REGIONAL MEETING ON CURBING FOREIGN BRIBERY IN ASEAN ECONOMIC COMMUNITY

Concept Note and Agenda

2-3 October 2014
Siem Reap, Cambodia

With financial support from the Government of Japan
Background
The bribery of foreign public officials is a widespread phenomenon in international business transactions, including trade and investment, raising serious moral and political concerns, undermining good governance and sustainable economic development, and distorting international competitive conditions (OECD, 2009). The increasingly transnational nature of business transactions makes the need for comprehensive policy frameworks in the area of foreign bribery a particularly crucial component of broader national anti-corruption strategies.

Sparked by the significant increase of instances of foreign bribery and lack of relevant legislation, countries began to adopt foreign bribery specific legislation in the 1970’s. The most notable of such legislation is the United States’ Foreign Corrupt Practices Act of 1977, which remains one of the most comprehensive and influential legal framework in this area. Subsequently, the Organisation for Economic Co-operation and Development (OECD) adopted its Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which went into force in 1999.1

The United Nations Convention against Corruption (UNCAC), which entered into force in 2005, created specific obligations for its 172 Parties (as of September 2014). As the first global anti-corruption instrument, it placed the issue of corruption on the global agenda. Specifically, articles 16 and 46 of UNCAC pertain to the criminalization of the bribery of foreign officials as well as mutual legal assistance in the investigation and prosecution of such cases.

Article 16 of UNCAC requires State Parties to adopt legislation that criminalizes “the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business”. This article highlights the significance of foreign bribery within broader anti-corruption frameworks.

Article 46 of UNCAC pertains specifically to mutual legal assistance and Article 46(1) states that “States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered in this

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1 The OECD Convention establishes an open ended peer driven monitoring mechanism to ensure the implementation of the obligations taken on by parties to the Convention. This monitoring is carried out by the OECD Working Group on Bribery, which is composed of members of all State Parties.
“Convention.” The article reflects the reality that economic crimes are in many instances of a transnational nature and the conviction of the States Parties that mutual legal assistance is essential during the investigation, prosecution and judicial proceedings of corruption cases. Therefore, national anti-corruption professionals face the challenge not only of building connections between different law enforcement agencies, but of linking these efforts to international cooperation mechanisms.

Foreign bribery is of particular concern to State Parties in dynamic economies of Southeast Asia. On the one hand multi-national and foreign corporations have established an important presence in Southeast Asia as a result of growing foreign direct investment in the region. On the other hand, companies from the region are increasingly present and competitive in international markets. With the creation of the single market within the ASEAN economic community in 2015 as well as the increasing level of outward trade and investment from the region, the need to establish effective foreign bribery frameworks and mutual legal assistance mechanisms is particularly acute (OECD, 2012).

The implementation of UNCAC provides countries with an opportunity to adopt and enforce their foreign bribery policies within a broader national anti-corruption framework. In fact, as States Parties in Southeast Asia have undergone or are currently undergoing review for compliance with Chapters III and IV of UNCAC (including articles 16 and 46), provisions on bribery of foreign officials and on mutual legal assistance have emerged as areas that are not fully implemented in many countries. In follow-up to these country reviews, the United Nations Office on Drugs and Crime (UNODC) in collaboration with Anti-Corruption Unit of Cambodia (ACU) aim at providing an opportunity for countries in the region to collectively address their technical assistance needs and fill the gaps of implementation identified in the review process.

The meeting is made possible with the generous financial contribution from the Government of Japan.

Objectives

The meeting will offer a collective response to specific technical assistance needs identified in the reviews of implementation of UNCAC and an opportunity for exchange of information among countries in the region in line with provisions of UNCAC on technical assistance and information exchange.

The meeting aims at discussing the common issues in the areas of foreign bribery legislation, enforcement and compliance faced at the national level by the countries in the region, and at strengthening international cooperation in the investigation and prosecution of foreign bribery cases. The meeting itself will provide a platform for participants to share their experiences, develop capacity and to generate a list of recommendations concerning the common problems faced by countries in the region concerning foreign bribery.

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2 Among the seven Southeast Asian countries reviewed so far (Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Philippines, Timor-Leste and Viet Nam), only two have incorporated Article 16 in their national legislation. Three countries did not establish the bribery of public officials and officials of international public organizations as a criminal offence and two are facing gaps in their definition of the bribing parties. Executive summaries of the reviews of these countries are available at: [https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html](https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html).

3 The remaining four countries of the Southeast Asia region, Cambodia, Myanmar, Singapore and Thailand, are currently under review.

Particularly see Article 60 paragraphs 2, 3 and 6, and Article 61 paragraph 2 of UNCAC.
This meeting will, therefore, aims to meet the following objectives:

1. Take stock of country experiences in developing and implementing foreign bribery legislation and mutual legal assistance mechanisms and identify good practices and common challenges;
2. Clarify the process of investigating and prosecuting foreign bribery cases through countries experiences;
3. Identify mechanisms to ensure effective mutual legal assistance and international cooperation in the investigation and prosecution of foreign bribery cases as well as challenges and successes in this area;
4. Highlight private sector experiences in developing foreign bribery compliance frameworks and identify how public and private sector should engage with each other in the fight against bribery;
5. Agree on a set of recommendations on development of effective bribery legislation, adoption of effective foreign bribery investigation practices and procedures, successful prosecution, and engagement in international cooperation in this area.

**Methodology**

Prepared in coordination with different key partners, in particular the OECD and Southeast Asian Parties Against Corruption (SEA-PAC), the conference will be structured to focus on four key areas pertaining to the compliance with UNCAC foreign bribery legislation: (1) legal frameworks, (2) foreign bribery enforcement (including investigation and prosecution), (3) international cooperation through mutual legal assistance in the investigation and prosecution of foreign bribery cases and (4) prevention through compliance.

In preparation of the conference, a survey will be conducted on the challenges and successes of participating countries in the area of foreign bribery enforcement and mutual legal assistance. The results of these pre-inquiries, together with Executive Summaries of UNCAC Reviews so far completed, will provide an overview of the situation in the region and will enable participants to take stock of and benefit from country experiences.

As States embark on revising existing foreign bribery and mutual legal assistance legal and policy frameworks, the meeting will generate a basic resource to aid States in carrying out their efforts. The resource material will take the form of recommendations which will be elaborated during the conference itself, taking into account the conclusions of each session. The recommendations of the regional meeting can serve as a basis for a resource guide to be developed after the meeting, to ensure wider reach and sustainability of conclusions of the meeting.

**Participants**

ACU and UNODC, with the kind financial support of the Government of Japan, will invite two officials from each Member State of ASEAN plus Timor Leste as well as international experts and practitioners. The officials will be invited to represent the anti-corruption and bribery authorities (e.g. Anti-Corruption Commission, specialized bribery agencies/task forces) and officials working in the area of mutual legal assistance (Central authorities designated under Article 46 paragraph 13 of UNCAC). Around 20-40 representatives will be in attendance. Country office representatives of international organizations working in these areas will also be encouraged to participate.

International experts (practitioners in areas of law enforcement, prosecution, mutual legal assistance) who have experience in foreign bribery investigations (e.g. FCPA litigation), academics, civil society and representatives from multi-national companies and law firms involved in foreign bribery compliance in the region, will also participate in the meeting.
## Agenda

### Day 1

**2 October 2014**

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<td>Welcome and Opening Remarks</td>
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<td>10:00-12:00</td>
<td>First Session</td>
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<td><strong>Legal Frameworks</strong></td>
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**Session objective:** To identify the challenges faced in developing corporate liability and foreign bribery legal framework and to provide an overview of the situation in the region and some examples of comprehensive legal framework in different countries or regions.

**Panel Discussion**

**Moderator** H.E. Kheang Seng, Vice President, Anti-Corruption Unit (ACU), Kingdom of Cambodia

**Speakers**

- Mr. Wilson Ang, Partner, Norton Rose Fulbright (Asia) LLP, Singapore
- Mr. William Loo, Senior Legal Analyst, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, OECD
- Mr. Azmi Mohd, Assistant Commissioner, Mutual Assistance in Criminal Matters (MACMA), Investigations Division, Malaysian Anti-Corruption Commission (MACC)
- Mr. Akharakit Keeratithanachaiyos, International Affairs Strategy Specialist, National Anti-Corruption Commission (NACC), Thailand

**Moderated Discussion**
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| 13:30-15:00  | **Second Session**       | **Enforcement**  
Session objective: To identify the challenges faced in implementing foreign bribery investigation and prosecution frameworks. This will be followed by remarks by chosen discussants. After the break participants will engage in group discussions on a set of questions on investigation and prosecution of foreign cases and will report back to the plenary.  
*Panel Discussion*
  Moderator Mr. Ang Seow Lian, Deputy Director, Corrupt Practices Investigation Bureau (CPIB), Singapore  
  **Speakers**  
Ms. Claire Daams, Prosecutor, Office of the Attorney General, Switzerland [*via video-conference*]  
Mr. Drago Kos, Chair of the Working Group on Bribery, The Organisation for Economic Co-operation and Development (OECD)  
Mr. Colin Hunt, Detective Sergeant, Team Leader, Fraud and Anti-Corruption Crime Operations, Federal Police, Australia  
Mr. El Cid Butuyan, Senior Litigation Specialist, Integrity Vice Presidency (INT), World Bank |
| 15:00-15:15  | Coffee Break             |                                                                                                                                            |
| 15:15-16:45  | **Second Session** (continued) | **Groups discussion and report to plenary** |
| 16:45-17:00  | Wrap-up Day 1            |                                                                                                                                            |
| 19:00        | Dinner Reception hosted by | H.E. Top Som, President, National Council Against Corruption (NCAC), Kingdom of Cambodia                                                                 |
Day 2
3 October 2014

8:45-9:00 Arrival of participants

International cooperation

Session objective: To identify the challenges faced in implementing a mutual legal assistance framework in a national context —through which international cooperation in the investigation and prosecution of foreign bribery is to be strengthened. After the break participants will engage in group discussions to identify challenges and recommendations in the area of mutual legal assistance mechanisms and will report back to the plenary.

Panel Discussion

Moderator Mr. Peter Ritchie, Regional Anti-Corruption Adviser, American Bar Association, Rule of Law Initiative, Thailand

Speakers

Mr. Leo Tsao, Trial Attorney, Fraud Section, Criminal Division of the Department of Justice, USA [via video-conference]

Mr. Afief Yulian Miftach, Investigator, Indonesian Corruption Eradication Commission, Indonesia

Mr. Yoshimitsu Yamauchi, Prosecutor, Special Investigation Division, Tokyo District Public Prosecutor’s Office, Japan

Mr. Francesco De Simone, Manager of the International Drivers of Corruption theme, U4 Anti-Corruption Resource Center

9:00-10:30 Third Session

10:30-10:50 Coffee Break

10:50-12:30 Third Session

Groups discussion and report to plenary

12:30-14:00 Lunch

14:00-16:00 Prevention

Session objective: To identify requirements for corporate compliance with UNCAC and national provisions on foreign bribery, and to highlight private sector experiences in developing foreign bribery compliance frameworks. Dialogue and partnership between the public
and the private sector in order to enhance corporate compliance is key in the prevention of foreign bribery.

**Panel Discussion**

**Moderator** Mr. Vincent Lazatin, Executive Director, Transparency and Accountability Network, Philippines

**Speakers**

Mr. Glenn T. Ware, Principal, Leader, International Anti-corruption, Corporate Intelligence and Strategic Threat Management, PricewaterhouseCoopers, USA

Ms. Wendy Wysong, Leads of the Asia-Pacific Anti-Corruption Practice, Clifford and Chance, Hong Kong and USA

Ms. Jeanette Estes, Chief Compliance Officer, General Electrics Global Growth Organization – ASEAN, Thailand

Mr. Jose Cortez, Representative of the Working Group on Business Integrity in ASEAN

**Moderated Discussion**

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<td>Coffee Break</td>
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| 16:15-17:00| **Conference Wrap-up: Recommendations and closing remarks**  
**Moderator**  
Mr. Sherwin Majlessi, Regional Anti-Corruption Adviser, United Nations Office on Drugs and Crime, Regional Office for Southeast Asia and the Pacific |
|            | **Closing Remarks**                             |
|            | H.E. Dr. Om Yentieng, Senior Minister, President of Anti-Corruption Unit (ACU), Kingdom of Cambodia |