

## 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 charged 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.

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