

DETECTION, PROSECUTION AND ADJUDICATION OF HIGH-PROFILE CORRUPTION

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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 The new Anti-Corruption Law was enacted on 7 August 2013, and the Suppression of Corruption Act, adopted in 1948, was repealed.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-Laundersing 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.