

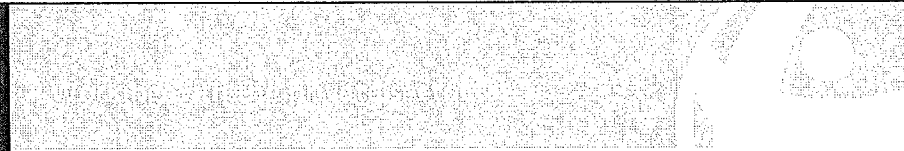


The Business Case for Transparency and Integrity in the Private Sector: The Transparency International Experience

Peter Rooke
Senior Adviser, Transparency International

Seminar/Workshop on the Implementation of the APEC Code of Conduct for Business
Manila, 20-21 September 2012

1



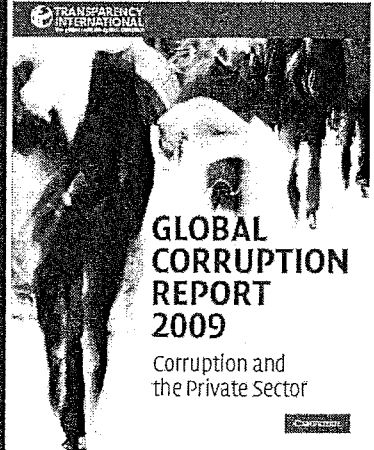
Curbing private sector corruption one of 5 global priorities for TI

TI's approach is to engage with and support companies by:

- Promoting knowledge and research
- Identifying and promoting good practice
- ***Providing anti-bribery tools and resources***
- Facilitating sector initiatives
- Giving advice

TI's engagement allows us to learn how enterprises counter bribery effectively. We then use this knowledge to improve our private sector work for the benefit of the business world

2



- TI Global Corruption Report 2009 focused on Corruption and the Private Sector
- Report draws together the views of more than 80 academics and other experts on important aspects of private sector corruption
- It analyses corruption risks for business and describes tools for tackling them
- It includes recommendations for action by business, by government and regulators and by civil society
- Report available free online at: http://www.transparency.org/whatwedo/pub/global_corruption_report_2009
- Also available in hardcopy

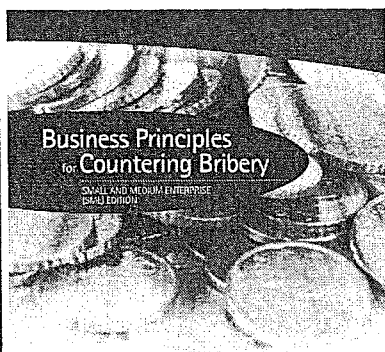
3

- APEC Code of Conduct for Business developed 2007
- Based on existing international standards:
 - TI Business Principles for Countering Bribery
 - World Economic Forum PACI Principles
 - International Chamber of Commerce Rules on Combating Corruption
- Brief, clear set of principles with emphasis on implementation, training and monitoring
- Intended as basis for enterprises when developing own codes
- TI supported promotion of APEC Code in Vietnam, Thailand and now Philippines

4

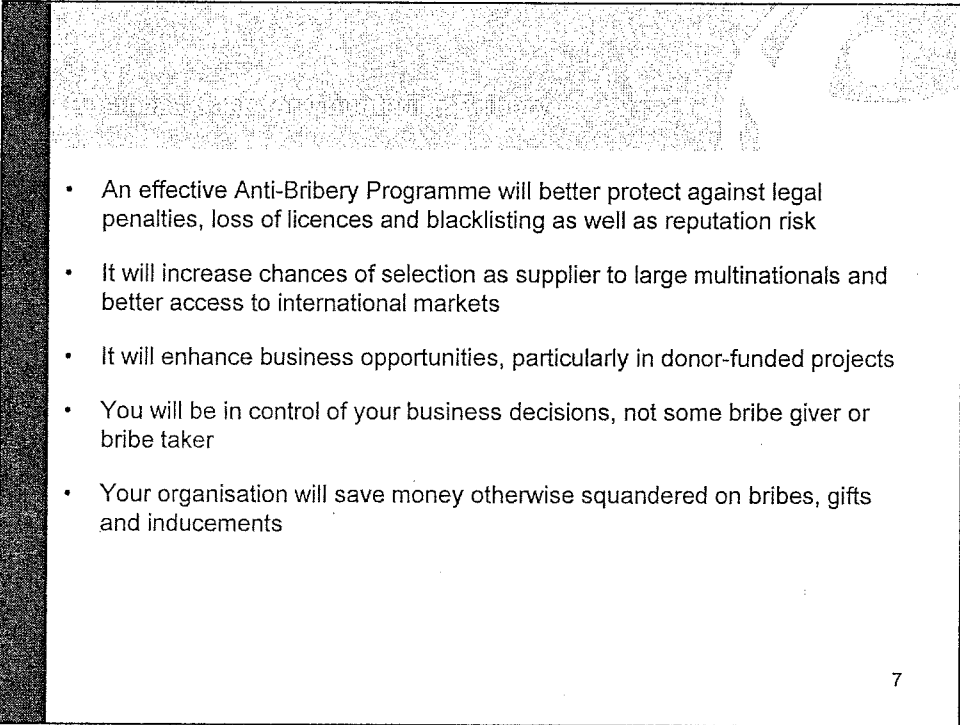
- TI Business Principles for Countering Bribery developed with multi-stakeholder steering group of international business, trade union, academic and NGO representatives
- Launched 2003, revised 2005:
www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery/1/
- New edition of Business Principles due in 2013
- TI working with other organisations such as the World Economic Forum, International Chamber of Commerce, UN Global Compact and accountancy bodies to harmonise anti-corruption standards for business and develop related tools

5

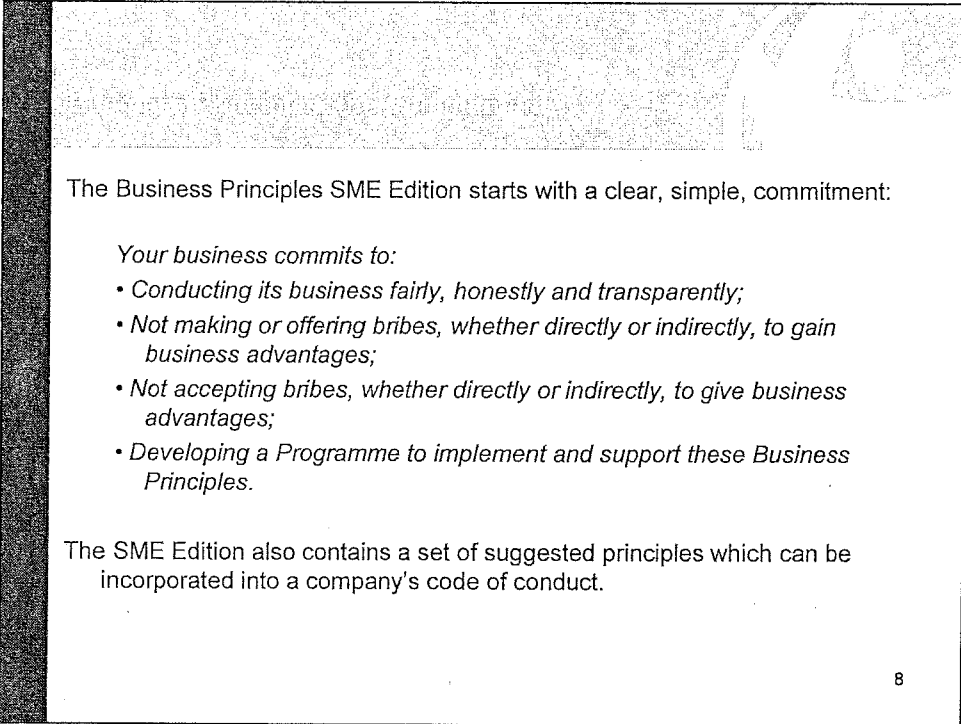


- APEC recognises SMEs as key target as they represent 90%+ of enterprises in most economies
- For same reason, TI developed SME Edition of Business Principles in 2008
www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery_sme_edition/1/
- TI Business Principles and SME Edition complemented by suite of tools, surveys and indices

6

- 
- An effective Anti-Bribery Programme will better protect against legal penalties, loss of licences and blacklisting as well as reputation risk
 - It will increase chances of selection as supplier to large multinationals and better access to international markets
 - It will enhance business opportunities, particularly in donor-funded projects
 - You will be in control of your business decisions, not some bribe giver or bribe taker
 - Your organisation will save money otherwise squandered on bribes, gifts and inducements

7



The Business Principles SME Edition starts with a clear, simple, commitment:

Your business commits to:

- *Conducting its business fairly, honestly and transparently;*
- *Not making or offering bribes, whether directly or indirectly, to gain business advantages;*
- *Not accepting bribes, whether directly or indirectly, to give business advantages;*
- *Developing a Programme to implement and support these Business Principles.*

The SME Edition also contains a set of suggested principles which can be incorporated into a company's code of conduct.

8

The Business Principles are an anti-bribery framework:

- Promoting good business practices and risk management
- Covering domestic and international bribery, including private-to-private
- Includes sections on:
 - Raising concerns and whistleblower protection
 - Internal controls and record-keeping
 - Human resources and training
 - Regular monitoring and review
 - Reporting to stakeholders on performance
 - External verification and assurance
- **Emphasis on implementation**
- Supported by detailed Guidance Document – simplified version included in SME Edition

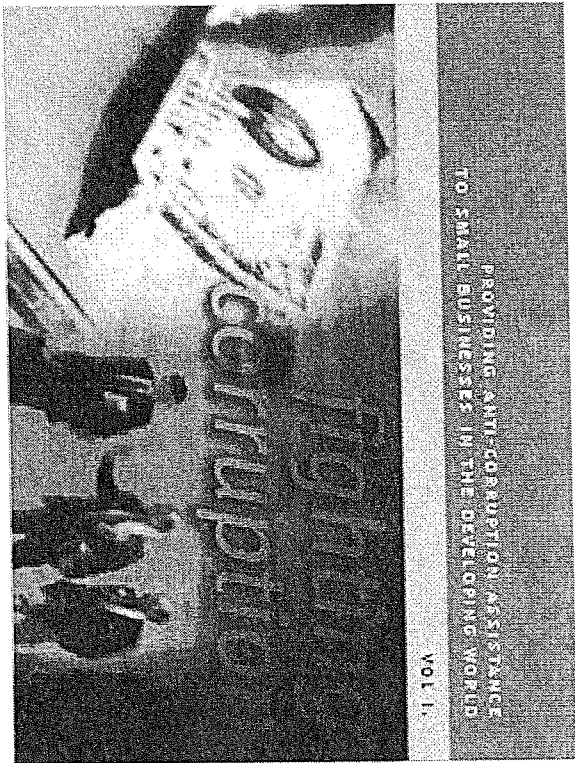
9

- Globalisation and complex business operations increase risk of bribery and corruption for enterprises
- Stronger regulation and enforcement and growing penalties also increase risk
- Comprehensive policies and systems to manage risk of bribery and corruption can reduce penalties (e.g. US Federal Sentencing Guidelines)
- Increasing demands for transparency by stakeholders
- Some companies are managing the risks adequately
- Many companies are not doing so
- The good news:
We know what a robust corporate anti-bribery programme should look like and there are good tools and support available

10

**More information on TI and TI private sector tools @
www.transparency.org**

**Peter Rooke
Senior Adviser
Transparency International
prooke@transparency.org**



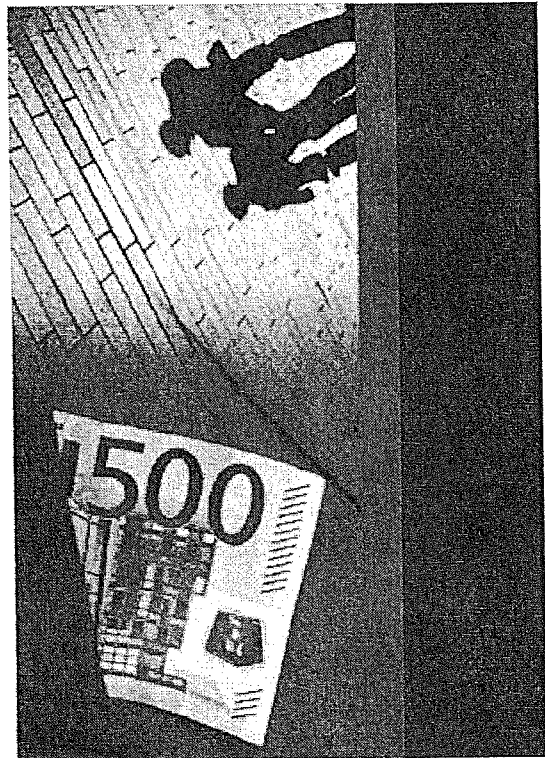
Corruption prevention
to foster small and medium-sized
enterprise development



UNITED NATIONS
INDUSTRIAL DEVELOPMENT ORGANIZATION



UNITED NATIONS
Office on Drugs and Crime



Corruption prevention
to foster small and medium-sized
enterprise development
VOLUME II

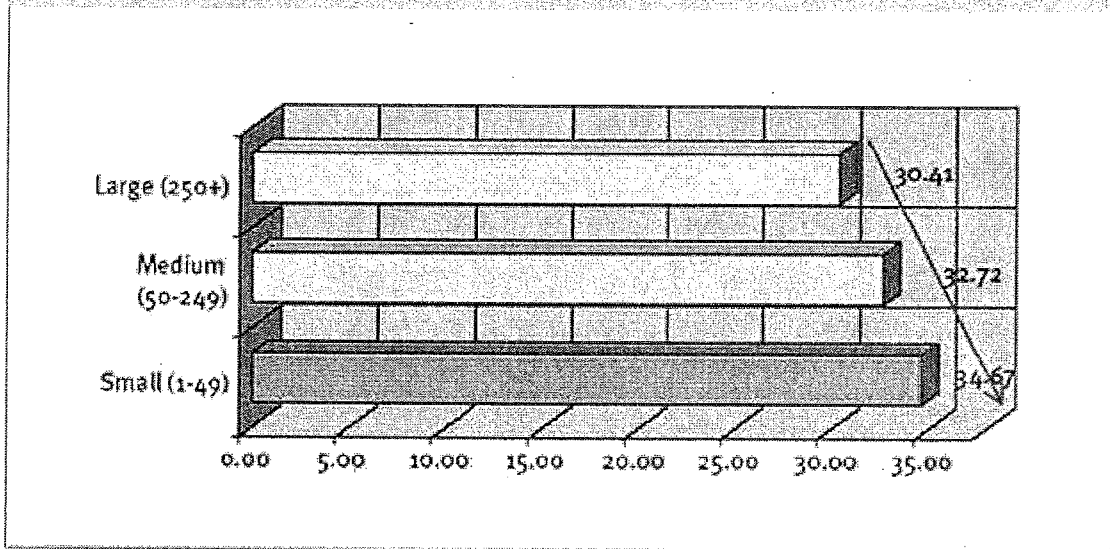


UNITED NATIONS
INDUSTRIAL DEVELOPMENT ORGANIZATION



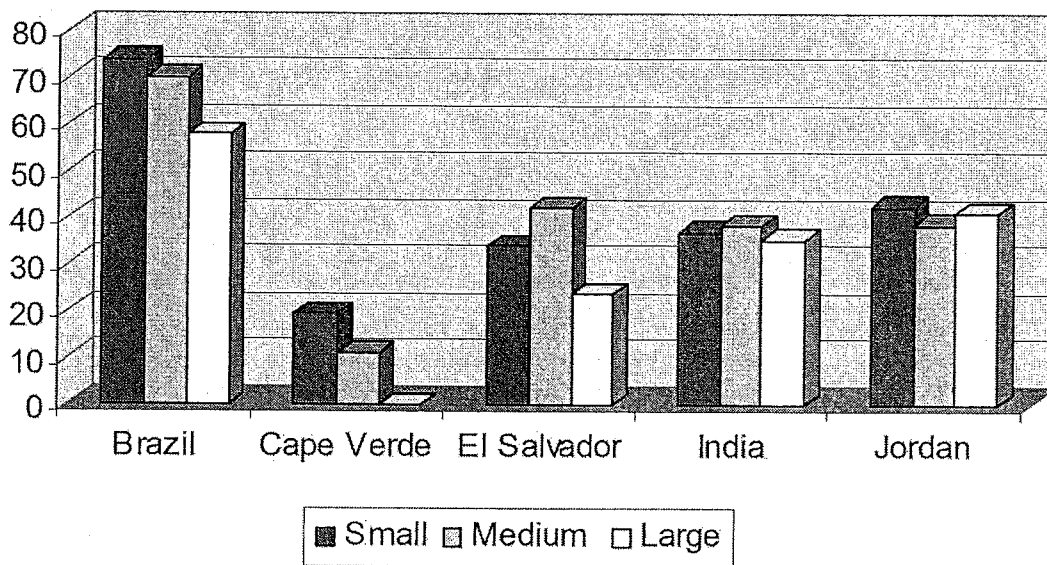
UNODC
United Nations Office on Drugs and Crime

Figure 1. Corruption perceived as a major business obstacle by SMEs and large companies (in per cent)



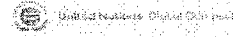
Source: World Bank, Investment Climate Survey.

% of firms identifying corruption as major constraint



THE FIGHT AGAINST CORRUPTION

An interactive tool for the private sector on the UN Convention against Corruption and the UN Global Compact 10th principle against corruption.



A joint product of the UN Global Compact and the UN Office on Drugs and Crime. This e-learning tool uses six interactive learning modules to further the audience's understanding of the UN Global Compact's 10th principle against corruption and the UN Convention against Corruption as it applies to the private sector. The tool is targeted at everyone who acts on behalf of a company. Each module only lasts about five minutes, providing a quick and effective way of learning. And it is fun too!



Introductions



Mr. Ban Ki-moon
Secretary-General
United Nations



Mr. Georg Kell
Executive Director
UN Global Compact



Mr. Dimitri Vlassis

Interactive learning modules

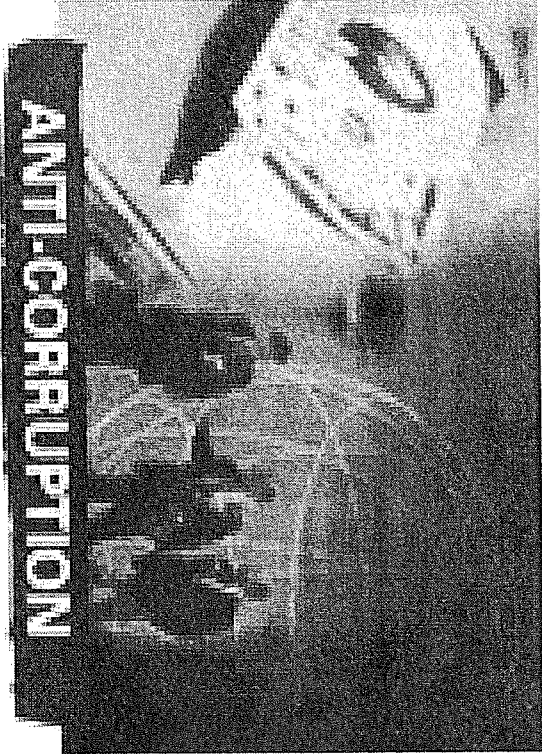


1 The Unwelcome Gift
Receiving gifts and hospitality
It may surprise you with how easy it is to receive a gift or even be offered one by a business partner. The interests and needs of the recipient will be discussed as a business but in the end, the gift is a bribe. How do you respond? What are the risks? What are the consequences?



2 The Arrangement
Gifts and hospitality towards officials

Policies and Measures
of the Fortune Global 500

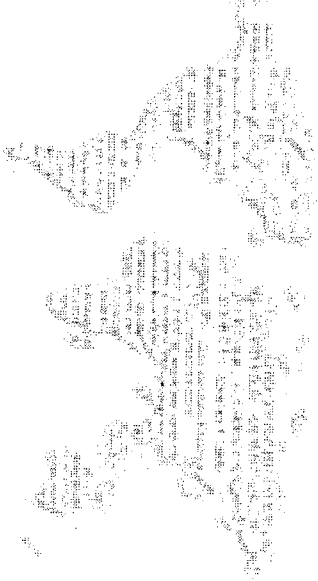


UNODC
UNITED NATIONS OFFICE ON DRUGS AND CRIME

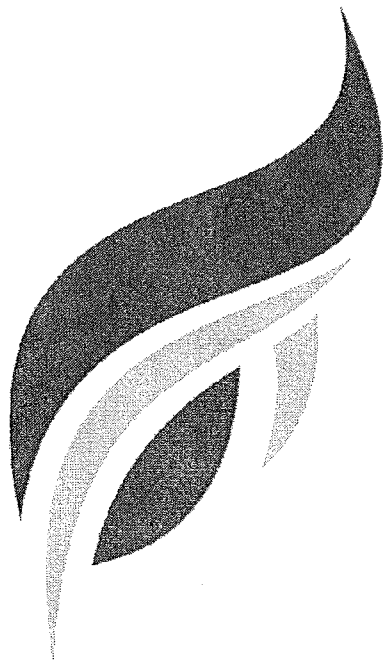


UNITED NATIONS
OFFICE OF THE HIGH COMMISSIONER
ON CORRUPTION

**UNITED NATIONS CONVENTION
AGAINST CORRUPTION**



UNITED NATIONS



Saying NO to Corruption

Preventing Fraud and Corruption in ADB and its Projects

Clare Wee, Director

*Office of Anticorruption
and Integrity (OAI)*



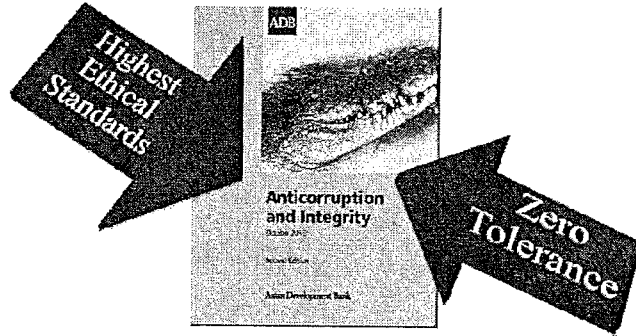
OVERVIEW

- ADB's anticorruption framework, systems and procedures
- Recent initiatives





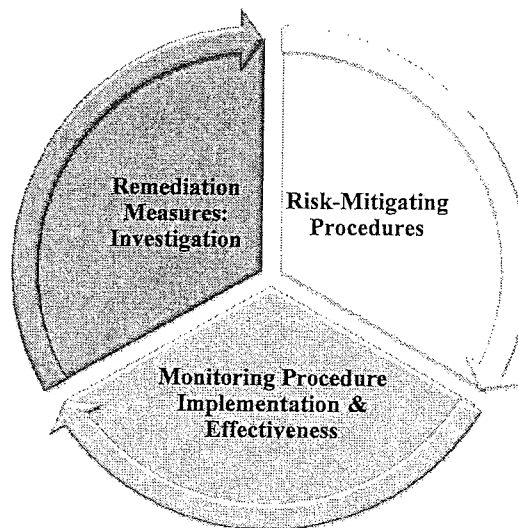
ADB's Anticorruption Policy



- For all parties engaging with ADB to observe
- For all ADB projects, activities, and staff to adhere to



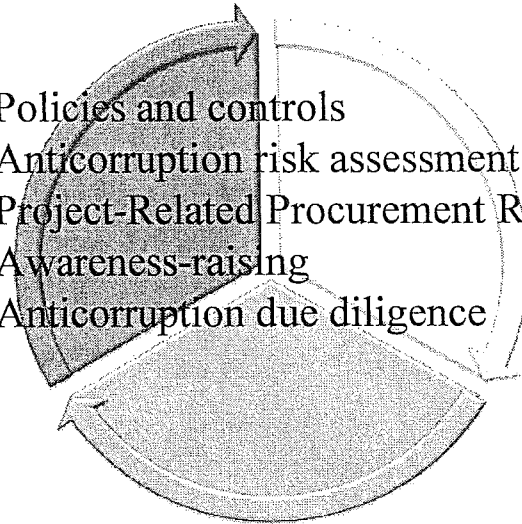
ADB's internal preventive systems





RISK-MITIGATING PROCEDURES

- Policies and controls
- Anticorruption risk assessment
- Project-Related Procurement Reviews
- Awareness-raising
- Anticorruption due diligence

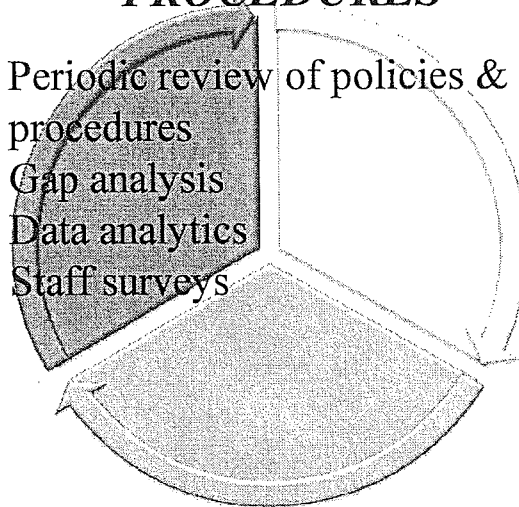


ADB

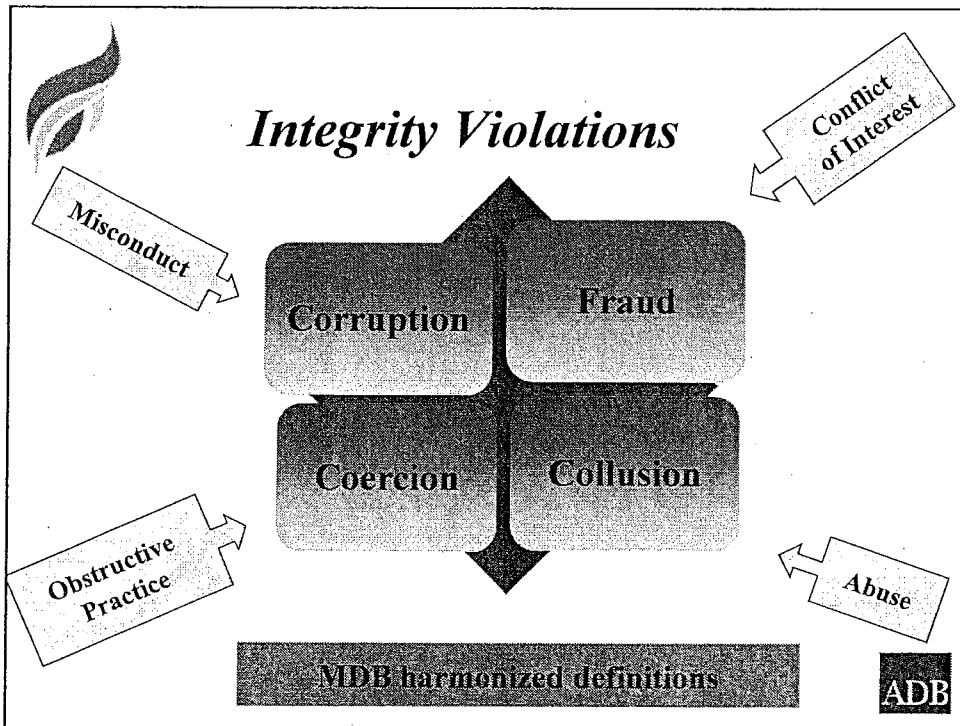
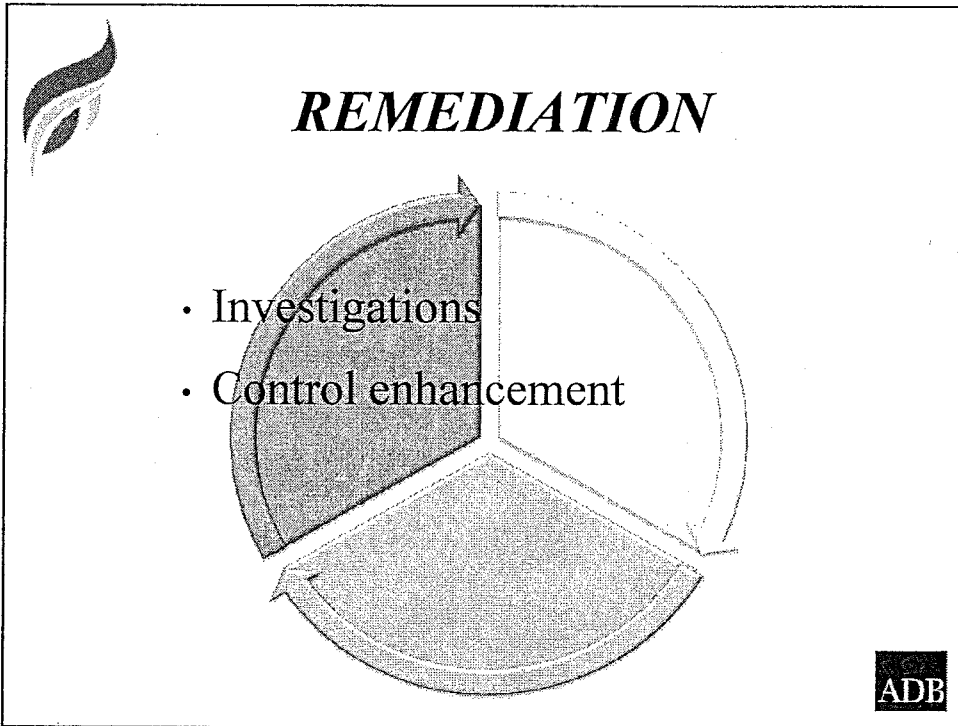


MONITORING IMPLEMENTATION AND EFFECTIVENESS OF PROCEDURES

- Periodic review of policies & procedures
- Gap analysis
- Data analytics
- Staff surveys

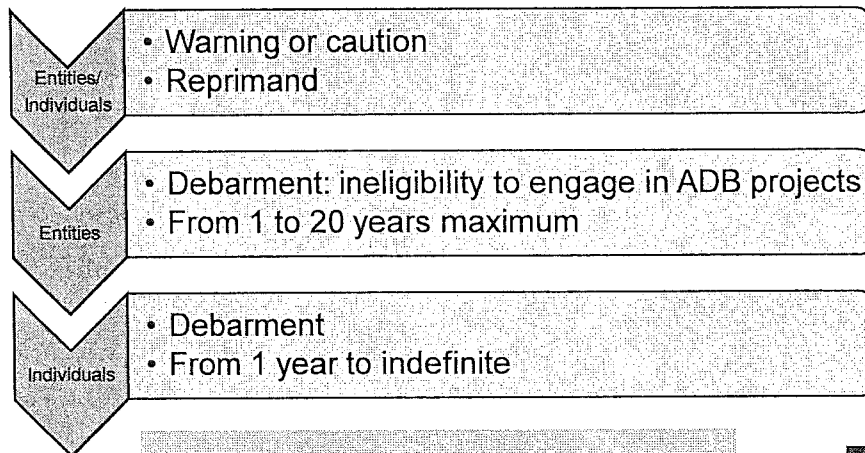


ADB





ADB remedial actions against proven integrity violations



MDB harmonized sanctioning guidelines



ADB's Sanctions List

❖ Available for the general public on

www.adb.org


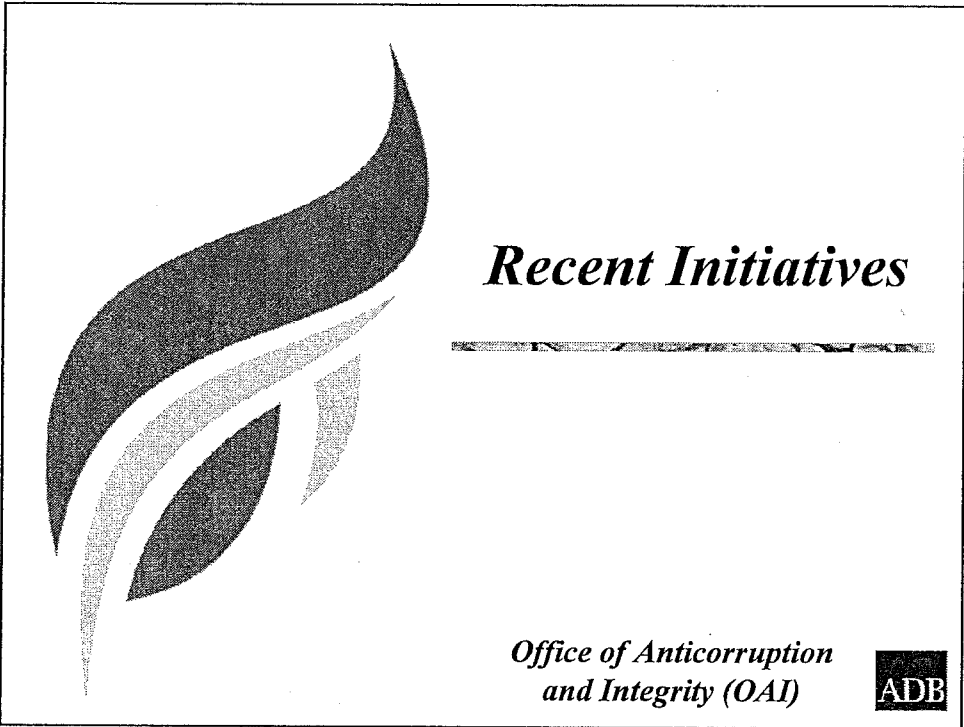
❖ Access to password-protected website by

ADB Staff

ADB Board of Directors








Other parties with a "need to know":
International organizations, bilateral and
Government partners





Cross-Debarment Agreement (2010)

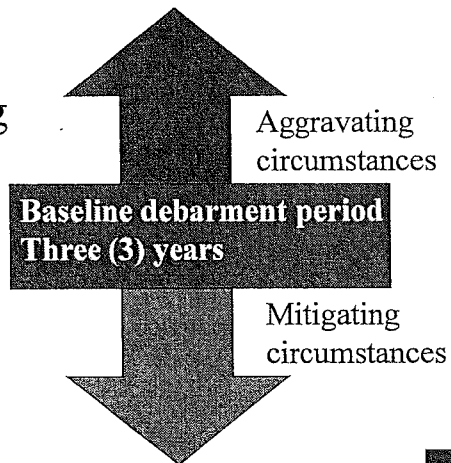
- ❖ Pursuant to 2006 Uniform Framework for Preventing and Combating Fraud and Corruption (the “IFI Framework”)
- ❖ 9 April 2010: Heads of MDBs signed Agreement in Luxembourg
- ❖ **First** global enforcement mechanism of sanctions by multiple MDBs





Harmonized Sanctioning Guidelines (2011)

❖ Harmonization by MDBs of sanctioning guidelines to ensure consistent treatment of individuals and firms



ADB

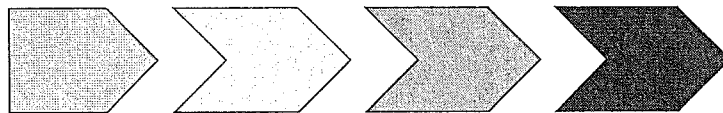


MDB harmonized principles of treatment of corporate groups (2012)

❖ Common standards for incorporation into each institution's sanctioning policies



Various corporate groups and other forms of business organizations



Levels of culpability/responsibility determine type/severity of sanction

ADB

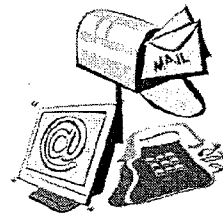


If you have any questions

Contact OAI

Website: www.adb.org/integrity
E-mail: anticorruption@adb.org
integrity@adb.org

Telephone: +63-2-632 5004
Fax: +63-2-636 2152



ADB

Integrity in Small- and Medium-Sized Enterprises

A Presentation to the Ombudsman

Jesse O. Ang

Resident Representative, Philippines

20 September 2012

CONFIDENTIAL

Background on IFC's Proposed SME Integrity Tool Kit

- IFC propose to create a WEB-BASED tool kit to help communicate the benefits of incorporating INTEGRITY considerations in their operations.
- Tool will address action that can be taken by an enterprise alone, as well as collective action (**3 LEVELS OF ACTION**).
- Does not explain integrity from a moral/ethical standpoint but builds on idea that good integrity performance equates to good business performance : *World Bank survey estimates SMEs spend up to 33% and in some cases 49% of revenue on bribes*
- Conducted country workshops in the Philippines, Colombia, Kenya, Lebanon and Serbia to obtain inputs from SMEs and other key private and public sector players.

3 LEVELS OF ACTION - WHAT SMEs CAN DO

Level 1: FOUNDATION what SMEs can do within their own businesses	Assess RISK and introduce INTERGITY POLICY. Know the LAWS. TRAIN company staff. DOCUMENT everything. Don't use FIXERS.
Level 2: DEMONSTRATION how SMEs can deal with internal and external parties	Use WEBSITES or HOTLINES to report bribes. DUE DILIGENCE on suppliers, buyers, partners. Use EXTERNAL AUDITORS to do regular audits.
Level 3: COLLECTIVE ACTION what SMEs can do to improve business environment	If focused on 1 big event or project: SIGNED STATEMENT or WRITTEN CONTRACT to act with INTEGRITY during bidding process or project If long-term initiative with many co.'s: Promote INTEGRITY and STANDARDS among like-minded firms

Key Workshop Takeaways

1. High awareness of integrity challenges among SMEs, but they feel they have limited ability to take action because of pressure on their bottom-line.
2. SMEs would be willing to consider IFC's recommendations but need to be convinced of their cost effectiveness.
3. The interaction with public sector was positive.
 - Compliance to laws and seeking expert advice was emphasized but SMEs had concerns again on the costs for the latter.
 - Public sector reps also advised the relevant agency hotlines to report bad conduct/questionable practices.
4. SMEs appeared willing to work with the public sector, but more at a municipal/local versus a national level.
5. SMEs' recommendations to government:
 - Processes be streamlined to limit opportunities for bribe-taking/extortion.
 - Engage with private sector in ongoing dialogue and trust-building exercises.
 - Benchmark LGUs' or agencies' performances against each other to encourage good integrity practices in govt.



Empowered lives.
Resilient nations.

Anti-Corruption in the Private Sector

Forum on the Implementation of the APEC
Code of Conduct for Business

Samuel De Jaegere – Anti-Corruption Specialist UNDP APRC

Presentation outline

- o Private Sector Corruption in Asia-Pacific
- o UNDP Anti-Corruption Work in Asia-Pacific
- o Questions for the Private Sector and APEC Member Economies

Perception of Corruption in the Private Sector in APEC

Member Economy	Percentage indicating that corruption is widespread in the business sector
Singapore	13%
New Zealand	24%
Hong Kong SAR	28%
Australia	32%
Vietnam	36%
Canada	40%
China	50%
Mexico	61%
United States	62%
Japan	64%
Malaysia	69%
Chile	71%
Peru	72%
Philippines	74%
South Korea	76%
Russia	79%
Thailand	83%
Indonesia	86%

Source: Gallup Survey Results – May 2012

Companies Paying Bribes Abroad

APEC Member Economy	Bribe Payers Index Rank & Score 2011
Japan	4 th / 8.6
Australia	6 th / 8.5
Canada	6 th / 8.5
Singapore	8 th / 8.3
USA	10 th / 8.1
South Korea	13 th / 7.9
Hong Kong	15 th / 7.6
Malaysia	15 th / 7.6
Indonesia	25 th / 7.1
Mexico	26 th / 7.0
China	27 th / 6.5
Russia	28 th / 6.1

Five most corrupt sectors

- 1) Public works contracts and construction
- 2) Utilities
- 3) Real estate, property, legal and business services
- 4) Oil and gas
- 5) Mining

Source: Bribe Payers Index 2011

Corruption in the Private Sector: A Growing Trend?

➤ Ernst and Young's 12th Global Fraud Survey

- China: 26% worse in economic downturn
- Indonesia: 52%

➤ Private sector case load

ACA	Cases 2010	Cases 2011	Prosecutions 2011	Prosecutions 2011
ICAC Hong Kong	63.6%	69.9%	77.6%	75.6%
CPIB Singapore	80%	75%	93.4%	87%

Top 5 countries with the highest measured
cumulative illicit financial outflows
between 2000-2008

- o 1.China: \$2.18 trillion
- o 2.Russia: \$427 billion
- o 3.Mexico: \$416 billion
- o 4.Saudi Arabia: \$302 billion
- o 5.Malaysia: \$291 billion

Source: Global Financial Integrity Report 2008

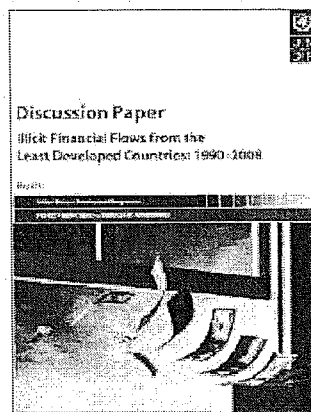
Trade mispricing

When companies trade with each other and artificially distort the price at which the trade is recorded, to minimize the overall tax bill.

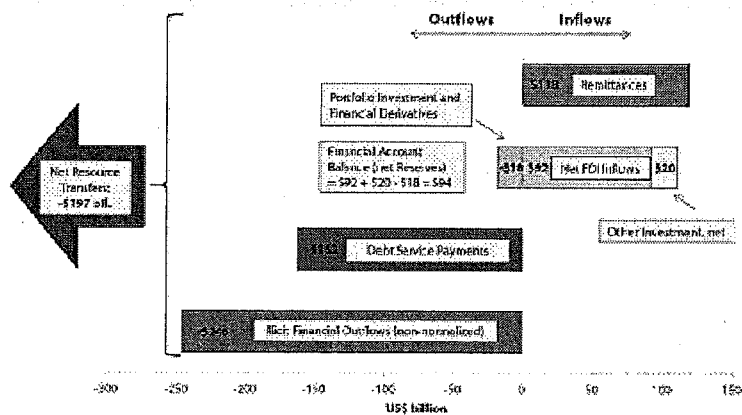
Financial Secrecy Index

RANK	Jurisdiction
1	Switzerland
2	Cayman Islands
3	Luxembourg
4	Hong Kong
5	USA
6	Singapore
7	Jersey
8	Japan
9	Germany
10	Bahrain

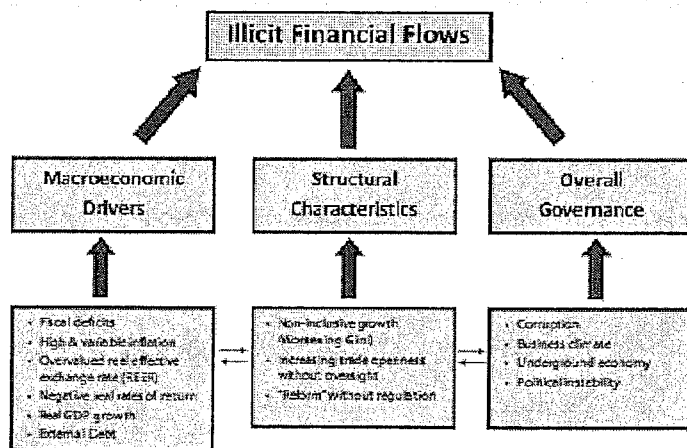
UNDP Research



Net recorded transfers and net resource transfers 48 LDCs (1990-2008)



"Push" factors driving illicit financial flows



UNDP Activities

- o Enhancing the capacity of anti-corruption agencies (7 countries in Asia, incl. Malaysia)
- o Supporting UNCAC ratification and self-assessments (a dozen countries in AP)
- o Supporting civil society organizations (incl. chambers of commerce)
- o Facilitating knowledge and information sharing (AP INTACT)
- o Supporting sectoral interventions (health, education, water, extractive industries, forestry, etc.)

Anti-Corruption Agency Focus on Private Sector Corruption

Member Economy	ACA	Focus
Singapore	CPIB	Public and private sectors
Malaysia	MACC	Public and private sectors
Hong Kong SAR	ICAC	Public and private sectors
Papua New Guinea	Ombudsman Commission	Public sector
Thailand	NACC	Public sector
Philippines	Ombudsman	Public sector
Brunei Darussalam	ACB	Public and private sectors
Australia	NSW ICAC	Public sector
South Korea	ACRC	Public sector
Indonesia	KPK	Public sector

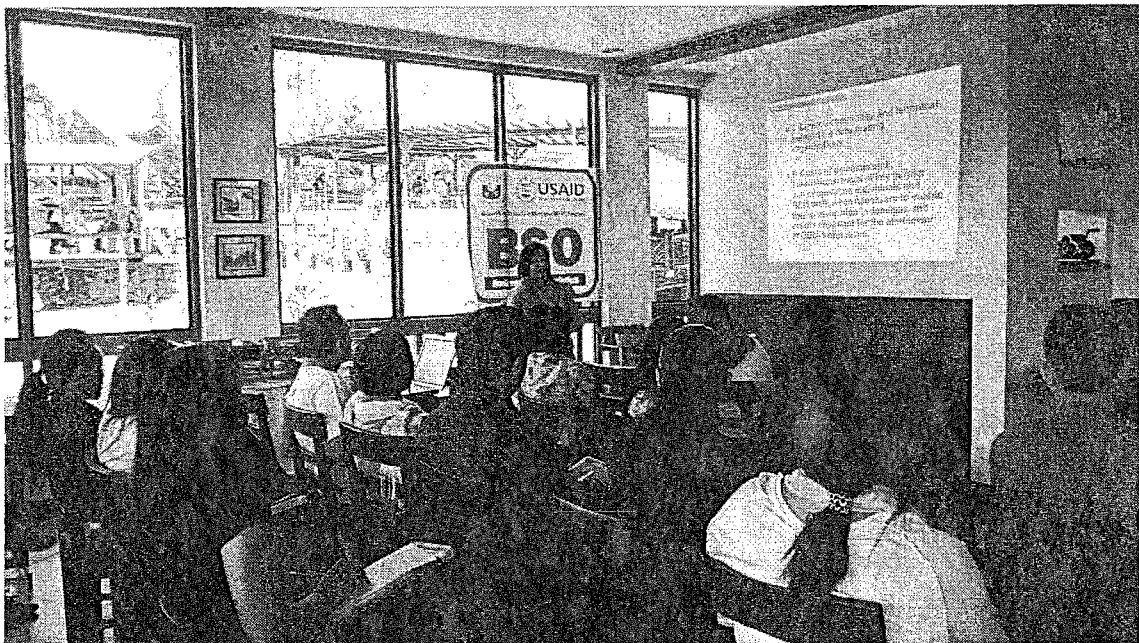
Questions

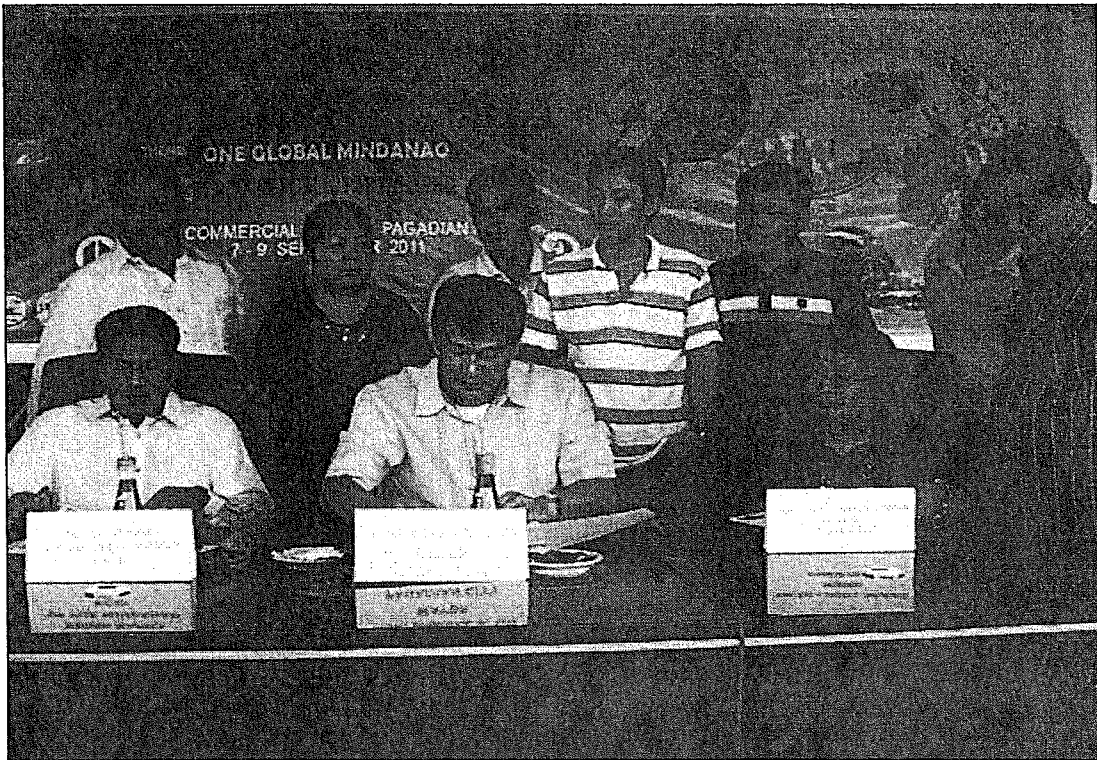
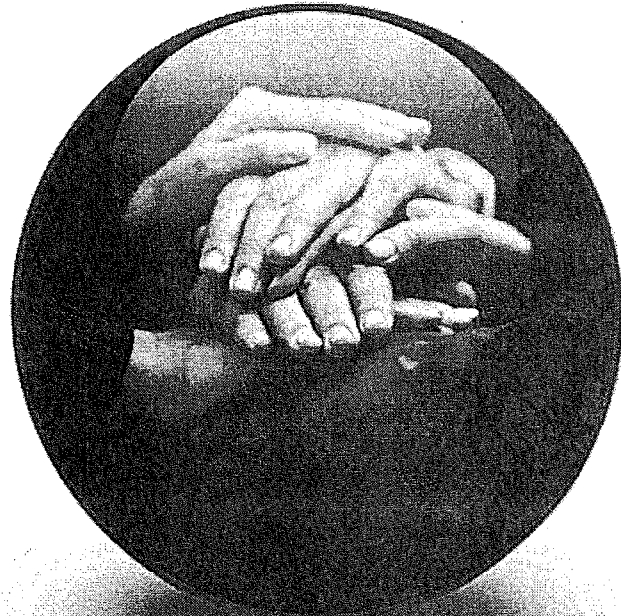
- o Is a code of conduct sufficient? What about trade mispricing, fraud, illicit financial flows, bank secrecy in APEC member economies?
- o Is voluntary action sufficient? What about law enforcement? What is the role of Anti-Corruption Agencies? What is the role of Chambers of Commerce?
- o To what extent is the APEC Anti-Corruption Code of Conduct implemented by the Extractive Industries and the Banks?



USAID

FROM THE AMERICAN PEOPLE







BUSINESS TAX ASSESSMENT



Richard M. Tolentino, President of the Philippine Chamber of Commerce and Industry (PCCI), is seen speaking at a business tax assessment seminar. He is surrounded by other attendees, including men and women in business attire, who are listening attentively. The setting appears to be a conference room or a seminar hall.

LEON LARIBIT, PCCI President, is seen speaking at a business tax assessment seminar. He is surrounded by other attendees, including men and women in business attire, who are listening attentively. The setting appears to be a conference room or a seminar hall.

ROBERT MENDOZA, PCCI President, is seen speaking at a business tax assessment seminar. He is surrounded by other attendees, including men and women in business attire, who are listening attentively. The setting appears to be a conference room or a seminar hall.

ARNILDO MONTIBALAN, PCCI President, is seen speaking at a business tax assessment seminar. He is surrounded by other attendees, including men and women in business attire, who are listening attentively. The setting appears to be a conference room or a seminar hall.

EMILIO DELA CRUZ, PCCI President, is seen speaking at a business tax assessment seminar. He is surrounded by other attendees, including men and women in business attire, who are listening attentively. The setting appears to be a conference room or a seminar hall.

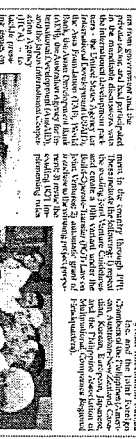
Private sector forms PPP Coalition to support Aquino Administration

Manila—A 10-member coalition of private sector organizations has formed to support the Aquino Administration. The coalition, known as the Private Sector Partnership Coalition (PSPPC), was formed on October 27, 2010. The coalition is composed of the Philippine Chamber of Commerce and Industry (PCCI), Philippine Chamber of Exporters and Importers (PCEI), Philippine Chamber of Manufacturers and Industrialists (PCMI), Philippine Chamber of Finance and Industry (PCFI), Philippine Chamber of Engineers and Technicians (PCET), Philippine Chamber of Scientists and Technologists (PCST), Philippine Chamber of Accountants and Auditors (PCAA), Philippine Chamber of Lawyers and Legal Professionals (PCLP), Philippine Chamber of Doctors and Health Professionals (PCDH), and Philippine Chamber of Teachers and Education Professionals (PCTEP).



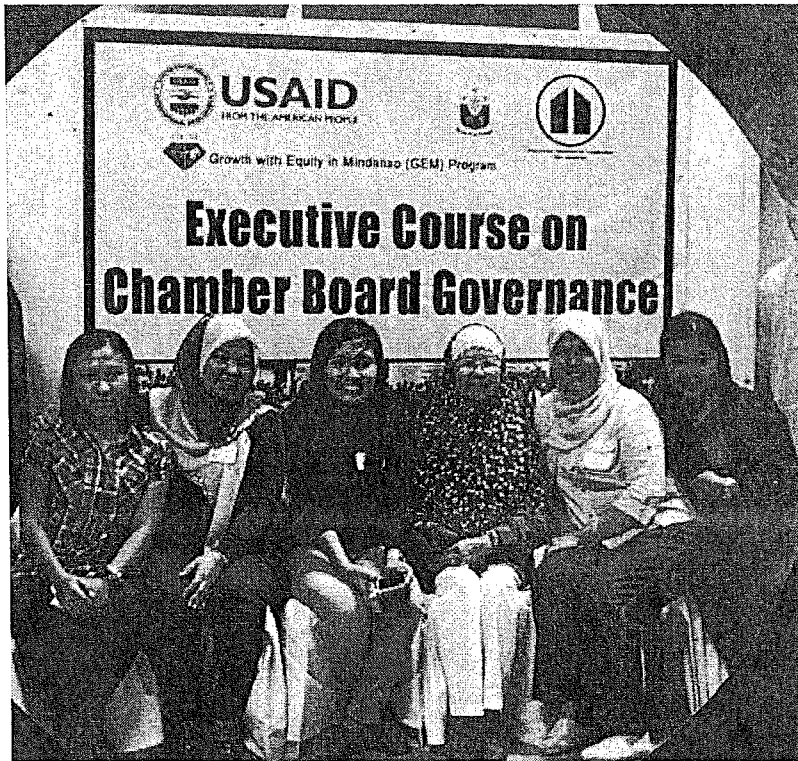
Policy Reform to Jumpstart PPPs

Manila—The annual Jumpstart PPPs (Public-Private Partnerships) Summit 2010 is set for November 10-12, 2010. The summit is organized by the Department of Energy (DOE) in partnership with the Philippine Chamber of Commerce and Industry (PCCI). The summit will focus on policy reform to jumpstart PPPs. The summit is expected to attract a large number of participants, including government officials, private sector representatives, and international experts.



PEA (Philippine Exporters Association) is a trade association representing the interests of Philippine exporters. It is committed to promoting and protecting the interests of its members. The PEA is active in lobbying for policies and regulations that are favorable to Philippine exporters. It also provides a platform for exporters to voice their concerns and share their experiences. The PEA is a member of the Philippine Chamber of Commerce and Industry (PCCI).

PEA is a trade association representing the interests of Philippine exporters. It is committed to promoting and protecting the interests of its members. The PEA is active in lobbying for policies and regulations that are favorable to Philippine exporters. It also provides a platform for exporters to voice their concerns and share their experiences. The PEA is a member of the Philippine Chamber of Commerce and Industry (PCCI).



APEC Anti-corruption Code of Conduct for Business





Asia-Pacific
Economic Cooperation

APEC Anti-Corruption Code of Conduct for Business

*-Integrity and Transparency Principles
for the Private Sector*



Asia-Pacific
Economic Cooperation

Background

- **2004 – Santiago, Chile**
 - Santiago Commitment to Fight Corruption and Ensure Transparency
 - APEC Course of Action on Fighting Corruption and Ensuring Transparency
- **2005 – Anti-Corruption Transparency Expert’s Task Force**
- **2007 – Sydney, Australia**
 - APEC Anti-Corruption Code of Conduct for Business



Asia-Pacific
Economic Cooperation

Anti-Corruption Code of Conduct for Business

- **Definition of bribery**
- **Anti-bribery program**
- **Scope**
 - charitable contributions
 - gifts, hospitality, expenses
 - facilitation payments
 - political contributions



Asia-Pacific
Economic Cooperation

Anti-Corruption Code of Conduct for Business

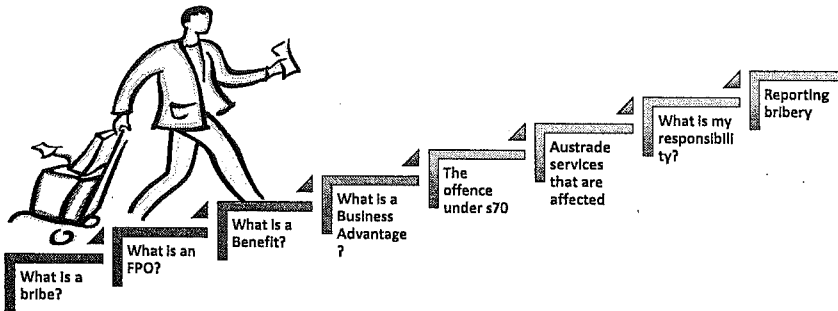
- **Implementation requirements**
 - business relationships
 - communication
 - leadership
 - financial recording and auditing
 - human resources

Anti-Corruption Code of Conduct for Business

- **Implementation requirements**
 - monitoring and review
 - raising concerns and seeking guidance
 - training
 - organization and responsibilities

Thank you!

Raising Awareness of Australia's Anti-Bribery legislation and its implications



Australia Unlimited

BRIBING A FOREIGN PUBLIC OFFICIAL IS A CRIME

It is a criminal offence to bribe a foreign public official.

The offence applies to:

- Individuals or companies, whether or not they are Australian, who bribe or attempt to bribe a foreign public official while in Australia and
- Australian citizens, Australian residents or companies incorporated in Australia who bribe or attempt to bribe a foreign public official while overseas.

Individuals or companies that commit the offence can be prosecuted in or Australia or overseas.

Australia's law provides fines or 10 years imprisonment for persons found guilty of bribing a foreign public official. A court may also impose a fine, or imprisonment, by way of reparation. Proceeds of the criminal activity can also be forfeited to the Australian Government.

The high penalties for foreign bribery reflect the seriousness of the offence. Corruption stifles the global market for Australia's exports and investment. It is a key trading fair competition, and can have detrimental consequences for development overseas.

The law applies to both individuals and companies

Companies can be found guilty of foreign bribery offence and can be held criminally responsible for the acts of their agents. Companies must create and maintain a corporate culture that requires compliance with the law. They must take reasonable steps to ensure that their employees do not commit foreign bribery offences.

Companies should also ensure that they have appropriate due diligence systems in place based on the law, and that people who do so report breaches are protected from prosecution whilst the company is investigated.

What is bribing a foreign public official?
The definition of "foreign bribery" is very broad. It includes providing or offering a benefit to another person or causing a benefit to be provided or offered to another person, where the benefit is not legitimately due.

The benefit must be intended to influence a foreign public official in the exercise of his or her official duties for the purpose of obtaining business or a business advantage.

A "benefit" can be monetary or non-monetary in nature. It does not need to be provided or offered in the form of a bribe or official that is, it can be provided or offered in another form, it can also be provided or offered by a third party.

Who are foreign public officials?
The definition of "foreign public official" is also very broad. It includes:

- employees, officials or contractors of a foreign government body
- individuals performing the duties of an appointment, office or position under a law of a foreign country
- individuals holding or performing the duties of an appointment, office or position created by law or constitution of a foreign country
- individuals in the service of a foreign government body (including whether as a member of a military force or police force)
- members of the executive, judiciary, legislature or legislature of a foreign country
- employees, contractors and individuals who perform the duties of an officer or position, or are otherwise in the service of a public international organisation (such as the United Nations)
- individuals who hold a position out to be an authorised intermediary of a foreign public official

If you suspect that an individual or company has bribed or attempted to bribe a foreign public official, please report the matter to Crime Stoppers on 1800 353 000 or write to:

Australian Federal Police
GPO Box 400
Canberra ACT 2601
11 07 00 000

For more information, visit www.afp.gov.au/foreignbribery
Produced by the Australian Government, Attorney-General's Department.

The key messages

Bribing, or attempting to bribe, a foreign public official (FPO) is a crime under Australian law

- Australian companies or citizens that bribe an FPO can be prosecuted:
 - *under Australian law; and*
 - *the laws of foreign countries*
- Australian Government has zero tolerance for bribery
- It is no excuse that 'bribery is common practice'

Australia Unlimited

Anthony Weymouth | Minister Counsellor & Senior Trade Commissioner

Philippines & Micronesia

Australian Trade Commission (Austrade)

Level 23, Tower Two, RCBC Plaza, 6819 Ayala Avenue, Makati City,
Philippines

T +63 2 902 5510 | F +63 2 902 5504 | M +63 917 848 1961

anthony.weymouth@ustrade.gov.au | www.austrade.gov.au

This email is confidential and use by any person other than the addressee may be illegal. If you have received it in error, please notify the sender immediately and delete it. The content is for information and carries no warranty; as such, the addressee must exercise their own discretion in its use. **Australia's anti-bribery laws apply overseas** and Austrade will not provide business related services to any party who breaches the law and will report credible evidence of any breach. If you are travelling overseas consult www.smarttraveller.gov.au - the Australian Government's travel advisory service. Please consider the environment before printing this email.

CHILEAN SYSTEM OF CRIMINAL LIABILITY OF LEGAL ENTITIES

BASIC ELEMENTS OF CRIME PREVENTION (LAW N°20.393)

Pablo Gómez Niada
Valparaíso's Regional Prosecutor
Public Prosecution Office, Chile



- APEC's Code of conduct has not yet been implemented in our country. Nevertheless, the private sector has recently created an ethical code, based upon APEC's principles, basically preventing antitrust practices and emphasizing more and better information for customers.
- However, different efforts have been made in order to include the good practices contained in the code, such as:
 - Compliance Programs in Antitrust area, developed by FNE (National Economic Prosecution Office).
 - Administrative regulation for the private sector for self-assessment regarding compliance and standards of good corporate governance to listed corporations, recent project of SVS (Stock Market and Insurance Superintendence).
 - Organization Models in the Law 20.393.

Chilean System of liability of legal entities, Law 20.393

- Default responsibility organisational system**
- Its part of the strategy of crime control through enforced self-regulation.**
- Liability is based precisely on the fact of not being organized and properly regulated.**
- Imposes the companies a duty to organize and regulate, so that they develop mechanisms for the prevention and detection of crime.**
- Ensures the adoption and implementation of compliance programs.**

Law N° 20.393

The Law also introduces criminal responsibility of legal entities for a limited list of offences:

- Bribery of chilean and foreign public officials,**
- Money laundering**
- Financing of terrorism.**

This list corresponds to requirements of international treaties, including the UNCAC and the OECD Anti-Bribery Convention.

Law N° 20.393

Basis to prosecute legal entities:

- ✓ **Predicate offence**
- ✓ **Offender of predicate offence (owners, managers, and other employees acting under direct supervision of the owner).**
- ✓ **Offence should be committed in direct and immediate profit or interest of the legal entity.**
- ✓ **Offence should be committed as a direct consequence of the breach of the duties on management and supervision by the legal entity (organization models).**

Organizational default system

Presumption of compliance:

Management and supervision duties adopting and implementing "organization models of administration and supervision to prevent such crimes and offences", in accordance with standards established in Article 4.

Organizational default system

Article 4°:

- VOLUNTARY** Prevention Program.
- MINIMUMS:** Act only provides a model, with minimum standards of prevention.
- There are not pre-established standards for certification.

Organizational default system

Art. 4°, Basic elements of crime prevention model within the company.

- 1. Prevention Officer**
- 2. Prevention officer with resources and powers**
- 3. Prevention program**
- 4. Monitoring and certification.**

Minimum Standards Of The Organizational models

- 1. Prevention Officer**
 - ✓ **Function: Development of the model with the Administration**
 - ✓ **Lasting period : Three years, renewable**
 - ✓ **Autonomy - Exceptions: (a) controller or internal auditor, and (b) the owner, partner or shareholder (SMEs)**

- 2. With Power and resources**
 - ✓ **Means and authority to press charges**

Minimum Standards Of The organizational models

- 3. Prevention Program**
 - ✓ **Identification of processes that generate or increase the risk of committing crimes**
 - ✓ **Establishment of protocols, rules and procedures (codes of conducts)**
 - ✓ **Method of administration and audit of financial resources to prevent use of money in crime**
 - ✓ **Existence of internal sanctions against anyone who does not meet the system**

Minimum Standards Of The Organizational models

- 4. Monitoring and certification of the crime prevention system.**
 - ✓ **Establishes methods for effective implementation (Prevention officer + General Management and administration)**
 - ✓ **Certification of adoption and implementation (auditing firms, rating agencies, other registered SVS)**

What should prosecutors investigate?

- ▣ **If the company has a compliance program.**
- ▣ **If the organizational model is a reality in the company.**
- ▣ **Public Prosecution Office has to reach a high standard of proof in the case a certificated model**

Final Remarks

- Law 20.393 was issued according international standards, including APEC's Code of conduct;**
- Law 20.393 emphasizes the importance of crime prevention;**
- Organizational model are voluntaries, but the companies are aware of the presumption of compliance**
- The system must be followed up**

CURRENT STATUS OF ANTI-CORRUPTION IN VIETNAMESE BUSINESS SECTOR
 Phung Thi Lan Phuong
 Legal Department
 Vietnam Chamber of Commerce and Industry

VCCI WITH THE ROLE OF PREVENTING CORRUPTION FROM ITS ROOT

“To create a transparent and fair Vietnamese business environment”

Commenting Legal Documents

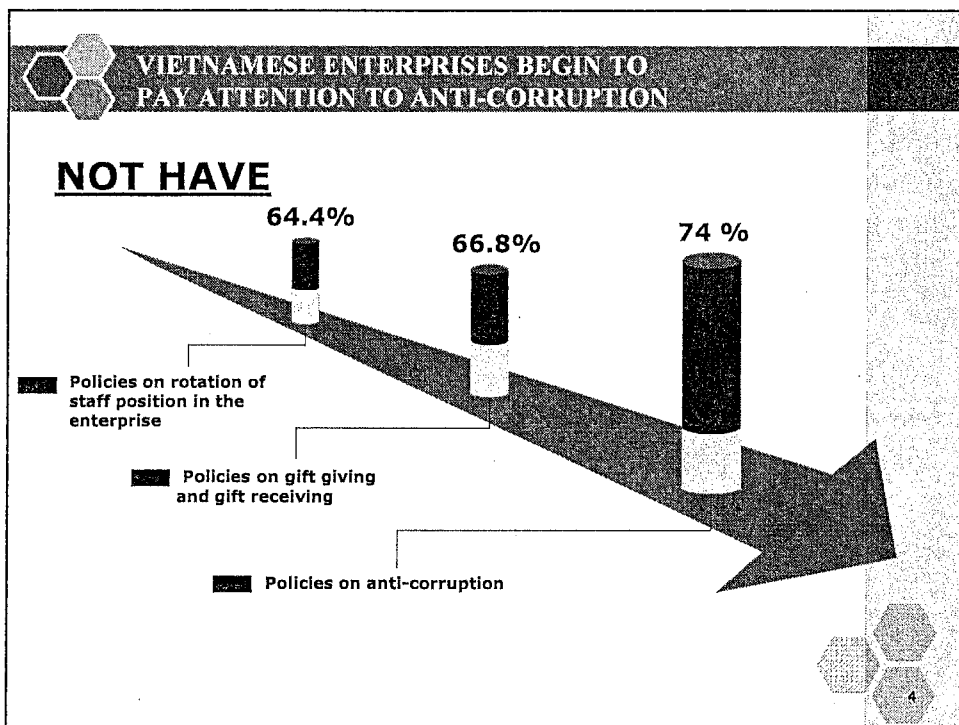
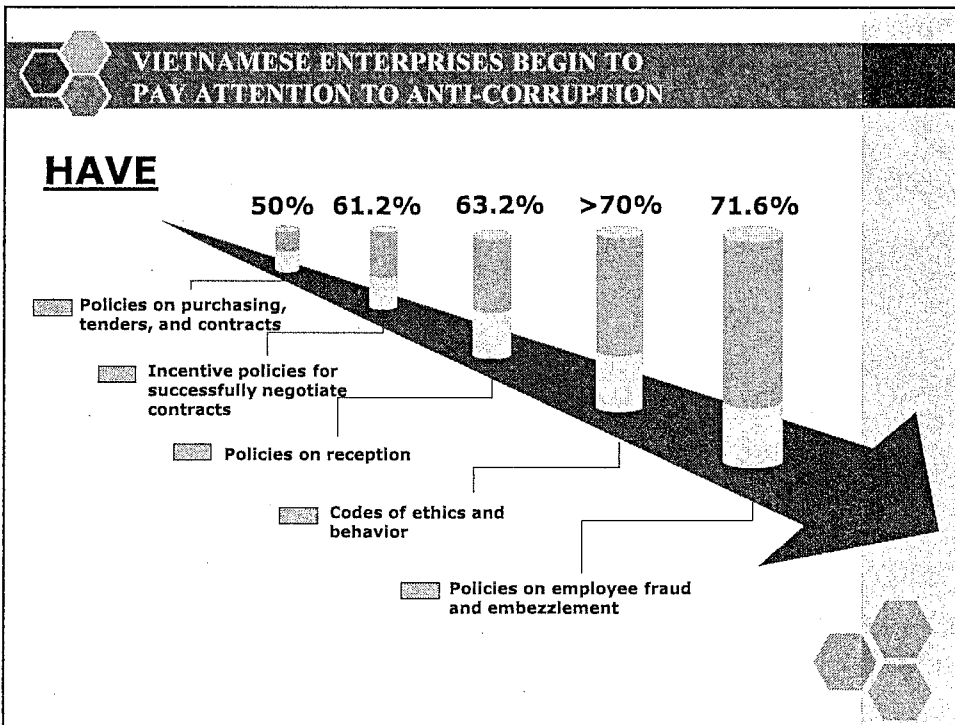
Collecting opinions of the business community and experts

Holding public - private dialogues

Provincial competitiveness Index (PCI)

Monitoring Implementation

Substantive Reviews and Recommendations





THANK YOU!

Phung Thi Lan Phuong

Legal Department

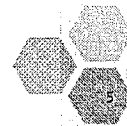
Vietnam Chamber of Commerce and Industry (VCCI)

Add: 9 Đào Duy Anh – Hanoi

Tel: 04.5771458

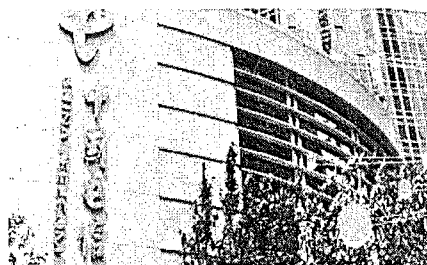
Fax: 04.5771459

Email: phuongptl@vcci.com.vn



Implementation of "APEC Anti-corruption Code of Conduct for Business"

by Chinese State-Owned Enterprises (SOEs)



- Mr. SHAO CHUNBAO
- CHINA TELECOM
- 20th Sept. 2012, Manila

About China Telecom



- An extra-large State-owned telecom operator, top 3 in China.
- Top 500 Global Corporations.
- Figure:
 - 194 million fixed-line telephone subscribers
 - 62.36 million mobile (CDMA) subscribers
 - 61.75 million broadband customers
 - 670 thousands employees



Check and balance in decision-making procedure



Improve the management and control mechanism



Improve the holistic supervision system

I. Check and balance in decision-making procedure

- **Check and balance in the governance structure**
 - Listed SOEs:
 - board of directors
 - management team
 - board of supervisors
 - Unlisted SOEs:
 - State-owned Assets Supervision and Administration Commission (SASAC) assigns the board of supervisors
 - more external directors than internal ones

I. Check and balance in decision-making procedure

■ Decentralize power in implementation

- Separate board of directors and management
 - clearly defining the boundary
 - keeping them irreplaceable

I. Check and balance in decision-making procedure

- Distinguish the levels of decision-making
 - For the most important matters, decisions are made in the board of directors and general manager's office.
 - For relatively important matters, decisions are made independently in different special committees.
 - For the common and daily matters, decisions are made by vice general-manager in charge.

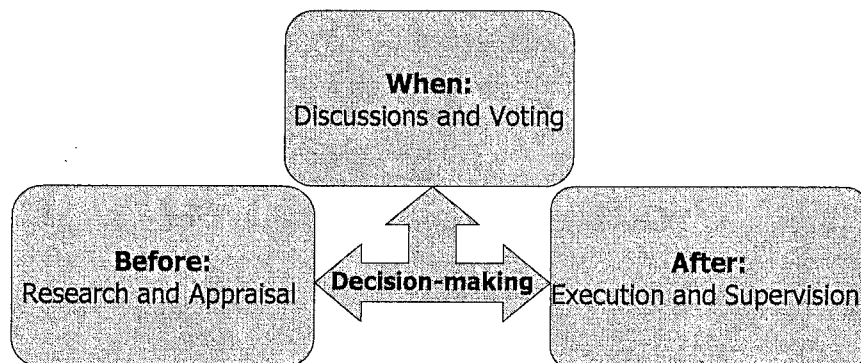
- **Supervisory departments** need to participate in making these decisions at each level.

I. Check and balance in decision-making procedure

■ Standardize the decision-making procedure

- “three major’s and one large” decision making system specifies the scope, authority and procedures regarding
 - major decisions
 - major personnel changes
 - major project arrangement, and
 - use large amount of money

I. Check and balance in decision-making procedure



II. Improve the management and control mechanism

■ Increase control over power

- Standardize, regulate the process and be transparent
- Establish corporate internal control system and put restraints on using power
- In terms of those key factors, improve the management of people, money and assets, identify weak spots.
- Use IT technology to make all execution process traceable
- E.g.: online ticket-booking system to prevent black box operation

II. Improve the management and control mechanism

■ Increase staff supervision

The management need to:

- regularly report major system change, work plan and other important matters;
- release daily operation information;
- report management integrity, enforcement of anti-corruption regulations and position-related consumption.

II. Improve the management and control mechanism

■ Prevent abuse of public power for personal use

- organize regular ethic educations;
- establish regular rotation system for leaders;
- carry out the recusal system to avoid conflict of interests and require leaders to report;
- establish instant warning system to have discussion and raise the red flag when problems.

II. Improve the management and control mechanism

■ Prevent commercial bribery

- established a communication and coordination mechanism between the enterprises and procuratorial organizations;
- identify, analyze and evaluate the risks;
- drive a collective commitment to business integrity;
- established a web-based open comment and supervision system.



III. Improve the holistic supervision system

- **Improve the prevention and control mechanism**
 - Build a “trinity” line of defense, including:
 - supervision of business management
 - supervision of the integrated control departments
 - supervision of inspection and audit departments



III. Improve the holistic supervision system

- **Improve the coordination mechanism**
 - joint conference system
 - information sharing mechanism
 - collaborative work mechanism

III. Improve the holistic supervision system

■ Improve the punishment mechanism



III. Improve the holistic supervision system

- Supervision
 - Efficiency
 - Audit
 - Special inspection

- Investigation
 - Detection
 - Investigation
 - Correction



III. Improve the holistic supervision system

- Punishment
 - Economic punishment
 - Organizational sanction
 - Disciplinary sanction
 - Disqualification to position
 - Transfer to judicial organs



THANK YOU !

