

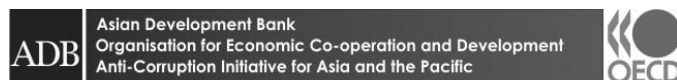
Making international anti-corruption standards operational:

Asset recovery and mutual legal assistance

Agenda

Bali, Indonesia, 5-7 September 2007

Organised by:



GOVERNANCE

BASEL INSTITUTE ON GOVERNANCE

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Conference venue

Nikko Bali Resort & Spa
Jl. Raya Nusa Dua Selatan, Nusa Dua, 80363 Bali, Indonesia
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Wednesday 5 September 2007

11:00 – 13:00 Registration

13:00 – 14:00 **Opening and keynote addresses**

Welcoming remarks

Taufiqurrahman Ruki

Chairman, Corruption Eradication Commission of Indonesia

International cooperation to combat bribery

Patrick Moulette

Head, Anti-Corruption Division, OECD

UNCAC: An innovative legal framework for asset recovery

Kuniko Ozaki

Director, Division for Treaty Affairs, United Nations Office on Drugs and Crime

Indonesia and the UNCAC review mechanism

Amien Sunaryadi

Vice Chairman, Corruption Eradication Commission, Indonesia

Global efforts to fight bribery and corruption are underpinned and promoted by international instruments and initiatives, most notably by the recent UN Convention against Corruption (UNCAC) as well as the pioneering OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD anti-bribery Convention). These instruments place particular emphasis on mechanisms to facilitate mutual legal assistance in corruption matters and testify to the importance of international cooperation for a successful fight against corruption. The OECD anti-bribery convention requires that bribes and the proceeds of bribery be subject to seizure and confiscation. Asset Recovery is a basic principle of the UNCAC, which consequently dedicates an entire chapter to procedures and conditions for the seizure, confiscation and repatriation of assets, the implementation of which is generally considered of utmost importance in today's global efforts against corruption.

Of additional relevance to the Asia-Pacific region, the ADB/OECD Anti-Corruption Action Plan for Asia-Pacific, which supports the implementation of UNCAC and the principles of the OECD Anti-Bribery Instruments, also underscores the importance of bilateral and multilateral cooperation in investigations of corruption.

This session seeks to assess the role of international instruments as facilitators for international legal cooperation and outlines the standards that state parties to these instruments are required to implement.

14:00 – 14:30 Group photo and coffee break

14:30 – 15:45 **Legal and institutional challenges in mutual legal assistance**

Chair: **Dr Maria Gavouneli**

Vice-Chair, OECD Working Group on Bribery

Marita van Thiel

Public prosecutor, National Coordinator for Corruption Investigations, National Public Prosecutor's Office, Netherlands

MLA and asset recovery in Asia-Pacific: Overview of trends

William Loo

Legal Analyst, ADB/OECD Anti-Corruption Initiative for Asia-Pacific, OECD

Self-assessment under UNCAC provisions relevant for requesting and providing MLA and asset recovery

Prof Dr Romli Atmasasmita

Indonesia

The effective and prompt provision of mutual legal assistance in criminal and civil proceedings is central to the struggle to investigate and successfully prosecuting cases of corruption.

However, as desirable and simple a proposition this is, serious legal and practical impediments often hamper legal assistance despite the increasing number of international treaties and bilateral arrangements that exist across the world.

Mutual legal assistance is still often declined on the basis of a lack of dual criminality despite the best efforts of international conventions and MLA schemes to promote a culture of broad interpretation. Furthermore, even when requesting states attempt to comply diligently with the demands of the requested state or comply fully with the criteria of the relevant treaties, there may still be serious institutional or structural problems such as a lack of expertise in either the requesting or requested states, inadequately funded central authorities or simply a genuine lack of will to assist in the investigations being conducted. These problems are neither restricted to one geographical area of the world nor to 'developing versus a developed world'-phenomena—these problems can often be found in some of the most advanced legal traditions in the world.

This session shall first attempt to identify, from the perspective of a practitioner, what obstacles stand in the way of effective and prompt mutual legal assistance, including how new provisions of UNCAC can assist in overcoming these obstacles. It will then proceed to outline how Asian-Pacific jurisdictions respond to these challenges, based on a thematic review that the members of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific conducted in 2006/2007. Finally, the session will look in particular at the mechanisms available for MLA and asset recovery in Indonesia and at results from Indonesia's 2006 UNCAC compliance review in this regard.

15:45 – 17:00 **Formal and informal paths to obtain international legal assistance**

Chair: **Bernard Rabatel**

Avocat Général, Court of Appeals of Lyon, France

Formal procedures: Experience from Thailand

Torsak Buranaruangroj

Chief Provincial Public Prosecutor, International Affairs Department, Office of the Attorney General

Combining formal and informal mechanisms: ways for speeding up MLA

Jean-Bernard Schmid

Investigating Magistrate, Geneva, Switzerland

There are a number of ways in which requests for information to other countries can be made, namely assistance by way of a letter of request, mutual legal assistance, or through an informal request for assistance, i.e. mutual assistance. The extent to which countries are willing to assist without a formal request varies from country to country, and is dependent in many cases on their own domestic laws, how good the relations are between the respective countries and even the attitude and opinions of those in the relevant agencies. If there are good working relationships then often people will do what they can to assist. It is impossible to definitively list the types of enquiries that can be made informally but, as a general rule, if the enquiry is routine and does not require coercive powers it may well be possible to make them without a formal letter of request. Where such enquiries can be undertaken through this mechanism, this should be encouraged to save time if nothing else. However, great care should be taken to ensure that using informal means to secure assistance does not legally jeopardise the information so received.

This session shall explore the circumstances in which some investigations can be advanced rapidly through efforts to seek international assistance through informal as well as formal means. The session shall also carefully consider the pitfalls of seeking informal assistance and when assistance through the more formal channels needs to be sought.

19:00

Dinner hosted by the Corruption Eradication Commission (KPK) of Indonesia

Thursday 6 September 2007

08:30 – 09:00 Coffee and Pastries

09:00 – 10:15 **Tracing, freezing, confiscating and repatriating the proceeds of corruption**

Chair: **Andrew Boname**

Regional Anti-Corruption Advisor, American Bar Association-ROLI, Asia Division

Sylvia Grono

Assistant Director, Criminal Assets, Commonwealth Director of Public Prosecutions, Australia

Theodore S. Greenberg

Senior Financial Sector Specialist, Financial Market Integrity Unit, Financial and Private Sector Development Vice-Presidency, World Bank

Alan Bacarese

Senior asset recovery specialist, Basel Institute on Governance

Mal Nuhu Ribadu

Executive Chairman, Economic and Financial Crimes Commission Nigeria (EFCC)

The tracing, freezing, confiscating and repatriating the proceeds of corruption is not a new concept. For example, the OECD anti-bribery Convention requires that bribes and the proceeds of bribery be subject to seizure and confiscation. The exponential growth of international treaties, banking regulations and conventions in this area and notably the coming into force of UNCAC, gives a new impetus to this area and will be instrumental in further improving and facilitating these processes.

For example, today, domestic seizure and confiscation is more and more often executed without a prior criminal conviction or a money laundering process recognising the unlawful nature of the property. Furthermore, UNCAC now makes available other mechanisms, particularly the civil process. However, considerable problems associated with both the criminal and civil techniques remain, such as banking secrecy, jurisdictional issues and parallel proceedings, what to do with materials obtained in criminal proceedings and the dilemma of repatriating the proceeds of corruption to some states.

This session shall explore the criminal and civil routes available to investigators and prosecutors in what is a technically difficult and complex area. The session shall highlight some of the principal considerations necessary to navigate through this area. Particular attention will be paid to the real and significant developments that UNCAC provide to investigators and prosecutors and how best to utilise these new tools.

10:15 – 10:30 Coffee break

10:30 – 12:00 **Seizure, confiscation and repatriation of Assets: Practices in financial centres**

Chair: **Dimitri Vlassis**

Chief, Crime Conventions Section, Division of Treaty Affairs, UNODC

Requirements in Switzerland

Pascal Gossin

Chief of Section for International Legal Assistance, Federal Department of Justice and Police, Switzerland

Requirements in Hong Kong, China

Wayne Walsh

Deputy Principal Government Counsel, International Law Division, Department of Justice Hong Kong, China

Singapore's practice for seizure, confiscation and repatriation of assets

Ang Seow Lian

Assistant Director, Corrupt Practices Investigation Bureau (CPIB), Singapore

A very significant proportion of the world's proceeds of bribery either ends up or makes its way through the main international financial centres. It is thus increasingly vital to have access to these financial centres and to possess a working knowledge of how they operate and how best to make inroads into their legal and institutional practices so that effective and directed requests can be made to seize, confiscate or repatriate those proceeds as quickly as possible.

The session shall attempt to navigate through some of the seemingly impenetrable complexity of some of the world's leading financial centres and to offer insights into how best to achieve both rapid and effective seizure, confiscation and repatriation of looted assets.

12:00 – 13:30 Lunch

13:30 – 16:00 **Case studies (3 parallel groups)**

Practical experience often reveals unexpected difficulties as well as solutions to overcome these difficulties. Three studies of high profile cases that have been handled in various jurisdictions in the past decade will outline practical solutions to recover assets from both the perspective of the requesting and the receiving states. In particular, the case study groups will seek to assess what tools provided by UNCAC will assist countries in future, similar cases to overcome the challenges identified in the three discussed cases.

Group 1: "Ferdinand Marcos" (Philippines)

Case presenter: **Jean-Bernard Schmid**

Investigating Magistrate, Geneva, Switzerland

Discussant 1: **Merceditas N. Gutierrez** (Ombudsman, Republic of the Philippines), represented by:

Mildred Bernadette Alvor

State Counsel V, Office of the Chief State Counsel, Department of Justice, Republic of the Philippines

Discussant 2: **Martin Polaine**

Consultant, Legal&Constitutional Affairs Division – Criminal Law Section, Commonwealth Secretariat

Rapporteur: **Arvinder Sambei**

Head, Criminal Law Section, Legal&Constitutional Affairs Division, Commonwealth Secretariat

Group 2: "Sani Abacha" (Nigeria)

- Case presenter: **Pascal Gossin**
Section Chief MLA, Federal Department of Justice and Police, Switzerland
- Discussant 1: **Mal Nuhu Ribadu**
Executive Chairman, Economic and Financial Crimes Commission Nigeria (EFCC)
- Discussant 2: **Timothy Daniel**
Partner, Kendall Freeman
- Rapporteur: **Alan Bacarese**
Senior asset recovery specialist, Basel Institute on Governance
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Group 3: "Vladimiro Montesinos" (Peru)

- Case presenters: **Guillermo Jorge**
Executive Director, Program on Corruption and Governance, Universidad de San Andrés, Argentina
- Discussant: **Theodore S. Greenberg**
Senior Financial Sector Specialist, Financial Market Integrity Unit, Financial and Private Sector Development Vice-Presidency, World Bank
- Rapporteur: **Marita van Thiel**
Public prosecutor, National Coordinator for Corruption Investigations, National Public Prosecutor's Office, Netherlands
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16:00 – 16:30 Coffee break

16:30 – 17:00 **Reports from case studies groups, discussion of lessons learnt**

Chair: **Gretta Fenner**
Director, Basel Institute on Governance

Speakers: Rapporteurs from Case study groups

Evening free

Friday 7 September 2007

07:30 – 08:00 Coffee and Pastries

08:00 – 09:45 ***Cooperation to recover proceeds of corruption: needs and priorities for Asia-Pacific under UNCAC and other international anti-bribery instruments***

Chair: **Edi Pratomo**

Director General for Legal and Treaties Affairs-Ministry of Foreign Affairs, Indonesia

Planning ahead: Needs assessment for Indonesia's upcoming MLA and asset recovery proceedings

Yoseph Suardi Sabda

Director for Civil Cases, Attorney-General's Office, Indonesia

Recovering proceeds of corruption: steps taken and new challenges in PR China

Guo Mingcong

Director of the International Judicial Cooperation Department
Supreme People's Procuratorate, PR China

Making UNCAC, the OECD anti-bribery instruments and other global anti-corruption tools operational

Nicola Bonucci

Director, Legal Directorate, OECD

*Implementing the UNCAC – Making Technical Assistance work:
The German UNCAC Project*

Dr Dedo Geinitz

Deutsche Gesellschaft für Technische Zusammenarbeit (GtZ), Germany

Building upon the experience of experts from across the world, this session will carefully consider the next steps for Asia-Pacific countries to bring the UNCAC and tools that other international instruments provide firmly within the armoury of investigators and prosecutors and to promote their use in investigations into transnational bribery cases.

This session will seek to define concrete steps to be taken by countries from the region to operationalize the central concepts of the UNCAC and of other relevant instruments and will assess the supporting role that regional processes such as the ADB/OECD Anti-Corruption Initiative play in this endeavour. The session shall look, in particular, at the work being undertaken in Indonesia and PR China as two examples from the region.

09:45 – 10:00 Coffee Break

10:00 – 11:00 ***Panel discussion on key outcomes of the seminar, and closing***

Co-chair: **Gretta Fenner and Kathleen Moktan**

Basel Institute on Governance / ADB/OECD Anti-Corruption Initiative for Asia-Pacific

Dimitri Vlassis

Division of Treaty Affairs, UN Office on Drugs and Crime

Dr Maria Gavouneli

Vice-Chair, OECD Working Group on Bribery

Saïd Fazili

Second Secretary Political Affairs, Royal Netherlands Embassy in Jakarta, Indonesia

Closing: **Taufiequrahman Ruki**

Chairman, Corruption Eradication Commission of Indonesia
