



ADB OECD Anti-Corruption Initiative

for Asia-Pacific

Combating Corruption In the New Millennium

The Secretariat

Action Plan stocktaking exercise

Background:

Endorsing countries of the Action Plan have agreed to periodically report on progress made to respond to the Action Plan's goals and objectives. The Steering Group, at its third meeting of March 2003, has agreed on the format and timeframe for this first reporting, which consist of a general stocktaking exercise and a self-review of the implementation of their first set of selected priority reforms areas. To help countries in preparing their reports and ensure consistency in the structure of reports, the Secretariat has prepared the present document which outlines the format on the basis of which countries will prepare their self-reporting.

Purpose:

The purpose of the stocktaking exercise is to gain a comprehensive and structured overview of the endorsing countries' legal and institutional framework in place to ensure and enhance transparency in the public sector, combat bribery and promote transparency in business operations, and facilitate public involvement in the fight against corruption. The results of this exercise should help participating governments understand better the main challenges which their countries are facing in the context of their efforts to combat corruption, assess difficulties in implementation of policies, learn from the solutions found by other countries and identify measures to further enhance anti-corruption efforts. Consequently, the exercise will assist endorsing governments in continuing their implementation efforts under the Action Plan and, in particular, in selecting the second set of priority reform areas under the Plan. The report from this exercise will serve in the future as a benchmark for measuring progress and for identifying areas in which targeted reform is crucial.

To enable a wider audience to take stock of countries general trends and prospects, and learn about current anti-corruption efforts among endorsing countries, country reports will be circulated, as background documents, to all participants at the Initiative's fourth regional anti-corruption conference (Kuala Lumpur, Malaysia, 3-5 December 2003).

Document structure:

The present document is structured along the lines of the Action Plan and its three Pillars with the aim of soliciting information on the institutional and legal framework in place in endorsing countries to respond to the Plan's different goals. The Country Reports should be precise and provide sufficient detail to take stock of policies and practice consistent with the three pillars of action. In particular the reports should reflect all relevant elements of the policies, including any on-going or planned reforms, so as to provide a complete picture. Where possible, legal or other supporting documents should be provided in electronic format and in English (and the original language if different) or by indicating, in the body of the report, the website where the documents can be downloaded.



Pillar I: Developing Effective and Transparent Systems for Public Service

Action Plan objective	Regulatory or legal framework (pls. provide corresponding document or legal text)	Institution in charge of implementation (i.e. ministry, department, independent internal or external oversight body etc.)	Pls. briefly describe any relevant recent or planned reforms in this area, i.e. their objectives, implementation stages, outputs and timeframe.
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Integrity in Public Service: Establish systems of government hiring of public officials that assure openness, equity, and efficiency and promote hiring of individuals of the highest levels of competence and integrity, through:

a) Development of systems for compensation adequate to sustain appropriate livelihood and according to the level of the economy of the country in question	<p>Minimum wage – established under the Price Controls Act under Labour Ordinances. The minimum wage, recommended by a committee, considers factors such as cost of living. It requires parliamentary approval prior to administering.</p> <p>Welfare Benefits - Old Age, Child and Destitute/Infirmed</p> <p>Superannuation – Cook Islands National Superannuation Fund</p>	<p>Ministry of Internal Affairs</p> <p>Cook Islands National Superannuation Fund (CINSF) Office</p>	<p>The minimum wage has remained at NZD4.00 per hour since 2000. A Cost of Living Adjustment Committee (COLA) was appointed by cabinet in 2000 to review this rate, however no solid response has been received to revalue the minimum wage since this time. Internal Affairs have submitted revalued minimum wage rates but this also has not yet been taken under consideration.</p> <p>CINSF became effective at the end of 2000 with a contribution of 3% in the first year with most government employees. The rate of contribution has gradually increased to 5% in August 2002 and is now compulsory for all public servants in the Cook Islands.</p>
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b) Development of systems for transparent hiring and promotion to help avoid abuses of patronage, nepotism, and favouritism, help foster the creation of an independent civil service; and help promote a proper balance between political and career appointments	<p>PSC Act 1996 – Covers good employer principles and the Employment of HOMs. PSC sets up hiring and promotion systems for HOMs with recommendations put forward to Cabinet for final approval.</p> <p>MFEM Act – Employment of public servants is the responsibility of HOMs. Therefore systems of employment are the devolved responsibility of the HOM. Checks on employment systems can be assessed through the annual audit of ministries and special investigations.</p> <p>Implementation of Job Sizing Project under the PSC Act to strengthen the system of hiring, pay scales and a Higher Salaries Commission.</p>	<p>Office of the Public Service Commissioner</p> <p>Audit Office</p>	<p>The Office of the Public Service Commissioner has identified the weaknesses in the devolution of HOM responsibility and is in the process of developing a standardised system for employment.</p>
c) Development of systems to provide appropriate oversight of discretionary decisions and of personnel with authority to make discretionary decisions	<p>The Policies and Procedures Manual relating to public financial expenditure was first developed by MFEM and released in 2002 under MFEM Act section 63. This section states <i>"Ministry Instructions – Subject to the provisions of this Act and any regulations made pursuant thereto, the ministry may from time to time issue instructions to ensure compliance with the recognised financial disciplines provided for in this Act."</i> As in the above, HOM Responsibility. Audit Office can provide checks to ensure appropriate systems are in place.</p>	<p>Onus on individual ministries and crown agencies to implement.</p> <p>Audit Office to provide oversight.</p> <p>MFEM to provide support to ministries to ensure systems are in place.</p>	<p>The Policies and Procedures Manual developed by MFEM has now been updated in 2004, accepted by Audit and the update has been delivered to all Ministries and Crown Funded Agencies.</p>

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d) Development of personnel systems that include regular and timely rotation of assignments to reduce insularity that would foster corruption	This concept is not required of government agencies. As stated earlier this is the responsibility of the HOM which would be included through each Ministries Personnel Policy. However, rotational systems are considered impractical in the small ministries.	Individual Ministries and Crown Agencies.	In developing a guide for personnel systems, PSC should consider the effectiveness of implementing a rotation of personnel policy.

Integrity in Public Service: Establish ethical and administrative codes of conduct that proscribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity through:

a) Prohibitions or restrictions governing conflicts of interest	<p>Financial Policies and Procedures Manual issued under section 63 MFEM Act. Part D, section 3.5 covers conflicts of interest <i>"Anyone intending to supply goods and services to the ministry or to purchase an asset from the Ministry must not be involved in the process of evaluation of quotations or tenders"</i></p> <p>The Audit Office is responsible to ensure that these procedures are being followed.</p>	<p>Individual Ministries and Crown Funded Agencies</p> <p>Audit Office</p>	Tightening of the Policies and Procedures Manual including the prohibitions governing Conflicts of Interest has been achieved in the updated 2004 version of this manual.
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b) Systems to promote transparency through disclosure and/or monitoring of, for example, personal assets and liabilities	<p>A Code of Conduct for Members of Parliament was developed and includes disclosure of personal assets and liabilities however this has not yet been approved by Cabinet.</p> <p>A Code of Conduct for Public Servants was prepared and awaits Cabinet approval. It does not require disclosure of personal assets and liabilities.</p>	<p>Office of the Public Service Commissioner to develop and advise on the Code</p> <p>The Audit Office to ensure compliance</p>	Heads of Ministries have agreed to implement a Code of Conduct for Public Service as part of their operational staff manuals and personnel policies.
c) Sound administrative systems which ensure that contact between government officials and business services users, notably in the area of taxation, customs and other corruption-prone areas, are free from undue and improper influence	Tax Legislation	Revenue Management Division (Tax and Customs) of MFEM	
d) Promotion of codes of conduct taking due account of the existing relevant international standards as well as each country's traditional cultural standards, and regular education, training and supervision of officials to ensure proper understanding of their responsibilities	Code of Conduct for Public Servants awaiting Cabinet approval, However individual ministries are expected to have a Personnel Policy that stipulates the standard of behaviour expected of a public servant.		

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e) Measures which ensure that officials report acts of corruption and which protect the safety and professional status of those who do	<p>MFEM Act – Under section 65 there is an obligation to report any action that may cause an offence including the failure to report information relating to crown financial management.</p> <p>PERCA Act – there is protection that allows for complaints to be made anonymously</p>	<p>MFEM</p> <p>Audit Office</p>	There is a need to initiate whistle-blowing legislation, however this is not a priority at this point in time.

Accountability and Transparency: Safeguard accountability of public service through effective legal frameworks, management practices, and auditing procedures through:

a) Measures and systems to promote fiscal transparency	<p>MFEM Act – Reporting requirements, Budget Process, procedures manual</p> <p>PERCA Act – ensure compliance of MFEM procedures</p> <p>PSC Act – HOM performance assessment including financial management</p>	<p>MFEM – production of a transparent budget including the development of transparent processes. Promotion and regular updating of the procedures manual within ministries to ensure GAAP are followed.</p> <p>Audit Office to ensure compliance</p>	
b) Adoption of existing relevant international standards and practices for regulation and supervision of financial institutions	<p>MFEM Act – requires all reports to be prepared in accordance with GAAP.</p> <p>Audit Office – ensure compliance</p>	<p>MFEM</p> <p>Audit</p>	A Special Interest Group has been formed under the NZ Institute of Chartered Accountants to enable domestic accountants to maintain their development hours through networking and training/presentations on current accounting issues and topics. The group is open to all accounting and finance professionals and promotes current international standards and practices.

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c) Appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on performance and decision making	PERCA Act – annual audits and the ability to pursue special investigations MFEM Act – Under section 28 ministries submit monthly reports	Audit Office	Delays in preparation and audits of Ministry and Crown Funded Agencies annual accounts is the major factor delaying the Government Annual Accounts, where by the latest accounts released are 2000/2001. This is considered untimely for informed decision making
d) Appropriate transparent procedures for public procurement that promote fair competition and deter corrupt activity, and adequate simplified administration procedures	MFEM Act – Reporting requirements, procedures manual	MFEM – provision of regulations for public procurement Audit – ensure compliance	
e) Enhancing institutions for public scrutiny and oversight	Public Expenditure Review Committee - PERC Parliament	PERC – created under the PERCA (Audit) 1997-1996 to investigate public expenditure Parliament	
f) Systems for information availability including on issues such as application processing procedures, funding of political parties and electoral campaigns and expenditure	The Electoral Act was amended in 2000 and removed the obligation to provide information on funding of political parties and campaigns.	Ministry of Justice	
g) Simplification of the regulatory environment by abolishing overlapping, ambiguous or excessive regulations that burden business			

Pillar II: Strengthening Anti-bribery Actions and Promoting Integrity in Business Operations

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Effective Prevention, Investigation and Prosecution:

Take effective measures to actively combat bribery by:

a) Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat the offence of bribery of public officials	The Crimes Amendment Act 2003 was further amended in June 2004 to expand the definition of money laundering to reflect the revised FATF Recommendations The existing act has created new offences and widens powers in relation to corrupting and conspiracy such as Organised Crime including people smuggling and trafficking, Corrupt use of official information, Conspiring to defeat justice, Corrupting juries and witnesses, Money Laundering, Altering and reproducing document with the intent to defraud.	Crown Law Financial Intelligence Unit	
b) Ensuring the existence and effective enforcement of anti-money laundering legislation that provide for substantial criminal penalties for the laundering of the proceeds of corruption and crime consistent with the law of each country	Financial Transaction Reporting Act 2003 – replaces components of the now repealed Money Laundering Prevention Act 2000 Financial Supervisory Commission Act 2003 – creates a new licensing, regulatory, and supervisory body. Banking Act 2003 – brings the banking regime under one umbrella and set of rules. Also addresses the issue of shell banks by requiring "physical Presence".	Financial Intelligence Unit – Investigation Financial Supervisory Commission	Several evaluations by international organisations were updated during 2004 and the FATF conducted an in-country examination in late 2004. As a result the Cook Islands have been 'provisionally' removed off the Non Cooperative Countries and territories (NCCT) in February 2005. Note: The Cook Islands has improved its international profile in relation to the AML/CFT area by chairing and being a member of working groups, and is
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	<p>Proceeds of Crime Act 2003 – creates the ability to “deal” with the proceeds of crime including freeze, seize and confiscation powers.</p> <p>Extradition Act 2003 – assists the Cook Islands in meeting its obligation in relation to the Honiara Declaration.</p> <p>Mutual Assistance in Criminal Matters Act 2003 – a comprehensive piece of legislation covering the Cook Islands obligations under the Honiara Declaration and components previously within the Money Laundering Prevention Act 2000.</p> <p>Criminal Procedure Amendment Act 2003 – provides for the interception of private communications.</p> <p>International Companies Amendment Act 2003 – deals with the risk of bearer debentures and now creates the requirement for immobilisation and possession by a “custodian”.</p> <p>Crimes Amendment Act 2003 – detailed in previous section.</p>		<p>recognised as an expert in respect of identity protection and is acknowledged by peers to assist with regional projects. The Cook Islands is soon to be considered for appointment as the Chair of the Oceania region for the Egmont Group of Financial Intelligence Units.</p>
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c) Ensuring the existence and enforcement of rules to ensure that bribery offences are thoroughly investigated and prosecuted by competent authorities;	The information a financial institution is required to obtain must be retained for six years (section 6(6) Financial Transactions Reporting Act 2002 (FTR)) and in a form that allows the FIU to readily reconstruct a		
These authorities should be empowered to order that bank, financial or commercial records be made available or be seized and that bank secrecy be lifted	<p>transaction (section 6(2) FTR) and the FIU may enter the premises of financial institutions to ensure compliance with Parts 2 and 3 of the FTR (section 30 FTR).</p> <p>The FTR specifically overrides the secrecy provisions in other legislation (sections 35 & 36 FTR). It also has broad powers to obtain disclosure of information from a financial institution and to supervise financial institutions (section 15 FSC), which includes all of the Acts that allow the establishment of offshore entities, partnerships and trusts (section 20 Financial Supervisory Commission Act (FSC)).</p>		
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<p>d) Strengthening of investigative and prosecutorial capacities</p> <p>by fostering inter-agency co-operation,</p> <p>by ensuring that investigation and prosecution are free from improper influence and have effective means for gathering evidence,</p> <p>by protecting those persons helping the authorities in combating corruption, and</p> <p>by providing appropriate training and financial resources</p>	<p>February 2003 - an "Anti-Money Laundering and Counter-Terrorist Financing Working Group" created.</p> <p>It is chaired by the Deputy Prime Minister's legal adviser and includes representatives from Banks, Trustee Companies, Lawyers, and various Government agencies.</p> <p>Police, Customs, Crown Law Office, and other government agencies have access to several technical assistance opportunities including:</p> <p>The South Pacific Chiefs of Police</p> <p>Pacific Islands Law Officers Meetings</p> <p>Oceania Customs Organisation</p> <p>World Customs Organisation</p> <p>The new suite of legislation has created investigative tools in the form of orders and warrants.</p>		<p>Technical assistance and training will be discussed at the 2003 APG AGM. Received technical assistance last year including in-country visits by the UN/ComSec Proceeds of Crime Mentor, IMF Legal Drafting workshop in Fiji, legal drafting expertise from the IMF and NZAID, ADB sponsoring attendance at a Money Laundering and Terrorist Financing training day within the 2002 APG AGM, unrestricted access to the New Zealand Police FIU by their Cook Islands counterpart FIU, NZ Police FIU Manager in-country visit and assessment, IMF TA through in country visits by Money Laundering consultant Pat O'Sullivan, ForumSec legal drafter re Proceeds of Crime/Extradition/ and Mutual Assistance legislation, offshore adviser employed by Offshore Financial Services, two separate one month attachments of the Cook Islands FIU Intelligence Officer to the NZ Police FIU, along with unrestricted access to IMF via email etc.</p>
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<p>d) Strengthening bi- and multilateral co-operation in investigations and other legal proceedings by developing systems which – in accordance with domestic legislation – enhance</p> <p>(i) effective exchange of information and evidence,</p> <p>(ii) extradition where expedient, and</p> <p>(iii) co-operation in searching and discovering of forfeitable assets as well as prompt international seizure and repatriation of these forfeitable assets</p>	<p>With the enactment of the above bills these matters are fully addressed.</p>		

Corporate Responsibility and Accountability: Take effective measures to promote corporate responsibility and accountability on the basis of existing relevant international standards through:

<p>a) Promotion of good corporate governance which would provide for adequate internal company controls such as</p> <p>codes of conduct,</p> <p>the establishment of channels for communication,</p> <p>the protection of employees reporting corruption,</p> <p>and staff training</p>	<p>PERC</p>	<p>Financial Supervisory Board</p> <p>Ombudsman</p> <p>Audit Office</p>	<p>Audit conducted an Anticorruption Workshop in July 2004 for all authority figures such as Heads of Ministries and Mayors of local government. Audit Office intends to conduct similar workshops of Cabinet Ministers and Members of Parliament.</p>
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b) The existence and the effective enforcement of legislation to eliminate any indirect support of bribery such as tax deductibility of bribes	NA		
c) The existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery, in respect of the books, records, accounts and financial statements of companies	NA		
d) Review of laws and regulations governing public licenses, government procurement contracts or other public undertakings, so that access to public sector contracts could be denied as a sanction for bribery of public officials	Public Expenditure Review Committee (PERC) and Audit (PERCA) Act 1995-96 Cook Islands Government Financial Policies and Procedures Manual (rule of law under the MFEM Act) Ministry Finance and Economic Management (MFEM) Act 1995-1996	Audit MFEM MFEM	The Cook Islands Government Financial Policies and Procedures Manual is a working document as it can be updated where additions are to be approved by the Financial Secretary when the need arises.



Pillar III: Supporting Active Public Involvement

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Public Discussion of Corruption:

Take effective measures to encourage public discussion of the issue of corruption through:

a) Initiation of public awareness campaigns at different levels	<p>The ADB Anti-corruption Initiative and the Cook Islands Stocktake will be made available on the MFEM Website.</p> <p>Free Distribution of the stocktake will be made available to stakeholders.</p>	<p>PSC</p> <p>MFEM</p> <p>Audit</p>	<p>A Good Governance Workshop with assistance provided by ADB was conducted in 2003 involving both private and public sector representatives.</p> <p>Audit Office conducted an Anti Corruption Workshop in July 2004 as mentioned in previous sections.</p> <p>Free distribution of the ADB OECD Stocktake is to be provided over the internet at www.mfem.gov.ck under Archives.</p>
b) Support of non-governmental organisations that promote integrity and combat corruption by, for example, raising awareness of corruption and its costs, mobilising citizen support for clean government, and documenting and reporting cases of corruption			<p>Cook Islands NGO's are assisted by being provided annual budget appropriations.</p>

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c) Preparation and/or implementation of education programs aimed at creating an anti-corruption culture	<p>ADB funded Good Governance Workshop in Fiji that Cook Islands government officials attended in August 2003.</p> <p>Anti-Corruption Workshop conducted by Audit Office for government officials, July 2004</p> <p>Government Representative to ADB/OECD Anticorruption Initiatives for Asian & Pacific Region: 6th Steering Group Meeting April 2005. Vietnam.</p>	Audit	

Access to information: Ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals, through:

a) Establishment of public reporting requirements for justice and other governmental agencies that include disclosure about efforts to promote integrity and accountability and combat corruption	Ministry and Head of Ministry Annual Reports and Six Monthly Reports are required to be produced on a regular basis.	PSC	
b) Implementation of measures providing for a meaningful public right of access to appropriate information			

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<u>Public participation:</u> Encourage public participation in anti-corruption activities, in particular through:			
a) Co-operative relationships with civil society groups such as chambers of commerce, professional associations, NGOs, labour unions, housing associations, the media, and other organisations			
b) Protection of whistleblowers	Audit Act allows the non-disclosure of those reporting acts for investigation.		
c) Involvement of NGOs in monitoring of public sector programmes and activities			Involvement through a consultative approach towards Public Policy Formulation (MDG's etc).