



Global Feature

ANTI-CORRUPTION EFFORTS IN THE ASIA PACIFIC

*Will ACT-NET Live Up To Its
Expectations as A Vehicle For Real Change?*

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In August, law enforcement officials from across the 21 Asia-Pacific Economic Cooperation (APEC) member economies descended on the tropical island of Cebu, in the Philippines, to participate in the second meeting of the Anti-Corruption Authorities and Law Enforcement Agencies Network (ACT-NET). The ACT-NET initiative was established by APEC's 2014 Beijing Declaration on Fighting Corruption, in which member economies pledged, among other things, to eliminate corruption through enhanced cooperation in extradition, judicial assistance, and more flexible legal processes to recover illicit proceeds of corruption and other financial crime within the APEC economies.

The cooperative effort, a first for APEC, has been spearheaded by China, Indonesia, and the United States, and endorsed by China's President Xi Jinping and President Barack Obama. ACT-NET's ambition is to promote greater international, regional, and bilateral support between law enforcement personnel, prosecutors, regulators, and financial intelligence units in order to help shed the region's reputation as the epicenter of global corruption. ACT-NET promises to help facilitate communication across the APEC inter-economy network through educational programming and informal development of expertise for those responsible for the day-to-day investigation and prosecution of corruption, bribery, money laundering, and illicit trade.

Although ACT-NET is still in its nascent stages, law enforcement authorities have already started to exchange sensitive case information, methods, and examples of mutual legal assistance on an APEC-wide basis, and leaders expect that cooperation to increase over time. ACT-NET is expected to facilitate what could be an unprecedented degree of cooperation and information sharing by law enforcement across borders in the region. That cooperation and support has been put to an early test by the United States and China, the two driving forces behind the initiative.

Extradition Cooperation

At the top of the agenda when Chinese and American diplomatic and law enforcement officials met in August was the repatriation of Chinese officials who allegedly fled to the United States along with billions of dollars in stolen assets. The United States and China do not have an extradition treaty, which has historically made the United States, and other Western democratic governments, such as Canada and Australia, top destinations for those looking to escape China. That thinking is now being revisited by the United States, which may set aside long-held concerns about China's inability to assure legal due process for the accused and overall transparency in the Chinese criminal justice system in exchange for Beijing's support in bringing corruption cases.

Earlier this year, China provided the United States with a list prioritizing at least 150 "economic fugitives" believed to be residing in the United States. At the top of the list was Yang Xiuzhu, a former Deputy Mayor of Wenzhou, who allegedly fled to the United States in 2003 after stealing \$40 million. She was arrested last year after being detained at the United States border using a fake European passport to enter the US. Most recently, Chinese officials have asked the United States government to help apprehend Ling Wancheng, the brother of Ling Jihua, one of the senior-most officials to be the subject of China's anti-corruption crackdown.

As part of the dialogue and cooperation encouraged by ACT-NET, United States officials are now considering the Chinese request, including alternatives to extradition such as deportations for violations of United States immigration law, for example, if the individual improperly claimed asylum or overstayed his or her visa. Another possible option is Washington's reliance on other international conventions, such as the United Nations Convention Against Corruption, which has its own extradition provisions.

However the issue gets resolved, it is apparent that China already sees cooperation by the United States as paramount to this APEC effort, and the request serves as an early test for the relations between the two most active countries seeking to crack down on bribery and corruption. APEC's eyes will be on Washington and Beijing as they work to resolve these extradition requests in the coming months.

International Requests for Evidence Likely to Initiate Parallel Prosecutions

More than extradition and recovery of stolen assets, ACT-NET has the potential to fundamentally change the landscape

in government corruption investigations in the Asia Pacific region. While China's anti-corruption efforts cannot go unnoticed, the anti-corruption enforcement environment that exists today is due in substantial part to the United States and its aggressive enforcement of the Foreign Corrupt Practices Act (FCPA).

Enacted by Congress in 1977 in the aftermath of the Watergate scandal, the FCPA has, for the past decade, struck fear in the hearts of many international companies with a nexus to the United States. The United States Department of Justice and the United States Securities and Exchange Commission have brought numerous enforcement actions over the past decade under the statute's anti-bribery and books and records provisions with astonishing success and settlements that have reached multi-million dollar amounts.

The FCPA's impact has been particularly strong in the Asia Pacific region, where eight of the 10 companies that paid a collective \$1.5 billion to United States authorities to resolve FCPA offenses in 2014 had an Asia Pacific connection—with more likely to come in the future. United States authorities have more than 100 active FCPA investigations in Asia—significantly more than in any other region in the world. According to the Department of Justice, in the last year and a half, its FCPA unit alone made more than 58 requests for mutual legal assistance to foreign governments.

It is virtually impossible for law enforcement agencies in the region not to take note of this level of enforcement activity by the United States, especially given the extraordinary settlement amounts that have come with it. Under ACT-NET, and with the encouragement of the United States, more Asia Pacific countries may get off the sidelines and move past mere compliance with mutual legal assistance requests to pursue parallel local prosecutions of corruption within their jurisdictions. While that type of parallel prosecution is not unheard of in today's enforcement environment, the level of cooperation proposed by ACT-NET is something new altogether, and has the potential to expand an investigation or prosecution from one side of the globe to similar action by a network member, such as China, on the other side of the globe.

China's unprecedented recent corruption crackdown has caused great alarm among the country's political and business elite, who have been targeted by a government seemingly determined to eradicate corruption and cronyism in the country. According to numbers released earlier this year by China's Central Commission for Discipline Inspection (CCDI), the Communist Party's anti-corruption watchdog, more than 250,000 officials have been charged since the beginning of the country's anti-corruption campaign in 2012.

It is not difficult to foresee overlap between these local corruption prosecutions and a United States-led FCPA investigation. The Chinese government has even given its large targets nicknames—"tigers"—while smaller targets are referred to as "flies." While some have speculated that the crackdown is mere political window dressing meant to consolidate power within the ruling Communist Party, regardless of the motivation, the sheer size of the undertaking has captured the attention of the world and there are no signs that the campaign is slowing down anytime soon.

But China is not alone in joining the American focus on corruption. Hong Kong has made its own efforts to battle corruption through its Independent Commission Against Corruption (ICAC). Like China—which, in practice, limits prosecutions to individuals, not corporate bodies, who are instead treated as victims—Hong Kong could take a new interest in criminal activity within its borders, perhaps also in parallel with investigations by foreign governments like the United States. Last year, the former number two official in the Hong Kong government, Rafael Hui, and billionaire Thomas Kwok, who until his conviction and sentencing was

Co-Chairman of one of the largest property developers in the world, were sentenced to prison terms for corruption. The ICAC prosecuted 223 individuals in 115 separate cases with an 85 percent conviction rate in 2014.

India, like China, has also pledged an aggressive crackdown on corruption. Prime Minister Narendra Modi has taken a page out of President Xi's playbook and appears willing to challenge some of the richest and most influential families in India. He has also placed a considerable focus on "black money," referring to funds hidden in offshore tax havens by corrupt public officials and business leaders. Even Indonesia, once a hotbed of corruption, has taken meaningful steps through its Corruption Eradication Commission (KPK) to crack down on corruption, prosecuting senior government officials and business leaders.

The involvement of more than one sovereign law enforcement authority raises the stakes considerably for individuals and companies, which not only face the risk of being penalized twice for the same conduct (once in each jurisdiction), but also must carefully consider the impact that one investigation may have upon the other. For example, an investigation launched in one member country could quickly lead to an investigation in a second or third country when actionable information is shared among ACT-NET members.

One government may choose to prosecute and enter into a settlement agreement with only a partial factual record (and understanding) regarding the activities and misconduct at issue, while regulators in the other jurisdiction may insist upon a more thorough investigation to determine whether more serious criminal charges are warranted. Any individual or company facing such a situation will be in a difficult position, and will need to weigh the impact of a resolution with one government while the investigation marches on in another. The process, including demands for information, timeliness of the investigations, and charging decisions, will likely vary greatly from one enforcement agency to another.

Movement in the Right Direction

The Asia Pacific region collectively constitutes one of the most populous and fastest growing economic areas in the world. Its combination of rich natural resources, inexpensive labor, and open trade with most of the world has increased foreign investment and, with it, opportunities for corruption. With those opportunities comes scrutiny. The World Bank estimates that almost \$1.3 trillion is lost each year to corruption, and the harm caused to social development is incalculable. The Asia Pacific region accounts for approximately 60 percent of the world's population, with some of the poorest countries also regarded as the most corrupt.

Transparency International's 2014 Corruption Perception Index, which ranks countries based on the perception of corruption in their public sector, found some bright spots for the Asia Pacific region, with New Zealand, Singapore, and Australia all being ranked among the 15 least corrupt countries in the world. Nonetheless, these countries remain the outliers, while most of their neighbors in the Asia Pacific region are all ranked much lower by Transparency International. A 2014 study by the US Chamber of Commerce that polled 588 executives representing companies in the United States found that the perception reflected in that study was that, with the exception of Singapore and Brunei, corruption continues to be a considerable problem in the region and an obstacle to doing business.

With the first year under its belt, it remains to be seen what impact ACT-NET will have on anti-corruption initiatives in the region. Already ACT-NET information sharing has led to improved methods of investigation and real-time briefings on active law enforcement operations, and has started to lay the groundwork for mutual legal assistance on a host of issues, including asset forfeiture and fugitive repatriation.

ACT-NET has the potential to fundamentally change the landscape in government corruption investigations in the Asia Pacific region.

As the network matures, even more attention will be paid to building the capacity of anti-corruption and law enforcement authorities in the region, with specialized assistance and training in areas including forensic accounting and the collection and review of electronic data and information.

This will help member countries address some of the key roadblocks that have historically plagued anti-corruption bodies in the region, including managing the limited financial and personnel resources available and updating outdated or poorly designed laws.

Will ACT-NET live up to its expectations as a vehicle for real change in the ability—and will—of Asia Pacific nations to combat corruption on their own shores and cooperate with the rest of the world in such efforts? Or will political inertia set in, and the effort become a mere bureaucratic forum? If ACT-NET helps member countries address some of the key roadblocks that have historically plagued anti-corruption authorities in this dynamic but oft-challenged region, that would undoubtedly be a positive step in the right direction.

The next ACT-NET meeting will be held in Peru in 2016, when Peru will serve as APEC Chair.

Author Biographies

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