Discussion paper

Encouraging Dialogue between Business and Government Regulators about Corruption Issues

United Nations
Office on Drugs and Crime

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Disclaimer

The views, conclusions and proposals expressed in this document cannot be considered as an official statement, are not the official position of UNODC. The task is to contribute to the scientific and practical discussion on the prospects for the development of the rulemaking system in the Republic of Uzbekistan, improving the corruption prevention system and the overall improvement of the regulatory environment.

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Introduction

UNODC provides technical assistance to countries party to the convention in their implementation efforts. One of the most important areas of assistance is to support efforts to analyze the phenomenon of corruption, various forms of its manifestation in certain industries and areas of social and economic activity.

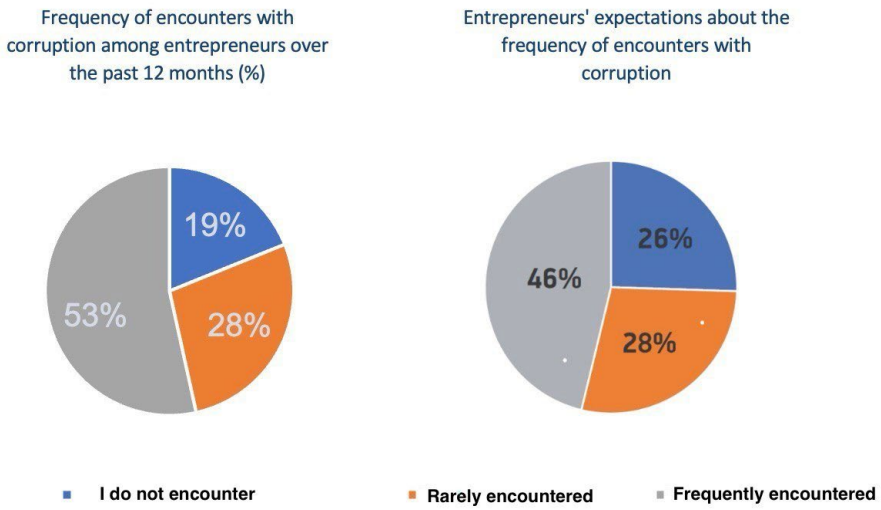
Together with the Anti-Corruption Agency, the Chamber of Commerce and Industry and the Commissioner for Protection of Rights and Legitimate Interests of Entrepreneurs under the President of the Republic of Uzbekistan (Office of the Business Ombudsman of the Republic of Uzbekistan), as well as the Center for Economic Research and Reforms, activities were carried out in 2021-2023 to analyze the corruption risks faced by business entities of the Republic of Uzbekistan when interacting with government organizations , as well as reasons related to the quality of regulation of business activities, as well as the process of state inspection of the activities of business entities. The study involved group discussions with representatives of key stakeholders - representatives of private enterprise, business associations, government officials, representatives of regulators, as well as representatives of civil society. A comparison of responses from representatives of these groups, as well as their points of view regarding the challenges created by the shortcomings of the regulatory environment that provoke corrupt interactions, allowed us to formulate several recommendations that are set out in this note.

The study was conducted as part of the project implemented by the Regional Office of the United Nations Office on Drugs and Crime in Central Asia “Global Action for Business Integrity.”

Weighing Viewpoints

As shown by the results of a pilot online survey conducted in October-November 2021, the prevalence of corrupt practices in the process of interaction between business entities and government organizations is quite high (Fig. 1). More than 50% of respondents encountered in their practice the need to participate in this interaction often, another 28% - rarely.

Figure 1. Prevalence of corrupt practices in the interaction of business entities with government organizations



At the same time, one can note the optimism of entrepreneurs regarding how, at the time of the survey, in their opinion, the situation will develop. The share of those who expected frequent encounters with corruption in the foreseeable future decreased to 46% due to an increase in the share of respondents who are confident that they will no longer encounter it.

To understand the factors that provoke businesses to use corrupt practices when interacting with government agencies, a series of group discussions were held with entrepreneurs, as well as business consultants.

The results of group discussions with representatives of the business community showed that entrepreneurs and business consultants consider the most problematic areas of interaction with the government to be:

- State procurements
- Licensing, permitting procedures, access to utilities
- Access to borrowed funds in the banking system
- Control of the activities of business entities
- Utility consumption control process
- Access to land resources and plots

Next, it is necessary to cite and compare different points of view on the same issues.

A business perspective

From the point of view of the business community, the reasons for the high prevalence of the use of corrupt practices in interaction with state organizations are:

1. **Conflicts of legal acts. Moreover, the most painful are the collisionsĂ of acts of different legal force.**
   For example, in the process of inspections of entrepreneurial activity,Ăor when considering the possibility of applying benefits, suchĂconflicts provide an opportunity for an official to choose the act forĂcompliance with which the activities of the entity are checked, at hisĂdiscretion.
2. **No less painful was the breadth of powers of officials to makeĂ decisions based on their subjective discretion.**
   For example, a "fork" when choosing the number of fines between theĂ minimum and maximum amounts. Or the ability of the inspector toĂ choose those types of violations and deficiencies identified during theĂ audit, which should be reflected in the report.
3. **The absence of responsibility for damage caused by an inspection, orĂ actions of a state body performed unreasonably, or in violation ofĂ order, is also noted as a problem area.**
   And although there are mechanisms for protecting the infringed rightsĂof entrepreneurs in the process of inspections, the practice of their use,Ăin some cases, involves an increase in time, with uncertainty that it willĂbe possible to defend their rights using these mechanisms. Obviously,Ăthe categories of "confidence or uncertainty" reflect the subjectiveĂfeeling of the entrepreneur, however, to a certain extent, this perceptionĂis formed by previous experience, one's own, or that of otherĂentrepreneurs. Therefore, this aspect should also be considered.
4. **Economic or practical impracticability of norms, requirements ofĂ normative legal acts. In other words, entrepreneurs argue that theĂ norms are often excessively high and unfeasible in practice.**
   During the discussions, it was noted that the introduction of technical orĂ economic regulation takes place without sufficient study andĂ assessment of the feasibility of implementation in practice.
5. **Frequent changes in legislation.**
   High paces of output of normative and legal acts, leading to instability and unpredictability of regulations. The term "output" applied here because the number of adopted acts per year exceeds 2000 documents (2021), and if we consider that a significant part of them implies amendments and additions to other acts, or repeal, then the coverage of the regulatory framework by regulatory changes can be quite significant and affect up to 50% of existing acts.

A civil society perspective

Almost all the factors that were noted in discussions with representatives of business circles were confirmed in discussions with representatives of non-governmental non-profit organizations. However, in addition to them, such factors as the following were also noted:

1. **Lack of transparency in the development process, even though not all legal acts are published in the online database lex.uz.**
2. **Lack of a full-fledged dialogue with civil society.**

   Not all draft laws and regulations are subject to public discussion. Khokimiyats are practically inaccessible for dialogue, especially in the regions.

3. **Practical impracticability of the rights of public control, in connection with which representatives of NGOs can argue that there is no legal basis for dialogue and control over the activities of state bodies by society.**
4. **Wide application of the principle "what is not allowed is prohibited" in the process of checking the activities of economic entities and civil society institutions.**

   In fact, according to representatives of NGOs, they cannot exercise their rights to perform any function of public control only because there is no order or procedure for their implementation.

   > *For example, Article 11 of the Law "On Public Control" states that:*
   >
   > *"Public monitoring is the observation of the activities of state bodies and their officials through the collection, generalization and analysis of information affecting the public interest.*
   >
   > *Public monitoring is carried out publicly and openly. Public monitoring can also be carried out using information and communication technologies.*
   >
   > *The organizer of public monitoring shall make public information about the object of public monitoring, the term and procedure for its conduct in advance."*
   >
   > *That is, how to carry out monitoring should be determined by the NGO itself. At the same time, we must understand that the right of NGOs to monitor does not create an obligation for the State Authority to comply with the requirements of NGOs, as it may be difficult to hold a State Entity accountable for failure to comply with requests in practice.*

5. **Approaches to regulating the situation are chosen, as a rule, from the position of a state body.**

   The reason why it can be argued that agencies have a dominant position in the choice of regulatory tools and in determining the appropriateness of regulatory intervention stems from the way in which the process of initiating the drafting of a piece of legislation is defined.

   In particular, the basis for the development of a departmental act is a decision of a higher authority, or a law. In turn, as is known, in Uzbekistan, most draft laws are often developed by the executive authorities, as well as draft resolutions of the Cabinet of Ministers and the President of the Republic of Uzbekistan. Accordingly, through these procedures, it is possible to implement the instructions of the departments to themselves to develop an additional departmental act.

   At the same time, it should be noted that this year the Agency for Strategic Reforms was created, which was given the authority to submit draft laws and regulations based on the results of the Agency's work with the expert community, bypassing the process of interdepartmental coordination.

A view from the state authorities

The feedback and opinions received during discussions with representatives of the business community and civil society institutions were presented at a panel discussion with government officials. From their point of view, there are several reasons why corrupt practices can be provoked by shortcomings in legal regulation.

1. **High-quality and full-fledged development of a draft normative legal act requires much more time than is actually allocated by the decisions of higher authorities and is provided for by the Law "On Normative Legal Acts".**

   As noted by the participants, often the time allocated for the development of draft normative legal acts is less than 2 months and, in some cases, less than 1 month.

   In practice, the process of developing a draft normative legal act includes the following stages: direct development of the text of the draft normative legal act, intradepartmental approval, interdepartmental coordination and comparison of disagreements, public discussion of the draft normative legal act on the regulation.gov.uz portal (at least 15 days), consideration of the comments received and subsequent amendments to the draft normative legal act, repeated interdepartmental approval, submission of the draft to a higher authority and subsequent revision.

   Given the high pace of reforms, it is obvious that priority is given to the speed of the state's response to a particular situation. In this regard, the

obligation of public discussion of all draft laws and regulations without exception has been canceled. And in accordance with the Presidential Decree of March 17, 2022, No UP-89, only *"draft normative legal acts of important economic and socio-political importance, as a rule, are subject to placement by project development organizations on the Portal"*.

1. From the point of view of representatives of state bodies, representatives of civil society and business circles in many cases give irrelevant, insufficiently developed, non-substantive comments on draft normative legal acts.
2. Civil servants responsible for the development of draft normative legal acts in departments do not always know the technique and methods of anti-corruption expertise of normative legal acts. This reduces the effectiveness of its implementation and can lead to formalism, for example, in the form of filling out a checklist, without conducting ACE.
3. One of the reasons why public procurement is accompanied by increased corruption risks, representatives of state institutions believe that there are quite wide opportunities for concluding direct contracts.
4. The opinion was also expressed that the reason why entrepreneurship is ready to engage in corrupt interaction is most likely to lie in the possibilities of significant reduction of costs, both transactional and material, on the one hand. Entrepreneurs may be convinced that administrative and bureaucratic procedures are so complex that they are close to insurmountable. Monetary thank-you can be used to speed up administrative and bureaucratic procedures. On the other hand, there may be a widespread belief that it is an agreement with officials that can guarantee more substantial benefits and income than in the absence of it.

Recommendations for discussion

1. Continue efforts to introduce and fully apply the Regulatory Impact Assessment mechanisms provided for by the Law of the Republic of Uzbekistan "On Normative Legal Acts".
   RIA mechanisms, if fully and correctly applied, provide the necessary level of assessment of the expediency of adopting a specific act, as well as provide additional information necessary when conducting an anti-corruption examination of normative legal acts.

2. Improve approaches to rule-making planning, so that the bulk of analytical work on a specific issue is carried out before a specific rule-making initiative is included in the plan.
   Analytical activities carried out by sectoral departments and organizations should prove that the identified problem in the industry cannot be solved without the adoption of a new normative legal act.
   Arguments in favor of launching a rule-making initiative should be supported by regulated entities, including. That is, group discussions with stakeholders should be held before the plan is formed.
   Thus, already at the planning stage, the draft laws and regulations should be screened out, the expediency of which has not been properly confirmed by the facts.
   In addition, the time allotted for the development of a normative legal act should provide sufficient time for the implementation of all related procedures of public discussion and expert assessment.

3. The prepared draft normative legal acts containing norms and provisions that establish regulations, the procedure for performing procedures, should be tested and piloted in practice using methods for modeling typical scenarios of interaction, timing, cost calculation of transaction costs associated with the implementation of normative legal acts and the procedures provided for therein.
   The results obtained should be reflected in the relevant report on the Regulatory Impact Assessment.

4. Continue work on the formation of a team of trainers on anti-corruption expertise of legal acts and increase the number of civil servants trained in this area.
   In addition, to involve representatives of the non-governmental sector - representatives of NGOs and the business community - in the training process.

5. To form a constructive dialogue between the non-governmental sector and public authorities, it is necessary to organize trainings and information events that allow:
   a. Civil servants should gain a full understanding of the role and opportunities of civil and business communities to contribute constructively to the process of a comprehensive analysis of the industry situation, the development of normative legal acts and other regulatory decisions that reflect a balanced, balanced approach to the interests of all parties.
   b. Activists of civil and business communities should improve their skills in analyzing state socio-economic policy, understanding the processes of rulemaking and lawmaking,

developing analytical and regulatory documents, as well as conducting constructive discussions that focus on systemic problems, rather than their manifestations.

6. To implement the intentions to promote the integrity of commercial activities, it is necessary to create conditions in which large corporate structures: joint-stock companies, commercial banks, limited liability companies:
   a. analyze internal procedures and regulatory documents using anti-corruption expertise methods.
   b. map the risks of corruption and fraud in the workplace and develop internal policies and mechanisms for their prevention, monitoring, detection and internal investigation.

Conclusion

Each of the parties involved in the relationship has its own point of view regarding the same situation. And on the example of the discussions, it can be noted that the explanation of the reasons for the use of corruption practices in the interaction of business structures and government agencies always considers the protection of their own professional, business interests, or the interests of the represented organization. In practical terms, this means that the rapprochement and identification of common positions, for objective reasons, will always be hindered by the established point of view of the interacting parties.

Nevertheless, despite the seemingly insurmountable contradictions in interests, both sides of the relationship, business and state regulators, also have common interests. Both parties are interested in minimizing the costs associated with compliance with the law, reducing the negative impact of corruption, both on everyday practice and on the image of business and business structures. Such common interests can and should be established through dialogue. A direct weighing of different points of view is a necessary step in finding a consensus between them.

In this regard, the creation of discussion platforms to discuss the problems of corruption and find ways to eliminate it is an important step towards reaching consensus between regulators and regulated entities.