THIRTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

EFFECTIVE FINANCIAL INVESTIGATION AND ANTI-MONEY-LAUNDERING MEASURES FOR CONFISCATION AND ASSET RECOVERY TO COUNTER NEW AND EMERGING CORRUPTION THREATS

Hosted by UNAFEI
17-19 December 2019, Tokyo, Japan

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UNITED NATIONS ASIA AND FAR EAST INSTITUTE
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FOREWORD

It is my great pleasure and privilege to present this report of the Thirteenth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Tokyo, Japan, from 17–19 December 2019. The Good Governance Seminar was held in Japan for the third time, although it was the first time that the seminar was held at UNAFEI's new facility in Akishima City.

The main theme of the seminar was *Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery to Counter New and Emerging Corruption Threats*. The Seminar was attended by two visiting experts − one from the Hong Kong Independent Commission Against Corruption (ICAC) and one from the United States Department of Justice (USDOJ) − and 23 criminal justice practitioners from the countries of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam. It should be noted that this Seminar marks the first occasion on which Timor-Leste participated in the Good Governance Seminar.

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. As with other regions in the world, the fight against corruption in Southeast Asian countries has taken on an international dimension. The main theme of the Thirteenth Seminar focused on providing updates on the latest anti-corruption measures and corruption-related trends across Southeast Asia.

The seminar explored existing and emerging corruption trends, identified challenges which frustrate effective financial investigations, and shared best practices for investigating money-laundering and confiscating illicit proceeds of corruption in the participating countries. Through discussion of issues − such as professional, team-based approaches to investigate corruption and trace proceeds; the emerging criminal use of peer-to-peer mobile payment platforms, digital wallets, and cryptoassets; proactive asset confiscation and recovery techniques; and the extensive use of international cooperation, among others − the participants exchanged knowledge, experiences, effective strategies and best practices in the field of anti-corruption. The Chair's Summary, published in this report, details the key conclusions and recommendations of the Seminar. In addition, the seminar enabled the participants to develop personal and professional contacts between anti-corruption authorities and investigators in Southeast Asia.

It is a pleasure to publish this report of the seminar as part of UNAFEI's mission, entrusted to it by the United Nations, to widely disseminate meaningful information on criminal justice.

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SETO Takeshi
Director, UNAFEI
October 2020

INTRODUCTION

Opening Remarks by
Mr. SETO Takeshi
Director of UNAFEI

OPENING REMARKS

SETO Takeshi[*]

Distinguished experts and participants, ladies and gentlemen,

It is a great pleasure and privilege for me to announce the opening of the Thirteenth Regional Seminar on Good Governance for Southeast Asian Countries. We sincerely welcome all of you to this significant forum, which is taking place at UNAFEI for the second time in the history of this seminar.

Since 2007, this seminar has been an exceptional opportunity for criminal justice practitioners in Southeast Asian countries to share our experiences in pursuit of the eradication of corruption in this region. The seminar has been co-hosted by UNAFEI and participating countries: it was first held in Thailand, and then the Philippines, Japan, Malaysia, Indonesia and, last year, Viet Nam.

Over these twelve years, we have seen and discussed many developments in anti-corruption-legislation and criminal justice practices in this region, including the recent acceptance of UNCAC by Japan.

In the latest two seminars in Viet Nam, we wrapped up those efforts and developments by discussing "Best practices in anti-corruption: a decade of institutional and practical development in Southeast Asia" in the eleventh seminar and "The latest regional trends in corruption and effective countermeasures by criminal justice authorities" in the twelfth seminar. This time, we will address many issues which we have dealt with in our past seminars from new perspectives.

Thus, we have decided to host the seminar at UNAFEI again to make a new start in our endeavour to fight against corruption. We are very happy and proud to show off our new UNAFEI facility, which moved to Akishima just two years ago.

This time, in our three-day discussion, we will focus on "Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery". Our theme is based on what we discussed in our third seminar in 2009 with a broader perspective to counter new and emerging corruption threats. Due to the globalization of crimes and the development of new technologies and financial systems in the last decade as stated above, the modus operandi of corruption and the laundering of corruption proceeds has become increasingly complex and sophisticated. Therefore, we find it extremely useful to revisit this topic to share the updates of each participating country's current situation of corruption and laundering of corruption proceeds, legal frameworks and best practices for identification, tracing, freezing, seizure, confiscation and recovery of proceeds of corruption.

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In order to deepen our discussion, three visiting experts will give us insights on these issues. Ms. Chi Yan Kate Cheuk, the Principal Investigator at the Independent Commission Against Corruption (ICAC) in Hong Kong, will lecture on Hong Kong's anti-money-laundering efforts and the practice of financial investigation, asset recovery and international cooperation based on her comprehensive knowledge and expertise. Another Visiting Expert, Ms. Louisa Kathryn Marion, is a Federal Prosecutor in the United States Department of Justice, specialized in investigation and prosecution of cybercrime issues. She is going to give us a lecture on financial investigations into money-laundering and cases involving cryptoassets. Also, Japanese expert Mr. WATANABE Naoki, public prosecutor in the Special Investigation Department of the Tokyo District Public Prosecutors' Office is going to lecture on "Exclusive Investigation of Corruption Cases Involving High Ranking Politicians/Officials and International Cooperation".

I would like to express my sincere appreciation to our visiting experts who have joined us to share their expertise and experiences. To all of the distinguished participants gathered here, I would also like to thank you for taking valuable time away from your work to make precious contributions to this seminar. I can assure you that all of us will learn from each other, and that will put us further on the path to eliminating corruption.

In this seminar, UNAFEI has continued its practice of inviting participants from one or two criminal justice organizations from each country. And as I said before, some of these organizations co-hosted previous seminars. I believe this system establishes not only a personal network among participants but also an organizational network as well. In addition, I would like to extend a warm welcome to the two organizations from Timor-Leste which are joining this seminar for the first time.

I look forward to seeing this seminar provide a useful forum to exchange expertise and experience in our common endeavour against corruption, contributing further to the promotion of good governance in Southeast Asia.

Thank you very much for your attention.

CHAIR'S SUMMARY

Thirteenth Regional Seminar on Good Governance
for Southeast Asian Countries
Tokyo, Japan
17 – 19 December 2019

OPENING CEREMONY

1. MR. SETO TAKESHI, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), served as the Chair of the Thirteenth Regional Seminar on Good Governance for Southeast Asian Countries. Officials from the following jurisdictions attended the seminar: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste and Viet Nam. Visiting Experts' lectures were delivered by practitioners from Hong Kong, Japan and the United States.

2. Director Seto welcomed the participants to the Thirteenth Good Governance Seminar on the theme of *Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery to Counter New and Emerging Corruption Threats*, noting that corruption and the laundering of criminal proceeds has become increasingly transnational and complex. Therefore, it is important to continuously review and share advancements in anti-corruption practices among law enforcement agencies in the Southeast Asian region and beyond. Finally, Director Seto extended a special welcome to the delegation from Timor-Leste, which participated in the Good Governance Seminar for the first time.

VISITING EXPERTS' LECTURES

3. MS. KATE CHEUK, Principal Investigator, Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong, delivered her lecture on the experiences of Hong Kong in conducting financial investigations and anti-money-laundering measures. Noting that corruption and money-laundering are inextricably linked, money-laundering is connected with other predicate offences, such as drug trafficking and other forms of organized crime. Hong Kong's robust anti-corruption regime is based on legislation, law enforcement and international cooperation. Established by recently adopted legislation, "significant controllers registers" require companies to maintain a list of beneficial ownership interests that is open to law-enforcement inspection. Hong Kong's Joint Financial Intelligence Unit (JFIU) receives, analyses and disseminates suspicious transaction reports (STRs), engages in international cooperation to identify money-laundering and shares information with other law enforcement agencies. "No consent letters" can be issued by the FIU to freeze assets prior to the entry of a restraint order. To strengthen its investigation techniques, the ICAC has developed a forensic accounting group composed of certified financial professionals to provide assistance to ICAC investigators in tracing illicit assets, conducting in-depth financial analysis, giving expert evidence at court and providing training to officers. The Proceeds of Crime Team was established in 2010 for the purpose of conducting asset recovery by restraining and confiscating crime proceeds. With the adoption of UNCAC and

UNTOC, international cooperation and asset recovery are fundamental principles and internationally accepted objectives of law enforcement agencies. ICAC engages in international training programmes to reduce the risk of corruption in neighbouring regions so as to minimize money-laundering risk in Hong Kong. Additionally, ICAC conducts sector-based money-laundering risk assessments, provides training and issues guidelines to all officers on anti-money-laundering work, and compiles statistics so as to objectively display the efforts and outcomes of the ICAC's AML work. Three cases were introduced to provide practical examples of financial investigation and asset recovery in Hong Kong through the use of restraint and confiscation orders, as well as obtaining intelligence, evidence and assistance from domestic and overseas counterparts. One of the cases also demonstrated the involvement of legal and financial professionals in fraudulent scams; however, such professionals can also be useful sources of evidence. Overall, the cases demonstrated the importance of professional and thorough financial investigations, the importance of charging suspects with money-laundering in cases where there is insufficient evidence to establish bribery, and the importance of asset recovery as a strong deterrent against corruption and international collaboration in combating corruption and related money-laundering, which has no geographical limitation.

4. MS. LOUISA K. MARION, Senior Counsel, Computer Crime and Intellectual Property Section, United States Department of Justice, delivered her lecture on the topic of *The Future of Financial Investigations: Bitcoin and Beyond.* Money is a primary motivator in many forms of crime, including cybercrime, darknet crime, violent crime, terrorist financing and public corruption. Financial investigations are therefore essential both when investigating crimes and their perpetrators, and when seizing the proceeds of crimes that otherwise unjustly enrich criminal actors. In the United States, financial institutions are regulated under the Bank Secrecy Act and related regulations, which require financial institutions and money services businesses to register with the US financial intelligence unit (FinCEN), to develop and maintain effective AML programmes and to comply with record-keeping and reporting obligations (e.g. of foreign bank accounts, suspicious activities, and large cash payments). Records maintained by these institutions are critical for financial investigations, so investigators should be familiar with what records exist and any limitations on their use in investigations and prosecutions. A number of new financial tools are emerging, which provide greater convenience for consumers, but they also create opportunities for misuse by criminals, including gift cards and general purpose reloadable prepaid cards, peer-to-peer mobile payment platforms, digital wallets, and cryptoassets. These tools have legitimate uses but can present challenges for investigators. These financial tools can increase the speed of money movements, which can make lawful seizures difficult for governments. They can also result in financial records becoming fragmented across countries and/or platforms. Financial investigations can nevertheless produce critical evidence of crime and/or opportunities for seizure, so investigators should endeavour to familiarize themselves with these tools and the records concerning their use, as well as the ways which they are being used by criminals. Another emerging trend in financially motivated crime is the use of "money mule organizations," which offer money-laundering services to criminals, for a fee. For example, in the US criminal case *United States v. Chostak et al.,* No 3:15cr59 (W.D.N.C. Mar. 18, 2015), a group of individuals was changed with offering a money-mule service for a fee, which relied on tricking over 15,000 US citizens into sending international wire transfers as a part of a scheme that appeared (to these "money mules") to be legitimate employment. Finally, a successful US forfeiture case was introduced, illustrating how thorough financial investigation, relying on open source research, financial intelligence unit

reporting, net-worth analysis (identifying extensive unexplained income) and other red flags, aided both to identify a criminal suspect and ultimately to forfeit extensive assets. International cooperation and MLA played a key role in serving relevant seizure and forfeiture orders. The US government pursues seizure and forfeiture of assets to deter criminals and compensate victims.

5. MR. WATANABE NAOKI, Public Prosecutor, Special Investigation Department, Tokyo District Public Prosecutors' Office, delivered his lecture on the *Exclusive Investigation of Corruption Cases Involving High-Ranking Politicians/Officials and International Cooperation.* Under Japanese law, public prosecutors are empowered to investigate cases on their own, without receiving referrals of cases from the police etc. Mr. Watanabe described how such investigative authority has been successfully exercised by Japanese public prosecutors, especially in corruption cases and complicated economic crime cases, while facing issues and challenges. Mr. Watanabe also explained the importance of financial investigation in which the Special Investigation Department has extensive expertise.

COUNTRY PRESENTATIONS

6. BRUNEI DARUSSALAM: The delegation provided information on the framework for incoming and outgoing MLA requests and introduced cases addressing Brunei's first successful money-laundering conviction and first recovery of criminal proceeds via MLA. The criminal-proceeds case demonstrated how joint investigations arising from informal cooperation can be a powerful tool for freezing and seizing criminal proceeds that have been removed to a foreign jurisdiction. Based on this success, the Attorney General's Chambers has adopted an "open door policy" for international cooperation in the field of MLA.

7. CAMBODIA: While Cambodia's Anti-Corruption Unit (ACU) has the sole investigative authority for corruption cases, numerous law enforcement agencies are involved in AML measures for confiscation and asset recovery. Financial disclosures were raised as an effective measure to investigate corruption cases by introducing a case in which inconsistencies between the corrupt official's disclosures and his actual assets were sufficient to obtain a conviction for unexplained wealth. Because some persons in positions of power will use their influence to hide their corruption, investigators must work closely with all stakeholders, including by protecting informants.

8. INDONESIA: Money-laundering involves *placement* of criminal proceeds in the financial system, *layering* the proceeds by disguising their illicit source, and *integration* of the proceeds for legitimate uses. STRs are important to immediately identify, trace, freeze and confiscate illicit assets, and typical money-laundering modi operandi, such as transferring money to family members, the use of joint accounts, disguising money through money changers and the use of false identities, should be investigated. Analysis of financial disclosures was identified as useful for identifying corruption based on unexplained wealth. Indonesia prioritizes investigation of high-profile corruption cases as a form of deterrence, and several such cases, including one involving a former member of parliament, were introduced.

9. LAO PDR: The State Inspection Anti-Corruption Authority (SIAA) performs a governmental oversight role by inspecting ministries to ensure compliance with relevant laws and rooting out corruption. Laos has introduced reporting requirements for financial and other institutions

(including know your customer measures and STRs), border control measures that require the declaration of currency, asset disclosures and administrative seizure, including non-conviction-based confiscation, to counter money-laundering. While unexplained wealth is not criminalized in Laos, the asset declarations and public complaints can be used to initiate investigations when a government official's wealth is disproportionate to income.

10. MALAYSIA: The MACC's Operation Target Center (OTC) conducts pre-investigation work to facilitate effective financial investigations. The OTC collates and analyses information, conducts strategic and operational planning, identifies and traces assets, etc. New legislation has imposed strict liability on corporations that fail to prevent bribery and burden shifting to establish adequate measures to prevent corruption, and a proposed law seeks to criminalize the failure to disclose beneficial ownership of corporations involved in public procurement. A corruption and money-laundering case was introduced in which money was siphoned from a government-owned company. The case demonstrated the complexity of corruption schemes at the highest levels of government and the legal challenges involving access to and admissibility of key documents.

11. MYANMAR: The delegation explained that both confiscation and non-conviction-based confiscation are authorized under the laws of Myanmar, and efforts are being made to develop the capacity of law enforcement officials to confiscate criminal proceeds. Myanmar engages in international cooperation to provide MLA and facilitate asset recovery; however, there have been no extradition cases. Several case studies were introduced, demonstrating the forms of corruption and enforcement mechanisms in Myanmar. Myanmar also promotes corruption prevention education in schools and training for public officials.

12. PHILIPPINES: Money-laundering, terrorist financing and corruption are national security issues in the Philippines. The delegation introduced the anti-corruption and AML regime in the Philippines from the perspectives of the Office of the Ombudsman and the Department of Justice. Case studies presented involved aspects of high-profile corruption, money-laundering, MLA, asset recovery, unexplained wealth and the filing of false financial disclosures. Casinos are now covered by reporting requirements to facilitate money-laundering investigations. Guidelines on cryptoassets have been adopted, which address due diligence requirements for financial institutions, corruption prevention and education, etc.

13. SINGAPORE: Seizure and confiscation are pursued vigorously in Singapore through the use of non-conviction-based restraint of property and conviction-based orders for benefits derived from criminal conduct. By law, disproportionate assets may be presumed to be benefits derived from criminal conduct, shifting the burden of proving the legitimacy of the assets to the defendant. A case study demonstrated how Singaporean law enables the confiscation of assets from an absconded suspect. STRs are important to effective investigations into domestic and foreign predicate money-laundering: 66% of domestic and 82% of foreign predicate money-laundering investigations are supported by STRs. The delegation also addressed Singapore's investigation and confiscation of cryptoassets.

14. THAILAND: The delegation explained the importance of financial investigation, informal cooperation and the key steps in the confiscation process. Thailand's five competent authorities were introduced, including the National Anti-Corruption Commission (NACC), which conducts corruption investigations, and the Anti-Money-Laundering Office (AMLO), which conducts

financial intelligence. A case study introduced a high-profile bribery case in which a Thai public officer demanded and received bribes paid into foreign accounts.

15. TIMOR-LESTE: The Anti-Corruption Commission (ACC) was established in 2010 as an independent specialized criminal policy body to investigate corruption and undertake preventive action. The ACC is authorized to investigate specified predicate offences, and money-laundering can be investigated as an independent crime. In Timor-Leste, criminal proceeds, property of equivalent value, the instrumentalities of crime, and property commingled with criminal property can all be confiscated. Case studies were introduced involving domestic money-laundering of embezzled funds and the diversion oil taxes to foreign accounts.

16. VIET NAM: The Anti-Corruption Law of 2018 authorizes inspections of public sector entities to ensure compliance. Public officials are required to submit annual asset declarations, but illicit enrichment has not been criminalized. In order to confiscate the proceeds of crime identified through asset declarations, predicate offences must be investigated, identified and established before money-laundering can be prosecuted. The delegation reported that popular methodologies include the use of structured transactions, non-bank financial services, trade-based money-laundering, gatekeepers (e.g. accountants and lawyers), third parties and casinos, and a case study was introduced in which a casino was used to launder money. The presentation also addressed international cooperation in asset recovery, providing an update on MLA requests and Viet Nam's participation in international agreements.

CONCLUSIONS AND RECOMMENDATIONS

17. Corruption and money-laundering undermine economic development and often facilitate transnational organized crime and terrorist financing, posing serious threats to national security, human rights and the sustainable development of domestic and regional economies. While legal and investigatory frameworks have been established to counter these threats, corrupt officials and money-launderers create elaborate schemes to exploit jurisdictional boundaries and new technologies. These technologies, such as cryptoassets, facilitate fast and difficult-to-trace money transfers. Innovative measures are required to respond to corrupt officials, money-launderers and their elaborate schemes.

18. We believe the following measures are good practices for financial investigation and asset recovery: (i) holistic investigation to unveil all relevant transactions; (ii) specialized investigators and prosecutors with access to professional and technical expertise (i.e. digital forensics, accounting, etc.); (iii) utilization of STRs to immediately identify, freeze and prevent the dissipation of illicit assets; (iv) non-conviction-based forfeiture as a measure to deprive criminals of ill-gotten gains or, alternatively, confiscation based on conviction *in absentia* in limited cases where a suspect has died or absconded; (v) asset declarations for public officials for use in investigating or establishing unexplained wealth; (vi) regulation of Virtual Asset Service Providers by requiring due diligence, record-keeping and reporting; (vii) measures to facilitate investigation and the collection of admissible evidence, such as cooperation agreements and protection of informants; (viii) maximize the potential of international cooperation, joint investigations, formal MLA and informal cooperation through face-to-face meetings with counterparts and commitment to networking among counterpart agencies; (ix) capacity-building to respond to new and emerging corruption and money-laundering threats.

19 DECEMBER 2019
TOKYO, JAPAN

COUNTRY PRESENTATION PAPERS

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Mr. Khoy Limhong & Mr. Ly Sophana, Cambodia

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Ms. Neva Sari Susanti & Mr. Wicklief Herbert, Indonesia

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Mr. Souphasith Lovanxay & Mr. Thongkham Soumaloun, Lao PDR

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Mr. Shuhaimi Bin Man & Mr. Muhammad Izzat Bin Fauzan, Malaysia

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Mr. Kyaw Kyaw Naing & Mr. Soe Naung Oo, Myanmar

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Mr. Robert Michael Nidea Razon & Ms. Mary Susan Santos Guillermo, Philippines

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Mr. Lam Jun Zhi & Mr. Oh Chun Wei Gordon, Singapore

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Ms. Akareeya Ngamwongpaiboon, Ms. Rata Rudravanija & Ms. Athitiya Dairerkngam, Thailand

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Mr. Rogerio Viegas Vicente & Mr. Augusto da Costa Castro, Timor-Leste

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EFFECTIVE FINANCIAL INVESTIGATION AND ANTI-MONEY-LAUNDERING MEASURES FOR CONFISCATION AND ASSET RECOVERY TO COUNTER NEW AND EMERGING CORRUPTION THREATS

Nor Hafizah binti Ahmad[*]
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I. INTRODUCTION

Corruption has emerged as a crime which requires careful investigation. Crimes of this nature can be very complex and cause difficulties and problems in investigation. In this technologically advanced era, it is common for the offender to make use of other professionals or developed means to cover their trails and assist them in conducting their illegal operations in other jurisdictions. The loopholes in the system may also be of an advantage to them in the smooth running of their operations. Current methods of investigation with the support of existing legal systems may not be sufficient in carrying out enforcement of corrupt activities, taking into account the emergence of new technology and modern era advances.

Brunei Darussalam recognizes the significant threats of money-laundering and is committed to ensuring money-laundering is controlled and prevented. There are several agencies who work together in monitoring efforts to combat money-laundering and corruption activities in Brunei Darussalam.

Primary responsibility for the investigation for money-laundering offences rests with the Royal Brunei Police Force (RBPF), which has the ability to administer and enforce a range of laws including the Mutual Assistance in Criminal Matters Order (MACMO), the Anti-Terrorism Order (ATO), Criminal Asset Recovery Order (CARO), the Prevention of Corruption Act (PCA), the Internal Security Act (ISA) and Criminal Procedure Code (CPC). However, there are other enforcement agencies such as the Anti-Corruption Bureau, the Custom and Excise Department who are also empowered to investigate offences related to money-laundering offences. These enforcement agencies will liaise and work closely with the Financial Intelligence Unit (FIU) at the Brunei Darussalam Monetary Authority (BDMA).

Brunei Darussalam's international commitments to tackling corruptions and money-laundering are also evident when Brunei Darussalam signed the United Nations Convention against Corruption (UNCAC) on 11 December 2003 and ratified it on 2 December 2008. The instrument of ratification was deposited with the UN Secretary-General on 9 December 2008. The Convention entered into force on 1 January 2009. Brunei Darussalam also became party to the United Nation's

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convention Against Transnational Organize Crime. Regionally, Brunei Darussalam is also party to the:

- ASEAN Treaty on Mutual Assistance in Criminal Matters
- Member of the Commonwealth Harare Scheme
- Listed in the UNODC CNA Directory, Commonwealth Network of Contact Persons and Focal Point for MLAT ASEAN
- Member of ARIN-AP (Asia Pacific Asset Recovery Inter-Agency Network)

II. FINANCIAL INVESTIGATION AND ANTI-MONEY-LAUNDERING MEASURES FOR CONFISCATION AND ASSET RECOVERY

Under the Brunei MACMO, the objects of this order are to facilitate the provision and obtaining by Brunei Darussalam of international assistance in criminal matters, including –

(a) the obtaining of evidence, documents, articles or other things;
(b) the making of arrangements for persons, including detained persons, to give evidence or assist an investigation;
(c) the confiscation of property in respect of an offence;
(d) the service of documents;
(e) the identification and location of persons;
(f) the execution of requests for search and seizure;
(g) the provision of originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records; and
(h) any other type of assistance that is not contrary to the laws of Brunei Darussalam.

This Order applies to any foreign country, subject to –

(a) any mutual assistance treaty between that country and Brunei Darussalam; and
(b) any multilateral mutual assistance treaty being a treaty to which that country and Brunei Darussalam are parties.

Such assistance may be provided on an ad hoc basis even in the absence of any formal agreement or treaty. However, in such circumstances, there must be assurance given by the requesting country that it will entertain a similar request by Brunei Darussalam for assistance in criminal matters.

Brunei Darussalam's CARO came to effect on 16 June 2012. Part V of the Order deals with foreign requests for recovery of criminal proceeds which contains provisions on:

a. Foreign Requests for Brunei Restraining Orders,
b. Requests for the Enforcement of Foreign Restraining,
c. Confiscation and Benefit Recovery Orders,
d. Foreign Requests for Location of Proceeds of Crime,
e. Powers of Investigation for a Foreign Serious Offence,
f. Sharing of Confiscated Property and Asset Sharing Agreements.

The Central Authority is the Attorney General and all requests are to be made to and by the Attorney General only. Brunei CARO enables the Attorney General of Brunei Darussalam as the Central Authority to render assistance in the registration of foreign restraining, confiscation or benefit recovery orders, allowing foreign countries to seek local assistance in investigations and locating proceeds of crime, the entering into asset sharing agreements as well as agreements to coordinate confiscation and seizure of property.

The Mutual Legal Assistance Secretariat of the Attorney General's Chambers is responsible for handling and processing all formal requests for assistance in accordance with the provisions of the MACMO; CARO and any applicable Mutual Legal Assistance Treaty; and other relevant domestic laws.

III. CASE LAW

A. Formal Request Via MLA

The case of *Public Prosecutor v David Chong* is Brunei's first successful request for recovery of criminal proceeds via MLA. Assistance was rendered by the Government of Singapore. The case was first investigated in 2009 and was prosecuted and convicted in November 2013. Mutual Legal Assistance request was transmitted in May 2014. The completion of the Mutual Legal Assistance Request was in August 2014. The investigations concerned the Defendant's company providing corrupt bribes/gratification to employees who were in charge of procurement in Brunei Darussalam's largest oil company, Brunei Shell Petroleum ("BSP"), whose primary business is the exploration and production of crude oil and natural gas from onshore and offshore fields. It is owned in equal shares by the Government of Brunei Darussalam and the Asiatic Petroleum Company Limited.

Investigations revealed that to increase sales, Musfada provided bribes and corrupt gratification to various personnel of BSP. The gratifications were paid to incentivise the relevant buyers in the SCM Department to expedite the creation of POs for Musfada and to ensure that they would not source for cheaper products from other vendors. Each receiver of the bribe would receive a three per cent commission of the purchase order that they approved.

Chong gave a total of BND $101,843 in bribes to Brunei Shell Petroleum employees in return for them securing over $3.2 million in contracts for his company, Musfada Enterprise, between 2007 and 2009.

This criminal scheme to pay gratification to BSP employees went on for a very long time and substantially increased Musfada's revenue from the sales of Musfada Products to BSP. While investigations were underway, in late September 2009, the Defendant fled to Malaysia. On or about 14 October 2009, the ACB sought the assistance of Interpol to locate the Defendant.

Investigations also revealed that the Defendant had a number of bank accounts in Singapore which were believed to be accounts to which corrupt proceeds were transferred. In the interim, Brunei ACB contacted Singapore's Commercial Affairs Department for assistance to freeze the funds in those accounts. As Brunei Darussalam's laws at that point of time were not adequate in

order to apply for a restraint order, Singapore CAD assisted by opening a domestic investigation on the Defendant and froze the accounts on that basis. In or around July 2011, the Malayan Anti-Corruption Commission, located Mr. Chong in Kuching, Sarawak, Malaysia.

On or about 8 September 2011, the SPRM Kuching arrested Mr. Chong in Kuching, and officers of the SPRM Kuching and the ACB brought him back to Brunei on or about 9 September 2011. On 27 November 2013, the High Court of Brunei convicted Mr. Chong in Criminal Trial No. 25 of 2012 and, on 28 November 2013, sentenced him to a total of six years and four months' imprisonment for 34 charges under the Prevention of Corruption Act, four charges of cheating, and two charges of fraudulently destroying documents.

After Chong was sentenced in 2013, the Court made a benefit recovery order under CARO in respect of funds in Chong's bank accounts in Singapore, ordering the defendant to pay to the State the sums of SGD $219,838.10 and USD $326,174.55 (BND $250,903.50) within nine months of the order.

Over BND$800,000 from Defendant's Singapore bank accounts were finally repatriated to Brunei Darussalam in November 2014 and placed in our Criminal Assets Confiscation Fund.

B. Conviction Under CARO

In the case of *PP v Pg Husin bin Pg Sulaiman,* Brunei Darussalam had its first money-laundering conviction, where the defendant faced 17 counts of cheating contrary to section 420 of the Penal Code and 20 counts of money-laundering contrary to section 3(l)(b) of the Criminal Asset Recovery Order. Another 38 outstanding money-laundering offences were admitted by the defendant and with the consent of the prosecution taken into consideration in passing sentence pursuant to section 13A of the Criminal Procedure Code. He pleaded guilty to the charges before him. On appeal he was sentenced to five years' imprisonment.

C. Financial Investigation

In the case of *Public Prosecutor v Minister of Development (D1) and D2*. Both Defendants were facing 11 charges in total: 3 under section 6 of the Prevention of Corruption Act and 8 charges under the Penal Code. D1 was charged for accepting the gratification and D2 was charged for giving the gratification. D1 at the time of the offences was in charge of the government development projects, while D2 was a businessman whose company is in land development (Contractor). The allegations were that sometime between 1993 and 1997 D1 had performed certain acts in relation to his principal affairs in which D1 received inducement and rewards from D2 in the form of substantial amounts over several years which resulted D2's company gaining major grant for government projects. During investigations by the Anti-Corruption Bureau, it was revealed that between 1992 and 2001:

- D2's company built a house on D1's land and paid monthly rent of BND$5K to D1. No evidence showed that D1 had paid for the building of the said house;

- D1 bought land, then D2's company developed it and built 24 houses on the said land to which D1 received 8 of the developed houses. Even though the land was under D1's name,

the purchase and development of the land were made and arranged financially by D2. D2 was also the guarantor for the land loans amounting to more than BND$3 million;

- D1 bought a shophouse in 1993 under his daughter's name worth $930,000 from D2 but paid nothing until 1999. However, rentals from the shophouse had been paid into D1's daughter's account since 1996 totaling $250,000.

At the end of the trial both D1 and D2 were convicted. D2, who absconded during the trial, was tried *in absentia*. D1 was also ordered to pay more than BND$3.5M as part of the prosecution cost. D1 was also ordered to pay more than BND$4M, which is the amount of the gratification required as restitution under section 17 of the PCA.

D. Informal Assistance

Formal processes such as Mutual Legal Assistance do not replace the informal relationships made between law enforcement agencies and their counterparts, which can often be speedier and involve less bureaucracy. The assurance to continuously network with counterparts from foreign countries to ensure such ties are always maintained with the view of putting a stop to elements of transnational crime permeating the borders of Brunei Darussalam is essential. Brunei's AGC practices an "open door policy" with law enforcement agencies where international cooperation is concerned and that the Mutual Legal Assistance and Extradition Secretariat stands ready and willing to assist and facilitate such requests.

Effective communication between law enforcement officers and officers of the Mutual Legal Assistance and Extradition Secretariat under the Attorney General's Chambers, Brunei Darussalam is crucial if Brunei Darussalam is to successfully tackle cases involving transnational crime. As such, law enforcement agencies need to designate relevant focal points to coordinate with the MLA and Extradition Secretariat to produce successful results to criminal cases with the use of international cooperation tools.

IV. CONCLUSION

We are currently active in implementing and enforcing the current laws in order to have effective financial investigation and anti-money-laundering measures for confiscation and asset recovery to counter new and emerging corruption threats. We have to ensure that we have solid evidence and established links between the asset and the crime to obtain a confiscation order via the court. Constant training and sharing of good practices will help pave the way to achieve and combat the emerging crime threats such as this in Brunei Darussalam.

EFFECTIVE FINANCIAL INVESTIGATION AND ANTI-MONEY-LAUNDERING MEASURES FOR CONFISCATION AND ASSET RECOVERY TO COUNTER NEW AND EMERGING CORRUPTION THREATS

H.E. Khoy Limhong[*]

I. OVERVIEW

Corruption is a phenomenon that affects virtually every country in the world. Corruption not only causes serious damage to public resources but also undermines democratic institutions, slows economic development and contributes to the instability of governments. The strengthening of exchanges and cooperation in the field of anti-corruption has become an inevitable choice in the international community. Even though legal systems in each country may be different, the political will to combat corruption keeps standing out. The Royal Government of Cambodia is strongly committed to fighting corruption and views such efforts as an important task and a leading priority.

II. BACKGROUND

Cambodia adopted a criminal law act in which three articles were related to corruption (embezzlement, bribe taking and bribe giving) in 1992. In 1999, an anti-corruption mechanism was first established in Cambodia. It was called the "Unit Against Corrupt Practices". In 2006, the Unit was restructured and renamed the "Anti-Corruption Unit (ACU)". The Anti-Corruption Law (ACL)[1] was promulgated by Royal Kram (Royal Code) on 17 April 2010. It is a substantive law that is applicable to all forms of corruption in all sections and at all levels throughout the Kingdom of Cambodia, which occurs after the law comes into effect. It stipulates the general provisions, definitions and the establishment of the Anti-Corruption Institution (ACI), which is composed of the National Council Against Corruption (NCAC) and the ACU.

Prioritized policies and programmes on anti-corruption are clearly specified in the Rectangular Strategy Phase I, Phase II, Phase III and Phase IV[2] considering good governance as a core angle, and anti-corruption is one of the priorities set by the Royal Government of Cambodia (RGC). *Samdech Akka Moha Sena Padei Techo HUN SEN,* Prime Minister of the Kingdom of Cambodia, stressed that "Fighting corruption is to make each individual not want to corrupt (education), can't corrupt (prevention), and dare not corrupt (law enforcement)."

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[1] The ACL was amended in 2011, allowing the ACI to have an independent budget that is separated from the budget of the Office of the Council of Ministers, aiming to ensure that the institution can carry out its mandate effectively.

[2] The Rectangular Strategy (RS) is a dynamic document that lays out the political commitment to a socioeconomic development process over five years (2013-2018). RS has undergone three changes in the last decade to keep up with the times.

III. THREE-PRONGED APPROACH TO COMBAT CORRUPTION

There is no single solution in fighting corruption. Cambodia's ACU, which is mandated by the ACL to combat corruption in all sections and at all levels throughout Cambodia, has been using a three-pronged strategy to fight corruption, namely education, prevention, and law enforcement, with public participation and support from international cooperation.

A. Education

The ACU has a very wide range of public education strategies, in order to enlist the support of the entire community as a partnership to fight corruption. The unit has spent many of its resources, budget, time and ideas to provide education and to disseminate the ACL to civil servants, the private sector, civil society, as well as the general public across the country in order to raise awareness about the law, about what corruption is, and the negative impacts of corruption, aiming to make sure that the whole society begins to accept the new mind-set and perspective in order that they all will jointly fight against corruption, which is a common enemy for all of us.

The education and dissemination tasks have been conducted through various means such as the dissemination of the ACL directly at the workplace, stipulating the 9th of December as National Anti-Corruption Day, and setting out policies and anti-corruption education programmes aiming to instil younger generations with the consciousness, clean mind-set, and the feeling of disgust for corruption, love of justice, integrity, abiding by laws, respecting themselves and others as they are the bamboo shoots and the future leaders of Cambodia.

B. Prevention and Obstruction

Prevention and obstruction refer to the eradication of opportunities and possibilities that lead to corruption. Various regulations and mechanisms have been established to prevent corruption from being committed. Prevention and obstruction of corruption have been conducted through many forms such as (i) declaration of assets and liabilities (ii) direct observation at bidding, public procurement, and fee bargaining at ministries and institutions as well as joining in the observation at the recruitment examination of a new cadre of officials at public institutions and high school national examinations (iii) signing Memorandums of Understanding (MOU) on anti-corruption cooperation between the ACU and private national and international companies as well as compiling and publishing a "Guidebook on Anti-Corruption Program for Business in Cambodia", which is available for the private sector to be widely used as a supporting document and guidance and (iv) revising the standard of public services fees.

The ACU has also focused on the support, promotion for the exchange of views and ideas as well as to strengthen career development aiming to work even closer with the private sector through the joint commitment and agreement under a form of signing Memoranda of Understanding (MOU) on anti-corruption cooperation between the ACU and private national and international companies. As a result, so far the ACU has signed more than twenty MoUs with private national and international companies. This has been used in an effort to jointly fight against corruption and encourage the practice of clean business in Cambodia.

In order to maintain the integrity, ethical behaviour and legal compliance of the leaders and officials of the ACU as a whole, two internal bodies were established: the Disciplinary and Internal

Control Council and the Internal Investigation Body. The Disciplinary and Internal Control Council is mandated to ensure that each official has strictly complied with discipline, integrity, transparency and having to avoid all forms of conflicts of interest set in the guidelines. In the process of the preparation of the internal regulations, disciplinary standards and internal control, the council has set out principle guidelines on the prevention of conflicts of interest, gift receiving, hospitality and dining out with all concerned parties. In addition, the Internal Investigation Body is directly governed by the president of the ACU, and its duty is to observe and investigate the performance of officials of the ACU.

C. Law Enforcement Measures

In the framework of law enforcement, the ACU holds a meeting every morning to study, analyse and take action against all complaints filed with the Unit. The complainant is allowed to attend the meeting to support his or her individual complaint. The mechanism has won tremendous support from stakeholders, especially complainants, due to the efficiency and effectiveness of service delivery. Simultaneously, the meeting has been used as a venue and as an opportunity to train officials of the ACU, aiming to enhance their skills of complaint analysis, information collection and investigation techniques.

IV. FINANCIAL AND MONEY-LAUNDERING INVESTIGATIONS FOR CONFISCATION AND ASSET RECOVERY

A. Investigative Powers and Privileges of the ACU

1. The Sole National Investigation Agency

Under the ACL, the ACU is the sole institution responsible for investigating corruption offences as stipulated in both the ACL and the Penal Code. Officials of the ACU who are accredited as judicial police are empowered to investigate corruption offences. In addition, other units that are aware of corruption offences shall make corruption complaints to the ACU or its branch offices in the Capital or provinces.

Officials of the ACU who are accredited as judicial police take charge of investigating corruption offences. If different offences are found during the course of a corruption offence investigation, and if the facts are related to the offence being investigated by the ACU, officials of the ACU may continue the investigation of the offences to the final stage. The ACU cannot investigate other offences that are unrelated to corruption unless the unit is ordered by the court to do so. In the framework of these investigations, and contradictory to some articles in the Code of Criminal Procedure, the ACU investigators have the power to arrest suspects after officially assigned by the President of the ACU without asking permission or informing the prosecutor before the arrest. After the arrest, the prosecutor exercises his power as stated in the Code of Criminal Procedure. At the end of each investigation, the ACU shall submit all facts to the prosecutor for further action in conformity with the provisions of the Code of Criminal Procedure.

2. Special Privileges of the ACU

The President of the ACU can ask the concerned authority to suspend all functions of any individual who is substantially proven to be involved in a case of corruption. If the suspect flees to a foreign country, the President of the ACU can ask the competent authority to undertake extradition in accordance with the provisions in force.

3. Privileges of the ACU in Cooperation with Public Authorities

The President of the ACU may order public authorities, government officials, citizens who hold public office through election, as well as units concerned in the private sector, namely financial institutions, to cooperate with officials of the ACU in an investigation. The President of the ACU may also ask the national and international institutions to cooperate in forensic examinations linked to an investigation.

4. Privileges of the ACU Related to Monitoring

In cases where there is a clear hint of a corruption offence, the ACU can:

a. Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts;

b. Check and order the provision or copy of authentic documents or individual documents; or all bank, financial and commercial documents;

c. Monitor, oversee, eavesdrop, record sound and take photos, and engage in phone tapping;

d. Check documents and documents stored in an electronic system;

e. Conduct operations aimed at collecting real evidence.

The above measures shall not be considered as violations of professional secrets. Bank secrecy shall not be justification for not providing evidence related to corruption offences under the provisions of this law.

B. Financial Disclosure Systems

Investigating corruption offences can be considered very challenging since the crime is committed by professionals or persons in high positions of authority. Corruption offences can only be effectively investigated with a proper investigation plan. Since corruption offences are becoming more sophisticated, we need to use every investigative technique available, including financial investigation through assets and liabilities declarations.

The declaration of assets and liabilities in the Kingdom of Cambodia began in early 2011. Over the past eight years, the ACU has received thousands of documents of assets and liabilities, and almost 100% of the declarants have fulfilled their obligations.

1. Categories of Public Officials Subject to the Financial Disclosure System

According to the ACL, Article 17 (persons required to declare assets and liabilities) states that upon taking and leaving office, the following persons shall, in writing or electronic form, declare their assets and liabilities, regardless of whether those assets are inside or outside the country, and shall submit, in person, to the ACU:

- Members of the Senate, members of the National Assembly, and Members of the Royal Government;

- Appointed public officials with a specific mandate;

- Members of the National Council Against Corruption, including the chairperson, vice-chairpersons and all officials of the ACU;

- Civil servants, police, military personnel and other public servants appointed by Royal Decrees or Sub-decrees;

- Other officials appointed by *Prakas* (regulation) and decided by the ACU's list of declaration on assets and liabilities, after consultation with the National Council Against Corruption;

- Trial judges, prosecutors, notaries public, court clerks and bailiffs;

- Leaders of civil society.

Civil servants and public officials have to declare assets and liabilities from the position of the department-level director and above, and the military and the national police have to declare from the rank of Colonel. The ACU is studying and preparing the list of those officials appointed by *Prakas* who will be required to declare assets and liabilities, especially the target groups that work in highly corruptible positions.

2. Opening the Asset Declaration[3]

The personal documents of each individual's declaration shall be kept highly confidential. The document shall be made in electronic form, assigned with a code number and in two copies in accordance with guidelines determined by the ACU. They shall be enclosed in separate envelopes, one to be kept by the individual concerned and the other by the ACU. The enclosed envelope shall be sealed and signed by the Chairperson of the ACU, or a representative, together with the concerned individual's thumbprint. The Chairperson of the ACU can decide on the opening of the envelope or electronic document for the sake of investigation as necessary. The documents on declaration of assets and liabilities shall be kept within the ACU for ten years upon being received. Procedures of opening envelopes or electronic documents of declaration of assets and liabilities shall be determined by the ACU.

3. Decision on Procedures of Opening Envelopes or Electronic Documents of Declaration of Assets and Liabilities[4]

Article 1: The person who can decide on the opening of the envelope or electronic document on declaration of assets and liabilities

The Chairperson of the ACU can decide on the opening of the envelope or electronic document in accordance with:

-the fulfilment of a need

[3] Anti-Corruption Law, 17 April 2010, art. 20.
[4] Decision 010/12, on 10 July 2012.

-the request of the investigation

Article 2: The process of the opening of the envelope on declaration of assets and liabilities in the first step:
After receiving a decision from the chairperson of the ACU in written form or annotations or verbal or the forming of an ad hoc committee, the director of the Assets and Liabilities Declaration Department, the director of technology and computer forensics and the director of the Legal, Complaint and International Affairs Department shall cooperate on:

1) Reviewing and opening the envelope by making a report to the chairperson of the ACU;

2) Copying the documents for those who are responsible for the investigation;

3) Organizing the documents carefully, safeguarding them, and transmitting them to the archives.

Article 3: The process of the opening of the envelope of declaration of assets and liabilities in the second step:

1) Only those who are responsible for investigating the targeted person can read the copied documents;

2) In the process of reviewing and analysing the documents, they shall be kept under the control of the Legal, Complaint and International Affairs Department;

3) Upon completion of investigation, in preparing the case for court, the director of the Assets and Liabilities Declaration Department shall give the original documents to the director of the Legal, Complaint and International Affairs Department;

4) After the case has been completed, the original and copied documents on declaration of assets and liabilities shall be given to the director of the Assets and Liabilities Declaration Department.

Article 4: The chairperson of the ACU may give verbal orders to perform relevant work related to procedures of opening envelopes or electronic documents of declarations of assets and liabilities that are not included in this decision.

C. Anti-Money-Laundering and Freezing an Individual's Assets

According to the IMF's estimates, money-laundering activities account for about 3-5% of the world's GDP (meaning that out of 1 out of every 20 dollars is subject to money-laundering). Money-laundering offences have increased in an intertwined and complex manner. Cambodia and the world have strived to combat money-laundering, as it is an urgent and pressing task for the current situation. Casinos and real estate are the most at risk for money-laundering in Cambodia.

Anti-money-laundering measures for confiscation and asset recovery generally cannot be done solely by institutions. The Audit Office, Office of the Prosecutor, ACU, Financial Intelligence

Unit, the police and investigation agencies, Customs Administration, tax authorities, regulatory and oversight authorities in the financial and non-financial sectors would invariably play a role in tackling the problem of money-laundering. Depending on the jurisdiction, each plays a specific role according to the legislative mandate given.

Upon the request by the President of the ACU, the Royal Government may order the General Prosecutor attached to the Court of Appeal or the Prosecutor attached to the Municipal or Provincial Court of First Instance to freeze the assets of individuals who commit corruption offences. Those above-mentioned assets include the funds received or any form of assets belonging to the offender.

V. ACTUAL CORRUPTION CASE

One company deposited 100,000 USD in a bank account belonging to the competent ministry that guaranteed its operations. When the company no longer sought this guarantee, with the agreement of the competent ministry, it discovered that CS, former inspector general of that ministry in 2008, already had withdrawn the deposit. CS refused to return the deposit, and the ministry brought the case to the ACU in 2014. The ACU investigated the case by assessing his asset declaration and reviewing his financial transactions with the purpose of pursuing money-laundering.

The comparison of the declaration during detention with all previous declarations, and the verification of data sources such as the land register revealed a total of at least 500,000 USD in *inexplicable wealth.* The public official could not explain how he had financed the acquisition of a villa worth 500,000 USD. He tried to explain it as proceeds from selling lands. However, data from the land registry and tax administration did not support his story. The ACU consulted with experts from the land and tax ministry in order to assess the market value of the villa. If he had argued that he had financed the villa through a loan, the ACU would have accepted such an "excuse" only if there was clear documentation of that loan. Similarly, courts would not accept large stacks of cash as an explanation if there was no clear documentation of where the cash came from.

As a result, the following offences were found: embezzlement committed by a public official, illicit enrichment (in the asset and liability declaration his assets increased by 500,000 USD from 2011 to 2013 without any reasonable explanation related to his lawful income) and failure to declare an asset and liability (52 Damleung and 23 kg of gold). However, we were not able to proceed with a money-laundering offence due to insufficient evidence.

The case was sent to the court in May 2014, and a public hearing was held in August 2014. The judgment of the court of first instance was issued in October 2014. The case was appealed to the court of appeal in November 2014, and a public hearing was held in July 2015. The case was also brought to the Supreme Court in September 2015, and a was tried in June 2016. The final judgment was issued in July 2016. CS was sentenced to 7 years in prison and was fined 200,000 USD. The unexplainable increase of money (500,000 USD) in the asset and liability declaration form of CS was confiscated.

VI. CONCLUSION

Financial investigation and anti-money-laundering measures for confiscation and asset recovery are not easy tasks. These measures need resources, skills and expertise. Approaches, strategies and techniques must follow the development of technology as well as the complexity of the crime. Achievements in handling corruption cases are now determined by the ability to punish the offender through sentencing, confiscating and recovering asserts. Therefore, the Royal Government of Cambodia has worked closely with the public, international community as well as every stakeholder including regional and international partners.

Cambodia's ACU has gathered tremendous support from the public both nationally and internationally. Because of the trust in the ACU, more and more private-sector entities have signed MOUs with the ACU in order to participate in the fight against corruption and to conduct their businesses in a corruption-free environment. In terms of building legal frameworks, the ACU has been drafting important laws: first, the law on the protection of witnesses and, second, the law on the protection of reporting persons. In addition, the ACU has also been in the process of drafting a code of conduct for public officials. As a result of the dissemination of the ACL, public officials and ordinary citizens have a better understanding of the impact of corruption and actively take part in the fight against this universal social disease.

EFFECTIVENESS OF MONEY-LAUNDERING INVESTIGATION IN INDONESIA

Neva Sari Susanti[*]

I. INTRODUCTION

A. Background

The influence of political, social, economic and cultural changes in Indonesia encourages the creation of new crimes. In the classical school of thought, the crimes that were once only conventional in nature, namely those that only exist in the Criminal Code, are transitioning into non-conventional or transnational crimes.

In criminology studies, the non-conventional crimes are also known as white-collar crimes. The term white-collar crime was first used by Edwin Sutherland in 1939 to refer to crimes committed by "respectable" people in their work as bankers, entrepreneurs, industrialists and professional groups. Among the many white-collar crimes, corruption is a crime that could lead to money-laundering.

In his press statement, the Head of PPATK (Indonesian Financial Transaction Reports and Analysis Center) said that in 2018 every day there were 100,000 incoming reports related to alleged money-laundering. From the overall reports received, there were 4,520 analysis results, 2,210 information and 123 examination results sent to law enforcers to be investigated for money-laundering, terrorist financing and organized crime.

B. Problem

In connection with the complexity, the proceeds of corruption are often disguised or hidden and could ultimately lead to money-laundering. Therefore, many efforts and strategies are needed to investigate money-laundering.

II. DISCUSSION

A. Public Services

Corruption has entered all sectors of life. Currently in Indonesia, some corruption cases involve many civil servants (PNS). The state loss due to corruption in 2018 reached Rp 9.29 trillion, while the efforts to recover the loss have not been maximized.

This was the result of a study from Indonesia Corruption Watch (ICW) (4/28/2019). ICW collects data on corruption case decisions issued by the district courts, the courts of appeal and the Supreme Court. Data collection was conducted from 1 January to 31 December 2018. ICW monitoring results in 2018 showed that there were 1,053 cases with 1,162 defendants who were adjourned at all three levels of courts and the problem of asset recovery remains a challenge. The most important thing right now is how to conduct a good investigation so that the assets obtained from the crime could be traced or returned to the State.

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Corruption often occurs in the public service sector. This happens because the duties and tasks carried out by the civil servants are always in contact with services to the community. A concrete example occurs in the public service sector which often results in the practice of bribery or gratuity by service applicants and civil servants as parties who are obliged to serve.

B. Money-Laundering

In Indonesia, money-laundering is regulated in Law No. 8 of 2010 on Prevention and Eradication of Money Laundering. It is stated in the provision of Article 1, number (1) of Law No. 8 of 2010 that money-laundering is "every act that fulfils the elements of a criminal act which are in accordance with the provisions in the law". In this sense, the intended elements are element of perpetrators, elements of acts against the law and elements which are the result of criminal acts.

Meanwhile the definition of money-laundering can be seen in the provisions of articles (3), (4) and (5) of Law No. 8 of 2010. The key point is that money-laundering is a form of crime committed either by a person and/or corporation intentionally by placing, transferring, diverting, spending, paying, granting, entrusting, bringing abroad, changing forms, exchanging with currency or securities or other acts of assets that are known to or reasonably suspected to be the results of criminal acts with the aim of concealing or disguising the origin of those assets, including those who receive and control them.

C. Case Position of Money-Laundering

In relation to money-laundering, here is an example of how a money-laundering case is handled:

1. Defendant X was a civil servant in the Indonesian National Land Office (BPN) who had acted as an intermediary from 2006 to 2016 to receive direct or indirect benefits in the context of managing land rights. The defendant in his position utilized the authority he had to promise the petitioners that the process would be expedited, but the petitioners were asked to provide fees for the management of land rights beyond the costs determined by the applicable Government Regulations.

2. The defendant from 2006 to 2016 had received bribes amounting to Rp8,715,570,000 (eight billion seven hundred fifteen million five hundred and seventy thousand rupiah) from the applicants for Land Rights or other third parties by transferring money to the Defendant's bank account and several accounts in the names of others.

3. The Defendant then saved the money, which amounted to Rp8,715,570,000, in several bank accounts in the name of the Defendant himself, the Defendant's Wife and the two Defendants' children as well as deposited and bought Indonesian Retail Government Bonds (ORI) at the Bank. The Defendant also used the money to buy houses and lands in several areas, as well as four-wheeled vehicles.

4. The Public Prosecutor charged the Defendant and sought 7 years' imprisonment and a fine of 300 million rupiah substitution for 1 year's imprisonment.

Article 12e of Law Number 31 of 1999 on the Eradication of Corruption in conjunction with Law Number 20 of 2001 states: any civil servant or state administrator who intends to benefit themselves or others unlawfully, or by abusing their power forces someone to give

something, pay, or receive payment in pieces, or to do something for him/herself. Article 4 in conjunction with Article 2 paragraph (1) of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering states: Any person who hides or disguises the origin, source, location, designation, transfer of rights, or the actual ownership of the assets he/she knows or reasonably suspects to be the result of a criminal offence as referred to in Article 2, paragraph (1) is convicted of money-laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiahs). The Semarang District Court sentenced Defendant X to 5 years' imprisonment and a fine of 200 million rupiah substitution for 6 months' imprisonment.

D. Money-Laundering Investigation Strategy

As a form of white-collar crime, the pre-investigation and investigation of a money-laundering case is different from the conventional crimes. Perpetrators of white-collar crime generally are people who are highly educated, with high intelligence. Therefore, their criminal acts are well planned. Furthermore, the perpetrators of money-laundering optimize various regulatory loopholes and exploit advances in information technology in the industrial revolution 4.0 era. It is done to disguise or hide the proceeds of crime so that it is difficult for law enforcers to detect it.

In the corruption case committed by Defendant X as a civil servant, the mode is as follows:

1. Using a bank account in the name of another party to conduct transactions using the source of funds from proceeds of crime;

2. Carrying out cash transactions in which the source is from the proceeds of crime with the aim of breaking the flow of funds and making the tracing difficult;

3. Spending the proceeds of crime such as buying cars, houses, apartments and other goods on behalf of others, deliberately not taking care of proof of ownership.

With 40 witnesses and almost 10 of them holding bank accounts to collect the proceeds of crime committed by the defendant, the investigation was more complicated. Investigators in this case also found several flows of funds resulting from the crime to be used for the benefit of the defendant and his colleagues, such as:

1. It was used for hotel bookings;

2. It was used for plane ticket reservations;

3. It was used for buying food, renting karaoke rooms and other entertainment costs.

On the investigation related to assets resulting from crimes committed by Defendant X, the investigators also paid attention to the lifestyle of the Defendant and calculated the total income received by the Defendant X as a civil servant. Another thing done by the investigators was conducting an analysis of the Report of State Officials' Wealth (LHKPN). LHKPN is the Report of State Officials' Wealth containing a list of all the assets of state officials as outlined in the LHKPN form determined by the Corruption Eradication Commission (KPK). LHKPN does not only cover the assets of a state organizer, but also covers the nuclear family, such as spouses and children who are still dependent on their parents.

In Indonesia, based on Article 2 of Law No. 28 of 1999, every year state officals are required to report LHKPN including State Officials at the State's Highest Institution, State Officials at the State High Institutions, Ministers, Governors and Judges. In addition to state officials, in accordance with the applicable laws and regulations, the officials who have strategic functions such as directors, commissioners, structural officials in State-Owned Enterprises and Regional-Owned Enterprises, heads of Bank Indonesia, university leaders, Echelon I Officials, prosecutors, investigators, court clerks and even treasurers of state projects are also categorized as parties that must report LHKPN.

As an investigator, it is common to identify money-laundering criminals and to know how to recover the assets derived from the proceeds of crime. We could identify these from the patterns or the techniques of money-laundering. Money-laundering involves several patterns or techniques, namely:

1. Placement;

2. Layering;

3. Integration.

Another difficulty is the resistance from the defendant in the process of pre-investigation, investigation and even prosecution, namely by removing evidence, influencing witnesses and appealing to the public to form the opinion that he or she is innocent. Other difficulties or obstacles that often hamper prosecutors' efforts to save or recover the assets derived from corruption are as follows:

1. Assets derived from corruption are obscured or transferred to other parties;

2. Assets derived from corruption are gone or used up;

3. Assets derived from criminal offences are pledged to other parties;

4. The criminal has passed away;

5. Assets derived from criminal offences have been taken abroad.

In reality, difficulties are often found by investigators in the field during investigations in tracing assets derived from the proceeds of crime. The research results of the National Legal Development Agency (BPHN) conveyed that the non-technical juridical constraints in revealing corruption cases are as follows:

1. The complexity of the cases requires comprehensive knowledge to solve it;

2. Corruption cases generally involve many people who enjoy the benefits of the crime. Therefore, they try to cover up their deeds;

3. It takes a long period of time for corruption cases to occur or to be revealed;

4. With a variety of efforts, corruption perpetrators have spent the proceeds of corruption or deliberately converted them to other forms, making it difficult to track the money derived from corruption.

From several studies, it is revealed that some of the most important things that must be done in the investigation of money-laundering are as follows:

1. Investigation and prosecution of corruption cases that attract attention or involve perpetrators who have high socioeconomic positions or that cause a large amount of state losses must be prioritized;

2. Improving the implementation, the application and the enforcement of laws that provide legal certainty and justice to the community, especially justice seekers. This strategy is to avoid errors in the investigation process by law enforcers;

3. Applying the principles of accountability and transparency in law enforcement of corruption cases;

4. Developing the management system and the law enforcement organization as community protectors;

5. Developing recruitment and promotion systems that support the realization of professionalism and integrity of law enforcers.

THE ANTI-MONEY-LAUNDERING REGIME IN INDONESIA

Wicklief Herbert[*]

I. OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF INDONESIA IN THE CONTEXT OF IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

Indonesia signed the United Nations Convention against Corruption on 18 December 2003 and ratified it on 19 September 2006. The main implementing legislation includes: Law No. 31 of 1999 on Eradication of the Criminal Act of Corruption, as amended; Prevention and Eradication of the Money Laundering Criminal Act No. 8 of 2010 (MLCA); Law No. 5 of 2014 on State Civil Apparatus (ASN); Law No. 8 of 1974 on Principles of Civil Service, as amended; Law No. 14 of 2008 on Public Information Disclosure; Law No. 28 of 1999 on State Administration that is Clean and Free from Corruption, Collusion and Nepotism; Regulation No. 54 of 2010 on Public Procurement of Goods and Services, as amended; and Law No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters (MLA Law).

Institutions involved in preventing and countering corruption in Indonesia include:

- Corruption Eradication Commission (KPK);
- Attorney General's Office (AGO);
- Ministry of Law and Human Rights;
- Ministry of Foreign Affairs;
- Ministry of Finance;
- Indonesian National Police;
- Supreme Audit Board (BPK);
- Finance and Development Supervisory Agency (BPKP);
- National Ombudsman Commission;
- Financial Intelligence Unit (PPATK);
- Financial Service Authority (OJK);
- Ministry of National Development Planning (Bappenas);
- Ministry of Administration and Bureaucratic Reform (AR&BR);
- Civil Service Commission (KASN);
- Public and Procurement Agency (LKPP) and Judicial Commission (KY).

[*] Investigator, Directorate of Investigation, Corruption Eradication Commission (KPK), Indonesia.

II. INFORMATION ON ANTI-MONEY-LAUNDERING REGULATORY AND SUPERVISORY REGIMES AND DESCRIPTION OF THE RELEVANT SECTORS AND TYPES OF PERSONS SUBJECT TO THE REGIMES

Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering (Money Laundering Law) establishes the tasks, authority and mechanism of work of Indonesia's financial intelligence unit (FIU), the reporting party, regulators / supervisory and regulatory institutions, law enforcement agencies, and other related parties in the anti-money-laundering regime. This law regulates:

- Acts which fall into a money-laundering crime;
- Compliance monitoring and reporting procedures, including the application of the principle of recognizing service users and reporting suspicious financial transactions;
- Procedures for carrying cash and other payment instruments into or outside Indonesian customs areas;
- The structure and authority of the FIU;
- Procedures for the temporary suspension of financial transactions;
- Investigations, prosecutions and court hearings;
- Protection for whistle-blowers and witnesses;
- Cooperation in the prevention and eradication of money-laundering.

The FIU, officially named *Pusat Pelaporan Dan Analisis Transaksi Keuangan* (PPATK), is an independent institution established in the framework of preventing and combating the crime of money-laundering (Article 1, number 2 of the Money Laundering Law) and operates under an administrative model. In this case many play a role as an intermediary between the public or the financial services industry with law enforcement institutions. Its main task in accordance with Article 39 of the Money Laundering Law is to prevent and eradicate the crime of money-laundering.

Criminal acts regulated in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering (Money Laundering Law) include:

- Any person who places, transfers, spends, pays, grants, entrusts, carries abroad, changes forms, exchanges for currency or securities, or other acts of assets that are known to be or reasonably suspected to be the result of criminal acts as referred to in Article 2 paragraph (1) with the aim of disguising the origin of assets is subject to imprisonment for a maximum of 20 (twenty) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah) (Article 3 of the Money Laundering Law);

- Any person who conceals or disguises the origin, source, location, designation, transfer of rights, or ownership when the actual assets are known or reasonably suspected to be the result of a criminal act as referred to in Article 2, paragraph (1), is subject to imprisonment for a maximum 20 (twenty) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah) (Article 4 of the Money Laundering Law);

- Every person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange, or use of assets known or reasonably suspected to be the result of a criminal offence as referred to in Article 2, paragraph (1) shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp 1,000,000,000.00 (one billion rupiah) (Article 5 of the Money Laundering Law).

Efforts to eradicate corruption and enforce the law are carried out by investigators, public prosecutors and judges by involving the participation of the FIU and the Reporting Party. As an individual or entity with first-hand knowledge of the crime, the Reporting Party submits a report on Suspicious Financial Transactions (TKM) and Cash Financial Transactions (TKT) to the PPATK for analysis. If there are indications of Money Laundering and / or other criminal acts, the analysis report (LHA) or Examination Report (LHP) is submitted to the original criminal investigator which includes the Police, Attorney's Office, Corruption Eradication Commission (KPK), National Narcotics Agency (National Narcotics Agency (National Narcotics Agency) BNN), the Directorate General of Taxes, and the Directorate General of Customs and Excise. These law enforcement agencies can also request an analysis report (LHA) from the PPATK for criminal acts and / or return of assets being handled.

III. TYPICAL MONEY-LAUNDERING SCHEME

There are three stages to the money-laundering process,[1] namely:

i. *Placement:* efforts to place funds generated from criminal activities into the financial system.

ii. *Layering (Transfer):* separating the proceeds of crime from the source, namely criminal acts through several stages of financial transactions to hide or disguise the origin of funds. In this activity there is a process of transferring funds from certain accounts or locations as a result of placement to other places through a complex series of transactions designed to disguise and eliminate traces of sources of funds.

iii. *Integration (Using Property):* efforts to use assets that have seemed legitimate, both to be enjoyed directly or invested in various forms of material and financial wealth, are used to finance legitimate business activities, or to refinance criminal activities. In conducting money-laundering, the perpetrators do not consider the results to be obtained and the costs involved, because the main purpose is to disguise or eliminate the origin of money so that the end result can be enjoyed or used safely.

[1] Joni Emirzon, Bentuk Raktik Dan Modus Tindak Pidana Pencucian Uang, see https://jurnal.kpk.go.id.pdf, Palembang, October 2017.

The mode of crimes of money-laundering are as follows:

1. Open an account at a bank using your real identity, but the person who comes to the bank is another person who is similar to the photo in the identity and a signature similar to that printed on the original identity. In this case, before coming to the bank, the actor looks for a figure who is similar to the holder of the original identity and later acts as if he is the holder of the original identity. Previously the suspect had borrowed the original identity of the owner of the original identity for various reasons, namely for the processing of letters in the context of the transaction, for example, for the maintenance or checking of documents to the authorized agency.

2. Using the proceeds of crime to open a halal business such as catering, renting party tools, boutiques, restaurants or other businesses with the aim of obtaining profits that appear to come from the results of legitimate activities.

3. Using the proceeds of crime to purchase vehicles or assets in the name of other people such as wives, children, parents or drivers.

4. Making fictitious invoices, bills or accounts receivable as underlying transactions to place, transfer or transfer assets resulting from criminal acts.

5. Hiding the actual purpose of the transaction information in the transfer form (transfer, clearing or RTGS), for example, writing the purpose of the transaction for payment of debt or for payment as an underlying financial transaction of assets resulting from criminal acts.

6. Borrowing other people's accounts by mastering ATMs, tokens and savings books so that the perpetrators of criminal acts can freely withdraw cash, transfer or spend money from the crime as if it were legal money.

7. Borrowing an account belonging to someone else. The ATM and account book is held by the account holder, but when the money has entered the account, the perpetrator orders the account holder to transfer to the account of the offender or account designated by the offender.

8. Writing in the account opening application as a businessman, company owner, director of a PT, but in fact the company is only a front and there are no business activities. This effort was carried out so that the money that was deposited into his account as if from the results of business activities but actually came from the results of criminal acts.

9. Borrowing or using an account of a company that has long existed but its financial transactions are classified as passive to collect the proceeds of crime and subsequently the proceeds from criminal acts are withdrawn in significant amounts continuously or transferred to an account designated by the criminal offender.

10. Acting as a beneficial owner of a company which is used to accommodate assets resulting from criminal acts and subsequently the perpetrators who control the company's operations, including controlling corporate checks / BGs, some of which have been signed by directors and commissioners who have close relationships (wife / relatives / friends), and then the perpetrator freely withdraws cash using the check / BG.

IV. EXAMPLE OF A MONEY-LAUNDERING CRIMINAL CASE

This money-laundering case involved Nazaruddin, a member of parliament. Nazaruddin was convicted of committing a criminal act of corruption in the construction of the Hambalang Athlete House. Nazaruddin was charged with receiving Rp40.3 billion from PT Duta Graha Indah (DGI) and PT Nindya Karya and also charged with receiving bribes from PT Waskita Karya in the amount of Rp 13,250,023,000, from PT Adhi Karya in the amount of Rp 3,762,000,000, and from PT Pandu Persada Konsultan amounting to Rp 1,701,276,000. Nazaruddin then hid the proceeds of the crime through 42 accounts which were then transferred to ownership of the shares of Permai Group companies, ownership of land and buildings, spending or paying for the purchase of land and buildings, spending for vehicles, paying insurance policies, and paying for the purchase of shares and *sukuk* bonds.

V. ACTS OF INVESTIGATORS IN CARRYING OUT CRIMINAL INVESTIGATIONS OF MONEY-LAUNDERING

In carrying out investigations of money-laundering crimes, investigators carry out the following actions:

1. Tracing the suspect’s family history, both direct lineage and marriage;

2. Tracing the nearest circle of suspects who are suspected of being where the assets are hidden;

3. Immediately block a bank account or non-bank financial institution related to a suspect or related party suspected of having a relationship with the money-laundering conducted by the suspect;

4. Ask for help from the FIU to trace financial transactions by the suspect, the company or related parties to facilitate the work of investigators;

5. Perform calculations of how much profit or benefit the suspect has received from the original crimes;

6. Browse profiles of suspects and their companies;

7. Carry out compulsory measures against suspects or related persons.

VI. CHALLENGES OF INVESTIGATORS IN DEALING WITH MONEY-LAUNDERING CRIMES

In carrying out investigations of money-laundering crimes, it is often found that some investigators are less professional in carrying out investigations. This is caused by, among others:

1. Lack of competence and integrity;
2. Lack of understanding of financial products;
3. Lack of understanding of how money-laundering takes place in all financial services sectors;
4. Insufficient study of the cases that occur;
5. Failure to review the existing weaknesses in regulations, financial institutions and existing regulations;
6. Failure to plan measures for the prevention of customs and excise crimes;
7. Lack of cooperation and coordination with various agencies;
8. Not acting independently, objectively and professionally.

ANTI-MONEY-LAUNDERING MEASURES IN LAOS

Thongkham Soumaloun[*]

I. INTRODUCTION AND OVERVIEW

The State Inspection and Anti-Corruption Authority of the Lao PDR (SIAA), which was established on 16 February 1982, is a ministerial level government agency mandated to conduct inspections, prevent and combat corruption, handle corruption complaints within its scope of rights, duties and supervise such work throughout the country. Corruption continues to pose negative effects on national development as it corrodes the scarcely limited government funds desperately needed for development. Corruption is found in public and private sectors alike, such as in development projects (infrastructure), violation of financial rules, leakages in revenue collection, etc. The most commonly found forms of corruption include an abuse of power, bribery, embezzlement, cheating and falsification of standards in constructions, design and calculations.

To fulfil the Target No. 16.5 (Substantially reduce corruption and bribery in all forms) of the UN's Sustainable Development Goals (the 2030 Sustainable Development Agenda), Laos has put in place institutional and legal frameworks to prevent and combat corruption. Among others, some of the recent developments are as follows:

A. The Law on Anti-Corruption (ACL)

The ACL lays out principles, regulations and measures, prohibitions for preventing and combating corruption in order that the properties of the state, collectives, society or the legitimate rights and interests of the citizens are not damaged, misappropriated or swindled, to subject offenders to legal proceedings and protect those who are innocent, aiming to make state organizations transparent, strong and capable of conducting inspections at all times.

B. The Law on State Inspection (LSI, 2017)

The SIAA also exercises its powers and functions based on the LSI which was enacted to detect the strengths and weaknesses, violations of the laws in the performance of duties by public officials, persons, legal persons or organizations; and to come up with preventive, countering and corrective measures, aiming to strengthen the effectiveness in public administration.

C. The National Anti-Corruption Strategy towards 2020 no. 02/PM, dated 4 Dec 2012

Pursuant to Resolution No. 2 (2012), the State Inspection and Anti-Corruption Authority has formulated and enacted the National Anti-Corruption Strategy. The National Anti-Corruption Strategy provides for measures to reduce corruption incidences and ensure that state property and that of collectives and individuals are not embezzled directly or indirectly. It stresses the need to provide anti-corruption education, to revise and enforce all related legislation, and/or promote the development of other sub-law legislation as necessary. It encourages state organizations to enhance

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transparency in public administration by way of defining clear division of responsibilities to avoid overlapping of mandates; strengthening and streamlining work procedures and removing outdated bureaucratic red-tape; encouraging and supporting full public participation.

D. The Decree on Thriftiness and Anti-Extravagance no. 78/G, dated 10 Mar 2015

This decree defines general principles and measures for the management and use of state budget, source of funds, state properties and official working time so they are utilized efficiently in order to accumulate funds towards national development. It also encourages people of all walks of life to be careful in their spending, use of personal assets, national resources, vehicles, equipment and time, etc.

E. Decree on the Early Monitoring and Inspecting of Government Investment Projects no. 01/G, dated 6 Jan 2015

This decree defines principles, regulations and measures for monitoring, inspecting government investment projects at the early stage in order to prevent violations of laws, regulations and other acts of corruption in order that the government investment projects are executed in a transparent, thrifty and highly effective manner. The inspection is carried out in three stages such as at the project initiation stage, during the actual implementing stage and at the completion and before the hand-over of the project.

II. ANTI-CORRUPTION BEST PRACTICES

Laos is firmly committed to eradicating corruption and has stepped up a series of actions ranging from public education, training, monitoring, inspecting, investigating, prosecuting and punishing offenders. More specifically, based on the Decree on the Thriftiness and Anti-Extravagance, in 2016 the government withdrew luxury cars used by top leaders, sold them through auctions and provided them with cheaper models. Also, in support of this decree, the National Savings Policy no. 09, dated 19 May 2017, temporarily halts government agencies from purchasing new vehicles for administrative purposes starting from 2018 onwards. This immediately and resolutely stops unapproved projects. It further regulates that between 2017-2020, no new office is allowed to be built. The order strongly encourages all government agencies to take necessary steps to comply with the national savings policy, including in the use of electricity, water, office supplies, work time, furniture, and so on.

The Decree on Monitoring and Inspecting of Government Investment Projects at the early stage has empowered competent authorities to regularly monitor projects – to learn first-hand about the progress of the projects starting from initiation to closure. This particular decree has put a complete stop to the implementation of unapproved projects, which contributed significantly to reducing public debts. Since 2016, there have been a number of projects on the monitoring list, including the Laos-China Railway Project etc.

III. LEGAL FRAMEWORKS AND BEST PRACTICES RELATING TO AML

The following are effective measures to identify and trace the concealed proceeds of corruption:

A. Effective Use of Reporting Requirements (Financial Institutions, Designated Non-financial Businesses and Professions (DNFBPs)

In accordance with the Law on Anti-Money-Laundering and Counter Financing of Terrorism (AML/CFT No. 50/NA, 21 Jul 2014), art. 18, reporting entities and DNFBPs are now required to fulfil the following rights and obligations, inter alia:

Sub-para 2. Implementing Know Your Customer measures;

Sub-para 3. Enhancing Customer Due Diligence measures;

Sub-para 5. Gathering detailed information on customers;

Sub-para 6. Gathering information about customer's transactions;

Sub-para 9. Collecting data on wire transfer;

Sub-para 10. Maintaining records;

Sub-para 13. Reporting suspicious transactions, etc.

B. Border Control Measures against Cash Couriers and Bulk Cash Smugglers

In accordance with the Law on AML/CFT law, article 33 and 34, any person who carries cash, precious metals or any bearer of negotiable instruments in or out of the Lao PDR with the value exceeding the threshold set periodically by the Bank of the Lao PDR, must declare them to the customs officers at border checkpoints; then the customs officers shall further report it to the AMLIO. The threshold currently is set at 100,000,000 million LAK or about 12,500 USD. In case of non-declaration or underreporting or false declaration of cash, precious metal and bearer negotiable instruments relating to ML/FT and detected by customs officer, such items will be seized immediately; AMLIO is to be informed, and an investigation shall be initiated to determine the origins of such items.

C. Availability and Use of Disclosure of Assets

In line with the AC law, ever since the first Decree on the Asset and Income Declaration was enacted in 2013, Laos has completed two rounds of asset declarations. The subjects of asset declaration are all levels of public officials. Whereas, objects of declaration, include among others, land, houses, inheritance, vehicles, industrial machines, precious metals, bonds, gold, share certificates, payable debts and receivable debts, whose value amounts to 20 million LAK and above. Objects of declaration also include salary and other income.

The following are effective measures to freeze, confiscate and recover the concealed proceeds of corruption:

D. Offence of Illicit Enrichment

Although Lao PDR has not criminalized illicit enrichment or adopted clear legal provisions in this regard, there is an inspection mechanism that allows competent authorities to conduct inspection/investigations based on public complaints/claims when a public official appears to be

unusually rich or there is strong indication/evidence that he/she has acquired wealth or properties which cannot be reasonably explained.

E. Availability and Use of Administrative Seizure and Availability and Use of Non-conviction-based Confiscation

Art 10 (Rights and Duties of the Agency Responsible for Asset and Income Declaration) defines that such agency has the right (Sub-para 5) to request the revocation of the right to possession and use by an individual of the assets gained unlawfully following an investigation by competent authorities. Under Sub-para 6, the agency has the right to request competent authorities to issue seizure or freezing orders of assets and income obtained illicitly.

IV. INVESTIGATION, PROSECUTION, NATIONAL AND INTERNATIONAL COOPERATION

A. Investigation and Prosecution

As an investigative body, SIAA Laos is empowered to investigate corruption cases. Upon inspection and/or investigation, if sufficient evidence of a corruption offence is found, with the value of damage amounting to 5 million LAK, the SIAA shall finalize the investigation findings and submit case files to the Prosecutor's Office for prosecution. SIAA investigators perform their functions based on Art. 41 of the Law on Anti-Corruption (ACL 2012) and the Criminal Procedure Law (CPL), which include among others the right to receive and record complaints, reports of acts of corruption; request the decision-making authority to issue summonses, order arrest and detention, order seizure or freezing of assets, etc. Other rights include the right to seize and maintain seized items relating to corruption, the right to, alone or with other authorities, conduct household and vehicle searches, and the right to make arrests based on the order issued by the Head of Office of the Prosecutors or Head of People's Court. The procedures for investigation consist of: 1. Issuing an order to open an investigation, 2. Carrying out the investigation and 3. Preparing case files to submit to the Prosecutors' Office who shall then prosecute the accused in open court. The President of the SIAA is mandated to issue an order to open or not to open an investigation.

B. Sample Case: Corruption by Public Officials/State Enterprise Employees

The task force team composed mainly of SIAA investigators has recently concluded its investigations and submitted the case files to the Prosecutors' Office, which were subsequently adjudicated by the Vientiane People's Court in October 2019. The case is about corrupt practices by 12 former officials and employees of the Savings Deposit Institution (Lao Post Office), Ministry of Post, Telecom and Communications. They were charged with corruption, such as cheating, collusion, abuse of power and position to take state properties. Each of the convicts have received different prison terms, fines and civil liabilities based on the amount of losses or damages one's act has caused. For example, only four of them combined have already cost the government more than 4.5 billion LAK, or approximately 500,000 USD, while only 50 per cent of the corrupt money has been recovered to date. The court has initially sentenced these four defendants up to 9 years' imprisonment and fined them in the amount of one per cent of the stolen assets. The corruption has led to the suspension of service by the institution. The convicts have the legal right to appeal against the court judgments.

C. National and International Cooperation

1. National Coordination

In terms of inter-agency cooperation for the purpose of information exchange and coordination, SIAA has concluded MOUs with the Anti-Money-Laundering Office (AMLIO, BOL), State Audit Organization (SAO), while cooperation agreements with other law enforcement agencies are being developed. Very often when investigating corruption cases, the SIAA President appoints a taskforce team comprising investigators not only from SIAA, but also other relevant authorities such as anti-corruption officers of line ministries and provinces, police, prosecutors, AMLIO, Bank of the Lao PDR, Ministry of Finance, etc.

2. International Cooperation

In areas of international cooperation, Laos has maintained bilateral cooperation based on MOUs with all five neighbouring countries, namely Viet Nam, China, Cambodia, Thailand and Myanmar. The purpose is to strengthen cooperation in the prevention of and fight against corruption, including in anti-money-laundering cooperation, by way of exchange of information for preliminary fact-finding, investigation based on voluntary or upon request, best practices sharing to promote mutual understanding and strengthen cooperation between anti-corruption agencies.

At the multilateral level**,** Laos has continued to actively participate in SEA-PAC, a group established in 2004 that consists of all anti-corruption agencies from the Southeast Asia region, and the second review cycle of the Review Mechanism of the United Nations Convention against Corruption on Chapters II and V. More precisely, in 2016-2017, Laos, together with Uganda, successfully completed reviewing Burkina Faso's implementation of UNCAC. From 2017-2018, Laos completed its self-assessment, and we are currently reviewing the Draft Executive Summary submitted by the Secretariat of the Review Mechanism. In fact, according to the UNODC, Laos is one of the first countries in the region that completed the second review cycle.

All of the above-described engagement and partnerships have provided us with ideas to come up with specific ways and tools to deal with corruption in various fields as reflected in the enactment of corruption prevention legislation. Although in the past few years, there have not been any requests for mutual legal assistance for the purpose of identification, tracing, freezing, seizure, confiscation and recovery of proceeds of corruption from the Southeast Asia region, nor from other regions, Laos has never refused a request for MLA from any requesting state.

MALAYSIA ANTI-CORRUPTION COMMISSION: EFFECTIVE FINANCIAL INVESTIGATION AND ANTI-MONEY-LAUNDERING MEASURES FOR CONFISCATION AND ASSET RECOVERY TO COUNTER NEW AND EMERGING CORRUPTION THREATS

Shuhaimi Man[*]

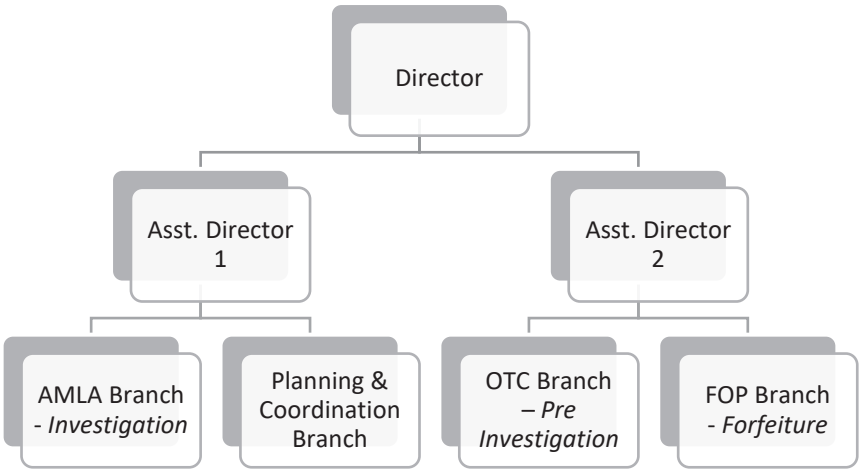
I. INTRODUCTION

Money-laundering is a growing crime this decade. According to a report from the Washington-based Global Financial Integrity Report, Malaysia is ranked fifth in the world with US $ 39.49 billion in illegal money-laundering. While there have been various steps taken by the authorities to address this problem, the number of money-laundering cases has increased in tandem with the increase in other crimes, and this trend is not only happening in Malaysia but also worldwide. To further support this point, statistical data shows that money-laundering from developing countries is increasing by an average of 9.4 per cent per year.

Serious attention to money-laundering activities began with the signing of the United Nations Convention on Transnational Crime in Palermo Italy in December 2000 (UN 2004). All the countries involved have sought to ensure that the essence of this convention is implemented in their respective countries. This convention provides a framework for participating countries in promoting greater cooperation to prevent and address cross-border crime more effectively.

II. SEGREGATION OF TASKS IN THE AML DIVISION OF THE MACC

AML Division Chart



[*] Anti-Money-Laundering Division, Malaysia Anti-Corruption Commission, Malaysia.

According to the organizational chart of the AML Division of the MACC (AML Division), there is a separation of duties at each branch within the AML division.

The AMLA branch of the AML Division (the AMLA branch) is responsible to investigate corruption-related money-laundering offences under the AMLATFPUAA Act 2001.

The Asset Recovery Branch of the AML Division (the Asset Recovery branch) is responsible to conduct forfeiture of property in relation to corruption and money-laundering, monitor the expiry of seizure orders and progress of the forfeiture proceedings, and produce reports on the status of all properties under its purview.

The Planning & Coordinating Branch of the AML Division (the Planning & Coordinating branch) is responsible for providing statistics and producing reports required by the National Coordination Committee in Combatting ML/TF for the purpose of a Follow Up Report and Follow-up Assessment on the implementation of the FATF Forty Recommendations, scheduled to be held in 2020. It is also responsible to ensure that the MACC conducts the corruption risk assessment for the country for the period from 2016 to 2018. With an additional scope of work in administration and confidentiality, this section covers the management and coordination of records applications with FIED (Cash Threshold Report (CTR), Suspicious Transaction Report (STR) and International Transfer Transactions).

Meanwhile the OTC Branch is conducting pre-investigation work. The primary focus of the OTC is scrutinization and examination of information obtained from various sources for profiling of the subject and associates, asset identification and tracing, and case risk assessment.

III. OBJECTIVES OF THE AML DIVISION OF THE MACC

The focus of the AML Division is to disrupt and dismantle corruption and related money-laundering activities via two (2) main objectives, as follows:

- To punish offenders/associates;
- To recover and confiscate stolen assets.

A. To Punish Offenders/Associates

Punishment is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, on the part either of the punishing authority or of those “in whose name” the punishment is inflicted. Punishment, in short, has a symbolic significance largely missing from other kinds of penalties. We at the MACC want to emphasize that punishment serves to teach offenders a lesson so that in the process of being punished and being made aware that a crime violated communal values, they will come to see what is good and choose it in the future.

B. To Recover and Confiscate Assets

Stolen assets can be hidden either domestically or abroad. Such assets are often hidden in banks located in the financial centres of developed countries, although financial havens have begun to

appear in emerging market countries as well. Further, multinational corporations from developed countries are often the source of bribes paid to public officials in developing countries. The crimes of bribery, corruption, and money-laundering (ML) are inextricably linked; indeed, ML, understood as hiding or obscuring the source, ownership, control, and movement of assets, could be seen as the last link in a long chain of corrupt acts. ML seeks to lower the chances of detecting stolen funds, as well as breaking the direct link between the kleptocrat or politically exposed person (PEP) and the stolen assets by disguising ownership.

The MACC is also aggressively collaborating with the Financial Intelligence Unit, other Law Enforcement Agencies and international authorities to share expertise and information to expedite investigations and produce quality investigative papers. In addition, the MACC has sought to recover movable or immovable property arising from illegal activities. By conducting comprehensive investigations such as freezing assets and seizing criminals' property, the MACC hopes to cripple these criminal activities as their financial resources are seized and frozen.

Integrated financial investigation is an essential element of any strategy for targeting proceeds from crime. The investigative process is the core activity, forming the basis for any asset recovery effort, asset recovery (particularly at an international level) involving an overlapping of anti-corruption, anti-money-laundering and broader law enforcement agendas. A jurisdiction where funds have been secreted will not confiscate or repatriate the assets to the country of origin unless evidence is presented, linking them to an illegal activity. This evidence must, furthermore, be admissible in court proceedings. As a preliminary activity to the recovery of stolen assets, the identification and tracking of the proceeds of crime and securing the property for final confiscation is an essential part of the process.

This is a demanding task which should be conducted in parallel with the investigation of the criminal offence generating material benefit. It requires intense cooperation between law enforcement agencies or those tasked with tracing assets, Financial Intelligence Units and, in most instances, the prosecutor. Where an investigation focuses, for example, on a public official’s receipt of bribes or otherwise unlawful financial enrichment, this will require the involvement of experienced investigators in gathering and analysing financial evidence. In many instances, it will also require the involvement of a forensic accountant, i.e. an expert, to assist in unravelling complex financial transactions, and an understanding of the role played by gatekeepers in assisting (sometimes unwittingly) criminals disposing of their criminal profits.

IV. STRATEGIES TOWARD EFFECTIVE INVESTIGATION & CONFISCATION

A. Strong Collaboration with FIUs & Domestic LEAs through Exchange of Information

The MACC collaborates with FIUs, domestic and international law enforcement agencies and NGOs through exchange of information to foster understanding and share expertise in combating corruption and money-laundering. Among the key points for the collaboration are:

- Sharing of expertise and information in the areas of operations, prevention and training; and

- Implementing capacity-building programmes to boost capability in combating corruption.




Domestic collaboration	International taskforce	Introduction of new & proposed new provision	Integrity Unit
- Public Private Partnership (MyFINet - FIU, MACC & Reporting Institutions) - A member of the National Coordination Committee on ML/TF - A member of special taskforce on 1MDB	- Grand corruption involving multiple jurisdictions 1. Effective platform for clarification of facts 2. Sharing of Information & documents prior to MLA 3. Overcoming legal impediments	- Malaysian Anti-Corruption Act 2009 - New Section 17A – Corporate Liability - Proposed new section that will criminalize wrongful declaration of beneficiary ownership information in government procurement	– Requirement to set up Integrity Unit within Government Ministry, Agencies & Government Link Companies

B. International Taskforce

MACC participates in a wide range of formal and informal task forces, including multi-agency task forces. Multi-agency task forces involve a broad range of partners working together to disrupt criminal enterprises through intelligence-led responses. Internationally, the MACC is working closely with the Department of Justice (DOJ), FBI, ICAC Hong Kong; Egmont Group; Anti-Corruption Bureau (BMR), Brunei Darussalam; Corrupt Practice Investigation Bureau (CPIB), Singapore; Commission on Corruption Eradication (KPK), Indonesia; Government Inspectorate of Viet Nam (GIV); National Anti-Corruption Commission (NACC), Thailand; International Criminal Police Organization (INTERPOL) and others aim to share information, Joint Legal Aid (MLA) and share ideas or opinions in conducting investigations.

C. Introduction of New and Proposed Provisions

New provisions recommended by MACC:

1. Section 17A of the MACC Act 2009–Corporate Liability Offence for Corruption

The amendment to the Malaysian Anti-Corruption Act 2009 to include this new provision was tabled in and passed by the Malaysian Parliament on 4 April 2018 with the Royal assent granted on 27 April 2018. The Bill introduces a new strict liability offence on corporations for failing to prevent bribery and shifts the burden of proof to the corporation to establish that it has adequate measures in place to prevent corruption. The corporation commits an offence if a "person associated with the commercial organisation" corruptly gives, agrees to give, promises or offers to any person gratification with the intent to secure business or an advantage for the commercial organization. The penalties could be in the form of a fine of not less than ten times the value of the gratification (if capable of being valued), or RM 1 million, whichever is higher, or imprisonment for a term not exceeding 20 years, or both.

2. Declaration of Beneficial Owner

The MACC is proposing a new provision under section 17B of the MACC Act 2009 which makes it an offence for failure to declare the ultimate beneficial owner by any person who enters

into the government procurement process: "*Any person who fails to declare the ultimate beneficiary owner in the government procurement process, has committed an offence under the Act."* Declaration of a false beneficial owner under any other acts enforceable in Malaysia is to be designated as a prescribed offence under the act.

D. Setting-up Integrity Units

The best public sector governance system and quality work culture are important foundations in raising people's perception of and confidence in their integrity. The Malaysian government is implementing policies to prevent corruption and increase integrity among civil servants. One of them is the establishment of a unit of integrity in the public sector. In this regard, the Government will continue to take steps to strengthen its integrity by ensuring civil servants uphold the principles of integrity and accountability towards better public service.

The establishment of the Integrity Unit was an internal control effort by the agency for managing integrity within the organization. This unit is responsible for the implementation of the following six (6) core functions:

1. Governance
   Ensures best governance is implemented;

2. Strengthening Integrity
   Ensuring culture, institutionalization and implementation of integrity organization;

3. Detection and Verification

   (a) Detects and confirms complaints of criminal misconduct as well violations of the conduct and ethics of the organization and ensures appropriate action is taken; and

   (b) Reporting crime to the responsible law enforcement agency;

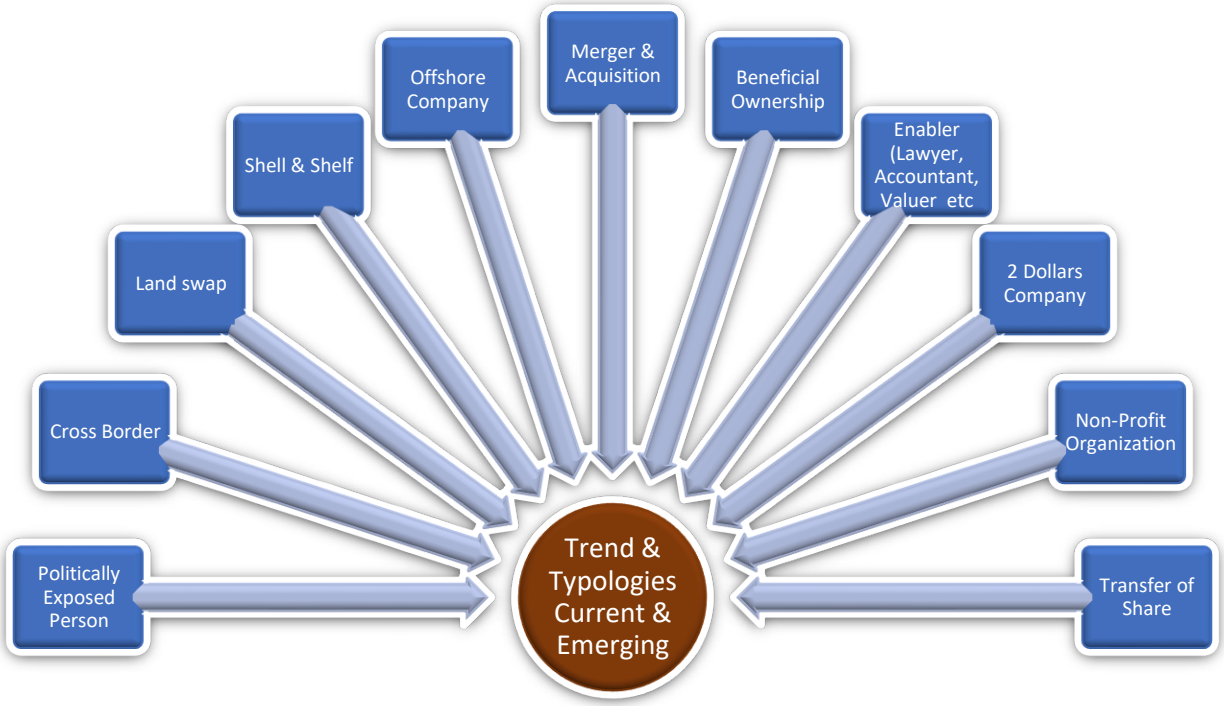
4 Complaint Management
   Receive and take action on all complaints / information on criminal mischief as well as moral and ethical violations by the organization;

5 Compliance
   Ensures compliance with laws and regulations in force; and

6 Discipline
   Performs the disciplinary functions of the Disciplinary Board.

Existing functions performed by various parts / branches / units in the agency must be transferred to this Integrity Unit based on the Integrity Unit model designated. The MACC is responsible for implementing agency risk rating to determine the appropriate Integrity Unit model. Risk levels are classified into high, medium or low, and risk rating is required to be performed every three (3) years.

V. TREND AND TYPOLOGIES: CURRENT AND EMERGING



VI. NEW AND EMERGING INVESTIGATION AT THE MACC

In the MACC, there is a branch within the AML Division, called the Operations Target Centre (OTC) that carries out pre-investigation work. The establishment of the OTC serves as the backbone of the Investigation Division at the MACC, especially in cases involving high-profile individuals and of public interest. The focus of pre-investigation work at the OTC is when the information obtained will be examined by analysing information from various angles including risk analysis and subsequently performing profiling to determine whether further investigations are needed before being recommended for further investigation. Pre-investigations carried out by OTC officials require strategic and detailed planning where the actions taken are based on collaborative data obtained from private agencies, overseas enforcement agencies and governments, as well as good analytical measures to determine the effectiveness of effective investigations and meet the targets. The OTC conducted preliminary investigations based on profiling and analysis. OTC officers called Case Analysts (CA) will handle cases with detailed financial and data analysis. The CA may conduct investigations in accordance with the powers of the Malaysian Anti-Corruption Commission Act 2009 (ASPRM 2009), AMLATFPUAA 2001 and the Criminal Procedure Code (KTJ).

A. Profiling and Analysis

Profiling is a fundamental step in every case investigation where identifying both the target and his associates is crucial and key to the next phase. Proper profiling is very useful in determining the pattern of investigation to be applied. The analysis ensures that the investigation is carried out

efficiently and effectively to obtain the required evidence and testimony and to meet the substance of the crime. At this stage, analysis and evaluation are also conducted to identify the following:

- Other criminal issues;
- Information requirements;
- Witnesses-protection requirements under the Whistle Blower Protection Act 2010 and the Witness Protection Act 2009;
- Requirements for the use of the Mutual Assistance in Criminal Matters Act (MACMA), Mutual Legal Assistance (MLA), bilateral & multilateral arrangements or treaties, good practices, both locally and internationally; and
- Other legal issues.

The analysis also includes aspects of identifying other possible offences that may have been committed such as offences under the Penal Code and other applicable laws. Analysis needs to be made from all angles regarding violations of existing laws and regulations.

1. Profiling

   Profiling activities include:

   - Profiling personal & corporate information,
   - Profiling of criminal information,
   - Profiling financial & investment information,
   - Property information profiling,
   - Vehicle information profiling,
   - Communication information profiling,
   - Travel information profiling,
   - Import / export trade information profiling, and
   - Open Source information profiling.

The sources for the above records are available from the database of the Malaysian Anti-Corruption Commission, the Royal Malaysian Police, the Central Bank of Malaysia, the Attorney General's Chambers (Special Task Force) and relevant government and private agencies. The above agencies will also act as the data centres where the latest data are housed on their own or through the tap of the relevant agencies.

2. Financial Analysis

In addition to the above profiling, financial and investment analysis will be conducted on Cash Threshold Reports (CTR) and Suspicious Transaction Reports (STR), which contain data obtained from the Financial Intelligence Unit, including account statements and cheques provided by financial institutions.

3. Targeting Analysis

In addition to the profiling stage above, the data obtained will be analysed to identify the background of the target being investigated, to determine the level of risk that will be met before planning appropriate on-the-ground intelligence and open investigations.

VII. REPORTING INSTITUTION

Under this Act, several institutions have been named as reporting institutions that need to report to the competent agency (Central Bank of Malaysia) any suspicious transactions that may have elements of money-laundering. Included in the list of reporting institutions are banks, currency exchange agencies, insurance brokers, Coastal Trustees, the Pilgrims' Board, Malaysian Postal Service, the National Savings Bank, the People's Cooperative Bank of Malaysia Berhad and licensed casinos. In addition, the Securities Commission, stockbrokers, external auditors, lawyers and company secretaries also fall into the category of parties who are required to report any suspicious transactions. In addition, banks have also been directed to conduct customer due diligence checks to ensure that criminals cannot use financial institutions in Malaysia for the purpose of money-laundering or terrorism financing.

VIII. OBSCURED BENEFICIAL OWNERSHIP

Increasingly, sophisticated criminals seek access to the country's financial system by masking the nature, purpose or ownership of their accounts and the sources of their income through the use of front companies, shell companies or nominee accounts with unknown beneficial owners. Front companies typically combine illicit proceeds with lawful proceeds from legitimate business operations, obscuring the source, ownership and control of the illegal funds. Shell companies typically have no physical operations or assets and may be used only to hold property rights or financial assets. Nominee-held "funnel accounts" may be used to make structured deposits in multiple geographic locations and corresponding structured withdrawals in other locations. All of these methods obscure the true owners and sources of funds.

IX. CASE STUDY

The information comes from a financial analysis conducted by the OTC in which the initial investigation found that the first suspect had enjoyed the purchase of luxury goods and the receipt of a check paid by Mr. B2 (Suspect 2), owner of Company XXX Sdn Bhd, YYY Sdn Bhd and ZZZ Sdn Bhd. Initial investigations revealed that the three companies had been awarded projects through the KKK Sports Council (KKK) for a programme under the Ministry of SSS. All projects awarded to the three companies were paid by the KKK from the National Trust Fund's (trust fund) provided by the Ministry of SSS.

Each year the Ministry of SSS will be allocated a total of RM 150 million in funding from the Ministry of Finance (MOF). The allocation of the trust fund will be distributed based on project proposal requests by the agencies under the Ministry of SSS including KKK, the National SSS Institute and more. The approval of this application will be presented at the Trust Fund Management Committee Meeting chaired by the Secretary General of the Ministry of SSS. Suspect 1 was also one of the members of the Trust Fund Management Committee.

Initial investigation also revealed that the three companies owned by Suspect 2 had tender projects from SSS, but the work was not implemented. This is because each payment claim received by the company was paid to Suspect 1 by way of AMEX and credit card repayment and other payments. Based on financial analysis, Suspect 1's accounts were found to have been credited via cheques and cash from the three companies.

In this case, the CA had profiled the individual suspects, directly or indirectly, involved in the commission of the corrupt activities. Then, the CA profiled the suspected individual family members. After identifying individuals and their family members, the CA will review if they have any companies. In addition, the CA also conducted an open source search to identify lifestyle, hobbies and so on. This information was used to identify the suspects and their associates favourite meeting places, favourite places to spend their spare time and other information that might be useful in assisting an open investigation.

Subsequently, the CA obtained financial information from the FIU for financial analysis and tracing. Based on financial and tracing analysis, the CA will be able to identify the patterns and modes of operation of the criminal. After all the profiling and financial information, the CA was be able to identify the offences that had been committed and proposed that an open investigation be conducted. The information provided will be used by the investigating officer in conducting an open investigation. This method expedited the investigation process.

X. CONCLUSION

Malaysia has been through difficult times for the past few years due to major issues affecting its efforts to fight corruption; but this difficult episode is not expected to be repeated in the future. Quoting the words of Prime Minister Tun Dr Mahathir bin Mohamad, Malaysia should be known for its integrity and not for corruption. By that, in the face of the challenges of globalization and the political scenario of uncertainty, the Government needs to set its direction through development of an integrated and comprehensive strategic effort to fight corruption. Enforcement agencies also need to increase their expertise in various fields, especially in cases of transnational corruption.

PROSECUTING CORRUPTION AND MONEY-LAUNDERING: THE NAJIB RAZAK EXPERIENCE

Izzat Fauzan[*]

I. BACKGROUND

Although the investigation into the matter began as early as 2015, only on 4 July 2018 was former prime minister of Malaysia Dato' Seri Mohd Najib bin Hj Abdul Razak charged with two (2) sets of offences, the first being a charge for using his office for gratification under the Malaysian Anti-Corruption Commission Act, the second being three (3) charges for criminal breach of trust under the Penal Code. On the 7 August 2018, three (3) charges for receiving proceeds of unlawful activities were brought against him under the Anti-Money-Laundering Act. Trial commenced on 3 April 2019, and the former prime minister was called to enter his defence on 11 November 2019 on all seven charges.

II. THE MALAYSIAN ANTI-MONEY-LAUNDERING ACT

The Malaysian Anti-Money-Laundering Act[1] ("AMLA") provides a very wide definition of what constitutes money-laundering under Malaysian law. Section 4 of AMLA makes it an offence if someone, in relation to proceeds of an unlawful activity or instrumentalities of an offence, engages in a transaction,[2] or, acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes or uses[3] said proceeds, or, removes from or brings into Malaysia[4] said proceeds, or, conceals disguises or impedes the true nature origin location, movement, disposition, title of, rights with respect to, or ownership of said proceeds.[5]

The law allows for the court to draw an inference from any objective factual circumstances that a person knows, has reason to believe or has reasonable suspicion that the property is the proceeds of unlawful activities,[6] or without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is the proceeds of an unlawful activity or an instrumentality of an offence.[7]

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[*] Deputy Public Prosecutor, Special Litigation Unit, Attorney General's Chambers, Malaysia. The following is a discussion on the events that transpired up to the end of the Prosecution's case and the findings of the High Court of Malaya in Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd Razak as of 11 November 2019.

[1] Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2011 [*Act 613*].

[2] Section 4(1)(a) AMLA.

[3] Section 4(1)(b) AMLA.

[4] Section 4(1)(c) AMLA.

[5] Section 4(1)(d) AMLA.

[6] Section 4(2)(a) AMLA.

[7] Section 4(2)(b) AMLA.

In proving the *mens rea* of an accused under AMLA, the Malaysian Court of Appeal ruled in Azmi Osman v PP and another appeal[8] as follows:

> The doctrine of willful blindness imputes knowledge to an accused person *who has his suspicion aroused to the point where he sees the need to inquire further, but he deliberately chooses not to make those inquiries.* Professor Glanville Williams has succinctly described such a situation as follows: "He suspected the fact; he realised its probability but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone is willful blindness." (Glanville Williams, Criminal Law 157, 2nd edn, 1961). Indeed, *in the context of anti-money laundering regime, feigning blindness, deliberate ignorance or willful ignorance is no longer bliss. It is no longer a viable option. It manifests criminal intent.*

The prosecution need not prove that the proceeds are from a specific unlawful activity in the event that the proceeds are derived from one or more unlawful activities[9] and that a person may be charged and convicted of an offence 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.[10]

The above was affirmed by the Malaysian Court of Appeal in Aisyah Mohd Rose & Anor. v PP[11] which decided as follows: "… we acknowledge that pursuant to s. 4(2) of AMLATFA, the conviction for an offence under s. 4(1) can be sustained even without the conviction for a predicate offence…"

III. THE MALAYSIAN ANTI-CORRUPTION COMMISSION ACT

In relation to the Malaysian Anti-Corruption Commission Act[12] ('MACCA') offence of using office for gratification, the law provides that the prosecution needs to show that the accused is an officer of a public body, and that he had used his position to obtain gratification, whether for himself, or his relative or associate. What the prosecution needs to prove is that the person charged was an officer of a public body[13] and had abused his position for gratification, whether for himself or another person who is his relative or associate. In the absence of direct evidence to show that the position or office was abused by the accused, the law presumes that there was such an abuse when the accused makes a decision or takes any action in relation to a matter either the accused or his relative had an interest in.[14] In relation to the gratification received, the law presumes that in the event that it was proven that gratification has been received, accepted, obtained, solicited, given, promised, offered, or any agreement or attempt to do any of the aforementioned, it was presumed to have been done corruptly.[15]

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[8] [2015] 9 CLJ 845.
[9] Section 4(3) AMLA.
[10] Section 4(4) AMLA.
[11] [2016] 1 CLJ 529.
[12] Malaysian Anti-Corruption Commission Act 2009 [*Act 694*].
[13] Section 3, MACCA.
[14] Section 23(2), MACCA.
[15] Section 50, MACCA.

IV. CHALLENGES FACED

The prosecution was unable to call Nik Faisal Ariff Kamil ('Nik Faisal') and Low Taek Jho ("Jho Low") as witnesses. They both remain wanted by the Malaysian authorities. Nik Faisal wore several hats in the SRC incident. He was appointed as the CEO and a director of SRC International Sdn. Bhd. ("SRC International"), and he was also made to be the "Authorized Personnel" to deal with the personal bank accounts of the former prime minister. Jho Low, however, held no official position in SRC International or any of the other companies involved. However, he was painted to be the invisible hand behind the entire scheme.

As the prosecution was unable call Nik Faisal and Jho Low as witnesses, the prosecution had no choice but to rely on contemporaneous documentary evidence. The documents seized by the authorities, however, were both voluminous and a mixed bag of original documents and copies of documents, which fell short of the primary evidence rule. In dealing with this, the MACCA and AMLA provides that documents, including copies of documents obtained by the investigating authority, are admissible in evidence in any proceeding.

Section 41A of the MACCA provides:

> Where any document or a copy of any document is obtained by the Commission under this Act, such document shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any other written law.

Section 71 of AMLA provides:

> Where the Public Prosecutor or any enforcement agency has obtained any document or other evidence in exercise of his powers under this Act or by virtue of this Act, such document or copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any written law.

It was the contention of the accused that the bulk of the documents adduced by the prosecution were not admissible by virtue of the fact that the documents produced were not primary evidence, the requirements of admitting secondary evidence were not met, the makers of the documents were not called, there was no proof of the execution on the documents produced and that section 41A of the MACCA was not applicable as it does not apply retrospectively as it only came into force in October 2018.

The prosecution contended that the documents produced are admissible, as the accused was in essence, merely challenging the irregularity and inadequacy of the method of production of the documents, and that such challenges should be raised at the earliest possible moment and failure to do so would amount to a waiver of the right to object to, and admission of, the documents. Further to the above, it was also submitted that the documents were admissible by virtue of the non-obstante clauses in both the AMLA and MACCA, i.e. sections 41A of the MACCA and 71 of AMLA, respectively.

V. FINDINGS OF THE HIGH COURT

The High Court ruled that the prosecution had proven a prima facie case and that the former Prime Minister was called upon to enter his defence. In relation to the argument concerning the documents and the applicability of section 41A of MACCA and section 71 of AMLA, no oral pronouncement of the ruling was made in open court. However, the Court relied on the contested documents indicating that it was accepted to form part of the evidence admitted before the court.

EFFECTIVE FINANCIAL INVESTIGATION AND ANTI-MONEY-LAUNDERING MEASURES FOR CONFISCATION AND ASSET RECOVERY TO COUNTER NEW AND EMERGING CORRUPTION THREATS

Kyaw Kyaw Naing[*]

I. INTRODUCTION

Nowadays, transnational crimes such as money-laundering, corruption and terrorism are committed by groups and in more than one state by using advanced technology. Money-laundering and corruption offences occur in the form of transnational crimes and threaten not only the rule of law but also the economy of the state. Combating these crimes is the first and most important task requiring cooperative efforts of the entire international community. Today we live in a world that is linked. No state or jurisdiction in the world can live alone. States are linked to each other by cooperation or by legal instruments in the form of bilateral or multilateral treaties. Corruption concerning government officials is widespread in the world today. No country in the world is free from malpractice. The fact that no country is free from corruption requires the effort of all countries to combat this widespread matter.

II. MYANMAR'S PARTICIPATION IN INTERNATIONAL TREATIES REGARDING TRANSNATIONAL CORRUPTION-RELATED CRIMES

The Republic of the Union of Myanmar, being a member of the global community, has never lagged behind and is taking part in the process of combating transnational crimes such as money-laundering, terrorism and corruption, and is cooperating with international and regional anti-corruption organizations. Regarding the international conventions which have been ratified by Myanmar, measures have been taken for criminalization of money-laundering and corruption, and the harmonization of domestic law with international standards. Myanmar acceded to the United Nations Convention for the Suppression of the Financing of Terrorism, which was signed on 12 November 2006 and ratified on 16 August 2006. The United Nations Convention against Corruption was signed on 2 December 2001 and ratified on 20 December 2012.

III. NATIONAL ANTI-MONEY-LAUNDERING LEGISLATION

In order to give domestic effect to these conventions and the conventions ratified by Myanmar that come into touch with the public, the principles of the conventions have been transformed into domestic legislation for implementation thereof. Myanmar promulgated the Control of Money Laundering Law 2002 which conferred power to the Central Control Board so whether the offender absconds or not, his property can be confiscated. However, the Control of Money Laundering Law in 2002 has some

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gaps in the implementation of the FATF recommendations. In 2014, the Anti-Money-Laundering Law was promulgated in line with FATF standards, and its rules were issued on 2015. According to the CML Law, the properties of the absconder cannot be confiscated by the Control of Money Laundering Central Board. However, the court only has power to confiscate these proceeds of crime (money and properties). Relating to the court practice of confiscation, it is true that confiscation of properties and money are based on the conviction of the accused person under the Criminal Procedure Code, section 517. On the other hand, section 53(a) of the Anti-Corruption Law conferred power to the Commission to confiscate the properties and money which are derived from illegal enrichment. As an aspect of international cooperation, section 25 of the Mutual Legal Assistance in Criminal Matters Law provides that the Central Authority has power to confiscate properties and money upon the request of a foreign jurisdiction.

The CML Law has conferred power to the FIU to investigate and prosecute money-laundering cases. Now, the FIU has been established separately to do its main task of receipt, analysis and dissemination of STRs. Investigation of money-laundering is assigned to the Financial Crime Investigation Division. However, there are many investigation bodies which have power to investigate predicate offences such as the Drugs Police Force, the Anti-Trafficking Police Force and the Bureau of Special Investigation. Some offences are not separately prescribed in their duties and so they are overlapping each other.

IV. NATIONAL RISK ASSESSMENT ON MONEY-LAUNDERING AND FINANCING OF TERRORISM

Under FATF Recommendation 1 and under section 7(c), chapter 4 of the AML Law, the 2014 Myanmar National Risk Assessment Committee on ML/TF was formed by the Anti-Money-Laundering Central Board on 30 December 2015 to conduct national risk assessment in money-laundering and financing of terrorism with the help of the International Monetary Fund. The National Risk Assessment Report was issued on 12 July 2018 by approval of the Cabinet. In the assessment report, proceeds of crime were largely identified based on tax and excise evasion, environmental crime, and corruption and bribery.

In order to mitigate the risks that have been found in the NRA and Mutual Evaluation Report, the strategic action plan was drafted in consultation with the relevant Ministries and DNFBP to conduct a risk-based approach for mitigating risks. Among the five strategic areas, areas (iv) and (v) mainly focus on the capacity development of LEAs, prosecuting bodies and judicial authorities with respect to confiscation of proceeds obtained from committing money-laundering, its predicate offences, terrorist financing, and enhancing internal and international cooperation on AML/CFT.

V. ANTI-CORRUPTION LEGISLATION

Before Myanmar was a party to the UNCAC, Myanmar had a legal framework since she gained her independence, namely the Prevention of Corruption Act 1948, the Amendment of the Criminal Law 1951, the Law Taking Action against Ownership or Sale of Property Obtained by Illegal Means 1986 to protect the State from corrupt civil service personnel. During this period, bribery and corruption were severely suppressed in accordance with the existing laws.

Myanmar signed the United Nations Convention against Corruption on 2 December 2005 and ratified it on 20 December 2012. Under the obligations of UNCAC, Myanmar adopted the Anti-Corruption Law in 2013 and its rules were issued. Under this law, the Anti-Corruption Commission was formed on 25 February 2014, which was composed of 15 members. A new commission was formed on 23 November 2017 by President Office Notification 30/2017, comprising 12 members including the Chairperson. The commission's functions and responsibilities are prescribed in sections 16 and 17. Under this law, the Anti-Corruption Commission can only investigate corruption cases and can only confiscate based on illegal enrichment. Section 58 of the Anti-Corruption Law prescribes that any person who conceals, obliterates, alters or transfers the proceeds of crime related to any offence contained in this law shall, on conviction, be punished with imprisonment for a term not exceeding five years, and shall also be liable to pay a fine. This means that the commission has power to investigate corruption related to money-laundering cases. It is also overlapping power with Financial Crime Division under the AML Law.

VI. PROSECUTION OF CORRUPTION CASES

According to the Anti-Corruption Commission's website, during 2017 to 2019, 37 corruption cases were prosecuted by the Anti-Corruption Commission. However, corruption cases are not investigated as money-laundering offences. Because these cases are a small amount of bribery cases, that is why the Anti-Corruption Commission does not seem to hand over the cases to the Anti-Financial-Crime Division to take action against offenders to charge with AML.

If the predicate offence and money-laundering can be investigated in parallel, money-laundering can be suppressed effectively. Although predicate offences are investigated by some relevant organizations, some cases were not exposed. In corruption cases, some of the known properties can be confiscated but some are not because there is no parallel investigation if cooperated with the Financial Crime and Anti-Money-Laundering Division more public funds can be confiscated.

In the Asia/Pacific Group on Money Laundering (APG) Mutual Evaluation Report of Myanmar, the APG recommend that parallel investigation of predicate offences and money-laundering should be conducted for effective investigation and prosecution. So a provision granting power to conduct parallel investigations is needed in the AML Law. That is why this recommendation is included in the new draft Anti-Money-Laundering Law.

Prosecuting			**37 Cases**
No. of Prosecuted Persons			**106 persons**
Serial	**Section**	**Accused/Sentenced Persons**	**Remarks**
ɔ11	Section 55 of the Anti-Corruption Law	2 persons	2 persons are on trial.
J11	Section 55/63	3 persons	3 Persons are on trial.

၃။	Section 56	73 persons	56 persons are on trial; 16 persons are being prosecuted as absconders; One person was sentenced to 5 years' imprisonment.
၄။	Section 56/63	19 persons	18 persons are on trial; One person was sentenced to 4 years' imprisonment.
၅။	Section 57	4 persons	2 persons are on trial; One person is being prosecuted as an absconder; One person was sentenced to 3 years' imprisonment.
၆။	Section 57/63	2 persons	One person is being prosecuted as an absconder; One person was sentenced to 3 years' imprisonment.
၇။	Section 59	1 person	One person is on trial (One Case)
၈။	Section 59/63	2 persons	2 persons are being prosecuted as absconders (2 Cases)

This chart is copied from the ACC website. http://www.accm.gov.mm/acc/index.php?route=pavblog/blog&id=70

VII. PREVENTIVE MEASURES AGAINST CORRUPTION

As per Anti-Corruption Rule 59, the Anti-Corruption Commission may, for the participation of the public in preventive measures of corruption, give educative lectures in schools and civil society organizations, provide training courses to the staff of government departments and organizations, expose corruption and activities of persons of high integrity in the news media, release news of corruption for public information and give training and education to promote the honesty of the authorities. The Anti-Corruption Commission formulated the Anti-Corruption Strategic Plan (2018-2021), entitled "Fight Corruption, Promote Integrity''. Corruption Prevention Units were formed in 15 ministries on 1 March 2019. The members of the Corruption Prevention Units are trying to reduce corruption in their organizations.

VIII. INTERNATIONAL COOPERATION

Myanmar is a state party to the United Nations Conventions Against Corruption. In order to render assistance in criminal matters under international obligations, Myanmar promulgated the Mutual Assistance in Criminal Matters Law on 28 April 2004, and its Rules were issued on 14 October 2004. The Extradition Law was enacted on 21 July 2017.

IX. THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS LAW

The Mutual Assistance in Criminal Matters Law was promulgated on 28 April 2004, and its Rules were issued on 14 October 2004 in order to render legal assistance in criminal matters in accordance with international conventions, regional agreements and other agreements among

states. Under this law, the Central Authority was formed, which is chaired by the Minister for Home Affairs. All the matters in regard to rendering assistance in criminal matters are administered by the Central Authority. Under section 10 of the MLA Law, any foreign state shall, if it is a state party to the international convention or regional agreement to which Myanmar is a state party, or a state which has a bilateral agreement with Myanmar, request assistance directly to the Central Authority and if it is not, a foreign state may request assistance from the Central Authority through diplomatic channels.

Section 25 of the MLA Law authorizes the Central Authority, after scrutiny of the request of a foreign state, to search, seize, control, issue a restraining order or confiscate the assets. The Central Authority shall instruct the relevant government departments and organizations to execute the request in conformity with existing laws. However, section 26(a) provides that the Central Authority will execute the request of foreign state based on bilateral treaty if there is no bilateral agreement between the two states and the confiscated properties shall be vested in the State. This means that asset recovery will be implemented based on bilateral agreement, otherwise the asset must be owned by the State. Under UNCAC, asset recovery is one of the most important matters in international cooperation. Under the Second Cycle UNCAC review on Myanmar, reviewing states pointed out some weakness in Myanmar's legislation on international cooperation, particularly with respect to the asset recovery system.

X. EXTRADITION LAW

Regarding extradition, Myanmar enacted the Extradition Act in 1903 in which listed cases are extraditable; however, modern forms of transnational crime are not listed. This is not in line with the present situation, so Myanmar's Parliament enacted a new extradition law in 2017 to be in line with international obligations. To date, Myanmar has no bilateral treaties with other states and no extradition cases. In addition, Myanmar's AML/CFT regime was reviewed by the APG in 2017. The Report was adopted at the APG's 21st Plenary Session in Nepal in 2018, and it was published in September 2018. In the report, Myanmar was found to be in partial compliance with FATF Recommendations 37, 38 and 39, but Recommendation 40 was found to be in substantial compliance. This shows that Myanmar still has some weaknesses in international cooperation.

XI. THE ROLE OF THE UNION ATTORNEY GENERAL'S OFFICE

In accordance with the 2008 Constitution, the Attorney General of the Union Law was enacted on 28 October 2010. Under this Law, the Attorney General of the Union and a Deputy Attorney General shall be appointed. The Attorney General of the Union is a member of the Union Government, and he is responsible to the President of the Union. In order to do the duties and power of Attorney General of the Union, the Union Attorney General's Office was established. In the Union Attorney General's Office there are four main departments headed by Directors General:

(a) **The Legislative Vetting and Advising Department** is responsible for vetting and advising with respect to new laws initially drafted and sent by the relevant ministries, as well as the vetting of draft laws sent by the relevant ministries to amend any existing laws. This Department is also responsible for vetting and advising the draft

Rules, Procedures, Notifications, Order and Directives and translation of laws from the Myanmar language to English.

(b) **The Legal Advice Department** is responsible for tendering legal advice to the Union-level organizations on matters relating to international, regional or bilateral or multilateral treaties, whether Myanmar should be a party or not, and tendering legal advice to the Union-level organizations regarding MOUs, agreements, local and foreign investment instruments and giving them general legal advice.

(c) **The Prosecution Department** is one of the oldest departments in the Union Attorney General's Office. This Department is responsible for prosecution on behalf of the State in criminal and civil cases in which the government is involved as the plaintiff or defendant. In addition to that under the new Constitution, the Union Attorney General's Office appears on behalf of the State in applications to issue writs to the Supreme Court of the Union.

(d) **The Administration Department** carries out the functions relating to civil service personnel affairs, inspection, budget and accounting, logistics, legal research, building, training, compiling and publishing law books, and information technology.

XII. ROLE OF THE PROSECUTOR OR LAW OFFICER

Under the Union Attorney General Law 2010, law officers have various duties. Law officers from different levels of law offices are mainly concerned with tendering pretrial legal advice on criminal cases and appearing in the court on behalf of the government. Before the Anti-Corruption Law, corruption cases were investigated and prosecuted by the Bureau of Special Investigation, in which law officers are not involved. After the Anti-Corruption Law was enacted, the Commission is responsible to investigate, and the Union Attorney General's Office is responsible for prosecution.

XIII. CONCLUSION

Regarding the theme of this seminar, "Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery to Counter New and Emerging Corruption Threats", Myanmar has some deficiencies in effective investigation in money-laundering, corruption cases and its asset recovery system as recommended by mutual evaluation and the result of the National Risk Assessment. Myanmar needs to fill some gaps and needs to enhance capacity-building within prosecuting bodies, and among judges and law officers as well, to do their duties effectively.

DETECTION, PROSECUTION AND ADJUDICATION OF HIGH-PROFILE CORRUPTION

Soe Naung Oo[*]

I. INTRODUCTION

Myanmar enacted the Suppression of Corruption Act in 1948. The new Anti-Corruption Law was enacted on 7 August 2013, and the Suppression of Corruption Act, adopted in 1948, was repealed. The Anti-Corruption Commission was formed on 25 February 2014, and investigation officers from the Bureau of Special Investigation were attached to that commission to investigate corruption offences.

II. PROVISIONS FOR POLITICAL POST HOLDERS

The Anti-Corruption Law, Section 3(g), states that "political post holder" means a person who is declared by the Anti-Corruption Commission as a political post holder by issuing notification from time to time with the consent of parliament. In Section 3(h), it states that high ranking officer means director general and managing director who assumes the duties as a head of public servants of a government department, organization or a person who holds a similar designation or member or director of a state owned or state and private joint venture company, board, corporation or other organization or a person who holds a similar designation.

In Section 43(b), it states that the parliament representatives may submit the proposal to the relevant parliament under the law in connection with any political post holder who is becoming rich by bribery, misusing the power relating to the designation or committing corruption. In Section 43(c), the relevant parliament speaker shall assign the Anti-Corruption Commission to investigate and submit as necessary upon receiving the proposal under sub-section (b). He shall inform the authority concerned to take action under the law if any political post holder is becoming rich by corruption, misusing the power relating to the designation or committing corruption. In Section 55 of the Anti-Corruption Law, it states that if any political post holder is convicted of committing corruption, he or she shall be punished with imprisonment for not more than 15 years and with a fine.

III. CORRUPTION PREVENTIVE MEASURES

In Anti-Corruption Rule 59, it states that the Anti-Corruption Commission may, for the participation of the public in preventive measures of corruption, give educative lectures in schools and civil society organizations, provide training courses to the staff of the government departments and organizations, carry out to expose the matters of corruption and activities of persons of high

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integrity in news media and information works, release news of corruption for public information, and give training and education to promote the honesty of the authorities.

The Anti-Corruption Commission formulated the Anti-Corruption Strategic Plan (2018-2021), based on the recommendations and comments of 26 resource people and citizens in the Symposium on the title "Fight Corruption, Promote Integrity'', which was held in Yangon from 21 to 23 January 2018. The Anti-Corruption Strategic Plan (2018-2021) was implemented under the five areas as follows:

- Thematic Area (1): Establishing the best effective foundation for strengthening corruption prevention, investigation and prosecution. Work plans for the Thematic Area (1) are as follows:
  - Work Plan (1): Developing the legal framework of the Anti-Corruption Law
  - Work Plan (2): Enhancing awareness, prevention and combating corruption throughout the country
  - Work Plan (3): Reviewing the complaint mechanism
  - Work Plan (4): Protection of complainants and informants
  - Work Plan (5): Establishing the Corruption Prevention Unit (CPU) in the Anti-Corruption Commission Office and Ministries

- Thematic Area (2): Building Capacity on Integrity
- Thematic Area (3): Promoting cooperation with international organizations in prevention and anti-corruption
- Thematic Area (4): Protecting State-owned properties, human rights and the interests of the citizens
- Thematic Area (5): Fostering a corruption free area in the economic fields

The UNODC and Anti-Corruption Commission held the Anti-Corruption Training Course in Mandalay and Yangon in 2018. The Myanmar Accountancy Council held the Discussion on Anti-Corruption Law and Rules in Yangon in 2018. The Anti-Corruption Commission has distributed Integrity Promotion books to the Ministry of Education to promote awareness in the Basic Education High Schools. Awareness raising on corruption programmes is being carried out at Ministries, States and Regions, the Central Institute for Civil Service and a refresher course for Senior Civil Servants.

Corruption Prevention Units were formed in 15 ministries on 1 March 2019. The members of the Corruption Prevention Units are trying to reduce corruption by reviewing the weakness of the laws, rules and regulations that need to be amended.

IV. ANTI-MONEY-LAUNDERING MEASURES

The Duties of the Anti-Money Laundering Central Board (AMLCB) formed under the Anti-Money Laundering Law, 2014 are to form the Board of Inquiry, to issue directives to the reporting organizations and to promote awareness in the government departments and organizations. The State president has assigned the Ministry of Home Affairs as the Focal Ministry for the National Risk Assessment on AML/CFT, according to the FATF Recommendation of 1 June 2013, the

National Risk Assessment Committee was formed on 30 December 2015 with the Deputy Minister for Home Affairs as chairman, and composed of 29 members. To perform the activities broadly, that Committee was reformed on 18 June 2016 with 12 government departments and 6 private organizations composed of 37 members.

The assessment was conducted, based on information from 2011 to 2015 in Myanmar. It was conducted by Japanese funds and IMF-funded staff's assessment methodology. The Myanmar National Risk Assessment Executive Summary Report on Money Laundering and Financing of Terrorism was issued in July 2018. After the National Risk Assessment, the Risk Based Approach on AML/CFT was conducted.

After the National Risk Assessment (NRA) was completed, policies on AML/CFT and mechanisms were formulated in line with FATF Recommendation 2. The Anti-Money-Laundering Central Board (AMLCB) has formulated a National Strategy and Action Plan to correct the weaknesses found in the Mutual Evaluation (ME), and it was approved on 1 March 2019. Now, it is being prepared for submission to the cabinet. After the approval from the cabinet, departments related to the AML/CFT have to implement the Strategy and Action Plan.

The AMLCB has amended the Anti-Money-Laundering Law by reviewing the weakness found by the NRA and ME processes. That amended Anti-Laundering Law was translated and distributed to international experts. The AMLCB has drafted the National Strategy with five area as follows:

- the policies, directives and legal framework of anti-money-laundering and countering the financing of terrorism shall be in line with international norms and shall be effective;

- to implement the duties of the FIU more effectively;

- to effectively prevent the money-laundering and financing of terrorism of bank and financial institutions and designated non-financial business and professions;

- if there are weaknesses in confiscation of criminal assets resulting from predicate offences and financing of terrorism by law enforcement bodies and prosecution organizations, they shall be amended. If the amended Anti-Money-Laundering Law is completed, it will be submitted to the parliament before October 2019.

Myanmar was listed among the Non-Cooperative Countries and Territories (NCCT) on 22 June 2011 because of non-compliance with NCCT standards and norms. At that time, Myanmar did not have the Anti-Money Laundering Law. Myanmar enacted the Control of Money Laundering Law, 2002, the Mutual Legal Assistance in Criminal Matters Law and Rules, formed the FIU and Central Control Board, drafted the Action Plan, joined the Asia Pacific Group on Money Laundering, which is similar to FATF, and Myanmar was removed from the NCCT list on 13 October 2006. In 2007, the NCCT process was dissolved and the International Cooperation Review Group (ICRG) process began. The ICRG issued public statements on high risk and non-cooperative jurisdictions, and Myanmar was listed there on 24 June 2011. Myanmar had to criminalize the financing of terrorism, develop procedures to freeze the assets of the terrorists, create transparency for the extradition legal framework and the duties of the FIU and Customer Due Diligence Processes.

Myanmar adheres to the above-mentioned 6 Recommendations, and Myanmar was removed from public statements in February 2016 and removed from the ICRG process in June 2016. Now, there are no sanctions against Myanmar.

According to the money-laundering threat findings, the estimated value of domestic proceeds of crime is 15 billion US dollars and 23 per cent of GDP. Domestic proceeds of crime received from tax evasion and other tax offences, environmental offences and bribery are altogether 63 per cent of GDP. The remaining 37 per cent is from other crimes. Foreign proceeds of crime are less than domestic proceeds of crime, and the origin of foreign proceeds of crime are neighbouring countries, which are China and Thailand. It is estimated that from 30 to 40 per cent of domestic proceeds of crime per year is going abroad from Myanmar based on the following six offences:

- trafficking of narcotic drugs and psychotropic substances;
- tax evasion and other tax offences;
- environmental offences;
- corruption and bribery;
- other beneficial offences.

China and Thailand are destinations for the proceeds of crime because they are bordering Myanmar. Other destination countries are India, the United States of America and some European countries.

The following factors have an impact on money-laundering:

- Myanmar shares a border with countries that are vulnerable to money-laundering and terrorist financing and has porous borders for corruption and bribery, making it easy to produce and distribute narcotic drugs and to smuggle money and merchandise;
- their trading countries have many proceeds of crime;
- there are many cash-based businesses;
- the rate of economic development is high;
- large population;
- they have not conducted National Risk Assessment on money-laundering and terrorist financing, so enforcement is not effective.

According to Myanmar's legislation, the properties of the absconder cannot be confiscated under the Control of Money Laundering Law (CMLL), 2002. The law conferred power to the Central Control Board so whether the offender runs away or not, his properties can be confiscated.

That is the strength of that law. According to the CMLL, if the case will be prosecuted, money and properties shall be submitted to the court and properties have to wait to be confiscated, and that is a weakness. The Anti-Money-Laundering Law (AML), 2014 states that confiscation shall be done after prosecution.

Myanmar has the Drug Police Force and the Anti-Human Trafficking Police Force to investigate predicate offences. Normal cases are investigated by police, and economic crimes and money-laundering are investigated by the Bureau of Special Investigation. Some of the offences are not separately prescribed so there is overlap. The Anti-Corruption Commission can only investigate corruption cases and can only confiscate on the scene. Only the FIU can trace the money and inspect bank accounts according to the law. If a predicate offence and money-laundering can be investigated in parallel, money-laundering can be suppressed effectively. Predicate offences were investigated by some organizations but were not referred to the responsible organization, and some cases were not exposed. In corruption cases, some of the known properties can be confiscated if agencies cooperate with the anti-money-laundering organization, and more public funds can be confiscated. If a parallel investigation of a predicate offence and money-laundering can be stated in the law, the above-mentioned matter can be conducted. That expression was included in the new draft law.

Many laws have conferred power to investigate and prosecute money-laundering cases. The FIU has performed its analysis and prosecution. Now, the FIU can perform the main task of accepting, analysis and dissemination. Investigation of money-laundering is assigned to the Bureau of Special Investigation. To conduct parallel investigation, to enable the FIU to take action if a money-laundering report is received and to use special investigation techniques are included in new draft law. Legal officers should know about predicate offences, and they have to give advice at the township or district that financial investigation can be conducted on predicate offences. Judges should observe how to investigate money-laundering cases, how to submit the evidence and determine whether the evidence is sufficient or not. Money-laundering is a technical offence, and the investigation bodies, law officers and judges have to be professionals, and they need to be trained.

Myanmar has signed the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, the Vienna, International Convention for the Suppression of Terrorism, 1999, and the United Nations Convention against Transnational Organized Crime in Palermo, 2000, and Myanmar had enacted laws to implement these conventions.

Myanmar had made a reservation on extradition in Article 6 of the Vienna Convention, Article 16 of the Palermo Convention and Article 11 of the International Convention for the Suppression of the Financing of Terrorism, 1999. In 2012, these reservations were revoked. The Extradition Act, 1904 was repealed, and the new Extradition Law, 2017 was enacted. Section 3 of that law states that extraditable offence means an offence punishable for at least two years. Money-laundering offences and terrorist financing offences are punishable for more than two years, so they are extraditable. In the Mutual Evaluation report, 2008, Myanmar has not implemented the law so it was not considered fully compliant, but it was in partial compliance with the 39 recommendations.

Myanmar has enacted its Mutual Legal Assistance in Criminal Matters Law (MLA) in 2004, and it is partly compliant. Asset recovery issues came up later, and Myanmar did not have an obligation in 2004 because it was not included in the MLA Law, 2004. The Vienna Convention and the Palermo Convention do not have detailed information about asset recovery. According to the MLA law, assets can be searched, exposed, frozen, prohibited or confiscated if there is a request from other countries. If there is an agreement with another country, the assets will be returned. If there is no agreement, Myanmar will confiscate them. Myanmar has also arranged to return the assets with bilateral agreement.

The Myanmar MLA Law, Articles 25, 26 and 27, have provisions for confiscation. Myanmar has to amend the law in line with the APG Recommendation of the Mutual Evaluation Agreement Report. The Myanmar MLA Law cannot confiscate the assets without criminal punishment.

V. CASE STUDY

A comedian went to a New Year's Eve party at one entertainment park in 2018 with his girlfriend. He met a group of men with whom he had a quarrel at another night club. He was attacked by the group of men, they beat him, causing severe head injuries. He was taken to the hospital and he died there. The three suspects turned themselves into the police, and they were charged with murder under section 302 of the Penal Code. The suspects' families paid a lot of money to the three law officers, a judge, a police officer and the victim's family. The victim's family submitted a petition to the court to withdraw the case, and the court approved the petition under section 494(a) of the Criminal Procedure Code and ordered the release of the three suspects from jail. Following public outcry, the Anti-Corruption Commission opened an investigation into the Yangon Court's decision to withdraw the charges against the three suspects accused of killing the comedian.

The high-ranking law officer was prosecuted under section 55 of the Anti-Corruption Law, and two other law officers, a judge and a police officer were prosecuted under section 56 of the Anti-Corruption Law for taking money and gratification from the suspects' families, carelessly examining the witnesses and trying to create a situation in which they could not prove who killed the victim.

The challenges are that it is difficult to investigate the case when the law officer, judge and police commit the offence together and they try to manipulate the information, and when the victim's family is also involved in the case.

In some cases, the police officer has to get a legal opinion from a law officer, and the law officer tries to delay the case until the police pay a bribe to him. Sometimes the judge has many cases on his hands, and the plaintiff has to give bribe to the judge if he wants to finish his case earlier than other cases.

CORRUPTION AND MONEY-LAUNDERING: THE PHILIPPINE SITUATION

Robert Michael N. Razon[*]

I. INTRODUCTION

Money-laundering has become a very serious threat not just in the Philippines but also in almost every country. Criminals have become more creative, ingenious and resourceful in laundering the proceeds of their criminal activities. With the advent of new technology and the fast pace of its updates, anti-money-laundering authorities are now working overtime to keep up with the everchanging trends and doubling their efforts to give more teeth and power to existing laws, rules, regulations and guidelines.

One of the most perennial concerns that governments face is the issue on graft and corruption perpetrated by its officials and employees. Governments do not just stop in securing a conviction of these corrupt officials but would also ensure that the proceeds of these criminal acts are traced, frozen, recovered and forfeited in favour of the government.

The Republic of the Philippines is no exception to this problem. The Philippines has seen several government scandals that involved high-ranking officials involved in multi-million-dollar corruption cases, which eventually lead to uncovering a much bigger and wider web of corruption activities.

The exposé on the corruption scandal involving the Armed Forces of the Philippines gives us a glimpse on how deeply seethed is the problem of corruption. And it surprises us to discover that it is much harder at times in securing a conviction and the eventual civil forfeiture of the criminal proceeds.

II. SITUATION

Looking at the current situation of money-laundering activities will give us a better view and understanding of where corruption and money-laundering stand in the Philippines right now. The Anti-Money-Laundering Council (AMLC) is the Philippines' central government agency tasked to monitor money-laundering activities in the country and mandated to strictly implement and enforce anti-money-laundering laws and regulations. The AMLC was created pursuant to Republic Act No. 9160, otherwise known as the "Anti-Money-Laundering Act of 2001" (AMLA), to protect the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money-laundering site for the proceeds of any unlawful activity.[1]

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[1] Anti-Money-Laundering Council website, http://www.amlc.gov.ph/.

The AMLC is the Philippines' Financial Intelligence Unit (FIU) tasked to implement the Anti-Money-Laundering Act (AMLA), as amended by Republic Act Nos. 9194, 10167, and 10365, as well as Republic Act No. 10168, otherwise known as the "Terrorism Financing Prevention and Suppression Act of 2012".[2]

In the 2017 published report of the Anti-Money-Laundering Council entitled National Risk Assessment on Money Laundering and Terrorist Financing 2015-2016, it stated, to wit:

> After considering the proceeds generated by select predicate crimes, money laundering trends and techniques, the prevalence of sectoral threats and external threats, the national money laundering threat is assessed to be HIGH. After considering the ratings for National Combating Ability and Sectoral Vulnerabilities, the national vulnerability for money laundering is assessed to be Medium. Following the risk map of the assessment tool, the Money Laundering Risk at National Level is rated as Medium-High.[3]

The same assessment report further stated that threat in Plunder and Violations of the Anti-Graft and Corrupt Practices Act (Republic Act 3019) is still *generally high, viz*:

> It is estimated that 20% of the Philippines' yearly national budget is lost to corruption. Following the same pattern and based on the 2015 (Php2.6 Trillion) and 2016 (Php3.0 Trillion) national budgets, about Php520 to Php600 Billion were lost to corruption in 2015 and 2016.[4] From 2015 to 2016, the NBI conducted 222 corruption-related investigations. For the same period, the Ombudsman convicted 299 individuals for cases of bribery, malversation of public funds and violation of RA No. 3019. Filed before the Sandiganbayan were 2,207 corruption-related cases from 2011 to 2016; 1,019 of these cases were filed from 2015 to 2016. The AMLC conducted 15 ML investigations predicated on corruption-related cases from 2015 to 2016. Ten (10) cases and two (2) cases being investigated by the AMLC and its Secretariat in 2015 and 2016, respectively, are related to the alleged unlawful appropriation and use of the Priority Development Funds (PDAF) funds of subject lawmakers. All the 15 money laundering cases under AMLC investigation from 2015 to 2016 involve corruption proceeds approximately amounting to Php750 Million. For the same period, corruption proceeds subject of civil forfeiture amounted to Php223 Million in funds and properties. The amount constitutes 22.3% of the estimated Php1 Billion in funds and properties subject of civil forfeiture corruption-related cases as of 31 December 2016. The foregoing data on the corruption-related cases investigated and prosecuted for the period 2011 to 2016 show no increasing trend, but the figures remain significantly high. As to the amount of corruption proceeds, about Php689.7 Million and Php750 Million are involved in the cases for forfeiture of illicit funds pending before the Sandiganbayan and money laundering investigations of the AMLC, respectively.

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[2] Ibid.
[3] 2nd National Risk Assessment – Philippines 2015-2016, page 3.
[4] Developing a Corruption-intolerant Society (www.ph.undp.org).

> Moreover, insofar as the 15 money laundering cases are concerned, only 30% of the proceeds of these cases are subject of civil forfeiture. The foregoing considerations provide reasonable bases to retain the HIGH rating of the threat posed by plunder and other corruption-related cases.[5]

For a better perspective, a staggering US$ 10,400,000,000 to US$ 12,000,000,000 were lost to corruption in 2015 to 2016. The Anti-Money-Laundering Council investigated 15 cases which involved US$ 15,000,000. For the same period, the amount representing civil forfeiture of the proceeds of these crimes equals to US$ 4,460,000.[6]

The data and the figures presented in the foregoing report clearly show that corruption and money-laundering is not just a problem but has already become a menace in the Philippines. Continued efforts and additional laws and regulations are constantly passed and implemented to address this problem.

III. ACTUAL CASE STUDY

A. The Game of the Generals

An interesting case in the Philippines which involved graft and corruption, money-laundering, forfeiture and the effective use of a Mutual Legal Assistance Treaty is that of Major General Carlos F. Garcia, then Deputy Chief of Staff for Comptrollership, J6, of the Armed Forces of the Philippines.

On 27 September 2004, Atty. Maria Olivia Elena A. Roxas, Graft Investigation and Prosecution Officer II of the Field Investigation Office of the Office of the Ombudsman, after due investigation, filed a complaint against Garcia, before the Office of the Ombudsman, (1) for violation of Sec. 8, in relation to Sec. 11 of Republic Act (R.A.) No. 6713, (2) violation of Art. 183 of the Revised Penal Code, and (3) violation of Section 52 (A)(1), (3) and (20) of the Civil Service Law. Based on this complaint, a case for violations of R.A. No. 1379,[4] Art. 183 of the Revised Penal Code, and Sec. 8 in relation to Sec. 11 of R.A. No. 6713 was before the anti-graft court, the Sandiganbayan.

In April 2005, the Office of the Ombudsman filed against Garcia before the Sandiganbayan criminal charges of Plunder, Perjury and Money Laundering for allegedly amassing P303,270,000 in ill-gotten wealth while he was in active service in the Armed Forces of the Philippines. His wife Clarita Depakakibo Garcia, and their three sons, Ian Carl, Juan Paolo and Timothy Mark, all surnamed Garcia, were named co-defendants for allegedly helping him conceal suspected unlawfully acquired assets. The Garcia family is also facing money-laundering charges following alleged withdrawals from their numerous bank accounts.

In May 2011, Garcia was eventually convicted of Perjury, but for the cases of Plunder and Money Laundering, he entered into a plea-bargaining agreement with the government. The Sandiganbayan approved the former general's guilty plea to the lesser offence of Indirect Bribery and the lesser offence of Facilitating Money Laundering under Section 4 (b) of Republic Act 9160,

[5] 2nd National Risk Assessment – Philippines 2015 -2016, pages 7-8.
[6] Php 50.00 = US$ 1.00.

based on the plea-bargaining agreement between Garcia and the Office of the Ombudsman. Under the controversial agreement, Garcia will be allowed to plead guilty and post bail to the lesser offences of Indirect Bribery and Facilitating Money Laundering on the condition that he would return to the government half of the P303.27 million that he had allegedly stolen.

As part of the plea-bargaining deal between Garcia and the government, Garcia transferred real properties worth P 21,269,520.50 and personal properties amounting to P4,416,380 in favour of the Republic of the Philippines. Likewise, total cash and bank deposits in the amount of P52,510,980.00 were turned over in favour of the government.[7] Two of Garcia's sons are facing bulk cash smuggling charges in a US court for attempting to slip US$100,000 into the United States from the Philippines in 2003. The government is working for their extradition.

Through effective Mutual Legal Assistance, the US Embassy in the Philippines in June 2015 turned over to the Philippine government a check amounting to some US$ 1,300,000 as the second tranche of proceeds from the forfeited assets of Garcia. Then US Ambassador to the Philippines Philip Goldberg handed over a US Treasury check amounting to US$ 1,384,940.28 or around P61,000,000 to then Ombudsman Conchita Carpio-Morales, who represented the Philippine government. The check represented the net proceeds from the sale of Garcia's condominium unit at The Trump Tower in Manhattan, New York, and the balance from the former general's two bank accounts in Citibank New York. The money from Garcia's bank accounts in Citibank New York had earlier been traced by the US Department of Homeland Security to be part of the laundered assets of Garcia. In sum, the Philippine Government was able to recover a total amount of P135,433,387.84 from former Major General Carlos F. Garcia, his wife and his three sons.

Another high-ranking official of the Armed Forces of the Philippines that got embroiled in a corruption scandal is the predecessor of Major General Carlos F. Garcia as Comptroller, Retired Lieutenant General Jacinto Ligot. This case is one of the biggest corruption scandals in Philippine military history, first exposed in 2004 and culminated in multiple investigations in 2011, where Ligot and other officials were accused of amassing unexplained wealth, including receiving send-off money. After a series of Senate investigations in 2011, former military chief Angelo Reyes, who was also dragged into the issue, took his life in front of his mother's grave.

The prosecution accused Ligot of acquiring tax deficiencies worth P428,000,000 from 2001 to 2004. The Department of Justice (DOJ) prosecution found out that the Statements of Assets Liabilities and Net Worth (SALNs) of General Ligot did not declare bank deposits, assets and investments, the value of which are beyond their compensation, considering that his wife, Erlinda Ligot, is described as a mere 'housewife' in those documents with no source of income. The Department of Justice (DOJ) prosecution surmised that there can be no other conclusion that Ligot and his spouse failed to declare their true and correct income in their income tax returns, thereby evading the payment of correct income taxes.

Aside from bank assets, the Department of Justice (DOJ) prosecution uncovered the Ligots real estate including a 14-hectare land in Malaybalay City in Bukidnon; two Paseo Parkview Tower 2 Condominium units with one parking slot in Makati City; a unit at Essensa East Forbes

[7] People of the Philippines vs. Carlos F. Garcia, et. al., Criminal Cases Nos. 28197 & SB-09-CRM-0194, 09 May 2011.

Condominium; properties in Anaheim and Orange County in California; and a parcel of land in Tanay, Rizal.

The Anti-Money-Laundering Council (AMLC) was able to generate a report of the mismatch in assets and lawful income, but in 2015, the Court of Tax Appeals (CTA) struck all evidence off the record because they did not fall “within any exception of the best evidence rule.” The CTA said the AMLC probe was sanctioned for a case at the Makati Regional Trial Court (RTC), not for the tax cases.

Bank secrecy laws in the Philippines will not apply in certain cases such as impeachment, cases related to the Human Security Act, and some kinds of forfeiture cases such as when a deposit makes its way to a wrong account and the bank needs to retrieve it. The CTA ruled that these exceptions to the Bank Secrecy Law also find no application in the case of Ligot and his spouse. It also enunciated that having no assets purportedly purchased with other income, they could not have willfully violated Secs. 254 and 255 of the National Internal Revenue Code (NIRC). The earlier deficiency assessment of the Bureau of Internal Revenue (BIR) still stands, said the CTA.

The CTA Third Division acquitted the Ligots in a decision promulgated January 8, 2019, mainly because an extensive paper trail of bank evidence was stricken off the record for violating bank secrecy laws. Ligot tried to invoke the bank secrecy law in arguing that his foreign deposit records were accessed without his consent. The Philippine bank secrecy law got Ligot acquitted in the P428,000,000 tax case in the Court of Tax Appeals (CTA).

However, the Sandiganbayan ruled that while Section 2 of Republic Act No. 1405, enacted in 1955, declares bank records confidential except in certain conditions, Section 8 of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, amended that when it said bank deposits "shall be taken into consideration" in the investigation into unexplained wealth. The anti-graft law was enacted in 1960. The later law typically prevails over earlier laws.

In the CTA decision that acquitted Ligot, tax court justices strictly applied Section 2 of R.A 1405, which waives confidentiality of bank records "in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation." The Sandiganbayan, however, applied the last exemption and said: "Bank representatives are allowed to testify on the subject bank accounts because the accounts allegedly contain the unlawfully acquired money of respondent Jacinto during his service, the same constitute the subject matter of the present litigation. The anti-graft court also said that the bank investigation "is an exercise of the power of the Anti-Money-Laundering Council under the law."

In April 2019, the Sandiganbayan convicted Ligot of 6 counts of perjury over misdeclarations in his Statements of Assets, Liabilities, and Net Worth (SALNs). The Office of the Ombudsman has been working to forfeit in favour of the government P55,596,000 in unlawfully acquired bank deposits and investment accounts of General Ligot, his wife, and other co-accused. Last July 2019, the Sandiganbayan denied the Demurrer to Evidence filed by General Ligot.

IV. NEW LEGISLATION TO ADDRESS NEW TRENDS IN MONEY-LAUNDERING

In 2016, the government investigated the biggest documented case of money-laundering in Philippine history – where about $81 million stolen from the Bank of Bangladesh's account at the Federal Reserve Bank of New York was coursed through Rizal Commercial Banking Corporation (RCBC), converted into pesos, and then played in large casinos in the country.

Because of this US$ 81,000,000 Bank of Bangladesh money-laundering case, President Rodrigo Duterte in July 2017 signed Republic Act No. 10927, placing casinos, including internet and "ship-based" ones, under the AMLA. Casino cash transactions of more than P5,000,000 or its equivalent in other currencies are now considered a transaction covered by the law and must thus be reported to the Anti-Money-Laundering Council (AMLC). The new amendment now includes, real estate developers, money transfer firms, junket operators, and dealers of high-value items under the AMLC's watch. In the amended law, the Anti-Money-Laundering Council still has to wait for the Court of Appeals to issue a freeze order if they suspect a monetary instrument or property is related to an unlawful activity. The freeze order will be effective immediately and will last 20 days.

The Supreme Court of the Philippines in January 2017, in a unanimous decision penned by Associate Justice Jose Portugal Perez, held Section 11 of RA 9160 or the Anti-Money Laundering Act to be valid and constitutional. Section 11 of R.A. 9160 states that the Anti-Money Laundering Council (AMLC) may "inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an *ex parte* application." It allows the AMLC, upon approval from the Court of Appeals, to check the movement of money and history of the account. Banks could then waive their confidentiality agreement without having to notify the account owners.

The constitutionality of the said provision was challenged by a law firm associated with former Vice-President Binay. In January 2018, anti-money-laundering authorities implemented the AMLC Registration and Reporting Guidelines (ARRG). This AMLA law requires covered persons – like those in banks, insurance companies, and securities dealing firms – to submit suspicious transaction reports (STRs) within 5 days of an incident. This includes the date of determination of the suspicious nature of the transaction, which should not exceed 10 calendar days. It also provides for appropriate sanctions for violators as to ensure a culture of compliance among the covered persons. Two new facilities would allow covered persons to upload know-your-customer (KYC) documents for STRs as well as e-returns via the AMLC portal.

In 2018, the AMLC Secretariat issued Resolution No. 59 adopting the Anti-Money-Laundering and Counter-Terrorism Financing (AML/CTF) guidelines for Designated Non-Financial Businesses and Professions (DNFBPs), which covers and includes jewellery dealers, fund managers, lawyers, and accountants. These professionals are now being strictly monitored by the Anti-Money-Laundering Council (AMLC), as it firms up its battle against money-laundering and terrorist financing.

The guidelines are based on Republic Act No. 10365, which includes under "covered persons" those who deal with precious stones and metals; those who deliver fund or securities management

services for other persons; and persons and entities who provide services to organize, create, and manage companies and arrangements under the amended Anti-Money Laundering Act (AMLA). Lawyers and accountants, who provide the services enumerated in the amended AMLA, are required to report covered and suspicious transactions to the AMLC.

On November 12, 2018, President Rodrigo Duterte signed Executive Order No. 68, which orders the government to implement a national strategy to fight money-laundering and terrorism financing from 2018 to 2022. The Executive Order also creates a committee to oversee and coordinate all government and private sector efforts in pursuit of the strategy. This plan is officially known as the National Anti-Money-Laundering and Countering the Financing of Terrorism Strategy (NACS). The committee is referred to as the National AML/CFT Coordinating Committee (NACC). The said committee is mandated to craft operational guidelines and rules of procedure to implement the strategy and consult public and private stakeholders on operational and policy issues that may have implications on the NACS. The NACC is to be chaired by the Executive Secretary or a representative while its vice chairpersons shall be the Bangko Sentral ng Pilipinas governor and Anti-Money Laundering Council chairperson. Its members are the Foreign Secretary, Finance Secretary, Justice Secretary, Defense Secretary, Interior Secretary, Trade Secretary, Securities and Exchange Commission chairperson, Insurance Commissioner, Philippine Amusement and Gaming Corporation CEO and chairperson, Cagayan Economic Zone Authority administrator, and Aurora Pacific Economic Zone and Freeport Authority president. The AMLC will serve as the committee's secretariat.

V. CONCLUSION

Corruption and money-laundering activities continue to evolve overtime. As such, government must be faster and quicker in addressing these issues and concerns. It is sad that, most of the time, new laws and amendments to existing legislation take time to come to fruition as it has to go through the constitutionally mandated law-making process. Innovations in money-laundering come about faster than new rules and regulations. However, governments must make use of existing mechanisms currently available to combat these threats. Stricter implementation and execution of current laws, rules and regulations should be had to avoid and to stop, or at least manage these threats.

Actual cases of graft and corruption with corresponding active prosecution and eventual forfeiture and recovery of the criminal proceeds, whether successful or a failure, must always serve as guidance to governments to more strictly enforce anti-money-laundering laws, rules and regulations. There is comfort in knowing that the government authorities continue to pass relevant and stricter laws that are compliant with international standards and guidelines.

MONEY-LAUNDERING IN CORRUPTION-RELATED CASES, EMERGING THREATS AND TRENDS: THE PHILIPPINE SCENARIO

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I. INTRODUCTION

Money-laundering is both a domestic and international menace, threatening states, institutions and people. For the Philippines, it poses a gargantuan challenge undermining National Security.[1] Money-laundering in simple terms is literally sanitizing the money path to legitimize criminally acquired assets or cash; hence, the term "laundering". Considering the magnitude of this global problem, States Parties to the United Nations Convention Against Corruption (UNCAC) have adopted measures to combat money-laundering, terrorist financing and corruption.

In the Philippines, money-laundering was criminalized by the passage of Republic Act 9160, or the Anti-Money-Laundering Act of 2001, as amended. The Anti-Money-Laundering Council (AMLC), the Philippines' Financial Intelligence Unit, is in the forefront of this battle against the ill effects of money-laundering and terrorist financing. With the advent of technological advancement, the dilemma becomes more complex and intricate. It enables individuals, banks, financial institutions, among others, to communicate, finalize their business dealings and transfer funds faster, deeper and cheaper than ever before, anywhere and anytime in the world. Indeed, the development and introduction of modern technologies have expanded the opportunities of money launderers, organized criminals and corrupt public officials and individuals to conceal their identities and the source of their illicit funds. The emergence of new threats and trends has given rise to greater risks, which presents a serious challenge to law enforcement agencies, financial regulators, investigators and prosecutors in countering money-laundering (ML), terrorist financing (TF) and corruption, both in the public and private sectors.

The Office of the Ombudsman, being the premiere anti-corruption body of the Philippines, is committed to fight corruption on all fronts and takes an active role in the prevention and detection of corruption-related offences including predicate crimes involving money-laundering and terrorist financing (ML/TF). For this purpose, it maintains a strong collaboration and coordination with the Anti-Money-Laundering Council and various law enforcement agencies on sharing of vital information to ensure effective investigation and prosecution of these offences involving public officials and employees and persons who conspired with them.

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[1] National Defense College of the Philippines' Definition of National Security: "The State or condition wherein the nation's sovereignty and territorial integrity, the people's well-being, core values, way of life and the State, and its institutions are protected and enhanced."
Retrieved from https://www.officialgazette.gov.ph/downloads/2018/08aug/20180802-national-security-strategy.pdf

For the Office of the Ombudsman, it has also adopted a multi-sectoral approach in its corruption prevention programmes to deter the prevalence and commission of corruption-related offences, placing a premium on values formation.

Understanding the global threat of ML and the international community's response will assist law enforcement agencies pursuing the evidentiary trail of launderers by identifying the enforcement tools and techniques developed to overcome obstacles encountered when crossing international boundaries.[2]

This paper will discuss the structure and functions of the Philippines' Financial Intelligence Unit (FIU), the role of the Office of the Ombudsman (OMB) in combating ML and TF and corruption, the recent developments of the country's anti-money-laundering and combating terrorist financing (AML/CTF) regime, the challenges posed by digital or virtual currencies (VCs) in the fight against ML and TF and the measures adopted by the Philippines to prevent virtual currencies as a medium in committing money-laundering, terrorist financing and corruption. In this magical world, so to speak, of cyberspace and virtual reality, the Philippines remains vigilant in its efforts to combat money-laundering, terrorist financing and corruption.

II. THE PHILIPPINES' FINANCIAL INTELLIGENCE UNIT

The Philippines' Financial Intelligence Unit (FIU) is the Anti-Money-Laundering Council (AMLC). It was created under Republic Act (RA) No. 9160, otherwise known as the *Anti-Money-Laundering Act of 2001* (AMLA). It is an active member of the Asia-Pacific Group on Money Laundering (APG). The AMLC is also a member of the Egmont Group, a worldwide association of Financial Intelligence Units (FIUs) which recognizes national and international efforts to fight money-laundering and counter financing of terrorism (AML/CFT) and provides an avenue for the protected exchange of expertise and financial intelligence to combat ML/TF.

A. Composition of the AMLC

The AMLC is composed of the Governor of the Bangko Sentral ng Pilipinas (BSP) as Chairman, and the Commissioner of the Insurance Commission (IC) and the Chairman of the Securities and Exchange Commission (SEC) as members. It acts unanimously in the discharge of its functions. The AMLC is assisted by a Secretariat headed by an Executive Director.

B. Objectives and Functions of the AMLC

As the Philippines' FIU, the AMLC is the lead agency primarily tasked to implement the AMLA, as amended by RA Nos. 9194,[3] 10167,[4] 10365[5] and 10927,[6] as well RA No. 10168,

[2] Schroeder, W. R., Money Laundering: A Global Threat and the International Community's Response, FBI Law Enforcement Bulletin, May 2001. Retrieved https://www.unl.edu.
[3] An Act Amending Republic Act No. 9160, Otherwise Known as the "Anti-Money-Laundering Act of 2001.
[4] An Act to Further Strengthen the Anti-Money-Laundering Law, amending for the Purpose Sections 10 and 11 of Republic Act No. 9160, Otherwise known as the "Anti-Money-Laundering Act of 2001", as Amended, and For Other Purposes.
[5] An Act to Further Strengthening the Anti-Money-Laundering Law, amending for the Purpose Republic Act No. 9160, Otherwise Known as the "Anti-Money-Laundering Act of 2001", as Amended.
[6] An Act Designating Casinos as Covered Persons Under Republic Act no. 9160, Otherwise Known as the Anti-Money-Laundering Act of 2001, as Amended.

otherwise known as the "Terrorism Financing Prevention and Suppression Act of 2012".

The primary objectives of the AMLC's creation are:

1. To protect and preserve the integrity and confidentiality of bank accounts;

2. To ensure that the Philippines shall not be used as a money-laundering site for proceeds of any unlawful activity;

3. To extend cooperation in transnational investigation and prosecution of persons involved in money-laundering activities, wherever committed.[7]

The AMLA, as amended, and the Terrorist Financing Prevention and Suppression Act of 2012 authorized the AMLC to, among others, perform the following functions in relation to the investigation of money-laundering/terrorist financing (ML/TF) activities:

1. Investigate suspicious transactions (STs), covered transactions (CTs) deemed suspicious, ML activities and other violations of the AMLA, as amended;

2. Investigate TF activities and other violations of RA No. 10168;

3. Act on requests for investigation or requests for information from domestic law enforcement and other agencies of the government as well as requests for assistance of other jurisdictions and international organizations;

4. Gather evidence for the purpose of establishing probable cause required in the filing of petitions for freeze orders, applications for bank inquiry, civil forfeiture cases and criminal complaints for ML;

5. Conduct administrative investigation on violations by covered persons (CPs) of the AMLA, as amended, and its Revised Implementing Rules and Regulations.[8]

C. Suspicious Transaction (ST) and Covered Transactions (CT) Under the AMLA

ST refers to a transaction, regardless of amount, 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 AMLA;

[7] http://www.amlc.gov.ph/about-us. Retrieved: 11/08/2019.
[8] AMLC Annual Report 2016, p. 15. Retrieved: http://www.amlc.gov.ph.

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 person;
6. the transaction is in any way related to an unlawful activity or any money-laundering activity or offence that is about to be committed, is being or has been committed; or
7. any transaction that is similar, analogous or identical to any of the foregoing.[9]

On the other hand, a CT refers to a transaction in cash or other equivalent monetary instrument exceeding Five Hundred Thousand pesos (Php500,000.00) within one banking day or a transaction exceeding One Million pesos (Php1,000,000.00) in cases of jewellery dealers, dealers in precious metals and dealers in precious stones.[10] In casinos, is a single casino transaction involving an amount exceeding Five Million pesos (Php5,000,000.00), or its equivalent in any foreign currency is considered a CT.[11]

D. Predicate Crimes of ML under the AMLA, as amended

For purposes of ML as defined under the AMLA, the term "unlawful activity" refers to predicate crimes or any act or omission or series or combination thereof involving or having direct relation to the following:

1. Kidnapping for ransom;
2. Drug trafficking and related offences;
3. Graft and corrupt practices;
4. Plunder;
5. Robbery and Extortion;
6. Jueteng and Masiao;
7. Piracy;
8. Qualified theft;
9. Swindling;
10. Smuggling;
11. Violations under the Electronic Commerce Act of 2000;
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;
14. Felonies or offences of a similar nature that are punishable under the penal laws of other countries;
15. Terrorism financing and organizing or directing others to commit terrorism financing (R.A. 10168);
16. Attempt/conspiracy to commit terrorism financing and organizing or directing others to commit terrorism financing (R.A. 10168);
17. Attempt/conspiracy to commit dealing with property or funds of a designated person;
18. Accomplice to terrorism financing or conspiracy to commit terrorism financing;

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[9] Rule III, 2016 Revised Implementing Rules and Regulations of the AMLA, as amended**.** Retrieved: http://www.amlc.gov.ph/laws/money-laundering/2016-revised-implementing-rules-and-regulations-of-republic-act-no-9160-as-amended

[10] Ibid.

[11] Rule 3, Section 6 (M), IRR of RA 10927. Retrieved: http://www.amlc.gov.ph/laws/money-laundering/casino-implementing-rules-and-regulations-of-republic-act-no-10927

19. Accessory to terrorism financing.[12]

E. Covered Persons (CPs) Under the AMLA

The covered persons (natural or juridical) under the AMLA, as amended, are the following:

1. Persons supervised or regulated by BSP, such as:
    a. Banks;
    b. Non-banks;
    c. Quasi-banks;
    d. Trust entities;
    e. Pawnshops;
    f. Non-stock savings and loan associations;
    g. Electronic money issuers;
    h. All other persons, their subsidiaries and affiliates supervised or regulated by the BSP; and
    i. Foreign exchange dealers, money changers, and remittance and transfer companies are covered persons under the supervision of the BSP.

2. Persons supervised or regulated by IC, such as:
    a. Insurance companies;
    b. Pre-need companies;
    c. Insurance agents;
    d. Insurance brokers;
    e. Professional reinsurers;
    f. Reinsurance brokers;
    g. Holding companies;
    h. Holding company systems;
    i. Mutual benefit associations; and
    j. All other persons and their subsidiaries and affiliates supervised or regulated by the IC.

3. Persons supervised or regulated by the Securities and Exchange Commission (SEC), such as:
    a. Securities dealers, brokers, salesmen, investment houses, and other similar persons managing securities or rendering services, such as investment agents, advisors, or consultants.
    b. Mutual funds or open-end investment companies, close-end investment companies or issuers, and other similar entities;
    c. Other entities, administering or otherwise dealing in commodities, or financial derivatives based thereon, valuable objects, cash substitutes, and other similar monetary instruments or properties, supervised or regulated by the SEC.

4. The following Designated Non-Financial Businesses and Professions (DNFBPs):
    a. Jewellery dealers, dealers in precious metals, and dealers in precious stones.
    b. Company service providers which, as a business, provide any of the following services to third parties:
        i. acting as a formation agent of juridical persons;

[12] http://www.amlc.gov.ph/2-uncategorised/20-amlaglance

ii. acting as (or arranging for another person to act as) a director or corporate secretary of a company, a partner of a partnership, or a similar position in relation to other juridical persons;
iii. providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; and
iv. acting as (or arranging for another person to act as) a nominee shareholder for another person.

c. Persons, including lawyers and accountants, who provide any of the following services:
   i. Managing of client money, securities or other assets;
   ii. Management of bank, savings, securities or other assets;
   iii. Organization of contributions for the creation, operation or management of companies; and
   iv. Creation, operation or management of juridical persons or arrangements, and buying and selling business entities.

Let it be stressed that the herein enumerated CPs are required to submit CT or ST reports with the AMLC and to comply with AML and/or CTF measures under the AMLA and its Implementing Rules and Regulations (IRR). Under RA No. 10927 and its IRR, all casinos, including internet and ship-based casinos, operating within the territorial jurisdiction of the Philippines and authorized by the Appropriate Government Agency (AGA) to engage in gaming operations are now CPs, and are required to comply with the AML measures and requirement.

F. Investigation of Money-Laundering (ML) Offences

As the Philippines' FIU, the AMLC investigates CT and ST reports submitted by covered institutions. These reports are submitted by the covered institution to the AMLC within five (5) working days from the occurrence of the transactions. Aside from the CT and ST reports, the AMLC may, in its own initiative conduct an investigation, or upon referrals or requests of law enforcement or government agencies. The AMLA also empowered the AMLC to act directly on requests from other countries for legal assistance relative to their own AML investigations.

When, after its investigation, the AMLC finds that money-laundering has been committed, it causes the filing of a criminal complaint with the Department of Justice (DOJ), in cases involving the private sector or with the Office of the Ombudsman (Ombudsman) in cases involving public officers or employees, which conducts the preliminary investigation of the case, including the administrative adjudication of the same. If the DOJ or the Ombudsman finds probable cause to indict the offenders, criminal cases are filed with the Regional Trial Courts which have the jurisdiction to try all cases of money-laundering, or with the Sandiganbayan if the offender is a high ranking public officer or a private person in conspiracy with the public officer.[13]

For the Philippines, the biggest stumbling block in the investigation of corruption-related offences is the Bank Secrecy Law (Republic Act 1405) whereby Philippine bank deposits are privileged and confidential and the subsequent ruling in the case promulgated by the Supreme Court entitled "Lourdes T. Marquez vs. Hon. Aniano A. Desierto, et al.," (G.R. No. 135882, June

[13] J.B. Abad, Retrieved: https://www.unafei.or.jp/publications/pdf/GG3/Third_GGSeminar_P34-38.pdf

27, 2001) which bar the Office of the Ombudsman from obtaining bank records which are crucial in validating the "money trail" in corruption cases.

G. Mutual Legal Assistance and Cooperation

Mutual Legal Assistance (MLA) and cooperation (international and local) play a vital role in the investigation and prosecution of ML/TF and corruption-related offences. MLA refers to the formal method of cooperation between two jurisdictions for purposes of seeking assistance in the production of documents, asset freezing and forfeiture, extradition, enforcement of foreign judgments, and other kinds of legal assistance in criminal matters. The importance of MLA is increasing because the commission of crimes becomes more complex, and the risk of cross-border transactions is present. The Department of Justice for this purpose is the central authority.

As of December 2018, the AMLC has 43 Memoranda of Understanding (MOUs) with foreign FIUs and counterparts. The MOU conforms with the model MOU of the Egmont Group and is consistent with its Principles for Information Exchange between FIUs.[14] Moreover, the AMLC also enlists 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 AML/CTF operations.[15]

III. ROLE OF THE OFFICE OF THE OMBUDSMAN IN THE INVESTIGATION AND PROSECUTION OF ML-TF CASES

The Office of the Ombudsman (OMB) was created by the 1987 Philippine Constitution as an independent body,[16] and to serve as protector of the people.[17] In order to achieve this role, the Constitution granted the Ombudsman powers to investigate and prosecute graft and corruption cases and to impose the administrative liabilities upon erring public officials and employees.[18] The Philippines, being a signatory to the United Nations Convention Against Corruption (UNCAC), is compliant with Article 1, Chapter 1, of the UNCAC, particularly on promoting and strengthening measures to prevent and combat corruption more efficiently and effectively. The Office of the Ombudsman, being the premiere anti-corruption body of the Philippines, takes centre stage in this regard. It has for its mandate, under Section 13 of Republic Act 6770 (An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes): "The Ombudsman and his Deputies, as protectors of the people shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people" *(Section 13, R.A. No. 6770; Section 12 Article XI of the 1987 Constitution).*

[14] 2017-2018 AMLC Annual Report, page 22. Retrieved: http://www.amlc.gov.ph/images/PDFs/2017-2018%20AMLC%20ANNUAL%20REPORT.pdf
[15] Ibid.
[16] Section 5, Article XI, 1987 Philippine Constitution.
[17] Section 12, Ibid.
[18] Section 13, Ibid., see also Section 13 of RA No. 6770, or the Ombudsman Act of 1989.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offences as well as complaints involving large sums of money and/or properties *(Sec. 15, R.A. No. 6770).*

The power to investigate and to prosecute granted by law to the Ombudsman is plenary and unqualified. It pertains to *any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient*. The law does not make a distinction between cases cognizable by the *Sandiganbayan* and those cognizable by regular courts. It has been held that the clause "any illegal act or omission of any public official" is broad enough to embrace any crime committed by a public officer or employee.[19]

While the jurisdiction of the Office of the Ombudsman extends to government officials and employees, including persons who conspired with them, the AMLC has the power to investigate money-laundering/terrorist financing offences committed by individuals, juridical persons, banks and financial institutions in the private sector and for unlawful activities/predicate crimes that may be committed by government officials and employees, which may be filed with the Office of the Ombudsman for possible investigation and prosecution. The AMLC's criminal complaints or charges involving public officials or employees are filed with the Ombudsman for the conduct of preliminary investigation to determine probable cause and that there are sufficient grounds to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction. All other ML cases not involving public officials or employees are filed with the Department of Justice (DOJ), likewise for preliminary investigation. Should the Ombudsman, after preliminary investigation, establish the existence of probable cause to warrant the filing of charge/s against the offending public officials, the Ombudsman shall cause the filing of criminal case/s with the *Sandiganbayan*[20] and prosecute the said case/s before said court.

A. OMB-AMLC Areas of Cooperation

The Office of the Ombudsman is also active in the prevention and detection of corruption-related offences including predicate offences involving money-laundering and terrorist financing (ML/TF). For this purpose, it maintains strong collaboration and coordination with various law enforcement agencies, including the AMLC, for intelligence and information sharing. Thus, the Office of the Ombudsman, since 2005, has an existing and operative Memorandum of Agreement (MOA) with the AMLC. The initial MOA was renewed in 2018 to further redefine the mutual covenant of the parties. The objective of the MOA is to promote and encourage cooperation and coordination between the parties to effectively prevent, control, detect and investigate the predicate offences of ML, especially when the ML offences under investigation are committed by public officials or employees, including private individuals who may have conspired with them, and the ML activities were committed in the Philippines. Under the MOA, the parties shall endeavour to

[19] Uy vs. Sandiganbayan, G.R. Nos. 105965-70, March 20, 2001.

[20] The Sandiganbayan is a special court in the Philippines that has jurisdiction over criminal and civil cases involving graft and corrupt practices and other offences committed in relation to office by public officers with Salary Grade 27 and above, including those in government-owned and controlled corporations.

cooperate in the areas of information exchange and capacity-building measures to enhance both parties in addressing ML/TF and other unlawful activities in the Philippines.[21]

B. OMB-AMLC Areas of Cooperation

Since 2005, the OMB and AMLC have maintained well established, good and dynamic cooperation and coordination in terms of corruption investigation, prosecution and intelligence sharing. In some instances, the OMB requested the AMLC to conduct investigation on the financial transactions of, and/or provide documents relative to, an accused/respondent of high-profile corruption cases. The result of the AMLC's investigation and the documents it gathered are vital evidence used by the OMB in prosecuting the corruption case. Also, the AMLC's financial investigators or financial analysts are utilized by the OMB as prosecution witnesses. The strong collaboration between the OMB and AMLC relative to case build-up, investigation and prosecution of money-laundering and corruption-related offences is a clear manifestation of their concerted efforts to give life and meaning to their respective mandates. As former US President John F. Kennedy said, "United there is little we cannot do in a host of cooperative ventures. Divided there is little we can do—for we dare not meet a powerful challenge at odds and split asunder." [22]

A corruption-related case may be emphasized in view of the efforts of the OMB in close coordination with the AMLC. The case in point addressed large-scale corruption through the use of non-governmental organizations (NGOs), dummy corporations, and foreign exchange dealers (AMLC Annual Report 2014).

In an alleged misuse of the Priority Development Assistance Fund (PDAF), or pork barrel, by several members of the Philippine Congress, the scam involved the funding of agricultural "ghost projects," using the PDAF of participating lawmakers. Funds would be processed through fake foundations and Non-Governmental Organizations (NGOs) established under the holding company of Ms. N. Each foundation or NGO served as an official recipient of a particular legislator's PDAF funds for the supposed implementation of these projects. The funds, however, would be withdrawn and split among Ms. N, the lawmaker, the facilitator of the fund transfers, and the local mayor or governor. Some of Ms. N's employees eventually became whistle-blowers, agreeing to expose the scam and testify against her. International Cooperation Investigations revealed that Ms. N and members of her family transferred money to the USA. Through the Egmont Secure Web (ESW) of the Egmont Group of Financial Intelligence Units, fostering reciprocal exchange of financial intelligence information, the AMLC sought the assistance of the Financial Crimes Enforcement Network (FinCen), the FIU of the US, yielding positive results. Material information showed how the money was transferred and established how money changers acted as conduits. In 2018, the AMLC, NBI, and OMB acted on the Mutual Legal Assistance Treaty (MLAT) request from the US for the production of documents in relation to the seizure and eventual forfeiture of the properties of Ms. N and members of her immediate family in the said jurisdiction, which were acquired during the pork barrel scam. Civil Forfeiture and ML cases resulting from the MLAT close coordination with US authorities have resulted to the filing of a civil forfeiture case against the assets of Ms. N found in the US, amounting to around USD12.5 million. On August 1, 2018, a US federal grand jury indicted Ms. N and her cohorts, for conspiring

[21] OMB-AMLC Memorandum of Agreement dated May 22, 2018, at Article 1 thereof.
[22] https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/inaugural-address-19610120.

to funnel in and out of the US some USD20 million of Philippine public funds obtained through a multi-year bribery and fraud scheme.[23]

Related to this PDAF Scam, the OMB requested the AMLC to provide information and to conduct financial investigation on the bank accounts and transactions of the involved personalities in the scam. The result of AMLC's investigation and its supporting documents, as well as the evidence gathered by the OMB, were used as bases for the filing of a Plunder case with the Sandiganbayan against Ms. N and those involved public officials, including their cohort private individuals. This specific case of plunder involved Php224.5 million government funds diverted by the accused through the scam. In prosecuting the plunder case, the OMB utilized the AMLC's Financial Investigation Report and its supporting documents (*e.g.* bank records) as evidence for the prosecution to prove the paper trail of the diverted funds. The OMB likewise presented as vital prosecution witnesses the AMLC's investigating officers during the trial.

On December 7, 2018, the Sandiganbayan convicted Ms. N and one public official of the crime of Plunder and were sentenced to suffer the penalty of *reclusion perpetua* (30 years' imprisonment), with perpetual absolute disqualification to hold any public office. In addition, said accused were likewise ordered to return the amount plundered (Php124.5 million) to the Philippine National Treasury.[24]

IV. A MORE VIBRANT APPROACH: THE OMB PUBLIC ACCOUNTABILITY BLUEPRINT (2019-2025)

The Office of the Ombudsman is not just about investigation and prosecution of corruption-related offences that can possibly include money-laundering/terrorist financing predicate offences. Upon the assumption of Justice Samuel R. Martires (a retired Philippine Supreme Court Justice) as the Ombudsman of the Republic of the Philippines in August 2018, he developed and introduced the *"OMB Public Accountability Blueprint"* (OmbPAB), a more vibrant multi-sectoral approach on corruption prevention, to be implemented over the period 2019 to 2025. This OmbPAB outlines the policies/projects and strategies of the Office of the Ombudsman. The battle cry under the OmbPAB is "*WE PROTECT*" that stands for Working to Establish

P-UBLIC
R-ESPONSIBILITY
O-UTCOMES
T-HROUGH
E-NFORCEMENT
C-OLLABORATION and
T-RANSFORMATION

[23] 2017-2018 AMLC Annual Report, at page 38. Retrieved: http://www.amlc.gov.ph/images/PDFs/2017-2018%20AMLC%20ANNUAL%20REPORT.pdf.
[24] People vs. Revilla, et al., Retrieved: http://sb.judiciary.gov.ph/DECISIONS/2018/L_Crim_SB-14-CRM-0240_People%20vs%20Revilla,Jr,%20et%20al_12_07_2018.pdf.

with focus on corruption prevention, having in mind the old adage, "an ounce of prevention is better than a pound of cure," and placing a premium on values formation, "return to values", which is the long-term solution for addressing corruption.

The OmbPAB is envisioned with the purpose of making *"An Office of the Ombudsman that will transform public accountability into the norm and be recognized as the central corruption prevention arm of the government".*

Multi-sectoral collaboration involving the religious, the academe, professionals, business, national government organizations and the media, among others, is a vital element in preventing corruption. Effective community participation in ensuring public accountability, return to values and engagement of the public in corruption prevention programmes are now being vigorously pursued and prioritized. For the Office of the Ombudsman, indeed, the long-term solution is values formation.

V. RECENT DEVELOPMENTS OF THE PHILIPPINES' AML/CTF REGIME

The Philippines underwent the Second (2nd) Round Mutual Evaluation (ME) in 2008, wherein its technical compliance with the Financial Action Task Force (FATF) Recommendations was assessed. The Philippines got a relatively poor rating due to major shortcomings in the country's AML/CFT legal framework. As a result of this, the Philippines was placed on the FATF's "grey list" and was subject to the FATF's International Cooperation Review Group (ICRG) process.[25]

Since the 2nd ME back in 2008, the Philippines adopted measures to deal with ML/TF risks. In 2013, the country was removed from the "Grey List" of FATF's ICRG, as most of the deficiencies identified in the 2nd ME have been addressed. The notable AML/CTF measures adopted by the Philippines to address the deficiencies noted during its 2nd ME back in 2008 were:

1. Passage on June 12, 2012 of RA No. 10168 or the Terrorism Financing Prevention and Suppression Act of 2012; The said law reinforced the Philippines' fight against terrorism by criminalizing the financing of terrorism and related offences, and by preventing and suppressing the commission of said offences through freezing and forfeiture of properties and funds while protecting human rights.[26]
2. Passage on February 15, 2013 of RA No. 10365 which strengthened the AMLA, with additional predicate offences in accordance with Financial Action Task Force (FATF)-designated categories of offences; Other features of the said law include:
    - Expansion of the definition of the crime of money-laundering: AMLC can now go after persons who engage in the conversion, transfer, movement, disposal of, possession, use, and concealment or disguise, of the monetary proceeds of an unlawful activity, that was previously limited to the transaction of laundered funds and property;
    - Inclusion of jewellery dealers in precious metals and stones whose transactions are in excess of Php1,000,000.00 and company service

[25] Operational Guidelines In The Conduct Of The 2018 Third Round Mutual Evaluation Of The Philippines. Retrieved: http://www.amlc.gov.ph.
[26] Retrieved: http://www.amlc.gov.ph/laws/terrorism-financing/2015-10-16-02-51-58.

providers as defined and listed under RA 10365, are now included as "Covered Persons";

- Expansion of the definition of unlawful activities relative to money-laundering. The additional crimes among others include trafficking in persons, bribery, counterfeiting, fraud and other illegal exactions, forgery, malversation, various environmental crimes, and terrorism and its financing;
- Authorize the AMLC to require the Land Registration Authority and all its Registers of Deeds to submit reports to the AMLC covering real estate transactions in excess of P500,000.00;
- Issuance of freeze order by the Court is now valid for a maximum period of six (6) months, from the previous twenty (20) days' validity under RA 10167.[27]

3. Casinos are now covered persons (CPs) under RA No. 10927 signed into law on July 14, 2017, which amended the AMLA. In the same year (on November 4, 2017), the Casino Implementing Rules and Regulations were prescribed. New AMLC Registration and Reporting Guidelines for CPs, and the AMLC Registration and Reporting Guidelines for Casinos have been adopted as well.[28] Pursuant to RA 10927, casinos, including internet and ship-based casinos, with respect to their casino cash transactions related to their gaming operations, and such other entities as may be hereafter determined by Appropriate Government Agency (AGA), are hereby designated as covered persons under the AMLA. Further, under the same law, casinos shall be regulated to prevent money-laundering and terrorist financing, as well as from undermining the Philippine financial system. Casinos shall therefore apply the following principles throughout their businesses:
4. Conform with high ethical standards and observe good corporate governance consistent with the guidelines issued by the AGA in order to protect the integrity of their operations and that of the gaming industry;
5. Know sufficiently their customer to prevent suspicious individuals or entities from transacting with, or establishing or maintaining relationships with, casinos;
    a. Adopt and effectively implement an appropriate anti-money-laundering (AML) and countering of financing of terrorism (CFT) risk management system that identifies, assesses, monitors, and controls risks associated with money-laundering and terrorist financing;
    b. Ensure that officers and employees are aware of their respective responsibilities under this CIRR and carry them out in accordance with its Money Laundering Prevention Program; and
    c. Cooperate with the AMLC and the AGA for the effective implementation of the AMLA and this CIRR, and other applicable issuances.

On November 12, 2018, the President of the Philippines issued Executive Order (EO) No. 68, a measure adopting the National Anti-Money-Laundering and Counter-Financing of Terrorism

[27] Retrieved: http://www.bsp.gov.ph/about/advocacies_anti.asp.
[28] Retrieved: http://www.amlc.gov.ph.

Strategy (NACS) *and the creation of the National AML/CTF Coordinating Committee.*[29] The NACS was formulated by the AMLC, together with relevant government agencies, the Office of the Ombudsman included, to enable the government and the private sector to have a strategic and coordinated approach toward combating ML and TF. The NACS is envisioned to be implemented over the period 2018 to 2022.

The NACS 2018-2022 (NACS) contains the country's priority policies consistent with international standards, defined targets, action plans, and insights harvested during the dynamic involvement of all departments, bureaus, offices, and agencies of the Executive Branch, including government financial institutions and government-owned or controlled corporations.[30]

In particular, the NACS lays out seven (7) concrete strategic objectives[31] ranging from enhancement of Philippine laws and regulations, strengthening the AMLC's investigations and prosecutions, coordinated action among government agencies, development of mechanisms to deter ML/TF, improved supervision of covered persons, international cooperation, and information dissemination to combat ML/TF, specified as follows:

Strategic Objective 1: Enhance the Philippine AML/CFT Legal Framework in Order to Effectively Address the Country's ML/TF Risks and the Deficiencies in the Country's Compliance with the International Standards;

Strategic Objective 2: Strengthen the Anti-Money-Laundering Council and its Capacity for Money-Laundering and Terrorism Financing Intelligence Gathering, Investigations and Prosecutions in order to become a more Effective Partner in Combating Money-Laundering and its Predicate Offences, Terrorism and Terrorism Financing;

Strategic Objective 3: Improve Capacity and Collaboration among the Financial Intelligence Unit, Law Enforcement Agencies and Prosecutors for the Effective Investigation and Prosecution of, as well as the Confiscation of Proceeds Relating to Money-Laundering, its Predicate Offences, Terrorism and Terrorism Financing;

Strategic Objective 4: Enhance AML/CFT Regulation and Supervision Framework to Ensure Effective and Robust AML/CFT System in Supervised Institutions for The Purpose of Protecting the Financial System, Designated Non-Financial Businesses and Professions, and the Economy from the Threats of Money-Laundering and Terrorism Financing;

Strategic Objective 5: Develop and Strengthen Mechanisms to Prevent, Disrupt and Combat Terrorism, Terrorism Financing and Proliferation Financing Strategic Objective 6-Strengthen Domestic and International Cooperation Mechanisms for the Effective Exchange of Information, Facilitate Actions against Criminals and their Assets and Assist in the Capacity Building of Relevant Government Agencies;

[29] Executive Order No. 68, s. 2018. Retrieved: https://www.officialgazette.gov.ph/2018/11/12/executive-order-no-68-s-2018/.
[30] NACS 2018 to 2022, at page 2. Retrieved: http://www.amlc.gov.ph/images/PDFs/NACS.pdf.
[31] NACS 2018 to 2022, at page 8. Retrieved: http://www.amlc.gov.ph/images/PDFs/NACS.pdf.

Strategic Objective 6: Promote AML/CFT Awareness of Government Agencies, Covered Persons and the General Public to Effectively Combat Money-Laundering and Terrorism Financing EO No. 68 also created the National AML/CFT Coordinating Committee (NACC), a body tasked to oversee implementation of the NACS, composed of various government agencies, including the Bangko Sentral ng Pilipinas (BSP), the Insurance Commission, the Securities and Exchange Commission (SEC), the Department of Finance, and the Department of National Defense, among others. The AMLC will serve as the Secretariat for the NACC.[32]

The National Anti-Money-Laundering and Counter Terrorism Financing Strategy and the creation of the National AML/CTF Coordinating Committee and National Law Enforcement Coordinating Committee (NALECC), may be considered as a powerhouse and a milestone for the Philippine Government as it provides effective coordination of all law enforcement activities of various government law enforcement agencies to ensure a united front in the suppression of criminal activities that includes investigation of money-laundering, terrorist financing and corruption-related cases – a best practice that may be highlighted.

VI. THREAT OF MODERN TECHNOLOGIES IN AML/CTF EFFORTS

As the Internet becomes a worldwide phenomenon, prepaid card system, internet payment services and mobile payment services are potentially subject to a wide range of vulnerabilities that can be exploited for money-laundering. Numerous third-party payment service providers offer individuals the ability to make online purchases, funding accounts with wire transfers, money orders and even cash. In most cases, the provider of this service will not have a face-to-face relationship with its customers and may even allow anonymous accounts.[33]

Financial innovation has drastically changed the financial landscape. New technologies, services and products offer efficient alternatives to classic financial products and can improve financial inclusion. At the same time, the speed and anonymity of some of these innovative products can attract criminals and terrorists who wish to use them to launder the proceeds of their crimes and finance their illicit activities.[34]

VII. EMERGING THREATS AND TRENDS: VIRTUAL CURRENCIES

The proceeds of corruption (in cash or fiat money) may be converted to digital or virtual currencies for money-laundering purposes. It may be noted that the digital or virtual currencies may now be used as a medium for laundering money because of new technologies. The identity of the person/s transacting can also be concealed in the process.

As modern technologies evolve, digital or virtual currencies (VCs) were introduced as an accepted payment scheme with worldwide recognition. Its electronic nature allows VCs to

[32] Retrieved: http://www.amlc.gov.ph/16-news-and-announcements/158-president-duterte-approves-national-aml-cft-strategy.
[33] Tang J. & Ai L., New Technologies and Money Laundering Vulnerabilities. Retrieved https://www.researchgate.net.
[34] Guidance for a Risk-Based Approach to virtual Assets and Virtual Assets Service Providers. Retrieved: https://www.fatf-gafi.org.

facilitate the movement of funds at a faster, cheaper, and more convenient manner compared to traditional remittance and payment channels, which accrues benefits in areas such as (1) remittances and wire transfers, (2) electronic payments, and (3) financial inclusion.

However, the convenience of use and electronic character of VCs poses a challenge to regulators and law enforcement agencies around the world who are uncertain how to deal with this payment scheme or method, especially that VCs offer a high degree of anonymity which may be exploited for ML/TF and other unlawful activities.

A. Definition of Virtual Currency

Virtual Currency (VC) is defined as a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.[35] The Bangko Sentral ng Pilipinas (BSP) has defined VC as any type of digital unit that is used as a medium of exchange or a form of digitally stored value created by agreement within the community of VC users.[36]

B. Advantages and Risks Associated with VC

The legitimate use of VCs offers many benefits such as increased payment efficiency and lower transaction costs. VCs facilitate international payments and have the potential to provide payment services to populations that do not have access or limited access to regular banking services. However, other characteristics of VCs, coupled with their global reach, present potential AML/CFT risks, such as:

1. the anonymity provided by the trade in virtual currencies on the Internet;
2. the limited identification and verification of participants;
3. the lack of clarity regarding the responsibility for AML/CFT compliance, supervision and enforcement for these transactions that are segmented across several countries;
4. the lack of a central oversight body.[37]

C. Philippines' AML/CTF Measure on VCs

In response to VCs' vulnerabilities, the Philippines have adopted and implemented measures to thwart VCs as a vehicle for ML/TF, and to prevent the inflows of illicit funds into its economy and territory; and to ensure that the Philippines shall not be used as a money-laundering haven for proceeds of any unlawful activities.

Following the rise of the use of VCs for payments and remittances in the Philippines, the BSP issued Circular No. 944[38] (Guidelines for VC Exchanges) on February 6, 2017 establishing a formal regulatory framework for VC Exchanges in the Philippines. The adoption of the measure is in consonance with FTAF Recommendation No 14[39] that "*directs countries to register or license natural or legal*

[35] An Introduction to Virtual Currency. Retrieved: https://www.cftc.gov.
[36] BSP Circular No. 944: "Guidelines for Virtual Currency (VC) Exchanges" issued on 6 February 2017.
[37] Virtual Currencies: Key Definitions and Potential AML/CFT Risks. Retrieved: https://www.fatf-gafi.org.
[38] BSP Circular No. 944. Retrieved: http://www.bsp.gov.ph/downloads/regulations/attachments/2017/c944.pdf.
[39] Guidance for a Risk-Based Approach: Virtual Currencies, at pages 9 and 10. Retrieved: https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf.

persons that provide MVTS[40] (Money Value Transfer Service) *in the country, and ensure their compliance with the relevant AML/CFT measures*".

Under the circular, VC exchanges or businesses engaged in the exchange of VCs for equivalent fiat money in the Philippines are required to register with the BSP as remittance and transfer companies. BSP-registered VC exchanges are now required to put in place adequate safeguards to address the risks associated with VCs such as basic controls on anti-money-laundering and terrorist financing, technology risk management and consumer protection.

In addition, the Circular requires of all BSP-registered VC exchanges that large value pay-outs of more than PhP500,000, or its foreign currency equivalent, in any single transaction with customers or counterparties, shall only be made via check payment or direct credit to deposit accounts. VC exchanges are now Covered Persons (CPs) required to submit Covered Transaction Report (CTRs) and Suspicious Transaction Reports (STRs) to the BSP through the appropriate department of the Supervision and Examination Sector (SES). In addition, a VC exchange shall maintain records and submit the following reports to the appropriate department of the SES:

Nature of Report	**Frequency**	**Due Date**
Audited financial statements (audited by any of the BSP selected external auditors)	Annually	Not later than 30 June following the reference calendar year
Quarterly Report on Total Volume and Value of VCs transacted*	Quarterly	Ten (10) business days from end of reference quarter
List of operating offices and websites*	Quarterly	Ten (10) business days from end of reference quarter

* *Duly certified by the Proprietor/Managing Partner/ President or any officer of equivalent rank*

It should be emphasized, however, that though the BSP issued the mentioned circular on VC, it does not intend to endorse any VC, such as bitcoin, as a currency since it is neither issued or guaranteed by a central bank nor backed by any commodity. Rather, the BSP aims to regulate VCs when used for delivery of financial services, particularly, for payments and remittances, which have material impact on AML/CFT, consumer protection and financial stability.[41]

D. VC Exchange Services and Exchanges in the Philippines

VC *exchange service* refers to the conversion or exchange of fiat currency or other value into VC, or the conversion or exchange of VC into fiat currency or other value; *while* VC *exchange* refers to an entity that offers services or engages in activities that provide facility for the conversion or exchange of fiat currency to VC or vice versa.[42] Duly registered VC exchanges may perform other money or value transfer services such as the acceptance of cash, checks, and other monetary instruments, and/or payment to a beneficiary by means of a communication, message, transfer or

[40] Including domestic entities providing convertible VC exchange services between VC and fiat currencies (i.e. VCPPS) in a jurisdiction.
[41] Ibid.
[42] Ibid., Subsection 4512N.2, at pars. b and f, respectively.

through a clearing network.[43] As of October 31, 2019, there are thirteen (13) operating BSP-registered VC exchanges in the Philippines[44].

E. The AMLC's Study of the Transaction Profile of Accredited Virtual Currency Exchanges in the Philippines[45]

In view of the expansion of the VC exchange industry in the Philippines, the Philippines' FIU, or the AMLC, conducted a study for the purpose of assessing the transaction profile of BSP-registered VC exchanges, as these transactions relate to AML efforts. The data used by AMLC in its study are the CTRs and STRs submitted[46] by BSP-registered VC exchanges from March 6, 2017 to April 10, 2018 pursuant to BSP Circular No. 944. The result of the AMLC's study was released on April 12, 2018.

F. Significant Observations

The AMLC's study yielded the following significant observations that may be used as a basis for the formulation of policies or regulations to further strengthen existing AML/CTF measures:

1. VC Exchange-Reported Transactions Increased Dramatically in Both Volume and Value for 2017

Following the BSP's issuance of Circular No. 944 in February 2017, VC exchange-reported transactions increased dramatically in both volume and value for 2017. Total volume increased by 170% year-on-year (driven by 161% and 845% growth in STRs and CTRs, respectively), while total value increased by 608% year-on-year to reach an aggregate amount of PHP1.7 billion. Consider the following data of VC Exchange-Reported Transactions by Type[47]:

	CTR		STR		TOTAL	
Transaction Year	**Volume**	**Value***	**Volume**	**Value***	**Volume**	**Value***
2014			10	1.9	10	1.9
2015			78	1.0	78	1.0
2016	74	175.8	5,583	67.1	5,657	242.9
2017	699	1,189.5	14,550	531.5	15,249	1,721.0
2018**	313	1,031.7	1,059	57.1	1,372	1,088.8
TOTAL	1,086	2,396.9	21,280	658.7	22,366	3,055.6

*Values are in PHP million **Coverage of 2018 data is until 6 April 2018

While accreditation for VC exchanges commenced in 2017, it may be observed that transactions executed using the said platform date back to 2014. At that time, VC exchanges could

[43] http://www.amlc.gov.ph/images/PDFs/Study%20on%20VC.pdfn at page 6.
[44] List of Remittance and Transfer Companies (RTC) with Money Changing (MC)/ Foreign Exchange Dealing (FXD) and Virtual Currency (VC) Exchange Service As of 31 October 2019: Source: FSD IX Database. Retrieved: http://www.bsp.gov.ph/banking/MSB.pdf.
[45] Strengthening Anti-Money-Laundering Surveillance Alongside Advancements in Financial Technology. Retrieved: http://www.amlc.gov.ph/images/PDFs/Study%20on%20VC.pdf.
[46] Betur, Inc. and Rebittance, Inc., registered and accredited by BSP in September and October2017, respectively.
[47] The VC exchanges began submitting CTRs and STRs in 2017. Since STR submission hinges on the determination of the suspicious nature of a specific transaction regardless of the date it was executed, some reported transactions covered in the dataset were carried out on the VC exchanges' platforms in previous years (i.e., starting 2014).

register their remittance business with the BSP under Circular No. 471 (Rules and Regulations for Foreign Exchange Dealers, Money Changers, and Remittance Agents) issued on January 24, 2005. Becoming duly registered remittance agents (RAs) would allow them to open bank accounts.

The narratives for some transactions were also noted to demonstrate a degree of coordination between the VC exchanges and other CPs (such as correspondent banks), which has aided the former in identifying suspicious individuals and transactions. These may be indicative of proactive AML investigation and robust controls on the part of the regulated entities. Inter-entity coordination and knowledge sharing would also strengthen the capacity of the broader financial system in detecting and countering money-laundering and terrorist financing.

2. Deviations Were Noted on the Clients' Profile and/or Transaction History, Including Transaction Amounts Not Commensurate with One's Financial Capacity

The bulk of the total number of STRs (at 41.9%) were tagged as deviations from the clients' profile and/or transaction history, including transaction amounts not commensurate with one's financial capacity. Aside from such reasons relating to doubts on the clients' profile and/or nature of transactions, the three most frequently cited reasons for suspicion or circumstances warranting the filing of STRs all shared links to investment fraud, such as participation in (1) investment schemes, (2) swindling, and (3) fraudulent practices and other violations under the Securities Regulations Code of 2000. Taken together, these account for 6,670 STRs amounting to PHP121.8 million (equivalent to 31.3% of the total volume and 18.5% of the total value of STRs)

3. Most Suspicious Transactions Reported by the VC Exchanges Are Smaller Ticket Items

Most suspicious transactions reported by the VC exchanges are smaller ticket items, with 95.7% of the sample amounting to below PHP100,000. Nonetheless, despite the volume of STRs from the smallest bracket of PHP 1–9,999 (at 9,231 transactions or 43.4% of total), these account for only 4.6% of the total value of transactions. On the other hand, while STRs belonging to the PHP 100,000–499,999 bracket comprise 4.2% of the total in terms of volume, these account for the largest aggregate value, at 35.7% of the total. To date, seven transactions exceeding PhP500,000 have been identified as suspicious, with reasons as follows: (1) association of account owner with online gambling; (2) account owner suspected to be in violation of the Cybercrime Prevention Act of 2012; and (3) no established legal/trade purpose nor economic justification for the transactions involved.

4. Suspicious Transactions Were Mostly Outward Remittances to Domestic Beneficiaries, While the Rest Were in the Form of Cash Deposits

In terms of volume, suspicious transactions were mostly outward remittances to domestic beneficiaries (comprising 59.4% of the total volume), while the rest were in the form of cash deposits (comprising 40.6% of the total volume). On the other hand, the reverse can be said about the composition of suspicious transactions in terms of value, where cash deposits dominate at 58.5% of the total, whereas the remaining 41.5% of transactions are composed of different forms of domestic outward remittances.

It can be observed that the volume and value of cash deposits tagged as suspicious have increased significantly in 2017, although these appear to have decreased in 2018 thus far. Examining monthly data, large cash deposit flows were noted for September to December 2017,

amounting to PHP237.7 million, or 73.0% of the total cash deposit STRs for the year. The large inflow of cash deposits was observed to continue to January 2018, which accounted for PHP32.0 million, or 82.1% of the total value of cash deposit STRs reported year-to-date.

G. Typologies and Indicators

The AMLC's study of the transaction profile of accredited Virtual Currency exchanges in the Philippines revealed that various methods and techniques can be exploited and/or employed by criminals to usurp money from unsuspecting victims and/or launder the proceeds of illicit activities. The AMLC noted that the key element in the execution of such unlawful activities is anonymity, whether through means such as the extraction of funds in cash in order to remove the money trail or the usage of an untraceable mobile sim to be able to assume a fake identity in withdrawing funds. In particular, recurring schemes that may warrant enhanced monitoring and implementation of more stringent preventive measures include:

1. Unlicensed Investment Scheme

In this scheme, the perpetrator uses an account in the VC platform to solicit funds for an unlicensed investment scheme. The victim opens an account in the VC platform or performs over-the-counter cash deposits to transfer money to the wallet address provided by the perpetrator. At first, the gains on the investment are delivered as promised, and the victim is encouraged to top up on the investment and refer more members in order to earn commissions. Eventually, an issue arises which allegedly causes the perpetrator to fail to deliver the funds as promised. Communication subsequently ceases and victims are unable to contact the perpetrator through all available channels. The perpetrator deliberately severs all connections –deactivating groups and pages, blocking the victim's account and the like.

2. Online Shopping Fraud

The perpetrator poses as a seller of products/services in social media channels or online shopping sites, requiring a payment to an account within the VC platform prior to delivery of items. After the payment is made, the perpetrator promptly cuts all communication with the victim and removes/deactivates all social media connections. Delivery of the promised product/service is never fulfilled.

3. Identity Theft

The perpetrator using this scheme assumes the identity of a legitimate online store and sells items on the Internet similar to those being sold by the online store, advising the victim–a prospective customer–to remit payments to an account in the VC platform prior to shipment of the purchased items. Payments are immediately withdrawn from the account and all communication with the victim is cut. The perpetrator may also deceive a victim by pretending to be the victim's relative and then requests money through a payment centre, possibly through a VC platform.

4. Unauthorized Withdrawal via Cybercrime

The perpetrator accesses a client's account without authorization via online means such as hacking or phishing and then withdraws the funds in cash through the VC platform's payment partner using a fabricated identity, effectively eliminating the money trail.

5. Fraud (with Claims of Hacking of the Suspect's Account)

The victim is contacted by an acquaintance (in this particular case, a colleague) asking if there is a nearby payment centre to the victim and subsequently seeks assistance in making payments/deposits to particular reference numbers, promising to pay off the debt as soon as they meet. However, after completion of the transaction, the acquaintance claims that the account was hacked.

6. Fraud (via Exploitation of System Glitch)

The perpetrator avails the services of a VC platform's payment partner then exploits a glitch in its system wherein simultaneously triggering a credit in one's account and cashing out funds would result in an erroneous credit to one's account.

7. Advance Fee Fraud

The victim comes across a post on social media where the perpetrator, who claims to be part of a capital financing company, advertises loan offerings for additional capital (possibly targeting small-time entrepreneurs). The victim avails of the loan and is told that in order for the loan to be released, a processing fee must first be paid. The victim can no longer contact the perpetrator after payment of the processing fee.

8. Online Dating Fraud

The victim and perpetrator meet in a dating site and eventually agree to meet up at a particular place and time. The victim shoulders the transportation allowance of the perpetrator but is unable to communicate with the perpetrator subsequent to the deposit of funds. In addition, the AMLC's study likewise established the following red flags indicating that VCs are used in laundering illicit funds:

1. Unusually high volume of fund inflows (via cash deposits and/or incoming transfers from other VC platform users) and/or outflows (typically via outgoing transfers to external VC wallets or conversion to cash);
2. Multiple person-to-person (P2P) transfers from various accounts within the VC exchange;
3. Immediate turnover of newly received funds;
4. Attempts to purchase verified accounts within the VC platform.

VIII. CASE INVOLVING BITCOIN SCAM

An individual used his company originally registered as a sole proprietorship under a different purpose to operate a pyramid scheme using VC bitcoin as a front to explain the company's source of earnings and VC exchange platforms to facilitate payments and investments. Under the scheme, investors were promised double-digit interest rates every few weeks. As the suspects resorted to pyramiding and employed middlemen to serve as recruiters of new investors, the scheme's geographical reach extended nationwide. The perpetrators were eventually arrested. Months prior to the arrest, the VC exchange's systems flagged suspicious account activities, transactions, and

individuals associated with the scheme, leading to the filing of STRs on the group and their associates/cohorts.[48]

IX. CHALLENGES AND BEST PRACTICES

While the Philippines progress as a nation, it encounters challenges in the implementation of the policies and programmes to combat money-laundering, terrorist financing and corruption. With a strong bond between the Anti-Money-Laundering Council and the Office of the Ombudsman with the unwavering support of the various sectors of society, including the international community, we can win this battle to minimize if not altogether eliminate these menaces in our midst.

Relevant laws should be passed by Philippine legislators giving more powers to the Anti-Money-Laundering Council and the Office of the Ombudsman for more effective investigation and prosecution of cases. It is high time to revisit Republic Act 1405, for it impedes law enforcement authorities and investigators and prosecution officers in the performance of their duties and responsibilities.

The legislative proposals introduced by Philippine legislators to aid the AMLC and OMB to fulfil their respective mandates can be considered as a welcome development. These proposals include, among others, amendments to RA 1405; the Subscriber Identity Module (SIM) Card Registration Bill[49] to raise the level of the country's financial literacy and educate the public in performing their own due diligence, especially in assessing investment opportunities; classifying vote-buying and vote-selling as unlawful activity under the AMLA[50]; a proposal strengthening the institutional capacity of the Office of the Ombudsman by amending certain provisions of RA 6770 and giving power to the Office of the Ombudsman to employ wiretapping as an investigative technique.[51]

Moreover, instead of just legislative proposals, pertinent laws, rules and regulations should be adopted to counter ML-TF and corruption. The passage of Republic Act No. 11055, otherwise known as the Philippine Identification System Act, on August 6, 2018, is a step closer to aid in curbing anonymity. Pursuant to Section 2 of said law, it is a declared state policy, "to enhance administrative governance, to reduce corruption, and curtail bureaucratic red tape, to avert fraudulent transactions and misrepresentations, to strengthen financial inclusion and to promote ease of doing business. Towards this end, a resilient digital system shall be deployed to secure data collected and ensure that the people's right to privacy, confidentiality and other basic rights are at all times upheld and protected."[52]

While the emerging threats and trends in virtual currencies are present, the Bangko Sentral ng Pilipinas (BSP or the Central Bank of the Philippines) Issuance of Circular No. 944 Guidelines for

[48] Strengthening Anti-Money-Laundering Surveillance Alongside Advancements in Financial Technology, at pages 13 to 14. Retrieved: http://www.amlc.gov.ph/images/PDFs/Study%20on%20VC.pdf.
[49] 2017=2018 AMLC Annual Report, p. 25. Retrieved: http://www.amlc.gov.ph/images/PDFs/2017-2018%20AMLC%20ANNUAL%20REPORT.pdf.
[50] SBN-926 Retrieved https://www.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-926.
[51] http://www.congress.gov.ph/members/search.php?id=cabochan-m.
[52] https://www.officialgazette.gov.ph/downloads/2018/08aug/20180806-RA-11055-RRD.pdf.

Virtual Currency Exchanges provides a silver lining to counter money-laundering, terrorist financing and corruption. The adoption of the National Anti-Money-Laundering Counter Financing of Terrorism Strategy[53] and the creation of its National Anti-Money-Laundering Counter-Financing of Terrorism Coordinating Committee may be considered as a best practice for the Philippine Government since it adopts a holistic approach.

Most of these activities outlined in the NACS are not just good on paper but are already in place. In fact, an enhanced collaboration in the form of joint investigations, capacity-building and training and workshops between the AMLC and OMB investigators and prosecutors are good indicators of the serious efforts of the government to fight money-laundering, terrorist financing and corruption. It is hoped that more technical assistance may be provided by developmental partners in this score.

X. CONCLUSION/RECOMMENDATIONS

Money-laundering, terrorist financing and corruption have adverse impacts on the economy and political stability of a country; thus, such crimes must be curbed with an iron hand. The Philippine Government, through the AMLC and the Office of the Ombudsman, in its unrelenting stance in fighting the menace of money-laundering, terrorist financing and corruption is taking positive steps. The strong collaboration between said offices manifested through their Memorandum of Understanding is indeed imperative.

The formulation of the National Anti-Money-Laundering and Counter-Financing of Terrorism Strategy (NACS) and the creation of the National AML/CTF Coordinating Committee, the passage of relevant laws, the legislative proposals of Philippine legislators and the issuance of guidelines for virtual currency exchanges by Bangko Sentral ng Pilipinas (BSP Circular No. 944) are manifestations of the government's serious efforts to counter money-laundering, terrorist financing and corruption.

On the emerging threats and trends, money-laundering/terrorist financing schemes have become sophisticated and complex because of modern technology. The introduction of virtual currencies as an accepted exchange or payment scheme has offered alternative pathways for criminals to launder illicit funds or finance terrorist activities. The use of virtual currencies is considered one of the latest challenging threats and trends in the fight against money-laundering/terrorist financing and corruption.

Clear understanding of the nexus of virtual currencies in various money-laundering/terrorist financing and corruption schemes will enable anti-money-laundering authorities to formulate effective laws, rules, regulations and regulatory frameworks to prevent virtual currencies as a vehicle for laundering illicit funds.

The establishment by the Bangko Sentral ng Pilipinas (The Central Bank of the Philippines) of a regulatory framework for virtual currencies exchanges has strengthened safeguards against risks associated with virtual currencies, such as controls on Anti-Money-Laundering and Counter Terrorist Financing, technology risk management and consumer protection. In particular, the

[53] http://www.amlc.gov.ph/images/PDFs/NACS.pdf.

inclusion of virtual currencies exchanges as Covered Persons has allowed for more comprehensive monitoring of the financial behaviour of individuals and entities possibly connected to illicit activities as well as closer coordination and information sharing among Covered Persons in the conduct of Anti-Money-Laundering surveillance.

However, there is still much to be desired to mitigate the vulnerabilities of virtual currencies as tools or vehicles for laundering money and other crimes. To reduce the prevalence of fraudulent activities using virtual currency exchanges, the following measures should be adopted or imposed:

a. Lower thresholds for the amount, volume and/or frequency of transactions in an account;
b. More stringent Know Your Client (KYC) procedures;
c. Stricter requirements for increasing an account's transaction thresholds;
d. Release of constant advisories and reminders to accountholders on prohibited activities and possible penalties;
e. More rigid Anti-Money-Laundering/due diligence standards for virtual currencies exchanges' payment partners, such as remittance centres or mobile payment systems.[54]

A multi-sectoral approach to corruption prevention programmes to deter the prevalence and commission of corruption-related offences, giving premium on values formation by the Office of the Ombudsman, is the long-term solution.

The adoption and effective implementations of the recommended measures are dependent on the political will of those in power. Political will is a necessary prerequisite to have a clean and honest governance. As Singapore's Prime Minister Lee Kuan Yew said: "*Political will is the key to a clean government*"[55].

After all has been said and done, the strong political will of the national leadership would spell a great difference.

"I now ask everyone, and I mean everyone, to join me as we embark on this crusade for a better and brighter tomorrow." President Rodrigo Roa Duterte, Philippines[56]

[54] 2017=2018 AMLC Annual Report, p. 25. Retrieved: http://www.amlc.gov.ph/images/PDFs/2017-2018%20AMLC%20ANNUAL%20REPORT.pdf.
[55] Retrieved: https://www.cpib.gov.sg/lee-kuan-yew-political-will-key-clean-government-.
[56] https://www.officialgazette.gov.ph/2016/06/30/inaugural-address-of-president-rodrigo-roa-duterte-june-30-2016/.

CURTAILING THE FLOW OF CORRUPT BENEFITS: THE SINGAPORE EXPERIENCE IN COMBATING MONEY-LAUNDERING AND ASSET RECOVERY FROM CORRUPTION

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I. INTRODUCTION

Modern corruption often assumes a transnational character. The corrupt are no longer content with keeping the proceeds of their criminal conduct within their borders. Advances in technology and the interconnected nature of global finance bring both promise of shared prosperity, but also risk abuse by the corrupt who use these systems to transfer their benefits of criminal conduct across multiple jurisdictions.

For a global and regional financial hub like Singapore, the sheer volume of transactions, most of which legitimately pass through the Singapore financial system, compounds the difficulty in detecting the laundering of proceeds of foreign corruption. Coupled with Singapore's reputation as an international financial hub, the nature of our interconnected financial systems poses a significant risk that the corrupt will seek to use Singapore as a transit point to launder their ill-gotten gains. Between 2017 and 2018, total assets managed by Singapore-based asset managers grew by 19% to S$3.3 trillion, compared to $2.7 trillion in 2016, outpacing the 15% growth rate of the previous five years. This exposure is exacerbated by the fact that about 78% of the funds managed in Singapore are foreign sourced, with the majority of assets under management coming from the Asia Pacific region.[1]

Accordingly, effective seizure of benefits of criminal conduct and the swift detection of these transactions are crucial to cutting the financial vein of the corrupt. Singapore regularly reviews and updates its legal framework to ensure its efficacy in investigating, prosecuting and preventing the transferring of corrupt benefits through our jurisdiction. Beyond the judicious use of legal mechanisms, Singapore has also sought to cultivate a culture of proactive reporting and taking dissuasive action against errant gatekeepers. These successes guide the spirit in which we approach new challenges on the horizon.

II. EFFECTIVE USE OF LEGAL MECHANISMS TO SEIZE AND CONFISCATE CORRUPT PROCEEDS

In the fight against global corruption, Singapore's strategy lies not just in effectively using anti-money-laundering legislation and prosecution, but also leveraging on international cooperation with foreign agencies and honing the edge of our investigators on the ground.

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[1] https://www.straitstimes.com/singapore/singapore-reclaims-top-spot-in-competitive-economy-ranking.

A. The Corruption Drug Trafficking and other Serious Crimes Act

The Corruption Drug Trafficking and other Serious Crimes Act ("CDSA") (Chapter 65A) is Singapore's primary legislation to criminalize the laundering of criminal benefits. The offences under the CDSA include the laundering of the benefits of corruption and other serious offences within and beyond Singapore. Offenders convicted of money-laundering offences face imprisonment terms of up to 10 years and possibly fines of up to S$500,000. Companies and other bodies corporate may be liable to fines of up to S$1 million or double the value of the property concerned in the offence. In cases where the companies or body corporate's money-laundering activities are proved to have been committed with the consent, connivance or neglect of any officer of the former, the officer will additionally be personally liable for the money-laundering offences of the company or body corporate.

In addition to criminalizing money-laundering, the CDSA also provides for the seizure and confiscation of benefits derived from corruption and serious offences. Where there is reasonable cause to believe that a person has derived benefits from corruption and serious offences, the prosecution may apply to court under section 16 of the CDSA to restrain any of his property before he is convicted of such offences, and to obtain confiscation orders against the person after his conviction, for the value of the benefits derived from such offences. A restraining order prevents the person from dissipating his property and ensures that the property is available to be realized to satisfy the confiscation orders.

The property that is liable to be restrained and realized under the CDSA includes money and all movable or immovable property, including things in action and other intangible or incorporeal property. The power to restrain and realize assets extends beyond laundered property or its traceable proceeds: assets that are not directly traceable to the offence in question are also liable to be restrained or realized. This includes both the offender's untainted assets, as well as properties given by the offender to third parties (these are often family members and associates) up to six years before criminal proceedings are started against the offender for the corruption or serious offences.

B. Action against Absconded Persons

The CDSA also allows prosecutors to apply for confiscation orders against absconded persons, i.e. persons who cannot be found, apprehended or extradited at the end of six months from the commencement of investigations against them and against whom there is evidence which, unrebutted, would warrant their conviction of corruption or serious offences. This preserves the efficacy of the CDSA's anti-money-laundering measures against fugitives, including foreigners, who remain outside of Singapore.

This recourse under the CDSA is not a dead letter law. The Corrupt Practices Investigation Bureau investigated a Chief Executive Officer ("CEO") of a publicly listed electronic waste recycling company for corruption. However, the CEO fled Singapore with his family just prior to the CPIB's investigations. He was placed on Interpol's wanted person list, and his whereabouts are still unknown today.

Notwithstanding the CEO's absconding, the CPIB's investigations uncovered strong evidence that he had misappropriated and diverted electronic scrap to overseas syndicates for repackaging and sale as standard products, and bribed various parties to conceal his wrongdoing. Working with foreign authorities, the CPIB identified the beneficiaries of the disbursements stemming from the illegal proceeds credited into overseas bank accounts. Satisfied that the CPIB had exhausted its efforts to locate the CEO, the Singapore High Court pronounced him an absconded person under the CDSA and deemed him convicted of the alleged serious offences. Subsequently, the High Court issued a confiscation order of US$51 million, which represented what was known of the CEO's benefits from his embezzlement. In total, about S$25 million of assets were disgorged.

C. Confiscating Assets of an Offender that are Disproportionate to his Known Sources of Income

The CDSA has legal mechanisms that assist the prosecution in proving that a person has derived benefits of corruption or serious offences. Where a person is believed to have derived benefits of corruption or serious offences beyond bribe moneys or actual proceeds of crime, the prosecution may undertake a concealed income analysis to ascertain if he possesses property disproportionate to his known sources of income. If such property is proved from the analysis, the CDSA presumes that the benefits of corruption or serious offences derived are such property, unless the person can provide a satisfactory explanation to the court. In the CPIB's experience, this is invaluable in disgorging the full benefits of corruption from the *givers* of bribes.

In 2014, following the CPIB's investigations and a successful prosecution, an international match fixer was convicted of bribing match officials to fix a football match. The CPIB conducted financial investigations against him as he was suspected to be in possession of assets disproportionate to his known sources of income. CPIB investigators conducted an extensive and in-depth concealed income analysis that examined the gaping difference between the assets he held, and what income was available to him from his businesses in Singapore and other investments. The analysis covered assets including bank balances, property, insurance policies and vehicles acquired in the six years prior to his arrest along with a concurrent audit of the match fixer's known liabilities. The CPIB also engaged an independent accountant to review the CPIB's concealed income computation for fairness and reasonableness.

Ultimately, just earlier this year, the court approved of the analysis and issued a confiscation order for S$3.4 million, being the match fixer's disproportionate wealth and, therefore, being deemed criminal benefits which he was unable to provide a satisfactory explanation to the court.

The above paragraphs illustrate the dynamic nature of the CDSA as Singapore's primary tool to prevent the corrupt from enjoying the benefits of their criminal conduct.

III. INTERNATIONAL COOPERATION AND MUTUAL ASSISTANCE

Singapore takes its membership in the global community in the fight against corruption seriously. As a financial hub, the Singapore authorities receive numerous requests for assistance in both investigating transnational corruption and seizing of assets representing the proceeds of corruption. Where we have received such requests for aid, we have promptly responded.

The CDSA's provisions apply equally to domestic as well as foreign corruption, and have often served as the basis for domestic money-laundering investigations to enable effective seizure of corrupt proceeds prior to the receipt of formal mutual legal assistance requests. Even where the CPIB has received information from public sources, we have not shied away from first commencing domestic investigations.

Recently, the CPIB received information that significant sums (about S$10 million) believed to be corrupt proceeds of persons charged in another jurisdiction were suspected to have been received in financial institutions in Singapore. The CPIB then commenced domestic money-laundering investigations under the CDSA to track down the money. In the course of investigations, the CPIB froze the relevant bank accounts and restrained dealing in the properties held in the names of the persons prosecuted in the foreign jurisdiction. At present, the Singapore authorities are processing the formal request for mutual legal assistance received from the country, and have followed up with our own request for information relating to the underlying predicate offences.

Our approach in viewing domestic and foreign investigations into money-laundering of corrupt proceeds as two sides of the same coin enhances effective engagement of both our local law enforcement agencies and our foreign counterparts. This idea of joint ownership between countries in cracking a cross-border money-laundering case sharpens the investigators' edge to swiftly progress investigations and prevent the dissipation of assets.

One way we have sought to build trust between law enforcement agencies is the participation in international enforcement networks, like the International Anti-Corruption Coordination Centre ("IACCC"), which serves to enhance international cooperation in the fight against grand corruption. Singapore has been a part of the IACCC since July 2017.

IV. EFFECTIVE MANAGEMENT OF SEIZED ASSETS

In addition to the legal powers under the CDSA, law enforcement agencies have recourse to seizure powers under the Criminal Procedure Code ("CPC") (Chapter 68). Specifically, section 35 of the CPC confers broad powers on the police and the CPIB to seize assets, documents and other property that represent proceeds of criminal conduct, or constitute evidence of an offence, in connection with domestic investigations. Investigators are also empowered to prohibit persons, legal and natural, from dealing in or disposing specific property (for example, interests in real estate). In the context of cross-border money-laundering, the CPIB has used its section 35 CPC powers to seize and curtail assets that represent the traceable fruits of both domestic corrupt conduct and foreign corruption.

When untainted assets are concerned, i.e. assets belonging to the offender which are not the traceable proceeds of criminal conduct, investigators cannot utilize their seizure powers under section 35 of the CPC. For these situations, the prosecution seeks a restraint order under section 16 of the CDSA to restrain offenders from dealing with specific assets owned by the offender that are *not* the traceable proceeds of criminal conduct (see sec. II.A above). Effectively, the restraining order prevents dealing in such untainted assets, while ownership and possession of the property remains with the person.[2]

With the seizure and freezing of assets come the concomitant issue of preservation and maintenance, especially for seizures of real estate and tangible property. While the CPIB has legal powers to seize the traceable proceeds of corruption, a particularly tricky issue has been how to effectively preserve the value of these assets pending final resolution of the case.

In recent years, the CPIB has taken a more realistic and proactive approach in preserving and/or realizing the value of seized assets. This has entailed working with the defendant, the victims involved and other stakeholders to develop workable arrangements to realize the value of the seized assets at an early stage. This preserves the value of the assets, as well as reduces the need for preservation and upkeep of the same.

In 2015, the CPIB's corruption investigations against an employee of a private company, revealed conspiracies with other parties to cheat the company using fictitious quotations and invoices. Further financial investigations showed that the benefits of the employee's criminal benefits were estimated to be about S$5 million, which was mostly converted to the luxury items such as branded watches, jewellery, branded handbags and clothes, as well as investments in properties in Singapore and overseas. Resulting from its detailed financial investigations into the employee's spending patterns, the CPIB seized three bank accounts, two insurance policies, numerous luxury items and branded apparel, and prohibited the dealing in and disposal of four properties under section 35 of the CPC.

[2] However, section 16(8) of the CDSA allows for property to be seized by the authorities in order to prevent it from being removed from Singapore.

In the course of investigations, the CPIB engaged the employee and the victim company to liquidate the luxury items and branded apparel. Subsequently, the value of the luxury items was realized via a public auction. Altogether, the CPIB recovered about S$500,000 through the auction of over 500 items of luxury watches, jewellery and branded bags. It is worth highlighting that the public auction was completed months before the employee was prosecuted for the cheating and money-laundering offences in December 2016. Eventually, a total of about S$2.8 million, comprising proceeds from the public auction, disposal of other properties and monies seized, was eventually recovered and released to the victim company.

In this case, managing the luxury items was a particular concern. The CPIB took extra efforts to prevent loss and damage to the items. These items were, therefore, catalogued meticulously, individually photographed, and stored in a strong safe under optimal conditions (e.g. in a room with lowered humidity to prevent damage to luxury items).

Separately, where maintenance costs may exceed the realizable value of the seized asset, the CPIB avoids taking physical possession of the asset while preventing dealing in or disposal of the asset. For example, where corrupt proceeds have been converted into real estate, the CPIB usually exercises its powers under section 35 of the CPC to serve an order on the owner of the real estate to prevent the dealing in the property on grounds that it represents the traceable proceeds of crime. The CPIB then follows up with a request to the Registrar of the Singapore Land Authority for a caveat on the property to prevent the registered owner from dealing with the property without giving prior notice to the CPIB on the same basis. The effect is that while the suspect may still live in the property (if he is in jurisdiction), he cannot transfer or liquidate it without notifying the enforcement agencies.

By adopting a practical approach towards the restraint of assets, the CPIB walks the middle ground of ensuring that the corrupt do not enjoy their ill-gotten gains and maximizing the restitution for the innocent.

V. BUILDING A CULTURE OF PROACTIVE REPORTING

Singapore's experience is that the success of identifying and tracing the proceeds of corruption hinges primarily on a proactive culture of reporting suspicious transactions. Suspicious transaction reports ("STRs") have supported 66% of domestic money-laundering investigations and 82% of money-laundering investigations into foreign predicate offences.[3] STRs are also taken seriously by law enforcement agencies in Singapore, resulting in 199 investigations arising from 500 STRs.[4] Singapore's FATF mutual evaluation in 2016 found Singapore to have achieved a substantial level of effectiveness. Our Suspicious Transaction Reporting Office is well coordinated with law enforcement processes with "secure communications" and "access to law enforcement agency information that can be integrated with Financial Intelligence Unit information". Since then, we have undertaken several initiatives to strengthen Singapore's suspicious transaction reporting regime and reporting culture across various sectors.

A. Proactive Use of STRs in Investigations

The CPIB, and other law enforcement agencies, has for many years leveraged financial intelligence for early detection of money-laundering offences and for asset tracing. The following case underscores the need for close cooperation and trust among foreign law enforcement agencies to allow for sharing of financial intelligence and, at times, investigation findings to enable prompt action to arrest illicit fund flows.

[3] Anti-Money Laundering and Counter-Terrorist Financing Measures, Singapore Mutual Evaluation Report, September 2016 at page 55. Last accessed on 27 October 2019 at <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-singapore-2016.html>.
[4] Ibid.

In 2016, through a review of an STR, the CPIB suspected that a Singapore corporate bank account was used as a conduit to receive funds intended for bribing foreign politically exposed persons. The filer of the STR reported that its client, which was featured in overseas adverse media, had received significant funds from an offshore company. Through STRO, the CPIB immediately alerted the relevant foreign authorities as the beneficial owner of the bank account was making plans to move the funds out of Singapore. Within a day, the foreign authorities responded and provided court affidavits to prove that monies in the bank accounts were likely to be illicit funds. With this information and relying on powers under section 35 of the CPC, the CPIB immediately seized about US$16 million in the bank account on the basis that it constituted suspected proceeds of criminal conduct. Simultaneously, the CPIB also commenced domestic money-laundering investigations. Almost a year later, the foreign authorities followed up with a formal mutual legal assistance request to restrain the bank account.

Had the CPIB not acted to seize the assets at the earliest opportunity, the funds in the bank account would have been dissipated by the time a formal request for mutual legal assistance was made. Subsequently, the beneficial owner of the bank account made a legal challenge on the seizure made by the CPIB, claiming that the monies were legitimate funds meant to be used for investments. The CPIB then sought assistance from its foreign counterpart to defend the seizure and subsequently obtained the court's assent to retain the seizure while investigations remained underway. The CPIB is currently working with its foreign counterpart to obtain further evidence to prove that the funds in the seized account were indeed bribe monies linked to their investigations into the foreign predicate offence, with a view to confiscating them.

B. Effective Enforcement of STR Filing Obligations

Section 39 of the CDSA requires all persons who encounter suspicious transactions in the course of their business to report them. This obligation to file STRs, with effective and dissuasive sanctions for failure to do so, protects the nerve centre of Singapore's confiscation and asset recovery regime. The requirement applies not only to financial institutions, but also to, among others, employees within these institutions. Singapore has not shied away from taking persons to task for their failure to file such reports.

In 2016, in connection with its largest cross-border money-laundering investigation, Singapore successfully prosecuted the branch manager of a local branch of a foreign private bank for not only failing to file STRs in connection with suspicious transactions, but also for consenting to the branch's failure to file STRs in compliance with the regulator's anti-money-laundering directions. The branch was concerned in a series of transactions which carried clear red flags and involved almost US$1.2 billion. For these offences and for lying to investigators, the branch manager was sentenced to a total of 28 weeks' imprisonment and fined S$128,000. Arising from the same investigation, two bankers, a senior private banker and his colleague, were also prosecuted over separate instances of omitting to file STRs in respect of a suspicious transaction involving US$110 million transferred between their clients' accounts. The two bankers were sentenced to 18 weeks' imprisonment and a $24,000 fine, and 2 weeks' imprisonment and a $10,000 fine for their respective conduct.

To fortify the regime, section 39 of the CDSA was amended earlier this year to increase the maximum sentences for failing to report suspicious transactions to a maximum fine of $250,000 and/or imprisonment of up to 3 years for individuals and a maximum fine of $500,000 for corporate offenders.

C. Expansion of Categories of Persons Expressly Required to File STRs

While section 39 of the CDSA imposes a general obligation on those whose businesses reveal suspicious transactions to report them, Singapore has taken pains to specifically identify certain sectors of the economy that must comply with this obligation and, where necessary, maintain records of transactions. These sectors include gatekeepers and designated non-financial businesses and professions ("DNFBPs").

D. Gatekeepers – the Legal Profession

Gatekeepers, especially the legal profession, are expected to take their reporting obligations seriously. The Law Society of Singapore is tasked with regulating the legal profession and ensuring the upkeep of the standards of professional conduct of lawyers in Singapore. As part of its mandate, the Law Society of Singapore is also primarily responsible for anti-money-laundering/countering the financing of terrorism ("AML/CFT") framework for lawyers. Section 70D of the Legal Profession Act (Chapter 161) ("LPA") imposes a separate obligation on lawyers to file STRs alongside the CDSA. Where lawyers have omitted to file these STRs, aside from criminal prosecutions, they have been subject to disciplinary actions under the LPA.

In 2016, a senior lawyer was disciplined over failing to report suspicious circumstances in respect of a conveyancing transaction involving real estate in Singapore. The transaction was in fact a front for an unlicensed money-lending transaction, the circumstances of which should have raised alarm bells for the senior lawyer who had more than 30 years' experience. For her infraction, she was suspended from legal practice for two and a half years.

Following this case, several other lawyers were taken to task over related failures to conduct due diligence into their clients' affairs (which, had they done, may have given rise to a need to file an STR).

In 2018, a lawyer was disciplined for repeated failures to perform even basic background checks on his clients' identities and obtaining evidence of his clients' business relationships. For his misconduct, he was suspended from legal practice for two years and fined S$100,000.

In 2017, the Attorney-General's Chambers of Singapore successfully took another senior lawyer to task for failing to file an STR in respect of a conveyancing transaction. In brief, the lawyer was engaged by the former President of a Chinese company to purchase a $23.8 million property in Singapore. The Chinese company had launched a Chinese peer-to-peer lending platform that turned out to be a $10.8 billion Ponzi scheme. In addition to negative public news reports on the Chinese company and its platform, the Singapore authorities obtained the information regarding the purchase of the property through an STR filed by the counterparty to the conveyancing transaction (which was ultimately not completed).

However, despite having read negative news reports about her client who was not only suspected of perpetrating a Ponzi scheme in China, but who had also been arrested in connection with the same, the lawyer failed to file an STR to notify the authorities that her client could be involved with the Ponzi scheme. For her failure to file the necessary STR, the lawyer was fined $10,000, half of the maximum penalty at the time. In 2019, she was subsequently also subject to disciplinary proceedings and was fined an additional $5,000.

The above cases illustrate the comprehensive approach toward regulating gatekeeper professions, which is crucial to fostering a culture of reporting within such sectors of the economy.

E. Other DNFBPs – Precious Stones and Precious Metals Dealers

Earlier this year, Singapore enacted the Precious Stones and Precious Metals ("PSPM") (Prevention of Money Laundering and Terrorism Financing) Act 2019 ("PSPM Act"). The purpose of the Act and the Regulations thereunder is to regulate PSPM dealers to strengthen the AML/CFT framework for the PSPM industry and bring our regime fully in line with international standards set by the Financial Action Task Force.

The PSPM Act and PSPM Regulations came into force on 10 April 2019. The PSPM Act and Regulations are administered by the AML/CFT Division of the Ministry of Law in Singapore, which will

be headed by a Registrar of Regulated Dealers (the "Registrar"). The Registrar has broad powers to register dealers in PSPM, impose conditions for operating in Singapore, as well as powers of investigation, enforcement and composition of offences.

Among other things, the PSPM Act and its Regulations mandates customer due diligence for transactions for precious stones, metals, products involving sums above $20,000, prohibits regulated dealers from entering into certain transactions and requires them to keep records on pain of criminal sanction. Specifically, regulated dealers are required under section 21 of the PSPM Act to report suspicious transactions in accordance with the CDSA.

Anecdotally, the response of the industry has been heartening. As at 11 August 2019, the Division has received 1,272 applications for registration and expects there to be approximately 1,800 registered entities doing business at approximately 2,300 outlets in Singapore. With the advent of the PSPM Act, we expect it to be much more difficult for the corrupt to launder their ill-gotten gains through Singapore via DNFBPs.

VI. DEALING WITH NEW THREATS ON THE HORIZON

The CPIB and other Singapore law enforcement agencies remain vigilant and alive to the evolving landscape of AML/CFT risk. On the technological front, the advent of cryptocurrencies is a recurrent trend in international law enforcement fora. While cryptocurrencies may have legitimate uses, they are notorious for their potential for money-laundering, concealment of assets and cyberextortion due to their "anonymous" nature. The novelty of the block chain technology backing the operation of such alternative "currencies" have also compelled law enforcement agencies to relook their investigation capabilities.

As a financial hub, Singapore has seen growth in the number of cryptocurrency exchanges and initial coin offerings, which indicate the growing traction of virtual currencies as a mode of obtaining value. It is thus important for both financial institutions as well as law enforcement and regulatory agencies to be equipped with the "know-how" on detection and comprehension of cryptocurrency transactions.

Thus far, our findings reveal unique challenges in dealing with cryptocurrencies. *Firstly*, cryptocurrencies are intangible property. While dealing in cryptocurrencies would be considered dealing in property, and a confiscation order may be sought to realize such cryptocurrency, a suspect cannot physically surrender it to the investigators. *Secondly*, unlike conventional intangible assets like stocks and interests in land, there is no central depository for these currencies. There are no known cryptocurrency exchanges in Singapore that may be subject to orders to prohibit dealing in a specific cryptocurrency. *Thirdly*, cryptocurrency is comprised of computer data, as opposed to the traditional chose-in-action. The data itself may be, and likely is, stored on a server outside Singapore's jurisdiction. While the owner may exercise control over the coin, the coin (and data) itself lies beyond the reach of traditional investigative powers.

The unique nature of cryptocurrency lends itself to two possible responses by law enforcement: the adapting of the anti-money-laundering legal framework to cater for this new reality, and the upskilling of law enforcement to think and investigate differently. Singapore has responded in both ways.

In respect of legal powers to deal with computer data, Singapore has recently amended section 39 of the CPC. Investigators are now empowered to access a computer and even compel person(s) in charge of such computers to assist them. Investigators are also able to access computers located outside Singapore if (a) the computer's owner consents; or (b) if the investigator gains access to the computer through the use of traditional investigative powers, including seizing documents which provide the username and password. This enhancement would allow the investigators to log into a suspect's cryptocurrency wallet/account, that is based overseas, and transfer the currency electronically to a wallet held by the law enforcement agency

at the earliest opportunity. This approach would be enhanced through investigative strategies to preserve the value of the assets sought to be seized.

Building on the tried-and-tested use of traditional powers expands the reach of law enforcement agencies to these new frontiers in ways that they are familiar. It is also crucial to help investigators understand the true nature of the asset they are dealing with. In this regard, the CPIB has developed investigative procedures (which include technical processes and precautions) to guide officers when dealing with the seizure and management of cryptocurrencies. The investigators are educated on the tracking and tracing of the origins of cryptocurrency transactions, and keep abreast of emerging cryptocurrency trends, like bitcoin mixing. Since 2017, the Computer Forensics Branch of the CPIB has been conducting its own research and development into the use of cryptocurrency, which includes simulating transactional flows to gain a better understanding of a particular currency's technical inner-workings to enhance the CPIB's investigative abilities in dealing with the same. The CPIB also supports international efforts to prevent and detect cryptocurrency-facilitated crime, and regularly shares its research findings with counterpart agencies and regional fora and workshops.

VII. CONCLUSION

Singapore's experience is that it is necessary to adopt a certain dynamism to investigations and seizure of assets within our legal framework in order to keep up with trends in the laundering of corrupt proceeds. At times, the legal framework needs to evolve to align with best practices around the world, but in an autochthonous manner. Leveraging the well-functioning aspects of our legal framework, like the use of STRs and the powers our CDSA confers on investigators, is one way to guide this evolution to effectively meet the new challenges on the horizon.

PRACTICAL ASPECTS OF MUTUAL LEGAL ASSISTANCE IN FINANCIAL INVESTIGATION AND ASSET RECOVERY IN CORRUPTION CASES

Akareeya Ngamwongpaiboon[*]

I. INTRODUCTION

Corruption is one of the most serious crimes that affects economic stability, the rule of law and healthy democracy in all jurisdictions. According to the Corruption Perception Index 2018, more than 120 countries failed to reach a 50/100 score-benchmark, revealing ineffective control over corruption.[1] Corruption is found to be one of the five major crimes in Thailand, inter alia, drug offences, tax evasion, unfair securities trading and customs evasion, which all together contribute to 86 per cent of all crime-generated assets.[2] The reason why corruption persists is based on its economic and monetary incentives. The risk of punishment, in the view of corruptors, outweighs the risk of their opportunity for pecuniary gains. Money is clearly seen as the ultimate goal which incentivizes the criminals as well as the proceeds of crime itself. In most cases, government financial resources are moved, in disguise, mostly from one country and placed into another country which would be layered through more complicated means, and subsequently gathered by innovative integration. Transnational corruption, rather than traditional domestic corruption, is the trend. This transnational corruption calls for effective international legal cooperation to combat such crime. UNCAC and UNTOC are the two prominent international legal instruments that strengthen and promote international legal cooperation. The framework introduces, inter alia, mechanisms to facilitate formal cooperation, mutual legal assistance (MLA) and informal cooperation among relevant agencies.

II. LEGAL BASIS FOR MUTUAL LEGAL ASSISTANCE

In accordance with international norms, seeking and providing mutual legal assistance in criminal matters to and from Thailand is premised on treaty and domestic law. The Act on Mutual Assistance in Criminal Matters 1992 (the MLA Act), Thai domestic MLA law, has been the foundation for mutual legal assistance in Thailand. It permits Thailand to provide assistance to a Requesting State based on an MLA treaty and even in the absence of treaty on mutual assistance in criminal matters, provided that the Requesting State must demonstrate its commitment to provide assistance in a similar manner if Thailand so requests. The Act also sets forth preconditions for granting assistance including dual criminality, grounds for refusal and specific conditions to each type of assistance. The Attorney General or a person designated by him shall be the Central Authority of Thailand for both MLA and extradition requests. With regard to MLA, the Central

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[1] https://www.transparency.org/cpi2018 (accessed 12 October 2019).

[2] Anti-money-laundering and counter-terrorist financing measures Thailand Mutual Evaluation Report December 2017, p. 5 and p. 16.

Authority has the power and duty to handle and process both incoming and outgoing requests, transmit them to the competent authority, draft the outgoing request, and to approve and monitor requests.

In 2016, the MLA Act was significantly amended to be in line with international standards by including necessary measures that allow the Central Authority to accord financial investigation requests and the asset recovery process. Four additional competent authorities, namely the Department of Special Investigation (DSI), the National Anti-Corruption Commission (NACC), the Anti-Money-Laundering Office (AMLO) and the Office of Public Sector Anti-Corruption Commission (PACC), are included and vested with power to conduct investigations upon request.[3] Prior to this amendment, the execution of an MLA request was required to have been conducted by the Royal Thai Police, the only competent authority.

Moreover, Part 9 of the MLA Act also welcomed the concept of enforcement of value-based confiscation, return of assets and asset sharing. Previously, the asset requested to be confiscated by the Requesting State shall devolve to Thailand, without exception. However, with this amendment, the Court can order the return of forfeited assets as prescribed in a bilateral treaty between Thailand and the other State. In this case, the Central Authority, the Attorney General of Thailand, shall file an application asking the Court to issue an order to submit such asset to the Central Authority to return to the Requesting State.

III. MUTUAL LEGAL ASSISTANCE AND FINANCIAL INVESTIGATION

The reason supporting the assumption of AMLO as the competent authority under the MLA Act is that AMLO plays a prominent role as a specialist financial investigation unit (FIU). The Anti-Money-Laundering Act of B.E. 2542 (1999) established the national financial intelligence unit with the authority to gather financial information and to analyse and disseminate information to relevant legal enforcement officers. With its large information database including suspicious transaction reports (STRs), financial transactions deriving from domestic reporting entities and databases from other agencies, such as land title, vehicles and immigration. In cases where further information is needed, they can request further information from reporting entities for the purpose of investigation of money-laundering and predicate offences, including corruption offences. As a part of the network of international financial intelligence units, the Egmont Group, AMLO can acquire informal financial intelligence through the network as well as from its 54 international partners under their memorandum of understanding. The information obtained can be later distributed to assist domestic money-laundering investigations conducted by other agencies.

The National Anti-Corruption Commission (NACC) is the key agency for preventing and combating corruption, especially cases involving high-ranking officials. Through their investigation process, the NACC can order any public official, individual or public organization to give a statement, documents or other evidence. Despite the fact that the NACC is not a financial intelligence unit, they are equipped with the authority and budget to hire advisors or experts to conduct financial investigation and asset tracing in foreign jurisdictions. The NACC can also obtain and provide informal cooperation in corruption cases, including information if

[3] The Act of Mutual Legal Assistance in Criminal Matters B.E. 2535 and its amendment, Section 12.

they deem it appropriate through other anti-corruption counterparts.[4]

When foreign countries request evidence or financial information, if the request meets the conditions set forth in the MLA Act, the Central Authority shall transmit the request to the competent authority for execution. Nevertheless, financial intelligence exchange via informal cooperation is applied by practitioners to accelerate the process prior to the submission of a formal MLA request. Once a request is made and transmitted, the execution of such request can be done very quickly. Such good practice, nevertheless, requires a level of mutual understanding, trust and communication among domestic and international counterparts. However, in some jurisdictions, obtaining financial information is more difficult as it requires coercive measures. Therefore, the only means to obtaining financial information must be made through an MLA request to the Central Authority. Therefore, it is important for the requesting agency to understand the different legal culture and standards in order to employ effective approaches.

IV. MUTUAL ASSISTANCE, ASSET CONFISCATION AND ASSET RECOVERY

During the investigation, proceeds of corruption or targeted assets must be secured to ensure the success of asset confiscation and return at a later stage. Measures to secure the assets may differ depending on the law of such jurisdiction. In Thailand, if there are reasonable grounds to believe that any asset connected with the commission of a money-laundering offence includes a corruption offence,[5] AMLO shall have the power to order a provisional seizure or attachment of such asset for the duration of not more than ninety days. In the case where there is convincing evidence that an asset is connected with the commission of an offence, the Secretary-General shall refer the case to the public prosecutor for consideration and filing a petition in court for an order that such asset be vested in the State without delay.[6] The NACC is also vested with the power to temporarily seize or confiscate an asset connected with the offence, and with respect to unusual wealth, such order can be limited within 1 year from the dated of seizure or freezing or until the case is final.

According to Thai law, as a general rule, forfeiture of property related to a criminal case is considered as a form of criminal punishment.[7] Therefore, the traditional means is to apply criminal forfeiture to recover the proceeds of the corruption crime. However, it should be noted that in most corruption cases, the corruptors are very powerful, which might affect the possibility of effective criminal investigation or prosecution or there might be cases where evidence gathered is insufficient to conduct criminal prosecution. In this regard, non-conviction-based asset forfeiture is considered by practitioners to be a more preferable mechanism,[8] or at least an alternative mechanism to criminal forfeiture.

Thailand incorporates non-conviction-based approaches to forfeiture of proceeds of crime in many laws, including the Anti-Money-Laundering Act B.E. 2542 (1999) and the Act on the

[4] The Organic Act on Counter Corruption B.E. 2561 Section 34 and 142.
[5] The Anti-Money Laundering Act B.E. 2542 (1999) Section 3(5).
[6] Ibid., Sections 48 and 49.
[7] Thai Penal Code, Section 18.
[8] Theodore et al. (2009) *Stolen Asset Recovery A Good Practices Guide for Non-Conviction Based Asset Forfeiture,* p 13.

Measures for the Suppression of Offenders in an Offence Relating to Narcotics, B.E. 2534. In corruption cases, Thailand's non-conviction-based approach can be found under the Organic Act on the Prevention and Suppression of Corruption B.E. 2561 (2018). However, it merely applies to the offence of "unusual wealth". Unusual wealth under the Act is defined as having an unusually large quantity of assets, having an unusual increase of assets, having an unusual decrease of liabilities or having illegitimate acquisition of assets as a consequence of the performance of duties or the exercise of power in office or in the course of duty. Under such legislation, the standard of proof required to forfeit proceeds of crime is the preponderance of the evidence. The accused must prove to the court that the property does not result from the unusual wealth,[9] otherwise the asset shall devolve upon the State. As it requires a different legal basis from its related criminal offence, non-conviction-based measures can be proceeded with independently, and with shifting the burden of proof to the accused culprit, assets can be recovered from NCB measures and the result of the case are totally separate from the criminal case.

In the case of Mr. Supoj Saplom, the former permanent secretary of the Transport Ministry holding the position between 2009-2011, the Court of Appeal made a decision to order confiscation of assets of Mr. Saplom worth 64 million baht or to make payment in lieu thereof. Such assets included cash, bank deposits, gold, six parcels of land, houses, condominiums and luxury vehicles. The investigation began in 2012 after burglars broke into Saplom's house in Bangkok on a night in November 2012 during a severe flood in Thailand. The Burglars were later arrested with 18-million-baht cash and 10 bath weight gold. They also revealed that millions of baht in cash were inside the house. The NACC later inspected Mr. Saplom's house and conducted an investigation. It appeared that Mr. Saplom could not explain the source of such assets. The NACC finalized the case file and submitted it to the Office of the Attorney General. The public prosecutor filed a petition to the Civil Court to devolve such assets to the State as unusual wealth and due to his failure to declare assets under the Organic Act on Counter Corruption B.E. 2542 (1999). With regard to the criminal case, in 2018, the Supreme Court's Criminal Division sentenced Mr. Saplom to 10 months' imprisonment for political officeholders deliberately avoiding declaration of assets under Section 119 of the same Act.

In Juthamas's Case, the former Governor of the Tourism Authority of Thailand was charged with demanding bribes from American investors in exchange for a contract to manage an international film festival. During the criminal proceedings, the NACC asked the Central Authority to make mutual assistance requests to freeze the accounts of Juthamas's daughter, the co-defendant, which were opened abroad. The civil forfeiture was based on an unusual wealth allegation. That case is being conducted in parallel and is still pending.

However, in international corruption cases, such seizure or freezing of assets in Thailand for the purpose of confiscation and asset recovery must be made through mutual assistance requests. As mentioned earlier, the MLA act was amended allowing assets to be returned. The Requesting State can send a request for seizure/freezing of property during its investigation or prosecution with its seizure/freezing order issued by its authority, or the court judgment, although it is not yet final. The public prosecutor shall later file the case of such request to the Court to issue a seizure or freezing order. Thailand can also accord the request to confiscate the asset if the case in the

[9] Anti-Money Laundering Act B.E. 2542, Section 51.

Requesting State is final.

Since its amendment, nevertheless, the application of these provisions has not yet been tested before the Court. It should also be noted that the MLA itself does not stipulate whether the order or judgment must be criminal forfeiture or non-conviction-based asset forfeiture. As Thailand is party to the UNCAC and UNTOC and with its utmost efforts to combat corruption and transnational organized crime, the application of the MLA Act is to provide the widest measures to enable effective asset recovery, or at least to become aware of the issues with possible solutions based on the context of their own legal culture.[10] This pro-cooperation concept is, however, being tested in the case requested by Thailand in a drug-trafficking and money-laundering case. The Civil Court ordered the forfeiture of proceeds of drug trafficking that were transferred abroad. The Central Authority of the Requested Stated in which the three accounts were found agreed to return the frozen accounts.

V. CONCLUSION

Investigation, prosecution and asset recovery of proceeds of corruption are very challenging, especially in cases of transnational corruption. Thailand has developed its domestic legal framework to establish agencies specialized in financial and corruption investigation to combat corruption crime. Civil forfeiture is also put in place to ensure proceeds of crime are recovered. Furthermore, the international asset recovery regime and asset sharing are now incorporated into the MLA Act. Such measures can only fully be implemented through international cooperation. Differences in approaches in financial investigation, asset confiscation and asset recovery will remain with respect to legal systems and legal cultures in each jurisdiction. Nevertheless, direct communication between agencies, Central Authorities, efforts to informal consultation and the mindset to accord the widest assistance will narrow such gaps and move towards the common goal to combat and break the corruption chain.

[10] UNCAC, Article 51.

FINANCIAL INVESTIGATION AND ASSET RECOVERY: AN EFFORT TO COMBAT CORRUPTION IN THAILAND

Rata Rudravanija[*]

I. INTRODUCTION

Corruption is a serious threat to humanity. It can take many forms, such as bribery, embezzlement, graft, bid rigging, cronyism, money-laundering, tax evasion and extortion. Whatever form corruption takes, it always comes at someone's expense, especially the public funds. As a result, corruption is detrimental to the development of the State. It denies citizens access to basic public services, damages the economy and undermines political stability, leading to weaker institutions and less prosperity of the people and the country.

Recently, the problem of corruption has become more complicated. Rapid growth of trade and investment opportunities, as well as the free movement of capital and people across borders, creates an environment where corruption flourishes undetected and unpunished. In today's inter-connected world, corruption is intrinsically linked to money-laundering, terrorism and organized crime, all of which have impacts that can be felt among the international community. The United Nations Secretary General, António Guterres, recently noted that the annual costs and damages brought upon by transnational corruption amount to a staggering 3.6 trillion US Dollars in the form of bribes and stolen money.[1] To make matters worse, when countries decide to pursue justice through stolen asset recovery actions, there are considerable challenges to overcome, for example, inscrutable offshore secrecy accounts and asset holdings, bureaucratic obstacles in mutual legal assistance, and low investigative and prosecutorial capacity.[2]

The aim of this paper is to make a contribution to the existing financial investigation and asset recovery framework by providing an overview of the financial investigation and asset recovery process of Thailand through the roles of the National Anti-Corruption Commission (NACC) as the designated agency responsible for combating corruption in Thailand. The first part of this paper will explain the power and duty of the NACC for a better understanding of the organization and its roles. Then it will describe the method of financial investigation as a part of corruption investigation, followed by the process to recover the proceeds of corruption crime. Lastly, this paper will present a number of challenges practitioners encounter in conducting financial investigation and recovery of illicit assets.

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[1] Guterres, António (2018). Message on International Anti-Corruption Day. 9 December. Available at https://www.un.org/en/events/anticorruptionday/messages.shtml.

[2] Stolen Asset Recovery Initiative (2018). StAR Annual Report 2018. Available at https://star.worldbank.org/sites/star/files/star-annual-2018-09-reduced.pdf.

II. THE NATIONAL ANTI-CORRUPTION COMMISSION OF THAILAND

The National Anti-Corruption Commission of Thailand, or NACC, was established in 1999 as an independent constitutional body with the power and duties to counter corruption in the Kingdom of Thailand. Under the Organic Act on Anti-Corruption, the NACC has the authority to conduct investigations into allegations of public corruption and other related offences. Such offences include bribery of domestic and foreign public officials, embezzlement, bid-collusion in public procurement, unusual wealth or illicit enrichment of politicians and high-ranking public officials, and malfeasance in public office, among others. Besides corruption investigations, the NACC is authorized to inspect assets and liabilities of politicians and high-ranking public officials to verify the accuracy of the declared assets and liabilities and to identify unusual changes in assets which might have resulted from unusual wealth or illicit enrichment.

Furthermore, the NACC is the designated lead agency responsible for ensuring Thailand's implementation of international obligations and agreements relating to anti-corruption. As a State Party to the United Nations Convention against Corruption (UNCAC), the first and only legally binding international instrument of its kind, Thailand has recently amended its Organic Act on Anti-Corruption B.E. 2561 (2018) as part of its ongoing efforts to fully comply with UNCAC.

Below is a table showing provisions of the amended Organic Act on Anti-Corruption B.E. 2561 (2018) that have been implemented based on UNCAC:

UNCAC		Organic Act on Anti-Corruption, B.E. 2561 (2018)
Article 2	Use of terms	Section 4
Article 10	Public reporting	Section 32
Article 12	Private sector	Section 176
Article 13	Participation of society	Section 32
Article 16	Bribery of foreign public officials and officials of public international organizations	Section 28(4) Section 97 Section 173-176
Article 25	Obstruction of justice	Section 177
Article 26	Liability of legal persons	Section 176
Article 29	Statute of limitations	Section 7
Article 31	Freezing, seizure and confiscation	Section 83 Section 84

UNCAC		Organic Act on Anti-Corruption, B.E. 2561 (2018)
Article 36	Specialized authorities	Section 41 Section 138
Article 43	International cooperation	Section 138 Section 140
Article 46	Mutual legal assistance	Section 140
Article 47	Transfer of criminal proceedings	Section 139
Article 48	Law enforcement cooperation	Section 140
Article 53	Measures for direct recovery of property	Section 34(5)
Article 55	International cooperation for purposes of confiscation	Section 140

Apart from actively engaging and coordinating national efforts to improve Thailand's anti-corruption legal framework to be in compliance with international standards and best practices, the NACC attaches great importance to the investigation of cross-border corruption cases. In 2013, the NACC established the Thailand Anti-Corruption Coordination Centre (TACC) to act as a focal point to (i) promote and coordinate national efforts to effectively implement UNCAC and other related international and regional instruments; (ii) provide operational guidance and support as requested, both through formal and informal channels, by domestic and foreign law enforcement counterparts which are conducting investigation on corruption cases involving Thai nationals or Thai territory.[3] In addition to international cooperation in regard to transnational corruption investigations, TACC also facilitates and collaborates closely with the StAR/INTERPOL Global Focal Point on Asset Recovery[4] and the International Centre for Asset Recovery (ICAR)[5] on international asset recovery efforts, especially in the exchange of information and intelligence sharing between agencies.

[3] See www.nacc.go.th/tacc.

[4] A joint collaboration between INTERPOL and the Stolen Asset Recovery (StAR) Initiative to provide a secure information exchange platform for criminal assets recovery. Anti-corruption practitioner and prosecutors from more than 120 countries have been nominated as focal points to assist one another on matters relating to the tracing, freezing, seizing, confiscating and recovering of proceeds of corruption.

[5] Established by the Basel Institute on Governance as an independent non-profit centre of excellence in asset recovery in 2006.

III. OVERVIEW OF FINANCIAL INVESTIGATION AND ASSET RECOVERY IN THAILAND

A. Financial Investigation

There is a challenge that most practitioners face at least once when conducting corruption investigations: how to prove that there is corruption. High-profile cases of corruption almost always involve actors from different jurisdictions, and the money used in corruption is usually transferred through complex channels, which often involve banking institutions of various countries. The financial strategies used to conceal the methods used to perform a corrupt act or the proceeds derived from it are becoming increasingly sophisticated. High-level corruption organizes extensive resources to effectively camouflage the bribes and to transfer the acquired assets to safe financial havens, especially offshore or other shell companies. The complexity and sophistication of these systems causes considerable obstacles for practitioners, and seems to be in favour of both bribe givers and bribe takers.

Therefore, a crucial element to successful investigations and prosecutions of corruption cases is competent financial investigation. It is vital to focus on all possible financial angles when conducting corruption investigation to uncover and prove corruption crimes by tracing the movement of money and other assets. These illicit assets are key evidence to strengthen the case and to secure conviction. It might also reveal further connections to additional suspects and other offences. Most importantly, by identifying and locating the corrupt assets, the competent authorities can then start on the process to recover said proceeds of corruption back to the country.

The first step in financial investigation and the asset recovery process is to identify, trace and locate the ill-gotten gains of the corrupt acts, as well as the methods in which the assets are laundered. This requires gathering financial intelligence from various sources of information on assets used in or derived from corruption. Financial intelligence is collected by public and private organizations and used by competent authorities in investigation of money-laundering cases and associated predicate offences, including corruption cases. It is imperative for law enforcement agencies to be able to gather, assess, analyse and provide reliable, accurate and relevant information concerning the financial trails.

A main source of financial intelligence is bank information. Nevertheless, movements of money can also be traced using databases and registers, e.g. tax statements, property ownership registry, enterprise/company registration, data of stock exchanges and available information about salaries, income and spending, such as bills and expense reports.

Moreover, law enforcement authorities should take full advantage of whatever beneficial transparency laws are at their disposal. In Thailand, the law requires the full disclosure of assets and liabilities of politicians and high-ranking public officials.[6] This provides the competent authorities with an invaluable tool for determining an individual's demonstrable network and whether there are reasons to believe the suspect to have other illegally obtained assets to support him or her.

[6] Section 102, Section 103 and Section 105 of the Organic Act on Anti-Corruption B.E. 2561 (2018).

Financial Intelligence Units (FIUs) also play a significant role in financial investigation. They generally act as an intermediary between financial and other reporting entities on one side and law enforcement authorities and prosecutors on the other. FIUs' main tasks are to receive and analyse suspicious transactions reports and other information relevant to money-laundering, associated predicate offences and terrorist financing.[7] Then they direct their analysis results to the competent authorities. Most importantly, FIUs are also responsible for the exchange of financial information internationally with counterpart FIUs and other foreign competent authorities.[8]

The NACC, as a designated national agency with the power and duties to counter corruption in Thailand, has authority to request information from banks and other financial entities.[9] However, if the financial intelligence required needs to be obtained from other states, the NACC would often collaborate with the Anti-Money-Laundering Office (AMLO)[10] which is the designated FIU of Thailand. The reason is that AMLO has the advantage of utilizing its own channels of cooperation with its partners, whether agency-to-agency or through other international cooperation, such as the Egmont Group, the Asia/Pacific Group on Money Laundering (APG) and the Financial Action Task Force (FATF).

B. Freezing or Seizing Illicit Assets

When conducting financial investigation, if there is a circumstance indicating the possibility of the transfer, move, transformation or concealment of the corrupt assets, the NACC has the power to issue an order of temporary seizure or freezing of such assets in the case where the commission of the offence has a criminal penalty.[11] In case of assets relating to the unusual wealth offence, the NACC has the power to issue an order of temporary seizure or freezing of such assets which must be within one year from the date of the seizure or freezing or until the court passes a final judgment dismissing the case.[12]

The purpose of freezing or seizure of illicit assets is to prevent the dissipation of assets, i.e. transfer, destruction, conversion, disposition or movement. However, there are other aspects that should be taken into consideration before freezing or seizing assets. One is that freezing or seizing assets might alert the suspect of the ongoing investigation. Another is the time limitation of the freezing or seizure order. Also, the management of the frozen or seized assets might have to be deliberated before deciding to serve the freezing or seizure order.

C. Asset Recovery

After identifying and tracing the illicit assets, and freezing or seizing them if needed, the next step in conducting asset recovery is the confiscation and return of the assets. As a general concept, confiscation and return of stolen assets helps take away the profit of corruption and provides restitution to victim countries and individuals. The international community has long recognized that the return of stolen assets and money back to the country of origin is necessary as they provide

[7] Stroligo K., Hsu C., & Kouts T., *Financial Intelligence Units Working With Law Enforcement Authorities and Prosecutors* (Washington DC: International Bank for Reconstruction and Development/The World Bank, 2018) 7.
[8] Ibid.
[9] Section 34(4) of the Organic Act on Anti-Corruption B.E. 2561 (2018).
[10] AMLO is an autonomous government agency and is mandated under Section 40 of the Anti-Money Laundering Act, 1999 and its amendment.
[11] Section 69(1) of the Organic Act on Anti-Corruption B.E. 2561 (2018).
[12] Section 69(2) of the Organic Act on Anti-Corruption B.E. 2561 (2018).

essential resources for the financing of public services and investments in infrastructure, which is vital for growth and development of the country. According to the StAR Initiative's Asset Recovery Watch database, approximately 8.2 billion US Dollars of stolen funds have been frozen, confiscated or successfully returned to affected countries since 1980.[13]

As stated in Section 83 of the Organic Act on Anti-Corruption B.E. 2561 (2018), in case of proceedings against persons holding political positions, if the alleged culprit or the person participating in corruption has used or acquired property in an unlawful manner as a result of the commission of corruption, the NACC or the Attorney General of Thailand, as the case may be, may file a motion with the Supreme Court's Criminal Division for Persons Holding Political Positions for the confiscation of such properties, unless it is the property of another person who has no connivance with the commission of the offence.[14] If it is a case against public officials, the proceedings would be held in the Central Criminal Court for Corruption and Misconduct Cases, and the asset confiscation request would be filed with the Central Criminal Court for Corruption and Misconduct Cases.[15]

Additionally, the Organic Act decrees the illicit properties that can be confiscated under Section 83 as follows:

(i) Property which any person used or had in his or her possession for use in the commission of the offence;

(ii) Property or interest that can be calculated into monetary value, which has been given, requested to give or pledged to give to the alleged culprit by any person in an unlawful manner;

(iii) Property or interest that can be calculated into monetary value which a person has obtained from the commission of or from his involvement as an instigator, an aider and abettor, or a publisher or announcer in order for another person to commit the offence;

(iv) Property or interest that can be calculated into monetary value which a person has obtained from a disposal, distribution or transfer in any manner of the property or interest under (i) or (iii); and

(v) Fruits or any other interest occurring from the property or interest under (i), (iii) or (iv).[16]

Furthermore, there is a new provision in regard to the value-based confiscation in the amended Organic Act on Anti-Corruption B.E. 2561 (2018). It is stated in Section 84 of the Organic Act that the NACC may undertake a calculation of value of the property at the time of the acquisition of such property by the alleged culprit or the value of the property at the time that the NACC has

[13] United Nations, Conference of the State Parties to the United Nations Convention against Corruption (2019). Progress report on the implementation of the mandates of the Working Group on Asset Recovery, 20 March. CAC/COSP/WG.2/2019/2.
[14] Section 83 of the Organic Act on Anti-Corruption B.E. 2561 (2018).
[15] Section 93 of the Organic Act on Anti-Corruption B.E. 2561 (2018).
[16] Ibid.

passed a resolution that the alleged culprit commits an offence, depending upon whichever value is higher at that time.[17] As a result, the NACC may file a motion with the Supreme Court's Criminal Division for Persons Holding the Political Positions for issuance of an order to make monetary payment or confiscate any other property of the same value of the alleged culprit.[18]

In cases where there is a request for assistance concerning stolen assets from a foreign country under the law on mutual legal assistance in criminal matters, the NACC has the power to confiscate such assets, as Section 83 and Section 84 of the Organic Act would apply mutatis mutandis.[19] However, the confiscated assets would not become properties of the state, unlike other illicit assets, and the management of the confiscated assets would be in accordance with the agreement made with the requesting country.[20]

IV. CHALLENGES

The more the world advances, the more complex and intricate corruption practices become. There are several challenges practitioners encounter when trying to deal with corruption these days. As has been stated earlier, high-level corruption employs extensive resources to conceal the acquired assets and to transfer the proceeds of crime to safe financial havens. The sophistication and complexity of these crimes require financial experts who are well-trained and highly experienced in dealing with financial crimes. However, in practice, the law enforcement agencies responsible for counter corruption often do not have such specialized knowledge. The lack of sufficient capacity and appropriate training of law enforcement practitioners shows a clear and pressing need for more specialized training and capacity-building, especially in financial forensics.

Another difficulty practitioners often face when conducting forensic accounting is the uncooperativeness of financial intermediaries or the states where the illicit assets are situated, especially the so called "financial havens" or offshore countries. It is very rare for legal authorities of the fiscal haven countries to collaborate with law enforcement agencies in legal investigations. As a result, an enormous effort is required in forging good relationships between countries whose wealth has been looted and the financial centres where it ends up.

In addition, the recovery of proceeds of corruption needs international cooperation, whether agency to agency or state to state, to be effective. Therefore, it is imperative to establish anti-corruption alliances across the world to set up a strong support system for countries' asset recovery efforts. Law enforcement practitioners need to work together across agencies, sectors and borders to make sure that the countries' diverted public wealth finds its way back home to the people to whom it belongs.

[17] Section 84 of the Organic Act on Anti-Corruption B.E. 2561 (2018).
[18] Ibid.
[19] Section 140 of the Organic Act on Anti-Corruption B.E. 2561 (2018).
[20] Ibid.

V. CONCLUSION

The United Nations recognizes corruption as one of the biggest impediments to achieving its 2030 Sustainable Development Goals.[21] Corruption deprives people of schools, hospitals and other basic services, drives away foreign investment and strips nations of their natural resources.[22] Combating corruption is a global effort that requires dedication from all countries.

As the main motivation for committing corruption is beneficial gain, countries can remove the incentive for engaging in corrupt practices by depriving the perpetrators and others from the benefit of such crimes. In order to achieve that, countries must have effective legislation and procedures to freeze, seize and confiscate proceeds of corruption, as well as facilitate international cooperation.

However, in today's inter-connected world, corruption has become more sophisticated and is inherently linked to other transnational crimes such as money-laundering, terrorism and organized crime. The rapid growth of trade and investment opportunities, as well as the free movement of capital and people across borders, also plays an important role in creating an environment where corruption flourishes undetected and unpunished. Consequently, to keep up with this new threat, law enforcement agencies need to have sufficient capacity to conduct financial investigation to trace and freeze corrupt assets, collaborate with foreign counterparts and have effective mechanisms for sharing assets confiscated with the requested countries.

[21] United Nations, Law and Crime Prevention (2018). The costs of corruption: values, economic development under assault, trillions lost, says Guterres. 9 December. Available at https://news.un.org/en/story/2018/12/1027971.
[22] Ibid.

FINANCIAL INVESTIGATION AND MEASURES FOR CONFISCATION AND ASSET RECOVERY IN THAILAND

Athitiya Dairerkngam[*]

I. INTRODUCTION

Corruption and money-laundering are interrelated since corruption causes massive financial gain that is necessary to be laundered to make such financial gain appear legitimate. For this reason, the existence of corruption will lead to money-laundering activities. In order to counter corruption and money-laundering, it is essential to provide the process of financial investigation, identification, tracing, freezing and confiscation of such illegal benefits effectively. In Thailand, the Anti-Money-Laundering Office (AMLO) and the Office of the National Anti-Corruption Commission (NACC) are the two significant organizations which deal with corruption and anti-money-laundering cases. However, this paper shall focus on merely the National Anti-Corruption Commission's roles and authorities in preventing and combating corruption. Also, it shall demonstrate the National Anti-Corruption Commission's legal framework and measures in financial investigation and confiscation of illicit assets and illustrate a corruption case to show the collaboration between the NACC, the Attorney-General and the U.S. government.

II. DUTIES AND POWERS OF THE NATIONAL ANTI-CORRUPTION COMMISSION IN CONDUCTING FINANCIAL INVESTIGATION, FREEZING, CONFISCATION AND ASSET RECOVERY

Under the Organic Act on Anti-Corruption B.E. 2561 (2018), the NACC has the duties and power to conduct an inquiry and prepare an opinion when there is an allegation that a person holding a political position, a judge of the Constitutional Court or a person holding a position in an independent agency is involved in circumstances of unusual wealth, corruption or deliberate performance of duties or exercise of powers contrary to the provisions of the Constitution or laws, or a severe violation of or failure to comply with ethical standards. Moreover, it has the power to conduct an inquiry and decide whether a public official is unusually wealthy, has committed an offence of corruption, or malfeasance in public office or malfeasance in judicial office. Additionally, it has the power to obligate persons holding political positions, judges of the Constitutional Court, persons holding positions in independent agencies and state officials to submit accounts showing particulars of their assets and liabilities and those of their, spouses and children who have not yet become *sui juris*, and to inspect and disclose the results of the inspection of such accounts.[1]

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[1] The Organic Act on Anti-Corruption B.E.2561, section 28.

III. THE PROCEEDINGS OF FINANCIAL INVESTIGATION, FREEZING, CONFISCATION AND ASSET RECOVERY IN A CORRUPTION CASE UNDER THE ORGANIC ACT OF ANTI-CORRUPTION B.E. 2561

The NACC has the power and authority to conduct a financial investigation when it appears to the NACC, regardless of whether there is an allegation or the NACC has reasonable grounds to suspect, that any public official is unusually wealthy.[2] Under the Organic Act of Anti-Corruption B.E. 2561, the property of the alleged culprit shall include the property that is under the ownership of another person and there are circumstances indicating that the property or its ownership is held by a nominee. In such a case, the person holding title to the property has the right to prove that the property is not unusual wealth.

In order to conduct a financial investigation in a corruption case, the NACC sets the proceedings of financial investigation, confiscation and asset recovery by implementing the United Nations Convention against Corruption (UNCAC) through the Organic Act on Anti-Corruption B.E. 2561. Accordingly the NACC shall conduct the following.

A. Tracing and Identifying Financial Assets

In order to identify and trace the movement of money during the course of criminal activity, investigators need to find the link between the origins of the money, the beneficiaries, when and where the money was received, transferred and deposited, and where it is stored, since such movement of money can provide information about and proof of criminal activity.[3]

For identifying a financial transaction, the NACC shall have the power to inspect the sources of the assets and liabilities, financial movement or transactions of such person and perform any other acts to obtain relevant facts. If the alleged culprit has submitted the account of assets and liabilities, the NACC shall compare the account of assets and liabilities with the existing assets at the time of inquiry, including the income and expenses and also the income tax of such person. For this purpose, the NACC shall have the power to order the alleged culprit to submit the account of assets and liabilities according to the list and time period as prescribed by the NACC regardless of whether such person has previously submitted the account of assets and liabilities.[4] Thus, the NACC has the power to request relevant documents from all institutions directly. Evidence of corruption may be found through the account of assets and liabilities of public officials that is submitted to the NACC.

B. Financial Evidence Analysis

The NACC uses *the specific method*; this method is used when there is evidence that can directly trace the flow of money from the corruption activity to the official together with *the source and application of funds method*; the method that the investigator will have to determine whether

[2] The definition of unusual wealth under the Organic Act on Anti-Corruption B.E.2561 is having an unusually large amount of assets, or having an unusual increase in assets, or having an unusual decrease in liabilities, or acquiring assets without legitimate grounds in consequence of the performance of duty or the exercise of power in office or in the course of duty, including the case of having an unusual increase in assets upon comparison of the accounts showing particulars of assets and liabilities.

[3] APEC Anticorruption and Transparency Working Group, 'Best Practices In Investigating And Prosecuting Corruption Using Financial Flow Tracking Techniques And Financial: A Handbook' (2015) 91.

[4] The Organic Act on Anti-Corruption B.E.2561, section 116.

public officials are living significantly above their legitimate means.[5] Typically, the investigator needs to prove that the alleged culprits have underreported income by making a comparison of total assets owned by the alleged culprits relative to their tax returns. Consequently, if the alleged culprits have assets more than their taxable income and the legitimate source of funds for those assets cannot be explained, the NACC shall consider that circumstances are indicative of unusual wealth and shall conduct an inquiry for a subsequent request for assets to be confiscated.[6]

C. Asset Freezing

The objective of this method is the preservation of the assets that may later be subject to confiscation and to prevent their removal. The applicable standard to determine the assets subject to these measures is the reasonable suspicion or belief that the assets are the proceeds or an instrumentality of a crime.

Under the Organic Act on Anti-Corruption B.E. 2561, if it appears from the inquiry that the facts convincingly indicate the possibility of the transfer, move, transformation or concealment of the property that the alleged culprit has used in the commission of an offence or is unlawfully acquired in connection with the commission of the offence that is under the duties and powers of the NACC or the property vis-à-vis unusual wealth, the NACC shall issue a freeze order or a temporary seizure in two cases: one is in cases where the commission of the offence has a criminal penalty and another is in cases of property vis-à-vis unusual wealth. However, in cases of unusual wealth, the NACC shall have the power to issue a temporary seizure or freeze order which must be within one year from the date of the seizure or freeze or until the Court passes a final judgment dismissing the case.[7] Nevertheless, if the owner or a person who possesses such property is able to prove that the property is not unusual wealth, the NACC shall issue an order of release of seizure or freeze without delay.[8] Additionally, the NACC also sets the regulations in order to manage the assets that are frozen or are temporarily seized to preserve their safety and value until they are eventually confiscated or released.[9] Such regulations are mainly the proceeds of administration of the seized assets, the asset manager, expenses, use and sale of restrained assets.

D. Confiscation Proceedings

The NACC uses both a property-based confiscation system[10] and a value-based confiscation system[11] as stated in section 83 of the Organic Act on Anti-Corruption B.E. 2561, permitting the NACC or the Attorney General, as the case may be, to file a motion with the Supreme Court's Criminal Division for Persons Holding the Political Positions for the confiscation of the following properties:

(1) property which any person used or had in his or her possession for use in the commission of the offence,

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[5] Ibid. n. 4, 111.
[6] The Organic Act on Anti-Corruption B.E.2561, section 113.
[7] The Organic Act on Anti-Corruption B.E.2561, section 69.
[8] Ibid. n. 6.
[9] The Organic Act on Anti-Corruption B.E.2561, section 85.
[10] This system allows the confiscation of assets found to be the proceeds or instrumentalities of crime. See n. 4, 152.
[11] This system allows the determination of the value of the benefits derived from crime and the confiscation of an equivalent value of assets that may be untainted. See. n. 4, 152-153.

(2) property or interest that can be calculated into monetary value, which has been given, requested to give or pledged to give to the alleged culprit by any person in an unlawful manner,

(3) property or interest that can be calculated into a monetary value which a person has obtained from the commission of or from his involvement as an instigator, an aider and abettor, or a publisher or announcer in order for another person to commit the offence,

(4) property or interest that can be calculated into a monetary value which a person has obtained from the disposal, distribution or transfer in any manner of the property or interest under (1) or (3),

(5) fruits or any other interest occurring from the property or interest under (1), (3) or (5).[12]

Under the Organic Act on Anti-Corruption B.E. 2561, the assets which are confiscated shall become properties of the state as from the date of the court ruling. However, in case there is a request for assistance from a foreign country under the law on mutual legal assistance in criminal matters to proceed against a foreign public official, an official of a public international organization or any other person on the grounds that an offence was committed under section 140 of the Organic Act on Anti-Corruption, the management of the confiscated assets shall be in accordance with the agreement made with the requesting country.[13]

IV. CORRUPTION CASES

Ms. J, the former governor of the Tourism Authority of Thailand (TAT), was charged with demanding a bribe from Mr. G and his wife, an American couple, in exchange for their being awarded an over 13 million U.S. dollar contract to organize the annual Bangkok International Film Festival. Ms. J's daughter helped her mother commit the offences by opening accounts in numerous foreign banks, and the American couple concealed the bribes in the shell companies, some with fake addresses and phone numbers, and paid the money, 1.8 million U.S. dollars, into bank accounts in many different jurisdictions in the name of Ms. J's daughter and a friend of the governor.

This case was initiated by the Federal Bureau of Investigation (FBI), and the United States Attorney for the Central District of California conducted the investigation regarding the bribes made to influence the awarding of contracts to manage the Bangkok International Film Festival. Tracing the transactions between the American couple and Ms. J, including her nominees, found that some bribes were given in cash and some by transferring to the accounts of Ms. J's daughter and friend.

Additionally, the evidence presented and witness hearings established that Mr. G and his wife were granted the sole rights to run the event despite lacking the necessary expertise, experience or any related proven work record. Besides, there was no other organizer attending the competition

[12] The Organic Act on Anti-Corruption B.E.2561, section 83.
[13] The Organic Act on Anti-Corruption B.E.2561, section 140.

for the contract, which the court decided was an attempt to inhibit other potential competitors from taking part. As a result, the film festival rights were secured by three companies, all of which were created by the couple to receive the contract from the TAT on Ms. J's advice.

In 2010, the U.S. Court sentenced the American couple to six months in jail and six months of home detention for their part in paying bribes to secure the rights to run the festival. The couple was found guilty of money-laundering and violating the Foreign Corrupt Practices Act.

On the part of the Thai proceedings, the NACC gathered the evidence from Thailand and other countries in order to convict Ms. J. The NACC defermined that Ms. J was engaged in corruption in the course of duty, constituting a criminal offence under the Act Concerning Offences Relating to the Submission of Bids to Government Agencies B.E. 2542 (1999) and the Act on the Offence of the Officials in Public Organization, B.E. 2502 (1959). Her daughter was found guilty of conspiracy to commit corruption. Consequently, the NACC furnished the report and inquiry file, including all related evidence to the Attorney-General to file a case against Ms. J in Court. In addition, regarding the unusual wealth offence, the NACC also passed a resolution declaring that Ms. J is unusually wealthy. Now the legal proceedings for the unusual wealth offence are in recess in order to wait for judgment in the criminal case.

In 2017, the Central Criminal Court for Corruption and Misconduct Cases rendered the verdict that Ms. J was guilty of receiving bribes from the American business couple. Ms. J was sentenced on 11 counts of corruption and imprisoned for 50 years, while her daughter was imprisoned for 44 years. In addition, the Court also ruled to confiscate all the money plus interest for 1.8 million U.S. dollars from the overseas bank accounts of the defendants to become property of the state. The case is now pending in the Supreme Court.

V. CONCLUSION

Thailand has been aware that corruption is one of the most severe threats undermining the country in every aspect. Consequently, the NACC, as the organization which has the duties and powers in dealing with the corruption cases of high-ranking officials, has been trying to find the best practices in countering corruption, especially enhancement of the effectiveness of the proceeds of freezing, confiscation and asset recovery. Enforcement of confiscation orders in other jurisdictions is seen as one of the crucial challenges in asset recovery procedure in Thailand. Since the confiscated property will frequently be located in a foreign jurisdiction, it will be essential to restrain it as soon as possible in order to avoid dissipation. For this reason, quick and effective freezing and confiscation measures should be applied. Therefore, Thailand should enhance cooperation with other countries by seeking and providing mutual legal assistance agreements in order to allow direct enforcement of a foreign confiscation order because indirect enforcement can cause dissipation of the asset quickly, making future confiscation difficult, which could lead to inefficiency in preventing and countering corruption.

ON INTERNATIONAL CRIMINAL COOPERATION IN ASSET RECOVERY – THE TIMORESE LEGAL SYSTEM FOR FORFEITURE OF THE INSTRUMENTS, PROCEEDS AND BENEFITS OF CRIME AND AN EXAMPLE OF INTERNATIONAL COOPERATION

Rogério Viegas Vicente[*]

The theme of this paper concerns asset recovery through international cooperation and is divided into two parts: first, the Timorese legal system for the forfeiture of instruments, proceeds and benefits of crime, and second, an example of international criminal cooperation.

I. FORFEITURE OF PROCEEDS AND BENEFITS OF CRIME

A. Political-Criminal Significance of the Forfeiture of Property, Proceeds and the Benefits of Crime

In line with modern legal systems, Timor-Leste's criminal law enshrines the mechanism of the forfeiture of criminal property, proceeds and benefits — based essentially on preventive grounds. Thus, the mechanism of forfeiture has the purpose of general prevention, aiming to demonstrate and give effect to the idea that "crime does not pay", but also has the purpose of special prevention, based on the idea that the proceeds or benefits can be subject to forfeiture if they "pose serious risk of being used in the commission of further crimes".

B. The Timorese Law on Forfeiture of Property, Proceeds and Benefits of Crime

The Timorese law imposes a general regime of forfeiture of property, proceeds and benefits of crime (articles 102.º and 103.º of the Penal Code) and a special regime of forfeiture of property of criminal origin, contained in the law to prevent and combat money-laundering. Law No. 17/2011 of December 28. The general regime distinguishes between the forfeiture of objects (hereinafter, "instruments") and proceeds of crime, and the forfeiture of benefits arising from crime proceeds.

1. Regime: Classic Forfeiture

a. Forfeiture of instruments and proceeds of crime

Article 102 deals with instruments "which were or were intended to be used for the commission of a crime", i.e. the instrumentalities of crime and the proceeds of crime. "Instruments" means the objects (things) used as a means of carrying out the crime. "Proceeds of crime" means "property" created or produced by criminal activity.

The first requirement for the forfeiture of instruments and proceeds of crime is that the object has been used in a criminal activity and that the proceeds result from a criminal activity. However, it is not necessary that the crime has been consummated.

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The "forfeiture" must be decreed, provided that the elements on which the existence of a crime depends, except for fault, are verified. Thus, subject to “forfeiture” they can be both imputable and unimputable agents.

The decision to "confiscate" the instruments and proceeds of crime does not require any determined person to be persecuted and convicted of the criminal act. Thus, the forfeiture of property and benefits may take place even in cases where the agent-in-fact is not determined, but also in cases where, although the agent-in-fact is determined, the case must nevertheless be closed for some reason (cause of termination of criminal liability, e.g. prescription example, or for lack of procedural assumption).

The second requirement for the forfeiture of instruments and proceeds of crime is the hazardousness of such objects or products, which means that the forfeiture only affects objects and proceeds of crime that could prove to be criminally dangerous.

Effectively, the State’s law that instruments and proceeds of crime are declared forfeited to the State “where by their nature or by the circumstances of the case endanger the safety of persons or of public order, or pose a serious risk of their being used for the commission of new crimes”, Article 102, point (1). It should be noted that the forfeiture of instruments and proceeds of crime to the State must always safeguard the rights of victims and also the good faith for the property rights of third parties.

b. Forfeiture of benefits from crime

Article 103 governs the forfeiture of “things, rights and benefits acquired” as a result of the commission of crimes. The term “benefit” has a broad meaning, meaning both the reward given or promised to the agent, as well as any property benefit that results from or has been obtained through the crime.

If, in the case of forfeiture of the instruments or proceeds of crime, their immediate danger is at stake, in the case of forfeiture of the “benefits”, what is at stake is the overall crime prevention objective linked to the need for “withdrawal of the crime”. Unlawfully obtained asset benefits and, consequently, to the idea that the State “cannot tolerate an anti-juridical property situation”, and the legal means of asset recovery should therefore be applied.

The "forfeiture" of the benefits of crime (in favour of the State) has as its formal presupposition the practice of a typical illicit fact (and not properly, or technically, of a crime). In fact, concern with the “forfeiture of the benefits of crime” responds to “the social alarm” that might arise from the conviction that, in the end, the breach of the criminal law can “compensate”, it would be absolutely contradictory that the institution of “forfeiture” could not be applied simply because the agent-in-fact is not imputable or because he acted without fault. Thus, even under these assumptions, the benefit resulting from unlawful de facto practice must be neutralized and removed, and the original assets must be restored.

The Timorese law provides that all benefits acquired, directly or indirectly, “as a result of the commission of a crime”, must be declared forfeited to the State, paving the way for the forfeiture

of benefits to occur independently of the sequence of exchanges or transmissions that took place. Only the rights of bona fide third parties are safeguarded.

On the other hand, the law provides that “if things, rights or benefits” cannot be appropriated in themselves, the forfeiture is replaced by payment to the corresponding State. This happens, for example, when the benefit takes the form of reward given to the agent and is not "susceptible to direct transfer to the State".

2. Special Scheme: Extended Forfeiture

In addition to the general regime, as mentioned, the Timorese legal system contains a special regime for the confiscation of property of criminal origin, contained in the law to prevent and combat money-laundering — Law no. 17/2011 of 28 December. This special regime is valid only for the offences listed in a catalogue (as listed below) contained in article 32-A of the aforementioned law:

i. Drug trafficking
ii. Terrorist organizations, terrorism and terrorist financing
iii. Arms trafficking
iv. Corruption, embezzlement and economic participation in business
v. Money-laundering
vi. Criminal association
vii. Smuggling practiced in an organized manner
viii. Sexual exploitation of third parties and organized child pornography
ix. Counterfeiting of money also practiced in an organized manner

The special scheme for confiscation in favour of the State is set out in Article 43 of the Law which, in paragraph 1, provides that claims are declared to the State:

i. Proceeds from crime, capital and property, or other property of equivalent value
ii. Criminal property and property
iii. Instruments of crime
iv. Funds or property with which the proceeds of crime have been mixed

The specificities of the special regime of forfeiture of property to the State is provided in the aforementioned law wherein the forfeiture to the State, according to the special regime can only occur with the following requirements:

i. A conviction for one of the catalogued crimes
ii. The factual or juridical domain of the convict over property incompatible (incongruent) with his known lawful income, and
iii. The existence of an earlier criminal activity of the convict in which the offences are included in the catalogue identical to, or have any connection with, the criminal case in question.

II. REFERENCE TO A CASE OF INTERNATIONAL COOPERATION IN ASSET RECOVERY

A. Description of the Case

In October 2014, a case was filed at the Office of the Fight against Corruption and Organized Crime with the Prosecutor General of Timor-Leste, for an alleged crime of corruption and money-laundering, against a Portuguese couple (husband and wife) and a Nigerian national residing and working in Dili, Timor-Leste.

The Nigerian worked as an international advisor in the Ministry of Finance of Timor-Leste, specifically in the oil tax department, and the Portuguese couple owned a company that provided consulting services. As an advisor to the Ministry of Finance, the Nigerian was tasked with negotiating with two Northern European companies to pay oil taxes owed to the State of Timor-Leste.

As soon as he was entrusted with this mission, the Nigerian devised a plan to divert the value of the taxes to his own advantage. The plan was to create a company headquartered outside Timor-Leste, which would be presented to tax-paying companies as an intermediary in whose name tax amounts should be deposited. In order to carry out this plan, he requested and obtained the collaboration of the Portuguese nationals for this purpose, who created it in Macao, Republic of China (where one of them is a native), a company called "Olive Consultancy Company Limited" for the purpose of receiving the amounts transferred by the tax debtors. Effectively, upon indication of the Nigerian, the US $ 859,706.30 (eight hundred fifty-nine thousand seven hundred six dollars and thirty cents), the amount of taxes, was deposited in BNU (Macao) under the name of Olive Consultancy Company Limited, and transferred from the Macao-based company to national and international creditors.

B. Request for International Cooperation (First Request)

As early as October 2014, the Attorney General's Office of the Democratic Republic of Timor-Leste sent an application for international cooperation requesting the cooperation of the competent judicial authorities to the Macao Administrative Region Prosecutor's Office to obtain the following information:

i. Identification of the existence of any bank accounts held by the Portuguese couple concerned;
ii. Obtaining bank transaction statements from 1 December 2011 until the date of the letter (December 2014);
iii. Freezing and seizure of any amounts deposited in these accounts, up to the corresponding amount of US $ 859,706.30 (eight hundred and fifty-nine thousand seven hundred six dollars and thirty cents);
iv. Identification of banks' names and addresses, account numbers and holders, bank account movements indicating suspicious transactions.

The request for international cooperation was complied with, and freezing of the amounts deposited in accounts in the defendant's name (the Portuguese couple and the Olive Consultancy

Company Limited has an account at Banco BNU Oriente, SA of which they are relatives) from one of the members of the Pueblese couple (Macao native).

C. Request for Confirmation of the Validity of the Measures Enacted (Second Request)

Subsequently, specifically in May 2018, the Attorney General's Office of the Democratic Republic of Timor-Leste sent a new letter to the Macao Administrative Region Prosecutor's Office requesting information on the state / validity of the freezing measure deposited with East Timorese banking institutions. Following the first letter of request and the maintenance of the decreed freezes confirmed.

D. Extension of Measures (Third Request)

Recently the Macao authorities indicated that there is another account with Banco BNU Macau. on behalf of the father of one of the defendants, where the amount of USD 221,010.79 (two hundred twenty-one thousand ten dollars and seventy-nine cents) is deposited, transferred by one defendant immediately after the initiation of the proceedings, and in light of this information the Prosecutor General of the Republic of Timor-Leste has made a new request to freeze this account.

E. Current Situation of the Case

The Nigerian left the country early in the process and fled to the USA. The Portuguese were tried in Timor-Leste, and by the decision of 24 August 2017 of the Dili District Court, they were found guilty of engaging in a conspiracy to commit the crime of embezzlement and the crime of money-laundering. They were sentenced as follows:

- Eight (8) years' imprisonment (individually), and
- To pay back to the State of the Democratic Republic of Timor-Leste US $859,706.30 (eight hundred and fifty-nine thousand seven hundred six dollars and thirty cents), plus interest for late payment until the full payment.

The judgment of the Dili District Court (lower court) has been appealed by the defendants, and the appeal is awaiting a decision of the Court of Appeal. The judgment of the Court of Appeal is expected at any time. After the decision, the Portuguese also fled the country.

F. Possible Developments of the Case

As soon as there is a final decision in the case, and if it affirms the convictions, the Attorney General's Office of the Republic of Timor-Leste will request the Macao Judicial Authorities to repatriate the amounts seized in the various bank accounts. On the contrary, if the decision is for acquittal, it will then request the release of the frozen assets.

CORRUPTION AND MONEY-LAUNDERING INVESTIGATION AND ITS CHALLENGES IN TIMOR-LESTE

Augusto da Costa Castro[*]

I. INTRODUCTION

In today's world, there is no single country that is immune to the criminal activities regardless of how big or small and how rich or poor it is. The criminals are always trying to explore any opportunities for their illicit interests. It seems that in every moment the criminals are competing with the state to show their existence through the occurrences of the criminal activities that are conducted either in a single show or in a form of organization. As the State manages and organizes itself toward economic and social development to fulfil its citizens' demands and necessities, at the same time the criminals also organize themselves to conduct criminal activities with types and patterns that vary from time to time, utilizing every single moment and loophole to squeeze the State's resources for their private interest.

Comparing the criminal activities in Timor-Leste in the early stages and current situation, it has a significant change, where in its early stages people committed crime in a very traditional way on the basis of retaliation and/or social jealousy because of the economic disparities, and that is quite easy for the authorities to uncover. But in today's era, people who commit crime utilize modern management and technology to conceal their criminal activities and proceeds. Furthermore, the criminal activities that they are involved in are as their routine activities and also as a source of income for economic and financial gain, and the types of crime they commit are the types of crime which can produce massive financial benefits within a short period of time, such as corruption, tax evasion, drug trafficking, fraud, human trafficking and sexual exploitation, smuggling and evasion of excise duties, illegal gaming, organized criminal groups and racketeering, contraband smuggling, counterfeit IT product smuggling, motorbikes and vehicle theft and smuggling of wildlife. Ironically, all proceeds derived from those crimes are stashed and laundered not only within the jurisdiction of Timor-Leste (domestically), but they are also stashed and laundered in foreign jurisdictions as well, such as in neighbouring countries through money-laundering schemes.

Under Timor-Leste's legislation, money-laundering is considered as a follow-up crime because it comes from various predicate offences. According to Article 313 of the Penal Code and its amendment of Law No. 5/2013, a number of predicate offences for the money-laundering and terrorist financing are set out. They include terrorism, trafficking of arms and nuclear products, human trafficking, pornography of minors, corruption, fraud and extortion, tax fraud, illicit exploitation of gaming, trafficking of protective species, and trafficking of human organs and also any other crimes that are punishable above two years of imprisonment.[1]

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[1] The Penal Code was approved with Decree Law No. 19/2009 of 8 April.

With all these predicate offences, corruption is the major crime committed by the perpetrators during the last three years from 2016 to 2018, making this crime the primary source of criminal proceeds. According to the data from the Anti-Corruption Commission (ACC), in 2016 the ACC investigated 29 corruption cases from which the total estimated State loss amounted to about US$18,615,980.52[2]; in 2017 the ACC investigated 24 corruption cases and the total estimated State loss was about US$1,552,100.73[3]; and in 2018 there were 36 corruption cases investigated and the total estimated State loss was about US$998,202.85.[4] Most of the cases involved public officials, which places the public sector at a very high risk for corruption. The vulnerability of the sector is because most of the economic activities are relying on the public investment by the State through the procurement and public works where the systems and controls over these two are considered to be poorly designed and implemented, and also the economy of the country still remains as a cash-based economy where people can easily keep and transport the cash in bulk within or outside of the country for various purposes including money-laundering.

However, Timor-Leste criminalized money-laundering in article 313 of the Penal Code through Decree Law No. 19/2009, and since the beginning there were several money-laundering cases that are being investigated by the law enforcement authorities, but the progress still has a long way to go, especially related to the proceeds of crime that are laundered in foreign jurisdictions because of the difficulties of dealing with the authorities in foreign jurisdictions in terms of cooperation and mutual legal assistance.

II. EFFORTS ON COMBATING MONEY-LAUNDERING IN TIMOR-LESTE

Money-laundering always involves a linkage between predicate offences and proceeds of crimes because when there is no linkage between these two basic elements, there is no money-laundering. So, in Timor-Leste, in order to effectively investigate money-laundering, there are two approaches that are applied by the law enforcement authorities in investigating and prosecuting cases: first, investigation of predicate offences in order to discover and root out any possibility that the perpetrator used money-laundering methods to launder their ill-gotten assets and, second, direct investigation of the money-laundering as independent offences according to article 313 (4) of the Penal Code.

A. The Investigation of Predicate Offences

As stated in the previous paragraphs, according to the Timor-Leste Penal Code there are several predicate offences for money-laundering offences such as terrorism, trafficking of arms and nuclear products, human trafficking, pornography of minors, corruption, fraud and extortion, tax fraud, illicit exploitation of gaming, trafficking of protective species, trafficking of human organs and also any other crimes punishable by more than two years of imprisonment. With all these predicate offences, the ACC is only mandated to investigate the corruption crimes with all of its forms, such as passive corruption for illicit acts, passive corruption of licit acts, active corruption, embezzlement of moveable and immoveable State assets or properties, abuse of power and economic participation in public affairs that are committed by public officials during and after

[2] Comissão Anti-Corrupção (CAC), *Relatoriu Anuál 2016*, Dili, March 2017, pg. 8.
[3] Comissão Anti-Corrupção (CAC), *Relatoriu Anuál 2017*, Dili, March 2018, pg. 16.
[4] Comissão Anti-Corrupção (CAC), *Relatoriu Anuál 2018*, Dili, April 2019, pg. 20.

performing their official duties. During investigating of these corruption crimes, the ACC conducts parallel investigation of criminal elements of the offences on one hand and financial investigation on the other. In the investigation of the elements of crime mainly focused on the fulfilment of subjective and objective elements of each crime, financial investigation is focusing on the financial elements and assets which are derived from the practicing of each of the corruption crimes starting from the ways of acquisition until final use of the assets. While conducting the financial investigation, the ACC asks the FIU for assistance through formal requests in order to do financial analysis on the incoming and outgoing transactions and flow of the money in suspect bank accounts. After receiving the financial analysis report from the FIU, the ACC immediately follows up with detailed analysis, such as net worth analysis and expenditure analysis. During this detailed analysis and upon detecting that there is a gap between legal income, expenditures and accumulated assets and the investments of the suspect, the ACC will inform the General Prosecutor's Office through interim reports in order to open money-laundering cases against the suspects' investment businesses. When the case is open, as the agency in charge of criminal proceedings,[5] the General Prosecutor's Office will order the ACC, based on the available evidence, to proceed with further investigation for freezing and confiscating all assets and investments until recovering them when proved in court.

One of the prominent cases that came from this process is an embezzlement case that finally became a money-laundering case. The crime was committed by Mr. Ritimoko, a Timorese national, who worked as a financial officer in the Planning and Financial Management Capacity Building Programme (PFMCBP) of the Ministry of Finance. In this case, when we started investigating it was a normal embezzlement case involving a tax fund totalling US$ 346,712.33. Mr. Ritimoko, as a financial officer, had to transfer this amount of money to the East Timor Revenue Services (ETRS, the then tax authority) account at UNB Bank, 10% of the income tax withholding that came from monthly staff salaries who work for the PFMCBP. Instead of transferring the money to the ETRS account, he opened a new account on his own called East Timor Services (ETS) at the same bank, and he started depositing the money into this account on a monthly basis, totalling about US$ 34,671.23 each month for 10 consecutive months starting from March to December 2011. Mr. Ritimoko used the money firstly to build three fuel stations, and then one and a half years later he bought four passenger busses, then fifteen head of cattle (buffalo), 2 hectares of rice fields and he built a luxurious two-story house complete with sport facilities such as a swimming pool and tennis and basketball courts in his home town. The case was revealed three years later in 2014 when the ETRS sent a notification letter to the head of the PFMCBP for the ten months of unpaid income tax, and then the PFMCBP initiated an internal investigation and finally the case reached us in the middle of 2015. We started to investigate it thoroughly and solved it in the middle of 2018. In this case the suspect committed embezzlement and domestic money-laundering crimes which were successfully investigated and, finally, all of the proceeds of crime were recovered by the state.

B. Direct Investigation of Money-Laundering as Independent Offences

Aware of the serious threat of money-laundering to the Timor-Leste economy and financial sector, the direct investigation is also considered important as an effective way to fight against money-laundering in Timor-Leste. In this process, the State authorities can investigate and prosecute money-laundering as an independent crime. In order to start, the financial and non-

[5] According to article 132 (1) of the Timor-Leste Constitution, the Public Prosecutor's Office is the only institution that can execute the criminal proceeding, which includes criminal investigation and prosecution.

financial institutions are required to report any suspicious transactions to the Financial Intelligence Unit (FIU) on the movement and transaction of money and assets of someone that are not compatible with his or her profile. After analysing the suspicious transaction report (STR), the FIU is required to report its final result to the General Prosecutor's Office in order to follow it up with the opening of a money-laundering case and investigate the case either by itself or dispatched through the delegation of competence directly to the Scientific Criminal Police Investigation[6] (*Polícia Científica de Investigação Criminal,* or *PCIC,* in Portuguese) to conduct further criminal investigation regardless of the nature of the predicate offences. According to the data from the FIU, in 2018 there were 109 STRs reported. From this number about 20 STRs were substantiated and reported to the General Prosecutor's Office for further criminal proceedings.[7] Of the 20 STRs that were reported to the General Prosecutor's Office, six of them were officially opened and investigated by the PCIC.[8]

III. CHALLENGES

The investigation of money-laundering has made some progress; however, there are still some challenges faced along the way:

A. Cash-based Economy

One of the major challenges of effective fighting against corruption and money-laundering crimes in Timor-Leste is that the country's economy is still relying on cash. According to the Central Bank of Timor-Leste, only about 45% of the adult population has access to financial services.[9] This situation brings difficulties to the law enforcement authorities when conducting an effective investigation, such as paper or electronic trails using tracing methods. This also exposes the vulnerability of the country's economy and financial system to illicit funds and counterfeit money.

B. Lack of International Cooperation on Mutual Legal Assistance

International cooperation on mutual legal assistance in criminal matters is one of the ways that is available for the states to cooperate and help each other in gathering evidence and some other matters as stated in article 46 of UNCAC in order to support the cases in the investigation, prosecution and other judicial proceedings. According to Law No. 15/2011 on International Cooperation on Criminal Matters, article 19 (1) designates the General Prosecutor's Office as the central authority for the management of the outgoing and incoming requests for mutual legal assistance, but there have been no positive results in this area due to the reluctance of the foreign authorities to fulfil MLA requests from Timor-Leste.

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[6] PCIC is a one of the criminal police bodies that is mandated to investigate organized crime including money-laundering cases.

[7] Unidade Informasaun Financeira (UIF), *4th Edition of Annual Report 2018*, Dili, April 2019, pg. 28

[8] Polícia Científica de Investigação Criminal (PCIC), *1ª Edição Balanço das Realizações das Actividades de 2015 a 2018,* Dili, 2018, pg. 11.

[9] Comissão Nacional para a Implementação das Medidas Destinadas ao Combate ao Branqueamento de Capitais e ao Financiamento do Terrorismo (CNCBC), *National Risk Assessment of Money Laundering and Terrorist Financing,* Dili, June 2016, pg. 23.

C. Lack of Human Resources

Another challenge in fighting against corruption and money-laundering in Timor-Leste is limited human resources in terms of quality and quantity. There are only twenty-four investigators at the ACC and only five specialized public prosecutors that are dedicated to handle corruption, money-laundering and organized crime for the entire country. Besides insufficient numbers, the quality is also an issue when coordinating, communicating and cooperating with foreign authorities on mutual legal assistance and joint investigation.

IV. CONCLUSION

The threat of money-laundering in Timor-Leste is significant. Since the beginning, the law enforcement authorities are putting serious effort into fighting against not only money-laundering as an independent crime but also its predicate offences such corruption, among others, through very rigorous investigation using tracing methods. Nationally, corruption is the primary source of the illicit income of the offenders in committing money-laundering crimes either domestically or transferring their proceeds of crime to a foreign country. There are a number of money-laundering investigations, and those which were committed domestically are having some good progress, but when dealing with foreign money-laundering cases, the results are far from expected. This is because during the investigation processes, Timor-Leste authorities are facing difficulties in obtaining cooperation from foreign authorities. In order to overcome this situation, there should be intensive dialogue between Timor-Leste authorities and their foreign counterparts in order to overcome barriers and achieve successful investigation, prosecution and asset recovery to serve justice for all in Timor-Leste.

PREVENTING AND COUNTERING CORRUPTION IN VIET NAM BY ANTI-MONEY-LAUNDERING MEASURES

Ms. HOANG Hai Yen[*]
Ms. LE Hong Phuong[†]

In recent years, the international economy has provided great opportunities for development in all aspects of Vietnamese society, but it has also raised the gravity of international money-laundering crimes. Money-laundering activities have only become clearly visible recently though the opening of bank accounts, securities trading, gambling, illegal transfer of foreign currencies out of the country, use of credit cards etc. According to reports of the State Bank of Viet Nam, the number of suspicious transactions has been increasing annually, which shows an alarming situation of money-laundering.

Currently, combating corruption and money-laundering has become one of the top concerns not only for the government but also the citizens in Viet Nam. The Vietnamese government has been expressing a strong determination to prevent and eliminate corruption and money-laundering through guidelines, policies and legislation. The Law on Anti-money Laundering took effect on 1 January 2013 and the New Anti-Corruption Law took effect on 1 July 2019. However, the situation of preventing corruption and money-laundering in Viet Nam has faced numerous difficulties, for instance, the insufficient legal framework of anti-money-laundering efforts; debatable guidelines for implementation of the law; limited capacity of authorities in detecting and dealing with the offence, as well as finite scientific and technological capacity. This means that the Vietnamese government must constantly make efforts to combat this type of crime.

I. VIET NAM'S LEGAL FRAMEWORK ON ANTI-CORRUPTION AND MONEY-LAUNDERING

The amended 2015 Penal Code has some major policies for corruption crimes, as follows: i) Expanding the concept of corruption crime in the private sector, like property embezzlement, taking bribes etc.; (ii) Expanding the content of "bribery" to include "non-material benefits"; (iii) Modifying and supplementing some criminal elements; (iv) Specifying details of offences and determining penalty frameworks. The Anti-Corruption Law in 2018 mainly focuses on the public sector and partly extends to non-State enterprises. Such entities are now required to establish and implement specific anti-corruption policies and are subject to investigation by government inspectorates to ensure compliance. In addition, the law provides details on the circumstances in which former public officials can join non-State enterprises following their resignation or retirement from public office. Every year, Vietnamese officials have to declare assets and income truthfully and take responsibility for such declaration.

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In addition, the Anti-money-laundering Law of 2012 stipulates the measures to prevent, detect, stop and handle the organizations and individuals who commit acts of money-laundering, the responsibilities of agencies, organizations and individuals in the prevention of money-laundering and international cooperation against money-laundering.

According to article 324 of the Penal Code 2015 (amended 2017), the following acts will be punished as money-laundering crimes:

a) Directly or indirectly participating in financial transactions, banking transactions, or other transactions to conceal the illegal origin of the money or property obtained through [the offender's] commission of a crime, or obtained through another person's commission of a crime with [the offender's] knowledge;

b) Using money or property obtained through [the offender's] commission of a crime or obtained through another person's commission of a crime with [the offender's] knowledge of doing business or other activities;

c) Concealing information about the true origin, nature, location, movement, or ownership of money or property obtained through [the offender] or commission of a crime or obtained through another person's commission of a crime with [the offender's] knowledge, or obstructing the verification of such information;

d) Committing any of the offences specified in points a through c of this clause while knowing that the money or property is obtained through transfer or conversion.

Also, Resolution No. 03/2019/NQ-HDTP dated May 24, 2019, of the Supreme People's Court (on providing guidelines for Article 324 of the Criminal Code on money-laundering) explains some terms, crime determination circumstances, penalty determination circumstances with regard to money-laundering crime. Accordingly, "money-laundering" subject to penalty under this clause consists of Viet Nam Dong, any foreign currency; cash or money in account. The term *"original crimes/ source crimes"* (the same meaning as the term *"predicate offence"* in UNCAC) are the crimes prescribed in the Criminal Code, and the property acquired from such crimes is subject to money-laundering charges (e.g. murder; intentionally inflicting injury or harm to the health of other persons; human trafficking, property, corruption etc.). Original crimes can be committed by Vietnamese citizens, Vietnamese commercial entities, stateless people who are permanently residing in Viet Nam within or outside the territory of the Socialist Republic of Viet Nam. The prosecution of criminal liability for money-laundering can be carried out simultaneously with the criminal prosecution of the original crimes.

It can be seen that Viet Nam's legal framework in general, and Viet Nam's Penal Code in particular, has implemented the UNCAC recommendations about anti-corruption and money-laundering. However, there are many loopholes that create difficulties for law enforcement in dealing with corruption and money-laundering cases.

Firstly, one of the difficulties in countering money-laundering is that the Vietnamese Penal Code does not establish illicit enrichment as a criminal offence. In order to identify, trace, freeze, seize, confiscate and repatriate the proceeds of corruption, the investigation and prosecution offices have to prosecute a corruption case and sentence the offenders. Recovering the proceeds of corruption has been considered as a measure that follows sentencing in

corruption cases. Although Vietnamese laws require officials to declare their assets and income, we do not have a strong mechanism to charge acts that lead to illicit enrichment.

Secondly, before convicting money-laundering crimes, Vietnamese law enforcement has to deal with *"source crimes/original crimes"* in advance, including corruption crimes. This means that, if law enforcement fails to prove the source crime/original crimes, they cannot obtain a conviction for money-laundering.

II. PREVALENT METHODOLOGIES OF CONCEALING THE PROCEEDS OF CORRUPTION IN VIET NAM

Nowadays, there are many methodologies of concealing the proceeds of corruption in Viet Nam such as:

- Use of structured transactions
- Use of non-bank financial services
- Trade-based money-laundering
- Use of gatekeepers (e.g. accountants, lawyers, notaries)
- Use of third parties
- Use of casinos

Among those methodologies, trade-based money-laundering and using third parties are the most popular ones in Viet Nam. In order to conceal and launder the money, offenders often invest corrupt proceeds into other enterprises or buy expensive properties that will be declared as belonging to the criminals' family members.

However, there are no trends of new methodologies for concealing the proceeds of corruption in Viet Nam such as using of New Payment Products and Services (NPPS) or virtual currencies (virtual assets). The reasons are as follows:

Firstly, the cash payment habits of Vietnamese people. Although the government has been promoting the use of mobile and other convenient payment methods, such as QRpay, mobile wallets etc., many Vietnamese people do not want to use them. As a result, in some cases, law enforcement cannot trace corrupt transactions.

Secondly, the Vietnamese government does not accept virtual currencies or virtual assets as legal property or legal payment methods. Thus, corruption offenders also do not choose those assets to hide their dirty money.

Below is an actual corruption and money-laundering case in Viet Nam that faces those issues: According to the indictment, in 2014 and in early 2015, Phan N (Chairman of the VTC Online Company's Board of Directors) met Nguyen D (Chairman of the Members Council of the High-tech Security Development and Investment Company (CNC)) to discuss the development of an online gambling system. After that, N and D decided to launch an online casino without the government's permission. After that, they embezzled form VTC online Company and CNC capital by making false contracts and invoices. All of that money had been invested in an online casino called Rik on the portal Rikvip.com. The main server of Rik casino was located in Phutho province.

In order to cover their organized gambling crime, N and D also gave bribes to Phan V (Former General Director of the Ministry of Public Security) and Nguyen H (Former Director of the High-tech Crime Police Department). According to D's testimony, D gave V and H about 8 billion VND in cash and Rolex watches to help them shield the country-wide gambling ring from investigation.

With the illicit money from the online casino, Phan N transferred money to relatives and friends to deposit into bank accounts, invest in other companies and buy real estate. Over 236 billion VND was transferred to N's aunt who used the money to buy houses in District 7, Ho Chi Minh City. Phan N also sent money to a friend to store nearly 150 billion VND. Moreover, N invested 50 billion VND in Ha Long Green Bay Company, a Hanoi Fintech Company. In addition, N deposited 3.5 million USD at a bank and bought four apartments worth nearly 39 billion VND.

In July 2016, the Ministry of Public Security directed the investigation offices in Hanoi and Phutho to trace the large-scale gambling organizations in cyberspace including Rikvip. After collecting enough evidence, the Security Investigation Agency in Phutho province arrested Phan N, Nguyen D, Phan V and Nguyen H in March 2018. Those arrest warrants were approved by the procuracy office. Because this case was particularly serious and complicated, it was investigated by the Ministry of Public Security and the Supreme People's Procuracy of Viet Nam. Both Phan N and Nguyen D were convicted of "embezzlement", "organized gambling" and "money-laundering". In order to reduce the sentence, Phan N returned the embezzled and laundered property (over 90 percent) and closely cooperated with the authorities in the process of investigation, prosecution and jurisdiction.

Unfortunately, although the investigators gathered sufficient evidence to pin charges of taking bribes on Phan V and Nguyen H, we were not successful in proving their crimes. Nguyen D's testimony was not enough to prosecute them, so they were sentenced to 10 years' imprisonment for "abusing position and power while performing duties". We also could not recover the corrupt proceeds from Phan V and Nguyen D.

Thirdly, in recent years, the results of corrupt property recovery in Viet Nam are still limited due to the following difficulties: (1) offenders often do not declare assets, or they disperse or hide assets; (2) Corruption acts are often committed by many offenders so the investigation process often requires assessment to determine the damage consequences, but the assessment of economic losses, including the value of land, is quite complicated.

III. ANTI-MONEY-LAUNDERING MEASURES BY INTER-AGENCY COOPERATION

With regard to the emerging threats as mentioned above, Viet Nam also pays high attention to anti-money-laundering measures with new technologies implemented. Actually, Viet Nam is not a member of the FATF but a member of the Asia/Pacific Group on Money Laundering (APG). In 2007, the State Bank of Viet Nam established an FIU organization which is under the Banking Supervision Agency. The Vietnamese FIU has duties to receive, process and provide information on the prevention of money-laundering. In our opinion, the Vietnamese FIU organization is not an independent agency, which also makes it difficult to improve the effectiveness of cooperation among authorities to fight money-laundering.

It can be said that cooperation among domestic agencies is one of the most effective ways to collect and protect evidence in corruption and money-laundering cases. Offenders often use technology to conceal their crimes. After being detected, offenders hide, falsify or destroy documents, making it difficult to collect evidence. After charging suspects, prosecutors must continue to handle evidence in such a way that it is admissible and persuasive in court. Thus, if cooperation between investigators and prosecutors is insufficient, the case might fail.

IV. INTERNATIONAL COOPERATION IN ASSET RECOVERY

Viet Nam officially joined the United Nations Convention against Corruption (UNCAC) on 18 September 2009. This is the only global legally binding document providing comprehensive solutions to prevent corruption. The Vietnamese government has signed 22 bilateral treaties on mutual legal assistance in criminal matters, in which confiscation of proceeds of crimes is specified as the content of the MLA request. Currently, the Supreme People's Procuracy of Viet Nam is carrying out domestic procedures to propose to the government to join in the Asset Recovery Interagency Network – Asia Pacific (ARIN-AP).

In 2011, implementing the recommendations of the UNCAC Member States Conference, the Vietnamese government appointed the Ministry of Justice to be the focal point of Viet Nam for the recovery of corrupt assets within the framework of UNCAC. However, due to perceived difficulties of the MOJ in the process of practicing the functions of focal point, the Government of Viet Nam decided to transfer the role of the focal point to the Supreme People's Procuracy.

On 7 January 2019, the 2018 Anti-Corruption Law of Viet Nam came into effect. Article 91 of the Law stipulated that:

> *The Supreme People's Procuracy is the Central Authority of Viet Nam for international cooperation in corrupt property recovery in criminal procedure; responsible for receiving, executing foreign states' MLA requests related to corrupt property recovery and sending foreign states MLA requests of Viet Nam related to corrupt property recovery.*

This provision is basically consistent with the role of the SPP as the Central Authority in mutual legal assistance in criminal matters, stipulated in the 2007 Law on mutual legal assistance, the 2015 Criminal Procedure Code and treaties that Viet Nam has concluded in the field of MLA.

The Vietnamese SPP has received, and has been executing, five incoming MLA requests related to asset recovery and four outgoing MLA requests related to the confiscation of proceeds of crimes. There are not any clear instructions about how to process the confiscation of proceeds of crimes in Viet Nam, so it is very challenging for us to deal with MLA requests relating to confiscation.

Finally, fighting against corruption is not a short-term and easy battle. It requires strategic measures including anti-money-laundering measures. It is hoped that these measures will reverse the latest trends of concealing the proceeds of corruption in Viet Nam in the near future.

THIRTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE

PARTICIPANTS, VISITNG EXPERTS & ORGANIZERS LIST

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B. Visiting Experts

Name	Title and Organization
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Ms. Chi Yan Kate Cheuk	Principal Investigator Operations Department, Independent Commission Against Corruption Hong Kong

C. Organizers: UNAFEI

Name	Title and Organization
Mr. SETO Takeshi	Director UNAFEI
Ms. ISHIHARA Kayo	Deputy Director UNAFEI
Ms. WATANABE Machiko	Professor UNAFEI
Mr. FUTAGOISHI Ryo	Professor UNAFEI
Mr. OTANI Junichiro	Professor UNAFEI
Mr. HOSOKAWA Hidehito	Professor UNAFEI
Ms. MATSUDA Mariko	Officer UNAFEI
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Thirteenth Regional Seminar on Good Governance for Southeast Asian Countries

Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery to Counter New and Emerging Corruption Threats

Schedule

17-19 December 2019
UNAFEI, Tokyo

Hosts
United Nations Asia and Far East Institute
for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

Monday, 16 December

10:30-12:00	Registration (Thailand, Laos, Singapore "AGC", Cambodia, Myanmar, Viet Nam, Brunei, Malaysia, Timor-Leste, Indonesia)
17:00-18:00	Registration (Singapore "CPIB", Philippines, Visiting Experts)

Tuesday, 17 December

09:30-09:40	Opening Ceremony Opening Address by Mr. SETO Takeshi, Director, UNAFEI
09:40-10:40	Presentation by Visiting Expert
10:40-11:00	Tea Break
11:00-12:00	Presentation by Visiting Expert
12:00-13:30	Group Photo and Lunch
13:30-14:10	Individual Presentation by Brunei
14:10-14:50	Individual Presentation by Cambodia
14:50-15:10	Tea Break
15:10-15:50	Individual Presentation by Indonesia
15:50-16:30	Individual Presentation by Japan
16:30-16:50	Tea Break
16:50-17:50	Presentation by Ad hoc Lecturer
18:30-	Reception co-hosted by ACPF and UNAFEI (at UNAFEI)

Wednesday, 18 December

09:30-10:10	Individual Presentation by Lao PDR
10:10-10:50	Individual Presentation by Malaysia
10:50-11:10	Tea Break
11:10-11:50	Individual Presentation by Myanmar
11:50-12:30	Individual Presentation by Philippines
12:30-13:30	Lunch
13:30-14:10	Individual Presentation by Singapore
14:10-14:50	Individual Presentation by Thailand
14:50-15:10	Tea Break
15:10-15:50	Individual Presentation by Timor-Leste
15:50-16:30	Individual Presentation by Viet Nam

Thursday, 19 December

10:00-14:30	Study Trip to Tokyo District Public Prosecutors' Office, Tachikawa Branch
16:00-16:40	Discussion/Adoption of the Recommendations

16:40-17:00	Tea Break
17:00-17:30	Closing Ceremony
	Address by Mr. SETO Takeshi, Director, UNAFEI
17:30-18:15	Award of Certificate
18:30-	Farewell Dinner hosted by ACPF (at UNAFEI)

End of the Seminar

APPENDIX

PHOTOGRAPHS

・ Commemorative Photograph of the Participants

・Opening Speech by Director Seto

・Special Lecture by Ms. Louisa Kathryn Marion

・Special Lecture by Ms. Chi Yan Kate Cheuk

・Special Lecture by Mr. WATANABE Naoki

・Presentation by Participants

・Study Trip to the Tokyo District Public Prosecutors' Office, Tachikawa Branch

・The Seminar

Commemorative Photograph of the Participants

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The Seminar