

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

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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 IV² 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 Declaration³

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 Liabilities⁴

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 assets. 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.