



UNCAC and Business Integrity: Insights from ASEAN's Implementation

Thimphu, 25 September 2024



UNODC

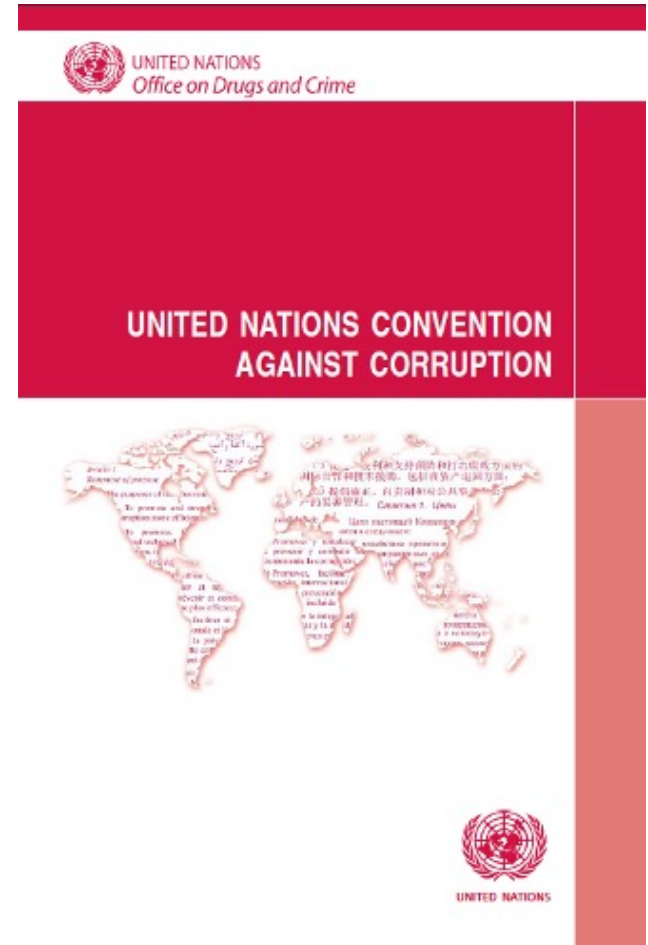
United Nations Office on Drugs and Crime

**UNITED
AGAINST
CORRUPTION**



Presentation Structure

- United Nations against Corruption (UNCAC) and the Implementation Review Mechanism (IRM)
- UNCAC provisions relevant to business integrity standards
 - Article 9: Public procurement
 - Article 12: Private sector
 - Article 15: Bribery of national public officials
 - Article 16: Bribery of foreign public officials and officials of public international organizations
 - Article 21: Bribery in the private sector
 - Article 26: Liability of legal persons
 - Article 33: Protection of reporting persons
- Business integrity in the Regional Roadmap 2024 - 2027



United Nations against Corruption (UNCAC) and the Implementation Review Mechanism

UNCAC

II: Preventive measures

III: Criminalization and law enforcement

IV: International cooperation

V: Asset recovery

- Adopted by Resolution 58/4 of the General Assembly on 31 October 2003.
- Entered into force on 14 December 2005.
- The world's only legally-binding, anti-corruption instrument, to which UNODC is the guardian.
- Currently, 191 States parties.

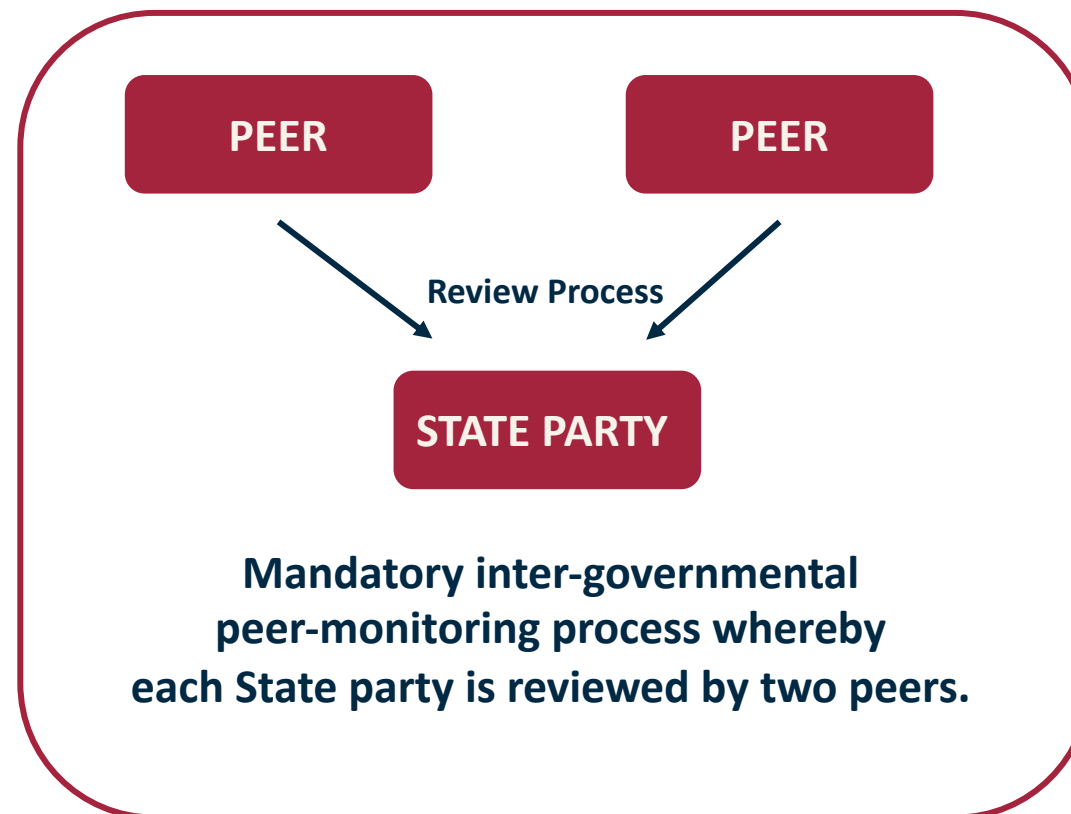
IRM



Two Cycles of Review

2009 - Chapters
2015 III and IV

2016 - Chapters
present II and V



IRM: Impact

- Legislative reform: before and after review.
- Increased domestic coordination and dialogue.
- Opportunity for capacity-building.
- Sharing of experiences and good practices with reviewing and reviewed States.
- Action plan: prioritization of country-owned technical assistance needs.
- Donor roundtables and donor coordination platforms.



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UNCAC provisions relevant to business integrity standards

Article 9(1): Public procurement

- States to take steps to establish procurement systems based on certain principles to prevent corruption; and to promote transparency and accountability in the management of public finances.
- **8** ASEAN Member States received recommendations on strengthening procurement systems by:
 - Enhancing e-procurement
 - Implementing integrity measures in public procurement
 - Increasing transparency and using declaration of interests in certain procurements
 - Having independent bodies for appeals
 - Reviewing sanctions

“Game-changing” legislation on public procurement marks crucial step in the Philippines’ fight against corruption



Manila (The Philippines), 9 September 2024 - The Philippines has achieved a significant milestone in its fight against corruption with the enactment of the new [Republic Act No. 12009](#) on public procurement this summer. The legislation marks a crucial step towards enhancing transparency, accountability and efficiency in the public sector.

“As legislators, we felt the urgent need to enhance, update and create a game-changing public procurement legal framework which primarily intends to make it more transparent and efficient so that Filipinos would get the best value-for-money for supplies needed in government operations while safeguarding public funds,” said Edward Michael Maceda, Chairman of the Parliament and Revision of Laws Committee of the House of Representatives of the Philippines.

The aim is for the law to streamline the procurement process by institutionalising electronic procurement and allowing greater flexibility with the introduction of new procurement modalities and concepts. As reiterated in article 9 of the United Nations Convention against Corruption (UNCAC),

Dialogue aims to open up Malaysian procurement

preventing corruption. This is bec:



Kuala Lumpur (Malaysia), 28 June 2023 – To help achieve the Malaysian Government’s announcement of a new Procurement Act with extensive consultation and public input, the Center to Combat Corruption & Cronyism (C4 Center) and the United Nations Office on Drugs and Crime (UNODC) brought together key stakeholders from civil society, the private sector, the Ministry of Finance and the Parliament for a three-day introductory procurement dialogue this week.

Thailand

UNODC supported Bangkok Metropolitan Administration with its corruption risk assessment, focusing on high-level infrastructure projects.



Article 12: Private sector

- States to take measures to prevent corruption involving the private sector, enhance accounting standards and apply appropriate penalties when measures are breached.
- **9** ASEAN Member States received recommendations on:
 - Developing corporate governance codes/compliance measures for the private sector
 - Enhancing transparency measures on beneficial ownership
 - Preventing conflicts of interests/ imposing measures to restrict employment of public officials in the private sector for an amount of time
 - Taking measures to improve company financial reporting
 - Implementing whistle-blower protection
- Recommendations also to criminalize bribery in the private sector (links to art. 21).

Business integrity

Corruption in the private sector may involve, for example, fraud, bribery and embezzlement. These corrupt acts not only undermine economic development, market competition, consumer welfare and equitable opportunities, but also constitute a business risk and can distort markets.

Indonesia

UNODC has been working with private companies and local governments in Kalimantan to increase business integrity in the palm oil industry, and to address environmental damage in the land-based sector.



Malaysia

Malaysia is part of [UNODC's Global Action for Business Integrity](#) Project addressing gaps and opportunities in corporate criminal liability and improving integrity pacts in public procurement.



Malaysia

UNODC has been supporting the State of Sawarak on strengthening its anti-corruption measures, including through the training for Certified Integrity Officers in statutory bodies, State-owned enterprises and private companies.



Implementation of Beneficial Ownership Transparency in ASEAN Member States and Timor-Leste



Workshop on Beneficial Ownership Data Verification



Jakarta (Indonesia), 24 August 2023 – The Indonesian Ministry of Law and Human Rights (MLHR), in seeking to improve its Beneficial Ownership (BO) verification system, requested guidance from UNODC on international best practices and sought key insights from jurisdictions that have adopted auto-verification systems. This initiative by the MLHR is in-line with the targets set by the National Strategy on Corruption Prevention (*Stranas PK*) to improve data quality and verification in certain high-risk sectors. While several agencies are collecting BO data, including the MLHR, none of these agencies to date are verifying the BO data collected.



PRESS RELEASE
Reference No.: 2024-85
16 September 2024

SEC supports beneficial ownership transparency reforms and cooperation in Southeast Asia

Beneficial Ownership Data Training for Law Enforcement Agencies in the Philippines



Manila (Philippines), 29-30 August 2023 - In a significant move toward enhancing transparency and accountability in the Philippines, the United Nations Office on Drugs and Crime (UNODC) and Open Ownership (OO), in collaboration with the Securities and Exchange Commission (SEC), conducted a training workshop on Beneficial Ownership Data for Law Enforcement Authorities.



Regional Peer Exchange: Advancing Anti-Corruption in Southeast Asia through Beneficial Ownership Transparency in Jakarta, Indonesia, August 2024

The SEC, led by Supervising Director Oliver O. Leonardo for the Anti-Money Laundering Division and Information and Communications Technology Department Director Oliver V. Chato, takes part in the Regional Peer Exchange on Advancing Anti-Corruption Efforts through BO Transparency in Jakarta, Indonesia from August 12 to 15.

UNODC Facilitates Landmark Data Sharing Agreement to Strengthen Philippines' Fight Against Criminal Financing

Manila (Philippines), 28 February 2023 - UNODC, in collaboration with the U.S. State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL), is working closely with the Securities and Exchange Commission (SEC) in the Philippines to improve beneficial ownership transparency in the country.

The Securities and Exchange Commission (SEC) continues to advance the implementation of beneficial ownership policies to prevent the misuse of the corporate vehicle for illegal activities.

Representatives from the SEC Information and Communications Technology Department and the Anti-Money Laundering Division participated in the Regional Peer Exchange on Advancing Anti-Corruption Efforts through Beneficial Ownership (BO) Transparency in Jakarta, Indonesia from August 12 to 15.

Organized and sponsored by the United Nations Office on Drugs and Crime (UNODC) and Open Ownership, the event brought together representatives

Bribery

- Bribery:
 - Of **national public officials (art. 15)**: 8 ASEAN Member States received recommendations on lack of legislative scope, inconsistent terminology use, additional barriers.
 - Of **foreign public officials and officials of public international organizations (art. 16)**: 6 ASEAN Member States received recommendations. 2 States had not explicitly criminalized foreign bribery.
- **Bribery In the private sector (art. 21)**: In order to address **corrupt conduct in the private sector**, States are required to consider adopting legislation that criminalizes certain acts when committed intentionally in the course of economic, financial or commercial activities. These acts include the **active form of bribery** to any person who directs or works for a private sector entity, as well as the **passive form of bribery** by such a person.
- **6 ASEAN Member States received recommendations on criminalizing bribery in the private sector by amending/ establishing domestic legislation.**
- Challenges:
 - Domestic understandings of bribery – perception that bribery only occurs in the public sector;
 - Private sector deemed to have the right to set out its internal regulations/ policies;
 - Management of bribery in the private sector only at a provincial level, but not on a national level.



Article 26: Liability of legal persons

- Providing for the liability of legal persons for Convention offences is important as serious and sophisticated crime can be committed by, through or under the cover of legal persons, such as companies, corporations or charitable organizations.
- **8** ASEAN Member States received recommendations by ensuring that:
 - Legal persons can be prosecuted by treating legal entities as actors of crime.
 - A **comprehensive legal framework** for the liability of legal persons exists.
 - Sufficient detail for liability is provided – e.g. specifying the terms and conditions for triggering liability, and the exact nature of acts that trigger liability.
 - Legal and natural persons (e.g. a company and its manager) can be prosecuted independently.
 - **Sanctions** for legal persons are effective, proportionate and dissuasive – e.g. imposing criminal liability if none currently exist, and that financial penalties are consistent.
 - There is **capacity** to detect, investigate and prosecute offences involving legal persons, particularly identifying the mental element of such offending.



Liability of Legal Persons Workshops for the Private Sector



Kuala Lumpur (Malaysia), 21 August 2023 – In 2018, the Government of Malaysia established Section 17A of the Malaysian Anti-Corruption Commission Act, known as the Corporate Liability Provision. This provision allows for directors and company management to be held criminally liable for acts of corruption perpetrated by any member of staff or agents of the company, unless management can prove adequate procedures are in-place to prevent corrupt practices within and involving the company.

The liability of legal persons for corruption offences is a well-established international standard.¹ This means that legal persons, as distinct from natural persons, can be held accountable for corrupt acts. Providing for such liability is important as serious and sophisticated crime can be committed by, through or under the cover of legal persons, such as companies, corporations or charitable organizations.² The actions of individuals within a legal entity may be difficult to identify due to complex corporate structures and multiple layers of decision-making, particularly if such individuals reside abroad.³

Article 26 of the United Nations Convention against Corruption (UNCAC) requires States parties to adopt measures to establish the liability of legal persons for participation in offences criminalized in accordance with the Convention, as follows:

Article 26. Liability of legal persons

1. *Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

2. *Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

Workshop on Liability of Legal Persons in Malaysia Paves the Way for Strengthening Business Integrity

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Putrajaya (Malaysia), 26 June 2023 – An effective corporate liability regime for corruption offenses is crucial for promoting accountability, transparency, and integrity within the private sector. Five years ago, Malaysia reformed its corporate liability regime for corruption offences by introducing [Section 17A of the Malaysian Anti-Corruption Commission \(MACC\) Act](#). The new offence entered into force on 1 June 2020 and has followed the United Kingdom's “failure to prevent” model of liability of legal persons (LLP) that experts and governments have hailed as an advanced approach to holding companies liable for serious criminal acts.

Article 33: Protection of reporting persons

- Whistle-blowers play an important role in the detection and prevention of corruption and other forms of wrongdoing and prosecution. Protection against unjustified treatment for anyone reporting facts regarding these offences must be considered.
- **10** ASEAN Member States received recommendations on:
 - Expanding protections to whistle-blowers by including them under the same protective status as witnesses.
 - Supplementing the physical safety of reporting persons with extra statutory protections, such as **protection from workplace dismissals and other workplace sanctions.**
 - Adopting existing draft laws on the protection of whistle-blowers.
 - Ensuring that specific programmes are in place to supplement legislation.
 - Managing resourcing challenges.

The Philippines drafts new policy to protect whistleblowers, with UNODC support

Viet Nam steps up whistle-blower protection efforts

Đồng Hới City (Viet Nam), 17 September 2024 - Viet Nam continues to strengthen reporting and protection systems for whistle-blowers, which is one of the strongest methods to detect and mitigate corruption cases. Last month, the UN Office on Drugs and Crime (UNODC) partnered with the National Assembly's Judicial Committee in Viet Nam to offer a workshop on whistle-blower protection for Vietnamese Government officials and legislators.

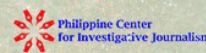


Whistle-blower Protection in ASEAN Member States

Whistle-blowers play an important role in the detection and prevention of corruption and other forms of wrongdoing and prosecution. Whistle-blowing has been identified as "one of the strongest measures for detecting wrongdoing at an early stage". However, in raising concerns, whistle-blowers face the risk of retaliation inside and outside of the workplace, including the potential of threats or physical harm.²

Article 33 of the United Nations Convention against Corruption (UNCAC) requires State parties to consider providing "appropriate measures to protect reporting persons against unjustified treatment".³ Article 8, paragraph 4 also requires State parties to consider establishing measures and systems to facilitate reporting of acts of corruption by public officials. This discussion paper provides examples of whistle-blower protection frameworks and practices in Member States in the Association of Southeast Asian Nations (ASEAN). It highlights examples of good practices and provides recommendations and suggestions for enhancing whistle-blower reporting and protection.

Table 1. UN Convention against Corruption in the ASEAN Member States		
ASEAN States parties to UNCAC		Date of ratification/ accession
	Brunei Darussalam	2 December 2008
	Cambodia	5 September 2007
	Indonesia	19 September 2006
	Lao People's Democratic Republic	25 September 2009
	Malaysia	24 September 2008
	Myanmar	20 December 2012
	Philippines	8 November 2006
	Singapore	6 November 2009
	Thailand	1 March 2011
	Viet Nam	19 August 2009



REPORTING ON CORRUPTION MATTERS



Journalists Against Corruption



Photo by: René A. Da Rin

What is Whistle-blower Protection?

Whistle-blowers are generally defined as persons who report wrongdoing or malpractice in the workplace to a person who can affect action. While traditionally, whistle-blower protection laws focused upon the relationship between employers and employees, contemporary international

good practice suggests that countries should consider protecting a wide category of persons who are connected to the workplace, such as volunteers, interns, contractors or close persons connected to the whistle-blower (such as family members and facilitators) the persons tasked with addressing the report.⁴



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Business integrity in the Regional Roadmap (2024 – 2027)

Technical assistance to promote UNCAC implementation – Regional Roadmap (2024 – 2027)

- Regional Platforms approach: resolution 9/4, December 2021.
- Regional Platform for Southeast Asia: launched 2023, located in Bangkok.
- Regional Roadmap to Reinvigorate the Platform to Fast-Track the Implementation of UNCAC (2024 – 2027):
https://www.unodc.org/roseap/uploads/documents/Publications/2024/2024-2027_UNCAC_Implementation_Roadmap_in_Southeast_Asia.pdf
- Consideration of cross-cutting themes: international cooperation and peer learning, human rights and gender equality, the use of technology and data, and the role of non-State actors.
- Action points relating to the private sector, public procurement, whistle-blower protection, and beneficial ownership transparency.





THEMATIC AREA 1: Strengthen institutions to prevent and combat corruption

OBJECTIVE 1: Enhance transparency and accountability through greater access to information and better reporting channels

Action point 1.1: Promote awareness-raising and education on right to information.

Action point 1.2: Develop policies on right to information in the public and private sectors through an inclusive, consultative process – including a greater understanding of secrecy laws and other exceptions – based on UNCAC and UN Human Rights Instruments.

Action point 1.3: Develop legislation and implementation plans on right to information in line with international good practice.

Action point 1.4: Encourage institutions to proactively disclose information for greater accessibility through better use of technology and e-systems.

Action point 1.5: Establish systems for data collection and analysis – clean, accessible and readable data from the public and private sectors, including for public procurement and beneficial ownership transparency.

Action point 1.6: Review and strengthen existing reporting channels, including by enhancing accessibility and anonymity in line with UNCAC articles 8(4) and 13(2), and encourage the consideration of gender sensitive reporting.

OBJECTIVE 2: Promoting transparency, accountability and inclusiveness in the private sector

Action point 2.1: Enhance preventive awareness-raising and education about public sector governance issues in the private sector, including conflicts of interest.

Action point 2.2: Criminalize bribery in the private sector (UNCAC article 21) and liability of legal persons (UNCAC article 26).

Action point 2.3: Strengthen the independence of institutions for private sector regulation (e.g. Central Bank, Security and Exchange Commission).

Action point 2.4: Extend the scope of regulatory mechanisms to State-Owned Enterprises and multi-national firms.

Action point 2.5: Enhance collaboration and cooperation between private and public sectors through joint trainings, peer-to-peer learning and the sharing of information.

Action point 2.6: Enhance compliance systems and associated capacity-building in the private sector to ensure the necessary checks and balances.

THEMATIC AREA 2: Enhance public procurement and greater beneficial ownership transparency

OBJECTIVE 1. Improve legal frameworks, public policies and capacity in public procurement

Action point 1.1: Map/ develop legal frameworks to allow for the availability of open and structured procurement data.

Action point 1.2: Review and develop policies on corruption risk, collusion, conflict of interest and the use of beneficial ownership in public procurement.

Action point 1.3: Develop/ review and strengthen policies and mechanisms on complaints and appeals in public procurement.

Action point 1.4: Consider policies that further strengthen competition in public procurement, through greater economic inclusion (e.g. women-owned, micro, and small enterprises).

Action point 1.5: Increase awareness and learning opportunities for public procurement officers and stakeholders on good practices in public procurement, such as open data, economic inclusion (e.g. women, micro and small enterprises), and the use of beneficial ownership information in procurement.

Thank you

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