



The Integrity Commission of Jamaica

Anti-Corruption and Good Governance Sensitization Workshop Series

**Specially Developed by the Integrity
Commission for the Cabinet of the Government
of Jamaica**

Anti-Corruption and Good Governance Sensitization Workshop Series

Module #12

“International Best Practices in Anti-
Corruption and Anti-Bribery”

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International Conventions and Treaties

- The ratification of International Conventions and Treaties by States within the International Community has been a long standing tool in the fight against Corruption.
- Such Treaties/Conventions include:
 - The Inter-American Convention Against Corruption;
 - The United Nations Convention Against Corruption;
 - The OECD Anti-Bribery Convention; and
 - African Union Convention on Preventing and Combating Corruption.

International Conventions and Treaties

The Inter-American Convention Against Corruption

1st Adopted in 1996, and entered into force 1997. It is the first legal instrument of its nature.

- 35 OAS Member States, all but 1 are Parties to the Convention.
- Jamaica has been a Signatory to the Convention since 1996 with Ratification on March 16, 2001.
- The Convention gave rise to the promulgation of Jamaica's Corruption Prevention Act, 2001.

International Conventions and Treaties

The United Nations Convention Against Corruption

- Effective December 2005
- 187 States Parties
- Only a handful of States Parties are yet to become signatories to the Convention.
- Given its applicability, it is considered to be a universally binding Convention.
- Jamaica became a Signatory in September 2005 and ratified the convention March 2008.

International Conventions and Treaties

The OECD Ant-Bribery Convention

- Entry into force: **15 February 1999**, **44 Signatories**: All OECD countries and 7 non-OECD countries)
 - Establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions.
 - <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

African Union Convention on Preventing and Combating Corruption

- In force since 2006, 44 Ratifications/49 Signatories of the 55 Member States.
 - Noted feature of the Convention is its applicability to “private –to private” sector bribery.

The Jakarta Principles

In November 2012, global heads of anti-corruption agencies and numerous multilaterals met in Jakarta, Indonesia to “discuss a set of principles” for Anti-Corruption Agencies.

The meeting gave rise to a suite of recommended principles to ensure the independence and effectiveness of Anti-Corruption Authorities

The principles, which were derived from the experiences of numerous anti-corruption bodies whilst acknowledging the realities of their diversity, are noted verbatim:

The Jakarta Principles

MANDATE	ACAs shall have clear mandates to tackle corruption through prevention, education, awareness raising, investigation and prosecution, either through one agency or multiple coordinated agencies;
COLLABORATION:	ACAs shall not operate in isolation. They shall foster good working relations with state agencies, civil society, the private sector and other stakeholders, including international cooperation;
PERMANENCE	ACAs shall, in accordance with the basic legal principles of their countries, be established by proper and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA;

The Jakarta Principles

APPOINTMENT	ACA heads shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence
CONTINUITY	In the event of suspension, dismissal, resignation, retirement or end of tenure, all powers of the ACA head shall be delegated by law to an appropriate official in the ACA within a reasonable period of time until the appointment of the new ACA head
REMOVAL	ACA heads shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice);

The Jakarta Principles

IMMUNITY	ACA heads and employees shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate. ACA heads and employees shall be protected from malicious civil and criminal proceedings.
REMUNERATION	ACA employees shall be remunerated at a level that would allow for the employment of sufficient number of qualified staff;
AUTHORITY OVER HUMAN RESOURCES	ACAs shall have the power to recruit and dismiss their own staff according to internal clear and transparent procedures

The Jakarta Principles

ADEQUATE AND RELIABLE RESOURCES	ACAs shall have sufficient financial resources to carry out their tasks, taking into account the country's budgetary resources, population size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA's operations and fulfillment of the ACA's mandate;
FINANCIAL AUTONOMY	ACAs shall receive a budgetary allocation over which ACAs have full management and control without prejudice to the appropriate accounting standards and auditing requirements;

The Jakarta Principles

INTERNAL ACCOUNTABILITY	ACAs shall develop and establish clear rules and standard operating procedures, including monitoring and disciplinary mechanisms, to minimize any misconduct and abuse of power by ACAs
EXTERNAL ACCOUNTABILITY	ACAs shall strictly adhere to the rule of law and be accountable to mechanisms established to prevent any abuse of power
PUBLIC REPORTING	ACAs shall formally report at least annually on their activities to the public.

The Jakarta Principles

PUBLIC COMMUNICATION AND ENGAGEMENT	ACAs shall communicate and engage with the public regularly in order to ensure public confidence in its independence, fairness and effectiveness.

Public Register of Interest

The UK Parliament System

- Register of Members' Financial Interests

“The main purpose of the Register is to provide information about any financial interest which a Member has, or any benefit which he or she receives, which others might reasonably consider to influence his or her actions or words as a Member of Parliament.”

- The UK Parliament's Website currently lists the Registers of Interest dating back to 1997/1998

Public Register of Interest

The Australian System

- **Members' Registrable Interests**

“Under the resolution of the House, within 28 days of making and subscribing an oath or affirmation as a Member, each Member is required to provide to the Registrar of Members' Interests a statement of the Member's registrable interests.

Public Register of Interest

The Australian System

- The registrable interests of which the Member is aware of the Member's spouse and any children wholly or mainly dependent on the Member for support must also be included in the statement. The statement is to include:
 - in the case of new Members, interests held at the date of the Member's election;
 - in the case of re-elected Members of the immediately preceding Parliament, interests held at the date of dissolution of that Parliament; and
 - changes in interests between these dates and the date of the statement.”

Public Register of Interest

The Turks and Caicos Island System

- In September 2012 the Integrity Commission Ordinance (2008) was amended to provide a system for members of the House of Assembly to register their interests in addition to their declaration under Section 39 of the Main Ordinance.

Public Register of Interest

The Turks and Caicos Island System

“53. (1) A statement of registrable interests shall contain the following information relating to the member, his spouse and children—

- *(a) particulars of any directorships held in any company or other corporate body;*
- *(b) particulars of any contract made with the Government;*
- *(c) the name or description of any company, partnership or association in which the person is an investor;*
- *(d) a concise description of any trust to which the person is a beneficiary or trustee;*
- *(e) any beneficial interest held in land;*

Public Register of Interest

- The Turks and Caicos Island System
- *(f) any fund to which the person contributes;*
- *(g) particulars of any political, trade or professional association to which the person belongs;*
- *(h) particulars relating to sources of income; and*
- *(i) any other substantial interest whether of a pecuniary nature or not, which the member considers may appear to raise a material conflict between his private interests and his public duty.*

Public Register of Interest

- The utility of the Public Register of Interest resides in the fact that:
 - The information can be centralised once submitted;
 - The Register is open to review and scrutiny by the entire public;
 - The Register becomes a quick reference point for compliance with disclosure requirements and potential conflicts of interest.

Foreign Corrupt Practices Act

- The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA"), was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.
 - <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>

Foreign Corrupt Practices Act

- A violation of the FCPA consists of five "elements." That is, a person or organization is guilty of violating the law if the government can prove the existence of:
 - a payment, offer, authorization, or promise to pay money or anything of value
 - to a foreign government official (including a party official or manager of a state-owned concern), or to any other person, knowing that the payment or promise will be passed on to a foreign official
 - with a corrupt motive
 - for the purpose of (a) influencing any act or decision of that person, (b) inducing such person to do or omit any action in violation of his lawful duty, (c) securing an improper advantage, or (d) inducing such person to use his influence to affect an official act or decision
 - in order to assist in obtaining or retaining business for or with, or directing any business to, any person

Foreign Corrupt Practices Act

- The FCPA has impacted many countries and firms worldwide since its promulgation in 1977.

Particulars of enforcement are publicly available on the U.S Securities and Exchange Commission's website.

The value of corporate enforcement action under the FCPA for 2020 amounts to approximately USD\$6,416,204,365.00, including USD 3.3 Billion levied against the Goldman Sachs Group.

Foreign Corrupt Practices Act

- Examples of Enforcement
- Goldman Sachs Group, Inc. - The firm agreed to pay more than more than \$1 billion to settle SEC charges that it violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA in connection with the 1Malaysia Development Berhad (1MDB) bribe scheme (10/22/20).

Foreign Corrupt Practices Act

- Ericsson – The multinational telecommunications company agreed to pay more than \$1 billion to the SEC and DOJ to resolve charges that it violated the FCPA by engaging in a large-scale bribery scheme involving the use of sham consultants to secretly funnel money to government officials in multiple countries. (12/6/19)

Foreign Corrupt Practices Act

- Walmart Inc. – SEC charged Walmart with violating the books and records and internal accounting controls provisions of the FCPA by failing to operate a sufficient anti-corruption compliance program for more than a decade as the retailer experienced rapid international growth. Walmart agreed to pay more than \$144 million to settle the SEC's charges and approximately \$138 million to resolve parallel criminal charges by the DOJ for a combined total of more than \$282 million. (6/20/19)

Foreign Corrupt Practices Act

- JPMorgan - The firm agreed to pay \$264 million to the SEC, Justice Department, and Federal Reserve to settle charges that it corruptly influenced government officials and won business in the Asia-Pacific region by giving jobs and internships to their relatives and friends. (11/17/16)
- Further examples and particulars may be obtained from: <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>

UK Bribery Act - 2010

- Latham and Watkins, in summarising the UK Bribery Act, 2010 indicated as follows with regard to the referenced Act:
- *“It will criminalise both active and passive bribery, i.e. both bribing and being bribed.*
- *• It will criminalise not just bribery of public officials, but also bribery entirely in the private sphere.*
- *It does not require proof of dishonesty or corruption.*
- *It will criminalise the failure to prevent bribery taking place.*

UK Bribery Act -2010

- *It will, effectively, require those carrying on business in the UK to have in place “adequate procedures” to prevent bribery taking place, even if the bribery is unconnected with the UK.*
- *The offences will have extensive extra-territorial reach, criminalising activities which may take place entirely outside the UK.*
- *Committing offences could lead to imprisonment for up to 10 years (for individuals) and/or unlimited fines (for individuals and corporate bodies).*
- *There is no exception for “facilitation payments”.*
- *“Local customs and practices” will not necessarily provide a defence.”*

UK Bribery Act - 2010

- Quite recently, leading private sector groups in Jamaica have expressed an intent to lobby the Government of Jamaica to promulgate legislation similar to the UK Bribery Act, 2010.

Similar Anti-Bribery Legislation

- Bermuda Bribery Act 2016:
 - Sections 9 and 11, of the Bermuda Bribery Act contain provisions regarding:
 - The failure of commercial organisations to prevent bribery;
 - Guidance about commercial organisations preventing bribery.
 - An allowable defence under the Act is for commercial entities to prove the existence of adequate procedures, in place, to prevent bribery. (Ref. Section 9(2)).

Similar Anti-Bribery Legislation

- Turks and Caicos Island's Bribery Ordinance 2017
 - Sections 10 and 12 of the Ordinance provide for the failure of commercial organisations to prevent bribery and guidance about commercial organisations preventing bribery, respectively.
 - Under Section 12 of the TCI Ordinance, the Integrity Commission is required to publish guidance about anti-bribery procedures which can be adopted by commercial entities.

Similar Anti-Bribery Legislation

- Under Colombia's Law 1778 of 2016, corporations can be fined up to \$40 Million for acts of bribery.
- The Law encourages self-reporting.
- The law is applicable, *inter alia*, to Colombian companies and their foreign subsidiaries.
- Sanctions imposed are published on the company's certificate of incorporation and good standing.

Brazil's Clean Company Act

- Brazil's Clean Company Act 2014 (Law No. 12,846) is the country's first anti-corruption law to hold companies responsible for their employees' corrupt actions.
- The Act imposes strict liability on companies operating in Brazil for domestic and foreign bribery and provides no exception for facilitation payments.
 - www.GANIntegrity.com

Brazil's Clean Company Act

- Unlike the UK Bribery Act, there is no expressed statutory defense for having implemented 'adequate procedures' to prevent persons from committing corrupt acts on behalf of the company.
- The Law allows self reporting and the exercise of leniency, it however requires the offending company to be the first to report the violation, amongst other things.
- These provisions make the Clean Company Act among the toughest anti-corruption laws in the world.

Brazil's Clean Company Act

- The Clean Companies Act sets forth that fines will range from 0.1% to 20% of the gross revenue of the legal entity from the year before the commencement of the administrative proceeding against the company.
- In the determination of the fines, the Regulations indicate the range of fines which are applicable to varying categories of breaches.
 - <http://fcpamericas.com/english/anti-corruption-compliance/highlights-brazils-regulation-clean-companies-act/>

SAPIN II – French Anti-Corruption Law

- The French anti-corruption law, with its three main pillars addressing transparency, anti-corruption and economic modernization, entered into force on 1 June 2017.
- SAPIN II stipulates that companies with more than 500 employees must establish an anti-corruption program to identify and mitigate corruption risks.

SAPIN II – French Anti-Corruption Law

- SAPIN II was largely inspired by the UK Bribery Act and the Brazilian Legislation.
- A novel feature of the law is the binding obligation to prevent corruption and trading in influence, inclusive of the implementation of internal whistleblowing procedure and training for staff.

SAPIN II

- **Examples of Sanctions**
- **A legal person may incur:**
 - A fine up to EUR one million for the breach of the obligation to implement measures to prevent and detect corruption.
- **A natural person may incur:**
 - A fine up to EUR 200,000 for failure to implement measures to prevent and detect corruption.

SAPIN II

- Unlike under the UK Bribery Act – where companies may demonstrate a full defense of ‘adequate procedures’ in case of a breach – the Sapin II law can hold companies liable for failure to implement an efficient anti-corruption program, even when no corrupt activity has taken place.

<https://www.ganintegrity.com/portal/anti-corruption-legislation/sapin-ii-law/>

- Other countries, such as Colombia, Germany and Canada have promulgated legislation that is similar to the FCPA, and the UK Bribery Act, 2010, to address the issue of corruption within the public and private sphere.

ISO 37001 – Anti-Bribery Management Systems

- The ISO-37001 Standard is an internationally recognised management system specifically designed to:
 - Instill an anti-bribery culture within an organisation;
 - Implement anti-bribery systems and controls.
 - Easily integrate with existing management systems and controls.

The ISO Standard does not replace anti-bribery legislation but is complementary to such laws.

ISO 37001 – Anti-Bribery Management Systems

- The standard requires the implementation of systems and controls, such as:
 - The adoption of an anti-bribery policy
 - Designation of personnel to oversee compliance
 - Vetting and training employees
 - Risk management and mitigation.

ISO 37001 – Anti-Bribery Management Systems

- Given that ISO 37001 is a voluntary standard, the onus remains on implementing agencies/businesses to adopt and maintain the relevant practices to maintain certification.
- ISO 37001 has gained support in Jamaica from the Jamaica Chamber of Commerce, the Private Sector Organisation of Jamaica and the Jamaica Manufacturers and Exporters Association.

Transparency Tools

- Transparency remains one of the greatest tools in the fight against corruption worldwide.
- Tools which encourage transparency include:
 - Open Government Partnership
 - Public Disclosure of MDA Salaries

Transparency Tools

- Open Government Partnership
 - The GOJ joined the Open Government Partnership (OGP) in 2016.
 - The OGP aims at making government more open, transparent, inclusive and responsive to its citizens.
 - As a part of the global movement, the GOJ has now embarked on the development of its 1st National Action Plan – a requirement to be a member of the OGP.

Transparency Tools

- Public Disclosure of Salaries of Public Officials:
 - The disclosure of public servants salaries and severances is a legal requirement in many jurisdictions, once salaries are derived from public funds.
 - These particular types of disclosures often complement the OGP initiatives to which the jurisdiction has subscribed.

Transparency Tools

- *The Public Sector Salary Disclosure Act, 1996* - Canada
 - Disclosure of Ontario Public Servant Salaries
 - “The act requires organizations that receive public funding from the Province of Ontario to make public, by March 31 each year, the names, positions, salaries and total taxable benefits of employees paid \$100,000 or more in the previous calendar year” - <https://www.ontario.ca/page/public-sector-salary-disclosure>
- Public Financial Disclosure Reports: - USA
 - Required to be filed by a certain classification of US Government employees. - <https://www.justice.gov/jmd/financial-disclosure#public>

The Revolving Door Principle

- The Revolving Door Principle is one in which persons who have highly influential positions within the public sector transition to jobs in the private sector and vice versa.
- The concept is often associated with regulators, policy makers and lobbyists.
- At the root of the Revolving Door is the risk of improper influence or access, whether inadvertent or deliberate.

The Revolving Door Principle

- In many jurisdictions there is a “cooling off” or waiting period, during which time holders of these influential posts are prohibited from this practice, particularly having left the public service.
- The purpose of the principle is not to stop the movement of skilled expertise but rather to regulate its movement to guard against abuse or the unethical leveraging of insider knowledge caused by “switching sides”.

The Revolving Door Principle

- Many US States have enacted prohibitions against this practice ranging from several months to years.

In Florida, the law provides that:

“No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for 2 years following vacation of office. Excludes representing others before judicial tribunals. West's F.S.A. Const. Art. 2 § 8 & Fla. Stat. Ann. § 112.313. For 2 years, a former legislator may not act as a lobbyist for compensation before an executive branch agency, agency official, or employee. Fla. Stat. Ann. § 112.313.

In November 2018, a constitutional amendment was passed via ballot initiative that will extend revolving door prohibitions to 6 years. The 6-year cooling off period will go into effect on December 31, 2022.”

The Revolving Door Principle

- In sharp contrast, there is no mandatory waiting period in states such as Idaho and Nebraska.
- Particulars of the prohibitions may be obtained via the following link:
 - <https://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx>

The Revolving Door Principle

- Transparency International has cited the following examples of the Revolving Door:
 - In India, the **former chairman of the Securities and Exchange Board** began serving the companies that he used to regulate once he 'retired' from public service.
 - In South Africa, the **former chief executive of the Gauteng Gambling Board** left his position to become the **director of a private gaming** company he used to oversee.

The Revolving Door Principle

- Jamaica, is not faultless in this regard, as persons transition between the public and private sphere.
- However, due consideration should be given to regulating how these transitions are undertaken to include:
 - The period from which overtures for employment are permissible.
 - The period from which actual employment can be accepted;
 - The classification of individuals to whom it would be applicable.

Sanctions/the Judicial System

- The adoption of many of the previously referenced anti-corruption and anti-bribery practices will require further action within the Justice Systems to include:
 - Consideration of Specialised Anti-Corruption Courts.
 - Specialised training of the Judiciary and Prosecutors to treat with anti-corruption and anti-bribery standards.
 - Overhauling outdated and inadequate sanctions, to include sentencing guidelines for corruption and bribery offences.

Sanctions/the Judicial System

- Anti-Corruption Courts:
 - Countries such as Afghanistan, Armenia, Bangladesh, Botswana, Bulgaria, Burundi, Cameroon, Croatia, Indonesia, Mexico, Malaysia, Kenya, Phillipines, Nepal, Uganda, Zimbabwe, Tanzania, and Thailand, are amongst a long list of countries which have adopted the use of Special Anti-corruption Courts.
- As at February 8, 2021, the Parliament of Fiji was set to debate a Bill to create a specialised division within the judicial system to deal solely with anti-corruption cases.

Sanctions/the Judicial System

- In support of the Specialised Courts, emphasis must also be placed on ensuring that the Judiciary and Prosecutors are adequately trained and resourced to treat with corruption cases.

Sanctions/the Judicial System

- As evidenced by the numerous Anti-Bribery and Anti-Corruption Legislation, there is a need to incorporate dissuasive sanctions as a best practice.
- Brazil, having instituted its Anti-Bribery Legislation in 2014, achieved great success through the “Operation Car Wash” Task Force.
- The task force during its tenure put 280 people to jail and retrieved some US\$800 million for the State.

Sanctions/the Judicial System

- In Singapore, the Singapore High Court set out new sentencing framework for public sector corruption given that:
 - Public sector corruption is considered an aggravated form of corruption as it undermines and erodes integrity and public trust in the State.
 - Custodial sentences are the norm in Singapore given the country's zero tolerance approach to corruption.

Sanctions/the Judicial System

- Quite similarly, in Indonesia strict sentencing guidelines have also been issued, with corruption convicts facing life convictions for certain types of corruption offences.

Sanctions/the Judicial System

- Though Jamaica has not yet implemented specialised courts or sentencing guidelines for corruption, due consideration should be given to:
 - The high rate of delinquency amongst declarants;
 - The IC's recent move towards referring delinquent declarants to the Director of Corruption Prosecution;
 - How the Courts, as presently structured would accommodate the many thousands who could possibly be referred.
- The question arises, therefore, as to how the Courts will treat with corruption related matters.

Questions and Answers