United Nations
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# Bribery in the Conduct of Business, Addressing Corruption in Public Procurement, and Laundering and Recovery of Proceeds of Crime:

## A Study on the Main Areas for Enhanced Cooperation among IPEF Partners

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## Disclaimer

This report has not been formally edited.

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# Introduction, Scope and Structure of the Study

In May 2022, the USA launched the Indo-Pacific Economic Framework for Prosperity (IPEF) with Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Viet Nam (IPEF partners).[1]

IPEF's objective is to advance resilience, sustainability, inclusiveness, economic growth, fairness, and competitiveness in participating economies. Through this initiative, IPEF partners aim to contribute to cooperation, stability, prosperity, development and peace within the region through the pillars of: (I) Trade; (II) Supply Chains; (III) Clean Energy, Decarbonization, and Infrastructure; and (IV) Tax and Anti-Corruption.

At the conclusion of the Senior Officials and Ministerial meetings, IPEF partners reached a consensus on ministerial statements for each of the four IPEF pillars. The IPEF Ministerial Statement for the Fair Economy Agreement highlights the intention of IPEF partners to: [2]

> ...effectively implement and accelerate progress on the United Nations Convention against Corruption (UNCAC), standards of the Financial Action Task Force (FATF), and as applicable, the OECD [Organisation for Economic Co-operation and Development] Anti-Bribery Convention. We aim to pursue provisions and initiatives to: prevent, combat, and sanction domestic and foreign bribery and other related corruption offenses, consistent with the UNCAC; strengthen measures to identify, trace, and recover proceeds of crime; strengthen anti money laundering and countering the financing of terrorism frameworks and their enforcement, including enhancing transparency of real estate transactions and beneficial ownership of legal persons consistent with the FATF standards; promote transparency and integrity in government procurement practices; encourage the private sector to implement internal controls, ethics, and anti-corruption compliance programs; establish and maintain systems for confidential and protected domestic reporting on corruption offenses; promote integrity of public officials; prevent corruption that undermines labor rights based on the ILO Declaration on Fundamental Principles and Rights at Work, which the Partners have adopted; strengthen transparency and implementation of existing anti-corruption review mechanisms; and promote, within our domestic legal frameworks, the participation of all stakeholders, including individuals and groups outside the public sector, in the fight against corruption, consistent with the UNCAC.

On 6 June 2024, the IPEF partners held a signing ceremony for the Fair Economy Agreement at the IPEF ministerial meeting in Singapore. The Fair Economy Agreement seeks to:[3]

> Effectively implement, enforce, and accelerate progress on anti-corruption measures and tax initiatives to advance transparency and level the playing field for enterprises and workers, consistent with international agreements and standards applicable to each Party; and
>
> Support capacity building, technical assistance, and innovative implementation approaches, including sharing of expertise and

[1] The White House, "Fact Sheet: In Asia, President Biden and a dozen Indo-Pacific partners launch the Indo-Pacific Economic Framework for Prosperity", 23 May 2022. Available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity/.

[2] United States Department of Commerce, "Ministerial Statement for Pillar IV of the Indo-Pacific Economic Framework for Prosperity," 2022. Available at: https://www.commerce.gov/sites/default/files/2022-09/Pillar-IV-Ministerial-Statement.pdf.

[3] United States Department of Commerce, "Indo-Pacific Economic Framework for Prosperity Agreement Relating to a Fair Economy", 2024. Available at: www.commerce.gov/sites/default/files/2024-03/IPEF-PIV-Fair-Economy-Agreement.pdf ('Fair Economy Agreement').
It is to be noted that while the Fair Economy Agreement is referenced throughout this study, it had not been signed at the time of drafting this document and has been added retroactively.

best practices, deployment of technologies, and strengthening of international cooperation, recognizing the different levels of development and capacity needs of each Party, as well as engagement, inclusion, and accountability measures of the Parties with respect to individuals and groups outside the public sector, such as civil society, enterprises, especially MSMEs, workers, women, Indigenous Peoples, persons with disabilities, rural and remote populations, minorities, and local communities.

Signatories to the Fair Economy Agreement:

- Recognize the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard;
- Recognize the importance of regional and multilateral initiatives to prevent and combat corruption, including bribery, and are committed to working with each other to encourage and support appropriate initiatives to reach these goals; and
- Affirm their obligations under UNCAC and, as applicable, the Anti-bribery Convention.

The objectives of the Fair Economy Agreement are in line with the 2030 Agenda for Sustainable Development and in particular Sustainable Development Goal (SDG) 16, which requires States to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels", by reducing the flow of proceeds of crime, strengthening the recovery and return of stolen assets, substantially reducing bribery and corruption, and developing effective, accountable and transparent institutions at all levels.[4] Moreover, article 3.5 of the Fair Economy Agreement provides for IPEF partners "support effective follow-through on the political declaration entitled *"Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation",* which the United Nations (UN) General Assembly adopted at its 32nd Special Session, June 2, 2021."[5]

All IPEF partners have ratified, accepted or acceded to UNCAC. UNCAC is unique in its holistic approach, adopting prevention and enforcement measures, including mandatory requirements for criminalizing corrupt behaviours. UNCAC also reflects the transnational nature of corruption, providing an international legal basis for enabling international cooperation and recovering proceeds of corruption (i.e. stolen assets). The important role of government, the private sector and civil society in fighting corruption is also emphasized. UNCAC has a Mechanism for the Review of its Implementation (the UNCAC Implementation Review Mechanism), requiring each State party to be reviewed by two other States parties on its implementation of UNCAC across two review cycles: one focused on chapters III (criminalization and law enforcement) and IV (international cooperation) of UNCAC and a second cycle focused on chapters II (preventive measures) and V (asset recovery). The UNCAC Implementation Review Mechanism aims to assist States parties in effectively implementing the UNCAC by identifying and substantiating the challenges, good practices and specific needs of each State party. Article 13 of the Fair Economy Agreement[6] notes that "[e]ach Party is committed to completing its UNCAC country reviews under the UNCAC Implementation Review Mechanism (UNCAC country reviews) in a timely manner."

UNODC, guardian of UNCAC and secretariat to the UNCAC Implementation Review Mechanism, seeks to provide support to the IPEF partners in implementing the UNCAC and achieving the overall objectives set under the Fair Economy Agreement. Most of the priorities under the Fair Economy Agreement correspond to priorities identified by the UNCAC Implementation Review Mechanism.

[4] UN, "Transforming our World: the 2030 Agenda for Sustainable Development," General Assembly resolution 70/1, Sustainable Development Goal 16, targets 16.4, 16.5 and 16.6.
[5] Ibid., p. 7. Cf also: UN General Assembly, "Resolution adopted by the General Assembly on 2 June 2021. S-32/1. Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation", A/RES/S-32/1, 7 June 2021. Available at: https://documents.un.org/doc/undoc/gen/n21/138/82/pdf/n2113882.pdf.
[6] Fair Economy Agreement, op.cit., p. 19.

| IPEF partners to UNCAC | Date of ratification/ accession/ acceptance[7] |
|---|---|
| Australia | 7 December 2005 |
| Brunei Darussalam | 2 December 2008 |
| Fiji | 14 May 2008 |
| India | 9 May 2011 |
| Indonesia | 19 September 2006 |
| Japan | 11 July 2017 |
| Malaysia | 24 September 2008 |
| New Zealand | 1 December 2015 |
| Philippines | 8 November 2006 |
| Republic of Korea | 27 March 2008 |
| Singapore | 6 November 2009 |
| Thailand | 1 March 2011 |
| USA | 30 October 2006 |
| Viet Nam | 19 August 2009 |

This study aims to provide a broad overview and high-level analysis of the following three areas for enhanced cooperation in the fight against corruption in IPEF partners:

- **Bribery in the conduct of business**, with a focus on the implementation of UNCAC articles 12 (private sector), 15 (bribery of national public officials), 16 (bribery of foreign public officials and officials of public international organizations), and 26 (liability of legal persons).
- **Addressing corruption in public procurement**, with a focus on the implementation of article 9(1) (public procurement).
- **Laundering and recovery of proceeds of crime,** with a focus on the implementation of articles 14 (measures to prevent money laundering), 23 (laundering of proceeds of crime) and chapter V (asset recovery).

This study addresses all IPEF partners. Where relevant, the study may place an added emphasis on information relating to Fiji, India, Indonesia, Malaysia, the Philippines and Viet Nam as countries that are eligible to receive official development assistance.[8]

This study is prepared with information included in the country review reports and executive summaries of IPEF partners from the UNCAC Implementation Review Mechanism. While all IPEF partners have completed their first cycle reviews (covering UNCAC articles 15, 16, 23 and 26), nine out of the 14 IPEF partners[9] have completed their second cycle reviews (covering UNCAC articles 9, 12, 14 and chapter V).

Where appropriate, this study also draws on commentary from other UNODC publications and internationally recognized standards, partners, bodies and initiatives. These include the Asia/ Pacific Group on Money Laundering (APG), FATF, OECD, Open Ownership (OO), and the Stolen Asset Recovery Initiative (StAR Initiative). Sources may further include commentary from other experts, such as legal practitioners.

The comparison and analysis of information were challenging due to the different levels of information provided in the country review reports and executive summaries. As the second cycle of the UNCAC Implementation Review Mechanism has not yet been completed, recommendations and particular areas of information for some IPEF partners are not fully available.

The diversity of IPEF partners posed a further challenge in the comparison and analysis of information, given differences in their normative, legal and socio-political frameworks. These differences give rise to varying challenges and limitations of IPEF partners' effort to address corruption. The progress of each IPEF partner to implement existing recommendations from the UNCAC Implementation Review Mechanism or other international standards, such as the FATF recommendations, has differed.

[7] UNODC, "Signature and ratification status," 1 April 2024. Available at https://www.unodc.org/unodc/en/corruption/ratification-status.html.
[8] OECD, "DAC List of ODA Recipients," accessed on 3 June 2024 Available at: https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/daclist.htm.
[9] Australia, Fiji, Indonesia, Malaysia, the Philippines, Republic of Korea, Thailand, USA, Viet Nam.

# Bribery in the Conduct of Business

To promote sustainable economic development and a level playing field for doing business in the region, it is important that IPEF partners introduce provisions to effectively combat bribery (including foreign bribery) and the liability of legal persons. IPEF partners should seek to ensure that they can effectively conduct enforcement actions against companies for corruption offences, particularly if foreign persons or jurisdictions are involved.

The Fair Economy Agreement sets out provisions on bribery, with article 5 in particular looking at application and enforcement of measures to prevent and combat corruption, including bribery. Some obligations under article 5 to note include:

- Article 5.1 requires IPEF partners to enhance its efforts to effectively prevent, detect, investigate, prosecute, and sanction corruption offenses, including bribery offenses;
- Article 5.2 requires IPEF partners to affirm their obligations under several UNCAC articles, including articles 12 (private sector), 15 (bribery of national public officials), and 16 (bribery of foreign public officials and officials of public international organizations), and, as applicable, the Anti-bribery Convention;
- Article 5.7 requires IPEF partners to disallow the tax deductibility of bribes, and, as consistent with their tax laws, other expenses incurred in furtherance of corruption offences, including bribery.

Other provisions from the Fair Economy Agreement relevant to combating bribery include:

- Article 7 on private sector internal controls, ethics and compliance, where under article 7.1, IPEF partners are to take appropriate measures to promote the active participation of the private sector in preventing and combating corruption, including bribery;
- Article 20.2, where IPEF partners are to cooperate, coordinate, and exchange information between their competent authorities to foster effective measures to prevent, detect, and deter corruption, including bribery, and article 20.4, where IPEF partners are to intend to demonstrate concrete efforts and share information with each other, as appropriate, on actions towards criminalizing domestic and foreign bribery and enforcing relevant laws in accordance with their respective domestic law.

This section explores the implementation of UNCAC provisions relevant to bribery in the conduct of business. In addition to key provisions on criminalizing the bribery of national public officials (article 15), and foreign public officials and officials of public international organizations (article 16), this section looks at making legal persons liable for their wrongdoing (article 26). This section also looks at the need to prevent corruption in the private sector (article 12), including by promoting beneficial ownership transparency. Article 8 of the Fair Economy Agreement sets out commitments by IPEF partners to take actions to enhance the transparency of legal persons and assess the money laundering and terrorism financing risks associated with all types of legal persons, including foreign-created legal persons.

The guiding framework[10] to fast-track the implementation of the UNCAC in Southeast Asia (2024–2027) (Guiding Framework) emphasizes the need to promote transparency and accountability in the private sector, with action points specifically on criminalizing bribery in the private sector and

[10] UNODC, "Regional Roadmap to Reinvigorate the Platform to Fast-Track the Implementation of the United Nations Convention against Corruption in Southeast Asia," 2024. Available at: https://www.unodc.org/roseap/uploads/documents/Publications/2024/2024-2027_UNCAC_Implementation_Roadmap_in_Southeast_Asia.pdf.

providing for the liability of legal persons. Action points also note the need to establish systems for data collection and analysis from the public and private sectors, including for the purposes of beneficial ownership transparency.

## Article 12: Private sector

UNCAC recognizes that the prevention of corruption in the private sector is critical to the success of any anti-corruption system. To this end, article 12 requires States parties to institute a wide range of measures to help prevent private sector corruption. These could include:

- Promoting cooperation between law enforcement agencies and relevant private entities;
- Developing standards and procedures on integrity for the private sector, including codes of conduct;
- Measures to avoid conflicts of interest, including by imposing restrictions for the employment of public officials in the private sector after their resignation or retirement where relevant;
- Take measures regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit acts such as establishing off-the-books accounts, the recording of non-existent expenditures, and the entry of liabilities with incorrect identification of their objects, which would be carried out for the purposes of committing offences established in accordance with UNCAC;
- Promoting transparency among private entities, including measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- Preventing the misuse of procedures on subsidies and licenses granted by public authorities for commercial activities.

There should further be civil, administrative or criminal penalties for failing to comply with such measures.

IPEF partners regulate the private sector with a variety of laws, regulations, frameworks and corporate guidance. Applicable laws and regulations, such as in the prevention of money laundering, may define the responsibilities for certain entities. Laws and regulations can set out minimum or enhanced levels of standards, such as in accounting and auditing, which may be dependent on the specific sector. Regulatory bodies commonly form part of the private sector landscape, including in enforcing legislation, standards and procedures. On the other end of the spectrum, corporate guidance may be non-binding or voluntary.

Ten IPEF partners that have completed the second review cycle at the time of writing received recommendations on article 12. A number of these recommendations concerned the transparency of legal persons and arrangements, preventing conflicts of interests when considering the employment of public officials in the private sector, and promoting standards for business ethics in the private sector.

### *Transparency of legal persons and arrangements*

The concept of beneficial ownership[11] presently refers to the individual or individuals – in other words, only physical or natural persons – who ultimately own or control a legal person or arrangement, such as a company, a trust, or a foundation, or who materially benefits from the assets held by such an entity or an arrangement. Article 8.1 of the Fair Economy Agreement defines a legal person as an entity other than individual that can establish a permanent customer relationship with a financial institution or otherwise own property – such an entity may include a company, body corporate, foundation, anstalt, partnership, association, and other relevantly similar entity.

UNCAC does not define the term "beneficial owner". FATF has defined the term "beneficial owner" as follows:[12]

[11] UNODC, "Enhancing beneficial ownership transparency: a study of beneficial ownership registration systems," CAC/COSP/2023/CRP.5, 7 December 2023, at p. 10. Available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/CAC-COSP-2023-CRP.5.pdf.
[12] Ibid.

> Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or arrangement.

FATF further clarifies that the reference to "ultimately owns or control" and "ultimate effective control" "refers to situations in which ownership/control is exercised through a chain or ownership or by means of control other than direct control." In other words, the beneficial owner is the person or persons who benefits from or exercises control, either directly or indirectly, over a legal person or a legal arrangement.

Beneficial ownership transparency[13] seeks to prevent the use of corporate vehicles to obscure ill-gotten gains and the proceeds of corruption. Making beneficial ownership information public can also, for example, assist other companies that are carrying out due diligence on their business, particularly in the context of mergers and acquisitions.

UNODC has recognized the importance of beneficial ownership transparency in recent resolutions of the Conference of States parties to UNCAC, such as:

- Resolution 9/7 of 17 December 2021,[14] entitled *Enhancing the use of beneficial ownership information to facilitate the identification, recovery and return of proceeds of crime*, where good practices and challenges with respect to beneficial ownership was deemed to foster and enhance the effective recovery and return of proceeds of crime;
- Resolution 10/6 of 15 December 2023,[15] *Enhancing the use of beneficial ownership information to strengthen asset recovery*, where the Conference of States parties built on Resolution 9/7 and called for States parties to adopt a multipronged approach to beneficial ownership transparency through appropriate mechanisms that would provide access to adequate, accurate and up-to-date beneficial ownership information on legal persons and legal arrangements. The aim would be for increased beneficial ownership transparency to facilitate the investigation and prosecution of cases of corruption and the identification, recovery and return of assets.

Five IPEF partners,[16] including Indonesia and the Philippines, received recommendations under the UNCAC Implementation Review Mechanism on enhancing the transparency of legal persons and arrangements.

After receiving a recommendation to enhance beneficial ownership transparency, Australia updated[17] UNODC on its commitment to establish a beneficial ownership register. Its Modernising Business Registers Program aimed to consolidate more than 30 existing business registers onto a modernized business register. In 2020, Australia also introduced the requirement for directors to obtain a Director ID. The issuing of a Director ID, which occurs through an authenticated process on the Australian Business Registry Services website, provides visibility over a director's relationships across companies and over time. This prevents the use of false or fraudulent director identities and prevents illegal phoenix activity,[18] which occurs when a corporation is

[13] UN and OECD, "A resource guide on state measures for strengthening business integrity," 2024, p. 20. Available at: https://businessintegrity.unodc.org/bip/uploads/documents/resources/Resources_guide_on_state_measures_for_strengthening_business_integrity.pdf.
[14] UNODC, "Enhancing the use of beneficial ownership information to facilitate the identification, recovery and return of proceeds of crime," 17 December 2021, Available at: https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html#Res.9-7.
[15] UNODC, "Enhancing the use of beneficial ownership information to strengthen asset recovery," 15 December 2023, CAC/COSP/2023/L. 10/Rev. 1. Available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/resolutions/L-documents/2325375E_L.10_Rev.1.pdf.
[16] Australia, Indonesia, the Philippines, Republic of Korea, Thailand.
[17] UNODC, "Update on measures taken by Australia to implement chapter II (Prevention) and chapter V (Asset recovery) of the UNCAC," 10 November 2022. Available at: https://www.unodc.org/documents/treaties/UNCAC/CountryOtherReports/Supplementary_submission_to_UNCAC_Second_Cycle_Review_Report_-_Australia_-_FINAL.pdf
[18] Australian Securities and Investments Commission, "Illegal phoenix activity," 2023. Available at: https://asic.gov.au/for-business/small-business/closing-a-small-business/illegal-phoenix-activity.

deliberately liquidated to avoid liability while its operation continues through other entities. At the time of this report, Australia also committed[19] – as part of its 2024 – 2025 Open Government Partnership National Action Plan – to establish a registry of beneficial ownership of companies and other legal vehicles, including trusts, which would be accessible to the public.

During the second review cycle, Indonesia received a recommendation to continue efforts to promote the transparency of legal persons and arrangements. Since then, Indonesia has enacted legislation to oblige notaries and legal persons to include information on beneficial ownership in the registration process. It has launched a publicly accessible beneficial ownership registry which is hosted by Indonesia's Ministry of Law and Human Rights.[20] While coverage is broad, including foundations, associations, cooperatives and other types of corporations, there are no provisions for collecting beneficial ownership information of foreign-owned companies, foreign natural persons, or non-residents. As a next step, Indonesia has committed[21] to verifying and utilizing its beneficial ownership data as part of its 2022 – 2024 Open Government Partnership National Action Plan. Low levels of compliance may remain a challenge – as of August 2022, about 29 per cent[22] of Indonesian entities had reported their beneficial ownership data.

In addition to beneficial ownership transparency, Indonesia received a recommendation to enhance the transparency of the private sector in line with international standards, including disclosure requirements, reporting and monitoring mechanisms, and accounting standards. While Indonesia's Financial Services Authority Regulations required publicly listed companies to fully disclose their financial statements, reviewing experts observed that there was no law or regulation requiring the full disclosure or fair presentation of financial statements by private sector entities.

In the Philippines, the Securities and Exchange Commission registers corporations and maintains a public registry of corporations. At the time of the country visit, reviewing experts observed that information on the identity of directors and beneficial owners was not available. Since the second review cycle, the Philippines has strived to improve its beneficial ownership transparency. In 2021,[23] as part of the Extractive Industries Transparency Initiative, the Philippines established a provisional beneficial ownership register for the extractive industries, which contained beneficial ownership information of companies that consented to public disclosure. Given the voluntary nature of the provisional register, it was reported in April 2024[24] that information is limited to about 50 companies in the metallic mining sector, followed by a few non-metallic and oil and gas companies. Moreover, while information on the provisional register is publicly accessible, beneficial ownership data that is collated by the Securities and Exchange Commission is not accessible to the general public. Access is limited to competent authorities[25] in the Philippines and other countries with existing data sharing agreements or memoranda of understanding on information-sharing. To date,[26] no fewer than 18 government agencies have entered into a data sharing agreement with the Securities and Exchange Commission, which includes the Anti-Money Laundering Council.

Thailand received a recommendation to enhance transparency among private entities. While its legislation provided for the registration of companies and such information was open to the public, no apparent measures have been taken to promote the transparency of beneficial ownership.

[19] Open Ownership, "Australia," accessed on: 2 May 2024. Available at: https://www.openownership.org/en/map/country/australia/.
[20] AHU (Directorate General of Administration of General Laws), "Profil Pemilik Manfaat," accessed on: 25 April 2024. Available at: https://ahu.go.id/pencarian/profil-pemilik-manfaat.
[21] Open Ownership, "Indonesia," 2024. Available at: https://www.openownership.org/en/map/country/indonesia/.
[22] Opening Extractive, "Beneficial ownership transparency in Indonesia," 2022, p. 4. Available at: https://eiti.org/sites/default/files/2022-10/Beneficial%20ownership%20transparency%20Indonesia.pdf.
[23] Philippine Extractive Industries Transparency Initiative, "Progress on beneficial ownership transparency in the Philippines," 2023. Available at: https://api.eiti.org/sites/default/files/2023-05/%20Philippines%20BO%20factsheet%20WEB.pdf.
[24] Open Ownership and EITI, "Scoping report: beneficial ownership transparency in the Philippines," April 2024, p. 23. Available at: https://eiti.org/sites/default/files/2024-04/OE%20BOT%20Scoping%20report%20–%C2%A0Philippines%20WEB.pdf
[25] Ibid., p. 26.
[26] Ibid.

| | Report date | R. 24 | R. 25 | IO 5 |
|---|---|---|---|---|
| **Australia** | March 2024 | PC | NC | ME |
| **Brunei Darussalam** | August 2023 | PC | NC | ME |
| **Fiji** | May 2023 | PC | PC | LE |
| **India** | N/A | N/A | N/A | N/A |
| **Indonesia** | April 2023 | LC | PC | ME |
| **Japan** | October 2023 | LC | PC | ME |
| **Malaysia** | October 2018 | PC | PC | ME |
| **New Zealand** | May 2022 | PC | LC | ME |
| **Republic of Korea** | April 2020 | PC | LC | ME |
| **Philippines** | August 2022 | LC | PC | LE |
| **Singapore** | November 2019 | LC | C | ME |
| **Thailand** | October 2023 | PC | PC | LE |
| **USA** | March 2024 | LC | PC | LE |
| **Viet Nam** | February 2022 | PC | PC | LE |

*NC: Non-Compliant; PC: Partially Compliant; LC: Largely Compliant; C: Compliant*
*LE: Low level of effectiveness; ME: Moderate level of effectiveness; HE: High Level of effectiveness*

The FATF recommendations address the transparency and beneficial ownership of legal persons and legal arrangements in:

- Recommendation 24 (transparency and beneficial ownership of legal persons);
- Recommendation 25 (transparency and beneficial ownership of legal arrangements);
- Immediate Outcome (IO) 5 (Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments). Compliance with Recommendations 24 and 25 are linked with the effectiveness of measures assessed in IO 5.

Article 8(2) of the Fair Economy Agreement sets out the commitments of IPEF partners to take action to effectively implement measures that enhance the transparency of legal persons, with emphasis on revisions to FATF Recommendation 24 and its interpretive note adopted by the FATF Plenary in March 2022 regarding transparency and beneficial ownership of legal perosns, including the revision relating to beneficial ownership transparency of legal persons in the course of government procurement. In 2022, FATF revised[27] Recommendation 24 to strengthen beneficial ownership transparency measures – the revised Recommendation 24 would require countries to ensure adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities through either a register of beneficial ownership or an alternative mechanism.

Article 8(3) of the Fair Economy Agreement further notes that IPEF partners are to be committed in modifying their measures to meet the standards set out in FATF Recommendation 24.

[27] UNODC, "Enhancing beneficial ownership transparency: a study of beneficial ownership registration systems," *op.cit.*, at p. 10.

The table below illustrates the compliance of IPEF partners on Recommendations 24 and 25, plus the effectiveness of their measures as assessed in IO 5, based on the most recent[28] FATF and APG evaluations. It is worth observing that IPEF partners may have received a "low level of effectiveness" rating for IO 5, despite being deemed "partially compliant" or "largely compliant" with Recommendations 24 and/or 25, and despite not having received a recommendation on the point of beneficial ownership under article 12.

For example, during the second review cycle, reviewing experts observed that Fiji had a public company register, which required updating when changes to the legal and beneficial ownership occurred. No recommendations were provided to Fiji on the point of beneficial ownership under article 12. However, the APG[29] assessed Fiji as having a "low level of effectiveness" for IO 5. Conversely, Brunei Darussalam was deemed "not compliant" with Recommendation 25 but was assessed as having a "medium level of effectiveness" rating for IO 5.

While India has not undergone its second review cycle or a recent FATF assessment, Open Ownership observed that India launched a beneficial ownership register in 2018.[30] India's Companies Act[31] requires the registration of significant beneficial owners in a company, which covers individuals who hold not less than 25 per cent in company shares. Individuals who have the right to exercise or who actually exercise significant influence or control over the company are also covered. Work has continued to improve implementation, with new beneficial ownership reporting requirements[32] recently imposed on all limited liability partnerships in India to file declarations of beneficial interests.

India has also been observed to issue life-long director identity documents, which is similar to Australia's approach.[33] While this does not extend to beneficial ownership and is confined to persons intending to be a director of a company, it has served to make the investigation and analysis of ownership chains easier and more accurate.[34]

In April 2024, Malaysia commenced the operation of its Electronic Beneficial Ownership System (e-BOS),[35] which allows for legal entities to update and rectify their beneficial ownership information. While Malaysia's Companies Act currently contains no exemptions to reporting requirements (which means all government-owned and state-owned companies have to comply), the Minister retains discretionary powers to exempt certain classes of companies from beneficial ownership reporting requirements via a Gazette order. Only competent authorities and law enforcement agencies currently have access to the register of beneficial owners. .

UNODC has published a catalogue[36] of online links to corporate and beneficial ownership registers, contact information for competent national authorities and channels for international cooperation, which covers five IPEF partners.[37,38]

[28] For all updated assessment information from FATF-style regional bodies, see FATF, "Consolidated assessment ratings," last updated on 7 May 2024. Available at: https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-ratings.html.
[29] APG, "6th Follow-Up Report: Mutual evaluation of Fiji," 2023. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-fur/Fiji-APG-Follow-Up-Report-2023.pdf.coredownload.pdf.
[30] Open Ownership, "India," accessed 2 May 2024. Available at: https://www.openownership.org/en/map/country/india/.
[31] India Code, "Section 90: Register of significant beneficial owners in a company." Available at: https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00008_201318_1517807327856&sectionId=1281&sectionno=90&orderno=93.
[32] Mercator, "India: New beneficial ownership requirements for LLPs," 2024. Available at: https://mercator.net/our-thinking/latest-news/india-new-beneficial-ownership-reporting-requirements-for-llps/.
[33] Cleartax, "Director Identification Number," 2021. Available at: https://cleartax.in/s/obtain-din-director-identification-number-india.
[34] B20, "Minutes of meeting, B20 Side-Event: Integrity and Compliance Task Force side event – collective action in alleviating integrity risks," 2022, p. 9.
[35] Companies Commission Malaysia, "Electronic beneficial ownership system," accessed 2 May 2024. Available at: https://www.ssm.com.my/Pages/ebos.aspx
[36] UNODC, "A catalogue of online links to corporate and beneficial ownership registers, contact information for competent national authorities and channels for international cooperation," CAC/COSP/2023/CRP.3, 4 December 2023. Available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/CAC-COSP-2023-CRP.3.pdf.
[37] Australia, Japan, Malaysia, Republic of Korea, Thailand.
[38] For more information, see: UNODC, "Implementation of Beneficial Ownership Transparency in ASEAN Member States and Timor-Leste," 31 May 2024, Available at: https://www.unodc.org/roseap/en/resources/publications.html.

***Preventing conflicts of interests***

During the second review cycle, reviewing experts observed that post-employment restrictions were regulated in the following IPEF partners:

- In the Philippines, the Code of Conduct and Ethical Standards for Public Officials and Employees prohibited former public officials and employees from having interests in the private sector that related to their prior official functions for a period of one year;
- In the Republic of Korea, the Public Service Ethics Act restricted the employment of public officials in any closely related institution within five years of their retirement. In addition, retired officials were prohibited from performing certain duties and making improper solicitations toward public officials with whom they were previously affiliated. A stricter cooling-off period was in place for public officials whose employment was terminated as a result of acts of corruption;
- Thailand established a post-employment restriction period of two years to restrict certain categories of public officials from undertaking key functions in any private business under the supervision, control or inspection of a State agency;
- Viet Nam had a decree that regulated the period in which office holders were prohibited from establishing or holding positions in the private sector, which ranged from six to 24 months. For specific groups of office holders, this period may be determined by the Minister of Public Security, Minister of National Defence or Minister of Foreign Affairs. Prohibition could last until the relevant programmes, projects or proposals were completed.

Australia, Fiji and Indonesia received recommendations on preventing conflicts of interest by imposing restrictions on the professional activities of former public officials or the employment of public officials in the private sector after their resignation or retirement. Restrictions and effective compliance mechanisms can be imposed through legislative or administrative measures.

During the country visit, reviewing experts observed that Australia had no general legislative restrictions on post-separation employment for public officials, although some guidance existed on managing post-separation employment to prevent conflicts of interests. Reviewing experts further observed that there was a lack of clarity on how restrictions could be enforced. Following a recommendation on this point, Australia provided updates to UNODC on amendments to its Government Lobbying Code of Conduct, which required lobbyists who previously held roles in the Australian Government to provide additional details about their former roles. This would be published on the Australian Government Register of Lobbyists.

Reviewing experts observed that Indonesia had no restrictions on the employment of former public officials and recommended that Indonesia consider such restrictions. While it was observed that Indonesia's Corruption Eradication Commission could investigate corruption in the private sector if there were links to the public sector, Indonesia's current lack of criminalizing bribery in the private sector could make the prosecution of any former public official challenging.

During the country visit, reviewing experts observed that Fiji had a Code of Conduct Bill that would provide restrictions on former public officials taking positions in the private sector. While the Bill had previously been tabled in 2016, it lapsed and has not been re-tabled in Parliament.[39] The Bill,[40] if passed, would – for a period of 12 months – prevent former public officials from being employed with companies, businesses or organizations in which the public official had official dealings in their last 12 months in office.

[39] Fiji Sun, "A-G: What the Code of Conduct Bill means," 2018. Available at: https://fijisun.com.fj/2018/12/01/a-g-what-the-code-of-conduct-bill-means/. See also The Fiji Times, "Code of Conduct Bill 'gathering dust'," 2020. Available at: https://www.fijitimes.com.fj/code-of-conduct-bill-gathering-dust/.

[40] Section 12 as drafted illustrates this. See Parliament of Fiji, "Code of Conduct Bill 2018," 2018. Available at: https://www.parliament.gov.fj/wp-content/uploads/2018/11/Bill-No-33-Code-of-Conduct.pdf.

### *Standards for business ethics or conduct for private sector entities*

Five IPEF partners,[41] including Fiji, Indonesia and Viet Nam, received recommendations on adopting, promoting or improving standards of business ethics or conduct for private sector entities.

Fiji received a recommendation to adopt standards of business ethics or conduct for private sector entities. At the time of the country visit, reviewing experts observed that Fiji's Independent Commission against Corruption had launched a corporate integrity pledge for selected companies that bid for government tenders, but only six companies had signed this pledge. Fiji also received a recommendation to establish measures to prevent the misuse of procedures regarding private entities (such as subsidies and licenses for commercial activities), given that it did not have such measures at the time of the review.

Indonesia received a recommendation to consider further developing anti-corruption guidelines for the private sector in line with international good practices, as its Financial Services Authority Regulations on Corporate Governance Guideline only applied to public companies.

While Viet Nam had implemented some measures to prevent corruption in the private sector, reviewing experts observed that its anti-corruption measures at the time of the country visit were directed mainly at the public sector. Moreover, while cooperation with the private sector to fight corruption was a government priority, specific measures to achieve this objective had not been fully implemented. Apart from a model of business integrity developed by Viet Nam's Chamber of Commerce and Industry, no business integrity principles or corporate governance codes had been established. As such, reviewing experts recommended that Viet Nam provide appropriate guidance on compliance procedures to private sector entities, enhance anti-corruption cooperation with private entities, and promote the development of business integrity principles or corporate governance codes.

### *Prohibiting the tax deductibility of expenses that constitute bribes*

Article 5.7 requires IPEF partners to disallow the tax deductibility of bribes, and, as consistent with their tax laws, other expenses incurred in furtherance of corruption offences, including bribery, which is in line with UNCAC article 12(4).

Six IPEF partners,[42] including Indonesia, Malaysia and Viet Nam, received recommendations on the implementation of UNCAC article 12(4), including by legislatively or explicitly prohibiting the tax deductibility of expenses that constitute bribes. For example, while Malaysia considers bribery as a criminal act and does not permit bribes to be deducted from taxes by its income tax legislation, there remains no specific provision disallowing the tax deductibility of bribes.

### *Good practices for article 12*

The emphasis on legal compliance, which relies on the enforcement of rules with corresponding sanctions, is only one aspect of addressing corruption in the private sector.[43] More work is required to overcome corporate cultures of wrongdoing, where behavioural changes are promoted to ensure business integrity.

Article 12(2)(a) of UNCAC[44] notes that one of the measures States parties can take to prevent corruption involving the private sector is promoting cooperation between law enforcement agencies and relevant private entities. In the Republic of Korea, a public-private consultative group exists to combat corruption and engage the private sector in corruption prevention. Awareness-raising is also a key component of preventing corruption in the private sector, with reviewing experts praising the USA's extensive work to raise awareness in relation to policy measures that incentivize corporations to self-report wrongdoing.

[41] Fiji, Indonesia, Republic of Korea, Thailand, Viet Nam.
[42] Australia, Indonesia, Malaysia, Thailand, USA, Viet Nam.
[43] UNODC, "Module 5: Private sector corruption." Available at: https://www.unodc.org/e4j/en/anti-corruption/module-5/key-issues/preventing-private-sector-corruption.html.
[44] UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Corruption (Second revised edition)* (New York, UN, 2012), p. 40.

During the first review cycle, reviewing experts also praised initiatives on corruption prevention being carried out with the private sector in Malaysia, such as its integrity pacts, monitoring committees for large projects and integrity pledges. It was observed that large Malaysian corporations were known to regularly employ integrity officers and have no-gift policies in place. The Malaysian Anti-Corruption Commission provides training for the private sector and seconds some officers to large companies.

Pursuant to resolution 9/7, UNODC has compiled a list of good practices and challenges with respect to beneficial ownership transparency.[45] Good practices included, for example, establishing a robust and comprehensive definition of beneficial owners and verifying beneficial ownership data. Verification could take place using automated verification checks and interconnecting beneficial ownership data with and cross-checking against other databases. Improving the accuracy of beneficial ownership data and enforcing a combination of sanctions for non-compliance were also cited as good practices.

Since the second review cycle, it should also be recognized that IPEF partners have made some progress in promoting beneficial ownership transparency. As the ability to collect and verify disclosures of information is as important as legal provisions on beneficial ownership transparency, IPEF partners should strive to improve their implementation. For example, IPEF partners can seek to improve the quality of data collected, compliance with beneficial ownership requirements and the capacity of verification mechanisms, so that verification may be more effective. Steps could also be further taken to ensure that beneficial ownership information is more accessible to the public.

### *Technical assistance requests for article 12*

During the second review cycle, Indonesia requested capacity-building on typologies of corruption in the private sector. Indonesia noted that it had previously received technical assistance by the Alliance for Integrity, which aimed at promoting transparency and integrity in Indonesia's economic system. Indonesia also cited collaborative action through the ASEAN Economic Community, which included discussions on building integrity in development projects based on public-private partnerships.

The Philippines requested:

- Institution-building: the sharing of good practices and lessons learned, model arrangements and agreements, on-site assistance by a relevant expert and/or mentoring, as well as the development of an action plan for implementation;
- Policy-making: technical assistance and assistance by relevant experts or mentoring in the Securities and Exchange Commission's efforts to prescribe specific rules for its Corporate Governance Manuals;
- Capacity-building: more extensive capacity-building, training, on-site assistance by a relevant expert, and/or mentoring to fully equip personnel with skills and knowledge to successfully implement new policies;
- Research, data-gathering and statistical advice.

## Article 15: Bribery of national public officials

*UNCAC Article 15 requires States parties to criminalize the bribery of public officials. The UNCAC addresses active bribery (the offering, giving or promising of an undue advantage) and passive bribery (the acceptance or solicitation of an undue advantage). State parties must adopt legislative measures targeting the supply and demand of bribery.*

*"Public official" is defined in article 2 of the UNCAC to mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii)*

[45] UNODC, "Good practices and challenges with respect to beneficial ownership transparency and how it can foster and enhance the effective recovery and return of proceeds of crime," CAC/COSP/2023/16, 13 October 2023. Available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/CAC-COSP-2023-16/2319911E.pdf.

*any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party.*

During the first review cycle, seven IPEF partners,[46] including India, Indonesia, the Philippines and Viet Nam, received recommendations on UNCAC article 15.

Recommendations on UNCAC article 15 concerned legislative amendments needed to effectively criminalize the bribery of national public officials. These ranged from enacting new laws to enhancing and expanding the scope of existing legislation. Recommendations also included the consistency of legislative frameworks, whether in the use of terminology, sanctions or interoperability between different laws.

### *Criminalizing bribery of national public officials*

Most IPEF partners have some form of stand-alone offence which criminalizes the bribery of national public officials. During the first review cycle, India and the Philippines had not established the active bribery of national public officials as a stand-alone offence and received corresponding recommendations.

In India, reviewing experts observed that active bribery was indirectly criminalized through abetment clauses. As such, India received a recommendation to criminalize active and passive bribery in a way that would cover all modalities of the commission of the offence (promise, offer and giving).

Following the first review cycle, India amended its Prevention of Corruption Act. In 2018,[47] it introduced the supply-side offence of bribing a public servant. The amendments also covered the bribery of public servants committed by a commercial organization for obtaining or retaining its business or an advantage in the conduct of its business, although a defence would exist if the commercial organization could prove that it had adequate procedures which complied with government guidelines for preventing such conduct. Industry experts[48] noted that no concrete guidelines had been issued to date, and a lack of clarity continues to exist on what "adequate procedures" would constitute.

In the Philippines, there is no stand-alone corruption law that would make the active bribery of national public officials an offence. The Philippines received a recommendation to consider a stand-alone corruption related law, which would include an offence of active bribery of national public officials, and to ensure consistency in its application. At the time of this report, a priority bill exists that would criminalize direct and indirect bribery, influence peddling and fixing, and qualified bribery.

### *Extending or broadening the scope of legislation*

Recommendations on extending or broadening the scope of domestic legislation were focused on ensuring that third parties, immaterial benefits, private individuals and the indirect commissioning of bribery were covered:

- Brunei Darussalam and Thailand received recommendations to extend the application of bribery offences to cover third-party beneficiaries;
- India received a recommendation to harmonize its legislation to ensure that third parties were covered;
- Thailand received a recommendation to ensure that the indirect commissioning of passive bribery continued to be criminalized; and
- Viet Nam received a recommendation to broaden the definition of bribery to cover immaterial benefits. It also received a recommendation to cover bribery committed by private individuals as

[46] Brunei Darussalam, India, Indonesia, New Zealand, the Philippines, Thailand, Viet Nam.
[47] Gazette of India, "The Prevention of Corruption (Amendment) Act 2018," (2018). Available at: https://www.dvac.tn.gov.in/pdf/RTI/PC%20Act%20Amendment%202018.pdf.
[48] Chambers and Partners, "Anti-Corruption 2024: India," (2023). Available at: https://practiceguides.chambers.com/practice-guides/anti-corruption-2024/india/trends-and-developments/O15527.

opposed to just competent authorities and persons holding positions and powers in the State apparatus.

In addition to legislative amendments, the judiciary could clarify the scope of bribery provisions. For example, reviewing experts observed that the Japanese judiciary had clarified a "bribe" to cover any profit that satisfies the needs or desires of people, irrespective of whether it is tangible or intangible.

*Legislative consistency*

The consistency of terminology was another focus of the reviewing experts:

- During the first review cycle, Brunei Darussalam, which used "agent," "public servant," or "public officer" interchangeably to describe the perpetrators of corruption-related offences, received a recommendation to address this inconsistency for clarity and certainty;
- While no recommendation was issued on this point, reviewing experts observed that Fiji's statutes used several terms such as "public official," "public servant" and "employed in the public service," and that there was a need for a gap analysis and the harmonization of these terms in Fiji's legislation;
- Reviewing experts observed that Malaysia, which used terms such as "agent" and "person," could benefit from the use of coherent and simplified terminology, though no recommendation was issued in this regard.

IPEF partners have sought to provide clarity in the use of terminology, and how such terminology can be applied along with any legislative exemptions. For example, Vietnamese officials clarified that the concept of "persons holding positions and powers" in its laws would correspond to the group of public officials enumerated in article 2 of the UNCAC, and equally apply to persons elected and appointed to positions of power.

India's Prevention of Corruption Act defines "public servant" broadly to include any person who holds an office by which they are authorized or required to perform any public duty, as well as any person authorized by a court of justice to perform this duty. Recent court decisions indicate that the scope of who constitutes a "public servant" in India is continuing to expand:

- In 2020, the Supreme Court of India[49] deemed that a trustee in the board of a "deemed-to-be university" would fall under the scope of a "public servant" and would therefore be subject to prosecution. This 2020 decision was made in reliance of another Supreme Court decision of 2016,[50] which held that the chairman of a private bank could be deemed a "public servant;"
- In 2023, the High Court of India[51] held that a professional appointed under the Insolvency and Bankruptcy Code would fall under the definition of a "public servant." The High Court observed that such functions related to loans extended by the banks, which were investments from the public at large and therefore came within the meaning of public duty. However, this judgment remains under challenge before the Supreme Court at the time of this study.

Another term that received some attention from reviewing experts was "corruptly," where Brunei Darussalam and New Zealand received recommendations to continue clarifying and monitoring the usage of this term to ensure that there were no obstacles to prosecution. For New Zealand, this recommendation extended to bribery in other circumstances, such as bribery in the private sector.

Incomplete, inconsistent or fragmented legislative drafting can have flow-on effects on the prosecution and sanction of bribery offences.

[49] *State of Gujarat v Mansukhbhai Kanjibhai Shah* (2020) 20 SCC 360. Available at: https://indiankanoon.org/doc/35899397/.
[50] *CBI v Ramesh Gelli* (2016) 3 SCC 788. Available at: https://indiankanoon.org/doc/30121571/?__cf_chl_rt_tk=PWKORE2zGtgw80qQdVcJ-59VR0wWjamQZL3ZU9fx68t0-1713168633-0.0.1.1-1599.
[51] *Sanjay Kumar Agarwal v CBI* (2023) SCC Online Jhar 394. Available at: https://indiankanoon.org/doc/146952430/.

For example:

- In Indonesia, penalties in bribery offences are linked to the value of the bribe, which could pose challenges if intangible benefits are involved. Reviewing experts recommended aligning the sanctions of bribery and its aggravated forms for more legislative consistency;
- Thailand received a recommendation to ensure that the indirect commissioning of active bribery would be subject to the same punishment as the direct commissioning of the offence;
- The Philippines has a variety of bribery provisions which apply in different circumstances. For example, the Anti-Graft and Corrupt Practices Act 1960 covers the "promise" or "offer" of a bribe in employment situations, where bribe givers can only be charged together with the offending public officer. Other provisions on active bribery, including the legal principle of "inducement," are found in different legislation.

The drafting of corruption offences may impact the implementation of other provisions in UNCAC. For example, reviewing experts noted that aggravated forms of bribery as amended by Law No. 20/2001 in Indonesia presented issues of compliance with article 37 (cooperation with law enforcement authorities) of UNCAC. As the amendment would provide immunity for an official who reports receiving a bribe within 30 days, this effectively would allow an official to receive a bribe and consider the risks of detection over a 30-day period. Under article 37, immunity would only be possible for persons other than those who participate in crimes in light of the Philippines legislation mentioned above.

### *Legislative thresholds*

In some instances, reviewing experts observed that additional thresholds in domestic legislation could pose a hindrance in the prosecution of bribery offences. For example:

- Thailand's bribery provisions required the additional element of "wrongfully" discharging, omitting to discharge or delaying the performance of a duty in the office;
- In Viet Nam, thresholds existed for active bribery, which was partially criminalized for bribes of two million Dong (approximately US$ 82) or more. Cases of "promise" and "offer" of bribery would otherwise be charged as incomplete offences, provided that such promises and offers would cause the public servant to act or refrain from acting in their official duties.

Viet Nam cited the inadequacy of existing normative measures and long processes to fully implement bribery provisions in the Penal Code as challenges to implementing article 15. Overall, reviewing experts observed that Viet Nam's bribery provisions, which were limited to material benefits and persons holding positions and powers in the State apparatus, made for a narrow application.

### *Good practices for UNCAC article 15*

Reviewing experts identified legislative forms of good practice in the implementation of UNCAC article 15, where broadly drafted legal provisions captured the behaviour article 15 sought to criminalize:

- Certain parts of Brunei Darussalam's legislation served as examples of good practice, where "gratification" was broadly defined to capture all forms of undue advantage, whether tangible or intangible and pecuniary or non-pecuniary.
- Japan's legislation criminalized active and passive bribery in advance of the assumption of office.
- Singapore's legislation was drafted broadly to cover forms of "indirect" bribery occurring through third-party intermediaries, including legal persons.

***The appropriate use of sanctions was also observed as a good practice:***

- In the Republic of Korea, the aggravated punishment for bribery had three layers

of penalties, depending on the amount of the bribe;

- In Singapore, bribery provisions in its Prevention of Corruption Act contained sanctions that appropriately corresponded to different circumstances, which reviewing experts deemed to be a good practice. For example, more severe penalties would apply if the bribery offence was committed concerning a government or public body contract.

***Technical assistance requests for UNCAC article 15***

Technical assistance requests on legislation and legal/legislative support featured strongly. Viet Nam noted that legal assistance, including the provision of model legislation, would be useful to assist it in broadening the definition of bribery in its domestic laws. The Philippines sought assistance for legislative drafting and the provision of model legislation. Both requested a summary of good practices and lessons learned.

The Philippines further requested on-site assistance by an anti-corruption expert, assistance with the development of an implementation action plan, inter-agency coordination and investigative training.

## UNCAC Article 16: Bribery of foreign public officials and officials of public international organizations

*Article 16 of the UNCAC requires States parties to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage. This advantage can be for the official him or herself or another person or entity, so that the official act or refrain from acting in the exercise of his or her official duties, to obtain or retain business or other undue advantage in relation to the conduct of international business.*

*Article 2 of the UNCAC defines a "foreign public official" as "any person holding a legislative, executive, administrative or judicial office of a foreign country, where appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise." An "official of a public international organization" is defined as "an international civil servant or any person who is authorized by such an organization to act on behalf of that organization."*

Criminalizing the bribery of foreign public officials and officials of public international organizations can, for example, help to prevent the misallocation of public funds to benefit foreign entities. Given the significant amounts of foreign investment flowing through IPEF partners, particularly with foreign direct investment reaching a record high of US$ 224 billion in ASEAN in 2022,[52] IPEF partners should continue to focus on preventing bribery beyond their domestic borders. In relation to business integrity, the 2021 OECD Anti-Bribery Recommendation[53] also introduced recommendations on how to criminalize and enforce the offence of bribery of foreign public officials.

During the first review cycle, nine IPEF partners,[54] including India, Indonesia, the Philippines and Viet Nam, received recommendations on implementing UNCAC article 16.

***Criminalizing the bribery of foreign public officials and officials of public international organizations***

During the first review cycle, India, Indonesia and the Philippines had not criminalized the bribery of foreign public officials and officials of public international organizations, and received recommendations to do so.

To date, the lack of criminalization of transnational bribery remains a legislative gap in India. In 2020, Transparency International revealed that India ranked poorly in enforcement actions against

[52] Asian Development Bank, "Investors favour Southeast Asia as economic landscape changes," 2024. Available at: https://seads.adb.org/solutions/investors-favor-southeast-asia-economic-landscape-changes#:~:text=Despite%20overlapping%20crises%20gripping%20the,the%20greening%20of%20emerging%20markets.

[53] OECD, "2021 OECD Anti-Bribery Recommendations," 2021. Available at: https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm.

[54] Brunei Darussalam, India, Indonesia, Japan, New Zealand, the Philippines, Thailand, USA, Viet Nam.

bribery of foreign public officials. This was directly attributed to the fact that there was no legislation criminalizing such acts, with India not being able to initiate a single case of bribing foreign public officials between 2016 and 2019. The International Bar Association similarly observed that despite foreign corporations being headquartered in India,[55] no law existed to initiate investigation into foreign bribery allegations.

Indonesia's Law No. 31/1999 on Corruption Eradication, which criminalizes active and passive bribery, does not apply to foreign public officials and officials of public international organizations. To date, Indonesian law does not specifically regulate the practice of corruption involving foreign public officials and officials of public international organizations.

In the Philippines, the focus remains on the bribery of public officials. The Philippines received a recommendation to ensure that its legislation includes foreign public officials and officials of public international organizations, notwithstanding any existing privileges.

### *Improving the scope of existing legislation*

The following IPEF partners received recommendations to more explicitly implement UNCAC article 16, or to ensure that the passive form was criminalized:

- Brunei Darussalam noted it was possible in practice to have a conviction for the bribery of foreign public officials or officials of public international organizations; however, this would occur by relying on other domestic provisions. As a result, reviewing experts recommended the more explicit implementation of UNCAC article 16;
- Fiji explained that its bribery provisions would cover active transnational bribery within and outside of Fiji; however, the passive version had not yet been criminalized. Fiji cited challenges in relation to inadequate normative measures and limited capacity. While no recommendation was explicitly issued on this point, this area remains a legislative gap in Fijian legislation;
- In Viet Nam, the term "agency or organization" in domestic legislation was deemed applicable to foreign organizations, but this had not been interpreted or tested by their courts. Moreover, the solicitation of transnational bribes was not addressed. Viet Nam therefore received recommendations to explicitly clarify that terms such as "agency or organization" in domestic legislation covered foreign agencies and organizations. In Viet Nam, reviewing experts considered this to be a priority area during the revision of its Penal Code.

### *The challenge of immunity*

While criminalization of foreign bribery in accordance with UNCAC article 16 is an important step, this may not be sufficient without further consideration of other critical considerations that could pose barriers to investigation and prosecution, such as the application of immunity to foreign officials. The Philippines and Viet Nam cited incompatibilities with domestic legislation as a challenge, as the implementation of article 16 was seen to conflict with domestic legislation that did not allow for the prosecution of foreign officials with diplomatic immunities. Viet Nam further cited a lack of existing normative measures as a challenge.

Foreign public officials may be shielded by functional or personal immunity, which may apply in jurisdictions under customary international law and treaties.[56] Moreover, the UNCAC Legislative Guide[57] expresses that the provisions of article 16 do not affect any immunities that foreign public officials or officials of public international organizations may enjoy under international law. Where officials of public international organizations are concerned, the UNCAC's interpretative notes indicate: "The States parties noted the relevance of immunities in this context

[55] International Bar Association, "Bridging the UNCAC gap: India's need for legislation banning the bribery of foreign public officials," 2022. Available at: https://www.ibanet.org/bridging-the-UNCAC-gap-Indias-need-for-legislation-banning-the-bribery-of-foreign-public-officials.
[56] StAR Initiative, *Asset Recovery Handbook: A Guide for Practitioners*, 2011, p. 30. Available on: https://star.worldbank.org/publications/good-practice-guide-non-conviction-based-asset-forfeiture.
[57] UNODC, *Legislative Guide, op.cit.,* p. 68.

and encourage public international organizations to waive such immunities in appropriate cases."[58] Legal questions could arise as to how immunities apply and when such immunities cease.

### *The use of facilitation payments*

The use of facilitation payments and its legitimacy in some contexts deserve some scrutiny, with Australia, New Zealand and the USA receiving recommendations on such payments.

The OECD's Working Group on Bribery discourages facilitation payments, and recommends, in view of the corrosive effect of small facilitation payments, particularly on sustainable economic development and the rule of law, that member countries: (i) undertake to periodically review their policies and approach on small facilitation payments in order to effectively combat the phenomenon; (ii) encourage companies to prohibit or discourage the use of small facilitation payments in internal controls, ethics, and compliance programmes or measures, recognizing that such payments are generally illegal in the countries where they are made and must in all cases be accurately accounted for in such companies' books and financial records.[59] Transparency International,[60] in defining facilitation payments as "small bribes", "speed" or "grease payments", calls for such payments to be recognized as bribes and prohibited as a result.

While Australia's foreign bribery statute criminalizes many forms of payment made to foreign government officials, there is an exception for facilitation payments made to expedite or secure the performance of a "routine governmental action" by a foreign official, political party or party official. Such routine government action65 does not include any decision to award or continue business, or any decision relating to the terms of new or existing business. In observing that Australia's principal domestic bribery statute contains no such exceptions for facilitation payments, reviewing experts recommended that Australia periodically review its policies and approach on facilitation payments and discourage the use of such payments by companies, including in internal company controls, ethics and compliance programmes or measures. Australia continues to caution that people making these payments may be liable for bribery under other laws that govern the foreign public official, even if a benefit constitutes a legitimate facilitation payment under Australian law.

New Zealand received a recommendation to amend its legislation to abolish the exception established for facilitation payments. Similar to Australia, New Zealand's guidance[61] warns the private sector of substantial legal and reputational risks undertaken when making a facilitation payment. While facilitation payments will not cover instances where the payment provides an undue material benefit or material disadvantage, this terminology excludes non-material benefits.

In the USA, the FCPA[62] has a narrow exception for "facilitating or expediting payments" made in furtherance of routine governmental action under its bribery prohibition. The facilitating payments exception applies only when a payment is made to further routine governmental action that involves non-discretionary acts. Guidance is provided on what could constitute "routine government action." For example, "routine governmental actions" would include processing visas, providing police protection or mail service, and supplying utilities like phone service, power and water. However, this would not include decisions to award a new business, continue business with a particular party, or acts that are within an official's discretion. Payments[63] made to secure favourable tax treatment, reduce or eliminate customs duties, obtain government

[58] *Ibid*.
[59] OECD, "Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions", 2021 (amended). Available at: https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378.
[60] Transparency International, "Facilitation payments," accessed on: 25 April 2024. Available at: https://www.transparency.org/en/corruptionary/facilitation-payments.
[61] Ministry of Justice, "Facilitation payments and New Zealand's anti-bribery laws," accessed on: 25 April 2024. Available at: https://www.justice.govt.nz/assets/Facilitation-Payments-Guide.pdf.
[62] Criminal Division of U.S. Department of Justice and Enforcement Division of the U.S. Securities and Exchange Commission, "FCPA: A resource guide to the United States Foreign Corrupt Practices Act, Second Edition," 2020, p. 25. Available at: https://www.justice.gov/criminal/criminal-fraud/fcpa-resource-guide
[63] *Ibid*., p. 11.

action to prevent competitors from entering a market, or circumvent a licensing or permit requirement would all constitute prohibited "business purposes" under the FCPA.

During the first review cycle, the issue of facilitating payments did not receive scrutiny in IPEF partners that are ASEAN Member States. However, in some contexts, such payments were raised as a challenge. For example, in Indonesia,[64] illicit facilitation payments were observed to be common in Indonesian ports, including in-kind demands such as cigarettes, beverages, hospitality and entertainment, with maritime companies penalized through delays or fined for alleged non-compliance if they refused to pay or accommodate those requests. Facilitation payments could heighten corruption risks in IPEF partners where such payments are unregulated or exist as a grey area. The prohibition of facilitation payments in India's Prevention of Corruption Act has been emphasized in its Supreme Court, which noted that if "speed payments" were allowed, "delay will deliberately be caused to invite payment of a bribe to accelerate it again".[65]

***Good practices for UNCAC article 16***

Reviewing experts noted that a good practice can be found in legislation that has a broad remit, covering the scope of UNCAC article 16. For example, Australia's foreign bribery offence applies to officials designated by law or custom.

Additionally, reviewing experts highlighted domestic legislation that would appropriately interact with other jurisdictional requirements. In Singapore, courts have the jurisdiction to consider all corruption offences committed by its citizens overseas as if they had committed the offences in Singapore. For example, Singaporeans have been prosecuted in Malaysia for offering bribes to Malaysian traffic police officers. Conversely, foreign public officials can also be charged with bribery offences if this were committed in Singapore.

While the first review cycle did not explicitly identify other forms of good practice in the implementation of article 16, further consideration of the challenges listed above – including the involvement of the private sector and its intermediaries – would likely contribute to more comprehensive legislative frameworks. This would result in fewer obstacles to the identification and prosecution of foreign bribery.

***Technical assistance requests for UNCAC article 16***

Technical assistance requests for UNCAC article 16 include the following:

- Indonesia requested a summary of good practices and lessons learned, model legislation, legal advice and on-site assistance;
- In addition to capacity-building, reviewing experts observed Fiji's need for appropriate legislation and model legislation concerning foreign bribery;
- Malaysia requested model legislation and legislative drafting assistance to strengthen the implementation of provisions on bribery of foreign public officials;
- The Philippines requested a summary of good practices and lessons learned, model legislation, legislative drafting and legal advice;
- Viet Nam requested model legislation, a summary of good practices and lessons learned, and assistance in conducting surveys and developing thematic reports in relation to issues on their implementation of article 16.

## Article 26: Liability of legal persons

*Article 26 requires States parties to take the necessary steps, in accordance with their fundamental legal principles, to provide for the liability of legal persons. This liability can be criminal, civil or administrative. At the same time, article 26(4) requires that the sanctions introduced must be effective, proportionate and dissuasive.*

[64] Maritime Anti-Corruption Network, "Indonesia," 2015. Available at: https://macn.dk/indonesia/.
[65] *Som Prakash v State of Delhi,* AIR 1975 Supreme Court 989, as cited in Clifford Chance, "A guide to anti-corruption legislation in Asia Pacific: 6th Edition," 2019, p. 100. Available at: https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2019/04/a-guide-to-anticorruption- legislation-in-asia-pacific-6th-edition.pdf.

As legal persons can be perpetrators of corruption, it is fundamental for IPEF partners to have the ability to hold such persons accountable. Extending liability to corporations for corrupt practices committed by their employees, agents, affiliates or subsidiaries aims to deter such behaviour by imposing penalties and sanctions on the corporate entity itself. Limiting liability to physical offenders alone may not pose a sufficient deterrence, given that perpetrators can use complex corporate governance structures and distributed decision-making as a shield.

The importance of establishing the liability of legal persons as a region is reflected in the Guiding Framework.[66] In addition to UNCAC, IPEF partners may be party to other binding global and regional legal instruments,[67] which require establishing a framework for this form of liability.

During the first review cycle, eight IPEF partners,[68] including India, Malaysia, the Philippines and Viet Nam, received recommendations on the implementation of article 26. Recommendations centred on more explicit liability and sanctions that were effective, proportionate and dissuasive to legal persons.

### *Explicit liability of legal persons*

Five IPEF partners,[69] including Indonesia and Viet Nam, did not have explicit liability for legal persons, or had liability which only applied to specific offences.

During the first review cycle, reviewing experts observed that Indonesia's law on corporate liability was still rudimentary, but welcomed Indonesia's commitment to broaden its laws on corporate liability and legal persons. While Indonesia's Law 1/2023[70] subjects corporations to criminal liability, including by specifying that the term "any person" includes a corporation, this law has not entered into force and will only do so three years after its promulgation.

Viet Nam cited challenges in providing liability for legal persons due to the inadequacy of normative measures. Reviewing experts noted that such implementation should be considered a priority to avoid issues of impunity for legal persons involved in corruption.

Brunei Darussalam, India and Indonesia received recommendations on ensuring that liability for legal persons can exist irrespective of the liability of natural persons (for example, prosecution of a company and its manager). Additionally, Brunei Darussalam received a recommendation to pursue the establishment of criminal liability of legal persons in a manner that specifies the terms and conditions for triggering such liability and the exact nature of the acts for which such a legal person might be held criminally liable.

During the first review cycle, Malaysia recognized challenges in implementing its provisions on corporate liability, including limited capacity (for example, knowledge and investigative skills), and a lack of knowledge and expertise in detecting, investigating and prosecuting offences involving a corporation. While Malaysia's amendments to the Anti-Corruption Commission Act (which came into effect on 2020) provided for corporate liability and extended this liability to managers in the case of a corporate offence, the provisions have not yet been tested in court. Other potential legislative hurdles that remain include:

- Definitions relevant to the conduct of "a company wherever incorporated and [which] carries on a business or part of a business in Malaysia." Interpretive issues may be raised during the enforcement, as foreign entities may not be instituted as "companies" but in other forms, while remaining as commercial organizations;
- Commercial organizations have a defence if they can prove that they had adequate procedures in place to prevent persons associated with the commercial organization from undertaking such conduct;

[66] "Action point 2.2: Criminalize bribery in the private sector (UNCAC article 21) and liability of legal persons (UNCAC article 26)."
[67] Including the UN Convention against Transnational Organized Crime, OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD Anti-Bribery Convention and the G20's High-Level Principles on the Liability of Legal Persons for Corruption.
[68] Brunei Darussalam, India, Japan, Malaysia, the Philippines, Republic of Korea, Thailand, Viet Nam.
[69] Brunei Darussalam, Indonesia, Japan, Thailand, Viet Nam.
[70] Assegaf Hamzah and Partners, "Indonesia's new criminal code introduces corporate crime," 2023. Available at: https://www.ahp.id/indonesias-new-criminal-code-introduces-corporate-crime/.

- It is not clear if, beyond defining that one of the persons is associated with the legal entity, the identification of a specific person is required.

### *Sanctions for legal persons*

UNCAC Article 26(4) notes that sanctions introduced must be effective, proportionate and dissuasive. In a business context, [71] sanctions can be considered effective and dissuasive if they adequately punish misconduct, eliminate illegal gains and encourage measures to prevent future misconduct. Proportionality considerations are related to the company itself, the gravity of the offence and the harm caused. Organizational size is often a critical factor, as measures adequate to deter future violations by a small local business could be inadequate for a larger company.

Six IPEF partners,[72] including Malaysia, the Philippines and Viet Nam, received recommendations to have more robust sanctions for legal persons, and ensure that the sanctions are effective, proportionate and dissuasive. For example:

- Malaysia received a recommendation to assess whether higher fines for legal persons might be useful to maximize deterrence;
- For Thailand, reviewing experts noted the need to assess whether current financial penalties for legal persons were consistent. Different fines applied to legal persons for money laundering offences that involved bid submissions, where the fine was 50 per cent of the highest bid price or value of the contract, whichever was higher. At any rate, fines for legal persons were limited to a maximum of 1 million Baht (less than US$ 30,000);
- In the Philippines, reviewing experts recommended that an assessment be made as to whether the criminal or non-criminal sanctions were effective, proportionate and dissuasive. A new circular in 2022[73] increased the penalties for non-disclosure and false disclosures of beneficial ownership, with the imposition of financial and non-financial sanctions. Specific provisions also now exact criminal liability on the directors, trustees, officers and other employees of a legal person or corporation found violating provisions of the Revised Corporation Code;
- While civil and administrative liabilities would technically satisfy the requirements of UNCAC, Viet Nam received a recommendation on considering the imposition of criminal liability on legal persons as its administrative and civil liabilities did not cover corruption offences. This meant a legal person could be liable administratively but not criminally for offences like money laundering.

### *Liability of legal persons for foreign bribery*

A key dimension under article 26 is its ties to article 16, where legal persons could be liable for foreign bribery. Corporate structures can facilitate foreign bribery in various ways, notably by functioning as intermediaries between the bribe giver and bribe recipient. Grey areas may be difficult to discern – for example,[74] while a company may understand that bribery to obtain new business is prohibited, it may see payments to secure a licence or other regulatory advantage as a form of administrative fee for service. Similarly, it may not always be clear when a company will be held accountable for violations by an affiliate, third-party or business partner.

A key example of the intersection between the liability of legal persons and the bribery of national public officials, foreign public officials and the private sector is the 1Malaysia Development Berhad (1MDB) case. In October 2020,[75] the Goldman Sachs Group and its Malaysian subsidiary pleaded guilty to participating in a

[71] *Ibid*., pp. 6 – 7.
[72] Brunei Darussalam, Japan, Malaysia, the Philippines, Thailand, Viet Nam.
[73] Securities and Exchange Commission, "Amendments to SEC Memorandum Circular No. 15, S. 2019 (the 2019 revision of the GIS) increasing the penalties and imposing additional non-financial penalties and providing further guidelines for submission," 2022. Available at: https://www.sec.gov.ph/wp-content/uploads/2022/12/2022_SEC-MC-No.-10-s.-of-2022-Amendments-to-SEC-Memorandum-Circular-No.-15-s.-2019-The-2019-Revision-of-the-GIS-Increasing-the-Penalties-and-Imposing.pdf.
[74] UN and OECD, "A resource guide on state measures for strengthening business integrity," *op.cit.*, p. 20.
[75] *Ibid.*, p. 42.

corruption scheme to pay over US$1 billion in bribes to high-ranking government officials in Malaysia and Abu Dhabi to obtain business, including underwriting three bond deals worth US$ 6.5 billion on behalf of 1MDB, a Malaysian state-owned and controlled investment fund. Goldman Sachs Malaysia pleaded guilty in the U.S. District Court for the Eastern District of New York to a one-count criminal information charging it with conspiracy to violate the anti-bribery provisions of the FCPA. As part of the resolution, Goldman agreed to pay a criminal penalty and disgorgement of over US$ 2.9 billion. In addition to the criminal charges, the U.S. Department of Justice has recovered, or assisted in the recovery of, in excess of US$ 1 billion in assets for Malaysia associated with and traceable to the 1MDB money laundering and bribery scheme.[76]

IPEF partners were recognized to have some form of provision addressing the liability of legal persons for foreign bribery during the first review cycle. For example:

- Reviewing experts observed that Japan had legislation which addressed the active bribery of foreign public officials and officials of public international organizations by legal persons. However, this liability of legal persons did not extend to all UNCAC offences;
- In New Zealand, legal persons who commit foreign bribery were subject to a fine of up to NZ$ 5 million (approximately US$ 3 million) or three times the value of the commercial gain;
- The Republic of Korea established the criminal liability of legal persons for foreign bribery under its legislation on Combating Bribery of Foreign Public Officials in International Business Transactions.

Otherwise, the liability of legal persons for foreign bribery in IPEF partners was not a primary focus during the first review cycle. The only recommendation that peripherally acknowledged this point was in the context of Japan, where reviewing experts recommended that legal persons be subject to more robust sanctions for participation in UNCAC offences, beyond the active bribery of foreign public officials and officials of public international organizations.

The 2021 OECD Anti-Bribery Recommendation[77] suggests that a flexible approach be taken for establishing the liability of legal persons for foreign bribery. The 2021 Recommendation specifically provides in Annex 1, C.1 that the legal person cannot avoid responsibility by using intermediaries, including related legal persons and other third parties to commit the offending of foreign bribery. It further provides in Annex 1, B.3 that systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches:

(a) the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons;

or (b) the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:

- A person with the highest level of managerial authority offers, promises or gives a bribe to a foreign public official;
- A person with the highest level of managerial authority directs or authorizes a lower-level person to offer, promise or give a bribe to a foreign public official;
- A person with the highest level of managerial authority fails to prevent a lower-level person from bribing a foreign public official, including through a failure to supervise or a failure to implement adequate internal controls, ethics, and compliance programmes or measures.

In relation to issues like parent-subsidiary liability, the 2021 OECD Anti-Bribery Recommendation[78] recommends that Member States should have appropriate rules or other measures to ensure

[76] U.S. Department of Justice, "Goldman Sachs charged in foreign bribery case and agrees to pay over $2.9 billion," 2020. Available at: https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion.
[77] *Ibid*., p. 18.
[78] *Ibid*.

that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, acquiring or otherwise altering their corporate identity. Similarly, Principle 6 of the G20 High-Level Principles on the Liability of Legal Persons for Corruption[79] provides that companies should not be able to escape liability by altering their corporate identity. IPEF partners could have appropriate rules on when and how changes in company identity and ownership impact the liability of legal persons.

IPEF partners have broad discretion to implement many different forms of sanctions, whether criminal, civil or administrative. A mixture of sanctions can be made available to law enforcement agencies or courts on a discretionary basis, with these sanctions applicable to a broad range of legal persons. The FCPA,[80] for example, specifies that "the term "United States person" means a national of the United States (as defined in section 1101 of title 8) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof".[81] Moreover, guidance on the FCPA recommends that if an agency relationship exists and the subsidiary is acting within the scope of authority conferred by the parent, a subsidiary's actions and knowledge should be imputed to its parent.[82]

In relation to potential defences relating to programmes that were in place during the legal person's offences, the USA's Department of Justice's Criminal Division issued a guide on evaluating corporate compliance programs.[83] This guide aims to assist prosecutors in making informed decisions as to whether, and to what extent, the corporation's compliance programme was effective at the time of the offence, and is effective at the time of a charging decision or resolution.

Otherwise, reviewing experts observed that inadequate criminalization of legal persons could affect the implementation of other provisions of the UNCAC, such as article 46 (mutual legal assistance), as States parties would not be able to fully provide mutual legal assistance in cases involving legal persons. This was explicitly noted for Viet Nam and is also highly relevant in foreign bribery, given that foreign bribery can take place beyond borders.

### *Good practices for UNCAC article 26*

Reviewing experts recognized the hard work that IPEF partners have put in to implement UNCAC article 26. For example, reviewing experts acknowledged Malaysia's legal framework during the first review cycle, where liability was established for natural and a broad range of legal persons like corporations, proprietorships, firms or unincorporated associations. Since 2021,[84] UNODC has assisted national authorities in Malaysia in the development and implementation of regulations on the liability of legal persons and beneficial ownership transparency.

Reviewing experts cited Singapore's legal framework of monitoring and imposing sanctions on legal persons as a good practice. The Monetary Authority of Singapore has the authority to impose a broad range of regulatory actions and supervisory measures in response to a financial institution's weak anti-money laundering controls and regulatory breaches. Examples of actions and measures that can be imposed include financial penalties, administrative sanctions and supervisory measures, such as restrictions on operations and revocations of licenses. In particular, the Monetary Authority of

[79] OECD, "Annex to G20 Leaders Declaration: G20 High-Level Principles on the Liability of Legal Persons for Corruption," 2017. Available at: https://www.oecd.org/g20/topics/anti-corruption/G20-principles-on-Liability-of-legal-persons%20for-corruption.pdf

[80] United States of Justice and the Enforcement of the Division of the United States Securities and Exchange Commission, "FCPA: A resource guide to the United States Foreign Corrupt Practices Act, Second Edition," 2020, p. 90.

[81] 15 U.S. Code § 78dd–1(g)(2) - Prohibited foreign trade practices by issuers.

[82] Criminal Division of U.S. Department of Justice and Enforcement Division of the U.S. Securities and Exchange Commission, "FCPA: A resource guide to the United States Foreign Corrupt Practices Act, Second Edition," 2020, p. 28. Available at: https://www.justice.gov/criminal/criminal-fraud/fcpa-resource-guide

[83] Department of Justice, "Evaluation of corporate compliance program," 2023. Available at: https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl.

[84] UNODC, "UNODC and Siemens AG strengthen partnership for business integrity," 2021. Available at: https://www.unodc.org/unodc/en/frontpage/2021/August/unodc-and-siemens-ag-strengthen-partnership-for-business-integrity.html.

Singapore can impose levies per day for which the regulatory offence continues after a financial institution is convicted.

Non-criminal measures can also be imposed. Under the Singapore Government Instruction Manual, contractors and companies who are investigated for corruption offences may be debarred from submitting a tender for government contracts for a specified duration. To provide evidence of its effective application in practice, Singapore was able to cite cases and provide statistics on the use of criminal and non-criminal responses against legal persons.

***Technical assistance requests for UNCAC article 26***

Malaysia requested assistance to strengthen its investigative skills to support the prosecution of cases involving legal persons.

The Philippines requested a summary of good practices and lessons learned, model legislation, legislative drafting and legal advice.

Similarly, Viet Nam requested a summary of good practices and lessons learned, as well as model legislation. Viet Nam also requested assistance in conducting surveys and developing thematic reports on the implementation of article 26 under the UNCAC Implementation Review Mechanism.

# Addressing Corruption in Public Procurement

It is estimated that approximately US$ 2 trillion of procurement expenditures are lost to corruption globally per year.[85] The large amounts of money involved, size of the market, complexity of end-to-end procurement processes, multitude of stakeholders, and close interaction between public and private interests make public procurement processes inherently vulnerable to corruption. UNODC[86] notes that corruption risks occur at all steps of the procurement process: from pre-selection activities, the tendering process, bid evaluation, post-selection activities, and to record keeping and auditing.

Corruption in public procurement puts government programmes and services at risk, potentially undermining competition and slowing down development. The distortion of the market caused by corruption[87] may further lead to low quality goods and services and inflated prices, disproportionately affecting the vulnerable.

Article 11 of the Fair Economy Agreement focuses on promoting integrity and transparency in government procurement. In particular:

- Article 11(2) notes that IPEF partners affirm their obligations under article 9(1) of UNCAC;
- Article 11(3) notes that IPEF partners shall adopt or maintain, in accordance with its domestic laws, criminal, civil or administrative measures to address corruption, fraud, and other illegal acts in its government procurement;
- Article 11(4) notes that where appropriate, IPEF partners should require contract bidders to disclosure their beneficial ownership information to procuring agencies and successful suppliers to publicly disclose their beneficial ownership information, or use other means to make such beneficial ownership information available to procuring agencies, to prevent waste, fraud, and abuse in government procurement;
- Article 11(5) notes that IPEF partners should, where appropriate, put in place policies or procedures that promote contracting with suppliers that operate with integrity and have good business practices
- Articles 11(6) to articles 11(9) refer to the use of suspension or debarment frameworks, including providing appropriate guidance or training on suspension, debarment, or alternative measures, and providing for transparency and notice of procedures in suspension and debarment proceedings.

Other provisions in the Fair Economy Agreement also apply to government procurement, including, for example:

- Article 10.2(c), which requires IPEF partners to adopt or maintain measures to promote transparency and accountability of public officials in the exercise of public functions, including in public procurement;
- Article 21.7, which refers to how IPEF partners shall endeavour to share best practices on the design, development, and application of technological innovations to advance the objectives of the Fair Economy Agreement, including in government procurement;
- Article 21.8, which refers to how IPEF partners shall endeavour to share expertise and best practices and to support

[85] OECD, "Preventing corruption in public procurement," 2016, p. 7. Available at: https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf.
[86] UNODC, "Corruption in public procurement," accessed on: 25 April 2024. Available at: https://www.unodc.org/e4j/zh/anti-corruption/module-4/key-issues/corruption-in-public-procurement.html.
[87] UNODC, "Integrity in public procurement processes and transparency and accountability in the management of public finances," *op.cit.*, p. 3.

each other's capacity building, particularly with respect to raining of relevant government procurement officials.

While this section focuses on the implementation of article 9(1) of UNCAC, it is important to consider how corruption risks in public procurement connect to the other corrupt acts that are highlighted in this study. For example, the OECD[88] indicates that more than half of the foreign bribery cases it studied involved the obtaining of a public procurement contract, with almost two-thirds of such cases occurring in sectors that tend to be closely associated with contracts or licencing through public procurement. Such sectors involved the extractive, construction, transportation and storage, and information and communication sectors. Increasing transparency in public procurement and allowing for the increased detection of corruption vulnerabilities and illicit behaviour can reduce money-laundering risks and the flow of proceeds of crime.[89]

The Guiding Framework[90] focuses on enhancing public procurement as a region, including by improving legal frameworks, public policies and capacity in public procurement. As transparency is one of the main means to achieve integrity in the procurement process, an emphasis was placed on how greater transparency and access to information, such as the use of structured procurement data and regional initiatives to allow for the use of e-procurement, may reduce corruption risks and result in better economic outcomes.

## UNCAC Article 9: Public procurement

*The establishment of a sound public procurement system based on principles of transparency, competition and objective criteria in decision-making is another important prerequisite for preventing corruption. Article 9(1) notes such systems shall address issues such as the public distribution of information relating to procurement procedures and contracts, the establishment of conditions for participation in advance, an effective system of domestic review and appeal, and measures to regulate matters regarding personnel responsible for procurement, such as declaration of interests in particular public procurements.*

During the second review cycle, six IPEF partners,[91] including Indonesia, Malaysia, the Philippines and Viet Nam, received recommendations on article 9(1). Some preliminary observations are also made in relation to India, which has not yet completed its second review cycle and therefore has not received recommendations through the UNCAC Implementation Review Mechanism.

### *Legislative frameworks on public procurement*

While a majority of IPEF partners have dedicated legislative and regulatory frameworks that apply to public procurement, India and Malaysia have no specific legislation that governs the government procurement process. Instead, different legislation and instruments apply to separate aspects of public procurement.

No recommendations in article 9 concerned the enactment of a dedicated legislative framework on public procurement. However, the importance of an adequate legal framework that is simple, clear and effective for procurement has been underscored by several international instruments on procurement.[92]

In India,[93] the apex legislation governing public procurement is the Constitution of India. At a federal level, there is no dedicated legislation governing public procurement. However, federal-level instruments (such as financial rules, policies and procedures for the purchase of goods, and guidelines issued by the Central Vigilance

[88] OECD, "Preventing Corruption in Public Procurement," 2016, p. 6. Available at: https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf.
[89] *Ibid*., p. 24.
[90] UNODC, "Regional Roadmap to Reinvigorate the Platform to Fast-Track the Implementation of the United Nations Convention against Corruption in Southeast Asia," *op.cit*.; see "Thematic Area 2: Enhance public procurement and greater beneficial ownership transparency."
[91] Indonesia, Malaysia, the Philippines, Thailand, USA, Viet Nam.
[92] Including the UN Commission on International Trade Law's Model Law on Public Procurement, Transparency International and OECD.
[93] Baker McKenzie, "Public Procurement World: India," 2024. Available at: https://resourcehub.bakermckenzie.com/en/resources/public-procurement-world/public-procurement/india/topics/1-the-laws. See also the Legal 500, "India: Public Procurement," 2024. Available at: https://www.legal500.com/guides/chapter/india-public-procurement/.

Commission) govern aspects of procurement. Otherwise, state legislatures may have their public procurement regulations.

Reviewing experts observed that in Malaysia, public procurement is regulated by legislation such as the Financial Procedure Act and related Treasury Instructions. As part of a broader strategic objective to strengthen its public procurement framework, Malaysia's National Anti-Corruption Plan (2019 – 2023)[94] identified the need to introduce legislation on public procurement in regulating its procurement activities. At the time of this report, a bill on public procurement legislation in Malaysia was in the process of being drafted.

***Using an open tender procedure by default***

Open tendering[95] is a procurement technique requiring, as a general rule, the unrestricted solicitation of participation by suppliers or contractors and the disclosure of aspects of the procurement process. These include the disclosure of all formalities required for the procurement contract, criteria in evaluating and comparing tenders, and criteria in selecting the successful tender. Direct negotiations between the procuring entity and suppliers or contractors as to the substance of tenders are usually prohibited.

Indonesia received a recommendation to continue ensuring the consistent application of open tenders as the norm for regular public procurements. While open tenders were, in principle, to be used for government procurements, reviewing experts observed that direct procurement and direct appointment methods were more frequently used in practice.

Viet Nam received a recommendation to ensure the consistent application of open bidding as the norm for public procurement. In Viet Nam, procurement modalities included open bidding, limited bidding, direct appointment, competitive quotation and self-implementation. While open bidding was cited as the preferred method, direct contracting was used for procurements of a value not exceeding 100,000,000 Dong (US$ 4,300) in accordance with Circular 58/2016/TT-BTC.

***Procedures, rules and regulations for review of the procurement process, including a system of appeal***

The development and publication of an effective system of review, including a system of appeal, helps to ensure legal recourse and remedies where established procurement procedures are not followed.[96] In 2023, UNODC[97] observed that most States parties have established systems under which procurement decisions are reviewed upon receiving complaints from participants. These systems include review by a specialized national authority in charge of supervising the procurement process or an authority higher than the one that issued the decision, and judicial review.

Indonesia received a recommendation on enacting comprehensive laws on public procurement with clear provisions on complaints, appeals and sanctions for violations. Reviewing experts observed that while bidders may file an objection to the head of the procuring agency, no procedures were spelled out in the review of complaints or sanctions for violations. It was further observed that while Indonesia's Public and Procurement Agency could be heard during the appeal process, final decisions rested with the procuring entity.

Indonesia was also recommended to establish a reporting system for procuring entities on the results of internal supervision and audits, and consider establishing mandatory or periodic external audits of public procurements. Reviewing experts observed that while supervision and audits were performed internally by procuring institutions, there were no mandatory or periodic external audits. Other audits of financial management were deemed purely financial and did not include the procurement process itself or the outcome.

[94] Prime Minister's Department, "National Anti-Corruption Plan: 2019 – 2023," 2019, p. 46. Available at: https://www.pmo.gov.my/wp-content/uploads/2019/07/National-Anti-Corruption-Plan-2019-2023_.pdf.
[95] UNODC and UNICRI, *Technical Guide to the United Nations Convention against Corruption*, 2009, p. 31. Available at: https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf.
[96] *Ibid.*, p. 32.
[97] UNODC, "Implementation of chapter II (Preventive measures) of the United Nations Convention against Corruption," CAC/COSP/2023/4, 5 October 2023, p. 11. Available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/CAC-COSP-2023-4/2319167E.pdf.

Malaysia received a recommendation to continue its efforts in establishing a procurement complaints mechanism for aggrieved parties, and encourage its Ministry of Finance to have an overview of procurement processes more generally. During the second review cycle, reviewing experts observed that steps were underway to establish a domestic review procedure, whereby bidders could complain about tender results or the response of procuring agencies. In 2023, the Prime Minister's Office of Malaysia announced its commitment to table a government procurement bill.[98]

Thailand received a recommendation to consider extending the seven-day period for filing procurement-related complaints or appeals. In Thailand, aggrieved tendering parties could file complaints to the head of the procuring agency when rules and procedures were violated within seven days of the date on which the bidding results were announced. The complaint would be considered by the Appeal Committee, whose decision would be final and could not be challenged except in relation to damages.

During the second review cycle, it was observed that procuring entities in the Philippines established bids and awards committees, which reviewed bids and made recommendations to the head of the procuring entity on selections. Unsuccessful bidders could request the bids and awards committee to reconsider its decision, but the head of the procuring entity's decision would be final unless challenged in court. As such, the Philippines received a recommendation to take steps to strengthen its public procurement system by establishing an independent and effective appeal mechanism for procurement decisions. At the time of this report, legislative amendments to provide for a third-party independent office to review appeals were under consideration.

The USA received a recommendation to consider establishing a new agency or entrusting an existing agency with a mandate to perform all federal contract audits. The reason for this was that public procurement in the USA is decentralized, with pre- and post-award audits of federal contracts conducted by a variety of federal entities, non-federal government and private auditors.

In Viet Nam, contractors and investors participating in the procurement process may file an objection in connection with the contractor selection process and its results, with complaints resolved by the procuring entity or another authorized person, such as a Minister or Chair of a People's Committee. Complaints regarding bid results would be resolved by a consulting council established by the Minister of Planning and Investment or other authorities. As such, Viet Nam received a recommendation to establish an effective system of review and appeal of public procurement matters by independent bodies.

### *Selection of personnel, integrity measures, and establishing a conflict of interest management system*

Article 9(1)(e) requires States parties to, where appropriate, regulate matters regarding personnel responsible for procurement, such as declarations of interests in particular public procurements, screening procedures and training requirements. The UNCAC Technical Guide[99] notes the need for published measures to regulate such matters, such as risk management, audit trails, specific appointment processes, specific codes of conduct, and training requirements.

Under article 11(6) of the Fair Economy Agreement, IPEF partners that have a suspension or debarment framework in place are encouraged, where appropriate, to take into account any mitigating factors or remedial measures developed by the supplier to address specific corruption risks as well as the supplier's existing internal controls, ethics, and compliance programs or measures.

Indonesia received a recommendation to consider strengthening integrity measures for procurement personnel. Reviewing experts observed no specific conflict of interest requirements for procurement personnel.

[98] Ministry of Finance, "Budget 2024: Government provides allocation for institutional, legal reform – Anwar," 2023. Available at: https://www.mof.gov.my/portal/en/news/press-citations/budget-2024-gov-t-provides-allocation-for-institutional-legal-reform-anwar.
[99] *Ibid*.

In Thailand, mandatory training for procurement officers was provided by the Comptroller General's Department of Thailand, which included modules on ethics. Thailand received a recommendation to strengthen measures to regulate matters regarding procurement personnel, such as declarations of interest in particular public procurements, screening procedures and integrity training.

The Philippines received a recommendation to consider adopting additional conflict of interest disclosure and management rules for procurement officials. At the time of this report, the Philippines had launched various training module lectures on ethics and an online hub for procurement professionals, with the aim of moving towards adopting a Code of Ethics for procurement professionals.

The Philippines was also recommended to extend the grounds for excluding bidders found to have been previously engaged in corrupt practices. This ground remains under consideration by the Government Procurement Policy Board.

In Viet Nam, individuals involved in procurement activities must possess a training certificate, which may be issued by certain entities. Reviewing experts recommended that Viet Nam consider adopting integrity measures for procurement personnel.

***Good practices for article 9***

Article 21.7 of the Fair Economy Agreement requires IPEF partners to endeavour to share best practices on the design, development, and application of technological innovations to prevent, detect, and combat corruption, including in government procurement. The use of e-procurement systems was recognized as a form of good practice during the second review cycle:

- The Republic of Korea's Public Procurement Service operated an e-procurement system[100] that provided comprehensive and timely information and statistics on public procurement using data collected. Petitions for objection could also be raised through the "ePeople" online petitioning and communication system, with the Board of Audit and Inspection or through the courts.
- The USA's[101] online portal contained all federal procurement opportunities and awards valued at more than US$ 25,000.

The integration of beneficial ownership information in public procurement processes has gained ground in some IPEF partners. Article 11.4 of the Fair Economy Agreement requires IPEF partners to, where appropriate, require contract bidders to disclose their beneficial ownership information to procuring agencies and successful suppliers to publicly disclose their beneficial ownership information, or use other means to make such beneficial ownership information available to procuring agencies, to prevent waste, fraud, and abuse in government procurement. Having launched a beneficial ownership database, Indonesia has committed to introducing public Having launched a beneficial ownership database, Indonesia has committed to introducing public access to the database for various purposes, including procurement.[102]

The use of integrity pacts was recognized as a form of good practice in the Indonesian and Malaysian contexts during the second review cycle. It is also worth noting that while India lacks an overarching federal law on public procurement, it has worked to legislate integrity pacts into certain public procurement contracts, including by orders[103] issued by the Central Vigilance Commission and Chief Vigilance Office. In India, the Integrity Pact envisages a panel of Independent External Monitors to review, independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. Parties commit to refrain from engaging in any corrupt practices in any aspect or stage of

[100] Public Procurement Service, "Korea Online e-Procurement System," accessed on: 25 April 2024. Available at: https://www.g2b.go.kr/index.jsp.
[101] US General Services Administration, "Sam.gov," accessed on: 25 April 2024. Available at: https://sam.gov/content/home.
[102] Open Government Partnership, "Strengthen and open access to beneficial ownership data." Available at: https://www.opengovpartnership.org/members/indonesia/commitments/ID0127/.
[103] For example, see Chief Vigilance Office, "CVO-CVC order for adoption of Integrity Pact in major government procurement activities and revised SOP," 2023. Available at: https://cvo.py.gov.in/Circulars_pdf/adoption-integrity.pdf.

the contract, and only those vendors and bidders who commit themselves to such a Pact with the buyer are considered competent to participate in the bidding process. In other words, entering this Pact would be a preliminary qualification.

Australia's updates to its Commonwealth Procurement Rules in 2022 are worth noting in the context of sustainable and ethical procurement. Australia's updates sought to ensure that small and medium-sized enterprises are not disadvantaged in Commonwealth procurements, and that sustainable procurement practices are supported. For example, the updates require officials to consider disaggregating larger projects into smaller work packages to encourage greater participation by more businesses, regardless of their size.[104]

### *Technical assistance requests for article 9*

Indonesia requested capacity-building, including training and certification for fraud examiners, forensic auditors, risk management and internal control. It also requested comparative studies and benchmarking on fraud prevention strategies.

[104] Australian Government Department of Finance, "Commonwealth Procurement Rules: 1 July 202 – Achieving value for money," 2022, p. 3. Available at: https://www.finance.gov.au/sites/default/files/2022-03/Commonwealth%20Procurement%20Rules%20-%201%20July%202022%20-%20advanced%20copy.pdf.

# Laundering and Recovery of Proceeds of Crime

In an increasingly borderless world with business and financial opportunities, criminals look to take advantage of increased interconnectivity among jurisdictions, financial institutions and global trade. Globally, the flows of proceeds of crime are estimated to make up around 2 to 5 per cent of global annual GDP.[105]

The Fair Economy Agreement sets out provisions on laundering and recovering the proceeds of crime, such as:

- Article 5.5 requires IPEF partners to adopt or maintain, consistent with UNCAC, legislative and other measures to criminalize acts to prevent and combat corruption, such as the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illegal origin of the property.
- Article 6 covers asset recovery and international cooperation. For example, article 6.1 notes that IPEF partners shall, consistent with UNCAC, adopt or maintain measures to enable the identification, tracing, freezing, seizure, and confiscation in criminal or civil proceedings of proceeds of crime derived from UNCAC offences or property the value of which corresponds to that of such proceeds; and property, equipment or other instrumentalities used in or destined for use in UNCAC offences. Article 6.4(b) notes that, consistent with UNCAC and in accordance with its domestic law, IPEF partners are to take measures and strengthen its international cooperation with other IPEF partners to facilitate the recovery of the proceeds of crime by denying safe haven to the proceeds of crime through effective cooperation in processes that may include mutual legal assistance and asset recovery.
- Article 20.5 notes that IPEF partners are to intend to, in accordance with their respective domestic laws, strengthen information-sharing among themselves concerning cross-border movements of illicitly acquired assets and individuals, including public officials, who are the subject of or otherwise involved in corruption investigations. Article 20.7 notes that IPEF partners are to commit to rapidly, constructively, and effectively providing the widest range of international cooperation in relation to money laundering, associate predicate offenses, and countering the financing of terrorism.
- Article 21.4 obligates IPEF partners to endeavour to support building each other's capacity, in particular, to effectively investigate and prosecute complex, transnational corruption offences, including those involving bribery, asset recovery, and money laundering.

This section looks at how IPEF partners have implemented the UNCAC's provisions on preventing money laundering (article 14), the laundering of proceeds of crime (article 23), and preventing and detecting transfers on proceeds of crime (article 52). It also analyses, article- by-article, how IPEF partners have implemented the UNCAC's provisions on asset recovery (chapter V). Given the breadth of these areas, the analysis in this section aims to provide a broad overview of key issues raised in the recommendations provided to IPEF partners, but does not comprehensively cover every sub-issue in detail.

[105] IMF, "Straight talk: cleaning up," 2018. Available at: https://www.imf.org/en/Publications/fandd/issues/2018/12/imf-anti-money-laundering-and-economic-stability-straight.

Chapter V obligates countries to undertake several measures to facilitate the identification, recovery and return, where appropriate, of criminal proceeds. This sets out a framework in civil and criminal law for tracing, freezing, confiscating, and returning funds, in line with the Convention, obtained through corrupt acts, and for providing international cooperation to facilitate such measures. IPEF partners, in recognition of the existing obligations set forth under UNCAC, have endorsed similar commitments.

Laundering the proceeds of crime is typically understood to occur in three phases:[106]

- Placement, where funds are integrated into the financial system or a legal business (i.e. initial transfer of proceeds of crime into a legitimate economy, for example, by placing them into a legal bank account);
- Layering, where money is distanced from its illegal source to make it difficult for investigators to "follow the money" trail – for example, through multiple transfers, the use of shell companies, nominee accounts or secrecy jurisdictions, or the use of cryptocurrencies;
- Integration, where money enters the legal economy and appears clean, which results in investigators being less likely able to determine where the money comes from. For example, this may occur when a criminal sells shares in an apparently legitimate company whose bottom line has been inflated by hidden illicit income.

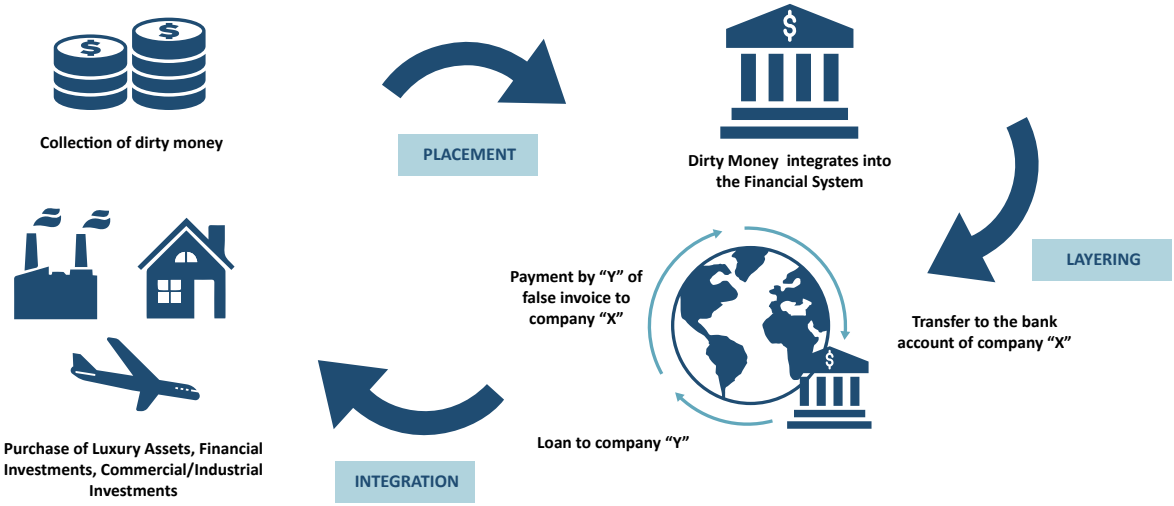
It is to be noted that these phases often overlap, and all three do not always occur in money laundering.

The APG[107] and FATF[108] provide key money laundering typologies which are referred to and analysed in this study, including:

- Money laundering associated with corrupt acts, such as bribery and proceeds of corruption, with possible influence by Politically Exposed Persons (PEPs);
- Cash couriers and currency smuggling;
- Gaming activities, such as casinos and internet gambling, to obscure the source of funds. For example, casino chips can be used as currency for criminal transactions to obscure the source of criminal proceeds;
- Purchase of valuable commodities, such as gold and precious metals, to conceal ownership or move value without detection, and to avoid financial anti-money laundering measures;
- Informal or underground banking, sometimes referred to as hawala, hundi, or chop after its variants in the Middle East, South Asia and China. These are informal mechanisms based on networks of trust used to remit monies, and are exploited by money launderers to move value without detection;
- Purchasing of valuable assets such as real estate to take advantage of reduced reporting requirements;
- Different methods to obscure the identity of persons controlling illicit funds, such as the use of foreign bank accounts or other persons (for example, nominees, trusts, family members or third parties). Identities can also be obscured through the use of offshore banks, company service providers and shell companies;
- The use of Designated Non-Financial Businesses and Professions (DNFBPs) or "gatekeeper" professional services, such as lawyers, accountants and brokers to obscure the identity of beneficiaries and the source of illicit funds;
- Trade-based money laundering, which usually involves invoice manipulation

[106] UNODC, "Casinos, money laundering, underground banking, and transnational organized crime in East and Southeast Asia: a hidden and accelerating threat," 2024, p. 3. Available at: https://www.unodc.org/roseap/uploads/documents/Publications/2024/Casino_Underground_Banking_Report_2024.pdf.
[107] APG, "Methods and trends: Introduction to APG typologies," 2024. Available at: https://apgml.org/methods-and-trends/page.aspx?p=a4a11dca-75f2-4dae-9c25-6215103e56da.
[108] FATF, "Methods and trends," accessed on: 15 May 2024. Available at: https://www.fatf-gafi.org/en/topics/methods-and-trends.html.

## Figure 1. Money laundering




Source: United Nations, "Money Laundering". Available at: https: www.unodc.org/romena/en/money-laundering.html.

and uses trade finance routes and commodities to avoid financial transparency laws and regulations.

While there is no internationally accepted definition or standard for the flow the proceeds of crime, they have been referenced as the cross-border movement of capital and money associated with a variety of illegal activities, such as "slavery and exploitation, extortion, trafficking in persons and kidnapping."[109] UNODC has identified some key trends in its research on the flow of proceeds of crime and money laundering in Southeast Asia, such as:

- The growing role of Special Economic Zones and the rise in the development and operation of casinos and online scams in Cambodia, Myanmar and Lao PDR as a contributor to the flow of the proceeds of crime,[110] which impact IPEF partners in Southeast Asia and beyond;
- The use of certain financial centers globally, including those of IPEF partners, as destinations for proceeds of crime;
- Weaknesses in or the lack of regulations and enforcement of DNFBPs in transit and final destinations, which play a key

[109] UNODC, "Conceptual framework for the statistical measurement of illicit financial flows," 2020, p. 15. Available at: https://www.unodc.org/documents/data-and-analysis/statistics/IFF/IFF_Conceptual_Framework_FINAL.pdf.

[110] "According to latest available projections, the formal online gambling market is projected to grow to more than US $205 billion by 2030,5 with the Asia Pacific region representing the largest share of market growth between 2022 to 2026 at a projected 37 per cent. Concerningly, the rise of the 'offshore' online casino industry (including online sports betting) in several high-risk jurisdictions in Southeast Asia, and particularly the Mekong region, has been reported as a major and growing challenge faced by authorities in and beyond the region. Macau SAR junket operators and their close criminal associates have been key drivers of this trend. Unregulated and underregulated online casino platforms run by junket operators, while profitable in and of themselves, also serve as a useful channel of credit settlement between junkets and their clients, and have been observed to be misused extensively to comingle and disguise proceeds of crime as legitimate online gambling profits. Most, if not all, of the largest junket operators have established these operations, with smaller junkets and online platforms acting as customer referral agents where further money laundering and layering can take place. At the same time, many illegal online casino in Southeast Asia have diversified their business lines into cyberfraud operations, with extensive evidence of infiltration of organized crime within casinos and SEZs for the purposes of concealing various illicit activities. Due to limited access to SRs, SEZs, and casino and cyberfraud compounds, it is not possible to determine the full extent of these operations. However, recent cases relating to the dismantling of illegal online gambling and cyberfraud operations, rescues of victims of human trafficking, seizures of bulk cash and virtual assets, as well as arrests of known organized crime figures, demonstrate that the scale of the industry is massive. Complicating matters further, the integration of technologies including mirror websites, cryptocurrency, and third-party betting software or so-called 'white-label' service providers in Southeast Asia has meant that it has never been easier to set up an online casino operation with limited technical expertise and overhead capital, irrespective of gambling laws within a given jurisdiction. The development and advancement in internet payment technologies has also assisted in supporting the online casino market with a rise in the number of third-party payment providers, e-wallets, and other payment solutions to support online transactions and in-app purchases. The massive, growing scale of the industry has also drawn in an unprecedented number of young people seeking work in the sector, with opportunities for some and risks for others linked to recruitment fraud and trafficking for forced criminality." UNODC, "Casinos, Money Laundering, Underground Banking, and Transnational Organized Crime in East and Southeast Asia: A Hidden and Accelerating Threat," op.cit., pp. 2-3.

**Figure 2: How criminals misuse virtual assets in East and Southeast Asia**


Source: UNODC, "Transnational Organized Crime, Casinos and Money Laundering in Southeast Asia: A Threat Analysis", 2022.

role in enabling proceeds of crime to reach the global economy;

- Weaknesses in the knowledge of the flow of proceeds of crime combined with the continued importance of informal banking within the Mekong region;
- The evolution of select flow of proceeds of crime associated with corruption, sometimes supported by virtual assets (see Figure 2: How criminals misuse virtual assets in East and Southeast Asia);
- Little to no transparency in project financing in the Mekong region;
- Money laundering risks from precious metals, including concerns of gold-related money laundering in the Mekong region;
- The trade of citizenship and residency for "golden visas" in Europe and elsewhere.

Since November 2023, FATF requires countries to:[111]

- Establish asset recovery as a priority at the domestic and international levels, and periodically review their confiscation policies and operational frameworks;
- Establish a non-conviction based regime in their legal systems, to the extent that such requirements are consistent with fundamental principles of domestic law;
- Be able to recognize each other's preliminary and final court orders concerning assets subject to confiscation.

[111] FATF, "Amendments to the FATF Standards to Strengthen Global Asset Recovery," 2023. Available at: https://www.fatf-gafi.org/en/publications/Fatfrecommendations/amendment-FATF-standards-global-asset-recovery.html.

These reforms from FATF overlap with the obligations of IPEF partners under UNCAC.

The Guiding Framework also recognizes the facilitation of asset recovery as a thematic priority in the region, with a focus on:[112]

- Strengthening asset recovery strategic, normative and legislative frameworks, with key action points on ensuring that domestic frameworks provide for the enforcement of foreign confiscation orders, including non-conviction based forfeiture orders;
- Strengthening asset recovery institutional frameworks to enhance their effectiveness, including by developing tools and mechanisms to improve data collection and expeditiously trace and freeze assets;
- Strengthening regional and international cooperation on asset recovery, including by encouraging membership of the GloBE Network, making use of the joint UNODC and World Bank StAR Initiative, and other available direct cooperation channels to facilitate international cooperation.

## Article 14: Measures to prevent money laundering

*The prevention of money laundering is an important requirement of the UNCAC. Article 14 requires States parties to put in place a comprehensive regulatory and supervisory regime for banks and non-banking financial institutions. The purpose of such a regime is to deter and detect all forms of money laundering, and to enable cooperation and the exchange of information at national and international levels. The establishment of a Financial Intelligence Unit (FIUs) is required to be considered by States parties, as is a national centre for the collection, analysis and dissemination of information regarding potential money laundering.*

Out of 10 IPEF partners that have completed the second review cycle, eight IPEF partners,[113] including Indonesia, Malaysia, the Philippines and Viet Nam, received recommendations on article 14.

### *Continuing efforts to implement a risk-based approach*

Each IPEF partner has its unique anti-money laundering profile, with specificities around the drivers of money laundering to the global economy. FATF Recommendation 1 notes that countries should apply a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing (AML/CFT) are commensurate with the risks identified.

During the second review cycle, Indonesia received a recommendation in 2018 to continue efforts to implement the risk-based approach, including addressing threats and vulnerabilities within its national risk assessment. Indonesia noted that its national and sectoral risk assessments were performed through cooperation, coordination and collaboration in the form of focus group meetings, and inter-agency and sectoral workshops. Reviewing experts observed that implementation of the risk-based approach in Indonesia's DNFBP sector was ongoing.

In 2023, FATF rated Indonesia to be "largely compliant" with Recommendation 1 and noted Indonesia's significant efforts to identify, assess and understand internal geographical risks across different provinces. However, FATF commented that Indonesia's risk assessments would benefit from a more robust approach and a deeper consideration of money laundering risks of environmental crimes (for example, forestry and illegal logging).

While no other IPEF partners have received recommendations at this point, Fiji's progress is worth observing. In 2016,[114] Fiji was "partially compliant" with Recommendation 1, as it did not adequately cover certain key risk areas.

[112] UNODC, "Regional Roadmap to Reinvigorate the Platform to Fast-Track the Implementation of the United Nations Convention against Corruption in Southeast Asia," 2024.
[113] Australia, Indonesia, Malaysia, the Philippines, Republic of Korea, Thailand, USA, Viet Nam.
[114] APG, "Anti-money laundering and counter-terrorist financing measures – Fiji: Mutual Evaluation Report," 2016, p. 5. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/APG-MER-Fiji-2016.pdf.coredownload.inline.pdf.

These included risks associated with legal persons and arrangements, foreign investment, and cross border transportation of currency and bearer negotiable instruments in relation to transit passengers from cruise ships and illegal businesses. Subsequently,[115] the APG re-assessed Fiji to be "largely compliant" in 2017, as Fiji's regulations and guidelines on effective risk-based compliance were then capable of enforcement.

### *The role of financial institutions in preventing money laundering*

Article 14(1) of the UNCAC requires States parties to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions to deter all forms of money laundering. This would cover natural or legal persons that provide formal or informal services for the transmission of money and value. States parties shall emphasize customer and, where appropriate, beneficial owner identification, record keeping and the reporting of suspicious transactions.

In addition to preventive measures such as customer due diligence and record-keeping, FATF Recommendation 13 notes that financial institutions should be required to carry out additional measures in relation to cross-border correspondents. Correspondent banking[116] is defined by FATF as the provision of banking services by one bank (the "correspondent bank") to another bank (the "respondent bank"). Large international banks typically act as correspondents for thousands of other banks around the world. Respondent banks can provide a broad range of services, including cash management, international wire transfers, cheque clearing and foreign exchange services.

Money or value transfer services are defined by FATF[117] as "financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or another form to a beneficiary using a communication, message, transfer, or through a clearing network to which the money or value transfer service provider belongs."[118] Transactions performed by such services can involve one or more intermediaries and a final payment to a third party using new payment methods.

The UNCAC Technical Guide[119] encourages IPEF partners to consider reviewing all the available means by which proceeds of crime are introduced into its legal economy, which may, in turn, be influenced by a range of factors, from the extent of its informal economy to the availability of financial instruments. This would allow IPEF partners to identify institutions or activities that might be susceptible to be misused for money laundering purposes and the most likely modalities that could be used.[120]

### *Designated Non-Financial Businesses and Professions*

DNFBPs in origin, transit and final destinations play a critical role in enabling the flow of the proceeds of crime to reach the global economy. DNFBPs are defined by FATF[121] to mean casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries or other independent legal professionals and accountants, and trust and company service providers. UNODC research found that the growth of casinos and Special Economic Zones across the Mekong have exacerbated this trend, where the flows of proceeds of crime are laundered through the services of lawyers, trust and company service providers, and facilitators in the sale and purchase of properties.

DNFBPs are commonly equipped with specialized skills which money launderers require to obscure

[115] APG, "1st Follow-Up Report: Mutual evaluation of Fiji," 2017, p. 7. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-fur/FUR-Fiji-Oct-2017.pdf.coredownload.pdf.
[116] FATF, "International standards on combating money laundering and the financing of terrorism and proliferation: the FATF Recommendations," 2023, p. 125. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf.
[117] FATF, "Glossary," 2024. Available at: https://www.fatf-gafi.org/en/pages/fatf-glossary.html.
[118] FATF, "Money or value transfer services," 2016. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-RBA- money-value-transfer-services.pdf.coredownload.pdf, p. 7.
[119] UNODC and UNICRI, *Technical Guide to the United Nations Convention against Corruption*, *op.cit.*, p. 68.
[120] Ibid.
[121] FATF, "Glossary," *op.cit.*

the trail of corrupt proceeds. For instance, lawyers[122] can draft contracts for the provision of goods or services secured with a bribe, create fake invoices, and play a key role in setting up shell and mailbox companies serving as conduits for the flow of proceeds of crime. Lawyers may hold clients' funds in designated accounts or agree to act on behalf of clients (for example, under a power of attorney) concerning specific aspects of transactions. Accountants[123] can be part of bribery schemes by giving the appearance of legality to accounting books, for example by issuing an unqualified audit opinion.

Five IPEF partners[124] received recommendations on DNFBPs:

- Australia received a recommendation to ensure that DNFBPs beyond casinos and bullion dealers such as real estate agents, accountants and lawyers, are subject to anti-money laundering obligations in line with FATF standards. Following the second review cycle, Australia noted that this recommendation remained under consideration, but highlighted that certain reporting obligations were already imposed on solicitors and motor vehicle dealers who acted as insurers or insurance intermediaries;
- The Republic of Korea received a recommendation to amend its legislation to expand the scope of obliged entities to cover all DNFBPs and designate supervisors for those sectors. Measures contained in the prevention of money laundering legislation applied to financial institutions and money or value transfer service providers, but not to other DNFBPs;
- Thailand received a recommendation to ensure that all relevant entities were subject to anti-money laundering requirements, including lawyers, notaries, certified accountants, auditors, leasing companies, pawn shops and small cooperatives;
- The Philippines received a recommendation to include real estate brokers within the definition of "covered persons" in its anti-money laundering framework. In 2021, the Philippines amended its legislation and defined "covered persons, natural or judicial" to include real estate developers and brokers. However, in 2023,[125] the APG recommended that the Philippines demonstrate the occurrence of effective risk-based supervision of DNFBPs, and that AML/CFT controls were being used to mitigate risks associated with casino junkets;
- The USA received a recommendation to create and effectively implement a comprehensive AML/CFT supervision mechanism for relevant DNFBPs. Reviewing experts observed that while the USA's system to prevent and detect money laundering was comprehensive, gaps remained in its coverage of DNFBPs. The USA's most recent FATF evaluation[126] observed that casinos were not required to perform enhanced due diligence for higher-risk categories of customers. Accountants, dealers in precious metals and stones, lawyers and real estate agents were also not subject to adequate customer identification and record-keeping requirements.

[122] OECD, "Foreign bribery and the role of intermediaries, managers and gender," 2020, p.7. Available at: https://www.oecd.org/daf/anti-bribery/Foreign-bribery-and-the-role-of-intermediaries-managers-and-gender.pdf.
[123] Ibid., p. 8.
[124] Australia, the Philippines, Republic of Korea, Thailand.
[125] FATF, "Jurisdictions under increased monitoring," 2023. Available at: https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-october-2023.html.
[126] FATF and APG, "Anti-money laundering and counter-terrorist financing measures: United States – Mutual Evaluation Report," 2016, p. 220. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-United-States-2016.pdf.coredownload.inline.pdf.

| | Report date | R. 22 | R. 23 | R. 28 |
|---|---|---|---|---|
| **Australia** | March 2024 | NC | NC | NC |
| **Brunei Darussalam** | August 2023 | PC | LC | PC |
| **Fiji** | May 2023 | LC | LC | LC |
| **India** | N/A | N/A | N/A | N/A |
| **Indonesia** | April 2023 | LC | LC | PC |
| **Japan** | October 2023 | PC | PC | LC |
| **Malaysia** | October 2018 | LC | LC | LC |
| **New Zealand** | May 2022 | PC | PC | PC |
| **Republic of Korea** | April 2020 | PC | PC | PC |
| **Philippines** | August 2022 | LC | LC | LC |
| **Singapore** | November 2019 | PC | LC | PC |
| **Thailand** | October 2023 | NC | PC | PC |
| **USA** | March 2024 | NC | NC | NC |
| **Viet Nam** | February 2022 | PC | PC | PC |

*NC: Non-Compliant; PC: Partially Compliant; LC: Largely Compliant; C: Compliant*
*LE: Low level of effectiveness; ME: Moderate level of effectiveness; HE: High Level of effectiveness*

India underwent its last FATF evaluation in 2010,[127] and has not yet received recommendations through the UNCAC Implementation Review Mechanism.

In 2023, India[128] amended its anti-money laundering legislation to cover a broader range of professional service providers. These amendments brought practicing chartered accountants, company secretaries, costs/work accountants, and persons carrying out trust and company services on behalf of another person under anti-money laundering obligations for specified financial transactions.[129] Examples of such financial transactions included:

- The buying and selling of immovable properties;
- Managing bank accounts and client money;
- Creating, operating and managing companies, limited liability partnerships or trusts;
- Buying and selling business entities.

However, India's amendments did not cover lawyers and legal professionals. Moreover, advocates, accountants or company secretaries who merely filed relevant declarations for the formation of a company, and certain intermediaries, remained excluded.

Certain FATF recommendations cover obligations on DNFBPs. The table below sets out assessments for IPEF partners on:

- Recommendation 22: DNFBPS – customer due diligence;
- Recommendation 23: DNFBPs – other measures. The focus of this Recommendation is on obligating DNFBPs to report suspicious transactions;
- Recommendation 28: Regulation and supervision of DNFBPs. This Recommendation sets out how DNFBPs should be subject to regulatory and supervisory measures, including licensing and supervision.

[127] FATF, "Countries: India." Available at: https://www.fatf-gafi.org/en/countries/detail/India.html#:~:text=India%20has%20not%20yet%20been,at%20the%20June%202024%20Plenary.
[128] Step, "India extends AML law to cover many more professionals," 2023. Available at: https://www.step.org/industry-news/india-extends-aml-law-cover-many-more-professionals.
[129] The Indian Review of Corporate and Commercial Laws, "Changes to Anti-Money Laundering laws in India: a step in the right direction?" 2023. Available at: https://www.irccl.in/post/changes-to-anti-money-laundering-laws-in-india-a-step-in-the-right-direction.

Most recent ratings[130] show that Australia and the USA were assessed to be "not compliant" with Recommendations 22, 23 and 28. Thailand was assessed to be "not compliant" with Recommendation 22 and "partially compliant" for Recommendations 23 and 28.

### *Beneficial ownership information transparency*

The importance of beneficial ownership transparency has already been highlighted in relation to preventing corruption in the private sector (article 12). However, beneficial ownership information also prevents money laundering (under articles 14 and 52) where attempts are made to obscure the identity of persons controlling illicit funds, such as through the use of shell companies. UNODC research revealed that shell companies, organizations and foundations are commonly created with unsubstantiated and highly registered funds to drive confusion or a false sense of business legitimacy.

Links have been made between offshore money laundering and the abuse of private sector investment focused programmes,[131] where citizenship or residency status is granted principally or solely in return for financial investment. Bogus investment schemes allow wealth managers[132] to use funds repeatedly by different applicants to gain citizenship or residency by recycling money through a complex and opaque series of corporate arrangements and transactions. Illicit actors are attracted to factors such as the ability to establish legal persons in jurisdictions with opaque systems, a lack of vetting by governments or third-party service providers, and weak due diligence requirements.

Australia, Indonesia and Malaysia received recommendations on improving beneficial ownership transparency to prevent money laundering:

- Australia received a recommendation to ensure that information on the beneficial owners of legal persons and legal arrangements is maintained and accessible to competent authorities in a timely manner;
- Indonesia received a recommendation to improve the regulatory framework on beneficial ownership transparency and the acceleration of such implementation;
- Malaysia received a recommendation to continue efforts to address its remaining FATF issues, which involved beneficial ownership transparency of legal arrangements.

FATF has recently advised the Philippines to enhance and streamline access to beneficial ownership information, with steps taken to ensure that beneficial ownership information is accurate and up-to-date.

### *Identification requirements*

Three IPEF partners received recommendations on the adoption of detailed identification requirements or enhanced scrutiny where information on the originator is incomplete:

- Indonesia received a recommendation to consider adopting measures on applying enhanced scrutiny to transfers of funds that do not contain complete information on the originator, as reviewing experts observed that this was not a requirement in Indonesia;
- Thailand received a recommendation to adopt the approach of enhanced scrutiny to all originators where information is incomplete beyond customers of financial institutions, and irrespective of the value of the transfer. Where money laundering was suspected, the recommendation noted that the transaction should be prohibited;
- Viet Nam received recommendations to adopt detailed identification requirements. While it was already an existing requirement to identify all clients opening accounts or establishing transactions with financial institutions, reviewing experts observed that Viet Nam had not adopted specific regulations on customer identification for electronic funds transfers.

[130] For all updated assessment information from FATF-style regional bodies, see FATF, "Consolidated assessment ratings," last updated on 7 May 2024. Available at: https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-ratings.html.
[131] OECD, "Misuse of citizenship and residency by investment programmes," 2023, *op.cit.*, p. 9.
[132] *Ibid.*, pp. 29 – 30.

### *Detection of cross-border movements of cash and bearer-negotiable instruments*

Article 14(2) requires States parties to consider the adoption of measures to detect and monitor the cross-border movement of cash, as well as of appropriate negotiable instruments. The concern is with the transportation of currency, negotiable instruments and valuables that are easily liquidated, such as bank guarantees or precious stones.[133] Irregular cross-border movements disrupt the trail of transactions from origin to destination, making it difficult for institutions to assess the cash's true origins and legitimacy when it moves back into the regulated financial system.[134]

The detection of physical cross-border transportation of cash through mandatory reporting is well-implemented in IPEF partners, usually with reporting thresholds at or around the equivalent of US$ 10,000 in local currency. For example, reviewing experts observed that individuals entering or leaving Singapore with cash exceeding S$ 20,000 had to fill in a reporting form, with cross-border cash transportation through mail and cargo subject to similar reporting requirements.

Australia received a recommendation to introduce threshold values for the requirement to report cross-border movements of bearer negotiable instruments, as no threshold values were present during the second review cycle. Subsequently, Australia introduced a requirement mandating the report of cross-border movement of bearer negotiable instruments if they were valued at AU$ 10,000 or more.

### *Preventing the use of virtual assets in cross-border money laundering*

In October 2018, FATF amended its Recommendations to explicitly capture financial activities involving virtual assets and to set standards concerning the regulation and supervision of virtual asset service providers. The relevant requirements are set out in Recommendation 15. Jurisdictions are required: to identify and assess the money laundering and terrorism financing risks emerging from virtual asset activities and the activities or operations of virtual asset service providers; and then to apply a risk-based approach to mitigation.

FATF has noted that global implementation of Recommendation 15 remains relatively poor,[135] with compliance remaining behind most other financial sectors. Among the IPEF partners, Viet Nam was assessed to be "not compliant" in February 2022. Fiji in May 2023 and the Philippines in August 2022 were assessed to be "partially compliant".

In 2023, India updated its Prevention of Money Laundering Act to include the regulation of cryptocurrencies and digital assets.[136] This would allow the Indian Government to investigate cryptocurrency transactions that were suspected of being proceeds of crime.

### *Exemptions and thresholds*

"Structuring", a money laundering technique,[137] allows for the circumvention of cash transaction reporting requirements by depositing and withdrawing funds at different bank branches or remittance business locations to evade threshold reporting requirements.

The Philippines and the USA received recommendations relating to the introduction, amendments, or elimination of exemptions and thresholds for reporting requirements:

- The Philippines was recommended to consider eliminating the threshold of US$ 10,000 or above for electronic transfers to be accompanied by required originator and beneficiary information;
- The USA was recommended to consider taking measures to require financial institutions to verify identifying information

[133] UNODC and UNICRI, *Technical Guide to the United Nations Convention against Corruption*, *op.cit.,* p. 73.
[134] OECD, "Misuse of citizenship and residency by investment programmes," 2023, *op.cit.,* p. 31.
[135] FATF, "Status of implementation of Recommendation 15 by FATF Members and Jurisdictions with materially important VASP activity," 2024. Available at: https://www.fatf-gafi.org/en/publications/Virtualassets/VACG-Snapshot-Jurisdictions.html.
[136] FIU of India, "AML and CFT guidelines for reporting entities providing services related to digital assets," 2023. Available at: https://fiuindia.gov.in/pdfs/AML_legislation/AMLCFTguidelines10032023.pdf.
[137] Examples of structuring are provided in APG, "Methods and trends: Introduction to APG typologies," *op. cit.*

for occasional customers conducting funds transfers *below* US$ 3,000 when there was a suspicion of money laundering or terrorist financing. Reviewing experts observed that requirements covering the originator's name, account number and address in any transmittal order only applied when the amount was above US$ 3,000.

### *Suspicious transaction reporting*

Suspicious transaction reports are a key component in preventing money laundering. These reports contain important points of information, including:[138]

- Source and destination of funds;
- Narrative explanation by the bank employee about the nature of the suspicion and know-your-customer information;
- Frequency of the use of wire transfers, checks and so forth;
- Information on other assets or products held by the target at the bank.

From this information, practitioners can trace the money backward to confirm its illegal source or forward to see where it has gone.[139]

Thailand received recommendations to continue taking steps to strengthen the implementation of anti-money laundering controls, including suspicious transaction reporting, in all DNFBPs. Reviewing experts observed this was a known area of weakness in Thailand's anti-money laundering regime.

The recommendation also suggested that Thailand consider abolishing the exemptions from suspicious transaction reporting requirements for transactions between government entities, as granted by Ministerial Regulation No. 5 (2000).

### Sanctions for financial institutions

Relevant to the UNCAC's provisions on the private sector and liability of legal persons, FATF's Recommendation 35 (sanctions) notes that countries should ensure that there is a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons covered by recommendations addressing AML/CFT requirements. In addition to financial institutions and DNFBPs, sanctions should also apply to their directors and senior management.

Viet Nam was the only IPEF partner assessed to be "not compliant" with Recommendation 35. In Viet Nam's most recent mutual evaluation report,[140] the APG noted that non-compliance only resulted in administrative sanctions. These sanctions were only applicable to directors and senior management of financial institutions in limited circumstances. There were no sanctions for directors and senior management of DNFBPs.

### *Institutions and capacity-building*

Thailand received a recommendation to continue investing in capacity-building for relevant supervisory and law enforcement agencies.[141]

As Viet Nam's FIU is not a member of the Egmont Group or any network aimed at information exchange with foreign FIUs, Viet Nam received a recommendation to evaluate the requirements and conditions required for membership of the Egmont Group. Viet Nam also received a recommendation to consider revising its legislation to specify the types of measures used to respond to requests for information and international cooperation on money laundering and corruption offences.

### *Good practices for article 14*

There are many sources of good practices for practitioners and legislators on the prevention

[138] StAR Initiative, *Asset Recovery Handbook*, *op.cit.,* p. 61.
[139] *Ibid*.
[140] APG, "Anti-money laundering and counter-terrorism financing measures – Viet Nam, Mutual Evaluation Report," 2022, p. 202. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/APG-Mutual-Evalutaion-Report-Vietnam-2022.pdf.coredownload.inline.pdf.
[141] Thailand.

of money laundering, including by international bodies[142] and domestic providers of services.[143] However, with the evolution of the flow of proceeds of crime and the proliferation of new technologies, further study in these areas will likely generate new forms of good practice in the future.

During the second review cycle, reviewing experts noted that Australia's establishment of the Fintel Alliance, a public-private partnership to share financial intelligence, was a form of good practice.

Singapore's implementation of effective sanctions on financial institutions for non-compliance with AML requirements was deemed a form of good practice.

Contributions to regional and international cooperation in the fight against money laundering, including work by IPEF partners to provide a wide range of assistance and training to neighbouring countries, constitute a form of good practice. Domestically, Thailand's Anti-Money Laundering Office was positively observed to have undertaken significant outreach activities and conducted seminars for financial institutions and DNFBPs.

### *Technical assistance requests for article 14*

Viet Nam requested legislative assistance, and assistance in conducting studies on assessing the effectiveness of anti-money laundering preventive measures, particularly in the private sector. Prioritized assistance methods include research, surveys and collecting inputs for drafting legal documents. Viet Nam also requested assistance in specialist exchanges, the participation in domestic and international conferences, and domestic and international consultations.

## Article 23: Laundering of proceeds of crime

*While article 14 addresses the prevention of money laundering, article 23 addresses the criminalization of the laundering of proceeds of crime. This includes the conversion or transfer of property, when done to conceal or disguise the illicit origin of the property or of helping any person who is involved in the commission of the original crime to evade the legal consequences of their action.*

*Article 2 defines a "predicate offence" as "any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of the UNCAC." Article 23 requires that the list of predicate offences include the widest possible range and, at a minimum, the offences established in accordance with the UNCAC.*

As part of their regimes to detect and deter money laundering and terrorism financing, all IPEF partners have worked to enhance their implementation of article 23. This can be evidenced by efforts to amend, enhance and expand the scope of their domestic anti-money laundering legislation. In addition to article 23, FATF Recommendation 3[144] also requires countries to criminalize money laundering on the basis of other international instruments,[145] such as the Vienna 1988 Convention and the United Nations Convention against Transnational Organized Crime.During the first review cycle, six IPEF partners,[146] including the Philippines and Viet Nam, received recommendations on article 23.

### *Broadening the scope of money laundering provisions*

Recommendations were centred on broadening the scope of money laundering provisions. Brunei Darussalam, for example, received a recommendation to broaden its money laundering provision to cover proceeds of crime

[142] In addition to the UNODC and FATF, this includes international organizations like the International Monetary Fund, OECD, and other organizations specializing in Know Your Customer processes.
[143] Examples include domestic law societies or other skilled practitioners' hubs.
[144] FATF, "The FATF Recommendations," 2023, p. 12. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf.
[145] UNODC, "Money laundering," accessed on: 15 May 2024. Available at: https://www.unodc.org/unodc/en/money-laundering/overview.html.
[146] Brunei Darussalam, the Philippines, Republic of Korea, Thailand, USA, Viet Nam.

by other people, not just the perpetrator of the predicate offence.

Four IPEF partners,[147] including the Philippines, received recommendations to expand the scope of predicate offences to cover all UNCAC offences. While the Philippines' anti-money laundering legislation criminalized money laundering partly in line with the UNCAC and its 2013 amendments covered predicate crimes such as bribery, reviewing experts observed that not all UNCAC offences were covered.

Five IPEF partners,[148] including Malaysia and Singapore, adopted the list approach to define the scope of predicate offences. Singapore noted its use of a Schedule that could be amended by way of an administrative process to include new offences, enabling its anti-money laundering regime to be quickly strengthened in line with international standards.

Other recommendations to broaden the scope of money laundering provisions focused on specific circumstances. For example, Viet Nam was recommended to ensure its laws covered the concept of association as required by article 23. Reviewing experts also recommended a comprehensive review of Viet Nam's anti-money laundering legislation to define the prohibited acts concerning the transfer and conversion of property more clearly. Moreover, several acts stipulated in the UNCAC, such as bribery in the private sector, would not be regarded as predicate offences in Viet Nam as they had not been criminalized.

### *Foreign predicate offences*

Consideration should be given to predicate offences committed by foreigners or in a foreign jurisdiction. While 10 IPEF partners[149] were observed to have legislative frameworks which covered foreign predicate offences, the scope and coverage markedly differed. In Japan, Malaysia and New Zealand, predicate offences committed abroad would need to be a criminal offence had they been committed domestically.

### *Legislative thresholds*

IPEF partners received recommendations on the use of high legislative thresholds for article 23. Brunei Darussalam, in considering expanding the scope of its predicate offences by reducing the threshold of defining such offences as requiring five years of imprisonment to one, received approval from reviewing experts. This one-year threshold could align with other IPEF partners – for example, in Australia, offences with a penalty of at least 12 months imprisonment would count as predicate offences.

### *Operational challenges*

In addition to legislative challenges, IPEF partners faced different operational challenges in implementing article 23, particularly if they faced money laundering as a new phenomenon during the first review cycle. These could stem from a lack of:[150]

- Interagency coordination;
- Capacity, exacerbated by a lack of knowledge and experience;
- Resources for implementation;
- Training for enforcement authorities in the detection and investigation of money laundering cases;
- Information-gathering powers for enforcement agencies;
- Legislative awareness;
- Statistics concerning money laundering incidents.

In particular, reviewing experts noted that Viet Nam lacked statistics in the area of money laundering and recommended that it keep a record of money laundering cases. Relatedly, FATF[151] observed that Viet Nam had "very limited" use of its financial intelligence, weak investigative capacity and rarely carried out money laundering prosecutions. FATF[152] noted that there were only just three prosecutions in the decade before 2022

[147] Brunei Darussalam, the Philippines, Republic of Korea, USA.
[148] India, Japan, Malaysia, Singapore, USA.
[149] Australia, Fiji, Indonesia, Japan, Malaysia, New Zealand, the Philippines, Republic of Korea, Singapore, USA.
[150] Indonesia, Viet Nam.
[151] APG, "Anti-money laundering and counter-terrorism financing measures – Viet Nam, Mutual Evaluation Report," 2022, p. 49.
[152] *Ibid*.

related to embezzlement, fraud and gambling predicates, with no previous convictions for stand-alone money laundering activities, investigations involving foreign predicates or money laundering through legal persons.[153]

Additionally, Brunei Darussalam, Indonesia and the Philippines received recommendations to furnish copies of their anti-money laundering laws to the Secretary-General of the United Nations.

***Good practices for article 23***

Australia's money laundering offences were deemed to be a good practice by incorporating elements of intent, recklessness and negligence, and going beyond the minimum standards set out in article 23. Reviewing experts also commended the use of a catch-all provision in Malaysia's Anti-Corruption Commission Act 2009, which covered participation, conspiracy, attempt and abetment, as well as "any act in furtherance."

The use of a "list approach" by Malaysia and Singapore in their respective anti-money laundering legislation was also deemed to be a good practice.

While not explicitly recognized as a good practice during the first review cycle, it is worth observing that some IPEF partners[154] had criminalized self-laundering, where both the money laundering act and the predicate offence is committed by the same person.

***Technical assistance requests for article 23***

Five IPEF partners made technical assistance requests, with an emphasis on training-related requests and capacity-building:

- Fiji requested specific training for law enforcement in the area of money laundering;
- Indonesia requested assistance in training investigators and prosecutors in the "follow the money" approach and promotion of greater use of anti-money laundering legislation;
- Thailand requested assistance on capacity-building and exchange of good practices concerning asset recovery and case management. Moreover, it sought assistance in establishing technical expertise and tools for asset recovery, case management and financial investigations;
- The Philippines requested a summary of good practices and lessons learned, and legal advice;
- Viet Nam requested a summary of good practices and lessons learned, and training to educate its staff of judicial agencies and banks. Reviewing experts also observed a need to build the capacity of Viet Nam's FIU and other law enforcement authorities to detect and investigate money laundering cases.

## Article 52: Prevention and detection of transfers of proceeds of crime

*Article 52 requires States parties to prevent and detect the transfers of proceeds of crime. Financial institutions are to: verify customers' identity; know the identity of the beneficial owners of high-value accounts; and apply enhanced scrutiny of accounts connected to those entrusted with prominent public functions to detect and report suspicious transactions. States parties are further required to issue advisories that guide these institutions to comply with these measures.*

Measures are to be implemented to prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group (shell banks).

States parties are also required to consider mandating public officials with a connection to a financial account in a foreign country to report that relationship to the appropriate authorities and to maintain appropriate records relating to those accounts.

[153] *Ibid.*, p. 39.
[154] Brunei Darussalam, Japan, Singapore, Thailand.

During the second review cycle, eight IPEF partners[155] received recommendations on article 52.

Given the overlapping aims of articles 14 and 52, some recommendations that were provided to IPEF partners for article 14 also applied to article 52. This included recommendations on improving beneficial ownership transparency and ensuring that DNFBPs were subject to AML/CTF obligations. However, article 52 has additional elements with its focus on PEPs, shell banks, financial declaration systems and the mandating of public officials to declare their interests in foreign countries.

***Politically exposed persons***

PEPs are individuals who are or have been entrusted with a prominent function.[156] In addition to domestic PEPs, FATF's definition of PEPs also covers foreign PEPs and persons who are or have been entrusted with a prominent function by an international organization.

PEPs may hold positions that can be abused to launder criminal proceeds or carry out other predicate offences such as corruption or bribery:[157]

- PEPs provide a veneer of respectability which can deflect suspicion about their transactions. The privileged positions of trust and responsibility that PEPs hold may be seen as enhancing the legitimacy of their transactions and financial activity, correspondingly reducing the risk of such activity and raising suspicion;
- Corrupt PEPs may seek to influence individuals and institutions that guard against criminal activity to circumvent AML/CTF regulation.

Due to the risks associated with PEPs, article 52 and FATF Recommendation 12 call for financial institutions to apply enhanced measures to business relationships with PEPs, their family members and close associates.

Three IPEF partners[158] received recommendations on the management of PEPs during the second review cycle.

While Australia's AML/CFT Rules refer to domestic PEPs, some exemptions apply relating to the identification of PEPs and beneficial owners. As such, Australia received a recommendation to review such exemptions at appropriate intervals to ensure that Australia's AML/CFT regime would not be subject to loopholes.

Thailand received a recommendation to:

- Make efforts to assist financial institutions and sectors in identifying PEPs;
- Implement adequate controls and conduct enhanced scrutiny of accounts sought or maintained on behalf of PEPs to detect suspicious transactions;
- Remove the existing exemption of several PEPs from suspicious transaction reporting requirements.

During the country visit, Thailand acknowledged challenges in the identification of domestic and foreign PEPs due to difficulties in obtaining information, gaps in the definition of PEPs, and a lack of explicit requirements for establishing sources of wealth. Since then, Thailand has worked to issue more guidance[159] on who a PEP is, who would be considered a "family" or a "close associate", and the obligations of financial institutions concerning enhanced due diligence.

[155] Australia, Fiji, Indonesia, Malaysia, Republic of Korea, Thailand, USA, Viet Nam. Australia's supplementary submission on 10 November 2022 following the second review cycle makes reference to measures taken in response to recommendations on all articles it received recommendations on in chapter V.
[156] FATF, "FATF guidance: politically exposed persons (Recommendations 12 and 22)," accessed on: 25 April 2024. Available at: https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Peps-r12-r22.html.
[157] AUSTRAC, "Politically exposed persons, corruption and foreign bribery: strategic analysis brief," accessed on: 25 April 2024. Available at: https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/politically-exposed-persons-corruption-and-foreign-bribery-strategic-analysis-brief.
[158] Australia, Thailand, Viet Nam.
[159] Government Gazette, "Ministerial Regulation on Customer Due Diligence," 2020. Available at: https://www.amlo.go.th/amlo-intranet/index.php?option=com_k2&view=item&task=download&id=9621_3651de53047795f557453a5c4c6b6d11.

Viet Nam received a recommendation to amend its legislation to establish requirements for enhanced scrutiny of accounts sought or maintained by domestic PEPs, their family members and close associates. Reviewing experts confirmed during the country visit that there were no regulations or restrictions for enhanced scrutiny of transactions by domestic PEPs (i.e. individuals who hold or have held important positions in the State apparatus) or their family members or close associates. Reviewing experts also observed that there was no list of domestic PEPs or surveillance of persons holding prominent public functions in Viet Nam.

Viet Nam's coverage of PEPs was observed to be limited to foreign PEPs, but close associates of foreign PEPs were not covered. As such, reviewing experts recommended that Viet Nam amend the definition of foreign PEPs to also cover close associates of such persons, including legal persons.

The APG[160] noted that Viet Nam's lack of regulation of PEPs remained a significant deficiency and assessed Viet Nam to be "Not Compliant" with Recommendation 12. The APG observed other shortcomings concerning PEPs, such as:

- The lack of senior management approval when establishing business relationships with foreign PEPs;
- A lack of application of risk mitigation measures for foreign PEPs in relation to beneficial ownership; and
- No provisions relating to beneficiaries or beneficial owners of life insurance policies who may be PEPs.

In 2023, India[161] amended its anti-money laundering legislation to incorporate more disclosure obligations on PEPs by reporting entities. The Reserve Bank of India further issued guidance by categorizing PEPs as "individuals entrusted with prominent public functions by a foreign country", which would encompass heads of State, senior politicians, government officers, executives of state-owned corporations, and key political party officials. However, the Reserve Bank of India did not extend its guidance to domestic PEPs, which the International Monetary Fund (IMF)[162] had previously observed to be an area of deficiency in India's anti-money laundering laws.

It can be challenging to ensure that databases of PEPs are up-to-date, especially if such information is not readily available. Depending on the definitions used and classifications of PEPs, information in PEP databases can also differ between countries. While there is no universal source of information on all PEPs, Open Sanctions[163] publishes a global data set on PEPs, which includes the names of PEPs, their positions, relatives and close associates. Where relevant, sanctioned individuals or individuals involved in criminal activity are also published.

***Shell banks***

Article 52(4) requires States parties to implement appropriate and effective measures to prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. This refers to the concept of a shell bank,[164] which is defined by the FATF as a bank that has no physical presence in the country in which it is incorporated and licensed. A shell bank has no affiliations with a regulated financial group that is subject to effective supervision, regulation, transparency and oversight. For a shell bank to have a "physical presence", it needs to have meaningful mind and management located within the country.[165] The existence of a local agent or low-level staff in itself is not sufficient to constitute physical presence.

Given their lack of physical presence, shell banks heavily rely on correspondent banking

[160] APG, "Anti-money laundering and counter-terrorism financing measures – Viet Nam, Mutual Evaluation Report," 2022, p. 158.
[161] Business World, "RBI updates definition of politically exposed persons in KYC Guidelines," 2024. Available at: https://www.businessworld.in/article/RBI-Updates-Definition-Of-Politically-exposed-Persons-In-KYC-Guidelines/05-01-2024-504836/.
[162] In 2018, the IMF observed that there were no requirements imposed on banks with regard to treatment of customers who are domestic PEPs. IMF, "India: Financial sector assessment program-detailed assessment of observance of the Basel Core Principles for effective banking supervision," 2018, p. 181. Available at: https://www.imf.org/en/Publications/CR/Issues/2018/01/19/India-Financial-Sector-Assessment-Program-Detailed-Assessment-of-Observance-of-the-Basel-45542.
[163] Open Sanctions, "Politically Exposed Persons (PEPS)", last amended on April 2024. Available at: https://www.opensanctions.org/pep/.
[164] FATF, "Glossary," *op.cit*.
[165] Anti-Money Laundering, "Shell banks," accessed on: 25 April 2024. Available at: https://anti-money-laundering.eu/shell-banks/.

relationships to conduct transactions and perform financial services. This makes shell banks an attractive venue for money launderers seeking to obscure the origins and destination of funds. FATF Recommendation 13 (Correspondent banking) makes references to shell banks.

Four IPEF partners,[166] including Fiji and Viet Nam, received recommendations on shell banks:

- Australia received a recommendation to continue implementing a FATF-issued recommendation concerning correspondent banking relationships with shell banks. FATF rated Australia to be "non-compliant" with Recommendation 13 in 2018. Following the second review cycle, Australia provided an update by noting amendments to its legislation, which required due diligence assessments to be conducted before entering and during the course of all correspondent banking relationships;
- While Fiji's legislation did not permit the licensing of shell banks or the establishing of relationships with shell banks, there was no requirement for financial institutions to guard against establishing relations with foreign financial institutions that permit their accounts to be used by shell banks. As a result, Fiji received a recommendation to consider adopting such requirements;
- Thailand's legislation prohibited the establishment of shell banks or the establishment of relationships with shell banks. However, there was no requirement to collect sufficient information from the respondent bank to enable a risk assessment on the adequacy of the correspondent bank's money laundering controls. Thailand received a recommendation to establish this requirement;
- There was no regulation explicitly prohibiting the establishment of "shell banks" in Viet Nam. While its laws prohibited business relations (including correspondent banking relationships) with shell banks, there was no requirement for financial institutions to guard against establishing relations with foreign financial institutions that permitted their accounts to be used by shell banks. Moreover, there was no legislative provision requiring financial institutions to satisfy themselves that their respondent banks were not dealing with shell banks. As a result, Viet Nam received recommendations to adopt measures to explicitly prohibit the establishment of shell banks, and to require financial institutions to guard against establishing relations with foreign financial institutions that permit their accounts to be used by shell banks.

In 2018, the IMF[167] observed that shell banks were not permitted in India, and entering into correspondent relationships with shell banks was prohibited. However, the IMF observed that there was no explicit requirement for banks to avoid establishing correspondent relationships or discontinue existing ones with banks that did not have adequate controls against criminal activities, and which were not effectively supervised by relevant authorities.

### *Financial disclosure systems*

Article 52(5) requires IPEF partners to consider establishing effective financial disclosure systems for public officials, and to provide sanctions for non-compliance. This provision on effective financial disclosure systems for public officials is functionally linked to article 20 on the offence of illicit enrichment and to article 8(5), which encourages disclosure regimes as preventive measures for public officials.[168] UNODC notes that financial disclosures allow for an analysis of a person's accumulation of wealth, and that it is easier for asset recovery to occur in the future

[166] Australia, Fiji, Thailand, Viet Nam.
[167] IMF, "India: Financial sector assessment program-detailed assessment of observance of the Basel Core Principles for effective banking supervision," 2018, pp. 85, 177, 181 - 182. Available at: https://www.imf.org/en/Publications/CR/Issues/2018/01/19/India-Financial-Sector-Assessment-Program-Detailed-Assessment-of-Observance-of-the-Basel-45542.
[168] UNODC, *Digest of asset recovery cases* (UN, New York, 2015), pp. 18 – 19.

if an inference of illicit enrichment can be drawn from such disclosures.[169]

During the first review cycle, the implementation of article 20 on illicit enrichment across ASEAN States parties was observed to be inconsistent.[170] In some ASEAN States parties, illicit enrichment could lead to the investigation and confiscation of assets, but not result in criminal sanctions due to a lack of criminalization or other barriers. For example, while the Philippines had mechanisms to enable the disclosure and investigation of assets belonging to public officials, it was observed that disclosures made by public officials may not be reviewed unless a complaint was received. Moreover, the filing of matters before the court could not occur one year before a general election.

The prosecution of illicit enrichment could also be prevented by high legislative thresholds. Reviewing experts observed that the penalization of a public officer in the Philippines who accumulated or acquired ill-gotten wealth had to total at least P 50 million (approximately US$ 900,000). In Malaysia, high legislative hurdles meant that an illicit enrichment case could only be pursued when an investigation under the Malaysian Anti-Corruption Commission Act was underway.

In relation to article 8(5), nine IPEF partners[171] had received recommendations centred on the need to implement rules on conflicts of interests and the adoption of measures requiring public officials to report or disclose their financial interests, which would necessitate an effective financial disclosure system.

For article 52(5), Fiji, Malaysia and Viet Nam received recommendations on adopting and/or improving their asset declaration systems and verification procedures.

In Fiji, financial disclosure is required for some categories of public officials. For example, Members of Parliament are required to declare their financial interests in parliamentary matters they participate in. All officers of the Fiji Independent Commission Against Corruption are also required to disclose their assets, liabilities and interests, and those of their spouses and children, on an annual basis. However, reviewing experts observed that legislation would be needed for other categories of public officials. Fiji was recommended to consider adopting effective financial disclosure systems for appropriate public officials and sanctions for non-compliance through the enactment and implementation of its Code of Conduct Bill, which had not passed at the time of writing this report.

In Malaysia, all public officials are required to make written declarations of properties owned by themselves, a spouse or child, or held on their behalves. Declarations are made electronically and are verified at individual department levels. Malaysia received a recommendation to consider establishing a mechanism for line ministries to report to the relevant public service authorities on the processes of verifying asset declarations of public officials within their departments.

Under its anti-corruption legislation, Viet Nam had established a reporting obligation concerning assets and income for public officials and civil servants, as well as certain enumerated persons. Public officials must declare their assets and income when appointed to public office and when their income rises above a specified threshold (approximately US$ 12,700). However, while each agency is responsible for managing and reviewing declarations, declarations would only be verified in specific situations. Few entities had the necessary institutional arrangements and verification procedures. As such, Viet Nam received recommendations to endeavour to improve the operation of its asset declaration system by adopting the necessary institutional arrangements and verification procedures, and continue efforts to establish electronic filing and verification systems.

[169] *Ibid*.
[170] UNODC, "Implementation of UNCAC chapter III: Criminalization and law enforcement in ASEAN States parties and Timor-Leste," 2024, p. 23. Available at: https://www.unodc.org/roseap/uploads/documents/Publications/2024/Implementation_of_UNCAC_Chapter_III_-_ASEAN_States_parties_and_Timor-Leste_March_2024.pdf.
[171] Australia, Fiji, Indonesia, Malaysia, the Philippines, Republic of Korea, Thailand, USA, Viet Nam. Australia's supplementary submission on 10 November 2022 following the second review cycle makes reference to measures taken in response to recommendations on article 8(5).

***Public officials with foreign interests***

Article 52(6) addresses how public officials having an interest, signature or other authority over a financial account in a foreign country should report that relationship to appropriate authorities and maintain records related to such accounts. Thailand received recommendations on this point.

Thailand has reporting requirements which include assets and liabilities domestically and abroad, and all assets in direct and indirect possession or management of other persons. However, reporting requirements do not cover foreign financial accounts in which the official has an interest, signature, or authority over.

Examples of IPEF partners implementing article 52(6) include the following:

- Any person in or resident of Fiji, including any public official, is prohibited from holding any offshore assets unless approved by the Reserve Bank of Fiji. The Reserve Bank maintains a register of persons who hold offshore assets;
- In Indonesia, financial disclosures, which cover overseas assets, are publicly available in summary form as supplements to the State Gazette;
- Asset disclosure requirements in Malaysia apply equally to foreign properties and financial interests;
- There is no distinction between assets, liabilities and interests to be declared in the Philippines and those to be declared overseas.

***Good practices for article 52***

Reviewing experts deemed Malaysia's Central Bank Standard Operating Procedures on Receipt, Analysis and Dissemination of Financial Intelligence with foreign States to be a good practice.

Thailand's legislative provisions, which require financial declarations to be submitted to the National Anti-Corruption Commission with supporting evidence that can prove the actual existence of assets and liabilities, including evidence of the income tax of a natural person in the previous tax year, were deemed to be a form of good practice.

The USA, which allows for the *ex parte* order of the temporary restraint of assets based on a foreign arrest or charge of a suspect or defendant for an offence that would give rise to forfeiture if the same conduct gave rise to forfeiture in the USA, was cited as a form of good practice during the second review cycle.

***Technical assistance requests for article 52***

Four IPEF partners made technical requests on the implementation of article 52:

- In the first review cycle, Fiji requested, under its implementation of money laundering provisions, specialized training for prosecutors and investigators on matters related to asset confiscation and forfeiture, including on its Proceeds of Crime Act and legislation on unexplained wealth;
- Indonesia requested capacity-building on money laundering investigation and prosecution;
- Thailand requested assistance on experiences and lessons learned regarding the identification and risk management of PEPs;
- Viet Nam requested assistance to amend and supplement its legislation and implement guidance documents.

## Article 53: Measures for direct recovery of property

*Article 53 requires States parties to take measures for the direct recovery of property including by: allowing other States to initiate civil actions to establish title or ownership of the corruptly acquired property; allowing courts to order those who have committed offences to pay compensation or damages to another State; and recognizing another State's claim as a legitimate owner of property acquired through the commission of an UNCAC offence.*

Compensation may be made directly to victims, including those from a foreign jurisdiction, through a court order (referred to as "direct recovery").[172] Direct recovery measures may not always be feasible for several reasons, but that the aim is to ensure that States parties are able to provide that option.

During the second review cycle, Fiji, Indonesia, Malaysia, and Viet Nam received recommendations on article 53.

### *Adopting explicit recovery mechanisms*

Recommendations from the second review cycle on article 53 concerned adopting explicit recovery mechanisms for foreign States:

- While nothing in Fijian legislation would preclude a foreign State from initiating a civil action in Fiji to establish title to or ownership of property, Fijian legislation also did not specifically give legal standing to foreign States to initiate a civil action in Fijian courts. As a result, Fiji received a recommendation to adopt measures to recognize a foreign State's claim as a legitimate owner of property in confiscation proceedings;
- Indonesia allowed civil claims to be joined for criminal proceedings. However, Indonesian legislation did not specify recovery mechanisms for foreign States to establish title or ownership of property, or be awarded compensation or damages for injuries, through domestic proceedings. Reviewing experts recommended that Indonesia specify such matters in law;
- While provisions existed for the enforcement of foreign judgments of countries which Malaysia had reciprocal arrangements with, there was no explicit legal provision which would permit a foreign State to initiate civil proceedings in courts in Malaysia. The law also did not specify recovery mechanisms for foreign States through domestic proceedings. As a result, Malaysia received a recommendation to specify in law recovery mechanisms for injured parties through domestic proceedings;
- Viet Nam received a recommendation to amend its legislation and adopt measures in line with article 53. Reviewing experts observed that there was no mechanism or procedure in Viet Nam for injured parties to claim compensation or establish ownership of property in criminal proceedings, other than through mutual legal assistance. Viet Nam's law also did not provide for the recognition of foreign States as legitimate owners in confiscation proceedings.

Other examples where IPEF partners have allowed for the recognition of a foreign State's claim concerning a UNCAC offence include:

- In the Republic of Korea, a foreign State would be recognized as a victim of a crime, as would any other legal person;
- In the Philippines, States can be plaintiffs in civil actions. However, reviewing experts observed that these provisions had not been applied in cases involving foreign governments during the second review cycle. For offences under the Anti-Graft and Corrupt Practices Act, the complaining party was observed to have a right to recover the value of the object of the offence in a criminal action, with priority over the forfeiture in favour of the Government of the Philippines. For all other offences, a foreign State, as a juridical person under Philippine law, would be considered a real party in interest;

### *Good practices for article 53*

No good practices were identified in IPEF partners during the second review cycle. However, UNODC has a central platform of tools and resources on asset recovery,[173] and

[172] StAR Initiative, Asset Recovery Handbook, op.cit., p. 8; StAR Initiative, "Public Wrongs, Private Actions," 2 November 2014. Available at: https://star.worldbank.org/publications/public-wrongs-private-actions.
181 UNODC, Legislative Guide, *op.cit.,* p. 207.
[173] UNODC, "Track – Chapter V of the Convention: Asset Recovery," accessed on: 14 May 2024. Available at: https://track.unodc.org/track/en/resources-by-UNCAC-chapter/chapter-V_asset-recovery.html.

the UNCAC Technical Guide[174] sets out some useful considerations which could improve the implementation of article 53. For example, IPEF partners can consider how to assess damages claimed by requesting States, particularly where non-material losses are alleged. The UNCAC Technical Guide[175] also highlights examples of indirect damages that can be caused by acts of corruption, such as environmental damage which harms the population's health or results in the contamination of natural resources.

Adequate and proactive notification and communication could also constitute potential forms of good practice, for example in instances where States parties may seek to claim ownership over assets as a third party in confiscation procedures. The UNCAC Technical Guide[176] notes that States parties may not always be aware of the existence of proceedings it may have a claim to in other jurisdictions. Early alerts and notification to the concerned State party, where appropriate, of its right to stand and prove its claim would therefore be beneficial.

***Technical assistance requests for article 53***

Despite not receiving a recommendation, the Philippines requested a summary of good practices and lessons learned concerning the implementation of article 53.

## Article 54: Mechanisms for recovery of property through international cooperation in confiscation

*Article 54 requires States parties to create mechanisms for the recovery of property through international cooperation in confiscation. This includes States permitting their competent authorities to act on a confiscation order by another State, and to order the confiscation of such property of foreign origin in accordance with procedures under its domestic law. Authorities are also required to freeze or seize property upon request from a State that provides a reasonable basis for the requested State to believe that there are sufficient grounds for taking that action.*

During the second review cycle, seven IPEF partners,[177] including Indonesia, Malaysia, the Philippines and Viet Nam, received recommendations on article 54.

***Developing measures to give effect to foreign confiscation orders***

Five IPEF partners,[178] including Indonesia, the Philippines and Viet Nam, received recommendations on adopting or developing measures to permit competent authorities to give effect to a confiscation order issued by a foreign court. Such recommendations were received because:

- In Indonesia, a domestic procedure to seize and confiscate assets must be initiated to enforce a foreign confiscation order. Moreover, foreign orders for search and seizure were not directly enforceable but must first be submitted to the courts for execution;
- While Thailand's Mutual Assistance in Criminal Matters Act would give a domestic court the power to adjudicate confiscation if a foreign court had issued a final forfeiture order, there was no process for the recognition and direct enforcement of foreign confiscation orders in the absence of adjudication by a domestic court;
- In the Philippines**,** enforcement of foreign confiscation orders required judicial proceedings. Moreover, while authorities from the Philippines claimed that its Anti-Money Laundering Act would apply to stand-alone offences not linked to money laundering, reviewing experts recommended that this legislation be clarified to cover stand-alone offences not linked to money laundering for provisional measures (asset identification, tracing, freezing and seizure);

[174] UNODC and UNICRI, *Technical Guide to the United Nations Convention against Corruption*, *op.cit.,* p. 203.
[175] *Ibid.*, p. 204.
[176] *Ibid.,* p. 205.
[177] Indonesia, Malaysia, the Philippines, Republic of Korea, Thailand, USA, Viet Nam.
[178] Indonesia, the Philippines, Republic of Korea, Thailand, Viet Nam.

- In Viet Nam, there was no mechanism for the recognition and enforcement of foreign confiscation orders. Reviewing experts observed that related provisions in the Civil Code did not apply to the enforcement of confiscation orders in criminal cases.

### *Allowing for non-conviction based forfeiture*

While criminal confiscations require criminal trials and convictions, which would be followed by confiscation proceedings, non-conviction based confiscations only require confiscation proceedings, not the conviction of a defendant.[179] In some jurisdictions, non-conviction based confiscation can be established on a lower standard of proof, which reduces the burden on authorities.

In foreign corruption cases,[180] countries that initiate non-conviction based confiscation actions may neither be the site of the underlying criminality nor the final location of assets sought for confiscation. Limited implementation of adequate tools for asset recovery such as non-conviction based confiscation can impede a country's assets to be recovered domestically and abroad. Further, impediments in countries' ability to recognize and enforce non-conviction based confiscation orders can hinder asset recovery efforts.

Five IPEF partners,[181] including Indonesia, the Philippines and Viet Nam, received recommendations for the adoption of measures to allow for non-conviction based forfeiture.

Indonesia and Thailand received recommendations to consider adopting measures allowing for non-conviction based confiscation, given that they had no legislation in this regard.

Reviewing experts recommended that the Philippines clarify the application of its Anti-Money Laundering Act to requests involving stand-alone offences not linked to money laundering and predicate crimes, and irrespective of a conviction for a money laundering offence. While its Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing did not require criminal charges or convictions for money laundering, reviewing experts expressed concern that there could be a limited application of legislation to other UNCAC offences.

While Viet Nam's Criminal Procedure Code allowed for the confiscation of equipment and instruments in the event of the offender's death, this would not cover all proceeds of crime. Viet Nam received a recommendation to consider adopting measures to allow for the confiscation of *any* property acquired through or involved in the commission of an offence without a criminal conviction.

### *Freezing and seizing of property upon a foreign request*

Indonesia, Thailand and Viet Nam received recommendations on taking measures to permit competent authorities to freeze or seize property, either upon an order issued by a foreign court or foreign competent authority. In the absence of such orders, this should extend to situations where foreign competent authorities make such requests on sufficient grounds, or where there is a reasonable basis for such action.

### *Strengthening measures to preserve property for confiscation*

Indonesia, Malaysia, Thailand and Viet Nam received recommendations on strengthening measures to preserve property for confiscation:

- Indonesia received a recommendation to establish an adequately resourced central asset management office and adopt comprehensive asset management guidelines. It also received a recommendation to consider establishing a specific body that had the authority to manage seized and/or confiscated assets, including performing a supervisory role;
- Similar to Indonesia, Malaysia received recommendations to establish a central asset management office and adopt

[179] StAR Initiative, *Asset Recovery Handbook*, *op.cit.,* p. 11.
[180] OECD, "Misuse of citizenship and residency by investment programmes," 2023, *op. cit.*, p. 24.
[181] Indonesia, the Philippines, Republic of Korea, Thailand, Viet Nam.

comprehensive asset management guidelines;

- Thailand received a recommendation to consider taking additional measures to permit the competent authorities to preserve property for confiscation to provide mutual legal assistance;
- Viet Nam received a recommendation to strengthen measures to preserve property for confiscation through international cooperation, such as based on a foreign arrest or criminal charge.

***Good practices for article 54***

During the first review cycle, reviewing experts cited Australia's development and expansion of its federal non-conviction based forfeiture regime as a form of good practice. In the second review cycle, Australia was praised for allowing authorities to act on the information provided by foreign law enforcement to commence domestic proceedings against property in Australia that were the proceeds of a foreign indictable offence.

Reviewing experts observed Malaysia's legislation as a form of good practice, where a certificate issued by an appropriate foreign authority stating that a foreign forfeiture order was in force and not subject to appeal shall be received in evidence without requiring further proof.

***Technical assistance requests for article 54***

Indonesia and Thailand made requests to build capacity:

- Indonesia requested capacity-building on cross-border asset tracing and recovery, and best practices in managing assets pending confiscation;
- Thailand requested capacity-building for its central authority concerning successful procedures and best practices in the enforcement of asset recovery laws.

Viet Nam requested for the following:

- The sharing of best practices and resources to participate in regional and international forums on enhancing cooperation in investigation, prosecution and adjudication of corruption offences and asset recovery;
- The sharing of best practices and resourcing in training and fostering officials, especially skills for investigation, prosecution and adjudication of corruption cases and asset recovery, particularly those with foreign elements.

## Article 55: International cooperation for purposes of confiscation

*Article 55 requires States parties that have received a request for the confiscation of the proceeds of crime to engage in international cooperation for the purposes of confiscation of those proceeds. This includes submitting the request for the order of confiscation, and giving effect to it if such an order is granted. Measures are also required to be taken to identify, trace and freeze or seize those proceeds, with the purpose of eventual confiscation. If no other agreement or arrangement is in place that allows it to do so, a State party may use the UNCAC as a legal basis for such action.*

Differences in legal traditions and confiscation systems (such as value-based or property-based systems) can cause challenges in international cooperation for confiscation.[182] Differences in the use of terminology, procedures, the time required to obtain assistance and the types of evidence required to satisfy different evidentiary burdens can result in confusion, delay and even the refusal of assistance.[183]

During the second review cycle, six IPEF partners,[184] including the Philippines and Viet Nam, received recommendations on article 55.

[182] StAR Initiative, *Asset Recovery Handbook*, *op.cit.,* p. 25.
[183] *Ibid.*, pp. 25 – 26.
[184] Australia, the Philippines, Republic of Korea, Thailand, USA, Viet Nam.

***Adopting measures to ensure the recognition and enforcement of foreign confiscation orders***

Recommendations received by IPEF partners emphasized the adoption of measures to ensure that their competent authorities could recognize and enforce confiscation orders, both conviction and non-conviction based, issued by foreign courts in respect of all offences under the UNCAC. For example:

- The Philippines received a recom. mendation to ensure that its anti-money laundering legislation could apply to requests involving stand-alone offences not linked to money laundering and predicate crimes, even if this has not previously posed a challenge in practice;
- Viet Nam received recommendations on amending its legislation: to allow for competent authorities to obtain or enforce an order of confiscation based on a foreign request; and to identify, trace, freeze, or seize property in the absence of a foreign court order. While basic measures were already in place to preserve exhibits and restrain property for mutual legal assistance purposes, the procedure to obtain an order of confiscation or to enforce a foreign confiscation order based on a foreign request was not explicitly set out in the legislation. Moreover, no additional requirements or further guidance specific to asset recovery requests had been developed.

***Protecting the bona fide rights of third parties***

Thailand and Viet Nam received recommendations on protecting the bona fide rights of third parties:

- While Thailand protects the bona fide rights of third parties, its regulations did not require requesting States to specify the measures taken to provide adequate notification to bona fide third parties. As such, reviewing experts recommended that Thailand include the element of notification to bona fide third parties in its regulations;
- Viet Nam received a recommendation to amend its legislation to adopt measures protecting the rights of bona fide third parties, as no legal protections for bona fide third parties were specified in confiscation proceedings. However, reviewing experts observed that in parallel civil proceedings, the rights of lawful owners and holders of property to reclaim assets were well-established.

***The exercise of discretion***

Australia and the USA received recommendations on the exercise of discretion:

- Reviewing experts recommended that Australia ensure its obligations under article 55 were considered by the Attorney-General as part of the exercise of discretion under the Mutual Assistance in Criminal Matters Act;
- Reviewing experts recommended that the USA continue its good practice in the exercise of discretion, which respected the binding obligations established under the UNCAC.

***Good practices for article 55***

Good practice has been cited in the flexibility of mutual legal assistance provisions. Two forms of good practices were observed in Malaysia:

- The flexibility of Malaysia's legislative provisions, which allowed Malaysia to fulfill any request in the manner the requesting State wished, as well as having detailed guidance and model request forms to facilitate the provision of assistance;
- Malaysia's practice of continuous consultations with requesting States, where Malaysia would not in practice refuse requests but close the cases provisionally until additional information or evidence from requesting States was received.

***Technical assistance requests for article 55***

Thailand requested capacity-building for its central authority concerning successful procedures

and best practices in the enforcement of asset recovery laws.

## Article 56: Special cooperation

*Article 56 encourages special cooperation. Measures should be taken to allow countries to share information about the proceeds of offences with another State when this might assist the receiving State in investigating or prosecuting a corruption offence or might lead to a request under chapter V.*

IPEF partners use a range of formal and informal methods of cooperation to facilitate the disclosure of information to other States parties on asset recovery, such as:

- Legislative and policy frameworks on asset recovery. This can include legislation on mutual assistance and dedicated guidelines for asset recovery;
- Other bilateral and multilateral agreements and memoranda of understanding, such as bilateral asset sharing agreements or asset sharing provisions forming part of mutual legal assistance treaties; and
- The spontaneous transmission of information to foreign counterparts, which can be facilitated through direct police-to-police communication, regional asset recovery inter-agency networks, INTERPOL or the Egmont Secure Web.

The Republic of Korea and Viet Nam[185] received recommendations on article 56:

- While the Republic of Korea's FIU was able to spontaneously share specified financial transaction information with foreign counterparts under the principle of reciprocity, the use of such information in investigations or trials of foreign criminal offences (even if in accordance with the purposes of the original request) would require the consent of the Minister of Justice. As such, the Republic of Korea received a recommendation to consider this form of prior authorization only in cases where the use of such information was beyond the purpose for which the information was originally sought or requested;
- Apart from money laundering offences, the spontaneous sharing of information about offences established in accordance with the UNCAC was not specifically provided for in Vietnamese legislation. Reviewing experts recommended that Viet Nam adopt measures on spontaneous cooperation and information-sharing with regard to UNCAC offences.

***Technical assistance requests for article 56***

Viet Nam requested assistance on multiple aspects, including amending laws, implementing guidance documents, the provision of modern equipment, the sharing of best practices and resources, and training and fostering officials.

## Article 57: Return and disposal of assets

*Article 57 requires States parties to further adopt measures that enable them to return confiscated property when acting on the request of another State. In the case of embezzlement or the laundering of public funds, the funds are to be returned to the requesting State. For the proceeds of any other offence covered by UNCAC, the property is to be returned to the requesting State when that State has reasonably established its prior ownership of the property, or if the requested State recognizes damage to the requesting State as a basis for returning the confiscated property.*

Article 5.8 of the Fair Economy Agreement notes that where appropriate, IPEF partners may also consider, consistent with UNCAC, particularly article 57(5), the conclusion of case-specific agreements or arrangements that promote the transparent and effective use, administration, and monitoring of confiscated and returned proceeds of crime.

[185] Republic of Korea, Viet Nam.

During the second review cycle, eight IPEF partners[186] received recommendations on article 57.

### *Providing for the return of confiscated property to requesting States*

Reviewing experts recommended that IPEF partners amend their legal framework to provide for the return of confiscated property to requesting States.

Fiji received a recommendation to adopt legislation and regulations to provide for the return of confiscated property to requesting States. Reviewing experts observed that Fiji's measures did not provide for the mandatory return of proceeds to requesting States for UNCAC offences – instead, proceeds recovered in Fiji would be paid to its Forfeited Assets Fund, without payouts determined by Ministers.

Indonesia did not have specific domestic provisions providing for the return of assets as prescribed under article 57, including for offences under the UNCAC. Indonesia therefore received a recommendation to amend its mutual assistance legislation to provide for the return of proceeds in accordance with article 57. The recommendation highlighted the need for such provisions to apply to cases of embezzlement of public funds, with reviewing experts observing that Indonesia should also review relevant treaties in this regard.

Malaysia received similar recommendations, with reviewing experts observing that its treaties did not always provide for a principle of return.

The Philippines received two recommendations on:

- Adopting measures providing for the return of proceeds to requesting States, given that no provision for such mandatory returns of confiscated assets existed. Reviewing experts observed that decisions on asset return were usually reached by ad hoc arrangements with requesting States. It was further observed that the Philippines did not have formal asset-sharing agreements with other countries to date, even if newer mutual legal assistance treaties did contain asset-sharing provisions;
- Clarifying the scope of application of its anti-money laundering legislation to stand-alone offences not linked to money laundering, and to ensure that property may be returned to prior legitimate owners in UNCAC offences. Reviewing experts observed that proceeds from money laundering offences were usually forfeited in the Philippines, and even if a court may order the return of assets to a requesting State, these measures may not apply to other UNCAC offences.

Viet Nam received two recommendations on:

- Adopting measures providing for the disposal of confiscated property (including by return to its prior legitimate owner) and the return of confiscated property, when acting on the request of another State. Viet Nam's Criminal Procedure Code provided for the return of property to legitimate owners only in cases where such property was not confiscated – where confiscation occurred, these were transferred to the State or destroyed;
- Amending its legislation to provide for the return of confiscated property to a requesting State, by incorporating the requirements of article 57 into domestic laws. Under Viet Nam's Criminal Procedure Code, decisions on asset return were handled according to international agreements or on a case-by-case basis between the relevant competent authorities. Reviewing experts also observed that Viet Nam had not entered into any agreements or arrangements on the disposal of confiscated property or the return of assets.

### *Regulation of costs*

Fiji, Indonesia and Viet Nam received recommendations concerning the regulation of costs:

[186] Australia, Fiji, Indonesia, Malaysia, the Philippines, Republic of Korea, USA, Viet Nam.

- In Fiji, the costs of asset recovery through mutual legal assistance were subject to agreements or arrangements on a case-by-case basis. Reviewing experts observed that Fijian authorities expressed an interest in developing guidelines on asset recovery, and noted the development of such guidelines would cover the issue of costs;
- Indonesia was asked to regulate the costs of mutual legal assistance, and in doing so, also review existing asset sharing agreements in light of the UNCAC. In Indonesia, expenses incurred in the implementation of requests for assistance were generally charged to the requesting State;
- Viet Nam was asked to adopt a legal provision on the expenses of asset recovery while considering mutual legal assistance provisions. In Viet Nam, the costs of mutual legal assistance were borne by the requesting State unless otherwise agreed, and this was noted to have presented challenges in practice.

***Good practices for article 57***

Malaysia had previously enforced its legislation resulting in proceeds of property being returned to bona fide third parties, which reviewing experts praised.

No other good practices were specifically recognized during the second review cycle. However, given the complexities of article 57 and the fact that cross-border asset returns are governed by many variables, UNODC notes that IPEF partners may wish to adopt a strategic and tactical planning approach which considers a series of detailed questions.[187] Questions may include details of the asset's location, the requesting State's approach to mutual legal assistance, and information on which entity would receive, control and dispose of a returned asset.

***Technical assistance requests for article 57***

Indonesia requested capacity-building in opening and channelling communication with requested States to facilitate the making of anti-money laundering requests.

## Article 58: Financial intelligence unit

*Article 58 obligates States parties to cooperate to prevent and combat the transfer of the proceeds of crimes, and asks States parties to consider establishing an FIU. The FIU is responsible for receiving, analyzing and disseminating to authorities reports of suspicious financial transactions.*

All IPEF partners have specialized FIUs. Commonly, IPEF partners provide for the functions, duties and powers of FIUs in legislation. Except Viet Nam, all FIUs are members of the Egmont Group.

Viet Nam was the only IPEF partner to receive a recommendation on article 58. Viet Nam's FIU, the Anti-Money Laundering Department, is an administrative-type unit forming part of the State Bank of Viet Nam that is tasked with receiving, analyzing and transmitting information on money laundering to Viet Nam's competent authorities. However, no legal provisions explicitly provide for its independence. Reviewing experts recommended that Viet Nam strengthen the necessary independence of its FIU and improve its operational effectiveness.

FATF[188] observed similar concerns by assessing Viet Nam to be "partially compliant" with Recommendation 29 (Financial Intelligence Unit) in 2022. FATF noted the lack of explicit legal obligations in Viet Nam's FIU to lodge terrorism financing-related suspicious transaction reports and concerns regarding its operational independence.

[187] UNODC, "Confiscated asset returns and the UNCAC: A net for all fish," 2023, p. 61. Available at: https://star.worldbank.org/sites/default/files/2023-10/CAR_UNCAC_NET_LARGE_FISH_AGO23-√.pdf.
[188] APG, "Anti-money laundering and counter-terrorism financing measures – Viet Nam, Mutual Evaluation Report," 2022, *op.cit.*, p. 190.

***Technical assistance requests for article 58***

Viet Nam requested assistance to amend and supplement its Law on Prevention of Money Laundering, Law on Inspection and its implementing guidance document.

## Article 59: Bilateral and multilateral agreements and arrangements

*Article 59 obligates States parties to consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken under chapter V.*

Agreements covering asset recovery can specify commitments on the implementation of chapter V, the handling of mutual legal assistance requests, and formal and informal procedures to exchange information. While no IPEF partner received a recommendation on article 59, the UNCAC Technical Guide[189] recommends that States parties review asset recovery provisions which already exist in its multilateral or regional agreements.

Examples of asset recovery networks in which IPEF partners are members of, or may be seeking full membership of, include:

- Asset Recovery Inter-agency Network – Asia Pacific (ARIN-AP);[190]
- Camden Asset Recovery Inter-agency Network (CARIN);[191]
- The GloBE Network, as established by the UNODC;
- The UNODC and World Bank's StAR Initiative.

[189] UNODC and UNICRI, *Technical Guide to the United Nations Convention against Corruption*, *op.cit.,* p. 218.
[190] Asset Recovery Interagency Network – Asia Pacific, "Mission and objectives," accessed on: 25 April 2024. Available at: http://www.arin-ap.org/about/mission.
[191] Camden Asset Recovery Interagency Network, "CARIN," accessed on: 25 April 2024. Available at: https://www.carin.network/.

# Outlook and Next Steps

This study has provided a broad overview and high-level analysis of three areas for enhanced cooperation in the fight against corruption in IPEF partners: bribery in the conduct of business; addressing corruption in public procurement; and asset recovery and the flow of proceeds of crime. Within the three areas of enhanced cooperation, IPEF partners may share common grounds and solutions, including through peer-learning exchanges on good practices and challenges.

***Next steps***

It is anticipated that IPEF partners will seek to collectively strengthen their capacities on the specific gaps identified under each area. UNODC stands ready to support IPEF partners with their capacity-building efforts and will convene three IPEF workshops on foreign bribery, public procurement, and asset recovery in the remaining half of 2024. The workshops aim to provide a platform for IPEF partners to gain a more in-depth understanding of the shared challenges and potential solutions for each theme, including opportunities for peer-to-peer learning. It is anticipated that the outcomes from the workshops will contribute to the future analysis and direction of capacity-building work under the Fair Economy Agreement of IPEF.

As IPEF partners look to improve their implementation of UNCAC, there are opportunities for them to align these efforts with their complementary obligations under:

- Respective national frameworks, including national anti-corruption plans or policies;
- Regional frameworks, such as the Guiding Framework underlying the regional platform for Southeast Asia or the Teieniwa Vision on Pacific unity against corruption, and corruption prevention initiatives by the ASEAN Parties Against Corruption; and
- Other international frameworks, such as FATF, G20 and OECD.

It is also anticipated that other detailed assessments are, or will be, carried out in the future to individually assess the progress of IPEF partners on specific areas. This includes, for example, the completion of the second review cycle for the remaining IPEF partners and upcoming FATF evaluations. Following these assessments, certain aspects in this report may benefit from a re-evaluation and further update on progress taken by IPEF partners.

To complement and support capacity-building efforts, the following key areas could seek to guide IPEF partners.

***Preventing bribery in the conduct of business***

To prevent bribery in the conduct of business, IPEF partners could, as a starting point, explicitly criminalize certain acts to allow for the investigation, prosecution and adjudicating of:

- The bribery of national public officials (article 15) and foreign public officials and officials of public international organizations (article 16);
- Legal persons (article 26), while ensuring that sanctions for legal persons are sufficiently effective, proportionate and dissuasive.

IPEF partners that already have existing legislative provisions to cover such conduct could seek to strengthen their legal frameworks. This may be done by:

- Ensuring that their laws are sufficiently broad and consistent to avoid ambiguity, as interpretive challenges can pose a barrier to the investigation, prosecution and adjudicating of bribery offences;

- Considering legislative amendments or legal guidance required to overcome existing hurdles in the investigation, prosecution and adjudicating of foreign bribery, such as challenges in immunity or a lack of normative frameworks.

IPEF partners could supplement the criminalization of such acts with preventive measures, with an emphasis on the private sector (article 12). Given the importance of cooperation between law enforcement agencies and private sector entities, IPEF partners could look to facilitate further work and dialogue with private sector entities, with an emphasis on sector-specific industries that are instrumental in corruption prevention.

With certain areas of work gaining traction, such as recent strides made by IPEF partners in their beneficial ownership transparency frameworks, IPEF partners may seek to leverage this momentum in alignment with article 12(2)(c). A strong need for technical expertise remains, such as in the quality and verification of beneficial ownership data.

***Addressing corruption in public procurement***

IPEF partners could improve transparency in their public procurement processes through better oversight and accountability. Improved transparency could occur by:

- Putting in place or enhancing the use of e-procurement systems;
- Providing an independent system of appeal;
- Allowing more scrutiny by independent parties in the procurement process, such as through the use of external audits, Independent External Monitors and open platforms that publish procurement data.

While certain steps such as setting up or enhancing e-procurement systems would require technical expertise and financial investment, reduced human administrative costs and improved monitoring of public procurement projects are likely to result in greater long-term savings for IPEF partners. Similarly, independent scrutiny in the procurement process and the ability for parties to appeal to an independent body will reduce opportunities for corrupt behaviour. Looking ahead, there may be opportunities to improve transparency by improving data collection and quality, and integrating other forms of data into public procurement processes, such as beneficial ownership data, in accordance with the Fair Economy Agreement.

***The flow of proceeds of crime***

Tackling the growing challenge of the flow of proceeds of crime requires cooperation between IPEF partners, given that such flows tend to be international in nature. Firstly, all IPEF partners should ensure that money laundering and UNCAC-related predicate offences (article 23) are sufficiently criminalized. Beyond criminalization, IPEF partners could aim to build on their legal and operational capacities to prevent money laundering (article 14) and detect the transfers of proceeds of crime (article 52).

IPEF partners may:

- Seek to improve their understanding of the flow of proceeds of crime occurring domestically, including the extent of money or value transfer services, which may be operating informally/ without adequate scrutiny, whether in person or virtually;
- Ensure all financial institutions within their jurisdictions, including DNFBPs and money or value transfer services, are subject to robust AML/CTF obligations;
- Ensure that non-compliance with AML/CTF obligations are adequately sanctioned;
- Seek to better resource and train FIUs to enable these institutions to carry out their functions without interference;
- Encourage and concretely improve cooperation between FIUs, and domestic and international stakeholders (including financial institutions, other FIUs and law

enforcement agencies);

- Enact and improve the financial disclosure systems, and seek to ensure that interests declared by public officials are verified;
- Enhance mechanisms to identify and record PEPs, their family members and close associates, whether domestic or foreign.

### *Asset recovery*

IPEF partners should provide the proper legal, policy and operational frameworks to enable the successful recovery and return, where appropriate and in line with UNCAC, of confiscated assets to other jurisdictions. Enabling mechanisms, whether in legislation or through international agreements, are required to implement a structured framework which would allow, with more certainty, foreign States to recover assets with a variety of methods. This could occur through direct recovery (article 53) or international cooperation (article 54). An area which IPEF partners can collectively seek to focus on is the use of non-conviction based forfeiture, which aims to ensure that assets can be confiscated without the requirement of an underlying conviction.

Given the legal complexities, IPEF partners may work on producing guidance on asset recovery that is tailored to their contexts. Current practices and agreements may also need to be reviewed and, where necessary, updated to explicitly address asset recovery for improved legal certainty.

### *Concluding remarks*

IPEF partners face different challenges and limitations in their work to prevent and address corruption, given their varying normative, legal and socio-political frameworks. Implementation of UNCAC has varied, and progress to further the recommendations under the UNCAC Implementation Review Mechanism has not been uniform. Despite the differences, there are some similarities inherent in the gaps and challenges faced. For example, IPEF partners may face a lack of legislative and normative frameworks, or a similar lack of understanding when it comes to managing DNFBPs and PEPs. However, as detailed in this study, within the three areas of enhanced cooperation, IPEF partners share common ground and solutions. These are key to build on going forward to also determine the next steps that IPEF partners wish to pursue in promoting a more robust Fair Economy Agreement.

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