

Mutual Legal Assistance Recovery of Proceeds of Corruption

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Formal Mutual Legal Assistance

- Obtain documents, eg. bank
- Evidence taking
- Arrest & extradition
- Search
- Restrain properties
- Confiscation of properties
- Return confiscated properties & proceeds of crime
- Sharing of confiscated properties

Informal Mutual Assistance

- Routine enquiries
- Public records, eg. land, companies
- Internet records
- Locating witnesses/suspects
- Interview with voluntary witnesses
- Sharing of intelligence, conviction records
- Training

Letter of Request Procedure (*Commission Rogatoire*)

- From designated authority (Secretary of Justice) to Secretary of Justice/magistrate/ of the requested country
- State the summary of the investigation and describe the offences committed
- Full particulars of persons involved
- Description of the assistance requested
- Letter translated and transmitted (sometimes through diplomatic channel)
- If urgent, can use Interpol channel

Mutual Legal Assistance Complications

- Competing jurisdiction on offences – double criminality
- Reciprocity - Offence must be corresponding
- Not of political nature
- Death penalty
- Different legal /judicial system
- Over protection of own citizens
- Witnesses cannot be compelled to testify
- Bank secrecy law
- LEA cannot be allowed to operate cross border
- Risk of leakage of information
- Resource constraint
- Time delayed is success denied

Solutions

- **Bilateral & Multilateral Treaties and Convention**
 - Extradition
 - Mutual Legal Assistance
 - Letter of Request
 - Exchange of prisoners
 - Asset sharing
- **Informal mutual assistance**

Hong Kong Legislation on Mutual Legal Assistance

- **Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525 (1997)**
 - **Collection of evidence, search, seizure & confiscation**
 - **Through Secretary for Justice**
 - **Authorized Officers – police, customs, ICAC**
- **Fugitive Offenders Ordinance, Cap. 503 (1997)**
 - **Extradition Treaty**
 - **Test of sufficient evidence**

Conventions on Crime

**1988 UN Convention Against Illicit
Traffic in Narcotic Drugs & Money
Laundering**

**1990 Council of Europe Convention
on Laundering, seizures and
confiscations on proceeds of crime**

Conventions on Crime

**1993 European Convention on
Extradition**

**2000 UN Convention Against
Transnational Organized Crime**

Conventions on Corruption

**1996 Inter-American Convention
Against Corruption**

**1997 OECD Convention on
Combating Bribery of Foreign
Public Officials in International
Business Transaction**

**2003 UN Convention Against
Corruption**

UNCAC INTERNATIONAL CO-OPERATION

- **UNCAC can be applied as legal basis for extradition & mutual legal assistance**
- **Mutual legal assistance –A46**
 - **Gathering and transferring evidence for use in court**
 - **Tracing, search, freezing, seizure, confiscation & return of corrupt proceeds**
- **Technical assistance & training-A60**

UNCAC INTERNATIONAL CO-OPERATION

- **Anti-corruption agencies co-operation-A48:**
 - **Liaison officer**
 - **Rapid exchange of information**
 - **Exchange of personnel & experts**
 - **Joint investigation-A49-50**
- **Extradition of offenders-A44**

UNCAC Asset Recovery

- Article 52 – should regulate the financial institution on integrity of accounts
- Article 53 – should assist in civil proceedings by foreign countries
- Article 54 – should recognize the court order of another member state for freezing, seizing and confiscation of corrupt assets
- Article 55 – setting the procedure for international cooperation
- Article 57 – Return and sharing of assets

Why Asset Forfeiture is important?

- Greater deterrent effect
- High risk, low return crime
- Enhance income for government/ACA
- Enhance professional image of ACA
- Encourage public partnership
- Enhance international cooperation
- Provide basis for public education

Difficulties of Asset Tracing and Forfeiture

- **Secret nature**
- **Involving third parties**
- **Professional offenders**
- **Cross jurisdiction**
- **Use of high tech & professionals**
- **Inadequate legal support**

Prerequisite for Effective Asset Tracing/Forfeiture

- **Adequate law**
 - **Investigation power**
 - **Forfeiture**
- **Effective public report system**
- **Adequate resources**
- **Confidentiality of investigation**
- **International assistance**
- **Professionalism**

Legislation Support Liable to Forfeiture

- Any bribe payments
- Corrupt assets

Legislation Forfeiture – bribe payments

- Upon conviction
- Court must issue “Restitution Order”
- Order the convicted person to pay to such person or public body
- Normally the full amount of the bribe, but liable to pay full interest on the sum
- However, no sanction for enforcement
- Only through civil proceeding

Legislative Support Excessive Asset (Illicit Enrichment) Criminal Offence

- Any Government Officer
- In control of asset
- Disproportionate to his official emoluments
- Without satisfactory explanation
- Presumption on close relationship
- Max fine HK\$1M (US\$128,000) & 10 yrs imprisonment
- Court order for forfeiture of unexplained asset

Legislation Forfeiture of Corrupt Asset

- Court Order upon conviction
- For asset held by third parties, Secretary of Justice to apply for court order
- Third parties allowed to show cause
- Third parties can appeal to Court of Appeal

Legislation Restraining Order

- To freeze property during the course of investigation
- Ex parte application to High Court
- Including assets held by third parties
- 6/12 months renewable by court, 3 months at a time, but continue in force upon prosecution
- Criminal offence for breach of order
- Can apply for revocation/variation of order
- Basis for civil proceedings & settlement

Legislation Investigative Power

- Bank Check
- Surveillance
- Intercept
- Search & seize
- Demand for Information Order

Legislation

Demand for Information Order

- Court Order to direct suspect to provide statutory declaration on
 - his income, assets (including gift, luxury items) & liabilities, past & present
 - Overseas remittances
- May be used in court proceeding for cross examination only

Legislation

Demand for Information Order

- Court Order to direct any other person to provide statutory declaration on
 - Properties suspected to be held on behalf of suspect
- Court Order to require any government & public bodies to produce documents
- Court order to require any other person to attend ICAC Office & answer questions on oath

Asset Tracing Preliminary Stage

- Effecting reporting system – Life Style Hotline
- Check Asset Declaration, if any
- Complainant/Informant
- Witnesses
- Background check : Registration of Persons Office, Birth, Marriage Registry
- Civil Service Registry/Treasury
- Immigration Department – passport, travel movement

Asset Tracing Preliminary Stage

- Transport Department – car/driver registration
- Land/Property Registry
- Company Registry
- Source of expenses - Credit card companies
- Police, FIU
- Public Utility companies – electric, gas etc
- Mobile phone/Internet service provider
- Social media

Source of Information Protracted Stage

- Surveillance & Observation – close relatives/mistresses
- Intercept
- Overseas enquiries

Source of Information Protracted Stage

- **List of related persons**
- **Bank accounts**
- **Remittance**
- **Stocks, shares & funds**
- **Shell companies**
- **Properties**

Source of Information Overt Stage

- Search
- Confession
- Interview close associates
- Demand Order for information
- Immunity Witnesses
- Forensic evidence – computer
- Corrupt sources?
- Mutual legal assistance

Financial Investigation Unit

- Cooperation FIU/ACA
- Access to Suspicious Transaction Reporting (STR) record
- Liaison with Foreign FIU
- Use of FIU power to investigate and freeze assets
- Criminal or civil proceeding to forfeit corrupt assets

Mathematical Exercise

- Current Assets
- - Current Liabilities
- = Net worth
- - Previous net worth
- + total expenditure
- - total official income
- - explainable income
- = excessive asset

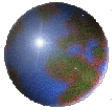


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Public – Private Partnership in Combating Corruption

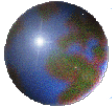
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True or False



- Corruption is so serious in this country that it will take a decade to eradicate it?
- If we can identify all the opportunities for corruption, and plug them all, corruption will be eradicated?
- We can rely on the dedicated ACA to eradicate corruption?
- Government should focus on public sector corruption, and leave business sector alone
- ACA should focus on "Big Fishes" & tolerate petty corruption



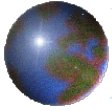
Two Important Understandings

- 1. There is no single solution in fighting corruption**
- 2. You can't rely on a single agency to fight corruption**



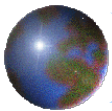
3-Pronged Approach

Deterrence
Prevention
Education



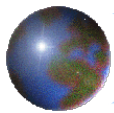
Three-pronged approach

- Don't want to corrupt
- Can't corrupt
- Dare not corrupt



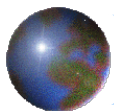
Why Enforcement is important?

- Demonstrate political will
- Encourage public support
- Driving force for system review
- Provide basis for public education
- Recovery of corrupt proceeds
- Deter the most corrupt!



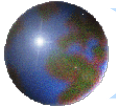
Equal Emphasis on public & private sector corruption

- **Double standard**
- **Identical to deception and theft**
- **Protect investment**
- **Level Playing field**
- **Consumer interest**
- **Financial Market stability**
- **Public safety**
- **Catalyst to organized crime & crime**



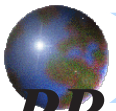
Partnership

- **Public organizations**
 - **Anti corruption commission**
 - **Police, FIU**
 - **Public Prosecutors**
 - **Judiciary**
 - **Ombudsman**
 - **Audit Commission**
 - **Civil Service Commission**
 - **Government departments**
 - **Parliament**
 - **Political parties**
- **Private**
 - **Business communities**
 - **Professional bodies**
 - **Civil society organizations**
 - **Educational institutions**
 - **Mass media, social media**
- **Public**
- **International networking**



UNCAC

- For the PRIVATE SECTOR –A12
 - Promote co-operation between anti-corruption agency and private sector in preventing corruption
 - Enhance accounting and auditing standards with penal sanctions
 - Promote private sector codes of conduct



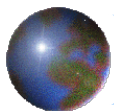
PREVENTIVE (Continued)

- For the PRIVATE SECTOR –A12
 - Prevent conflict of interest, eg. Employ former public officials
 - Promote internal control and internal audit
 - Disallow tax deductibility of bribe payment



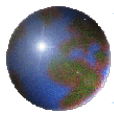
PREVENTIVE (Continued)

- For the PRIVATE SECTOR
 - Promote partnership with CSOs & NGOs – A13
 - Access to information – A13
 - Public education program- A13
 - Promote public reports of corruption, including anonymous reports-A13
 - Regulatory framework to detect/prevent money laundering-A14



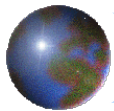
Some Best Practices

- National Integrity Council – strategy, action plan
- Advisory/monitoring committees
- Joint task forces
- Public reporting hotline/referral
- Ethics Development Centre
- Integrity Education Network
- Corruption Watch
- Multi parte code of ethics
- Institutional Integrity Management

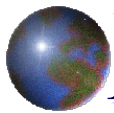


Code of Ethic

- **Explain the relevant law**
- **Acceptance of entertainment, gifts, loans & discounts**
- **Conflict of interest**
- **Abuse of authority**
- **Leakage of confidential/sensitive information**
- **Outside work**
- **Declaration of investment?**
- **General conduct and behaviour-excessive gambling, indebtedness etc**
- **Confidential complaint channel**
- **Sunshine Test**



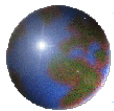
*Every Institution,
Government or Private,
should take up Responsibility of
Cleaning their Own Houses*



Ministries Anti Corruption

Action Plan

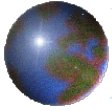
- Philippines, Mongolia, Serbia
- Prime Minister's Workshop – agreed common action based on 4 pillars
- Tailor made ministries action plan
- ACA to coordinate training needs
- Quarterly progress report to ACA, then to the Cabinet
- Review annually



Institutional Integrity

Plan

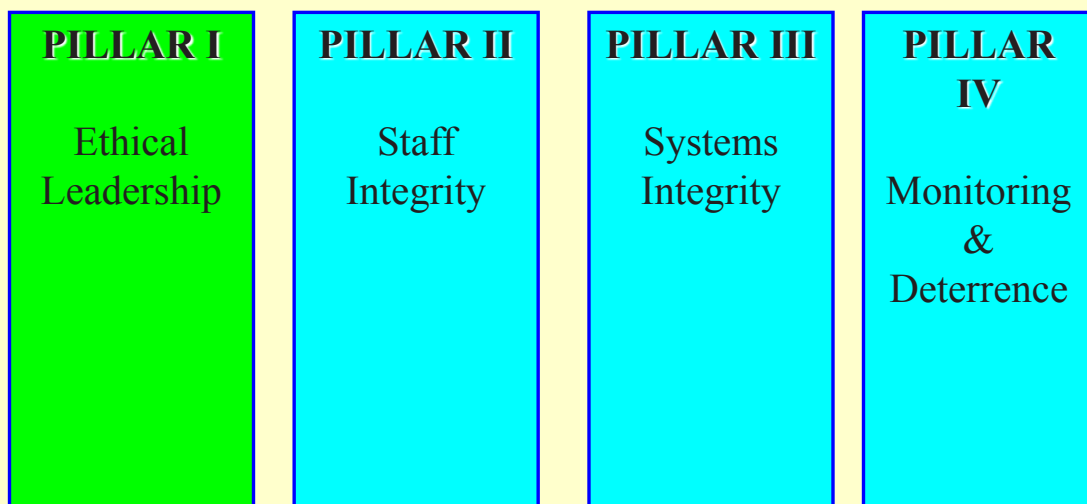
- Institutional Integrity Steering Committee
- Institutional Integrity Annual Action Plan
- Certified Institutional Integrity Officer (CIIO)

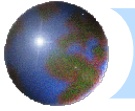


Role of CIIO

- Provide professional advice to the Steering Committee
- As facilitator in the strategic planning workshop to formulate annual action plan
- Coordinate & monitor the implementation of the Action Plan
- Progress report to Steering Committee
- Provide in house training
- Review annually
- Partnership with anti corruption agency & others

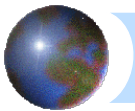
Institutional Integrity Action Plan





Ethics Leadership

- Integrity
- Human rights
- Equality
- Rule of law



Integrity

- Honesty
- Selflessness – decision based on public/institution interest, not private interest
- Objectivity – decision based on merit
- Transparency
- Accountability



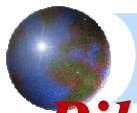
Pillar 1: Ethical Leadership

- 1. The Chief Executive should publicly pledge their commitment to adopt institutional integrity by issuing a public statement on business ethics, value and zero tolerance.**
- 2. The Chief Executive should allocate a fixed % of budget for institutional integrity activities**
- 3. Set up a declaration system for conflict of interest, including relatives involved in business in the same sector**
- 4. Set up a high level Integrity Steering Committee to formulate ethics policy, integrity strategy and action plan**
- 5. Establish a post of Integrity Manager (CIIO) to coordinate implementation**



Pillar 2: Individual Integrity

- 1. Formulate & promulgate a specific Staff Code of Ethics including clear guidelines for gifts, loans and entertainment, and conflicts of interest**
- 2. Open & fair staff recruitment, including integrity vetting**
- 3. Organize staff ethics training and development activities, such as seminars, workshops, slogan competitions and promoting healthy life styles**
- 4. Integrity management will be included in the job description, and in staff appraisal**



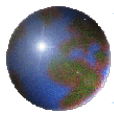
Pillar 3: Systems Integrity

1. **Set up a risk management unit to assess corruption/fraud vulnerability in the organization, to review systems & procedures, making them more efficient, transparent & accountable**
2. **Set service guarantees to enhance public services delivery**
3. **An anti-corruption clause will be included in all contracts**
4. **Unethical Contractors will be blacklisted and published in a central system**
5. **Job rotation systems to be implemented**



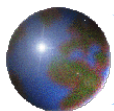
Pillar 4: Monitoring and Deterrence

1. Mandate that employees report corruption, suspected corruption, & attempted corruption
2. Set up a hotline for receiving complaints
3. Formulate policies and procedures to protect the confidentiality of whistleblowers
4. Enhance internal audit & surprise check system
5. Set up an internal monitoring section to investigate complaints and to monitor suspected staff unethical conduct
6. Consider Integrity Testing programme



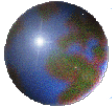
Best Practices - Law

- Conflict of interest law (Canada)
- Corporate liability (US)
- ACA budget cannot be reduced (Mongolia)
- ACA budget pegged with national budget (Malawi)
- Legal obligation to report corruption : Canada, Malaysia
- Reward for election bribery – South Korea
- Civil servant's unsecured loan not more than 3 months pay – Singapore
- Senior politician/public officials not allowed to have overseas bank accounts (Nigeria)
- Public Hearing System – Australia NSW



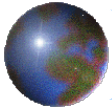
Best Practices - Prevention

- Presidential/Prime Minister Workshop – ministries, govt agencies, provinces, SOE, business
- Public service delivery - Performance pledge – Hong Kong, Singapore
- Government department to submit annual anti-corruption action plan : New Zealand, Philippines
- Integrity committee/Integrity Officer in all govt agencies – Tanzania
- Integrity Audit Review : Australia, Philippines
- Due Process Office of the President – Nigeria
- Procurement Observers/Monitors – Philippines



Best Practices - Education

- Publication of national anti-corruption plan - Pakistan
- China Public Integrity Education Network
- Tripartite code of conduct : Philippines
- Anti-corruption guideline on web : Hong Kong, Australia
- Anti-corruption month : Philippines
- Active partnership with Civil societies & churches – Philippines, Kenya



Best Practices - Enforcement

- Special Court : Pakistan, Philippines, Indonesia
- Life style check campaign - Philippines
- Australian Corruption & Fraud Centre
- Blacklisting of corrupt contractors
- "I paid a bribe" Website - India
- Integrity Testing

A nighttime aerial view of a city, likely Hong Kong, with numerous illuminated skyscrapers and a body of water. A bright full moon is visible in the dark sky above the city.

Thank You

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