

# LICENCES



In many countries, government has become a synonym for rules, regulations and red tape. Licenses, permits and authorizations of many kinds are required to engage in everything from driving a car to engaging in trade, and frequently require permissions from multiple agencies.

As a leading IMF official has observed, “The existence of these regulations and authorizations gives a kind of monopoly power to the officials who must authorize or inspect the activities ... [They] may refuse the authorizations or simply sit on a decision for months or even years. Thus, they can use their public power to extract bribes from those who need the authorizations or permits.”<sup>1</sup>

In many countries, too, a government provides goods and services at below market prices – water, public housing, education and health facilities, access to public land, access to some forms of pensions (e.g. disability pensions), and so on. Limited supplies can make rationing or queuing unavoidable, excess demand is created and decisions have to be made to share out the limited supply. It is not surprising that those who want these goods and services are prepared to pay bribes to jump queues or to get preferred access to what the government is providing.

In addition to these situations are discretionary decisions in which corruption – including high-level and political corruption – can play a major role:

- *The provision of tax incentives, which may be worth millions to those who acquire them.*
- *The zoning and re-zoning of land can convert land values from minimal to highly desirable.*
- *Licenses for the use of state-owned land, e.g. timber cutting and mining rights, can be lucrative.*
- *Decisions to authorize major foreign investments, which often provide investors with monopoly powers.*
- *The sale of significant public sector assets.*
- *Decisions on whether or not to privatize, and if so, how?*

- *Decisions providing monopoly power to particular export, import, or domestic activities.*<sup>2</sup>

Underpaid and corrupt bureaucrats love red tape, as it encourages businessmen to offer bribes as they wait for permits or delivery of services, and it enables them to feed on the needs of their fellow citizens. Given that in some countries, the low-level bureaucrats may not have been paid for months, it seems somewhat unfair to categorize them as “corrupt.” A first priority for any administration must be to ensure that their employees are paid on time.

In Indonesia, “wet” agencies refer to those which provide opportunities for enrichment on the side. “Dry” ministries are those where such opportunities are few. “Wet” government jobs are said to be the police, the tax office, and any government minister post. “A job as a tax collector was one of the surest roads to riches in the government bureaucracy,” said one individual interviewed for Keith Loveard’s “Suharto: Indonesia’s Last Sultan.”<sup>3</sup> “Being posted to a dry position is about the worst fate any official could fear,” said another.

The Bureau of Immigration in the Philippines was described as being enmeshed in graft and corruption, “and the only language spoken from commissioners down to clerks and janitors was money, money, dirty money.”<sup>4</sup>

Col. Salvador Rodolfo, a former intelligence consultant of the Bureau of Immigration described the scene:

*[C]orruption at the Bureau of Immigration is from top to bottom, permeating every rung in the bureau’s hierarchy. Because of the discretion given to immigration officials to determine the lives and destinies of both aliens living in the Philippines and Filipinos leaving for abroad, the opportunities for payoffs abound... [M]any employees are under-qualified [and] ... were hired because of nepotism or political patronage.*<sup>5</sup>

In neighboring Malaysia, fully 100,000 people were found to have obtained drivers’ licenses without passing the required tests.

Half a world away, a Canadian journalist painted this depressing picture of life in one transition country:

*Private businesses are spending an annual average of \$37,000 on bribes, protection money and other “extralegal payments,” according to recent surveys. Company managers must spend 40 percent of their working day in meetings with officials to “negotiate” licenses and taxes. By comparison, businesses in Lithuania are spending only 15 percent of their time with officials, in Pakistan the figure is 12 percent and in El Salvador 8 percent.*

Across the country, licenses are required for more than 100 separate economic activities — “a virtually comprehensive list” of all possible activities, a World Bank study noted. Only about one-third of these licenses are justified for reasons of health, safety, environment or state security. The licensing procedures often take several months to complete and can require extensive documentation and spending.<sup>6</sup>

Based on a survey of 150 enterprises in five cities in one European country citizens must pay on average \$1,250 to install a telephone line; \$390 for an import license; \$295 to cross a border; \$125 for every visit by a tax inspector; and \$60 for every visit by a health or fire inspector. The average bribe for the same services in a neighboring country is roughly similar, according to a poll of 50 enterprises.<sup>7</sup>

Once licenses are obtained, penalties for any failure to comply with the terms on which they were granted should be commensurate with the violation. There has been a school of jurisprudence that has argued that firms should balance the cost of a fine against the benefits that would flow from a deliberate breach. For a licensing system to function properly, it should never be the case that it was more profitable for a license-holder to breach the terms of his or her license than it would be to comply with its terms.

Corruption can assume various forms, from petty corruption engaged in by lowly-paid clerks who sit on papers until suppliers provide money to grease government machinery to top-level corruption, where policymakers change, bend or breach the rules to favor the suppliers that come up with bribes.

But these activities are not confined to the developing world. In the United States, extraordinary situations have been revealed. Applicants for truck drivers’ licenses in Illinois need to pass long and complex tests on safety and mechanical matters. Immigrants, eager for well-paying jobs as truck drivers but speaking little or no English, have virtually no hope of passing. So, federal prosecutors say, hundreds of license seekers paid bribes to state workers, who, in return, coached the applicants or just filled in answers for them. The state workers then funneled some of the payoff money into the campaign fund of the state governor. Thirty-one people have been charged, and of these 26 have pleaded guilty.<sup>8</sup> Similar scams have been uncovered in Western Europe.

What makes all this possible? Obscure or incomprehensible regulations. Areas of discretion. An ability to keep people waiting for lawful entitlements to such items as driver’s licenses. An absence of independent appeal mechanisms for the public to use.

What does all this mean for business? Surveys have shown that in some countries, senior executives have been spending up to a quarter of their time in dealing with public officials.<sup>9</sup>

### DO BRIBES SPEED THINGS UP?

“Petty” corruption bribes are sometimes referred to as “speed money” — they “grease the wheels” and things move faster when small bribes are paid. But is this true?

Using data from three worldwide surveys covering thousands of enterprises, World Bank economists Daniel Kaufmann and Shang-Jin Wei have examined the relationship between bribe payments, management time wasted with bureaucrats and the cost of capital. They found that firms that pay more in bribes are also likely to spend more — not less — management time negotiating regulations with bureaucrats. Businesses that bribe also face a higher, not lower, cost of capital.<sup>10</sup>

The authors conclude that it is simply not true that bribery can alleviate red tape for businesses where bureaucrats can choose the regulatory burden and

use delays with red tape to extract bribes. The authors' empirical test found that firms using bribes waste more management time dealing with bureaucrats.

The business community can benefit from laws and collective initiatives that strengthen its ability to say "no" to bribery.

### WHAT DOES BRIBERY MEAN FOR THE PUBLIC INSTITUTIONS INVOLVED?

There is growing evidence that low-level corruption, long described as "petty," is in fact much more damaging than many had realized. In a number of countries, the posts where public servants can extract the most bribes have become highly desirable. This has resulted in a market developing in which these positions are either sold outright by the appointing authority or else "leased" on the basis that the post holder will provide his or her superiors with regular sums of money. The money can pass up the line from the bottom to the very top, rendering the whole agency systemically – and systematically – corrupt.

Public service appointment mechanisms have to be examined. Wherever practicable, appointments should be made on merit, in open competition and made independently of the department or agency in question.

### A PLETHORA OF LICENSES

In many countries where corruption is endemic there is a plethora of licenses required, whether by private citizens or by businesses, and, for the private sector, a host of different inspections, some annual, some more frequent. Every time an inspector calls, a business may be at risk of being closed down.

Frequently, too, licenses and concessions are not automatically renewable. Receiving a license is not the end, but the beginning of a relationship of extortion.

Indeed, in some countries, so many permissions are required that there is not even a complete inventory of what they all are. Each department and agency

seems simply to set its own requirements and to make its own demands. These are overlaid by a high number of legal rules, many general in nature and capable of an infinite number of interpretations. Conditions for the granting of licenses are stipulated vaguely and broadly, creating a hotbed for corruption. Added to this, complaints and appeals wind up behind the same doors as those where the original decisions were taken.

Slovakia has been one such country. A central feature of its National Program of the Fight Against Corruption has been to require senior public officials in individual agencies to compile detailed lists of all the licenses, concessions, permits, loans, subsidies and allocations they administer. Further, they have been required to attach to each permit or category of allocation, details of the departments which handle them, the names of the officials responsible, the criteria applied and copies of all procedural and decision-making rules. This is followed by the preparation of an action plan designed to abolish all unnecessary permits, to introduce automatically renewable permits and concessions, and to set out clear and binding rules for granting any permits, concessions and allocations still considered necessary.

The first GRECO review in 2003 applauded the plan, but noted that as yet the government has not been able to provide details of the number of licenses abolished, nor of the reasons behind keeping those that are being retained.

Even in Switzerland, a remarkable discovery was made some years ago when the Inspector of Restaurants, whose permission was needed for a new restaurant to be opened in Geneva, was found to be extorting money from existing restaurateurs and to have acquired considerable property in Italy. After the inspector had been jailed, the Geneva city council considered appointing his replacement until one of the councilors asked why the post even existed. There were no health or safety considerations; it was simply a matter of whether the official considered that a new restaurant would be economically viable. Once this was explained, the council lost no time in abolishing the post completely.

But the abolition and/or streamlining of the process for granting licenses and concessions is no easy

task. However unnecessary a permit may appear to be, it is a fair assumption that the more illogical and indefensible it is, the greater the likelihood that it was invented simply as a means of extracting money from those forced to obtain it. Streamlining administration involves putting whole networks of corrupt officials out of business.

### **BREAKING THE PERSONAL RELATIONSHIPS**

Unhealthy relationships can develop, even unwittingly, when public servants spend too long a period in serving the same clients. Friendships can develop, social invitations can follow, and even the most honest public servant can find himself or herself under a sense of obligation for hospitality received. Two measures can address this problem.

The first is to depersonalize transactions, so that members of the public have no way of knowing precisely who is, or who will be, handling their applications. Customs clearances in Singapore were greatly accelerated through the use of computers, which can also establish deadlines for the clearance of goods, an approach that has been adopted in other countries. If goods are not cleared on time, supervisors demand explanations. Since the interactions between officials and citizens are by way of computer terminal, not across a counter, there is no face-to-face contact. Doing business by mail, rather than face-to-face, provides further opportunities to depersonalize these transactions.

The second is to rotate staff regularly so that employees are not left in vulnerable positions for undue lengths of time. This can have a cost; people will be moved away from posts where they have developed an expertise, but, nevertheless, it is a cost that has to be factored into management of the risks. The cost of leaving employees in these positions for too long will, in all probability, be much greater.

A third can be the involvement of third parties. In one country, corruption in the tax administration was markedly reduced by requiring that all tax payments be made through a stipulated bank, thereby eliminating the handling of payments by tax officials completely.

### **CITIZEN'S CHARTERS**

Citizen's charters were first introduced in the United Kingdom and are spreading rapidly around the world. In the UK, national charters cover such key public services as the courts, the National Health Service and the Benefits Agency. They set out the standards of service that people can expect and explain how to file a complaint if things go wrong.

There are also charters covering local services, such as an individual doctor's practice, local hospitals, schools and community care services. By informing the public of the standard of service to which they are entitled – and informing them of their rights to complain if these are not met – petty corruption can be rendered somewhat more risky for the officials concerned.<sup>11</sup>

The charters are self-enforcing, relying on members of the public to assert their rights as guaranteed by the charters, and to use the specified complaints channels to be used when services are not up to the standard required. The pressure on officials to perform is, thus, psychological rather than legal. But the fact that the guarantees of service are posted on the wall of public offices means that they are readily available for the reference of members of the public.

By fostering a culture of demands for service from the public, supervisors are in a position to monitor complaint levels and to take appropriate action in offices where these are inexplicably high.

### **USING THE INTERNET**

Clearly the Internet has the potential to reduce corruption levels in granting licenses and concessions. However, experience in India suggests that it is not enough simply to place an existing system, in which corruption flourishes, online and to call it e-government. The practices and procedures themselves have to be reformed and redesigned if the benefits of the web are to be won.

The Seoul city system, the Online Procedures Enhancement for Civil Applications (OPEN) was developed to achieve transparency in the city's

administration by preventing unnecessary delays or unjust handling of civil affairs on the part of civil servants. The web-based system allows citizens to monitor applications for permits or approvals where corruption is most likely to occur, and to raise questions in the event any irregularities are detected. The site receives over 2,000 visitors daily.<sup>12</sup>

### “POSITIVE SILENCE”

Recent reforms in Bolivia include the publication of details on all government procedures and fees. All government offices now have to display posters explaining the required paperwork and the exact costs of each transaction. This is designed to prevent government employees from demanding bribes, and to dispense with the need for “middle men” to help citizens through their transactions.

“Positive silence” has also been introduced. This means that citizens applying for occupational licenses, car registrations or other government certificates will be considered to have had their applications approved automatically if the applications have not been rejected within 15 days. The expression “Come back tomorrow,” is famous in Bolivia. What it really means is “Come back with money.” Under the reforms, if citizens are asked to “come back” they need only to wait 15 days; thereafter, they can invoke “positive silence” if the application has not been refused before the deadline passes.

This still leaves open, of course, the possibility that someone applying for a permit to which they are not entitled might bribe an official to mislay his or her application and so acquire an approved application. In any such system, it would be important to monitor the instances in which the right of “positive silence” was asserted to ensure that there were acceptable explanations and that the phenomenon was not occurring frequently with regard to any one office or any group of individuals.

The World Bank has observed that one of a country’s most important institutions is a professional and well-motivated public service, with selection and promotion based on merit rather than patronage. A well-performing public service not only resists petty corruption, but also provides the staff for many of

the institutions that protect integrity in government. Such institutions as finance and personnel ministries, government tender boards, technical departments that evaluate bids, bodies that implement regulatory policy, accounting units, and internal and external audit departments. However, the Bank’s experience in assisting with public service reform in more than 60 countries has shown that progress in this particular area tends to be slow.<sup>13</sup>

### AN ACTION PLAN FOR LIMITING CORRUPTION IN PERMIT AND LICENSING REGIMES

In one transition country, a leading NGO put forward the following action plan for countering corruption in the area of licenses:

*It is necessary for permit and license-requiring activities to be regulated by law, with all procedures and conditions for issuing permits and licenses stipulated by the law itself, rather than by other regulations and individual acts. Suggested actions include:*

- *limiting such activities to only those areas where they are absolutely indispensable. In such cases there should be better guarantees for transparency. The institutions issuing permits and licenses ought to be publicly accountable for their actions*
- *disallowing any permit or licensing regimes not expressly stipulated by law*
- *abolishing the numerous existing ordinances, rules, and instructions regulating permit and licensing regimes*
- *abolishing all legal provisions allowing for the issuing of permits and licenses at the discretion of the authorities. (One case in point is the Protection Competition Act with its section on advertising; also, the draft law on the media, etc.)*
- *extending possibilities for control in cases of refusal to grant permits or licenses.*

*Stipulation of basic requirements concerning the implementation of administrative procedures*

- *In the field of foreign trade, there should be strict adherence to the country's commitments to the European Union and the World Trade Organization.*
- *In the field of finance and the currency board, there should be strict adherence to the country's commitments stemming from membership in the IMF, including Article VIII of the IMF Articles of agreement. This adherence would lead to improvement in the methods, mode of operation and performance of public administration, and hence to better administrative servicing of the general public. The achievement of this result would be aided by introducing certain requirements for the administration to follow in the decision-making process (e.g., deadlines for rendering decisions, manner of informing the public about decisions made, etc.). A pilot project in a small or medium-sized municipality could be developed and implemented to test the anti-corruption effect.*

*Changing the legislation in order to reduce opportunities for subjective judgments on behalf of the administration.*

This could be achieved through clear-cut definition of the rights, obligations, and procedures involved in the exercise of discretionary power and by reviewing the philosophy of the role of government in society.

### **Adoption of a civil service act**

Such a law should clearly define the rights, obligations, and responsibilities of public officials. In this respect, the following specific measures to curb corruption could be undertaken:

- *Training public officials at all levels and formulating clear-cut guidelines and codes of conduct*
- *Regulating the obligation of public officials to file income and property declarations for themselves and members of their family (along with the introduction of the same obligation for members of parliament). In turn, the agencies entitled to request and verify such information should also have the power to request officials to prove the legitimate origin of their income and property rather than be expected to provide evidence of*

*illegal origin themselves. Such authority could be assigned either to the inspectors' offices with the ministries or to national agencies – the Financial Police or the Bureau for Investigation of Financial Fraud.*

- *Regulating the admissibility of gifts to public officials, to be monitored through internal control mechanisms*
- *Introducing a public register to ensure transparency of the financial and property status of high-ranking public officials*
- *Preventing conflicts of interest*

*Introduction of a system of performance evaluation of public officials, including disciplinary measures with the aim of enhancing internal control effectiveness.*

Controlling functions could be assigned to a body with the office of the Minister of Public Administration.

*Improved remuneration of public officials, combined with viable control and evaluation mechanisms.*

This will improve the motivation of public officials, as well as their social status.

### *Establishing internal rules and detailed instructions*

To achieve this objective, the rules and instructions concerning relations of the general public with the institutions should be publicly accessible and as simple, clear, and specific as possible. The publication of the rules and instructions in the press will lead to better awareness of citizens of their rights and the obligations of public officials. In this way, the rules and instructions will themselves become even more binding for public officials. Their observation will be a safeguard against arbitrariness and infringement of citizens' interests.

### *Legal regulation of measures and sanctions of varying scope and form for public officials involved in corruption*

It is necessary to provide for both criminal sanctions and disciplinary action. The liability to various forms of legal action will have a deterring effect on the conduct

of public officials. Disciplinary action could include demotion or financial liability of officials in case of unprofitable deals endorsed as a result of corruption. In this respect civil liability is deemed more effective.

*Financial liability ought to include reimbursement of any expenses involved in the termination of the contract.*

At the same time, the officials who have helped expose corrupt practices should be encouraged and receive part of the damages or fine owed by those involved in corruption.

*Introduction of a legal ban on public officials who become members of the governing bodies of commercial companies as a means of ensuring independent decision-making.*

Any exceptions to this ban ought to be carefully considered and thoroughly regulated by law, so as to avoid leaving any loopholes on the one hand, and to prevent such a regulation from becoming a potential barrier to hiring qualified staff in public administration, on the other.

*Introduction of restrictions regarding immediate hierarchical sub-ordination of public officials to spouses or family members (lineal or collateral relationships up to the fourth degree).*

The restriction could be applied only in the case of transactions and actions where such a dependence actually occurs rather than the assumption of office in principle.

*Providing for personnel rotation mechanisms in the relevant laws or regulations.*

In this manner, public officials could maintain their qualification and further develop their skills by assuming comparable positions and similar functions all while avoiding routine interaction with specific private individuals.<sup>14</sup>

## APPEALS

The final preventive measure is the appeal mechanism. In every case where a citizen has a right to

apply for a license or a permit, there should be the opportunity to challenge any decision denying that right. Appeals should be made to a separate office, not to the one where the original decision was made. The appeal should involve officials senior to those involved in the original decision. Appeals should be heard promptly, and there should be a right of appeal to the ombudsman and to the courts, if a citizen wishes to take the matter further.

When individual decisions are subject to independent review, and by others, this can be the most effective deterrent to officials who might otherwise be tempted to abuse their powers.

## ENDNOTES

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- 2 Tanzi, pg. 569
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- 4 Quoted in Chua and Rimban, "Gatekeeper," in Sheila S. Coronel, (ed) *Pork and Other Perks: Corruption and Governance in the Philippines* (1998) pgs. 153-54.
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