

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

The Secretariat

Fourth Master Training Seminar

Denying Safe Haven to Corruption and its Assets: Enhancing Asia-Pacific Cooperation on MLA, Extradition and the Recovery and Return of the Proceeds of Corruption

Kuala Lumpur, Malaysia, 28-30 March 2006

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Draft Agenda

Fourth Master Training Seminar of the
ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

organized in partnership with the
United Nations Office on Drugs and Crime



with support from the
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Hosted by the Anti-Corruption Agency of Malaysia



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Background

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific is dedicated to support Asian and Pacific countries in the fight against corruption in the overriding aim to reduce poverty, promote welfare, and attain social and political stability. One means to provide such support is the organization of training seminars. These seminars seek to strengthen the capacity of Asian and Pacific countries to implement the ADB/OECD Anti-Corruption Action Plan for Asia-Pacific, the region's instrument against corruption which commits 25 industrialized and developing countries and jurisdictions (Australia; Bangladesh; Cambodia; People's Republic of China; Cook Islands; Fiji Islands; Hong Kong Special Administrative Region of the People's Republic of China (hereinafter Hong Kong, China); India; Indonesia; Japan; Republic of Kazakhstan; Republic of Korea; Kyrgyz Republic; Malaysia; Mongolia; Nepal; Pakistan; Republic of Palau; Papua New Guinea; Philippines; Samoa; Singapore; Thailand; Vanuatu; and Vietnam).

Capacity building to foster the fight against corruption also supports the Initiative's member countries' efforts in achieving the standards of the United Nations Convention against Corruption – an objective that the recently-launched APEC "Course of Action on Fighting Corruption and Ensuring Transparency" also pursues.

Since the beginning of the series of seminars in 2003, the Initiative's member countries have chosen the seminar topics according to their common priorities and perceived needs. The first two seminars dealt with techniques and practices to improve the effectiveness of prosecuting corruption (February 2003) and with mechanisms to curb corruption in public procurement (July 2004). The third seminar (February 2005) focused on the adjustment of national laws and institutions to meet the mandatory standards of the UN Convention against Corruption.

One key aspect of the fight against corruption is international cooperation among law enforcement agencies and prosecutorial authorities. It is no longer uncommon for individuals to hide or launder bribes and embezzled funds in foreign jurisdictions. Bribers may keep secret slush funds in bank accounts abroad, or they may launder the proceeds of their crimes internationally. Governments therefore increasingly need to gather evidence abroad in corruption investigations through international legal assistance. As those who engage in corruption may also seek safe haven in a foreign country, extradition might be necessary to ensure effective prosecution of the crime.

Ensuring the effectiveness and performance of Asia-Pacific countries' fight against corruption also requires strong cooperation with countries – often from outside the region – whose individuals and corporate entities may contribute to domestic corruption in Asia and Pacific and which seek assistance in order to be able to investigate and prosecute those individuals and companies at home. By signing the OECD Convention Against Bribery of Foreign Public Officials in International Business Transactions, 36 countries have committed to actively reduce corruption worldwide, including in Asia and the Pacific, by establishing the offence of active bribery of foreign public officials and requiring their law enforcement authorities to prosecute any occurrence of it. Yet, such commitment can only be effective if Asia-Pacific countries whose public officials were bribed by individuals and companies of signatory states to the OECD Convention provide assistance to parties to the Convention's law enforcement authorities.

The ADB/OECD Action Plan recognizes the importance of international cooperation as a requirement for effective prosecution of corruption. Under the Plan's 2nd Pillar, member countries endeavor to take effective measures to actively combat bribery by "strengthening bi- and multilateral co-operation in investigations and other legal proceedings by developing systems which – in accordance with domestic legislation – enhance (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) co-operation in searching and discovering of forfeitable assets as well as prompt international seizure and repatriation of these forfeitable assets." The importance of enhancing mutual

legal assistance in criminal matters and extradition for the fight against corruption is also testified by the priority that the UN Convention against Corruption and the APEC Course of Action attach to the matter.

Sharing experience and cooperation with international and regional partners are among the Initiative's core principles. The Seminar will thus be conducted in partnership with the UN Office on Drugs and Crime – leading the work on the UN Convention against Corruption – and receives support from the American Bar Association/Asia Law Initiative. These partners will contribute their expertise and practical experience to the seminar.

Objectives of the Seminar

Despite the recognition of the importance of mutual legal assistance (MLA) and extradition, many practitioners in Asia-Pacific decry the current ineffectiveness of the legal and institutional tools that govern MLA and extradition. Their concerns are wide-ranging. In some cases, international cooperation is not possible because of legal obstacles, such as the absence of legal bases for cooperation, overly restrictive interpretation of legal principles or differences in legal systems. Other cases suffer from inordinate delay, inadequate legislation or insufficient institutional support. Regardless of the cause, the end result is that international cooperation in the fight against corruption remains less than completely effective.

Against this background, the objective of the Initiative's fourth seminar is to build capacity in Asia-Pacific for international cooperation in investigating and prosecuting corruption cases by:

- expanding the knowledge base in these areas;
- identifying obstacles and problems that arise in practice and discussing possible solutions;
- identifying priorities for reform that would contribute to strengthening international legal assistance and extradition; and
- bringing together experts and practitioners to enhance common understanding, exchange good practice and establish institutional contacts.

Structure and Methodology

The seminar will focus on four broad categories of topics in international cooperation: (1) informal and alternative measures for assistance, (2) solutions for overcoming obstacles found in legislation and treaties in the areas of MLA and extradition, (3) practical tips for prosecutors and law enforcement agents to improve the effectiveness of MLA and extradition, and (4) transnational cooperation to trace, freeze and recover proceeds of corruption. The seminar will cover these topics over 3 days in 2 plenary sessions and 5 break-out sessions. For each issue, the seminar will seek to identify the particular difficulties and challenges involved. Participants will then share and discuss their own experiences and solutions to these challenges.

The seminar is designed for practitioners from the 25 members of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific who investigate and prosecute corruption cases and who may have to seek or render international legal assistance. The working sessions will be conducted by trainers and experts from the Initiative's member countries and ADB and OECD member countries who have first hand experience in investigating corruption cases and granting and seeking extradition and mutual legal assistance, as well as senior international experts.

The format of the seminar is designed to encourage active participation and the sharing of experience and best practices among the attendees. The seminar will thus consist of plenary sessions and break-out sessions. Each break-out session will start with a 10 to 15 minutes plenary presentation made by an international or regional expert who will introduce the topic and identify the main issues at stake. Participants will then break into two to three groups for 90 minutes during which they will exchange

experience about problems they have encountered and solutions they have found for the particular issue. All participants will then reconvene in plenary to briefly present their discussions and main findings.

The Seminar will conclude with a case study that allows participants to review the issues discussed during the Seminar. It will also be an occasion to demonstrate a request-writing tool that could facilitate the drafting of requests for mutual legal assistance.

Program Notes

Plenary 1 – International cooperation in corruption matters in the Asia-Pacific region: An overview of policies, initiatives and applicable regional and international instruments in 25 countries

The seminar will begin with a brief presentation of the MLA and extradition in Asia-Pacific, including initiatives and instruments, followed by a roundtable discussion among participants.

Break-out groups session 1: Thinking outside the box – informal and alternative measures for assistance

Alternatives to conventional or formal requests for assistance are vital to effective international cooperation. Since many Asia-Pacific countries and jurisdictions do not have formal bilateral or multilateral MLA relations with other countries, these alternatives may be the only means of seeking assistance. Even when there are formal relations, these alternative channels could be useful for laying the groundwork and ensuring smooth execution of a formal request. This session will examine the availability, usefulness and limits of various alternatives, such as law enforcement cooperation, civil procedures, letters rogatory, and the use of specialized bodies (financial intelligence units, securities authorities, tax authorities).

Break-out groups session 2: Overcoming legal challenges

Treaties and domestic legislation impose certain preconditions – reciprocity, dual criminality, severity of the offence etc. – before MLA and extradition can be granted. They also invariably enumerate a number of grounds upon which cooperation may be denied, e.g. the political offence exception, exclusion of nationals as subjects of extradition, death penalty, immunity, trial fairness, essential and state interests, fishing expeditions and proportionality between the assistance sought and the evidence in support etc. Some of these provisions can unduly restrict international cooperation. This session will look at how these principles are implemented in different jurisdictions. It will also examine different solutions to overcoming these obstacles, such as the provision of assurances or conditional assistance. The session will consist of two parts, the first focusing on these issues in the context of MLA and the second in the context of extradition.

Break-out groups session 3: Working together and intensifying actions to strengthen mutual legal assistance and extradition

There may be little that practitioners can do to bring about the amendment of legislation or the signing of treaties, even if these measures can improve MLA and extradition. Nonetheless, practitioners in a given case can take a range of practical measures that enhance and facilitate international cooperation. This session will look at practical issues that arise in almost every request for assistance, such as the drafting of requests, preparation of supporting evidence and required documentation, use of liaison and co-ordination personnel, participation of the requesting state in the gathering of evidence (e.g. attendance at deposition or search warrant execution, joint investigative teams), the legality of evidence

gathered, formal issues in the transmission of evidence, the effect of concurrent proceedings in the requested state, appeals etc. The session will again consist of two parts, the first focusing on these issues in the context of MLA and the second in the context of extradition. It will include a demonstration of the UNODC mutual legal assistance request writing tool.

Break-out groups session 4: Working cooperatively to trace, freeze and recover the proceeds of corruption

The tracing, freezing, confiscation and repatriation of proceeds of corruption present unique challenges and raise issues such as the disposition of seized assets and the rights of third parties and victims. The UN Convention Against Corruption (UNCAC) includes obligations on States Parties to provide mutual legal assistance in relation to tracing, freezing, confiscation and repatriation of the proceeds of corrupt activity. The ADB/OECD Anti-Corruption Action Plan also encourages governments to take concrete steps in this area. However, in practice successful international cooperation in relation to the proceeds of corruption, as for proceeds of any type of criminal activity, presents many challenges.

Based on a presentation outlining Australia's experience in cooperating with other countries to recover the proceeds of corruption offences, experts will elaborate on these challenges, share their experiences in seeking repatriation and offer advice for practitioners to meet these challenges. They will discuss the benefits of a "taskforce" approach in cases where substantial proceeds are involved and emphasise the need for cooperation to occur at an early time to ensure the effective recovery. The discussion may also include various methods of seeking forfeiture, such as use of private civil litigation, non conviction based asset confiscation regimes.

Plenary 2: Strengthening mutual legal assistance to curb transnational bribery

The prosecution of transnational bribery is of critical importance for the effectiveness of domestic anti-corruption strategies in Asia and Pacific as, by targeting the supply side of transnational corruption of public officials, it is an effort to dry up one of the major sources of bribes. 36 countries parties to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions have established the offence of active bribery of foreign public officials in an attempt to cut off the supplies of bribes worldwide and thus contribute to Asia-Pacific and other countries' own efforts to curb corruption of their public officials.

Yet, given the transnational character of the offence, prosecuting transnational bribery creates particular challenges as authorities that prosecute the bribe payer will very often have to request MLA from the country where the offence took place. The plenary seeks to identify challenges – including potential legal and procedural impediments – that Asia-Pacific countries may face in responding to requests from foreign jurisdictions in relation with the specific offence of bribery of foreign public officials as established in the criminal law of the 36 parties to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and which is soon to be established by state parties to the UN Convention against Corruption. The purpose of the discussion is also to shed light on how, procedurally, OECD Convention requesting countries could make effective MLA requests specifically for foreign bribery offence.

Break-out groups session 5: Application of principles and solutions disseminated through a Case study

The seminar will conclude by putting the principles and solutions that have been discussed into practice. Participants will be given a case study on MLA and extradition before breaking into small groups, each of which will be responsible for analyzing certain aspects of the case and devising solutions for obtaining international cooperation. The small groups will then reconvene in plenary to discuss their findings. The session will conclude with a demonstration of a tool which has been developed by the UNODC to assist practitioners in drafting requests for assistance.

Agenda

Day 1 – Tuesday 28 March 2006

8:45 Arrival of participants at MACA by bus.

9:00 – 10:30 **Opening plenary**

Welcoming remarks:

Mr. R. Rathakirushnan, Director, Malaysia Anti-Corruption Academy

Opening remarks by the host:

Hon. Dato' Seri Mohamed Nazri Bin Tan Sri Abd Aziz, Minister in the Prime Minister's Department

Coffee break and Group photo

Opening remarks and seminar overview by the Secretariat:

Mr. Raza Ahmad, ADB Coordinator, Asia-Pacific Anti-Corruption Initiative, Governance and Regional Cooperation Division, ADB

Mr. Frédéric Wehrlé, Coordinator Asia-Pacific, Anti-Corruption Division, OECD

Brief roundtable introduction of participants

10:30 – 12:00 **Plenary I – International cooperation in corruption matters in the Asia-Pacific region: An overview of policies, initiatives and applicable regional and international instruments in 25 countries**

Introduction to the Seminar: A brief presentation of mutual legal assistance and extradition in Asia-Pacific, including international initiatives and instruments, followed by discussion among participants

Presenters:

Mr. William Loo, Legal Analyst, Anti-Corruption Division, OECD

Ms. Kimberly Prost, Chief, Legal Advisory Section, Treaty and Legal Affairs Branch, UN Office on Drugs and Crime (UNODC)

12:00 – 13:00 *Lunch*

13:00 – 14:45 **Break-out groups session 1: Thinking outside the box – informal and alternative measures for mutual cooperation and assistance**

Exploring forms of cooperation beyond formal bilateral and multilateral arrangements, including assistance at law enforcement level, civil procedures, letters rogatory, and use of specialized bodies (financial intelligence units, securities authorities, tax authorities)

Presenter: Pol. Col. Sehanat Prayoonrat, Acting Deputy Secretary-General, National Counter Corruption Commission (NCCC), Thailand

Moderator Group 1: Mr. Jean-Bernard Schmid, Investigative magistrate, Geneva, Switzerland

Moderator Group 2: Ms. Kimberly Prost, Chief, Legal Advisory Section, UNODC

14:45 – 15:00 *Coffee Break*

15:00 – 15:30 **Break-out groups session 1:** Report on break-out groups' discussion (in plenary);
Report by moderators on break-out groups' discussions.

15:30 – 17:15 **Break-out groups session 2: Overcoming legal challenges**

A: Overcoming legal challenges in mutual legal assistance

Examination of legal preconditions to MLA (e.g. reciprocity, dual criminality, severity of the offence, fishing expeditions etc.) and grounds for denying assistance (e.g. political offences, capital punishment etc.).

Presenter: Ms. Kimberly Prost, Chief, Legal Advisory Section, UNODC

Moderator Group 1: Mr. Bernard Rabatel, French liaison magistrate in the United Kingdom

Moderator Group 2: Mr. Jean-Bernard Schmid, Investigative magistrate, Geneva,
Switzerland

evening **Cultural outing to Putrajaya** (hosted by the Anti-Corruption Agency of Malaysia).

Welcoming dinner, hosted by the Deputy Director General of ACA Malaysia.

Day 2 – Wednesday 29 March 2006

9:00 – 10.45	<p>Break-out groups session 2: Overcoming legal challenges (continued)</p> <p>B: Overcoming legal challenges in extradition</p> <p>Examination of legal preconditions to extradition and grounds for denying extradition</p> <p>Presenters: Mr. Umar Saifuddin Bin Jaafar, Deputy Public Prosecutor, International Affairs Division, Attorney-General Chambers, Malaysia Mr. Tan Huanmin, Director, Department of Laws and Regulations, Ministry of Supervision, P.R. China</p> <p>Moderator Group 1: Mr. Charles Caruso, Regional Anti-Corruption Advisor, American Bar Association/Asia Law Initiative</p> <p>Moderator Group 2: Ms. Merceditas Navarro-Gutierrez, Ombudsman of the Republic of the Philippines</p>
10:45 – 11:00	<i>Coffee break</i>
11:00 – 11:30	<p>Break-out groups session 2: Report on break-out groups' discussion (in plenary)</p> <p>Report by moderators on break-out groups' discussions</p>
11:30 – 13:15	<p>Break-out groups session 3: Working together and intensifying actions to strengthen MLA and extradition</p> <p>A: Challenges and solutions in the practice of MLA</p> <p>Practical tips to deal with issues that arise in almost every request for MLA, such as delay, drafting of requests, form and legality of evidence produced by a requested state, participation of the requesting state in the gathering of evidence, concurrent proceedings in the requested state, appeals etc.</p> <p>Presenter: Mr. Jean-Bernard Schmid, Investigative magistrate, Geneva, Switzerland</p> <p>Moderator Group 1: Ms. Kimberly Prost, Chief, Legal Advisory Section, UNODC</p> <p>Moderator Group 2: Mr. Sean Mowbray, Mutual Assistance Unit, Attorney-General's Department, Australia</p>
13:15 – 14:15	<i>Lunch</i>
14:15 – 16:00	<p>Break-out groups session 3: Working together and intensifying actions to strengthen MLA and extradition (cont.)</p> <p>B: Challenges and solutions in the practice of extradition</p> <p>Practical tips to deal with issues that arise in almost every request for extradition , such as the preparation of supporting evidence and required documentation, requisite formalities, the use of liaison and co-ordination personnel etc.</p> <p>Presenter: Mr. Bernard Rabatel, French liaison magistrate in the United Kingdom</p> <p>Moderator Group 1: Mr. Charles Caruso, Regional Anti-Corruption Advisor, American Bar Association/Asia Law Initiative</p> <p>Moderator Group 2: Mr. Hasan Saqib Sheikh, Deputy Director, National Accountability Bureau, Pakistan.</p> <p>Moderator Group 3: Mr. Gerry Osborn, Assistant Director of Operations, Independent Commission Against Corruption, Hong Kong, China</p>
16:00 – 16:30	<i>Coffee break</i>

16:30 – 17:00	Break-out groups session 3: Report on break-out groups' discussion (in plenary) Report by moderators on break-out groups' discussions
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<i>evening</i>	Dinner hosted by the Director General of ACA Malaysia
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Day 3 – Thursday 30 March 2006

9:00 – 10:45	<p>Break-out groups session 4 – Working cooperatively to trace, freeze and repatriate the proceeds of corruption</p> <p>Specific challenges and solutions in tracing, freezing, recovering and disposition of the proceeds of corruption</p> <p>Presenter: Mr. Sean Mowbray, Mutual Assistance Unit, Attorney-General's Department, Australia</p> <p>Moderator Group 1: Mr. Hasan Saqib Sheikh, Deputy Director, National Accountability Bureau, Pakistan</p> <p>Moderator Group 2: Mr. Jean-Bernard Schmid, Investigative magistrate, Geneva, Switzerland</p> <p>Moderator Group 3: Prof. Syed Noh Bin Syed Ahmad, Professor of Accounting, University Teknologi Mara</p>
10:45 – 11:00	<i>Coffee break</i>
11:00 – 11:30	<p>Break-out groups session 4: Report on Break-out groups' discussion (in plenary)</p> <p>Report by moderators on break-out groups' discussions</p>
11:30 – 12:15	<p>Plenary 2: Strengthening mutual legal assistance to curb transnational bribery</p> <p>Particular challenges in providing mutual legal assistance associated with transnational bribery</p> <p>Presenter: Mr. Jean-Bernard Schmid, Investigative magistrate, Geneva, Switzerland</p>
12:15 – 13:30	<i>Lunch</i>
13:30 – 15:00	<p>Break-out groups session 5: Application of principles and solutions – two Case studies</p> <p>Analysis of two case studies to review the principles and issues discussed in the Seminar.</p> <p>Moderator Group 1: Ms. Kimberly Prost, Chief, Legal Advisory Section, UNODC</p> <p>Moderator Group 2: Mr. Bernard Rabatel, French liaison magistrate in the United Kingdom</p> <p>Moderator Group 3: Mr. Jean-Bernard Schmid, Investigative magistrate, Geneva, Switzerland</p>
15:00 – 15:15	<i>Coffee break</i>
15:15 – 16:15	<p>Break-out groups session 5: Report on break-out groups' discussion (in plenary)</p> <p>Discussion in plenary of the analysis of the case study; demonstration of request-writing tool</p>
16:15 – 16:30	<p>Closing plenary</p> <p>Closing Remarks by Dato' Seri Zulkipli bin Mat Noor, Director General, Anti-Corruption Agency of Malaysia</p> <p>Closing Remarks by the ADB/OECD Secretariat</p>
16:45	<p>Visit of the City of Kuala Lumpur (hosted by the Malaysian Anti-Corruption Agency)</p> <p>Dinner, hosted by the Director of the Malaysia Anti-Corruption Academy (MACA)</p>