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Governance & Anti-Corruption Roundtable & Conference

“Crisis, Stimulus & Integrity”

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ROUNDTABLE SESSION 2:

**The Limits and Problems of Government Regulation in Corruption Prevention and  
Creating a Culture of Good Governance**

**PREVENTING CORRUPTION IN TROUBLED TIMES**

**Bertrand de Speville**

We are here to discuss the concern that the publicly funded stimulus packages being provided by our governments are at risk of corrosion by fraud and corruption. So perhaps it would be as well to start by listing the contents of the stimulus packages in order to see in more concrete terms what may be at risk.

***Stimulus and cures***

These I believe are the measures our countries are taking or considering:

- Lowering the cost of credit
- Making credit available (emergency bail-out funds)
- Loan guarantees and bank funding guarantees
- Government guarantee of money market mutual funds
- Trade financing
- Tax incentives on capital expenditure
- Remedial global finance tax on financial transactions of banks, insurance companies and investment funds (recently called for by the German Minister of Finance, Herr Steinbrück, and Lord Turner, Chairman of the UK FSA)
- Capital injection (buying a stake in troubled enterprises, especially banks)
- Creating demand by government funded projects
- New banking controls (negative stimulus – more stick than carrot) eg increased capital ratios
- Increasing the money supply (quantitative easing)
- Bonus capping controls
- Community support grants, food and fuel subsidies
- Unemployment benefit
- Training and retraining schemes

### ***Increased corruption?***

A sluggish economy or an economy in recession is widely believed to bring about an increase in crimes of dishonesty, particularly fraud and corruption. Whether there actually is an increase is uncertain. What is certain is an increase in reports of fraud and corruption at such times. The increase in reports does not necessarily reflect an increase in corrupt activity – it may be due only to increased fears about the economic climate.

Whatever the reason, our mechanisms for dealing with fraud and corruption need to be in good working order to be able to deal with the anticipated increase - by preventive measures - and with any actual increase - by enforcement.

### ***Corruption described and distinguished***

Let's first clarify what we mean by corruption. The word can have a very wide meaning – rotten, depraved, wicked – but more specifically means “influenced by bribery”. A country's laws against corruption are usually concerned with “the unauthorised trading of entrusted authority”, namely bribery.

That working description of corruption allows us to focus on conduct influenced by bribery, in both the public and private sectors. In the private sector we must be careful not to aim at the wrong target. We are not after legitimate commission. Commission is, after all, the lifeblood of business trading. What we are after is secret commission – commission payment received that the boss knows nothing about and has not approved. In other words the unauthorised trading by an employee of the authority he has been entrusted with. Such conduct is wrong and is, or should be, a serious offence in the criminal law of all our countries.

We must distinguish corruption (namely, conduct influenced by bribery) from other forms of criminality that come to mind when the word corruption is used. Fraud, embezzlement and theft are not the same as bribery. We distinguish between them because we need to know what conduct constitutes each of these crimes so that we can guard against them. Anticorruption measures are not the same as the measures we need to take against theft, embezzlement or fraud. But we must recognise too that much fraud is facilitated by bribery.

We need also to distinguish anticorruption from governance. Governance is about how we run things; anticorruption is about upholding particular values set out in our criminal law. It is important to keep that distinction always in mind, otherwise we come to believe that merely by changing the way we run our affairs we can cure corruption. That is a profound mistake – good governance reform has never cured the problem of corruption. On the contrary, corruption undermines any attempt at governance reform and prevents it taking root.

### ***The strategy against corruption***

Writing not long after the Asian financial crisis of 1997-98, Professor Tay foreshadowed the need for a universal approach to corruption. A glance at the UN Convention Against

Corruption, which came into force in December 2005 and to which 137 states are now party (including Singapore, Malaysia, Indonesia, China, Japan, Vietnam and the Philippines), shows that tackling corruption effectively requires three elements: enforcement of the law, prevention of corruption opportunities that exist in systems and procedures, and public education and support. Furthermore, the fight against corruption includes corruption in the private sector.

It is now recognised that a sound national strategy against corruption comprises those three elements in close coordination and applies to the whole community. That includes the business community and, especially in these difficult times, the financial sector, notably the banks which have brought us to this pass.

The trouble we are in has required, and continues to require, massive government intervention. The rescue of the world's financial system is costing many hundreds of billions of dollars. The measures governments are taking involve the disbursement of huge sums, the imposition of tough conditions and the creation of new controlling regulations. Huge sums, new regulations – what a temptation, what an opportunity for the dishonest and the desperate!

### ***Prevention***

If we are to do more than shutting the stable door after the horse has bolted, we must ensure now that our prevention safeguards are in good order. Let us therefore focus for a moment on the prevention side of the anticorruption strategy. The second and third elements of the strategy (dealing with corruption opportunities in systems and procedures on one hand and educating the community on the other) are aimed at preventing corrupt conduct.

The second element of the three-part strategy is concerned with the systems and procedures by which we regulate all our affairs. These systems and procedures provide us with the opportunities for corruption. Corruption prevention involves the examination of each of these systems and eliminating those opportunities. It may be an existing system that has been operating for years; it may be a proposed system still on the drawing board.

The third element of the strategy, public education, has three objectives. First, to persuade people to provide information about what they suspect is going on; second, to change personal attitudes to corruption; third and most relevant to our discussion today, to teach people how to react in situations that can give rise to corrupt conduct. It is in connection with this third objective that codes of conduct have an important function – civil service codes of conduct and company codes of conduct in the business sector.

### ***Recent Asian experience***

A quick look again at the list of stimulus measures and cures a government may be taking shows some obvious candidates for corruption prevention treatment. Let's take for example government funded projects: juicy construction, equipment and procurement contracts to be awarded. The situation is similar to the natural disaster rescues that were carried out in the wake of the tsunami on 26 December 2004 and the massive earthquake

in northeast Pakistan and Jammu and Kashmir a few weeks later. Huge funds had to be disbursed swiftly in countries not known for their lack of corruption. Anticorruption and antifraud measures had to be put in place and proved their worth. The massive loss of rescue funds feared by the international community did not materialise.

In a non-crisis situation, prevention can be just as effective. When the old Kai Tak airport in Hong Kong was to be replaced, the building of the new airport and its associated road and rail links was at the time (the late 80s and early 90s) the largest infrastructure project in the world. Thousands of construction and procurement contracts were let by the airport authority. Corruption prevention measures were built into the contract letting procedures. Not a single report of corruption arose from the letting of those contracts.

### ***Corruption prevention in practice***

We should turn to consider the principles that apply to the work of corruption prevention.

1. Systems and procedures should be examined individually and methodically.
2. The “owners” of the system, namely the institution that operates the system or procedure, must call for external specialist advice, usually from the national anticorruption body (in Hong Kong it is the Corruption Prevention Department of the ICAC).
3. The specialist must work with the owner of the system in a client/adviser relationship. There can be no question of instructing or ordering the client to alter his system.
4. It is important for the adviser to understand not only how the system is supposed to work but also how it is being made to work in practice (quite often the manual and the practice have parted company).
5. The people who operate the system and the adviser have to examine the system together, and together recommend what changes should be made. A solution devised by the client’s own people is more likely to be accepted and to be effective.
6. Corruption prevention measures and efficiency must go hand in hand. Prevention measures that make a system or procedure work more slowly will not be implemented or will be bypassed, creating another corruption opportunity. It is here that anticorruption and governance most resemble each other. But it is important to remember that the purpose of corruption prevention is to prevent the dishonest from corrupting the system. Its purpose is not to decide how the ministry or the company should run its affairs.
7. When the draft recommendations have been approved by the anticorruption body, they go to the client ministry or the client company. It is for the ministry or the company to put the recommended changes in place.
8. A follow-up study may be needed to see how the changes are affecting the operation of the system or procedure, whether the delivery of the service has improved.

These principles of corruption prevention apply equally to a system or procedure that is still on the drawing board. It is usually easier to build in the corruption measures at this stage than when the system is in operation. The planners would be wise to call for

corruption prevention advice before trouble arises. Given the urgency with which many forms of government stimulus must be applied, it is necessary for the system and procedure planners to call for that advice at the outset of the planning process.

### ***The educational side of anticorruption***

Finally, let me say a few words on the education element of the anticorruption strategy. I said earlier that one of the objectives of the education element of the strategy, and the most relevant to our discussion today, is to teach people how to react in situations that can give rise to corrupt conduct. This is where codes of conduct have an important function – civil service codes of conduct and company codes of conduct in the business sector.

If a public official or a company director or an employee is to be held to account for his conduct, it is elementary fairness that he should have been told what was expected of him and that he should know in what way his conduct has fallen short of those expectations. A clear, concise and accessible written statement of the standards by which he is expected to behave in his working environment is a basic requirement.

A code of conduct should also provide warning of the dangerous situations that may arise and provide guidance on how a public official or a company director or an employee should react in those situations for his own protection. Too often a person finds himself compromised because he failed to act correctly at the time the situation arose. In these times of financial crisis when reports of corruption are expected to rise, it is doubly important that people should be on their guard.

A good code of conduct will state the company credo that honesty, integrity and fair dealing are its important assets in business. Consequently, all directors and employees must ensure that the company's reputation is not damaged by dishonesty, disloyalty or corruption. The code will usually go on to deal with:

- the personal conduct of directors and employees (especially covering bribery, illegal gifts and commissions);
- relations with suppliers and contractors;
- relations with customers and consumers;
- responsibilities to shareholders and the financial community;
- employment practices; and
- responsibilities to the community.

It will deal finally with compliance with the code and the consequences of failing to comply. The director or employee should certify that he has read the code and understands its provisions, and agrees to abide by them. That agreement, sometimes called an “integrity pact”, makes everyone aware that the company takes these matters seriously.

### ***The prevention part played by business***

The ethical dilemmas of the private sector differ considerably from one part of that sector to the next. The ethical questions of the financial sector are not those of the construction industry or the retail trades. One code of conduct cannot apply to all. The private sector

umbrella organisations and the anticorruption body should together assist each part of this sector to prepare a model code of conduct for adoption by enterprises within that part of the sector.

The role of the private sector in affecting the community's attitude to corruption can hardly be overstated. It is therefore crucially important that the representative organisations of the business sector should join in partnership with the anticorruption body in promoting ethical conduct in business. Small and medium enterprises in particular, which lack the resources for an in-house corporate compliance unit, need help. Experience shows that an ethics resource centre can provide that help efficiently and cheaply. A partnership with the anticorruption body, making use of one of its centrally placed branch premises and of its personnel to man the centre, allows the centre to be run by a board of business people which sets the centre's policy and directs its activities. Promoting sectoral model codes of conduct, providing advice to business companies and helping the anticorruption body spread the anticorruption message throughout the private sector have been demonstrated to improve the climate for doing business.

### ***The value of enforcement***

The emphasis of my remarks has been on preventing corruption. But let us not overlook the role that enforcement plays in preventing dishonesty. The risk of being caught and punished is a strong deterrent. The higher that risk, the more effective the deterrent. It follows that an essential protection of the integrity of the stimulus measures a government puts in place is the efficient detection, investigation, prosecution and trial of the criminal offences that reflect the standards of our communities.

### ***A silver lining to the cloud of recession?***

When, during the recovery from the Asian financial crisis of 1997-98, Professor Tay wrote that better times seemed to be weakening the collective resolve to tackle corruption, he was right. Good times tend to make corruption seem less of a problem. Indeed, as he said, in some instances, all the crisis produced was a shuffling of the cards, and a change of some players, while the same game was being played. However he acknowledged that the crisis had caused reforms to be started in both private and public sector governance. Let us hope that the current crisis will be the catalyst for real progress in the fight against corruption, not based as before on unsuitable western models but on the successful examples to be found in Asia itself.

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