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- PACS -

Project Anti-Corruption System

(Construction Projects)

A paper presented by

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*at the
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Summary

Transparency International has developed a **Project Anti-Corruption System (PACS)** specifically for construction projects.

The continuing prevalence of corruption in construction projects requires governments, funders and project owners to take preventive measures to limit corruption on a project-by-project basis. PACS is designed for this purpose. Implementation of PACS may be required by governments as a pre-requisite for project approval, by funders as part of the funding package, or by public or private sector project owners as a condition of participation in a project.

Corruption in construction can result in overpriced, defective and dangerous projects. The implementation of PACS is therefore in the interests of governments, funders and project owners.

The implementation of PACS is also in the interests of contractors, consultants and suppliers, who are frequently the victims of corruption on a project. Their competitors may win the project through bribery. They may be subject to extortion and fraud during tender and execution.

The implementation of PACS on a project will materially reduce these risks.

PACS is a modular system which applies a variety of anti-corruption measures to all major project participants throughout their involvement in a project. These measures include independent monitoring, due diligence, contractual commitments, procurement requirements, government commitments, a corporate programme, rules for individuals, training, transparency, reporting and enforcement. PACS targets both bribery and fraud. Although PACS has been designed as a project system, individual Modules (such as those relating to disclosure, benefits, training, and rules for individuals) may also be used by companies as general anti-corruption tools.

As PACS is a new product issued in January 2007, it has not yet been implemented on any project. However, Catherine Stansbury and Neill Stansbury, who are the authors of PACS, are both construction lawyers who have worked in the construction industry for over 20 years on over 70 major projects in 20 countries. They set up and lead Transparency International's Construction and Engineering Initiative worldwide. They have written a number of reports in relation to corruption in the construction industry which have concentrated on the measures necessary to limit such corruption. They have also written an anti-corruption code for individuals in the UK construction and engineering industry. PACS is based on the combined knowledge and experience of its authors.

It is anticipated that, if it is operated properly, PACS could have a significant impact in preventing corruption on projects and in detecting corruption where it occurs. This will have the combined effect of reducing the cost of construction projects and also improving quality. PACS should therefore provide a material enhancement to the sustainability of road financing and investment.

The 19 PACS Modules can be accessed through Transparency International's website: www.transparency.org/tools/contracting/construction_projects

The PACS Executive Summary (Module 1), which is attached to this Abstract, provides a detailed explanation of PACS, and a summary of each Module.

In this presentation, I will explain how PACS works.

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- PACS -

Project Anti-Corruption System

(Construction Projects)

Module 1

Executive Summary

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Disclaimer: Professional advice should be taken to ensure that necessary amendments are made to this Module to provide for the requirements of the relevant parties and to reflect the law and circumstances in the relevant jurisdiction. Neither Transparency International nor the authors accept any responsibility for the consequences of any action taken in reliance on this Module.

- PACS -

MODULE 1

EXECUTIVE SUMMARY

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The justification for PACS

What is PACS?

1. PACS (Project Anti-Corruption System) is a modular system designed to reduce corruption on construction projects.
2. It applies only to the project on which it is to be implemented.

Is a project anti-corruption system necessary?

3. Corruption, for the purposes of PACS, includes bribery, extortion, fraud, collusion, money-laundering and any similar activity. These offences can occur during any phase of a construction project, at any level in the contractual hierarchy, and may be committed by various types of project participant. Thus, there may be corruption in project identification, project financing, design, tendering, provision of works, materials, equipment and services, variations, approvals, payment, concealment of defects, and submission of claims. Those involved may include government officials, funders, project owners, contractors, suppliers, consultants, sub-contractors, agents, and other business partners.
4. There is no simple method by which to limit such corruption. A number of methods must be used which impact on all major participants throughout the project. To assume that corruption on a construction project will be significantly reduced by one or two measures is to underestimate the diversity of ways in which such corruption can occur.
5. Comprehensive systems and regulations have been developed and implemented to improve safety and quality in construction projects. Corruption in construction projects causes considerable loss both socially and commercially, and can result in corporate and individual criminal liability. As with quality and safety, a comprehensive and systematic approach to limit corruption on individual projects should be adopted if loss caused by corruption is to be reduced to any significant extent.
6. PACS has been developed for this purpose.

How will PACS limit corruption on a project?

7. PACS uses a variety of anti-corruption measures and tools which are contained in separate Modules. Schedule A to this Executive Summary summarises the PACS Modules. Schedule B to this Executive Summary summarises how PACS is operated.
8. PACS brings within the scope of its anti-corruption measures all those project participants who could become involved in significant corruption. These parties are subject to the PACS measures throughout their involvement in the project as follows.
 - (1) **Major project participants.** The project owner, major contractors, suppliers, consultants, sub-contractors, and their respective agents, joint venture partners and related companies are brought within the scope of PACS by the following measures:
 - (a) **Due diligence:** Details of the major project participants are provided by the relevant parties in Disclosure Forms (Module 3). The Independent Assessor and the relevant project participants examine these details to assess whether they provide any indication of corruption. They do so by using the Disclosure Assessment Guide (Module 4).

- (b) Anti-corruption contractual commitments: The project owner and major contractors, suppliers and consultants are each obliged to sign an Anti-Corruption Agreement (Module 5) which details the parties' anti-corruption obligations. The Agreement provides remedies for corruption and for breach of the Anti-Corruption Agreement.
- (c) Anti-corruption undertakings: Major contractors, suppliers and consultants are required to obtain undertakings from their major sub-contractors, agents and related companies which are equivalent to the undertakings which they have provided in their Anti-Corruption Agreements. They are obliged to monitor compliance with these undertakings and to enforce penalties for failure to comply with those undertakings.
- (d) Monitoring: The appointment of the major project participants, their terms of contract, their works and services, and their general conduct is monitored for corruption by the independent assessor who is appointed under the Independent Assessor Agreement (Module 2).
- (e) Anti-Corruption Programme: The major project participants are obliged, under the Anti-Corruption Agreement and undertakings, to implement an Anti-Corruption Programme (Module 10) for the duration of the project. These obligations include appointing an integrity manager, implementing appropriate management controls, requiring their officers and employees to comply with Anti-Corruption Rules for Individuals (Module 11), requiring disclosure of gifts and other benefits in a Benefits Register (Module 14), and providing anti-corruption training to their officers and employees using the Anti-Corruption Training Manual (Module 12).
- (f) Anti-Corruption Procurement Requirements: The major project participants are obliged to comply with the Anti-Corruption Procurement Requirements (Module 7).
- (g) Transparency: The major project participants will be subject to further scrutiny as a result of the Project Transparency Policy (Module 13). Under this Policy, details regarding the project and the relevant contracts must be publicly disclosed on the project website by the project owner. This enables the public and the project participants to be more aware of the project structure, specification and costs, and so helps both reduce and uncover corruption.
- (h) Reporting: The major project participants are obliged to report corruption to the Independent Assessor who must investigate the reports. If the Independent Assessor believes there is prima facie evidence of corruption he will report it to the criminal authorities, the funders and other affected parties.
- (i) Enforcement: Enforcement in the event of corruption by the major project participants is achieved both through the remedies provided in the Anti-Corruption Agreements and undertakings, and by the involvement of the criminal authorities (who will receive reports from the Independent Assessor and/or other parties).

All of the above will serve to deter corruption as the parties will be aware that, because of the implementation of PACS, corruption is more likely to be detected. The above measures will also enable corruption to be more easily detected.

- (2) **Funders** include any organisation providing financial aid, project financing, insurance, export credits or guarantees in relation to the Project. Funders are brought within the scope of PACS by the following measures:

- (a) Awareness: Funders will be notified of the implementation of PACS (or may have required its implementation themselves) and therefore will be aware that the reduction of corruption on the project is a high priority.
- (b) Transparency: The terms and conditions of funding will be disclosed on the project website in accordance with the Project Transparency Policy (Module 13). Any refusal by a funder to disclose such information will also be disclosed on the project website. Disclosure of the terms and conditions of funding will assist both in revealing any corruption in terms of funding, and also any inadequacies in the funder's procedures in terms of due diligence and good governance. In particular, each funder will be asked to disclose on the project website the steps taken by it, if any, to assess the worth of a project and to monitor the use of funds provided to a project.
- (c) Reporting: Funders will receive reports from the independent assessor relating to corruption by others on the project, and so will have the opportunity to take appropriate action. The independent assessor is obliged to report his views as to the adequacy of a funder's response to reports of corruption.
- (d) Enforcement: Funders will not be obliged to sign an Anti-Corruption Agreement. Nevertheless, they will remain subject to the applicable criminal and civil law. The criminal authorities will be able to take action in the event of corruption by a funder reported to them either by the Independent Assessor or any other party.

Those funders who wish to have more involvement in limiting corruption on funded projects will be provided with a greater opportunity for doing so. There will also be a greater probability that corrupt activity by funders and inadequate monitoring of provision and use of funds by funders will be exposed.

(3) **Government departments** are brought within the scope of PACS by the following measures:

- (a) Government as project owner: In public sector projects, the government will be the project owner and so will be bound by the obligations outlined above for major project participants.
- (b) Commitments: Those government departments who are not project owners, but who are involved in providing permits and licences, will be tied in to PACS by providing Anti-Corruption Government Commitments (Module 9). Under these commitments, they agree to take steps to limit corruption by their officials. They also specify the name of a government official to whom reports of government corruption may be reported, and provide information as to the official fees which should be charged for permits, and the time-scales which should apply to the issue of those permits.
- (c) Transparency: The Commitments referred to in the previous paragraph will be disclosed on the project website. Details of government permits required for the project and the official fees and time-scales for issuing those permits will also be disclosed.
- (d) Reporting: Individual employees of the major project participants are advised (subject to safety concerns) to inform government officials who are demanding bribes that payment of bribes is prohibited by their company and must be reported. They are also advised to report to their company and the Independent Assessor any incidents of government corruption. Individual employees will also be provided with copies of the Anti-Corruption Government Commitments (referred to above) which may be shown to obstructive government officials.

- (e) Enforcement: Under the Anti-Corruption Government Commitments, the government departments commit to taking appropriate actions against corrupt officers. In addition, these officers would be subject to criminal prosecution.

The above measures increase the likelihood that any attempts at extortion by government officials may be discouraged or, if not, will be made public and reported to the criminal authorities.

- (4) **Individual officers and employees:** Officers and employees of the major project participants who are involved in the project will be brought within the scope of PACS by the following measures:

- (a) Anti-Corruption Rules: Officers and employees are obliged to comply with the Anti-Corruption Rules for Individuals (Module 11). These Rules prohibit corruption by individuals in relation to the project. These Rules also specify limits as to the gifts and hospitality that may be provided or accepted by employees in relation to the project and require all such benefits to be registered in a Benefits Register (Module 14). The Rules must be posted up in prominent positions and so serve as a constant reminder to officers and employees as to the activities that are prohibited.
- (b) Training: Major project participants are obliged to hold anti-corruption training sessions for their officers and employees. They do so using the Anti-Corruption Training Manual (Module 12). These sessions inform officers and employees as to the nature of corruption, how liability for corruption may be incurred, and what to do when confronted with corruption. Employees are made aware of their obligations under PACS and of the role of the independent assessor and so are made aware that there is a greater likelihood that any corrupt activity will be detected.
- (c) Monitoring: The conduct of officers and employees is monitored internally by the parties' integrity manager (appointed under the Anti-Corruption Programme – Module 10) and externally by the independent assessor.
- (d) Reporting: In the training sessions, employees are advised as to the circumstances in which they may report corruption. The Anti-Corruption Rules for Individuals provide the contact details of the appropriate person in their company and of the Independent Assessor to whom they may make such reports. They are also informed that they make their reports anonymously. The Independent Assessor is under a duty to report corruption by employees and failure by them to comply with the Anti-Corruption Rules for Individuals.
- (e) Protection for those reporting corruption: The independent assessor is under an obligation to the Project Owner to keep confidential the identity of those reporting corruption, unless they give written consent to their identity being disclosed. Companies are also required, as part of the Anti-Corruption Programme, to adopt an internal system of reporting which protects individuals who have made reports.
- (f) Enforcement: Officers and employees who are involved in corruption are subject to dismissal by their employers and criminal prosecution.

The above measures will help to ensure that employees will be more reluctant to participate in corrupt activity and that they will be better equipped to recognise, deal with and report corruption. Persuading individuals not to become involved in corruption is an essential element of corruption prevention as corrupt activity, whether corporate or private, is committed only through individuals.

Will PACS work?

9. PACS cannot guarantee that significant corruption will be eliminated from a project. Nevertheless, the use of PACS will make it materially more difficult for corruption to occur and will increase the probability that corruption is detected and reported. This latter possibility will itself act as a deterrent to corruption.

Why use PACS?

10. The use of PACS on a project will:
- (1) reduce the risk of financial and social damage to the public resulting from corruption in that project;
 - (2) give funders some degree of assurance that their money is being properly spent;
 - (3) level the playing field for all major project participants in that, for the duration of their involvement in the project, these participants will be subject to the same anti-corruption measures, regardless of the ethical policies which they may or may not have adopted outside the context of the project;
 - (4) reduce the risk of a project participant being a victim of corruption in that project;
 - (5) reduce the risk of a project participant and its officers and employees:
 - (a) incurring criminal liability;
 - (b) incurring civil liability;
 - (c) being debarred from future work (in the case of companies);
 - (d) being dismissed from employment (in the case of individuals);
 - (e) suffering reputational damage.

How can PACS help to limit a company's liability for corruption?

11. PACS can help to limit a company's potential liability for corruption in relation to a project as follows:
- (1) It reduces the likelihood that the officers and employees of the company will engage in corrupt activity (as explained in paragraph 8(4)). As a result, the company will be less likely to incur liability for corruption (as a company can be made liable through the acts of its officers and employees).
 - (2) A company may be better able to counter an accusation that it was knowingly involved in corruption or that it turned a blind eye to such corruption by demonstrating:
 - (a) (if it is the project owner) that it took steps to implement PACS on the project, or
 - (b) (if it is a contractor, supplier or consultant and PACS has been implemented on the project) that it implemented fully all PACS measures which it was required to implement by the project owner, or
 - (c) (if it is a contractor, supplier or consultant and PACS has not been implemented on the project) that it encouraged the implementation of PACS and itself voluntarily adopted those PACS measures which were appropriate for its scope of engagement in the project. (As to how this may be done, see paragraphs 40 - 43.)

Such steps would assist the company to demonstrate that it took all reasonable steps to ensure that its officers, employees, related companies, business partners and agents did not engage in corrupt activity in relation that project.

The implementation and operation of PACS

Use of the PACS Modules

12. The PACS Modules may be used and adapted by any individual or organisation provided that the Licence for Use (on the front-sheet of each Module) is complied with. The PACS Modules may be down-loaded from Transparency International's website (www.transparency.org).

Who makes the decision to implement PACS?

13. The decision to implement PACS on a project may be taken by:
- (1) the government of the country where the project is located, who may require such implementation as a condition of approving the project;
 - (2) a project funder, who may require such implementation as a condition of funding;
 - (3) a project owner, who may require such implementation as a condition of participation in a project.

On what size of project should PACS be used?

14. PACS can be used on any size of project. However, because of the cost and time required for its implementation, it is unlikely to be cost-effective to use PACS on a small project.
15. Transparency International recommends its use on projects in excess of a value of US\$5 million. However, this is only an indicative figure.

Can PACS be adapted for different projects?

16. PACS will need to be adapted according to the needs of different projects.
17. The "Licence to Use" on the front sheet of each Module specifies that each PACS Module is freely available for adaptation, subject to the requirements specified in the Licence.
18. In all cases where PACS is to be used, legal advice should be taken to ensure that the party implementing PACS is satisfied that the legal requirements of the relevant jurisdiction are met. This may lead to some amendment.
19. In addition, PACS will need to be adapted to suit the specific requirements of the project. In various Modules, there are a number of decisions to be made by the company which is implementing PACS. For example, decisions will need to be made as to:
- (1) the contract value thresholds above which contracts will be defined as "Major Contracts" and "Major Sub-contracts", and so be subject to specific PACS measures (such as the signing of Anti-Corruption Agreements and completing of Disclosure Forms);
 - (2) whether the independent assessor's appointment should be full-time or part time;

- (3) in the case of a project extending over a long period, whether different independent assessors should be appointed for different phases;
 - (4) in the case of a project of great complexity, whether an organisation, rather than an individual, should be appointed as independent assessor;
 - (5) the value threshold above which gifts, hospitality and donations made or received in connection with the project will be prohibited.
20. The party promoting the use of PACS will be the relevant government, the project owner, or the funder which is requiring use of PACS as a condition of funding (as explained in paragraph 13). One or more of those parties will, therefore, be responsible for deciding how PACS is to be adapted.
21. Adaptation must be made prior to commencement of any implementation of PACS so that all Modules can then be specifically amended for the project and put on the project website.
22. If a party who is not a government, project owner or funder wishes to use one or more of the PACS Modules for the purposes set out in paragraphs 40 - 43, then that party may adapt the Modules to suit its particular needs.

Should PACS at any time be used only in part?

23. Where the objective is to limit corruption across a project as a whole, all PACS Modules should be used.
24. It is possible to use only some of the PACS Modules for a project. However, this is not recommended.
25. PACS is a comprehensive and integrated system specifically designed to impact on all major project participants throughout their involvement in the project by using a wide variety of co-ordinated anti-corruption tools. Use of only part of the whole system will reduce its effectiveness.
26. The desirability of using all PACS Modules may face one difficulty, namely, the ability to find a suitable person or organisation to be appointed as independent assessor within the time-scale specified in PACS. Given the critical importance of the independent assessor to PACS, it is essential that all efforts are made to find an independent assessor. If one cannot be found at the outset of the project, it is recommended that all other PACS Modules should be implemented, having been suitably amended to allow for the appointment of the independent assessor at a later date and to provide that all major project participants will be bound to co-operate with the independent assessor once he is appointed.

At what level of the contractual hierarchy should PACS be implemented?

27. In relation to a construction project, PACS is intended to impact upon the contracts between the project owner and external major contractors, suppliers and consultants, and their respective major sub-contractors. It is in this area of the contractual structure of the project that significant corruption is most likely to occur. ("External" here means those companies which are not part of the project owner's group of companies.)
28. If the project owner lets the construction or management of the whole project to a related company or entity, then that latter company or entity should be treated, for the purposes of PACS, as the project owner. This will then ensure that PACS is properly impacting on those contracts and sub-contracts where significant corruption is most likely to occur.

How will the implementation of PACS impact on other factors?

29. PACS can be implemented on a project with no requirement for any participant to have previously adopted any anti-corruption measures. It provides all the necessary tools for implementation of the various PACS requirements.
30. The PACS Modules have been designed so that they can, as far as possible, be applied to a project without affecting other project procedures or documentation. The only exceptions to this may be, firstly, that the Anti-Corruption Agreement (PACS Module 5) may contain clauses which overlap with anti-corruption clauses in a project contract. In such a case, these clauses can be amended to remove any overlap or inconsistency. Secondly, differences in terminology will need to be reconciled. PACS Module 19 (Definitions) provides a comprehensive list of all defined terms used in PACS. These can be amended so that they are compatible with terminology used in other project documentation.

The operation of PACS

31. The project owner is responsible for the operation of PACS. The Instructions to Project Owner (PACS Module 15) provide a step-by-step explanation to the project owner as to how to operate PACS. Schedule B to this Executive Summary summarises how PACS is operated.

Is PACS complicated to operate?

32. There are 19 PACS Modules and a number of the Modules contain detailed provisions. Consequently, on a first view of PACS, the initial reaction may be that it will be too complicated to operate.
33. This is not the case. As explained in paragraphs 3 to 5, corruption on a construction project is a complex problem to which there is no simple solution. It is, therefore, necessary to use a number of co-ordinated anti-corruption measures. Such measures could be difficult to implement without proper tools and guidance.
34. PACS provides, in modular form, all necessary documents and tools for its operation (as explained in paragraphs 7 and 8 and Schedule A). It also provides detailed instructions to the various project participants as to how to operate and comply with its requirements.
35. In doing so, PACS will have three results:
 - (1) It will make the anti-corruption measures easier to implement.
 - (2) It will make the implementation of the anti-corruption measures more effective.
 - (3) It will ensure a degree of uniformity between all project participants because they will be subject to the same anti-corruption measures and they will be required to use the same tools in implementing those measures.

The cost of PACS

36. The PACS documentation is freely available to any user.
37. Those aspects of PACS that are likely to involve expense are:

- (1) the fees and expenses of the independent assessor;
- (2) the project website (required under the Project Transparency Policy – Module 13);
- (3) the legal costs in reviewing PACS and ensuring that it is suitable for the project and compliant with the relevant law;
- (4) management time in complying with the PACS measures;
- (5) anti-corruption training for officers and employees (required under the Anti-Corruption Programme – Module 10);
- (6) appointment of an integrity manager (required under the Anti-Corruption Programme – Module 10), although cost may be reduced by the person appointed as integrity manager combining his duties with other duties relating to the project.

As PACS is currently drafted, the project owner would bear the costs of (1) to (3) above, and all major project participants would bear the cost of measures (4) to (6) in so far as they applied to each participant.

38. The following factors should be considered when determining whether expenditure on the implementation of PACS is justifiable or possible:

- (1) The direct cost of corruption is considerable. As corruption is concealed, and as it will differ in extent from project to project and from country to country, it is not possible to assess the amount lost to corruption on any particular project. However, it is estimated that corruption can frequently add between 5% to 50% to the total project costs, can result in delays, and can adversely affect quality and safety. It is believed, therefore, that the use of PACS can save costs and improve project completion times, quality and safety. On major projects, these savings are likely to be significantly greater than the costs of implementing PACS itself.
- (2) The indirect cost of corruption is considerable. Companies and individuals run the risk of criminal liability, civil liability, debarment, reputational damage, and fines. The use of PACS will reduce that risk.
- (3) It is regarded as a political, social and economic necessity to spend money to ensure proper safety and quality controls on construction projects. It should be regarded as equally necessary to spend money on anti-corruption measures.
- (4) It is not necessarily the case that all significant costs of PACS must be borne by one party. The decision as to how the cost of PACS is shared may vary from project to project. As currently drafted, PACS envisages that the project owner will fund those matters listed in sub-paragraphs 37(1) to (3). However, on projects which are funded by development aid, such costs could be borne by the funders to help ensure that the development aid is properly spent. Donor contribution could also be made to the costs of government participants in developing countries implementing the Anti-Corruption Programme. In addition or alternatively, it may be possible to require major contractors and major sub-contractors to share some of these costs.
- (5) Some of the costs may be reduced (where necessary) by reducing the scope of some of the Modules. For example, the independent assessor could be appointed on a part-time basis and/or his monitoring obligations could be reduced. However, modification to a Module by reducing the scope of or obligations under that Module will reduce the effectiveness of PACS.

39. Consequently, expenditure on implementation of PACS should be money well spent. Expenditure can be shared and/or subsidised, and it can be tailored to meet the needs of the

project and the purpose of the organisation funding it (provided that any such modification does not prevent the proper operation of PACS).

The use of PACS Modules for other purposes

40. PACS is designed as a project system.
41. However, some of the PACS modules may be used for purposes other than limiting corruption across the whole project.
42. For example, a company may wish to limit corruption within its sphere of operation on a project. This may be desirable where a project owner and/or funders have not implemented PACS on a project. If the company is a major project participant (such as a contractor or consultant for a large contract), it may wish to protect itself, both from being a victim of corruption and from incurring liability for corruption, by using certain PACS Modules. The Modules (with appropriate modifications) that may be suitable in such circumstances would be as follows:
 - (1) The Disclosure Form and Disclosure Assessment Guide (Modules 3 and 4) could be used to provide and carry out anti-corruption due diligence on the company's potential sub-contractors, joint venture partners and agents.
 - (2) The Anti-Corruption Agreement (Module 5) could be used to provide and obtain anti-corruption undertakings to and from the company's potential sub-contractors, joint venture partners and agents.
 - (3) The Anti-Corruption Procurement Requirements (Module 7) could be used to provide anti-corruption rules to govern the sub-contract procurement processes.
 - (4) The Anti-Corruption Programme (Module 10) could be used to ensure that the company and its sub-contractors and joint venture partners are adopting suitable internal anti-corruption procedures for the purposes of the project. This Programme will in turn require use of the Anti-Corruption Rules for Individuals (Module 11), the Anti-Corruption Training Manual (Module 12), and the Benefits Register (Module 14).
 - (5) The Instructions to Applicants (Module 18) could be used to explain to potential sub-contractors that they are obliged to complete the Disclosure Form and to enter into an Anti-Corruption Agreement in order to take part in the procurement process.
43. Alternatively or in addition, a company may wish to use some of the PACS Modules as general corporate anti-corruption tools (with appropriate amendments to suit the characteristics of the particular company). These Modules could include:
 - (1) The Disclosure Form and Disclosure Assessment Guide (Modules 3 and 4) which could be used for the purposes of anti-corruption due diligence on sub-contractors, joint venture partners and agents.
 - (2) The Anti-Corruption Rules for Individuals (Module 11) which could be included in the company's code of conduct for its officers and employees.
 - (3) The Anti-Corruption Training Manual (Module 12) which could be used to provide general anti-corruption training to the officers and employees of the company.
 - (4) The Benefits Register (Module 14) which could be used to record all gifts, hospitality and donations made and received by officers and employees in relation to the company's affairs.

Consultation on PACS

44. This version of PACS is being published as a “Consultative Edition”. The consultation period ends on 30th April 2007. The First Edition of PACS will be published in mid-2007. Questions on PACS and comments as to how PACS could be improved would be welcomed and should be sent to:

Catherine Stansbury
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Publication and authorship of PACS

45. PACS is published by Transparency International, the world’s largest non-governmental anti-corruption organisation, with chapters in over 90 countries. (www.transparency.org)
46. PACS is written by Catherine Stansbury and Neill Stansbury. They are both lawyers, each with over 20 years’ experience working in the international construction industry. They have in total been involved in over 75 major construction projects in 20 countries.

SCHEDULE A

SUMMARY OF PACS MODULES	
PACS Module	Purpose
Executive Summary (Module 1)	This provides an explanation of the justification for and implementation of PACS, together with a summary of all Modules.
Independent Assessor Agreement (Module 2)	<p>At the outset of the project, the project owner appoints an independent assessor who has been nominated by an independent institution. All of the independent assessor's duties relate to the detecting of corruption on the project. For this purpose, he assesses:</p> <ul style="list-style-type: none"> ▪ the project generally; ▪ the procurement and execution of major contracts and major sub-contracts; ▪ compliance with the Anti-Corruption Agreements. <p>He has a series of reporting duties which include mandatory reporting of corruption to the criminal authorities, the funders, the project owner, any other party affected by the corruption, and the relevant professional institution (where the relevant individual is a member of that institution).</p>
Disclosure Form (Module 3) Disclosure Assessment Guide (Module 4)	In order to assess the risk of corruption on the project, pre-qualification applicants, tenderers and nomination candidates for major contracts are required (as a condition of pre-qualifying, tendering or being nominated) to complete Disclosure Forms. The project owner must also complete a Disclosure Form. These Forms provide information relating to the disclosing party, its joint venture partners, its major sub-contractors, and the agents of those parties. Recipients of completed Disclosure Forms can assess the information disclosed in those Forms by using the Disclosure Assessment Guide which provides advice as to "red flags" and "further enquiries" in relation to each answer that may be given in the Disclosure Form. The Independent Assessor also assesses the information provided in these Forms.
Anti-Corruption Agreement (Module 5)	<p>Every pre-qualification applicant, tenderer and nomination candidate for a major contract is required (as a condition of pre-qualifying, tendering or being nominated) to enter into an Anti-Corruption Agreement with the project owner. Under this Agreement, each party undertakes:</p> <ul style="list-style-type: none"> ▪ not to become involved in any corrupt activity; ▪ to co-operate with the independent assessor; ▪ to implement an Anti-Corruption Programme; ▪ to prohibit certain gifts and to set up a Benefits Register; ▪ to comply with the Project Transparency Policy; ▪ to obtain anti-corruption undertakings from their major sub-contractors, agents and related companies; ▪ to report corruption to the independent assessor. <p>These obligations apply throughout the party's involvement in the project.</p> <p>Under this Agreement, a party will be disqualified from participation in the project in the event of any corruption by it which is intended to facilitate the award of a contract to it. If the contract has already been awarded, the contract may be terminated by the project owner. Corruption by the project owner prior to contract award entitles the bidding party to withdraw without liability to the</p>

	<p>project owner. In the event that any party suffers loss as a result of corruption, the guilty party must compensate the innocent party for its loss. In addition, breaches of the Anti-Corruption Agreement (which may or may not constitute corruption) also require the party in breach to pay a fine to a nominated charity.</p>
<p>Notices of Breach (Module 6)</p>	<p>Notices of breach are served by the independent assessor where parties are in breach of their obligations under the Anti-Corruption Agreements or anti-corruption undertakings. If such breaches also constitute corruption offences, then they are also reported by the independent assessor to the criminal authorities and the relevant parties.</p>
<p>Anti-Corruption Procurement Requirements (Module 7)</p>	<p>As part of his duties under the Anti-Corruption Agreement, the project owner must ensure that the Anti-Corruption Procurement Requirements are complied with during any pre-qualification, tender or nomination process for a major contract. These requirements include:</p> <ul style="list-style-type: none"> ▪ use of procedures that are fair and transparent; ▪ completing Disclosure Forms; ▪ entering into Anti-Corruption Agreements; ▪ monitoring of the process by the independent assessor.
<p>Anti-Corruption Notice to Government (Module 8)</p> <p>Anti-Corruption Government Commitment (Module 9)</p>	<p>Anti-Corruption Notices are sent by the project owner to the heads of those government departments which will be involved in the project in relation to, for example, the issuing of permits or licences. The Notice:</p> <ul style="list-style-type: none"> ▪ explains that the project owner is adopting PACS for the project, ▪ requests the assistance of the government department head in ensuring that none of his government officials engage in corrupt activity in relation to the project, ▪ requests the department head to provide an Anti-Corruption Government Commitment to this effect. In that Commitment : <ul style="list-style-type: none"> ▪ an official is nominated to whom reports of corruption in relation to the project committed by other officials in the department may be made; ▪ information is provided as to the fees which should properly be charged for permits issued by the department and the time-scale for issuing of those permits; ▪ the head of department confirms that he has no objection to the Commitment being published on the project website.
<p>Anti-Corruption Programme (Module 10)</p>	<p>Under the Anti-Corruption Agreement, each party is required to adopt an Anti-Corruption Programme for the duration of the project. Under this Programme, each party is required to:</p> <ul style="list-style-type: none"> ▪ appoint an integrity manager who is responsible for ensuring compliance with this Programme; ▪ require its officers and employees involved in the project to comply with the Anti-Corruption Rules for Individuals; ▪ implement a gifts policy and set up a Benefits Register; ▪ adopt a corruption reporting system. <p>The Programme also requires the project owner, major contractors and major sub-contractors to hold anti-corruption training sessions, for officers and employees involved in the project, using the Anti-Corruption Training Manual.</p>

<p>Anti-Corruption Rules for Individuals (Module 11)</p>	<p>The Anti-Corruption Rules for Individuals:</p> <ul style="list-style-type: none"> ▪ prohibit officers and employees from engaging in specified corrupt practices; ▪ require compliance with gifts and hospitality rules; and ▪ require reporting of corruption to the company's integrity manager (subject to safety concerns). <p>The Anti-Corruption Programme requires a company to ensure that all of its officers and employees who are involved in the project are aware of these Rules and to post up these Rules in prominent positions so that they serve as a constant reminder to officers and employees of activities that are prohibited on the project.</p>
<p>Anti-Corruption Training Manual (Module 12)</p>	<p>The Anti-Corruption Programme requires the project owner, major contractors and major sub-contractors to hold a number of anti-corruption training sessions, using the Anti-Corruption Training Manual, for their officers and employees involved in the project. Section 1 of this Manual provides an explanation of corruption, of how individuals and companies might incur civil and criminal liability for corruption, and of the reasons to avoid corruption. Section 2 of this Manual gives detailed examples of corruption. Section 3 of this Manual provides advice on what to do when confronted with corruption.</p>
<p>Project Transparency Policy (Module 13)</p>	<p>Under the Anti-Corruption Agreement, the project owner is required to comply with the Project Transparency Policy. This requires the project owner to set up a project website on which details in relation to:</p> <ul style="list-style-type: none"> ▪ the project; ▪ the funding of the project; ▪ government involvement; ▪ major contracts and major sub-contracts; ▪ contact details for reporting corruption; ▪ prosecutions and convictions for corruption; <p>must be disclosed to the public on a continuing basis throughout the life of the project. Any refusal by any party to disclose the necessary details is itself disclosed on the website. The Project Transparency Policy lists in detail the various aspects of the project which must be disclosed.</p>
<p>Benefits Register (Module 14)</p>	<p>Each party to an Anti-Corruption Agreement undertakes not to provide gifts, hospitality or donations above a specified value to any individual or organisation connected with the project, or to any political party in the country where the project is located. Each party is also required to set up a Benefits Register in which all officers and employees are obliged to record any (permitted) gift made to or received from any person or company connected with the project, and any political party in the country where the project is located.</p>
<p>Instruction to Project Owner for the operation of PACS (Module 15)</p>	<p>The project owner is responsible for the operation of PACS. These Instructions provide step-by-step guidance for the project owner in the operation of PACS.</p>
<p>Instructions to Project Owner Joint Venture Members (Module 16)</p>	<p>These Instructions apply where the project owner is a joint venture (whether unincorporated or incorporated). In either case, the joint venture partners or joint venture shareholders, as the case may be, must complete Disclosure Forms, sign the Independent Assessor Agreement, and sign the Anti-Corruption Agreements. These Instructions inform them of this.</p>

<p>Instructions to Funders (Module 17)</p>	<p>The Instructions to Funders do as follows:</p> <ul style="list-style-type: none"> ▪ They inform funders that PACS is to be used on the project and that the funders will, as a consequence, receive specific reports from the independent assessor. ▪ They request the funders to specify whether they wish to receive any Disclosure Forms submitted by the project owner and by pre-qualification and tender applicants and nomination candidates in relation to major contracts. ▪ They request the funders to confirm that they will provide details of their funding arrangements and procedures for disclosure in accordance with the Project Transparency Policy. ▪ They inform the funders that any refusal by a funder to provide disclosure for the project website will be disclosed on the project website.
<p>Instructions to Applicants (Module 18)</p>	<p>The Instructions to Applicants inform all pre-qualification applicants, tenderers and nomination candidates for major contracts that PACS is to be used on the project and that they are, as a consequence, required as a condition of pre-qualifying, tendering or being nominated to complete a Disclosure Form and to enter into an Anti-Corruption Agreement. They are also informed that, should they fail to comply with these Instructions, they will be disqualified from all further participation in the project.</p>
<p>Definitions (Module 19)</p>	<p>This Module provides a list of all defined terms used in the PACS Modules.</p>

SCHEDULE B

OPERATION OF PACS	
<u>Time or phase</u>	<u>Actions</u>
Outset of project	<p><u>By project owner:</u></p> <ul style="list-style-type: none"> - Follow Instructions to Project Owner for Operation of PACS (Module 15); - Appoint independent assessor (Independent Assessor Agreement – Module 2); - Send out Instructions to Project Owner Joint Venture Members (Module 16); - Send out Instructions to Funders (Module 17); - Send out Anti-Corruption Notices to Government (Module 8); - Set up project website in accordance with Project Transparency Policy (Module 13).
Procurement phase for each major contract	<p><u>By project owner</u></p> <ul style="list-style-type: none"> - Ensure Anti-Corruption Procurement Requirements (Module 7) are complied with. - Maintain the project website in accordance with the Project Transparency Policy (Module 13). <p><u>By project owner and contract applicants</u></p> <ul style="list-style-type: none"> - Complete and exchange Disclosure Forms (Module 3); - Assess information using Disclosure Assessment Guide (Module 4); - Sign Anti-Corruption Agreement (Module 5); - Comply with Anti-Corruption Agreement for duration of involvement in project, including: <ul style="list-style-type: none"> - not becoming involved in corrupt activity; - complying with Anti-Corruption Programme (Module 10); - requiring officers and employees to comply with Anti-Corruption Rules for Individuals (Module 11); - prohibiting certain gifts and operating a Benefits Register (Module 14); - reporting corruption. <p><u>By independent assessor</u></p> <ul style="list-style-type: none"> - Monitor procurement phase and report corruption and breaches of Anti-Corruption Agreements.
Execution of each major contract	<p><u>By project owner</u></p> <ul style="list-style-type: none"> - Maintain the project website in accordance with the Project Transparency Policy (Module 13). <p><u>By project owner and contractors</u></p> <ul style="list-style-type: none"> - Comply with Anti-Corruption Agreement for duration of involvement in project, including: <ul style="list-style-type: none"> - not becoming involved in corrupt activity; - complying with Anti-Corruption Programme (Module 10); - requiring officers and employees to comply with Anti-Corruption Rules for Individuals (Module 11); - prohibiting certain gifts and operating a Benefits Register (Module 14); - providing anti-corruption training to officers and employees (Anti-Corruption Training Manual – Module 12); - reporting corruption. <p><u>By independent assessor</u></p> <p>Monitor execution and report corruption and breaches of Anti-Corruption Agreements.</p>