Asia-Pacific
Economic Cooperation

Capacity Building Workshop on Combating Corruption Related to Money Laundering

Siam City Hotel, Bangkok, Thailand
20 – 22 August 2007

APEC Anti Corruption and Transparency Experts' Task Force

October 2007

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AGENDA

Time	Topic/Activity	Speakers/Moderators etc
Sunday, 19 August: Pre-Workshop		
15:00-19:00	**Registration:** Distribution of workshop documentation etc.	-
19:00-20:30	**Soirée:** Hosted by NCCC	
Monday, 20 August: Day 1: Morning Session		
08:45-09:30	**Registration cont.**	
09:30-09:45	**Opening Ceremony**	Panthep Klanarongran President, NCCC, Thailand
09:45-10:00	**Group Photo and Coffee Break**	
10:00-12:00	**Session 1:** International Mechanisms & Legal Obligations	Keynote Presentation: *United Nations Conventions and Instruments to Combat Corruption and Money Laundering* Catherine Volz, Chief, Human Security Branch, UNODC Keynote Presentation: *Practical Implementation of UN Standards and FATF Recommendations: Challenges and Assistance* Rick McDonell Chief, Global Programme against Money Laundering (GPML), Anti-Money Laundering Unit (AMLU), UNODC **Moderator:** Peter Ritchie AMLAT
12:00-13:00	**Lunch**	

Monday, 20 August: Day 1: Afternoon Sessions		
13:00-15:00	**Session 1 cont.** International Mechanisms & Legal Obligations	*International Cooperation: Mutual Legal Assistance & Extradition Laws* Rob McCusker Australian Institute of Criminology *International Cooperation in Combating Corruption Related to Money Laundering* Wanchai Roujanavong Ministry of Justice, Thailand *The Use of AML Systems to Detect, Deter and Investigate Corruption* Jason Sharman Griffith University, Australia **Moderator:** Dr. Juree Vichit-Vadakan, Transparency Thailand
15:00-15:15	**Coffee Break**	
15:15-17:00	**Session 2:** Preventive Measures	*Anti-Money Laundering as a New Weapon to Combat Corruption: Case Study of China* Yongyan Shi Anti-Money Laundering Bureau, Peoples' Bank of China *The Role of Financial Intelligence Units (FIUs) in the Prevention and Detection of Corruption: The Chilean Experience* Victor Ossa-Frugone Unidad de Analisis Financiero, Chile *Measures for Politically Exposed Persons (PEPs): An Evolving International Standard* Dr. David Chaikin Barrister/Senior Lecturer in Business Law, University of Sydney, Australia **Moderator:** Wanchai Roujanavong Ministry of Justice, Thailand
18:00-20:00	**Dinner in Honour of Workshop Participants:** Hosted by the Ministry of Foreign Affairs, Thailand	

Tuesday, 21 August: Day 2: Morning Sessions		
08:45-10:15	**Session 2 cont.** Preventive Measures	*Application of AML Measures to Detect Corruption-Linked Assets and Funds* Rita O'Sullivan, Asia Development Bank *Strategies on Effective Corruption Control* Raymond Wee Chief Special Investigator, CPIB, Singapore *Financial Institutions vs. Corruption: Trends and Mechanisms* Prof. Viraphong Boonyobhas Chulalongkorn University, Thailand **Moderator:** Pol.Col. Seehanat Prayoonrat Anti-Money Laundering Office, Thailand
10:15-10:30	**Coffee Break**	
10:30-12:00	**Session 3:** Institutional & Other Measures to Combat Corruption	*The Role of Special Investigative Techniques in Combating Corruption* Andrew Boname Regional Anti-Corruption Advisor, ABA Rule of Law Initiative *Undercover Techniques and Strategies* Mike Grant, FBI *Effective Local and Regional Cooperation between the FIU and Law Enforcement & Anti-Corruption Agencies* Peter Ritchie, AMLAT **Moderator:** Rob McCusker Australian Institute of Criminology
12:00-13:00	**Lunch**	

Tuesday, 21 August: Day 2: Afternoon Sessions		
13:00-14:45	**Session 4**: Experience Sharing & Case Studies	*Money Laundering Laws, Cases, and Enforcement Techniques in the United States* B. Lynn Winmill Chief Federal District Court Judge, Idaho *The Legal Systems of Anti-money Laundering & Some Cases in the Republic of Korea* Yong-Nam Kim Republic of Korea *The Corrupt Bank Manager & the Casino Boss* Choi Shu Keung ICAC Hong Kong **Moderator:** Andrew Boname Regional Anti-Corruption Advisor, ABA Rule of Law Initiative
14:45-15:00	**Coffee Break**	
15:00-16:30	**Session 4 cont.** Experience Sharing & Case Studies	*It's Not Always About Where the Money Went; Sometimes It's About Where the Money Didn't Go* Danny Griffin *The Links Between Corruption and Money Laundering: Indonesia's Perspective* Dr. Yunus Husein PPTAK, Indonesia *Anti-Money Laundering Council (AMLC) & Anti-Corruption: The Philippine Experience* Richard David C. Funk II AMLC Secretariat, The Philippines **Moderator:** Jason Sharman Griffith University, Australia

Wednesday, 22 August: Day 3		
09:00-10:30	**Session 5: Summaries and Way Forward**	*Effective Integration of AML Systems by APEC Economies' Anti-Corruption & Law Enforcement Agencies* Pol. Col. Seehanat Prayoonrat Anti-Money Laundering Office, Thailand *Prioritizing Action: A Tool to Assess Domestic and Regional AML/Anti-Corruption Priorities after the Workshop* Peter Ritchie AMLAT *APEC and Anti-Corruption: Developments, Achievements and Future Tasks* Juan Carlos Capunay Deputy Executive Director, APEC Secretariat **Moderator:** Dr. David Chaikin University of Sydney
10:30-10:45	**Conclusion** **Closing Remarks**	Prof. Dr. Pakdee Pothisiri Commissioner for Foreign Affairs, NCCC, Thailand
10:45-11:00	**Coffee Break**	
11:00-13:00	**Free time**	
13:00-16:00	**Optional Excursion: Vihmanmek Mansion**	

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Capacity Building Workshop on Combating Corruption Related to Money Laundering
APEC / NCCC
20-22 August 2007 / Bangkok, Thailand

United Nations Conventions and Instruments to Counter Corruption and Money Laundering

Kit Volz
Chief, Human Security Branch, UNODC

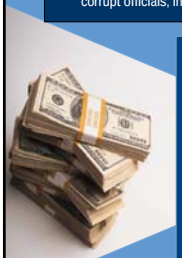
Corruption: a global threat

Cost of corruption exceeds by far the damage caused by any other single crime

- World Bank – More than 1 trillion US$ is paid in bribes every year and the harm exceeds the proceeds – US$ 1 bribe = US$ 1.7 damage
- Asian Development Bank – Cost of corruption = up to 17% of a country's GDP

Money Laundering: a crime which destabilises economies and expands criminal activities

- The objective of the vast majority of criminals and criminal enterprises worldwide is to earn money from crime and to accumulate wealth
- Criminally derived wealth brings with it the ability to further and expand criminal enterprises, corrupt officials, infiltrate legitimate business and even to destabilize fragile economies



Why countering money laundering?

- Effective means of identifying criminals and criminal enterprises (and the underlying criminal activity from which the money is derived)
- Effective way of disrupting the activities of criminal groups
- Effective technique of identifying and confiscating assets derived from crime
- Highly effective method of protecting a country's financial institutions, businesses and other aspects of the economy from the influence of criminals

What are the UN standards to counter money-laundering and corruption?

- Why the UN Conventions?

International efforts to curb money laundering and corruption are the reflection of a strategy aimed at, on the one hand, attacking the economic power of criminal organizations and individuals in order to weaken them by preventing their benefiting from, or making use of, illicit proceeds and, on the other hand, at forestalling the nefarious effects of the criminal economy and of corruption on the legal economy.

What are the UN standards to counter money-laundering and corruption?

1. UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998
2. International Convention for the Suppression of the Financing of Terrorism, 2002
3. UN Convention against Transnational Organized Crime , 2003
4. UN Convention against Corruption, 2005

History of the UN Conventions

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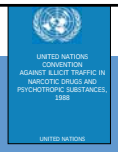
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention)



Entered into force: 11 November 1990

- The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is one of three major drug control treaties currently in force.

  It provides additional legal mechanisms for enforcing the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances.

- First Convention which requires States Parties to criminalise Money-Laundering (Art 3)

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United Nations Convention International Convention for the Suppression of the Financing of Terrorism, 1999

Entered into force: 10 April 2002

On 9 December 1999, the General Assembly of the United Nations adopted an international convention designed to cut off funding for terrorist activities.

The 28-article *International Convention for the Suppression of the Financing of Terrorism* was adopted on the recommendation of the Assembly's Sixth Committee (Legal).

The Convention requires States Parties to pass domestic legislation criminalizing the collection of funds for terrorist activities. As well, persons donating funds to groups which they know to support terrorist activities would also commit an offence.

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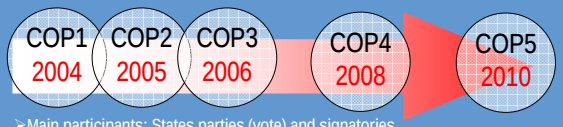
United Nations Convention against Transnational Organized Crime, 2000, and its protocols

Entered into force: 29 September 2003

Implementation of the Convention and its Protocols: Conference of the Parties (COP)



- Main participants: States parties (vote) and signatories
- Decision-making: consensus
- Area of competence: Convention and Protocols
- Funding: regular budget (regular session only)
- Secretariat: UNODC

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COP established by the Convention (Art. 32, 33) to:

- Promote and review implementation
- Make recommendations to improve Convention
- Consider means of implementing and difficulties encountered by States

Three sessions held:

- COP 1: Vienna, 28 June-8 July 2004: rules of procedure and programme of work for first round of review of implementation
- COP 2: Vienna, 10 – 21 October 2005: first assessment of information on national implementation efforts
- COP 3: Vienna, 9 – 18 October 2006: key decisions on Review of Implementation, International Cooperation, Trafficking and Smuggling Protocols, Technical Assistance

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United Nations Convention against Corruption, 2003

Entered into force: 14 December 2005

- International Action against Corruption

Until recently:

- Large number of international instruments against corruption, however:
  - Substantive limits – e.g. UN TOC
  - Geographical limits – e.g. CoE, EU, OAS instruments
  - Both – e.g. OECD
- UN Conventions against Corruption (2003)

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UN Conventions requirements on countering money-laundering and corruption

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United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention)

- Criminalize laundering - Art. 3 §1(b)
- Identify & trace proceeds of crime - Art. 5 §2
- Freeze and seize - Art. 5 §2
- Financial records - Art. 5 §3
- Override banking secrecy - Art. 5 §3

- Mutual legal assistance [Article 5, §4]
- Sharing confiscated assets [Article 5, §5(b)]
- Reversing onus of proof [Article 5, §7]

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United Nations International Convention for the Suppression of the Financing of Terrorism, 1999

Requires signatories to:

- Take measures for the detection and freezing, seizure or forfeiture of funds used or allocated to offences described (Art. 8)
- Establish their jurisdiction over offences described (deemed to be extraditable) (Art. 11)
- Cooperate in preventive measures and countermeasures and exchange information and evidence

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United Nations International Convention for the Suppression of the Financing of Terrorism, 1999

Further requires signatories to:

- Subject financial institutions and other professionals to KYC requirements, and STRs (Art. 18(1))
- Cooperate in prevention by licensing money service businesses and taking measures to detect or monitor cross-border transactions (Art. 18(2))
- Cooperate in exchanging information (Art. 18 (3))

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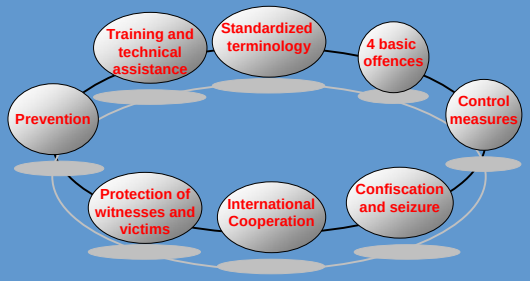
United Nations Convention against Transnational Organized Crime, 2000

Structure of the Convention: key provisions



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United Nations Convention against Transnational Organized Crime, 2000

The Convention establishes four specific crimes:

- participation in organized criminal groups (Art. 5)
- money laundering (Art. 6)
- corruption (Art. 8)
- obstruction of justice (Art. 23)

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United Nations Convention against Transnational Organized Crime, 2000

Laundering of proceeds of crime (Art.6)

- Under Art. 6, States Parties:

- Shall include *all* serious crimes as predicate offences to money laundering
- Not just cash but any property that is the proceeds of crime

- Article 6 criminalizes:

- Conversion or transfer to conceal criminal origins
- Concealment of nature, source, location, disposition, movement or ownership
- Knowing acquisition of proceeds
- Participation, association, conspiracy, attempts, aiding, abetting and facilitating*

*Subject to basic concepts of each State's legal system

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United Nations Convention against Transnational Organized Crime, 2000

Measures to combat Money-Laundering (Art.7)

Under Art.7, States Parties:

- Shall institute regulatory regime for banks, non-bank financial institutions and other susceptible bodies
- Regime shall include:
  - Customer identification
  - Record Keeping
  - Reporting of suspicious transactions
- Authorities should have ability to cooperate and share information at national and international levels

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United Nations Convention against Transnational Organized Crime, 2000

Corruption (Art.8)

Mandatory offence:

- promise, offer, give, solicit or accept
- any undue advantage to/by a public official
- to act or refrain from acting
- any matter relating to official's public duties
- participation as an accomplice

Optional offences:

- corrupting foreign or international public servants
- other forms of corruption

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United Nations Convention against Transnational Organized Crime, 2000

Confiscation and seizure (Art. 12)

- Confiscation: permanent deprivation of property (Art. 2. g)
- Seizure or *freezing*: temporary prohibiting transfer, conversion, disposition or movement of property (Art. 2. f)

Subject to seizure and confiscation are:

- Proceeds of crime derived from offences covered by Convention
- Property, equipment or instruments used to commit offences covered by Convention

States cannot decline to seize or confiscate on the ground of back secrecy

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United Nations Convention against Transnational Organized Crime, 2000

- International cooperation
  - Extradition (Art. 16)
  - Mutual Legal Assistance (Art. 18)
  - Investigative measures and other forms of cooperation (Art. 20, 26, 27)
- Training and technical assistance (Art.29-30)

States called upon to:

- Implement Convention domestically and through international cooperation
- Take into account effects of organized crime on societies and sustainable development
- Promote training programmes for law enforcement personnel (e.g. prosecutors, investigating magistrates, custom personnel), including secondments and exchange of staff
- Enhance cooperation with and financial assistance to developing countries to better enable them to fight organized crime

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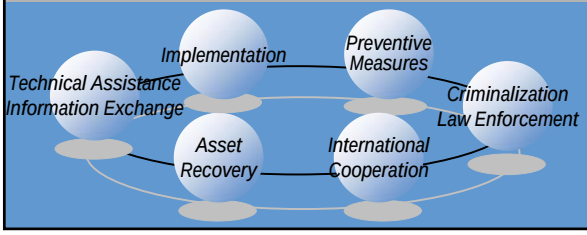
UN Convention against Corruption, 2003

Aims and structure of Convention

1. Prevent and Combat Corruption More Efficiently and Effectively
2. International Cooperation & Technical Assistance including Asset Recovery
3. Integrity, Accountability and Proper Management of Public Affairs and Property



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UN Convention against Corruption, 2003

Prevention of Money-Laundering (Art 14)

- Establish Comprehensive Regulatory and Supervisory Regime
- Ensure Internal and International Cooperation

- Each State Party shall institute a comprehensive domestic regulatory & supervisory regime for banks and non-bank financial institutions (Art. 14);
- Require customer or beneficial owner identification, record-keeping and the reporting of suspicious transactions;
- Cooperate and exchange information at the national and international levels;
- Establish a financial intelligence unit;
- Detect and monitor the movement of cash across borders;
- Require financial institutions to identify and maintain information about the originators of wire transfers.

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UN Convention against Corruption, 2003

- Freezing, Seizure & Confiscation (Art. 31)
- National Cooperation
- International Cooperation:
  - Extradition (Art 44): *Ensure that All Convention Offences are Extraditable Offence between States Parties*
  - Mutual legal assistance (Art 46): *Ensure Widest Measures of Mutual Legal Assistance in Investigations, Prosecution and Legal Proceedings in relation to Convention Offences*
- Asset Recovery
- Controlled Delivery

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UN Convention against Corruption, 2003

Asset recovery: a major breakthrough

Measures to Prevent and Detect Transfer of Proceeds (Art.52)

Measures for Direct Recovery of Property (Art.53)

Return of Assets as Fundamental Principle (Art.51)

Measures for Recovery of Property through International Cooperation (Art.54 - 55)

Measures for Return and Disposal of Assets (Art.57)

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UN Convention against Corruption, 2003

Financial Intelligence Units (Art. 58)

- State Parties shall cooperate with one another for purposes of preventing & combating transfer of proceeds of offences;
- Promoting ways & means of recovering such proceeds;
- Shall consider establishing FIUs responsible for:
  - Receiving;
  - Analysing;
  - Disseminating suspicious financial transactions.

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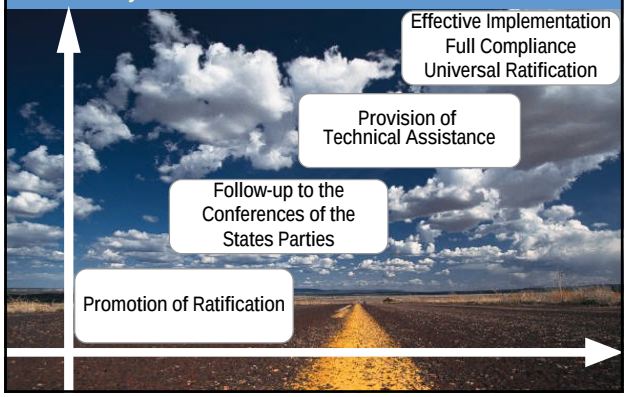
The way forward



Catherine Volz

Catherine Volz has worked for the United Nations Office on Drugs and Crime (UNODC) for seventeen years. She is currently Chief of the Human Security Branch of the Division for Operations. As such she supervises the provision technical advice and assistance to States in the fields of anti-corruption, anti-money laundering, anti-organized crime, rule of law and criminal justice reform. Prior to her appointment as Chief of the Human Security Branch, Ms Volz was Chief of the Treaty and Legal Affairs Branch, Division for Treaty Affairs (UNODC), and responsible for assisting states in ratifying and implementing international drug control treaties, and more recently, the UN Convention against Transnational Organized Crime and its protocols, and the UN Convention against Corruption. From 1980 to 1989, she was a senior trial attorney with the U.S. Department of Justice. Ms Volz has a Juris Doctor degree and an LLM in international and comparative law.

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Practical Implementation of UN standards and FATF Recommendations: Challenges and Assistance

Rick McDonell
Chief, Global Programme against Money Laundering (GPML)

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Summary of presentation

1. What is money laundering?

2. Requirements of the international standards
   - UN standards
   - FATF 40+9 Recommendations

3. Challenges in the implementation of the standards
   - Financial Intelligence Units (FIUs)
   - Politically Exposed Persons (PEPs)
   - Asset recovery
   - Case study: Sani Abacha, Nigeria

4. Technical assistance provided by UNODC
   - Global Programme Against Money Laundering
   - Global Programme Against Corruption

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What is Money-laundering?

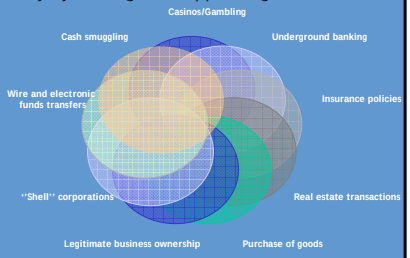
➢ Purpose

To hide the illegal proceeds of crime

To use those proceeds safely by making them appear legitimate

➢ Methods:

Some examples



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Requirements of the international standards

- UN Conventions and Resolutions:
  (already examined in the previous presentation)

UN Convention against Corruption
as the most advanced legal instrument on Money-Laundering and Corruption:

➢ Article 14: Prevention of Money-Laundering

- Comprehensive domestic regulatory & supervisory regime for banks and non-bank financial institutions
- Customer or beneficial owner identification, record-keeping and the reporting of suspicious transactions
- Establish a financial intelligence unit
- Asset recovery
- Ensure internal and international cooperation

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UNODC mandate concerning money-laundering

➢ Resolution 1617 (2005) of the UN Security Council:

'' Strongly urges all Member States to implement the comprehensive, international standards embodied in the Financial Action Task Force's (FATF) Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing;''

➢ Resolution 60/288 of the UN General Assembly (20 Sept 2006):

Annexed Plan of Action:

''To encourage States to implement the comprehensive international standards embodied in the Forty Recommendations on Money-Laundering and Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force, recognizing that States may require assistance in implementing them;''

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Summary of requirements

FATF 40 Recommendations on Money-Laundering (2004)

- Legal Systems
  - Criminal offence; freezing / confiscation
- Preventive measures: Financial Institutions and Designated Non-Financial Businesses and Professions
- Financial / non financial institutions measures
  - Customer identification; record-keeping; reporting of suspicious transactions;
  - Regulation & supervision
- Institutional Measures
  - Financial intelligence units (FIU)
- Powers of competent authorities
- Transparency of legal persons and trusts
- International co-operation
  - Mutual legal assistance; extradition; law enforcement co-operation

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FATF 40 + 9 Recommendations – Specific requirements

- Measures to be taken by financial institutions
  - Suspicious transaction reports and other reports (immunities and no tipping off provisions)
  - Customer Due Diligence (CDD) & Know Your Customer (KYC)
  - Politically Exposed Persons (PEPs)
  - Bank secrecy
  - Record keeping, including wire transfer rules
  - Internal controls - AML/CFT guidelines, compliance
  - Supervision and monitoring

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FATF 40 + 9 Recommendations – Specific requirements

- Measures to be taken by Designated Non-Financial Businesses and Professions
  - STR requirements and limited CDD
  - Casinos (CDD for all transactions over $3000)
  - Real estate agents
  - Lawyers "prepare for or carry out transactions" in relation to specific activities
  - Accountants - same as lawyers
  - Gold and gem dealers (CDD for transactions over $15000)
  - Dealers in high value items
  - Trust and company services providers

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FATF 40 + 9 Recommendations

Predicate offences of Money-Laundering:

-> FATF Recommendations = all serious offences should be covered by Money-Laundering Laws
-> List of 20 predicate offences: a minimum requirement :

-participation in an organised criminal group and racketeering;
- terrorism, including terrorist financing;
- trafficking in human beings and migrant smuggling;
- sexual exploitation, including sexual exploitation of children;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit arms trafficking;
- illicit trafficking in stolen and other goods;
- CORRUPTION and BRIBERY;
- fraud;
- counterfeiting currency;
- counterfeiting and piracy of products;
- environmental crime;
- murder, grievous bodily injury;
- kidnapping, illegal restraint and hostage-taking;
- robbery or theft;
- smuggling;
- extortion;
- forgery;
- piracy; and
- insider trading and market manipulation.

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Challenges

Challenges involved in implementing the UN and FATF standards:

Anti Money-Laundering / Anti Corruption issues

- FIUs / Anti-corruption agencies
- PEPs / Immunity
- Confiscation / Asset forfeiture
- Asset recovery
- International cooperation (international requirements, obstacles in reality)

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FIUs

- *Role and function:* Collecting STR/CTR/FTR Data → Analysing the collected data → Disseminating Intelligence reports to law enforcement
- *Suspicious reports: utility of data and reports, investigations*
- *Vulnerable places: need of independence of influence and sustainability*
- *Need to have procedures in place*
- *Major part of the fight against corruption because of the information they receive; source of information*
- *Need of cooperation with anti-corruption agencies, as FIUs are really useful in the fight against Corruption*
- *National role / international role of FIUs*

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PEPs

- Definition (FATF Glossary):

  Individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves.

- Enhanced customer identification measures for higher risks
- How recent are they?
- Problem of the list: need of an independent body

No sufficient criteria on how to set up and maintain the list

- Immunity issue: PEPs shall not have immunity if corrupted

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Asset recovery

UN Convention Against Corruption: Chapter V, art. 51-59

- Need of trust between the different actors
- Importance of a good relationship between the Central Banks and the Law Enforcement Agencies
- Efficiency of an Asset declaration system
- Need to focus not only on the person prosecuted but on his property:

"a profit-oriented approach to criminal law", as opposed to a more traditional "suspect-oriented" perspective

- Creation of Asset Forfeiture Funds / sensitive issue:

what to do with these funds? (for Law Enforcement Agencies, Asset-sharing systems, or victims compensation?)

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Case study : Efforts to Recover Assets Looted by Sani Abacha of Nigeria

- General Sani Abacha was the military dictator of Nigeria from November 17, 1993 to June 10, 1998
- The new democratic government has implicated the deceased general and his family in wholesale looting of Nigeria's coffers
- According to the post-Abacha government sources, some US$ 4 billion in foreign assets have been traced to Abacha, his family and their representatives (which represents about 10% of Nigeria's annual income from oil over 5 years).
The sum includes: monies allegedly derived from the systematic misappropriation of funds from the Central Bank of Nigeria, bribes received from foreign companies…
- Abacha was listed as the world's fourth most corrupt leader in recent history by Transparency International in 2004
- Abacha's son Mohammed Abacha was arrested in 2004 in Germany on warrant from the Swiss authorities, charged with money-laundering

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Case study : Efforts to Recover Assets Looted by Sani Abacha of Nigeria

Abacha's family agreed to return US$ 1.2 billion taken from the central bank in 2002

To date approximately US$ 825 million of the funds frozen in foreign jurisdictions have been repatriated (Jersey, UK, Switzerland and Luxembourg)

More money remained frozen in other jurisdictions, including approximately US$ 1.3 billion in Switzerland, Luxembourg and Liechtenstein

The Abacha recovered funds are to be used in healthcare and education sectors, as well as for infrastructure projects (roads, electricity and water supplies)

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Technical Assistance provided by UNODC

- UNODC has capacities and a special mandate to assist Member States in ratifying and implementing the international standards related to corruption and money-laundering
- Resolution 1617 (2005) of the UN Security Council:

'' Strongly urges all Member States to implement the comprehensive, international standards embodied in the Financial Action Task Force's (FATF) Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing;''

- Resolution 60/288 of the UN General Assembly (20 Sept 2006):

Annexed Plan of Action:

''To encourage States to implement the comprehensive international standards embodied in the Forty Recommendations on Money-Laundering and Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force, recognizing that States may require assistance in implementing them;''

UNITED NATIONS
Office on Drugs and Crime

Technical Assistance provided by UNODC

2 Units within UNODC specialised on Money-laundering and Corruption:

- Global Programme Against Money-Laundering (Anti-Money Laundering Unit)
- Global Programme Against Corruption (Anti-Corruption Unit)

-> They provide different kind of technical assistance

UNITED NATIONS
Office on Drugs and Crime

Global Programme Against Money-Laundering

Programme components

Technical assistance	• Mentorship programme • Specialised training • Mock trials
Capacity building	• FIU development • Building capacity in asset recovery • Raising awareness
Advisory services	• Advisory services on policy development • Legislative drafting assistance

UNITED NATIONS
Office on Drugs and Crime

Global Programme Against Money-Laundering

Tools available:

Computer-Based Training

IMoLIN / AMLID

(Internet-based network assisting governments, organizations and individuals in the fight against money laundering and the financing of terrorism / compendium of analyses of anti-money laundering laws and regulations)

Model legislation

GoAML* (FIU software)

* A product of ITS developed in cooperation w/ GPML

UNITED NATIONS
Office on Drugs and Crime

Global Programme Against Corruption

Programme components

Technical assistance and Advisory Services	• TA needs assessments • Supporting anti-corruption policies • Supporting the establishment of national anti-corruption agencies • Prevention and control of corruption
Policy development	• Development of legislative, investigative, judicial and enforcement capacity in asset recovery • Supporting judicial systems to strengthen integrity and capacity • Raising awareness
Interagency anti-corruption coordination	• Enhancing coordination and cooperation: Secretariat to the International Group for Anti-Corruption Coordination (IGAC)

UNITED NATIONS
Office on Drugs and Crime

Global Programme Against Corruption

Tools:

- Commentary to the Bangalore Principles of Judicial Conduct
- UN handbook on practical anti-corruption measures for prosecutors and investigators
- Technical guide for the implementation of the UNCAC** (will be available within the next few months)
- Technical guide on strengthening judicial integrity and capacity (will be available within the next few months)

** In collaboration with UNICRI

Legal Advisory Section of UNODC:

- Mutual legal assistance tool

UNITED NATIONS
Office on Drugs and Crime

For further information:

GLOBAL PROGRAMME
AGAINST MONEY LAUNDERING

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GLOBAL PROGRAMME
AGAINST CORRUPTION

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www.unodc.org

Thank you

Rick McDonell

Chief, Global Programme Against Money Laundering, UNODC

Rick McDonell is a lawyer by training and holds degrees in Law and Arts as well as postgraduate qualifications in law.

His career has included teaching at university, private legal practice, being a legal adviser to special inquiries into aspects of organized crime, a prosecutor at state and federal levels, coordinator of Task Force investigations for a specialist organized crime investigation agency, establishing the FATF/GAFI regional body in the Asia/Pacific region (APG) and more recently Chief of the UN Global Programme against Money Laundering.

Apart from Australia, Rick has lived for various periods in England, Italy and France.

He will take up his new position as Executive Secretary of FATF/GAFI, based at the OECD in Paris in September 2007.

Australian Government
Australian Institute of Criminology
www.aic.gov.au

Mutual Legal Assistance and Extradition: Mitigating the Impact of Money Laundering and Corruption

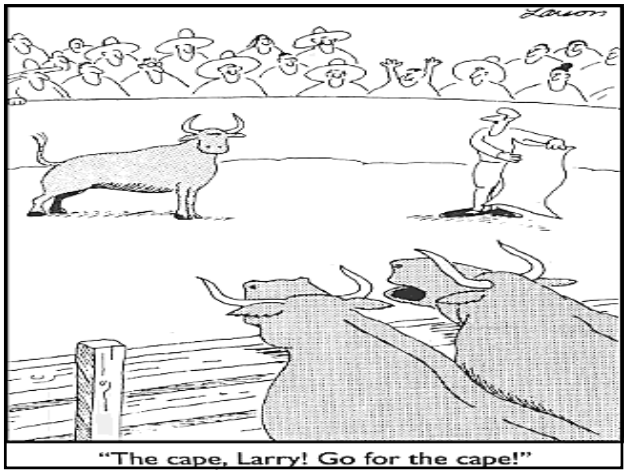
Rob McCusker
Transnational Crime Analyst

Context

- In his foreword to *'A new extradition system: A review of Australia's extradition law and practice'* the then Minister for Justice and Customs, Senator Ellison noted
- ***'[t]ransnational crime and the threat of terrorism are now among the highest priorities for law enforcement agencies. Improved communications have made it easier for criminals to plan crimes and commit them across borders, and increased international travel has made it easier for them to escape justice.'***

UN Secretary-General's *High-level Panel on Threats, Challenges and Change (2004)*

- Six key security challenges
  1. Economic and social threats
     - Poverty
     - Infectious disease
     - Environmental degradation
  2. Inter-state conflict
  3. Internal conflict
     - Civil war
     - Genocide
  4. Nuclear, radiological, chemical and biological weapons
  5. Terrorism
  6. Transnational organised crime
     - Complex operations
       - Real
       - Virtual
     - Economic imperative
     - Exploitation of financial systems
       - Target
       - Facilitator
     - Symbiotic relationship with corrupt public officials and judiciary



Guiding Principles of Mutual Assistance

- Efficiency
- Role clarity
- Responsiveness
- Compatibility of evidence
- Effective law enforcement
- "Normalising" mutual assistance
- Accountability
- Safeguards
- Confidentiality
- Sovereignty
- Technological neutrality

Cycle of Cumulative Impact

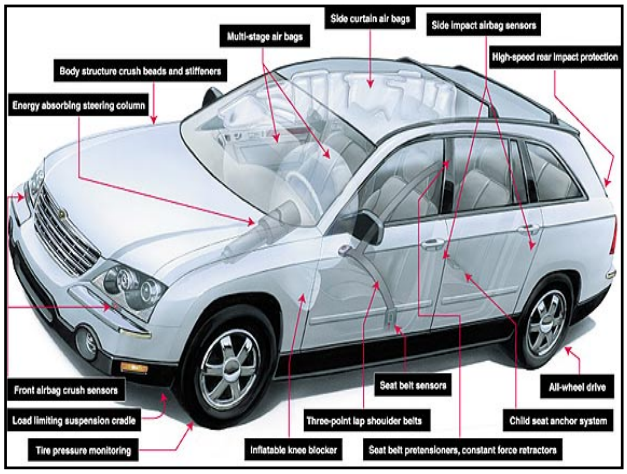
- Report of the Secretary-General's High-level Panel on Threats, Challenges and Change (UN 2005) noted
  - ***'[m]ember States should establish a central authority to facilitate the exchange of evidence among national judicial authorities, mutual legal assistance among prosecutorial authorities and the implementation of extradition requests'.***

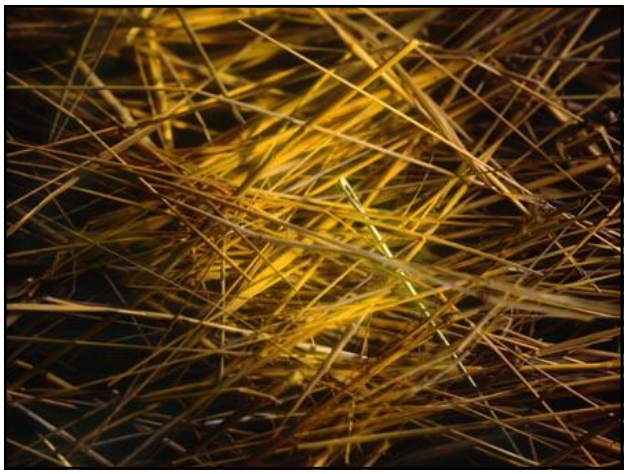
Preparation of the Investigative Environment (PIE)

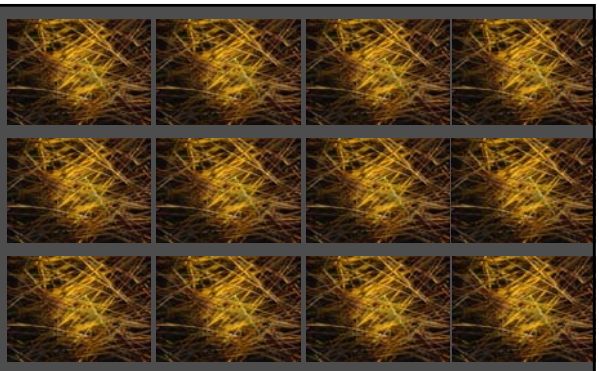
- Intelligence Preparation of the Battlespace (IPB)
  - Physical composition of the threat
  - Topography of the terrain
  - Operational tendencies and capabilities that serve as the doctrine for the opposing force
- Preparation of the Investigative Environment (PIE)
  - Organisational composition of networks/organisations
  - Environment in which they meet
  - Behavioural patterns of each group

(Source: Shelley et.al. 2005)

- Vertical thinking
  - Digging the same hole deeper
- Lateral thinking
  - Digging somewhere else
- Thinking outside the box/square/tradecraft







Australia: International Crime Cooperation

- Extradition
  - Surrender by one state, at the request of another, of a person who is accused of, or has been sentenced for, a crime committed within the jurisdiction of the requesting state
- Mutual Legal Assistance
  - Process to obtain and provide assistance in gathering evidence for use in criminal cases, transfer criminal proceedings to another state or execute foreign criminal sentences

- Dual Reality
  1. Reliance on international cooperation to mitigate transnational crime is a necessity
  2. Extradition and mutual legal assistance are not ready-made tools
     - Legal basis
     - Practitioners must know how, and if, that legal basis is applicable
       - Existence, age and contents of a valid international agreement
       - Type of offence
       - Legislation and practice in a particular country
     - Practitioners in requesting and requested country must be able to work together towards a common goal

1. Treaty-based cooperation
   - Advantages
     - Obligation to cooperate under international law
     - Detailed provisions on
       - Procedure
       - Parameters
       - Certainty and clarity
   a. Bilateral Treaties
   b. Multilateral Treaties
      a. UN Convention against Corruption
      b. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

UN Convention against Corruption

- Legal basis for extradition
  - Offences established under the auspices of the Convention deemed to be included in any existing bilateral extradition treaty between States and must be included in any future bilateral treaties
  - If a State party requires a treaty as a precondition to extradition it may consider the UN Convention as that treaty
  - If a State party does not require a treaty as a precondition to extradition, it shall consider offences under the UN Convention as extraditable offences
- UN Convention also provides legal basis for MLA
  - Parties are obliged to provide the widest measure of assistance in investigations, prosecutions and judicial proceedings

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

- OECD Convention contains provisions on extradition and MLA
  - Bribery of foreign public officials is an extradition offence under the laws of the Parties and in extradition treaties between them
  - A Party is required to provide prompt and effective assistance to other Parties

Other initiatives

- South-East Asian Mutual Legal Assistance in Criminal Matters Treaty
- UN Convention against Transnational Organized Crime
2. Non-treaty-based cooperation
   - Cooperation based on domestic law
     - Of utility where no treaties exist between countries concerned
     - Speed
     - No binding obligations under international law
   - Judicial assistance and Letters Rogatory
     - Of utility where no MLA treaties exist
     - Restricted ambit (service of documents, obtaining testimony)
     - No obligation to assist

Issues

- Jurisdiction
  - Artificial to examine issues of mutual legal assistance without considering the notion of competing jurisdictions
    - Extent of State jurisdiction
    - Determination of best jurisdiction
  - Few international instruments determine jurisdiction for a particular type of cases
  - "Inapproximate" regimes – lack of commonality between legal systems

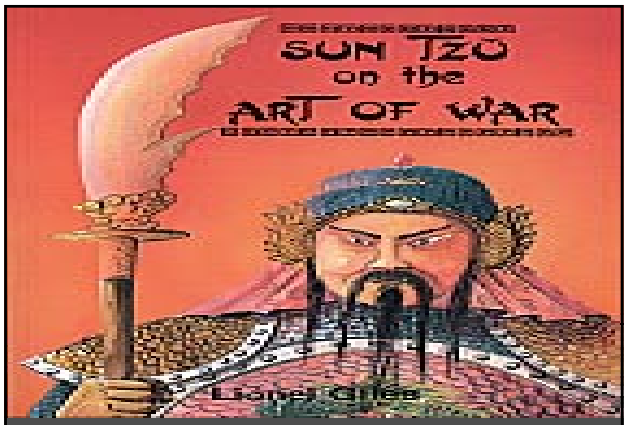
Mutual legal assistance/mutual assistance

- Distinction between MLA and MA
  - MA
    - Inquiry is routine and does not require the country of whom request is made to seek coercive powers
    - Potential witnesses might be contacted to see if they are willing to assist voluntarily
  - MLA
    - Obtaining testimony from non-voluntary witness
    - Seeking to interview suspect under caution
    - Obtaining account information and documentary evidence from financial institutions
    - Requests for search and seizure

Extradition

- Common conditions included in agreements regarding extradition are
  - Double or dual criminality
    - Offence in question is criminal in both the requesting and requested State
      - Legal difficulties
        Similar wording – different legal traditions
      - Practical difficulties
        Seeking to ascertain how offence is defined in requested State
    - Does offences constitute a punishable offence?
    - Do the constituent elements of the offence in both States correspond?

- The Rule of Speciality
  - The requesting State must not, without the consent of the requested State, try or punish the suspect for an offence not referred to in the extradition request and committed before s/he was extradited
- The Non-Extradition of Nationals
  - Obligation to protect citizens
  - Lack of confidence in the fairness of foreign legal proceedings
  - Disadvantages defendants face when defending themselves under a foreign legal system
  - Disadvantages of being in custody in a foreign country
- Political offences
- Danger of persecution, unfair trial or expected punishment



Mutual Legal Assistance and Extradition: Mitigating the Impact of Money Laundering and Corruption

Rob McCusker
Transnational Crime Analyst

Biography for Rob McCusker

Rob McCusker is the Transnational Crime Analyst, within the Global, Economic and Electronic Crime Program, at the Australian Institute of Criminology. He maintains a watching brief on transnational crime at the global, regional and national levels. Within Australia, Rob has worked with a number of agencies including the Attorney-General's Department, the Australian Crime Commission, the Australian Federal Police, AUSTRAC and the Office of National Assessments on issues ranging from anti-corruption, money laundering and human trafficking to future transnational crime threats and identity fraud. Overseas, Rob's work has been utilised by the Hong Kong Police and Rob has worked directly with the Specialist Crime Directorate of the Metropolitan Police and most recently with the Federal Bureau of Investigation within the USA.

International Cooperation
in Combating Corruption
Related to Money Laundering

Wanchai Roujanavong
Ministry of Justice
Thailand

United Nations Convention against Corruption

Money laundering related to Corruption

- Article 23: State Parties must establish the following offences as crimes.
  - Conversion or transfer of proceeds of crime
  - Concealment or disguise of the nature, source, location, disposition, movement or ownership of proceeds of crime
  - Acquisition, possession or use of proceeds of crime
  - Participation in association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the above offences.
  - The predicate offences shall include offences committed both within and outside the jurisdiction of the State Party.

Concealment

- Article 24 : State Parties must establish as an offence.
  - The concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this convention

Statute of limitations

- Article 29 : Statute of limitations.
  - State Party shall establish under its domestic law a long statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Freezing, seizure, and confiscation

- Article 31: Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:
  - Proceeds of crime or property derived from offences established in accordance with this convention
  - Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this convention.
  - (Even though the proceeds of crime have been transformed or converted into other property or have been mingled with property acquired from legitimate sources.)

Bank Secrecy

- Article 40: Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Asset Recovery

- Asset recovery is one of fundamental Principles of this Convention (Article 51)
- Consists of 4 main measures
  - Prevention and detection of transfers of proceeds of crime
  - Measures for direct recovery of property
  - Mechanisms for recovery of property through international cooperation in confiscation
  - Return and disposal of assets

Prevention and detection of transfers of proceeds of crime

- Article 52: Each State Party shall require financial institutions
  - to verify the identity of customers
  - to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts
  - to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.

Measures for direct recovery of property

- Article 53: Each State Party shall
  - Permit another State Party to initiate civil action in its courts to establish title to or ownership of the property taken by corruption
  - Permit its courts to order the offender to pay compensation or damages to another State Party that has been harm by such offences
  - Permit its courts to or competent authorities, in deciding on confiscation, to recognize another State Party's claim as a legitimate owner of the property taken by corruption

International cooperation for recovery of property

- Article 54: Each State Party shall
  - Permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party
  - Permit its competent authorities to order the confiscation of such property of foreign origin in accordance with its domestic law
  - Allow confiscation of the property without criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

International cooperation for recovery of property

- Article 54: Each State Party shall
  - Permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority (or even a request) of a requesting State Party that provides a reasonable grounds for taking such actions and that the property would eventually be subject to an order of confiscation
  - Permit its competent authorities to preserve property for confiscation

International cooperation for purpose of confiscation

- Article 55:
  - Having received a request from another State Party, a State Party shall take measures to identify, trace, and freeze or seize proceeds of crime, property, equipment or other instrumentalities for the purpose of eventually confiscation
  - If a relevant treaty is needed, the State Party shall consider this Convention the necessary and sufficient treaty basis

Return and disposal of assets

- Article 57:
  - Property confiscated shall be disposed of, including by return to its prior legitimate owners.
  - Each State Party shall enable its competent authorities to return confiscated property, when acting on the request made by another State Party in accordance with this Convention.
  - In the case of embezzlement of public funds or of laundering of embezzled public funds
  - In the case of proceeds of crime
  - In all other cases

Money Laundering Control Act 1999

Predicate offense

Section 3: In this Act, "Predicate offense" means

(1) offences relating to narcotics

(2) offences relating to sexuality in particular to sexual offences pertaining to procuring, seducing, or taking or enticing for indecent act on women or children in order to gratify the sexual desire of another person, and offences relating to the trafficking in children or minors,

(3) offences relating to cheating and fraud to the public

(4) offences relating to embezzlement or cheating and fraud involving assets

Money Laundering Control Act 1999

Predicate offense

(5) offences relating to malfeasance in office, or malfeasance in judicial office, or offences pertaining to malfeasance or dishonesty in carrying out official duties

(6) offences relating to the commission of extortion or blackmail by a member of an unlawful secret society or organized criminal association

(7) offences relating to customs evasion

(8) offences relating to terrorism

Money Laundering Control Act 1999

Money laundering offence

Section 5 : Whoever

(1) transfers, receives the transfer, or changes the form of an asset involved in the commission of an offense, for the purpose of concealing or disguising the origin or source of that asset, or for the purpose of assisting another person either before, during, or after the commission of an offense to enable the offender to avoid the penalty or receive a lesser penalty for the predicate offense, or

(2) acts by any manner which is designed to conceal or disguise the true nature, location, sale, transfer, or rights of ownership, of an asset involved in the commission of an offense shall be deemed to have committed a money laundering offense.

Money Laundering Control Act 1999

Section 6 : Whoever commits a money laundering offense, even if the offense is committed outside the Kingdom, shall receive the penalty in the Kingdom, as provided in this Act, if:

(1) either the offender or co-offender is a Thai national or resides the Kingdom;

(2) the offender is an alien and has taken action to commit an offense in the Kingdom or is intended to have the consequence resulting therefrom in the Kingdom, or the Royal Thai Government is an injured party; or

(3) the offender is an alien whose action is considered an offense in the State where the offense is committed under its jurisdiction, and if that individual appears in the Kingdom and is not extradited under the Extradition Act, Section 10 of the Penal Code shall apply mutatis mutandis.

Mutual Legal Assistance in Criminal Matters Act 1992

PART 9 Forfeiture or Seizure of Properties

Section 32

Upon receipt the request for assistance from a foreign state to forfeit or seize properties located in Thailand, the Competent Authorities shall apply to the Court having jurisdiction over the location of the properties for passing the judgement forfeiting such properties or for the issuance of an order seizing them.

Mutual Legal Assistance in Criminal Matters Act 1992

Section 33

The properties specified in the request for assistance from a foreign state may be forfeited by the judgement of the Court if such properties have been priory adjudicated to be forfeited by the final judgement of a foreign court and they are forfeitable under Thai laws.

If the properties were adjudged to be seized by a foreign court before the Court passed its judgement or after the passing of the judgement to forfeit such properties but the judgement has not become final yet, the Court may deem it appropriate to order the properties to be seized provides that they are seizable under Thai laws.

The forfeiture or seizure of properties by the judgement or order of the Court under this Section shall be effective even the offence which is the cause of such forfeiture or seizure may not have taken place in the territory of Thailand.

Mutual Legal Assistance in Criminal Matters Act 1992

Section 34

The provisions related to forfeiture of properties set forth in the Criminal Procedure Code and the Penal Code shall be applied to the inquiry, the application of motion, the trial, the adjudication, and the issuance of an order to forfeit or seize of properties in this regard, mutatis mutandis.

Section 35

The properties forfeited by the judgement of the Court under this part shall become the properties of the State, but the Court may pass judgement for such properties to be rendered useless, or to be destroyed.

Limitations

- **The forfeited properties belong to the State or the requested state.**
  - **Section 51 of the Money Laundering Control Act and Section 35 of the Mutual Assistance in Criminal Matters Act**

Wanchai Roujanavong

Ministry of Justice, Thailand

Present Position:

- Director General, Department of Probation, Ministry of Justice

Date of birth: 30 November 1950

Education:

- LL.B. Hons
- Barrister at Law
- LL.M. Cornell University
- Certificate in Crime Prevention and Treatment of Offenders, UNAFEI, Japan
- Certificate in International Cooperation on Criminal Matters, Oxford University, UK
- Certificate, National Defence College (Class 2546)

Career Outline:

- Director General, Department of Juvenile Observation and Protection, Ministry of Justice
- Director, Criminal Law Institute, Office of the Attorney General
- Public Prosecutor (Senior Expert), Department of Foreign Affairs, Office of the Attorney General

Academic and Social Service:

- UNODC Expert, laws relating to narcotics; organized crime; trafficking of women and children; extradition; international cooperation on criminal matters.
- Special lecturer on Human Rights, Transnational Social Issues and Juvenile Justice for Masters degree programme at Ramkamhaeng University and Rangsit University
- President, *Fight Against Child Exploitation (FACE) Foundation*
- President, *End Child Prostitution, Pornography & Trafficking Foundation (ECPAT) Thailand*
- Project Director, Research series on the improvement of laws to prevent and combat transnational organized criminal groups (awarded to be an Outstanding Research Series of the year 2003 by the Thailand Research Fund)
- Research, "Organized Crime: An Analysis of its Impact on Society and Security and Effective Preventative and Combative Measures" (awarded to be the Outstanding Research of the year 2004 by the National Defence College Council)
- A book on "Organized Crime in Thailand" (Thai), Matichon Publishing House, Bangkok, 2005

APEC Capacity Building Workshop on Combating Corruption Related to Money Laundering

Bangkok, Thailand
20 – 22 August 2007

***Anti-Money Laundering as a New Weapon to Combat Corruption:*Case Study of China**

Delegation of P.R. China

1

Main Content

- AML & Anti-Corruption
- Recent progress in AML & anti-corruption in China
  - AML legal framework
  - National AML coordinating mechanism
  - International cooperation
  - Supervision and examination
  - STR analysis and intelligence assistance: case studies
- Improving AML regime against corruption in the future

2

AML & Anti-Corruption

- Linkage between corruption and money laundering
- AML regime as a tool to prevent and combat corruption
- AML vs. Anti-Corruption efforts global
  - FATF 49 recommendations, R.6 (PEPs)
  - United Nations Convention against Corruption, articles 14,40,52 and 58.
- AML & Anti-Corruption efforts in China

3

Recent Progress in AML & Anti-Corruption

"In a very short time, China has made significant progress in implementing AML/CFT measure".

FATF report, 29th June,2007

4

AML Legal Framework

- 2003 UN Convention against Corruption (Merida Convention), Oct., 2005
- 191st article (money laundering offence) of Criminal Law,amended on 29th, June,2006, adding embezzlement and bribery as predicate crime.
- AML Law enacted on 31st Oct, 2006, effective on 1st January, 2007, setting up the AML regulatory framework, AML competent authority, extending AML obligation to all financial institutions and DNFBPs.

5

National AML Coordinating Mechanism

- AML Joint Ministerial Conference Mechanism (AML JMCM)
- Anti-money Laundering Coordination Mechanism among Financial Regulators
- People' Bank of China (PBC) act as the coordinator
  - set up AML Bureau in Sep.,2003
  - PBC set up China AML Monitoring and Analysis Center (CAMLMAC) in April, 2004
  - PBC have consolidated the SAFE's AML responsibilities in 2006
  - AML Divisions in 36 PBC's provincial branches in early 2007.

6

International Cooperation

- China became an observer to the FATF in January 2005, became FATF member on 29th June 2007.
- China as a founder joined Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) in late 2004.
- signed MOUs with 8 foreign FIUs, including South Korea, Malaysia and Russia.

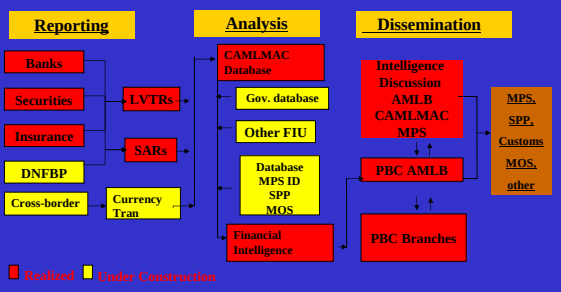
7

AML Supervision and Examination

- In 2006, Rules for AML by Financial Institutions, Administrative Rules for the Reporting of Large-Value Transactions and Suspicious Transactions by Financial Institutions.
- In 2007, Administrative Rules for Reporting of Suspicious Transactions related to the Financing of Terrorism by Financial Institutions, Administrative Rules for Financial Institutions on Customer Identification and Record Keeping of Customer Identity and Transaction Information with CBRC, CSRC, CIRC).
- In 2006, PBC carried out onsite examinations on 3378 banking institution, 600 of which were imposed pecuniary fines, totaling more than RMB 40 million.

8

China's AML Regime: FIU



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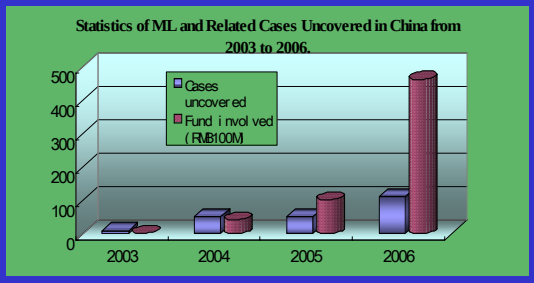
STR Analysis and Intelligence Assistance

- CAMLMAC received 124 million RMB LVTRs and 10.23 million FX LVTRs, has received 1.53 million RMB STRs and 4.23 million FX STRs, 2006.
- PBC carried out 1599 administrative AML investigations and disseminated 1239 dossiers, involving RMB 362 billion yuan and US$ 3.1 billion in 2006.
- PBC assisted the police and other authorities to investigate 2,750 cases , and helped to resolve more than 100 money laundering cases, with total funds of more than RMB 40 billion yuan in 2006

10

Money Laundering Cases Uncovered



11

Case Study 1

During the on-site AML examination by PBC's Guangdong Branch in August 2005, it was found that Mr. Liu, the former president of a local sub-branch of a national commercial bank, had abnormally substantial transaction involving more than RMB 20 million yuan, and he also had suspicious relationship with the bank's borrowers. With AML Bureau of PBC holding discussion with DECI of MPS and Anti-Corruption Bureau of SPP, investigation of the case suspecting of taking bribery was initiated, and Mr. Liu was arrested in December 2005. In the end, Mr. Liu was convicted as taking bribery RMB 210 thousand yuan, and the relevant proceeds of crime totaling RMB 438 thousand was confiscated.

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Case Study 2

Beijing Office of PBC found in AML monitoring that Mr. Ding and his relatives carried out suspicious foreign exchange transactions in January 2006. Holding intelligence discussion and consultation meeting among AML Bureau of PBC, CAMLMAC, MPS, the DECI of MPS began to investigate the case and found that Mr. Ding, the vice president of a state-controlled Sino-foreign transportation co., got more than US$ 1.7 million kick-backs in 2005. On 25th July 2006, the case was transferred to the Anti-Corruption Bureau of Beijing People's Procuratorate for prosecution.

13

New AML & Anti-Corruption efforts

- China 2005 strategy for combating and preventing corruption expressly stating "establishing AML regime "as an important part of anti-corruption measures.
- Ministers of Central Discipline Inspection Commission of the CPC, MOS visited PBC and CAMLMAC in June 2007.
- AML and Anti-Corruption departments to propose new initiatives to enhance information-sharing and case investigation assistance.
- International cooperation in APEC and global.

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Thanks

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AML Bureau, People's Bank of China

15

Yongyan SHI

Anti-Money Laundering Bureau, People's Republic of China

In March of 2006, Mr. Shi took over his current position as Deputy Director, General Office, Anti-Money Laundering Bureau, People's Bank of China (PBC). From 2003 to 2006, Mr. Shi was the Deputy Director, AML Division, Supervision and Inspection Department, SAFE (State Administration of Foreign Exchange). As a speaker, Mr. Shi has made presentations about China's AML efforts at Anti-Money Laundering & Fraud Prevention China Conference organized by LexisNexis, 30th Nov., Beijing, 2006, and BAFT (Banker's Association for Finance and Trade) 's 2nd Annual Asian Bank-to-Bank Forum on March 8-9, 2007, Singapore.

Mr.Shi holds a B.A. and M.A in economics from Peking University, China; an MBA (Nanyang Fellows); and a PhD from Nanyang Technological University, Singapore.

THE ROLE OF FINANCIAL INTELLIGENCE UNITS (FIUs) IN THE PREVENTION AND DETECTION OF CORRUPTION: THE CHILEAN EXPERIENCE

Víctor Ossa
Director
FINANCIAL ANALISYS UNIT (UAF) - CHILE
August 20, 2007

Money Laundering definition

United Nations (1)

1. Convention Against illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Vienna Convention (1988)
2. Convention Against Transnational Organized Crime, the Palermo Convention (2000)

Money Laundering definition (3)

United Nations (2)

The ***conversion or transfer of property***, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action;

The ***concealment or disguise*** of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

Money Laundering definition

United Nations (3)

Subject to the basic concepts of each country's legal system:

The ***acquisition, possession or use of property,*** knowing, at the time of receipt, that such property is the proceeds of crime;

Participation in, ***association*** with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of these type of offenses.

Money Laundering definition

CICAD – OAS (1)

The ***conversion, transfer or transport of property***, knowing or ***should having known***, or ***being intentionally ignorant*** that such property is proceeds or an instrumentality of a serious criminal activity;

The ***acquisition, possession, use or administration of property,*** knowing or ***should having known***, or ***being intentionally ignorant*** that such property is proceeds or an instrumentality of a serious criminal activity;

Money Laundering definition

CICAD – OAS (2)

The ***concealing, disguising or impediment*** to the establishment of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing or ***should having known***, or ***being intentionally ignorant*** that such property is proceeds or an instrumentality of a serious criminal activity;

Money Laundering definition

CICAD – OAS (3)

Participating in, ***associating*** with, conspiring to commit, attempting to commit, aiding and abetting, facilitating and counseling, inciting publicly or privately the commission of any of the above mentioned offenses to evade the legal consequences of such actions.

UAF

Money Laundering definition

Financial Action Task Force - FATF

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act.

Money laundering is the processing of illegally obtained proceeds to disguise their illegal origin.

UAF

Corruption definition

Whilst the "United Nations Convention against Corruption" (Mérida 2003), does not provide an official definition for corruption, common definitions include:

Corruption is an ***abuse of (public) power*** for private gain that hampers the public interest.

Corruption entails a confusion of the private with the public sphere or an illicit exchange between the spheres. In essence, corrupt practices involve ***public officials acting in the best interest of private concerns (their own or those of others) regardless of, or against, the public interest.***

UAF

The relationship between money laundering and corruption is direct

The relationship between the corruption of law enforcement or government officials and money laundering, is driven by the highly significant illegal revenues produced, the origin and ownership of which are concealed and disguised through the money laundering process.

On the other hand, money launderers intend to persuade law enforcement and government officials to perform a variety of corrupt practices, required to carry out the money laundering process.

The money launderer, through the application of 'kickbacks', may procure willful blindness on such party.

UAF

There is a direct relationship between money laundering and corruption

Regimes that lack systems of accountability and transparency typically allow for high levels of money laundering and corruption.

UAF

Anti Money Laundering (AML) systems are essential in fighting corruption

Key players of AML systems are the Financial Intelligence Units – FIUs

Definition of a Financial Intelligence Unit

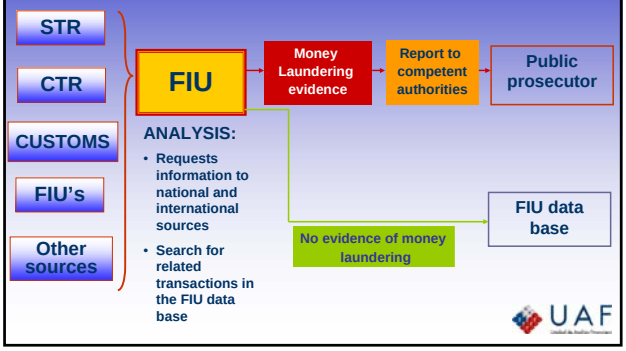
A central, national agency responsible for *receiving* (and, as permitted, requesting), *analyzing* and *disseminating* to the competent authorities, disclosures of financial information:

i) concerning suspected proceeds of crime and potential financing of terrorism.

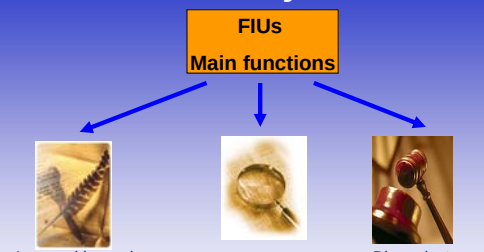
ii) required by national legislation or regulation, in order to combat money laundering and terrorism financing.

UAF

Operation Chart



Financial Analysis Unit - FIU



Anti Money Laundering (AML) systems are essential in fighting corruption

Prevention

If economies have strong AML systems in place, assets originated by corrupt practices will have more difficulties in being laundered and therefore, be used or enjoyed by such criminals. The issuing by FIUs of red flags, typologies and other guides to the reporting entities, is a key element in prevention having a **DISCOURAGING EFFECT**

This will also diminish the risk that government officials can be bribed, therefore **THE OFFER DIMINISHES**

Anti Money Laundering (AML) systems are essential in fighting corruption

Detection

A good record in the detection of corruption has an important discouraging effect in the practice of such crime.

The reception by FIUs of STRs and CTRs from banks, the financial system and other economic activities, allows the early detection of laundering proceeds originated in corruption as suspicious transactions are being monitored throughout several countries.

The reception by FIUs of cash cross-border reports is also a key element in early detection.

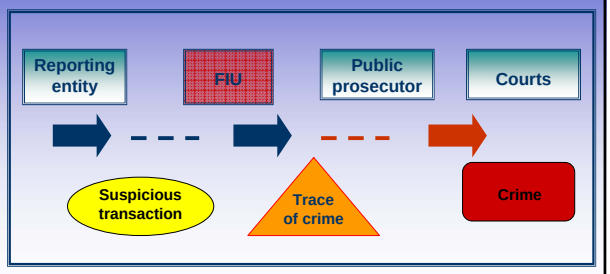
Anti Money Laundering (AML) systems are essential in fighting corruption

Prosecution

FIUs will collaborate with the Public Prosecutor Office providing financial information to support the investigation of Money Laundering and Terrorism Financing crimes.

Most important is the information FIUs can obtain from each other worldwide.

Responsibility chain in the AML system



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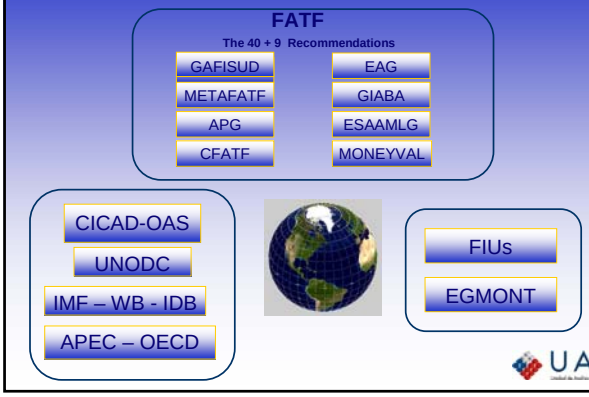
The International nature of Money Laundering



UAF

The international nature of Money Laundering

CICAD – OAS

In 1990, the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States (OAS), established the ***Experts Group on Money Laundering Control***. In the mid 90's, the Group issued the ***Model Regulations on Money Laundering Offenses*** related to drug trafficking and other criminal offenses. The Model Regulations document has been updated several times during the past years.

In 1999, as CICAD increased its activities of training and assisting member states in the control of money laundering, it established the **Anti-Money Laundering Unit (AMLU).** The Unit focuses its efforts on providing technical assistance and training.

UAF

The international nature of Money Laundering

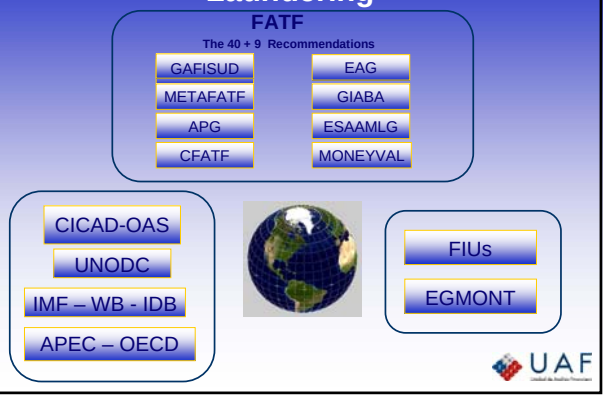
The UNODC Global Programme against Money Laundering

The Global Programme against Money Laundering (GPML) is the key instrument of the United Nations Office on Drugs and Crime (UNODC) in its efforts in combating money laundering and, therefore, organized crime.

A very important initiative currently being carried out by UNODC is the design of a software for FIUs called goAML and their offer to donate such software to FIUs.

UAF

The International nature of Money Laundering



UAF

The international nature of Money Laundering

FATF

The Financial Action Task Force on Money Laundering (FATF) was established in 1989 by the G-7 member States, the European Commission and eight other countries.

The FATF is an inter-governmental body whose purpose is the *development and promotion of national and international policies to combat money laundering and terrorist financing*. The FATF is therefore a "policy-making body" that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published 40 + 9 Recommendations in order to meet this objective.

UAF

The international nature of Money Laundering

FATF

During 1991 and 1992, the FATF expanded its membership from the original 16 to 28 members. In 2000 the FATF expanded to 31 members, in 2003 to 33 members, and in 2007 it expanded to its current 34 members.

UAF

The International nature of Money Laundering

FATF

The 40 + 9 Recommendations

GAFISUD
METAFATF
APG
CFATF
EAG
GIABA
ESAAMLG
MONEYVAL

CICAD-OAS
UNODC
IMF – WB - IDB
APEC – OECD

FIUs
EGMONT

UAF

The international nature of Money Laundering

Egmont Group

The first few Financial Intelligence Units (FIUs) were established in the early 90's.

Recognizing the benefits inherent in the development of a FIU network, a group of FIUs met at the Egmont Arenberg Palace in Brussels in 1995. On such occasion, they agreed to establish an informal group for the encouragement of international cooperation.

Now known as the Egmont Group, these FIUs meet regularly to find ways to cooperate, especially in the areas of information exchange, training and sharing of expertise.

There are 106 countries or jurisdictions, with recognized operational FIUs which are currently members of the Egmont Group, along with others in various stages of development. Since July 2007, an Executive Secretariat has been established and based in Toronto, Canada.

UAF

The Chilean Experience

The Chilean FIU was created, on December 18, 2003, under Law 19.913. This same law established corruption offenses as a predicative crime for money laundering.

Chile ratified the United Nations Convention Against Corruption on September 13, 2006 which became official by its publication in the Official Gazette on January 30, 2007.

UAF

The Chilean Experience

In the past months, Chile has taken legislative and administrative measures to ensure the implementation of what was agreed under the UN Convention Against Corruption.

UAF

The Chilean Experience

Article 5 - Preventive anti-corruption policies and practices

1.- Anti Corruption government policies

a) A report from a Committee of Experts on measures to favor probity and efficiency of public management.

In November 2006, the President of Chile received a report from a Committee of Experts she had previously designated, with recommendations in four areas: Probity, Transparency, Quality of Policies and Modernization of the State.

b) Constitution of an Agenda of Probity and Transparency and an Executive Secretariat.

On December 6, 2006, the President of Chile established the Agenda of Probity and Transparency reporting to an Executive Secretariat, which requested the enforcement of 30 concrete measures proposed by the Committee on their November 2006 Report.

UAF

The Chilean Experience

Article 5 - Preventive anti-corruption policies and practices

2.- Identification and promotion of good practices

The Executive Secretariat of the Agenda of Probity and Transparency organized - within the State Administration - a contest in order to detect the best practices in probity, transparency and access to public information.

The Chilean Experience

Article 6 - Preventive anti-corruption body or bodies

1.- The Counsel for Transparency

On December 6, 2006, in order to guarantee wide access to information on public entities, the President of Chile sent to Congress a Draft Law for its creation.

The Chilean Experience

Article 7 – Public Sector

1.- Improvements to the High Public Direction System

On December 20, 2006, the President of Chile sent a Draft Law to Congress, with a proposal to amend this System in the following aspects:

i) Add new Public Entities to the System. At the end of such process, only five of these, as well as all State owned Universities, will remain out of the System.

ii) Strengthen the corporate role of the High Public Direction Council

iii) Establish an annual report to Congress by such High Public Direction Council

iv) Improvements to the recruitment process of High Public Directors

The Chilean Experience

Article 7 – Public Sector

2.- Five-year training plan on public ethics for public officials

A training plan is being developed by the Finance Ministry, the High Public Direction Department, and the Executive Secretary of Probity and Transparency Agenda.

The Chilean Experience

Article 7 – Public Sector

3.- Primary Elections Regulation

On December 6 2006, the President of Chile sent to Congress a project to amend our Constitution. This amendment will establish Primary Elections within political parties for the nomination of their candidates for Presidential and Congress elections.

4.- Draft Law to regulate lobbying activities

On December 6, 2006 the President of Chile sent to Congress a Draft Law to regulate such activity.

The Chilean Experience

Article 7 – Public Sector

5.- Amendment to law on transparency, limit and control of election - campaign expenditures

On December 6, 2006, the President of Chile sent to Congress a Draft Law which will among others:

i) Create a Suppliers Registry

ii) Prohibition to juridical persons to make donations to candidates or political parties

iii) Establishment of penal types for certain offenses to the Election Expenditures Law

iv) Restrictions to some faculties of the Executive Power in relation to the presentation of urgent Draft Laws during election - campaign periods.

v) Restrictions to publicity of governmental policies during election - campaign periods.

vi) Prohibition to perform fund collection campaigns within Public Institutions.

The Chilean Experience

Article 8 - Code of conduct for public officials

1.- Probity and Transparency Manual

The Executive Secretary of the Probity and Transparency Agenda is presently elaborating a Manual and Code of Conduct for public officials.

2.- Incompatibility and Inabilities for Congressmen

On December 6, 2006 the President of Chile sent to Congress a project to amend the Constitution. Such Amendments include:

i) the ruling of conflict of interests for Congressmen and

ii) restrictions and disclosing to the acting of Congressmen as attorneys or mandates under certain circumstances.

The Chilean Experience

Article 8 - Code of conduct for public officials

3.- Protection to public officials who report irregularities and corruption acts

On December 6, 2006 the President of Chile sent to Congress a Draft Law, which establishes that public officials who report irregularities and corruption acts shall receive protection. This Law has already been approved by Congress, and published in the Official Gazette on July 24, 2007.

4.- Public availability of the declaration of Patrimony and Interests (Amendment to the 8th Article of the Chilean Political Constitution)

Public authorities are obligated to declare their wealth and interests at the beginning and end of their period in such positions. On December 6, 2006 the President of Chile sent to Congress a Draft Law in order to amend the Constitution and make such declarations public and widely available.

The Chilean Experience

Article 9 - Public procurement and management of public finances

1.- Presidential guidelines on active transparency dated December 4, 2006

Every public entity must publish in its official web site:

i) a detailed list of all acquisition of goods and services

ii) a list including every individual working for the entity

ii) a detailed list of funds transferred to juridical persons.

2.- Improvement of the General Audit Governmental System

A Draft Law has been presented to upgrade a governmental advisor commission to become the Internal General Audit Governmental Council. Every Ministry will need to establish its own Auditing Council.

The Chilean Experience

Article 9 - Public procurement and management of public finances

3.- Improvement of public procurement

On December 20, 2006 a Draft Law was sent to Congress to strengthen the public procurement system established by the Law in 2003, so extending its compulsory compliance to a broader range of public entities and public activities. All acquisitions over a certain amount (approximately US$ 50), must be made via the governmental procurement web site www.chilecompra.cl.

4.- Project of Constitutional Amendment on the modernization of the *Contraloría General de la República (the Chilean Official Public Auditing Entity)*

On December 6, 2006 the President of Chile sent to Congress a Draft Law to introduce significant changes and modernize the *Contraloría General de la República.*

The Chilean Experience

Article - 10 Public reporting

1.- Draft Law on the transparency of the activity and access to information of public entities.

On December 6, 2006 the President of Chile sent to Congress a Draft Law to regulate the access to information of public entities. Active transparency shall become an obligation.

Article 12 – Private Sector

1.- A Draft Law to broaden restrictions to the "revolving door"

On December 6, 2006, the President of Chile sent to Congress a Draft Law to strengthen employment restrictions to public officials once they finish their period as governmental authorities. Monetary compensation for a one year restriction period.

The Chilean Experience

Article - 33 Protection of reporting persons

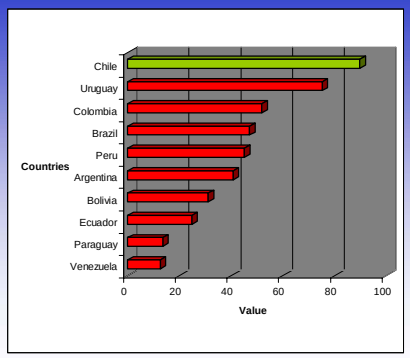
1.- A Law to provide protection to public officials who report irregularities or corruption acts

On December 6, 2006, the President of Chile sent to Congress a Draft Law to protect public officials against any unjustified treatment, if they report in good faith any irregularities or corruption acts, This project became a Law upon its publication in the Official Gazette on July 24, 2007.

Perception of corruption 2006

Source: Transparency International

SOUTH AMERICA



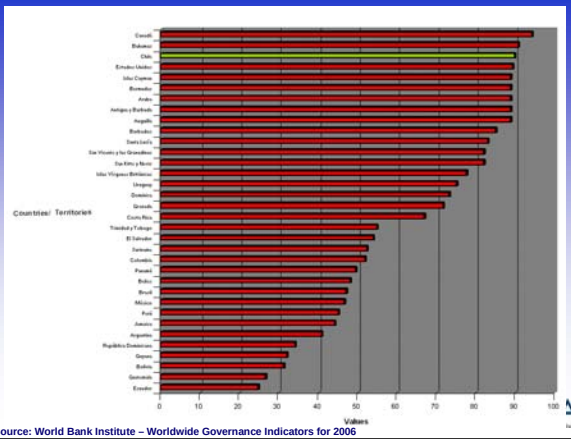
Source: World Bank Institute – Worldwide Governance Indicators for 2006

SOUTH AMERICA

Country	Control of Corruption	Ranking	
Chile	89,8	1	<=
Uruguay	75,2	2	
Colombia	51,9	3	
Brazil	47,1	4	
Peru	45,1	5	
Argentina	40,8	6	
Bolivia	31,1	7	
Ecuador	24,8	8	
Paraguay	13,6	9	
Venezuela	12,6	10	

Source: World Bank Institute – Worldwide Governance Indicators for 2006

WESTERN HEMISPHERE



Source: World Bank Institute – Worldwide Governance Indicators for 2006

WESTERN HEMISPHERE

Country / Territory	Control of Corruption	Ranking	
Canada	94,2	1	
The Bahamas	90,8	2	
Chile	89,8	3	<=
United States	89,3	4	
Anguilla	88,8	5	
Antigua and Barbuda	88,8	5	
Aruba	88,8	5	
Bermuda	88,8	5	
Cayman Islands	88,8	5	
Barbados	85,0	6	
Saint Lucía	83,0	7	
Saint Kitts and Nevis	82,0	8	
Saint Vincent and the Grenadines	82,0	8	
British Virgin Islands	77,7	9	
Uruguay	75,2	10	
Dominica	73,3	11	
Grenada	71,8	12	
Costa Rica	67,0	13	
Trinidad and Tobago	54,9	14	
El Salvador	53,9	15	
Suriname	52,4	16	
Colombia	51,9	17	
Panama	49,5	18	

Source: World Bank Institute – Worldwide Governance Indicators for 2006

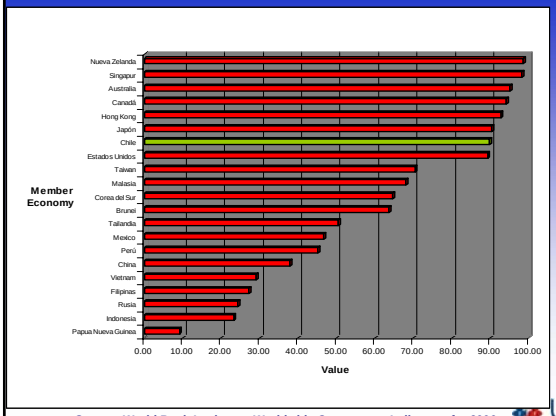
Belize	48,1	19
Brazil	47,1	20
Mexico	46,6	21
Peru	45,1	22
Jamaica	44,2	23
Argentina	40,8	24
Dominican Republic	34,0	25
Guyana	32,0	26
Bolivia	31,1	27
Guatemala	26,7	28
Ecuador	24,8	29
Nicaragua	23,8	30

Source: World Bank Institute – Worldwide Governance Indicators for 2006

Honduras	22,3	31
Paraguay	13,6	32
Venezuela	12,6	33
Haiti	2,4	34
Turks & Caicos Islands	N/A	
Montserrat	N/A	
Netherland Antilles	N/A	

Source: World Bank Institute – Worldwide Governance Indicators for 2006

APEC



Source: World Bank Institute – Worldwide Governance Indicators for 2006

APEC

Member Economy	Control of Corruption	Ranking	
New Zealand	98,5	1	
Singapore	98,1	2	
Australia	95,1	3	
Canada	94,2	4	
Hong Kong	92,7	5	
Japan	90,3	6	
Chile	89,8	7	<=
United States	89,3	8	

Source: World Bank Institute – Worldwide Governance Indicators for 2006

Taiwan	70,4	9
Malaysia	68,0	10
South Korea	64,6	11
Brunei	63,6	12
Thailand	50,5	13
Mexico	46,6	14
Peru	45,1	15
China	37,9	16
Vietnam	29,1	17
Philiphinas	27,2	18
Russia	24,3	19
Indonesia	23,3	20
Papua New Guinea	9,20	21

Source: World Bank Institute – Worldwide Governance Indicators for 2006

Thank you!

Víctor Ossa

Director

FINANCIAL ANALISYS UNIT (UAF) - CHILE

www.uaf.gov.cl

August 20, 2007

Victor Ossa

Mr. Víctor Ossa is a Civil Engineer and Master in tax law. Since April 2004 he has been Director of the Chilean Financial Intelligence Unit, which he created. In representation of the Americas and the Caribbean, he is presently member of the Steering Committee of the Egmont Group, organization formed by the FIUs from 106 countries and territories. He is also the Chair of the Steering Committee of the Egmont Group's IT project "FIU in a Box" as well as the Chair of the Group of Experts for the Control of Money Laundering of the CICAD from the OAS.

Prior to becoming Director of the Chilean FIU and until 1995 Mr. Ossa was the Manager for Foreign Resources and Correspondent banking from Banco Santander and from thereon Chief Financial Officer of an electricity generation company, a mining company and finally at the Chilean Post.

Measures for Politically Exposed Persons (PEPs) - An Evolving International Standard

Dr David Chaikin
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APEC/NCCC Workshop on Combating Corruption Related Money Laundering, Bangkok, Thailand, 2007

Historical Background

- Marcos case
  - 1986 Swiss banks freeze accounts ($357m)
  - 1987 Swiss Federal Banking Commission practice
  - 1998 Swiss Federal Banking Commission ML Guidelines
- Abacha case
  - 1999-2002 Switzerland, Liechtenstein, Luxembourg, England, Jersey freeze accounts
  - Regulatory reports – Swiss, British, Jersey
  - Establishment of private PEP data bases

Managing PEPs as part of AML/CTF Obligations

- US Senate Report on Private Banking
- Basel Committee on Banking Supervision
  - high reputation and legal risks of corrupt PEPS
- FATF 2004 Typologies Report
- Wolfsberg Group on Corruption Statement

Definition of PEPs – International Legal Instruments

- FATF
- UN Convention Against Corruption (UNCAC)
- EU Third Money Laundering Directive
- Treatment of relatives and friends
- No consistent, comprehensive definition
- Need to extend PEP categories
  - political parties
  - sub-national political figures
  - military & security personnel
  - charities & foundations

Business Associates – Natural and Legal

- Crony capitalism – use political connections to obtain monopolies, licences
- Secret fronts for PEPs to conceal & launder bribes & proceeds of corruption
- Use of shell companies & foreign legal entities to conceal PEP ownership
- Failure to implement FATF Recommendation 5
  - Identifying beneficial ownership

National or Domestic PEPS

- International legal instruments
  - FATF Revised Recommendation 6
  - EU Third Money Laundering Directive
  - United Nations Corruption Convention Article 52(1)
    - Enhanced due diligence for national PEPs
- National AML laws for domestic PEPs
  - Mexico, Brazil and Belgium

PEPs – International Legal Measures

- Prevention strategies
  - Financial disclosure - UNCAC Art 52(5)
  - Reporting of foreign bank accounts - UNCAC Art 52(6)
  - Correspondent banking
- Detection/Identification strategies
  - Customer Due Diligence -FATF Recommendation 5
    - Establish identity of customer & beneficial owner

PEPs – FATF Recommendation 6

- **Enhanced** Customer Due Diligence -FATF Recommendation 6
  - Risk management systems to identify PEPs
    - Customer disclosure, internal checks, external databases - Note limitations on private sector source data
    - Adequate documentation
    - Understand anticipated account activity
  - Senior management approval for PEP accounts
  - Verify sources of wealth & funds
  - Ongoing monitoring of business relationship

PEPs – International Legal Obligations

- Reporting of suspicious transactions and freezing of illicit PEP accounts
- Providing international legal assistance
- Repatriation of illicit PEP property
  - UN Corruption Convention
  - Egs Montesinos, Peru (2002, 2004), Marcos(2004), Alema, Nicaragua (2004)Abacha, (2005)

Future Developments and Reform

- Countries should ratify and fully implement the UNCAC
- National PEPs should be subject to enhanced scrutiny in accordance with obligation in article 52(1) of the UNCAC
- FATF/APG Project Group on Corruption will present a report on money laundering and corruption at FATF Annual Meeting in Paris in October 2007

David Chaikin

Dr David Chaikin PhD in Law (Cambridge), LLM (Yale), BCom/LLB (UNSW) is a Senior Lecturer in Business Law, Faculty of Economics and Business, University of Sydney. He is a barrister and a Council Member of the Australian Academy of Forensic Science. He is also an Expert Consultant to the Financial Action Task Force, and Asia/Pacific Group on Money Laundering. He has wide ranging experience in policy development, as well as multi jurisdiction investigations and transnational criminal and civil litigation, in both the private and public sectors.

APEC/NCCC CAPACITY BUILDING WORKSHOP ON COMBATING CORRUPTION RELATED TO MONEY LAUNDERING

Application of AML Measures to Detect Corruption-Linked Assets and Funds

Rita O'Sullivan, Senior Counsel
Asian Development Bank
20-22 August 2007
Bangkok, Thailand

ADB

MONEY LAUNDERING CONVENTION REQUIREMENTS

Vienna and Palermo Conventions require countries to

- **criminalize** the laundering of the proceeds of drug trafficking and ALL other serious crime
- Provide **mutual assistance** and extradition
- Enforce **foreign** proceeds of crime orders
- Provide **cooperation** for foreign investigations and exchange information

ADB

ADB

MONEY LAUNDERING AND CORRUPTION

- Corruption=both a **cause** and **effect** of ML
- Financial institutions are **vulnerable to corrupt** business persons, officials, and politicians.
- Criminals corrupt financial institutions to **gain influence** over money laundering channels.
- Any hint of ML by a financial institution **risks customer trust**—a fundamental element of sound financial institution growth.

ADB

EFFECT ON FINANCIAL MARKETS

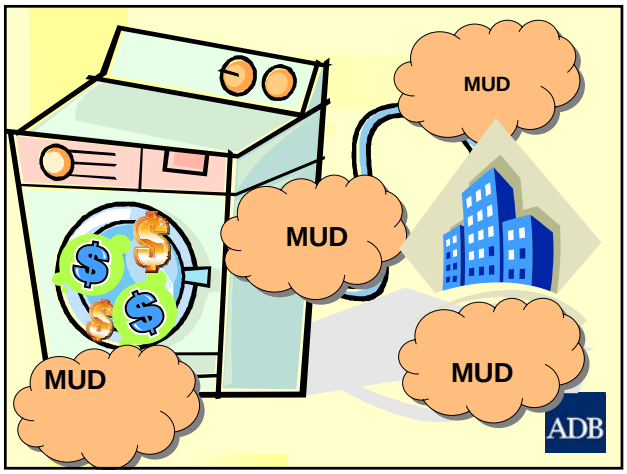
- Financial institutions can be **perpetrators, victims, or instrumentalities** of money laundering.
- Links between institutions and criminals undermines **credibility and confidence** in financial system particularly in emerging economies
- **Reputational** risks—major risk to banks
- **Operational** risks—fraud, theft

ADB

CORRESPONDENT RELATIONSHIPS

- Financial markets are global.
- **Banks** have to have correspondent relationships to do business.
- Poor AML systems will lead to end of correspondent relationship as regulators in developed economies increase scrutiny.
- Even in absence of supervisory framework
  - A) result of foreign ownership & implementation of internal group policies
  - B) result of demands of correspondent institutions & correspondence services requirements
- Legislative controls driving this—e.g. USA PATRIOT Act and 3rd European Directive

ADB



PUBLIC/PRIVATE SECTOR: Common Approach to AML Measures

- Financial institutions' clear interest to **avoid link** with corruption funds/ money laundering
- **Cooperation** between public/private sector
  - Built on mutual trust
  - Effective exchange of information
- Effective internal **due diligence**—rules and procedures

National Level Responses

- Structures for effective & swift **communication** to private sector
- Risk-based **guidance** to Financial Institutions
- Network of specific **points of contact** for security staff members
- Public awareness **campaigns**
- How to identify gaps & bottlenecks in AML regime?

Develop an AML Process Map

- Overview of the magnitude of criminal activities (including corruption) that may be related to money laundering – **risk based** approach
- Document AML regime procedures—5 Stages:
  1. Detection methods
  2. Investigation procedures
  3. Prosecution
  4. Judicial Determination
  5. Enforcement

I. Detection Stage-initial placement & layering

– Reporting and recording **procedures**

- 1st phase: **placement**—usually via financial institutions—"covered institutions" (bank deposits, buying securities or insurance products, money changers, money payment, remittance, and transfer companies)
- 2nd phase: **layering**—transactions dramatically change the form of funds—from cash in deposits to an entirely different class of assets—stock certificates, insurance policies, pre-need plans, investment contracts, bearer and other negotiable instruments, etc – i.e. **highly liquid** investments!

I. Detection Stage (2)

- Monitoring Compliance of **Covered Institutions**—3 major **requirements**
  - Know your client (**KYC) Rule** – install and maintain a system to identify and verify the true identity of clients for ALL accounts
  - **Retain** transaction records (usually 5 to 7 years)
  - **Submit** covered (cash) transactions reports (CTRs) and suspicious transactions reports (STRs) to FIU in a **timely manner**
- Staff **Training** Program

II. Investigation Stage

- AML Investigation Procedures
  - Examine allegation—probable cause?
  - Link with predicate crime?
  - Special ML investigation techniques
    - FIU gathers and analyzes data
    - Data mining software
  - Coordination between investigating agencies
  - Issuance of Warrants/ freezing orders
  - Seek Mutual Legal Assistance

II. Investigation Stage (2)

- Monitor Status of Investigations
  - Which agency undertakes monitoring?
- Training Program for Investigators
  - Forensic accounting

III. Prosecution Stage

- Preliminary Investigation Procedures
  - Who/ how **conducted**?
  - **PEPs**—Anti-Corruption authority/Ombudsman
  - **Foreigner**/ foreign registered company— Mutual legal assistance
  - Legal Protection for "**whistle blowers**"—bank, financial institution, and FIU staff

III. Prosecution Stage (2)

- Civil Forfeiture Procedures
  - Seize and/or Freeze orders, civil forfeiture
  - Criminal Prosecution
  - Do not need to prove "**predicate crime**"—establish fact that money from an illegal source

IV. Judicial Determination

- **Special court** and related court procedures
- Monitoring of **Case management**
  - Number of ML cases filed
  - Status of Money Laundering, Civil Forfeiture, and Related Cases
  - Speed and conviction rate of actual cases filed
- **Training Program** for judges and court officials

V. Enforcement

- Monitoring of Enforcement System
  - Status of **recovered amounts** from domestic and foreign cases (Mutual legal assistance)
- **Training Program** for enforcement officers

CONVERGENCE of CELL PHONE VALUE TRANSFER & AML MEASURES

Paradigm Shift from Cash to Digital funds—less bulky, faster/easier to move, more difficult to "follow the money".

A. Internet payment services

- transfer funds, shop online, or participate in online auctions
- across national borders

Example: PayPal—individual sets up pre-paid account; buyer directs PayPal to credit seller

transfer funds–credit/debit card or bank account

CONVERGENCE of CELL PHONE + AML (2)

B. Mobile payment services

- cell phone as access device to transact
- based on existing bank accounts or payment cards

CONVERGENCE of CELL PHONE + AML (2)

C. Mobile payment services **not based on an underlying bank** or payment card account

- telecom operator acts as payment intermediary to authorize, clear, and settle the payment –
- via phone bill (post paid) or
- via account holder's account (pre-paid) act as stored-value cards or as an electronic purse
- Value is stored on the subscriber identify module or SIM card within the mobile phone

OPERATIONAL CONCERNS

- KYC in **digital** world – how to enforce
- Digital value **smurfing**
- 3G phones (mini computers) allow **open-looped** digital transfers to move through various providers' systems
  - Where does value lie?
  - Who really owns the digital cash
  - Easy to move funds from anywhere
  - Search and seizures difficult as one SMS can transfer funds as police knock on the front door
- M-commerce/M-AML legislation for **cyber search warrants** to search, arrest, and seize.
- If open system between providers—rethink **AML controls**
- Cross industry and regulatory **collaboration** important
- International **cooperation** critical

WEBSITES AND CONTACT DETAILS

ADB's AML Toolkit website

www.adb.org/Documents/Others/OGC-Toolkits/Anti-Money-Laundering/default.asp

ADB/OECD Anti-Corruption Initiative for Asia-Pacific

www1.oecd.org/daf/ASIAcom/

THANK YOU

Contact: Rita O'Sullivan,
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RITA O'SULLIVAN, Senior Counsel, Asian Development Bank (ADB)

Ms. Rita O'Sullivan is an attorney in ADB's Office of General Counsel in Manila, Philippines. She specializes in financial sector reforms, providing advice and support for ADB's public sector operations. For the last 6 years, she has been responsible for coordinating ADB's anti-money laundering/combating financing of terrorism (AML/CFT) and trade security operations across the Asia Pacific region. She represents ADB at international and regional AML/CFT fora and on FATF working groups. Ms O'Sullivan specializes in alternative payment systems, information and communication technologies, particularly in the areas of e- and m-commerce, as well as commercial legal frameworks and court reforms.

Also an economist, Ms. O'Sullivan joined ADB in 1997 as a Capital Markets Specialist, designing and implementing financial sector reforms and enhancing capital market policies and strategies in ADB's programs in South East Asia. Prior to joining ADB, Ms. O'Sullivan was Vice President, Risk Management, with National Securities Clearing Corporation in New York, USA. Ms. O'Sullivan also worked as Manager and General Counsel at the Securities Exchanges Guarantee Corporation Limited in Sydney, Australia. Prior to that, she had positions with the Australian Federal Attorney-General's Office and Papua New Guinea's State Solicitor's Office in Port Moresby.

Strategies On Effective Corruption Control - Singapore's Perspective

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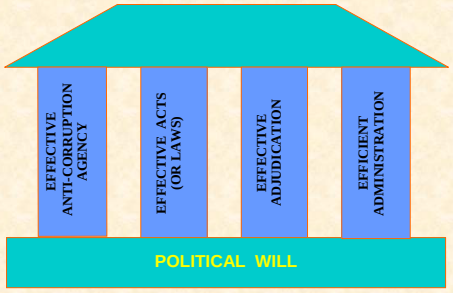
SCOPE OF PRESENTATION

- Pillars of Anti-Corruption Strategy
- On CPIB
- Effective Laws
- Anti-Money-Laundering

Pillars of Anti-Corruption Strategy



Pillar : Effective Enforcement

- Setting Up Of An Independent Anti-Corruption Agency (CPIB)

On CPIB

- Established in 1952 (one of the oldest anti-corruption agencies in the World)
- Part of Prime Minister's Office
- Functional Independence
- Sole agency on corruption-investigation

Swift and Sure

Our Role

- Contribute to Sound Governance
  - ✓ Watch over Government
- Contribute to national economy
  - ✓ Promote economic growth, remove impediments to level playing field

Enforcement approach to fight corruption

Total Approach

- Investigate both Public and Private Sector corruption
- Givers and receivers in bribe transaction are equally culpable
- Zero tolerance of corrupt acts ie. from few dollars to millions
- Can investigate anonymous reports
- Check and balance between CPIB and AGC

Pillar : Effective Laws

- Prevention of Corruption Act ("PCA")
  - Increased powers of investigation
  - Enhance punishments for corruption

Effective Laws

Some distinctive features of PCA:

- Presumption clause
- Acceptor guilty even if no power, right or opportunity to return favour
- Wealth disproportionate to income as corroborative evidence
- Investigates both public and private sector corruption
- Evidence of Customary Practices inadmissible

Presumption of corruption in certain cases

- Gratifications received by a public officer shall be deemed to have been paid or given and received corruptly unless the contrary is proved.
- Similar to Drug Trafficking Act

Acceptor of gratification to be guilty notwithstanding that purpose not carried out, etc.

- Guilty even if the person receiving bribes did not have the power, right or opportunity to do so, or he did not in fact do so.

Evidence of custom inadmissible

- In any civil or criminal proceeding under this Act evidence shall not be admissible to show that any such gratification as is mentioned in this Act is customary in any profession, trade, vocation or calling.

When Penalty To Be Imposed In Addition To Other Punishment

- Sec 13 of the PCA provides the Court to order any person convicted of corruption to pay as a penalty a sum which is equal to the amount of gratification or is, in the opinion of the Court the value of the gratification, in addition to imposing on the person any punishment.
- Sec 14 of the PCA provides where any gratification has in contravention of this Act, been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof from the agent or from the person who gave the gratification
- Principle is to deprive the accused of the proceeds of corruption

Anti-Money-Laundering

Legislation & Framework

AML/CFT - Legislation

- Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Cap 65 (CDSA)
  - Criminalizes money laundering in respect of Corruption, Drug Trafficking and 292 other serious offences

AML/CFT - Legislation

- Terrorism (Suppression of Financing) Act, Cap 325
  - Criminalizes terrorism financing;
  - Prohibits any dealing with property belonging to terrorists;
  - Imposes a duty on every person in Singapore, and every Singapore citizen overseas, to provide information on terrorism financing to the Police.

Background

- Shortly after becoming a member of the FATF, Singapore enacted the Drug Trafficking (Confiscation of Benefits) Act ('DTA') in 1992 which contained provisions on laundering of drug proceeds.
- The scope of the DTA was later expanded to include the laundering of proceeds from other serious crimes and the Act was renamed as the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act ('CDSA') in 1999. The ML provisions were also modified to catch a wider range of conduct.
- The CDSA came into effect on 13 September 1999 as Chapter 65A of the Statutes of the Republic of Singapore. Criminalizes money-laundering in respect of Drug Trafficking and 292 other serious offences.

Background

- Why criminalise ML?
- Why investigate ML?
  - To ensure that "Crime does not pay".
  - Minister for Home Affairs during the second reading of the Drug Trafficking (Confiscation of Benefits) Amendment Bill: "We do not want criminals or their families to be able to enjoy the fruits of such crime".

Important Provisions

- "**Serious Offence**": serious penal offences listed in Schedule and related offences (including attempts, conspiracy, abetment etc)
- "**Foreign Serious Offence**": offence against the laws of or part of a foreign country where the act or omission constituting the offence or the equivalent act or omission would, if it had occurred in Singapore, constitute a SO.
- "**Property**" means money and all other property, movable or immovable, including things in action and other intangible or incorporeal property

Important Provisions

- Section 2 CDSA: "**Criminal Conduct**":
  - Doing or being concerned in a **Serious Offence (SO)** or a **Foreign Serious Offence (FSO)**;
  - Entering into or being concerned in an arrangement where retention of benefits from SO/FSO is facilitated or benefits of SO/FSO are used to secure funds/acquire property;
  - Concealing/disguising property which represents benefits from SO/FSO
  - Conversion, transfer or removal from jurisdiction of property which represents benefits from SO/FSO

Important Provisions

Anyone who Conceals or disguises any property which represents his benefits from Drug Trafficking or from Criminal Conduct – CDSA S46(1) & S47(1)

Anyone knowingly assists a person to 'launder' property so as to avoid the prosecution of a money laundering offence or to avoid the enforcement of a confiscation order under the CDSA – S46(2) & 47(2)

Tip Off – CDSA S48(1) & S48(2)

Important Provisions

Confiscation order to confiscate the benefits derived from criminal conduct.

The amount to be recovered under confiscation order is the value of the benefits derived from criminal conduct

These benefits are assessed from an analysis of the defendant's property or interest which are disproportionate to his known sources of income and the holding of which cannot be explained to the satisfaction of the court

The value of the benefits is an aggregate of the values of the properties and interests

Important Provisions

CDSA S39(1) makes it mandatory for anyone to lodge a Suspicious Transaction Report (STR) if he has reason to suspect that any property is connected to criminal activity, and such suspicion arose in the course of employment / business. STR information is shared collectively amongst the enforcement agencies (Intel to Intel).

Monetary Authority of Singapore Regulation

- MAS 626
- MAS Notice on Prevention of Money Laundering and Countering The Financing of Terrorism
- Association of Banks in Singapore's 'Guidelines on Prevention of the Misuse of the Banking System in Singapore for Money-Laundering Purposes'
- Banks' internal AML/CFT Policies

ENFORCEMENT ROLE IN AML / CFT

Department	Conducts ML Investigations into…
Central Narcotics Bureau	Domestic Drug Trafficking
Corrupt Practices Investigation Bureau	International & Domestic Corruption Offences
Commercial Affairs Department	International Drug Trafficking, and the rest of the 292 serious offences

CONCLUSION

- Corruption control starts from within each jurisdiction,
- Strict enforcement against corrupt offenders,
- Principle of depriving corrupt offenders benefits of corruption
- Effective laws & action needed in corruption enforcement and pursuing benefits of corruption

THANK YOU

Raymond Wee

Chief Special Investigator of the Corrupt Practices Investigation Bureau (CPIB). Currently holding the appointment of Head Investigation, Special Investigation Team (SIT).
The SIT is part of the Ops branch which investigate high profile cases. As the HI, I direct investigation and day to day operations of the SIT. I've been in service for 14 years and have been in the Ops branch throughout my career with the CPIB.

APEC/NCCC Workshop on Combating Corruption Related to Money-Laundering

Bangkok August 21, 2007

The Role of Special Investigative Techniques in Combating Corruption

Andy Boname

The Importance of Special Investigative Techniques

- Article 50(1) of the UNCAC requires provision for "controlled delivery" to the extent consistent with local law, and adoption of other Special Investigative Techniques as deemed "appropriate."
- FATF Recommendation #27 includes the provision: "Countries are encouraged to support and develop, as far as possible, special investigative techniques suitable for the investigation of money laundering, such as controlled delivery, undercover operations and other relevant techniques."
- What is "appropriate" and "as far as possible"?

The Maria Nolasco Case

- In 2002 the US Customs service broke a money laundering operation that was moving money between a bank in New Jersey (USA) and several Brazilian currency exchange firms.
- The operation, managed by bank VP Maria Nolasco, laundered half a billion dollars in the 6 months of the investigation – **3.7 billion dollars** over its 4-year run.
- The scheme was broken by undercover agents; one who was hired as Ms. Nolasco's administrative assistant, another who acted as a drug trafficker seeking to have his money sent out of the U.S.

ABSCAM

- In 1979-1980 the FBI ran an undercover "sting" operation on local, state and federal officials.
- The operation, which had FBI agents portraying Arab oil tycoons who wanted to invest in casinos and titanium mines in the US, ran for 23 months and cost $800,000.00.
- Eighteen people, including six members of Congress, were eventually convicted (bribery and conspiracy, and some lesser charges).

Special Investigative Tools -- What Are They?

- "Techniques applied . . . for the purpose of detecting and investigating serious crimes and suspects, aiming at gathering information in such a way as not to alert the target persons." (COE, 2005)
- Surveillance, Controlled Delivery, Undercover Investigation, Communication Intercepts, Simulated Purchases/Bribes, Registration of Simulated Companies, etc.
- Exceptionally valuable in corruption cases.

Special Investigative Tools: More Important & Widespread

- **UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Art. 11)**
- **UN Convention against Transnational and Organized Crime (Art. 20)**
- **UN Convention against Corruption (Art. 50)**
- **FATF Recommendation #27**
- **EU position (directly supports UNCAC's use of SIT and calls on its Members to adopt common standards for their use)**
- **COE position – Encourages use of SIT (Recommendation No. (2005)10)(provides for proportionality and other constraints)**

Important tools -- that are not in every toolkit

- While more and more economies are making broad use of SIT, many do not.
- The reasons:
  - Prohibitions on some types of surveillance (human rights concerns; historical abuses of privacy rights)
  - Bar on controlled delivery based on rules requiring that crime be stopped when discovered, bar to police complicity, etc.
  - Impediments to simulated transactions and undercover activities: "agent provocateur" prohibited, no deceit permitted by police

These Are Valid Concerns

- Abuse of authorization to engage in surveillance
- Abuses in simulated/undercover operations -- entrapment, "Rampart" scenario, particular issues in vice cases
- Concerns about protecting public trust and the rights of citizens (ideas that police should stop crime when discovered, not engage in deceit, etc.)

Policy Issues

- Weighing the rights of citizens to have a less corrupt government (and issues relating to drug distribution and terrorism) against rights regarding privacy/intrusion.
- Efficacy of "organized crime" interdiction -- combating individuals, or taking on organizations. [Laws that require authorities to act immediately to stop crimes and arrest suspects, play into the hands of criminal syndicates].
- Issues generated by rising international standards.

Core issue: How to protect rights while attacking "wrongs"?

- There are ways to control the use of these tools so that potential harms are averted
  - E.g., Regarding Controlled Delivery, the UNCAC makes specific provision for removing or substituting illicit goods before completing delivery, if necessary to comply with domestic law.
  - Various types of constraints can be placed on these "power tools" – regulating threshold, methodology, and use of results.

Threshold Controls

- Limiting use of SIT to listed offenses or to offenses punishable by imprisonment of specified minimum term.
- Restricting to certain circumstances (e.g., in US, wiretaps limited to circumstances where no other available means of evidence will suffice. Judge decides.)

Controls on Methods

- Restricting the duration of a technique's use (e.g., limited period for wiretaps).
- Restricting the nature of investigative activities (policy manuals generally restrict the kind of behavior that can be engaged in by undercover agents)
- Legal principles pertaining to "entrapment" and "outrageous government conduct."
- Substitution of contraband in controlled deliveries.

Controls on use of results

- Evidentiary rules -
  - Can limit the use of the evidence obtained to the offenses that were the basis for the investigation.
  - Can entirely reject, or exclude, from judicial consideration evidence that was collected improperly or in a manner calling into question the integrity of the investigative procedure.
- Also, if undercover government agent assisted in accomplishing offense, this fact can be considered in mitigating punishment.

"Defending Liberty, Pursuing Justice"

- You can do both.
- It is worth amending laws, and perhaps constitutions, to allow for restricted and accountable use of SIT.
- Global standards are moving in this direction:
  - Citizens will expect their governments to take all reasonable steps to stop corruption.
  - Harmonization across borders increasingly important.

SIT As a Deterrent

- General deterrence (awareness that law enforcement officials may use these methods raises associated risks)
- Specific deterrence:
  - Integrity testing
  - Open surveillance of official activity
- Promotes public trust in the ability of government to constrain corruption.

Fewer Issues in Open Use as a Deterrent

- Official activity does not carry an expectation of privacy – can openly place surveillance cameras in public areas.
- This is an effective tool in stopping some forms of "enforcement" misconduct.
- Re "integrity testing," put government employees on notice that they are subject to testing through simulated bribery.

Plea Agreements as a SIT

- Not a traditional form of SIT, but an extension of one: the use of an informant.
- Plea Agreements are, like certain types of SIT, repugnant to the values of some legal systems.
- As a means of obtaining witness cooperation, Plea Agreements are, like all SIT, exceptionally valuable in corruption investigations.
- Properly managed, the harm threatened by the use of Plea Agreements can be contained.

Various levels of disposition authority allowed prosecutor:

- In some jurisdictions, plea agreements only effect which charges will be proceeded upon – the sentence remains entirely the province of the judge.
- In some, the prosecutor agrees to make a sentencing recommendation, but the decision remains the judge's.
- This can also be provided for with the judge reviewing the proposed plea agreement before "accepting it", if he or she finds it consistent with public policy.

- The value of the Plea Agreement in the fight against organized crime is so great that Italy, having had a traditional civil law system – and substantial concerns about organized crime – adopted a special form of it:
  - In Italy, the "pentiti" (cooperating defendants in organized crime cases) receive shorter sentences, in some cases freedom (and qualify for a witness relocation program).
  - Italy has a separate plea bargain procedure (similar to a procedure used in France and other civil law jurisdictions) for minor offenses.

Plea Agreements can be made:

- Transparent – public officials to disclose all terms and conditions in court.
- Accountable – justification for plea offer subject to review, and ultimately public oversight.
- Fair – within limits, plea agreements can be constrained so that the "big fish" does not get the "sweet deal", and the rights of all defendants – and the public interest – are protected.

Conclusion

- Special Investigative Techniques are powerful law enforcement tools that have particular value to corruption investigation and deterrence.
- They carry risks of abuse that must be managed through effective policies that maintain their limited and accountable use.
- Properly managed, the evidence they can produce is worth billions of dollars, the removal of innumerable corrupt officials, and an enhanced trust in government that is priceless.

ANDREW BONAME

After obtaining his JD at the New York University School of Law in 1983, Andy Boname served as a US Navy JAG officer, first in the capacity of a prosecuting attorney and later, in Guam, as the Staff Judge Advocate for the Naval Station Commander. After leaving the Navy in 1987, he took a position as a prosecutor in the Guam Attorney General's Office and, during his nine years there, established and headed a "White Collar" (anti-corruption) Crime unit, and later a specialized appeals unit. He also acted as Guam's Chief Prosecutor for a six-month period. For several years as a Guam prosecutor, Andy was cross-designated a Special Assistant U. S. Attorney, for the specific purpose of assisting in corruption prosecutions. He left prosecution to become the Staff Attorney of the Guam Supreme Court when it was founded in 1996.

Andy returned to active military service as an investigating officer for the National Guard Bureau in Arlington, Virginia (from July 1998 to June 1999). Returning to civilian life, he went back overseas, this time to Bosnia-Herzegovina, where he arrived in March 2000. Andy first served as a Criminal Law Liaison for the ABA/CEELI Office in Sarajevo and then as a Regional Coordinator for the Criminal Justice Advisory Unit attached to the UN Mission in Bosnia. The UN Mission closed in late 2002, but Andy stayed to lead two successive law reform projects funded by USAID, the first dealing with administrative law reform and the second aimed at streamlining regulatory controls on business. Andy left Bosnia in March 2007 to take the position of Regional Anti-Corruption Advisor, based in Bangkok, with the American Bar Association's Rule of Law Initiative.

MICHAEL L. GRANT
SPECIAL AGENT
FBI

UNDERCOVER TECHNIQUES AND STRATEGIES

I. CONFIDENTIAL INFORMANTS

A. POTENTIAL SOURCES TO PREDICATE CASES

1) RELIABILITY AND CREDIBILITY OF CI
(track record and "how do you know?"

2) PROMISE OF CONFIDENTIALITY

(a) WILL NEVER BE SURFACED

(b) WILL NEVER TESTIFY

3) MUST KEEP PROMISE

3) CONFIDENTIAL SOURCE FILE

(a) PROTECTS INVESTIGATOR

(b) PROTECTS INTEGRITY OF INVESTIGATION

4) PAID vs. UNPAID

(a) RULES AND REGULATIONS GOVERNING PAYMENTS

1) RECEIPTS

2) WITNESSES

5) CODE NAME

(a) HELLO TELEPHONE

(b) PROCEDURES TO CONTACT

II. COOPERATIVE WITNESSES (CW)

A. WORK WITH INVESTIGATORS AND PROSECUTORS

1) CWs TESTIFY AT ALL JUDICIAL PROCEEDINGS

(a) CONFIDENTIALITY ENDS WHEN CASE INDICTED

2) PROSECUTORS MUST BE KEPT INFORMED OF CWs ACTIVITIES---COULD IMPACT ON TESTIMONY

3) RELOCATION PROCEDURES

4) PAID vs. UNPAID

III.CONSENSUAL MONITORING

1) DONE BY CWs

2) ENTRAPMENT ISSUES

3) INVESTIGATOR AND PROSECUTOR MUST DISCUSS STRATEGY

4) PREPARATION OF CW:

(a) NO LEADING QUESTIONS

(b) LISTEN. DO NOT INTERRUPT

(GOOD DEFENSE LAWYER WILL TIME CONVERSATION---WHO TALKS THE MOST?)

5) CHAIN OF CUSTODY FOR TAPES/CD

(a) PROSECUTOR MUST GET COPY OF TAPE/CD AND TRANSCRIPT ASAP

IV. ENTRAPMENT

A. PREDISPOSITION vs. LEADING UNWILLING PERSON TO COMMIT CRIME

(a) INVESTIGATOR AND PROSECUTOR MUST AGREE ON STRATEGY TO AVOID PROBLEM

V. UCA vs. CW

1) WHICH WILL PRODUCE MOST CREDIBLE TESTIMONY?

(a) MAY NOT BE FEASIBLE TO USE UCA

(1) NOT POSSIBLE TO INJECT UCA INTO GROUP

(EG. ORGANIZED CRIME FAMILY)

2. UCA MAY NOT BE ABLE TO GAIN SAME DEGREE OF CONFIDENCE AS CW

3. CW MAY KNOW MORE ABOUT THE BUREAUCRACY, CULTURE, ETC. OF AN ENTITY

(EG. COMPLEX BUSINESS THAT IS UNDER INVESTIGATION)

VS.

4. UCA MAY BE MORE CREDIBLE WITNESS

5. UCA MAY BE BETTER TRAINED TO ROLE PLAY

2) UCO MORE COMPLICATED THAN USE OF CW

(a) LONG TERM UCO ALLOWS FOR PLANNING STRATEGY

(b) CW MAY BE MORE SUITED FOR SHORT TERM INVESTIGATION

VI.PAYOFFS

1) ALWAYS CONFER WITH PROSECUTOR TO ENSURE NO ENTRAPMENT AND TO AGREE ON STRATEGY

(a) LOCATION OF PAYOFF: HOTEL? CAR? OFFICE? STREET????

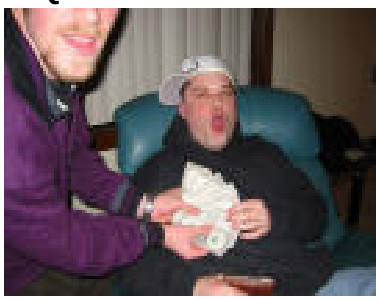
1) WHERE WILL BEST AUDIO/CCTV BE AVAILABLE?

(b) MIDDLE MEN PROBLEMS

(C) ANTICIPATE DEFENSES WITH CWs AND UCAs

1. consultant
2. campaign contribution
3. Prior "UNRECORDED CONVERSATIONS" defense

(d) CW/UCA MUST CLEARLY STATE ON TAPE THAT THE PAYMENT IS A QUID PRO QUO OR MONEY DOES NOT PASS



NOTE: IT CAN BE EFFECTIVE TO INITIALLY USE A COMBINATION OF UCA AND CW

Mike Grant

FBI, USA

Extensive White Collar Crime Experience to include Bank, Mail and Wire Fraud investigations. Responsible as Case Agent and Coordinator for major cases involving bank failures wherein Chairman and other Directors were indicted and convicted. Utilized various investigative techniques to include non-telephonic consensual monitoring and surveillance of subject meetings. Case Agent on case initially opened as Civil Rights - Hate Crime matter, but through investigation found complaints to be false, and indicted and convicted on 23 counts of Arson/Insurance Fraud, as well as Attempted Murder on a Federal Witness. U.S. Attorney presented an award for excellent work. This case involved developing extensive liaison with local and state agencies and preparing three search warrants.

Coordinator of Squad Module (Task Force) for Asian Organized Crime/Drug (AOC/D) investigations. Responsible for federal and state Title III installations involving numerous languages to include Cantonese, Mandarin, and Vietnamese, resulting in multiple significant AOC/D indictments and convictions, specifically a violent street gang and their leader. Developed RICO cases on AOC/D with coordinated effort with multiple Federal, State, and Local Agencies. Developed OCDETF cases, specifically on an AOC Tong, which involved the use of sophisticated techniques, including T-IIIs, pen registers, Undercover Activity (Group I and IIs), and unique surveillance activity.

Assigned as Case Agent and Co-Case Agent on numerous Public Corruption investigations to include the City of Atlanta investigation which involved the City of Atlanta Mayor and numerous high ranking City officials and city contractors. A lengthy investigation and subsequent trials revealed that the Mayor and others did in fact receive payoffs from city contractors and other businessmen for favorable treatment from city. Hundreds of witnesses were interviewed and thousands of documents were analyzed to corroborate these investigative findings. This investigation spanned over seven years and was worked by several FBI and IRS agents. Sources and consensual monitoring techniques were used in this case.

In addition, SA Grant was the case agent Police Corruption matters, to include one where there a high ranking officer that utilized a scheme that involved various stratagems, including forged power of attorneys, and other documents to obtain the release of money and property being held by the police department, purportedly for the benefit of the rightful property owners. In excess of $700,000 was obtained in the scheme over a ten year period. This complex case was presented to a Federal Grand Jury and a 38 count indictment was obtained, as well as a Tax Fraud Case indictment. The high ranking officer was convicted on all 38 counts, of conspiracy, mail fraud, and honest services mail fraud.

Local and regional cooperation

FIU and law enforcement and anti-corruption agencies

Peter Ritchie – Anti-Money Laundering Assistance Team, (AMLAT), Attorney-General's Department, Australia

Content

- Introduction
- Local cooperation
- Regional cooperation

Introduction

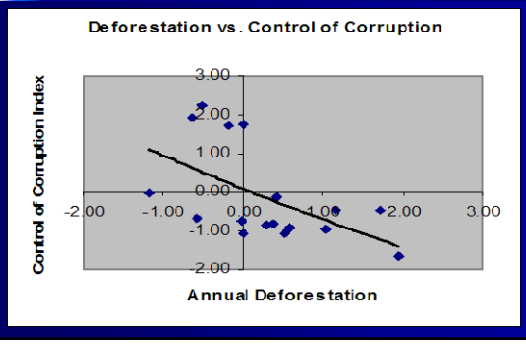
Tailoring AML/AC systems to specific risks

Example: illegal logging

- Lower level & grand corruption
- Extensive trade & money laundering
  - Money
  - Logs
- Local and regional crime & cooperation

Introduction

Corruption drives deforestation



Introduction

Illegal logging & deforestation is a major problem

- 2nd greatest contributor to greenhouse gas emissions & climate change
- Forests: 88% lost. 70% of biodiversity.
- Community & habitat destruction
- Major driver of corruption

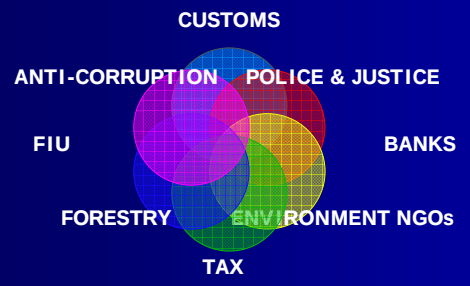
Local cooperation

1. Understanding the problem

- Building relationships
- Risk Assessment
  - awareness of illegal logging offence and illicit methods
- Identifying priorities

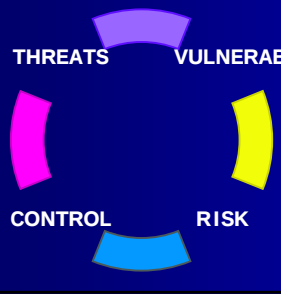
Local cooperation

Building relationships - AC-AML team



Local cooperation

Risk Assessment



Local cooperation

Risk Assessment

Threat ⟷ **Vulnerability**

Logging firms
- Capacity & intent to bribe?

Bribery of officials
- Opportunity?
- Intent?

Risk ⟷ **Control**

- Probability of bribes being offered and accepted

Monitor & detect?
Prevent?
Prosecute?

Local cooperation

Threat Assessment

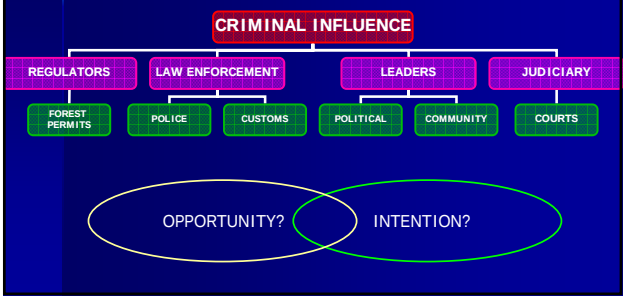
Capacity to corrupt? ⟷ Intend to corrupt?

- Industry wealth?
- Experience?
- Political links?
- Local networks?
- Bank connections?

- Criminal history?
- Corruption history?
- Reputation?
- Associations?
- Suspicious activity?

Local cooperation

Vulnerability Assessment – Officials



Local cooperation

Vulnerability Assessment – Officials

Illegal log bribery takes different forms

Higher level leaders and officials
- International funds transfers
- Luxury jewellery, furniture, cars, holidays
- Infrastructure: roads!

Lower level
- Cash & household goods
- Visits to bars & massage

MOST ARRESTS

Local cooperation

Identifying priorities - examples

Risks	Controls
Local cash bribes	Banks monitor forestry cash
Illegal logs receive 'legal' permits	Review & audit permit system
Leaders receive bribes in other countries	Improve monitoring of PEP accounts
	Register of business interests

Local cooperation

Identifying priorities - examples

Risks	Controls
Senior forest officials opening accounts	Treat senior forest officials' accounts as high risk
Logging companies money transfers	Treat all logging firms accounts as high-risk

Local cooperation

2. Tackling the problem

- Implement **Risk Controls**
- Working together
  - Building trust
  - Developing MOUs
  - Rehearsing cooperation
  - Managing Proceeds
- Building wider support

Local cooperation

2. Tackling the problem

Implement **Risk Controls**

AC-AML team decisions on:

- Priorities
  - Cost Likelihood of Success Impact
- Responsibility
  - Authority "Champion"
- Resources
- Timing

High value targets

Local cooperation

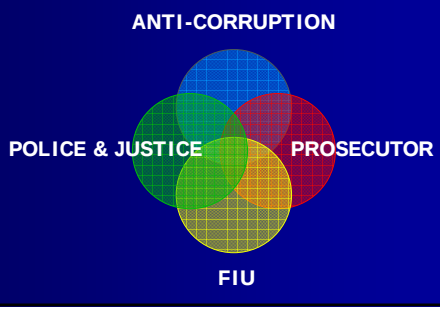
Working together

Building trust

- Territory versus effectiveness
  - Strategy
  - Speed
  - Stepping back
- Regular contact

Local cooperation

Developing AC/AML MOUs



Local cooperation

Rehearsing cooperation

- Scenario-based practice
  - Coordinating parallel investigation
    - Predicate Offence
    - Tainted Assets
- Managing proceeds of crime
  - Ready for swift action to restrain assets?
  - Physical assets? Trucks, boats?

Regional cooperation

Understanding the problem: illegal logging

Impossible for a single country to prevent illegal logging

- Illegal logging is trans-national crime
  - Asian forest to your dining table!
  - Unlike drugs, difficult to hide logs
  - Hide illegal status of logs & money

Regional cooperation
Understanding the problem

Huge regional trade and financial links

- Four of five major regional forest conglomerates own their own banks
- World bank estimates $10-15 billion per year illegal forest trade
- 'Masterminds' usually live away from the logging source country
- Most value leaves the source country

Regional cooperation

Risks ⟷ **Controls**

- Legitimate banks passively engage in laundering funds from illegal logging
- Legitimate banks risk penalties

- Strengthen KYC and due diligence in transactions associated with forest industries
- Bank regulators consider special guidance on timber finance sector

REVIEW CORRESPONDENT RELATIONSHIPS

Regional cooperation

Risks ⟷ **Controls**

- Failure to identify smuggled logs

- Improve ability to recognise trade-based laundering
- Closer intelligence sharing between Customs and FIUs
- Develop trade-based laundering profile

GLOBAL PRIORITY

Regional cooperation

Risks ⟷ **Controls**

- Failure to prevent international laundering of funds from forest crime and corruption

Combat financial tricks:

- Transfer pricing
- 'Loans' to affiliated companies
- Under and over valuation of logs and assets
- Tax authority partnerships

Regional cooperation

Risks ⟷ **Controls**

- Regional illegal logging syndicates are not prosecuted

NGOs? REMOTE SENSING?

Controls

- Shared analysis:
  - FIU - FIU
  - Customs - Customs
  - Police - Police
- Regional-level forest & network analysis
- Multi-country targeting of syndicates

Questions?

Peter Ritchie, AMLAT

Peter Ritchie

Peter Ritchie is a Financial Intelligence Adviser in the Australian Attorney-General's Department. He led the early establishment of the Australian Government's Anti-Money Laundering Assistance Team (AMLAT), which assists Pacific island countries to prevent money laundering, corruption, and the financing of terrorism. His current major projects include establishing and strengthening anti-money laundering systems in Papua New Guinea, the Solomon Islands and the Republic of Nauru. In partnership with other agencies, this work includes building operational links between financial intelligence units (FIUs) and domestic and international police, customs and anti-corruption agencies.

Before his work in financial intelligence, Peter was a Senior Analyst with the Office of Strategic Crime Assessments (OSCA), specialising in the analysis of people smuggling, identity fraud, and transnational crime in Southeast Asia. Prior to joining the public sector, Peter worked in technical and organisational reform roles for Conzinc Rio-Tinto Australia (CRA), a mining and exploration company.

The Legal Systems of Anti-Money Laundering & Some Corruption Cases in the Republic of Korea

Yong-Nam Kim
Senior Public Prosecutor
Suwon District Prosecutors' Office

On Aug. 12 in 1993 Presidential Order

Before year of 1993

Criminalizing the act of money laundering

- In 1995
- Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.
- In 2001
- Act on the Registration and Punishment of Concealment of Proceeds from Crimes (**Act on Proceeds from Crimes**)
- Act on Report on Specific Financial Transaction Information and Utilization Thereof, etc. (**Act on Financial Transaction Report**)

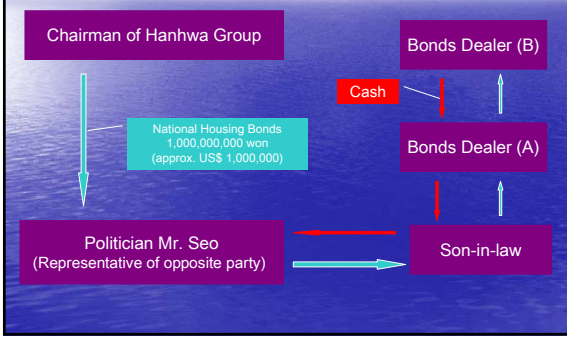
Act on Proceeds from Crimes

- Criminalizing the act of money laundering related to 109 crimes, including organized crimes, smuggling, evasion of assets to foreign nations, embezzlement, fraud and tax evasion in large amounts of money
- Confiscation of criminal proceeds & properties derived from criminal proceeds

Act on Financial Transaction Report

- Established the Korean Financial Intelligence Unit (KoFIU)
- Introduced a suspicious transaction reporting (STR) system
- KoFIU receiving 3,900 STRs per month in 2007

Bearer Bonds in Money Laundering



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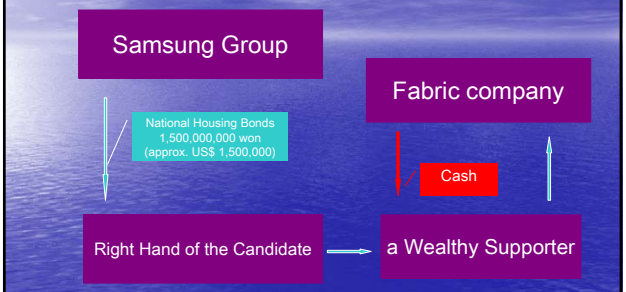
False Buying & Selling in Real Estates in Money Laundering

8

Samsung Group



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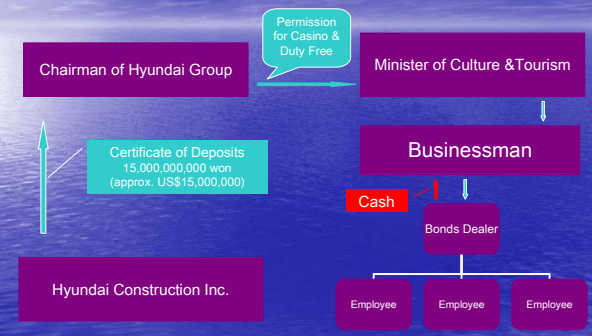
Money Laundering through Bearer Certificate of Deposits



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Thank You!!

Yong-Nam Kim

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tel) 82-31-212-3136
fax) 82-31-210-4744

11

Kim, Yong-Nam

As a senior public prosecutor at the Suwon District Prosecutors' Office, currently Yong-Nam Kim specializes in organized crimes. He started working as a prosecutor in 1995 for the Ministry of Defense. In the following 13 years, he was dispatched to many districts including Seoul, Kwangju and Suwon, having the opportunity to experience a variety of cases. He particularly enjoyed investigation experience in financial crimes while in Seoul and environmental crimes in Kwangju, for which he was awarded a presidential prize in 2003.

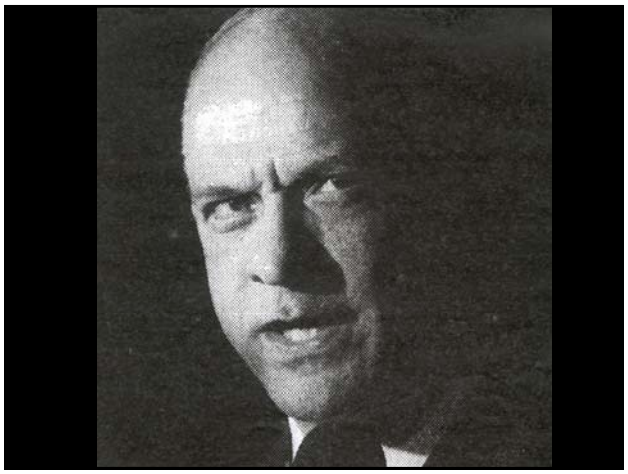
Mr. Kim's passion for working for justice grew during his academic years. He majored in Law at Seoul National University as an undergraduate and gained a master's degree in Commercial Law at Korea University. In 2001, he went to Cambridge University as a visiting scholar for in-depth study on insider trading.

It's Not Always About Where the Money Went; Sometimes It's About Where the Money Didn't Go

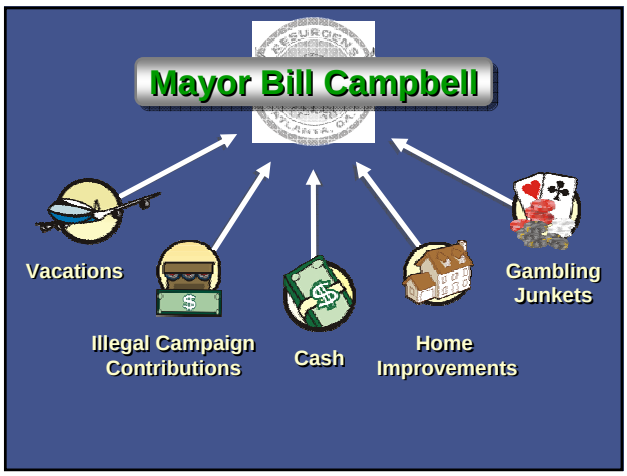
The Investigation and Prosecution of Political Corruption in Atlanta, Georgia, U.S.A.

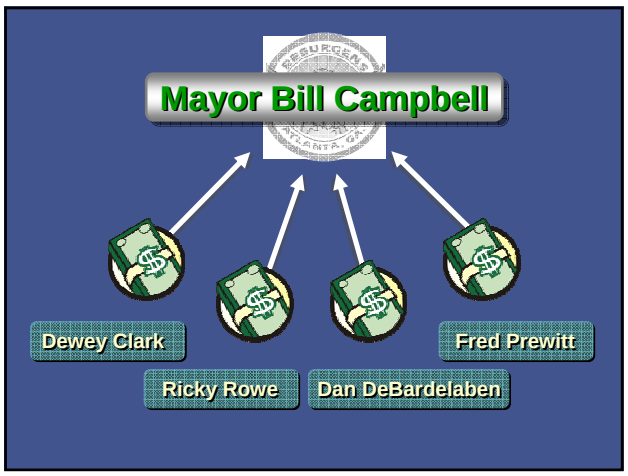
Presented By Daniel P. Griffin

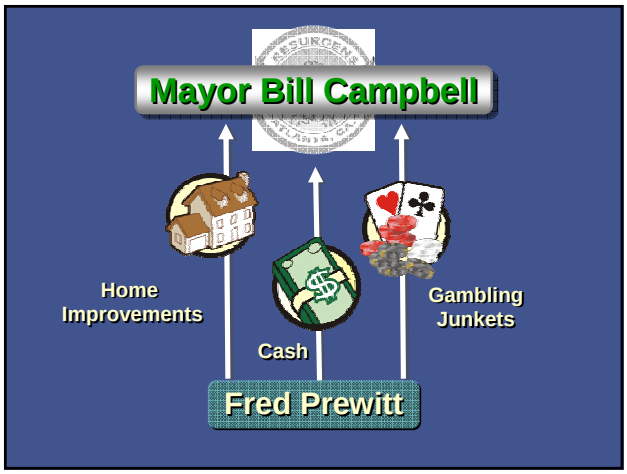
Miller & Martin PLLC



The "Pay to Play" Atmosphere

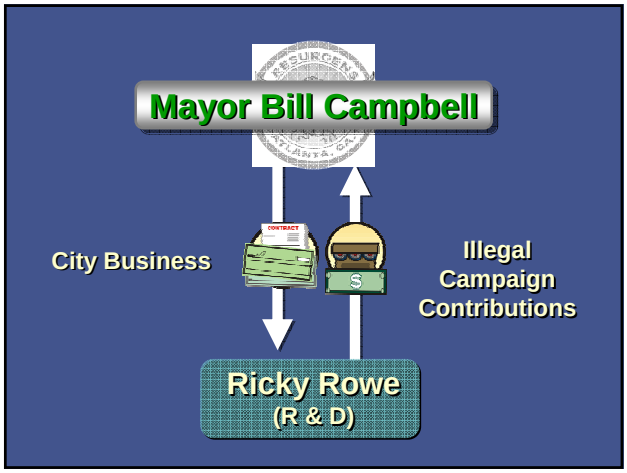


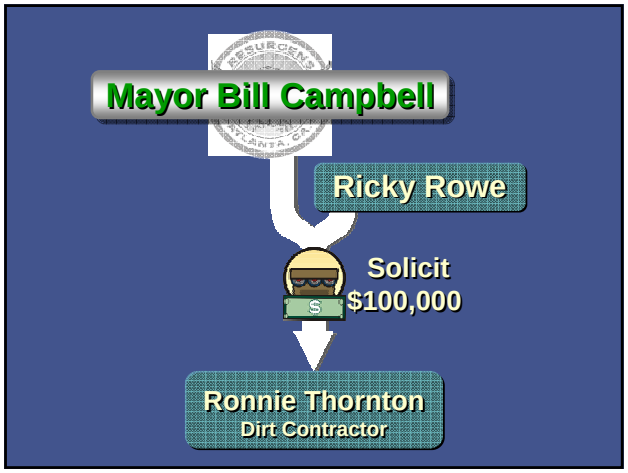


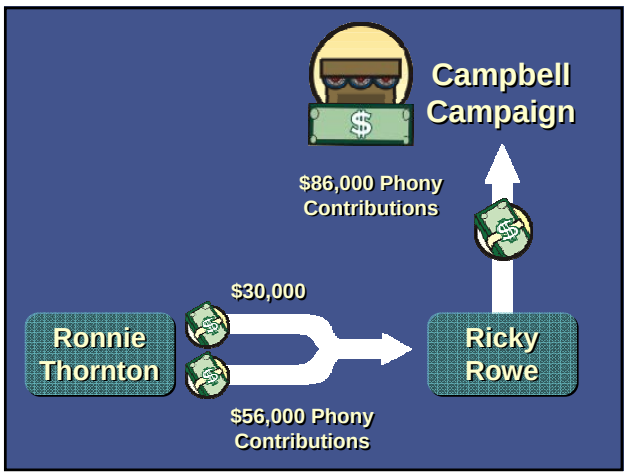


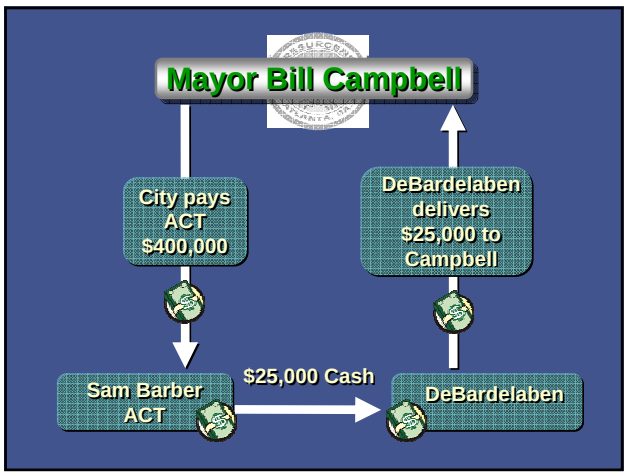
"I know virtually nothing about Fred Prewitt's business life."

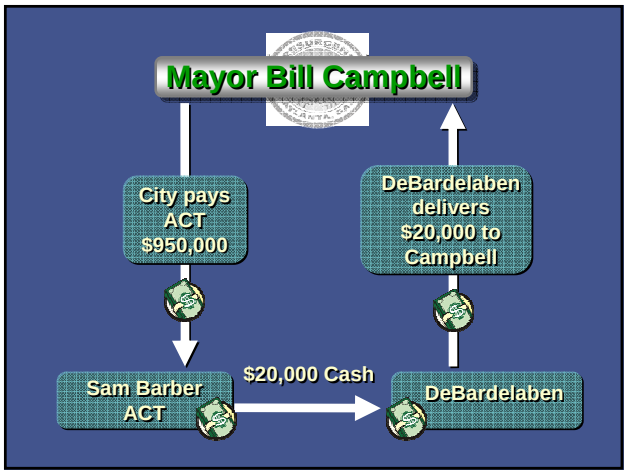
Bill Campbell
June 22, 2000

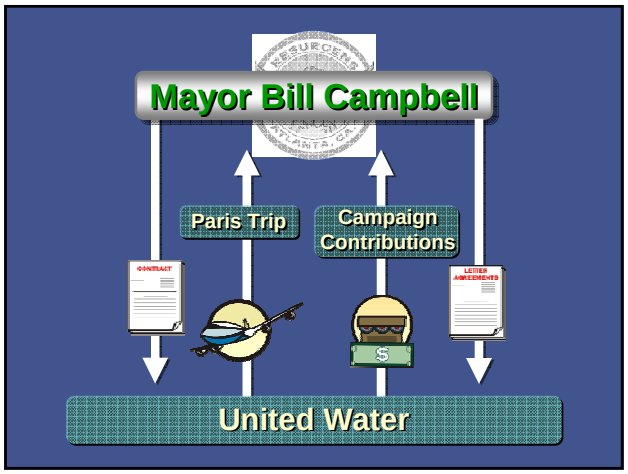


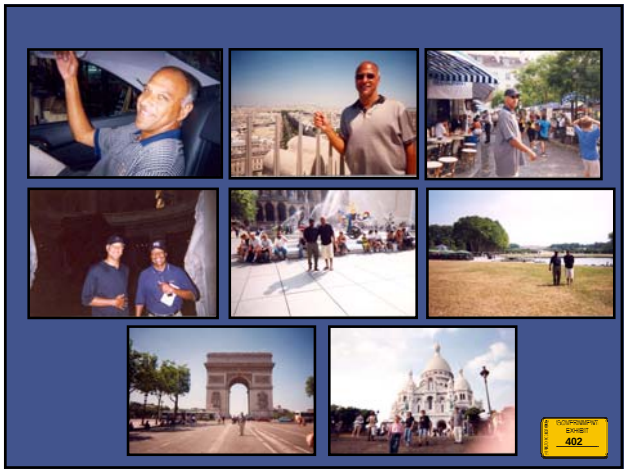


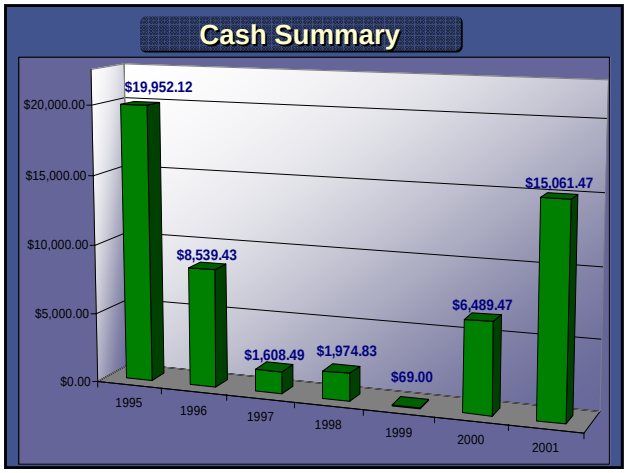






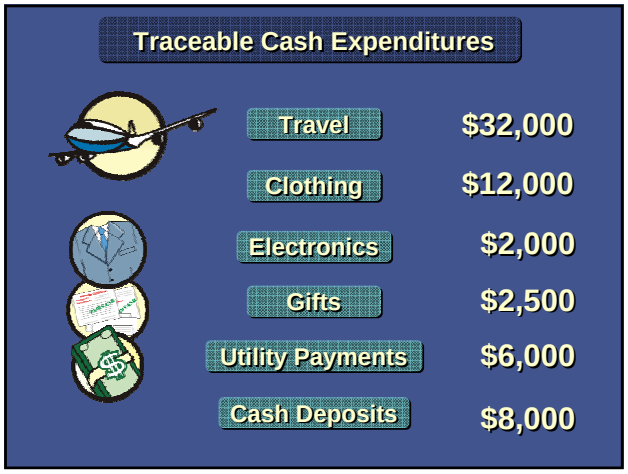


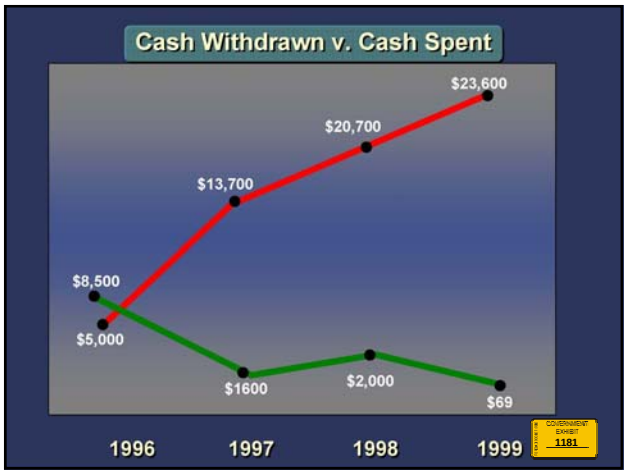




Where did the cash come from?

Source	1995	1996	1997	1998	1999	2000	2001
ATM withdrawals	$4,362.50	$1,327.00	$200.00	$0.00	$0.00	$0.00	$0.00
Checks to Cash	$613.16	$450.00	$0.00	$0.00	$25.00	$0.00	$0.00
Checks Cashed	$2,271.00	$4,500.00	$720.00	$1,974.83	$44.00	$114.00	$0.00
Cash from Deposits	$12,705.46	$2,262.43	$688.49	$0.00	$0.00	$6,375.47	$15,061.47
Total per Year	*$19,952.12*	*$8,539.43*	*$1,608.49*	*$1,974.83*	*$69.00*	*$6,489.47*	*$15,061.47*





Checks and Credit Card Charges

	1996	1997	1998	1999
Groceries	$1,447.67	$1,467.57	$279.14	$169.37
Gasoline	$677.91	$383.98	$124.49	$395.13
Restaurants	$1,140.85	$733.71	$515.28	$1,072.52
TOTALS	***$3,266.43***	***$2,585.26***	***$918.91***	***$1,637.02***

Travel Summary

- **217** - Trips without any business purpose at all between 1995 – 2000
- **49** - Trips have 3rd party payments for expenses
- **168** - Trips with no explanation of how the expenses were paid
- **61** - Gambling destinations

JUNE 1999

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2 Campbell to Los Angeles	3	4 Campbell returns from Los Angeles Barber deposits $400,000 City Ck	5
6	7	8 Barber Withdrawls $25,000 Debardelaben delivers $25,000 to Campbell	9 Campbell to Detroit	10	11 Campbell returns from Detroit	12 Campbell to New Orleans with Jimenez
13	14 Campbell returns from New Orleans	15 Campbell to Bahamas with wife	16	17	18 Campbell returns from Bahamas Campbell to Myrtle Beach	19 Campbell returns from Myrtle Beach
20	21	22	23	24 Campbell to Baltimore	25 Campbell returns from Baltimore	26
27	28	29	30	***Cash Withdrawls by Campbell in June: $0.00***		

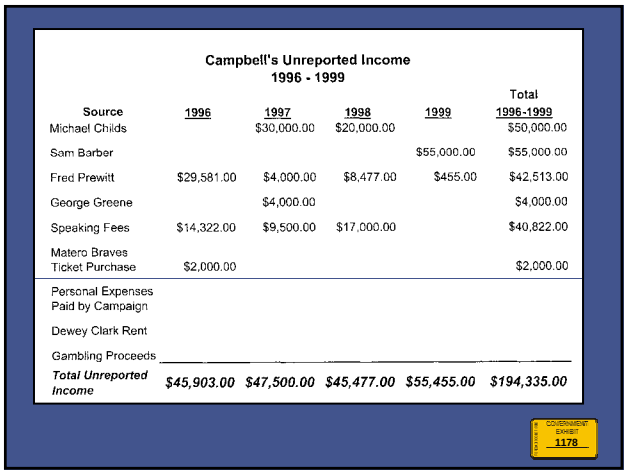
JULY 1999

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Cash Withdrawls by Campbell in July: $0.00				1	2	3
4	5	6	7	8	9	10 Campbell to Puerto Rico with family
11	12	13 Campbell returns from Puerto Rico	14	15	16 Barber deposits $953,000 City check	17 Campbell to Miami with Jimenez
18 Campbell returns from Miami	19 Campbell to Washington DC	20 Campbell returns from Washington DC	21 Barber withdrawls $20,000	22 Debardelaben delivers $20,000 to Campbell Campbell spends $403 at Sebastians Closet	23	24 Campbell to Paris with Brooks
25	26	27	28 Campbell returns from Paris Campbell attends fundraiser	29	30	31

William C. Campbell
Income Reported on Tax Returns
1996-1999

Income	1996	1997	1998	1999
Wages - William C. Campbell	$92,849	$92,805	$92,774	$92,774
Wages - Sharon T. Campbell	$42,051	$39,319	$42,999	$43,225
Interest	$1,290	$2,818	$374	$985
Dividends	$231	$390		$2,843
Taxable Refund	$687	$495	$283	$636
Stock Sales	-$3,000	-$1,837		-$3,000
Speaking Fees (After Expenses)	$19,678	$24,434	$23,997	$46,189
Partnership Income	-$377			
Other Income (Event Tickets)		$3,120	$2,200	
Total Reported Income	***$153,409***	***$161,544***	***$162,627***	***$183,652***

GOVERNMENT EXHIBIT 1151



Campbell's Unreported Income
1996 - 1999

Source	1996	1997	1998	1999	Total 1996-1999
Michael Childs		$30,000.00	$20,000.00		$50,000.00
Sam Barber				$55,000.00	$55,000.00
Fred Prewitt	$29,581.00	$4,000.00	$8,477.00	$455.00	$42,513.00
George Greene		$4,000.00			$4,000.00
Speaking Fees	$14,322.00	$9,500.00	$17,000.00		$40,822.00
Matero Braves Ticket Purchase	$2,000.00				$2,000.00
Personal Expenses Paid by Campaign					
Dewey Clark Rent					
Gambling Proceeds					
Total Unreported Income	***$45,903.00***	***$47,500.00***	***$45,477.00***	***$55,455.00***	***$194,335.00***

GOVERNMENT EXHIBIT 1178

Daniel Griffin

USA

Danny Griffin is a partner in Miller & Martin's Atlanta office. His practice focuses on white collar criminal defense, grand jury and internal investigations, defending False Claims Act (*qui tam*) cases, and civil litigation.

Mr. Griffin has handled cases involving alleged bribery, customs violations, embezzlement, environmental offenses, Executive Order violations, the Foreign Corrupt Practices Act, FTCA violations, healthcare fraud, immigration offenses, income tax offenses, money laundering, mortgage fraud, obstruction, perjury, public corruption, unlawful internet pharmacies, and mail, wire and bank fraud.

Within the last two years, Mr. Griffin has convinced federal prosecutors on four different occasions to dismiss the felony criminal charges that had been brought against his clients. He is listed in *Best Lawyers in America* for White Collar Criminal Defense and in *Who's Who Legal: Georgia 2007* as one of the state's leading business crime lawyers.

He has conducted investigations for corporations in the banking, bottling, electronics, entertainment, healthcare, and retail industries. He has also handled cases involving asset forfeiture, the False Claims Act, the recovery of stolen/embezzled funds, libel and slander, music royalties, stock options, products liability, medical malpractice, catastrophic injury and wrongful death.

Mr. Griffin clerked for United States District Court Judge Harold L. Murphy, and served five years (1997-2002) as an Assistant United States Attorney for the Northern District of Georgia where he had responsibility for prosecuting fraud, tax and public corruptions cases.

He is the co-chair of the annual Federal Criminal Practice seminar held in Atlanta, Georgia, and is a board member of the General Practice and Trial Section of the State Bar of Georgia. In 2003, he went to Thailand to meet with officials from the National Counter-Corruption Commission, the Department of Special Investigations and the Royal Thai Police to discuss investigations and prosecutions of major fraud and corruption cases.

Co-author: "Practical Aspects of Representing a Corporation During the Early Stages of a Criminal Investigation," Voice for the Defense (Journal of The Texas Criminal Defense Lawyers Assoc.) and Georgia State Bar Journal, Vol. 29, No. 2; "The Fifth Amendment in Civil Litigation," Calendar Call 9, No. 4; "The Discovery of Corporate Wrongdoing Before the Government Begins to Investigate," FCDR, July 1994 (Supp.).

Mr. Griffin received his B.B.A. (1983) and J.D. (*cum laude* 1986) from The University of Georgia where he served on the Georgia Law Review.

Indonesia Financial Transactions and Analysis Centre

THE LINKS BETWEEN CORRUPTION AND MONEY LAUNDERING: INDONESIA's EXPERIENCE

Presented by:
Yunus Husein
Head of INTRAC

Bangkok, 2007

„Corruption hurts the poor disproportionately-by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid" **(Koffi Annan, UN Secretary-General)**

Introduction

- Indonesia likes many other countries has been suffering a lot from corruption for many years.
- The connection between corruption and the laundering of its proceeds is not new and has been highlighted on several occasions in the past. The link between money laundering and corruption is not only related to the laundering of corruption proceeds, but goes much further.
- Due to the close link between corruption and money laundering, various international fora have noted that a comprehensive anti-corruption strategy must also include actions to prevent and control the laundering of corruption proceeds.

Studies and International Standard

- There are currently five other studies being written on the relationship between money laundering and corruption. The most relevant work on this topic is being conducted under the auspices of the World Bank.
- The first examines how AML/CFT intelligence can be used for anti-corruption purposes, and will be based on a survey of 15 anti-corruption agencies in several different regions.
- The second, conducted jointly with the Egmont Group, is investigating how to improve the governance of FIUs.
- In its umbrella anti-corruption strategy report released in March 2007, the World Bank draws three key insights on the money laundering-corruption nexus.

- First that effective customer due diligence under AML /CFT requirements plays an important role in promoting general financial transparency and hindering corruption.
- Second that closer co-operation between FIUs, anti-corruption agencies, law enforcement, and the private sector is essential in maximising the impact the AML regime can have on combating corruption.
- Lastly that in many countries law enforcement agencies specify corruption as the main underlying offence generating illegal funds to be laundered, and thus AML/CFT policy is to a large extent primarily an anti-corruption too

United Nations Convention Against Corruption (UNCAC)

- Article 23: Laundering of Proceeds of Crime
- Article 58: Establishment of Financial Intelligence Unit (FIU)

FATF and APG Initiatives

- A Draft Scoping paper was prepared in September 2004 which analysed material provided by jurisdictions. Paper scopes: typologies of corruption-related money laundering; current measures to combat corruption-related money laundering; and challenges and opportunities for combating corruption-related money laundering.
- At the Joint Plenary Session of FATF and APG in Singapore in June 2005, agreed to further explore co-operative work on the relationships between anti-money laundering/combating the financing of terrorism (AML/CFT) and anti-corruption efforts and particularly ways in which corruption can undermine AML/CFT implementation.

FATF AND APG …

- . The Joint Plenary called for further work to explore possible joint efforts that could be undertaken. A paper outlining the joint project was prepared by the FATF and APG Secretariats and endorsed by the FATF during their October 2005 Plenary and by the APG members out of session

Links Between Corruption and Money Laundering

- Corruption generates enormous profits to be laundered;
- Corruption facilitates many money laundering and terrorist financing methods and supports predicate criminal activities; and
- Systemic corruption undermines the effectiveness of legislative, regulatory and enforcement Anti-money laundering / combating the financing of terrorism (AML/CFT) measures.

Indonesia Efforts to Combat Corruption and Money Laundering

- Indonesia has criminalized corruption under Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001.
- Indonesia has criminalized money laundering crime under Law No.15 of 2002 concerning the Crime of Money Laundering, as amended by Law No.25 of 2003.
- Indonesia has established the Corruption Eradication Commission under Law No. 30 of 2002
- Indonesia has ratified United Nations Convention Against Corruption (UNCAC) by the enactment of Law No. 7 of 2006 concerning the Ratification of UNCAC

Corruption and Money Laundering in Indonesia

- Corruption is one of the predicate crimes
- Reporting on corruption submitted by the Financial Services Providers are the dominant reports received by INTRAC

The Corruption Eradication Commission and INTRAC

- Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001 mandated the formation of an independent Corruption Eradication Commission (Komisi Pemberantasan Korupsi or "KPK") to fight against corruption in Indonesia. Under Law No.30 year 2002 the Commission was established.
- Under Law No.15 year 2002 concerning the Crime of Money Laundering as amended by Law No.25 year 2003, the Indonesian Financial Transaction Reports and Analysis Center (Pusat Pelaporan dan Analisis Transaksi Keuangan/ **"PPATK")** was established.

KPK's Duties

a. coordinating with authorized institutions to eradicate corruption;
b. supervizing authorized institutions in their activities of eradicating corruption;
c. conducting investigations, indictments, and prosecutions against criminal acts of corruption;
d. preventing criminal acts of corruption; and
e. monitoring the governing of the State.

KPK's Authorities

a. to coordinate investigations, indictments, and prosecutions against criminal acts of corruption;
b. to implement a reporting system for the purposes of eradicating corruption;
c. to request information on acts with the purpose of eradicating corruption from relevant institutions;
d. to arrange opinion hearings and meetings with institutions authorized to eradicate corruption; and
e. to request for reports from relevant institutions pertaining to the prevention of criminal acts of corruption.

INTRAC's Duties

a. to collect, maintain, analyse and evaluate information obtained by the PPATK in accordance with this Law;
b. to report to the Police and the Public Prosecutor's Office the results of analyses of financial transactions which indicate money laundering;
c. to prepare guidelines for procedures for reporting of suspicious financial transactions;
d. to provide advice and assistance to relevant authorities concerning information obtained by the PPATK in accordance with the provisions of this Law;
e. to issue guidelines and publications to Providers of Financial Services concerning their obligations as set forth this Law or in other prevailing laws and regulations, and assist in detecting suspicious customer behavior;
f. to provide recommendations to the Government concerning measures for the prevention and eradication of money laundering;

INTRAC's Authorities

a. to request and receive reports from Providers of Financial Services;
b. to request information concerning the progress of investigations or prosecutions of money laundering that has been reported to investigators or public prosecutors;
c. to audit Providers of Services for compliance with the provisions of this Law and guidelines for reporting financial transactions;

The interaction between two respective agencies

The KPK and INTRAC have signed the Memorandum of Understanding (MoU) in 29 April 2004. The coverage of MoU includes, among other things, sharing information, Liaison Officer assignment, and joint training.

Implementation/Practices

- The MoU between INTRAC and KPK allows both agencies **to access the information** owned by agencies.
- To smoothen and to speed up the information gathering, KPK appointed relevant staff to INTRAC as **liaison officer (LO)**.
- In case INTRAC does not maintain the information requested by KPK, but such information is about financial institutions' customers and their financial information, -INTRAC **is allowed to inquire particular Financial Services Providers (FSPs) to provide the requested information**.

Implementation…

- **KPK could utilize the additional information provided by INTRAC**, especially financial intelligence, for their investigation.
- INTRAC can also **share financial intelligence spontaneously** to KPK whenever the information is supposedly related to corruption.

Exchange of Information between PPATK and KPK

- Since the MoU has been signed in April 2004, PPATK received more than 150 inquiries from KPK with regards to corruption cases investigated by KPK. Most of those has been replied by PPATK by providing the requested information.
- 80% of the twenty essential investigating cases by KPK rely on the financial information provided by PPATK. Some of those cases have been charged by the court.
- PPATK provided more than 20 spontaneous financial intelligence to KPK and some of those have been examined.

Lessons Learnt

- For country that corruption is a serious (extra-ordinary) problem, anti corruption law as well as anti money laundering law must be available. The nation shall criminalize both corruption and money laundering offence. In addition, in AML Law, corruption shall be one of predicate crimes, which its proceeds of crime to be laundered
- To eradicate the crime of corruption and money laundering, country shall have anti corruption agency and financial intelligence unit.
- Anti corruption agency and Financial Intelligence Unit shall have very close cooperation. If possible, the MoU should be established. The MoU allows both respective agencies to exchange the information.

Lessons Learnt….

- Direct access (on-line) database between two respective agencies, if possible, could be established. Instead of direct access, the access could be exercised on request basis. To smoothen and to speed up the information gathering based on request, the presence of liaison officer (LO) is necessary.
- To provide more valuable additional information, in case FIU does not have the requested information, the FIU shall be allowed to request the information to Financial Service Providers.

Lessons learnt….

- The effective initial way to eradicate corruption and money laundering as well as to reduce a deep impact on the effective implementation of the AML/CFT, preventive measures such as enhanced due diligence in case of PEPs shall be developed in financial institutions and other reporting parties.
- In this regards, the authorities should provide clear guidance regarding the identification and treatment of PEPs that can be implemented by financial institutions and other reporting parties.

Typologies of Corruption and Money Laundering

CASE 1

- Collusion, which is indicated from involvement of businessman and more than one government officials
- Use of numerous banks' accounts
- Multiple transaction that is conducted in consecutive days

CASE 2

- Fund transfer from private company to relevant public officer without clear explanation
- Direct assignment (without bidding process) to particular private company in conducting a huge government project

Typolgies …

- Third parties are used, including employees, subordinates, or affiliated companies to receive corrupt payments

CASE 3

- Involvement of PEPs (in this regards a provincial governor)
- Absence of a proper bidding process
- Marking-up price of the project
- Third parties are used, including family member to receive corrupt payments

Typologies…

CASE 4

- Frequently fund transfer from private company to public officer with the absence of reasonably background.
- Collusion between private company and public officer
- Structuring or 'smurfing' proceeds of corruption into bank accounts is occurring through the use of multiple deposit transactions.
- Third parties are used, including family members, employees, subordinates, or affiliated companies to receive corrupt payments in a variety of forms and to subsequently deposit proceeds of corruption into financial institutions. Such third parties may be employees or other accomplices. Typologies include proceeds of corruption being falsely loaned back to the bribe recipient.

Typologies…

CASE 5

- The use of fictitious transaction
- The use of shell company
- Negotiable instrument such as traveler checks are purchased with proceeds of corruption

CASE 6

- Gatekeepers, including accountants and lawyers, are utilized to conceal the origin of corrupt payments, including the disguising of such payments as consultancy fees.
- Proceeds of corruption being spent on luxury vehicles, jewellery and other luxury items.

THANK YOU FOR YOUR ATTENTION

Yunus Husein

Yunus Husein is the Head of Indonesian Financial Transaction Reports & Analysis Centre (INTRAC/PPATK). He has also been an employee of Central Bank of Indonesia since 1982, and was appointed as a Head of INTRAC/PPATK in October 2002. Additionally, Mr. Husein has held the position of Secretary to the Indonesian National Coordination Committee on Money Laundering since January 2004 and a has been a member of the National Committee on Governance since 2005, being also appointed as Co-Chair of Asia Pacific Group on Money Laundering from 2006 – 2008.

Mr. Husein is a lecturer (as an extraordinary lecturer) on Banking Law at the University of Indonesia, University of Padjadjaran, University of Pancasila, and Christian University of Indonesia. He received his Bachelor in Law from the University of Indonesia, his Master of Law from Washington College of Law. The American University – Washington, DC, and PhD in Law from the University of Indonesia.

THE ANTI-MONEY LAUNDERING COUNCIL AND ANTI-CORRUPTION : THE PHILIPPINE EXPERIENCE

Nota Bene

- The contents of this presentation are based on direct and verbatim quotes from the provisions of the Philippine Anti-Money Laundering Act of 2001, as amended, including its revised implementing rules and regulations and related laws, current AMLC policies, case law and jurisprudence. However some opinions and interpretations expressed are strictly those of the presenter's views and not of the AMLC, its Secretariat nor of the GRP and of Philippine courts.

The Anti-Money Laundering Act of 2001, as amended

- **R.A. No. 9160 - October 17, 2001**
- **R.A. NO. 9194 - March 23, 2003**
- **Revised IRRs - September 7, 2003**

The Anti-Money Laundering Act of 2001, as amended

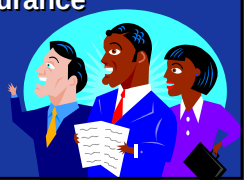
- **The two-fold policy of the AMLA are :**
  1. **To protect and preserve the integrity and confidentiality of bank accounts;**
  2. **to ensure that the Philippines is not used as a money laundering site of the proceeds of unlawful activities.**
- **Thus, it is the Philippines' policy not only to protect depositors and investors but of equal importance is the investigation, apprehension and prosecution of suspected money launderers.**

THE PHILIPPINES' FINANCIAL INTELLIGENCE UNIT

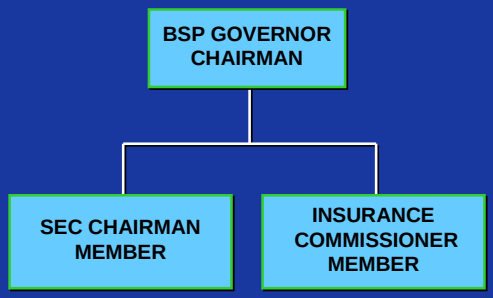
The **Anti-Money Laundering Council** is the financial intelligence unit of the Philippines created pursuant to R.A. 9160, as amended, by R.A. 9194.

Composition

- **Governor, Bangko Sentral ng Pilipinas** (BSP)
- **Chairman, Securities and Exchange Commission** (SEC)
- **Commissioner, Insurance Commission** (IC)



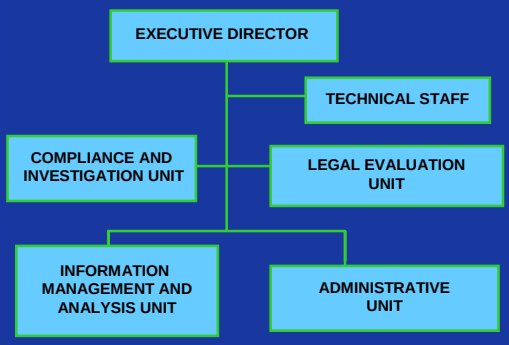
Composition



AMLC - Secretariat

- **Executive Director**
- **Compliance And Investigation Unit**
- **Legal Evaluation Unit**
- **Information Management and Analysis Unit**
- **Administrative Unit**

AMLC - Secretariat



Secretariat

1. **Executive Director** – has a 5-year term, at least 35 years old, of good moral character, unquestionable integrity and known probity.
2. **Members** – must have served for at least 5 years either in the BSP, SEC, or IC and shall hold full-time permanent positions within the BSP.

Vision

To be a world class financial intelligence unit that will help establish and maintain an internationally compliant and effective anti-money laundering regime which will provide the Filipino people with a sound, dynamic and strong financial system in an environment conducive to the promotion of social justice, political stability and sustainable economic growth.

Towards this goal, the AMLC, shall without fear or favor, investigate and cause the prosecution of money laundering offenses.

Mission

- **To protect and preserve the integrity and confidentiality of bank accounts**
- **To ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity**
- **To extend cooperation in transnational investigation and prosecution of persons involved in money laundering activities wherever committed**

Functions

- Require and receive covered and suspicious transaction reports from covered institutions.

Transactions

- Refers to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto.
- It also includes any movement of funds by any means with a covered institution.

COVERED TRANSACTIONS

- A **COVERED TRANSACTION** is a transaction in cash or other equivalent monetary instrument involving a total amount in excess of PHP500,000.00 within one (1) banking day.

Suspicious Transactions

Suspicious transactions are transactions with covered institutions, regardless of the amounts involved, where any of the following circumstances exist:

1. There is no underlying legal or trade obligation, purpose or economic justification
2. The client is not properly identified
3. The amount involved is not commensurate with the business or financial capacity of the client

Suspicious Transactions

4. Taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements
5. Any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions from the covered institution

Suspicious Transactions

6. The transaction is in any way related to an unlawful activity or offense under this Act that is about to be, is being or has been committed

7. Any transaction that is similar or analogous to any of the foregoing

When to File Reports

- **Covered institutions shall report to the AMLC all covered and suspicious transactions within five (5) working days from occurrence thereof, unless the Supervising Authority concerned prescribes a longer period not exceeding ten (10) days.**

WHAT REPORT TO FILE

- **Should a transaction be determined to be both a covered transaction and a suspicious transaction, the covered institution shall be required to report the same as a suspicious transaction.**

OTHER TYPES OF REPORTS

- BSP Circular No. 308 as amended by BSP Circular Nos. 314 and 507

(Foreign currency declaration forms)

- BSP Circular No. 98

Failure to Report

- "Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so."
- Imprisonment of 6 months to 4 years or a fine of not less than P100,000 to P500,000 or both

Malicious Reporting

- Any person who with malice, or in bad faith, reports or files a completely unwarranted or false information relative to a money laundering transaction against any person shall be a subject to a penalty of six (6) months to four (4) years imprisonment and a fine of not less than One Hundred Thousand pesos but not more than Five Hundred Thousand pesos, at the discretion of the court
- No entitlement to the benefits of probation

Breach of confidentiality

When reporting covered or **suspicious** transactions to the AMLC, covered institutions and their officers and employees are prohibited from communicating directly or indirectly, in any manner or by any means, to any person or entity, the media, the fact that a covered or **suspicious** transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail or other similar devices. In case of violation thereof, the concerned officer and employee of the covered institution and media (**the responsible reporter, writer, president, publisher, manager and editor-in-chief)** shall be held criminally liable.

Breach of confidentiality

- **Penalty**

3 to 8 years imprisonment and a fine of not less than P500,000.00 but not more than P1.0 Million.

Money laundering definition

- Under the AMLA, money laundering is " a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources."
- Money Laundering as a crime is committed in three (3) different ways under the AMLA

Money Laundering Proper

- "Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property."
- Imprisonment of 7 to 14 years and a fine of not less than P 3 Million but not more than twice the value of the monetary instrument or property involved in the transaction.

Facilitating Money Laundering

- "Any person knowing that any monetary instrument or property involves the proceeds of an unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above."
- Imprisonment of 4 to 7 years and a fine of not less than P 1 Million but not more than P 3 Million.

Offense of Failure to keep Record

- Penalty for failure to keep record :
  - Imprisonment from six (6) months to one (1) year or a fine of not less than One Hundred Thousand (Php100,000) pesos but not more than Five Hundred Thousand (Php500,000) pesos or both

Prohibited Accounts

1. Anonymous accounts
2. Accounts under fictitious names
3. All other accounts similar to the foregoing.

- Financial institutions shall maintain accounts only in the true and full name of the account owner or holder

Numbered accounts

Peso and foreign currency non-checking numbered accounts are allowed: Provided that the true identity of the customers of all peso and foreign currency non-checking numbered accounts are satisfactorily established based on official and other reliable documents and records and that the information and documents required under these rules are obtained and recorded by the covered institution.

Unlawful Activities

- **"Unlawful Activity"** refers to any act or omission or series or combination thereof involving or having DIRECT relation to any of the following:

1. Kidnapping for ransom
2. Drug Trafficking and other violations of the **Comprehensive Dangerous Drugs Act of 2002**

Unlawful Activities

3. **Graft and Corruption under R.A. No. 3019, as amended**
4. Plunder (R.A. No. 7080 as amended)
5. Robbery and extortion
6. Jueteng and Masiao (PD 1602)
7. Piracy on the high seas (RPC & PD 532)

Unlawful Activities

- 8. Qualified Theft under Art. 310, RPC
- 9. Swindling under Art. 315, RPC
- 10. Smuggling under RA 455 & 1937
- 11. Violations of Electronic Commerce Act of 2000

Unlawful Activities

12. Hijacking, destructive arson and murder, including those perpetrated by terrorists against non-combatant persons and similar targets
13. Fraudulent practices and other violations under the Securities Regulation Code of 2000 (RA 8799).
14. Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

Functions

- **Issue orders addressed to the the appropriate supervising authority (BSP, SEC, IC) or the covered institution to determine the true identity of the owner of any monetary instrument/property subject of a covered transaction report or suspicious transaction report or request for assistance from a foreign state, or believed by the AMLC, on the basis of substantial evidence, to be representing, involving, or related to the proceeds of an unlawful activity.**

Functions

- **Cause the filing of complaints with the department of justice or the ombudsman for the prosecution of money laundering offenses**

Jurisdiction Over Money Laundering Cases

*All cases on money laundering

*Preliminary Investigation – the Department of Justice or **the Ombudsman, as the case may be.**

*Trial – the Regional Trial Courts or the Sandiganbayan, as the case may be.

Prosecution of Money Laundering Cases

- Any person may be charged with and convicted of both the offense of money laundering (subject offense) and the unlawful activity (predicate offense)
- Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under R.A. No. 9160 without prejudice to the freezing and other legal remedies.

Prosecution of Money Laundering Cases

Rule 6.5 of the IRRs provides that "Knowledge of the offender that any monetary instrument or property represents, involves, or relates to the proceeds of an unlawful activity or that any monetary instrument or property is required under the AMLA to be disclosed and filed with the AMLC, may be established by direct evidence or inferred from the attendant circumstances."

Prosecution of Money Laundering Cases

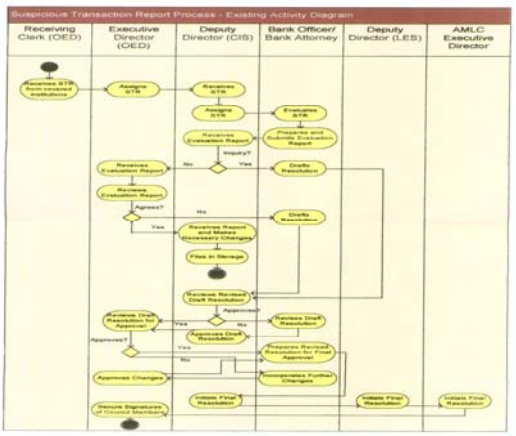
Rule 6.6. further provides that "All the elements of every money laundering offense under Section 4 of the AMLA must be proved by evidence beyond reasonable doubt, including the element of knowledge that the monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity."

Prosecution of Money Laundering Cases

Rule 6.7 clearly states that "No element of the unlawful activity, however, including the identity of the perpetrators and the details of the actual commission of the unlawful activity need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity."

Functions

- Investigate suspicious transactions and covered transactions deemed suspicious after an investigation by the AMLC, money-laundering activities, and other violations of the AMLA.



Functions

- Enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government including government-owned and controlled corporations in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.

Functions

- Examine or inquire into bank deposits/ investments upon order of any competent court in cases of violation of the AMLA, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity.
- No court order is necessary in cases involving kidnapping for ransom, narcotic offenses, hijacking, destructive arson and murder, including those committed against non-combatant persons and similar targets.

Functions

- Apply before the Court of Appeals, *ex parte*, for the freezing of any monetary instrument/ property alleged to be the proceeds of any unlawful activity as defined in the AMLA.

Functions

- Institute civil forfeiture proceedings and all other remedial proceedings through the office of the solicitor general.
- A.M. NO. 05-11-04-SC (effective Dec. 15, 2005)
- Rule of Procedure in cases of civil forfeiture, asset preservation, and freezing of monetary instruments, property or proceeds representing, involving or relating to an unlawful activity or money laundering offense
- Supreme Court designates AML courts

Functions

- Implement such measures as may be necessary and justified to counteract money laundering.

Functions

- Receive and take action in respect of any request for assistance from foreign states in their own anti-money laundering operations.

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

Assist in the investigation and prosecution of money laundering offenses

AMLC may execute, or refuse to execute informing the foreign state of the valid ground for not executing or the delay

Based on principles of mutuality and reciprocity

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

Assistance includes :

1. Tracking down, freezing restraining and seizing of proceeds of unlawful activity

2. Giving information needed within the procedures laid down by the AMLA

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

3. Applying for an order of forfeiture of any monetary instrument or property with the court

Request must be with an authenticated copy of the court order in the requesting State ordering the forfeiture

A certification or an affidavit of a competent officer of the requesting State that the order of forfeiture and conviction are final and that no further appeals lie

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

a. Must confirm that an investigation or prosecution for money laundering or a conviction for money laundering

b. State the grounds for investigation or prosecution or the details of conviction

c. Sufficient particulars as to the identity of the person

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

d. Particulars to identify any financial institution believed to have the document, information, material or object which may be of assistance

e. Ask from the financial institution

f. Specify the manner in which and to whom the information, etc., is to be produced

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

- g. Particulars necessary for the issuance by the court of the writs, orders or processes needed by the requesting State

- h. Contain such information as may assist in the execution of the request

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

- Limitations-
- Granting the request contravenes the Philippine constitution
- Execution to prejudice the Philippine national interest unless there is a treaty between the Philippines and the requesting party relating to the provision of assistance in relation to money laundering

MEMORANDUM OF UNDERSTANDING WITH AN EGMONT FIU

- APPROXIMATELY 100 FIU MEMBERS OF EGMONT

- Korean FIU (KoFiu)
- Bank Negara Malaysia (BNM)
- Indonesian Financial Transaction Reports and Analysis Center (INTRAC)

MEMORANDUM OF UNDERSTANDING WITH AN EGMONT FIU

- AMLO OF THAILAND
- Palau FIU
- Australian Transaction Reports and Analysis Center (Austrac)
- US Financial Crimes Enforcement Network
- Money Laundering Prevention Center of Taiwan
- Peruvian FIU (Peru)

Functions

- **Develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering operations, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders.**

Memorandum of Understanding

-Criminal Investigation and Detection Group (CIDG) of the PNP

-Department of Justice (DOJ)

-Philippine Center on Transnational Crime (PCTC/Interpol Manila)

-Philippine Drug Enforcement Agency (PDEA)

PNP Task Force "Sanglahi"

Memorandum of Understanding

- **Office of the Ombudsman**
- National Intelligence Coordinating Agency (NICA)
- Presidential Anti-Graft Commission (PAGC)
- Police Anti-Crime and Emergency Response (PACER)
- Bangko Sentral ng Pilipinas (BSP)

PUBLIC SECTOR COOPERATION

National Law Enforcement Coordinating Committee (NALECC)

-composed of approximately 58 agencies

-RLECCs and NALECC sub-committees

-AMLC Executive Director chairs- Sub-committee on Anti-Money Laundering/Combating the financing of terrorism

-AML desks in the various relevant LEAs

-detailees

PRIVATE SECTOR COOPERATION

- Bankers Association of the Philippines
- Association of Bank Compliance Officers of the Philippines
- Philippine Association of Securities Brokers and Dealers
- Philippine Life Insurance Association
- - are members of the Financial Sector Liaison Committee

OBLIGATIONS OF FINANCIAL INSTITUTIONS

- Customer identification and due diligence
- Record-keeping
- Reporting of suspicious and covered transactions
- Training

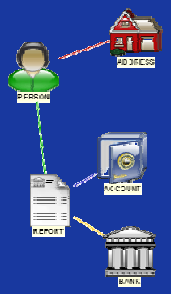
Functions

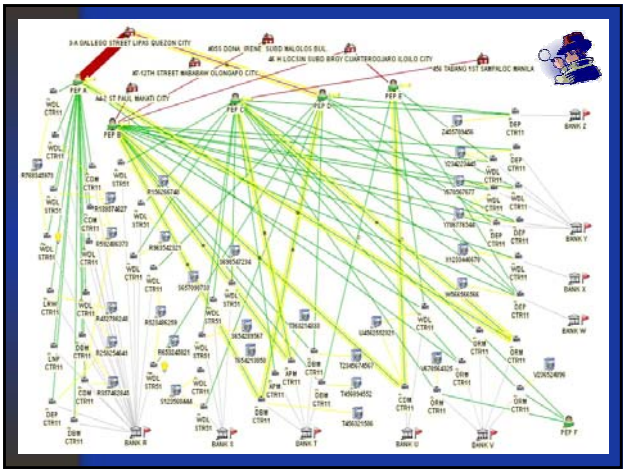
- Impose administrative sanctions for the violation of laws, rules, regulations and orders and resolutions issued pursuant thereto.

CASE STUDY

OPERATION

PEP AND FAMILY





THANKS

Richard David C. Funk II

Atty. Richard David C. Funk II is a Career Executive Officer (CEO) and has been connected with the Anti-Money Laundering Council (AMLC) and its Secretariat from the time of its creation on October 17, 2001, the date on which the Anti-Money Laundering Act of 2001 (AMLA), as amended, took effect. Prior to joining the AMLC, he was the head of the Claims and Adjudication Division of the Insurance Commission, one of three agencies comprising the AMLC: the other two agencies are the Bangko Sentral ng Pilipinas and the Securities and Exchange Commission.

He has extensive experience and training in the field of anti-money laundering and anti-corruption having attended, among others, the Complex Crimes Financial Investigation Course at the International Law Enforcement Academy (ILEA) in Bangkok, Thailand in August 2002 and the Advanced Management Course in August 2005 at the International Law Enforcement Academy (ILEA) at Roswell, New Mexico, USA. He likewise attended the FBI Anti-Corruption Seminar at the FBI Training Facility in Quantico, Virginia, USA.

Atty. Funk is the current Head of the Compliance and Investigation Group of the Anti-Money Laundering Council Secretariat.

Effective Integration of AML Systems by APEC Economies' Anti-Corruption & Law Enforcement Agencies

Police Col. Seehanat Prayoonrat
Deputy Secretary-General
Anti-Money Laundering Office
Thailand

UNCAC
Article 2, Use of terms

- For the purposes of this Convention:
- (h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;

Anti-Money Laundering Act of 1999 Thailand

8 Predicate Offences

- Narcotics
- Sexual Abuse of women and children
- Public Fraud
- Embezzlement
- Malfeasance in Office (Corruption)
- Extortion or Blackmail
- Customs Evasion
- Terrorism

Additional 8 predicated Offences

- Exploitation of Natural Resources
- Foreign Exchange Control Act
- Stock Manipulation
- Illegal Gambling
- Arms Smuggling
- Unfair Practice in Public Procurement
- Labour Fraud
- Offences Related to the Excise Law

UNCAC
Article 23, Laundering of proceeds of crime

- 1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

UNCAC
Article 23, Laundering of proceeds of crime

- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- (b) Subject to the basic concepts of its legal system:
- (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
- (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

UNCAC
Article 23, Laundering of proceeds of crime

- 2. For purposes of implementing or applying paragraph 1 of this article:
- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
- (b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

UNCAC
Article 23, Laundering of proceeds of crime

- (c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

UNCAC
Article 23, Laundering of proceeds of crime

- (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;
- (e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

UNCAC, Article 14
Measures to prevent money-laundering

- 1. Each State Party shall:
- (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

banks and non-bank financial institutions

- **"Financial institutions"** means any person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a customer:
- 1. Acceptance of deposits and other repayable funds from the public.
- 2. Lending.
- 3. Financial leasing.
- 4. The transfer of money or value.
- 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).

banks and non-bank financial institutions

- 6. Financial guarantees and commitments.
- 7. Trading in:
- (a) money market instruments (cheques, bills, CDs, derivatives etc.);
- (b) foreign exchange;
- (c) exchange, interest rate and index instruments;
- (d) transferable securities;
- (e) commodity futures trading.

banks and non-bank financial institutions

- 8. Participation in securities issues and the provision of financial services related to such
- issues.
- 9. Individual and collective portfolio management.
- 10. Safekeeping and administration of cash or liquid securities on behalf of other persons.
- 11. Otherwise investing, administering or managing funds or money on behalf of other persons.
- 12. Underwriting and placement of life insurance and other investment related insurance.
- 13. Money and currency changing

banks and non-bank financial institutions

- "**Designated non-financial businesses and professions**" means:
- a) Casinos (which also includes internet casinos).
- b) Real estate agents.
- c) Dealers in precious metals.
- d) Dealers in precious stones.

banks and non-bank financial institutions

- e) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.

banks and non-bank financial institutions

- f) Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:
- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

UNCAC, Article 14
Measures to prevent money-laundering

- (b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

FINANCIAL INTELLIGENCE UNITS

What Is an FIU ?

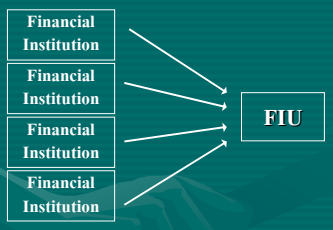
Egmont Definition of an FIU :

- National, central agency that receives, analyses and disseminates disclosures of financial information suspected proceeds of crime or as required by law to combat money laundering.

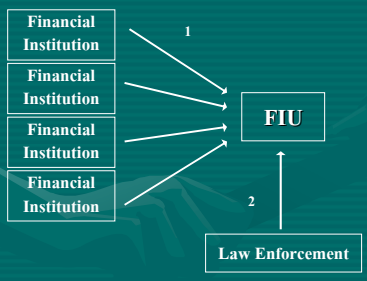
The Role of FIUs

NETWORKING

1. Transmittal of disclosures to FIU

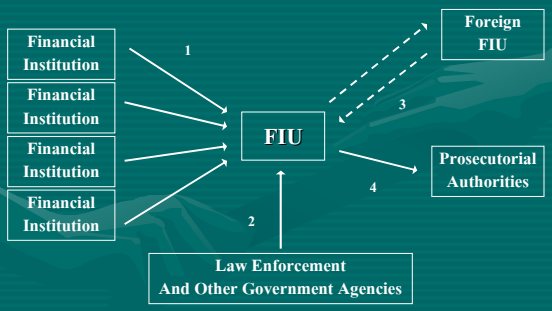


2. Transmittal of additional information to FIU



3. Possible Exchange of Information with Foreign Counterpart FIU

4. After analysis, FIU provides to prosecutor for action



Principles of Information Exchange

- Introduction
- General Framework
- Conditions for the Exchange of Information
- Permitted Uses of information
- Principles of Information Exchange

FINANCIAL INTELLIGENCE UNITS

- Many countries have established FIUs to help in the investigation of money laundering and other financial crimes.
- FIUs have statutory powers to access financial records and analyse suspicious transactions.
- FIUs have joined together in the EGMONT GROUP to assist each other by exchanging information on suspected international money laundering

CONDITIONS FOR EXCHANING INFORMATION

Egmont Group Members exchange information on the basis of five agreed conditions

CONDITION 1

Reciprocity or agreement

Procedures should be understood by both parties

Exchange may be spontaneous or as the result of a request

CONDITION 2

DISCLOSURE

The requesting FIU should disclose

- the reason for its request
- the purpose for which the information will be used
- other information relevant for the requested FIU

CONDITION 3

PERMITTED USE

Information exchanged between FIUs may only be used for the specific purpose for which it was provided

CONDITION 4

DISCLOSURE

Information may NOT be disclosed to a third party without the permission of the FIU that provides it.

CONDITION 5

PROTECTION OF PRIVACY

Information receives from another FIU must be used in accordance with national laws on privacy and date protection.

It must be treated in the same way as information provided by national bodies and financial institutions

UNCAC, Article 14
Measures to prevent money-laundering

- 2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

SR IX. Cash Couriers

- Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation.
- Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, or that are falsely declared or disclosed.

SR IX. Cash Couriers

- Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or instruments

UNCAC, Article 14
Measures to prevent money-laundering

- 3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:
- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
- (b) To maintain such information throughout the payment chain; and
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

UNCAC, Article 14
Measures to prevent money-laundering

- 4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

UNCAC, Article 14
Measures to prevent money-laundering

- 5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Conclusion
Effective Integration of AML Systems

- Corruption ► predicate offence
- Money Laundering ► predicate offence
- Implement Know Your Customer and Customer Due Diligence (KYC/CDD)
- Establishment of a financial intelligence unit
- Have measures to detect the physical cross-border transportation of currency and bearer negotiable instruments
- Develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities

Thank you

Seehanat Prayoonrat

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Biography

Police Col. Seehanat Prayoonrat, Thai nationality, born Bangkok, August 12th, 1957; graduated with Bachelor of Public Administration (Police Cadet Academy, 1978), Bachelor of Law (Ramkhamhaeng University, 1979), Master of Political Science (Long Island University, USA, 1981), Master of Law, (Chulalongkorn University, 1991); Master of Science in Information Technology (Rangsit University, 2005); PhD. Candidate in Law ,(Chulalongkorn University, 2005); awarded various certificates in – Hostage Negotiation Seminars for Commanders (FBI Academy, USA, 1985), Development Program of Official Inquiry, (Bangkok Metropolitan Police Bureau, 1991), Conspiracy, Asset Forfeiture and Financial Investigations, (Drug Enforcement Administration, US Department of Justice, 1992), Anti-Drug Profiteering International Observer Attachment Program (Royal Canadian Mounted Police, 1992), ASEAN Proceeds of Crime Seminar (Royal Canadian Mounted Police, 1992), Financial Investigation and Forfeiture of Assets (ONCB, Thailand, ASEAN Narcotics Law Enforcement Training Centre, 1992); Counter Terrorism Legislation Seminar (U.S. Dept. of State and U.S. Dept. of Justice, 2002); awarded as Outstanding Police Enquiry Official (Royal Thai Police, 1991), and Best Police Official (Prosecution and Financial Investigation Division, Police Narcotics Suppression Bureau, 1992); and represented Thai government at numerous international conferences on narcotics drugs, money laundering and anti-corruption; delivered lectures at money laundering, anti-corruption and information technology relating to law enforcement and investigation training courses at numerous government agencies; appointed as member of Drafting Committee on Anti-Money Laundering Law; served in various capacities with Parliamentary and Governmental bodies. Appointed by Asia Pacific Group on Money Laundering (APGML) to be Honorary Advisor for Thailand. Ex-Chief Information Officer (CIO), Anti-Money Laundering Office (AMLO), and Director, AMLO Financial Intelligence Unit (FIU), Thailand. At present, Deputy Secretary-General, AMLO, Thailand, and Vice-Chairman of AML-CFT Working Group, Thailand.

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Economy Report: Anti-Corruption and Anti-Money Laundering/Counter Terrorism Financing in Australia

Australia has established a strong institutional framework to fight corruption – consistent with its 2005 ratification of the United Nations Convention Against Corruption (UNCAC). Various pillars support this framework by deterring corrupt practices, including: constitutional safeguards, accountability and transparency, and the criminalisation of corruption. A fourth pillar is Australia's anti-money laundering and counter-terrorism financing (AML/CTF) system. This paper looks at linkages between Australia's AML/CTF and anti-corruption frameworks, highlighting the role that financial intelligence plays in helping law enforcement to detect funds linked to corruption. It goes on to examine several recent anti-corruption initiatives of the Australian Government which will help to consolidate Australia's institutional framework against corruption.

Linkages between Australia's AML/CTF and Anti-Corruption frameworks

One of the pillars of Australia's anti-corruption framework is its AML/CTF system, which allows law enforcement authorities to detect funds emanating from corruption. New legislation provides a strong legislative basis for Australia's AML/CTF system, thereby also strengthening Australia's anti-corruption framework.

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, was passed through Parliament in late 2006. The new legislation imposes AML/CTF obligations on businesses providing 'designated services' that are considered vulnerable to money laundering and terrorism financing, which include financial, gambling and bullion dealing services. In addition, the Act significantly broadens the powers of the Australian Transaction Reports and Analysis Centre (AUSTRAC) as Australia's financial intelligence unit and extends its role as the AML/CTF regulator. The new AML/CTF legislation is being implemented in stages.

Australian Transaction Reports and Analysis Centre (AUSTRAC)

As the financial intelligence unit and regulator, AUSTRAC is the agency at the centre of Australia's AML/CTF system. Under AML/CTF legislation AUSTRAC regulates the conduct of 'reporting entities' (providers of 'designated services') with civil penalty provisions for non-compliance with regulatory obligations. Such provisions will help to ensure that law enforcement agencies receive financial intelligence that can identify funds linked to corrupt practices.

AUSTRAC's role as a financial intelligence unit is to receive and analyse financial intelligence it receives from providers of financial and other services, and pass on information it regards as suspicious to law enforcement and anti-corruption agencies for further investigation. Because of its access to financial intelligence of a suspicious nature, AUSTRAC is a key player in the detection of corruption in Australia. Its linkages with agencies that help fight corruption are fundamental to its operations. AUSTRAC exchanges information with a wide range of State and Federal law enforcement and anti-corruption bodies, including:

Australian Commission for Law Enforcement Integrity, Australian Federal Police, State and Territory police (7), Australian Crime Commission, NSW Crime Commission, Independent Commission Against Corruption (NSW), Crime and Misconduct Commission (QLD), Police Integrity Commission (NSW), Corruption and Crime Commission (WA), Australian Tax Office, State Revenue Authorities (8), Australian Securities and Investments Commission, Australian Prudential Regulation Authority, and the Australian Competition and Consumer Commission.

Technical Assistance and Training in the Region

Recognition of the potential for an AML/CTF system to be used as an anti-corruption tool is one of the reasons that Australia is providing technical assistance and training to establish and strengthen AML/CTF systems throughout the region.

Australia's Anti-Money Laundering Assistance Team (AMLAT) assists Pacific Islands countries in their efforts to curb money laundering. Some of the many activities undertaken by AMLAT include:

- conducting FIU establishment visits to Papua New Guinea, Nauru and Kiribati
- co-hosting a workshop with the AFP for FIUs and transnational crime units, with representatives from 14 Pacific Island countries in attendance. AMLAT also provided Pacific FIUs with access to World Check - a database containing information on known fraudsters, politically exposed persons and stolen passports
- conducting mentoring visits in the Solomon Islands and the Cook Islands, and delivering Customs training in the Solomon Islands
- hosting a regional Financial Investigation workshop in Samoa
- running AML seminars for the Federated States of Micronesia law enforcement and finance sectors and conducting an awareness raising workshop in Palau, and
- co-hosting a regional judicial workshop with the Pacific Anti-Money Laundering Program (PALP) on proceeds of crime for countries in the Northern Pacific.

Research: the Corruption-Money Laundering Nexus

Dr David Chaikin (University of Sydney) and Dr Jason Sharman (Griffith University) are currently working on a report for the Financial Action Task Force (FATF) and the Asia-Pacific Group on Money Laundering (APG) examining the corruption-money laundering nexus. These crimes are linked in two important senses:

- the proceeds of corruption, which may be considerable, are susceptible to being laundered, and
- corruption, and poor governance arising from corrupt institutions and individuals, can blunt the effective operation of an anti-money laundering system.

In particular, the report aims to develop a greater understanding of how corruption damages the effectiveness of anti-money laundering systems, and develop appropriate strategies to deal with the issue. Final results will be presented to the FATF plenary in October 2007.

Recent Anti-Corruption Initiatives

In addition to enhancing Australia's AML/CTF system, the Australian Government is pursuing several anti-corruption initiatives. One of the most important is the consolidation of Australia's legislative provision against corruption. Other initiatives include: changes to rules by which law enforcement agencies operate, a high profile inquiry into corrupt practices of Australian companies overseas, a foreign bribery awareness raising campaign, and work with APEC on the trial of a Code of Conduct for Business.

Changes to rules concerning investigation and prosecution of bribery

The anti-corruption effect of recent changes to Australia's AML system have been further strengthened by changes to the rules under which law enforcement agencies operate. The Australian Federal Police has recently amended its Case Categorisations Prioritisation Model (CCPM) to clearly classify corruption as a category of crime with a "high" impact. The Commonwealth Director of Public Prosecutions has also issued a direction to all prosecutors instructing them that, when deciding whether to prosecute a person for bribing a foreign public official under Division 70 of the *Criminal Code*, the Director of Public Prosecutions should not be influenced by:

- considerations of Australia's or any other country's economic interest
- the potential effect upon Australia's relations with another country, or
- the identity of the persons involved (individuals and corporate entities).

The Cole Inquiry

In October 2005, after a request by the Secretary-General of the United Nations, the Australian Government moved decisively to set up an open, transparent and independent public inquiry with Royal Commission powers. Its task was to look into the conduct of the Australian companies identified in the Volcker Report, the UN Committee report which unveiled corruption throughout the UN Oil-for-Food Programme involving 2200 companies from 66 countries while Saddam Hussein was in power.

On 24 November 2006, Commissioner Cole presented the Report of his Inquiry to the Australian Governor-General. The inquiry was significant in its examination of the Government's internal processes: examination that extended far beyond government departments, to ministers and their offices and to intelligence agencies. The Australian Government is currently responding to the recommendations made by the Cole Inquiry.

The International Trade Integrity Bill 2007

The *International Trade Integrity Bill 2007* is being adopted in response to the recommendations of the Cole Inquiry. Its main aim is to consolidate Australia's legislative provisions against corruption. The principal features of the Bill are:

Amendments to the Criminal Code Act 1995 to:

- ensure the defence under section 70.3 to a charge of bribing a foreign public official is only available where the advantage paid to a foreign official is expressly permitted or required by written law, regardless of the results of payment or the alleged necessity of payment.

Amendments to the Income Tax Assessment Act 1997 to:

- ensure that payments to foreign public officials are tax deductible only where the benefit paid is expressly required or permitted by written law, regardless of the results of payment or the alleged necessity of payment, and
- align the definition of facilitation payment with that in the Criminal Code Act 1995.

Amendments to the Charter of the United Nations Act 1945 to:

- create a new offence for people who, or corporations which, engage in conduct that contravenes a UN sanction in force in Australia with increased penalties for breaches
- create a new offence for people who, or corporations which, knowingly or recklessly provide false or misleading information in connection with the administration of UN sanctions, including in relation to the issuance of permits or authorisations
- grant agencies responsible for administering UN sanctions the required information gathering powers to determine whether UN sanctions are being complied with and improve information sharing among government agencies, and
- require persons to retain, for five years, documentation in connection with permit applications and compliance with permit conditions.

Amendments to the Customs Act 1901 to:

- introduce new criminal offences for importing or exporting goods sanctioned by the United Nations (UN-sanctioned goods) without valid permission.

Awareness Raising

The Foreign Bribery Awareness Campaign aims to raise awareness of the offence of foreign bribery and what to do if foreign bribery is suspected. The project has involved developing a comprehensive information pack on the foreign bribery offence, including the impact of bribery on the economy of developing nations, the scope of the Commonwealth offence and how to report suspected foreign bribery.

This information pack will be sent to businesses around Australia in a bid to disseminate information on bribery as an offence.

International Cooperation

In September 2006, Australia took part in an APEC ACT Public-Private Dialogue on Anti-Corruption and Ensuring Transparency in Business Transactions Workshop that looked at ways of working with the private sector to fight corruption. Australia is leading a project within the APEC Anti-Corruption and Transparency Experts Task Force to trial the implementation of the APEC Code of Conduct for Business.

Australia has chaired the APEC Anti-Corruption and Transparency Experts Task Force throughout 2007, hosting two meetings during the year.

Conclusion

Australia is taking a dual approach to fighting corruption by enhancing both its AML system and institutional framework against corruption. Initiatives under these two labels are mutually reinforcing: strengthening Australia's AML system facilitates the detection of corruption by law enforcement agencies, thereby boosting Australia's anti-corruption efforts. Anti-corruption initiatives on the other hand have the potential to enhance Australia's AML system to the extent that poor governance blunts its effectiveness. Australia's efforts in the Asia-Pacific region to establish and enhance AML systems and anti-corruption frameworks are mutually supportive for the same reasons.

CAPACITY BUILDING WORKSHOP ON COMBATING CORRUPTION RELATED TO MONEY LAUNDERING
20-22 AUGUST 2007, BANGKOK, THAILAND

ECONOMY REPORT ON COMBATING CORRUPTION RELATED TO MONEY LAUNDERING

BY
BRUNEI DARUSSALAM

1. INTRODUCTION

1.1 In the context of Brunei Darussalam, the main legislation which directly penalized the offence of corruption is the Prevention of Corruption Act (PCA) which came into force in 1982. The PCA is presently being updated in order to enhance its effectiveness in combating all forms of corrupt practices. The Anti-Corruption Bureau (ACB) since its inception in 1982 had also seen much transformation in both its mission and objectives. Apart from merely focusing on investigative and prosecutory approach, the ACB had also undertaken various preventive, educational and community approach. This is towards ensuring greater participation from local citizens and the community in corruption prevention in Brunei Darussalam. On 7/1/2006, Brunei Darussalam through the ACB and the Curriculum Development Department, Ministry of Education had launched a National Anti-Corruption Curriculum. With the commencement of this curriculum, all educational institutions within Brunei Darussalam starting from those in the primary school level up to pre-university level will be required to teach various aspects of corruption prevention initiatives. Amongst them is the emphasis on good moral values, ethical behavior, sincerity and honesty in all walks of life. It is hoped that through such strategy the future member of the society will be made aware of the evil of corruption and resist the temptation to be indulged in bribery and corruption.

1.2 Meanwhile, Brunei Darussalam had also enacted and updated its legal instruments towards ensuring effective mechanisms in detecting and seizing criminal proceeds both within the local and international context. For instance, recently The Criminal Conduct (Recovery of Proceeds) (Designated Countries) Order, 2007, had accorded the Minister of Finance of Brunei Darussalam to declare all ASEAN member countries to be designated countries for the purpose of enforcement of foreign confiscation orders. This include any illegally acquired gains which constitute the proceed of crime such as those related to corruption offences.

1.3 Brunei Darussalam is also a member to the Asia Pacific Group (APG) on Money Laundering. As such Brunei Darussalam had also been evaluated in its readiness and compliance to the requirements of the APG. The last time Brunei Darussalam was evaluated was in 2005, and it is anticipated that the next evaluation would likely be in 2010.

2. FURTHER PROGRESS SINCE MUTUAL EVALUATION (2005) TO IMPLEMENT THE INTERNATIONAL ANTI-MONEY LAUDERING (AML) AND COMBATING THE FINANCING OF TERRORISM (CFT) STANDARDS

2.1 THE ESTABLISHMENT OF THE FINANCIAL INTELLIGENCE UNIT (RECOMMENDATION 26)

2.1.1 The Financial Intelligence Unit (FIU) in Brunei Darussalam was established in February 2007 with the appointment of the following officials under the following legislation:

Supervisory Authority under the Money Laundering Order 2000:
i) Permanent Secretary, Ministry of Finance

Reporting Authority under the Criminal Conduct (Recovery of Proceeds) Order 2000:
i) Permanent Secretary, Ministry of Finance
ii) Director of Financial Institutions, Ministry of Finance.

2.1.2 The setting up of the FIU, supported by National Anti-Money Laundering Committee (NAMLC) members was done with the collaboration of the Australian Transaction Reports and Analysis Centre (AUSTRAC) under the ASEAN Technical Assistance Program. Discussions between NAMLC & AUSTRAC focused on a suitable FIU model for Brunei Darussalam, taking into consideration the country's legal & regulatory infrastructure, availability of expertise & resources and law enforcement agencies' network arrangements.

2.1.3 The establishment reflects Brunei Darussalam's commitment to be in compliance with international standards i.e. Recommendation 26 of the FATF 40 Recommendations. The FIU model at its early stage is of an administrative type and located under the Financial Institutions Division of the Ministry of Finance.

2.1.4 The FIU will serve as a national centre responsible for receiving, requesting, analysing, storing suspicious transactions reports and any other information regarding potential money laundering or terrorist financing and disseminating financial intelligence based on the information received to the appropriate law enforcement agencies.

2.1.5 Technical assistance is still required as part of an on-going programme to strengthen the AML/CFT framework. To move forward, assistance is still being sought in other areas such as operational aspect of the FIU, drafting of guidelines, advice on policy issues relating to the FIU and AML/CFT regulatory framework. Training for relevant government agencies are also required particularly in specialised areas such as suspicious transaction analysis, financial investigation, investigation & prosecution of money laundering and terrorist financing cases, asset tracing, forfeiture and so forth.

2.1.6 The FIU need to establish a mechanism for better coordination among relevant government departments namely, the regulators of the financial services industry, law enforcement agencies, Attorney General Chambers, and so forth. The FIU is currently working with the Information Technology Department, Ministry of Finance to set up FIU database system to facilitate, amongst other things, on-line submission of reports and reproduction into various reporting format requirements.

2.1.7 Other significant issues to be addressed are as follows:-

- ✓ Legislation
- ✓ Administration
- ✓ Reporting Entities
- ✓ Compliance
- ✓ IT, Data Storage & Processing
- ✓ Analysis
- ✓ Domestic cooperation with law enforcement agencies
- ✓ International cooperation

2.1.8 As a first-step post FIU-establishment, FIU will be seeking technical assistance from AUSTRAC under the above-mentioned Technical Program to develop a capacity building program that will focus on the following key areas:-

- ✓ Developing a reporting framework - creating forms for transaction reports and guidelines for reporting entities;

- ✓ Reports screening, prioritisation and management; and

- ✓ Education and guidance to reporting entities on Know-Your-Customer/Customer Due Diligence obligations and processes

2.2 LEGISLATIVE DEVELOPMENTS

2.2.1 ENFORCEMENT OF FOREIGN CONFISCATION ORDERS – RECOMMENDATIONS

i) DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (ENFORCEMENT OF EXTERNAL CONFISCATION ORDERS) ORDER, 2007

ii) CRIMINAL CONDUCT (RECOVERY OF PROCEEDS) (DESIGNATED COUNTRIES) ORDER, 2007

iii) DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (AMENDMENT) ORDER, 2007

2.2.1.1 The Minister of Finance has declared all ASEAN member countries to be designated countries for the purpose of

enforcement of foreign confiscation orders. Through the **Drug Trafficking (Recovery of Proceeds) (Enforcement of External Confiscation Orders) Order, 2007**, the Minister has also declared that the provisions of the Act is now applicable (subject to some modifications, alterations and additions) to external confiscation orders and to proceedings which have been or are to be instituted in such designated countries which may result in external confiscation order being made there. For these purpose, the Minister has also declared in those legislation the appropriate authorities for the designated countries who will represent the government in requesting such assistance.

2.2.1.2 In the absence of appropriate authorities being declared for any of the designated authorities, amendments to the **Criminal Conduct Recovery of Proceeds Order, 2000** and the **Drug Trafficking (Recovery of Proceeds) Act, Chapter 178** respectively state that it is sufficient evidence that a certificate made by the Attorney-General stating that any authority specified therein is the appropriate authorities for the purposes of these legislation.

2.2.1.3 Amendments to the **Criminal Conduct Recovery of Proceeds Order, 2000** and the **Drug Trafficking (Recovery of Proceeds) Act, Chapter 178 also state that** proceeds of drug trafficking offences recovered under a confiscation order made under the Act can be paid into the Criminal Offences Confiscation Fund established under the 2000 Order.

2.3 PENDING LEGISLATION/AMENDMENTS TO LEGISLATION

2.3.1 PROPOSED ISLAMIC BANKING ORDER

2.3.1.1 A new Islamic Banking Order is currently being drafted which will subsequently repeal the Islamic Banking Act (Chapter 168 of Laws of Brunei). The new legislation will have provisions to assist the Authority under the Order on the prevention of money laundering through the banking system. In particular, the legislation will provide that the Authority shall determine that banks have adequate policies, practices and procedures in place including strict “Know-Your-Customer” rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements. This provision supports the prevention measures identified in the Money Laundering Order, 2000.

2.3.1.2 Significant provisions include banking confidentiality, permitted disclosures, powers of investigation, assistance to designated foreign Authorities, powers of inspection, etc. This introduction in the legislation is an effort to comply with BASLE 25 Core

Principles for Effective Banking Supervision as well as taking into consideration FATF 40+9 Special Recommendations (Recommendations 4, 10, 22, 23, 29).

2.3.2 PROPOSED PROVISION TO MISUSE OF DRUGS ACT, CHAPTER 27 OF LAWS OF BRUNEI

It is proposed to introduce a "special investigation powers" provision into this Act whereby the Director of the Narcotics Control Bureau (NCB) is given the power to authorise its officer or officers to conduct inspection or investigation into the accounts held at any financial institutions in Brunei Darussalam of any persons suspected to be involved in drug trafficking offences.

2.3.3 PROPOSED AMENDMENT TO THE COMMON GAMING HOUSE ACT, CHAPTER 28 OF LAWS OF BRUNEI AND A NEW BETTING ORDER

Amendments are being made to the laws governing gambling and betting. The new laws will strengthen the Police powers of investigation into all forms and activities of gambling and betting.

2.4 INTERNATIONAL CO-OPERATION DEVELOPMENTS

Brunei Darussalam ratified the Treaty on Mutual Legal Assistance in Criminal Matters in January 2006. For this purpose, the Mutual Legal Assistance secretariat which will act as the central authority for the purpose of mutual legal assistance has been set up within the Attorney-General's Chambers. The Attorney-General's Chambers have also conducted a few seminars to increase awareness of, and to prepare, the law enforcement agencies concerning their responsibilities under the Mutual Assistance in Criminal Matters Order, 2005.

Brunei Darussalam is also a signatory to the United Nations Convention against Corruption (UNCAC) which was signed in 2003 and is currently in the process of ratifying the said Convention.

3. TRAINING, TECHNICAL ASSISTANCE AND CAPACITY BUILDING INITIATIVES

3.1 ASSISTANCE PROVIDED OR RECEIVED DURING THE PAST 12 MONTHS

- ✓ APG Annual Meeting and Technical Assistance Forum, 3 – 7 July 2006, Manila, Philippines;
- ✓ Regional Seminar on Legislation and Customs Activities Against Money Laundering for Asia and the Pacific, 10 - 16 September 2006, Dalian, China;
- ✓ Terrorism Financial Training organised by the Federal Bureau of Investigations and Department of State Diplomatic Security Services USA at the Police Headquarters, Brunei Darussalam, 2 December 2006;

- ✓ Alternative Remittance Systems (ARS): A workshop for FIUs, 21 – 24 March 2007, Fremantle, Western Australia;

- ✓ Complex Financial Investigations, organised by the International Law Enforcement Academy, Bangkok, Thailand, 23 April – 4 May 2007;

- ✓ Counter Terrorism International Training Program Australia Whole Government, 18 – 24 May 2007, Sydney, Australia; and

- ✓ Regional Program on Money Laundering and Terrorist Financing through charities and new technology, 21 – 24 May 2007, Kuala Lumpur, Malaysia.

3.2 ASSISTANCE REQUIRED DURING THE NEXT 12 MONTHS

- ✓ FIU – capacity building programme, enhancing AML/CFT framework, operational functions (analysis, financial investigation), FIU-related policy design;

- ✓ Training in analyzing suspicious transaction reports, financial analysis to detect terrorism financing activities, including risk-based approach strategies on AML/CFT;

- ✓ Financial sector – assistance with the supervisory framework paying specific attention to CDD and training for regulators to detect suspicious transactions;

- ✓ Legislative framework – assistance with strengthening and amending the legal framework on AML/CFT;

- ✓ Law enforcement – assistance with financial investigation training; and

- ✓ Others – training of criminal justice personnel in investigating, prosecuting money laundering and terrorist financing cases, asset tracing, forfeiture and international cooperation.

4. FUTURE PRIORITIES AND PLANNED AML/CFT INITIATIVES/ ACTIVITIES

With FIU establishment, Brunei Darussalam is:-

- ✓ considering membership in the Egmont Group to enable the sharing of information and international co-operation;

- ✓ considering MoUs with other FIU jurisdictions;

- ✓ drafting format and guidelines for Suspicious Transactions Reports for Reporting entities;

- ✓ creating awareness on reporting obligations and compliance by reporting institutions;

- ✓ considering on-line reporting from reporting institutions and entities;

- ✓ considering extending AML regulatory net to designated non-financial businesses and professions in line with FATF Recommendation 16;

- ✓ formulating draft guidelines and notices on CDD measures; and

- ✓ strengthening cooperation at national level by having special arrangements with law enforcement agencies to counter money laundering and the financing of terrorism.

Report on Combating Corruption Related to Money Laundering in Chile

As established in the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Vienna Convention (1988), in 1995 by law 19.366, laundering proceeds originated in illicit traffic of narcotic drugs and psychotropic substances became a criminal offense in Chile.

As a State Party to the Convention against Transnational Organized Crime, the Palermo Convention (2000), on December 18, 2003, under Law 19.913 the Chilean Financial Intelligence Unit was created. This same law added other predicative offenses for money laundering, being corruption related crimes one of the new predicative offenses incorporated by this new law. The FIU started operations in April 2004.

Chile ratified the United Nations Convention against Corruption (Merida 2003) on September 13, 2006, which became official by its publication in the Official Gazette on January 30, 2007.

In the past months, Chile has taken legislative and administrative measures to ensure the implementation of what was agreed under the UN Convention against Corruption. The main initiatives currently in progress and their relation with the corresponding articles of the UN Convention against Corruption are as follows:

Article 5 - Preventive anti-corruption policies and practices

1.- Anti Corruption government policies

a) A report from a Committee of Experts on measures to favor probity and efficiency of public management.

In November 2006, the President of Chile received a report from a Committee of Experts she had previously designated, with recommendations in four areas: Probity, Transparency, Quality of Policies and Modernization of the State.

b) Constitution of an Agenda of Probity and Transparency and an Executive Secretariat.

On December 6, 2006, the President of Chile established the Agenda of Probity and Transparency reporting to an Executive Secretariat, which requested the enforcement of 30 concrete measures proposed by the Committee on their November 2006 Report.

2.- Identification and promotion of good practices

The Executive Secretariat of the Agenda of Probity and Transparency organized -within the State Administration- a contest in order to detect the best practices in probity, transparency and access to public information.

Article 6 - Preventive anti-corruption body or bodies

1.- The Counsel for Transparency

On December 6, 2006, in order to guarantee wide access to information on public entities, the President of Chile sent to Congress a Draft Law for its creation.

Article 7 – Public Sector

1.- Improvements to the High Public Direction System

On December 20, 2006, the President of Chile sent a Draft Law to Congress, with a proposal to amend this System in the following aspects:

i) Add new Public Entities to the System. At the end of such process, only five of these, as well as all State owned Universities, will remain out of the System.

ii) Strengthen the corporate role of the High Public Direction Council

iii) Establish an annual report to Congress by such High Public Direction Council

iv) Improvements to the recruitment process of High Public Directors

2.- Five-year training plan on public ethics for public officials

A training plan is being developed by the Finance Ministry, the High Public Direction Department, and the Executive Secretary of Probity and Transparency Agenda.

3.- Primary Elections Regulation

On December 6 2006, the President of Chile sent to Congress, a project to amend our Constitution. This amendment will establish Primary Elections within political parties for the nomination of their candidates for Presidential and Congress elections.

4.- Draft Law to regulate lobbying activities

On December 6, 2006 the President of Chile sent to Congress a Draft Law to regulate such activity.

5.- Amendment to law on transparency, limit and control of election - campaign expenditures

On December 6, 2006, the President of Chile sent to Congress a Draft Law which will among others:

i) Create a Suppliers Registry

ii) Prohibition to juridical persons to make donations to candidates or political parties
iii) Establishment of penal types for certain offenses to the Election Expenditures Law
iv) Restrictions to some faculties of the Executive Power in relation to the presentation of urgent Draft Laws during election - campaign periods.
v) Restrictions to publicity of governmental policies during election - campaign periods.
vi) Prohibition to perform fund collection campaigns within Public Institutions.

Article 8 - Code of conduct for public officials

1.- Probity and Transparency Manual

The Executive Secretary of the Probity and Transparency Agenda is presently elaborating a Manual and Code of Conduct for public officials.

2.- Incompatibility and Inabilities for Congressmen

On December 6, 2006 the President of Chile sent to Congress a project to amend the Constitution. Such Amendments include, i) the ruling of conflict of interests for Congressmen and ii) restrictions and disclosing to the acting of Congressmen as attorneys or mandates under certain circumstances.

3.- Protection to public officials who report irregularities and corruption acts

On December 6, 2006 the President of Chile sent to Congress a Draft Law, which establishes that public officials who report irregularities and corruption acts shall receive protection. This Law has already been approved by Congress, and published in the Official Gazette on July 24, 2007.

4.- Public availability of the declaration of Patrimony and Interests (Amendment to the 8th Article of the Chilean Political Constitution)

Public authorities are obligated to declare their wealth and interests at the beginning and end of their period in such positions. On December 6, 2006 the President of Chile sent to Congress a Draft Law in order to amend the Constitution and make such declarations public and widely available.

Article 9 - Public procurement and management of public finances

1.- Presidential guidelines on active transparency dated December 4, 2006

As of January 2007, every public entity must publish in its official web site, in a monthly basis:

i) A detailed list of all acquisition of goods and services

ii) A list including every individual working for the entity

iii) A detailed list of funds transferred to juridical persons.

2.- Improvement of the General Audit Governmental System

A Draft Law has been presented to upgrade a governmental advisor commission to become the Internal General Audit Governmental Council. Every Ministry will need to establish its own Auditing Council.

3.- Improvement of public procurement

On December 20, 2006 a Draft Law was sent to Congress to strengthen the public procurement system established by the Law in 2003, so extending its compulsory compliance to a broader range of public entities and public activities. All acquisitions over a certain amount (approximately US$ 50), must be made via the governmental procurement web site www.chilecompra.cl.

4.- Project of Constitutional Amendment on the modernization of the Contraloría General de la República (the Chilean Official Public Auditing Entity)

On December 6, 2006 the President of Chile sent to Congress a Draft Law to introduce significant changes and modernize the Contraloría General de la República.

Article - 10 Public reporting

1.- Draft Law on the transparency of the activity and access to information of public entities

On December 6, 2006 the President of Chile sent to Congress a Draft Law to regulate the access to information of public entities. Active transparency shall become an obligation.

Article 12 – Private Sector

1.- A Draft Law to broaden restrictions to the "revolving door"

On December 6, 2006, the President of Chile sent to Congress a Draft Law to strengthen employment restrictions to public officials once they finish their period as governmental authorities. Monetary compensation for a one year restriction period.

Article - 33 Protection of reporting persons

1.- A Law to provide protection to public officials who report irregularities or corruption acts

On December 6, 2006, the President of Chile sent to Congress a Draft Law to protect public officials against any unjustified treatment, if they report in good faith any irregularities or corruption acts, This project became a Law upon its publication in the Official Gazette on July 24, 2007.

Víctor Ossa/August 2007

Cracking down on Money Laundering and Effectively Preventing Corruption

——Chinese Government's Efforts in Strengthening its capacity in Anti-Money Laundering for Corruption Prevention

Ministry of Supervision of the People's Republic of China

(Bangkok, Thailand, August 20 to 22, 2007)

Corruption is one of the predicate offences for money laundering, and they are closely related to each other. Within a context of economic globalization and the internationalization of capital circulation, corruption behavior and money laundering activities are usually interwoven, with the trans-national (border) tendency becoming increasingly visible. Criminals of corruption not only cover or hide their illicit money through seemingly legitimate economic activities, but also transfer their bribes abroad via money laundering followed by fleeing from home country. Therefore, firmly cracking down on money laundering crimes and the interception and tracking down of illegal funds transfer are important means to prevent corruption from its source. During the campaign against corruption, the Chinese government highly emphasizes the importance of anti-money-laundering programs and regards improving the capacity and the standard of anti-money laundering as the key content of the program aimed at strengthening the government's anti-corruption capability. A series of important measures regarding the construction of anti-money laundering legislation and functional mechanism, international cooperation, business monitoring, case investigation, etc. have been adopted, as a result of which positive progress and effects have been achieved.

I. Speed up legislative progress to gradually improve the anti-money laundering legal system

The anti-money laundering work is an integral part of China's anti-corruption campaign. The Chinese Government issued in 2005 the *Implementing Program for Building and Perfecting a System for the Punishment and Prevention of Corruption with Equal Emphasis on Education, Institution and Supervision*. The program clearly points out that to "formulate and improve the anti-money laundering system" is an important task for building the system for the punishment and prevention of corruption. Since China ratified the *United Nations Convention Against Corruption* (UNCAC), the Chinese Government has always taken the promulgation and amendment of the law and regulations on anti-money laundering as an important content that bridges the Chinese legal system and the UNCAC, thus actively giving an impetus to the law-making progress. In June 2006, the Standing Committee of the Tenth National People's Congress deliberated and passed the *Sixth Amendment to the Criminal Law*. According to Article 191 of *the Criminal Law,* three crimes including embezzlement and bribery are listed as the predicate crime for money laundering. The amendment expands the scope for the upper stream crimes of money laundering and provides a basis of the *Criminal Law* for preventing corruption through cracking down the crime of money laundering. In October 2006, the Standing Committee of the Tenth National People's Congress deliberated and passed the *Law of People's Republic of China on Anti-money Laundering.* It was the first time to define such important issues as the anti-money laundering supervision system, the obligations of anti-money laundering for financial institutions and special non-financial institution, etc. in the legal form, thus laying down a corner-stone for formulating the system for the anti-money laundering program. In recent years, the Central Government and relevant ministries formulated many administrative regulations and department rules, such as the *Regulations on the Real-name System for Opening*

Individual Deposit Accounts, the *Regulations on Anti-money Laundering for Financial Institutions*, the *Measures for the Management of Reporting Large-sum Transactions and Suspicious Transactions*, the *Rules on the Management on Customers' Identification and the Storage of Customers' Identity Data and Transaction Records in Financial Institutions*, the *Measures for the Management of Reporting Suspicious Transactions Involving Financing for Terrorists*, etc., which set up the basis for the implementation of the anti-money laundering system, such as the financial institutions' real-name system for opening bank accounts, customer identity recognition, large-sum transaction and suspicious transaction reporting system and the storage of transaction records, etc.. At present, China has primarily established a legal system in compliance with the international standard for anti-money laundering to prevent and crack down the criminal activities of money-laundering, which provides a strong legal basis and support for the further expansion of the anti-money laundering and anti-corruption programs.

II. Establish work coordination mechanism and further form a joint force of anti-money laundering supervision

In 2004, the Chinese government successively established two work coordination mechanisms: the financial supervision department coordination group and the anti-money laundering work inter-ministerial joint meeting. At the financial system level, the Central Bank, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission and the State Administration of Foreign Exchange jointly set up an anti-money laundering work coordination group, which regularly studies anti-money laundering work in the financial systems, shares supervision information, unitarily coordinates the anti-money laundering work of such financial supervision departments as banking, securities, insurance and foreign exchange, and promotes integration and consolidation of the supervision resources. At the ministerial level, led by the Central Bank, more than 20 ministries including the Ministry of

Supervision and judicial organs established an Inter-Ministerial Joint Meeting on Anti-Money Laundering Work. Ministry of Supervision, as a governmental exclusive supervision organ in accordance with division of power, takes charge of investigating and punishing violation of laws and disciplines in connection with money-laundering committed by national administrative organs and the civil servants as well as other personnel appointed by the national administrative organs; strengthen the construction of institutions, mechanism and systems have been strengthened to contain and prohibit the money laundering activities from the very sources. We have studied and established an information sharing and joint investigation mechanism in crackdown on corruptions including embezzlement and bribe through money laundering. The establishment of the inter-ministerial joint meeting system has provided an effective platform for the Central Bank to report anti-corruption work information related to money laundering crimes to the supervision organ so as to timely monitor corrupt-related funds and transfer clues of corruption cases. In the same year, the Central Bank set up China Anti-Money Laundering Monitoring and Analysis Center as a special organ for collecting and analyzing large volume and suspicious transaction statements so as to provide clues of crimes related to money laundering and other crimes. In 2006, the State Administration of Foreign Exchange transferred its anti-money laundering duty, institutions, staff and information system to the Central Bank, which means that anti-money laundering work has realized unified management and control of domestic and foreign currencies and that the efficiency of anti-money laundering supervision has been further improved. The Central Bank has made significant progress in setting up special anti-money laundering organs in its branches. Up to now, 36 branches at the sub-provincial level have been approved to set up their anti-money laundering department.

III. Promote international cooperation to facilitate fighting against cross-country/border money laundering

In recent years, China has successively become member of the international conventions including the *United Nations Convention against Transnational Organized Crime* and the *United Nations Convention against Corruption*, promising to perform its international obligations by taking measures to fight against corruption crime and the money laundering arising from harboring or concealing the corruption crime. In February 2006, the *International Convention for the Suppression of the Financing of Terrorism* was approved by the Standing Committee of the 10th National People's Congress. So far, China has signed and ratified a series of international conventions passed by the United Nations in relation to anti-money laundering, showing its firm determination to fight against money laundering and corruption crimes to the international community. To strengthen the international cooperation of anti-money laundering, the Chinese government actively launches or participates in the multilateral cooperation systems concerning anti-money laundering. In October 2004, China joined in Eurasian Group on combating money laundering and financing of terrorism (EAG) as an initiating member state. This June, China obtained the official membership of the Financial Action Task Force on Anti-Money Laundering (FATF). The Chinese government also insists in integrating anti-money laundering into the anti-corruption multilateral and bilateral cooperation, and regards it as an important issue in many important events held recently, such as the Fifth Asia-Pacific Regional Anti-corruption Conference, the APEC Anti-corruption Workshop, the U.S.-China Joint Liaison Group and its anti-corruption working group meetings, as well as criminal hunting and arrest outside of China. In addition, it takes great efforts to drive the communication and cooperation among nations in promulgating and execution of laws and regulations, supervision and information sharing in relation to anti-money laundering.

IV. Enhancing supervision, financial institutions steadily increase their capability to fight against money laundering

To meet the requirements of the anti-money laundering execution in a systematic and regulated way, the Chinese governmental departments, on the basis of related laws and regulations, make more supervision and examinations to urge the financial institutions to perform their anti-money laundering duties abiding by laws. Since 2004, the Central Bank has annually organized special on-site examinations so as to inspect the implementation of the anti-money laundering obligations by financial institutions in banking industry. Over 6800 financial institutions in banking industry were examined, solutions were brought out for problems in the business management of financial institutions, such as not to or less strict execution of the anti-money laundering system during the client ID identification and no report on suspicious transactions. In particular, more than 3300 banking institutions were examined on-site in 2006. These supervision and examination improved the increasing ability of the financial institutions to operate according to laws and regulations and fight against anti-money laundering.

V.More case investigations, with severe punishment to money laundering and corruption crimes

The Chinese governmental departments make the best use of information on the suspicious transactions from China Anti-Money Laundering Monitoring and Analysis Center (CAMLMAC), expending the resources and channels to investigate violation of disciplines or law, and severely punish money laundering crime and corruption crime thereof. The CAMLMAC accepts, gathers and analyzes reports on large amount transaction in domestic or foreign currency, suspicious transaction in RMB, or suspicious transaction in foreign currency, and therefore finds a good number of clues to money laundering crime. For example, in 2006, the anti-money laundering department assisted to uncover over 40 cases related to money laundering. Through earnest analysis and in-depth examination to cases and clues handed over by the anti-money laundering department, supervision organs of all levels seriously investigate and punish the typical

corruption crimes such as traders collusion with governmental officials, and trading power for money, and they also demand back illegal money gained through the corruption. In May 2007, The Chinese government enacted *Regulations on Strict Prohibition of Illegal Interests Gained through the Abuse of Power*. It explicitly states that certain behaviors are rigorously forbidden, for example, all governmental personnel are forbidden to gain any illegal interest in the name of commissioning of securities or futures investment, or any other financial management commissioning, either personally or jointly with his/her relatives, mistress or lovers and/or with any person who is potentially bonded together with him/her by a common interest. From now on, supervision departments of all levels will further enhance coordination with anti-money laundering authorities, strengthen monitoring on large amount and suspicious transactions, establish a sound precaution system to effectively monitor large amount fund outflow, fully give play the positive role of anti-money laundering in the program of combating corruption and building a clean government, and prevent and control the corruption from the very beginning.

Current State of Anti-Corruption in Chinese Taipei

I. Foreword

Chinese Taipei is an open, vibrant society and a peace-loving economy. We have a population of 23 million and a per capita income of more than US$12,000. We are the world's 15th largest trading economy and have become a developed economy and an important investor in many countries.

Besides improving the political environment through the implementation of the "Sweeping away Organized Crime and Corruption Program," Chinese Taipei also strives to burnish its international image. As a major trading economy in the world, we understand the adverse effect of corruption on international commerce. Therefore, we took as a reference the "Convention on Combating Bribery of Foreign Public Officials in International Transactions" proposed by OECD to revise our Statute of Penalties for Corruption. The new law states that in all international transactions, bribing a foreign country's public servant shall be punished.

II. Strengthening of the Mechanism for Preventing and Eliminating Corruption

A. The Current Anti-Corruption Framework

1. In the area of the legal system

a. The Statute of Penalties for Corruption

(1) Major provisions

(a) A public servant who seeks ill-gotten gains from affairs under his charge or his surveillance shall be sentenced to more than five years in prison and may be fined for up to NT$30 million ($857,142).

(b) A public servant who takes bribes in violation of his duties shall be sentenced to more than ten years in prison and may also be fined for up to NT$100 million ($1.71 million).

(c) A public servant who takes bribes in the exercise of his duties shall be sentenced to more than seven years in prison or also be fined for up to NT$60 million ($2.85million).

(d) A public servant who gives bribes in violation of his duties

shall be sentenced to imprisonment from one year up to seven years and may also be fined for up to NT$3 million $85,714).

(e) A person who bribes a public servant of a foreign nation, the Chinese Mainland area, Hong Kong, or Macau in cross-border trade, investment, or other commercial activities shall be sentenced to fewer than five years in prison and may also be fined for up to NT$1 million ($28,571).

(2) Encouragement of self-surrender and confession

If a public servant surrenders after committing an offence and voluntarily return all the ill-gotten gains, the sentence shall be commuted or exempted, and if this leads to the discovery of accomplice(s), he shall be exempted from penalty.

b. Law of Witness Guarantee

The Law of Witness Guarantee is intended to protect the witnesses in a criminal case so that they can rally up their courage to stand a witnesses for the benefit of criminal investigations and trial, and the protection of the defendant's rights and interests. According to relevant laws, when someone accuses a public servant of corruption and the public servant is thus convicted as guilty, the accuser is eligible for a reward of an amount from NT$200,000 to NT$6 million.

c. The Law of Asset Declaration by Public Servants

The Law of Asset Declaration by Public Servant came into effect in 1993, calling for government employees of the following ranks and categories to make public their assets: heads of government agencies above the rank of selected appointment, which is the highest rank in the three ranks system; heads of government enterprises above Grade 10 in the 14 grades system; elected government heads above the township level and representatives above the county and city level; heads of public schools; judges; prosecutors; and police, judicial investigation, taxation, customs, land administration, public works, urban planning, stock exchange, and procurement officials in charge. All

of them are subject to the “Sunshine Law” and obligated to declare their assets, including their property, boats, cars, aircraft, bank deposits over a certain amount, foreign exchange, stocks and securities, creditor’s rights, debts; along with those of their spouses and their minor children. These officials must file their asset reports within three months of the assumption of office. Besides, the asset reports of the President and Vice President of Chinese Taipei, the presidents and vice presidents and political employees of the five Yuans, the people’s representatives above the county and city level are to be published in a government gazette regularly.

d. Conflict of Interests Law for Public Servants

The Conflict of Interests Law for Public Servants was promulgated on July 12, 2000. The enactment was intended to promote honest and competent government, ensure respect of public servant ethics, set the criteria for avoidance of conflict of interests by government employees, and effectively curb the tendency of corruption and sweetheart deals. These interests include property interests and non-property interests. The non-property interests refer to the appointment, transfer, promotion, and other personnel affairs favorable to a public servant and concerned persons working in government agencies, public schools, or public enterprises. The Law has the following provisions: “A public servant shall immediately abstain if he or she knows there is a conflict of interests,” “a public servants shall not use the power, opportunity, and method of his or her position to seek gains for themselves or their relatives,” “a relative of a public servant shall not advise or request by any unlawful methods something from the related officials of an organization for the interests of himself or a public servant,” and “a public servant and persons related to him shall not engage in business transaction, rental, and contract affairs of his organization or of its affiliated agencies.” All this is intended to prevent corruption.

e. Money-laundering Prevention Law

The original Money-laundering Prevention Law was enacted in 1996. It was amended in 2003. It is the first one of its kind in

Asia. The Law provided that a bank shall examine the identity of the customer and keep a transaction record for any currency deal amounting to NT$1 million and more and, if the deposit is suspicious of money laundering, the bank shall report the case to the Money-laundering Prevention Center.

Violation of the Law is punishable for a prison term of up to five years and also a fine of up to NT$3 million. If necessary, the suspect's assets may be frozen. To prevent cross-nation money laundering and make the crackdown on the suspect of a crime more effectively, the Law empowers the government to sign cooperation agreements with foreign governments and establish a property-sharing system with them.

To track the suspect's money transactions in the bank or other monetary institutions, the Ministry of Justice has discussed several times with the Ministry of Finance the establishment of a "System of Enquiry About the Opening of Bank Accounts" to provide for a computerized databank to enable related organizations understand the suspect's accounts kept in other banks.

2. In the field of organizations

a. Prosecutors Offices

Prosecutors Offices are established as corresponding to courts at different levels. There are a State Prosecutor-General's Office, six High Prosecutors' Offices and branch offices, and 20 District Prosecutors' Offices. In keeping with the principle of prosecutorial unity, the prosecutor-general has the power to command and supervise the prosecutors' offices at all levels.

b. Bureau of Investigation

The primary task of the Bureau of Investigation under the Ministry of Justice is to investigate crime and take various preventive measures as required for ensuring national security and social stability. The Bureau has six divisions, and among them the Division of Honest Government is the unit in charge of the elimination of corruption.

c. Department of Government Ethics

The Department of Ethics under the Ministry of Justice is in charge of the maintenance of the morals of public servants and supervises the 2,500 officials charged with government ethics. It operates based on the beliefs of “positive contribution above negative prevention,” “prevention above punishment,” and “service above interference.” To orchestrate the nation’s system and resources of government ethics, the MOJ is planning to transform the Department into an independent anti-corruption organization in the future.

d. Organization of Task Forces

(1) In compliance with the Sweeping away Organized Crime and Corruption Program, the Taiwan High Prosecutors’ Office established a Black-and-Gold Investigation Action Center and organized four special investigation groups in its office and its three branch offices at Taichung, Tainan and Kaohsiung. These four investigation groups recruit prosecutors and police and investigation officers in the area of their respective jurisdiction to crack down on major cases of organized crime and corruption in a joint effort.

To strengthen the crackdown on corruption cases, equal efforts are placed on elimination and prevention. The State Prosecutor-General’s Office has established an Anti-corruption Supervisory Group to organize the Prosecutors’ Offices, the Bureau of Investigation, and the police into an iron triangle. The District Prosecutors’ Offices and branch offices have formed anti-corruption execution groups to look into giant engineering projects, huge procurements, business registrations, urban planning, financial operations, motor vehicle management, taxation, customs service, the police, the judiciary, correction institutions, construction control, land affairs, environmental protection, medical care, education, fire-fighting service, funeral parlors, and the excavation of sand and gravel to see whether there is any collusion with government officials, sweetheart deals, promised payments, give or take of bribes, and any other illegal practices. If corruption is found, the

offenders will be punished according to law.

(2) To cope with the economic transformation and the need of development and to implement the policy of building a financial environment with international competitiveness, MOJ, in compliance with the decision of the Financial Crime Investigation Work Group formed under our central government Financial Reform Ad Hoc Group, ordered the Taiwan High Prosecutors Office to establish on November 1, 2002, a Financial Crime Investigation Task Force to crack down on major financial crime.

(3) To foster the team spirit of the government ethics control system and maximize the combat power of the whole system as a totality, MOJ established "government ethics investigation mobile unit" in the county and city governments in northern, central, and southern Chinese Taipei to strengthen the anti-corruption function. These groups are in charge of gathering evidence and investigating ethics violations reported by government ethics organizations.

(4) In addition, MOJ has organized its government ethics officials and those of its affiliated agencies into a "special evidence gathering unit" against the heads and deputy heads and other sensitive officials of government agencies involved in landmark corruption cases to show MOJ's determination to rectify the officialdom.

B. Reform Measures for Corruption Elimination

1. Establishment of an Anti-corruption Bureau

MOJ, taking reference from the anti-corruption efforts of Singapore and Hong Kong, is planning and pushing for the establishment under itself of an independent anti-corruption organization. Although the various parties have not yet reached an agreement on the establishment of the organization, hampering the enactment of the organic law for the new agency, MOJ is persisting in the communication work on the belief that the establishment of such an organization will never be too late.

2. Revision of the Law of Assets Declaration by Public Servants

The draft amendment is under legislative review. The major changes are the expansion of its scope of application and the addition of the provisions on the criminal responsibility for possession of assets coming from unclear sources. Once the amendment is passed, a public servant whose assets are found increasing unreasonably and exceeding double the amount of the annual salary income of said public servant, he/she or his/her spouse and minor children will be faced with the penalty of imprisonment and fines.

III. Achievements in Elimination of Corruption and Crackdown on Bribery

A. Elimination of Corruption

MOJ and its affiliated District Prosecutors Offices began to execute the "Sweeping out Organized Crime and Corruption Program" in July 2000. By the end of July 2004, a total of 2,386 corruption cases had been indicted, involving 5,635 people and NT$25.14 billion of corruption money. The indicted people were 303 (5.38%) officials above the rank of selected appointment, 392 (6.96%) people's representatives, 1,120 (19.88) medium-level officials and 1,831 (32.40%) low-level officials. Judging from the indictment percentages of medium-level officials and people's representatives, it is obvious that the targets of the crackdown on corruption were not limited to low-level pubic servants and, on the contrary, extended to the medium and higher levels.

A comparison of the situation before and after the implementation of the "Sweeping away Organized Crime and Corruption Program" shows that the numbers of both indicted cases and indicted people have increased tremendously after the launching of the program. This indicates that MOJ's anti-corruption measures are effective.

B. Investigation of Bribery

After decades of reform, Chinese Taipei has established a free, democratic electoral system. Many of its public officials, including the president, are elected directly by the people. Fair and clean elections not only form the firm foundation of democracy, but also prevent elected officials from corruption after taking office. As mentioned before, Chinese Taipei has suffered from unfair elections for decades, so the new administration took the establishment of an open, fair and square electoral system as a primary responsibility. In the period between May 2000 and

July 2004, 4,413 people had been indicted in 1,526 cases of corruption, more than doubling the numbers between 1997 and 2000. This is to say that so long as we can persevere, elimination of corruption is not an unreachable dream.

IV. Conclusion

Only when the officialdom is rectified and honest and competent government is established, can peace in Chinese Taipei endure and the people live and work happily. To achieve this goal, eliminating corruption, cracking down on bribery, and sweeping away organized crime are the three most important tasks. In sweeping away organized crime and corruption, our position is: paying no respect to any political party or faction, giving no regard to the ranks of any official involved, and setting no bottom line for our effort. We will pursue the cases to the end. We will never cease our effort before organized crime and corruption are removed. This is a crusade of all the people and an endless uncompromising battle against viciousness. We must move forward in full force so as not to betray the trust and hopes of the people.

As a key member of the international community, Chinese Taipei is fully aware of the necessity of international cooperation and experience exchange to eliminate corruption. We are striving to build an honest, efficient government devoted to the service of the people. We seek to provide our people with a just, equitable society. To achieve this goal, we must continue to strengthen our administrative reform and the restructuring of our government. We need not only to attain the lofty ideal where no one dares, is willing, is able or is in the need of attempting corruption. What is more, we need to maintain effectively the image of honesty of the absolute majority of our public servants.

In view of the rising frequency of cross-nation crime, it is impossible to deal with such crime without assistance from other economies. However, only very few economies have entered into formal or informal relations of legal mutual assistance with Chinese Taipei in criminal matters. Only the United States signed with Chinese Taipei in 2002 an agreement on mutual legal assistance in criminal matters. Therefore, the law-enforcement authority in Chinese Taipei cannot effectively crack down on a corruption case involving a foreign nation. Take the procurement of La Fayette frigates. It is reported that there was a scandal involving as much as US$760 million as commission for distribution to officials of foreign countries, and that the criminal suspect deposited the ill-gotten money in a Swiss bank and fled to another country. Without assistance of foreign nations, it is difficult for Chinese

Taipei's judicial authority to bring the suspect to justice.

Crackdown on corruption is a common responsibility of civilized societies. All economies should put aside political imbroglios and join up to smash the common scourge. Therefore, Chinese Taipei sincerely hopes to enter into relations of legal mutual assistance in criminal matters with other economies. We believe this will benefit all participating economies.

Money Laundering Control Act

Promulgated on October 23, 1996
Amended and promulgated on February 6, 2003
Amended and promulgated on May 30, 2006
Amended on 14 June, 2007 and promulgated on 11 July, 2007

Article 1

This Act is explicitly enacted to regulate unlawful money-laundering activities and to eradicate related serious crimes.

Article 2

As used in this Act, the crime of "money-laundering" is defined as any person who—

1. Knowingly disguises or conceals the property or property interests obtained from a serious crime committed by themselves or;
2. Knowingly conceals, accepts, transports, stores, intentionally buys, or acts as a broker to manage the property or property interests obtained from a serious crime committed by others.

Article 3

As used in this Act, "serious crimes" include the following crimes:

1. The crimes of which the minimum punishment is 5 years or more imprisonment.
2. The crimes prescribed in Articles 201 and 201-1 of the Criminal Code.
3. The crimes prescribed in paragraph 1 of Article 240, paragraph 2 of Article 241, and paragraph 1 of Article 243 of the Criminal Code.
4. The crimes prescribed in paragraph 1 of Article 296, paragraph 2 of Article 297, paragraph 2 of Article 298, and paragraph 1 of Article 300 of the Criminal Code.
5. The crimes prescribed in paragraphs 2 to 4 of Article 23, and paragraph 2 of Article 27 of the Act for the Prevention of Child and Juvenile Prostitution.
6. The crimes prescribed in paragraphs 1-3 of Article 12, paragraphs 1 and 2 of Article 13 of the Statute for Fire Arms, Ammunition and Harmful Knives Control.
7. The crimes prescribed in paragraphs 1 of Article 2, paragraph 1 of Article 3 of the Statute for Punishment of Smuggling.
8. The crimes prescribed in subparagraph 1 of Article 171 of the Securities and Exchange Act, in violation of paragraphs 1 and 2 of Article 155, or subparagraphs 2 and 3 of paragraph 1 of Article 157-1 and subparagraph 8, paragraph 1 of Article 174 of the Securities and Exchange Act.

9. The crimes prescribed in paragraph 1 of Article 125-2 and paragraph 1 of Article 125-3 of the Banking Act can apply to the provisions in paragraph I of Article 125, paragraph 1 of Article 125-2, paragraph 4 of Article 125-2 of the Banking Act.
10. The crimes prescribed in Articles 154 and 155 of the Bankruptcy Law.
11. The crimes prescribed in paragraph 1and 2 of Articles 3, 4 and6 of the Organized Crime Prevention Act.
12. The crimes prescribed in paragraph 1 of Article 39 and paragraph 1 of Article 40 of Agricultural Finance Act.
13. The crimes prescribed in paragraph 1 of Article 39 and paragraph 1 of Article 58-1 of the Bills Finance Management Act.
14. The crimes prescribed in paragraph 1 of Article 168-2 of the Insurance Law.
15. The crimes prescribed in paragraph 1 of Article 58 and paragraph 1 of Article 57-1 of the Financial Holding Company Act.
16. The crimes prescribed in paragraph 1 of Article 48-1 and paragraph 1 of Article 48-2 of the Trust Enterprise Act.
17. The crimes prescribed in paragraph 1 of Article 38-2 and paragraph 1 of Article 38-3 of the Trust Cooperative Act.
18. The crimes prescribed in paragraph 3 of Article 11 of this Act.

The following crimes also fall into the category of the “serious crimes” if the property or property interests obtained from the commission of the crime(s) exceeds NT 5 million dollars:

1. The crimes prescribed in paragraph 2 of Article 336 and Article 344 of the Criminal Code.
2. The crimes prescribed in paragraph 1, the second-half of paragraph 2 to paragraph 6 of Articles 87, Article 88, Article 89, paragraph 1, second-half of paragraph 2, and paragraph 3 of Article 90, paragraph 1, second-half of paragraph 2 and paragraph 3 of Article 91 of the Government Procurement Act.

Article 4

As used in this Act, the “property or property interests obtained from the commission of the crime” means:

1. The property or property interests obtained directly from the commission of the crime.
2. The remuneration obtained from the commission of the crime.
3. The property or property interests derived from the above two subsections. This provision, however, is not applicable to a third party who obtains in good faith the property or property interests prescribed in the preceding two subparagraphs.

Article 5

As used in this Act, the “financial institutions” include the following institutions:

1. banks;
2. trust and investment corporations;
3. credit cooperative associations;
4. credit department of farmers’ associations;
5. credit department of fishermen’s associations;
6. Agricultural Bank of Taiwan;
7. postal service institutions which also handle the money transactions of deposit, transfer and withdrawal;
8. negotiable instrument finance corporations;
9. credit card companies;
10. insurance companies;
11. securities brokers;
12. securities investment and trust enterprises;
13. securities finance enterprises;
14. securities investment consulting enterprises;
15. securities central depository enterprises;
16. futures brokers;
17. trust enterprises;
18. other financial institutions designated by the competent authorities of enterprises bearing financial purposes..

The provisions prescribed in this Act governing financial institutions shall apply *mutatis mutandis* to the following institutions:

1. Jewelry businesses
2. Other financial institutions likely to be used for money laundering and designated by the Ministry of Justice in consultation with central competent authorities governing target businesses.

If the competent authorities for the institutions set forth in the above two paragraphs are ambiguous, the Executive Yuan shall designate the competent authorities for the institutions.

The Ministry of Justice may, as it deems necessary, require the institutions set forth in paragraphs 1 and 2 of this Article to accept monetary instruments other than cash as payment for financial transactions.

Article 6

Every financial institution referred to in this Act shall establish its own money laundering prevention guidelines and procedures, and submit those guidelines and procedures to the central competent authority for review. The content of the money

laundering prevention guidelines and procedures shall include the following items:

1. The operation and the internal control procedures for money laundering prevention;
2. The regulatory on-job training for money laundering prevention instituted or participated in by the financial institution referred to in this Act;
3. The designation of a responsible person to coordinate and supervise the implementation of the established money laundering prevention guidelines and procedures;
4. Other cautionary measures prescribed by the central competent authority.

The directions for institutional money laundering prevention referred to in paragraph 2 of the preceding Article may be prescribed by the central competent authorities governing target businesses.

Article 7

For any currency transaction exceeding a certain amount of money, the financial institutions referred to in this Act shall ascertain the identity of customer and keep the transaction records as evidence, and submit the financial transaction, the customer's identity and the transaction records to the institutions designated by the Executive Yuan.

The amount and the scope of the financial transaction, the procedures for ascertaining the identity of the customer, and the method and length of time for keeping the transaction records as evidence referred to in the preceding paragraph shall all be established by the central competent authorities governing target business in consultation with the Ministry of Justice and the Central Bank of the Republic of China.

Any financial institution which violates the provisions set forth in the first paragraph of this Article shall be punished by a fine between NT 200,000 dollars and NT 1 million dollars.

Article 8

For any financial transaction suspected to be a money laundering activity, the financial institutions referred to in this Act shall ascertain the identity of the customer and keep the transaction record as evidence, and report the suspect financial transaction to the designated authority.

The reporting financial institution will be discharged from its confidentiality obligation to the customer if the institution can provide proof that it was acting in good faith when reporting the suspect financial transaction to the designated authority in compliance with the preceding paragraph of this Article.

The scope and procedures of the reporting referred to in paragraph 1 of this Article

shall all be stipulated by the central competent authorities governing target businesses in consultation with the Ministry of Interior, the Ministry of Justice and the Central Bank of the Republic of China.

Any financial institution which violates the provisions set forth in the first paragraph of this Article shall be fined between NT200, 000 dollars and NT 1 million dollars. However, if the violating financial institution is able to prove that the cause of such violation is not attributable to the intentional act or negligent act of its employee(s), no fine shall be imposed.

Article 9

Whenever the prosecutor obtains sufficient evidence to prove that the offender has engaged in money laundering activity by transporting, transmitting, or transferring a monetary instrument or funds through bank deposit, wire transfer, currency exchange or other means of payment, the prosecutor may request the court to order the financial institution to freeze that specific money laundering transaction to prevent withdrawal, transfer, payment, delivery, assignment or other related property disposition of the involved funds for a period not more than 6 months. The prosecutor on their own authority may freeze a specific money laundering transaction and request the court's approval within three days whenever the prosecutor has probable cause to believe that the property or property interests obtained by the offender from the commission of crime are likely to disappear under exigent circumstances. The prosecutor must immediately remove the hold on transaction if the prosecutor fails to obtain the court's approval within three days. If the court fails to approve within 3 days or if the prosecutor fails to petition to the court for approval within 3 days, the hold shall be removed.

During the trial proceeding, the presiding judge has discretion to order a financial institution to freeze the offender's money laundering transactions for purposes of withdrawal, transfer, payment, delivery, assignment or other related property disposition.

The order to freeze the offender's money laundering transactions for withdrawal, transfer, payment, delivery, assignment or other related property disposition in a financial institution must be in writing and meet the requirements set forth in Article 128 of the Criminal Procedure Code.

When deemed necessary, applications for extension of the period referred in paragraph 1 shall be made by the public prosecutor with reasons and submitted to the court not later than 5 days prior to the expiration of the period. The extension shall not exceed 6 months and only one extension is allowed.

Paragraph 1 and the preceding paragraph of this Article shall apply *mutatis mutandis* to foreign governments, foreign institutions or international organizations requesting

for assistance to a particular money laundering activity based on treaties or agreements entered with our government according to Article 16 relating to the prevention of money laundering activities, or based on reciprocal principle, whenever the activity engaged by the offender constitutes a crime under Article 3 of this Act regardless of whether such activity is being investigated or tried in this jurisdiction. The provisions set forth in Chapter 4 of the Criminal Procedure Code with respect to interlocutory appeal shall apply *mutatis mutandis* to orders referred to in paragraphs 1, 2 and 4.

Article 10

Passengers or service crew on board who cross the border with the carrier and carry the following items shall make declarations to the customs. The customs shall report subsequently to the institution designated by the Executive Yuan.

1. Cash of foreign currency with total amount exceeding a certain amount.

2. Negotiable securities with face value exceeding a certain amount.

The aforementioned fixed amount of currency and negotiable securities, and the scope, procedures and other matters in relation to declaration and reporting shall be stipulated by the Ministry of Finance in consultation with the Ministry of Justice, the Central Bank, and the Financial Supervisory Commission of the Executive Yuan.

Foreign currencies carried but failed to declare in accordance with the provision in paragraph 1 shall be confiscated. In the event of untruthful declaration with regard to the amount of foreign currency carried, the amount exceeding the number declared shall be confiscated; Failure to make declaration with regard to the amount of negotiable securities carried according to paragraph 1 or in the event of untruthful declaration, a fine in the amount equivalent to the amount not declared or not truthfully declared shall be imposed.

Article 11

Whoever engages in money laundering activity referred to subparagraph 1, paragraph 1 of Article 2 of this Act shall be sentenced to imprisonment for not more than five years; in addition thereto, a fine of not more than NT 3 million dollars may be imposed.

Whoever engages in money laundering activity referred to subparagraph 2, paragraph 1 of Article 2 of this Act shall be sentenced to imprisonment for not more than seven years; in addition thereto, a fine of not more than NT 5 million dollars may be imposed.

Whoever engages in financing terrorist activity or organization that is acknowledged

or kept track of by an international anti-money laundering organization shall be imprisoned for not less than 1 year and not more than 7 years; in addition thereto, a fine of not more than NT 10 million dollars may be imposed.

The representative of a legal entity, the agent, employee or other worker of a legal entity or a natural person engaging within the scope of his or her employment in money laundering activities as set forth in the preceding three paragraphs shall be punished in accordance with the provisions set forth in the preceding three paragraphs of this Article. In addition, the legal entity or the natural person that the offender represents or works for, shall also be fined in accordance with the provisions set forth in the preceding three paragraphs, unless the representative of a legal entity or a natural person has done his or her best to prevent or stop the money laundering activities.

Any person who surrenders himself or herself to the authorities within six months after he or she has engaged in money laundering activities as set forth in the preceding three paragraphs, his or her sentence shall be exempted. Any person who surrenders himself or herself in later than six months after he or she has engaged in any of the money laundering activities set forth in the preceding four paragraphs, his or her sentence shall be reduced or exempted. Any person who confesses during the custodial interrogation or the trial that he or she has engaged in the money laundering activities set forth in the preceding four paragraphs, his or her sentence shall be reduced.

Article 12

The sentence of a person who engages in money laundering activity set forth in subparagraph 2 of paragraph 1 of Article 2 of this Act to conceal, accept, transport, store, intentionally buy, or act as a broker to manage the property or property interests obtained from a serious crime or crimes committed by his or her lineal relatives, spouse or any other relatives living together and jointly owning the property may be reduced.

Article 13

Any government official who reveals, discloses or turns over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others shall be sentenced to imprisonment of not more than three years.

Any employee of a financial institution without a government official position reveals, discloses or hands over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others shall be sentenced to imprisonment for not more than two years, detention, or a

fine of not more than NT 500,000 dollars.

Article 14

The property or property interests obtained from the commission of a crime by an offender violating the provisions set forth in Article 11 of this Act, other than that which should be returned to the injured party or a third party, shall be confiscated, regardless of whether the property or property interests belong to the offender or not. Whenever the above property or property interests can not be confiscated in whole or in part, the value thereof shall be indemnified either by demanding a payment from the offender or by offsetting such value with the property of the offender.

The offender's property may be seized, if necessary, to protect the property or property interests obtained from the commission of a crime by an offender violating of the provisions set forth in Article 9 of this Act.

The preceding two paragraphs of this Article shall apply *mutatis mutandis* to foreign governments, foreign institutions or international organizations requesting for assistance to a particular money laundering activity based on treaties or agreements entered with our government according to Article 16 relating to the prevention of money laundering activities, or based on reciprocal principle, whenever the activity engaged by the offender constitutes a crime under Article 3 of this Act regardless of whether such activity is being investigated or tried in this jurisdiction.

Article 15

The property or property interests confiscated, other than cash or negotiable instruments, may be appropriated by the Ministry of Justice to the prosecutors office, the police departments, or other government agencies assisting the investigation of the money laundering activities for official use in accordance with the provision set forth in paragraph 1of the preceding Article.

The Ministry of Justice may appropriate the confiscated property or property interests in whole or in part to a foreign government, foreign institution or international organization which enters a treaty or agreement in accordance with Article 16 of this Act to assist our government in confiscating the property or property interests obtained by an offender from the commission of a crime or crimes.

The regulations governing management, appropriation and use of the property or property interests referred to in the preceding two paragraphs shall be stipulated by the Executive Yuan.

Article 16

Based on the principle of reciprocity, cooperation treaties or other international

written agreements relating to the prevention of money laundering activities may be entered into with foreign governments, institutions or international organizations to effectively prevent international money laundering activities.

With regard to the request for assistance by foreign governments, institutions or international organizations, unless otherwise stipulated in the applicable treaties or agreements, information of declarations or reporting and investigation result may be provided in accordance with Articles 7, 8 and 10 based on the principle of reciprocity.

Article 17

This Act shall go into effect upon promulgation.

COMBATING CORRUPTION and THE IMPLEMENTATION of ANTI MONEY LAUNDERING REGIME in INDONESIA

Corruption and money laundering are increasingly becoming a global phenomenon and this is not only a threat to the Indonesian economy, but also it has a potential threat to Indonesia's civil and political spheres. Since, corruption is universally perceived to be the biggest human induced threat facing humanity at the moment; corruption has emerged as a notable cause of poverty and deprivation in most of the "developing world".

However, the Government of Indonesia is still struggling to overcome the problem. For instance, the economics reforms initiated by the government in year 2000 following the 1997 economies and political down turn, have lead to major changes as a result of significant changes in policies.. The effective implementation of these new policies, however, depends on the government's ability to restructure its regulatory and infrastructure agencies and to reorient their staffs.

Yet, with this restructuring, the government of Indonesia began to realize the powerful destructive force of the crime of money laundering. In seeking to battle the deep levels of corruption, the Indonesian government recognized that public and private sectors must build a united front to interest and policies and implement an effective anti-money laundering regime.

The combating of money laundering should revolve around ensuring the ability of law enforcement agencies to find, freeze and forfeit the laundered money. In addition, the wide scope of affected stakeholders in anti money laundering efforts requires an unprecedented level of co-operation both at national and international levels.

In these efforts, the Indonesia legislature passed and issued Law Number 15 Year 2002 concerning The Crime of Money Laundering as Amended by Law Number 25 Year 2003 (AML Law). This law is a strong foundation on which Indonesia has built its an anti-

money laundering regime. This legislation strictly declares that money laundering is a crime.

Moreover, Law No 30 Year 2002 on the Corruption Eradication Commission is the basis establishing of the Corruption Eradication Commission (KPK). KPK was given the mandate to eradicate corruption in a professional and sustainable manner to ensure the existence of a just and prosperous society under Pancasila and the 1945 Constitution.

Transaction Reports

1. Suspicious Transaction Reports (STRs)

In the past years since Indonesia's criminalization of money laundering andthe enforcement of anti money laundering policy, evidence from the reported suspect transactions has given indication of promising development. As, a result of actions conducted by PPATK, other financial sector regulators, and Government of Indonesia (GOI) agencies, there are large numbers of Financial Services Providers (FSPs) that report Suspicious Transaction Reports (STRs) to PPATK as presented in following figure:

No.	Period	Number of banks	Number of Non-bank FI
1.	As of December 2005	107	26
2.	As of 15 June 2006	112	37
3.	End of June 2007	118	59

The number of Financial Services Providers (FSPs) reporting Suspicious Transaction Reports (STRs) to PPATK has increased, which the growing reached more than 44% compared to the number in the beginning of June 2006. This increasing is dominated by the increase of non-bank financial institutions which almost 100%. Also there are some increases in reporting parties from regional development banks and non bank financial institutions such as securities companies, money changers, finance companies, and insurance companies.

In term of the number of STRs filed by FSPs, the following upward trend in STRs reporting reflects the success of activities of PPATK and other regulatory agencies in Indonesia in encouraging greater identification of STRs as follows:

Period	Number of STRs filed	Procentage	Number of Reporting Parties	Average per month
During the year 2001 *)	14			2
During the year 2002 **)	124	786%	19	10
During the year 2003 ***)	280	126%	51	23
2004	838	199%	71	70
2005	2,055	145%	133	172
2006	3,482	69%	161	290
Dec 2006 – June 2007	2,961	70%	177	493,5

*) Filed to Bank Indonesia, start from June 2001 when regulation on KYC principles was launched.

**) Filed to Bank Indonesia.

***) 1 Jan-17 Oct 2003 filed to Bank Indonesia, Oct 2003 filed to PPATK.

As of June 2007, PPATK has received 9,754 STRs (9,155 STRs from 112 commercial banks and 6 rural bank, and 576 STRs from 59 non-bank financial institutions). It can be concluded that the number of STRs filed during year 2007 has increased more than 200% compared to year 2006.

2. Currency Transaction Reports (CTRs)

Meanwhile the number of Currency Transaction Reports (CTRs) filed by FSPs has shown the number since its commencement in 1 April 2004. As of May 2007, we have received 3,446,666 CTRs.

No.	Period	Number of CTRs filed	Average per month
1.	June 30, 2005 – Dec 31, 2005	233,908	38,985
2.	Jan 2, 2005 - May 31, 2006	227,265	45,453
3.	June 30,2006 – May 31, 2007	3, 219,401	268,283

The excellent progress in reporting presented in those above figures is due to the aggressive compliance efforts underway and also the utilization of IT in the process. In the past, CTRs were recorded manually, but now the processes have been done automatically. As a result, the system could provide the real number of CTRs every month. As PPATK and the primary regulators continue aggressive socialization efforts, all financial institutions have increasing awareness of their responsibilities.

3. Cross Border Cash Carrying Report (CBCC)

CBCC Report has also been increasing significantly. As of 30 June 2007, 1855 Forms BC 3.2 have been filed by the end of April 2005. As of 15 May 2006, 816 Forms of BC 3.2 have been filed with Customs and submitted to PPATK. The reports were derived from 5 (five) airports, namely Jakarta (Cengkareng), Batam, Jawa Barat (Bandung), Bali (Denpasar), and Tanjung Balai Karimun. Investigations / prosecutions

It is expected that these legal action and reports from financial institution will significantly increase following the extensive campaign toward the existing of the anti-money laundering regime in Indonesia. Thus, Indonesia has increased its enforcement against money laundering in concrete and significant ways.

Considering that these duties are crucial, not only for today, but also for the future. Therefore, as a new government institution, PPATK needs to communicate and socializes its vision and mission, and expects support from all stakeholders to achieve its goals. Hopefully, the mission extends to the battle against corruption.

The National Strategy and Cooperation

In order to improve the effectiveness in the implementation of the anti money laundering regime, the Indonesian Government has set up a National Strategy for the period of 2007 – 2011.

It should be noted that the National Strategy is not meant to serve as a "to-do list" that will solve every existing problem. The National Strategy identifies current weaknesses to the anti-money laundering regime and provides measures and/or actions that need to be taken at the Executive and/or the Legislative level. Therefore, in order to materialize the National Strategy needs to be conducted in a coordinated and integrated manner by all levels of the government.

As a way forward, this National Strategy focuses on specific areas to enhance Indonesia's effort to prevent and combat laundering, as follows:

(i) the need to establish a *Single Identity Number* for every Indonesian citizen, in order to eradicate fraudulent identities;

(ii) the completion of the on-going discussion of the amendments made to the current AML legislation in compliance with international practice;

(iii) strengthening the management of electronic database and the connectivity of database within related agencies in preventing and combating money laundering more effectively and efficiently;

(iv) increasing supervision over providers of financial services in fulfilling their obligations and monitoring compliance;

(v) increasing the effectiveness in implementing asset forfeiture and asset recovery;

(vi) enhancing the participation of society through public campaigns/awareness programmes;

(vii) strengthening international cooperation; and

(viii) strengthening regulation on alternative remittance system (ARS) and wire transfer (WT).

a) National Cooperation

KPK cooperates with other law enforcement agencies such as the National Police, the Attorney-General Office, FIU (PPATK), Inspectorates in the government institutions, strategic institutions, and other sources. All the cooperation is enforced by making the MOU with the institutions. Besides, the cooperation is also done with Local Government in the 33 Provinces and with 66 Universities in the framework to enforce the activities of corruption eradication in Indonesia.

Until May 2007 PPATK has signed 17 Memorandum of Understanding with relevant domestic agencies, such as Bank Indonesia, Indonesian National Police, Attorney General Office, and National Narcotics Board.

In line with duties and authorities of PPATK as stipulated in Articles 26 and 27 of Anti Money Laundering Law, PPATK has taken parts actively in efforts to eradicate corruption in Indonesia.

- Up to October 2006, total STRs obtained and analyzed by PPATK from Providers of Financial Services were 6,530;
- From all STRs obtained, there are 429 cases from more than 701 STRs submitted to investigators that are followed up and some of these are corruption cases sent to the Anti Corruption Commission (KPK);
- In addition, PPATK has obtained 1,965,639 CTRs and 1,266 cash carrying reports.

PPATK has also provided information on fund flow upon a request of law enforcers in handling cases that are public concerned. Detail information up to October 2006 on this request is:

- National Police : 101 requests
- AGO : 23 requests
- KPK (Anti Corruption Commission) : 143 requests
- FIUs of other countries : more than 125 requests

b) International Cooperation

In 2006 Indonesia has ratified MLA Treaty with The People Republic of China and in May 2007, Indonesia signed an Extradition Treaty with the Singapore. Both of these treaties covers money-laundering offences as areas of cooperation.

KPK involved in the cooperation among anticorruption agencies throughout ASEAN with the signing of the ASEAN Multilateral Cooperation Treaty by four countries including, Brunei Darussalam's Badan Mencegah Rasuah (BMR), Singapore's Corruption Practices Investigation Bureau (CPIB), Malaysia's Badan Pencegah Rasuah (BPR). Moreover, KPK have built cooperation with Peaople's Republic of China, KICAC, ICAC Hongkong, EFCC Nigeria, and Timor Leste Proedor.

As of May 2007, PPATK has established 20 Memorandum of Understanding (MoU) with Foreign FIU eg. AMLO-Thailand, Bank Negara Malaysia, KoFIU-Republic of Korea, AUSTRAC-Australia, AMLC-Philippines, NOPCML-Romania, UIC-Italy, CTIF CFI-Belgia, SEPBLAC-Spain, GIFI-Poland, UIF-Peru, CAMLMAC-China, FIU of Mexico, FIU of Canada, FIU of Myanmar, FIU of South of Africa, FIU of Cayman Island, FIU of Japan, FIU of Mauritius, FIU of Bermuda Island.

Until May 2007 PPATK/INTRAC has identified more than 180 inquiries of cooperation involving financial intelligence with other countries since 2003, including Japan, U.S., Singapore, Australia, Cook Island, United Arab Emirates, Hong Kong, Philippines, Switzerland, Malaysia, Belgium, Thailand, Mauritius, Lebanon, British Virgin Island, Taiwan, P.R. China, and others.

Legislative Developments

1) FATF Recommendation

In order to accommodate the revised 40 FATF Recommendation and 9 Special Recommendations, Indonesia is making amendments to its anti-money laundering legislation. The draft amended law is incorporated in the National Legislation Programme 2006 – 2009 of the House of Representative. The draft amended law is prioritized to be approved and adopted by the House of Representative by early 2008. The main amendments, among others are as follows:

- Extension of reporting parties.
- Extension of type of reports provided by reporting parties.
- Extension of power of PPATK (Indonesian FIU).
- Reorganization of institution of PPATK.
- Investigation procedure.

2) Ratification of UN Convention on Anti Corruption

Indonesia, as a member of the United Nations, ratified the 2003 UNCAC on March 21, 2006. A month later, Law Number 7 of 2006 on Ratification of the 2003 UNCAC was born. With the ratification of the law, Indonesia inevitably would have to synchronize its anti-corruption laws with a number of provisions set out in the 2003 UNCAC. Currently, an expert team led by Prof. DR. Andi Hamzah, SH are drafting new law on corruption eradication.

Private Sector Corruption

The provision in Articles 5 to 14 (Chapter 2) regarding the scope of action for corruption prevention stated, among other things, that prevention and prosecution of corruption practices include the private sector and money laundering preventive measures. In accordance with Law Number 30 Year 2002, KPK may only pursue legal efforts (pre-investigation, investigation and prosecution) when civil servants and law enforcers are involved, while corruption in the private sector is still beyond the reach of KPK. Indonesian laws and regulations does not specificly stated and criminalize private sector corruption. However, in case of a person who leads or works, on capcity, for a private

body or institution conducting economic, finance or trade activities and obtaining illegal financial supports from the state or and resulting financial loss to the state, then we can criminalize the private subjects as it is similar to the content of Article 2 or Article 3 of the Law 31/1999 as amended by the Law 20/2001.

The issues related to the private sector corruption have been recomended to be stated in the next coming draft amendment of law of crimes on corruption as we believe that the private sector activities is most prone to the corruption.

Politically Exposed Persons (PEPs)

Taking into account the importance for monitoring of 'politically exposed persons on PEPs'. The government of the Republic Indonesia has issued Law No.15/2002 concerning Money Laundering as amended by Law No.25/2003 and several regulation concerning Know Your Customer Principle such as:

(1). Bank Indonesia Regulation No.3/10/PBI/2001 jo.No.5/21/PBI/2003 and No.5/23/PBI/2003 for rural banks.

(2). Minister of Finance Decree No.74/PMK.012/2006 Capital Market Supervisory Board No.KEP-02/PM/2003.

In order to supplement the issuance of such regulation, PPATK has also issued Head of PPATK Decree No.3/1/KEP.PPATK/2004 and Guidelines such as: First Guideline No.2/1/KEP.PPATK/2003; and Second, Guidelines No.2/4/KEP.PPATK/2003 which oblige financial service providers to carry out enhanced AML/CFT due diligence on PEP's.

There are several legal instruments is being applied to domestic politically exposed persons such as the Directive of People Representative Assembly No.XI/MPR/1998; Law No.28/1999 Concerning the Creation of Cleaned Government without Corruption; Collusion; and Nepotism.

In order to strengthen the effort to combat corruption by government official and other PEPs, Law No.30/2002 concerning the corruption eradication commission (KPK) oblige PEPs to submit wealth report to the KPK.

COMBATING CORRUPTION and THE IMPLEMENTATION of ANTI MONEY LAUNDERING REGIME in INDONESIA

Corruption and money laundering are increasingly becoming a global phenomenon and this is not only a threat to the Indonesian economy, but also it has a potential threat to Indonesia's civil and political spheres. Since, corruption is universally perceived to be the biggest human induced threat facing humanity at the moment; corruption has emerged as a notable cause of poverty and deprivation in most of the "developing world".

However, the Government of Indonesia is still struggling to overcome the problem. For instance, the economics reforms initiated by the government in year 2000 following the 1997 economies and political down turn, have lead to major changes as a result of significant changes in policies.. The effective implementation of these new policies, however, depends on the government's ability to restructure its regulatory and infrastructure agencies and to reorient their staffs.

Yet, with this restructuring, the government of Indonesia began to realize the powerful destructive force of the crime of money laundering. In seeking to battle the deep levels of corruption, the Indonesian government recognized that public and private sectors must build a united front to interest and policies and implement an effective anti-money laundering regime.

The combating of money laundering should revolve around ensuring the ability of law enforcement agencies to find, freeze and forfeit the laundered money. In addition, the wide scope of affected stakeholders in anti money laundering efforts requires an unprecedented level of co-operation both at national and international levels.

In these efforts, the Indonesia legislature passed and issued Law Number 15 Year 2002 concerning The Crime of Money Laundering as Amended by Law Number 25 Year 2003 (AML Law). This law is a strong foundation on which Indonesia has built its an anti-

money laundering regime. This legislation strictly declares that money laundering is a crime.

Moreover, Law No 30 Year 2002 on the Corruption Eradication Commission is the basis establishing of the Corruption Eradication Commission (KPK). KPK was given the mandate to eradicate corruption in a professional and sustainable manner to ensure the existence of a just and prosperous society under Pancasila and the 1945 Constitution.

Transaction Reports

1. Suspicious Transaction Reports (STRs)

In the past years since Indonesia's criminalization of money laundering andthe enforcement of anti money laundering policy, evidence from the reported suspect transactions has given indication of promising development. As, a result of actions conducted by PPATK, other financial sector regulators, and Government of Indonesia (GOI) agencies, there are large numbers of Financial Services Providers (FSPs) that report Suspicious Transaction Reports (STRs) to PPATK as presented in following figure:

No.	Period	Number of banks	Number of Non-bank FI
1.	As of December 2005	107	26
2.	As of 15 June 2006	112	37
3.	End of June 2007	118	59

The number of Financial Services Providers (FSPs) reporting Suspicious Transaction Reports (STRs) to PPATK has increased, which the growing reached more than 44% compared to the number in the beginning of June 2006. This increasing is dominated by the increase of non-bank financial institutions which almost 100%. Also there are some increases in reporting parties from regional development banks and non bank financial institutions such as securities companies, money changers, finance companies, and insurance companies.

In term of the number of STRs filed by FSPs, the following upward trend in STRs reporting reflects the success of activities of PPATK and other regulatory agencies in Indonesia in encouraging greater identification of STRs as follows:

Period	Number of STRs filed	Procentage	Number of Reporting Parties	Average per month
During the year 2001 *)	14			2
During the year 2002 **)	124	786%	19	10
During the year 2003 ***)	280	126%	51	23
2004	838	199%	71	70
2005	2,055	145%	133	172
2006	3,482	69%	161	290
Dec 2006 – June 2007	2,961	70%	177	493,5

*) Filed to Bank Indonesia, start from June 2001 when regulation on KYC principles was launched.

**) Filed to Bank Indonesia.

***) 1 Jan-17 Oct 2003 filed to Bank Indonesia, Oct 2003 filed to PPATK.

As of June 2007, PPATK has received 9,754 STRs (9,155 STRs from 112 commercial banks and 6 rural bank, and 576 STRs from 59 non-bank financial institutions). It can be concluded that the number of STRs filed during year 2007 has increased more than 200% compared to year 2006.

2. Currency Transaction Reports (CTRs)

Meanwhile the number of Currency Transaction Reports (CTRs) filed by FSPs has shown the number since its commencement in 1 April 2004. As of May 2007, we have received 3,446,666 CTRs.

No.	Period	Number of CTRs filed	Average per month
1.	June 30, 2005 – Dec 31, 2005	233,908	38,985
2.	Jan 2, 2005 - May 31, 2006	227,265	45,453
3.	June 30,2006 – May 31, 2007	3, 219,401	268,283

The excellent progress in reporting presented in those above figures is due to the aggressive compliance efforts underway and also the utilization of IT in the process. In the past, CTRs were recorded manually, but now the processes have been done automatically. As a result, the system could provide the real number of CTRs every month. As PPATK and the primary regulators continue aggressive socialization efforts, all financial institutions have increasing awareness of their responsibilities.

3. Cross Border Cash Carrying Report (CBCC)

CBCC Report has also been increasing significantly. As of 30 June 2007, 1855 Forms BC 3.2 have been filed by the end of April 2005. As of 15 May 2006, 816 Forms of BC 3.2 have been filed with Customs and submitted to PPATK. The reports were derived from 5 (five) airports, namely Jakarta (Cengkareng), Batam, Jawa Barat (Bandung), Bali (Denpasar), and Tanjung Balai Karimun. Investigations / prosecutions

It is expected that these legal action and reports from financial institution will significantly increase following the extensive campaign toward the existing of the anti-money laundering regime in Indonesia. Thus, Indonesia has increased its enforcement against money laundering in concrete and significant ways.

Considering that these duties are crucial, not only for today, but also for the future. Therefore, as a new government institution, PPATK needs to communicate and socializes its vision and mission, and expects support from all stakeholders to achieve its goals. Hopefully, the mission extends to the battle against corruption.

The National Strategy and Cooperation

In order to improve the effectiveness in the implementation of the anti money laundering regime, the Indonesian Government has set up a National Strategy for the period of 2007 – 2011.

It should be noted that the National Strategy is not meant to serve as a "to-do list" that will solve every existing problem. The National Strategy identifies current weaknesses to the anti-money laundering regime and provides measures and/or actions that need to be taken at the Executive and/or the Legislative level. Therefore, in order to materialize the National Strategy needs to be conducted in a coordinated and integrated manner by all levels of the government.

As a way forward, this National Strategy focuses on specific areas to enhance Indonesia's effort to prevent and combat laundering, as follows:

(i) the need to establish a *Single Identity Number* for every Indonesian citizen, in order to eradicate fraudulent identities;

(ii) the completion of the on-going discussion of the amendments made to the current AML legislation in compliance with international practice;

(iii) strengthening the management of electronic database and the connectivity of database within related agencies in preventing and combating money laundering more effectively and efficiently;

(iv) increasing supervision over providers of financial services in fulfilling their obligations and monitoring compliance;

(v) increasing the effectiveness in implementing asset forfeiture and asset recovery;

(vi) enhancing the participation of society through public campaigns/awareness programmes;

(vii) strengthening international cooperation; and

(viii) strengthening regulation on alternative remittance system (ARS) and wire transfer (WT).

a) National Cooperation

KPK cooperates with other law enforcement agencies such as the National Police, the Attorney-General Office, FIU (PPATK), Inspectorates in the government institutions, strategic institutions, and other sources. All the cooperation is enforced by making the MOU with the institutions. Besides, the cooperation is also done with Local Government in the 33 Provinces and with 66 Universities in the framework to enforce the activities of corruption eradication in Indonesia.

Until May 2007 PPATK has signed 17 Memorandum of Understanding with relevant domestic agencies, such as Bank Indonesia, Indonesian National Police, Attorney General Office, and National Narcotics Board.

In line with duties and authorities of PPATK as stipulated in Articles 26 and 27 of Anti Money Laundering Law, PPATK has taken parts actively in efforts to eradicate corruption in Indonesia.

- Up to October 2006, total STRs obtained and analyzed by PPATK from Providers of Financial Services were 6,530;
- From all STRs obtained, there are 429 cases from more than 701 STRs submitted to investigators that are followed up and some of these are corruption cases sent to the Anti Corruption Commission (KPK);
- In addition, PPATK has obtained 1,965,639 CTRs and 1,266 cash carrying reports.

PPATK has also provided information on fund flow upon a request of law enforcers in handling cases that are public concerned. Detail information up to October 2006 on this request is:

- National Police : 101 requests
- AGO : 23 requests
- KPK (Anti Corruption Commission) : 143 requests
- FIUs of other countries : more than 125 requests

b) International Cooperation

In 2006 Indonesia has ratified MLA Treaty with The People Republic of China and in May 2007, Indonesia signed an Extradition Treaty with the Singapore. Both of these treaties covers money-laundering offences as areas of cooperation.

KPK involved in the cooperation among anticorruption agencies throughout ASEAN with the signing of the ASEAN Multilateral Cooperation Treaty by four countries including, Brunei Darussalam's Badan Mencegah Rasuah (BMR), Singapore's Corruption Practices Investigation Bureau (CPIB), Malaysia's Badan Pencegah Rasuah (BPR). Moreover, KPK have built cooperation with Peaople's Republic of China, KICAC, ICAC Hongkong, EFCC Nigeria, and Timor Leste Proedor.

As of May 2007, PPATK has established 20 Memorandum of Understanding (MoU) with Foreign FIU eg. AMLO-Thailand, Bank Negara Malaysia, KoFIU-Republic of Korea, AUSTRAC-Australia, AMLC-Philippines, NOPCML-Romania, UIC-Italy, CTIF CFI-Belgia, SEPBLAC-Spain, GIFI-Poland, UIF-Peru, CAMLMAC-China, FIU of Mexico, FIU of Canada, FIU of Myanmar, FIU of South of Africa, FIU of Cayman Island, FIU of Japan, FIU of Mauritius, FIU of Bermuda Island.

Until May 2007 PPATK/INTRAC has identified more than 180 inquiries of cooperation involving financial intelligence with other countries since 2003, including Japan, U.S., Singapore, Australia, Cook Island, United Arab Emirates, Hong Kong, Philippines, Switzerland, Malaysia, Belgium, Thailand, Mauritius, Lebanon, British Virgin Island, Taiwan, P.R. China, and others.

Legislative Developments

1) FATF Recommendation

In order to accommodate the revised 40 FATF Recommendation and 9 Special Recommendations, Indonesia is making amendments to its anti-money laundering legislation. The draft amended law is incorporated in the National Legislation Programme 2006 – 2009 of the House of Representative. The draft amended law is prioritized to be approved and adopted by the House of Representative by early 2008. The main amendments, among others are as follows:

- Extension of reporting parties.
- Extension of type of reports provided by reporting parties.
- Extension of power of PPATK (Indonesian FIU).
- Reorganization of institution of PPATK.
- Investigation procedure.

2) Ratification of UN Convention on Anti Corruption

Indonesia, as a member of the United Nations, ratified the 2003 UNCAC on March 21, 2006. A month later, Law Number 7 of 2006 on Ratification of the 2003 UNCAC was born. With the ratification of the law, Indonesia inevitably would have to synchronize its anti-corruption laws with a number of provisions set out in the 2003 UNCAC. Currently, an expert team led by Prof. DR. Andi Hamzah, SH are drafting new law on corruption eradication.

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The issues related to the private sector corruption have been recomended to be stated in the next coming draft amendment of law of crimes on corruption as we believe that the private sector activities is most prone to the corruption.

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APG ANNUAL MEETING 2007

FORMAT FOR WRITTEN JURISDICTION REPORT

Jurisdiction Reports should briefly indicate the major anti-money laundering / combating the financing of terrorism (AML/CFT) developments since the 2006 Annual Meeting.

Subject headings

1. Steps taken since July 2006 to implement the international AML/CFT standards

(a) Policy/coordination developments (eg enhancement of national coordinating mechanism, awareness raising workshops etc)

The FIU of Japan was transferred from the Financial Service Agency to the National Public Safety Commission (NPSC)/the National Police Agency (NPA) on April 1st, 2007. The NPSC/the NPA ,possessing various kinds of information on criminals, organaized crime syndicates(Boryokudan) or Terrorist groups and playing a major role against them, takes comprehensive measures against money laundering and terrorist financing.

(b) Legislative developments eg new/amended legislation (incl. pending)

The new law for implementing the FATF Recommendations," The Law for Prevention of Transfer of Criminal Proceeds" was adopted in March 2007.This law is aimed at transferring the FIU to the NPSC/the NPA, and bringing DNFBPs (Designated Non-Financial Businesses and Professions) in addition to financial institutions into AML/CFT regime.

A bill to amend the Anti-Organized-Crime Law, which was resubmitted to the Diet in October 2005, has been under deliberation. This bill includes the expansion of the scope of the predicate offences of money laundering to cover those penalized by imprisonment of 4 years or more serious punishments in order to implement the UN Convention against Transnational Organized Crime.

(c) Regulatory developments - financial sector/DNFBPs/ARS/NPOs (eg issuing of regulations or guidelines, initiatives in the private sector, ARS regulation etc)

As a part of implementing FATF SR VII, the Cabinet Order of the Customer Identification Act has been amended in effect on 4 January 2007, whereby financial institutions are required to identify an originator who makes a wire transfer of cash, etc. of exceeding 100,000 yen.

Furthermore, in order for financial institutions to enhance their internal control environment, etc. ensuring customer identification and the suspicious transaction reporting system, the FSA has amended the Comprehensive Supervisory Guidelines for Major Banks, etc. and the Comprehensive Supervisory Guidelines for Small and Medium-Sized/Regional Financial Institutions in effect on 13 March as well as the Inspection Manual for Deposit-Taking Institutions in effect on 1 April, and has

currently been drafting the Comprehensive Supervisory Guidelines for Financial Instruments Business Operator, etc. following the enactment of the Financial Instruments and Exchange Act.

(d) Law enforcement (eg significant investigations / prosecutions, establishment/enhancement of FIUs, statistics of STRs received, prosecutions, assets seized, implementation of SRIX on cash couriers etc)

a. Establishment & Enhancement of New FIU

The FIU of Japan was transferred from the Financial Service Agency to the NPSC/the NPA on April 1st, 2007.

The FIU at the NPSC/the NPA(JAFIC; Japan Financial Intelligence Center) , possessing various kinds of information on criminals, organized crime syndicates (Boryokudan) or Terrorist groups and playing a major role against them, has enhanced its analytical functions and increased its staff.

b. Significant increase in the number of Suspicious Transaction Reports(STRs)

The number of STRs submitted to the Japan Financial Intelligence Office (The former FIU of Japan) from financial institutions has been continuously increasing since 2002. For reference, the following chart is the statistics on the number of STRs for the past 5 years.

Year	2002	2003	2004	2005	2006
Number of STRs	18,768	43,768	95,315	98,935	113,860
Number of disseminated STRs	12,417	30,090	64,675	66,812	71,241

c. Number of persons prosecuted for ML by public prosecutors offices

Violation of Anti-Organised Crime Law		Violation of Anti-Drug Special Law	
Concealment of crime proceeds	Receipt of crime proceeds	Concealment of drug offence proceeds	Receipt of drug offence proceeds
100	52	3	9

(2005)

d. Number of cases sentenced confiscation of crime proceeds

Violation of Anti-Organised Crime Law	Violation of Anti-Drug Special Law
27	62

(2006)

e. Increase in the number of designated individuals and entities whose assets are frozen

The Ministry of Finance (MOF) and the Ministry of Economy, Trade and Industry (METI) enforce asset freezing in accordance with Articles 16, 21 and 24 of the Foreign Exchange and Foreign Trade Law. The Ministry of Foreign Affairs (MOFA) publicizes individuals and entities which are subject to the measure. These individuals and entities include those who are designated by the UN Security Council Sanctions Committee under the United Nations Security Council Resolution (hereinafter, the UNSCR) 1267, 1333 and 1390 and the list of individuals and entities under the UNSCR 1373.

The number of these individuals and entities increased from 511 as of May10, 2006 to 521 as of March 23, 2007.

f. Cash couriers

Specific measures to implement SRIX on cash couriers are currently under discussion by relevant ministries and agencies.

(e) International co-operation developments (eg ratification of treaties/instruments, mutual legal assistance developments, MOUs)

a. mutual legal assistance treaties

"The Treaty between Japan and the United States of America on Mutual Legal Assistance in Criminal Matters" came into effect in July 2006, and "The Treaty between Japan and the Republic of Korea on Mutual Legal Assistance in Criminal Matters" came into effect in January 2007. These treaties enable both countries to execute mutual legal assistance promptly through the central authorities, and strengthen the cooperation of both countries in criminal matters, including AML/CFT matters.
Japan is currently under negotiations for a mutual legal assistance treaty with the People's Republic of China, Hong Kong and the Russian Federation.

b. International co-operation –MOUs-

JAFIC has signed statements of cooperation with FIUs of Hong Kong, the United States, Australia, Belgium, Malaysia, Thailand and Singapore.
JAFIC plans to further increase the number of such arrangements.

2. Training, technical assistance and capacity building initiatives

(a) Technical assistance *provided* or *received* during the past 12 months

(b) Technical assistance *required* during the next 12 months (please attach any TA&T matrix or coordination documents)

(c) Other capacity building initiatives (eg AML/CFT training)

Please note, this information may have been updated as part of the exercise to update the AML/CFT Needs Matrix.

Term	Donor Agencies	Recipient countries or agencies	Summary
July, 2006	IMF[1], MOF[2]	China, Hong Kong, India, Indonesia, Korea, Macao, Malaysia, New Zealand, Pakistan, Philippines, Singapore, Thailand	AML/CFT Workshop at Singapore Training Institute
July 2002-June 2007	JCG[3], MOFA[4]	Philippines	Coast Guard Human Resource Development; JICA Project
August 2002-July 2007	NPA[5], MOFA[6]	Indonesia	Enforcement of Civilian Police Activities; JICA Project
December 2002-December 2008	JCG, MOFA	Philippines	Technical Assistance for Coast Guard Human Resource Development in Philippines
June 2003-May 2008	JCG, MOFA	Indonesia	Technical Assistance for Coast Guard Human Resource Development in Indonesia
2005 - 2007	JCG	Philippines, Thailand, Indonesia, Malaysia	Acceptance of Trainees to Japanese Coast Guard Academy
29 August – 11 November, 2006	MOFA	Afghanistan, Cambodia, India, Indonesia, Lao PDR, Malaysia, Nepal, Philippines, Sri Lanka, Tonga	International Seminar on Taxation (General Course);JICA Project
22 August-7 October, 2006	MOFA, MOJ[7]	Afghanistan, Brazil, China, Indonesia, Myanmar, Namibia, Pakistan, Panama, Thailand, Tunisia, Yemen	Crime Prevention Seminar II ; JICA Project, conducted by UNAFEI

[1] International Monetary Fund
[2] The Ministry of Finance
[3] the Japan Coast Guard
[4] the Ministry of Foreign Affairs
[5] the National Police Agency
[6] the Ministry of Foreign Affairs
[7] the Ministry of Justice

Signed August, 2006	MOFA	Cambodia	Project for the Improvement of Security Facilities and Equipment in Main International Ports in Cambodia (Grant Aid)
22 August – 30 September, 2006	MOFA, MOF	Cambodia, PNG, Philippines, Myanmar, Bangladesh, Sri Lanka,etc.	Customs Administration; JICA Project
September 2006	JCG	Philippines	Joint Exercise between Coast Guard Agencies
September 2006	JCG	Indonesia	Joint Exercise between Coast Guard Agencies
3-16 September, 2006	NPA, MOFA	Indonesia, Malaysia, Bangladesh, Pakistan, Thailand, Sri Lanka, etc.	Seminar on International Terrorism Investigation; JICA Project
4 September 2006	METI[8]	Korea	Industrial Outreach Seminar
6 September 2006	METI	Hong Kong	Industrial Outreach Seminar
11-29 September 2006	NPA, MOFA	Bangladesh, Indonesia, etc.	Seminar for Foreign Senior Police Officers; JICA[9] Project
25-29 September 2006	MOF	Lao PDR	Multi-year Package on Developing Customs Intelligence Analysts : Dispatching Experts
1 - 28 October, 2006	MOFA	Bangladesh, Fiji, Malaysia, Mongolia, Myanmar, Philippines, Vietnam	International Seminar on Taxation(Senior Course);JICA Project
2-6 October 2006	MOF	Myanmar	Multi-year Package on Developing Customs Intelligence Analysts : Dispatching Experts
4 – 13 October, 2006	FSA[10]	Bangladesh, Brunei, China,India, Indonesia, Kazakhstan,Kyrgyz Republic, Mongolia, Myanmar, Nepal, Philippines, Sri Lanka,Thailand,	Tokyo Seminar on Securities Market Regulation

[8] The Ministry of Economy, Trade and Industry
[9] The Japan International Cooperation Agency

		Uzbekistan,Vietnam	
6 – 10 October, 2006	SESC[11]	Bangladesh, Bhutan,China,India,Indonesia, Cambodia, Maldives, Mongolia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Uzbekistan, Vietnam	Tokyo Enforcement Seminar*
10 October - 3 November, 2006	MOFA、MOJ	Cambodia, China, India, Indonesia, Maldives, Mongolia, Myanmar, Nepal, Philippines, Sri Lanka	Immigration Control Administration(Asian Countries); JICA project
11-20 October 2006	MOF	China, Lao PDR, Philippines, Pakistan, etc.	Seminar for Top Management of Customs Intelligence
29 Oct - 25 November, 2006	MOFA	China, Vietnam, Philippines, Indonesia, Malaysia, Thailand, Myanmar, India, Cambodia, Singapore, Hong Kong	Training Course on Maritime Law Enforcement; JICA Project
November 2006	JCG	India	Joint Exercise between Coast Guard Agencies
November 2006 – September 2007	MOFA	Indonesia	Project for Contingency Exercises on Airport Security
15-16 November, 2006	MOFA	Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, Korea, Hong Kong, Macao, China	Asian Workshop on Passport Policy
5-18 November 2006	MOFA, METI	Cambodia, Indonesia, Lao PDR, Thailand, Philippines, Malaysia, Myanmar, Vietnam	Improvements of Implementation on Security Exports Controls in Asia; JICA Project

[10] Financial Services Agency

[11] Securities and Exchange Surveillance Commission

27-30 November, 2006	MOJ	Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar Philippines, Thailand, Vietnam	Seminar on Immigration Control
27 November - 1 December 2006	MOF	Pakistan	Multi-year Package on Developing Customs Intelligence Analysts : Dispatching Experts
5 – 12 December 2006	MOFA	Cambodia, Indonesia, Lao PDR, Philippines, etc.	Local Finance; JICA Project
10-26 January, 2007	MOFA	India, Indonesia, Samoa, China, Malaysia, etc.	Seminar on Police Info-Communications; JICA Project
16 January - 7 February, 2007	MOF	China, Philippines, Lao PDR	Training Course on Customs Intelligence
16 January - 17 February, 2007	MOFA	India, Indonesia, Nepal, PNG,Malaysia, Philippines, Myanmar, Lao PDR, etc.	Seminar on Aviation Security; JICA Project
25-26 January 2007	MOFA	Indonesia, Malaysia, Philippines, Thailand, Brunei, Cambodia, Lao PDR, Vietnam, Myanmar, China, Korea, etc.	4th Asian Senior-level Talks on Non-Proliferation: ASTOP IV
28 January - 14 February, 2007	MOFA	Indonesia, Malaysia, Myanmar, Philippines, Thailand, Vietnam	Seminar on Financial System ; JICA Project
February 2007	JCG	Malaysia, Thailand	Joint Exercise between Coast Guard Agencies
6-8 February, 2007	METI, MOFA	Bangladesh, Brunei, Cambodia, China, Hong Kong, Macao, India, Indonesia, Lao PDR, Malaysia, Mongolia, Myanmar, Pakistan, Sri Lanka, Philippines, Taiwan, Thailand, Vietnam, etc.	Asian Export Control Seminar
7 February 2007	MLIT[12]	ASEAN countries	ASEAN – Japan Joint Communication Exercise on Port Security

[12] The Ministry of Land Infrastructure and Transport

20 February, 2007	METI	Thailand	Industrial Outreach Seminar
20-23 February, 2007	MOJ	Bangladesh, Cambodia, India, Indonesia, Lao PDR, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Vietnam, Thailand	Seminar on Document Examination
22 February, 2007	METI	Philippines	Industrial Outreach Seminar
9-27 April, 2007	MOFA	Indonesia, Cambodia, Pakistan, Philippines, etc.	Seminar on Criminal Investigation
10-12 April 2007	MOFA, MLIT	Vietnam	APEC Seminar on Port Security
16 – 20 April 2007	MOF	Philippines	Multi-year Package on Developing Customs Intelligence Analysts : Dispatching Experts
May 2007 -	JCG	Philippines, Thailand, Indonesia, Malaysia	Acceptance of Trainees to Japanese Coast Guard Academy
27 May – 14 June, 2007	MOFA	Indonesia, Philippines, Thailand, Cambodia, Vietnam, Mongolia, Bangladesh, India, Sri Lanka	Stock Exchange Seminar for Asian Countries ; JICA Project
28 May – 27 June, 2007	MOFA	Cambodia, Mongolia, Pakistan	Seminar on Small & Medium Enterprise Development Policies ; JICA Project

3. APG Typologies – methods and trends

(a) Statistics on the number of suspicious transaction reports filed; AML/CFT investigations; prosecutions and/or criminal charges; seizures/confiscation related to money laundering

Number of persons arrested for ML by police

Violation of Anti-Organised Crime Law			Violation of Anti-Drug Special Law	
Control of management of enterprises through illicit proceeds	Concealment of crime proceeds	Receipt of crime proceeds	Concealment of drug offence proceeds	Receipt of drug offence proceeds
1	92	42	5	5

(2006)

(b) Case studies of significant methods identified

Disguise and Concealment of Criminal Proceeds by Using a "Paper" Company

It has been a mainstream method for money laundering to use the bank accounts in the name of fictitious or other persons.

However, utilization of such accounts of financial institutions by criminals has become more difficult in recent years as a result of enhancement of customer due deligence by financial institutions.

Then the criminals have come to use “paper” companies. One of the cases indicating this trend is as follows:

In a case the criminals ;

i acquired several inactive companies (so-called "paper" companies) from a black-market lender

ii were disguised to a legitimate adult video distributors attempting to sell so-called obscene "underside" DVDs listed the names of companies selling "underside" DVDs on the Internet

iii received orders from a number of video sellers addressed to one of the "paper" companies

iv disguised the approximately 60 million yen (US$500,000) in sales customers had sent via door-to-door courier service as transactions with multiple "paper" companies and transferred the funds to a bank account maintained by the criminals under a borrowed name.

Then, the police arrested the criminals applied Article 10 Section 1 (concealment of crime-related proceeds) and Article 17 (dual liability) of the Organized Crime Punishment Law.

Doc.1

April 2007

Outline of the Law for Prevention of Transfer of Criminal Proceeds

The Law for Prevention of Transfer of Criminal Proceeds (hereinafter "AML/CFT Law") is intended to meet the requirements of the Forty Recommendations as revised by the Financial Action Task Force in 2003, as well as to better control the acts of money laundering and terrorist financing.

Following is the outline of the AML/CFT Law:

1 Expansion of Regulated Sectors

Banks and other financial institutions are subject to customer due diligence, transaction record keeping, and suspicious transaction report requirements under the existing laws (Customer Due Diligence Law of 2003 and Punishing Organized Crime Law of 2000). The AML/CFT Law will expand the types of regulated businesses and professions to real estate agents, dealers in precious metals and stones, lawyers, accountants and certain types of company service providers.

Note 1: Lawyers, accountants and other legal professionals are not subject to the STR regime.

Note 2: Some articles have not been in effect; they will be enacted within a year from March 31, 2007. Until the enactment, not DNFBPs but financial institutions are obliged to report suspicious transactions (See Supplementary Provisions (Date of enforcement) Article 1.).

2 Transfer of the FIU to the National Public Safety Commission/ the National Police Agency

Financial Intelligence Unit that serves as a national center for receiving, analyzing and disseminating suspicious transaction reports and other information belonged to the Financial Services Agency. As the AML/CFT Law imposes suspicious transaction report requirements on non-financial sectors, the National Public Safety Commission/ the National Police Agency, better equipped for combatting organized crime and terrorism, now takes charge of receiving and analyzing suspicious transaction information.

Law for Prevention of Transfer of Criminal Proceeds

Doc.2

JAFIC

(Japan Financial Intelligence Center)

National Public Safety Commission

(National Police Agency)

【Collection & Analysis of STR】

Competent Administrative Authority

Notification of STR

Statement of Opinion on Supervision

Dissemination of STR

Investigative Authority

Forfeiture or Collection of Equivalent Value on Criminal Proceeds

Investigation into a Criminal Case

Inquiry into an Irregularity

Close Coordination Information Exchange

Foreign FIUs

Terrorist, Boryokudan, etc.

☆STR

Supervisory Measures such as Remedy Orders (*)

Administrative Inspection

(*) The measures of guidance, advice and recommendation are established as an instructive method, less strict than the measure of remedy order

Specified Business Operator

Suspicious Transaction Report

Customer Identification & Record Keeping

Financial Institution(*), Financial Leasing Company, Credit Card Company Real Estate Agent,Dealer in Precious Metals & Stones Mail Box Operator, Telephone Service Operator	Judicial Scrivener Administrative Scrivener Certified Public Accountant Certified Tax Accountant (☆not subject to an STR obligation)	Lawyer

(*)Banks and other similar financial institutions have an obligation of notification with regard to foreign exchange transaction

Note: Measures by lawyers which correspond to identification of a customer and retention of a transaction record shall be governed by the provisions established in the Rules of the Japan Federation of Bar Associations following the examples of judicial scriveners,etc. stipulated in this law.

【Requirement from the International Society：FATF Recommendations】

F A T F (Financial Action Task Force) ： an inter-governmental body established pursuant to the agreement at the Arche Summit in 1989; the FATF Recommendations are the international standards for combating money laundering and terrorist financing.

LAW FOR PREVENTION OF TRANSFER OF CRIMINAL PROCEEDS

(Law No. 22 of 31 March 2007)
[Provisional translation]

(Purpose)

Article 1. The purpose of this Law is, in view of the fact that it is extremely important to prevent criminal proceeds from being transferred (hereinafter referred to as "prevention of transfer of criminal proceeds") given the fact that criminal proceeds are likely to be used to encourage organized crime and, as a result of their being used in business activities after their transfer, to have serious adverse effects on sound economic activities and that the transfer of criminal proceeds is likely to make it difficult to take the forfeit of them or to allot them to the recovery of damage by crime through forfeiture or collection of equivalent value or by other procedures, to seek the prevention of transfer of criminal proceeds and to assure appropriate enforcement of international treaties, etc., concerning the prevention of financing terrorism, and, thereby, to assure the safety and peace of national life and to contribute to sound development of economic activities by devising such measures as identification of customers, retention of transaction records or the like, and report of suspicious transactions by specified business operators, coupled with other measures stipulated by the Law for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters (Law No . 136 of 1999; hereinafter referred to as "Organized Crimes Punishment Law") and the Law concerning Special Provisions for the Narcotics and Psychotropics Control Law, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances through International Cooperation (Law No. 94 of 1991; hereinafter referred to as "Anti-Drug Special Law").

(Definitions)

Article 2. In this Law, "criminal proceeds" means crime proceeds or the like provided for in Paragraph 4, Article 2 of the Organized Crime Punishment Law or drug crime proceeds or the like provided for in Paragraph 5, Article 2 of the Anti-Drug Special Law.

2. In this Law, "specified business operator" means any of the following:

(1) a bank;
(2) a credit association;
(3) a union of credit associations;
(4) a labor credit association;
(5) a union of labor credit associations;
(6) a credit cooperative association;
(7) a union of credit cooperative associations;
(8) an agricultural cooperative association;
(9) a union of agricultural cooperative associations;
(10) a fishery cooperative association;
(11) a union of fishery cooperative associations;
(12) a marine products processing industry cooperative association;
(13) a union of marine products processing industry cooperative associations;
(14) the Agricultural and Forestry Central Bank;
(15) the Commercial and Industrial Associations Central Bank;

(16) an insurance company;
(17) a foreign insurance company or the like provided for in Paragraph 7, Article 2 of the Insurance Business Law (Law No. 105 of 1995);
(18) a petty and short-term insurance company provided for in Paragraph 18, Article 2 of the Insurance Business Law;
(19) a union of marine products industry mutual aid cooperative associations;
(20) a financial commodity transaction business operator provided for in Paragraph 9, Article 2 of the Financial Commodity Transaction Law (Law No. 25 of 1948);
(21) a securities finance company provided for in Paragraph 30, Article 2 of the Financial Commodity Transaction Law);
(22) an exceptional business affairs reporter provided for in Paragraph 3, Article 63 of the Financial Commodity Transaction Law);
(23) a trust company;
(24) a person who has been registered under Paragraph 1, Article 50-2 of the Trust Business Law (Law No. 154 of 2004);
(25) a real estate specified joint business operator provided for in Paragraph 5, Article 2 of the Real Estate Specified Joint Business Law (Law No. 77 of 1994) (including a trust company or a financial institution which has obtained the permission mentioned in Paragraph 1, Article 1 of the Law concerning Additional Operation of Trust Business Affairs by Financial Institutions (Law No. 43 of 1943) which operates the real estate specified joint business provided for in Paragraph 4, Article 2 of the Real Estate Specified Joint Business Law);
(26) a mutual loan company;
(27) a moneylender provided for in Paragraph 2, Article 2 of the Moneylending Business Law (Law No. 32 of 1983);
(28) a person, from among those provided for in Item (5), Paragraph 1, Article 2 of the Moneylending Business Law, prescribed by Cabinet Order;
(29) a commodity trader provided for in Paragraph 18, Article 2 of the Commodity Exchange Law (Law No. 239 of 1950);
(30) a transfer institution provided for in Paragraph 2, Article 2 of the Law concerning Transfer of Corporate Bonds, Shares, etc. (Law No. 75 of 2001) (including the Bank of Japan which is regarded as a transfer institution under the provision of Article 48 of the same Law);
(31) an account management institution provided for in Paragraph 4, Article 2 of the Law concerning Transfer of Corporate Bonds, Shares, etc;
(32) the Postal Savings and Postal Life Insurance Management Organization, an Independent Administrative Corporation;
(33) a person who carries on a business affair of money changing (it means the operation of trade, by way of business, in foreign currency (it means a currency other than the Japanese currency) or traveler's checks);
(34) a person who carries on a business affair of purchasing machinery or other goods designated by customers and granting a lease (limited to one of those stipulated by Cabinet Order) of them;
(35) a person who carries on a business affair of delivering or granting a card or other thing or a number, sign or other code (hereinafter referred to as "credit card or the like") the presentation or notification of which enables purchasing goods or a title from a specific dealer or obtaining the provision of a paid-for service from a specific service provider (it means a person who carries on a business affair of providing services; the same shall apply hereinafter in this Item) to a person who intends to purchase goods or a title or obtain the provision of a service by means of such credit card or the like (hereinafter referred to as "customer who is a user") and, when such customer who is a user purchases goods or a title from a specific dealer or obtains the provision of a paid-for service from a specific service provider by presenting or notifying such

credit card or the like, delivering the price of the goods or title concerned or money equivalent to the value of the service concerned to such dealer or service provider directly or through a third person and receiving the total amount of such price or value by a predetermined time or receiving, at each predetermined time, money to be calculated in a predetermined method on the basis of such total amount from such customer who is a user.

(36) a building lots and buildings dealer provided for in Item (3), Article 2 of the Building Lots and Buildings Transaction Business Law (Law No. 176 of 1952) (including a trust company or a financial institution which has obtained the permission mentioned in Paragraph 1, Article 1 of the Law concerning Additional Operation of Trust Business Affairs by Financial Institutions which operates the building lots and buildings transaction business provided for in Item (2), Article 2 of the Building Lots and Buildings Transaction Business Law (simply referred to as "building lots and buildings transaction business" in Paragraph 1 of Article 4) (referred to as "deemed building lots and buildings dealer" in Item (14), Paragraph 1 of Article 20));

(37) a person who does, by way of business, trade in gold, platinum or other precious metals prescribed by Cabinet Order, or diamonds or other jewelries prescribed by Cabinet Order, or their products (hereinafter referred to as "precious metal or the like");

(38) a person who carries on a business affair of providing a service which consists of permitting a customer to use the address of his domicile or office as such of the customer's to receive postal mail (including a mail letter provided for in Paragraph 3, Article 2 of the Law on Delivery of Letters by Private Businesses (Law No. 99 of 2002) and a cargo whose size and weight are similar to postal mail; the same shall apply hereinafter) or to use his telephone number as the customer's contact telephone number, and receiving, at his domicile or office concerned, postal mail addressed to the customer concerned and delivering such mail to the customer or receiving a call (including correspondence through facsimile machine; the same shall apply in Item (11), Paragraph 1 of Article 20) made to the customer concerned on the telephone number concerned and informing the customer of the content of such call;

(39) a lawyer (including a foreign lawyer licensed in Japan) or a lawyer corporation;

(40) a judicial scrivener or a judicial scrivener corporation;

(41) an administrative scrivener or an administrative scrivener corporation;

(42) a certified public accountant (including a foreign certified public accountant provided for in Paragraph 5, Article 16-2 of the Certified Public Accountant Law (Law No. 103 of 1948)) or an audit corporation;

(43) a certified tax accountant or a certified tax accountant corporation.

(Responsibilities of the National Public Safety Commission, etc.)

Article 3. The National Public Safety Commission shall, in order to assure appropriate conduct by specified business operators of such measures as identification of customers, retention of transaction records or the like, and report of suspicious transactions, provide specified business operators with assistance including provision of information on modi operandi regarding transfer of criminal proceeds, and shall endeavor to enhance public awareness on the importance of the prevention of transfer of criminal proceeds.

2. The National Public Safety Commission shall promptly and appropriately conduct the collection, arrangement and analysis of information on criminal proceeds including information on suspicious transactions reported by specified business operators so that such information can be effectively utilized in investigation of criminal cases, inquiry of irregularities and cooperation, including international exchange of information, with regard to the prevention of transfer of criminal proceeds.

3. The National Public Safety Commission and other relevant administrative organs as well as relevant organs of local public entities shall cooperate with one another in the prevention of transfer of criminal proceeds.

(Obligation of customer identification, etc.)

Article 4. A specified business operator (excluding those enumerated in Item (39), Paragraph 2 of Article 2 (referred to as "lawyer or the like" in Article 8); the same shall apply hereinafter) shall, in conducting a transaction mentioned in the third column of the following Table in connection with the business affairs mentioned respectively in the second column of the same Table (hereinafter referred to as "specified business affair") according to the classification of the specified business operators mentioned in the first column of the same Table (hereinafter referred to as "specified transaction") with a customer (a customer who is a user in case of a specified business operator mentioned in Item (35) of the same Paragraph; the same shall apply hereinafter) or a person prescribed as equivalent thereto by Cabinet Order (hereinafter referred to as "customer or the like"), perform the verification of identity particulars (it means the name, domicile (matters stipulated by Ordinance of Minister in Charge in case of a foreigner who does not have a domicile in Japan and who is specified by Cabinet Order) and date of birth when the customer or the like is a natural person, and the name and address of head office or main office when the customer or the like is a corporation; the same shall apply hereinafter) (hereinafter referred to as "customer identification") with regard to the customer or the like by a method prescribed by Ordinance of Minister in Charge, such as having a driver's license presented.

Specified Business Operators	Specified Business Affairs	Specified Transactions
Persons enumerated in Items (1) to (33), Paragraph 2 of Article 2	Business affairs regarding finance and other business affairs prescribed by Cabinet Order.	Conclusion of a contract of deposit or savings (it means a contract which consists of the acceptance of deposit or savings; the same shall apply in Paragraph 1 of Article 26), exchange transaction and other transactions prescribed by Cabinet Order.
A person enumerated in Item (34), Paragraph 2 of Article 2	The business affair provided for in the same Item.	Conclusion of a lease contract for goods provided for in the same Item and other transactions prescribed by Cabinet Order.
A person enumerated in Item (35), Paragraph 2 of Article 2	The business affair provided for in the same Item.	Conclusion of a contract which consists of the delivery or grant of a credit card or the like and other transactions prescribed by Cabinet Order.
A person enumerated in Item (36), Paragraph 2 of Article 2	Affairs, among those of a building lots and buildings transaction business, involving the trade, or its representation or intermediary, in a building lot (it means a building lot provided for in Item (1), Article 2 of the Building Lots and Buildings Transaction Business Law; the same shall apply hereinafter in this Table) or building (including a part of a building; the same shall apply hereinafter in this Table)	Conclusion of a contract of trade for a building lot or building and other transactions prescribed by Cabinet Order.

A person enumerated in Item (37), Paragraph 2 of Article 2	Affairs of the trade in a precious metal or the like.	Conclusion of a contract of trade for a precious metal or the like and other transactions prescribed by Cabinet Order.
A person enumerated in Item (38), Paragraph 2 of Article 2	The business affair provided for in the same Item.	Conclusion of a contract which consists of the provision of the service provided for in the same Item and other transactions prescribed by Cabinet Order.
A person enumerated in Item (40), Paragraph 2 of Article 2	Business affairs, among those prescribed in Article 3 or 29 of the Judicial Scrivener Law (Law No. 197 of 1950) or those incidental to or associated with such affairs, involving the representation or procuration of any of the following acts or procedures to be done on behalf of a customer (excluding those prescribed by Cabinet Order) (hereinafter referred to as "representation or the like of specified mandatory act"): (1) act or procedure concerning the trade in a building lot or building; (2) act or procedure concerning the establishment or merger of a company and other acts or procedures prescribed by Cabinet Order concerning the organization, operation or management of a company (including acts or procedures, prescribed by Cabinet Order as those corresponding to these acts or procedures, involving a corporation, association or trust which is not a company and is prescribed by Cabinet Order); (3) management or disposition (excluding those falling under the preceding two Items) of cash, deposits, securities and other property.	Conclusion of a contract which consists of the conduct of the representation or the like of specified mandatory act and other transactions prescribed by Cabinet Order.
A person enumerated in Item (41), Paragraph 2 of Article 2	Business affairs, among those prescribed in Article 1-2, 1-3 or 13-6 of the Administrative Scrivener Law (Law No. 4 of 1951) or those incidental to or associated with such affairs, involving the representation or the like of specified mandatory act.	Conclusion of a contract which consists of the conduct of the representation or the like of specified mandatory act and other transactions prescribed by Cabinet Order.
A person enumerated in Item (42), Paragraph 2	Business affairs, among those prescribed in Paragraph 2 of Article 2 or Item (1) of Article 34-5 of the Certified Public Accountant Law or those incidental to or	Conclusion of a contract which consists of the conduct of the representation or the like of specified mandatory act and other

of Article 2	associated with such affairs, involving the representation or the like of specified mandatory act.	transactions prescribed by Cabinet Order.
A person enumerated in Item (43), Paragraph 2 of Article 2	Business affairs, among those prescribed in Article 2 or 48-5 of the Certified Tax Accountant Law (Law No. 237 of 1951) or those incidental to or associated with such affairs, involving the representation or the like of specified mandatory act.	Conclusion of a contract which consists of the conduct of the representation or the like of specified mandatory act and other transactions prescribed by Cabinet Order.

2. A specified business operator shall, when it performs identification of a customer or the like and if a natural person who actually is being in charge of a specified transaction with it is different from the said customer or the like (excluding the case provided for in the following Paragraph), in such cases as a representative of a company conducting a specified transaction with it on behalf of the said company, perform customer identification not only with regard to the customer or the like but also with regard to the said natural person who actually is being in charge of the said specified transaction (hereinafter referred to as "representative or the like").

3. In case where the customer or the like is a one prescribed by Cabinet Order, such as the State, a local public entity, an association or foundation without juridical personality, the natural person who actually is being in charge of a specified transaction with the specified business operator on behalf of the customer or the like shall be regarded as the customer or the like itself and the provision of Paragraph 1 shall apply.

4. A customer or the like (including a natural person who is regarded as a customer or the like in accordance with the provision of the preceding Paragraph; the same shall apply hereinafter) or a representative or the like shall not state a false identity particular of the customer or the like or of the representative or the like to a specified business operator when it performs customer identification.

(Immunity of specified business operators)

Article 5. A specified business operator may, when a customer or the like or a representative or the like does not respond to customer identification, refuse to implement the obligation involving a specified transaction until he responds to such identification.

(Obligation to prepare customer identification records, etc.)

Article 6. A specified business operator shall, when it has performed customer identification, promptly prepare, by a method stipulated by Ordinance of Minister in Charge, a record regarding the matters, such as identity particulars and measures taken for the customer identification, stipulated by Ordinance of Minister in Charge (hereinafter referred to as "customer identification record").

2. The specified business operator shall retain the customer identification record for seven years from a date prescribed by Ordinance of Minister in Charge, such as the date when the contract involving the specified transaction is terminated.

(Obligation to prepare transaction record or the like, etc.)

Article 7. A specified business operator (excluding those provided for in the following Paragraph) shall, when it has performed a transaction involving a specified business affair, promptly prepare, by a method stipulated by Ordinance of Minister in Charge, a record regarding the matters stipulated by Ordinance of Minister in Charge, such as particulars for searching for the customer identification record of a customer or the like and the date and content of the transaction, except in case of a transaction in a small amount and other transactions prescribed by Cabinet Order.

2. Any of the specified business operators enumerated in Items (40) to (43), Paragraph 2 of Article 2 shall, when it has performed representation or the like of specified mandatory act, promptly prepare, by a method stipulated by Ordinance of Minister in Charge, a record regarding the matters stipulated by Ordinance of Minister in Charge, such as particulars for searching for the customer identification record of a customer or the like, the date when it performed such representation or the like and its content, except in case of the representation of disposition of property whose value is a small amount and other representation or the like of specified mandatory act prescribed by Cabinet Order.

3. The specified business operator shall retain the record provided for in the preceding two Paragraphs (hereinafter referred to as "transaction record or the like") for seven years from the date when the transaction or the representation or the like of specified mandatory act was performed.

(Measures corresponding to customer identification, etc., by lawyer or the like)

Article 8. Measures by a lawyer or the like which correspond to identification of a customer or the like or a representative or the like, preparation and retention of a customer identification record, and preparation and retention of a transaction record or the like shall be governed by the provisions established in the Rules of the Japan Federation of Bar Associations following the examples of the specified business operators enumerated in Items (40) to (43), Paragraph 2 of Article 2.

2. The provision of Article 5 shall apply mutatis mutandis to a measure corresponding to customer identification conducted by a lawyer or the like pursuant to the provisions of the Rules of the Japan Federation of Bar Associations established in accordance with the provision of the preceding Paragraph.

3. The Government and the Japan Federation of Bar Associations shall cooperate with each other with regard to the prevention of transfer of criminal proceeds.

(Suspicious transaction report, etc.)

Article 9. A specified business operator (excluding one of those enumerated in Items (40) to (43), Paragraph 2 of Article 2) shall promptly report, as prescribed by Cabinet Order, to the competent Administrative Authority those matters prescribed by Cabinet Order when it is deemed that there is a suspicion that the property it has received in the course of a specified business affair is criminal proceeds or that there is a suspicion that a customer or the like is committing, in connection with a specified business affair, an act constituting an offence provided for in Article 10 of the Organized Crime Punishment Law or Article 6 of the Anti-Drug Special Law.

2. The specified business operator (including its officers and employees) shall not disclose the fact that it will make or has made a report pursuant to the provision of the preceding Paragraph (hereinafter referred to as "suspicious transaction report") to the customer or the like whom such suspicious transaction report concerns or to any other person related to him.

3. The competent Administrative Authority (limited to a Prefectural Governor or a Prefectural Public Safety Commission) shall, upon the receipt of a suspicious transaction report, promptly notify the Minister in Charge of the matters regarding the said report.

4. The competent Administrative Authority (excluding a Prefectural Governor or a Prefectural Public Safety Commission) or the Minister in Charge mentioned in the preceding Paragraph (excluding the National Public Safety Commission) shall, upon the receipt of a suspicious transaction report or the notification mentioned in the same Paragraph, promptly notify the National Public Safety Commission of the matters regarding the said report or notification.

(Obligation of notification with regard to foreign exchange transaction)

Article 10. A specified business operator (limited to one of those enumerated in Items (1) to (15), Paragraph 2 of Article 2; the same shall apply hereinafter in this Article) shall, when it conducts with a customer an exchange transaction (excluding those by a method prescribed by Cabinet Order, such as issuance of a check) involving payment from Japan to a foreign country (it means a country or territory located outside Japanese territory and excludes the countries or territories prescribed by Cabinet Order; the same shall apply hereinafter in this Article), and if it entrusts the said payment to another specified business operator or to an overseas exchange transaction operator (it means a person who is located in a foreign country and operates, by way of business, exchange transactions; the same shall apply hereinafter in this Article), do so by notifying identity particulars of the customer and other matters prescribed by Ordinance of Minister in Charge.

2. A specified business operator shall, when it is entrusted or re-entrusted with payment to a foreign country by receiving, from another specified business operator, a notification in accordance with the provision of the preceding Paragraph or this Paragraph and if it re-entrusts the said payment to another specified business operator or to an overseas exchange transaction operator, do so by notifying the matters regarding the said notification.

3. A specified business operator shall, when it is entrusted or re-entrusted with payment from a foreign country to Japan or payment from a foreign country to another foreign country by receiving, from an overseas exchange transaction operator, a notification in accordance with a provision of a foreign law or regulation corresponding to the provision of this Article, and if it re-entrusts the said payment to another specified business operator or to another overseas exchange transaction operator, do so by notifying the matters (limited to those prescribed by Ordinance of Minister in Charge) regarding the said notification.

4. A specified business operator shall, when it is re-entrusted with payment from a foreign country to Japan or payment from a foreign country to another foreign country by receiving, from another specified business operator, a notification in accordance with the provision of the preceding Paragraph or this Paragraph and if it re-entrusts the said payment to another specified business operator or to an overseas exchange transaction operator, do so by notifying the matters (limited to those prescribed by Ordinance of Minister in Charge) regarding the said notification.

(Provision of information to investigative authorities, etc.)

Article 11. When the National Public Safety Commission deems that matters regarding a suspicious transaction report, information provided by a foreign organization which performs the functions equivalent to those of its own provided for in Article 9, this Article and the following Article, and results of arrangement or analysis of such matters and information (hereinafter referred to as "information on suspicious transaction") contribute to an investigation into a criminal case or an inquiry into an irregularity conducted by a public prosecutor, a public prosecutor's assistant officer or a judicial police official, or a revenue official, a customs official, a taxation official or an official of the Securities and Exchange Surveillance Commission (hereinafter referred to as "public prosecutor or the like" in this Article) in respect of any offence provided for in (A) or (B) of Item (1), Paragraph 2 of Article 2 or (D) of Item (2) of the same Paragraph of the Organized Crime Punishment Law, in Paragraph 3 of Article 10 or Article 11 of the same Law, or in each Item of Paragraph 2 of Article 2 or Article 6 or 7 of the Anti-Drug Special Law, the said Commission shall provide the public prosecutor or the like with such information on suspicious transaction.

2. A public prosecutor or the like may, when he deems it necessary for an investigation into a criminal case or an inquiry into an irregularity in respect of any offence provided for in the preceding Paragraph, ask the National Public Safety Commission for his perusal or copying of, or transmission of a copy of, a record of information on suspicious transaction.

(Provision of information to foreign organizations)

Article 12. The National Public Safety Commission may provide a foreign organization prescribed in Paragraph 1 of the preceding Article with information on suspicious transaction which it deems will contribute to the performance of the functions of the organization (such functions shall be limited to the functions equivalent to those of its own provided for in Article 9, this Article and the following Article; the same shall apply in the following Paragraph).

2. With regard to the provision of information on suspicious transaction pursuant to the preceding Paragraph, appropriate measures should be taken so that the information on suspicious transaction will not be used except in the performance of the functions of the foreign organizations provided for in Paragraph 1 of the preceding Article and will not be used in a criminal investigation (such investigation shall be limited to an investigation in which the criminal fact has been specified) or criminal proceeding (hereinafter referred to as "investigation or the like" in this Article) in a foreign country without the consent given pursuant to the provision of the following Paragraph.

3. The National Public Safety Commission may, upon a request from a foreign country, give the country consent to the use of the information on suspicious transaction which has been provided in accordance with the provision of Paragraph 1 in the investigation or the like of the criminal case for which the request has been made except for cases which fall under any of the following Items:

(1) when the offence which is the object of the investigation or the like of the criminal case for which the request has been made is a political offence, or when the request is deemed to have been made with a view to conducting an investigation or the like for a political offence;

(2) unless otherwise provided for in an international agreement (it means an international agreement concerning provision of information on suspicious transaction in accordance with the provision of Paragraph 1; the same shall apply in Paragraph 5), when the act constituting the offence which is the object of the investigation or the like of the criminal case for which the request has been made would not constitute an offence under the laws and regulations of Japan if committed in Japan;

(3) when there is no assurance of the requesting country to provide an assistance to a similar request which may be made by Japan.

4. The National Public Safety Commission shall, before giving consent referred to in the preceding Paragraph, obtain confirmation by the Minister of Justice that the request concerned does not fall under either Item (1) or Item (2) of the same Paragraph and confirmation by the Minister of Foreign Affairs that it does not fall under Item (3) of the same Paragraph.

5. When the provision of information on suspicious transaction in accordance with the provision of Paragraph 1 has been made pursuant to an international agreement which prescribes the scope of the investigation or the like (such investigation or the like is limited to an investigation or the like which is not for a political offence) of criminal cases of foreign countries in which the information on suspicious transaction may be used, the consent referred to in Paragraph 3 shall be deemed to exist with respect to the use of information on suspicious transaction within such scope.

(Report)

Article 13. The competent Administrative Authority may, to the extent necessary for the enforcement of this Law, request a specified business operator to submit a report or material in connection with its business affairs.

(On-site inspection)

Article 14. The competent Administrative Authority may, to the extent necessary for the

enforcement of this Law, have relevant staff to make entry into an office or other facilities of a specified business operator and inspect account documents and other objects or put questions to persons concerned in connection with its business affairs.

2. A relevant staff member who makes an on-site inspection pursuant to the provision of the preceding Paragraph shall carry with him a certificate which shows his official status, and shall present it upon request of a person concerned.

3. The power of on-site inspection under Paragraph 1 shall not be construed as being admitted for criminal investigation purposes.

4. The provision of Paragraph 1 shall not apply to the Bank of Japan as a specified business operator.

(Guidance, etc.)

Article 15. The competent Administrative Authority may, when it deems it necessary to assure appropriate and smooth implementation of measures provided for in this Law by a specified business operator, give necessary guidance, advice and recommendation to the specified business operator.

(Remedy order)

Article 16. The competent Administrative Authority may, when it deems that a specified business operator has violated any of the provisions of Paragraphs 1 to 3 of Article 4, Articles 6 and 7, Paragraph 1 or 2 of Article 9 and Article 10 in connection with its business affairs, order the said specified business operator to take necessary actions to remedy such violation.

(Statement of opinion by the National Public Safety Commission)

Article 17. The National Public Safety Commission may, when it deems that a specified business operator has violated the provision provided for in the preceding Paragraph in connection with its business affairs, state to the competent Administrative Authority (excluding a Prefectural Public Safety Commission; the same shall apply hereinafter in this Article) its opinion to the effect that an order under the preceding Article should be issued against the said specified business operator or, if an action such as suspension of business affairs can be taken in accordance with a provision of another law or regulation for reasons of the said violation, that such action should be taken against the said specified business operator.

2. The National Public Safety Commission may, to the extent necessary for stating its opinion in accordance with the provision of the preceding Paragraph, request the specified business operator to submit a report or material in connection with its business affairs or direct a prefectural police force which it deems appropriate to make necessary inquiry.

3. The Superintendent General or Chief of Prefectural Police Headquarters of the prefectural police force which has received the direction mentioned in the preceding Paragraph may, when it is deemed especially necessary for making the inquiry mentioned in the same Paragraph, and after obtaining an approval of the National Public Safety Commission, have relevant staff to make entry into an office or other facilities of the specified business operator concerned and inspect account documents and other objects or put questions to persons concerned in connection with its business affairs. In this case, the provisions of Paragraphs 2 to 4 of Article 14 shall apply mutatis mutandis.

4. The National Public Safety Commission shall, when it intends to give an approval mentioned in the preceding Paragraph, notify in advance the competent Administrative Authority (when it is a Prefectural Governor, the said Prefectural Governor via the Minister in Charge) of that effect.

5. The competent Administrative Authority which has received the notification mentioned

in the preceding Paragraph may, as prescribed by Cabinet Order, request the National Public Safety Commission for consultation necessary for seeking coordination between the enforcement of power under Paragraph 1 of Article 14 and enforcement of power of a prefectural police force under Paragraph 3. In this case, the National Public Safety Commission must agree to such request.

(Delegation to Ordinance of Minister in Charge)
Article 18. In addition to what is prescribed by this Law, matters necessary for the enforcement of this Law shall be prescribed by Ordinance of Minister in Charge.

(Transitional measures)
Article 19. In case a Cabinet Order or Ordinance of Minister in Charge is formulated, revised or repealed under the provisions of this Law, necessary transitional measures (including those relating to penal provisions) may be stipulated in the Order or Ordinance concerned to the extent considered to be reasonably necessary as a result of such formulation, revision or repeal.

(Competent Administrative Authority, etc.)
Article 20. The competent Administrative Authority in this Law shall be the person prescribed respectively in the following Items according to the classification of the specified business operators respectively enumerated in those Items, with regard to matters relating to the specified business operator concerned:
(1) a specified business operator mentioned in Item (1) to (3), (6), (7), (16) to (18), (20) to (24), (26) to (28) or (42), Paragraph 2 of Article 2: the Prime Minister;
(2) a specified business operator mentioned in Item (4) or (5), Paragraph 2 of Article 2: the Prime Minister and the Minister of Health, Labor and Welfare;
(3) a specified business operator mentioned in Item (8) or (9), Paragraph 2 of Article 2: the Administrative Authority provided for in Paragraph 1, Article 98 of the Agricultural Cooperative Association Law (Law No. 132 of 1947);
(4) a specified business operator mentioned in Item (10) to (13) or (19), Paragraph 2 of Article 2: the Administrative Authority provided for in Paragraph 1, Article 127 of the Marine Products Industry Cooperative Association Law (Law No. 242 of 1948);
(5) a specified business operator mentioned in Item (14), Paragraph 2 of Article 2: the Minister of Agriculture, Forestry and Fisheries and the Prime Minister;
(6) a specified business operator mentioned in Item (15), Paragraph 2 of Article 2: the Minister of Economy, Trade and Industry and the Minister of Finance;
(7) a specified business operator mentioned in Item (25), Paragraph 2 of Article 2: the Minister in Charge provided for in Paragraph 1, Article 49 of the Real Estate Specified Joint Business Law;
(8) a specified business operator mentioned in Item (29), Paragraph 2 of Article 2: the Minister in Charge provided for in Paragraph 1, Article 354 of the Commodity Exchange Law;
(9) a specified business operator mentioned in Item (30) or (31), Paragraph 2 of Article 2 (excluding the one mentioned in the following Item): the Prime Minister and the Minister of Justice;
(10) a specified business operator, among those mentioned in Items (30) and (31), Paragraph 2 of Article 2, who handles government bonds: the Prime Minister, the Minister of Justice and the Minister of Finance;
(11) a specified business operator mentioned in (32), Paragraph 2 of Article 2 and a specified business operator, among those mentioned in Item (38), Paragraph 2 of Article 2, who carries on a business affair of providing a service which consists of receiving a telephone call made to a customer and informing the customer of the content of such call: the Minister of Internal Affairs

and Communications;

(12) a specified business operator mentioned in Item (33) or (43), Paragraph 2 of Article 2: the Minister of Finance;

(13) a specified business operator mentioned in Item (34), (35) or (37), Paragraph 2 of Article 2, and a specified business operator, among those mentioned in Item (38) of the same Paragraph, who carries on a business affair of providing a service which consists of receiving postal mail addressed to a customer and delivering such mail to the customer: the Minister of Economy, Trade and Industry;

(14) a specified business operator mentioned in Item (36), Paragraph 2 of Article 2: the Minister of Land, Infrastructure and Transport or the Prefectural Governor who has given the license mentioned in Paragraph 1, Article 3 of the Building Lots and Buildings Transaction Business Law (the Minister of Land, Infrastructure and Transport with regard to a specified business operator who is a deemed building lots and buildings dealer);

(15) a specified business operator mentioned in Item (40), Paragraph 2 of Article 2: the Minister of Justice;

(16) a specified business operator mentioned in Item (41), Paragraph 2 of Article 2: a relevant Prefectural Governor.

2. Notwithstanding the provision of the preceding Paragraph, the competent Administrative Authority with regard to the matters stipulated in Article 10 relating to a specified business operator provided for in Paragraph 1 of the same Article (excluding a specified business operator mentioned in Item (15), Paragraph 2 of Article 2) shall be the one stipulated in the preceding Paragraph and the Minister of Finance.

3. Notwithstanding the provision of Paragraph 1, when a person who is a specified business operator and who has been registered under Article 33-2 of the Financial Commodity Transaction Law performs a registered financial institution business affair (it means the registered financial institution business affair provided for in Item (3), Paragraph 1, Article 33-5 of the same Law; the same shall apply in Item (2) of Paragraph 6), the competent Administrative Authority with regard to matters relating to the said registered financial institution business affair shall be the Prime Minister.

4. Notwithstanding the provision of Paragraph 1, when a person who is a specified business operator mentioned in Item (37), Paragraph 2 of Article 2 and who has obtained the permission mentioned in Paragraph 1 of Article 3 of the Antique Dealing Law performs a dealing business affair for a precious metal or the like that is an antique mentioned in Paragraph 1, Article 2 of the same Law, the competent Administrative Authority with regard to matters relating to the said business affair shall be a relevant Prefectural Public Safety Commission. In this case, administrative affairs belonging to the power of the Hokkaido Prefectural Public Safety Commission may be caused to be done by an Area Public Safety Commission as prescribed by Cabinet Order.

5. The Prime Minister shall delegate his powers under this Law (limited to those under the jurisdiction of the Financial Services Agency and excluding those stipulated by Cabinet Order) to the Commissioner of the Financial Services Agency.

6. The Commissioner of the Financial Services Agency shall delegate the powers, among those delegated to him in accordance with the provision of the preceding Paragraph (excluding those concerning Articles 9, 15 and 16; referred to as "powers of the Commissioner of the Financial Services Agency" in the following Paragraph), relating to any of the following acts to the Securities and Exchange Surveillance Commission. Provided that this shall not preclude the Commissioner from performing himself the power of ordering the submission of a report or material.

(1) an act by a specified business operator mentioned in Item (20) or (22), Paragraph 2 of Article 2;

(2) an act relating to a registered financial institution business affair.

7. The Commissioner of the Financial Services Agency may delegate the powers, among powers of the Commissioner of the Financial Services Agency, relating to an act (excluding those enumerated in the respective Items of the preceding Paragraph) of a specified business operator mentioned in Item (21), (30) or (31), Paragraph 2 of Article 2 to the Securities and Exchange Surveillance Commission.

8. In the case referred to in the preceding two Paragraphs, an appeal, under the Administrative Appeal Law (Law No. 160 of 1962), against an order of submission of report or material issued by the Securities and Exchange Surveillance Commission may be entered with the Securities and Exchange Surveillance Commission only.

9. A part of the administrative matters belonging to the powers of the competent Administrative Authority provided for in this Law (excluding such administrative matters as are to belong to the powers of a Prefectural Governor or a Prefectural Public Safety Commission in accordance with the provisions of this Law) may be prescribed, as stipulated by Cabinet Order, as those to be done by a relevant Prefectural Governor.

10. In addition to what is provided for respectively in the preceding Paragraphs, necessary matters for the exercise of the powers of the competent Administrative Authority under Articles 9 and 13 to 17 shall be prescribed by Cabinet Order.

(Minister in Charge, etc.)

Article 21. In this Law, the Minister in Charge is defined as follows:

(1) The Minister respectively stipulated in the following Sub-Items (A) to (E) according to the classification of the specified business operators enumerated in those Sub-Items, with regard to matters relating to the specified business operator concerned (excluding the matters enumerated in Items (2) to (4)):

(A) a specified business operator other than those enumerated in (B) to (D): the Minister who is the competent Administrative Authority prescribed in Paragraph 1 of the preceding Article;

(B) a specified business operator enumerated in Items (8) and (9), Paragraph 2 of Article 2: the Minister in Charge prescribed in Paragraph 2, Article 98 of the Agricultural Cooperative Association Law;

(C) a specified business operator enumerated in Items (10) to (13) and (19), Paragraph 2 of Article 2: the Minister in Charge prescribed in Paragraph 2, Article 127 of the Marine Products Industry Cooperative Association Law;

(D) a specified business operator enumerated in Item (36), Paragraph 2 of Article 2: the Minister of Land, Infrastructure and Transport;

(E) a specified business operator enumerated in Item (41), Paragraph 2 of Article 2: the Minister of Internal Affairs and Communications.

(2) Matters provided for in Paragraph 2 of the preceding Article with regard to the specified business operator provided for in the same Paragraph: the Minister prescribed in Sub-Items (A) to (C) of the preceding Item and the Minister of Finance.

(3) Matters provided for in Paragraph 3 of the preceding Article with regard to the specified business operator provided for in the same Paragraph: the Prime Minister.

(4) Matters provided for in Paragraph 4 of the preceding Article with regard to the specified business operator provided for in the same Paragraph: the National Public Safety Commission.

2. An Ordinance of Minister in Charge in this Law shall be an order jointly issued by the Prime Minister, the Minister of Internal Affairs and Communications, the Minister of Justice, the Minister of Finance, the Minister of Health, Labor and Welfare, the Minister of Agriculture, Forestry and Fisheries, the Minister of Economy, Trade and Industry and the Minister of Land, Infrastructure and Transport.

(Classification of administrative affairs)

Article 22. The administrative affairs, among those to be handled by a Prefecture pursuant to the provisions of this Law, with regard to the persons enumerated in the following shall be legal matters under requisition Item (1) provided for in Item (1), Paragraph 9 of Article 2 of the Local Autonomy Law (Law No. 67 of 1947):

(1) an agricultural cooperative association or a union of agricultural cooperative associations who operates the business mentioned in Item (3), Paragraph 1, Article 10 of the Agricultural Cooperative Association Law;

(2) a fishery cooperative association who operates the business mentioned in Item (4), Paragraph 1, Article 11 of the Marine Products Industry Cooperative Association Law;

(3) a union of fishery cooperative associations who operates the business mentioned in Item (4), Paragraph 1, Article 87 of the Marine Products Industry Cooperative Association Law;

(4) a marine products processing industry cooperative association who operates the business mentioned in Item (2), Paragraph 1, Article 93 of the Marine Products Industry Cooperative Association Law;

(5) a union of marine products processing industry cooperative associations who operates the business mentioned in Item (2), Paragraph 1, Article 97 of the Marine Products Industry Cooperative Association Law.

(Punishment)

Article 23. A person who violates an order under Article 16 shall be punished with imprisonment with labor for not more than two years or a fine of not more than 3,000,000 yen, or both.

Article 24. A person who falls under any of the following Items shall be punished with imprisonment with labor for not more than one year or a fine of not more than 3,000,000 yen, or both:

(1) a person who does not submit a report or material in accordance with Article 13 or Paragraph 2 of Article 17, or who submits a false report or material;

(2) a person who does not answer a question put by a relevant staff member pursuant to the provision of Paragraph 1 of Article 14 or the provision of Paragraph 3 of Article 17 or gives a false answer, or who refuses, hinders or evades the inspection under these provisions.

Article 25. A person who violates the provision of Paragraph 4 of Article 4 for the purpose of disguising an identity particular shall be punished with a fine of not more than 500,000 yen.

Article 26. A person who, for the purpose of obtaining the provision of a service relating to a deposit or savings contract with a specified business operator (limited to one of those enumerated in Items (1) to (15) and (32), Paragraph 2 of Article 2; the same shall apply hereinafter in this Article) by posing himself as another person, or of having a third person do so, takes over, receives the submission of, or obtains the provision of, a deposit or savings book, a card for withdrawing deposit or savings or information necessary for withdrawing or transferring deposit or savings involving the said deposit or savings contract or any other matters prescribed by Cabinet Order as those necessary for obtaining the provision of a service relating to a deposit or savings contract with a specified business operator (hereinafter referred to as "deposit or savings book or the like") shall be punished with a fine of not more than 500,000 yen. The same shall apply to a person who onerously takes over, receives the submission of, or obtains the provision of, a deposit or savings book or the like without a legitimate reason such as the fact that such act is a one that is done as an ordinary commercial or financial transaction.

2. The preceding Paragraph shall also apply to a person who, knowing that another party has the purpose mentioned in the former part of the same Paragraph, hands over, submits or provides a deposit or savings book or the like to that other party. The same shall apply to a person who onerously hands over, submits or provides a deposit or savings book or the like without a legitimate reason such as the fact that such act is a one that is done as an ordinary commercial or financial transaction.

3. A person who does, by way of business, an act that constitutes a crime mentioned in the preceding two Paragraphs shall be punished with imprisonment with labor for not more than two years or a fine of not more than 3,000,000 yen, or both.

4. Paragraph 1 shall also apply to a person who urges a person or invites, by means of an advertisement or any other similar method, a person to do an act that constitutes a crime mentioned in Paragraph 1 or 2.

Article 27. When a representative of a corporation or a procurator, employee or other staff member of a corporation or person does an act that violates the respective provisions enumerated in the following Items in connection with a business affair of that corporation or person, not only the actor shall be punished but also that corporation shall be punished with the fine provided for in the relevant Item and that person shall be punished with the fine mentioned in the relevant Article:

(1) Article 23: a fine of not more than 300,000,000 yen;

(2) Article 24: a fine of not more than 200,000,000 yen;

(3) Article 25: the fine mentioned in the same Article.

(Mutatis mutandis application of the Financial Commodity Transaction Law)

Article 28. The provisions of Chapter IX of the Financial Commodity Transaction Law shall apply mutatis mutandis to a case of a crime provided for in Article 25 or Item (3) of the preceding Article involving any of the acts enumerated in each Item of Paragraph 6, Article 20.

Supplementary Provisions

(Date of enforcement)

Article 1. This Law shall come into force on 1 April 2007. Provided that the provisions enumerated in the following Items shall come into force on the respective dates prescribed in those Items:

(1) The provisions of Paragraph 2 (excluding Items (22) and (24)) of Article 2, Articles 4 to 10 and Articles 13 to 28; the provisions of the following Article, Articles 5 to 7 of the Supplementary Provisions; the provisions of Articles 9 to 12 of the Supplementary Provisions; the provisions of Articles 14 to 18 of the Supplementary Provisions; the provisions, among those of Article 19 of the Supplementary Provisions, amending Articles 189 and 190 of the Law concerning the Adjustment of Relevant Laws Incidental to the Enforcement of the Law Amending the Securities Exchange Law and Other Laws (Law No. 66 of 2006); the provision, among those of Article 19 of the Supplementary Provisions, amending Article 196 of the same Law (limited to the part deleting the provision amending Article 127 of the Supplementary Provisions of the Law Amending the Law concerning the Transfer of Corporate Bonds, etc., for the Purpose of Rationalization of Settlement Involving Transaction of Shares, etc., and Other Laws (Law No. 88 of 2004)); the provision of Article 20 of the Supplementary Provisions; the provisions, among those of Article 23 of the Supplementary Provisions, amending Article 8 and Paragraph 1, Article 20 of the Law for Establishment of the Financial Services Agency (Law No. 130 of 1998); and the provision of Article 27 of the Supplementary Provisions: the date prescribed by Cabinet Order within a period not exceeding one year from the date of promulgation.

[The rest is omitted.]

Asia-Pacific
Economic Cooperation

ECONOMY'S REPORT

The Republic of Korea

Capacity Building Workshop on
Combating Corruption Related to
Money Laundering

1. Steps taken since July 2006 to implement the international AML/CFT standards

(a) Policy/coordination developments (eg., enhancement of national coordinating mechanism, awareness raising workshops, etc)

- **Roadmap for Implementation of the FATF Recommendations**

  The Republic of Korea is taking steps to implement global AML/CFT standards in accordance with the roadmap that Korea Financial Intelligence Unit (KoFIU) established in June 2005 through collaboration with related entities such as the Financial Supervisory Commission (FSC) and the Ministry of Justice (MOJ). According to the timeframe of the roadmap, KoFIU started legislative procedures in 2006 to introduce anti-terrorist financing legislation and to amend the existing *Act on Report on Specific Financial Transaction Information and Utilization Thereof, etc.(*the *Financial Transaction Reports Act*)

  In the first half of 2007, a task force team was organized in preparation for the joint APG/FATF mutual evaluation, which we hope will take place in the latter half of 2008. The task force team is composed of relevant government agencies and private sector entities. The major focus of the team is to gauge Korea's level of compliance with the international standards according to FATF 2004 methodology and compile information about what various entities are doing to implement the FATF Recommendations. The members of the task force team have already completed documentation of the current status and plans that are currently in place to enhance the compliance level. The team will have its first meeting in August 2007.

- **Law Enforcement Agencies' Consultative Meetings**

  Law enforcement agencies, including the Public Prosecutor's Office (PPO), KoFIU, the National Police Agency (NPA), National Tax Service (NTS), and the National Customs Service (NCS), have consultative meetings. At such meetings, the agencies discuss ways to effectively utilize financial transaction information and to facilitate inter-agency cooperation. In principle, the meetings are held each quarter. There were three meetings held during July 2006 ~ June 2007.

- **Consultative Meeting with AML Experts in the Private Sector**

The 13th meeting of the AML Policy Consultation Committee was held in September 2006. The Committee is composed of the Commissioner of KoFIU and experts from the banking, securities and IT sectors and the academia. Agenda of the meeting included i) anti-terrorist financing legislation and amendment of *Act on Report on Specific Financial Transaction Information and Utilization Thereof, etc.*, ii) Korea's FATF observer status and steps to be taken to gain full membership, and iii) improvement of the FIU information system. The 14th meeting of the Committee is scheduled for August 2007.

(b) Legislative developments eg new/amended legislation (incl. pending)

Two very important bills in Korea's fight against money laundering and terrorist financing were submitted to the National Assembly in January 2007; the *Suppression o f the Financing of Terrorism Bill* and the *Financial Transaction Reports Act Amendment Bill*. The two bills were discussed at the Finance and Economy Standing Committee in April and in June. We expect that the bills will be passed in September. The core concepts of the bills are as follows:

- **Suppression of the Financing of Terrorism Bill**

Definition of "terrorist property"

- Any fund or assets collected, provided, delivered, or kept for use in any of a list of specific acts committed with the intention to i) interfere with the exercise of rights of a national, local, or foreign government or to force such a government to do something that it is not obligated to do, or ii) to intimidate the public. The specific list of activities covers all the activities governed by the 9 international treaties listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism (1999).

Criminalization of financing of terrorism

- Collecting, providing, delivering, or keeping funds or assets knowing that such funds or assets are used as terrorist property and an attempt thereof;

- Soliciting or requesting collection, provision, delivery, or keeping of funds or assets knowing that such funds or assets are used as terrorist property

Designation of persons and entities

- The Minister of Finance and Economy can announce a list of designated persons and entities for whom financial transaction is restricted. The list may include persons and entities whose financial transaction needs to be controlled in order to implement relevant international treaties of which Korea is a signatory and generally recognized international laws or to participate in the international community's efforts to promote international peace and security.
- A financial institution needs permission of the Minister of Finance and Economy to conduct a transaction with a designated person or entity

- **<u>Financial Transaction Reports Act Amendment Bill</u>**

Amendments Related to the Suppression of the Financing of Terrorism Bill

- Reporting entities are required to file STR when it is suspected that the funds are terrorist property or that the customer is involved in financing of terrorism
- Reporting entities are required to check if the customer is the beneficial owner of the transaction when it is suspected that the customer is involved in financing of terrorism

Other Amendments

- Casinos are subject to the full range of AML/CFT obligations under the Act
- Reporting entities are required to implement differentiated customer due diligence measures according to the level of risk associate with each type of customer/transaction
- The maximum amount of administrative fine for failure to fulfil reporting obligation is increased (KRW 5 million → 20 million)

(c) Mutual legal assistance Developments

During July 2006 ~ July 2007, Korea signed Mutual Legal Assistance Treaty with Kuwait('07.3.26). Korea has signed 22 mutual legal assistance treaties so far.

2. APG Typologies – methods and trends

a) Statistics on the number of suspicious transaction reports filed; AML/CFT investigations; prosecutions and/or criminal charges; seizures/confiscation related to money laundering

Since its establishment, KoFIU has received a total of 63,720 STRs as of May 31, 2007. Among them, 62,706 reports were analyzed, 1,014 reports have yet to be analyzed, and 6, 476 reports were disseminated to law enforcement agencies. 2,013 reports were disseminated to Public Prosecutors' Office, 1,487 to National Police Agency, 1,690 to National Tax Service, 135 to Financial Supervisory Commission, and 11 to National Election Commission.

The breakdown of the STRs by the type of financial institutions filing the reports is as follows: 61, 724 reports were filed by the banking sector; 896 by the securities sector; 147 by the insurance sector; and 953 by the other sectors. The annual number of STR filings, which was only 275 in 2002, grew sharply to 1,744 in 2003, 4,680 in 2004, 13,459 in 2005 and 24,149 in 2006. Monthly number of STRs has topped and stayed above 3,000 since January 2007.

The Public Prosecutors' Office conducted investigation on 75 money laundering cases and prosecuted 47 cases in 2006. There were 35 convictions during the same year. There were 26 cases of forfeiture worth a total of 10, 590 million won (USD 11. 43 million) in relation to money laundering.

b) Case studies of significant methods identified

Major cases identified in 2006 include laundering of proceeds from illegal game rooms, missing trader fraud exploiting zero VAT rates applied to gold bars, and laundering of proceeds from smuggling of fake goods.

- **<u>Laundering of proceeds from illegal game rooms</u>**

  According to a suspicious transaction report filed to KoFIU, Person *K* withdrew 100 million won in cash from Person *J*'s account in August 2006. *J* opened the account in 2003, which had remained dormant until *K* made the withdrawal. *K* had

a criminal record of being punished under the *Act on Discs, Videos and Games* for running an illegal adult game room. It was suspected that *K* was laundering proceeds from illegal game rooms and it seemed highly likely that he would commit similar crimes with proceeds from other game rooms.

Analysis conducted by KoFIU showed that *K* used *J*'s account to launder proceeds from game rooms where illegal game machines were installed. It was suspected that *K* might have given the laundered money to the real owner of the business or his accomplice, and KoFIU forwarded the case to the Public Prosecutors' Office.

Investigation by the Public Prosecutors' Office revealed that *K* provided free gift to customers by exchanging gift certificate into cash, which was against the law, and that he installed illegal speculative games in his game rooms. It was also confirmed that *K* tried to disguise the origin of 100 million won of profits from illegal game rooms by depositing the fund into *J*'s account and then withdrawing the whole amount after a short time. The game rooms were operated under the name of *P*, and *K* also helped *P* flee by making false statements. The Public Prosecutors' Office arrested *K* in January, 2007 for violation of the *Act on Regulation and Punishment of Speculative Acts* and the *Proceeds of Crime Act*.

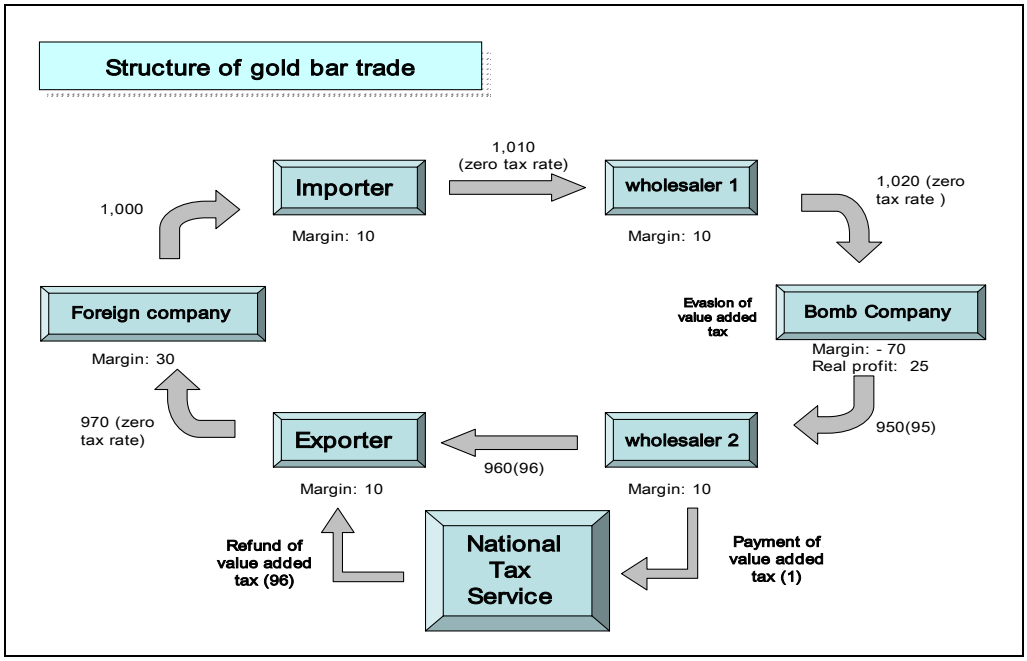
- **'Missing trader' fraud exploiting zero rate applied to gold bars**

  Until June 2003, zero VAT rate was applied to gold bars traded domestically as raw material for export. And from July 2003 to December 2007, wholesalers of gold bars and craftsmen that meet certain conditions are allowed to trade in gold bars VAT free. KoFIU identified methods of exploiting this system to evade VAT and to get illegal refunds.

  Repetitive cash transactions of a company suspected of tax evasion came to the attention of KoFIU through STR. Analysis of KoFIU showed that the subjects set up or acquired the so-called 'bomb companies' (companies that shut down and disappear without paying value added tax), wholesalers, exporters, and importers to participate in complex transactions that involved cycles of "import-domestic trades-export". It turned out that the bomb company evaded value added tax and that the export company caused outflow of national wealth by exporting goods at a price lower than the import price and then got illegal VAT refunds. KoFIU forwarded the case to the Public Prosecutors' Office.

The following is a typical example of such a scheme: an importer buys gold bar for 1,000 won and sells the gold bar for 1,010 won to the first wholesaler at zero rate. The first wholesaler earns a profit of 10 won by selling the gold bar for 1,020 won to the 'bomb company' also at zero rate. And then the bomb company sells the gold bar to the second wholesale company for 950 won plus VAT of 95 won, which is lower than the purchase price of 1,020 won. The bomb company, however, does not pay the VAT and earns a profit of 25 won(950+95 – 1,020). The second wholesaler sells the gold bar to the exporter for 960 and pays only 1 won of VAT. The exporter then reaps a profit of 10 won by selling the gold bar for 970 won VAT free and gets 96 won of VAT refund, which is divided among all the participants in the scheme.

In the investigation by the Public Prosecutors' Office, it turned out that the suspects evaded VAT worth 92.1 billion won in such schemes. The Public Prosecutors' Office arrested 30 suspects including the export company's president and Person *S* who evaded taxes worth 200 billion, and indicted 4 others without physical detention. It also forwarded the data on the tax evasion and illegal refunds of 560 billion won to National Tax Service.



- **<u>Laundering of proceeds from smuggling of counterfeit goods</u>**

According to suspicious transaction reports, 34 subjects including Person *B* and Person *S* converted cash and bank checks into USD 6,686,000 in 69 transactions at banks in Kyong- gi province.

B had been convicted of violating the trademark law and the customs law, and *S* had the records of visiting China about 15 to 37 times a year for business purposes. KoFIU's analysis revealed that the subjects converted foreign currencies of a total of 7 billion won in just 4 months, and each transaction amounted to 100 million won. KoFIU forwarded the case to Korea Customs Service as it was suspected that it involved smuggling of goods and manipulation of export and import prices.

Investigation by Korea Customs Service revealed that *B* and *S* received a total of approximately 9 billion won from many unspecified persons. They converted the Korean won into USD 8.7 million in 102 transactions at 4 branches of Bank *J* with the help of 44 acquaintances with false documents stating that the fund was for business expenses. The investigation also found out that they remitted 1 billion won from Korea to China and vice versa in illegal remittance services using 7 accounts at Bank *W*. It was also revealed that they were also engaged in trading of 236 fake Rolex watches plus 965 pieces of other counterfeit goods (market price 15 billion won).

Korea Customs Service sent the case to the Public Prosecutors' Office for violation of the *Foreign Exchange Transactions Act*, including cross-border smuggling of foreign currency, unlicensed foreign exchange transactions, and illegal remittance in May 2006. *S* was also indicted for violation of the *Customs Law* and *Trademark Law*.

3. Future priorities and planned AML/CFT initiatives / activities

The first priority in Korea's efforts to implement the international standards is to pass the *Suppression of the Financing of Terrorism Bill* and the *Financial Transaction Reports Act Amendment Bill*, which are pending at the National Assembly, as early as possible. After completing the legislative processes, Korea will work in close collaboration with reporting entities in establishing guidelines for implementation by the legislation/amendment.

The legal systems of anti-money laundering and some corruption cases in the Republic of Korea

-Summary-

The legal systems of anti-money laundering of the Republic of Korea have begun since 1993. On August 12 in 1993, the real name financial system was introduced in Korea by a presidential order of which name was the Presidential Financial and Economic Emergency Order on Real Name Financial Transactions and Guarantee of Secrecy.

Prior to the Presidential Order, it was not prohibited to open financial accounts in obviously fictitious names. As a result, laundering money was not difficult matter to do so.

In spite of the implementation of the real name financial system, the act of money laundering could not be punished per se. The first act was Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc. that made the act of money laundering related to drug trafficking criminally punishable.

The main legislation of anti-money laundering started in 2001. Act

on the Registration and Punishment of Concealment of Proceeds from Crimes (hereinafter refer to as “Act on Proceeds from Crimes) and Act on Report on Specific Financial Transaction Information and Utilization Thereof, etc.(hereinafter refer to as “Act on Financial Transaction Report”) were legislated in 2001.

Act on Proceeds from Crimes criminalizes the act of money laundering related to 109 crimes, including organized crimes, smuggling, evasion of assets to foreign nations, embezzlement, fraud and tax evasion in large amounts of money. Act on Financial Transaction Report established the Korean Financial Intelligence Unit(KoFIU) and imposed financial workers legal duties to report on suspicious transactions to KoFIU.

The following three money launderings relating to corruption cases would be introduced in the presentation.

The first case relates to bearer bond in money laundering, the second case is the matter of false buying and selling in real estates in money laundering, and the last case is money laundering through bearer Certificate of Deposits (CDs).

CAPACITY BUILDING WORKSHOP ON COMBATING CORRUPTION RELATED TO MONEY LAUNDERING

MALAYSIA

Introduction

Malaysia has developed laws to combat money laundering and has developed an anti-money laundering system. Malaysia enacted the Anti-Money Laundering Act 2001 criminalizing money laundering and lifting banking secrecy provisions for criminal investigations involving more than 122 predicate offences in the Second Schedule of the Anti-Money Laundering Act 2001 was increased from 168 to 185 serious offences from 27 pieces of legislation. The Anti-Corruption Act 1997, which came into force on 8th January 1998, may not have a specific provision for the offence of money-laundering, but there a provisions within the Anti-Corruption Act 1997, that provides for the dealing in relation to any property which is the subject matter of corruption offences.

Anti-Money Laundering Act 2001 [Act 613]

The Anti-Money Laundering Act (hereinafter, called the said Act) was passed in 2001 and various corruption offences were considered a 'serious offence' for the purposes of the Act. For the purposes, of the said Act, the following offences under the Anti–Corruption Act 1997, are considered predicate offences under the said Act. They are,

1. ***Section 10 of the Anti-Corruption Act 1997- offence of accepting gratification.***
2. ***Section 11 of the Anti-Corruption Act 1997- offence of giving or accepting gratification by agent.***
3. ***Section 12 of the Anti-Corruption Act 1997, Acceptor or giver of gratification to be guilty, notwithstanding that the purpose was not carried out or the matter not in relation to principal's affairs or business.***
4. ***Section 13 of the Anti-Corruption Act 1997- Corruptly procuring withdrawal of tenders***
5. ***Section 14 of the Anti-Corruption act 1997- Bribery of officer of public body.***
6. ***Section 15 of the Anti-Corruption Act 1997- Misuse of position***
7. ***Section 18 of the Anti-Corruption Act 1997- Dealing with, using, holding, receiving or concealing gratification or advantage in relation to any offence.***
8. ***Section 20 of the Anti-Corruption Act 1997- Attempts, preparations, abetments and criminal conspiracies punishable as offences.***

Offences under the Penal Code *vis-a viz* that are by or relating to public servants were also considered predicate offences within the said Act. These offences include,

- ***Section 161 Penal Code***

- ***Section 162 Penal Code***
- ***Section 163 Penal Code***
- ***Section 164 Penal Code***
- ***Section 165 Penal Code***
- ***Section 207 Penal Code***
- ***Section 213 Penal Code***
- ***Section 214 Penal Code***
- ***Section 215 Penal Code***
- ***Section 216A Penal Code***
- ***Section 217 Penal Code***
- ***Section 218 Penal Code***

Aspects of the Anti-Money Laundering Act that strengthen combating corruption.

Anti-Money Laundering Act 2001

In the main, the purport of the said Act was to provide for the offence of money laundering, the measures to be taken for the prevention of money laundering and to provide for forfeiture of property derived from, or involved in, money laundering.

The application of the Act was to any serious offence, foreign serious offence or unlawful activity whether committed before or after the commencement of the said date of the Act. From this, it can be said that the said Act has a retrospective effect. There is however a caveat to this retrospective application of the said Act, vide section 2(3) of the said Act. It reads as follows,

> ***(3) Nothing in this Act shall impose any duty or confer any power on any court in connection with any proceedings under this Act against a person for a serious offence in respect of which he has been convicted by a court before the commencement date.***

This apart, it is evident from section 2 of the said Act, that the said Act applies to property situated in or outside Malaysia, This aspect of the extra-territorial nature of the said Act is reinforced once again in the definition of the property under the said Act, found in the interpretation section of the said Act, namely section 2.

The term '*property'* has been defined to mean moveable or immovable property derived or obtained, directly or indirectly, by any person as a result of any unlawful property.

The offence of money laundering is provided for in section 4 of the said Act and it reads as follows,

Offence of money laundering

4. (1) Any person who-

(a) engages in, or attempts to engage in; or

(b) abets the commission of,

money laundering, commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

(2) ***A person may be convicted of an offence under subsection (1) irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that prosecution has been initiated for the commission of a serious offence or foreign serious offence.***

Whilst, the definition of money laundering is defined in section 2 of the said Act, and it covers the following acts of a person who-

(a) engages, directly or indirectly , in a transaction , that involves proceeds of any unlawful activity;

(b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or

(c) conceals, disguises, or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;

where-

(aa) as may be inferred from the objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or

(bb) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from unlawful activity.

'Unlawful activity' means any activity ' which is related, directly or indirectly, to any serious offence or foreign serious offence.

'proceeds of any unlawful activity' means any property derived or obtained , directly or indirectly, by any person as a result of any unlawful activity.

It is important to bear in mind, that under the scope of section 4 of the said Act, a person may be convicted of the offence of money laundering regardless of whether there has been a prosecution or conviction of a serious offence or foreign serious offence. From this, it can be said that the offence of money laundering is triggered of, as long as there is a commission of a serious offence or foreign serious offence.

What amounts to a 'serious offence' or 'foreign serious offence' within the said Act?

This has been provided for once again, in the interpretation section of the said Act, and it is as provided,

'serious offence' means –

(a) any of the offences specified in the Second Schedule;

(b) an attempt to commit any of those offences;

(c) the abetment of any of those offences;

' foreign serious offence' means an offence-

(a) against the law of a foreign State stated in a certificate purporting to be issued by or on behalf of the government of that foreign state; and

(b) that consists of or includes an act or activity which , if it had occurred in Malaysia, would have constituted a serious offence.

For the record, *'any of the offences specified in the Second Schedule,'* means the predicate offences, of which are certain acts of criminality found under the ***Anti-Corruption Act 1997***. The said offences were mentioned earlier on, in the report.

Detection and Prevention process under the said Act

In order to ensure efficacy under the said Act to detect or prevent the commission of money laundering offences, the Legislature has provided for the protection of informers and this is enshrined in section 5 (2) of the said Act, which reads as follows,

(2) Where any information relating to an offence under the Act is received by an officer of the competent authority or reporting institution, the information and the identity of the person giving the information shall be a secret between the officer and that person and everything contained in such information, the identity of that person and all the circumstances relating to the information, including the place where it

was given, shall not be disclosed except for the purposes of subsection 8(1) or section 14

This is reinforced by ***section 6 of the said Act*** that provides as follows,

There is also the additional protection given to persons reporting in ***section 24 of the said Act,*** that reads as follows,

The role and treatment[1] of ***agent provocateur*** evidence has been provided for in ***section 69 of the Anti-Money Laundering act 2001.*** An ***agent provocateur,*** is not only confined to an officer of an enforcement agency, but to any person who has attempted to commit, or abet, or having abetted or engaged in a criminal conspiracy for an offence under the said Act, in order to secure evidence against an individual.

The Legislature has in its wisdom seen the need to incorporate this additional provision in the interest of ***section 14 and 20 of the said Act***.

Malaysia's financial institutions have strict ' *know your customer'* rules under the Anti-Money Laundering Act 2001. Every transaction regardless of its size is recorded.

Reporting institutions created under the said Act, must maintain records for at least six years and report any suspicious transaction to Malaysia's Financial Intelligence Unit. Under the Anti-Money Laundering Act, reporting institutions include financial institutions from conventional Islamic, and offshore sectors as well as non-financial businesses and professions such as lawyers, accountants, company secretaries and Malaysia's one licensed casino. There are provisions in ***section 25, 26 and 27 of the said Act*** that provides how a Competent Authority may maintain compliance by a reporting institution.

[1] The court can proceed to convict on the uncorroborated evidence of an agent provocateur and no conviction shall be deemed illegal if the trial judge has failed to warn himself of the uncorroborated testimony of an agent provocateur.

In 2005, reporting obligations were invoked on licensed gaming outlets, notaries public, offshore trading agents and listing sponsors. Phased- in reporting requirements for stockbrokers, future brokers, money-lenders pawnbrokers, registered estate agents, trust companies, unit trust management companies, fund managers, future fund managers, non-bank remittance service providers, and non-affiliated issuers of debit and credit cards.

If the reporting institution deems a transaction suspicious it must report the transaction to the Financial Intelligence Unit, regardless of the transaction size. In addition, cash threshold, reporting requirements above approximately RM10,000.00 were invoked on banking institutions.

Financial Intelligence Unit officials indicate that they receive regular reports from Anti-Money Laundering reporting institution.

Reporting institutions and individuals are protected by statute with respect to their cooperation with law enforcement. While Malaysia's bank secrecy provisions prevent general access to financial information, those secrecy provisions are waived in the case of money laundering provisions[2].

Malaysia has adopted banker negligence (due negligence) laws that make individual bankers responsible if their institutions launder money. Both reporting institutions and individuals are required to adopt internal compliance programmes to guard against any offence.

In 1998, Malaysia imposed foreign exchange controls that restrict the flow of the local currency from Malaysia. Onshore banks must record cross-border transfers over approximately RM1000. Since, April 2003, an individual form is completed for each transfer above approximately RM10.000.00.

[2] See section 20 of the Anti-Money Laundering Act 2001.

While Malaysia's offshore banking center on the island of Labuan has different regulations for the establishment and operation of offshore businesses, it is subject to the same anti-money laundering laws as those governing onshore financial service providers. Malaysia's Labuan Offshore Financial Services Authority (LOFSA) serves as a member of the Offshore Group of Banking Supervisors.

The Labuan Offshore Financial Service Authority (LOFSA) has obtained approval from the Ministry of Finance to amend the Labuan Offshore Financial Services Authority 1996, to remove any perceived impediments to access by LOFSA of information relating to the business of regulated entities, including the identity of customers. This would enhance LOFSA's authority to acquire information, subject to court order, from regulated institutions on behalf of law enforcement agencies.

The LOFSA has obtained the approval from the Minister of Finance to amend the LOFSA Act, to rationalize the secrecy provisions and enable cooperation with other regulatory agencies.

Provisions for investigations under the Anti-Money Laundering Act 2001

Investigations under the said Act, is provided for under ***Part V*** of the said Act.

The Anti-Money Laundering Act 2001 has provided for a financial intelligence unit[3], the Unit Perisikan Kewangan, located in the Central Bank, Bank Negara Malaysia. The FIU is tasked with receiving and analyzing information and sharing financial intelligence with appropriate enforcement agencies for further investigations. The Malaysian FIU cooperates with other relevant agencies to identify and investigate suspicious transactions. A comprehensive supervisory framework has been implemented to audit financial institutions compliance with Anti-Money Laundering Act.

[3] See section 7 of the Anti-Money Laundering Act 2001

Who is a Competent Authority?

This is provided for in section 7 of the said Act. The Central Bank of Malaysia has of 15th January 2002 been appointed a Competent Authority Currently, Bank Negara Malaysia maintains 300 examiners who are responsible for money laundering inspections for both onshore and offshore financial institutions.

The FIU in Bank Negara is the central point of reference for all AML/ CFT matters. Being a part of Bank Negara Malaysia, the FIU enjoys support from various other departments including legal, information technology and examination.

Since its set up in 2001, the functions of the FIU have grown in tandem with international development and domestic agencies' capacity. In recognizing these developments, the FIU has expanded its capacity with the creation of more senior posts and two new sections to fulfill its mission and purpose more effectively and efficiently. With the creation of the Compliance Section and the Investigation Support Section, the staff strength has increased.

Bank Negara Malaysia, as the Competent Authority under AMLA, has issued Standard Guidelines on AML/ CFT to its reporting institutions, supplemented by various Sectoral Guidelines to assist the reporting institutions in discharging their obligations under the Anti-Money Laundering Act. These guidelines were drafted in accordance with AMLA and the FATF 40+ 9 Recommendations.

In addition, the National Coordinating Committee (NCC) to counter Money Laundering was established as a national committee for multi-agencies dedicated to enforce the Anti-Money Laundering Act. The Anti-Corruption Agency of Malaysia is a member of this committee. This committee serves to share information on money laundering and financing of terrorism. The NCC has also developed AMLA Investigation Reference Guide that sets out the required tasks to assist investigating officers in carrying out investigations under AMLA.

Investigations under the Anti-Money Laundering act 2001, is provided for in ***Part V*** of the said Act. The Competent Authority and the relevant Enforcement agency carry out investigations under the said Act.

There are provisions under sections ***8, 9, 10.11 and 12 of the said Act*** that deal with the manner in which the Competent Authority carries out its functions under the said Act.

The powers of investigation by the Competent Authority or the relevant enforcement agencies are set in ***sections 32, 33, 35, 37, 38,39, 40, 41,42, 43*** and ***48 of the said Act.***

One of the salient tools of investigation provided for under the said Act is the power of the Public Prosecutor to obtain information in the course of investigation for an offence under section 4 (1) of the said Act in respect of property that may have been acquired as a consequence of the proceeds of crime. This is provided for in ***section 49 of the Anti-Money Laundering Act 2001***. The scope and implications of this section is far-reaching and serves as a tremendous boost in the investigative processes under the said Act. In the main, the said provision gives the Public Prosecutor the power to issue a notice to any person suspected of having committed an offence, or his/her relative or associate or any person whom the Public Prosecutor has reasonable grounds to believe is able to assist in the investigation to furnish in writing on oath or affirmation information in relation to property or property movement of the suspect. The range of information that can be solicited pursuant to this power is found in [4]. *A fortiori,* additional powers are given to the Competent Authority or enforcement agencies in the said Act, that provides for ***property tracking***[5]**.**

<u>Investigation powers in relation to a financial institution</u>

[4] paragraphs (*aa) to (ff)* of section 49
[5] See section 67 (1) (a) or (b) of the Anti-Money Laundering Act 2001.

There are special provisions relating to investigative powers in relation to financial institutions provided in section 48 of the said Act. The definition of financial institutions is found in section 3 of the said Act. [6]

Power of freezing, seizure and forfeiture in the course of investigation.

This is a necessary tool in the investigative process to ensure that the property that is the subject matter of the offence under the Act is not dissipated or transferred in the course of investigation. ***Part VI of the Anti-Money Laundering Act 2001[7],*** provides for the freezing, seizure and forfeiture mechanisms of property subject to investigation under the said Act.

Within the context of these particular provisions[8], are provisions that deal with ***prohibitions*** against the dealing of property that has been subject to a freeze or seizure order. [9]

In relation to forfeiture orders, there are provisions within ***sections 55 and 56 of the said Act,*** that provide for the forfeiture of property ***used in the commission of the offence*** or proved to be the ***subject-matter of the offence under the said Act.***

In determining whether property is the subject matter of an offence or has been used in the commission of an offence under subsection 4 (1) of the Act, the court shall apply the standard of proof required in civil proceedings.

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[6] Financial institution means –

(a) an institution licensed under the Islamic Banking Act 1983, the Takaful Act 1984, the Banking and Financial Institutions Act 1989, the Insurance Act 1996 and the Money Changing Act 1998

(b) a person licensed under the Securities Industry Act 1983, the Securities Commission Act 1993 and the Future Industry Act 1993; or

(c) an offshore financial institutioin.

[7] See sections 44, 45, 46, 50, 51, 52, 53, 54, 55,56, & 57 of the Anti-Money Laundering Act 2001.

[8] sections 44, 45, 46, 50, 51, 52, 53, 54, 55,56, & 57 of the Anti-Money Laundering Act 2001.

[9] See section 53 & 54 of the Anti-Money Laundering Act 2001.

Forfeiture orders can also be made in respect of property subject to a freezing or seizure order, whether there is ***prosecution or not*** for the said offence under the Act. [10]

Only a court can make a forfeiture order.

The rights of ***third parties*** in respect of the ***forfeiture orders*** to be made by the court pursuant to section 55 and 56 of the said Act shall be taken into account.

Privileged communication

Section 47 of the said Act, provides that on an application to a Judge of the High Court in relation to an investigation for an offence under section 4(1) of the said Act, an advocate and solicitor may be ordered to disclose information available to him in respect of any transaction or dealing relating to any property which is liable to seizure under the said Act. However, [11] provides that such an order for such information or communication will not be effective if it came to the advocate or solicitor as privileged information or communication for the purpose of any pending proceedings. See also, ***section 35(2) of the Anti-Money Laundering Act 2001***. However, section ***35(3) of the Anti-Money Laundering Act 2001***, operates as an exception to section 35 (2), in respect of disclosures by an advocate and solicitor in respect of an illegal purpose.

There is a penalty provision within the said Act, that provides for obstruction to the exercise of powers by an investigation officer. [12]

Further, there is an offence of ***Tipping-off*** under section ***35 of the said Act***. Here, if any person knows or has reasons to suspect that an investigating officer is acting, or is proposing to act in connection with an investigation which is being, or is about to be,

[10] See section 56 of the Anti-Money Laundering Act 2001.
[11] Section 47(2) of the Anti-Money Laundering Act 2001
[12] See section 34 of the Anti-Money Laundering Act 2001.

conducted under or for the purposes of the Act and discloses to any other person information or any matter which is likely to prejudice the investigation or proposed investigation or who has reason to suspect that a disclosure has been made under the Act and discloses to any other person information or any other matter which is likely to prejudice investigation, commits an offence under the said Act.

Prosecution of offence under the Anti- Money Laundering Act 2001

Jurisdiction of courts

The courts in Malaysia is seized of jurisdiction to deal with an offence under the Act,[13] if committed by a citizen or permanent resident of Malaysia, even though it was committed outside and beyond the limits of Malaysia. See also ***sections 82(1) (a) and (b) of the said Act.***

Of pertinence, is where an offence under the said Act is committed by a body corporate or an association of persons, then pursuant to section ***87 of the said Act, a person,***

(a) who is director, controller, officer, or partner; or

(b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his function in that capacity and to the circumstances.

Further, there is a provision under section 88 of the said Act, that where a person is liable under the said Act, because of the act, omission, neglect or default of his employee, controller or agent, then he would be liable to the same penalty as that of his employee, controller or agent. There are however, exceptions to this provision, ***see section 88 (a), (b), (c) or (d) of the said Act.***

[13] See section 82 of the Anti-Money Laundering Act 2001

Evidence

Standard of proof of any question of fact to be decided by a court of proceedings under the Act shall be decided on the balance of probabilities. [14]

There are provisions in the said Act that provides for admissibility of statements and documents of persons who are dead or cannot be traced in section 73 of the said Act.

Further, in the event of whether a particular act is an offence in any other country, the provisions of ***section 75 Anti-Money Laundering Act 2001*** bears consideration. This is presumably, where there is an issue of dual criminality involved in the said offence.

In 2004, Malaysia made its first money laundering arrest. As of December 2005, six individuals were being prosecuted for money laundering offences. From January through November 2006, 14 additional persons have been charged for money laundering offences,

Anti-Corruption Act 1997 [Act 575]

Besides, the Anti-Money Laundering Act, 2001, there are provisions in the ***Anti-Corruption Act 1997***, that provides for asset tracing, seizure and forfeiture. Some of these provisions are given directly to the Agency's officers, some from an authorization by the Public Prosecutor and order of a High Court.

Among the provisions of the Anti Corruption Act 1997, which are related to 'money laundering' are as follows;-

[14] see section 70 (1) and (2) of the Anti-Money Laundering Act 2001.

A. Dealing in Property (Laundering)

Bil	Provision	Effect	Offence or Non-Compliance (NC)
1.	**S. 18** Dealing in property	Beside the accused person, this provision also allows investigation and prosecution of any person who assist/abet the accused.	Fine < RM50,000 or Jail < 7 years or both

B. Investigation Powers In Relation to "Asset Tracing"

Bil	Provision	Effect	Offence or Non-Compliance (NC)
1.	**<u>Officer's Powers (Direct)</u>** **S.22 (1) (b)** Order to produce documents	Compel any person to produce documents without having to conduct a search.	NC-S.22 (10) and punishable by S.58- Fine < RM10,000 or Jail < 2 years or Both
2.	**S.22(8)** Recording of witness' statement	Witness shall not refuse to answer questions, which are incriminating. Used as to source information pertaining to property acquired/held,	S.19 – giving false statements or mislead Fine < RM100,000 or Jail < 10 years or Both

		details of incomes/expenditures, net worth analysis, etc. Statement to be admissible as evidenced to forfeiture of property.	

3.	**S.23(3)** Search without DPP's Order	Search can be done immediately and as such reduced the prossibilities of documents or properties being destroyed.	S.29 – obstruction, and punishable by S.58 – Fine < RM10,000 Jail < 2 years or Both
4.	**S.45(3)** Recording of accused' statement	Compel accused to give his defense or else if he hold back until in the court, then it'll be less likely to be believed by the court. Used as to source information pertaining to property acquired/held, details of incomes/expenditures, net worth analysis, etc.	
5.	**<u>Officer's Powers (through DPP)</u>** **S.23(1)** Search with DPP's Order	Search done with a written authorization from the DPP.	S.29 – obstruction and punishable by S.58 - Fine < RM10,000 or Jail < 2 years or Both
6.	**S.27(1)** Solicitors to disclose	Overcome 'privileged information' barrier in	NC – S.57 and punishable by S.58 –

	information-by High Court order	respect of dealing of properties under investigation.	Fine < RM10,000 or Jail < 2 years or Both
7.	**S.31(1)** Order allowing investigation of any account in bank	Supersede banking secrecy provision. Banking documents are used to trail movement of moneys and to ascertain modes operandi.	NC-S.31(4) Fine < RM10,000 or Jail < 2 years or Both
8.	**S.32(1)** Notice for declaring assets to the accused or any person, and to the bank for disclosure of any account of the party above.	An avenue for investigators to have details information pertaining to any property owned/held within or outside Malaysia.	NC-S.32(2) Mandatory Jail < 14 days < 20 years and Fine < RM100,000
9.	**S.32(3)** Explanation on excessive properties (only for officer of a public body)	The accused or any person to furnish details explanation on how properties are owned/held.	Failure to explain satisfactorily – Mandatory Jail < 14 days < 20 years and Fine <= 5 times the value of the excess or RM10,000, whichever higher

			NC-S.32(4) Mandatory Jail >= 14 days < 20 years and Fine >= 5 times the value of the excess or RM10,000, whichever higher.

C. Seizure

No.	Provision	Effect	Offence or Non-Compliance (NC)
	<u>Officer's Powers (Direct)</u>		
1.	**S.25(1)** Seizure of movable property (except under bank's custody)	Allows property to be seized for further due course.	S.29 – obstruction, and punishable by S.58 – Fine < RM10,000 or Jail < 2 years or Both
2.	**S.26(6)** Seizure of money, shares securities, stocks and debentures	Allows prohibition to deal with such property or to affect the seizure of such properties.	S.29 – obstruction, and punishable by S.58 - Fine < RM10,000 or Jail < 2 year or Both
	<u>DPP's Powers</u>		

3.	**S.33(1)** Seizure of movable property under bank's custody.	Allows seizure/restraining order on bank account for further due course.	NC-S.33(3) - Fine < 2 times the amount paid out in contravention of the order or RM50,000 whichever higher and mandatory Jail < 2 years.
4.	**S.34(1)** Seizure of immovable property.	Allows seizure/restraining order on property for further due course.	NC-S.33(3) – Fine < 2 times the value of the property or RM50,000 whichever higher and mandatory Jail < 2 years.
5.	**S.35** Property outside Malaysia (by High Court Order)	Prohibit any dealing on property owned/held overseas.	NC – S.57 and punishable by S.58 – Fine < RM10,000 or Jail < 2 years or Both

D. Forfeiture

No.	Provision	Effect	Offence or Non-Compliance (NC)
1.	**S.36** Forfeiture upon prosecution (application to High Court)	Allows property to be forfeited whether the offence is proved or not.	

2.	**S.37** Forfeiture without prosecution (application to High Court)	Allows property to be forfeited without prosecuting the accused (within 12 months of seizure).	

E. Evidence

No.	Provision	Effect
1.	**S.43** Evidenced of unexplained wealth.	Any evidence of unexplained wealth shall be presumed to corroborate any evidence relating to the commission of the offences under the Act.
2.	**S.44** Evidenced of an accomplice and agent provocateur	Evidence of an accomplice and agent provocateur shall be admissible in court.
3.	**S.46** Admissibility of statements and documents of dead o untraceable person.	Statements or documents given by a person who later on dead or untraceable shall be admissible in court.

International Cooperation towards combating Money Laundering

Malaysia has signed the ***United Nations Convention Against Corruption*** where there are specific Articles in the said Convention that deal with measures to prevent money laundering. ***See Article 14 of the United Nations Convention against Corruption.*** In terms of compliance with the said provisions of the Article, the Government of Malaysia has taken the steps to ensure due compliance.

Malaysia has also passed the ***Mutual Assistance in Criminal Matters Act 2002 t***o assist in the investigation, prosecutions, and proceedings related to money laundering. The Mutual Assistance in Criminal Matters Act 2002 provides for assistance for all offences that carry a penalty of one year's imprisonment, or death penalty.

The Attorney General's Chambers is the Central Authority for mutual legal assistance under Mutual Assistance in Criminal Matters. A request to/by a Foreign State is made to/by the Attorney General through diplomatic channel.

Malaysia has also concluded a Mutual Legal Assistance Treaty with the United States, and concluded and signed a similar treaty among like- minded ASEAN member countries in November 2004. This treaty was signed by nine other Association of Southeast Asian Nations (ASEAN) member countries with the aim to collaborate their efforts more efficiently in enhancing regional cooperation to combat transnational crime. In October 2006, Malaysia ratified treaties with China and Australia regarding the provision of mutual assistance in criminal matters. An extradition treaty was also signed with Australia. The mutual assistance treaties enable State Parties to assist each other in investigations, prosecutions, and proceedings related to money laundering.

ON 30TH November 2001, Malaysia formally endorsed the ***Anti Corruption Action Plan for Asia and the Pacific*** and has thus become a member to the Asian Development Bank/ Organization for Economic Cooperation and Development Anti-Corruption Initiative for Asia-Pacific. Currently, Malaysia is also member of the

Financial Task Force on Money Laundering (***FATF)/ Asia-Pacific Group on Money Laundering (APG) Anti-Corruption/ AML Issues Project Group*** which further explores the cooperative work between the two bodies on the relationships between AML/CFT and anti-corruption efforts, and in particular, ways in which corruption can undermine AML/CFT implementation.

The Malaysian Financial Investigation Unit (FIU) has been a member of Egmont Group since July 2003. Malaysia was also the Asia Chair for the Egmont Committee.

The FIU has signed memoranda of understanding (MOU) on the sharing on the sharing of financial intelligence with the FIU's of Australia, Indonesia, Thailand, the Philippines and China and is currently at various stages of negotiations with other foreign counterparts to execute similar MOUs. Besides having an MoU with corresponding authorities or through mutual legal assistance under MACMA to acquire information from foreign countries, the FIU in Bank Negara has also established a good relationship with Royal Malaysian Police (RMP) to facilitate information exchange. The RMP uses the Interpol and 'police-to-police' methods to acquire information from foreign countries especially at the early stages of investigation in order to assist and speed up their investigations.

The FIU has provided capacity building and training in anti-money laundering efforts to some of its ASEAN partners, including Cambodia, Laos and Vietnam. In February 2006, the Asian Development Bank (ADB) funded a team of Malaysia's FIU to run a workshop in Laos for two state owned banks and to provide technical assistance in the drafting of Laos's anti-money laundering compliance procedures.

The setting up of the ***Malaysian Anti-Corruption Academy*** operational since 2006, serves as a regional training center for capability and capacity building in the areas of anti-corruption measures within the ASEAN region.

Combating money laundering comes within the sphere of activities tackled by this training center. Courses have been designed to cater for information–exchange and best practices guide towards combating corruption related activities.

Anthony Kevin Morais,
Deputy Public Prosecutor,
Anti-Corruption Agency,
Malaysia.

PHILIPPINES' COUNTRY REPORT

CAPACITY-BUILDING WORKSHOP ON COMBATING CORRUPTION RELATED TO MONEY LAUNDERING SIAM CITY HOTEL BANGKOK, THAILAND AUGUST 20 - 22, 2007

HIGHLIGHTS FOR 2006

The year is significant for the Philippines and its anti-money laundering regime as it is the year that the 9th Asia/Pacific Group on Money Laundering (APG) Plenary Meeting and Technical Assistance and Training Forum was held in Metro Manila. The Philippines, through the Anti-Money Laundering Council (AMLC) and the Bangko Sentral ng Pilipinas, hosted the APG Plenary Meeting on 2 – 7 July 2006 at the Philippine International Convention Center.

The APG is an autonomous regional anti-money laundering body in the Asia/Pacific Region established in February 1997 in Bangkok, Thailand, as a response to the global threat of money laundering. It has thirty three (33) member jurisdictions, including the Philippines, which is one of the founding members. The APG Annual Meeting is the most important event in the APG's calendar as it is the primary policy and decision making vehicle for the APG members. The APG Annual Meeting was attended by more than two hundred fifty delegates representing various jurisdictions in the Asia/Pacific Region and international organizations such as the Financial Action Task Force, the Egmont Group, the World Bank, the United Nations Office on Drugs and Crime and the Asian Development Bank.

It is also in 2006 that the Financial Action Task Force (FATF) decided to stop monitoring the Philippines. During its Plenary meeting in Cape Town, South Africa on 15 – 17 February 2006, the FATF noted the continued efforts of the Philippines in effectively implementing its anti-money laundering laws and regulations a year after it was removed by the FATF from its list of Non-Cooperative Countries and Territories.

The year 2006 is a very fruitful year for the AMLC. The following is a brief description of the continuing efforts, initiatives and developments in the Philippine anti-money laundering regime for the year:

FUNCTIONS OF THE AMLC

1. Receipt of covered and suspicious transaction reports

All transactions in cash or equivalent monetary instruments involving a total amount in excess of PhP500,000 within one banking day are automatically reported by covered institutions to the AMLC as covered transactions. All covered transactions are further screened as possible suspicious transaction. If classified as suspicious transaction, then a suspicious transaction report is prepared and submitted to the AMLC.

All transactions, even those involving amounts less than PhP500,000 are also scrutinized by covered institutions to determine whether these are suspicious. Suspicious transactions are transactions with covered institutions, regardless of the amounts involved, where any of the following circumstances exist:

1. there is no underlying legal or trade obligation, purpose or economic justification;
2. the client is not properly identified;
3. the amount involved is not commensurate with the business or financial capacity of the client;
4. taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the act;
5. any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered institution;
6. the transaction is in any way related to an unlawful activity or offense under this act that is about to be, is being or has been committed; or
7. any transaction that is similar or analogous to any of the foregoing

All covered transactions are submitted in electronic form while suspicious transactions are reported both in electronic form and in hard copy to the AMLC.

i. Total Number of covered transactions (CTs) / suspicious transactions (STs) as of 31 December 2006

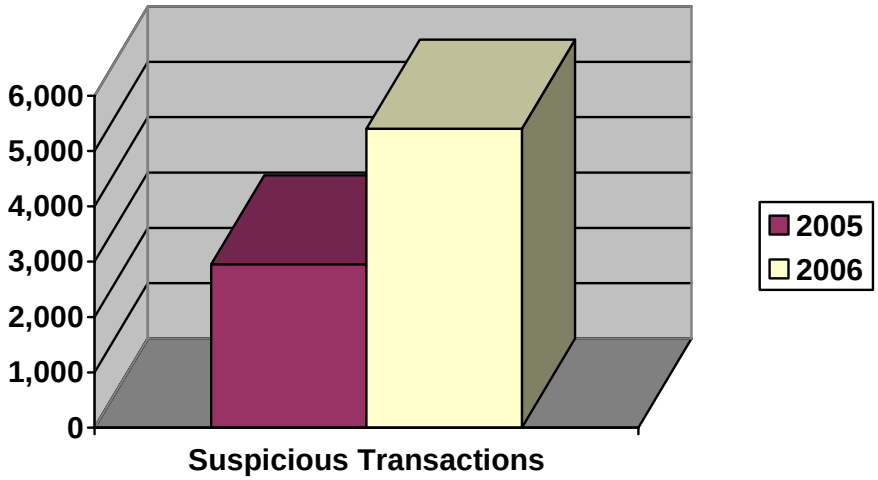
	Banks/ NBFIs	**INSURANCE**	**SECURITIES**	**GOVT.**	**TOTAL NO. OF TRANSACTIONS**
STs	11,021	75	30	2,679	**13,805**
CTs	74,706,188	82,329	102,966	0	**74,891,483**

As shown above, as of 31 December 2006, there were 13,805 suspicious transactions (STs) and 74,891,483 covered transactions (CTs) reported to the AMLC. As of December 2005, there were 8,402 suspicious transactions (STs) and 48,871,717 covered transactions (CTs) reported.

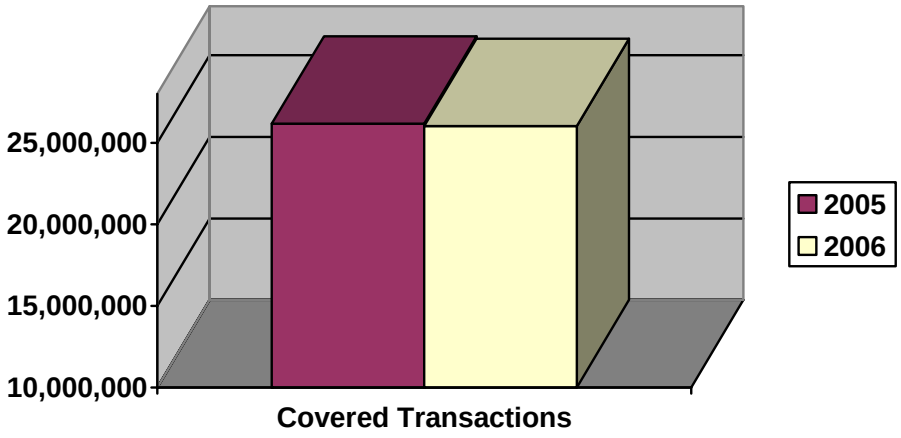
ii. Total Number of covered transactions (CTs) / suspicious transactions (STs) for 2006

	Banks / NBFIs	INSURANCE	SECURITIES	TOTAL NO. OF TRANSACTIONS
STs	5,370	28	5	**5,403**
CTs	25,944,737	38,987	36,042	**26,019,766**

For the year 2006, there were 5,403 suspicious transactions (STs) and 26,019,766 covered transactions (CTs) reported to the AMLC.



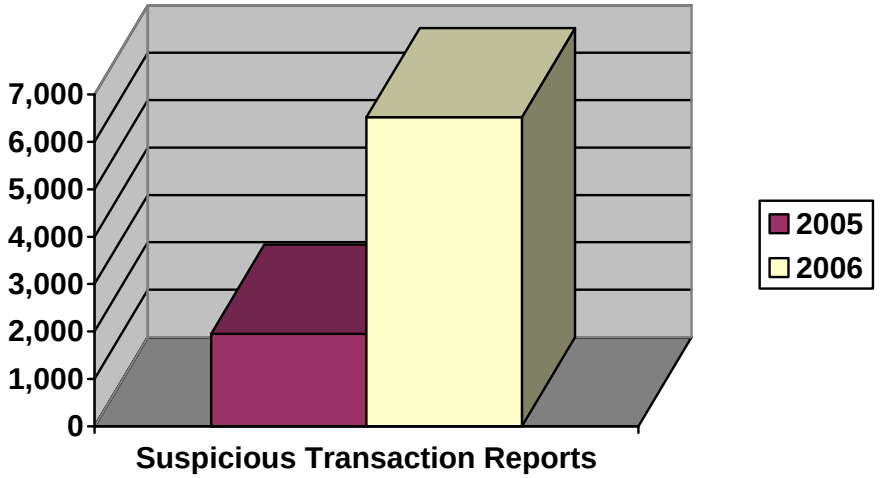
Suspicious transactions reported to the AMLC increased by 83.09% in 2006. There were 5,403 suspicious transactions in 2006 compared to 2,951 in 2005.



For covered transactions received by the AMLC, there were 26,019,766 covered transactions in 2006 as against to 26,169,812 in 2005.

iii. Reports of Suspicious Transactions

As of 31 December 2006, there were 6,520 reports submitted to the AMLC involving 13,805 suspicious transactions, as compared to 1,952 reports submitted to the AMLC involving 8,402 suspicious transactions as of 31 December 2005.



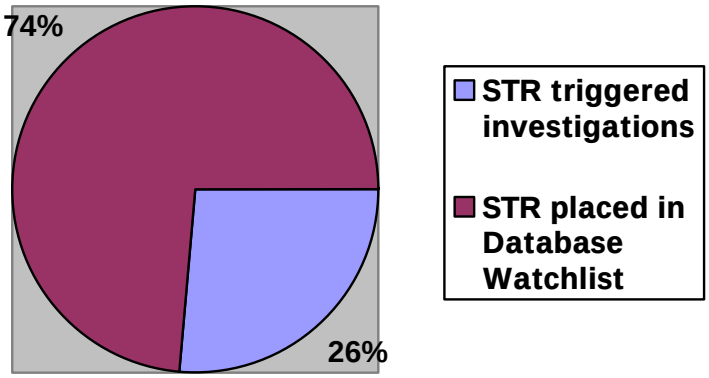
In 2006 alone, the AMLC received 4,568 reports of suspicious transactions.

Of the 4,568 reports of suspicious transactions, 1,201 reports or 26% of the total reports submitted for the year were the subject of further investigation since they were found to be related to certain unlawful

activities under the AMLA, like kidnapping for ransom, violations of the Dangerous Drugs Act, qualified theft, estafa, graft and corruption and terrorist-related activities.

The remaining 74% or 3,367 reports received were placed in AMLC's "Database Watchlist" for future reference. The AMLC could not pursue further investigation on these reports since there is no sufficient proof/evidence, as of the cut-off date, to link the said transactions to certain unlawful activities under the AMLA.

Reports of Suspicous Transactions in 2006



2. **Investigation and prosecution of money laundering, civil forfeiture and other related cases as of 31 December 2006**

The submission of covered and suspicious transaction reports by covered institutions to the AMLC does not automatically mean that the persons or entities subject of the said reports will be prosecuted or charged for a money laundering offense or the funds subject of said reports will be frozen or will become the subject of a civil forfeiture case. There is a need for the AMLC to show that the said transactions are related to an unlawful activity under the AMLA. Mere receipt of suspicious transactions or covered transactions is not sufficient to establish that the said transactions are related to unlawful activities under the AMLA. In fact, under the AMLA, only one of the suspicious transaction indicators require covered institutions to submit a report when a transaction is related to an unlawful activity or a money laundering offense that is about to be, is being or has been committed.

A great number of suspicious transaction reports received by the AMLC involved applications for credit card where the applicants submitted fake identity documents to the concerned covered institutions. One of the suspicious transaction indicators under the AMLA is "where the client is not properly identified" as when he submitted fraudulent

identity documents. Reported transactions like these do not require investigation.

Covered transactions and suspicious transactions are not stand alone evidence and serves only as triggers for further investigation that may produce evidence to establish probable cause that the said accounts are related to unlawful activities under the AMLA before the AMLC can file a money laundering case or institute the freezing or forfeiture of the funds subject of said reports.

This explains why the number of cases being filed by the AMLC is very much less compared to the number of reports being received. The filing of appropriate criminal, civil or administrative action under the AMLA requires more than just covered or suspicious transaction reports coming from covered institutions.

i. Number of money laundering, civil forfeiture and other related cases

	OMB	DOJ	RTC	CA	SC	TOTAL
MONEY LAUNDERING CASES	-	10	23			33
CIVIL FORFEITURE CASES			22			22
APPLICATIONS FOR BANK INQUIRY			17			17
APPLICATIONS FOR FREEZE ORDER				1		1
PETITIONS FOR EXTENSION OF FREEZE ORDER				7	2	9
TOTAL	**-**	**10**	**62**	**8**	**2**	**82**

Out of the thirty three (33) money laundering cases, twenty three (23) are still being tried before special anti-money laundering courts and ten (10) are under preliminary investigation by the Anti-Money Laundering Task Force of the Department of Justice.

In civil forfeiture cases, three (3) had been decided in favor of the Republic of the Philippines.

In a civil forfeiture case entitled, “Republic of the Philippines vs. G. Cosmos Phils. Inc.”, the Regional Trial Court of Manila, Branch 50 ordered the forfeiture of P117,792.21, US$279.05 and JPY63,113.36 in favor of the Government. The judgment was executed on 5 September 2006.

The other two (2) judgments, involving the total amount of P348,238.45 and US$7.62, are pending execution.

ii. Amount of funds / bank deposits frozen

	PHILIPPINE PESO	US DOLLARS*	JAPANESE YEN**	TOTAL
TOTAL AMOUNT FROZEN	1,075,877,448.72	$2,809,091.00	JPY 63,114.36	**1,213,919,780.27**
TOTAL AMOUNT UNFROZEN***	688,260,515.00	67,899.00		**691,596,528.67**
TOTAL	387,616,933.72	$2,741,192.00	JPY 63,114.36	**522,323,251.61**

*DOLLAR-PESO EXCHANGE RATE: $1.00 : 49.1320

**YEN-PESO EXCHANGE RATE: P1.00: 0.4131

***TOTAL AMOUNT UNFROZEN AND RETURNED TO INVESTORS/VICTIMS

iii. Real Properties subject of Civil Forfeiture Cases

NUMBER OF CASE	PARCELS OF LAND INVOLVED	TOTAL LAND AREA	ESTIMATED VALUE (IN PHP)
2	8	6,137 SQM	P33,020,500.00

iv. Number of inquiries/examinations conducted in various banks (without court order)

UNLAWFUL ACTIVITIES INVOLVED	NO. OF AMLC RESOLUTIONS ISSUED	NO. OF SUSPECT INDIV/ENTITIES INVOLVED	NO. OF ACCOUNTS INQUIRED INTO/ EXAMINED
DRUG TRAFFICKING	17	79 INDIVIDUALS	198
KIDNAPPING FOR RANSOM	7	8 INDIVIDUALS	28
TERRORISM- RELATED	13	36 INDIVIDUALS/ 4 ENTITIES	47
TOTAL	**36**	**121DIVIDUALS/ 4ENTITIES**	**261**

v. Number of inquiries/examinations conducted in various banks (with court order)

UNLAWFUL ACTIVITIES INVOLVED	NO. INQUIRIES/EXAMINATIONS
MONEY LAUNDERING OFFENSE/ESTAFA	3
SECURITIES REGULATION CODE VIOLATION	5
MONEY LAUNDERING OFFENSE/ANTI- GRAFT & CORRUPT PRACTICES	6
SWINDLING/FRAUD	4

Domestic and International Cooperation

i. Domestic Cooperation

a. National Law Enforcement Coordinating Committee (NALECC) and the Sub-Committee on Anti-Money Laundering/ Combating the Financing

of Terrorism. The AMLC is a regular member in good standing of the NALECC, which is a policy-coordinating and action monitoring mechanism for all government agencies with a role in formulating law enforcement and regulatory policies that are currently being implemented, providing inputs and recommendations and enabling the passage of important legislations affecting the country's peace and order, economy and environment. NALECC consists of fifty eight (58) member-agencies.

The AMLC Executive Director is the chair of the Sub-Committee on Anti-Money Laundering/ Combating the Financing of Terrorism which was formed on 15 August 2003. The Sub-Committee has 26 member-agencies.

The NALECC Sub-Committee on Anti-Money Laundering/ Combating the Financing of Terrorism was awarded as the Best NALECC Sub-Committee on 22 September 2006 on the occasion of the 24th NALECC anniversary celebration at the Days Hotel, Tagaytay City.

b. **Memorandum of Agreement (MOA) with other concerned government agencies.** On 31 May 2006, the AMLC entered into MOA with the National Intelligence and Coordinating Agency (NICA) to promote and encourage cooperation and coordination in detecting and preventing money laundering activities and terrorist financing in the country. The AMLC have existing MOAs with the Criminal Investigation and Detection Group of the Philippine National Police, the Department of Justice, the Philippine Center on Transnational Crime, the Philippine Drug Enforcement Agency, PNP Anti-Terrorism Task Force "Sanglahi" and the Office of the Ombudsman. It is also set to enter into MOA with other government agencies.

c. **Supplemental Memorandum of Agreement on Physical Cross-Border Transport of Currencies.** Upon AMLC's initiative, a Supplemental Memorandum of Agreement was signed on 20 December 2006 by the AMLC, the BSP, the Bureau of Customs, the Manila International Airport Authority, the Philippine Ports Authority, the Philippine National Police, the Bureau of Immigration and the Air Transportation Office on the effective implementation of the BSP rules on physical cross-border transport of currencies and in compliance with FATF's 9th special recommendation.

ii. International Cooperation and Mutual Legal Assistance

a. International requests. In 2006, the Philippines, thru the AMLC, had received and promptly taken appropriate action on forty one (41) international requests for assistance involving other jurisdictions.

b. AMLC's requests for foreign assistance. In 2006, the AMLC made eighteen (18) requests for assistance from other FIUs, embassies and law-enforcement agencies.

c. AMLC Resolutions against Terrorists and Terrorist-Related Groups. The AMLC issued sixty (60) Resolutions, nine (9) in 2006, directing all covered institutions to report to AMLC, transactions and assets, if any, of designated terrorist individuals and organizations as well as any person/group with links to terrorist organizations, i.e., Osama Bin Laden, Al-Qaeda, Jemaah Islamiyah, the Taliban, and other terrorist organizations designated by the UN Security Council, the United States and other foreign governments.

d. Memorandum of Understanding (MOU) with the Money Laundering Prevention Center (MLPC) of Taiwan. – To facilitate the exchange of information related to money laundering and financing of criminal activities related to terrorism, the AMLC had entered into an MOU with the MLPC on 21 September 2006. The AMLC has existing MOUs with Korean Financial Intelligence Unit, the Bank Negara Malaysia, the Indonesian Financial Transaction Reports and Analysis Center, the Anti-Money Laundering Office of Thailand, the FIU of Palau, the Australian Transaction Reports and Analysis Centre and the U.S. Financial Crimes Enforcement Network. It also plans to enter into MOU with other FIUs.

OTHER AML INITIATIVES/DEVELOPMENTS

1. **Gaming Assessment in the Philippines.** The U.S. Department of Treasury – Office of Technical Assistance (OTA) assisted by the AMLC, conducted a Gaming Assessment in the Philippines last 2-11 October 2006 to determine the assistance that may be extended by the US Government in terms of training and technical support.

2. **European Study Tour.** The Philippine delegation, which is headed by the senior officials of the AMLC, participated in the European study tour which was sponsored by the B & S Europe. The tour was focused on comprehensive meetings and presentations made by FIU counterparts in Austria, France and Italy. The Philippine delegates also visited the office of the Financial Action Task Force in Paris, France.

3. **Technical Assistance and Training.** Officers from the Australian Transaction Reports and Analysis Centre (AUSTRAC) made a follow-up technical assistance and training visit to the AMLC on 3-7 April 2006. The AUSTRAC team also met with representatives of agencies being represented in the AMLC such as the BSP, the SEC, the IC; with representatives from the relevant law enforcement agencies, i.e., the ISAFP, the CIDG, the PCTC, the PACER, the PDEA, the NBI, the Task Force "Sanglahi" and the AIDSOTF; and with the representatives from prosecutorial agencies like DOJ, Ombudsman and Office of the Solicitor General.

   On 6 November 2006, the Republic of the Philippines-European Union (RP-EU) Anti-Money Laundering Project for the Philippines was officially launched with the opening of its "Training of Trainors Program". The Project aims to train a select group of trainors from the Bangko Sentral ng Pilipinas, Securities and Exchange Commission, Insurance Commission, the Anti-Money Laundering Council, the Office of the Ombudsman, Department of Justice and Philippine National Police. The trainors, in turn, would be responsible for giving training/seminars to the various stakeholders in the Philippines anti-money laundering regime (e.g. banks, securities and insurance companies, the Judiciary,etc).

Combating Money Laundering and Financing of Terrorism in Peru

Background:

Before the creation of the Financial Intelligence Unit of Peru (UIF-Peru), the Superintendency of Banking, Insurance and Private Pension Funds (SBS) was the only entity in charge of the supervision of a money laundering prevention system in Peru, which was only oriented to banks, financial institutions and other similar companies.

In this regard, the General Law of the Financial and Insurance System, and Organic Law of the SBS, Law Nº26702 dated December 9, 1996, was the first law in Peru to introduce a series of provisions destined to establish a system for the prevention of money laundering in the financial system within the Peruvian legislation. For this purpose the Model Regulations of the Inter-American Drug Abuse Control Commission of the Organization of American States (CICAD/OAS) were used as a baseline, as well as the principles established in the Basel Committee, especially those regarding "knowing your customer and the market".

The fifth section of Law Nº26702 provided the legal framework in order for the financial system companies to carry out an adequate customer identification process, to obtain good information records of said costumers, to have an Anti-Money Laundering Manuel, to record cash transactions in a Cash Transactions Registry, and the obligation to report suspicious transactions, among other obligations. By Resolution SBS Nº904-97 additional reglamentation was approved regarding the money laundering prevention system of financial companies. However, in July of 1998, Resolution SBS Nº731-98 left in suspense numeral 3.2 of the aforementioned Resolution regarding the obligation of financial companies to register cash transactions in the Cash Transactions Registry. Said suspension was lifted by Resolution SBS Nº477-2001 in July 21, 2001.

New Legal Framework for the supervision of a money laundering prevention system in Peru:

In the national and world context up to the year 2003 and pursuant to the international agreement and conventions ratified by Peru, the UIF-Peru was created by Law Nº27693 passed on April 12, 2002, later modified by Law Nº28009 dated June 19, 2003, and Law Nº28306 dated July 29, 2004.

The UIF-Peru was created as a nationally competent organization that would become the central agency for the reception, analysis and dissemination of information on possible suspected proceeds of money laundering or terrorism financing[1] provided by the reports of suspicious transactions reported to it by the Reporting Entities[2]. The UIF-Peru has to process said information and transmit it to the Public Ministry with the corresponding evidence when there are true clues that a money laundering and/or financing terrorism activity is under way.

Law N°27693 and it's modifications, among other aspects, established rules to keep the Operations Record and to send the Suspicious Operations Reports, defined the characteristics of the Anti-Money Laundering System, indicated the supervision scheme and the role of the Compliance Officers, Internal and External Audits, it set out the need for a better coordination between the regulators (SBS) and the UIF-Peru, it increased participation and coordination with public entities, and it established that the directors and managers are responsible for implementing the money laundering and financing of terrorism prevention system.

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1 In July of 2004, Law N°28306 that modified Law N°27693 incorporated the financing of terrorism to the money laundering prevention system.

2 With Law Nº27693 24 Reporting Entities were included, which consider all the companies supervised by the SBS (companies of the financial system, insurance system and Private Pension Funds) as entities of other economic sectors such as stock exchange agents, investment funds, money exchange companies, casinos, lottery associations, etc.

Additionally, the abovementioned regulation established that the UIF-Peru is authorized to supervise the money laundering and the financing of terrorism prevention systems of the Reporting Entities that are not supervised by a supervisory organ. With regard to those included in the scope of a supervisor entity, a coordinated supervision will be carried out between UIF-Peru and said supervising entities upon their request.

Moreover, the UIF-Peru can participate in joint investigations with other national public institutions or with international authorities with the same authority for those cases allegedly linked to money laundering and the financing of terrorism activities, in order to request, receive and share information.

In summary, the UIF-Peru was set up due to the inevitable need to fight against money laundering and the financing terrorism, to participate in the international actions against organized crime, which aims at accumulating important amounts of money, through the violation of other people's rights and causing social caos, legal and economic instability. On the other hand, it was also established as a consequence of a commitment assumed by the Peruvian Government which signed different international conventions.

Before the aforementioned regulatory framework, the SBS issued Resolution SBS Nº1725-2003 dated December 12, 2003, that regulated the new legal framework applicable specifically to companies of the financial system, insurance system and Private Pension Funds. Said Resolution has been revised with the issuance of Resolution SBS Nº419-2007 of last April of the present year.

Incorporation of the UIF-Peru to the SBS:

By Law Nº29038, published last June12, the UIF-Peru has been incorporated to the SBS. The aforementioned Law ordered that for the incorporation process a Transference Commission should be created, which was established by Resolution SBS Nº810-2007 and that counts with all the same faculties that the Executive Director of the UIF-Peru had. The President of the Transference Commission is Sergio Espinosa Chiroque and the Vice-President is Silvia Wuan Almandos that is participating in the present Workshop. The SBS is carrying out said transference process with out interfering with the efficiency and achievements the UIF-Peru has obtained in the past.

The transference process maximum deadline is next September 11. Once the UIF-Peru is incorporated in to the SBS it will be an specialized unit that will report directly to the Superintendent of Banking, Insurance and Private Pension Funds.

It is important to mention that the UIF-Peru will continue to be the Central National Agency in charge of receiving the Suspicious Transaction Reports. Law Nº29038 has set this forward and guarantees the independence of the functions of the UIF-Peru, in accordance to the Peruvian Constitution, the SBS is functionally, administrative and economically independent.

Silvia Wuan
Maria Fernanda Garcia Yrigoyen
Lima, Peru
August, 2007

COMPILATION OF EACH ECONOMY'S IMPLEMENTATION SUCCESSES AND MILESTONES RELATED TO:

COMBATING CORRUPTION AS IT RELATES TO MONEY LAUNDERING

REPORT OF

THE UNITED STATES OF AMERICA

August 2007

COMBATING CORRUPTION AS IT RELATES TO MONEY LAUNDERING – PROGRESS REPORT OF THE UNITED STATES

Action I. Increase scrutiny of financial indicators bearing on corruption and money laundering.

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials.	At the federal level, senior officials and those holding positions with risk factors for corruption are required to complete, sign, and submit personal financial statements detailing investments, gifts from outside sources, and information on income and assets of the official, the official's spouse and dependent children. These reports are used to identify and avoid potential conflicts. The reports of senior level officials, including all elected officials and all federal judges and senior political and career appointees, are available to the public. The reports of the rest are confidential. In addition to criminal conflict of interest laws and civil ethics laws applying to officials of all three branches, each branch has one or more administratively enforced codes of conduct.	The financial disclosure systems, the conflict of interests and ethics statutes and codes of conduct are periodically assessed for purposes of effectiveness.
Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.	Within the government, there are several statutory requirements that dictate standardized financial management within agencies including the accounting standards to be used. Evaluation of agencies' adherence to those requirements is ongoing and the evaluations are done pursuant to standardized criteria. For example, the Government Accountability Office has developed and uses the Government Auditing Standards (The Yellow Book) in carrying out its oversight role in the government. In the private sector, in addition to the long-standing standards required for licensure, the obligations of accountants and auditors of publicly traded companies were enhanced by the	The United States will continue to fight domestic corruption aggressively and to investigate U.S. companies and individuals engaged in bribing and otherwise corrupting foreign government officials. The Foreign Corrupt Practices Act (FCPA) makes it a serious federal crime to bribe foreign government officials for the purpose of obtaining or retaining business. Fighting domestic corruption and enforcing the FCPA are major priorities for the United States.

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	passage of the Sarbanes-Oxley Act and the subsequent creation of the Public Company Accounting Oversight Board. This Board maintains a website at www.pcaobus.org. The FCPA has two chief features, an accounting requirement and an anti-bribery prohibition. The FCPA's accounting requirements are not limited to corrupt payments. Publicly-traded companies must maintain accurate books and records. They must also have a system of internal controls to ensure that transactions are properly recorded and executed in accordance with management's direction. The FCPA applies to all U.S. companies, U.S. nationals, officers, directors, employees, or agents of U.S. companies, shareholders acting on a U.S. company's behalf, and any foreign company or national that does an act within the United States. It prohibits the giving a bribe to any foreign official in order to obtain or retain business. Violations of the act may result in a civil enforcement action by the U.S. Securities and Exchange Commission (SEC). Willful violations may result in a criminal prosecution by the Department of Justice. In recent years, the Justice Department has substantially increased its focus on enforcing the FCPA, which prohibits U.S. companies – and foreign companies that issue stock on U.S. capital markets – from bribing foreign government officials. In that time, we have secured major FCPA plea agreements or deferred prosecution agreements from a number of major corporations and individuals. In the last year alone, the United States obtained 7 FCPA dispositions against corporations and individuals who violated the statute. These actions resulted in approximately $88 million in penalties.	
Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's	The U.S. is largely compliant with the Financial Action Task Force's (FATF) 40+9 Recommendations on money laundering and terrorist financing, and has undergone a thorough assessment conducted by the FATF to assess its compliance with these standards in June 2006. The U.S.	The U.S. will continue to provide experts to participate in Anti-Money Laundering (AML) / Counter Terrorist Financing (CFT) assessments globally, conducted by the FATF or its regional style bodies.

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	received a rating of "largely compliant" with FATF Recommendation 6 regarding customer due diligence requirements for politically exposed persons. Within Section 312 of the USA PATRIOT Act, enhanced scrutiny is required of private banking accounts that are maintained by or on behalf of senior foreign political figures, their immediate families and close associates. This provision requires financial institutions to establish appropriate, specific, and where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through private banking accounts.	

Action II. Deny Safe Haven to Those Benefiting from Corruption and/or Money Laundering and Recover Proceeds

Work to strengthen international cooperation in preventing and combating corruption, the recovery and return of proceeds of corruption.	The United States continues to work with other APEC economies to develop and support capacity-building programs as part of the ACT initiative. Information shared includes anti-corruption tools, training, and best practices related to: prevention, investigation and prosecutorial techniques; judicial reform; anti-money laundering; denial of safe haven; asset forfeiture and recovery; corporate governance; and anti-corruption measures for the development of Small and Medium Enterprises (SMEs) and Micro Enterprises (MEs). In April 2006, for example, the U.S. and China co-sponsored a APEC ACT Symposium in Shanghai, on the denial of safe haven, extradition, asset recovery, anti-bribery, and anti-money laundering. A team of US prosecutors and counter-corruption advisers shared with APEC counterparts a variety of counter-corruption and mutual legal assistance tools, including innovative legal concepts and software.	The United States has been a strong advocate of promoting international cooperation on asset recovery issues and will be working with various multilateral partners to develop workshops and training sessions in Asia and other regions. The United States will continue to increase international cooperation to: identify and prevent access by kleptocrats to financial systems; to deny safe haven to corrupt officials; to identify, recover and return proceeds of corruption; and to provide anti-corruption assistance for capacity and training to strengthen critical law enforcement and rule of law systems. The U.S. is collaborating with UNODC to cosponsor several workshops on the recovery of assets consistent with UNCAC principles and provisions. For example, the United States hopes to support Indonesia and partner with the ADB, OECD, and UNODC for an asset recovery workshop which will be held in Bali in September 2007. The United States is also supporting Peru for their upcoming Symposium entitled "The Fight against Corruption is a Common International Responsibility: Strengthening the Cooperation Mechanisms in the Asia Pacific Region." We hope the work of the APEC ACT Task Force is highlighted during COSP II, which will be hosted by Indonesia, as a useful model of anti-corruption cooperation with the Asia Pacific region.
Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.	The United States has signed and ratified over 50 bilateral Mutual Legal Assistance Treaties (MLATs) that are in force worldwide. The United States has signed and ratified multilateral treaties, including the UNCAC and the UN Convention against Transnational Organized Crime, that provide for mutual legal assistance in corruption cases. Where there is no such treaty provision, the United States may provide assistance to foreign and international tribunals in accordance with U.S. domestic law (e.g. 28 USC § 1782). The United States has bilateral extradition treaties with over 110 countries. Most of these treaties already include bribery	Also of practical significance to the United States is the possibility contemplated by UNCAC for expanded international cooperation, and in particular mutual legal assistance, in corruption-related investigations and prosecutions. The United States, through the UNCAC, will be better able to exchange assistance with a wide range of countries – principally developing countries – with which we previously did not have such treaty-based relations. Possible assistance will include action under 28 USC § 2467 to restrain assets at the request of such jurisdictions and to enforce their future forfeiture judgments against kleptocrats and their assets.

	and/or corruption as extraditable offenses. Offenses established in accordance with the UNCAC are deemed to be included as extraditable offenses under U.S. bilateral extradition treaties. The United States has successfully forfeited the proceeds of misappropriation by kleptocrats and repatriated funds to such economies as Peru, Nicaragua and Kazakhstan, among other recent examples. The return of assets has been conducted in a responsible manner that ensures their use, under transparent and accountable procedures, for the benefit of the public	
Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.	The United States promotes cooperation among financial intelligence units (FIU) through its participation in the Egmont Group, including information exchange among FIUs. The United States' FIU, the Financial Crimes Enforcement Network (FinCEN), actively shares information with other FIUs. As of 30 May 2007, FinCEN has entered into 27 MOUs with its counterparts (Australia, Albania, Argentina, Aruba, Belgium, Canada, Cayman Islands, Chile, Cyprus, France, Guatemala, Italy, Japan, Macedonia, Mexico, Philippines, Poland, Russia, Netherlands Antilles, Panama, Singapore, Slovenia, South Korea, Spain, and the U.K.) FinCEN shares data with Egmont partners, even in the absence of an MOU.	The United States will continue to strengthen its operational relationships by, among other things, entering into further bilateral agreements or cooperative arrangements with APEC jurisdictions.
Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.	The United States has several legal authorities for denying entry to foreign citizens who are involved in corruption. Presidential Proclamation 7750, issued in January 2004, allows denial of entry of persons engaged in or benefiting from corruption, where that corruption has or had serious adverse effects on the national interests of the United States. Such individuals could also be denied entry if they are convicted of bribery in their home courts or if they have laundered funds through U.S. financial institutions or have been involved in other crimes under which our Immigration and Naturalization Act (INA) would regard them as ineligible for entry. For example, the INA allows denial of entry to individuals convicted of crimes of moral turpitude, or involved in money laundering, trafficking in persons, or other	Further to its efforts at the 2006 U.S.-China ACT Symposium in Shanghai, the U.S. will work with other APEC economies to encourage the denial of safe haven through our national laws to individuals found guilty of corruption, the return of illicitly-acquired assets, and the development of further measures to prevent such individuals from gaining access to the fruits of their criminal activities in our financial systems.

	crimes involving corruption.	
Work cooperatively, within the means of each economy, using mechanisms in the UNCAC, FATF, or other international initiatives and in accordance with domestic law, to investigate and prosecute corruption offenses and to trace, freeze, and recover the proceeds of corruption.	The United States continues to work cooperatively to find, freeze, and recover proceeds of corruption that are moved and maintained overseas and/or are moved into the U.S. financial system**.**	In September 2007, the United States hopes to support Indonesia and partners UNODC, APEC, OECD, ADB and the Swiss-based International Centre on Asset Recovery for a regional asset recovery workshop in Bali, Indonesia. Attendees will discuss asset recovery and related mutual legal assistance using the new UN Convention Against Corruption (UNCAC) asset recovery framework. In October 2007, the United States will work with APEC economies to help support a regional asset recovery workshop in Lima, Peru. This symposium will address pursuing asset recovery cases under the new UNCAC framework and focus on strengthening cooperation between countries in the Americas and Asia Pacific regions. It is expected that organizers for both events will present their conference reports and showcase the work of APEC and others to the second UNCAC Conference of States Parties in Bali, Indonesia in January 2008. Outside of APEC, the Unites States plans to co-sponsor a UNCAC/asset recovery program in the Middle East, tentatively scheduled for Jordan in December 2007.

National Strategy Against High-Level Corruption:

Coordinating International Efforts to Combat Kleptocracy

"Corrupt practices undermine government institutions, impede economic and social development, and cast shadows of lawlessness that erode the public trust."

—President George W. Bush

Kleptocracy Threatens U.S. Global Interests

High-level, large-scale corruption by public officials, or kleptocracy, threatens America's global interests. These interests include ensuring security and stability; the rule of law and core democratic values; discouraging tyrannical regimes; advancing prosperity; and creating a level playing field for lawful business activities.

International Anti-Kleptocracy Initiative

President George W. Bush unveiled in August 2006 a National Strategy to Internationalize Efforts Against Kleptocracy, a component of his strategy to fight corruption around the world. The U.S. has been engaged for some time in the fight against kleptocracy. This strategy combines the policy and law enforcement tools of several federal agencies, including the Departments of State, Treasury, Justice, and Homeland Security. It builds upon G-8 leaders' and other international commitments to mobilize and coordinate global efforts to end large-scale corruption in the public and private sectors by:

- Denying safe haven to kleptocrats and those who corrupt them;
- Bringing together major financial centers, vulnerable to exploitation by corrupt officials, to develop best practices specifically to deny financial haven to corruption;
- Enhancing information sharing with foreign partners and financial institutions on corrupt officials;
- Uncovering and seizing stolen funds and returning them to their rightful owners; and
- Ensuring greater accountability of development assistance to nurture new hope and horizons for societies and their children around the world.

Kleptocracy Undermines Democracy and Hinders Prosperity

Corruption is a threat to both developing and developed countries where it:

- Undermines sound public financial management and accountability;
- Weakens market integrity and deters foreign investment;
- Stifles economic growth and sustainable development;
- Distorts prices;
- Undercuts democracy and the rule of law;
- Impedes reforms; and
- Destroys aspirations for a better way of life and faith in freedom and democratic principles.

(Continued on next page…)

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U.S. Leads Fight Against Corruption

The U.S. actively supports effective anticorruption measures through various international bodies and conventions. In addition to the President's commitment made with G-8 leaders to promote legal frameworks and a global financial system to reduce opportunities for kleptocracy, the United States has promoted strong anticorruption leadership and action in, but not limited to, the following:

- The United Nations' Convention Against Corruption
- The Organization for Economic Cooperation and Development's Anti-Bribery Convention and Working Group on Bribery
- The Council of Europe Group of States Against Corruption
- The Organization of American States' Mechanism for Implementing the Inter-American Convention Against Corruption
- The Asia-Pacific Economic Cooperation's Anticorruption and Transparency Initiative
- The Broader Middle East and North Africa's "Governance for Development in Arab States" Initiative

The U.S. Government has also worked with its G-8 partners to launch anticorruption pilot programs in Georgia, Nicaragua, Nigeria, and Peru, and has persuaded other nations to accept and apply the "Denial of Safe Haven" policy.

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KLEPTOCRATS

Saddam Hussein, former President of Iraq

Hussein looted Iraq of billions of dollars by skimming workers' profits, taking kickbacks, smuggling, and stealing state funds. He used these ill-gotten gains to maintain despotic power, develop and purchase weapons, and enrich his family, cronies, and himself.

Arnoldo Aleman, former President of Nicaragua

Aleman and other officials embezzled millions from the Government of Nicaragua by diverting government funds offshore for personal enrichment.

Sani Abacha, former President of Nigeria

Abacha amassed about $2 billion in illicit proceeds by taking bribes and kickbacks from foreign contractors, awarding contracts to bogus companies, and stealing money from the Nigerian Central Bank.

Alberto Fujimori, former President of Peru

Fujimori fled to Japan and resigned his presidency amid accusations of fraud, corruption, and money laundering leveled against him and several of his close associates. U.S. law enforcement agencies discovered more than $20 million in assets hidden in the United States which were returned to the Government of Peru.

Department of Justice

STATEMENT

OF

BRUCE C. SWARTZ
DEPUTY ASSISTANT ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL DIVISION

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

CONCERNING

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

PRESENTED ON

JUNE 21, 2006

STATEMENT OF BRUCE C. SWARTZ
DEPUTY ASSISTANT ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL DIVISION

BEFORE THE

UNITED STATES SENATE COMMITTEE ON FOREIGN RELATIONS
IN RE THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

JUNE 21, 2006
9:30 A.M.

I. INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I am pleased to appear before you today on behalf of the United States Department of Justice to testify in favor of the United Nations Convention Against Corruption. This new treaty, if ratified, will significantly and directly advance the national security and law enforcement interests of the United States. As President Bush has stated: "The international fight against corruption is an important foreign policy priority for the United States. Corruption hinders sustainable development, erodes confidence in democratic institutions, and facilitates transnational crime and terrorism. The Convention will be an effective tool to assist in the growing global effort to combat corruption."

The U.N. Convention Against Corruption is the first truly global anti-corruption treaty. It is the culmination of a worldwide movement against corruption that has resulted in regional corruption conventions, such as the Organization of American States Inter-American Convention Against Corruption, the Council of Europe Convention Against Corruption, and the Organization for Economic Cooperation and Development Corruption Convention. Although those other conventions have addressed corruption on a regional basis, none has attacked corruption with the same substantive or geographical breadth as the U.N. Convention.

Mr. Chairman, I understand that the President and the Secretary of State have already submitted

to this Committee substantial information detailing the various provisions of the Convention. You have also heard this morning from my State Department colleague, Mr. Witten. I do not intend to duplicate the information you have received from those sources. I would, however, like to take this opportunity to more fully explain exactly why this treaty is so important from a federal criminal law enforcement perspective. Specifically, I would like to discuss the Convention's core criminalization provisions under Chapter III; the provisions related to international law enforcement cooperation under Chapter IV; and the provisions related to asset recovery under Chapter V. I would also like to briefly discuss the technical assistance and implementation provisions of Chapters VI and VII.

The Attorney General has made fighting corruption one of his top priorities. And as Deputy Assistant Attorney General of the Justice Department's Criminal Division, I can tell you first-hand that the Department's anti-corruption efforts do not stop at our borders. Under the Attorney General's leadership, as well as the leadership of Assistant Attorney General Alice Fisher, the Criminal Division's prosecutors are working tirelessly every day to root out global corruption and to prosecute bribery of foreign officials.

For example, we are aggressively investigating violations of our Foreign Corrupt Practices Act, which as you know makes it illegal for U.S. companies and individuals doing business overseas to bribe foreign officials. We are actively working to recover and repatriate the proceeds of foreign official corruption and urging other countries to do the same. We are also working extremely hard to root out bribery in the Iraq reconstruction process. And through our overseas prosecutorial development and training assistance program, we are working with our international partners to build and strengthen the ability of prosecutors around the world to fight corruption.

The U.N. Corruption Convention, if timely ratified by the U.S. Senate, would create new opportunities for international law enforcement cooperation to combat corruption around the world. It would give the Department new tools to more effectively prosecute companies and individuals who

bribe foreign governments. And it would make it easier for the Department to recover the ill gotten assets of corrupt government officials.

II. CRIMINALIZATION

Let me begin by describing the Convention's core criminalization provisions, which can be found in Chapter III of the Convention. Articles 15, 16, 17, 23 and 25 require all signatory nations to enact laws criminalizing bribery and associated conduct. Article 15, for example, requires countries to criminalize bribery of domestic public officials. Article 16 requires countries to criminalize bribery of foreign public officials. Article 17 requires criminalization of embezzlement by public officials. Article 23 requires criminalization of money laundering and requires countries to expand the reach of their money laundering laws to predicate offenses associated with corruption. Finally, Article 25 requires criminalization of obstruction of justice related to offenses set forth in the Convention.

As this Committee knows, all of the foregoing offenses are already illegal under U.S. law. For that reason, and because the other criminalization provisions in Chapter III are discretionary, the U.S. does not need to enact any new legislation to implement Chapter III (or any other components) of this Convention. Rather than placing a burden on the U.S. to change its laws, this Convention puts the burden on countries around the world to enact anti-bribery laws that the U.S. already has in place.

The effect on U.S. economic and security interests of criminalizing bribery and related offenses on a global scale cannot be overstated. Let me give you an example. Under the U.S. Foreign Corrupt Practices Act, or FCPA, it is illegal for U.S. companies to bribe foreign government officials for the purpose of retaining or obtaining business or securing any unfair advantage. Because corruption is rampant in certain parts of the world in which our companies do business, U.S. companies seeking to play by the rules often have been at a competitive disadvantage.

The core criminalization provisions of this Convention will level the playing field by requiring everyone to play by the same set of rules. The Convention effectively requires all signatory nations to

adopt a "Foreign Corrupt Practices Act" of their own. Now all companies based in countries that are Parties to the Convention will have an obligation to comply with the same anti-bribery laws in competing for business overseas. That is good for U.S. businesses. It is also good for federal law enforcement, because the less financial incentive companies have to bribe foreign government officials, the less likely they will be to ignore or subvert the requirements of the FCPA.

The Convention's core criminalization provisions are also good for the U.S. economy. As this Committee knows, public corruption weakens the integrity, stability and transparency of market systems. By criminalizing domestic and foreign public corruption and related offenses, this Convention helps to promote the integrity, stability and transparency of foreign markets, thereby creating opportunities for U.S. investment in those markets.

Finally, the core criminalization provisions of the Convention are good for U.S. national security. For example, as President Bush stated in his transmittal message, corruption facilitates transnational crime and terrorism by funding – directly or indirectly – criminal and terrorist organizations. By criminalizing domestic and foreign bribery and related offenses, this Convention will reduce or cut off a critical funding source for terrorists, drug traffickers, money launderers and other criminals.

At this point Mr. Chairman, I would like to briefly note that the Secretary of State has recommended one reservation and one declaration relevant to the core criminalization chapter. First, the Secretary of State has recommended that the United States take a reservation to the Convention to accommodate federalism concerns. As the Committee knows, federal criminal law does not apply where the criminal conduct does not implicate interstate commerce or another federal interest. Federal criminal law may therefore be inadequate to satisfy our obligations under the Convention with respect to purely local conduct without any attendant federal interest. Accordingly, the Secretary of State has recommended that the U.S. reserve to the obligations set forth in the Convention "to the extent they (1)

address conduct that would fall within this narrow category of highly localized activity or (2) involve preventative measures not covered by federal law governing state and local officials." In light of this reservation, the Convention does not require any additional legislation by state or local government (or the federal government). The Justice Department supports this reservation.

Second, the Secretary of State has recommended that the Senate include a declaration in its resolution of advice and consent that makes clear that the provisions of the Convention, with the exception of Articles 44 and 46 regarding extradition and mutual legal assistance, are non-self executing. This is particularly relevant to Article 35 of the criminalization chapter, which requires that "each State Party shall take such measures as may be necessary . . . to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage . . . ."

Under U.S. law, private parties damaged by corruption already have private rights of action under various theories (*e.g.*, fraud claims, shareholder class actions or derivative suits). The U.S. is therefore already in compliance with Article 35. The Secretary of State recommends this declaration, however, to clarify that none of the provisions, including Article 35, creates an independent private right of action that could open U.S. courts to civil lawsuits that would not otherwise lie under U.S. law. The Justice Department fully supports such a declaration.

III. INTERNATIONAL COOPERATION

I would now like to briefly describe Chapter IV of the Convention, which governs international law enforcement cooperation. Mr. Chairman, the provisions of this Chapter provide critical new tools to federal law enforcement by creating new mechanisms for extradition and mutual legal assistance. At the same time, these provisions provide the U.S. government with all of the safeguards found in modern bilateral mutual legal assistance treaties, including options for non-compliance where assistance would offend the "essential interests" of the United States.

These provisions are closely modeled after similar provisions in the United Nations Convention Against Transnational Organized Crime, which as you know the United States Senate has ratified. Article 44, for example, creates an extradition regime for offenses established pursuant to this Convention where dual criminality exists (*i.e.*, where the offense is criminalized under the laws of both the requesting and the requested State). Article 44 provides that States Parties may make extradition conditional upon the existence of a bilateral extradition treaty (which is the practice in the United States). It also provides that "each of the offenses to which this article applies shall be deemed to be included as an extraditable offenses" in any existing treaty. Thus, the practical effect of this Article is to expand the substantive scope of existing bilateral extradition treaties to new offenses such as money laundering, obstruction of justice, foreign and domestic bribery, and embezzlement.

Additionally, Article 46 creates a framework for mutual legal assistance in corruption-related cases where the States Parties do not otherwise have mutual legal assistance obligations. Parties with bilateral mutual legal assistance treaties can continue to use those existing agreements. Parties that do not have existing bilateral mutual legal assistance treaties can use Article 46 as an independent legal basis for requesting or providing assistance. Article 46 is effectively a "treaty within a treaty" governing in great detail cooperation between the States Parties for offenses covered by the Convention.

Specifically, Article 46 sets forth various types of assistance that States Parties may request under the Convention (including taking evidence or statements from persons, effecting service of judicial documents, executing searches and seizures, and other activities). Paragraphs 9 and 21, however, list various grounds upon which assistance may be refused, providing strong safeguards in the event incoming requests are fundamentally at odds with U.S. law or interests. Article 46 also requires on a global scale measures that have long been a standard aspect of U.S. mutual legal assistance practice but that are not always applicable in other countries, such as the prohibition on

invoking bank secrecy to bar cooperation in Paragraph 8.

Finally, Chapter IV contains several other non-mandatory but helpful cooperation provisions, including Article 48 (encouraging States Parties to cooperate closely to enhance the effectiveness of law enforcement action) and Article 49 (whereby States Parties shall consider concluding bilateral or multilateral joint investigation agreements).

We believe that all of these provisions provide important new tools to U.S. law enforcement. Let me give you a practical example. As I stated earlier, enforcing the Foreign Corrupt Practices Act is a major priority for the Justice Department's Criminal Division. The very nature of FCPA investigations, however, is that many of the relevant witnesses and evidence often are located in foreign countries. The Justice Department believes that the international cooperation provisions in this Convention will increase our ability to obtain evidence from foreign countries, leading to more effective enforcement of the FCPA and other offenses. And by providing us with the tools to more effectively investigate and prosecute the FCPA, the Convention helps us to preserve the integrity, stability and transparency of our political and economic systems.

IV. ASSET RECOVERY

I would now like to discuss a few of the key asset recovery provisions of the Convention, which can be found at Articles 51-59. The asset recovery provisions establish new mechanisms for the recovery of illicitly acquired assets and for international cooperation regarding asset forfeiture. These provisions are important from a law enforcement prospective because they will help to deprive corrupt officials of their ill-gotten gains. They may also help lessen the effects of grand corruption by, in some cases, requiring property to be returned to the nation from which it was taken.

Article 52, for example, requires States Parties to have adequate procedures in place to ensure financial institutions pay particular attention for suspicious activity involving private banking accounts of foreign officials. Article 53 allows a State Party to participate as a private litigant in the courts of

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another state to recover corruption proceeds as a plaintiff in its own action, as a claimant in a forfeiture proceeding, or as a victim for purposes of court ordered restitution. And in Article 54, the Convention requires States Parties to establish a legal framework for providing assistance in the recovery of assets acquired through one of the core criminalized offenses. Importantly, under this provision, countries must have legislation to enable them to freeze and forfeit illicit property based on their own investigation and also have the statutory basis to recognize a foreign restraint order or forfeiture judgment. This legislative framework provides the foundation for cooperation executed in accordance with the provisions of Article 55, which, in appropriate cases, the Department would seek to use to seek enforcement of both U.S. *in rem* civil forfeiture and post-conviction criminal forfeiture judgments.

Finally, Article 57 sets forth a framework for the disposition of property forfeited by one State Party at the request of another. Although Article 57 is an important new provision to ensure victim states receive recovered assets, it is narrow in scope and thus will not burden the United States. First, Article 57 applies only in cases in which one country has successfully recovered the proceeds of foreign corruption through enforcement of a foreign forfeiture order (*i.e.*, pursuant to Article 55(1)(b)). Second, Article 57 reaffirms the principle that repatriation of forfeited assets is subject to the requirements and procedures of domestic law. Third, the obligation is subject to the same safeguards as provided in Article 46. The U.S. government could therefore refuse a request to repatriate funds under this Article where assistance would offend the "essential interests" of the United States. The United States has ample authority through its asset sharing and remission statutes to execute the obligations under Article 57.

V. TECHNICAL ASSISTANCE AND IMPLEMENTATION

Finally Mr. Chairman, I would like to say a brief word about the technical assistance and implementation provisions of the Convention. The Convention, in Chapter VI, calls for States Parties

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to provide each other with technical assistance in implementing the various provisions of the Convention. In Chapter VII, the Convention creates a Conference of the States Parties to the Convention, the purpose of which is to "improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation."

The first meeting of the Conference of the States Parties, or COSP, is tentatively scheduled to occur in December of this year. The COSP will determine the substance and scope of any technical assistance and implementation programs, including any mechanism for "peer review" or "monitoring." In the months leading up to the COSP, signatory nations will be working informally to develop an agenda for the COSP and to begin to discuss the substantive issues that the COSP will address. For example, the Criminal Division and other U.S. government components have already been assisting the United Nations Office on Drugs and Crime with the drafting of legislative and technical guides for the Convention.

Critically, the United States will have more influence as a participant in the COSP if the U.S. Senate has ratified the Convention (because absent ratification and deposit of the instrument of ratification, the United States is not officially a "State Party" to the Convention). Participating in the COSP as a State Party will benefit the United States. Among other things, as a State Party we will be in a better position to influence the scope of any peer review mechanism that may emerge from the COSP to ensure that it is not unduly burdensome or otherwise unreasonable.

Accordingly, I respectfully urge the Committee and the Senate to approve the Convention as soon as practicable, but in any event prior to December 2006.

VI. CONCLUSION

Mr. Chairman, by combating global corruption, we restore confidence in democracy and the rule of law. We bolster the global economy by encouraging open trade and investment. We strengthen

the stability, integrity and transparency of government and economic systems worldwide. The United Nations Convention Against Corruption helps us do all of those things.

But above all, Mr. Chairman, the Convention significantly and directly advances the national security and law enforcement interests of the United States of America. As Attorney General Ashcroft stated at the treaty signing in Merida, Mexico: "The fight against corruption is critical to realizing our shared and essential interests. Corruption undermines the goals of peace loving and democratic nations. It jeopardizes free markets and sustainable development. It provides sanctuary to the forces of global terror, and facilitates the illicit activities of international and domestic criminals. It undermines the legitimacy of democratic governments and can, in its extreme forms, even threaten democracy itself."

On behalf of the Department of Justice, I therefore urge this Committee and the U.S. Senate to ratify this important treaty.

I would be pleased to respond to any questions the Committee may have.

U.S. Legal Authorities and Other Tools to Combat Grand Corruption

On August 10, 2006, the President of the United States of America announced a new U.S. Strategy to Internationalize Efforts Against Kleptocracy: Combating High-Level Public Corruption, Denying Safe Haven, and Recovering Assets. Consistent with this U.S. Kleptocracy Strategy, the U.S. government has compiled a non-exhaustive list of some of the principal U.S. legal authorities and tools available for recovering the proceeds of grand corruption. These mechanisms have been grouped into three broad categories: (1) Prevention and Detection Mechanisms; (2) Tracing and Recovering Mechanisms; and (3) Diplomatic Authorities and Multilateral Efforts. We look forward to coordination with international partners in our joint efforts to combat kleptocracy.

I. PREVENTING and DETECTING

Administrative and regulatory mechanisms are particularly important for preventing the proceeds of grand corruption from entering the United States financial system in the first instance and detecting potential movements of the illicitly acquired assets.

1. ***Domestic Regulatory Requirements.*** Domestic regulatory requirements oblige U.S. financial institutions to:
   - Conduct **enhanced scrutiny of** private banking accounts established or maintained for non-U.S. politically exposed persons (PEPs);
   - File **Suspicious Activity Reports** (SARs) where a financial institution subject to Bank Secrecy Act (BSA) suspicious activity reporting requirements knows, suspects, or has reason to suspect that a transaction involves funds derived from illegal activity or that a customer has otherwise engaged in activities indicative of money laundering, terrorist financing, or other violation of law or regulation;
   - File **Currency Transaction Reports (CTRs)** regarding each deposit, withdrawal, exchange of currency, or other payment or transfer to, by, or through a financial institution in connection with transactions involving more than $10,000 in currency by or on behalf of any one person (natural or legal) during any one business day; and
   - Include and maintain **funds transmittal transactional information**, including originator and beneficiary information.
   - Additionally, each *person* who physically mails, ships, or transports over $10,000 in currency or monetary instruments at any one time into or out of the United States (and each person who causes such mailing, transportation, or shipment) must file a **Report of International Transportation of Currency or Monetary Instrument (CMIR)** form.

2. ***Alerts, Advisories, and Enhanced Information Sharing.*** Examples of these tools include:
   - Mechanisms for **sharing information** between federal law enforcement and financial institutions allow law enforcement to request information from qualifying financial institutions regarding certain account and transaction information on specified individuals, entities, or organizations based on a certification of credible evidence, or reasonable suspicion, of engagement in money laundering and other criminal activities;

- **Voluntary information sharing among certain financial institutions,** including sharing information relating to the activities of individuals, entities, or organizations that may involve money laundering and other criminal activities;
- Issuing **Financial Crimes Enforcement Network (FinCEN) advisories** where there is credible, substantiated information regarding a money laundering or other threat to U.S. financial institutions and the U.S. financial system through PEPs seeking to move illicitly acquired assets to, from, or through the U.S. financial system;
- Facilitating and promoting **FIU-to-FIU Information Sharing.** Through the Financial Crimes Enforcement Network (FinCEN), the United States Government can in appropriate instances seek assistance and share information with other FIUs internationally about particular money laundering concerns, including particular PEPs, jurisdictions of concern, and transactions involving illicit assets from foreign public corruption; and
- Providing electronic access to BSA reports (including SARS and CTRs) that **alert and advise** appropriate law enforcement, intelligence, and financial regulatory bodies about possible flows of criminal proceeds to and through the U.S. financial system.

3. ***Designations and Special Measures.*** Section 311 of the Patriot Act authorizes the Secretary of the Treasury to designate a foreign jurisdiction, foreign financial institution, class of transaction, or type of account as being of "primary money laundering concern" and impose "special measures" to address this concern. Such special measures include enhanced recordkeeping and reporting requirements and prohibiting U.S. financial institutions from opening or maintaining correspondent or payable-through accounts for or on behalf of a foreign financial institution if the account involves a foreign jurisdiction, foreign financial institution, class of transaction, or type of account that is found to be of primary money laundering concern. This authority potentially can be used to alert financial institutions to a particular foreign public corruption-related money laundering problem.

4. ***Presidential Executive Orders (E.O.s) to Impose Economic Sanctions.*** A Presidential Executive Order (E.O.) can impose economic sanctions through the President's declaring a national emergency with respect to particular individuals, entities, or jurisdictions ("designated persons") that pose an unusual and extraordinary threat to the national security, foreign policy, or economy of the United States. Where such a national emergency is declared, a typical E.O., modeled on prior E.O.'s, would preclude U.S. companies and individuals anywhere in the world from engaging in business dealings or other transactions with designated persons. Such an E.O. would also require all persons under U.S. jurisdiction (including financial institutions and their foreign branches) to identify and block all property of designated persons located in the United States or otherwise subject to U.S. jurisdiction. Future transactions through the U.S. financial system would also be blocked when identified. An E.O. also typically would allow for ongoing derivative designations of entities and individuals that are owned or controlled by, acting on behalf of, or providing material support, assistance or services to the parties specifically named in the E.O. or other subsequently designated parties. An E.O. could be issued either unilaterally or in concert with a United Nations Security Council Resolution (UNSCR).

5. Prosecuting Corruption and Money Laundering Offenses. In addition to serving as a basis for recovery of assets through forfeiture, criminal prosecution in the United States serves as an important mechanism for the prevention of kleptocracy and a strong deterrent to the introduction into the United States of the proceeds of grand corruption. Since 1977, through the Foreign Corruption Practices Act (FCPA), the United States has explicitly outlawed bribery of foreign officials in commercial transactions by U.S. nationals or companies, and provided for both criminal prosecutions and civil enforcement actions to attack the supply side of corruption. Similarly, prosecutions, and in some cases civil penalties for violations of federal money laundering laws, federal mail, and wire fraud statutes, the Racketeer Influenced and Corrupt Organizations (RICO) statutes, the Interstate Travel in Aid of Racketeering Act (ITAR), and other U.S. criminal statutes, can carry significant penalties for conduct involving foreign official corruption or related money laundering.

II. TRACING and RECOVERING

Where foreign official corruption and/or the laundering of kleptocratic proceeds involves violations of U.S. or foreign criminal law, the United States Government has a broad range of law enforcement investigation and forfeiture tools with which to trace and recover the proceeds of grand corruption and to provide assistance to foreign investigations to recover assets. Under most circumstances, property must be forfeited to the United States in order for the United States Government to obtain title and transfer it for the benefit to the country victimized by grand corruption. Consequently, these mechanisms are particularly useful in United States Government efforts to identify and recover the proceeds of foreign official corruption.

1. Law Enforcement Investigatory Authority. As in all criminal investigations, U.S. law enforcement can use a wide range of effective investigatory techniques to obtain information and evidence in support of corruption-related forfeiture cases. Different techniques may require court approval or may otherwise be subject to constitutional, statutory, and internal administrative limitations, such as the stringent non-disclosure requirements of grand jury proceedings. In addition to more traditional investigative techniques, other techniques available to U.S. law enforcement include:

- **Obtaining evidentiary information located abroad,** including through a formal letter rogatory, treaty request (e.g., Mutual Legal Assistance), or official letter of request. The United States Government's strong network of bilateral and multilateral treaties provides for mutual legal assistance in the formal production of foreign evidence. In atypical cases where foreign law, treaties, and law enforcement relationships are unable to secure required evidence, the United States Government may seek production of foreign financial records based upon a foreign financial institution's physical presence in the United States or use of correspondent bank accounts in the United States.
- Providing **investigative assistance to foreign authorities,** when they request assistance in tracing assets. Where compulsory production of evidence is required, the scope of assistance that the United States can provide is governed by the treaty invoked or by the United States' principal foreign judicial assistance statute, which permits a federal prosecutor to subpoena records or compel testimony on behalf of a foreign government. U.S. law enforcement agents can also use non-compulsory investigative techniques to

assist foreign authorities as they would in a domestic case. The United States has numerous law enforcement attachés posted abroad who can facilitate assistance in support of foreign corruption investigations.

- **Use of Financial Intelligence and Other Information.** Examination and analysis of lead information, such as suspicious activity reporting, may enable investigators to trace the proceeds and instrumentalities of crime and can facilitate identification of evidence for legal proceedings.

2. ***U.S. Asset Forfeiture.*** Forfeiture is a consequence of legal proceedings through which title to property is vested in the government following proof of criminal conduct. Forfeiture extinguishes the title of all prior property holders in favor of the government. U.S. forfeiture authority extends to proceeds and instrumentalities of foreign corruption offenses, corruption, and related money laundering offenses occurring in part in the United States, and certain offenses committed by U.S. corporations or persons, even if occurring outside the United States, such as violations of the Foreign Corrupt Practices Act, among others.

   - **Conviction-based forfeiture.** Following conviction, the defendant's interest in property constituting the proceeds of an offense or property used in the commission of the offense is forfeited to the United States as part of the criminal sentence.
   - ***In Rem* forfeiture.** *In rem,* forfeiture actions are actions against property, rather than a criminal defendant, and do not require a conviction. These non-conviction-based *in rem* l forfeiture actions require proof of the nexus between the particular property subject to forfeiture and criminal conduct. *In rem* forfeiture actions are particularly useful in cases in which a criminal conviction is not possible, such as when the property is held by a fugitive or a criminal who has died.
   - **Restraint/Seizure for U.S. Forfeiture.** In both conviction-based and *in rem* forfeiture actions, U.S. courts have broad authority to order the seizure or restraint of property prior to trial to ensure that it remains available for forfeiture, provided there is probable cause to believe the property is traceable to the offense.
     - **Restraint Based Upon Foreign Arrest or Charge.** The United States may seek preliminary restraint of assets based solely on a foreign arrest or criminal charge in order to allow foreign authorities time to provide sufficient probable cause evidence to enable the United States Government to file an *in rem* forfeiture action.
   - **Extraterritorial Reach of U.S. Forfeiture.** U.S. forfeiture authority extends to criminal proceeds and instrumentalities located outside the United States that are traceable to a criminal defendant prosecuted in the United States or to criminal conduct occurring in part in the United States.

3. ***Enforcement of Foreign Forfeiture and Restraining Orders.*** The United States has authority to **enforce foreign forfeiture or confiscation judgments against property located in the United States**, including orders that target proceeds of foreign public corruption. Among other things, this statutory authority requires that (1) the order be issued by a foreign nation that is party to a treaty or other formal international agreement with the United States providing for mutual forfeiture assistance; (2) the offense for which forfeiture was ordered would also constitute conduct giving rise to forfeiture if it occurred in the United States; and (3) the foreign order be certified for enforcement by the Attorney General. The

United States Government also can seek to **restrain property prior to enforcement of a foreign forfeiture judgment** by enforcing a foreign restraining order or based on an affidavit from foreign authorities setting forth a reasonable basis to believe that the property will be named in a foreign forfeiture judgment.

4. ***Disposition and Transfer of Forfeited Assets*.** After forfeiture, the Attorney General has discretionary authority to remit or restore forfeited assets to certain categories of victims, such as prior owner victims. In addition, the Attorney General and the Secretary of the Treasury, with concurrence from the Secretary of State, also have authority to transfer forfeited assets through international sharing to foreign governments that assisted in achieving the forfeiture, including victim states.

III. DIPLOMATIC AUTHORITIES and MULTILATERAL EFFORTS

The United States Government employs a variety of diplomatic and multilateral mechanisms to deter and combat foreign public corruption, especially theft of state assets, and to assist in the recovery of the proceeds of foreign official corruption. These efforts include urging other nations to take an active role in prosecuting those who pay or promise to pay bribes to corrupt officials and recover the proceeds of foreign official corruption. Such measures are particularly relevant for helping other nations establish the legal framework to close their financial systems to criminal proceeds and to develop the necessary laws and practical capacity to conduct effective investigations and prosecutions, block or restrain assets, and forfeit criminal property.

1. ***Diplomatic Outreach.*** Through diplomatic outreach, demarches, and liaison relationships, the United States encourages foreign authorities to cooperate in providing information and access to financial records and other evidence to U.S. investigators. In addition, diplomatic outreach (including bilateral information sharing between United States Government agencies and their counterparts) can encourage other jurisdictions to undertake their own efforts to identify and recover proceeds of corruption. Diplomatic outreach also enables the United States to emphasize the need for transparency and accountability to deter corruption and theft of state assets.

2. ***Promoting Implementation of the U.N. Convention Against Corruption.*** The United States will continue to work with international partners to promote acceptance and implementation of prevention and asset recovery commitments found in the U.N. Convention Against Corruption, which contains innovative and far-reaching commitments to prevent corruption (chapter 2) and to facilitate international cooperation in asset recovery (chapter 5). The U.S. Senate gave its advice and consent to ratification of the UNCAC on September 15, 2006.

3. ***Collaboration with G-8 Members.*** By advancing initiatives in the Group of Eight (G-8), the United States is working in coordination with other G-8 member states to prevent kleptocracy and improve multilateral efforts to recover the proceeds of foreign official corruption.

- ***G-8 Anticorruption/Transparency Initiative.*** The United States is committed to promoting greater transparency in developing country budgets, revenues, and expenditures, as well as public procurement and concession-letting, as called for in the 2003 G-8 Declaration on Fighting Corruption and Improving Transparency. Partnerships among host governments, extractive industry companies, and civil society have an important role to play in supporting such efforts. The 2004 G-8 Sea Island Summit carried this initiative forward with the launch of anticorruption/transparency compacts with four developing countries, while the 2005 G-8 Gleneagles Summit highlighted expanding developing country participation in the Extractive Industries Transparency Initiative (EITI).
- ***G-8 Justice and Home Affairs Asset Recovery Initiative.*** The United States Government is continuing to implement the G-8 Justice and Home Affairs Ministerial decision adopted May 2004 to assist in the recovery of the proceeds of grand corruption. The initiative provides for accelerated response teams to help victim countries formulate formal requests and furnish supporting evidence in asset recovery actions. It also calls for enhancing case coordination among G-8 members in such cases; sponsoring technical workshops on asset recovery; and ensuring that G-8 countries have adequate laws and procedures to detect and recover proceeds of corruption.

4. ***Internationalizing Denial of Safe Haven Policy and Efforts Against Grand Public Corruption.*** The United States Government continues to urge nations to deny safe haven to corrupt officials (through visa denial); to support asset recovery initiatives in cases of grand public corruption; and to take steps to ratify and implement the United Nations Convention against Corruption (UNCAC). The United States promotes these efforts through regional and international fora such as the Special Summit of the Americas in January 2004; the OAS, including the 2004 OAS General Assembly; the G-8, including the 2003, 2004, 2005 and 2006 G-8 Summits; the Asia-Pacific Economic Cooperation (APEC) Leaders' Meetings in 2004 and 2005; and the June 2005 Fourth Global Forum on Fighting Corruption.

5. ***Prosecuting Those Who Bribe.*** Recognizing that addressing the supply side of corruption is as important as taking measures against corrupt officials themselves, the United States continues to work for effective implementation of the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and other OECD anti-bribery measures. We encourage our international partners to take active steps to enforce the Convention by investigating and prosecuting persons who pay or promise to pay bribes to foreign public officials, just as U.S. enforcement agencies do under the Foreign Corrupt Practices Act. The United States Government is also leading efforts to strengthen anti-bribery regimes for those who apply for and use official export credits and credit guarantees, and for multilateral development bank anti-bribery measures in their procurement and contracting functions. Strong measures in these areas help deter and detect possible grand public corruption.

6. ***U.N. Security Council Resolutions and U.N. Listings.*** To internationalize a particular asset recovery effort, the United States can seek a U.N. Security Council Resolution (UNSCR), requiring all U.N. member states to identify, freeze, and transfer illicit assets located in their jurisdictions related to a particular instance of public corruption. The UNSCR may include a

requirement to block assets of designated persons and entities, and lead to the issuance of a U.S. Executive Order.

7. ***Financial Action Task Force (FATF) Recommendations.*** The United States Government supports and promotes implementation of the Revised FATF Forty Recommendations on money laundering and the Nine Special Recommendations on terrorist financing. These recommendations establish international standards of financial transparency and accountability that can help prevent criminals, including corrupt foreign government officials, from gaining access to the international financial system, and can provide valuable information for identifying, tracing, and recovering those assets that do enter the financial systems of countries applying the standards. The Recommendations include a specific recommendation (Recommendation 6) to apply enhanced scrutiny to accounts of politically exposed persons (PEPs).

8. ***Other Multilateral Asset Initiatives.*** The United States Government also actively participates in other multilateral initiatives that support efforts to identify, trace, freeze, and recover the proceeds of crime, including foreign official corruption. For example, the United States Government provides experts to the Council of Europe Group of States Against Corruption (GRECO) to participate in the mutual evaluation of anticorruption systems of other GRECO member states, including their asset recovery capabilities. Similarly, the United States Government seeks to strengthen foreign forfeiture systems and international cooperation in forfeiture through participation in such organizations as the Money Laundering Experts Group of the Organization of American States and the newly-formed Camden Asset Recovery Inter-Agency Network, composed principally of Council of Europe states and the United States. The United States is also working with other donors and developing countries, extractive companies, and civil society to broaden and deepen the G-8 Extractive Industries Transparency Initiative as one means of helping ensure that natural resource revenues are budgeted for economic development and poverty reduction rather than the enrichment of kleptocrats.

9. ***Technical Assistance.*** Through the Departments of State, Treasury, Justice, and Homeland Security, as well as USAID, among others, the United States Government can provide technical assistance to victim countries to support their own ability to identify, trace, freeze, and recover the proceeds and instrumentalities of corrupt public officials. Our foreign aid also provides a range of assistance to help partner countries build systems that can resist kleptocracy by strengthening democratic processes, increasing transparency, and building governance oversight and management capacity.

Asia-Pacific
Economic Cooperation

2007/SOM3/ACT/003f
Agenda Item: 4

Compilation of Each Economy's Progress, Successes and Milestones – USA

Purpose: Consideration
Submitted by: USA

APEC
AUSTRALIA 2007

Anti-Corruption and Transparency Task Force
Cairns, Queensland, Australia
24-25 June 2007

Asia-Pacific
Economic Cooperation

ANTI-CORRUPTION AND TRANSPARENCY (ACT) TASK FORCE

COMPILATION OF EACH ECONOMY'S IMPLEMENTATION SUCCESSES AND MILESTONES PURSUANT TO THE COMMITMENT OF LEADERS AND MINISTERS RELATED TO THE*:*

SANTIAGO COMMITMENT

APEC ANTI-CORRUPTION & TRANSPARENCY (ACT) COURSE OF ACTION

BUSAN DECLARATION

HANOI ROAD MAP

REPORT OF

THE UNITED STATES OF AMERICA

June 2007

APEC ACT TASK FORCE – PROGRESS REPORT OF THE UNITED STATES

Action I. Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UN Convention Against Corruption (UNCAC)[*]:

(Santiago Commitment and APEC Course of Action, 2004)

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Intensify efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.	The United States signed the UNCAC on December 9, 2003. The United States Senate ratified UNCAC on October 26, 2006. The Convention will not require implementing legislation for the United States. Subject to certain reservations, the existing body of federal and state laws and regulations will be adequate to satisfy the Convention's requirements for legislation. Over the past year, the U.S. has worked with governments around the world to strengthen international efforts against kleptocracy and combating corruption including working with APEC, the Group of Eight (G8), and Organization of American States (OAS).	Given the existence of the UNCAC, APEC's commitment to make it a priority area for cooperation in the fight against corruption, and the new beginning of a global process to turn the words of this comprehensive instrument into concrete global actions, the United States is committed to work with other APEC economies towards the effective implementation of the UNCAC and to provide continued support to the UNCAC Conference of States Parties (COSP) process that has been established to promote such implementation. The United States will continue to increase cooperation within APEC to internationalize efforts against high-level corruption (kleptocracy) consistent with UNCAC principles.
Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.	UNCAC will be an effective tool to assist in the global effort to combat corruption. It provides for a broad range of preventive measures, criminal statutes, and cooperation including asset recovery, extradition and mutual legal assistance. Additionally, the Convention establishes the first-ever comprehensive framework for recovery of illicit assets sent or taken abroad by corrupt officials. In APEC, the United States is working cooperatively with other economies to harness APEC Leaders' commitment to	Implementation of the UNCAC is now underway following the first meeting of the UNCAC Conference of States Parties in Jordan in 2006. The COSP's adopted a self-assessment checklist to be completed by all States Parties. UNODC has distributed the finalized checklist to all States Parties and signatories. The United States is strongly encouraging all States Parties and signatories to complete the checklist in a timely manner. The U.S. has agreed to participate in the pilot evaluation project using the checklist in order to help assess and improve implementation of the UNCAC.

[*] APEC member economies that are not members of the United Nations will positively consider and make efforts to achieve the measures, practices, and goals set out by the UNCAC through ways consistent with their respective status.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	fighting corruption and ensuring transparency into effective actions, and to make UNCAC one of the central areas for implementation and cooperation. With funding from the U.S. Department of State, the American Bar Association (ABA) Asia Council, through its Regional Anticorruption Advisor (RACA), works with APEC economies that have requested technical assistance with their anti-corruption implementation efforts and builds links among existing anti-corruption activities in the Asia Pacific region, including assistance and support for signatories to the Anti-Corruption Action Plan for Asia/Pacific developed by the Asian Development Bank (ADB) and the Organization for Economic Cooperation and Development (OECD).	The United States plans to work with States Parties in the context of the three working groups created by the COSP: technical assistance, asset recovery, and review mechanism working groups. We believe that each one of these groups is capable of developing a practical, concrete plan for moving the UNCAC forward that balances the need to respect the sovereignty of each State Party with the need to make the UNCAC a meaningful and relevant instrument. We hope that the work of the APEC ACT Task Force is highlighted during the UNCAC COSP II (hosted by our APEC partner, Indonesia) as a useful model of anti-corruption cooperation within the Asia Pacific region.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Work to strengthen international cooperation in preventing and combating corruption, the recovery and return of proceeds of corruption.	With respect to international cooperation, the United States continues to work with other APEC economies to develop and support capacity-building programs as part of the ACT initiative, including innovative anti-corruption tools, training, and best practices related to: prevention, investigation and prosecutorial techniques; judicial reform; anti-money laundering; denial of safe haven; asset forfeiture and recovery; corporate governance; and anti-corruption measures for the development of Small and Medium Enterprises (SMEs) and Micro Enterprises (MEs). In April 2006, the U.S. and China co-sponsored a successful APEC ACT Symposium in Shanghai, on the denial of safe haven, extradition, asset recovery, anti-bribery, and anti-money laundering.	The United States has been a strong advocate of promoting international cooperation on asset recovery issues and will be working with various multilateral partners to develop workshops and training sessions in Asia and other regions. The United States will continue to increase international cooperation to: identify and prevent access by kleptocrats to financial systems; to deny safe haven to corrupt officials; to identify, recover and return proceeds of corruption; and to provide anti-corruption assistance for capacity and training to strengthen critical law enforcement and rule of law systems. The U.S. is collaborating with UNODC to cosponsor several workshops on the recovery of assets consistent with UNCAC principles and provisions. For example, the United States hopes to support Indonesia and partner with the ADB, OECD, and UNODC for an asset recovery workshop which will be held in Bali in September 2007. The United States is also supporting Peru for their upcoming Symposium entitled "The Fight against Corruption is a Common International Responsibility: Strengthening the Cooperation Mechanisms in the Asia Pacific Region." We hope the work of the APEC ACT Task Force is highlighted during COSP II, which will be hosted by Indonesia, as a useful model of anti-corruption cooperation with the Asia Pacific region.

APEC ACT TASK FORCE – PROGRESS REPORT OF THE UNITED STATES

Action II. Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

(Santiago Commitment and APEC Course of Action, 2004)

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity.	The vast majority of federal public officials are selected through a merit system. Recruitment occurs through public announcement of openings (internet and/or publication in print media) and through job fairs. Information is easily found on available positions, qualifications required, and application process on www.usajobs.opm.gov. Selection is made from individuals determined to be qualified based on ability, knowledge and skills. All individuals hired must be reliable, trustworthy, of good conduct and character and loyal to the U.S. Thus each person hired is subject to a background investigation that varies in scope depending upon the nature of the position which he or she would fill. Civil servants are evaluated each year based upon pre-established written performance criteria. The United States has implemented extensive programs at every government agency to insure compliance with ethics laws and financial disclosure requirements. All employees in the executive branch must receive an initial ethics orientation upon entering service. High-level executive branch officials receive verbal ethics training annually, though an agency may substitute written training in some years under certain circumstances. Many other	The U.S. and Chile have cosponsored a proposal for "Draft Conduct Principles for Public Officials" which the ACTTF5 will consider for adoption. The U.S. Office of Government Ethics monitors and evaluates agency ethics programs with a goal of enhancing them wherever possible. The U.S. Office of Personnel Management monitors and evaluates the merit system of hiring and recruitment for purposes of assuring compliance and enhancing effectiveness.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	high- and mid-level employees also receive annual ethics training of some type, and many agencies require additional employees to attend annual ethics training. In addition to each agency's ethics programs, the Office of Government Ethics (OGE) oversees many training programs throughout the executive branch. The focus of the training is to educate government employees regarding conflict of interests laws and other areas in order to help them avoid even creating the appearance of impropriety. Each agency is also required to appoint a designated agency ethics official and one of the duties of such official is to ensure that an ethics counseling program exists for the agency's employees.	
Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes.	The United States is committed to strong corruption prevention programs. Enforceable procedural systems promoting consistency and transparency provide substantial opportunities for detection of potential misconduct. These include: general requirements for standardized and public administrative processes and licenses; public and standardized procurement processes; public legislative processes that follow standard rules; public judicial proceedings that follow standardized procedures; public budgeting processes and internal financial controls; a large merit-based civil service; and rights for public access to information regarding most government activities. In addition, the activities of the federal government are conducted under the watchful eye of an active and free press.	The United States continues to evaluate its mechanisms for transparency and public access to information, particularly through the enhancement of "E-gov" initiatives. Federal agencies continue to make extensive use of internet websites to inform the public about official activities and explain how to obtain additional information. These individual agency portal websites are linked to a federal Internet portal, www.USA.gov which serves as a comprehensive reference point for citizen access to U.S. Government information and services. USA.gov allows users to access federal government information by subject matter rather than by agency.
Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials.	At the federal level, senior officials and those holding positions with risk factors for corruption are required to complete, sign, and submit personal financial statements detailing investments, gifts from outside sources, and information on income and assets of the official, the official's spouse and	The financial disclosure systems, the conflict of interests and ethics statutes and codes of conduct are periodically assessed for purposes of effectiveness.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	dependent children. These reports are used to identify and avoid potential conflicts. The reports of senior level officials, including all elected officials and all federal judges and senior political and career appointees, are available to the public. The reports of the rest are confidential. In addition to criminal conflict of interest laws and civil ethics laws applying to officials of all three branches, each branch has one or more administratively enforced codes of conduct.	
Institute effective government measures aimed at preventing corruption and ensuring transparency, including the implementation of the APEC Leaders Transparency Standards in all areas endorsed by Leaders: Government Procurement; Services; Investment; Competition Policy and Regulatory Reform; Standards and Conformance; Intellectual Property; Market Access; Customs Procedures; Business Mobility.	The United States is implementing appropriate transparency standards for all specific areas, as outlined in the APEC ACT Course of Action: services, procurement, investment, competition policy and regulatory reform, standards and conformance, intellectual property, market access, customs procedures, and business mobility. The United States will not require any implementing legislation or new regulations to meet our commitment to the APEC Transparency Standards agreed to in 2004. The U.S. has continued to fill out a report on transparency as part of their annual Individual Action Plan (IAP).	The United States continues to coordinate within all APEC subfora to ensure that transparency issues remain a key area of cooperation and to advance our collective work within APEC on the Transparency Standards.
Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.	The United States has signed and ratified over 50 bilateral Mutual Legal Assistance Treaties (MLATs) that are in force worldwide. Additionally, the United States has signed and ratified multilateral treaties, including the UNCAC and the UN Convention against Transnational Organized Crime, that contain provisions for providing mutual legal assistance in cases involving corruption. In situations where there is no treaty provision providing for mutual legal assistance, the United States may provide assistance to foreign and international tribunals in accordance with U.S.	The expanded possibility for international cooperation, and in particular mutual legal assistance, contemplated by the UNCAC in investigations and prosecutions relating to the crimes identified above, is also of practical significance to the United States. The United States, through the UNCAC, will be able to provide enhanced assistance to, and request it from, a wide range of countries – principally developing countries – with which we previously did not maintain such treaty-based relations.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	domestic law (e.g. 28 USC § 1782). The United States has bilateral extradition treaties with over 110 countries. Most of these treaties already include bribery and/or corruption as extraditable offenses. Offenses established in accordance with the UNCAC are deemed to be included as extraditable offenses under U.S. bilateral extradition treaties.	
Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.	Public corruption is addressed through multiple federal, state, and local mechanisms. The United States Department of Justice (DOJ) is the principal government entity responsible for investigating and prosecuting public corruption offenses at the federal level. DOJ directs the federal prosecutive function through United States Attorney's Offices in 94 districts and through specialized components in Washington, D.C. DOJ also directs the primary federal investigative function through the Federal Bureau of Investigation (FBI). Other federal agencies also have specialized components responsible for addressing pertinent aspects of public corruption. These agencies include the Internal Revenue Service (IRS), the Securities and Exchange Commission (SEC), and the Office of Government Ethics (OGE). Additionally, there is an extensive network of Inspectors General (IG) with broad authority to identify and investigate fraud, waste, and abuse within their respective agencies. Many of these investigative components conduct criminal investigations that may lead to criminal charges. Some of the structures and functions of the specialized components of the federal system are mirrored at the state and local levels. Federal, state, and local authorities coordinate investigations and prosecutions as appropriate. Only DOJ can bring federal criminal charges. DOJ's Office of International Affairs is the designated Central Authority for mutual legal	DOJ's Office of International Affairs will continue to serve as the Central Authority for requests for legal assistance made under the UNCAC or other applicable legal assistance instrument. The U.S. Department of State will continue to coordinate with other U.S. Government agencies to facilitate cooperation with other APEC economies and regional networks.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	assistance under UNCAC, UNTOC, and bilateral MLATs.	

APEC ACT TASK FORCE – PROGRESS REPORT OF THE UNITED STATES

Action III. Deny Safe Haven to Officials and Individuals Guilty of Corruption:

(Santiago Commitment and APEC Course of Action, 2004)

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.	The United States participates in promoting cooperation among financial intelligence units through its participation in the Egmont Group in the areas of information exchange. The U.S. financial intelligence unit, the Financial Crimes Enforcement Network (FinCEN), actively shares information with other FIUs. As of 30 May 2007, FinCEN has entered into 27 MOUs with its counterparts (Australia, Albania, Argentina, Aruba, Belgium, Canada, Cayman Islands, Chile, Cyprus, France, Guatemala, Italy, Japan, Macedonia, Mexico, Philippines, Poland, Russia, Netherlands Antilles, Panama, Singapore, Slovenia, South Korea, Spain, and the U.K.)	The United States will continue to expand its operational relationships with additional APEC jurisdictions through bilateral agreements.
Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.	The United States has several legal authorities for denying entry to foreign citizens who are involved in corruption. Presidential Proclamation 7750, issued in January 2004, allows suspension of entry of persons engaged in or benefiting from corruption, where that corruption has or had serious adverse effects on the national interests of the United States. Such individuals could also be denied entry if they are convicted of bribery in their home courts or if they have laundered funds through U.S. financial institutions or have been involved in other crimes under which our Immigration and Naturalization Act (INA) would regard them as ineligible for entry. For example, the INA allows denial of	Following the successful 2006 U.S.-China ACT Symposium in Shanghai, the U.S. will work with other APEC economies to encourage the denial of safe haven through our national laws to individuals found guilty of corruption, the return of illicitly-acquired assets, and the development of additional measures to prevent such individuals from gaining access to the fruits of their criminal activities in our financial systems.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	entry to individuals convicted of crimes of moral turpitude, or involved in money laundering, trafficking in persons, or other crimes involving corruption.	
Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations on Terrorist Financing.	The U.S. is largely compliant with the Financial Action Task Force's (FATF) 40+9 Recommendations on money laundering and terrorist financing, and has undergone a thorough assessment conducted by the FATF to assess its compliance with these standards in June 2006. The U.S. received a rating of "largely compliant" with FATF Recommendation 6 regarding customer due diligence requirements for politically exposed persons. Within Section 312 of the USA PATRIOT Act, enhanced scrutiny is required of private banking accounts that are maintained by or on behalf of senior foreign political figures, their immediate families and close associates. This provision requires financial institutions to establish appropriate, specific, and where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through private banking accounts.	The U.S. will continue to provide experts to participate in Anti-Money Laundering (AML) / Counter Terrorist Financing (CFT) assessments globally, conducted by the FATF or its regional style bodies.
Work cooperatively, within the means of each economy, using mechanisms in the UNCAC, FATF, or other international initiatives and in accordance with domestic law, to investigate and prosecute corruption offenses and to trace, freeze, and recover the proceeds of corruption.	The United States continues to work cooperatively to find, freeze, and recover proceeds of corruption that are moved and stowed overseas and/or are moved into the U.S. financial system.	In September 2007, the United States hopes to support Indonesia and partners UNODC, APEC, OECD, ADB and the Swiss-based International Centre on Asset Recovery for a regional asset recovery workshop in Bali, Indonesia. Attendees will discuss asset recovery and related mutual legal assistance using the new UN Convention Against Corruption (UNCAC) asset recovery framework. In October 2007, the United States will work with APEC economies to help support a regional asset recovery workshop in Lima, Peru. This symposium will address pursuing asset recovery cases under the new UNCAC framework and focus on strengthening cooperation between countries in the Americas and Asia Pacific regions. It is expected that organizers for both events will present their conference reports and showcase the work of APEC and others to the second UNCAC Conference of States Parties in Bali, Indonesia in January 2008.

APEC ACT TASK FORCE – PROGRESS REPORT OF THE UNITED STATES

Action IV. Fight Both Public and Private Sector Corruption:

(Santiago Commitment and APEC Course of Action, 2004)

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anti-corruption conventions or initiatives.	Since 1977, the United States has explicitly outlawed bribery of foreign officials in commercial transactions by its nationals and companies organized under its laws through the Foreign Corrupt Practices Act (FCPA). The FCPA targets active bribery of foreign officials. The United States is a member of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and its law in this area has been reviewed as part of the peer review process of the OECD Working Group on Bribery. In addition, the United States has a long-standing criminal statute applicable to domestic bribery (18 U.S.C. § 201 et. seq.), covering both those who offer or give and those public officials who solicit or accept a bribe or a criminal gratuity. This statute is also applicable to legal persons.	The OECD Anti-bribery Convention and the OECD Working Group on Bribery provide important avenues for the United States to cooperate with counterparts outside the US to combat bribery in international business transactions.
Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.	Within the government, there are a number of statutory requirements that dictate standardized financial management within agencies including the accounting standards to be used. Evaluation of agencies' adherence to those requirements is ongoing and the evaluations are done pursuant to standardized criteria. For example, the Government Accountability Office has developed and uses the Government Auditing Standards (The Yellow Book) in carrying out its oversight role in the government. In the private sector, in addition to the long-standing standards required for licensure, the obligations of accountants and auditors of publicly traded companies were enhanced by	The United States will continue to aggressively fight domestic corruption as well as investigate those U.S. companies and individuals engaged in bribing and otherwise corrupting foreign government officials. The Foreign Corrupt Practices Act (FCPA) makes it a serious federal crime to bribe foreign government officials for the purpose of obtaining or retaining business. Fighting domestic corruption and enforcing the FCPA are major priorities for the United States.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	the passage of the Sarbanes-Oxley Act and the subsequent creation of the Public Company Accounting Oversight Board. This Board maintains a website at www.pcaobus.org. Outside government the FCPA has two aspects: (1) an accounting requirement; and (2) an anti-bribery prohibition. The FCPA's accounting requirements, which are not limited to corrupt payments, require publicly-traded companies to maintain accurate books and records, and a system of internal controls to ensure that transactions are properly recorded and executed in accordance with management's direction. In addition, the FCPA prohibits all U.S. companies, U.S. nationals, officers, directors, employees, or agents of U.S. companies, shareholders acting on a U.S. company's behalf, and any foreign company or national that does an act within the United States, from giving a bribe to any foreign official for purposes of influencing in order to obtain or retain business. Violations of these provisions may result in a civil enforcement action by the U.S. Securities and Exchange Commission (SEC) or, if done willfully, in a criminal prosecution by the Department of Justice. In recent years, the Justice Department has substantially increased its focus on enforcing the FCPA, which prohibits U.S. companies – and foreign companies that issue stock on U.S. capital markets – from bribing foreign government officials. In that time, we have secured major FCPA plea agreements or deferred prosecution agreements from a number of major corporations and individuals. In the last year alone, the United States obtained 7 FCPA dispositions against corporations and individuals who violated the statute, resulting in approximately $88 million in penalties.	
Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anti-corruption measures in their businesses, wherever they operate.	The United States is working with other APEC economies, and the APEC Business Advisory Council (ABAC), to draw together the practical experience of governments and companies in making anti-corruption strategies really work in the Asia Pacific region, and to strengthen the capacity and opportunity of public-private partnerships to fight	The United States will be working with the APEC ACT Task Force Chair and APEC economies to develop "APEC Transparency Principles for the Private Sector". Should APEC ministers and leaders adopt these principles later this year, the United States will work with ABAC and all interested APEC partners to implement them and to encourage good corporate governance in the private sector.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	corruption.	

APEC ACT TASK FORCE – PROGRESS REPORT OF THE UNITED STATES

Action V. Public-Private Partnerships:

(Santiago Commitment and APEC Course of Action, 2004)

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Involve, in accordance with each economy's domestic law, individuals and groups outside the public sector, such as civil society, nongovernmental organizations, community-based organizations, and the private sector in efforts to fight corruption, ensure transparency, promote good governance, strengthen public financial management accountability systems, and advance the rule of law.	The United States actively works with the private sector and civil society groups to build awareness on the cost of corruption as well as to increase public participation in public administration through service on federal advisory committees, through participation in federal rulemaking processes following the Administrative Procedures Act, and through specific public-private partnership projects. In addition, each agency is required to develop, publish and report on its success in meeting an annual agency performance plan that is tied to its budget. A variety of laws give the public the right to intervene in government processes where there is evidence of misconduct on the part of government officials.	Public administration in the United States is conducted in the public eye with broad access to information and an active free press. The United States continues to enhance access to information through the use of technology – most notably, its government-wide portal, www.USA.gov. The United States Agency for International Development (USAID) includes anti-corruption efforts a central part of its foreign assistance strategy and takes a broad approach to assisting partner countries to strengthen their systems to resist corruption. USAID's anti-corruption programs are designed to help reduce opportunities and incentives for corruption; support stronger and more independent judiciaries, legislatures, and oversight bodies; and promote independent media, civil society, and public education. By providing capacity building and other forms of support, USAID will continue to encourage the growth of active, public policy-oriented civil society groups that will monitor governmental integrity, bring corruption issues onto the public agenda, and actively promote the twin concepts of transparency and accountability.

APEC ACT TASK FORCE – PROGRESS REPORT OF THE UNITED STATES

Action VI. Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

(Santiago Commitment and APEC Course of Action, 2004)

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anti-corruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, CTI, GPEG, SCCP, and IEGBM).	The United States has worked well with other APEC economies in advancing the work of the APEC Task Force over the past two years. We remain interested in continued international cooperation with other economies and in exchanging information related to each economy's efforts to fight corruption. The U.S. has been a strong proponent of strengthening collaboration with other APEC subfora given that the issue of corruption cuts across the diverse array of APEC issues and programs.	The United States supports the ACT Task Force's efforts to seek new synergies with CTI on the nexus between public sector governance, corporate governance, and anti-corruption. The U.S. hopes that other APEC sub-fora also provide leadership in integrating anti-corruption as a main element of their work in APEC.
Coordinate, where appropriate, with other anti-corruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anti-corruption Action Plan for the Asia Pacific region, and Inter-American	In 2006-2007, the United States participated in numerous workshops held jointly between APEC and other appropriate intergovernmental organizations including the: - ADB-OECD Anti-corruption Initiative for the Asia Pacific Region - OAS, Inter-American Convention Against Corruption - UNODC and Implementation of the UNCAC; COSP I in Jordan - V Ministerial Global Forum on Fighting Corruption and Safeguarding Integrity	The United States will continue to coordinate with all APEC partners related to this action.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Convention Against Corruption.	- OECD Antibribery Working Group - FATF/APG on Money Laundering	
Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anti-corruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, the Global Forum on Fighting Corruption and Safeguarding Integrity, and other appropriate multilateral intergovernmental organizations.	In 2006-2007, the United States participated in numerous workshops held jointly between APEC and other appropriate intergovernmental organizations: - ADB-OECD Anti-corruption Initiative for the Asia Pacific Region - OAS, Inter-American Convention Against Corruption - UNODC and Implementation of the UNCAC; COSP I in Jordan - OECD Antibribery Working Group - FATF/APG on Money Laundering The United States participated at the V Ministerial Global Forum on Fighting Corruption and Safeguarding Integrity which was held in Johannesburg, South Africa, 2-5 April 2007.	The United States hopes to support Indonesia and partner with the ADB, OECD, UNODC for an asset recovery workshop which will be held in Bali in September 2007.
Initiate and develop innovative, coordinated and targeted training and capacity building tools (e.g., an APEC Anti-corruption and Transparency Training (ACT) Program), a region-wide public outreach program, or other initiatives that provide regional technical expertise and raise awareness).	In 2004, when APEC Leaders launched the APEC ACT Initiative, the United States committed $2.0M to support developing APEC economies implement the Santiago Commitment and ACT Course of Action. The U.S. sponsors an ABA Regional Anti-corruption Advisor in Bangkok to assist countries in a number of anti-corruption areas outlined in the Santiago Commitment and APEC ACT COA. The United States continues to support the APEC Secretariat's general public outreach and awareness on the good work that APEC is doing including the efforts by the APEC ACT Task Force. The United States will seek to provide another $3.0M over the next two years to support anticorruption efforts related to the work of the APEC ACT Task Force.	The United States will continue to coordinate with all APEC partners related to this action.
Encourage all relevant economies to sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC.	The United States supports efforts by multilateral and bilateral donors to provide resources for the provision of technical assistance to facilitate the effective implementation of the Convention.	The United States will continue to coordinate with all APEC partners related to this action, including those parties to the UNCAC, to coordinate assistance efforts and align them with the needs and priorities of requesting States for technical assistance.

APEC ACT TASK FORCE – PROGRESS REPORT OF THE UNITED STATES

Action VII. Moving Forward (from Santiago to Seoul and from Hanoi to Sydney):

(Santiago Commitment and APEC Course of Action, 2004; modified)

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Strengthen and further refine the APEC course of action adopted in the Santiago Commitment to Fight Corruption and Ensure Transparency towards effective implementation and monitoring by all APEC economies.	The United States is active in the ACT Task Force and regularly works with other APEC partners towards the effective implementation and monitoring of APEC ACT commitments. The U.S. has been active in all APEC ACT Task Force Meetings to date in Chile, Korea, Vietnam, and Australia.	The United States will continue support the work of the APEC ACT Task Force and to coordinate with all APEC partners related to this action.
Encourage APEC Member Economies, where appropriate, to put into practice measures and mechanisms outlined in the UNCAC.	The United States is actively working within the ACT Task Force and cosponsoring workshops that integrate UNCAC principles.	The U.S. will work with Indonesia and other partners to ensure that APEC is prominently featured as a model in the Asia Pacific region on fighting corruption, asset recovery, and international cooperation.
Recommend any additional actions to fight corruption and ensure transparency, including further areas related to corruption involving the private sector and denying them of their safe haven.	The United States applauded Vietnam's leadership for focusing on public-private partnerships in 2006 and for making this important issue a key area of implementation for the ACT Task Force As discussed above, in March 2006, the U.S. and China cosponsored an APEC Symposium that focused on combating corruption and denying safe haven to corrupt individuals	The United States is supporting Peru for their upcoming Symposium entitled "The Fight against Corruption is a Common International Responsibility: Strengthening the Cooperation Mechanisms in the Asia Pacific Region".
Develop specific benchmarks to help ensure that each APEC Member Economy is taking all appropriate steps and measures to	The United States fully supported the Australia-Korea proposal on cataloging the successes of each economy related to the ACT commitments (this Matrix).	The United States will continue to work to implement all actions outlined in the Santiago Commitment, the APEC ACT Course of Action, and other suggested areas recommended by the ACT Task Force as approved by Ministers or Leaders.

Specific Actions	Status-to-date (June 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
implement agreed upon commitments.		
[Support] APEC Anti-corruption and Transparency [Task Force activities that] showcase the progress that APEC economies have done to fight corruption and ensure transparency and discuss further cooperation on any additional actions that need to be built into the APEC work program.	The United States continues to be active in all ACT Task Force meetings and has sponsored numerous anti-corruption training workshops and symposia since the creation of the APEC Anticorruption Initiative.	The United States is working with APEC economies to strengthen the political will and commitment to fight corruption in the Asia Pacific region.

COMPILATION OF EACH ECONOMY'S IMPLEMENTATION SUCCESSES AND MILESTONES RELATED TO:

COMBATING CORRUPTION AS IT RELATES TO MONEY LAUNDERING

REPORT OF

THE UNITED STATES OF AMERICA

August 2007

COMBATING CORRUPTION AS IT RELATES TO MONEY LAUNDERING – PROGRESS REPORT OF THE UNITED STATES

Action I. Increase scrutiny of financial indicators bearing on corruption and money laundering.

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials.	At the federal level, senior officials and those holding positions with risk factors for corruption are required to complete, sign, and submit personal financial statements detailing investments, gifts from outside sources, and information on income and assets of the official, the official's spouse and dependent children. These reports are used to identify and avoid potential conflicts. The reports of senior level officials, including all elected officials and all federal judges and senior political and career appointees, are available to the public. The reports of the rest are confidential. In addition to criminal conflict of interest laws and civil ethics laws applying to officials of all three branches, each branch has one or more administratively enforced codes of conduct.	The financial disclosure systems, the conflict of interests and ethics statutes and codes of conduct are periodically assessed for purposes of effectiveness.
Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.	Within the government, there are several statutory requirements that dictate standardized financial management within agencies including the accounting standards to be used. Evaluation of agencies' adherence to those requirements is ongoing and the evaluations are done pursuant to standardized criteria. For example, the Government Accountability Office has developed and uses the Government Auditing Standards (The Yellow Book) in carrying out its oversight role in the government. In the private sector, in addition to the long-standing standards required for licensure, the obligations of accountants and auditors of publicly traded companies were enhanced by the	The United States will continue to fight domestic corruption aggressively and to investigate U.S. companies and individuals engaged in bribing and otherwise corrupting foreign government officials. The Foreign Corrupt Practices Act (FCPA) makes it a serious federal crime to bribe foreign government officials for the purpose of obtaining or retaining business. Fighting domestic corruption and enforcing the FCPA are major priorities for the United States.

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	passage of the Sarbanes-Oxley Act and the subsequent creation of the Public Company Accounting Oversight Board. This Board maintains a website at www.pcaobus.org. The FCPA has two chief features, an accounting requirement and an anti-bribery prohibition. The FCPA's accounting requirements are not limited to corrupt payments. Publicly-traded companies must maintain accurate books and records. They must also have a system of internal controls to ensure that transactions are properly recorded and executed in accordance with management's direction. The FCPA applies to all U.S. companies, U.S. nationals, officers, directors, employees, or agents of U.S. companies, shareholders acting on a U.S. company's behalf, and any foreign company or national that does an act within the United States. It prohibits the giving a bribe to any foreign official in order to obtain or retain business. Violations of the act may result in a civil enforcement action by the U.S. Securities and Exchange Commission (SEC). Willful violations may result in a criminal prosecution by the Department of Justice. In recent years, the Justice Department has substantially increased its focus on enforcing the FCPA, which prohibits U.S. companies – and foreign companies that issue stock on U.S. capital markets – from bribing foreign government officials. In that time, we have secured major FCPA plea agreements or deferred prosecution agreements from a number of major corporations and individuals. In the last year alone, the United States obtained 7 FCPA dispositions against corporations and individuals who violated the statute. These actions resulted in approximately $88 million in penalties.	
Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's	The U.S. is largely compliant with the Financial Action Task Force's (FATF) 40+9 Recommendations on money laundering and terrorist financing, and has undergone a thorough assessment conducted by the FATF to assess its compliance with these standards in June 2006. The U.S.	The U.S. will continue to provide experts to participate in Anti-Money Laundering (AML) / Counter Terrorist Financing (CFT) assessments globally, conducted by the FATF or its regional style bodies.

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
	received a rating of "largely compliant" with FATF Recommendation 6 regarding customer due diligence requirements for politically exposed persons. Within Section 312 of the USA PATRIOT Act, enhanced scrutiny is required of private banking accounts that are maintained by or on behalf of senior foreign political figures, their immediate families and close associates. This provision requires financial institutions to establish appropriate, specific, and where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through private banking accounts.	

Action II. Deny Safe Haven to Those Benefiting from Corruption and/or Money Laundering and Recover Proceeds

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Work to strengthen international cooperation in preventing and combating corruption, the recovery and return of proceeds of corruption.	The United States continues to work with other APEC economies to develop and support capacity-building programs as part of the ACT initiative. Information shared includes anti-corruption tools, training, and best practices related to: prevention, investigation and prosecutorial techniques; judicial reform; anti-money laundering; denial of safe haven; asset forfeiture and recovery; corporate governance; and anti-corruption measures for the development of Small and Medium Enterprises (SMEs) and Micro Enterprises (MEs). In April 2006, for example, the U.S. and China co-sponsored a APEC ACT Symposium in Shanghai, on the denial of safe haven, extradition, asset recovery, anti-bribery, and anti-money laundering. A team of US prosecutors and counter-corruption advisers shared with APEC counterparts a variety of counter-corruption and mutual legal assistance tools, including innovative legal concepts and software.	The United States has been a strong advocate of promoting international cooperation on asset recovery issues and will be working with various multilateral partners to develop workshops and training sessions in Asia and other regions. The United States will continue to increase international cooperation to: identify and prevent access by kleptocrats to financial systems; to deny safe haven to corrupt officials; to identify, recover and return proceeds of corruption; and to provide anti-corruption assistance for capacity and training to strengthen critical law enforcement and rule of law systems. The U.S. is collaborating with UNODC to cosponsor several workshops on the recovery of assets consistent with UNCAC principles and provisions. For example, the United States hopes to support Indonesia and partner with the ADB, OECD, and UNODC for an asset recovery workshop which will be held in Bali in September 2007. The United States is also supporting Peru for their upcoming Symposium entitled "The Fight against Corruption is a Common International Responsibility: Strengthening the Cooperation Mechanisms in the Asia Pacific Region." We hope the work of the APEC ACT Task Force is highlighted during COSP II, which will be hosted by Indonesia, as a useful model of anti-corruption cooperation with the Asia Pacific region.

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.	The United States has-signed and ratified over 50 bilateral Mutual Legal Assistance Treaties (MLATs) that are in force worldwide. The United States has signed and ratified multilateral treaties, including the UNCAC and the UN Convention against Transnational Organized Crime, that provide for mutual legal assistance in corruption cases. Where there is no such treaty provision, the United States may provide assistance to foreign and international tribunals in accordance with U.S. domestic law (e.g. 28 USC § 1782). The United States has bilateral extradition treaties with over 110 countries. Most of these treaties already include bribery and/or corruption as extraditable offenses. Offenses established in accordance with the UNCAC are deemed to be included as extraditable offenses under U.S. bilateral extradition treaties. The United States has successfully forfeited the proceeds of misappropriation by kleptocrats and repatriated funds to such economies as Peru, Nicaragua and Kazakhstan, among other recent examples. The return of assets has been conducted in a responsible manner that ensures their use, under transparent and accountable procedures, for the benefit of the public.	Also of practical significance to the United States is the possibility contemplated by UNCAC for expanded international cooperation, and in particular mutual legal assistance, in corruption-related investigations and prosecutions. The United States, through the UNCAC, will be better able to exchange assistance with a wide range of countries – principally developing countries – with which we previously did not have such treaty-based relations. Possible assistance will include action under 28 USC § 2467 to restrain assets at the request of such jurisdictions and to enforce their future forfeiture judgments against kleptocrats and their assets.
Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.	The United States promotes cooperation among financial intelligence units (FIU) through its participation in the Egmont Group, including information exchange among FIUs. The United States' FIU, the Financial Crimes Enforcement Network (FinCEN), actively shares information with other FIUs. As of 30 May 2007, FinCEN has entered into 27 MOUs with its counterparts (Australia, Albania, Argentina, Aruba, Belgium, Canada, Cayman Islands, Chile, Cyprus, France, Guatemala, Italy, Japan, Macedonia, Mexico, Philippines, Poland, Russia, Netherlands Antilles, Panama, Singapore, Slovenia, South Korea, Spain, and the U.K.) FinCEN shares data with Egmont partners, without MOUs.	The United States will continue to strengthen its operational relationships by, among other things, entering into further bilateral agreements or cooperative arrangements with APEC jurisdictions.

Specific Actions	Status-to-date (August 2007) including on-ongoing measures started but not yet completed.	Future action to achieve goal and any further measures being considered to enhance action.
Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.	The United States has several legal authorities for denying entry to foreign citizens who are involved in corruption. Presidential Proclamation 7750, issued in January 2004, allows denial of entry of persons engaged in or benefiting from corruption, where that corruption has or had serious adverse effects on the national interests of the United States. Such individuals could also be denied entry if they are convicted of bribery in their home courts or if they have laundered funds through U.S. financial institutions or have been involved in other crimes under which our Immigration and Naturalization Act (INA) would regard them as ineligible for entry. For example, the INA allows denial of entry to individuals convicted of crimes of moral turpitude, or involved in money laundering, trafficking in persons, or other crimes involving corruption.	Further to its efforts at the 2006 U.S.-China ACT Symposium in Shanghai, the U.S. will work with other APEC economies to encourage the denial of safe haven through our national laws to individuals found guilty of corruption, the return of illicitly-acquired assets, and the development of further measures to prevent such individuals from gaining access to the fruits of their criminal activities in our financial systems.
Work cooperatively, within the means of each economy, using mechanisms in the UNCAC, FATF, or other international initiatives and in accordance with domestic law, to investigate and prosecute corruption offenses and to trace, freeze, and recover the proceeds of corruption.	The United States continues to work cooperatively to find, freeze, and recover proceeds of corruption that are moved and maintained overseas and/or are moved into the U.S. financial system**.**	In September 2007, the United States hopes to support Indonesia and partners UNODC, APEC, OECD, ADB and the Swiss-based International Centre on Asset Recovery for a regional asset recovery workshop in Bali, Indonesia. Attendees will discuss asset recovery and related mutual legal assistance using the new UN Convention Against Corruption (UNCAC) asset recovery framework. In October 2007, the United States will work with APEC economies to help support a regional asset recovery workshop in Lima, Peru. This symposium will address pursuing asset recovery cases under the new UNCAC framework and focus on strengthening cooperation between countries in the Americas and Asia Pacific regions. It is expected that organizers for both events will present their conference reports and showcase the work of APEC and others to the second UNCAC Conference of States Parties in Bali, Indonesia in January 2008. Outside of APEC, the Unites States plans to co-sponsor a UNCAC/asset recovery program in the Middle East, tentatively scheduled for Jordan in December 2007.

For Immediate Release
August 10, 2006

Fact Sheet: National Strategy to Internationalize Efforts Against Kleptocracy

President's Statement on Kleptocracy

Today, The President Unveiled His National Strategy To Internationalize Efforts Against Kleptocracy, Pledging To Confront High-Level, Large-Scale Corruption By Public Officials And Target The Proceeds Of Their Corrupt Acts. This Strategy Is A New Component Of His Plan To Fight Corruption Around The World. Public corruption erodes democracy, rule of law, and economic well-being by undermining public financial management and accountability, discouraging foreign investment, and stifling economic growth and sustainable development.

- **Kleptocracy Is A Threat To The Governments And Citizens Of Both Developing And Developed Countries.** Corruption by senior officials in executive, judicial, legislative, or other official positions in government can destabilize whole societies and destroy the aspirations of their people for a better way of life.

The President's National Strategy To Internationalize Efforts Against Kleptocracy

This New National Strategy Builds On The President's Commitment Made With The G-8 Leaders At Their Recent Summit In St. Petersburg. At the G-8 summit, President Bush committed to promote legal frameworks and a global financial system that will reduce the opportunities for kleptocracies to develop and to deny safe haven to corrupt officials, those who corrupt them, and the proceeds of corrupt activity.

- **The Strategy Has As Its Foundation In The President's Proclamation, Made In January 2004, To Generally Deny Entry Into The United States Of Persons Engaged In Or Benefiting From Corruption.**

- **The Strategy Advances Many Of The Objectives In The National Security Strategy By Mobilizing The International Community To Confront Large-Scale Corruption By High-Level Foreign Public Officials And Target The Fruits Of Their Ill-Gotten Gains.**

- **The Strategy Reaffirms The President's Commitment To Ensure That Integrity And Transparency Triumph Over Corruption And Lawlessness Around The World, Expand The Circle Of Prosperity, And Extend America's Transformational Democratic Values To All Free And Open Societies.**

Specifically, The Strategy Promotes Our Objectives By Committing To:

- **Launch A Coalition Of International Financial Centers Committed To Denying Access And Financial Safe Haven To Kleptocrats.** The United States Government will enhance its work with international financial partners, in the public and private sectors, to pinpoint best practices for identifying, tracing, freezing, and recovering assets illicitly acquired through kleptocracy. The U.S. will also work bilaterally and multilaterally to

immobilize kleptocratic foreign public officials using financial and economic sanctions against them and their network of cronies.

- **Vigorously Prosecute Foreign Corruption Offenses and Seize Illicitly Acquired Assets.** In its continuing efforts against bribery of foreign officials, the United States Government will expand its capacity to investigate and prosecute criminal violations associated with high-level foreign official corruption and related money laundering, as well as to seize the proceeds of such crimes.

- **Deny Physical Safe Haven.** We will work closely with international partners to identify kleptocrats and those who corrupt them, and deny such persons entry and safe haven.

- **Strengthen Multilateral Action Against Bribery.** The United States will work with international partners to more vigorously investigate and prosecute those who pay or promise to pay bribes to public officials; to strengthen multilateral and national disciplines to stop bribery of foreign public officials; and to halt bribery of foreign political parties, party officials, and candidates for office.

- **Facilitate And Reinforce Responsible Repatriation And Use.** We will also work with our partners to develop and promote mechanisms that capture and dispose of recovered assets for the benefit of the citizens of countries victimized by high-level public corruption.

- **Target And Internationalize Enhanced Capacity.** The United States will target technical assistance and focus international attention on building capacity to detect, prosecute, and recover the proceeds of high-level public corruption, while helping build strong systems to promote responsible, accountable, and honest governance.

The President's Announcement Builds On Established U.S. Leadership In The International Fight Against Corruption. The U.S. actively supports development and implementation of effective anticorruption measures in various international bodies and conventions. In addition to the G-8, we have promoted strong anticorruption action in the:

- UN Convention Against Corruption
- OECD Anti-Bribery Convention and the OECD Working Group on Bribery
- Financial Action Task Force (FATF)
- Council of Europe Group of States Against Corruption (GRECO)
- OAS Mechanism for Implementing the Inter-American Convention Against Corruption
- Asia Pacific Economic Cooperation Forum's Anticorruption and Transparency (ACT) Initiative
- Broader Middle East and North Africa (BMENA) "Governance for Development in Arab States" (GfD) Initiative.

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VIETNAM'S LAWS ON
PREVENTING AND COMBATING MONEY LAUNDERING

Country report
Prepared by the Government Inspectorate of Vietnam
for the Capacity Building Workshop on Combating Corruption Related to Money Laundering
Bangkok, Thailand, 20-22 August 2007

Preventing and combating money laundering is quite new in Vietnam. While in the anti-corruption field, Vietnam possesses a rather complete legal system which includes a main anti-corruption law titled Law on Preventing and Combating Corruption and various other laws and governmental decrees supporting and providing in details the implementation of provisions of the Law on Preventing and Combating Corruption, in the anti-money laundering field, Vietnam has only one governmental decree in existence – the Decree No. 74 on Preventing and Combating Money Laundering issued on 7 June 2005 and came into effect from 1 August 2005. This is understandable in the context of low-level economic development of Vietnam with annual average income per capita below 1,000 USD resulting in inconsiderable money laundering crime in the country. However, with the present high-speed economic growth and foreign investment capital increasingly flowing into Vietnam, the existence of such a basic anti-money laundering legal framework as Decree No. 74 is quite necessary for the effective prevention of and fight against any acts of money laundering. The followings are the main points of the Decree:

Definition of money laundering: the Decree provides that "Money laundering means acts committed by individuals or organizations to legitimize money or property acquired from criminal activity through the following specific activities: (1) directly or indirectly participate in a transaction related to money or property acquired from criminal activity; (2) receiving, appropriating, moving, converting, transferring, transporting, using or transporting across borders money or property acquired from criminal activity; and (3) investing in a project or work, contributing capital to an enterprise or otherwise concealing or disguising, or obstructing the verification of the origin, the truth or the location, movement process or ownership of, money or property acquired from criminal activity".

Anti-money laundering measures: the Decree requires tight supervision of

money transactions and provides several types of punishment. Accordingly, all types of money transactions conducted within Vietnam territory must be supervised by banks and other competent agencies. Transactions subject to supervision and reporting include: (1) one or more than one transaction conducted in a day by an individual or organization in cash with an aggregate value of VND 200,000,000[1] or more or of equivalent value for foreign currencies or gold; (2) for savings transactions, one or more than one transaction conducted in a day by an individual or organization in cash with the aggregate value of VND 500,000,000[2] or more or of equivalent value for foreign currencies or gold. The Prime Minister shall adjust the value levels of cash transactions subject to reporting to suit the national socio-economic development situation in each period. The Decree requires that suspicious transactions must be clearly identified and regularly supervised by banks and other competent agencies. The State Bank of Vietnam shall set up a list of those suspicious transactions which is updated periodically and sent to relevant agencies and organizations nationwide.

In the process of preventing and combating money laundering, one of the following provisional measures may be applied: (1) not to effect transactions; (2) to block accounts; (3) to seal up or seize property; (4) to seize violators; and (5) other preventive measures provided for by law. Competent investigating agencies may apply measures of blocking accounts, sealing up or seizing property, seizing violators and other preventive measures as provided for by law.

As for institutional measures, the Decree provides for the establishment of the anti-money laundering information center under the Vietnam State Bank. The center shall function as the sole body to receive and process information; have the right to request related agencies, organizations and individuals to supply documents and records of information concerning transactions; and assist the Vietnam State Bank Governor in performing the money laundering tasks.

Right after the issuance of the Decree No. 74, the Vietnam State Bank Governor established the Anti-money laundering Information Center. The Center officially operated from 1 August 2005.

Types of punishments: those who commit money laundering-related offenses shall be handled under the Penal Code of the Socialist Republic of Vietnam. Individuals or organizations who are responsible for the prevention and

[1] Equivalent to around 12,300 US dollars.
[2] Equivalent to around 30,000 US dollars.

combat of money laundering and violate the provisions of this Decree but not seriously enough for penal liability examination shall be subject to administrative sanctions such as (1) warning; (2) fines of between VND 5,000,000[3] and VND 15,000,000[4] for failures to inform or report to the anti-money laundering information center or competent state agencies, to keep books, records and documents related to transactions within the regulated time limit, and to report to the anti-money laundering information center or competent state agencies on errors they detect in the records, documents and books already transferred to these agencies; (3) fines of between VND 10,000,000[5] and 30,000,000[6] for notifying the involved parties of the contents of reports or information supplied to competent agencies; postponing the compliance with or failing to comply with the requests of the anti-money laundering information center or competent agencies according to the provisions of this Decree without plausible reasons.

Apart from being subject to caution or fines listed above, the violating individuals or organizations may be deprived of the right to use their operation licenses or practice certificates they have used in the commission of violations for a definite or indefinite period. Besides, those who abuse their positions and powers to violate the provisions of this Decree while performing their duties in preventing and combating money laundering shall, depending on the nature and seriousness of their violations, be disciplined or examined for penal liability; if causing damage, they shall have to pay compensation for according to the provisions of law.

Responsibilities of state agencies in anti-money laundering: the Decree provides clearly responsibilities of governmental agencies in preventing and combating money laundering, notably the responsibilities of Ministry of Public Security, Vietnam State Bank and ministerial inspectorates. Accordingly, the Ministry of Public Security (1) assumes the prime responsibility for preventing and combating money laundering-related offenses, receiving and processing of information on money laundering-related offenses; (2) assumes the prime responsibility for popularizing and educating in the prevention and combat of money laundering; (3) organizes forces to investigate money laundering-related offenses; and (4) is responsible for negotiating and concluding international treaties on judicial assistance, extradition and cooperation in the prevention and combat of money laundering-related offenses; organizing the implementation of guidelines, policies and international treaties on the prevention and combat of

[3] Equivalent to around 310 US dollars.
[4] Equivalent to around 930 US dollars.
[5] Equivalent to around 600 US dollars.
[6] Equivalent to around 1,800 US dollars

money laundering-related offenses. The State Bank of Vietnam assumes the prime responsibility for formulating and implementing strategies, guidelines, policies and plans on the prevention and combat of money laundering in the Vietnamese territory; studies and works out measures to limit cash payment in the Vietnamese territory; and acts as the sole agency for negotiating, concluding and implementing international treaties and agreements on the exchange of information on transactions suspected to be related to money laundering. Ministerial inspectorates hold the responsibilities to inspect and supervise units subject to management by their ministries or branches when they have money laundering-related transactions at the request of the anti-money laundering information center or competent state agencies.

In sum up, it is possible say that despite of being newly adopted, the existing anti-money laundering legal frameworks of Vietnam basically meet the requirements of the country's present-time anti-money laundering task. In the time to come, with more practical lessons acquired as well as international experiences learned, this legal framework will step by step be improved and completed, creating a strong legal basis for the effective anti-money laundering works in reality.

LIST OF SPEAKERS

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