open awaiting expiration of their appeal period). (Paragraph 16 explains all cases, including those opened before 2003, that OAGA presented to the Oversight Committee in 2003.)

7. In 2003, OAGA reopened and continues to investigate two cases it had closed earlier in 2003. OAGA reopened those cases because of new information OAGA obtained related to those cases, and in particular for one case to monitor a government investigation of issues related to those OAGA had investigated.

8. OAGA cases comprised concerns related to ADB-financed projects, ADB staff, and other ADB-financed matters.<sup>4</sup> Figure 2 shows the proportion of 2003 cases in each category. Cases related to ADB staff often concern suspected abuse of benefits, but may also involve other allegations under the Policy. OAGA, as the sole investigative function within ADB, also provides support to ADB's Human Resources Division, at the Human Resources Division's request, to conduct preliminary inquiries of possible staff misconduct. Appendix II provides a summary of significant cases that OAGA investigated in 2003.

<sup>4</sup> Other ADB-financed matters relate to ADB administration or former ADB staff.

**Figure 2: Case Interest (2003 Investigations)\***



\* OAGA classifies each investigation into a single category that is most applicable, though some investigations may overlap more than one category.

9. OAGA engages investigating firms on a retainer basis to conduct investigations of allegations of fraud and corruption. This arrangement allows the Auditor General to issue work orders covering the investigations on a case-by-case basis, pursuant to ADB's procedures on anticorruption. OAGA's experience showed the firms OAGA had engaged prior to 2003 did not always have the capability to carry investigations economically or in a particular country, or in some cases did not wish to carry out investigations due to a conflict of interest. Consequently, in 2003, OAGA completed a process to select other investigating firms. OAGA continues to retain one of the three firms it had engaged prior to 2003, and selected three other firms to provide additional investigative support to OAGA. The Auditor General issued seven work orders to OAGA's retainer firms in 2003.

10. Investigating cases involves OAGA investigative missions and field investigations by retained investigating firms. In 2003, such missions and investigations included travel to Bangladesh, Indonesia, Lao PDR, and Sri Lanka, as well as within the Philippines.

11. OAGA maintains a fraud and corruption reporting system that includes a discrete telephone line, facsimile machine, and e-mail address. In addition, OAGA maintains a biometric access device for its file room. The fingerprint-reading device strictly limits access to OAGA documents and files to OAGA staff. To provide security in addition to that provided by ADB's administrative network, OAGA operates a secure subnetwork (integrated with ADB's administrative network), with its own firewall and encryption capability, to protect sensitive or confidential fraud and corruption-related information.

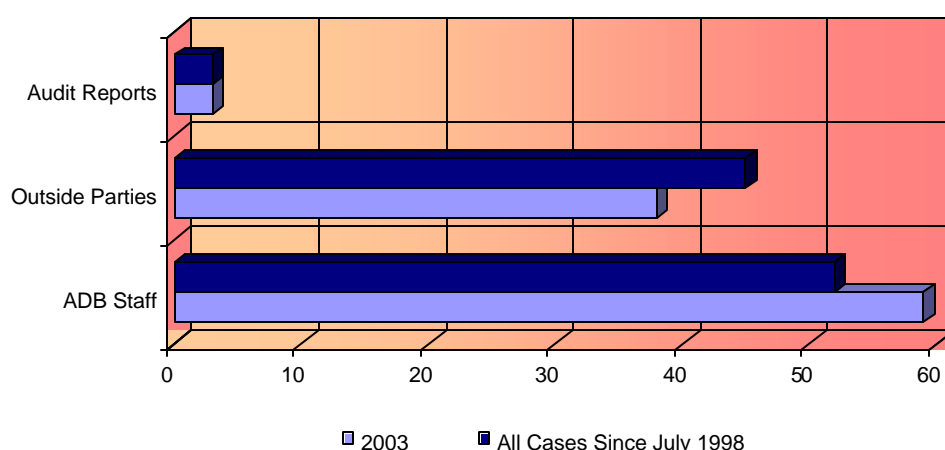
12. In 2003, OAGA fully implemented the investigative case management software it began to work with in 2002. The software enhances OAGA's administrative controls and information, and strengthens case data research and retrieval capability.

13. In conjunction with ADB's revision of its Operations Manual in 2003, OAG reviewed and revised its Audit Manual, including incorporating anticorruption procedures into Chapter 800 of the Audit Manual. The procedures applying to ADB's handling of allegations of fraud and corruption, which had been detailed in ADB's Guidelines on Operational Procedures, Section

55, issued in July 2000, became obsolete upon ADB's issuance of its new Operations Manual. The President approved OAG's new Audit Manual, including Chapter 800's anticorruption procedures, in December.

14. As in 2002, in 2003, OAGA noted a trend of ADB staff being the source of a greater portion of OAGA cases when compared to all cases since ADB adopted the Policy. Figure 3 illustrates this trend. Although OAGA cannot determine all specific causes for such an increase, OAGA believes the increasing awareness of the Policy and confidence in OAGA among ADB staff contributes to this increase. This trend may persist as OAGA continues its awareness seminars and training. However, it also underscores the need for OAGA to continue its efforts to ensure outside parties are aware of OAGA, the Policy and ADB's anticorruption procedures (see paragraphs 25-32 for such efforts OAGA undertook in 2003).

**Figure 3: Case Source (Percent of Cases)**



## 2. Sanctions

15. ADB's Oversight Committee on Anticorruption determines if firms or individuals involved in ADB-financed activity violated ADB's Anticorruption Policy and may impose sanctions. The Committee consists of three regular voting members, and three alternate members who fill any vacancies that may occur among the regular members due to absence or conflict of interest. Members are nominated by the Auditor General and approved by the President annually. The heads of ADB's Budget, Personnel and Management Systems Department and Central Operations Services Office (or their designees), and an Assistant General Counsel advise the Committee.

16. In addition to the six cases noted in paragraph 6, pursuant to ADB's anticorruption procedures (see paragraph 13), OAGA also presented to the Oversight Committee investigative findings, recommendations for reinstatement, and requests for investigations to the Oversight Committee related to cases opened before 2003. Table 1 outlines the Oversight Committee's cases considered and decisions made in 2003, and Table 2 outlines sanctions imposed by ADB since adoption of the Policy.

**Table 1: Oversight Committee on Anticorruption 2003 Cases Considered**

26 cases to consider OAGA investigative findings  
 21 firms debarred for 3 to 7 years  
 5 individuals debarred for 2 to 7 years  
 5 individuals debarred indefinitely

3 cases to consider reinstatement of eligibility (upon expiry of minimum sanction period)  
 2 firms and 2 individuals reinstated or removed from ineligible list

8 cases approved for OAGA to conduct field investigations

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

<u>As of 31 December 2003</u>	<u>Firms</u>	<u>Individuals</u>
Total Declared Ineligible to Participate in ADB-Financed Contracts	49	50
Number Whose Ineligible Terms Have Been Completed	8	11
Currently Ineligible to Participate in ADB-Financed Contracts	41	39

17. Periodically in 2003, to help ensure ADB resources do not support any entity or individual involved in or supporting money laundering or terrorism, OAGA continued to review internationally disseminated lists of such entities and documented those entities that appear to be from ADB-member countries.

### **3. Appeals**

18. To fulfill a commitment to due process, ADB's anticorruption procedures provide an opportunity for firms or individuals to appeal sanctions imposed by ADB, and designate the role for such consideration to the Review Committee on Anticorruption. In 2003, the Review Committee considered one case involving two firms and one individual. In that case, for both firms and the individual, the Review Committee found there was no basis for it to reconsider the Oversight Committee on Anticorruption's decision. Therefore, the sanctions imposed by ADB remained unchanged following appeal.

19. In November and December, the Auditor General, as Secretariat to the Review Committee, received appeals on three cases in which earlier in 2003 ADB had declared four firms ineligible to participate in ADB-financed activity. OAGA will present those cases to the Review Committee on Anticorruption in early 2004.

### **B. Project Procurement-Related Activities**

20. Project procurement-related audits can proactively address potential control weaknesses that may allow fraud or corruption. Due to resource limitations, in 2003, OAGA was able to conduct only one limited-scope project procurement-related audit of a road improvement project. The objectives of the project procurement-related audit, completed in July, were to identify weaknesses of the procurement process, to identify compliance issues, and to substantiate any fraudulent or corrupt practices. The project procurement-related audit included reviewing a sample of six civil work contracts financed by the Project. OAGA also used the

project procurement-related audit as a pilot to explore options on how to conduct further such activity.

21. Based on the project procurement-related audit, OAGA recommended the Executing Agency to develop a systematic verification process: establishing and following specific procedures, and taking action on the feedback coming from this process for effective planning. The project procurement-related audit also demonstrated the benefits of strengthening due diligence—and doing so as early as possible in the project cycle—on executing agencies to identify, monitor, and prevent fraudulent and corrupt practices. OAGA, in partnership with its project procurement-related audit consultant, presented the audit's findings and recommendations to the operational departments in September.

## **C. Education and Awareness**

### **1. ADB Staff**

22. To continue to advance awareness of the Policy and related procedures, OAGA delivered six half-day training workshops organized by ADB's Human Resources Division to 164 staff. As in 2002, OAGA's target audience in 2003 was professional staff, national officers, and administrative staff of operational divisions. OAGA also briefed resident mission financial and administrative officers on the Policy and anticorruption procedures at a workshop organized for them by the Human Resources Division in August.

23. OAGA presented an overview of the Policy and of OAGA to professional staff, national officers, and administrative staff at four Induction Programs for New Staff. OAGA also participated in 14 Human Resources Division-organized orientation meetings for new ADB staff in 2003. These sessions ensure that all new staff are aware of the Policy and OAGA from the start of their career with ADB. OAGA also presented the Policy and anticorruption procedures to three Engineering for Non-Engineers seminars organized by the Human Resources Division for ADB staff in 2003.

24. In July, OAGA completed a two-day mission to the Indonesia Resident Mission to discuss the Policy and anticorruption procedures, at the Resident Mission's request. Discussion focused on the Resident Mission's procurement and withdrawal application processing procedures to ensure they are done consistently and efficiently, and are effective for project administration while addressing fraud and corruption issues.

### **2. Executing Agencies and Governments**

25. At the request of the Executive Director for Indonesia, OAGA conducted a workshop on the Policy and anticorruption procedures in Jakarta, Indonesia in October. Participants included government officials, industry associations and private sector participants in ADB-financed activity. The one-day workshop provided more than 100 participants with an understanding of the background, implementation and effects of the Policy. The event also provided the Auditor General an opportunity to discuss the Policy with senior government officials.

26. OAGA addressed 31 participants of a regional seminar on Project Implementation and Administration in October, and 47 participants of an orientation program for developing member country officials in November, both at ADB Headquarters in Manila.

27. In December, OAGA made a presentation on the Policy and how ADB deals with allegations of fraud and corruption in ADB-financed activity as part of a four-day seminar on the use of consulting services, in Kunming, People's Republic of China. ADB's Consulting Services Division organized the seminar for executing agency officials.

28. In November, the Auditor General spoke on ADB's Anticorruption Efforts at the International Consortium on Government Financial Management's luncheon meeting at The Brookings Institution in Washington, DC.

### **3. Contractors, Consultants and Others**

29. In June, the Auditor General was the keynote speaker at a conference, "Curbing Corruption as Part of Development Cooperation," organized by the Danish Ministry of Foreign Affairs. In November, the Auditor General also discussed the Policy and anticorruption procedures with representatives of a dozen nongovernmental organizations at a meeting organized in Washington, DC, by ADB's North American Representative Office.

30. OAGA addressed over 30 representatives of an Australian Trade Mission in September, and the Auditor General met with 15 representatives of a Danish Trade Delegation in December to outline the Policy and anticorruption procedures.

31. As mentioned in paragraph 25, the anticorruption workshop in Jakarta included many contractor and consultant participants in ADB-financed projects. Also, in June, OAGA met with nine senior executives, including the chief executive and chief operating officers of a major international consulting firm to explain the Policy and anticorruption procedures. The firm requested the meeting because of its involvement in an OAGA investigation.

32. In 2003, OAGA began working with Fédération Internationale des Ingénieurs-Conseils (FIDIC) to enhance the consulting industry's awareness of the Policy, anticorruption procedures, and particularly the impact of sanctions that ADB may impose on entities that violate the Policy.

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

33. OAGA continued to supervise the implementation of Technical Assistance (TA) Project 6014-REG: Strengthening the Regional Training Capability of the Asian Organization of Supreme Audit Institutions (ASOSAI), approved in December 2001. A pre-workshop meeting of instructors was held in March to develop the workshop on Audit of Financial Statement in an Information Technology Environment. Also, the 9<sup>th</sup> ASOSAI General Assembly, which OAGA attended in Manila, Philippines in October, discussed and approved guidelines for dealing with fraud and corruption. The Assembly also permitted senior audit officials of developing and donor countries to freely exchange views and share knowledge and best audit practices to strengthen audit capabilities in the region.

34. OAGA completed TA 6036-REG: Strengthening the Regional Training Capability of the South Pacific Association of Supreme Audit Institutions (SPASAI) in 2003, which involved a regional performance audit workshop in May. The workshop upgraded the skills of the participants and assisted them in sharing their acquired audit knowledge and skills. The Project concluded with a meeting, also in May, to review the results of the training courses and discuss their application at regional and local levels, enabling participants to prepare action plans for the region and their respective SAIs.

35. In 2003, OAGA evaluated the results of TA 3103-PRC: Strengthening the Government Auditing System, supporting the National Audit Office of the People's Republic of China (CNAO) to reformulate their auditing standards and procedures. The Project improved the outcome of CNAO audits through CNAO's adoption of the latest audit concepts, including materiality and risk, internal controls, audit planning and programming, and management of audits. CNAO reported positive results from the better quality of their audits, and that audit results are drawing increasing public attention. CNAO's ownership and strong commitment to the Project's goal contributed to the Project's sustainability.

36. Also in 2003, OAGA and OAG's Financial, Administrative and Information Systems Audit Division evaluated the results of TA 5940-REG: Audit Training Program for Central Asian Republics, completed in August 2002. The Project provided training in basic audit concepts and techniques to three Central Asian republics—Kazakhstan, Kyrgyz Republic, and Uzbekistan—and allowed participants to be more aware of issues and problems in their counterpart organizations. The Project developed auditing guidelines, a training manual and materials, a fraud investigation manual, and a training program to enable the SAIs to spread knowledge among government auditors, enabling them to better audit ADB-financed projects as well as other government institutions.

#### **E. Enhancing OAGA Capacity**

37. Management authorized five professional staff positions for OAGA in 2002. OAGA only reached that staffing level in July 2003, with the addition of one new professional staff. However, another of OAGA's professional staff was on extended leave then, and resigned in November. OAGA filled that vacancy in December with a professional staff who transferred from another ADB department. OAGA maintained its two national officers throughout 2003. The administrative assistant working in OAGA at the beginning of 2003 transferred to another ADB office in April. In May, the Auditor General assigned to OAGA a senior administrative assistant from his immediate staff, and OAGA hired another administrative assistant who started in July.

38. OAGA continued to strengthen its relationship with other international organizations, particularly the World Bank and the Inter-American Development Bank. OAGA met with the World Bank's Department of Institutional Integrity staff in Manila and Washington, DC, and the Inter-American Development Bank's Auditor General and Oversight Committee on Fraud and Corruption staff in Washington, DC, several times in 2003. Also, in April, OAGA attended the monthly meeting of the Washington, DC, chapter of the Institute of Internal Auditors where the Director of the World Bank's Department of Institutional Integrity spoke on the topic, "Integrity Makes The Difference," which outlined how the World Bank, through the Department of Institutional Integrity, addresses fraud and corruption internally and externally.

39. In January, OAGA represented ADB at the Independent Commission Against Corruption/Interpol Conference in Hong Kong, China. The conference enabled participants to exchange practical experience and valuable insight on how best to combat corruption, provided an opportunity to meet and exchange ideas with representatives from other international organizations, and helped to establish closer ties between ADB and the Independent Commission Against Corruption.

40. In March, OAGA participated as a discussant on the topic, "Corruption Among Aid Recipients: Linking Development Aid to National Reform," at a Regional Conference on Corruption and Development Aid in Kuala Lumpur, Malaysia, sponsored by Transparency

International Malaysia, the Singapore Institute of International Affairs, and the Konrad Adenauer Foundation. OAGA met with many regional nongovernmental organizations and heard their views of corruption related to official development assistance. The conference revealed that official development assistance is a critical part of the region, and corruption is an issue relevant to official development assistance; multilateral development banks can improve their own governance; and, there seems to be a greater push to replace official development assistance with private capital development.

41. OAGA participated in the 4<sup>th</sup> Annual International Investigators Conference in Brussels, Belgium, in April. The World Bank's Department of Institutional Integrity and the United Nations' Office of Internal Oversight Services sponsored the conference. OAGA participated as a panel member in a presentation and discussion on investigative cooperation among international organizations. Through OAGA's participation on the panel, participants learned that OAGA does not usually involve itself in any legal or judicial systems, which contrasts with many other international organizations.

42. In May, OAGA was part of an ADB Mission to Seoul, Republic of Korea, to attend the Third Global Forum on Fighting Corruption and Safeguarding Integrity, and the 11<sup>th</sup> International Anti-Corruption Conference. The Global Forum is an intergovernmental conference devoted to fighting corruption, while the International Anti-Corruption Conference is a global assembly of anti-corruption professionals from various fields of society.

43. Two OAGA staff attended an Anti-Bribery Workshop held in May in Manila organized by Transparent Agents and Contracting Entities (TRACE), an international non-profit organization working to reduce corruption in transactions involving business intermediaries. The workshop focused on issues of corporate governance and due diligence, which OAGA promotes, and raised issues for OAGA to consider regarding definitions and application of fraud and corruption terms that ADB defines pursuant to the Policy.

44. An OAGA staff completed a two-day training course sponsored by the Association of Certified Fraud Examiners on Contract and Procurement Fraud in Washington, DC. About 90 people from the US government and private-sector firms participated in the course. As a result, OAGA contracted with the instructor, who is also a consultant to the World Bank's Department of Institutional Integrity, to conduct a three-day training course on Investigating Contract and Procurement Fraud in Manila in October. In addition to OAG staff who participated in the entire course, the first day included about 30 participants from ADB's Office of Administrative Services and Central Operations Services Office, as well as operational departments. Representatives of the World Bank, United States Agency for International Development, and the European Commission also attended the training, at OAGA's invitation.

## **F. Publication of Information Materials**

45. In 2003, OAGA updated and distributed to internal and external stakeholders more than 1,000 copies of its brochure on the Policy, which it published in 2001 to fulfill a requirement of the Policy. In addition to an overview of OAGA's procedures, the brochure provides some background on the development of the Policy, as well as the roles of the Oversight and Review Committees on Anticorruption.

46. Via *ADB Today*,<sup>5</sup> OAGA continued a series of advisories to ADB personnel. The advisories provided guidance on the application of anticorruption sanctions, and notified staff of other issues related to the Policy and updates to sanction lists, as well as advance fee frauds, cautioning staff not to respond to the numerous solicitations that various ADB staff received.

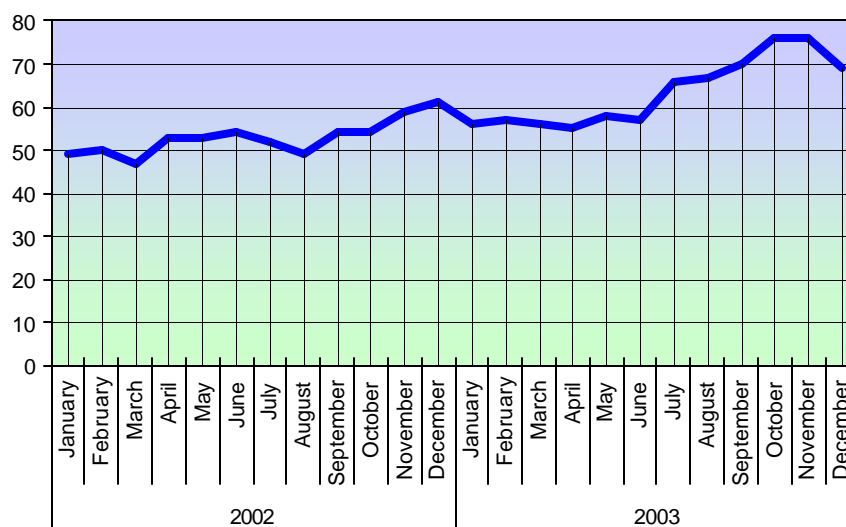
47. Throughout 2003, OAGA maintained and enhanced its section of the ADB website (<http://www.adb.org/anticorruption>) to provide transparency on how ADB deals with allegations of fraud and corruption related to ADB-financed activities.

48. ADB does not make public its list of firms and individuals ineligible to participate in ADB-financed activity pursuant to the Policy. OAGA does share that information, on a confidential basis, with the World Bank, the Inter-American Development Bank, and other international organizations. With support from OIST, OAGA maintains an Intranet site at which ADB staff may access the list of sanctioned entities and terrorism-related entity information.

### III. CHALLENGES

49. OAGA's workload continues to grow in volume and complexity. As illustrated in Figure 4, as of 31 December 2003, OAGA continued to investigate 69 cases opened in 2003 and prior years, 13 percent more than the 61 investigations open at the end of 2002. OAGA opened 12 percent more investigations in 2003 compared to 2002 (91 in 2003 compared to 81 in 2002), as illustrated in Figure 5. OAGA averaged 64 open investigations in 2003, 20 percent more than the average 53 open cases in 2002.<sup>6</sup>

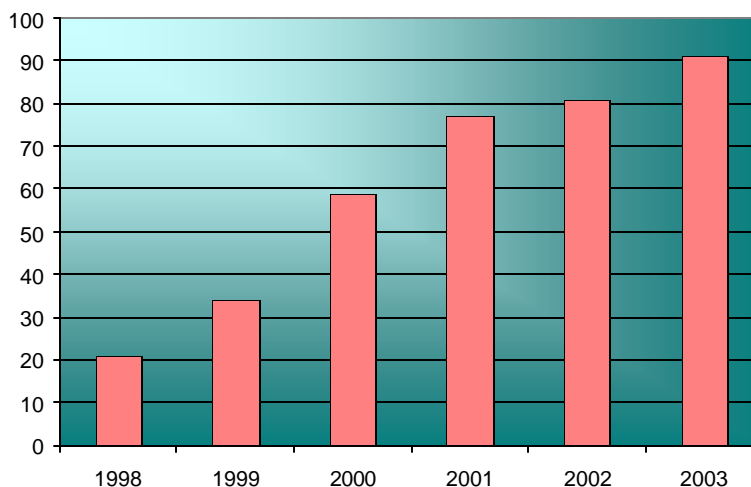
**Figure 4: Open Investigations**



<sup>5</sup> *ADB Today* is ADB's internal daily newsletter that includes news and official announcements for personnel.

<sup>6</sup> Based on open investigations at the end of each month.

**Figure 5: Investigations Begun Annually**



50. The increasing collective experience and skill of OAGA investigators, as well as the complexity of cases, leads to more thorough and time-consuming investigations and use of new investigative techniques. OAGA is constantly challenged to effectively

- investigate fraud and corruption issues related to large, high-profile entities,
- review complex issues regarding the fair, reasonable, and appropriate application of the Policy to ensure the principles and intent of the Policy are met, including determining if actions were merely errors or were actions intended to benefit an entity, evaluating responsibilities of various parties to a proposal or contract, and assessing variations of contracts of ineligible entities,
- provide guidance when executing agencies may want to terminate a contract that has been negotiated or awarded, and
- discuss collateral sanctions by other international organizations based on ADB's remedial actions.

51. In addition, ADB's Board of Directors has expressed a desire for OAGA to conduct more project procurement-related audits.

52. OAGA hopes to address these significant workload and resource challenges through strengthening the supervision and management of OAGA activities and staff, and carefully planning future resource requirements.

53. OAGA administers its responsibilities under the Policy in many environments where fraudulent and corrupt activities, as defined by ADB, are institutionalized. Because of this, OAGA must consider both ADB Charter provisions to not interfere in sovereign matters of its members, and protecting the privileges and immunities of ADB.

54. All of OAGA's accomplishments contribute to addressing this challenge, though OAGA understands it will take continuous effort and much time to change, let alone overcome. In

particular, to address this in 2004, OAGA hopes to increase its presence in developing member countries with project procurement-related work, more investigative missions, and more briefings to government, ADB staff, and private-sector participants in ADB-financed activity. OAGA will also update its brochure explaining the Policy and procedures, continue to issue advisories to ADB personnel, and maintain and enhance its website to provide transparency on anticorruption activities. OAGA will also continue its ongoing effort to identify, and work with appropriate ADB departments to clarify internal procedures and controls to help reinforce the ethical environment of ADB.

55. Based on its experience, OAGA believes ADB's definitions of fraudulent practices and corruption need to be revised to fulfill the intent of the Policy. OAGA will review the definitions in 2004.

**SUMMARY STATUS OF REPORTED FRAUD AND CORRUPTION  
ALLEGATIONS AS OF 31 DECEMBER 2003**

Year Received/Status	Total	Loan	Technical Assistance	ADB Staff	Other
<b>1998:</b>					
<b>Total</b>	<b>21</b>	<b>11</b>	<b>3</b>	<b>5</b>	<b>2</b>
<b>1999:</b>					
<b>Total</b>	<b>34</b>	<b>21</b>	<b>1</b>	<b>5</b>	<b>7</b>
<b>2000:</b>					
Open	1	1	-	-	-
Closed	58	34	5	14	5
<b>Total</b>	<b>59</b>	<b>35</b>	<b>5</b>	<b>14</b>	<b>5</b>
<b>2001:</b>					
Open	2	2	-	-	-
Closed	75	56	6	7	6
<b>Total</b>	<b>77</b>	<b>58</b>	<b>6</b>	<b>7</b>	<b>6</b>
<b>2002:</b>					
Open	12	12	-	-	-
Closed	69	42	10	12	5
<b>Total</b>	<b>81</b>	<b>54</b>	<b>10</b>	<b>12</b>	<b>5</b>
<b>2003:</b>					
Open	54	37	6	6	5
Closed	37	14	11	5	7
<b>Total</b>	<b>91</b>	<b>51</b>	<b>17</b>	<b>11</b>	<b>12</b>
<b>Cumulative</b>					
Open	<b>69</b>	<b>52</b>	<b>6</b>	<b>6</b>	<b>5</b>
Closed	<b>294</b>	<b>178</b>	<b>36</b>	<b>48</b>	<b>32</b>
<b>Grand Total</b>	<b>363</b>	<b>230</b>	<b>42</b>	<b>54</b>	<b>37</b>

CLOSED INVESTIGATIONS*					
Year Closed	Total	Closed after Investigation – No Further Action	Closed – No Sanctions	Closed – With Sanctions	Referred to Human Resources Division
1998	5	3	-	-	2
1999	36	24	1	7	4
2000	47	27	4	6	10
2001	57	43	5	5	4
2002	80	52	10	12	1
2003	68	59	0	6	3
<b>Total</b>	<b>293</b>	<b>208</b>	<b>20</b>	<b>36</b>	<b>24</b>

ORIGIN OF REPORTED COMPLAINTS/ALLEGATIONS			
TOTAL	ADB Management/Staff	Audit Reports	Outside Parties
<b>363</b>	<b>188</b>	<b>11</b>	<b>164</b>

\* Reopened investigations remain in this table, but may be reclassified upon subsequent closing.

## SIGNIFICANT INVESTIGATIONS CONCLUDED IN 2003

### A. Bribery

1. In March 2002, OAGA began investigating an allegation that a representative of a firm (Firm A) that submitted a proposal to provide consultancy services offered a bribe to a member of the executing agency's tender selection committee. OAGA confirmed that the firm is a member of a corporate group and shared the same office as an associated firm (Firm B). OAGA confirmed that the individual who represented Firm A met with a member of the executing agency's tender evaluation committee in connection with Firm A's proposal to provide consultancy services. The member of the evaluation committee confirmed to OAGA that the individual offered a commission if Firm A's proposal was ranked first.

2. Firm A acknowledged OAGA's findings following their own investigation, but said the individual was not acting on behalf of the firm. Further, Firm A stated it did not employ the individual, rather, Firm B did. Firm B represented to OAGA that it terminated all relations with the individual and changed the business operations of the office where the individual worked, and developed a corporate code of conduct for Firm A's staff and consultants. OAGA confirmed that Firm B employed the individual, but found that the individual had been given a termination notice several months before the investigation due to retirement. Despite Firm A stating there was no contractual agreement between it and the individual, OAGA found that the individual actually represented both Firm A and Firm B as a business development manager.

3. In August 2002, the Oversight Committee on Anticorruption declared Firm A and Firm B each ineligible to participate in ADB-financed activity for a minimum period following an established principle that firms are responsible for the actions of their employees and representatives, and should ensure that adequate controls are in place to detect and deter fraud and corruption, especially in high risk environments. The Committee also declared the individual ineligible to participate in ADB-financed activity indefinitely.

4. In November 2002, Firm A, Firm B, and the individual appealed ADB's decision because they believed the decision was not warranted and inappropriate. The Review Committee on Anticorruption met in February 2003 and found there was no new, relevant information to provide a basis for it to reconsider the Oversight Committee's decision. Therefore, the sanctions imposed by ADB remained unchanged following appeal.

### B. Bribery

5. OAGA received an allegation that one of the local firms associated with a lead bidding firm paid a significant amount to the Chairman and members of the Evaluation Committee. OAGA contacted the complainant but did not receive any further information. The lead bidding firm denied any knowledge of payments made by its associate firm.

6. OAGA attempted to meet with the Managing Director of the associate firm while on mission to the country; but the Managing Director cancelled the meeting at the last moment. OAGA considered several options for investigating this allegation. OAGA recommended that the Oversight Committee approve granting amnesty to the associate firm to allow it to cooperate fully with ADB's investigation.

7. The Oversight Committee on Anticorruption decided that OAGA should conduct further investigation, including contacting the complainant again, before any consideration should be given to providing amnesty to the associate firm.

### **C. Collusion**

8. Two of nine bidders for civil works alleged that the other seven bidders colluded on the tender, and that the first-ranked bidder overpriced the contract by a significant amount. OAGA obtained a copy of a letter that an official of the first-ranked bidder wrote to another bidder asking to meet to discuss the best way to handle the contract, and indicating that the other bidder would receive a portion of the contract. OAGA believed the letter showed an attempt to fix the outcome of the tender, although the first-ranked bidder denied that was the intention.

9. One of the complainants confirmed to OAGA that the first-ranked bidder invited the other bidders to four informal meetings before bids were due. The complainants also alleged that the officials of the first-ranked bidder stole bidding documents, and assaulted an official of one of the complainant firms when it refused to collude with the other bidders. OAGA confirmed that the executing agency inexplicably extended the deadline to submit bids by several days, the tender then was cancelled and a second tender, with a later bid submission deadline, was announced. The bid evaluation report did not explain the reasons for those decisions.

10. The Oversight Committee on Anticorruption found that the first-ranked bidder and its director each committed a fraudulent practice by attempting to influence the outcome of the tender in their favor. The Committee declared the firm ineligible to participate in ADB-financed activity for a minimum period, and its director, as an individual, ineligible to participate in ADB-financed activity indefinitely.

### **D. Embezzlement**

11. A resident mission notified OAGA that a consultant under a technical assistance project had embezzled the equivalent of a small amount, which had been transferred to the Project's bank account for the purchase of office equipment and for the Project vehicle expenses. The consultant provided OAGA a written statement admitting the embezzlement, explaining his reasons for "borrowing" the money that he subsequently returned. OAGA concluded that when "borrowing" from the Project's bank account, the consultant violated ADB's Anticorruption Policy by improperly enriching himself through misusing his position.

12. The Oversight Committee on Anticorruption recommended that Management terminate the consultant's contract, and determined that the consultant would be ineligible to be awarded any ADB-financed contract for a minimum period. OAGA confirmed that the resident mission and the project team leader took appropriate actions to prevent similar situations from occurring.

### **E. Embezzlement**

13. A firm working on an ADB-financed project dismissed its accountant because of fraud and embezzlement, and urged ADB not to engage the accountant for future contracts. OAGA confirmed that the firm found that the accountant embezzled funds, including ADB funds. The firm explained to OAGA that once the deficits were revealed, the accountant paid back a portion of the embezzled amount, which covered shortages of the ADB account.

14. Although not agreeing with the amount missing, the accountant admitted fault to OAGA, and explained his actions were a result of faulty forms, a poor, non-computerized accounting system, the lack of an audit, and overwork. The accountant further explained that because of his workload, the financial reports were delayed, thus delaying replenishments and fund transfers. Because of these delays, he had to juggle funds among the accounts.

15. The Oversight Committee on Anticorruption determined that the accountant committed a corrupt act under ADB's Anticorruption Policy by misusing his position to embezzle funds. The Committee declared the individual ineligible to participate in ADB-financed contracts indefinitely.

#### **F. Extending Consulting Services Contract of Ineligible Firm\***

16. OAGA advised the Oversight Committee on Anticorruption that, following OAGA guidance to staff, an operational department requested OAGA's opinion regarding a variation in a contract with a sanctioned firm. OAGA considered various factors, including the value of the requested variation in relation to the original and current contract value and the facts of the case related to the debarred firm. OAGA advised the Committee that it did not believe it would be in the best interests of ADB to endorse the variation, and that endorsing such an addendum would seriously diminish the effective administration of ADB's implementation of its Anticorruption Policy.

17. The Committee, with the advice of Counsel, and having considered the details of the specific variation, concluded that the variation effectively was a new contractual relationship. The Committee discussed at length the operational impact of denying such a variation but expressed its opinion that it agreed with OAGA that the contract variation was inconsistent with the Policy. OAGA expressed an opinion to the operational department that Management should not approve the government's agreeing to the variation. Management accepted that position.

#### **G. False Airline Ticket**

18. In its processing of a withdrawal application, a resident mission questioned a claim under a Loan-financed Project by an international consulting firm for an expert's home country travel because the resident mission believed that the expert was a domestic resident. The firm explained that the expert was domiciled in a foreign country other than where the firm was based and explained that it submitted a false ticket to comply with its interpretation of the contract, which it understood restricted home travel to the location of the firm's home office.

19. OAGA consulted with government officials to determine the government's interpretation of the contractual provision. The officials advised OAGA that the government did not consider the contract to restrict home country travel in that way, but considered the available budget to be a ceiling amount, and any home travel taken alternate to the indicated route should be at costs not to exceed the budget. OAGA confirmed that the expert actually traveled to his country of residence, and the firm provided documentation supporting that the actual cost exceeded the amount it claimed based on the fake air ticket.

20. OAGA recognized that there might be differences in interpreting the contract. However, OAGA believed it should not be the prerogative of any firm to fabricate documentation for claims under a contract that it had willingly entered into, even if it considered the contract to be ambiguous. The Oversight Committee on Anticorruption acknowledged the issues regarding interpretation of the contract, but determined that the firm should be reprimanded for violating the Policy.

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\* When ADB debars an entity, it usually allows that entity to fulfill existing contractual obligations. ADB also considers if it should endorse logical, necessary, and appropriate variations to such contracts.

## **H. False Bid Security**

21. An executing agency reported to a resident mission that a firm submitted false bank guarantees in conjunction with a bid for a contract to be financed by an ADB loan. The executing agency's procurement committee confirmed the guarantees were forged and that the bank did not issue them to the firm.

22. OAGA confirmed the executing agency's procurement committee report, and the existence and contact information of the firm. However, after exhausting phone, fax, and e-mail attempts to contact the firm, OAGA ultimately sought the resident mission's assistance to confirm the firm's existence. The resident mission reported that the firm apparently had vanished, though it was possible that the firm would reopen at another location, possibly under a new name. Because the firm seemed to have abruptly closed when OAGA and the authorities began to investigate the firm, OAGA concluded that the firm's managing director should also be accountable for the fraudulent practice of the firm.

23. The Oversight Committee on Anticorruption declared the firm ineligible to participate in ADB-financed activity for a minimum period of seven years, and the firm's managing director ineligible to participate in ADB-financed activity indefinitely.

## **I. False Documents**

24. ADB's Procurement Division reported to OAGA that in the pre-qualification of the bidders for civil works, an executing agency disqualified a firm from the bidding because that firm, alone among all prospective bidders, did not comply with a request for additional documentation to support documentation provided during pre-qualification. Because of other cases involving fictitious bidders, OAGA confirmed that this bidder was an actual firm, which also operated under a former name despite formally changing its name in 1996.

25. The firm never responded to OAGA's queries, leading to a conclusion that the originally submitted documents were false. The Oversight Committee on Anticorruption declared the firm, operating under any name, ineligible to be awarded any ADB-financed contract for a minimum period.

## **J. False Documents**

26. An ADB operational project officer found that 10 local contractors submitted false certificates of experience in bids for various civil works contracts. OAGA initially was unable to investigate three of the contractors because it could not obtain the alleged fraudulent certificates. OAGA was able to verify the accuracy of certificates of one of the contractors.

27. The Oversight Committee on Anticorruption declared one firm ineligible to participate in ADB-financed activity for a minimum period, and five other firms, none of which responded to OAGA's inquiries, each to be ineligible to participate in ADB-financed activity for a greater minimum period. The Committee asked OAGA to ensure the ADB project officer and resident mission were aware of the outcome of this case, in general terms, so they might convey ADB's concern regarding the executing agency's administration of tenders and the resident mission could ensure its own procedures are effective to identify and control such fraudulent activity. The Committee also asked OAGA to conduct further investigation regarding the certificates from the three contractors that OAGA initially had been unable to examine.

**K. Fraudulently Procuring Consulting Services Advance**

28. In October 2001, ADB paid an advance for services and expenses to a consultant hired under a technical assistance project. OAGA confirmed that despite repeated requests from the operational department and ADB's Controller's Department, the consultant did not liquidate the advance. The operational department notified the consultant in October 2002 that his contract would be terminated.

29. In May 2003, OAGA sought an explanation from the consultant for the failure to liquidate the advance, and investigated whether the consultant had fraudulently obtained the advance. Although the consultant responded initially, the response was not adequate to resolve the concerns. Despite several assurances of an imminent response, the consultant failed to fulfill his commitments to resolve the matter.

30. The Oversight Committee on Anticorruption determined that the consultant violated ADB's Anticorruption Policy by abusing his position as a consultant for personal gain by obtaining an advance from ADB for which he performed no service and has not repaid the advance. The Oversight Committee on Anticorruption declared the individual ineligible to participate in ADB-financed activity indefinitely.

**L. Manipulating Bids**

31. When investigating allegations of irregularities in the procurement of equipment under an ADB-financed project, OAGA found that the number of firms that submitted bids for three packages was relatively low compared to the number of firms that purchased tender documents. OAGA confirmed three firms had been threatened not to submit proposals in return for compensation. Independently, a government audit reported that in one package there were indications of kickbacks from the winning firm and the procurement process for a second package appeared to have been a formality.

32. OAGA contacted the firms that were awarded the contracts in the three packages. Two of the three winning firms denied the allegations, and one firm did not respond. The Oversight Committee on Anticorruption found that three firms engaged in corrupt practices, and declared them to be ineligible to participate in ADB-financed activity for a minimum period.

**M. Misrepresenting Experience**

33. As part of a proposal for consulting services on an ADB-financed project, an associate firm allegedly submitted false information regarding its experience with another international organization's development projects. OAGA's investigation confirmed that the associate firm did not have the experience it reported. The associate firm characterized the matter as "human errors" based on incomplete files and prepared by personnel that had been terminated "to protect the integrity and compliance of the company policies." One of the former staff, however, indicated he had separated voluntarily for different reasons.

34. OAGA did not believe the explanations from the associate firm provided a logical explanation of how such errors occurred, and found there was sufficient evidence to indicate the associate firm intentionally misrepresented its work experience. OAGA did not find the lead firm was involved in the misrepresentation.

35. The Oversight Committee determined that the associate firm misrepresented its experience and declared it ineligible to participate in ADB-financed activity for a minimum period.

#### **N. Misrepresenting Experience**

36. ADB's Procurement Division reported to OAGA that the executing agency of a Loan denied a contract award to a lead firm—the lowest priced and lowest evaluated bidder for two contracts—because the firm submitted false certificates of experience concerning and provided by its associate firm. OAGA found that the lead firm was not aware that the certificates were falsified, and had disassociated itself from the associate firm as a result of the allegation. OAGA found no evidence to indicate that the lead firm participated in the submission of falsified information. Although OAGA wrote to the associate firm twice, it received no reply.

37. The Oversight Committee on Anticorruption found the submission of falsified certificates of experience constituted a fraudulent practice and declared the associate firm ineligible to participate in ADB-financed activity for a minimum period.

#### **O. Reinstatement of Firm Debarred for Submitting False Documents**

38. The Oversight Committee on Anticorruption declared a firm ineligible to be awarded ADB-financed activity for a minimum period for fraudulent practices, as defined by ADB. During OAGA's investigation, the firm acknowledged a false claim but explained that the executing agency requested the firm to submit an invoice in advance of actual expenses to allow the executing agency to close its books for the Project.

39. Upon completing the minimum ineligibility period, the firm requested reinstatement. OAGA reviewed the specific circumstances of the case and concluded there was no reason to object to the firm's reinstatement to eligibility. The Oversight Committee on Anticorruption approved reinstating the firm to be eligible to be awarded ADB-financed activity.

#### **P. Violating ADB Sanction**

40. OAGA found that a firm that ADB's Oversight Committee on Anticorruption declared ineligible to participate in ADB-financed activity in July 2002 submitted a proposal in November 2002 for consulting services. When ADB notified the firm of ADB's sanction, ADB informed the firm that any attempt to participate in an ADB-financed project while ineligible would result in ADB extending the sanction and posting that information on its website.

41. OAGA confirmed through discussion with the firm's senior management that, in conformance with previously-established corporate practice, an eligible firm within the corporate group used the ineligible firm's name for its proposal even though it did not propose any of the ineligible firm's staff for the project. ADB's Oversight Committee on Anticorruption found that the firm's submission of a proposal in November 2002 violated, whether or not intentionally, ADB's sanction. The Committee decided to extend the minimum ineligibility period of the firm, but due to mitigating circumstances decided not to impose any other remedial action on the subject firm or any other firm in the corporate group.