

MEASURES TO FREEZE, CONFISCATE AND RECOVER PROCEEDS OF CORRUPTION, INCLUDING PREVENTION OF MONEY-LAUNDERING IN MYANMAR

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I. INTRODUCTION

Corruption poses a serious problem and affects each and every one of us. It is a fact that there are links between corruption and other forms of crime, including money-laundering. Corruption is no longer a local matter. It is a transnational phenomenon. To prevent, to control and to eradicate corruption is a responsibility of all of us. This is the reason why we meet here with hope of exploring ways and means of strengthening our legislation and criminal justice systems in the area of measures to freeze, confiscate and recover proceeds of corruption, including prevention of money-laundering.

II. MYANMAR LEGAL SYSTEM

The Myanmar legal system is closely akin to Indian legal system of the Common Law Legal Family. However, it is not a replica of the Common Law System since we have embodied in laws of Myanmar our national characteristics, especially in the area of Myanmar Customary Law. We have been developing our own Legal System for nearly one and a half centuries.

III. OFFICE OF THE ATTORNEY GENERAL (OAG)

The Office of the Attorney General (OAG) of the Union of Myanmar has been constituted under the Attorney General Law, 2001. Its predecessor was the Attorney General Law, 1988. The present Attorney General Law grants the Attorney General wide –ranging powers including legislative drafting, legal translation, updating laws and amendments. Moreover, the OAG is responsible for giving legal advice on matters relating to international conventions and regional agreements, and also on matters of bilateral or multilateral treaties, memorandums of understanding, memorandums of agreement, local and foreign investments and other instruments that are to be ratified by the Union of Myanmar. The Attorney General is the Chief Prosecutor and appears in criminal cases and also litigates or defends claims of civil nature where the government is involved.

IV. THE LAW OFFICERS

The Law Officers who are appointed under the Attorney General Law, 2001, perform the functions and duties assigned to us by the Attorney General including tendering advice on criminal cases and before trial to be in conformity with the Law.

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V. JUDICIAL SYSTEM OF MYANMAR

The present judicial system was adopted by the Judiciary Law, on 27 June, 2000. All Criminal Courts in Myanmar have to adhere strictly to the established procedure and practice of admitting documentary and material evidence, examining witnesses, and examining complainants and the accused. Basic legal principles to be observed in conducting criminal cases are that the burden of proof lies on the prosecution. In criminal cases Law Officers play significant roles by giving legal opinion to the police before sending the case to the court, conducting before the court on behalf of State, and if he or she is not satisfied with the order of the court, filing appeal and revision to higher courts in order that the accused be convicted and the sentence be enhanced.

VI. LEGISLATION ON THE AREAS OF CORRUPTION

There is various legislations in Myanmar containing provisions for taking action against corruption.

1. The Prevention of Corruption Act

It is the main law and it provides more effective measures. This Law provides special rules of evidence that the burden of proof relies on the accused, if the acceptance of a bribe by the accused has been proved. The Law also provides that the Court may presume an accused guilty of corruption if he owns or owned too much money or properties beyond his income, where the accused cannot prove his lawful ownership of such money or properties. Any person convicted under *section 4(1) (c) /4(2)* of this law is punishable with imprisonment for a term which may extend to seven years. Besides, all benefits obtained by the accused by committing such offense shall be confiscated. The punishment under this law is more severe and effective than the punishment prescribed under the Penal Code. So, in Myanmar, serious corruption cases are prosecuted under with law. The law also authorizes investigating police officers to make necessary inspections of the bank accounts or registers of the accused and / or his or her dependents. However, the law requires obtaining prior sanction from the relevant appointing authority of the accused before taking action under this Law.

2. The Penal Code

It provides, under *sections 161 to 171*, corruption offences by or relating to public servants. Taking of gratification by public servants other than legal remuneration in respect of an official act; taking gratification in order, by corrupt or illegal means, to influence a public servant, taking gratification for exercise of personal influence with public servant, without consideration, from persons concerned in proceedings or business transacted by a public servant, disobeying direction of the law by a public servant, with intent to cause injury to any person, framing an incorrect document by public servant with intent to cause injury to any person; unlawfully engaging in trade by a public servant, are corruption offences punishable with imprisonment ranging from one year to three years, or with fine, or with both.

3. The Narcotic Drugs and Psychotropic Substances Law

It has particular provisions for taking action against investigating officers who commit corrupt acts. *Section 18* of the Law provides, *inter alia*, that a person authorized to search, arrest, seize, exhibit and investigate in respect of any offence under that law shall be, on conviction, punished with imprisonment for a term which may extend from 5 years to 10 years, if he is guilty of asking for and accepting any money and property as gratification either for him or herself or for another person, or accepting a narcotic drug or psychotropic substance unlawfully.

4. The Control of Money Laundering Law

The Law prescribes, under *section 25*, members of the investigation body not to demand or accept

money or property either for him or herself or for any other person as a gratification; substitution of an offender with any other person so that action cannot be taken against him or her imprisonment of an offender without taking action against him or her. The breach of such prohibitions may be punishable with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 7 years and may also be liable to a fine.

5. The Myanmar Police Force Maintenance of Discipline Law

It has wide provisions concerning corruptions. Especially, its *sections 17 and 18* provide various kinds of corruptions. *Section 17* prohibits a person subject to that law not to commit, unnecessarily detaining of a person against the law, failing to bring his or her case before the proper authority for investigation, taking in or bringing in or allowing to be taken in, due to his or her negligence, articles which are prohibited from being taken in or brought into the prison or police custody, causing or allowing a prisoner or a person in custody to strike or otherwise ill-treat another person subject to that Law or any prisoner under custody, striking or ill-treating his or her subordinate, allowing to escape any person for whom he or she has a duty to keep or guard, and demanding or accepting cash or kind in a corrupt manner from any person. The offender who violates any of such prohibitions, on conviction by Police Court, may be punished with imprisonment up to 3 years or less punishment as prescribed in that Law. Section 18 of the Law further prohibits a person subject to that Law not to commit theft of any property belong to the Myanmar Police Force or any person subject to that Law, dishonestly misappropriate or convert to his or her own use of such property, committing criminal breach of trust in respect of such property, dishonestly receive or retain any such property, will-fully destroy or injure or cause loss through negligence of any such property, dishonestly misappropriate, obliterate, destroy , injure or cause loss through negligence, any exhibit, or do any other thing with intent to defraud or to cause wrongful gain or wrongful loss. The violation of any of such prohibitions shall be punishable with imprisonment up to 3 years or such less punishment as prescribed by that Law.

6. The Defense Services Act, the Pyithu Hluttaw Election Law, the Commercial Tax Law, the Forest Law and the Fire Services Law

They also provide provisions for taking action against corruption.

7. The Criminal Law Amending Act

It is the more effective procedural law in taking action against corruptions. If the Government has the reasons to believe that an accused in a corruption case obtained money or property by committing such an offence, it may direct to submit an application to the District Administrative Officer for the attachment of a warrant on such money or property. These speedy actions may deter or freeze or exhibit the money or property obtained by the accused in a timely manner.

VII. THE MEANING OF THE LAW TAKING ACTION AGAINST THE OWNERSHIP OR SALE OF PROPERTY OBTAINED BY ILLEGAL MEANS

It means the Government is authorized to confiscate movable or immovable property of a person who obtained such property by illegal means or from illegal business or brought with money evaded from income tax.

VIII. MYANMAR TAKING ACTION AGAINST CORRUPTION

Myanmar launched many operations to suppress corruption from 1974 to 1988. The Crocodile Operation, Machinery Operation, Shark Operation, Hinsa Operation, and Varasein (or Thunder Bolt) Operation are significant among others. The White Elephant Operation was also a special one and this Operation took action against even intelligence and customs officials.

IX. CRIMINALIZATION OF MONEY LAUNDERING

Money Laundering was criminalized under several provisions contained in the Control of Money Laundering Law 2002. To implement this Law effectively, Rules relating to the Control of Money Laundering Law was issued in 2003. The Central Control Board formed under this Law has the powers to pass an order confiscating money and property obtained by illegal means (*Section 8(1)*). Chapter IX of the Rules prescribes the details for confiscation.

X. RELATED INSTITUTIONAL MEASURES

- In Myanmar, corruption cases are cognizable case under the provisions of the Code of Criminal Procedure. Therefore those cases may be investigated by the Bureau of Special Investigation officers or Police Officers without obtaining warrant of a court. Bureau of Special Investigation (BSI) is conferred authority to investigate corruption cases under the provisions of the Bureau of Special Investigation and the Investigation Department Act, and the Myanmar Police Force is authorized to do so under the provisions of the Code of Criminal Procedure.
- Being a cognizable case, BSI Officers and Police Officers may book case against the accused at the respective police station, request for sanction to prosecute the accused from the relevant Ministry, arrest the offender, examine the accused and witnesses, seize the exhibits, construct the case, ask for expert opinions on the exhibits if necessary, ask for legal advice from the Office of the Attorney General or various Law Offices for sound construction of the case and reconstruct the case in accordance with the legal advice of the Office of the Attorney General or the respective Law Office, and file the case before a competent and relevant Court. Usually, the Bureau of Special Investigation investigates serious corruption cases and refers other corruption cases to Myanmar Police Force for investigation. If the case is not strong enough for sending up to the Court, and it is necessary to take some other action, such corruption case is referred to the Government department concerned for taking departmental action.
- Under *section 197* of the Code of Criminal Procedure, if an accused who is a Judge, Magistrate or any public servant who is not removable from his or her office save by or with the sanction of the President or relevant Ministry, is accused of any offence alleged to have been committed by him or her while acting or purporting to act in the discharge of his or her official duty, no Court shall take cognizance of such offence except with such previous sanction.
- When such cases are sent up before the Courts, BSI prosecutors or Law Officers conduct prosecution in those cases. Throughout the prosecution period, prosecutors consult with the relevant Investigation Officers of the case to construct the case strongly. If necessary, the Law Office concerned files appeals or revisions against the order and judgment of original or appeal Court to enhance punishment so as to obtain effective and deterrent punishments. The BSI may request the relevant Law Office to file revision in those cases. If the accused is acquitted by the Court, The Office of the Attorney General may file an appeal against acquittal order to the Supreme Court. The BSI or the Myanmar Police Force may apply to the relevant Law Office or Office of the Attorney General to file an appeal against acquittal.

XI. ADMINISTRATIVE MEASURES AGAINST CORRUPTION

All civil service personnel in Myanmar are responsible for abiding by the Fundamental Rules and Supplementary Rules. Those Rules prescribe that Government servants shall not, except with the prior sanction of the Government, accept directly or indirectly on his or her own behalf or on behalf of any other person, or permit any member of his or her family so as to accept any gift, gratuity or reward.

XII. CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME

- Myanmar laws allow for the confiscation of criminal property under the following pieces of legislation:

(i) Narcotic Drug and Psychotropic Substances Law 1993 in respect of cases concerning the following offences:

- (a) Cultivation, Possession, Transportation, and Sale of narcotic drugs, psychotropic substances or chemical/plants used in the production of the same;
- (b) Laundering the proceeds of (a);
- (c) Accepting Bribes in connection with (a);
- (d) Conspiracy to commit (a) or (b).

(ii) *Section 8(i)* of the Control of Money Laundering Law, 2002 allows the CCB to pass an order confiscating money and property obtained by illegal means.

(iii) The Code of Criminal Procedure, 1889, *Section 517* allows for the general confiscation of items of property including money, and other valuable property.

- Although Criminal Procedure Code *Section 517* is general in nature, it can widely apply and use in various corruption cases before the court as evidence and exhibits including money and property. Criminal Procedure Code *Section 517* provides as follows:

(1) When an inquiry or a trial in any criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have committed, or which has been used for the commission of any offence.

(2) When the High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section(4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court, if the order made under this section is modified or set aside on appeal.

Explanation.--In this section the term "property" includes in the case of property regarding which an

offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise. I also would like to present the MFIU.

XIII. THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS

- The Central Control Board on Money Laundering Order 3/2004 established the Myanmar Financial Intelligence Unit ("MFIU"). Myanmar has chosen the Law Enforcement model of an FIU. The MFIU is a unit under the Ministry of Home Affairs; it is headed by a Police Colonel, the head of the Myanmar Police Force's ("MPF") Department against Transnational Crime.
- The MFIU is the sole body in Myanmar authorized to receive transaction reports. The reports are delivered to the MFIU by the reporting bodies either by courier/messenger or through the post or by fax or electronic means.
- The MFIU has signed MOUs to govern the exchange of information and financial intelligence with the Thai FIU, AMLO and Indonesian FIU, PPATK.

XIV. DOMESTIC AND INTERNATIONAL COOPERATION FOR EFFECTIVE INVESTIGATION AND PROSECUTION OF CORRUPTION

Bureau of Special Investigation, Myanmar Police Force and Law Office cooperate for sound construction of the corruption cases at the pre-trial stage and during trial period. The Courts at various levels pass effective and deterrent punishments against the offenders of corruption cases. The Supreme Court instructs all Courts at all levels to pass effective and deterrent punishments, on conviction, against the accused of corruption cases.

XV. INTERNATIONAL COOPERATION

- Myanmar is a Party to the ASEAN Treaty on Mutual Assistance in Criminal Matters. Under this treaty assistance is rendered among Parties. Besides, Myanmar has already enacted The Mutual Assistance in Criminal Matters Law 2004. It is the main Law in Myanmar for bilateral, multilateral and regional co-operation for effective search, seizure and confiscation of exhibits in criminal matters including corruption.
- This Law contains provisions for Search, Seizure and Confiscation of Exhibits as follows:
 - Section 25 With respect to request of any foreign State the Central Authority shall, if granted after scrutiny the request of a foreign State to search, seize, control, issue restraining order or confiscate the exhibit is granted instruct the relevant government department and organization to search, seize, control, issue restraining order and confiscate in conformity with the existing laws.*
 - Section 26(a) The Central Authority shall administer the property seized as exhibits, property controlled and property confiscated under the request of a foreign State in conformity with the bilateral agreement.*
 - Section 26(b) If there exists no bilateral agreement between the two States, the confiscated property shall vest in the State.*
- Myanmar has already signed the United Nations Convention against Corruption and thoroughly studies

the Convention for the development of a main Law to effectively suppress the corruption.

XVI. CONCLUSION

This is the current situation in Myanmar. Myanmar has a good basic legal and regulatory framework for freezing, seizure and confiscation. However, in international co-operation in corruption cases, Myanmar has little experience. Myanmar is ready to co-operate in this area and make the provisions of laws operational.

Thank you.