

# BEST PRACTICES IN ANTI-CORRUPTION

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## I. INTRODUCTION

1. Corruption poses a serious problem and affects every country, and it impacts each and every human being. It is a fact that there are links between corruption and other forms of crime, including money laundering. Corruption is no longer a local matter. It is a transnational phenomenon. To prevent, control and eradicate corruption is a responsibility of all of us. To enforce the enacted laws and regulations of each country, it is required to develop a sound anti-corruption mechanism and political will.
2. In Myanmar, corruption is widespread, and it will be a great challenge to eliminate such malpractice in the shortest time possible. Nevertheless, bribery and corruption disturb the society, economics, and the rule of law at all corners, and the problem needs to be handled effectively.

## II. HISTORICAL BACKGROUND

3. The Penal Law (1861) and the Code of Criminal Procedure (1898) were the laws which penalize the offence of bribery and corruption. The Special Investigation Administrative Board was established and the Special Investigation Administrative Board and Bureau of Special Investigation Act was promulgated in 1951. In line with this act, the Bureau of Special Investigation (BSI) was founded on 1 September 1951. The Suppression of Corruption Act was enacted in 1948. A new law for anti-bribery and corruption was enacted in August 2013, and the 1948 law has been repealed.
4. Section 4 of the Anti-Corruption Law stipulates the law's objectives: to create clean government and good governance, to protect state-owned properties, community and rights and benefits of the citizens from corruption and to take effective action against offenders of corruption. This is a clear message to the world that Myanmar is dedicated to combating corruption as its national duty.
5. Besides the Anti-Corruption Law 2013, there are new laws in which provisions relevant to bribery and corruption are stipulated. These laws include, but are not limited to, the Civil Service Personnel Law, the Foreign Investment Law, the Myanmar Citizens Investment Law, the Myanmar Special Economic Zones Law, the Competition Law, the Consumer Protection Law, the Anti-money Laundering Law, the Electronic Transaction Law, the Electricity Law, etc. However, according to section 68 of the Anti-Corruption Law, any investigation or action taken against money or property related to corruption or enrichment by bribery shall only be taken according to this law.

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6. According to the Control of Money Laundering Law, if a person launders money and property obtained by corruption, he is punishable with imprisonment extending up to ten years and may also be liable to pay a fine, and any proceeds of the crime will be confiscated. These are effective deterrents against the offenders of corruption cases.

### **III. RELEVANT AGENCIES AND INSTITUTIONS AND THEIR WORKING MECHANISMS**

#### **A. Relevant Agencies and Departments**

7. According to the law, an anti-corruption commission has been formed and organized consisting of 15 members, of whom 5 persons are selected by the President, the Speaker of People's Parliament and the National Parliament. When the members of the commission are assigned, they must report their money, property, liabilities and rights of their family if headed by them, including beneficial ownership, to the President.

8. The duties and functions of the commission are forming of preliminary scrutiny bodies and investigation bodies, forming the department by assigning the Chief Investigator, specifying the authority, cooperating with the government departments and agencies and State-owned enterprises in laying plans for programmes in order to dispel corruption and implementing suitable programmes for public cooperation. The commission also has power to examine the records of banks and financial institutions, issue an order to responsible persons of banks and financial institutions to allow the seizure of evidence if necessary, issuing orders prohibiting the transfer, concealment, and disguise of accounts and money, issuing orders to prosecute, pass and order confiscation of money and property with the recommendation of a preliminary scrutiny body, and to give protection to and set rewards for witnesses.

9. Other relevant agencies, such as the Ministry of Home Affairs, the Myanmar Police Force, and the Financial Intelligence Unit also take action on corruption cases. Sometimes the agencies are combined as a team to enquire and investigate bribery and corruption.

#### **B. Working Mechanism**

10. Offences relating to corruption and bribery shall be investigated by the investigation body formed by the Anti-Corruption Commission in line with the Anti-Corruption Law, 2013. Moreover, officers of the Bureau of Special Investigation, who have been conferred the power of Police Officer, also have power to investigate the offences relating to corruption and bribery due to corruption offences, which are defined as cognizable offences by the Anti-Corruption Law.

11. Being a cognizable case, BSI Officers and Police Officers may file a case against the accused at the respective police station, arrest the offender, examine the accused and witnesses, seize evidence, construct the case, ask for expert opinions on the evidence if necessary, seek and receive legal opinions from the legal section of the BSI or the Union Attorney General and their respective legal offices, request permission to prosecute the accused from the relevant Ministry and file the case before a relevant Court. If the case is not strong enough for sending up to the Court, and it is necessary to take some other action, such corruption cases are referred to the relevant Ministry for taking departmental action.

12. When such cases are sent up before the Courts, BSI prosecutors or Law Officers prosecute those cases. Throughout the prosecution period, prosecutors consult with the relevant Investigation Officers of the cases to build strong cases against the accused. If necessary, the legal office concerned files appeals or revisions against the order and judgement of the original or appellate court to enhance punishment so as to obtain effective and deterrent punishments. The BSI may also request the relevant legal office to file amendments in those cases. If the accused is acquitted by the Court, the officer from the Division or State Attorney General Office may file an appeal against the acquittal order to the High Court of the Region or the High Court of the State. The BSI or the Myanmar Police Force may also file an appeal against the acquittal order to the High Court of the Region or the High Court of the State through the relevant Division or State Attorney General Office.

#### **IV. CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME**

13. Generally, law enforcement bodies are authorized to conduct search and seizures according to the Code of Criminal Procedure. In cases relating to the special laws, search and seizures must be in line with the provisions of those special laws. The proceeds of crime must be confiscated by the court according to the Code of Criminal Procedure and other relevant special laws.

14. The following laws allow the confiscation of the proceeds of crime:
- (a) Section 53 of the Anti-Corruption Law assigns the confiscation power to the Anti-Corruption Commission relating to money and property obtained by bribery and corruption and proceeds of crime.
  - (b) Relating to the cultivation, possession, transportation, and sale of narcotic drugs, psychotropic substances or chemicals/plants, laundering the proceeds, accepting bribes and conspiracy, section 24 of the Narcotic Drug and Psychotropic Substances Law 1993 allows confiscation.
  - (c) Section 52(a) of the Anti-Money Laundering Law, 2014 allows the Courts to pass an order confiscating money and property obtained by illegal means.
  - (d) The Code of Criminal Procedure, 1889, Section 517 allows for the general confiscation of items of property, including money and other valuable property. Although the provision is general in nature, it can be widely applied and used in various corruption cases before the court as evidence and exhibits including money and property.
  - (e) According to some cases in which money and property are supposed to be obtained from illegal sources but are not evidently related to any criminal cases, pursuant to The Criminal Law Amending Act.
  - (f) In addition to the Code of Criminal Procedure, the Criminal Law Amending Act is a more effective procedural law to freeze and confiscate effectively the assets of a person alleged to have committed corruption if there are grounds to believe that he committed corruption. The law empowers the district administration officer, without seeking an order of a court, to issue a warrant to be attached to the assets of the accused person. This speedy action may deter the accused from transferring the assets or enable the government to freeze the money or property obtained by the accused in a timely manner.

15. The BSI investigated 87 corruption cases from 2003 to 2013, and 273 offenders were prosecuted and punished according to the law and 88 million US dollars were confiscated.

16. The Bureau also investigated 34 money laundering cases from 2014 to 2017, in which 3 offenders were punished, 12 million US dollars were seized and 18 million US dollars were confiscated.

## **V. THE PROCLAMATION OF THE PRESIDENT'S OFFICE OF THE UNION OF MYANMAR REGARDING THE ACCEPTANCE OF GIFTS**

17. The Proclamation of the President's Office of the Union of Myanmar regarding the acceptance of gifts was announced on 1 April 2017. It contains a definition of gifts, basic-principle provisions relating to prohibited organizations/persons, exceptions, things and gifts which are not allowed to be accepted, and gifts which are given by foreign governments. This proclamation has already been distributed to all Government Departments and Organizations.

## **VI. CHALLENGES**

18. Myanmar does not have a whistle-blower protection law and does not have a legal framework for special investigation techniques, such as wiretapping and video conferencing. To investigate public servants, we need approval from the applicable department. Thus, the accused knows about the investigation, and they sometimes abscond or conceal the evidence. Consequently, when we conduct searches, there may be no evidence, and the accused may have withdrawn their money from the bank so there is nothing to confiscate. Because there is no whistle-blower protection law, the witnesses often fail to appear before the court so it is difficult to punish the offender effectively. These are weak points in the legal framework and the procedures for the management of confiscated property. The Anti-Corruption Law is not fully in compliance with UNCAC. Myanmar is still a developing country and is not able to use online systems in public services. We have to conduct services in person, and there is often red tape in the system so it is vulnerable to corruption. Most people pay in cash so it is hard to report suspicious transactions. Now, government departments are conducting open tenders in public procurement and are reducing the red tape.

19. The places that can cause corruption are the departments that can permit big projects, those that deal with people, and the courts, which can punish offenders. We have enacted the Law for the Protection of Personal Freedom and Safety, and it is difficult to trace, conduct surveillance or wiretap a suspect. Many Myanmar nationals work abroad and use the hony/hawala system to send money back to Myanmar so there are no suspicious transaction reports, and it is hard to trace the money laundering and tax evasion. In addition, we are not able to use an e-procurement system.

## **VII. PLANS OF ACTION**

20. Myanmar's strategies for corruption prevention are as follows:
- (a) To regard corruption and prevention as matters of international concern and to prevent corruption multilaterally.
  - (b) To cooperate with regional governmental organizations and society to prevent corruption.
  - (c) To cooperate with regional anti-corruption agencies.
21. Tactics for corruption prevention are as follows:

- (a) To reduce poverty, to achieve progress and give priority to the welfare of public servants.
- (b) To reduce malpractice in order to create good governance and clean government.
- (c) To create transparency in the administrative sector and to reduce formalities in public administration.
- (d) To conduct corruption awareness programmes for the public sector and private sector to create a corruption free environment.
- (e) To set up a complaint system for corruption and bribery.
- (f) To form a joint team consisting of central organizations and commissions at all levels and departments.
- (g) To create a plan of action to ensure that the private sector is free from corruption.
- (h) The essential plan must be implemented and reviewed according to the law and procedures.
- (i) To apply technology instead of human resources to reduce abuses of power.
- (j) To create independence in the administrative and judicial sectors.
- (k) To cooperate with the media to prevent and fight corruption.
- (l) To apply modern technology to fight corruption.
- (m) To modernize and amend the Anti-Corruption Law, Rules and Regulations, Orders and Guidelines to fight corruption.
- (n) To apply a reward and punishment system to fight corruption.
- (o) To provide suitable opportunity and assurance to fight corruption.
- (p) To cooperate with international organizations to fight corruption.

## **VIII. CASE STUDIES**

### **A. Criminal Miscellaneous Case No. 7/ 2015, Bago Region High Court**

22. The offender U Shwe, who was a Deputy District Judge from Taungoo District Court, was prosecuted under Section 56 of the Anti-Corruption Law and Section 512 of the Criminal Procedure Code. Although he was dismissed from his job for taking a bribe from a client, the Bago Region High Court took action against the offender with proclamation and attachment of property in Criminal Miscellaneous Case No. 7/ 2015.

### **B. Criminal Regular Trial No. 1/ 2014, Sagaing Region High Court**

23. U Tin Sein, Township Judge, Homemalinn Township, Sagaing Region, who was convicted by the Sagaing Region High Court, CRT No. 1/ 2014 under Section 56 of the Anti-Corruption Law, was sentenced to 10 years' imprisonment. In this case, U Thein Lwin, Bailiff of the Homemalinn Township Court, was referred as a principal witness in accordance with Section 164 of the Code of Criminal Procedure, whose deposition led to the judge's conviction.

### **C. Criminal Regular Trial No. 563/ 2015, Meikhtila Township Court**

24. Lawyer U Aye Lwin and another were convicted by the Meikhtila Township Court, CRT No. 563/ 2015 under Section 57/ 63 of the Anti-Corruption Law. In this case, U Aung Ko Linn (a) Ko Aung Aung, the driver, was referred to, as a principal witness, in accordance with Section 164 of Code of Criminal Procedure, whose deposition led to the conviction of the defendants.

**D. Criminal Miscellaneous Case No. 68/ 2014**

25. Yankin Additional Township Judge Daw Khin Lay Nge was prosecuted under the Anti-Corruption Law Section 56/ Cr.P.C Section 512 in the High Court of the Yangon Region in Criminal Miscellaneous case No. 68/ 2014. It was alleged that she was bribed in the amount of Kyats Three Hundred Thousand from the client and this case is still in progress.