

Long WORKSHOP REPORT FORM

Number and title of workshop: WS Row 3 – ‘Integrated Solutions for Fighting Transnational Bribery in Asia’

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Moderator: Patrick Moulette, Head, OECD Anti-Corruption Division

Rapporteur: Christine Uriarte, Anti-Corruption General Counsel, OECD Anti-Corruption Division

Panellists

1. Prof. Pakdee Pothisiri, Commissioner, National Anti-Corruption Commission (NACC), Thailand
2. Ms. Kathleen Hamann, Anti-Corruption Policy Counsel and Trial Attorney, Fraud Section, Criminal Division, United States Department of Justice
3. Mr. Andrew Boname, Chief of Party, East-West Management Institute Program on Rights and Justice (PRAJ)
4. Mr. Peter Rooke, Advisory Council and Senior Advisor, International Group, Transparency International
5. Ms. Christine Uriarte, Anti-Corruption General Counsel, OECD Anti-Corruption Division

Summary

The risk of transnational bribery has increased dramatically in Asia in recent years with the exponential growth of trade and investment in the Region. This has profound consequences for governments, the private sector and public at large in Asia. Because of its highly complex, multi-jurisdictional nature, transnational bribery requires a truly concerted effort by all the stakeholders to combat it successfully.

This workshop brought together representatives of Thailand’s National Anti-Corruption Commission, the United States Department of Justice, Transparency International, a regional NGO and the OECD, to find ways to enhance coordination and cooperation between the different stakeholders.

Law enforcement experts highlighted difficulties in sharing information between jurisdictions, and called for solutions including the use of informal assistance channels in early stages of investigations.

Grass root civil society organisations often have knowledge of transnational bribery, but do not necessarily have safe channels for sharing this information.

Multilateral organisations provide constructive tools to help governments comply with international anti-corruption standards, such as the recently adopted *Thematic Review of the Criminalisation of Bribery in Asia and the Pacific* (<http://www.oecd.org/dataoecd/2/27/46485272.pdf>), by the ADB/OECD Anti-Corruption

Initiative for Asia-Pacific; and tools for the private sector to prevent corruption in their cross-border operations, including the new *OECD Good Practice Guidance on Internal Controls, Ethics and Compliance* (<http://www.oecd.org/dataoecd/5/51/44884389.pdf>).

Solutions are within easier reach if all the stakeholders share expertise and experience. Tools for providing technical assistance on meeting relevant standards in the UN and OECD anti-bribery conventions by governments and the private sector are already available -- they just need to be fully disseminated and their use supported by a coordinated approach involving all stakeholders.

Summary of presentations

Prof. Pakdee Pothisiri, Commissioner, National Anti-Corruption Commission (NACC), Thailand

Professor Pakdee discussed the importance of international cooperation in tackling transnational bribery. He also discussed Thailand's strategy for dealing with transnational bribery, which he feels is on the increase and becoming more serious.

Transnational bribery is particularly challenging for developing nations since their legal and institutional frameworks often require strengthening to meet international anti-corruption standards, such as those under the OECD Anti-Bribery Convention and the UN Convention against Corruption (UNCAC). Thailand is working hard to make necessary legal adjustments to meet these standards. In the meantime, Thailand is using certain laws that are already in place to deal with corruption involving Thai public officials, including where they are bribed by foreign nationals.

Thailand's National Anti-Corruption Commission (NACC) recently worked closely with a foreign law enforcement authority on a case allegedly involving the bribery of a Thai official by foreign nationals to obtain lucrative government contracts. This case showed how early cooperation enabled the NACC to open an investigation. It also showed how early informal cooperation can lead to effective formal cooperation for the purpose of producing documentary evidence admissible in trial proceedings.

Prof. Pakdee concluded that ratifying international instruments such as the UNCAC and OECD Convention is essential to obtaining effective international cooperation in transnational bribery cases. In addition, countries need to avail themselves of alternative tools, such as the bilateral tools described in the case study.

Ms. Kathleen Hamann, Anti-Corruption Policy Counsel and Trial Attorney, Fraud Section, Criminal Division, United States Department of Justice

Ms. Hamann described the evolution of international cooperation in cross-border bribery cases, beginning 20 years ago with tools like letters rogatory, and the principle of reciprocity, evolving to the use of bilateral treaties, and more recently multilateral treaties that apply to multiple countries.

Informal assistance, where possible under a country's legal system, is also an important channel. It allows enforcement authorities to cooperate in real time. It provides opportunities for them to get to know each other and find constructive solutions. And the next evolution is underway – parallel investigations, where law enforcement authorities in different countries work together as a team.

Most importantly, for international assistance to work, law enforcement authorities need opportunities to meet each other. This builds trust, and enables them to learn about each other's legal systems. Initiatives by multilateral institutions have facilitated these kinds of

exchanges, such as the OECD Working Group on Bribery through its regular meetings of prosecutors, the Egmont Group of Financial Intelligence Units, and APEC's networks of law enforcement officials.



Mr. Andrew Boname, Chief of Party, East-West Management Institute Program on Rights and Justice (PRAJ)

Mr. Boname spoke about the important contribution of grass roots civil society organisations to the fight against transnational bribery in Asia. These organisations do so through several avenues, with the overall goal of increasing the risk of participating in corrupt transactions, and sometimes at great risk to those who run these organisations.

One avenue is the promotion of policy development that supports efforts to combat transnational bribery. This is done by collecting and communicating relevant information that discourages businesses from engaging in corruption. It is also done by providing input to governments on relevant laws and policies, such as was done in 2009 when Indonesia's KPK was under threat, including by draft laws that would reduce its powers.

In addition, 'on-the-ground' civil society organisations often have information about transnational bribery cases. Safe and accessible reporting channels are needed so that they can transmit this information to law enforcement authorities. For instance, in some jurisdictions, reporting corruption may result in defamation charges if the information does not lead to a successful prosecution.

One mechanism that might help identify transnational corruption cases is the Business Anti-Corruption Portal, based in Denmark. The purpose of the Portal is to help SMEs with risk-management for operating in emerging markets and developing countries.

In Asia, civil society organisations play a particularly important role raising awareness of corruption in the extractive resource industry. This role could be enhanced by ensuring lines of communication between those organisations and relevant government authorities.

Mr. Peter Rooke, Advisory Council and Senior Advisor, International Group, Transparency International

Mr. Rooke spoke about the role of Transparency International (TI) in combating transnational bribery in Asia and globally, since it was launched in 1993 with transnational bribery as its primary focus.

TI has sought to raise global awareness of the immense damage caused by transnational bribery, particularly in developing countries. TI considers the OECD Anti-Bribery Convention a milestone in the global fight against transnational bribery. TI encourages countries to adopt comprehensive national anti-corruption strategies involving a holistic multi-stakeholder approach and effective national laws and institutions to underpin implementation of relevant international standards.

TI has continued to play a major role in promoting implementation of the OECD Anti-Bribery Convention, and related initiatives, such as the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. It also participated in the negotiation of the UNCAC.

TI believes that implementation of international anti-corruption standards needs to be monitored and followed-up, and that civil society should be a real partner in such an exercise.

For the fight against transnational bribery to be successful, governments must create an enabling environment, as reflected in the UNCAC, including by providing access to information, whistle-blowing and witness protection, and access to anti-corruption bodies.

The private sector must also play an active role preventing the supply of bribes. TI works with global business organisations including the ICC, World Economic Forum-PACI and the UN Global Compact on corporate anti-bribery code standard-setting. TI also encourages corporate reporting of anti-corruption measures, and in 2009 launched the TRAC report to assess how well 500 leading companies are reporting. Working with specific industry sectors to develop anti-corruption tools is also essential. In Asia-Pacific, TI works with the forest sector to bring together suppliers and consumers and their governments.

Ms. Christine Uriarte, Anti-Corruption General Counsel, OECD Anti-Corruption Division

The OECD is the home of the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (OECD Anti-Bribery Convention). Since the OECD member countries represent the majority of the world's largest exporters and investors, the OECD was the logical place to try to stem the supply of bribes in international business transactions.

The OECD Anti-Bribery Convention is known for its rigorous monitoring system, which is essential for ensuring a level playing field in international business. The 38 States Parties include four from Asia-Pacific: Australia, Japan, Korea and New Zealand.

The States Parties engage closely with major emerging economies in the Region, including China, India, Indonesia and Thailand. This engagement takes many forms, such as *ad hoc* observership at Working Group meetings. Recently, P.R. China hosted a technical seminar on transnational bribery, involving experts from P.R. China and the Working Group.

The OECD also supports anti-corruption efforts in the Region through its partnership in the ADB/OECD Anti-Corruption Initiative for Asia-Pacific (www.oecd.org/corruption/asiapacific), which consists of 28 member countries and economies. The Initiative recently adopted its *Thematic Review of the Criminalisation of Bribery in Asia and the Pacific*, which provides an analysis and recommendations on implementation by its members of the main bribery offences in the UNCAC. This analysis could form the basis of technical assistance on UNCAC implementation in the Region.

In 2010, the OECD adopted the *Good Practice Guidance on Internal Controls, Ethics and Compliance*, which is addressed to companies to help them prevent corruption in their international operations. The guidance is very relevant to Asia-Pacific as it is flexible, so that it can be adapted by companies of all sizes, including SMEs, in all industry sectors and geographic locations, and according to the level of risk of transnational corruption in their operations.

Main Outputs

The Workshop produced strategies for increasing coordination and information sharing in Asia between the main stakeholders in the fight against transnational bribery – domestic governments, multilateral organisations, civil society and the private sector.

These included new techniques for international legal assistance, such as the use of informal information-sharing means at the early stages of investigations, and parallel investigations in the bribe givers' and bribe receivers' jurisdictions.

Since grassroots civil society organisations in the Region can learn about transnational bribery cases, including in the extractive resource industry, they need safe and effective channels for reporting these cases to law enforcement authorities.

The ADB/OECD Anti-Corruption Initiative for Asia-Pacific provides essential capacity building and policy analysis on relevant issues. The 2010 *Thematic Review of the Criminalisation of Bribery in Asia and the Pacific* could be used as a blueprint for technical assistance on implementing the main bribery offences in the UNCAC, including Article 16 on transnational bribery.

The OECD *Good Practice Guidance on Internal Controls, Ethics and Compliance* is the only multilateral instrument addressed to companies for preventing bribery in their international operations. Its flexibility makes it perfectly suitable for companies in Asia of different sizes and facing different risk levels for transnational bribery.

Recommendations, Follow-up Actions

To strengthen efforts in Asia to combat transnational bribery, the risk of penalties must be tangible, and flexible preventive measures must be available to all companies, regardless of their size and sector of operation.

This requires a concerted effort involving national governments, multilateral organisations, civil society and the private sector in the following areas:

1. Strengthening the framework for international legal assistance, including by further developing more efficient methods, such as informal information sharing at early investigative stages, and parallel investigations involving the bribe givers' and bribe receivers' jurisdictions.
2. Providing civil society organizations with effective and safe channels for sharing information with law enforcement authorities about transnational bribery cases.
3. Using the analysis and recommendations in the 2010 *Thematic Review of the Criminalisation of Bribery in Asia and the Pacific* by the ADB/OECD Anti-Corruption Initiative for Asia-Pacific, to provide technical assistance to countries and economies in the Region on implementing the main bribery offences in the UNCAC.
4. Broadly disseminating information about the *OECD Good Practice Guidance on Internal Controls, Ethics and Compliance* to companies of all sizes in all sectors of operation in Asia, to help them minimize the risk of bribery in their international operations.

Highlights

The audience participants in this workshop were particularly interested in the following two proposed integrated solutions for fighting transnational bribery in Asia:

1. Developing informal networks for information sharing at early stages of transnational bribery investigations; and
2. The *OECD Good Practice Guidance on Internal Controls, Ethics and Compliance* to companies, because it provides straightforward and flexible guidance on how to prevent corruption in a company's international operations, and is backed by the OECD's more than 11 years of experience monitoring implementation of the OECD Anti-Bribery Convention.

It came as an important revelation when the representative of a grass roots civil society organisation in the Region explained that such organisations come across information about transnational bribery cases. Participants may not have previously thought of these organisations as important sources of allegations.

An important quote came from Andy Boname, Chief of Party, East-West Management Institute Program on Rights and Justice (PRAJ), who said that one of the roles of civil society organisations is to make corrupt entrepreneurs worry about getting caught. He ironically dedicated his presentation to an anonymous entrepreneur who boasted about his corrupt dealings in Vietnam.

Signed and date submitted

Christine I. Uriarte
07 December 2010