

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. 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
၁။	Section 55 of the Anti-Corruption Law	2 persons	2 persons are on trial.
၂။	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.
၅။	Section 56/63	19 persons	18 persons are on trial; One person was sentenced to 4 years' imprisonment.
၂။	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.