

ASIAN DEVELOPMENT BANK



**ANNUAL REPORT
ON THE MAJOR
ACTIVITIES OF THE
ANTICORRUPTION UNIT
2004**

Office of the Auditor General

January 2005

ABBREVIATIONS

ADB	-	Asian Development Bank
AO	-	Administrative Order
ASOSAI	-	Asian Organization of Supreme Audit Institutions
BPHR	-	Human Resources Division
BPMSD	-	Budget, Personnel and Management Systems Department
CFE	-	Certified Fraud Examiner
CIDA	-	Canadian International Development Agency
CSC	-	Consultants Selection Committee
CV	-	Curriculum vitae
DFID	-	Department for International Development
EA	-	Executing agency
FCCU	-	Financial Company for the Support and Development of Credit Unions (Kyrgyz Republic)
FIDIC	-	International Federation of Consulting Engineers (Fédération Internationale Des Ingénieurs-Conseils)
GAP	-	Government Accountability Project
IDI	-	INTOSAI Development Initiative
IGAC	-	International Group for Anti-Corruption Coordination
INKINDO	-	National Association of Indonesian Consultants (Ikatan Nasional Konsultan Indonesia)
INTOSAI	-	International Organization of Supreme Audit Institutions
IRM	-	Indonesia Resident Mission
MDB	-	Multilateral Development Bank
NBKR	-	National Bank of the Kyrgyz Republic
NGO	-	Nongovernmental organization
OAG	-	Office of the Auditor General
OAGA	-	Anticorruption Unit
OAGI	-	Integrity Division
OECD	-	Organization for Economic Co-operation and Development
OGC	-	Office of the General Counsel
OLAF	-	European Anti-Fraud Office (Office Européen de Lutte Antifraude)
PCP	-	Public Communications Policy
PhP	-	Philippine Peso
TA	-	Technical Assistance

NOTE: In this report, \$ refers to United States dollars.

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1. Summary Status of Reported Fraud and Corruption Allegations as of 31 December 2004
2. Significant Cases Concluded in 2004
3. How to Report Fraud and Corruption

I. MISSION

1. The Asian Development Bank's (ADB) Anticorruption Policy (the Policy), approved in July 1998,¹ designates the Office of the Auditor General (OAG) as the initial point of contact for allegations of fraud and corruption among ADB-financed projects or its staff. ADB established an Anticorruption Unit (OAGA), within OAG in September 1999 to handle all matters related to such allegations.

2. Under the Policy, OAG has several responsibilities to fulfill the Policy's objective to ensure ADB-financed activity and its staff adhere to the highest standard of ethical conduct. OAGA fulfills these responsibilities through

- determining the credibility of allegations and the need for further investigation, and ensure allegations are investigated promptly, thoroughly, and confidentially;
- conducting project procurement-related activities to help prevent and detect corruption or other forms of fraud; and
- collaborating with the Budget, Personnel and Management Systems Department (BPMSD) to provide training in forensic accounting and other investigative techniques for ADB staff.

3. Pursuant to the Policy, OAGA contributes to strengthening key institutions, such as supreme audit institutions, to advance transparency in developing member countries. In addition, OAGA works to strengthen its own capacity to address anticorruption issues and fulfill its mission effectively. OAGA also publishes information materials to describe the Policy and anticorruption procedures.

4. OAGA proposed and the Board approved in November 2004 clarification of certain aspects of the Policy (primarily terms and definitions related to corruption and fraud) to address critical issues that affect OAGA's activities and ability to assure and promote the ethical standards required by the Policy.²

II. 2004 ACCOMPLISHMENTS

A. Allegations of Fraud and Corruption

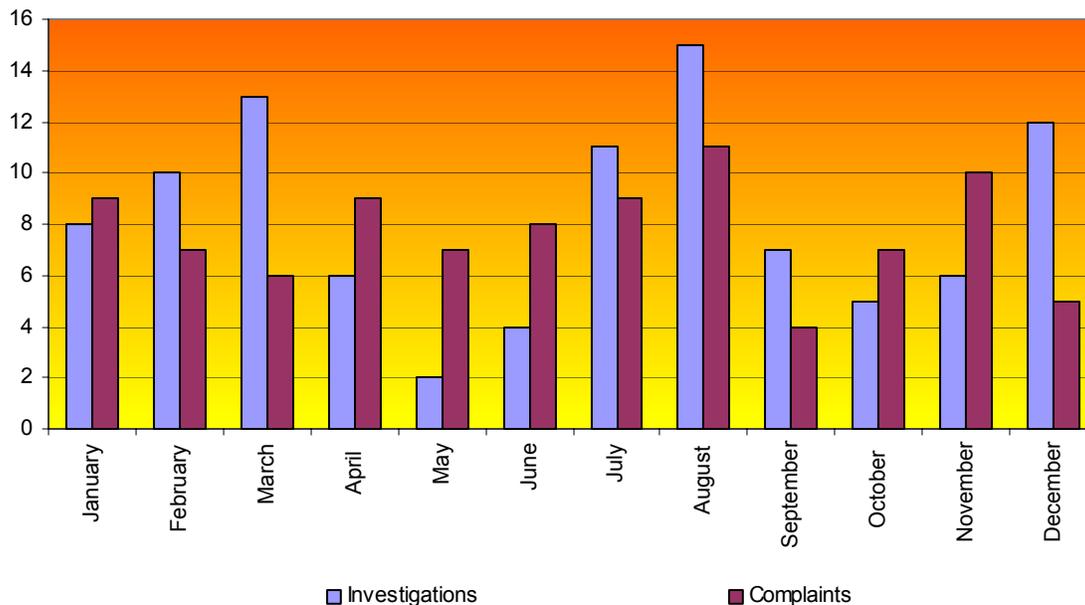
1. Investigations

5. In 2004, OAGA received 191 complaints (concerns or allegations of fraud or corruption related to ADB-financed activity). In screening³ those, OAGA closed 63 complaints upon concluding no investigation was warranted. As of 31 December, OAGA was still screening 29 complaints, and had opened 99 investigations to review further the concerns and allegations. Figure 1 illustrates the number of complaints and investigations OAGA opened each month this year. Including the 99 investigations opened this year, OAGA opened a total of 463 investigations since ADB adopted the Policy. Appendix 1 provides a more detailed summary of allegations.

¹ Board Paper R89-98, 2 July 1998.

² See <http://adb.org/Anticorruption/procurement-guidelines.pdf>.

³ Upon receiving any concern or allegation, OAGA first will evaluate whether a complaint is within OAGA's mandate (i.e., related to ADB-financed activity or staff), credible, verifiable, and material.

Figure 1: Cases Opened in 2004

6. Of the 99 investigations it opened in 2004, as of 31 December, OAGA
- closed 32 cases, including 22 for which OAGA did not find support for the allegation or evidence sufficient to demonstrate that there was a violation of the Policy;
 - referred 15 cases (involving 15 staff) to the Human Resources Division (BPHR); and
 - presented investigative findings on eight cases to ADB's Oversight Committee on Anticorruption (Oversight Committee), which determines if firms or individuals involved in ADB-financed activity violated the Policy and may impose sanctions.

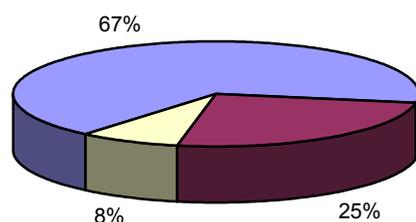
7. OAGA investigations comprised concerns related to ADB-financed projects, ADB staff, and other ADB-financed matters.⁴ Figure 2 shows the proportion of investigations in each category for this year's investigations, and Figure 3 shows the data since ADB adopted the Policy. Cases related to ADB staff often concern suspected abuse of benefits, but may also involve other allegations under the Policy. Appendix 2 provides summary of significant cases that OAGA completed this year.

8. This year, OAGA opened significantly more cases related to ADB staff than in prior years. The principal reasons for that are a single OAGA investigation begun in 2003 to review a judgmental sample of staff's compliance with ADB's rental subsidy rules, which led to more detailed investigations this year on a number of individual staff, and development of ADB's Human Resources Strategy and Management's related increased emphasis on staff accountability.⁵

⁴ Other ADB-financed matters relate to ADB administration or former ADB staff.

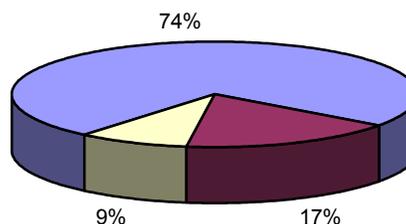
⁵ BPMSD exclusively is responsible for disciplinary actions related to ADB staff.

Figure 2: Case Interest*
2004 Investigations



■ ADB-financed Activity
■ ADB Staff
■ Other ADB-financed Matters

Figure 3: Case Interest*
All Investigations Since 1998



* OAGA classifies each investigation into a single category that is most applicable, though some investigations may relate to more than one category.

9. OAGA engages investigating firms on a retainer basis to assist in investigating allegations of fraud and corruption. This arrangement allows OAGA to issue work orders covering the investigations on a case-by-case basis, pursuant to ADB's procedures on anticorruption. OAGA, through the Auditor General, issued a total of 15 work orders to the four firms contracted on a retainer basis this year.

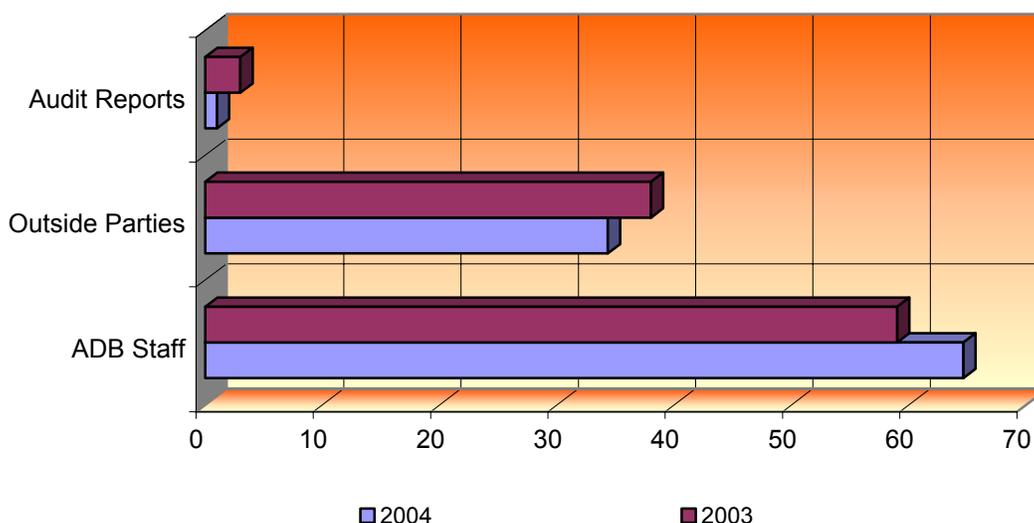
10. In May and October, OAGA completed three investigative missions, which included extensive interviews of suspects and informants, and scrutiny of various bidders' and suppliers' business operations. Through these missions, OAGA found 10 entities used various collusive and fraudulent practices to circumvent competitive bidding processes. OAGA also conducted investigative missions to Canada and India this year.

11. OAGA maintains a fraud and corruption reporting system, detailed in Appendix 3, that includes a discrete telephone line, facsimile machine, and E-mail address to ensure that the identity of the complainant and the information provided to OAGA remains confidential. To strictly control access to its records, OAGA maintains a biometric access device for its file room. The fingerprint-reading device strictly limits access to OAGA documents and files to OAGA staff. Also, OAGA continues to operate a secure subnetwork (integrated with ADB's administrative network), with its own firewall and encryption capability, to protect sensitive or confidential fraud and corruption-related information. OAGA is currently using the investigative case management software it began to work with in 2002. The software enhances OAGA's administrative controls and information, and provides case data research and retrieval capability. This year, OAGA purchased investigative analysis software to enable investigators to organize complex and voluminous amounts of data, perform analysis, and effectively report investigative results.

12. ADB's anticorruption procedures, which apply to OAGA's work, are currently Chapter 800 of ADB's Audit Manual. In December, OAGA began reviewing those procedures to incorporate changes to ADB's fraud and corruption-related terms and definitions and the scope of OAGA work approved by the Board of Directors in November (noted in paragraph 4 and explained further in paragraph 52).

13. The proportion of cases referred to OAGA by ADB staff continues to increase, as illustrated in Figure 4. Although OAGA cannot determine all specific causes for such an increase, OAGA believes its ongoing efforts to increasing staff awareness and understanding of the Policy and procedures, as well as growing confidence in OAGA and respect among ADB staff, which has also been demonstrated through greater cooperative working arrangements, contributes to this increase. This trend may persist as OAGA continues its awareness seminars and training. However, it also underscores the need for OAGA to continue its efforts to ensure outside parties are aware of OAGA, the Policy and ADB's anticorruption procedures.

Figure 4: Case Source (Percent of Cases)



2. Sanctions

14. ADB's Oversight Committee determines if firms or individuals involved in ADB-financed activities violated the Policy and may impose sanctions. The Oversight Committee consists of three regular voting members, and three alternate members who fill any vacancies that may occur among the regular members due to absence or conflict of interest. Members are nominated by the Auditor General and approved by the President annually. The heads of BPMSD (in cases where ADB staff may be involved) and Central Operations Services Office (or their designees), and an Assistant General Counsel advise the Oversight Committee.

15. In addition to the eight cases noted in paragraph 6, pursuant to ADB's anticorruption procedures (see paragraph 12), OAGA also presented to the Oversight Committee investigative findings, recommendations for reinstatement, and requests to close investigations. Table 1 outlines the Oversight Committee's cases considered and decisions made this year, and Table 2 outlines sanctions imposed by ADB since adoption of the Policy.

16. To ensure that ADB resources do not support any entity or individual involved or supporting money laundering or terrorism, OAGA reviewed periodically in 2004 internationally disseminated lists of such entities and documented those that appear to be from ADB-member countries.

Table 1: Cases Considered by Oversight Committee in 2004

24 cases to consider OAGA investigative findings
59 firms debarred for 18 months to 7 years
2 firms reprimanded
15 individuals debarred for 2 to 7 years
51 individuals debarred indefinitely
7 cases to consider reinstatement of eligibility (upon expiry of minimum sanction period)
12 firms and 3 individuals reinstated or removed from ineligible list
1 case to discuss OAGA's policies on whistleblowing
6 cases approved for OAGA to terminate the investigation

Table 2: Sanctions (since 1998)

<u>As of 31 December 2004</u>	<u>Firms</u>	<u>Individuals</u>
Total Declared Ineligible to Participate in ADB-Financed Contracts	108	116
Number Whose Ineligible Terms Have Been Completed	20	14
Currently Ineligible to Participate in ADB-Financed Contracts	88	102

3. Appeals

17. To fulfill OAGA's commitment to due process, ADB's anticorruption procedures provide an opportunity for firms or individuals to appeal sanctions imposed by ADB, and designate the role for such consideration to the Review Committee on Anticorruption (Review Committee). This year, the Review Committee considered eight cases involving seven firms and two individuals. In two cases, the Review Committee confirmed new information and facts provided by the two appealing firms provided a basis for appeal. The Review Committee decided to lift the sanction imposed on one firm, and reduced by one year the period of ineligibility of the other firm. For the remaining six cases, involving five firms and two individuals, the Review Committee found there was no basis for it to reconsider the decision of the Oversight Committee and left unchanged the sanctions imposed on those entities.

18. Also this year, the Auditor General, as Secretariat to the Review Committee, received appeals on two cases, in which ADB had declared three firms ineligible to participate in ADB-financed activity. OAGA is investigating one firm's appeal, and reviewing the information presented by the other two firms to help determine if there is a basis for appeal. The Auditor General will present those cases to the Review Committee in 2005.

B. Project Procurement-Related Activities

19. OAGA continues to proactively address potential control weaknesses that may allow fraud or corruption in ADB-financed activities. This year, OAGA conducted two project procurement-related audits. The overall objective of such audits is to detect and substantiate any fraudulent and corrupt practices relating to procurement of goods and services through review of a project's procurement and financial management practices.

20. OAGA conducted, with support of a team of consultants, an audit of a Mekong road project from June to September, including review of 120 contracts totaling \$17 million. The audit

found inadequate supervision and monitoring of procurement processes and contract execution, inadequate capacity of personnel, lack of awareness and compliance with ADB's and the government's procurement rules and the Policy, lack of clear guidance and standard procedures to undertake local competitive bidding, and a geographic dispersion of the project that led to difficult project management. OAGA recommended strengthening project supervision and monitoring, improving personnel capacity, developing procedures to supplement procurement guidelines, and standardizing local competitive bidding. OAGA, in partnership with its consultant, presented the audit's findings and recommendations to the operational department (including resident mission) staff and more than 50 Government officials, including from the executing agency (EA), in November.

21. OAGA staff conducted the second audit of a South Asia road project, with support of a consultant, from October to December. The audit included review of documents relating to three civil contracts, a project supervision consultant contract, a toll way study contract, procurement documents and financial documents totaling more than \$130 million. The audit found instances where the EA deviated from ADB Guidelines. OAGA will provide its final report and recommendations to the operational department and EA in early 2005.

C. Education and Awareness

1. ADB Staff

22. To continue to advance awareness of the Policy and related procedures, OAGA delivered three half-day training workshops organized by BPHR. OAGA's target audience was professional staff, national officers, and administrative staff of operational departments. This year, OAGA presented an overview of the Policy and procedures to professional staff, national officers, and administrative staff at three Induction Programs for New Staff; to Bangladesh, Pakistan, and Uzbekistan Resident Mission staff in conjunction with missions to their locations; and to the Office of the General Counsel (OGC). OAGA also participated in 11 orientation meetings for new ADB staff in 2004. These sessions ensure that all new staff are aware of the Policy and OAGA from the start of their careers with ADB. OAGA also presented the Policy and anticorruption procedures to Engineering for Non-Engineers seminar for ADB staff this year.

23. OAGA, BPHR, and OGC made a series of presentations to more than 1,500 staff on ADB's Principles of Behavior and Conduct from late October until the first week of December. OAGA and BPHR made the same presentation to Indonesia Resident Mission (IRM) staff in November, and OAGA made the presentation to Pakistan Resident Mission staff in December.

24. In March, OAGA led a discussion with about 20 IRM staff on anticorruption issues to advance their ability to address fraud and corruption issues in their day-to-day work and provide guidance on some recent anticorruption issues and OAGA's experience in Indonesia.

2. Executing Agencies and Government

25. In January, OAGA participated in a project implementation and administration seminar for the Indonesian state-owned electric company. OAGA explained to the participants the Policy and due process under ADB's anticorruption procedures to support the company's effective administration of ADB projects. In July, OAGA participated in a Country Portfolio Review Mission conducted by the People's Republic of China Resident Mission to outline the Policy and procedures.

26. At the request of the Resident Representative, Special Liaison Office in Timor-Leste, OAGA conducted a half-day workshop on anticorruption issues and the Policy. The workshop was titled "Transparency and Accountability in the Procurement Process Under ADB-Administered Projects". Thirty-eight people attended, primarily Timor-Leste government officials accompanied by some representatives of other development projects in Timor-Leste. The participants raised a number of issues and there was worthwhile discussion among the group. There was great interest among participants in ADB's ability to suspend or withdraw financing, the applicability of ADB's policies and guidelines in projects with other financing, and the desire of ADB to support building capacity in the Timor-Leste government to ensure it is able to administer properly ADB-financed projects.

27. OAGA continued to provide a resource for an anticorruption module as part of some Use of Consulting Services seminars organized by ADB's Consulting Services Division. This year, OAGA participated in seminars held in Nepal, Pakistan, Papua New Guinea, Uzbekistan, and Viet Nam. Participants of these seminars are primarily officials of EAs.

28. In June, OAGA met with officers of Canadian International Development Agency (CIDA) to discuss the Policy and procedures. CIDA shared its anticorruption protocols with OAGA.

29. OAGA was one of the resource speakers in an ADB-United Kingdom Department for International Development (DFID) Governance and Poverty Knowledge Exchange Event held in Manila in October. DFID has been an active bilateral donor in the field of governance and poverty. OAGA discussed key challenges and issues facing ADB in implementing the Policy. DFID's anticorruption efforts were also discussed in the forum.

30. Also in October, the Auditor General and representatives from other MDBs and the International Monetary Fund attended the International Organization of Supreme Audit Institutions (INTOSAI) Congress in Budapest, Hungary, where various initiatives to strengthen SAIs were discussed.

31. OAGA is supporting the Review of the Implementation of ADB's Governance and Anticorruption Policies (led by the Governance and Regional Cooperation Division of the Regional and Sustainable Development Department), and in October, November and December participated in external consultation workshops in Indonesia, Viet Nam, and India. The consultations described trends in governance and anticorruption and identified potential actions for ADB's Medium-Term Action Plan on Governance and Anticorruption. More than 100 government, nongovernmental organization (NGO), press and private sector officials participated.

32. In December, OAGA met with the United States Senate Foreign Relations Committee staff and US Department of the Treasury staff to discuss OAGA activities, policies, procedures, and accomplishments.

3. Contractors, Consultants, and Others

33. OAGA briefed Canadian Trade Commissioners on the Policy and procedures in April. In October, OAGA made the same presentation to a group of visiting development bankers from the Association of Development Finance Institutions in Asia and the Pacific. In June, OAGA participated in ADB's Public Communications Policy (PCP) public consultation workshops in the United Kingdom and Canada as an effort for outreach and consultation on the Policy and

procedures with different parties. In July, OAGA made a presentation on fraud and corruption at the Association of Government Internal Auditors' mid-year convention in Manila.

34. In June, OAGA met with the Director and other officers of the Government Accountability Project (GAP) to discuss ADB's accomplishments in whistleblower protection, GAP's objectives, and general issues regarding whistleblower protections at ADB. OAGA worked with GAP to identify opportunities for ADB to improve some of its procedures and communication on the issue of whistleblowers.

35. In September, the Auditor General attended the International Federation of Consulting Engineers (FIDIC) annual conference in Copenhagen, Denmark. The Auditor General and a representative of the World Bank discussed business integrity management in the context of the anticorruption policies of their respective organizations. The discussion was a follow-up from similar discussion at the FIDIC annual conference in 2002, and was aimed at promoting further dialog between the multilateral development banks (MDBs) and the consulting industry.

36. Following media publication in mid-2004 of names of some Indonesian firms that ADB had debarred,⁶ the National Association of Indonesian Consultants (Ikatan Nasional Konsultan Indonesia, or INKINDO), requested ADB to clarify its Anticorruption procedures. OAGA met with INKINDO in December and recognized INKINDO's and OAGA's shared interest in maintaining the highest ethical standards. OAGA will continue to work with professional and industry groups to broaden the awareness and understanding of the Policy and procedures.

D. Strengthening Key Institutions

37. Providing assistance to strengthen supreme audit institutions to support enhanced public accountability, a key element of good governance, is consistent with ADB's policies on governance and anticorruption and will help reduce waste and abuse of public funds, thus contributing to combating corruption. This year, OAGA completed one regional technical assistance (TA) project for that purpose and evaluated another.

38. In August, OAGA completed TA 6014-REG: *Strengthening the Regional Training Capability of the Asian Organization of Supreme Audit Institutions (ASOSAI)*, approved in December 2001. A Pre-Workshop Instructors Team Meeting in Japan in January designed and developed the Regional Audit Workshop on Audit of Privatization; a Regional Audit Workshop on Financial Audit in an IT Environment was held in April in Malaysia, and a Regional Audit Workshop on Audit of Privatization in May in the Philippines. Overall the TA produced 25 new training specialists from ADB developing member countries, expanding the pool of regional trainers. Other important project outputs included Regional Guidelines on Fraud and Corruption, 50 trained auditors on technical audit subjects, and complete set of course materials on Financial Audit in an IT Environment and Audit of Privatization in CD-ROM format to facilitate adaptation for member-SAIs' local training.

39. In May, OAGA evaluated TA 5940-REG: *Audit Training Program for Central Asian Republics*, completed in August 2002. The project produced training materials, auditing guidelines, fraud investigation guidelines and a training manual; a strategic planning workshop;

⁶ The media initially claimed that the information was obtained from ADB, but later recanted, reporting that ADB had not provided such information, noting ADB's policy to keep such names confidential. OAGA investigated the matter and concluded the original published article was based on outdated information that had been improperly disclosed. However, OAGA could not definitively determine the source of disclosure.

an audit training workshop; and a fraud investigation workshop. OAGA considered the project successful.

40. At the end of March and beginning of April, at the invitation of the INTOSAI Development Initiative (IDI), OAGA attended a symposium in Bangkok, Thailand organized by IDI and the ASOSAI. OAGA assisted examining the structure of an existing ASOSAI five-day workshop related to fraud and corruption to help revise the workshop objectives and organization.

41. OAGA was a resource speaker in an ASOSAI symposium in Makati, Philippines in April. OAGA discussed four TA projects involving ASOSAI: the Audit Training Program; the Regional Long-Term Audit Training Program, phases 1 and 2; and the Regional Training Capability of ASOSAI. In conjunction with the symposium, OAGA also made a presentation on the Policy and anticorruption procedures.

E. Enhancing OAGA Capacity

42. ADB authorized OAGA five professional staff positions, two national officers and one administrative assistant in 2004. In addition, the Auditor General assigned an additional senior administrative assistant to support OAGA. One professional staff began a two-year special leave, effectively separating from OAGA in September. OAGA filled that vacancy in November and that person will start working with OAGA in January 2005. One of OAGA's national officers transferred to another ADB department in September and the vacancy was filled from within OAG in November by the promotion of an administrative staff.

43. OAGA continued to strengthen its relationship with other international organizations. In March, OAGA met with World Bank representatives to discuss their inquiry about a firm debarred by ADB. OAGA participated in the Fifth Annual International Investigators Conference in Lyon, France, in September. The conference was attended by broad range of organizations, including various United Nations organizations and the World Bank. OAGA participated in panel discussions on post-investigation procedures and debarment and explained to participants how ADB's anticorruption procedures are an efficient, and clearly administrative, process. Following the conference, the mission met with representatives of the European Investment Bank and African Development Bank to discuss ADB's anticorruption procedures.

44. In September, OAGA represented ADB at the sixth meeting of the International Group for Anti-Corruption Coordination (IGAC), an effort to strengthen international anticorruption coordination and collaboration, hosted by the European Anti-Fraud Office (OLAF). Participants represented 14 organizations, including the World Bank Department of Institutional Integrity and African Development Bank. The major theme of the meeting was discussion of organizations' internal integrity initiatives. Other issues included the United Nations Convention Against Corruption, and the World Bank's and African Development Bank's anticorruption initiatives, and principles of cooperation and information exchange.

45. In November, an OAGA staff attended a two-day conference sponsored by the Association of Certified Fraud Examiners (CFE) in Hong Kong, China. More than 50 participants from various parts of Asia, mostly CFEs, attended the conference. The conference covered a very diverse area of fraud of corruption: organized crime, anti-money laundering, securities fraud investigations, brand counterfeiting, forensic accounting, data mining and Sarbanes-Oxley Section 404 reporting.

46. Also in November, OAGA participated as a resource speaker at the Organization for Economic Cooperation and Development (OECD) Global Forum on Governance: Fighting Corruption and Promoting Integrity in Public Procurement. More than 200 participants from over 50 countries participated in the Forum, hosted by the French Ministry of Economy, Finance, and Industry. OAGA was a panelist at the workshop, Identifying Risks in the Bidding Process to Prevent Corruption, outlining some of ADB's actions to identify and address corruption in procurement. OAGA also actively participated at the workshop Compliance with Anticorruption Laws Through Access to Public Procurement: Sanctioning or Voluntary Self-Regulation, at which OAGA outlined and discussed ADB's investigation and debarment process.

47. In December, OAGA participated in a meeting that included also representatives from the African Development Bank's Internal Audit Department, the European Bank for Reconstruction and Development's Office of the Chief Compliance Officer, the Inter-American Development Bank's Office of Institutional Integrity and the World Bank's Department of Institutional Integrity. The group agreed to reaffirm its shared commitment to fight corruption in the respective operations. The forum helped all parties understand better the distinctions of the different organizations and approaches to common issues. It fostered cooperation and should help the five institutions consider areas where they might harmonize in the future. OAGA is committed to participating in this forum in the future.

F. Publication of Information Materials

48. In January, OAGA published its *Annual Report on the Major Activities of the Anticorruption Unit 2003* on the Internet (<http://www.adb.org/anticorruption>). Throughout the year, OAGA maintained and enhanced its website to provide considerable transparency on how ADB deals with allegations of fraud and corruption related to ADB-financed activities.

49. OAGA updated and distributed to internal and external stakeholders more than 600 copies of its brochure on the Policy, which it first published in 2001 to fulfill a requirement of the Policy. In addition to an overview of OAGA's procedures, the brochure provides some background on the development of the Policy, as well as the roles of the Oversight and Review Committees.

50. Via *ADB Today*,⁷ OAGA continued a series of advisories to ADB staff. The advisories provided guidance on the application of anticorruption sanctions, notified staff of other issues related to the Policy and updates to sanction lists, and warned staff to be cautious of advance fee and other fraudulent E-mail and other solicitations that various ADB staff received.

51. ADB does not make public its list of firms and individuals ineligible to participate in ADB-financed activity pursuant to the Policy (see paragraph 61). OAGA shares that information, on a confidential basis, with other MDBs and international organizations and others with a need to know. With support from ADB's Office of Information Systems Technology, OAGA enhanced its Intranet site at which ADB staff may access the list of sanctioned and terrorism-related entity information.

G. Policy Clarifications

52. With the experience OAGA gained in addressing fraud and corruption concerns since 1999, it concluded that it was appropriate to refine certain aspects of the Policy by clarifying and

⁷ *ADB Today* is ADB's internal daily newsletter that includes news and official announcements for staff.

strengthening the fraud and corruption-related terms, and that sanctions could apply to more than just the award of new contracts. OAGA developed and the Board approved in November the paper, *Anticorruption Policy: Proposed Clarifications and Related Changes to Consulting and Procurement Guidelines*. To ensure that ADB can fulfill its responsibilities to ensure that all ADB projects and staff maintain the highest ethical standards, the Policy amendment established new fraud and corruption-related terms and definitions, including establishing a definition of conflict of interest. The Policy change also gives ADB latitude to impose sanctions where ADB determines that an entity eligible to participate in an ADB activity has not maintained the highest ethical standards, even if the activity that demonstrates the failure to maintain such high ethical standards is not related to an ADB activity, and apply sanctions to any ADB activity or situation. ADB will update its *Guidelines for Procurement Under Asian Development Bank Loans*, and *Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers* accordingly.

III. CHALLENGES

A. Workload and Resources

53. The growth in volume and complexity of its workload continues to challenge OAGA. Figure 5 shows the trend of a growing number of open investigations: 81 at the end of 2004, 17 percent more than the 69 investigations open at the end of 2003. Figure 6 shows the trend of an increasing number of investigations opened each year: 99 in 2004, as noted in paragraph 5, 8 percent more than the 92⁸ opened in 2003. (The data in Figures 5 and 6 do not include complaints being screened.) OAGA averaged 72 open investigations in 2004, 13 percent more than the average 64 open cases in 2003.⁹ Also, OAGA's increasing collective experience and skill, as well as the complexity of cases, leads to more thorough and time-consuming investigations and use of new investigative techniques. OAGA continues to be challenged to effectively

Figure 5: Open Investigations

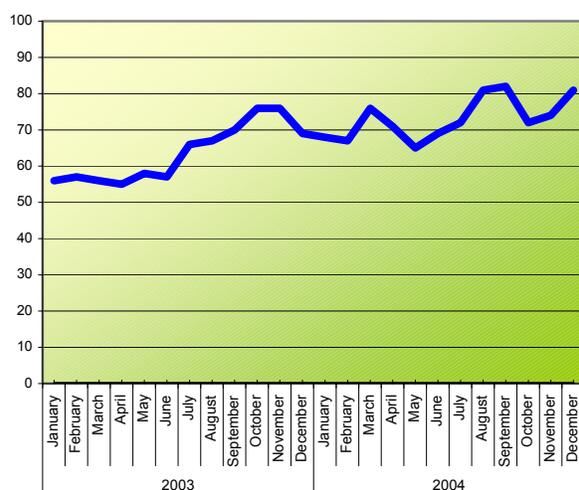
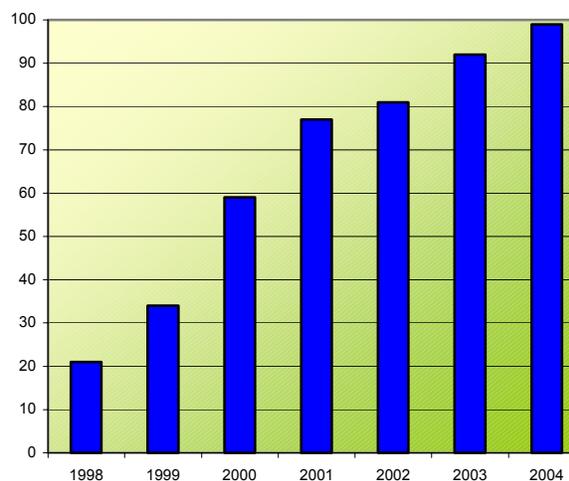


Figure 6: Investigations Begun



⁸ The 92 investigations opened in 2003 reported here corrects the figure shown in OAGA's "Annual Report of the Major Activities of the Anticorruption Unit 2003."

⁹ Based on open investigations at the end of each month.

- investigate fraud and corruption issues related to large, high-profile entities;
- review complex issues regarding the fair, reasonable, and appropriate application of the Policy to ensure the principles and intent of the Policy are met, including determining if actions were merely errors or were actions intended to benefit an entity, evaluating responsibilities of various parties to a proposal or contract, and assessing variations of contracts of ineligible entities; and
- provide guidance when EAs may want to terminate a contract that has been negotiated or awarded.

54. ADB's Board of Directors continues to express a desire for OAGA to conduct more project procurement-related audits. OAGA plans to do four such audits in 2005.

55. OAGA hopes to address some of the significant workload and resource challenges through strengthening the supervision and management of OAGA activities and staff, as well as carefully planning future resource requirements. Management has approved elevating OAGA to become the Integrity Division of OAG in 2005, with a new senior staff position of Director. This will provide greater recognition to OAGA's activities, and strengthen the supervision, management, and autonomy of its activities. Also, OAGA will normally participate in external activities such as conferences, meetings, seminars, and workshops only when it is a resource (e.g., speaker or active participant) to the event.

B. Corrupt Environments

56. OAGA administers its responsibilities under the Policy in many environments where fraudulent and corrupt activities, as defined by ADB, are institutionalized. Because of this, OAGA must consider both ADB Charter provisions to not interfere in sovereign matters of its members, and protecting the privileges and immunities of ADB. All of OAGA's accomplishments contribute to addressing this challenge, though OAGA understands it will take continuous effort and much time to change, let alone overcome. In particular, to address this in 2005, OAGA will continue to increase its presence in developing member countries with project procurement-related work, investigative missions as appropriate, and more briefings to government, ADB staff, and private-sector participants in ADB-financed activity.

C. Cross Debarment and Criminal Referrals

57. OAGA and the Auditor General realize from discussions with ADB's Board of Directors, as well as the recent high levels of donor scrutiny regarding how well MDBs address fraud and corruption, that there still is a need to enhance ADB's existing procedures. Two of the most important issues are cross debarment (all MDBs imposing a sanction on an entity when just one does so) and criminal referrals (referring administrative findings to legal and judicial authorities). OAGA does neither of these routinely, though its anticorruption procedures allow both. The issues are complex.

58. Before MDBs establish a consistent practice of cross debarment, there should be standard policies, terms, definitions, and procedures among the MDBs, as well as uniform sanction policies. These do not currently exist, and as OAGA found in updating ADB's fraud and corruption-related terms and definitions, it likely will not be easy to achieve. Without such standardization, it is difficult for ADB's Oversight Committee to determine appropriate sanctions. Also to be considered is a key principle of ADB's administrative due process to treat large and

small firms alike. Cross debarment creates a very real potential to put small firms out of business, which is contrary to ADB procedures, while large firms are much more likely able to weather such a storm.

59. Making criminal referrals a practice blurs the line between an MDB's administrative process and legal and judicial processes. For ADB, one of the critical issues is its adherence to a principle of administrative due process, which OAGA has steadfastly maintained includes treating everyone equally. ADB has defined fraud and corruption terms in one way, and applies that perspective throughout its operations; however, ADB's 63 member countries have varying perspectives and legal definitions precisely what constitutes fraud and corruption. Also, OAGA has concluded that some member countries' legal and judicial systems lack the capacity to consistently address cases following principles of good governance: transparency, accountability, and reliable predictability. Until OAGA can refer all cases, thereby treating all entities equally, it has established a practice that it should not routinely make such referrals, but considers this option on a case-by-case basis. OAGA does not discourage legal and judicial processes by its member countries and, when asked, has found ways to support its members' legal or judicial efforts related to fraud and corruption cases.

60. To address these issues, OAGA will continue to discuss these and other relevant concerns with its counterparts at other MDBs at working-group meeting on MDB anticorruption issues, annual International Investigators Conferences, and IGAC meetings, and with representatives of ADB's member countries.

D. Debarment List Disclosure Policy

61. Some of ADB's member countries, NGOs, and other stakeholders have questioned ADB's policy not to make public its list of entities on which it had imposed sanctions. As noted in paragraph 51, ADB staff may access the list of debarred entities, and OAGA shares the information with other MDBs, international organizations, and others with a need to know. The Auditor General and OAGA have often reassessed the benefits and weaknesses of publicizing ADB's Anticorruption Sanctions List, and concluded that ADB can best implement its Policy by retaining the current practice that those names are confidential. OAGA has posted on the Internet a detailed explanation of this decision (<http://adb.org/Anticorruption/issues.asp>), and will continue to engage stakeholders to help them better understand the rationale for maintaining this policy.

**SUMMARY STATUS OF REPORTED FRAUD AND CORRUPTION
ALLEGATIONS AS OF 31 DECEMBER 2004**

Year Received/Status	Total	Loan	Technical Assistance	ADB Staff	Other
1998 & 1999:					
Total	55	32	6	10	7
2000:					
Open	1	1	-	-	-
Closed	58	34	5	14	5
Total	59	35	5	14	5
2001:					
Open	1	1	-	-	-
Closed	76	57	6	7	6
Total	77	58	6	7	6
2002:					
Open	2	2	-	-	-
Closed	79	52	10	12	5
Total	81	54	10	12	5
2003:					
Open	10	7	-	2	1
Closed	82	45	17	9	11
Total	92	52	17	11	12
2004:					
Open	67	41	10	13	3
Closed	32	9	6	12	5
Total	99	50	16	25	8
Cumulative					
Open	81	52	10	15	4
Closed	382	229	50	64	39
Grand Total	463	281	60	79	43

CLOSED INVESTIGATIONS					
Year Closed	Total	Closed After Investigation – No Further Action	Closed – No Sanctions	Closed – With Sanctions	Referred to BPHR
1998	21	12	-	5	4
1999	34	22	2	7	3
2000	58	36	4	8	10
2001	76	58	3	12	3
2002	79	55	3	17	4
2003	82	62	3	16	1
2004	32	21	2	3	6
Total	382	266	17	68	31

ORIGIN OF REPORTED COMPLAINTS/ALLEGATIONS			
TOTAL	ADB Management/Staff	Audit Reports	Outside Parties
463	277	10	176

SIGNIFICANT INVESTIGATIONS CONCLUDED IN 2004

A. Case 03-026-0402—Misrepresented employment status and false claims

1. The Anticorruption Unit of the Office of the Auditor General (OAGA) received from ADB's Central Operations Services Office a concern that three firms short-listed for consulting services each submitted the curriculum vitae (CV) of one expert. In the CV submitted by Firm A, the individual expert represented that he was a regular full-time employee of Firm D, a local associate firm of Firm A, as well as a managing official and expert of a consulting firm that he owns. Firm A claimed that the individual expert was a regular full-time employee of Firm D in their proposal. The individual expert's CVs submitted by Firms B and C indicated that he was not working as a regular full-time employee of any other firm.

2. OAGA concluded that the individual expert was not a regular full-time staff of Firm D because Firm D pays the individual expert only when the individual expert provides advisory services to Firm D. The individual expert informed OAGA that he interpreted full-time employment differently than ADB. OAGA found that Firm A did not independently vet any third-party information received for proposals, which led them to accept the individual expert's claim that he was a full-time regular staff of Firm D. The Oversight Committee on Anticorruption (Oversight Committee) found the individual expert and Firm D misrepresented information to ADB and reprimanded each.

3. OAGA found that the individual expert agreed to have Firms A and B submit his CV; but did not authorize Firm C to submit his CV, and assumed that Firm C had his CV from a previous engagement. Firm C did not dispute that the individual expert did not authorize it to submit his CV for this Project. OAGA opened a separate case involving Firm C to review a finding from an OAG audit: OAGF found that Firm C overcharged ADB \$46,532 due to higher salaries represented during contract negotiations with ADB than paid to three international experts, and leave periods for the experts that Firm C claimed from ADB but did not pay to the experts.

4. Firm C did not refute the discrepancy between the monthly fees stated in the ADB contract and the monthly fees paid to the international experts. However, Firm C justified to OAGA its actions by stating that, on their initiative, it engaged an additional expert, and paid him \$25,494, although ADB had never been informed of that expert's involvement in the Project, and there was no variation or amendment to the contract providing for his employment. Firm C denied that they benefited from unpaid leave periods, and OAGA decided not to investigate that issue further.

5. OAGA further investigated the involvement of Firm C's representative, who negotiated with ADB and signed the contract on behalf of Firm C, but retired since OAG's audit. The representative did not explain his actions to OAGA, and only stated that he was then permanent staff of Firm C saw no reason his involvement should be handled separately from the firm's.

6. The Oversight Committee concluded that Firm C misrepresented its proposal to ADB by indicating that the individual expert was available and had agreed to be included in the proposal. It further found that Firm C misrepresented salaries paid to experts and benefited from the related overcharging. The Oversight Committee declared Firm C ineligible to participate in ADB-financed activity for a minimum of four years, and declared Firm C's representative ineligible to participate in ADB-financed activity for a minimum of two years. Finally, the Oversight Committee recommended that ADB recover \$32,759 from Firm C.

7. Both Firm C and its representative appealed the Oversight Committee's decision on the basis of new information provided by Firm C. Firm C was able to clarify representations it had received regarding the availability of the expert, which the Review Committee on Anticorruption (Review Committee) considered. Although not excusing Firm C's actions, the Review Committee recognized the new information as a mitigating factor, and reduced Firm C's period of ineligibility to three years. The Review Committee rejected the representative's appeal as it provided no new, relevant information.

B. Case 02-021-0402—Bid manipulation and false documents (bid security)

8. OAGA opened cases relating to eight firms in May and June 2002 based on concerns identified by a resident mission of numerous instances of false bid security provided with bids for various procurement packages. Following its initial screening, OAGA investigated the cases as a group to assess possible collusion among the firms, focusing on a particular firm, Firm A.

9. OAGA found indications of a pattern of fraud that suggested Firm A might have been involved in manipulating tenders. In several tenders, the common winner was either Firm A or one of its subsidiaries. OAGA noted several tenders in which only companies from Firm A's group submitted bids, other invited bidders were ineligible and easily disqualified, and names of bidders not part of Firm A's group were used without their knowledge. OAGA noted in one case, Firm A claimed it had authorized another firm, Firm B, to bid on its behalf and that Firm B submitted the false bid security. In that tender, Firm B also submitted its own bid.

10. Firm C responded to OAGA that it did not participate in the tender. For that tender, OAGA determined that Firm A was the only firm among four bidders that passed the qualification criteria, and one of the losing bidders was a subsidiary of Firm A.

11. Six firms, including Firms A and B, confirmed to OAGA, either upon initial inquiry in 2002 or final inquiry in 2003, that the bid security provided in conjunction with their bids for various tenders was false. A seventh firm, Firm D, never responded to OAGA's inquiries, although OAGA confirmed delivery of its correspondence.

12. The Oversight Committee found that seven firms, including Firms A, B and D, committed one or more fraudulent acts by submitting false bid security in tenders to be financed by ADB. The Oversight Committee declared six firms, including Firms A and B, ineligible to participate in ADB-financed activity for a minimum of three years and, recognizing its failure to respond or cooperate in OAGA's investigation, declared Firm D ineligible to participate in ADB-financed activity for seven years.

13. Firm A appealed the Oversight Committee's decision as "unfairly prejudicial, excessively punitive," and not taking into account the firm's "leading position in the advancement of corporate governance and good business ethics." However, the Review Committee concluded the firm provided no new, relevant information, and rejected the appeal.

C. Case 03-020-0402—Bid manipulation

14. OAGA received allegations of bid manipulation on two civil work contracts and one contract to supply heavy equipment through international shopping financed by an ADB loan. OAGA found that in the first civil work contract, a bidder was forced to submit bid in exchange for money while in the second civil work contract, most of the bidders were un-contactable due to wrong phone numbers and contact information, or the companies that did not exist. OAGA

also found significant similarities and common elements, including format, font, facsimile telephone numbers and misspellings among the four bids. OAGA investigated the procurement of the heavy machineries and established that the three bidders were related. As a result, the Oversight Committee declared five firms each ineligible to participate in ADB-financed activity for a minimum of five years.

D. Case 03-040-0402—Bid manipulation

15. OAGA received allegation of bid manipulation and physical threats against potential bidders on the tender to purchase 80 motorcycles financed by an ADB loan. OAGA investigated the allegations and found that out of 14 potential bidders, only four submitted their bid. Certain potential bidders did not submit their bids because they were physically threatened by criminal elements when they were about to submit their bids. OAGA also found significant similarities and common elements, including format, font, facsimile telephone numbers and misspellings among the four bids. OAGA established that the four bidders were related. The Oversight Committee declared the four bidders each ineligible to participate in ADB-financed activity for a minimum of five years.

E. Case 03-073-0402—Breach of contract

16. An OAGA project procurement-related audit found evidence that a contractor misrepresented its work to an executing agency (EA) by engaging personnel from a third party and claiming those personnel were their staff, while at the same time the contractor assigned a majority of the work to another party, in violation of its contract. The contractor and the EA agreed to resolve the matter. OAGA established that the contractor violated the terms in the contract and misrepresented information to the EA. The Oversight Committee reprimanded the firm for its actions.

F. Case 02-073-0408—False CV

17. OAGA investigated concerns from an anonymous complaint alleging fraudulent misrepresentation in selecting consultants for a project financed by an ADB loan. OAGA found a firm falsified a CV, employment status, and availability period of an expert, an employee of another firm. The Oversight Committee declared the firm ineligible to participate in ADB-financed projects for a minimum of three years.

18. The firm appealed the Oversight Committee's decision to the Review Committee on the grounds that ADB had not considered the effect on the firm's ongoing privatization efforts in that only one branch of the firm was involved in the fraudulent practice, the sanction was too severe, and the branch manager would be terminated. The Review Committee concluded that the firm's privatization efforts were not a relevant consideration, and found no basis for appeal because there was no other new and relevant information.

G. Case 03-072-0403—False documents (bank guarantees)

19. An EA reported that a firm submitted two false bank guarantees for a bid to be financed by an ADB loan. The involved bank confirmed to OAGA that the guarantees were forged and that it did not issue them to the firm. Meanwhile, OAGA found one of the firm's managers fabricated the bank guarantees and the bank's official seal. The Oversight Committee declared the firm ineligible to participate in ADB-financed activity for a minimum of 18 months, and the firm's manager, as an individual, ineligible to participate in ADB-financed activity indefinitely.

H. Case 03-077-0403—Misrepresented work experience

20. A project officer informed OAGA that a bidder might have submitted a false certificate of experience as part of its bid for a contract financed under an ADB loan. OAGA confirmed the work certificate was not authentic. OAGA found one of the employees of the bidder forged the certificate without informing the management of his firm. The Oversight Committee did not take any action on the firm because the firm had taken constructive actions to rectify the problem before OAGA's investigation. However, the Oversight Committee declared the person who fabricated the work certificate ineligible to participate in ADB-financed activity for a minimum of two years.

I. Case 02-031-0404—False CV

21. An independent consultant submitted a complaint to the OAGA alleging a nongovernmental organization (NGO) forged her signature and used her CV without her permission when submitting a proposal for a contract. Comparing the complainant's known authentic signature to the CV provided by the NGO and the CV submitted to the EA for the tender, OAGA found the NGO gave OAGA a forged signature. The NGO carried out an internal investigation and found one of its junior employees guilty of forgery and dismissed the employee after the NGO's board meeting on 10 August 2003. OAGA received an E-mail reply from the employee on 18 March 2004 acknowledging he forged the complainant's signature. The Oversight Committee declared the NGO and its junior employee, as an individual, each ineligible to participate in ADB-financed activity for a minimum three years.

J. Case 03-032-0404—False financial statements

22. OAGA became aware in January 2003 that a draft Procurement Committee report covering the pre-qualification exercise of 16 civil works contracts included the observation that the EA disqualified one firm because the firm allegedly submitted false financial statements to support its bid for pre-qualification. OAGA analyzed the figures, supposedly audited financial statements submitted by the firm in conjunction with its prequalification and found material inconsistencies compared with figures presented in the same application. OAGA did not find any basis to believe such discrepancy could be from foreign currency conversion calculations. OAGA confirmed the EA's analysis and position regarding the financial data. OAGA confirmed its letters of 27 January 2004 and 9 March 2004 were delivered. With no response from the firm, OAGA has no choice but to conclude the firm's actions were such a misrepresentation and constitute a fraudulent practice under ADB's Anticorruption Policy (the Policy). The Oversight Committee declared the firm ineligible to participate in ADB-financed activity for a minimum of seven years, recognizing its lack of cooperation by not responding to OAGA's inquiry and findings.

K. Case 03-057-0405—Misrepresented employment and availability

23. A construction supervision expert was presented by two joint ventures (JV1 and JV2) to be full-time staff of each JV's associate firm. JV1's and JV2's associate firms both stated in their respective proposals that the expert was their regular full-time employee. OAGA's investigation found one of JV1's associate firm employed the expert as a regular full-time employee for 12 months as of the date when JV1 submitted its proposal. The expert insisted he was a freelancer and attempted to mislead OAGA during its inquiry.

24. OAGA concluded the expert's actions constitute fraudulent misrepresentations because he certified he was a full-time employee of JV2's associate firm in the Certification Section of his CV; represented himself as a freelancer to JV2's associate firm; signed a statement of availability with JV1's & JV2's associate firms concurrently; signed an Employment Agreement first with JV1's associate firm on 5 May 2002, followed by a Memorandum of Understanding with JV2's associate firm on 30 May 2002; gave an untrue and misleading signed statement to the EA on 23 June 2003 and provided false information to OAGA during its investigation.

25. The Oversight Committee declared the expert ineligible to participate in ADB-financed projects indefinitely, and requested OAGA convey the Oversight Committee's decision to the EA and JV1's associate firm. The Oversight Committee approved ADB taking no action against JV2 and its associate, subject to OAGA cautioning both firms to exercise greater due diligence to avoid repeating the mistakes found in this case.

L. Case 03-039-0406—Falsified documents

26. OAGA investigated alleged coercion to get bidders to collude to mark up their prices, with the "profit" to be shared among several parties. The EA awarded the approximately \$5 million contract to the allegedly responsible firm. OAGA found individuals from rural contractors threatened a firm they wanted to withdraw from bidding. Other bidders participated in the tender and denied involvement in any wrongdoing. As part of OAGA's investigation, it found two bidders (including the winning bidder) submitted a false Power of Attorney as part of their proposals.

27. As a result of the lack of evidence to support the allegations regarding intimidations of bidders, OAGA's investigation shifted to the concern that the winning bidder submitted a falsified Power of Attorney. OAGA determined that the Power of Attorney submitted by the winning bidder was authentic whereas the Power of Attorney and Letter of Statement submitted by the other bidders were falsified. OAGA determined that a broker/commission agent, not an employee of the other bidder was responsible for the preparation of the false documents and for falsifying his signatures, confirmed by the broker/commission agent's reply stating that he had an agency agreement with the other bidder.

28. The Oversight Committee declared the broker/commission agent ineligible to participate in ADB-financed activity for a minimum period of seven years.

M. Case 04-004-0406—False performance security

29. An EA found financial guarantees provided by a firm were false when it tried to enforce the security due to the contractor's slow progress and poor performance. In a series of letters to the Project Director, the firm claimed it conducted its own inquiry and found out that two of its high-ranking officers and a broker had defrauded their firm, and were jointly responsible for the fraudulent bank guarantees. The firm claimed they sought criminal and civil actions against the persons involved and suggested that payments due to the EA should be deducted from their subsequent bills. The firm did not provide any information to substantiate their inquiry findings.

30. After unsuccessfully writing and attempting to telephone the firm, OAGA concluded the firm may have "absconded and dissolved and are now operating under a different name". The Oversight Committee declared the firm ineligible to participate in ADB-financed activities for a minimum period of seven years and approved posting the firm's name on ADB's website.

N. Case 04-029-0406—False documents and signature

31. OAGA learned an ADB supplier, or its representative, admitted sending a fraudulent letter to the Philippine Department of Energy regarding a tax-exempt purchase. The letter appeared to be on ADB letterhead and with a signature that appeared to be that of an ADB staff member. OAGA determined that the bank's staff signature was forged by the supplier's chairman/president to purchase tax-free goods, supposedly as compensation for insufficient profit on the supplier's ADB contract. ADB did not renew its contract with the supplier. OAGA did not find evidence that any ADB staff were involved in the fraudulent activity. The Oversight Committee declared the supplier ineligible to be awarded ADB-financed contracts for a minimum period of seven years, and declared the chairman/president ineligible indefinitely.

O. Case 02-080-0407—Fraud (false documents and financial records)

32. This case began when the National Bank of the Kyrgyz Republic (NBKR) identified fraudulent activity in a subproject of the ADB-financed Rural Financial Institution Project. In October 2002, NBKR advised ADB that the Financial Company for the Support and Development of Credit Unions (FCCU), created with ADB's support as a source of financing for businesses in rural areas, found fraud involving fictitious membership and financial data in some credit unions. FCCU assists in creating credit unions and rendering financial assistance and advisory services to established and qualified credit unions. Through surveys, audits, and inspections, FCCU identified fraudulent data that formed the basis of credit unions' borrowing from FCCU, which was then used to pay members and finance high-risk ventures not reported to FCCU.

33. ADB's East and Central Asia Department staff, OAGA, and NBKR and FCCU worked together to effectively address the fraud. With ADB's support through technical assistance for Capacity Building in Savings and Credit Unions and Microfinancial Systems, FCCU was able to increase scrutiny of credit union assets. FCCU also tightened procedures for increasing capital of any credit union, and strengthened licensing procedures. FCCU ultimately identified fraud in 21 credit unions, and has appropriately classified the debt and undertaken efforts to recover fraudulently obtained funds. NBKR referred FCCU's findings to prosecutors, who so far have convicted 4 of the 41 individuals of wrongdoing. FCCU shared its findings with OAGA, which ensured ADB could complete administrative procedures regarding corruption and fraud.

34. The Oversight Committee declared 21 credit unions and 41 individuals in the Kyrgyz Republic ineligible to participate in ADB-financed activity for seven years (for the credit unions) to indefinitely (for the individuals). The Oversight Committee also asked OAGA to publicize the case.

P. Case 04-044-0407—Misrepresented availability

35. Two firms each proposed an expert as Bank Training Specialist for a project. Firm A asserted the expert made himself exclusively available to it through its associate firm. Firm B was first-ranked bidder under ADB's quality and cost-based selection procedures. OAGA determined the expert provided Firm B his CV and authorized that firm to use his CV in any assignment that it might find suitable for his qualifications. The expert told OAGA he was unaware Firm B would be using his name to compete in this project. However, OAGA found evidence contradicting that claim. OAGA concluded the expert misrepresented his availability by his conflicting availability statements. OAGA did not find any evidence that the firms misrepresented information to ADB. The Oversight Committee found Firm B's statement

credible and declared the expert ineligible to participate in ADB-financed activity for a minimum of two years.

Q. Case 02-045-0408—Misrepresented work experience

36. OAGA found two contractor firms submitted false work certificates in separate tenders. The investigation showed Firm A's former engineer fabricated that firm's work certificate. Because he is no longer an employee of the firm, OAGA concluded that the former engineer should be accountable for his action as an individual. Firm B's sole proprietor claimed to have not participated personally in the tender because he was on medical leave, and refused to identify who prepared the tender documents for his firm, which included a false work certificate. Although OAGA investigated a third firm, its sole proprietor provided evidence that the work certificate was accurate. However, OAGA was not able to confirm such evidence. Therefore, there was insufficient evidence to establish Firm C violated the Policy.

37. Recognizing the varying degrees of transgression by the firms and individuals, by consensus, the Oversight Committee declared Firm A ineligible to participate in ADB-financed projects for a minimum period of three years; Firm B ineligible to participate in ADB-financed projects for a minimum period of five years; and Firm A's former engineer ineligible to participate in ADB-financed projects for a minimum period of seven years.

38. OAGA was able to confirm Firm C's evidence with further investigation, and the Oversight Committee agreed then to close the case.

R. Case 04-032-0408—Collusion

39. An executing agency identified an appearance of collusion between two joint venture bidders (JV1 and JV2) based on similarities in bid price information. In addition, the representative of JV1 signed the price schedule page in the bid documents of JV2.

40. OAGA's investigation found the irregularities would be impossible to explain without JV1 and JV2 communicating with each other, and neither JV1 nor JV2 satisfactorily explained the irregularities. Evidence showed JV1 and JV2 lead partners met at the JV1 lead partner's office before they submitted bids. OAGA concluded that JV1 and JV2 collaborated in preparing their bid documents.

41. The Oversight Committee declared the lead partners and representatives as individuals of both JV1 and JV2 each ineligible to participate in ADB-financed activity for a minimum of three years. The Oversight Committee agreed no action would be taken on the partners of JV1 and JV2.

S. Case 03-091-0409—Misrepresented work experience

42. One of ADB's resident missions rejected an EA's recommendation to award a contract for equipment because firm proposed for the contract did not meet qualification and experience criteria. Also, the resident mission forwarded to OAGA an allegation that the firm submitted fabricated work certificates, and two EA officials may own the firm. OAGA found the work certificates did not have firm logo, contact details, or corporate seals; had a similar letterhead format; and two of the three certificates had the same facsimile number and the same contact person, while the third had no contact details.

43. The firm explained that they had not checked the authenticity of the performance certificates, which came directly from the manufacturer. The firm implicated an official of EA and a competitor. Furthermore, they said that the integrity of the evidence might have been tampered because they have submitted eight certificates, but OAGA only examined three of them. They emphasized the possibility of their originally submitted performance certificates being replaced by their competitor with the aid of the EA official. However, the firm would not provide contact details of their local counterpart, the manufacturer, the implicated EA official, or the competitor.

44. OAGA's investigation did not find any link between the EA official and the firm, and found that a wholesaler of electric supplier operated out of the address that the firm provided in the bid documents. Also, OAGA found that while the firm claimed also to operate from that address, there was no evidence the firm actually did operate there.

45. The Oversight Committee declared the firm ineligible to participate in any ADB-financed activity for a minimum of seven years.

T. Case 04-024-0409—Collusion

46. Resident mission staff, in conducting due diligence reviewing documents related to procurements ADB would finance, suspected three bidders colluded in a tender for laboratory equipment. OAGA was investigating four related cases, and OAGA and the resident mission staff also found irregularities not related to fraud or corruption in other project tenders.

47. OAGA's investigation found three bidders made identical typographical errors and offered identical specifications for 169 items of laboratory equipment (same brand, model, origin, supplier, and manufacturer) in their respective technical bids, and had a direct business relationship with each other. Also, through two common third party suppliers, these bidders had a privileged position to influence the procurement selection process. OAGA also found five individuals colluded to subvert the project's tendering process, and that one of these five individuals orchestrated this collusive bidding and was assisted by his brother—one of the three bidder's chairman and another bidder's proprietor—and two of the other bidders' proprietors. OAGA confirmed two bidders were related parties by kinship. One of them assisted the other in obtaining another bidder's authorization letter with corresponding manufacturer's authorization letter through the individual that orchestrated this collusive bidding

48. OAGA concluded the EA's Sub-Project Management Unit and its regional evaluation committee were involved in the collusive bidding by establishing restrictive bid specifications and inappropriately disqualifying other bidders.

49. The Oversight Committee declared the three bidders, two suppliers, and five individuals ineligible to participate in ADB-financed projects each for a minimum of seven years. The Oversight Committee approved taking no action against another supplier because of insufficient evidence, and OAGA cautioned that bidder to exercise greater due diligence when participating in ADB-financed projects.

U. Case 04-057-0409—Misrepresentation

50. OAGA opened this investigation to investigate allegations received by a Consultants Selection Committee (CSC) received from an expert that his CV was signed and used without his authorization. Separately, the CSC found differing employment records on CVs of another

expert. To assess the two allegations, OAGA assessed whether Firms A and B were authorized to nominate Expert 1 for this project; confirmed Expert 1's signature was genuine; determined if Expert 1's CV correctly indicated he was full-time staff of Firm B; and evaluate representations by Expert 2, who was nominated by different firms on two proposals, or Firms A or B related to Expert 2's experience, because the CVs in each proposal showed different employment experience.

51. OAGA's investigation cleared the first two concerns, but concluded the latter two issues and concluded there was no basis to determine that Firm A failed to perform adequate due diligence or intended to misrepresent anything in its proposal. OAGA found the incorrect representations of Expert 1 being a full-time employee of Firm B, as well as Expert 2's incorrect employment experience demonstrated Firm B failed to perform adequate due diligence in preparing CVs for proposals. Although that failure to perform due diligence led to errors that could have increased Firm B's proposal's technical evaluation score, because Expert 1 was not available for the position for which Firm A nominated him, the CSC awarded no points when evaluating the proposal. Therefore, while the Oversight Committee found Firm B's lack of due diligence constituted a fraudulent practice under the Policy, it decided that Firm B should only be reprimanded for failing to perform adequate due diligence that led to a misrepresentation.

V. Case 04-033-0410—Collusion and false documents

52. Investigating allegations of potential collusion between a bidder and an EA, and of falsified documents by another bidder, OAGA found EA's bid evaluation report showed Firm A might have obtained confidential information from the EA or the project consultants. Firm A was unable to provide a satisfactory explanation to justify the basis of their itemized bid amounts, which were consistently exactly 7.4 percent below the EA's estimate.

53. OAGA also established that Firm B submitted falsified bid securities. Firm B's general manager stated that a certain group that approached his firm during the prequalification stage of the tender was responsible. The general manager admitted there was negligence on Firm B's part, but stressed there was no malicious intent in submitting the falsified bid security. He stated that a certain person was responsible for the falsified bid security. However, OAGA's investigation found no evidence that Firm B took any action to investigate the matter or report the fraud to proper authorities. The person Firm B reported as having falsified the bid security did not reply to two OAGA letters, though OAGA confirmed delivery.

54. OAGA did not find evidence that the project consultants prepared the detailed estimates or that the EA was involved in collusive practices.

55. The Oversight Committee declared Firms A and B, their respective general managers as individuals, and the person whom Firm B accused of falsifying the bid security each ineligible to participate in ADB-financed activity for a minimum of seven years.

W. Case 04-042-0410—False documents (bid and work certificates)

56. OAGA investigated submission of a false certificate of completion in a tender for the design, supply, installation, testing and commissioning double circuit transmission line. The EA for the project reported to ADB that two of the seven firms that submitted bids were declared non-responsive, and one was found lacking in experience and for submitting questionable documents. OAGA found that the certificate of completion issued by and included in the bid of one firm was not authentic. OAGA confirmed that the signature on the certificate was falsified.

57. OAGA sought clarification from the firm twice, but did not receive any response from the firm, despite having evidence that it received the two letters. The Oversight Committee declared the firm ineligible to participate in ADB-financed activity for a minimum of seven years.

X. Case 03-002-BPHR—False claims (rental subsidy)

58. An OAG audit in 2003 found indications that a staff member violated ADB's Administrative Orders (AOs) by claiming rental subsidy for a property owned by the staff and his spouse through a company. OAGA's investigation determined that a company owned the single-family residential property that the staff member "rented," and the company's majority shareholders included the staff and his spouse. OAGA found no evidence that the staff member asked to be exempted from prohibitions and restrictions within the AOs. OAGA determined that the staff violated the provisions in the AOs. The staff member separated* from ADB. ADB's Budget, Personnel and Management Systems Department (BPMSD) is recovering \$135,249.

Y. Case 04-020-BPHR—False claim and false document (birth certificate)

59. An ADB staff member submitted to BPMSD a birth certificate to support his claim for dependency allowance for a child born 11 October 2003. OAGA's investigation confirmed the 50-year old wife of the staff member participated in bowling tournaments on 10 October 2003 and 17 October 2003. OAGA also was unable to find any records of prenatal care or medical claims from the hospital where the wife allegedly gave birth.

60. Responding to OAGA's findings, the staff member admitted the child was actually a grandchild. The staff member separated from ADB.

Z. Case 04-040-BPHR—False claims (insurance fraud)

61. An ADB staff submitted 97 medical claims totaling PhP 279,466, for herself and her dependents, between 26 September 2003 and 13 March 2004. Suspicious circumstances that led to OAGA's investigation included (1) alterations in amount of invoices, (2) several brands of hypertension medicines and disproportionate number of medicines purchased, (3) purchase of medicines in numerous locations, (4) paying cash, even to ADB retainer doctors, and (5) paying cash for purchases despite direct billing arrangements with drugstores.

62. OAGA established that PhP 128,665 were fraudulent claims paid to the staff member. OAGA found that 28 invoices were false in that no purchases were actually made or the amounts were altered to increase the cost of actual purchases. OAGA found that two medical suppliers do not sell prescription drugs, only food supplements and beauty products.

63. The staff member separated from ADB. BPMSD recovered PhP 141,942, an amount determined by further review of the staff member's claims.

AA. Case 04-059-BPHR—False claims (rental subsidy)

64. OAGA investigated an allegation that an ADB staff member violated the AOs by claiming rental subsidy despite owning a condominium unit suitable for self-accommodation within commuting distance from the duty station. OAGA confirmed staff member actually owned a condominium unit, as indicated in the Certificate of Title of the property. The staff member

* This report will indicate only that a staff member's employment ended and will not distinguish the manner (such as termination, resignation in lieu of termination, or retirement) in which the employment ended.

claimed rental subsidy for a different property, and claimed that his name was used only for the purchase of the property but the property actually belonged to a relative.

65. Considering the specific circumstances of the case and the staff member's explanations, BPMSD reprimanded the staff member and recovered \$21,940, an amount equal to one-year's rental subsidy. In addition, BPMSD barred the staff member from claiming rental subsidy until his name is removed from the certificate of title of the concerned property.

BB. Case 04-060-BPHR—False claims (rental subsidy)

66. OAGA confirmed a staff member had been claiming rental subsidy on a property that he owned, in violation of the AOs. OAGA also found the staff member owned another property suitable for self-accommodation. The staff member separated from ADB. BPMSD is recovering \$123,289 from the staff, the amount of rental subsidy that ADB paid.

CC. Case 04-062-BPHR—False claims (rental subsidy)

67. OAGA investigated an allegation that an ADB staff member claimed rental subsidy on a condominium unit owned by a relative, in violation of the AOs. OAGA confirmed the allegation and found no evidence to suggest that the staff member sought or obtained any exemption from prohibitions and restrictions within the AOs. OAGA was not able to establish whether the staff member had any direct financial interest in the condominium unit.

68. BPMSD concluded that the staff member violated the AOs. The staff member separated from ADB. BPMSD recovered \$307,544 for the period 1 March 1991 to 29 February 2004 because the staff member was not able to provide evidence that he actually paid rent to his relative.

HOW TO REPORT FRAUD OR CORRUPTION

1. Contact the Integrity Division* of the Office of the Auditor General (OAGI) to report concerns or evidence that fraud or corruption may have occurred or is occurring related to any ADB-financed activity. Information concerning the identity of a complainant is strictly controlled and will not be released to other ADB staff or to anyone outside ADB without the consent of the complainant.
2. You may report allegations by contacting OAGI by E-mail, facsimile (fax), mail, in person, or by telephone. Only OAGI staff can access any such communication.
3. When reporting concerns, please provide as much information and detail as possible, including who, what, when, where, why, and how. For further guidance, see our website at "What to Report" (<http://adb.org/Anticorruption/whatto.asp>).

E-mail

4. You may send an E-mail to our secure E-mail server at anticorruption@adb.org. You may also use our complaint form (<http://adb.org/Anticorruption/complaint.asp>).

Facsimile (Fax)

5. You may send information to OAGI's confidential fax at + 63 2 636 2152. This is not a toll-free number, and normal local or long-distance telephone charges will apply.

Mail

6. You may also write to OAGI at the following addresses. Please mark correspondence "Strictly Confidential."

Integrity Division (OAGI)
Office of the Auditor General
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila, Philippines

In Person

7. Visit us. OAGI staff are on the third floor, North Core, of ADB headquarters

Telephone

8. You may telephone OAGI at + 63 2 632 5004. This is not a toll-free number, and normal local or long-distance telephone charges will apply. Only OAGI staff answer this telephone or can access the voice mailbox.

* Effective 1 January 2005, the Anticorruption Unit became the Integrity Division.