

Japan-Vietnam Joint Committee for Preventing Japanese ODA-related Corruption (Anti-ODA-related Corruption Measures)

February 2009

Preface

1. Occurrence of the PCI case and the current situation

(1) In August 2008, in connection with a Japanese ODA loan project, Saigon East-West Highway Construction Project, four former officials of Pacific Consultants International Co., Ltd. (hereinafter referred to as 'PCI') were arrested and indicted, along with PCI as a corporation, on a charge of breach of the Unfair Competition Prevention Law (alleged bribery of foreign public servants). On November 11, 2008, the first trial was held in Japan and the PCI side admitted the fact stated in the indictment, that PCI had handed out about 600,000 US dollars in cash in December 2003 and about 220,000 US dollars in cash in August 2006 to a senior official of the East-West Highway and Water Environment Project Management Unit of HCMC, in return for awarding consulting contracts for the Saigon East-West Highway Construction Project.

(2) In parallel with Japan's trial, investigation is under way in Vietnam, under the leadership of Prime Minister Nguyen Tan Dung, and the Director of the East-West Highway and Water Environment Project Management Unit of HCMC, who allegedly accepted the bribe, was suspended from his job as of November 19, 2008. The Ministry of Public Security started prosecution procedures (i.e. official investigation according to Vietnamese laws) of the case on December 9, 2008.

2. Establishment of the Japan-Vietnam Joint Committee for Preventing Japanese ODA-related Corruption

(1) The PCI case was taken seriously by both Governments because it could undermine the credibility of Japan's ODA to Vietnam. Aware that it is necessary for the Governments, related agencies, and consulting companies in both countries to promptly address and implement effective measures against ODA-related corruption, to regain public trust in Japanese ODA to Vietnam, Mr. Masato Kitera, Director-General of International Cooperation Bureau, Ministry of Foreign Affairs, visited Vietnam from September 18 to 20, 2008. Mr. Kitera informed the Vietnamese

Government of the serious public perception towards the PCI case in Japan and discussed with Mr. Vo Hong Phuc, Minister of Planning and Investment, and other government officials, how to tackle this problem, to regain public trust in Japan's ODA to Vietnam.

(2) Consequently, the Governments of Japan and Vietnam reconfirmed the seriousness of the PCI case and reaffirmed that ODA-related corruption cases, including the PCI case, would be strictly dealt with. Moreover, both Governments agreed to the establishment of a Vietnam-Japan Joint Committee for Preventing Japanese ODA-related Corruption to work jointly towards implementing effective measures against ODA-related corruption.

(3) Subsequently, the Governments of Japan and Vietnam held the first meeting of the Committee on November 7, 2008, and the second one on December 19, 2008. The Committee discussed and examined concrete and effective new measures to be taken by Japan and by Vietnam respectively, to prevent recurrence of similar cases. As a result of the discussion, both Governments agreed to take the following measures.

I. Measures to be taken by the Vietnamese side

With the establishment of the Law on Preventing and Combating Corruption (November 2005), Vietnam has drastically strengthened anti-corruption measures, through such measures as enacting Decree No.107 (defining responsibilities of heads of agencies, organizations, and units for corruption occurrences in their agencies, organizations, or units), Decree No. 120 (detailing regulation and guidance on implementing the Law against corruption) and the Law on Procurement (enacted in November 2005, effective from April 1, 2006). Vietnam further upgraded its measures, by establishing the Central Steering Committee on Anti-Corruption in August 2006, in response to the corruption case at the beginning of 2006, in which the former Director General and other officials of the Project Management Unit 18 of the Ministry of Transport were arrested on a charge of illegal football gambling and bribery. Although the PCI case occurred before the above-mentioned anti-corruption measures were taken, the Government of Vietnam decided to take the following measures to further strengthen its anti-corruption efforts, in response to the PCI case.

1. More transparent and stricter procurement procedures for Japanese ODA loans

(1) Evaluation of consultant bidding proposals by third person(s)

Vietnam issued the Decree on November 14, 2008 to establish a “Public Procurement Agency” under MPI (The Ministry of Planning and Investment). Vietnam will oblige the staff of the “Procurement Support Center” under the Agency, or other organizations or individuals that are qualified, according to the Law on Procurement, to participate, as a fair and independent third party, in evaluation committees (or other similar organizations) conducted by executing agencies for consulting services.

In addition, Vietnam will oblige the staff of the Center to also participate in a bidding evaluation of contractors as a third party.

(2) Capacity building of executing agencies regarding procurement and contract management

Vietnam will start supervision, guidance, and training by the Procurement Support Center by the 1st quarter of 2009 to improve awareness of executing agencies that the basic premise for the success of projects and the prevention of corruption is to evaluate and select consultant proposals fairly and accurately. Vietnam will also improve capacity building of executing agencies regarding operation and contract management of projects.

(3) Introduction of an electronic procurement system

It is effective to introduce an electronic procurement system to comprehensively process procurement information to eliminate attempts at fraudulence. Vietnam will promote the program of electronic procurement from 2009 to 2015. In the program, Vietnam will develop an electronic system to improve transparency, by sharing information on evaluation and bidding results related to the procurement process, while restricting unauthorized access to the system to prevent system tampering.

(4) Public disclosure of procurement information

In case the contract amount for the consulting service exceeds 100 million JPY, Vietnam will place procurement information such as (a) names and nationalities of consulting firms which submitted proposals, (b) names and nationalities of highest ranked consulting firms, (c) names and nationalities of consulting firms to which the contract is awarded, and (d) contract amount. Similarly, in case the contract amount for civil work exceeds 1 billion JPY, Vietnam will disclose information such as (a) names, nationalities and prices of bidders, (b) names and nationalities of successful bidders, (c) names and nationalities of contractors to which the contract is awarded, and (d) contract amount. Such information will be made available in its official newspaper "Procurement Gazette" by the 2nd quarter of 2009. In addition, Vietnam will start posting such information on its official website by the 2nd quarter of 2009.

(5) Enhancement of ex-post audits related to procurement

Besides implementing ex-post audits related to domestic public projects, MPI will also start conducting ex-post audits related to the Japanese ODA loans by the 1st quarter of 2009. In this regard, MPI will consult with the Government of Japan and JICA in deciding which projects will be subject to ex-post audits, so as to maximize the effect of the ex-post audits from the perspective of preventing corruption.

2. Dealing with individual ODA-related corruption

(1) Establishment of a report system, including measures to protect informers

Vietnam established a bidding hot-line at MPI January 1, 2008. Vietnam will establish regulations on co-ordinating related agencies in receiving and handling information on suspicious corruption cases by June 2009. Through implementation of the regulations, Vietnam will further enhance the effectiveness of detecting and handling corruption cases.

Vietnam has established laws on claims and denunciations since 2005, whereby protection of national and foreign informers is provided. Vietnam will establish a separate law to protect witnesses (including nationals and foreigners) by June 2010.

Furthermore, Vietnam will make sure that informers of suspicious corruption cases shall not be treated unfairly in the course of their businesses.

(2) Prompt investigation of corruption cases and information sharing with the Government of Japan and JICA

Upon receiving highly reliable information concerning Japanese ODA-related corruption, Vietnam will promptly investigate and share information with the Japanese side in a timely manner.

3. Strengthening the system / organization to prevent corruption

(1) The National Strategy for Preventing and Combating Corruption towards 2020, which is now under final consideration of the Prime Minister, will be implemented in close consultation with donors.

(2) Based on the Strategy, Vietnam will implement the Action Plan as early as possible, including:

(a) Ratification of the UN Convention against Corruption by June 2009.

(b) Review of the activities of the Steering Committee on Anti-Corruption (both at central and regional levels) for enhanced effectiveness of anti-corruption activities and strengthening of monitoring and supervision by the Central Committee.

(c) Issuance of Regulations on receiving and processing information and denunciations on corruption by June 2009.

(3) The Ministry of Justice will draft a Decree on participation of the general public, social organizations, and socio-professional associations in policy / law-making by June 2009.

(4) The Ministry of Planning and Investment will establish a Code of Conduct / Ethics for bidding by June 2009. Upon the establishment of the Code of Conduct / Ethics, all related agencies and bidding companies will be obliged to sign and observe the Code.

II. Measures to be taken by the Japanese side

JICA has already taken various anti-corruption measures. For example, to ensure transparent procedures of employing consultants, JICA has already established and disclosed guidelines for employment of consultants, and has confirmed consistency of executing agencies' employment procedures with this guideline through JICA's concurrence for conclusion of contract, etc. Furthermore, JICA also discloses each bidding result, etc. on JICA's website. Therefore, it is important to review and enhance existing anti-corruption measures. JICA also decided to improve systems and operations related to anti-corruption measures through revising its guidelines for employment of consultants by March 2009. Moreover, the Government of Japan and JICA will review and institutionalize the system for receiving and processing information related to corruption, since such system is not in place at the moment. Following are the concrete measures to be taken by the Japanese side.

1. Enhancement of existing anti-corruption measures related to Japanese ODA loans

(1) Enhancement of JICA's concurrence procedures

When recipient countries' executing agencies employ consultants, JICA requires executing agencies in the recipient countries to obtain JICA's concurrence at each stage, such as when (a) sending letters of invitation, (b) evaluating proposals, and (c) concluding contracts. Moreover, JICA, in principle, conducts primary examination by outsourcing the task to external experts to make sure whether documents for request of concurrence are consistent with related guidelines. Furthermore, JICA, in its General Terms and Conditions, requires submission of documents which JICA regards necessary.

To prevent corruption, enhancement of JICA's concurrence procedures is necessary. Therefore, JICA will clearly stipulate in agreements and other documents between JICA and the recipient country that JICA requires submission of all documents which JICA regards necessary for concurrence, and the recipient country should sincerely respond to this requirement.

(2) Expansion of ex-post audits

JICA has executed ex-post audits only on procurement procedures for employing contractors by outsourcing the task to external experts. From now on, JICA will also execute ex-post audits on the procedure for employing consultants. When executing ex-post audits, if necessary, JICA itself will audit proposals (including proposals for projects, past records of the company, background of personnel, etc.) submitted by bidding companies. Furthermore, as for on-going projects (which have no stipulation of ex-post audits in their agreements and other documents between the Government

of Japan or JICA and the recipient country), JICA will execute ex-post audits, if necessary, with the cooperation of recipient countries.

(3) Reinforcement of supporting employment of consultants

JICA has dispatched experts for technical assistance to recipient countries' executing agencies, if they lack experience in procurement, including employment of consultants. From now on, in view of reinforcing support for fair and transparent employment of consultants, regarding large consultant contracts (for example, contract fee exceeding 1 billion JPY), regardless of executing agencies' experience, JICA will dispatch such experts.

(4) Enhancement of procurement seminars

JICA has held procurement seminars targeting executing agencies' staff in charge of employing consultants and procurement. From now on, JICA will also provide explanations and discussions of anti-ODA-related corruption measures in these seminars.

(5) Sharing information on the companies involved in corruption

The Government of Japan and JICA will share information on the companies involved in corruption with international institutions and other donor countries. To appropriately grasp information on companies which took part in corruption in the past, the Government of Japan and JICA will also introduce a system, for example, to require bidding companies to submit a written pledge to state that it had not engaged in corruption in past aid projects.

2. Introduction of new measures to Japanese ODA loans

(1) Introduction of QCBS (Quality and Cost Based Selection)

JICA will stipulate in the Guidelines for the Employment of Consultants under Japanese ODA Loans (hereinafter referred to as 'Guidelines') that it introduces aspects of cost based evaluation in the selection process of consultants. However, JICA seeks to design a well-balanced scheme, based on such principles that QBS would be maintained when it is appropriate to evaluate only on the basis of quality-related elements, and that, for the sake of securing adequate quality and safety, the quality elements will be given due weight when evaluating.

(2) Limitation on the negotiated contracts

JICA has allowed executing agencies to employ specific consultants if certain conditions stipulated in the Guidelines are met. However, JICA will stipulate in the Guidelines that such negotiated contracts shall be limited to exceptional cases and apply stricter rules regarding awarding negotiated contracts.

(3) Introduction of debriefing

JICA will stipulate in the Guidelines that executing agencies shall disclose the final results of the evaluation to those bidders unselected, and offer explanation upon request by the bidders. By doing so, the accountability of executing agencies should be clearly defined, and JICA, based on the Guidelines, will provide appropriate instructions to executing agencies when they fail to respond to a bidder's request.

3. Handling of information related to corruption

(1) Establishment of the mechanism of handling information

The Government of Japan and JICA will institutionalize a mechanism of handling information on corruption, including bribery. The mechanism will receive, comprehensively grasp, examine, and when necessary, notify such information to recipient countries. Also, it will be stipulated in agreements and other documents between the Government of Japan or JICA and the recipient country, that recipient countries shall not unfairly treat informers of corruption cases.

(2) Accountability of the Governments of the recipient countries

It will be stipulated in agreements and other documents between the Government of Japan or JICA and the recipient country that if information related to corruption cases involving officials of recipient countries is received by the Government of Japan and JICA, the Government of Japan and JICA have a right to request explanations from the Governments of the recipient countries.

(3) Dissemination of information on these new mechanisms to the governments of the recipient countries and the consultants' community.

The Government of Japan and JICA will disseminate information regarding how to handle information on corruption and the accountability of the recipient countries to the Governments of the recipient countries and the consultants' community in Japan.

4. Enforcement of compliance by the consultants' community in Japan

The consultants' community in Japan will further strengthen and promote capacity-building activities related to the compliance and the on-site monitoring among their member firms by organizing seminars and workshops. The consultants' community will also encourage small and medium-sized consulting firms to introduce such activities on the compliance. Furthermore the Government of Japan will hold meetings with the consultants' community to monitor and review the community's action for compliance, and will also encourage the community to enforce compliance activity.

III. Follow-up

Regarding the above-mentioned measures, the progress will be closely monitored and reviewed at such occasions as the ODA Policy Consultations, and the Dialogue on Japanese ODA Loans between the Government of Japan and the Government of Vietnam.