

### What is the UK Anti-Corruption Forum?

The Anti-Corruption Forum is an alliance of UK business associations, professional institutions, civil society organisations and companies with interests in the domestic and international infrastructure, construction and engineering sectors. The purpose of the Forum is to promote industry-led actions which can help to eliminate corruption. The members of the Forum believe that corruption can only be eliminated if governments, banks, business and professional associations, and companies working in these sectors co-operate in the development and implementation of effective anti-corruption actions.

### Anti-Corruption Action Statement

In September 2005, the Forum published its “Anti-Corruption Action Statement”. The Action Statement calls on all those with interests in the infrastructure, construction and engineering sectors to take effective and co-ordinated action to reduce corruption, on both a domestic and international basis, and on both the supply and demand sides. It identifies the various categories of participant in the sectors, including governments, project owners, banks, export credit agencies, companies providing the equipment and services for a project, business associations and professional institutions. It recommends preventive and enforcement actions which could be taken by those participants. Recommendations include increasing awareness of corruption and its consequences through publicity and training; improved international co-operation; the adoption and enforcement by organisations of anti-corruption codes of conduct and management systems; fair, reasonable, objective and transparent procurement and project management procedures; the introduction of effective anti-corruption monitoring and reporting procedures on a project; and fair and effective prosecution and blacklisting procedures. The Forum is currently in discussion with the UK Government in relation to the implementation of various of these recommended actions

For further information, contact the Forum Co-ordinator, Neill Stansbury, at [neill.stansbury@transparency.org.uk](mailto:neill.stansbury@transparency.org.uk)

### United Nations Convention Against Corruption

The United Nations Convention against Corruption came into force on 15th December 2005. It has been signed by 140 nations. So far 44 nations have ratified it. Only France of the G8 nations has currently ratified, but the UK and several other G8 countries have committed to ratify in the near future.

The UN Convention is the most far-reaching of the various international anti-corruption conventions which have been agreed during the last 10 years. It requires or advises signatories to take significant steps to strengthen the global anti-corruption process. Some of the key areas covered are:

- i) the development, implementation or maintenance of effective, co-ordinated anti-corruption policies;
- ii) the establishment of transparent, competitive and objective procurement systems and public finance procedures.
- iii) the criminalisation of bribery, trading in influence, embezzlement, abuse of power, illicit enrichment, money laundering, and false accounting (applicable to both public and private sector);

- iv) the establishment of independent and adequately resourced entities to fight corruption;
- v) international co-operation and extradition.

See [http://www.unodc.org/unodc/en/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/en/crime_convention_corruption.html)

### Africa All Party Parliamentary Group

The Africa All Party Parliamentary Group is an all-party committee of members of the UK Parliament which is investigating the prevalence of corruption in Africa, and how to prevent it. The Forum submitted its “Anti-Corruption Action Statement” to the AAPPG. The AAPPG as a result invited a small team of Forum members to give oral evidence to the AAPPG on 18 January 2006 on necessary actions for corruption prevention.

### International Anti-Corruption Collaboration

In a collaborative move to support business’s fight against corruption and bribery in all its forms, Transparency International, the United Nations Global Compact 10<sup>th</sup> Principle, the International Chamber of Commerce’s Commission on Anti-Corruption and the World Economic Forum’s Partnering Against Corruption Initiative agreed to coordinate their efforts. In order to increase their combined impact, the four players committed to disseminating good practice and guidance materials and to supporting each others’ implementation and compliance tools.

### Links between Forum and associations in other countries

The Forum believes that the elimination of corruption is a medium to long-term goal, and that this can only be achieved by effective international co-operation. It is therefore preparing to develop links with associations in other countries, both developing and developed.

The Forum is planning to co-operate with national, regional and international associations with interests in the infrastructure, construction and engineering sectors. This will be undertaken both by liaison with existing associations, and by encouraging the establishment in other countries of groups similar to the UK Forum.

Members of the Forum's Developing Countries Working Group are preparing a request to DFID for support for an innovative anti-corruption initiative in one or more countries in Africa. The idea

is to encourage private sector organisations to form their own version of an Anti-Corruption Forum. By working through a range of channels including Professional Associations and Chambers of Commerce, such an initiative would help raise the profile and credibility of existing local initiatives. This could result in meaningful and productive dialogue with Government. The countries currently being considered for the pilot phase of this initiative are Tanzania, Malawi, or Zambia.

If you have relevant contacts in these countries, please contact Hamish Goldie-Scot ([Hamish@Goldie-Scot.freeserve.co.uk](mailto:Hamish@Goldie-Scot.freeserve.co.uk)) or Neill Stansbury ([neill.stansbury@transparency.org.uk](mailto:neill.stansbury@transparency.org.uk)).

## EU Public Sector Procurement Directives

The EU Public Sector and Utilities Procurement Directives 2004 came into effect in April 2004. Member states had until 31<sup>st</sup> January 2006 to implement the EU Directives into their own legal systems. England, Wales and Northern Ireland implemented the Directives on 31<sup>st</sup> January 2006 by means of two Regulations: "The Public Contracts Regulations 2006", and "The Utilities Contracts Regulations 2006". Scotland is implementing equivalent regulations.

The EU Directives and consequent UK Regulations govern how public sector and utility contracts are placed. Regulation 23 of the "Public Contracts Regulations 2006" and Regulation 26 of the "Utilities Contracts Regulations 2006" provide for mandatory exclusion of a company from public sector and utility contracts if the company, or its directors, or any other person who has powers of representation, decision or control of the company, have been convicted of corruption, bribery, fraud, money laundering, cartels and specified other offences.

The UK Office of Government Commerce (OGC), an independent office of the Treasury, was tasked by the UK Government to develop guidance for the implementation of the Regulations in the UK. The UK Anti-Corruption Forum made a submission to OGC on perceived difficulties with the Directives and Regulations, and was invited by OGC to join a working party to discuss these issues. OGC published its Guidance on 31 January 2006.

The Forum believes that the EU Directives are flawed, in that they do not deal with several issues which are vital if the exclusion procedures are going to be both effective and fair. As the UK Regulations mirror the EU Directives, the Regulations are equally flawed. The Forum's concerns include the following:

- (a) Neither the EU Directives nor the UK Regulations specify whether or not the exclusion procedures have retro-active effect. OGC is interpreting the Regulations as having retro-active effect. Therefore, a company which is convicted of an offence (or whose director or relevant manager is convicted of an offence) committed prior to the Regulations coming into force would be excluded. The Forum believes that the Regulations should not apply to offences committed prior to 31<sup>st</sup> January 2006 (as this would be a penalty having retro-active effect, which is contrary to normal equitable principles).
- (b) Neither the EU Directives nor the UK Regulations specify the length of the exclusion. OGC is interpreting the length as being equivalent to the unspent period of the conviction. This would usually result in an exclusion period of more than 5 years. In many cases, exclusion would be permanent, as convictions for some serious offences are never spent. The Forum regards this as neither fair nor proportionate, as the length of the exclusion should depend on the severity of the offence, and credit should be given for mitigatory circumstances (such as the institution of effective anti-corruption management procedures, self-reporting by the company, and co-operation with the authorities). Nor is there any provision for a company which can prove that it has satisfactorily introduced effective anti-

corruption procedures after the offence to get the exclusion period reduced.

- (c) The Forum believes that exclusion procedures should not only be designed to punish offenders. They should also be designed to encourage companies to introduce effective anti-corruption procedures, and should provide an incentive to companies to identify and deal openly with incidences of corruption in their organisation. The provisions identified in (a) and (b) above provide no such incentives, as companies remain open to long or permanent exclusion for offences which may have taken place years ago under a different management, and with no account being taken of the severity of the offence or mitigatory steps taken. As a result, it may be in the interests of companies to conceal incidences of corruption which they uncover within their organisations, whereas the Forum wishes organisations to be encouraged to bring these issues out into the open.
- (d) Even though the requirement to introduce mandatory exclusion in all 25 EU countries is the result of an EU Directive, no attempt has been made at EU level to ensure that countries introduce this requirement uniformly. The Directives are therefore being implemented unevenly across the EU. The Forum wishes to see a level playing field across the EU.
- (e) The Regulations could be circumvented relatively easily by unethical organisations. For example, it appears that if one company in a group has been convicted of corruption, another group company will be able to tender for a project without being subject to mandatory exclusion. Therefore, companies may trade through numerous separate subsidiaries specifically to minimise the impact of possible exclusion on their group. It also appears that if a director or senior manager of a company is convicted, the company may be able to avoid exclusion by dismissing the director or manager, or by transferring the director or manager to another group company. While it would normally be the correct response for a company to dismiss a director or manager who is responsible for a corrupt act, and this factor should be taken into account in mitigation in determining the exclusion of a company, it would be unacceptable if a company which had deliberately by corporate decision participated in a corrupt act was able to escape exclusion merely by dismissing or transferring the director or manager. In some EU countries, this type of avoidance would be prevented by conviction of the company in addition to the director. However, some EU countries' legal systems do not allow conviction of a company.
- (f) Establishing whether or not a company or person has a conviction is very difficult. There is no central EU database. Purchasing authorities would therefore need to check records in 25 EU countries. No database exists to record world-wide convictions. There is a UK database of convictions of individuals, but not of companies. The UK procedures necessary to obtain details of convictions appear difficult and time consuming. While there are very good reasons to impose restrictions on the availability of data, the exclusion system will have limited impact if contracting authorities who need to know this information cannot obtain it.

The Forum discussed these and other issues at length with OGC. Many suggestions put forward by the Forum have been taken into account by OGC in the Guidance. However, the issues raised above concern flaws in the EU Directives on which the Regulations are based. OGC's mandate in producing the Guidance was limited to interpreting the Regulations as they currently stand, and did not and could not include correcting flaws in the EU Directives. Therefore, OGC had no mandate to take account in the Guidance of the above issues identified by the Forum. However, OGC, recognising the Forum's concerns, has indicated that it will take up these concerns at EU level. The Guidance expressly acknowledges in paragraph 1 that it will be updated based on the experience of UK authorities applying the Guidance, and as the EU-wide position develops.

Representatives of the Forum also attended a roundtable to discuss exclusion procedures in the EU, in Brussels during January 2006. This was attended by representatives of the EU Commission, OLAF (the EU anti-fraud agency), the UN, OECD, World Bank, EIB, OGC, FIDIC, EFCA and TI. It was clear from this roundtable that these new exclusion procedures have not properly been thought through at EU level, and that many EU countries are experiencing similar interpretational difficulties to the UK. The fault lies in the original EU Directives. The Forum expressed its concerns at this roundtable, and there are indications that attempts will be made at EU level in the medium term to resolve these issues.

In summary, the Forum's view is that the exclusion procedures under the Regulations (and the EU Directives on which they are based) are fundamentally flawed, and will neither reduce corruption nor result in a level playing field across the EU. The Forum is committed to continue to work with OGC and EU institutions to try to achieve in the medium to long term a fair, reasonable and transparent exclusion system, which is evenly applied across the EU. This system should not only punish offenders. It should also provide significant incentives to companies to encourage them to modify their behaviour, and to deal openly and actively with incidences of corruption.

Companies should take their own legal advice on these issues, and should not rely on this note for guidance.

A copy of the OGC Guidance can be obtained from [ServiceDesk@ogc.gsi.gov.uk](mailto:ServiceDesk@ogc.gsi.gov.uk)

### **International Centre for Transparency in Construction**

There is a growing awareness of the need for practical services to help companies, clients and donors curb corruption on construction and infrastructure projects, particularly in developing countries. These include the external verification of anti-corruption procedures, external accreditation of Independent Assessors, and maintenance of related databases. In response, a group of volunteers in Scotland is preparing the groundwork for the establishment of an International Centre for Transparency in Construction. Provisionally dubbed the "Ethical Edinburgh" initiative, this idea enjoys strong support from local NGOs engaged in international development. The Forum agreed at its January meeting to endorse this initiative with the following statement.

*"The Anti-Corruption Forum welcomes the launch of the International Centre for Transparency in Construction, in that the ICTC plans to develop and put into practice several of the Forum's key objectives contained in the Anti-Corruption Action Statement."*

See <http://www.ethicaledinburgh.org/>

### **G8 Communiqué**

The G8 issued a communiqué on 8<sup>th</sup> July 2005. Paragraph 14(h) on page 20 of the communiqué stated that the G8 will:

*"Reduce bribery by the private sector by rigorously enforcing laws against the bribery of foreign public officials, including prosecuting those engaged in bribery; strengthening anti-bribery requirements for those applying for export credits and credit guarantees, and continuing our support for peer review, in line with the OECD Convention; encouraging companies to adopt anti-bribery compliance programmes and report solicitations of bribery; and by committing to co-operate with African governments to ensure the prosecution of those engaged in bribery and bribe solicitation".*

### **Liaison between the Forum and the UK Government**

The Forum has agreed with the UK Government that periodic meetings will be held between the Forum and the Foreign Office, Department for International Development, UK Trade & Investment, and the Office of Government Commerce to discuss corruption issues. Two meetings were held in 2005, and further meetings are planned for 2006. Topics covered in these meetings include: (1) how Government and industry can co-operate together to reduce corruption in international business; (2) the new EU exclusion procedures; (3) how UK overseas embassies can provide support to UK companies if they face demands for corruption while trading overseas, or believe that their competitors have won the contract through bribery.

### **Transparency International's indices and business tools**

A series of anti-corruption indices and business tools are available free of charge on TI's web-site (<http://www.transparency.org>). These include:

- the Corruption Perceptions Index, the Bribe Payer's Index and the Global Corruption Barometer, which can be helpful to companies in assessing the degree of corruption risk in a territory in which they are proposing to do business;
- the Business Principles for Countering Bribery which have been developed by TI in conjunction with leading international companies, and which can be used to benchmark a company's anti-corruption management procedures;
- a series of reports and business tools under the heading "How to Fight Corruption - Preventing Corruption on Construction Projects" which aim to raise awareness of corruption on construction projects, and provide suggestions as to how to prevent it.

### **Reform of the UK Anti-Bribery Laws**

The UK Home Office has published a Consultation Paper on reform of the UK anti-bribery law. There is a wide-spread belief that the law in this area (which relies largely on legislation which is over 100 years old) needs to be simplified and updated. Anyone who wishes to submit views on this area must send them to the Home Office ([bribery@homeoffice.gsi.gov.uk](mailto:bribery@homeoffice.gsi.gov.uk)) by 1<sup>st</sup> March 2006.

See <http://www.homeoffice.gov.uk/documents/2005-cons-bribery?version=1>

### **UK and US professional engineering institutions clamp down on corruption**

**The Royal Academy of Engineering** has published a "Statement of Ethical Principles". This contains principles with which professional engineers should comply. It expressly prohibits bribery, deceptive acts and corrupt practices. The Royal Academy has requested all UK professional institutions to incorporate the Statement, by cross reference, into the institutions' professional codes of conduct. The Royal Academy is also working with universities to improve ethical training for engineers during qualification.

**The American Society of Civil Engineers** has published "Combating Corruption in Engineering and Construction - An Engineer's Charter". This document prohibits corruption by engineers, and pledges that the ASCE will work with other international organisations to eradicate corruption.

For further information on both of these, contact the Forum Co-ordinator, Neill Stansbury, at [neill.stansbury@transparency.org.uk](mailto:neill.stansbury@transparency.org.uk)

## UN Global Compact

The United Nations Global Compact is a voluntary initiative designed to stimulate change and to promote good corporate citizenship and encourage innovative solutions and partnerships. Participating companies agree to comply with 10 principles of good governance. Principle 10 states that "Businesses should work against corruption in all its forms, including extortion and bribery". By the end of January 2006, over 2,700 companies had endorsed these principles.

See <http://www.unglobalcompact.org>

### World Economic Forum Partnering Against Corruption Initiative

The Partnering Against Corruption Initiative was established by the World Economic Forum, and is facilitated by Transparency International and the Basle Institute of Governance. The initiative seeks to offer a neutral platform to enable companies to consolidate their efforts to counter bribery and corruption. It has developed the Partnering Against Corruption Principles for Countering Bribery ("PACI Principles") which were derived from Transparency International's Business Principles for Countering Bribery. These include commitments to adopt a zero tolerance to bribery management policy, and to implement effective anti-corruption procedures within the organisation. Companies, regardless of sector and region, are invited to sign a support statement to commit to these policies.

Over 90 major international companies, with a combined turnover of in excess of US\$400 billion, have committed to these anti-corruption principles. Many of these companies have interests in the infrastructure, construction and engineering sectors.

See <http://www.weforum.org/site/homepublic.nsf/Content/Partnering+Against+Corruption>

### Enhancement to the anti-corruption practices of Export Credit Agencies

The export credit agencies of all OECD countries meet periodically at the OECD in Paris as part of the "Working Group on Export Credits and Credit Guarantees". In 2000, this group agreed an "Action Statement on Bribery and Officially Supported Export Credits" which was designed to establish a minimum level of anti-corruption best practice among export credit agencies. Discussions are currently underway in this group to issue an enhanced Action Statement in 2006.

The UK Export Credits Guarantee Department held during 2005 a major public consultation on enhancing its own anti-corruption procedures. ECGD intends to publish new procedures which take account of this public consultation in early 2006.

See <http://www.ecgd.gov.uk>

### Lugar Bill (U.S.A.)

In November 2005, U.S. Senate Foreign Relations Committee Chairman Dick Lugar announced that reforms to bring greater transparency and accountability to the five multilateral development banks (MDBs) had been signed into law by President Bush, as part of the FY06 Foreign Operations appropriations bill. The reforms, contained in Lugar's amendment S.A. 1293 that passed the Senate by unanimous consent, apply to the World Bank, the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, and the European Bank for Reconstruction and Development.

Lugar's reforms include measures to seek financial disclosure by development bank employees similar to that required for U.S. government officials and members of Congress; to improve the

quality and oversight of development bank loans; and to support the integrity of the development banks and strengthen whistleblower policies; and to support the independence and efficacy of the audit functions. It also requires that the Treasury Department make publicly available the positions taken by the U.S. Executive Directors on policies and significant projects.

## DFID Consultation

The Department for International Development recently published a Consultation Document "Eliminating World Poverty". This poses three key questions:

- What can we do to reduce poverty and deliver development more quickly?
- What policies are needed in the UK and internationally to create the conditions necessary for reducing poverty?
- How can the international development system be reformed so that it delivers better results for development, and is more responsive to the needs of poor people?

Corruption is dealt with in the "Beyond aid: What else can be done to reduce poverty?" section, with the question:

*What further international action against corruption - such as bribery, money laundering, tax havens, trafficking and organised crime - should be taken?*

Interested Forum members or others should provide the Co-ordinator ([neill.stansbury@transparency.org.uk](mailto:neill.stansbury@transparency.org.uk)) by 28<sup>th</sup> February 2006 any detailed suggestions, with draft wording if possible, for points for inclusion in a Forum submission. Final submission must be in to DFID by 7<sup>th</sup> April 2006.

## Recent Publication

*Corruption and Good Governance in Asia*: edited by Nicholas Tarling and published in 2005 by Routledge.  
[xiii + 282 pp, £80, ISBN 0-415-36904-5]

This book is a compilation of papers by seventeen contributors, originally presented at a conference "From Miracle to Crisis and Beyond: Governance, Institutions and Anti-Corruption in Asia" at the University of Auckland in April 2003. As this provenance suggests, it is a rather academic treatment of national traits of corruption in twelve eastern and south-eastern Asian countries, with particular reference to the effects of the 1997 Asian financial crisis. There is a good deal of historical background to the evolution of corruption in the various countries, and in this respect it provides a useful guide to different forms of bad governance (the title is rather misleading) in the wealthier parts of Asia over the last few decades. It might be recommended as an introductory text for anyone wanting to improve their general understanding of macro-level abuses of authority in this region, or of any of the subject countries in particular.

### Joining the Anti-Corruption Forum

For information on how to join the Forum, contact Neill Stansbury, Forum Co-ordinator, at [neill.stansbury@transparency.org.uk](mailto:neill.stansbury@transparency.org.uk)

### Information on the Anti-Corruption Forum

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