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Money Laundering in the Asia Pacific

Working Paper No. 4: Money laundering and
corruption in the Asia Pacific

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Introduction

Crime is an increasing source of concern in the international arena. The method by which the proceeds of crime are given the appearance of legality, often referred to as 'money laundering', is intimately connected with the profitability and regeneration of criminal activities and the existence and prosperity of criminal organisations.

In the public mind, as well as in many official accounts and analyses, money laundering has obvious associations with such high revenue crimes as drug trafficking, extortion, and prostitution. There is no doubt that these activities generate a large amount of the total criminal funds laundered world wide, a sum variously estimated to be between several hundred billion and a trillion US dollars annually.¹ However, the need to conceal the origin, passage and beneficial ownership of funds from the scrutiny of regulators and law enforcement is not restricted to those involved in the high profile crimes mentioned above, but is shared by a variety of other actors. For instance, illegal activities that rely on the laundering process to render their practitioners a degree of profitability include tax evasion. This practice costs national governments hundreds of billions of dollars annually, depriving needy societies of desperately required revenue and altering the principles of fair redistribution that underpin the legitimacy of many states.

The need to conceal the source and ownership of revenue is also shared by groups and individuals involved in corruption, the subject of this study. A simple definition of corruption is 'the misuse of public or private office for personal gain'.² A greater level of detail is provided by a recent study,³ which subdivides the issue of corruption into four separate areas, as follows:

¹ See Allan Castle, *Money Laundering in the Asia Pacific: Working Paper No. 2: Asia Pacific Money Laundering Flows and Trends*, International Centre for Criminal Law Reform and Criminal Justice Policy: Vancouver, 1999, for an analysis of the amounts and sources of laundered criminal funds in the region.

² Asian Development Bank, *Policy on Anticorruption*, paragraph 1, available on line at (www.adb.org/Work/Policies/Anticorruption/corruption_policy.PDF)

³ See Margaret Beare, 'Corruption and organized crime: Lessons from history', *Crime, Law & Social Change*, vol. 28, pp. 155-72, 1997.

- a. **Bribes and ‘kick-backs’:** payments demanded or expected in return for being allowed to do legitimate business. The payment becomes the license to do business. Those who make the payments are allowed to compete or win contracts.
- b. **Election/campaign corruption:** illegal payments made at the time of elections to ensure continuing influence.
- c. **Protection:** officials accept payments (or privilege) from criminal organisations in exchange for permitting them to engage in illegitimate businesses.
- d. **Systemic top-down corruption:** national wealth is systematically siphoned off or exploited by ruling elites.⁴

All four types of corruption suggested here, along with a fifth type – military involvement in illegal enterprise – exist in numerous contexts in the Asia Pacific, and have been discussed elsewhere in this series as sources of laundered funds.⁵ A review of existing analyses of corruption reveals that the types of corruption considered of greatest concern do indeed vary across different jurisdictions. Corruption, though often associated with bribery of public officials, can also occur discretely within the private sector. It may involve organised crime groups, venal elites, or – at the other extreme – individuals who have previously had no contact with criminal behaviour yet are presented with an opportunity for immediate, illegal gain (through, for instance, the abuse of public office).⁶ As the information reviewed in this study reveals, while no overall figure can be established it is likely that funds derived from corrupt practices worldwide are of a magnitude to warrant similar levels of concern to those expressed with respect to transnational crime.

⁴ List with minor adaptations from Beare, *ibid.*, pp. 161-62.

⁵ See Castle, *Flows and Trends*, *supra*.

⁶ Both the OECD and Transparency International choose to apply a general definition of corruption while stressing the variable focus of anti-corruption concern and efforts in different societies. See e.g. the *Recommendation on Anti-Corruption Proposals for Aid-Funded Procurement* at (www.oecd.org/daf/nocorruption/bribdac.htm). The TI *Corruption Perceptions Index* uses the general definition of abuse of public office for private gain as a catch-all in collating the results of numerous related surveys of corrupt activities – see the list of methodological questions at (www.transparency.de/documents/cpi/cpi-faq.html).

Figure 1: sources and consequences of the money laundering process



The relationship between corruption and money laundering is twofold and complex. As expressed above, corruption produces significant illegal revenues whose origins and ownership must be concealed through the money laundering process. But just as money laundering facilitates and renders profitable a variety of corrupt practices, so does corruption contribute to the process of money laundering. The money launderer, through the application of ‘grease payments’ or ‘kickbacks’, may procure wilful blindness on the part of banking, law enforcement, or government officials. In so doing, the corrupt official contributes to the profitability of all three social ills highlighted in **Figure 1** above.

While this study suggests that the Asia Pacific is less prone to the problem of corruption than many regions of the world, the data reviewed also indicate a broad range of experience across the region. Some jurisdictions fare extremely well in independent assessments of corruption, others exhibit middling experiences, while a limited number have major problems in this area. The existence of significant criminal activity in the region, largely in

the shape of the drug trade and other forms of trafficking, and the emergence of new offshore financial services centres to complement those already in existence, render the region vulnerable to money laundering activity in any event. With the overlay of significant nodes of corrupt activity, it becomes evident that moves towards greater financial transparency and public accountability are as necessary in the Asia Pacific as in any other region of the world.

1. Defining money laundering

Most organised crime activity is economic activity. The goal of the criminal is to use the proceeds of crime in the same manner as legal earnings, and this is possible as long as the source of the funds remains concealed. The task of the money launderer, therefore, is to make the proceeds of crime appear to be of legal origin, or of sufficiently obscure origin that any attempt to link those assets to criminal behaviour would be futile. In the context of developed states, it is generally understood that this task is accomplished through three basic steps: placement, layering and integration. The following paragraphs describe these activities, as they are currently understood.

Placement

The initial challenge for the money launderer is to place the profits from predicate criminal activity (i.e., original crimes such as drug sales or prostitution) into a bank or non-bank financial institution, in order to more easily manipulate the funds. In the familiar context of the drug trade, this will typically involve depositing or otherwise converting amounts of cash that would be unusually large by normal commercial standards. As placement of large sums of cash may trigger formal reporting mechanisms in many jurisdictions, elaborate means may be employed at this stage to avoid detection. These may include the use of 'front' businesses such as bars, restaurants, or casinos that may reasonably claim to do business in cash. They may also involve the use of 'smurfing' techniques – numerous deposits of amounts small enough to avoid raising suspicion or triggering reporting mechanisms. Once the cash has been placed, it may then be moved with greater ease and less suspicion through the economy or if necessary offshore.

Layering

Once the money derived from criminal activity has been converted to a bank account balance or a financial instrument, the next step in laundering the funds is to 'layer' the money.⁷ The launderer seeks to insert layers of transactions between the original criminal activity and the seemingly legitimate re-emergence of the funds into the legal economy. This may be accomplished several ways, but the goal remains the same: to render the path of the funds and their ownership as opaque as possible. The most common means used here are well known. Money launderers favour jurisdictions whose financial institutions provide legally protected anonymous banking and/or who provide 'off-the-shelf' shell companies under conditions of anonymity. Other methods include the importing or exporting of non-existent products, the use of casinos or lotteries, and the purchase and resale of fixed assets or real estate. It is in this phase that the crime of laundering money becomes particularly transnational, as multiple jurisdictions are often used in further efforts to cloud the audit trail.

Integration

The goal of the placement and layering phases is to make it impossible to trace the funds to their original source. Once this condition has been achieved, the criminal assets may then be integrated into the legal economy. This may occur under the auspices of a company domiciled in the criminal's own jurisdiction, which conducts 'business' with offshore shell companies used in the layering process, or via returns on 'investments' in those companies. It may also take the form of loans with highly favourable or negligible terms of repayment, real estate investments, or other transactions, which will be unremarkable once the criminal has constructed a plausible legal commercial and business identity.

2. Regional Scope

The focus of this report is on East and Southeast Asia and the island states of the South Pacific. This grouping obviously brings together several distinct economic categories. It includes the large, heavily populated economies of East and Southeast Asia, the smaller

⁷ A process sometimes referred to as 'structuring'.

economies of those same sub-regions, and the small states of the Pacific. Where relevant, reference will be made to the situation and/or experience of individual jurisdictions. However, as the goal of this report is to provide an overall view of problems common to a number of states or entire sub-regions, most analysis is developed in general terms.

The report excludes the distinct groupings of states in South Asia and in the territories of the former Soviet Union, as well as some states where information is either unavailable or unreliable (e.g. North Korea, Mongolia, Christmas Island). Selected developed states on the periphery of the region with an active engagement in the regional economy but with substantial extra-regional links (Australia, New Zealand, Japan, the United States and Canada) are included in the analysis where relevant, and for purposes of comparison.

Figure 1: Jurisdictions covered in this report

East and Southeast Asia	Pacific Islands	Other Regional Actors
Brunei, Cambodia, PR China, Hongkong SAR, Indonesia, South Korea, Laos, Macao, Malaysia, Myanmar, Philippines, Singapore, Taiwan, Thailand, Vietnam	Cook Islands, Fiji, Kiribati Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tahiti, Tokelau Islands, Tonga, Tuvalu, Vanuatu	Australia, Canada, Japan, New Zealand, United States

3. Corruption in the Asia Pacific

Is corruption a problem?

While some have argued in the past that corruption could advance economic efficiency by removing the effect of artificial economic rents and establishing prices at a market level, such arguments have several flaws, as noted by the Asian Development Bank:

- Benefits stemming from specific illicit acts do not consider the systemic impact of corruption. Although a given incident or transaction may have positive results, it may also generate negative externalities that degrade the performance of the system as a whole and compromise the economy's long-term dynamic efficiency.
- Many of the alleged benefits from corruption, such as streamlining government transactions or enhancing civil service pay, only appear as such against the background of a public sector that is failing to perform effectively. Patient and persistent efforts toward improved public sector management are likely to result in greater benefits over time than tolerating relatively high levels of corruption to compensate for these deficiencies
- Corruption encourages people to avoid both good regulations and bad. There is no guarantee that an importer who bribes a customs official to expedite the clearance of badly needed medication one week will not bribe the official to expedite the clearance of illegal narcotics the next.⁸

By way of illustration, the ABD points to individual cases which “paint a disturbing picture of resources lost, squandered, or devoted to sub-optimal uses” and gives the following examples from the region:

- Over the last 20 years, one East Asian country is estimated to have lost \$48 billion due to corruption, surpassing its entire foreign debt of \$40.6 billion.⁹
- An internal report of another Asian government found that over the past decade, state assets have fallen by more than \$50 billion, primarily because corrupt officials have deliberately undervalued them in trading off big property stakes to private interests or to international investors in return for payoffs.¹⁰
- In one South Asian country, recent Government reports indicate that \$50 million daily is misappropriated due to mismanagement and corruption. The Prime Minister stated publicly recently that the majority of bureaucrats and the administrative machinery from top to bottom are corrupt.¹¹

⁸ List adapted from the Asian Development Bank's *Policy on Anticorruption*, available online at (www.adb.org/Work/Policies/Anticorruption/corruption_policy.PDF), and from Robert Klitgaard, *Controlling Corruption*, Berkeley and Los Angeles: University of California Press, 1988

⁹ Philippine Government estimate, cited from “Philippines Corruption a ‘Nightmare’ — Ramos,” *Reuter Newswire*, 11 January, 1997. See also “Commission on Audit: P1.2 B Lost to Graft Each Year,” *Philippine Star*, 12 June 1997.

¹⁰ Internal report, cited from “The Destructive Costs of Greasing Palms,” *Business Week*, 6 December 1993. p. 133.

¹¹ *The News*, 28 March, 1997

- In one North American city, businesses were able to cut \$330 million from an annual waste disposal bill of \$1.5 billion by ridding the garbage industry of Mafia domination. A particular problem was the permeation of regulatory bodies by organized crime.¹²
- Studies of the impact of corruption upon government procurement policies in several Asian countries reveal that these governments have paid from 20 to 100 percent more for goods and services than they would have otherwise.¹³

The ADB goes on to note that the indirect costs of corruption often outstrip its direct costs, though such indirect costs are difficult to measure. Examples include the following:

- Scarce resources are squandered on uneconomical projects at the expense of priority sectors such as education or health
- Legitimate entrepreneurial activity is hindered or suppressed
- Public safety is endangered by substandard products and construction
- Capital is redirected toward more transparent and predictable investment sites.
- Individuals who would not otherwise engage in illicit behavior decide they have no alternative, and intellectual energy is diverted from more productive pursuits to figuring out ways to “get around the system.”
- In extreme cases, the legitimacy of the public sector itself is called into question, and governments may be confronted with political instability or collapse.¹⁴

Data from the World Bank: the “credibility indicator”

A recent study conducted for the World Bank focussed on a variety of indicators of instability with negative effects on economic development, including the prevalence of crime and corruption in the national economy. Comparative data for 73 states was derived using a total of more than 3500 questionnaire responses. Multiple choice responses allowed the

¹² *The Financial Times*, 6 June, 1997

¹³ Thinapan Nakata, “Corruption in the Thai Bureaucracy: Who Gets What, How and Why in Its Public Expenditures,” *Thai Journal of Public Administration* 18 (January 1978): 102-28; Clive Gray, “Civil Service Compensation in Indonesia” *Bulletin of Indonesian Economic Studies* 15 (March 1979): 85-113; and Robert Wade. “The System of Administrative and Political Corruption: Canal Irrigation in India.” *Journal of Development Studies* 18 (April 1982.): 287-328. Cited in Klitgaard. 1988. pp. 39-40.

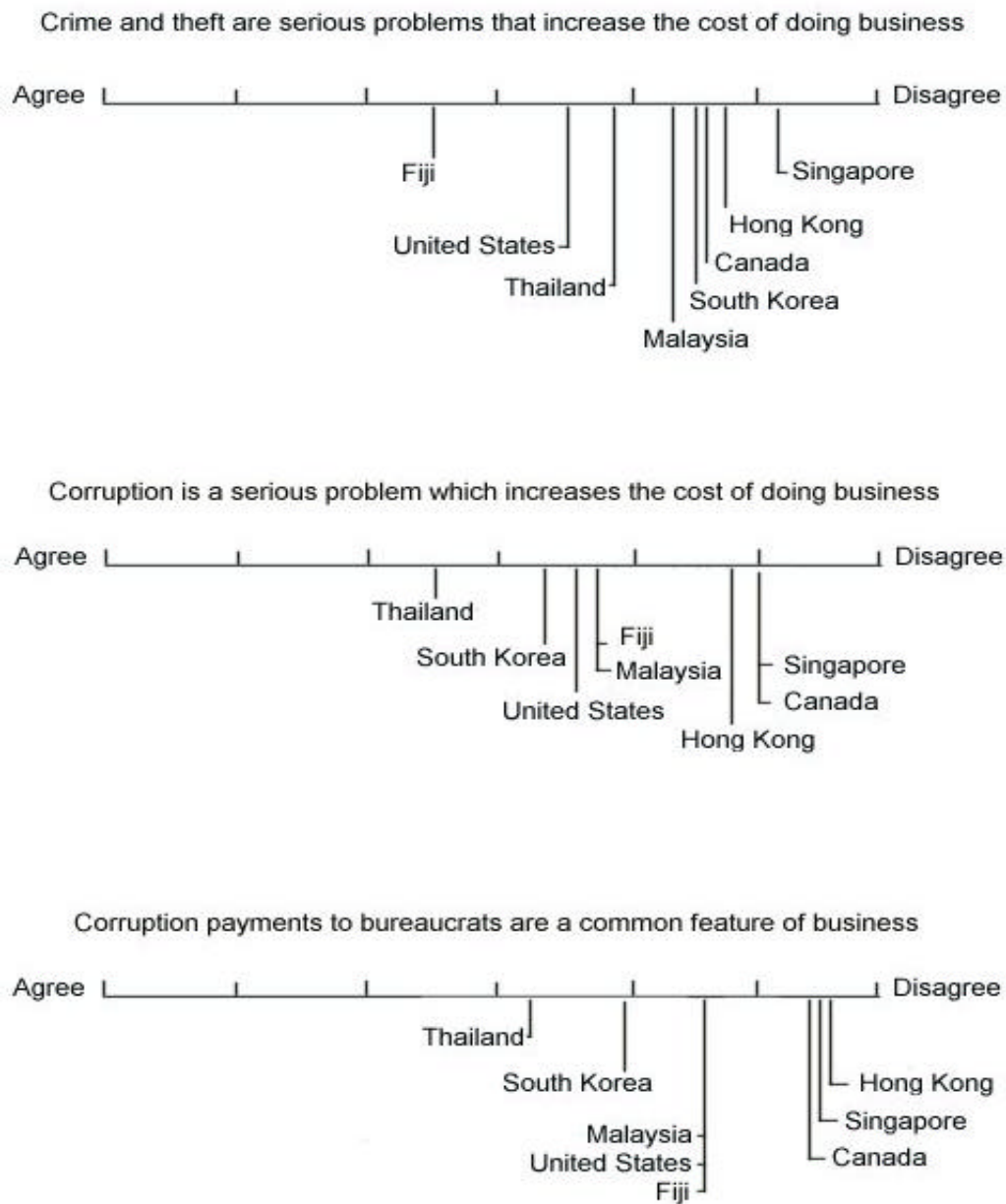
¹⁴ Asian Development Bank, *Policy*, supra.

development of a standardised 'credibility-indicator', designed as a broad measure of the reliability of the institutional framework. It encompasses several different sources of uncertainty in the interaction of government and private sector and summarises them into one global indicator. As outlined in the report, the five sub-indicators are:

- *Predictability of rule making*: Extent to which entrepreneurs have to cope with unexpected changes in rules and policies and whether they expect their governments to stick to announced major policies. The degree to which entrepreneurs are usually informed about important changes in rules and if they can voice concerns when planned changes affect their business.
- *Subjective perception of political instability*: Reflects whether government changes (constitutional and unconstitutional) are perceived to be accompanied by far-reaching policy surprises which could have serious effects on the private sector.
- *Security of persons and property*: Reflects whether entrepreneurs feel confident that the authorities would protect them and their property from criminal actions and whether theft and crime represent serious problems for business operations.
- *Predictability of judicial enforcement*: Captures the uncertainty arising from arbitrary enforcement of rules by the judiciary and whether such unpredictability presents a problem for doing business.
- *Corruption*: Asks whether it is common for private entrepreneurs to have to pay some irregular additional payments to government agents to get things done.

Figure 2 below gives comparative mean responses to three questionnaire items for selected Asia Pacific jurisdictions for which data is available. To the limited extent that one may generalise from such a limited sample, we may observe that economic development does not in this case necessarily predict levels of corruption or criminal activity (although typically corruption correlates inversely with economic development). Though differences in cultural standards of acceptable levels of criminal and corrupt activity may account for some of the counter-intuitive variance in the figure, there are some jurisdictions that appear to perform consistently well. Perhaps not coincidentally, two of these jurisdictions have taken considerable strides in developing domestic watchdog institutions to combat corruption.

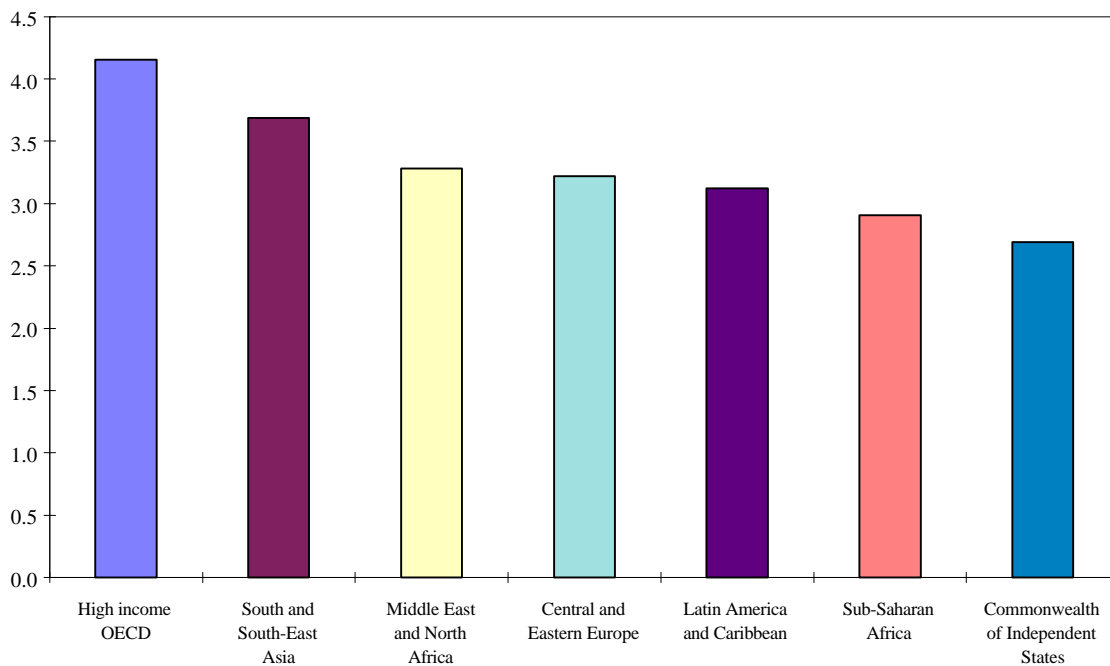
Figure 2: Private sector responses to indicators of crime and corruption (selected states)¹⁵



¹⁵ Graphic designed by the author, adapted from data included in *Survey Research On Economic Development*, an independent project commissioned for the World Bank and conducted between 1996 and 1997 by Aymo Brunetti (University of Saarland, University of Basel) and Beatrice Weder (University of Basel, on leave from the IMF). Data and analysis are available at (www.unibas.ch/wwz/wifor/survey/).

Figure 3 shows regional averages of the overall ‘credibility indicator.’ In this index, a value of 6 means ‘perfect credibility’ – which to say, an economic environment and business-government relationship exhibiting the rule of law, political fairness and predictability, a consistent regulatory environment and a relative absence of crime and corruption – and a value of 1 ‘no credibility at all’.

Figure 3: Regional averages of credibility index, World Bank¹⁶



Perhaps surprisingly, given the known difficulties with corruption in some jurisdictions of the region, ‘South and Southeast Asia’ emerges as the second most ‘credible’ grouping of states in the survey. While this may be a reflection of the relative nature of the standards applied, it may also reflect the wide variance in situation of the jurisdictions in the region, a possibility given further weight by the findings discussed in the next section.

¹⁶ From Brunetti et al., *ibid*.

Transparency International's corruption rankings

The leading independent body focussing on corruption from an international perspective is Transparency International (TI). TI's annual *Corruption Perceptions Index* synthesises the results of twelve separate independent opinion surveys concerning corruption, with the results scored according to jurisdiction. Respondents to the various surveys include both samples of the general public in the states in question, international observers of those jurisdictions, public officials, and businesspeople. **Figure 4** below gives the 1998 scores for selected Asia Pacific jurisdictions, along with supplementary information concerning sample size and degree of confidence in the figure obtained. Not all Asia-Pacific jurisdictions are included, as the *CPI* gives results only for those countries for whom sufficient data is available (in the 1998 report, data from a minimum of three independent surveys was required for inclusion).

An examination of the figure yields several observations. First, unlike states from some other regions of the world, which when the entire index is perused often cluster together in exhibiting similar scores, there is little commonality to the 'Asia-Pacific experience' as such.¹⁷ If anything, the majority of jurisdictions rate closer to the 'clean' end of the continuum than they do to the 'corrupt'. Second, however, while some states of the region receive extremely positive appraisals from the survey respondents, others fare decidedly poorly. While the number of Asia-Pacific jurisdictions with low scores on the index (i.e., perceived to be afflicted with high levels of corruption) is small, the scores for some states are very low indeed. Third, and perhaps of greatest concern, is the fact that the five Asia-Pacific jurisdictions scoring 4.0 or below out of 10 include several of the most populous states of the region, and two of the most populous in the world. While the top five jurisdictions are home to no more than 70 million people, the bottom five have a combined population of over 1.5 billion! A further analysis, which weighted the results according to population as opposed to simply categorising states as nominally equal actors, would likely paint a far more negative picture of the region than the current report.

¹⁷ Perhaps shedding some doubt on the claims of this region to 'regionality', beyond those of mere geography.

Figure 4: Rankings of A-P jurisdictions in 1998 TI corruption perceptions index¹⁸

Rank (total of 85 countries)	Jurisdiction	1998 CPI Score	Standard Deviation	Surveys used
4	New Zealand	9.4	0.7	8
6	Canada	9.2	0.5	9
7	Singapore	9.1	1.0	10
11	Australia	8.7	0.7	8
16	Hong Kong	7.8	1.1	12
17 (tied)	United States	7.5	0.9	8
25	Japan	5.8	1.6	11
29 (tied)	Malaysia	5.3	0.4	11
29 (tied)	Taiwan	5.3	0.7	11
43 (tied)	South Korea	4.2	1.2	12
52 (tied)	China	3.5	0.7	10
55 (tied)	Philippines	3.3	1.1	10
61 (tied)	Thailand	3.0	0.7	11
74 (tied)	Vietnam	2.5	0.5	6
80	Indonesia	2.0	0.9	10

1998 CPI Score: perceptions of the degree of corruption as seen by businesspeople, risk analysts and general public – ranges between 10 (highly clean) and 0 (highly corrupt).

Surveys Used: the number of surveys that assessed a country's performance.

There are two main conclusions that may be drawn from the various data and opinions presented above. First, and importantly, the Asia Pacific is by no means the most corrupt region of the world. Secondly, however, there is enormous variance across the region, with lower levels of economic development correlating to a considerable extent – at least

¹⁸ Adapted by the author from the full index, available at (<http://www1.gwdg.de/~uwwv/CPI1998.html>). 12 surveys were used and at least 3 surveys were required for a country to be included into the 1998 CPI.

impressionistically – with the degree of corruption associated with the jurisdiction in question.

4. Individual cases: money laundering and corruption

Corruption and money laundering have been linked in a series of high profile cases across the region in recent years. Many of these incidents have come to light in the aftermath of the Asian economic crisis of 1997-98, as revelations of the negative effects of opaque financial dealings and the ‘Asian way’ caused journalists and law enforcement officials to probe more deeply into the financial activities of elites. Elsewhere in this series, some of these cases have been detailed. One such case described money laundering of corrupt proceeds at the highest level resulting in the jailing of the head of a major financial conglomerate. A second case in another country pointed to the penetration of the banking sector by some of that country’s largest criminal organisations, precipitated in turn by opaque and unaccountable dealing between high-ranking government officials and criminal bosses.¹⁹

In the following section, the linkages between money laundering and corruption will be explored in more detail through the use of two contemporary country case studies. Proper names of principals, and principal countries involved, have been rendered anonymous.

Case study 1: Country A

The current economic crisis in Country A has again brought to the surface centuries of simmering resentment of one minority ethnic group (Group O) by indigenous citizens of Country A. Business owners from Group O, their female family members²⁰, and business premises, were all targeted during widespread rioting. Many indigenous citizens of country A believe that Group O holds an unfair economic advantage, through perceived collusion

¹⁹ See Castle, *Money Laundering in the Asia Pacific, Working Paper No. 5: Socio-economic consequences of money laundering and related financial crime in the Asia Pacific*, International Centre for Criminal Law Reform and Criminal Justice Policy: Vancouver, 1999.

²⁰A fact-finding team after the riots confirmed that at least 52 women and girls were raped during the riots, the majority of them ethnic Chinese..

with a recently deposed regime in undermining the national economy via corruption and nepotism.

The resentment dates back as far as the era of colonialism in Country A, when the colonial power used Group O to collect taxes from the indigenous population, granting them monopolies over opium, salt, and other commodities in return for their co-operation²¹. The members of Group O have been significant economic actors ever since, largely with the blessing and support of the regime. It has been suggested that the former president deliberately granted lucrative business monopolies to this group because they lacked the necessary support from the military and civil service ever to challenge his leadership, unlike wealthy indigenous persons. Group O members are excluded from the upper echelons of the Country A military, civil service, and academia, so they argue that they have little choice but to make the business economy their domain of influence²².

Despite accounting for less than 10% of the population, ethnic Group O control half of the national economy²³. It is also estimated that they own 110 of the 140 major business conglomerates that account for the bulk of Country A's gross national product²⁴. Most of the remaining conglomerates belong to friends or relatives of the former President.

Many of the wealthiest ethnic Group O families are accused of having cultivated “guanxi”, in order to make up for a lack of direct influence over the government and military. “Guanxi” (also known as “personal connections”) has been an integral part of traditional Group O business practice for centuries, and generally involves “gift-giving”, in return for a favour that may or may not be called upon sometime in the future. Group O members have given many gifts and business deals to indigenous Country A military officers over the years, in the hope of receiving protection in times of crisis²⁵. In fact, troops did appear promptly in front

²¹M. Dorgan, “In Collapsing Economy...”, 23 January 1998, *Knight Ridder Newspapers*, Internet version.

²²P. Waldman & J. Solomon, “While Business is Good...”, 5 June 1997, *The Wall Street Journal Interactive Edition* [ISMAP] - Asia

²³B. Gilley, J. McBeth, B. Dolven & S. Triparthi, “Ready, Set ... As tension flares, Indonesia's invaluable Chinese middle class lays emergency-escape plans”, 16 February 1998, at gopher://gopher.igc.apc.org:2998/0REG-INDONESIA/r.921286398.9331.3

²⁴P. Waldman & J. Solomon, *supra*

²⁵*Ibid.*

of many ethnic Group O businesses and homes when rioting broke out in the capital in mid-1996.

“Gift-giving” is also an ideal way to launder money in Country A, because the receiver of the gift is unlikely to draw attention to it, for fear of being seen as corrupt. A “gift” may also be made indirectly, for the apparent benefit of a third party who is unlikely to question the source of the money. For example, for the past few years, many Group O conglomerates have been donating what they describe as a share of their profits to various charitable foundations run by the former president’s office²⁶. Not only do the poor benefit, but both the Group O gift-givers’ and the president’s public image have benefited from such practices.

One ethnic Group O businessman has quietly cultivated “guanxi” with the Clinton administration for many years, and is suspected of laundering around \$1 million through U.S. Democratic National Committee funds. Mr. R, believed to be one of the richest men in Country A and head of a major financial group, has been implicated in a “gift-giving” scandal subsequently overshadowed by events in US domestic politics. Mr. R’s son first met President Clinton in Little Rock, in the early days of Clinton’s political career²⁷. Since 1991, Mr. R has donated \$1 million to Clinton and his party, mostly through relatives of his business colleagues. A former president of Mr. R’s US business operations, Mr. H, became vice chairperson of the Democratic National Committee finance committee in 1996, in which position he handled all the “Asian American” donors.²⁸ Since non-residents are not allowed to donate money to U.S. political campaigns or politicians directly, Mr. R was able to launder money through his son (who was a U.S. resident between 1991 and 1992). Additionally, Mr. R laundered money through another couple from Country A with green cards, Mr. and Ms. W, who are also relatives of a former colleague of Mr. R.²⁹

²⁶Ibid.

²⁷For more details, see H. Fineman & M. Hosenball, “The Asian Connection”, 28 October 1996, *Newsweek - Asian Connection*, at <gopher://gopher.igc.apc.org:2998/0REG-INDONESIA/r.921283833.4815.7>

²⁸J. Kifner, “Clinton Advertising Plan Led to Asian-American Donors”, 14 April 1997, *New York Times*, at <gopher://gopher.igc.apc.org:2998/0REG-INDONESIA/r.921283833.4815.14>

²⁹A. C. Miller, “Controversy Swirls over Donation to Democrats”, 14 October 1996, *L.A. Times*, at <gopher://gopher.igc.apc.org:2998/0REG-INDONESIA/r.921283833.4815.9>

The clearest evidence that Mr. H was promoting money laundering as a means for Asian donors to buy influence over U.S. foreign and trade policy came in the form of a fundraising event he organized at a Buddhist temple in California in April 1996. A Buddhist nun stated later that she was given a wad of cash, then induced to write out a cheque for \$5000 to the Clinton campaign. Many other nuns and monks gave similar donations on the night, despite having taken a vow of poverty. Mr. H was subsequently suspended from fund-raising duties, and within a year more than \$2.2 million in contributions solicited by Asian American fundraisers were returned, because of concern over their legality.³⁰

However, questions remain over President Clinton's motivations for a decision to halt an investigation into human rights abuses in Country A in 1996, a development which would have improved Mr. R's relationship with the President, were he able to take credit for arranging it.³¹ Further questions have been raised over Mr. R's readiness to employ Webster Hubbell, a friend of Clinton's who resigned as associate attorney general not long before he was convicted of defrauding his former legal partners of nearly half a million dollars.³² The extent of influence Mr. R's laundered money bought for him in the US may never be known, but existing evidence points to a degree of linkage between corrupt funds, money laundering and political manipulation which should make observers citizens of both countries deeply uncomfortable.

Two ethnic Group O businesspeople, Mr. N and Mr. P, have also "helped" several top military officials to make the best use of cheap 20 year leases over large forest areas, granted to them by the president as a reward for their support in bringing him to power in 1966. The leases were distributed through a closed, non-competitive system, as most government contracts in Country A have been. The two businesspeople, dubbed the "forest kings" because they control most of the 584 Country A logging concessions, were also able to influence forest policy to their advantage through their connections with the president and the military. For example, in 1985 Mr. N, who heads numerous timber-related industry associations, was able to impose a ban on the export of raw logs, in order to provide more

³⁰J. Kifner, *supra*

³¹W. Safire, "Get Riady, Get Set ...", 21 October 1996, *New York Times*, at <http://www.nytimes.com/web/docsroot/yr/mo/day/early/21safi.html>

³²J. Kifner, *supra*

raw materials at a reduced price for the local processing industry. This type of corruption and nepotism has had a devastating effect on Country A's forests³³.

More recently, there have been explicit government calls for ethnic Group O business people to be actively encouraged to launder money back *into* Country A³⁴. There are suggestions that some Country A money held in foreign accounts *has* been laundered through foreign partners who purchase Country A businesses that are having financial problems, at greatly reduced prices and using Country A money covertly to disguise its origins³⁵. But many wealthy ethnic Group O families continue to maintain substantial monetary and other assets in neighbouring Asian countries, such as the Mr. R's majority stake in Hong Kong's subsidiary of the late and ill-starred Bank of Credit and Commerce International³⁶. Others began moving their wealth into non-resident accounts in Singapore and Australia in late 1997, just before anti-Group O rioting gripped the country in 1998. Foreign banks in Country A were inundated with new account-seekers and Australian bankers estimate that \$1 billion flowed into their country from Country A in the last five weeks of 1997³⁷.

In addition, vast amounts of cash and gold were taken out of the country by various means. Three men bound for Singapore were stopped at the capital's airport in January 1998 and \$2 million in gold was found in their carry-on baggage. On 20 January 1998 another man was arrested at the airport for trying to leave the country with \$305 000 in cash on him.³⁸ This money – assuming it is but the tip of an undetected iceberg – could help rejuvenate the Country A economy. But the chairman of the Country A Chamber of Commerce claims that ethnic Group O business people are afraid to bring the money back in case they are

³³O. Hafner, "The Role of Corruption in the Misappropriation of Tropical Forest Resources and in Tropical Forest Destruction", 23 October 1998, *Transparency International Working Paper*, at www.transparency.de/documents/work-papers/ohafner.html

³⁴Anonymous, "Guarantee Needed for Return of Ethnic Chinese Capital", 25 June 1998, *Jakarta Bisnis Indonesia* (Internet version), translated from original Indonesian, at <http://wnc.fedworld.gov/cgi-bin/re...8b60&CID C883819580078125114958730>

³⁵Anonymous, "Paper Reports on Foreign Savings", 17 June 1998, *Jakarta Bisnis Indonesia* (Internet version), translated from original Indonesian, at <http://wnc.fedworld.gov/cgi-bin/re...81y4&CID C88381580078125114958730>

³⁶J. Pomfret, "Lippo Group Buys Control of BCCI", 2 September 1991, *AP News*, at <http://coombs.anu.edu.au/WWWVLPages/IndonPages/WWWVL-Indonesia.html>

³⁷B. Gilley, J. McBeth, B. Dolven & S. Triparthi, *supra*

³⁸*Ibid.*

questioned about where they got it from originally³⁹. Country A launched a “Love the Currency” campaign in the middle of the crisis, to encourage all citizens of Country A to convert their US dollars into local currency, in order to support the weakened local currency. Military officials even phoned 13 of the wealthiest ethnic Group O business people, asking them to participate in the campaign⁴⁰. But Group O members remain wary. Now that the president is no longer there to protect them, they cannot be confident that the new anti-corruption mood sweeping the country will not make them into scapegoats for all the abuses perpetrated by the president during his period in office.

To date, the former president has withstood the feeble attempts made by the new government to investigate his wealth. Some believe that the new president and his ministers have been reluctant to push for a more effective investigation, for fear that their own assets may come under the same spotlight⁴¹. Others claim that tracking the former president’s wealth would be inordinately difficult, because he was able to afford the best legal minds to help him conceal his vast fortune all over the globe. One writer has postulated that the following is one method employed:

“The president’s first step would be to give ‘power of attorney’ ... to a lawyer working on his behalf. Then the first lawyer would open similar power-of-attorney arrangements with a second lawyer. This would be done for a third time and maybe even for a fourth time. Then, as the money moved from attorney to attorney, accounts and deposits would be made in each attorney’s (or even their law firm’s) name. The final deposits in a Swiss or Austrian bank account would be in the name of a lawyer, and that lawyer may not even know it is the president’s money he or she is handling via a chain of powers-of-attorney. In fact, it is likely the lawyer does not know the origin of the money. Part of the safety in this operation comes from having each link in the money-laundering process know as little information as possible about earlier links in the chain. Each member in the chain only deals with the previous member.”⁴²

³⁹Anonymous, “Guarantee Needed for Return of Ethnic Chinese Capital”, supra

⁴⁰G. Torode, “Military Accuses Chinese Tycoons of Rupiah Snub”, 17 January 1998, *South China Morning Post Internet Edition*, at gopher://gopher.igc.apc.org:2998/0REG-INDONESIA/r.921289026.14162.1

⁴¹Anonymous, “Asia : Cleared Out”, 26 September 1998, v.348, *The Economist*, 43

⁴²J. Winters, “Some Comments on Suharto’s Wealth and Trying to Track It”, 14 September 1998, at gopher://gopher.igc.apc.org:2998/0REG-INDONESIA/r.921283833.4815.4

The same writer suggests that the first step in investigating the president's fortune would be to identify his personal attorney/s and follow all subsequent transactions. However, he acknowledges that Swiss and Austrian banks are particularly secretive about their customers' records, and that the investigation must proceed on the basis of an alleged illegality, which may be hard to pinpoint in such a system. He recommends that the best way to seek redress for all the harm that the president has done to Country A is to put him on trial for "all the disappearances, torture and massacres that occurred under his rule."

Case study 2: Country B

Despite being described as the 'good child of the Asian crisis' by one commentator⁴³, Country B appears to be dragging its feet over introducing effective anti-money laundering legislation that will address the full spectrum of money laundering activities, especially those related to corruption of political officials.

Country B's Lower House of Parliament passed the final reading of an anti-money laundering bill in July 1998. The anti-money laundering office was originally envisaged as being managed by the Finance Ministry. But the committee vetting the bill said the office should report directly to the Prime Minister, "so that it can work more independently."⁴⁴ It was hoped that the office would thus be free from "political interference". The initial draft bill identified nine types of crimes, including corruption that would provide grounds for authorities to confiscate the assets of those believed to be involved in such crimes. But by the final reading of the bill, the House had watered it down to cover only drug trafficking and prostitution⁴⁵. This has set off alarm bells amongst those monitoring the efforts by the Democratic government to completely remodel Country B's political and economic system, in the wake of a spate of corruption scandals in 1996, which led to their election on an anti-corruption platform.

⁴³Yvan Cohen, "Thais Learn Not to Keep Business All in the Family", 27 May 1998, *Christian Science Monitor*, 9.

⁴⁴Somroutai Rawang, "Anti-laundering office to go under prime minister", 20 February 1999, *The Nation*, Section : Local, (online version)

⁴⁵See : Chang Noi (a pseudonym), "Laundering the money-laundering law", 28 July 1998, *The Nation*, Section : Editorial & Opinion (online version)

Why has the Lower House been so reluctant to include corruption-related profits within the scope of the anti-money laundering legislation? During the House debates on the bill, various MPs made assorted allegations against one another about possible graft cases, particularly in relation to the controversial 'SDH' project⁴⁶. Speculation amongst observers centred around the belief that members of Parliament were sufficiently concerned about the bill's potential impact on their own personal financial affairs to be unwilling to pass a law that might expose them.

Country B's Senate has been quick to draw the same conclusions. At its first reading of the bill in July 1998, numerous Senators stated that they would be seeking to restore the scope of the bill to its initially wide ambit. Many of these Senators specifically mentioned corruption as one of the most important crimes that the legislation should target⁴⁷. At the time, the Senate voted unanimously to set up a committee to examine the draft that was passed by the Lower House. The Deputy Finance Minister, who defended the bill, stated that the government would not mind the changes that the Senators had foreshadowed. The Senate eventually restored six additional offences to the list of those that may warrant assets seizure, as well as retaining drug trafficking and prostitution. The six offences that the Senate restored to the list of those that would attract assets seizure⁴⁸ were: public fraud, embezzlement from financial institutions, abuse of public office, extortion and racketeering, smuggling, and wrongful exploitation of natural resources (eg. illegal logging and violations of national parks and endangered species legislation)⁴⁹.

The Lower House's response was to set up a Joint Committee of both Houses to scrutinise the amended bill, along with five other bills that were amended by the Senate after passage through the Lower House. Some MPs accused the Senate of exercising its power just to prove that it could, rather than acting in the best interests of the country⁵⁰. But the Joint

⁴⁶See : Sopon Onkgara, "Towards a very diluted bill", 2 August 1998, *The Nation*, Section : Editorial & Opinion, (online version)

⁴⁷See : Somroutai Ra-wang, "Money-laundering bill passes Senate", 1 August 1998, *The Nation*, Section : Headlines, (online version)

⁴⁸See para. 4 of my original paper.

⁴⁹Anonymous, "Laundering bill clears big hurdle", 18 February 1999, *The Nation*, Section : Politics, (online version)

⁵⁰See : Somroutai Sapsamboon, "Tougher scrutiny of bills", 24 September 1998, *The Nation*, Section : Politics (online version)

Committee process is a lengthy one, and will only further delay enactment of effective anti-corruption and anti-money laundering legislation in Country B. Despite the smokescreen, the actions of the Lower House suggest a decided, personal disinterest in the passage of an effective money laundering statute.

Recently, the Joint House-Senate Committee scrutinising the amended bill agreed with the amendments proposed by the Senate. The bill was expected to go before the House for its second reading some time after 25 February. If the House then adopts the draft by a simple majority, the bill will be proclaimed in the Royal Gazette and become effective in 120 days⁵¹. However, human rights activists and 'legal experts' are concerned that the bill in its present form may infringe constitutional rights, yet be ineffective against powerful culprits. The 'enforcer' of the law will be a "four-member panel to be appointed by a joint state-public commission headed by the prime minister", which will have discretionary powers normally requiring judicial approval, e.g. the power to seize assets, to tap telephones, and to halt transactions for up to 10 days. In addition, the onus is on suspects to prove that the seized properties were acquired legally, not the other way around⁵².

Some light was shed on the reluctance of MPs to act decisively in the case of money laundering legislation in January 1997. At that time the Commissioner of the Narcotics Suppression Bureau told the House Committee on Parliamentary Affairs⁵³ that 'certain MPs are involved in the amphetamine trade,' and were using their status to bail out suspects charged with selling the drug.⁵⁴ A spokesperson for the House Committee said that they would be approaching the House Speaker to lodge a petition requesting that MP's be prohibited from bailing out such suspects. While there was insufficient evidence available to charge the ten or so MPs suspected of drug dealing. Most of the dealing suspects bailed out had worked as political canvassers for the MP's.

⁵¹Opas Boonlom and Yindee Lertcharoenchok, "Crime assets bill 'close to approval' ", 21 January 1999, *The Nation*, Section : Politics, (online version)

⁵²Ibid.

⁵³This was the panel that pushed for anti-money laundering legislation initially.

⁵⁴Anonymous, "Panel wants ban on MP's bailing out drug suspects", 24 January 1998, *The Nation*, (online version)

Allegations made in a Canadian court recently have provided some more indication of the types of activities that Country B MPs may be reluctant to have scrutinised by those enforcing the new anti-money laundering law. Former banker Mr. S, wanted in connection with the fraud-related collapse of a leading national bank, is currently trying to challenge an attempt by the Country B government to extradite him from Canada. In the British Columbia Supreme Court in March 1999, Mr. S alleged that he had been present when the current Premier and other politicians accepted bribes from the bank, in the lead-up to the 1995 elections. Mr. S claims that the money came out of the bank's own funds.

Given the allegations made subsequently against bank officials in relation to fraudulent banking transactions, it seems reasonable to assume that the bribes may have formed part of a larger money-laundering scheme. Mr. S was the Treasury Adviser for the bank, Country B's ninth-largest commercial bank until the scandal erupted, and thus a central figure in the scandal. He is suspected of have falsified documents for approximately 100 "paper companies" while holding this position, and thereby embezzling \$696.5 million (US)⁵⁵. He is said to have used corporate "registries of convenience" to hide his identity in international deals, according to his former accountant⁵⁶. He would also list a nominee rather than the beneficial owner of companies with these corporate registries.

The former premier's party has since denied receiving any such money and the incumbent has defended his predecessor against the allegations⁵⁷. One senior Finance Ministry official was "reassigned" following charges that he accepted kickbacks from Mr. S⁵⁸. It is also alleged by the Country B government that the former president of the bank, Mr. J, endorsed a loan of approximately \$88m Canadian to a Cayman Islands investment company allegedly controlled by Mr. S⁵⁹. The bank's problems were leaked by Country B opposition leaders in May 1996, revealing that the bank was "overextended and verging on collapse, partly due to

⁵⁵"Man Charged in Thai Bank Embezzlement Arrested in B.C.", 9 July 1996, *Quicklaw*, National general news database.

⁵⁶"Fugitive Banker Tried to Hide Identity, Extradition Hearing Told", 21 May 1998, *Quicklaw*, National general news database.

⁵⁷See : "Chuan defends ex-PM against bribery claims", 1 March 1999, *The Straits Times Interactive - Region*, http://straitstimes.asia1.com.sg/reg/sea4_0301.html

⁵⁸"Witnesses Under Police Protection", 29 January 1998, *Vancouver Sun*, *Quicklaw*, National general news database.

unsecured loans made to high-ranking government politicians and company executives in land deals and debt-financed take-overs.”⁶⁰ The bank was also known for its “risky deals and questionable client lists, including Saudi arms merchant Adnan Khashoggi.”⁶¹

In addition to Country B government efforts to extradite him to face charges relating to the above activities, the RCMP are currently investigating Mr. S for money laundering activities during his time in Vancouver, including his financial support for a counter-coup in Sierra Leone early in 1998.⁶² He was first arrested in Vancouver in 1996, under a warrant issued at the request of the Country B government. Extradition proceedings commenced at that time, but have dragged on ever since. The case is exceedingly complicated and will likely not be completed until the end of June or possibly even into September of 1999.⁶³

In his defense, Mr. S’s accountant has testified that Country B police tried to extort \$3 million from Mr. S, which was to be deposited secretly in a Swiss bank account⁶⁴. Country B police Major General J arranged to meet Mr. S at Whistler, B.C. to discuss the bribe, which was supposed to help Mr. S to “fix” his trial. Mr. S took to the meeting an attache case with \$100 000 of Swiss francs and U.S. dollars, the accountant stated during Mr. S’s extradition hearing. Of the \$3 million fee, two thirds would be officially recorded as bail money, and one million “would go into the ether or some major police official’s pocket,” said the accountant. However, the RCMP arrested Mr. S before the deal was finalised, and confiscated the currency.

5. Conclusion

Corruption and money laundering are two separate blights on the economic and social health of any nation, and the states of the Asia Pacific are as much afflicted by these

⁵⁹"RCMP Investigate Money-Laundering Allegations Against Thai Banker", 22 April 1998, *Vancouver Sun*, Quicklaw, National general news database.

⁶⁰"Man Charged in Thai Bank Embezzlement Arrested in B.C.", supra.

⁶¹Ibid.

⁶²"Fugitive Banker Tried to Hide Identity, Extradition Hearing Told", supra.

⁶³*Thailand v. Saxena* [1998] B.C.J. No. 2624, Oral judgment, 21 October 1998, British Columbia Court of Appeal, Braidwood J.A. (In Chambers)

⁶⁴"Thai Police Tried to Extort Money from Banker, Accountant Says", 4 June 1998, *Vancouver Sun*, Quicklaw, National general news database.

phenomena as are the states of any region. It becomes increasingly obvious, however, that despite the distinct nature of these two forms of criminality, they are in fact inseparable. The machine of money laundering often requires the lubricant of corruption to function effectively. This corruption may take the form of wilful blindness or a studied lack of due diligence on the part of bank officials, police, financial supervisors or even parliamentarians, as we have seen from both in-depth case studies in this report.

Conversely, corruption as a broader phenomenon produces revenues that must be concealed from the eyes of the authorities, often requiring international transactions of millions and sometimes billions of dollars. While money laundering receives much attention for its role in the financial activities of organised crime, we would do well to reflect on the negative consequences of the laundering of funds that do not have their origin in the drug trade or other similar crimes. This misappropriation of billions of dollars of state funds by the governments of some of the most populous and least economically developed states in the world, in the Asia Pacific and elsewhere, is one of the greatest crimes of this century.

Critics of the 'war on drugs' suggest that much of the negative effect of the drug trade could be offset through the application of controlled legalisation and/or controlled dose programs for addicts. While it is not the place of this analysis to pass judgement on those arguments, it is enough to say that there is a genuine debate over whether efforts spent controlling the laundering of drug money might not be better applied to demand reduction and progressive drug policy. No basis for such debate can be said to exist in the case of corruption and money laundering. The laundering of corrupt funds, and the willingness of financial institutions in many developed states to accept and hold the assets pillaged by corrupt elites in the Asia Pacific and elsewhere (with the rationale that in the absence of a judicial request from the state in question, nothing can be done) is an affront to good sense, morality and human rights. Moreover, this practice sustains the ability of corrupt officialdom in many areas of the world to exercise an instrumentalist method of rule. It erodes the chances for the emergence of genuine democracy by perpetuating commonly-held views of the state as a lever for patronage which must be captured, rather than as an arena for the just allocation of resources and identification of policies. Money laundering, as a key to corruption, is inescapably one of the fundamental obstacles to further democratisation in the Asia Pacific.

Annex: The OECD Convention

Combating Bribery of Foreign Public Officials in International Business Transactions

Text of the Convention

On 21 November 1997, OECD Member countries and five non-member countries, Argentina, Brazil, Bulgaria, Chile and the Slovak Republic, adopted a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Signature of the Convention took place in Paris on 17 December 1997.

Preamble

The Parties,

Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions;

Considering that all countries share a responsibility to combat bribery in international business transactions;

Having regard to the Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Council of the Organisation for Economic Co-operation and Development (OECD) on 23 May 1997, C(97)123/FINAL, which, inter alia, called for effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions, in particular the prompt criminalisation of such bribery in an effective and co-ordinated manner and in conformity with the agreed common elements set out in that Recommendation and with the jurisdictional and other basic legal principles of each country;

Welcoming other recent developments which further advance international understanding and co-operation in combating bribery of public officials, including actions of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the Council of Europe and the European Union;

Welcoming the efforts of companies, business organisations and trade unions as well as other non-governmental organisations to combat bribery;

Recognising the role of governments in the prevention of solicitation of bribes from individuals and enterprises in international business transactions;

Recognising that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, monitoring and follow-up;

Recognising that achieving equivalence among the measures to be taken by the Parties is an essential object and purpose of the Convention, which requires that the Convention be ratified without derogations affecting this equivalence;

Have agreed as follows:

Article 1 - The Offence of Bribery of Foreign Public Officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.
2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.
3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as “bribery of a foreign public official”.
4. For the purpose of this Convention:
 - a) “foreign public official” means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation;
 - b) “foreign country” includes all levels and subdivisions of government, from national to local;
 - c) “act or refrain from acting in relation to the performance of official duties” includes any use of the public official’s position, whether or not within the official’s authorised competence.

Article 2 - Responsibility of Legal Persons

Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

Article 3 - Sanctions

1. The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.
2. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.
3. Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.
4. Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.

Article 4 - Jurisdiction

1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.
2. Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as maybe necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.
3. When more than one Party has jurisdiction over an alleged offence described in this Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution.
4. Each Party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps.

Article 5 - Enforcement

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Article 6 - Statute of Limitations

Any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

Article 7 - Money Laundering

Each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

Article 8 - Accounting

1. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities within correct identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.
2. Each Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

Article 9 - Mutual Legal Assistance

1. Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance.
2. Where a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention.
3. A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy.

Article 10 - Extradition

1. Bribery of a foreign public official shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them.
2. If a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.
3. Each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution.
4. Extradition for bribery of a foreign public official is subject to the conditions set out in the domestic law and applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of Article 1 of this Convention.

Article 11 - Responsible Authorities

For the purposes of Article 4, paragraph 3, on consultation, Article 9, on mutual legal assistance and Article 10, on extradition, each Party shall notify to the Secretary-General of the OECD an authority or authorities responsible for making and receiving requests, which shall serve as channel of communication for these matters for that Party, without prejudice to other arrangements between Parties.

Article 12 - Monitoring and Follow-up

The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference, or within the framework and terms of reference of any successor to its functions, and Parties shall bear the costs of the programme in accordance with the rules applicable to that body.

Article 13 - Signature and Accession

1. Until its entry into force, this Convention shall be open for signature by OECD members and by non-members which have been invited to become full participants in its Working Group on Bribery in International Business Transactions.
2. Subsequent to its entry into force, this Convention shall be open to accession by any non-signatory which is a member of the OECD or has become a full participant in the

Working Group on Bribery in International Business Transactions or any successor to its functions. For each such non-signatory, the Convention shall enter into force on the sixtieth day following the date of deposit of its instrument of accession.

Article 14 - Ratification and Depositary

1. This Convention is subject to acceptance, approval or ratification by the Signatories, in accordance with their respective laws.
2. Instruments of acceptance, approval, ratification or accession shall be deposited with the Secretary-General of the OECD, who shall serve as Depositary of this Convention.

Article 15 - Entry into Force

1. This Convention shall enter into force on the sixtieth day following the date upon which five of the ten countries which have the ten largest export shares (see annex), and which represent by themselves at least sixty per cent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification. For each signatory depositing its instrument after such entry into force, the Convention shall enter into force on the sixtieth day after deposit of its instrument.
2. If, after 31 December 1998, the Convention has not entered into force under paragraph 1 above, any signatory which has deposited its instrument of acceptance, approval or ratification may declare in writing to the Depositary its readiness to accept entry into force of this Convention under this paragraph 2. The Convention shall enter into force for such a signatory on the sixtieth day following the date upon which such declarations have been deposited by at least two signatories. For each signatory depositing its declaration after such entry into force, the Convention shall enter into force on the sixtieth day following the date of deposit.

Article 16 - Amendment

Any Party may propose the amendment of this Convention. A proposed amendment shall be submitted to the Depositary which shall communicate it to the other Parties at least sixty days before convening a meeting of the Parties to consider the proposed amendment. An amendment adopted by consensus of the Parties, or by such other means as the Parties may determine by consensus, shall enter into force sixty days after the deposit of an instrument of ratification, acceptance or approval by all of the Parties, or in such other circumstances as may be specified by the Parties at the time of adoption of the amendment.

Article 17 - Withdrawal

A Party may withdraw from this Convention by submitting written notification to the Depositary. Such withdrawal shall be effective one year after the date of the receipt of the notification. After withdrawal, co-operation shall continue between the Parties and the Party which has withdrawn on all requests for assistance or extradition made before the effective date of withdrawal which remain pending.

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