

**Raising the Institutional and Professional Capacity of the  
Corruption Prevention and Combating Bureau  
Latvia  
(KNAB 2005/12)**

**PART C: Internal anti-corruption control  
Report No. 3**

**Examination of officials' activities**

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## 1 Introduction

### 1.1 Terms of Reference

This sub-component is described in the project Terms of Reference under:

#### **“2.2 Specific Objectives:**

Project goals are the following:

2.2.3 To improve the operation of the Bureau in the field of development of methodologies for examinations.

#### **2.3 Results to be achieved by the Tenderer**

2.3.3 Development for guidelines and methodology for examination of state officials’ activities.”

### 1.2 Inception report

Paragraph 6.4 Anticipated work to be undertaken, of the Inception Report, referring to Internal Anti-Corruption Control made no specific mention of the examination of officials’ activities. This paragraph stated the following:

- Presentation of reports on the existing methodology and recommendations for changes regarding internal anti-corruption control; in particular focus on the field of procurement in state and municipal institutions.
- Present guidelines for new methodology in connection with developing internal anti-corruption measures as well as Guidelines on anti-corruption plans and the organization of internal control in selected Latvian institutions.
- Presenting a report outlining internal control procedures in public institutions dealing with state and municipal property and resources, as well as evaluating the existing control measures and proposing recommendations for preventing conflict of interest within the internal control system.
- Evaluation of existing laws and recommendations for changes.
- Guidelines for corruption risks assessment in the field of state and municipal procurement.

However, paragraph 6.6. Work Plan as it related to Internal anti-corruption control, included:

Output	Activity
Analysis of laws, regulations and internal procedures regarding methodology for examination of officials’ activities	Report on the existing methodology and recommendations for changes. In particular focus on the field of procurement in state and municipal institutions

### **1.3 Scope of work**

This discrepancy, in particular the inclusion of the examination of officials' activities in the internal anti-corruption control sub-component, was raised with the Corruption Prevention and Combating Bureau (KNAB) by the Internal Control Expert (ICE), at an early stage of the project. It was agreed at that time that this sub-component should concentrate, in its examination of officials' activities, on such an examination within the internal control systems of the selected institutions only. The KNAB function, within the Division of Control of Actions of State Officials, was specifically excluded from this sub-component.

However, it was later noticed that this area of activity by KNAB was not included elsewhere. As a consequence, further discussions between KNAB and the consultant resulted in agreement that this additional sub-component would be undertaken and this report prepared, covering the KNAB function of the examination of officials' activities.

Notwithstanding the extremely late commencement of work on this sub-component, this work has included a legislative review; interviews with staff in the Division of Control of Actions of State Officials; examination of statistics and work effectiveness; and comparison with some fields of activity in other institutions.

While a number of issues are raised and recommendations for change made, nothing in this report should be construed as reflecting on the personnel of KNAB in general and the Division of Control of Actions of State Officials in particular, who clearly are well-motivated and diligent, and were most helpful in the researching of this report.

## **2 Summary of Recommendations**

The recommendations below are listed here for convenience in using them as an Action Plan. Justifications and explanations are set out in the main body of the report.

- Any lobbying for an extension to the law, to require asset declarations by all citizens, should be left to the State Revenue Service to argue on revenue grounds.
- KNAB should seek a redrafting of Section 23(1) of the Law on Prevention of Conflict of Interest in Activities of Public Officials, to clarify the circumstances in which a declaration should be made.
- An amendment to the same section of the law should be sought, extending the asset declaration requirements to include declarations by candidates for political or appointed office, at the time of candidature.

- The existing anomaly that declarations are submitted to the State Revenue Service but responsibility for verification rests with KNAB should be removed by amending the law to follow existing practice.
- KNAB should seek a revision of the Law on Prevention of Conflict of Interest in Activities of Public Officials to include parents-in-law in the definition of 'relative.' Consideration may also be given to extending the current, rather restrictive definition to cover other 'relatives.'
- A concerted programme of internal communication should be undertaken, throughout the public service, to explain both the letter and spirit of the law and its effects on each and every public official.
- This should be supported by a programme of external communication to the general public, explaining the provisions of restraints on the actions and behaviour of public officials.
- The shortcomings in current understandings should be brought to the attention of the State Administration School, for its consideration in the development of future training programmes.
- KNAB Regulations should be updated to reflect the current organisation of the divisions in the Corruption Prevention Department.
- A structured training programme should be introduced, covering both induction and continuation training, in the various areas in which DCASO personnel work, including divisional roles and responsibilities.
- Consideration should be given to a rearrangement of internal organisation, to make DCASO part of the Corruption Combating Department, to reflect the nature of its duties.
- A set of DCASO internal operating procedures should be prepared, introduced and enforced.
- DCASO officers involved in explanation sessions of the law to public officials should be trained in presentation skills and training needs.
- A system of prioritisation of examinations, based on risk assessment, should be introduced by DCASO.
- A strategic plan for setting out a programme of activities, monitoring their execution and assessing the results should be designed and implemented.
- An annual report should be produced and published, setting out, in addition to the statistics already available, the extent to which the system of prioritisation and strategic plan have been successfully implemented.

- A review of the thrust of the examination of the issues of asset declarations and conflict of interest should be conducted, covering the deployment and tactics of DCASO.

### 3 International Practice

The Terms of Reference for this project specify that international practice should be used as a reference in making recommendations to achieve the project goals. In particular, paragraph 2.2 Specific Objectives, mentions:

- “2.2.1. To acquire the experience of other countries in identification of risks and schemes of corruption...
- 2.2.4. Using international experience, to improve internal control systems...
- 2.2.5. To study EU legislation and practice...”

An international perspective of the use of asset declarations as a tactic in integrity and conflict of interest compliance was obtained by reference to World Bank research.<sup>1</sup> This indicated that, worldwide, a total of 18 countries use asset declarations as such a tactic. The countries identified were:

- Albania;
- Bangladesh;
- Brazil;
- Ghana;
- India;
- Kenya;
- Korea;
- LATVIA;
- Mexico;
- Nigeria;
- Philippines;
- Romania;
- Sri Lanka;
- Tanzania;
- Thailand;
- Turkey;
- Uganda; and
- USA.<sup>2</sup>

Details of the levels of declaration required are set out in Annex A.

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<http://www1.worldbank.org/publicsector/civilservice/assetsByCountryCoverageALL.as>

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<sup>2</sup> It is understood that Sweden also uses asset declarations, but for all citizens and for tax purposes only

From this list it can be seen that Latvia is the only EU country listed and, with the USA, the only ones not generally categorised as developing or third world countries. Comparison of current levels of perception of the corruption problems in the other countries also reveals that all are below Latvia on the Transparency International Corruption Perception Index 2005<sup>3</sup>, other than the USA and Korea.<sup>4</sup>

In the case of the USA, it should further be noted that many senior civil servants at both federal and local level are elected or politically appointed. The asset declaration system applies to these, but not to career civil servants. This leaves Latvia as the only developed country worldwide to apply asset declarations to career civil servants.

From these figures it might be deduced that asset declaration is best suited to, or favoured by, undeveloped countries faced with a chronic corruption situation, perhaps also linked, in nearly all cases, to a lack of a fully developed democratic process. This situation clearly does not apply to Latvia.

While it is beyond the scope of this project to discuss the overall desirability of asset declaration in a modern democracy, it is apparent that examples of best international practice are hard to identify.

It is understood that consideration is being given to the adoption in Latvia of the Swedish system, whereby all citizens are required to declare all assets to the revenue authorities. It was also suggested that such a system in Latvia would assist in the fight against corruption. Two points arise:

- The Swedish model is entirely designed for tax revenue and compliance purposes. As far as can be discovered, there is no intention or capability to use it for anti-corruption or conflict of interest combating; and
- The resource implications of the adoption of such a system, in terms of both information technology and human resources, would be vast. If the intention is to fight corruption, then these resources would be far better deployed in enhancement of the dedicated investigative and prevention capabilities of KNAB.

While it is accepted by the ICE that KNAB would have competence under the law to lobby for such a change, the ICE has serious doubts as to the efficacy and value of the introduction of such a change, for the above reasons.

It is recommended, therefore, that any lobbying for such an extension to the law, to require asset declarations by all citizens, be left to the State Revenue Service to argue on revenue income grounds. Any inclusion of anti-corruption arguments could result in the diversion of funds to this revenue initiative, which might otherwise have been used for tackling corruption.

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<sup>3</sup> [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2005](http://www.transparency.org/policy_research/surveys_indices/cpi/2005)

<sup>4</sup> TI CPI 2005 figures are included in the table at Annex A.

## 4 Legislation

A review of relevant legislation and procedural dictates was carried out, including the following:

- Law on Corruption Prevention and Combating Bureau;
- State Administration Structure Law;
- State Civil Service Law;
- Law on Prevention of Conflict of Interest in Activities of Public Officials;
- Administrative Procedure Law;
- Law on Administrative Penalties;
- Law on Prevention of Squandering of the Financial Resources and Property of the State and Local Governments;
- The Criminal Law;
- State Audit Office Law;
- Internal Audit Law;
- Law on the State Revenue Service;
- The National Programme for Corruption Prevention and Combating, 2004 – 2008;
- Corruption Prevention and Combating Bureau Regulations: I Structure of Bureau and Functions of Divisions, and II Personnel;
- Corruption Prevention and Combating Bureau Procedure for Circulation of Documents;
- Corruption Prevention and Combating Bureau, Job Descriptions of selected personnel;
- Corruption Prevention and Combating Bureau Working Procedure Regulations;
- Corruption Prevention and Combating Bureau Document Circulation Chart;

## 5 Legislative Review

### 5.1 *Asset declaration*

The circumstances under which a public official is required to submit a declaration are set out in Section 23, Procedures for Submission of Declarations, of the Law on Prevention of Conflict of Interest in Activities of Public Officials and are (with a few exceptions), in lay terms:

- On assuming office;
- Once per year while in office; and
- On termination of office.

The law actually lists four circumstances, but those at Section 23 (1) 3) and 4) both relate to termination of office and are so similar in wording as to appear to be identical in meaning. The ICE enquired of various staff members of KNAB what the difference was and in each case was given a different explanation. These explanations included:

- One sub-section relates to voluntary termination or resignation while the other relates to compulsory termination or dismissal;
- One sub-section relates to elected or appointed terms of office with a fixed period, while the other to ongoing employment, such as of a career civil servant;
- A suggestion that the law was faulty and they had the same meaning and purpose; and
- An admission that the difference between the two sub-sections was not understood.

Whatever the intention, the difference between the two sub-sections is not set out in the law. It is apparent that this section of the law is unclear in interpretation and purpose and it is recommended that KNAB seek to have it redrafted to make it clearer.

A more serious shortcoming is in the restriction on the first declaration requirement to occur following assumption of office. This overlooks an opportunity to create a potentially valuable vetting tool. If a further requirement were to be introduced, requiring a declaration at time of candidature for elected or appointed office, this would enable an extensive background check to be conducted into candidates' suitability for office, before any commitment is made to appoint them.

This provision is included in the legislation of several other countries with asset declaration legislation, including Korea and the USA, the only two such countries occupying higher positions than Latvia in the Transparency International Corruption Prevention Index 2005.

It is recommended, therefore, that an amendment of this law be sought by KNAB, extending the asset declaration requirements to include declarations by candidates for political or appointed office, at the time of candidature. This would naturally need to be supplemented by legislative provisions covering the circumstances under which either the breach of the declaration provisions, or the facts they reveal, may lead to disbarment from candidature.

Section 23 (2) of the same law requires that most public officials shall submit the required declarations to the State Revenue Service (SRS) and it is understood that this procedure is followed. However, Sections 27 and 28 charge KNAB with the responsibility for verification that declarations have been submitted in accordance with procedures, on time, and have been completed correctly and completely. This anomaly would create difficulties if followed. In practice, routine checking that submission procedures have been followed properly is left to the SRS. It is recommended that this anomaly be eliminated, by amending the law to follow existing practice.

Sections 24 and 25 of the same law, dealing with the information to be included and time periods for submission, are clear.

Section 26 establishes that virtually all aspects of the personal financial position of public officials shall be made public. The intention of providing public access to the

financial affairs of public officials is presumably based on the admirable premise that such transparency will both hinder transgressions and provide reassurance to the public that this is so. However, it is within the personal experience of the ICE that intimate knowledge of others' financial situations can have negative repercussions in the workplace too. For example, a supervisor may resent, or be made to feel insecure by, the fact that a subordinate, by better and honest financial management, is in a significantly better position than he is. This can lead to a negative workplace atmosphere, poor morale, jealousies and unfair repercussions on the career prospects of the subordinate.

So widespread is this viewpoint that it is general, worldwide practice in the private sector (with a number of legally-required exceptions such as board members of publicly-listed corporations) to specifically prohibit the revelation, even by the persons themselves, of their emolument packages. In many corporations, it may constitute grounds for dismissal.<sup>5</sup> While it is understood that the law applies to the public sector only, the principle of the inherent difficulties of such arrangements requiring the revelation of personal finances can apply to all.

On balance, however, it may be felt that, in the local Latvian situation, the demand for transparency in the fight against corruption justifies the retention of this provision.

Section 29 places a duty on public officials to provide and justify all information required, while Section 30 states that liability is as set out in other regulatory enactments and covers financial issues such as compensation for losses.

The liability referred to above is set out in two ways. Criminal liability is covered in the Criminal Law Section 219 Avoiding Submission of Declaration, which covers a range of circumstances including non-submission or setting out false information. Further comment on this law has already been provided in Report No. 1 in this series, concerning internal anti-corruption control.

Civil liability is set out in Section 166.<sup>27</sup> Failure to Submit the Declaration of a Public Official, of the Law of Administrative Penalties.

## **5.2 Conflict of Interest**

As in the case of asset declaration, the principal law is the Law on Prevention of Conflict of Interest in Activities of Public Officials, which details a number of restrictions on the activities of public officials, as well as requiring the asset declaration requirements set out above.

The definition of conflict of interest in this law is clear and unambiguous. It relates to any activity of the public official that may affect the personal or financial interests of the official or his or her relatives. A 'relative' is defined as father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother,

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<sup>5</sup> Examples include Coca-Cola International, one of the world's largest corporations; Weber Shandwick, the world's largest public relations company; and Sky Broadcasting, the international TV broadcasting station.

sister, half-sister, half-brother, and spouse. Omitted are, among others, parents-in-law, i.e. the mother and father of the official's spouse. This omission was raised with the ICE by DCASO personnel, who felt that it was a significant omission that worked to their disadvantage in maintaining standards of integrity in the public service. It is recommended that KNAB seek a revision of the Law on Prevention of Conflict of Interest in Activities of Public Officials to include parents-in-law in the definition of 'relative.'

Consideration may also be given to extending the current, rather restrictive definition to cover other 'relatives.' For example, the Acceptance of Advantages Regulations, under the Prevention of Bribery Ordinance, Laws of Hong Kong, list the following as 'relations': spouse (including concubine), any person with whom the official is living as man and wife, fiancé, fiancée, parent, step-parent, lawful guardian, spouse's parent, spouse's step-parent, spouse's lawful guardian, grandparent, great-grandparent, child, ward of court, spouse's child, spouse's ward of court, grandchild, child's spouse, brother, sister, spouse's brother, spouse's sister, half-brother, half-sister, step-brother, step-sister, brother's spouse, sister's spouse, brother's child, sister's child, parent's brother, parent's sister, parent's brother's spouse, parent's sister's spouse, parent's brother's child, parent's sister's child.

Administrative violations are dealt with as a civil liability, in accordance with the Law of Administrative Penalties, in particular sub-sections 166.<sup>28</sup> to 166.<sup>33</sup>, which deal with those conflict situations set out in the Law on Prevention of Conflict of Interest in Activities of Public Officials. Each of these sub-sections carries a maximum fine of 250 Lats, while most carry a minimum of 50 Lats, as well as other administrative sanctions.

Where the violation is intentional and has been repeated or causes substantial harm to the state, then criminal liability can be invoked, by Section 325 of the Criminal Law.

In summary, the legislation designed to ensure compliance by public officials with the principles of honest service and avoidance of conflict of interest is comprehensive, but also complex. To work through a given set of circumstances is, for a person without legal training, an arduous undertaking. This assertion is supported by the informal estimate provided by KNAB personnel at paragraph 7.2.3 below, that approximately 70% of all public officials called to account for administrative violations, committed those violations through ignorance.

This clearly indicates a lack of adequate communication in promulgating and explaining the law. It is recommended that a concerted programme of internal communication be undertaken, throughout the public service, to explain both the letter and spirit of the law and its effects on each and every public official. It is suggested that an ideal way of achieving this would be by the development of a series of detailed explanations, supported by a flow chart of decision-making options, and that this be promulgated as a part of, or a supplement to, the Guide to Managers recommended in Report No. 1.

It is further recommended that this be supported by a programme of external communication to the general public, explaining the provisions of restraints on the actions and behaviour of public officials, so that those members of the public entering into dealings with public officials do not unwittingly place them at risk.

These recommendations align closely with items 74 and 90 of the National Programme for Corruption Prevention and Combating, 2004 – 2008, which are reproduced at Annex B. However, it is clear that the desired objective of general understanding of the legal requirements regarding declaration submission and conflict of interest has not yet been achieved. It is, therefore, also recommended that this issue be brought to the attention of the State Administration School (LSPA), for its consideration in the development of future training programmes.

## **6 KNAB Organisation**

### **6.1 *Internal Structure***

KNAB is divided into two functional departments: the Corruption Prevention Department and the Corruption Combating Department, each under a Deputy Director. In addition, there are a number of stand alone divisions, dealing with matters such as legal matters, finance, personnel, administration, internal control, IT, internal audit and the Report Centre, each of which comes directly under the Director.

The Corruption Prevention Department has four divisions, dealing with Control of Actions of State Officials, Control of Political Parties Financing, Corruption Analysis and Countermeasures Methodology, and Public Relations and International Cooperation. The first of these, the Department of Control of Actions of State Officials (DCASO) is responsible for dealing with the subject of this report.

In contradiction of the above current structure of four divisions within the Corruption Prevention Department, the KNAB Regulations relating to the Structure of Bureau and Functions of Divisions list five such divisions, including, at paragraph 2.3, the division of Monitoring State and Municipalities Procurement. The ICE was informed that this division no longer exists, its duties having been taken over by DCASO.

This updating should be reflected in amended regulations and it is recommended that this be done.

The division has a divisional head and deputy head, and a total of 14 Specialists and Senior Specialists at the time of preparation of this report. This leaves approximately five vacancies in the approved establishment. This results in a workload of approximately 40-55 cases being dealt with by each investigator at any one time, which itself results in adverse effects on the depth of the level of investigation that can be undertaken within the dictated timescales.

DCASO is internally divided into two sections, one dealing solely with issues relating to officials meeting restrictions on conflict of interest, while the other deals with this plus cases where there is private-sector business involvement.

Personnel are all drawn from legal or economic backgrounds. None is provided with specialist training in any other areas. It is recommended that a structured training programme be introduced, covering both induction and continuation training, in the various subject areas in which personnel work, including divisional roles and responsibilities, and the processes by which these are fulfilled.

## **6.2 Procurement**

As noted in the previous paragraph, the function of monitoring state and municipalities procurement, at least in so far as it relates to officials' activities, now rests with DCASO. However, no special procedures or separation of function has been established. While some personnel specialise in the investigation of officials who deal with procurement matters, there is no functional or procedural difference in their duties.

Procurement matters reportedly do not take up a major part of the division's duties and do not include any evaluation of procurement procedures, being largely confined to referrals from the Procurement Monitoring Bureau of suspected misconduct. DCASO personnel report that these arrangements work satisfactorily.

## **6.3 Role and Placement**

### **6.3.1 Three-pillar strategy**

The national anti-corruption policy of Latvia uses the so-called 'three-pillar strategy' – enforcement (or combating), corruption prevention and public awareness.

Definitions based on international practice are adopted and explained below:

- **Enforcement:** Anti-corruption enforcement is the process of gathering information and intelligence, conducting interviews, investigation and prosecution of specific people for past or present acts of corruption. [Also known as 'combating' in Latvia.]
- **Prevention:** Prevention can be defined as the minimising of opportunity for corruption that exists in systems and procedures. By a process of review and reform of laws, regulations, systems and practices, it concentrates on the reduction or elimination of 'future corruption.'
- **Public awareness.** This encompasses both direct and indirect public communication, and therefore includes public and internal education and training, media relations, and publicity programmes and campaigns.

The distinctions between the three pillars are illustrated below:

	<b>Enforcement/Combating</b>	<b>Prevention</b>	<b>Public awareness</b>
<b>Type of corruption</b>	Past or present cases	Future corruption	All
<b>Target</b>	Specific persons	Systems of governance	All people, sometimes divided into targeted groups
<b>Method</b>	Investigation and prosecution	Review of systems	Education, publicity, information
<b>Aim</b>	Termination of activities, sanctions	System improvement, reducing opportunity	Attitude and behaviour modification

### 6.3.2 DCASO role

The routine and primary functional role of DCASO, as set out in greater detail at paragraph 7 below, involves the examination of the asset declarations, personal affairs and activities of public officials. This role is clearly not a corruption prevention role if the above definitions of the three pillars are agreed; rather it is an enforcement, or combating, role. This can be seen by reference to the table above and its application to the role of DCASO:

- Type of corruption: DCASO deals with past or present cases, rather than future;
- Target: It is aimed at specific persons, rather than systems of governance;
- Method: This is achieved by the investigation of these specific persons, rather than a review of systems; and
- Aim: It aims at the termination of the activities of these persons, rather than at changing systems.

The argument was put forward by DCASO staff that the investigation of some public officials, and the fear of detection, helped prevent corruption in others. This is undoubtedly true, but by the same argument, the investigation and prosecution of any individual for corruption, the primary activity of the Corruption Combating Department, can be held to have a preventative effect. Similarly, public awareness has the function of preventing corruption by creating an environment intolerant of corrupt practices, by raising public awareness both of its harmful economic and social effects and of the laws and the rights of the citizen. Public awareness also assists in combating corruption by fostering citizens' active support and participation in the fight against corruption, encouraging members of the public to report corruption offences, and providing an immediate point of contact with a simple and secure system to report suspicions and experiences

Thus, all activities of the various departments and divisions of KNAB can be seen to be inter-related and to assist in the work of the others. Notwithstanding this, the work of DCASO can be seen to be primarily in the field of corruption combating. It is recommended that consideration be given to reflecting this role by a rearrangement of internal organisation, to make DCASO part of the Corruption Combating Department.

#### **6.4 Internal Regulations**

There are a number of internal procedural regulatory documents in use, regarding structure, personnel, working procedure regulations, the procedure for circulation of documents and job descriptions. The KNAB Regulations on Structure of the Bureau and Functions of Divisions defines the functions of DCASO as:

- to monitor observance of Law On Prevention of Conflict of Interest in Actions of State Officials as well as observance of any other additional restrictions for state officials specified in normative enactments;
- to compile and analyse information on carried out checks as well as information contained in declarations submitted by state officials, violations found in submissions and failure to observe restrictions specified in law;
- within its authority, to draft administrative protocols on violations found, to consider violation matters, to charge with administrative liability and to impose administrative punishments;
- to consider letters, complaints and applications of physical and legal persons and to render answers to the above.

Job descriptions of personnel in the division describe such activities as:

- Evaluating the compliance of actions carried out by state officials...;
- Assessing the information received...;
- Checking whether state officials...are not in conflict of interest...;
- Checking the legal origin of assets of the state official...;
- Collecting and analysing information on unlawful activities of state officials...

Notably, however, there are no standard operating procedures, manuals, or procedural directives relating to these primary functional activities of the division. Nowhere is it set out how, in what sequence, to what level, using what authorities and protocols, etc., these functions are to be carried out. Apparently, newly inducted personnel are verbally briefed on customary procedures and given guidance in execution of these roles by their peers and supervisors, but there is no written guide or directive. This is in apparent contravention of the Regulations on Procedure for Circulation of Documents, Section 4 Bureau Internal Documents Turnover, where Section 4.1 Types of Bureau Internal Documents lists among the required documents:

- Regulation 103.1 internal regulatory instruments and job descriptions;

while Regulation 104.2 includes in these:

- Regulations of Bureau divisions.

It is recommended that such a set of internal operating procedures be prepared, introduced and enforced.

While it is beyond the scope of this study to consider all other divisions of the Bureau, the principle of introducing internal operating procedures holds good for all.

## **7 KNAB Methodology**

### **7.1 *National Policy Documents***

The National Strategy for Corruption Prevention and Combating for 2004-2008 points out basic principles and objectives of the corruption prevention and combating policy, as well as defining problems, the solution of which requires implementation of the national anti-corruption policy.

The National Programme for 2004-2008 sets priorities, defines responsible institutions, their tasks and timeframe for implementation of the strategy, thus effectively coordinating the cooperation amongst all agencies involved. The KNAB is responsible for control and co-ordination of the implementation of the programme. An extract of the relevant sections, as they relate to officials' activities, is at Annex B.

### **7.2 *Routine Processes***

The implementation of the National Programme within DCASO in practice amounts to three tasks:

- The investigation and follow-up action of officials' activities, following a report or complaint;
- Identification of weaknesses in nominative acts; and
- Education within the public service.

These three roles are examined in turn.

#### **7.2.1 *Investigation of officials' activities***

The major task of DCASO personnel is the examination of officials' activities. Statistics provided indicate that, in 2005, 712 complaints and applications for consideration were received; 1,096 declarations of public officials were requested from the SRS and examined, relating to a total of 522 individual public officials.

The vast majority of examinations are based on the receipt, from either public or private persons, of a complaint or report suggesting or alleging that a breach of the law has been committed. This may relate to a conflict of interest, abuse of authority or corrupt activity. A minority are cases referred to KNAB from other public bodies, such as the Procurement Monitoring Bureau.

The procedure followed, in lay terms, is:

- Receipt and registration of report or complaint;
- Identification of what needs to be checked;
- Checking process, by access to SRS and Land Registry databases, etc.;
- Checking from other sources, e.g. commercial organisations, by mail;
- Identification of any breaches (not confined to original complaint);
- Report prepared for approval by Division Head;
- Division Head sets fine as legal act;
- Transgressor summoned to KNAB office; \*
- Administrative penalty (fine) imposed;
- Appeal to Director of KNAB if aggrieved;
- Appeal to courts if still aggrieved.

[\* In cases where attendance at KNAB offices is inconvenient or difficult, such as for an official in a remote municipal institution, the process may be conducted by mail.]

The ICE was informed by those DCASO personnel provided for interview that this process was adequate and efficient. No significant shortcomings were raised by them. Unfortunately, the opportunity to examine the process in greater detail, by physical observation, on-site enquiry or more extended interviewing, was denied to the ICE.

### **7.2.2 Identification of system weaknesses**

While the corruption prevention function of identification of weaknesses in nominative acts of various kinds is ideally a function of a division of the Corruption Prevention Department, in practice this forms a very minor, almost insignificant, part of their work. For example, while the Procurement Monitoring Bureau refers cases of suspected malpractice to DCASO, the latter in turn have little or no opportunity or capability to examine the process of procurement that led to the surfacing of the case.

### **7.2.3 Education**

Routine explanation sessions of the Law on Prevention of Conflict of Interest in Activities of Public Officials are arranged, with the assistance of the Public Relations and International Cooperation Division, for a range of state and municipal institutions throughout the country; a total of 29 such sessions were arranged last year. Each session is usually attended by 30-100 officials.

Notwithstanding this training, an informal estimate provided by KNAB personnel is that approximately 70% of all public officials called to account for administrative violations, committed those violations through ignorance. This clearly indicates a lack of adequate communication in promulgating and explaining the law. Recommendations on this subject have already been made earlier in this report.

Should the provision of training sessions remain with DCASO, then the officers involved (currently only four) should be trained in presentation skills and training needs. At present, only two have training in training skills. This is recommended.

### **7.3 Prioritisation**

The current working arrangements within DCASO allow little opportunity for analysis or assessment of what is being achieved in preventing or combating corruption. The vast majority of the cases examined arise in direct response to incoming complaints or applications for consideration. The division is, therefore, almost entirely reactive, rather than proactive, in the execution of its duties. This can provide little reassurance that the most deserving cases, or those where there is considerable risk of misconduct, are being examined, simply because no one has triggered an examination by writing in to complain.

Instead, it would be preferable if DCASO rearranged its priorities to initiate its own examinations, in accordance with a predetermined and pre-approved set of criteria. There would appear to be no legal bar to this in existing legislation, which is silent on how KNAB implements its responsibilities under the National Strategy and National Programme for Corruption Prevention and Combating 2004-2008.

Proactive tasking can be achieved by the introduction of a number of measures, including the following:

#### **7.3.1 Risk analysis of duty positions**

A risk analysis should be conducted to identify high-risk positions within the public service. This should be along very similar lines to that outlined in Report No. 1 for the identification of units suitable for corruption prevention studies within institutions. The only difference is that this risk analysis should strive to identify particular positions, rather than whole units, that may be at particular risk. The earlier report outlined lists of risk criteria, vulnerable procedures and a streamlined assessment procedure.

It is suggested that vulnerable procedures, such as the following, be identified first:

- Law enforcement (e.g. police, customs, border and immigration operations);
- Regulatory control and licencing;
- Collection of income or revenue;
- Site supervision (e.g. of construction or installation work);
- Procurement;
- Asset management and safeguarding; and
- Staff administration (appraisal, promotions and duty allocation).

Secondly, the identification of duty posts charged with key steps in these procedures should then be identified. An assessment chart, as outlined in the earlier report, will facilitate this process.

Finally, the allocation of a risk category to the duty post will provide a prioritisation list of duty posts, and their incumbents, for examination.

#### **7.3.2 Risk analysis of personnel**

There are two likely sources of information on individuals that will assist in prioritisation of their risk of misconduct:

- The SRS database already logs the contents of declarations submitted by public officials. It would require a simple addition to the programme to trigger variations year-on-year. These could include such variations as an N% increase in the value of assets, or an X% increase in the number of areas of financial interest.
- Individuals about whom credible information or intelligence has been received, whether from KNAB Corruption Combating Department or other reliable sources, that leads to a suspicion of corruption or other misconduct.

It is recommended that a system of prioritisation of examinations, based on risk assessment, be introduced by DCASO.

#### **7.4 Strategic Plan**

Other than the rather general National Strategy and National Programme for Corruption Prevention and Combating 2004-2008, there is no strategic plan within DCASO for setting out a programme of activities, monitoring their execution and assessing the results.

It is recommended that such a plan be designed and implemented. It is suggested that this should ideally be a five-year rolling plan, timed to coincide with the National Programme, and that it should be reviewed, assessed and updated each year. This would be particularly effective if introduced in tandem with the previous recommendation, for a system of prioritisation of examination of officials' activities, as it would provide an evaluation tool for the efficacy of that system.

As part of this strategic plan, it is further recommended that an annual report be produced and published, setting out, in addition to the statistics already available, the extent to which the system of prioritisation and strategic plan have been successfully implemented. Naturally, this report should be sanitised to ensure that it did not contain identifiable details of any individual cases.

#### **7.5 Tactical considerations**

In examining the work of DCASO, the ICE was left with some overall concerns that the deployment of a large cadre of professional officers to the examination of officials' activities appeared to have had little effect on tackling corruption. This is not meant as a criticism in any way of the personnel involved, but rather as a doubt about the tactical wisdom of concentrating on asset declarations as a major tactic in fighting corruption.

The first concern relates to the procedural nature of the present system. In 2005, the declarations of a total of 522 officials were subjected to examination. 124 officials were sanctioned according to administrative liability, for breaching restrictions imposed on public officials, 114 being fined from 50 Lats to 200 Lats<sup>6</sup> each, while

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The range of fines available under the law is from 50 to 250 Lats, but DCASO personnel informed the ICE that the maximum that had actually been imposed was 200 Lats.

the other 10 were given a warning. An estimated 70% of these, or say 80-90, were in breach of the law through ignorance or mistake. This appears to indicate that the present arrangements concentrate on catching officials for failure to comply with bureaucratic regulations, rather than for acts of corruption or dishonesty.

Only approximately 30-40 officials, by DCASO estimate, knowingly committed acts of conflict of interest that were surfaced by examination. Of these, 25 were referred to the Corruption Combating Department of KNAB for further examination, as possible evidence of a crime had been surfaced. However, only two of these officials were eventually subjected to criminal proceedings. (Unfortunately, the results of these cases were unavailable to the ICE at the time of this study.) This cannot be classified as a high success rate.

The second concern relates to duplication of effort with the SRS. Following their receipt of the asset declarations of public officials, these are subjected to a risk based assessment, which currently has 167 public officials identified for review of their disclosures. These are then subjected to manual review by the SRS Corruption Prevention Department. These cases are not usually referred to KNAB, unless evidence of conflict of interest is surfaced. Success rates are poor, with two cases, involving six officials, being investigated in 2005. Neither has been resolved, by trial or dropping of the cases.

The third concern relates to targeting. It is unreasonable to assume that anyone involved in syndicated corruption or organised crime is likely to be so naïve as to reveal the details of their profits in an SRS asset declaration. Even if they did, the sanctions available, including a maximum fine of 250 Lats, are hardly threatening. Similarly, major cases of conflict of interest, say in the areas of procurement, are easily concealed by the simple expedient of laundering the proceeds through distant relatives or shell companies.

The ICE understands that the present arrangements were designed to prevent the misappropriation of state assets following independence. Current threats may now be entirely different. In summary, a review of the whole thrust of the examination of the issues of asset declarations and conflict of interest is called for, covering the deployment and tactics of DCASO. In particular, a prime target of this review should be the achievement of a more highly focussed unit, targeting prioritised misconduct. This should also include the consideration of the move of DCASO from the Corruption Prevention Department to the Corruption Combating Department, recommended earlier.

## Annex A – Asset Disclosure by Country

Country	TI CPI 2005	Elected officials	Appointed officials	Civil servants	Provincial/local employees same as state
Albania	126	Yes, senior	Yes, senior	Yes, senior	Yes
Bangladesh	158	No	Yes	Yes	Yes
Brazil	62	Yes	Yes	Yes	Yes
Ghana	65	Very senior only	Very senior only	Very senior only	No
India	88	Yes, and on candidature	Variable	Variable	Variable
Kenya	144	Yes, senior	Yes, senior	Yes, senior	Yes
Korea	40	Yes, senior, and on candidature	Yes, senior	Yes, senior	Yes
LATVIA	51	Yes	Yes	Yes	Yes
Mexico	65	Yes, senior	Yes, federal only	Yes, federal only	No
Nigeria	152	Yes	No	Yes	No
Philippines	117	Yes	Yes	Yes	Yes
Romania	85	Yes, senior	Yes, senior	Yes, senior	Yes
Sri Lanka	78	Yes	Yes, senior	Unclear	Yes
Tanzania	88	Yes	Yes, senior	No	Yes
Thailand	59	Yes	Yes	Yes	Yes
Turkey	65	Yes	Yes	Yes	Yes
Uganda	117	Yes, senior	Yes, senior	Yes, senior	No
USA	17	Yes, senior, federal only, and on candidature	Yes, federal only, and on candidature	Yes, senior, federal only*	Federal only, but some local laws*

\* In the USA, many senior civil servants at both federal and local level are elected or politically appointed. The asset declaration system does not apply to career civil servants.

## Annex B -- Extracts from The National Programme for Corruption Prevention and Combating, 2004 – 2008

### III Improvement of control over illegal income and expenditure

1. Improvement of legal acts in the area of tax administration with particular attention to establishing a control system over residents' income, including income of state officials, and the implementation of an adequate system of sanctions.

No.	Task	Rationale of the Task	Responsible Institution	Timetable for Execution	Activity Results
24	Development and implementation of a methodology for the examination of state officials' income legality, properties, their compliance with restrictions and prohibitions	The examination methodology would improve the disclosure of violations with regard to performance of functions by state officials in a situation of conflict of interest	CPCB (KNAB)	09/2004	Approved methodology in place

### VI Ensuring and improvement of the internal anti-corruption system in state and municipal bodies

1. Prevention of conflict of interest regarding state officials in the respective state and municipal organisations

No.	Task	Rationale of the Task	Responsible Institution	Timetable for Execution	Activity Results
74	Explanation of the law "On Prevention of conflict of Interest	Precise, unambiguous interpretation of the law has to be	CPCB (KNAB)	Permanent	Commentaries to the law produced, information

	in Activities of Public Officials” to state officials and the general public	ensured			published on the KNAB home page and published in brochures
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## VII Building legal awareness among state officials and other members of the society on issues of corruption

1. Educating state and municipal officials together with representatives of the private sector on prevention and combating of corruption.

No.	Task	Rationale of the Task	Responsible Institution	Timetable for Execution	Activity Results
91	Education of state officials on issues of prevention of corruption	Education of state officials to raise professional qualifications and reduce the risk of corruption	LSPA	Ongoing	Training programmes that support prevention of corruption developed for state officials. Training materials, methodology and training programme produced