

OAI/01.18/10-0748-P
13 August 2010

United States Senate
Committee on Foreign Relations
Washington, DC 20510-6225
USA

Attention: Ms. Nilmini Rubin

VIA EMAIL: nilmini_rubin@foreign.senate.gov

Subject: Senator Richard G. Lugar's letter dated 3 August 2010

Dear Nilmini Rubin,

President Kuroda has asked me to respond to Senator Lugar's letter dated 3 August 2010, regarding referrals to local authorities and prosecution in the context of fraud and corruption.

Asian Development Bank's Anticorruption Policy (ADB's Integrity Principles and Guidelines (2010)¹ paragraph 45) provides for referral of information relating to complaints to national authorities where appropriate.

As for the number of individuals and firms debarred since 2005, as well as actions taken against staff for integrity violations, including abuse, please see the attached list.

Since 2005, referrals to national authorities have been made in seven cases as a result of investigations carried out by the Office of Anticorruption and Integrity (OAI). These cases (two in 2007, four in 2008, and one in 2009) were referred to ministries or government agencies and led to suspension and cancellation of loans, termination of contracts and disciplinary action taken against involved government employees. In some cases, ADB was not informed of the actions taken by the national authorities, in particular when the referrals have involved individuals.

Since the majority of sanctions of individuals and firms relate to contracts entered into under loans and technical assistance projects, and therefore fall under the jurisdiction of the recipient country, ADB does not play an active role in pursuing a case against the individuals or the firms, other than ensuring that these entities are debarred from benefiting from any ADB-financed activity.

¹ <http://www.adb.org/Documents/Guidelines/Integrity-Principles-Guidelines/2010/default.asp?p=antipubs>

In considering the issue of referral of cases to the national authorities in general, it should be noted that investigations conducted by OAI are administrative in nature.² OAI carries out its mandate, within the constraints of its investigative resources, to protect ADB-financed operations from participation by entities which have violated ADB's Anticorruption Policy. Our investigations do not produce case files that may necessarily be acted on by national prosecutors, and the evidence submitted by OAI to its internal sanctions decision-maker (the Integrity Oversight Committee) may not meet national legal requirements (for example, it may have been obtained in a manner that does not comply with local laws, such as data protection laws in certain ADB member countries). In addition, the standard of proof applied by ADB's Integrity Oversight Committee (*more probable than not*)³ to justify sanctions may not comply with local laws and procedural requirements in a particular jurisdiction for the pursuit of criminal or civil activities.

I wish to emphasize that the list of debarred firms is shared with the national agencies involved in projects, and we also in many cases alert involved institutions and companies of findings that we suggest that they investigate further to ensure that corrupt and/or fraudulent practices are prevented from occurring. In the event ADB staff has been found to have violated ADB's Anticorruption policy, we refer our findings to the human resources department for disciplinary action, and as far as possible attempt to recover any irregular payments made. In each case, as well as in cases that may involve consultants, we consider whether to refer the matter to national authorities. In addition, if a violation of the Anticorruption policy has been perpetrated within ADB, an inquiry is made into whether and how internal processes can be improved to ensure that such violation does not occur again.

In cases where ADB has concluded that the laws of a country have been breached, ADB would have no hesitation to refer such case to the national authorities for prosecution. Also, we have no restriction in cooperating with national authorities except under circumstances where such cooperation conflicts with the intent of the immunity provisions of the Agreement Establishing the Asian Development Bank.

Finally, you may wish to access OAI's Annual Report from 2009 at <http://www.adb.org/Documents/Reports/Anticorruption/OAI-Annual-Report-2009.pdf>.

President Kuroda has asked me to make myself available, should you wish further clarifications or to discuss the above.

President Kuroda has also asked me to convey his warmest regards to Senator Lugar.

Kind regards,



Peter Egens Pedersen
Head
Office of Anticorruption and Integrity

Attachment: a/s

cc: Executive Director Curtis Chin
Office of the President

PEP:tlu

² See Integrity Principles and Guidelines, paragraph 10

³ See Integrity Principles and Guidelines, paragraph 12

ADB SANCTIONED ENTITIES

1 January 2005 - 31 July 2010

Year	Sanctioned Entities		Staff
	Firms	Individuals	
2005	38	32	1 suspension 3 witten reprimand 1 repayment (including interest) 5 dismissal 1 termination
2006	36	31	7 separation
2007	61	48	6 separation 1 written reprimand
2008	41	38	2 demotion and suspension without pay 2 resignation
2009	56	68	1 resignation 1 written censure 2 written censure and suspension without pay 1 termination
2010	14	18	-
Totals	246	235	34