



Contributions to Finance and Accounting

Duncan Smith

Promoting Integrity in the Work of International Organisations

Minimising Fraud and Corruption in
Projects



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Minimising Fraud and Corruption in Projects

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Corruption, embezzlement, fraud, these are all characteristics which exist everywhere. It is regrettably the way human nature functions, whether we like it or not. What successful economies do is keep it to a minimum. No one has ever eliminated any of that stuff—Alan Greenspan

Alan Greenspan is an American economist who served as Chair of the Federal Reserve of the United States from 1987 to 2006.

Less corruption means lower revenue leakage and less waste in expenditures, and higher quality of public education and infrastructure

In April 2019, the International Monetary Fund published the results of research they had undertaken noting that about US\$1 trillion in tax revenues annually could be generated by reducing corruption. The IMF said that fighting corruption could also reduce waste, help to improve overall public trust in government and even help to lift test scores of school students.

Foreword

The American bank robber, Willie Sutton, who made well over \$2 million over a 40-year career in the early part of the twentieth century, reputedly replied to a reporter's enquiry as to why he robbed banks by saying, 'Because that's where the money is'.

Institutions that give grants or make loans are irresistible to crooks and fraudsters the world over. The vulnerability of organisations which hold themselves out as grant-givers or loan-providers is a cause of enormous anxiety in the private banking and public sector; one has only to look at the billions of pounds sterling targeted by fraudsters seeking to take advantage of the UK Government's 'bounce back' loan scheme (BBLs) to help small businesses recover from the economic impact of the coronavirus pandemic to gauge the scale of fraud in this very limited area. Up to a third of the £45 billion lent through BBLs for small businesses, which can borrow up to £50,000, is already thought to have been subject to fraud. Ultimately, the public is the loser as the loans are guaranteed by the taxpayer.

Procurement fraud is an area where the public sector is particularly vulnerable. Fraudsters seeking to obtain contracts to supply goods or services make use of a range of illicit activities, from bid-rigging during the pre-contract phase to false invoicing in the post-contract phase. In extreme cases, fraudsters set up phoney companies to tender for contracts, bidding against themselves to create the impression of genuine competition and driving the price up. Cartels are set up in secret to distort competition and direct their sights at public sector institutions offering competitive tenders. The UK has seen repeated attempts to manipulate and skew the tendering process in government contracts, particularly in the health sector and defence. The amounts at stake are very high and the likelihood of detection and subsequent conviction is worth the risk for a determined organised criminal network. Detection of fraudulent attacks on the system is not as effective as it could be in many sectors and those charged with ensuring that the organisation is protected from harm often lack essential training, skills and resources to counter the sophisticated weapons and strategies adopted by today's international cyber-criminals.

There is also a prevailing suspicion, not without justification, that it would be difficult to commit procurement fraud without insider help. This is where the issue of corruption is inextricably linked to fraud.

Some years ago, legal history was made in the UK with the longest (and possibly the most expensive) fraud trial in history, arising out of a procurement fraud allegedly committed by a number of companies bidding to secure the lucrative contract to extend the then, new, Jubilee line on the London Underground rail network. The two main defendants ran a quantity surveying firm and were said by the Crown to have corrupted certain London Underground Limited personnel in order to obtain confidential financial information. This, they had then fraudulently used on behalf of client contractors in relation to the original tendering process, and later on behalf of several client contractors in relation to claims against LUL arising out of contractual variations. With the exception of one defendant, an employee of LUL, who pleaded guilty on a limited basis to the charge of corruption, all the defendants, who were charged with conspiracy to defraud LUL, denied any wrongdoing and were ultimately acquitted following a 21-month trial reputedly costing some £60 million.

Fraud against big institutions and organisations cannot be successfully carried out without the existence of a number of key factors: these include lax controls and supervision within the target organisation, complacency ('We're not at risk'), lack of fraud awareness and anticipation and poor direction and a lack of moral leadership from senior management. It is a truism that an ounce of prevention is worth a ton of enforcement—what is often described as better the railings at the top of the cliff to stop someone falling than the ambulance at the bottom when it is too late. For many years, the Fraud Advisory Panel has urged companies and professionals to gear up their fraud prevention tools to guard themselves against becoming the victims of fraud. Awareness of fraud risk is now better than it has ever been, but fraud is becoming ever more prevalent and the losses are reaching previously unthinkable levels worldwide.

Many organisations should be complimented on the recognition of their exposure to fraud and their willingness to devote resources to combatting it. Organisations I have worked with and am still closely connected to within the UK and Europe more widely have taken up the fraud challenge and have put in impressive and expensive controls and strengthened their internal investigatory departments. There are now dedicated university departments teaching counter-fraud techniques to both law enforcement and to investigators employed in public and private organisations such as the NHS and banks. Fraud networks have been set up around the UK raising awareness of fraud prevention techniques and trends in fraud and at grass-roots level, television programmes and newspaper columns highlight the common 'scams' from rogue traders to cyberattacks on bank accounts which affect us all. International co-operation in fraud law enforcement is now a highly developed tool in combating fraud.

Fraud affects everyone. We are all the losers. Procurement fraud and fraud against public institutions should never be dismissed as 'someone else's problem' for governments or the bodies themselves to sort out. Identification of fraudulent

techniques and of individuals and groups who have offended before should be a top priority. Debarment processes to stop known fraudsters and those who manipulate markets and distort the integrity of competition being allowed to participate in tendering for contracts and applications for loans should be supported. Vigilance and effective action are needed from both inside the organisation and from law enforcement to make this form of crime uneconomic and those who commit it likely to be put out of business for many years and drained of their ill-gotten gains. Where the appropriate legislative tools do not exist, governments should be pressed to introduce them. Organisations can do more to protect themselves by being alert to their own exposure to fraud; the techniques they need to instal their own railings at the top of the cliff are available. They must acknowledge the need and use them.

Rosalind Wright CB QC is a barrister and a former Director of the Serious Fraud Office and the Chairman of the Fraud Advisory Panel. She was the Director of Policy and General Counsel at the Securities and Futures Authority, chairman and member of the Supervisory Committee of the European Anti-Fraud Office (OLAF), and before that, an Assistant Director of Public Prosecutions in England and Wales. She is a bencher of Middle Temple and is also chair of the disciplinary committees of a number of professional regulatory bodies. She is a member of the Exclusion Committee of the EIB and the Complaints Commissioner of the London Metal Exchange.

Rosalind Wright
March 2021

Preface

Duncan Smith is a barrister (a member of London's Gray's Inn) and was called to the Bar of England and Wales in 1989. He works in the European Investment Bank's Fraud Investigation Division as Deputy Head, based in Luxembourg and, having previously conducted investigations including into large international corporations, he is responsible for a range of policy, training, outreach, prevention and deterrence issues.

Duncan spent 10 years prosecuting corporate fraud and corruption offences at the Department of Trade and Industry and at the Serious Fraud Office, in London, UK. He then joined the World Bank's Investigation Unit in Washington DC in 2000 as Team Leader and then moved over to become policy/debarment adviser, before joining EIB in Luxembourg in early 2007.

During his time at the World Bank, he identified the need for greater coordination between international organisations in the fight against fraud and corruption. Consequently, he co-authored the IFI Task Force's Uniform Framework Agreement (2006) that harmonised the definitions of fraud and corruption across the Multilateral Development Banks and provided general principles for the conduct of MDB investigations. He is author of the EIBs Anti-Fraud Policy in 2007–2008 (and the update in 2013).

Moreover, Duncan served on the Secretariat of the Conference of International Investigators between 2004 and 2017, coordinating annual conferences for investigators from a wide range of international organisations. He was also an external expert undertaking reviews of the investigation functions at the World Food Programme (WFP, based in Rome) and the European Patent Office (EPO, based in Munich).

Duncan is the founder (in 2003) of regular coordination meetings between the Heads of Investigations of the MDBs. He is the author/co-author of a number of documents that provide a harmonised approach that each participating MDB institution can adopt, including the IFI Uniform Framework Agreement, General Principles and Guidelines for Sanctions and MDB Harmonised Principles on Treatment of Corporate Groups. In raising awareness of the work of EIB's investigation function, he has written a number of articles for the FCPA Blog.

Any opinions or conclusions expressed herein are those of the author and do not reflect the views of the European Investment Bank Group, its management, Vice-Presidents and President or the Board of Directors (or indeed of any previous employer).

Luxembourg, Luxembourg

Duncan Smith

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I am extremely grateful to the many people who have assisted in creating, designing and publishing this book.

It is the summation of many years of experience working as a prosecuting lawyer at the Department of Trade and Industry (as it was then called) and the Serious Fraud Office in London and then in the investigation teams at international institutions (the World Bank in Washington DC and European Investment Bank in Luxembourg).

I owe a big thank you to Jan Willem, Bernie, Johan, Dominik, Sabrina, Marco, Alex, Gijs, Monique and all my colleagues in IG/IN for their support and assistance. I am also very grateful to many colleagues for their assistance over the years in the international arena (including Steve Z, Paul LR; Franz B., Ryna F, Yannick S, Dina D and Laura V when I was at World Bank and since; Lisa R, Enery Q, Rohan S and Chiawen K from EBRD; Samir F from IDB; Peter P, Clare W and David B at ADB; David W at the Global Fund; and Brett S at UNDP). It is difficult to think about World Bank INT without considering the lives of Christina and Christian (both WB).

Thanks also to Janet & Mark for encouraging me to complete it and seek its publication.

I have a wonderful family (my wife Joanne and daughters Laura, Kirsty and Ella) all of whom have supported me at every point along my journey of recovery after my serious cycling accident in 2018—which had me in a coma for a few days and a wheelchair for a few weeks (later, during my months of recovery, I started making notes that subsequently have transformed into this book!). My family has been very kind and patient, working hard to ensure my continued health and happiness. Thank you for everything!

Any errors or mistakes are mine and mine alone.

This book is correct as of January 1, 2020.

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Abbreviations

| | |
|---------------|--|
| ADB | Asian Development Bank |
| AFD | France's Agence Francaise de Development |
| AfDB | African Development Bank |
| AIIB | Asian Infrastructure Investment Bank |
| CII | Conference of International Investigators |
| DfID | UK's Department for International Development |
| DANIDA | Danish International Development Agency |
| (US) DoJ | Department of Justice |
| EBRD | European Bank of Reconstruction and Development |
| EEA | European Environment Agency |
| EIB | European Investment Bank |
| EIF | European Investment Fund |
| EPO | European Patent Office |
| FAO | Food and Agricultural Organization |
| FIFA | Fédération Internationale de Football Association (international governing body of association football) |
| Global Fund | The Global Fund to Fight AIDS, Tuberculosis and Malaria |
| GTZ | Germany's Technical Cooperation Agency |
| IADB (or IDB) | Inter-American Development Bank |
| IBRD | International Bank for Reconstruction and Development (part of the World Bank) |
| ICSID | International Centre for Settlement of Investment Disputes (part of the World Bank) |
| IDA | International Development Association (part of the World Bank) |
| IFC | International Finance Corporation (part of the World Bank) |
| IFI | International Financial Institution |
| INTERPOL | International Criminal Police Organization |
| IOC | International Olympic Committee |
| (WB) INT | The World Bank's Integrity Vice-Presidency |
| MDB | Multilateral Development Bank |

| | |
|---------|---|
| MIGA | Multilateral Investment Guarantee Agency (part of the World Bank) |
| MoU | Memorandum of Understanding |
| NATO | North Atlantic Treaty Organization |
| ODA | Canada's Official Development Assistance |
| OLAF | EU Commission's Office Européen de Lutte Anti-Fraude (European Anti-Fraud Office) |
| OSCE | Organization for Security and Cooperation in Europe |
| SFO | The UK's Serious Fraud Office |
| SIDA | Swedish International Development Cooperation Agency |
| UN | United Nations |
| UNEP | UN Environment Programme |
| UNDP | UN Development Programme |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNICEF | The United Nations Children's Fund |
| UN OIOS | United Nations Office of Internal Oversight Services |
| UNRWA | UN Relief and Works Agency |
| US AID | US's Agency for International Development |
| VW | Volkswagen AG |
| WFP | World Food Programme |
| WMO | World Meteorological Organization |
| WTO | World Trade Organization |

Chapter 1

Introduction



There are many international organisations trying positively to influence the way in which the world is developing. There are numerous reasons why there are so many international organisations and why they were founded—to maintain peace and stability (Organisation for Security and Cooperation in Europe—OSCE¹ and the North Atlantic Treaty Organisation—NATO²), to provide rules for international trade (World Trade Organisation—WTO³), to monitor meteorology (World Meteorological Organisation—WMO⁴), to promote cooperation between Police forces (INTERPOL),⁵ to promote positive environmental practices (UN Environment Programme—UNEP⁶ and the European Environment Agency—EEA⁷) to identify and name but a few. In addition, there are a number of international institutions which aim to alleviate poverty, to promote development and provide funding to poorer parts of the world.

The international financial institutions (IFIs) include major ones such as the European Investment Bank (EIB), the Asian Development Bank (ADB), African Development Bank (AfDB), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IADB) and the World Bank (hereinafter ‘the six banks’ or ‘six MDBs’, short for Multilateral Development Banks).⁸ These MDBs have a wide portfolio of loans and grants to a range of beneficiaries in the public and private sectors and seek to promote development.

¹www.osce.org.

²www.nato.int.

³www.wto.org.

⁴www.public.wmo.int/en.

⁵www.interpol.int.

⁶www.unenvironment.org.

⁷www.eea.europa.eu.

⁸Their websites are provided on many occasions through this book.

There are also international financial organisations which have developed a more regional character (such as the Nordic Investment Bank,⁹ Black Sea Trade and Development Bank,¹⁰ Islamic Development Bank,¹¹ Council of Europe Development Bank,¹² Caribbean Development Bank,¹³ East Africa Development Bank,¹⁴ West Africa Development Bank,¹⁵ Central American Bank for Economic Integration,¹⁶ Development Bank of Latin America¹⁷ etc.). There are also many non-bank organisations linked to or operating under the auspices, mandate or authority of the United Nations.

The list of six large MDBs (see above), as well as many of the regional banks, are international but publicly owned financial institutions ('banks') that were founded to finance and support projects that would assist in the development of poorer countries (e.g. build roads to, for example, improve access to markets, build housing, promote social sustainability, etc.). More recently, the MDBs have added environmental sustainability and reducing the impact of climate change to their list of aims and policy objectives.

Those organisations operating under the mandate of the UN tend to be more focused on specific issues such as the Food and Agriculture Organisation of the United Nations (FAO)¹⁸ and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).¹⁹

The opening quote from Alan Greenspan states that 'corruption, embezzlement, fraud ... exist everywhere' including to affect the work of international organisations but that '... successful economies ... keep it to a minimum'. This quote is accurate and graphically demonstrates the importance of integrity and how fraud and corruption can affect (even to the extent of infesting) the work of different organisations operating in different sectors and economies around the world.²⁰ The quote

⁹www.nib.int.

¹⁰www.bstdb.org.

¹¹www.isdb.org.

¹²www.coebank.org.

¹³www.caribank.org.

¹⁴www.eadb.org.

¹⁵www.boad.org.

¹⁶www.bcie.org.

¹⁷www.caf.com.

¹⁸www.fao.org.

¹⁹www.unrwa.org.

²⁰Recently fraud and corruption have tainted the US education sector, as noted by a number of news reports and articles including on 7th February 2020 one from the BBC, as follows: 'College cheating scandal: Pimco tycoon jailed for 'chutpah': The former head of a top US investment firm has been sentenced to nine months in prison for his role in the US universities admissions scandal ... The US college admissions scandal has seen dozens of defendants indicted for allegedly cheating and bribing to get their children into elite universities, like Yale and Stanford. The parents - many of whom are celebrities or wealthy business executives - allegedly paid a firm as much as \$6.5m (£4.9m) to cheat on students' college entrance exams or bribe top coaches to offer fake

also notes that the positive aims and goals such as efforts to develop economies, provide employment and reduce starving and hunger are subject to various illegal and/or unethical practices that will reduce their effectiveness and some of the funds will be mis-applied, possibly being deliberately mis-used or stolen.

To avoid such problems completely in the global economy is not possible: in developed economies—in European countries, North America, Australia, New Zealand and Singapore, for example—it is difficult enough to promote integrity and to reduce the effect of fraud and corruption despite the presence of project staff, local regulators, accountants/auditors, active and uninhibited press, interested third parties and active local law enforcement; to avoid those problems in developing economies where such groups are not common and if they do exist, may be less effective and operate in more of a struggle, if indeed they are functioning at all, is indeed very difficult. This is the case irrespective of the treaties signed and international commitments adopted, the rules and procedures that may require the country to try to promote positive, good practices and rational assessment of the products and services on offer and assistance in monitoring developments in the project.

One of the ways in which the six MDBs have sought to deter bad conduct is by giving themselves (rather than needing to rely on others) the ability to review and, if necessary, conduct a detailed investigation of allegations of integrity violations in the projects they have funded. In particular the six MDBs have all adopted harmonised rules (and more detailed Investigation Procedures) that I helped to draft in 2006²¹ with the result that the same type of misconduct, resources permitting, would be investigated in the same way by any of the six organisations.

In addition, five of the MDBs (not EIB) have signed the Cross-Debarment Agreement in 2010 so that an entity or individual that is sanctioned following a finding that the entity has been engaged in fraud, corruption, collusion, coercion (or other misconduct such as obstruction) will be excluded from winning future contracts as part of a project financed by any of them.

Such an investigation could, amongst other results, lead to an identification of the misconduct by a publicly identified company and the debarment of that entity from other, similar projects in the future. Such rules are published and each organisation endeavours to ensure they can be relied upon if the need arises.²²

The integrity violations of fraud, corruption, collusion and coercion can present serious economic and financial challenges to a project, as well as the entity/entities concerned and can threaten not just the integrity and the successful implementation of the project but the effectiveness and compliance with laws designed to prevent death/injury of the public when the project is completed. If the newly constructed

athletic scholarships. The colleges have not been accused of any wrongdoing and are investigating the matter internally. Fifteen parents are still contesting the allegations, and their trials are expected to take place later this year. US actress Lori Loughlin . . . is among the 50 total individuals - including coaches and other associates - is charged in the case . . . ' www.bbc.com.

²¹The Uniform Framework for Preventing and Combating Fraud and Corruption, which can be found published on most of the 5 MDBs websites and at: www.crossdebarment.org.

²²For example, the MDB cross debarment website at www.crossdebarment.org.