



Union Internationale des Avocats
International Association of Lawyers
Unión Internacional de Abogados



Associação dos Advogados de Macau
澳門律師公會

Macau

PRE-PROGRAMME

Friday, May 14 & Saturday, May 15, 2010



Corruption and The Rule of Law

Seminar organised by the UIA and the Macau Bar Association

Seminar languages: English – Portuguese – Chinese



I - Corruption and its Impact on Modern Societies

- What is Corruption ?
- Economic, Social and Political Costs of Corruption
- Fighting Corruption and Protecting the rule of law

Corruption - ranging from bribery and extortion to nepotism - drains government coffers, wreaks havoc with free trade, and scares away investors. Rather than enhancing a more equitable distribution of income, corruption distorts the allocation of resources away from those who are legally entitled to them and toward the rich, the powerful, and the politically well-connected.

Instead of cementing citizens' loyalty to the political system, corruption more often breeds public cynicism and resentment toward the political process and those associated with it.

In extreme cases, the legitimacy of the public sector itself may be called into question, and governments may find themselves confronted with political instability or even collapse.

The level of corruption in a society has a dramatic impact on that society's support for the rule of law. Corruption and the rule of law are closely linked, and efforts to reduce corruption and strengthen the rule of law appear to be mutually reinforcing.

II - Should special procedural rules apply to the fight against corruption?

- What specific powers should be given to investigative authorities?
- Should a specific political body be in charge of oversight of corruption issues and what powers should it be granted? What safeguards should be put in place to protect against abuses?
- What is the proper role of the defense lawyer?
- What is the interrelationship of the attorney-client privilege and the fight against corruption?

International anti-corruption treaties, including the UN Convention against Corruption (UNCAC), require member states to establish two types of anti-corruption institutions - one to prevent corruption and the other to fight corruption through law enforcement. But the establishment of special anti-corruption bodies does not appear to be a commonly-accepted approach to preventing and fighting corruption. There are several countries that have in fact established such special bodies for combating corruption. At the same time many countries prefer to instead focus their efforts on strengthening traditional law enforcement institutions in order to improve the effectiveness of their anti-corruption activities. With respect to special law enforcement bodies, the UNCAC and some regional conventions underline the need for effective means of gathering evidence, protection of witnesses and increased incentives for

citizens to report corruption. Specialized law enforcement institutions are often granted more extensive and sometimes more intrusive powers than regular police (for example, special investigative powers, access to private financial information, the ability to trace and seize the proceeds of corruption, whistleblower protection, wiretapping authority, etc.). Such broad powers should be strictly scrutinized in light of international human rights standards (the right to a fair trial including the right to put on a defence, protection of the attorney-client privilege, etc.) and should be subject to external oversight.

III - Corruption in an international context

- Bilateral, Regional and International instruments
- International cooperation (mutual assistance, Interpol, extradition, jurisdiction and immunity issues...)
- Multijurisdictional investigations

Bilateral, regional and international anti-corruption conventions and agreements provide frameworks to promote mutual cooperation between state parties. How efficient are such instruments and how are they used in practice? What are the impediments to an efficient exchange of mutual assistance, and what means do enforcement authorities have to circumvent them?

More and more individuals and companies are faced with multijurisdictional investigations. How can they best respond to them? Is cooperation with enforcement authorities an advisable approach worldwide? Are internal investigations possible and/or advisable in all countries? Are there strategies for avoiding investigations on the same facts in multiple jurisdictions?

IV - Sentencing in corruption cases, restitution, recourse for victims

- What sentences should apply in corruption cases? Are overly harsh sentences a possible obstacle to effectively fighting against corruption?
- The problems in an international context of discrepancies in sentencing
- Who are the true victims of corruption and what claims can they advance in court?

If harsh sentences may be seen as necessary strategy to re-establish control over economic and social sectors distorted by corruption, consistency is often lacking in sentencing in corruption cases. Beyond the imposition of penalties such as fines and prison terms, means recovery of ill-gotten assets must be strengthened.

Is the victim of corruption only society as a whole or does it also include individuals who should be identified and recognised as such? Who should have the right to bring civil claims in court and how ?