

## **GROUP 3**

### **TRIAL AND SENTENCING IN CORPORATE CRIME CASES**

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#### **I. INTRODUCTION**

Group 3 started its discussion on 23 September 2007. The Group elected by consensus Mr. Mohamed Ahmed Abani as its chairperson, Mr. Takeshi Hashimoto as its co-chairperson, Mr. Mc Syd Hubert Chalunda as its rapporteur, and Mr. Trimulyono Hendradi as its co-rapporteur. The Group, which was assigned to discuss “Trial and Sentencing in Corporate Crime Cases”, agreed to conduct its discussion according to the following agenda: 1) The nature of corporate trials in respective countries; 2) The rule of evidence in the different jurisdictions i.e. the hearsay and documentary evidence rule; 3) Fair and speedy trials, i.e. preparation for trials: disclosure of evidence, clarification of disputes, utilization of forensic analysis or expert witnesses for the fact finding; 4) Sentencing procedures in participating countries; 5) Effective sanctions against corporate crimes, i.e. sanctions against individuals, such as directors, senior supervisors and ordinary employees as well as sanctions against corporate entities.

#### **II. THE CURRENT SITUATION OF THE NATURE OF CORPORATE CRIME TRIALS**

The group first reviewed the current situation of the nature of corporate crime trials in participants’ countries.

##### **A. Thailand**

The participant from Thailand said that in her country they use the civil law system and there is no difference in the trial of corporate crimes and other criminal trials. However, in many corporate crime trials there are many forensic expert witnesses. The trial process is time consuming as the cases are complicated. More time is needed to present the evidence in court. She went on to say that the trials are presided over by no fewer than two judges. There is no jury. If there is an appeal of the case to the Court of Appeal or the Supreme Court, three judges preside over the case. In Thailand some corporate crimes regarding intellectual property are tried in the Central Intellectual Property and International Trade Court. Since intellectual property cases possess different characteristics from ordinary criminal cases, a new procedure has been devised to achieve convenient, speedy and fair proceedings in these cases. There is no special court for tax crimes. The tax court is only for civil cases.

##### **B. Malawi**

The participant from Malawi said that his country uses the common law system. Corporate criminal cases are tried in the same way as other criminal cases using the same courts. The cases are normally initiated in the Magistrate Courts. However, due to their complexity, the cases are transferred to the High Court for trial. In the Magistrate and High Courts, the cases are presided over by a single magistrate or judge respectively. Even though the law provides that cases at the High Court can be presided over by the jury, in reality a single judge presides over them. (The law also provides for the single judge in the absence of the jury). On appeal, the cases are presided over by no fewer than three judges in the Supreme Court. Malawi does not have a special court for tax crimes. There is only a special department for the enforcement of tax laws and investigating tax evasion.

##### **C. Indonesia**

The participant from Indonesia said that in his country they use the civil law system. Corporate criminal

cases are tried in the same courts as other criminal cases. At first instance, the cases are examined by three judges. If any of the parties is not satisfied with the judge's verdict, an appeal is made to the High Court where three judges also hear the case. If the verdict of the High Court is not satisfactory to any of the parties, an appeal is made to the Supreme Court. Three judges again will hear the appeal. Indonesia does not have a special court for tax crimes. There is only a special department for the enforcement of tax laws and investigating tax evasion.

#### **D. Niger**

The participant from Niger said his country uses the civil law system which is different from other group members' legal systems. Corporate criminal cases are tried in the same courts as other criminal cases. The cases that are serious in nature are tried by a panel of seven, comprising three professional judges and four jurors. The jurors are selected from the citizenry and are of different professional backgrounds. The verdict in the case is made by all seven in consultation. The participant expressed his concerns with this system as he feels that it can result in injustice as most of the jurors do not know the law and might reach a wrong conclusion in the case. He concluded by saying that there are neither special courts in Niger which try tax cases nor special departments to deal with them.

#### **E. Japan**

The participants from Japan said that in their country corporate criminal cases are tried in the same courts as other criminal cases. The trials for corporate crime cases frequently take a long time due to their complexity. Trials are conducted by professional judges. They said that at first instance, if the case is simple, it is decided by a single judge; if the case is complex, it may be decided by three judges. If there is an appeal of the case to the High Court, three judges will preside over the case. Moreover if there is an appeal of the case to the Supreme Court, in principle five justices will preside over the case. However, if the case has significant issues, such as constitutional considerations, all 15 justices may preside over the case. The participants said that two major District Courts (Tokyo District Court and Osaka District Court) have special departments for tax evasion cases.

At the conclusion of the discussion, the Group unanimously confirmed that there are no special courts in their respective countries which try corporate criminal cases. The cases are tried in the same way as all other criminal cases. However, in Thailand, corporate crimes regarding intellectual property are tried by the Central Intellectual Property and International Trade Court.

### **III. THE RULE OF EVIDENCE**

#### **A. Hearsay Rule**

The Group afterwards discussed the rules of evidence in respective countries regarding hearsay and documentary evidence. The participants from Thailand, Malawi, Indonesia and Japan said that hearsay evidence is inadmissible in their courts. The person who perceived the crime with his or her senses is required to give testimony in court to allow the court to cross-examine him or her. The participant from Niger said that in his country's legal system hearsay evidence is admissible during trial. The participants from Indonesia and Malawi went on to say that despite the general inadmissibility of hearsay evidence in their courts, the testimony of an expert witness can be admitted in court in the absence of the expert. The Japanese participants said that one of the exceptions to the ban on hearsay evidence is when the defence agrees to its use in court. Other exceptions are provided in the Code of Criminal Procedure. For example, when the witness cannot testify in court because he or she has passed away, is outside the country etc., the written statement recorded by the prosecutor is admitted in court as hearsay evidence. If the witness has changed the statement since it was recorded by the prosecutor and the requirements provided in the Code of Criminal Procedure are satisfied, the statement is admitted in court as hearsay evidence. Financial statements and general ledgers are regarded as hearsay evidence in Japan; however, such evidence is admissible as an exception to the hearsay rule, which is stipulated in the Code of Criminal Procedure.

#### **B. Documentary Evidence**

The participants from Thailand, Malawi, Indonesia and Japan all explained that original documents are admissible as evidence in their courts. However, there is an exception to this rule whereby copies can be admitted in evidence. In Thailand, if the originals are not available, certified copies or oral evidence of their contents are acceptable. If official documents are cited as evidence, even where the originals are still

available, copies certified by the authorities may be sent to court as evidence, unless otherwise directed in the summons. In Malawi and Indonesia, the copies can be admitted if they have been certified by public notaries, government officials or commissioners of oaths as true copies of the original documents. As for Japan, there is no statutory law that prohibits the use of copies as evidence, however, according to the precedent, it is necessary to meet the following conditions:

- a) when it is known that the original document did exist
- b) when the original document can not be found
- c) when the copy is the true copy (exact copy) of the original document. In this case the person who originated the document must satisfy the court that the copy is exactly the one he or she originated.

The scenario, however, was different for the participant from Niger. He explained that both original and copied documents are admitted in evidence provided that the evidence was collected in the presence of the accused/offender and the court has agreed to its use.

All the participants concluded that in their respective jurisdictions, any evidence to be admitted in court must be collected by the investigators or any person conducting the investigation legally. Unlawful collection of evidence will render its inadmissibility in court.

### **C. Electronic Evidence**

The participants from Thailand, Indonesia, Japan and Malawi said that in their countries electronic evidence is admitted in court. In Thailand, the Electronic Transaction Act allows electronic documents to be used as evidence in the courts and makes digital signatures legally binding. Many Thai governmental rules and regulations have been revised to allow electronic documents as evidence. The Malawian participant, however, said that the law has not clearly taken care of the use of electronic evidence but with the advancement of technology and the increase in cases committed through computers, the courts allow its use provided the court is satisfied that the evidence has not been tampered with. The participant from Niger informed the group that electronic evidence is also admissible in Niger courts provided it is legally obtained.

## **IV. FAIR AND SPEEDY TRIAL**

### **A. Preparation for Trial: Disclosure of Evidence and Clarification of Disputes**

#### **1. Japan**

The participants from Japan said that the trials of complex cases, including corporate crime cases, sometimes take a very long time which earns public criticism. In order to speed up the trial process, they introduced pre-trial arrangement proceedings in November 2005. At these proceedings both parties sort out all preliminary issues like the evidence or witnesses to be used during trial, etc. All the factual disputes and clarifications in issue are sorted out before the actual trial.

The participants went on to say that until the pre-trial arrangement proceeding was introduced in Japan it was enough for the prosecutor to disclose evidence which he or she planned to use for the trial prior to the first trial date. In addition, according to Supreme Court precedent, the defence counsel could request the judges to order the prosecutor to disclose the particular evidence during trial in limited circumstances. By using the new pre-trial arrangement proceedings, now both parties can request such disclosure in a wider and earlier manner than before, which leads to speedy trials. The pre-trial arrangement proceedings are always *in camera*.

#### **2. Niger**

The participant from Niger informed the Group that there is no pre-trial proceeding in his country's legal system. There is no law requiring the disclosure of evidence before trial. However, in most cases the defence counsel is given the evidence against the accused before trial. The accused is also informed of the charges against him or her before the actual trial, and is further requested to find a defence counsel to represent him or her in the case. In the case that he or she can not hire a defence counsel, it is the duty of the government to assign one to represent him or her during trial in order to ensure a fair trial. The participant went on to say that the trials are always held in open court. When the trial starts it is held continuously until the case is disposed of.

### 3. Indonesia

The participant from Indonesia said there is no pre-trial proceeding in his country's legal system to disclose evidence. The pre-trial proceedings are only done to examine whether the arrest and/or detention was legal or not and to decide whether the district court has the jurisdiction to try the case at hand. In Indonesia the evidence is disclosed during the trial. However, if the defence counsel needs more evidence from the prosecutor, he or she is free to ask the judge that he or she be given the evidence by the prosecutor in order to prepare for the case. To ensure a fair trial the offender is allowed to bring his or her own evidence into court during trials.

### 4. Malawi

The Malawian participant explained that even though the law is silent on the disclosure of evidence, the prosecutor is expected to disclose all the evidence he or she will use during the trial at least 14 days before the trial date. This enables the defence counsel to prepare the defence and also speeds up the trial as there will be no unnecessary adjournment. The prosecutor is also expected to furnish the defence counsel with the list of its witnesses and their statements.

The participant further said that before the actual trial, the defence counsel is free to seek any clarifications from the prosecutor or judge. They can object to the charges themselves if they are improper or defective. They can even seek an amendment of the charges. The law allows that any clarification should be made before the trial commences. The law does not allow the clarification of disputes at the appeal stage of a case. The participant informed the Group members that criminal trials in Malawi are very long and slow. This is happening mainly because of a shortage of legal personnel in the country who can handle the cases. As a result, there are a lot of adjournments during the trial.

### 5. Thailand

Finally, the Thai participant said the law in her country provides for the disclosure of evidence by both the prosecutor and defence counsel before the commencement of trial. In case of the accused not making a statement or making a negative statement, when any of the parties requests, or the court deems suitable, the court may designate the date and notify both parties of evidence inspection not less than 14 days before the trial. Any disputes in the case are clarified before the trial. The prosecutor and the defense counsel agree in advance the number of witnesses and who is to testify at the trial. Trials in Thailand are continuous. There is no break or adjournment once the trial has commenced. However, if the witness does not appear or if there are reasonable grounds for the adjournment of the trial, the court shall adjourn the case as it thinks fit.

### 6. Summary

In conclusion, it was observed that Japan, Thailand and Malawi recognize pre-trial proceedings to clarify any disputes in the case in order to speed up the trial. Niger and Indonesia do not have pre-trial proceedings. Secondly, it was observed that Japan, Malawi, Thailand, and to some extent Niger, have a disclosure of evidence principle before the trial commences. Indonesia on the other hand does not have the disclosure of evidence principle. Lastly, it was observed that all the countries except Malawi, and to some extent Japan, have a continuous trial process which speeds up the trial. The shortage of legal personnel (judges, prosecutors and defence lawyers) was cited as a reason for the adjournments of trials in Malawi.

## **B. Utilization of Forensic Analysis and/or Expert Witnesses in Fact Finding**

### 1. Thailand

The Thai participant was the first to comment on this topic. She said that in her country, forensic analysis is used in some criminal cases such as drugs and murder as well as in corporate crimes. The person who does the forensic analysis becomes a witness and is required to testify in court under oath on the analysis done. The courts also utilize the expert witnesses. The experts give evidence in their area of expertise. The experts can give evidence in person or use their witness statements provided the defence counsel has agreed to it. She concluded that the only problem facing Thailand is the lack of experts in some fields.

### 2. Malawi and Indonesia

The participants from Malawi and Indonesia said that in their respective countries forensic analysis is used in the courts to prove the case. For example, computer experts are used to retrieve and analyse data deleted from a computer. However, the Indonesian participant said that for corporate crime in his country

they do not need forensic analysis but opinions of expert witnesses. Soon after the analysis, a report is prepared which is tendered in court as part of evidence. The two participants further explained that the laws in their respective countries allow expert witnesses to be used and give evidence in court in the area of their expertise. The experts give evidence under oath in person. However, in some instances the court can allow their reports or statements to be admitted in evidence in their absence. The Malawian participant said it is up to the court to assess the capability of the expert witness before allowing him or her to give evidence as an expert. It is mainly done through assessing his or her past experience and previous work.

### 3. Niger

In the case of Niger, as stated by its participant, forensic analysis and expert witnesses are also used. On the issue of forensic analysts and expert witnesses, there is a prepared list of experts who are chosen when need arises to analyse a matter or give expert opinion. The defence counsel has to agree to the choice of the analyst or expert. However, the participant said that if there is no one on the list, another expert can be chosen. After the analysis or examination, they produce a report which is tendered in court as part of evidence. They are also called in court to give their evidence in person.

### 4. Japan

Finally, the Japanese participants informed the group members that forensic analysis is used in Japanese courts in several ways, like fingerprinting and DNA and computer analysis. The police have specialists who testify in court on their analysis. On the issue of expert witnesses, the participants explained that they are frequently used and testify in court. Their opinions and analysis are used in court as part of evidence. For example, psychiatrists are sometimes called to give opinions on the mental condition of a defendant. The prosecutor chooses the expert witnesses. However, the court has the final decision whether or not to allow a particular expert witness to give evidence. The participants said that reports by expert witnesses are treated as hearsay evidence. Unless the defence counsel has agreed to use it, the expert witness is called in court to testify concerning the admissibility or credibility of the report. In some cases, if necessary, the court has the authority to choose an expert witness without request of the parties.

## **C. Fair Trial**

### 1. Japan

The Japanese participants were the first to address this topic. They said that in Japan, a fair trial is a constitutional right of every accused person. In order that the accused is accorded a fair trial, the trial should be open to the public. In addition to that it must be presided over by unbiased judges. In this regard, the only information available to the presiding judges before the trial is the indictment. They continued in saying that the Japanese court system would like as much as possible to have a continuous trial after commencement but in reality it is virtually impossible because defence counsels are busy with other cases. As a result, there are adjournments which delay the cases. The pre-trial arrangement proceedings are aimed at speeding up the trial where unnecessary issues are eliminated and relevant matters are isolated and are discussed at the actual trial. The participants were of the view that in order to accord the accused a speedy trial, there is a need to increase the number of defence counsels.

Finally on the issue of trial, the two participants narrated that in principle in Japan if the accused is absent from court, the trial can not proceed. However, in minor cases where a fine of up to five hundred thousand yen will be imposed in case of conviction, the trial can proceed in the absence of the accused. However, even in such a case, he or she is usually present at the trial.

### 2. Malawi, Thailand and Indonesia

The three participants from Malawi, Thailand and Indonesia expressed similar sentiments regarding fair trial in their respective countries. They explained that fair trial is maintained by making sure that the accused is afforded the chance to answer to the charges leveled before him or her. He or she should not be condemned before he or she is heard. Secondly, the trial must be presided over by unbiased judges. Thirdly, the accused has the right to find a lawyer of his or her choice to represent him or her. Fourthly, the trial should be held in public and the accused should be given a chance to cross-examine the witnesses against him or her or contradict the evidence against him or her. In addition to the above, in Malawi and Indonesia, fair trial is afforded to the accused by separation of duties between the investigator and the prosecutor. In these countries, one can not be an investigator and prosecutor of the same case. In Thailand, in special cases

specified by law, the prosecutor may be required to inquire or participate in order to give advice and examine the evidence from the beginning of the investigation process. In cases of serious transnational crime committed by an organized crime group or a criminal case in which a politically or socially influential person is the principal, instigator or supporter, a prosecutor is required to conduct a joint investigation with the special case inquiry official. Moreover, in cases where the offence is alleged to have occurred outside Thailand, the Attorney General, or any other official(s) in charge of his or her functions, is the inquiry officer.

### 3. Summary

Lastly, all the participants said that in their respective countries, as far as criminal trials are concerned, the accused must be present in court during the proceedings otherwise the trial will be seen to be unfair. The absence of the accused before court is enough reason to cause an adjournment of the trial. On the same matter, the participant from Niger explained that in his country an accused is required to be present in court for his or her trial. However, in some cases the trial can proceed in the absence of the accused in court.

## V. SENTENCING

### A. Sentencing Procedures

#### 1. Thailand

Each participant explained the sentencing procedures in their respective countries and the factors the court takes into account in passing sentences. The Thai participant explained that the two trial judges pass a verdict after hearing evidence from both the persecutor and defence counsel. A judgment is read in an open court either on the day the trial is over or within three days from such date. However, if there are reasonable grounds the court may postpone the reading of the judgment to a later date. Upon conviction and in coming up with the sentence several considerations are taken into account by the judges such as the gravity of the offence committed, past criminal record of the accused, etc.

#### 2. Malawi

The participant from Malawi said that after both the prosecutor and defence counsel have closed their cases, they make final oral and written statements that will be submitted to the court. Based on these submissions and the evidence submitted during the trial, the trial judge passes a verdict of guilty or not guilty. In the event that the accused is convicted, sentencing is in most cases passed separately. It can be done the very day of the judgment, after a day or two, or even after a week. At this moment the accused (now a convict) is kept in prison. On the day of sentencing, the prosecutor submits to the court its antecedents and pleads with the court as to what they think should be the right sentence for the convict. On the other hand, the defence counsel submits its mitigations pleading with the court to be lenient with the convict based on the facts they put forward. The judge therefore passes an appropriate sentence based on the facts put forward by both parties, the gravity of the offence and the past criminal record of the convict.

#### 3. Indonesia

In Indonesia, before the judges give a verdict, both the prosecutor and the defence counsel submit their arguments. Normally, the prosecutor submits that the offender should be convicted and proposes a possible sentence. The defence counsel on the other hand submits that the offender should be acquitted and set free. The participant went to say that the judges make a decision based on the prosecutor's recommendations, the facts that came up during trial and the defence counsel's arguments. Many considerations are taken into account by judges in sentencing such as the gravity of the offence committed, the offender's past criminal record, etc.

#### 4. Niger

According to Mr. Abani, sentencing in Niger, especially in serious offences, is decided by three judges and four jurors at the end of the trial. In simple offences, a verdict and sentence is passed by a single judge. The verdict and sentence is reached by the consensus of the said seven people. In Niger, it is possible to pass a prison sentence on the offender and impose a civil penalty on him or her, which normally is compensated to the victim of his or her crime.

#### 5. Japan

The matter of sentencing procedures was concluded by the explanation of the two Japanese participants

as to the procedure followed in their country. They said that there are no clear sentencing guidelines in their country. In closing argument, the prosecutor recommends a particular sentence. The judge gives a verdict on the case. In the event of a conviction a sentence is rendered taking into consideration the content of the crime such as motive, gravity of the offence, etc. The prosecutor's recommendation is also important for sentencing. In practice, judges usually consider the prosecutor's sentencing recommendation as an important guideline for similar cases. In contrast to Niger, the Japanese participants said that criminal and civil sanctions are not pronounced together. Recently, the Code of Criminal Procedure has been amended to allow victims to use the outcome of the criminal proceedings to claim damages. However, this procedure can be applied only to certain types of serious offences such as homicide, not corporate crime.

## **B. Sentencing Guidelines**

### **1. Japan**

It was agreed before addressing the last topic on our agenda, which was effective sanctions against corporate crime, that there was need to discuss the sentencing guidelines in the respective countries. The matter was brought to the floor by the co-chairperson, Mr. Hashimoto, who was also the first to contribute. He said that in Japan there is no standardization or formal guideline in giving sentence. Sentences vary depending on what the judge deems appropriate, therefore in corporate crime deciding the sentence is very difficult. He was of the view that it would be good if there were formal guidelines to guide judges, especially for corporate crime.

The other Japanese participant added that prosecutors on the other hand have very precise guidelines in deciding the sentence to give as a sentencing recommendation to the judge. For instance in corporate crime there is a special standard which they use and follow.

### **2. Niger**

The participant from Niger said that there are no formal sentencing guidelines in his country. The law in Niger provides for the minimum and maximum sentence for every offence. Judges are at liberty to pass a sentence which they deem fit depending on the facts of the case. They can even pass a lower sentence than the one provided for in law. He went on to explain that in Niger sentences are categorized into three groups:

- If it is a petty crime, the penalty is a fine ranging from 500CFA to 100,000CFA or imprisonment of 1 day up to 29 days;
- If it is an offence, the penalty is imprisonment of 30 days to not more than 10 years, deportation and sometimes fine;
- If it is a serious crime, the penalty is 10 to 30 years' imprisonment, life imprisonment or the death penalty.

### **3. Malawi**

In Malawi there are no clear sentencing guidelines. The penalties are provided for in laws. The law provides the maximum sentence on every offence. However, in practice, judges are very reluctant to impose the maximum sentence unless the offender has previous convictions for the same offence or the offence is very serious. Judges sometimes follow previous judgments on sentencing, especially if they are rendered by the Supreme and High Courts. The participant further explained that the Magistrate Courts in Malawi cannot pass a sentence of more than 14 years' imprisonment. If the magistrate thinks the offender should be sentenced to more than 14 years, he or she transfers the case to the High Court which has jurisdiction to pass sentences of more than 14 years. Lastly, the participant said that the offender has the right to appeal both the conviction and sentence.

### **4. Indonesia**

On his part, the Indonesian participant said there are no formal sentencing guidelines in his country. However, in similar cases there is a custom among the judges to pass similar sentences. In Indonesia the prosecutor would be guided by his or her supervisor on the appropriate sentence to recommend to the judge. Before recommending to the judge the possible sentence, the prosecutor must report to his or her supervisor and propose a suitable sentence. The supervisor will either agree or disagree with the prosecutor's proposal. The proposed sentence will be submitted to the judge as the prosecutor's recommendation on the possible sentence to be imposed on the offender. In most cases, the judge will follow

the recommendation of the prosecutor.

#### 5. Thailand

The participant from Thailand explained that there are no formal sentencing guidelines in her country. However, judges have informal guidelines that they use among themselves. The sentences are provided for in the legislation and other judicial precedents, especially those from the Supreme Court. The judges have the power to pass the sentence they deem fit depending on the facts of the case and what the law provides.

In concluding the matter, it was found that none of the five countries have clear and formal sentencing guidelines which judges can use. Judges rely on the penalties provided for in the laws or previous precedents. It was felt by the Group members that it is important that the countries have clear and formal guidelines on sentencing to aid judges in coming up with appropriate and consistent sentences since corporate crimes are so complicated, even though they should not be bound by them. The guidelines will remove the disparities in sentencing seen now in the countries where similar cases end up with different sentences.

## VI. EFFECTIVE SANCTIONS AGAINST CORPORATE CRIMES

### A. The Situation in Participating Countries

#### 1. Thailand

The Thai participant said that in her country there are criminal sanctions that are imposed on both the individuals and corporate entities committing corporate crimes. Upon conviction, the individuals are subject to all types of penalties. However, as for corporate entities, there are only certain penalties that can be imposed; such penalties are fines and forfeiture of property. On administrative sanctions, Thailand also imposes administrative sanctions on individuals and corporate entities. For instance, if there is evidence that the condition or operation of any securities company has caused damage to the public interest, the Office of the Securities and Exchange Commission has the power to order such company to remove its directors, managers or persons who are responsible for its operation who have caused the damage (the Securities and Exchange Act B.E 2535). As for the corporate entities, administrative sanctions also include various measures such as forcing the closure of business or daily fine by the competent officials. Civil sanctions are also imposed on individuals and corporate entities as punishment for corporate crimes. They have to pay compensation for damages to the victims of crime.

#### 2. Niger

The Niger participant explained that criminal, civil and administrative sanctions are imposed on perpetrators of corporate crimes in Niger. Criminally, individuals are sentenced to death, imprisonment (life or determinate), or they are expelled from Niger for a specified period of time, their proceeds are confiscated, and further, their civil rights, such as voting, are denied (revoked). The corporate entities are, on the other hand, fined and their assets are confiscated. Also the company is debarred from conducting business with the government, judicially suspended from carrying on their business for a specified period of time, or dissolved. However, the law provides that the corporate entities and individuals that report any criminal acts in their company or their association with others are exempted from criminal sanctions. Civil sanctions are imposed on corporate entities to compensate the victim of the crime for damage.

#### 3. Indonesia

The Indonesian participant said that in his country both criminal and administrative sanctions are imposed on the accused. Criminally, the accused may be imprisoned or fined and the accused company's trading licence would be revoked and the business dissolved followed by the liquidation of the company. He went on to say that criminal and administrative sanctions are decided in separate courts. According to the participant, there is no civil sanction in Indonesia for the accused of corporate crimes.

#### 4. Malawi

In Malawi, as expressed by its participant, criminal and administrative sanctions are imposed on the offenders of corporate crimes. The main sanctions are imprisonment or fine. Administratively, the government can revoke the work permit granted to the individual if he or she is a foreigner and request him or her to leave the country. Coming to the sanctions imposed on the corporate entity, the participant explained that the law,

especially on money laundering and terrorism financing, imposes criminal sanctions on the corporate entity itself. Upon conviction, the corporate entity is fined and automatically loses its business. Administratively, the corporate entity's business licence can be revoked. Furthermore, the corporate entity can be disbarred from conducting business with the government.

#### 5. Japan

In Japan, according to its two participants, criminal sanctions imposed on individuals are mainly imprisonment and fine. In addition, a director sentenced for certain types of corporate crime is disqualified from his or her position which will result in difficulties in securing another job. If the individual is of a lower position, the corporations have their own internal mechanics in dealing with him or her. Normally, he or she will be fired from the company. There is no punitive damage sanction imposed on the offenders of corporate crimes. Regarding sanctions on the corporate entity, the participants explained that the criminal sanctions are imposed on corporations when they violate the law which provides for double punishment. Administrative sanctions (e.g. an order for business suspension, revocation of licence) can also be imposed on corporations.

### **VII. RECOMMENDATIONS**

After a lengthy discussion on all the above topics the group members came up with the following recommendations:

1. There is no need to establish or create special courts in respective countries to deal with corporate crime cases. The procedure currently followed in dealing with such cases is appropriate. However, it would be useful to establish specialized departments to deal with corporate crime cases like tax evasion in order to ensure speedy and fair trials;
2. Every country should have legislation to provide for the use of electronic evidence to avoid the evidence being challenged in court. The legislation will make its use in court unequivocally binding;
3. As much as possible, the countries should use original documents as evidence in courts. Copied documents must be used with strict conditions to avoid the use of tampered evidence;
4. Preparation before the actual trial is vital in all the countries where clarifications of disputes and disclosure of evidence should be made. The preparation will speed up the trial process because it will cut unnecessary objections which may arise during the trial;
5. The court should maintain a list of qualified forensic analysts and experts who can be called to give testimony, rather than the parties calling their own analysts and experts; this would avoid possible conflicts of opinion between opposing experts. The list would be prepared by the court in consultation with relevant bodies. However, the parties should not be bound to use only the analysts and experts on the list;
6. Countries must have adequate jurists and legal personnel to handle corporate crime cases in order to ensure fair and speedy trials. Countries should strive to have as much as possible a continuous trial process without adjournments so that there is a speedy trial process;
7. Judgment and sentencing should be rendered within a reasonable time after the trial. Preferably, the judgment and sentence should be delivered together at the end of the trial;
8. In order to avoid disparities in sentencing and speed up trial, it is useful to establish sentencing guidelines. However, judges should not be bound by the guidelines in determining (passing) sentence;
9. In order to combat corporate crimes, there should be a balance amongst criminal (penal), civil, and administrative sanctions imposed on both corporate entities and the individuals concerned.