

# **CURRENT SITUATION AND COUNTERMEASURES AGAINST MONEY LAUNDERING: FOCUSING ON THE EXPERIENCE AND LEGAL POLICIES OF THE REPUBLIC OF KOREA**

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## **I. INTRODUCTION**

Since late in the 20<sup>th</sup> century, people have enjoyed the benefits of industrialization and globalization that the development of transportation and communication technology has brought to the world. At the same time, this economic and social change has also brought about changes to the form, technique, and scope of crime. The consequences are that criminals are crossing borders with an ease unknown in the past and are expanding the area of their activity, and that they are becoming ever more intelligent and specialized.

The expansion of the influence of organized crime has reached such point that it poses great threat to the safety of international community. According to the recent statistics, crime groups are committing trafficking in drugs and illicit firearms, and counterfeiting of currency and credit card, which involve dirty money totaling 3000 billion US dollars. The international community has come to recognize that corruption serve as the soil for the growth of organized crime. And the anti-corruption round initiated with this recognition has become an eloquent international movement.

It is difficult to give a uniform explanation about the purpose of organized crime and corruption, but the most

important purpose and motivation is financial profits. Therefore, in order to combat organized crime and corruption effectively, we need to deprive offenders of their financial gains. To attack them financially is to cut off the Achilles tendon of organized crime groups.<sup>1</sup> But, criminals are cutting off the link between crimes and criminally-derived money, by laundering dirty money taking advantage of all methods and mechanisms imaginable.

We call the series of transactions turning dirty money into clean money, money laundering. In the following, I'll first look into what money laundering is, and the current situation of money laundering in the international community.

## **II. DEFINITION OF MONEY LAUNDERING AND THE CURRENT SITUATION**

### **A. Definition of Money Laundering**

Money laundering is the process by which one conceals the existence, the illegal source, or illegal application of income, and then disguises that income to appear legitimate.<sup>2</sup> In other words, money

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<sup>1</sup> R. Peter, Money Laundering and Its Current Status in Switzerland: New Disincentive for Financial Tourism, 11 Northwestern Journal of International Law & Business 104(1990), p. 108

<sup>2</sup> The President's Commission on Organized Crime, Interim Report to the President and Attorney General, The Cash Connection: Organized Crime, Financial Institutions and Money, 1984. 10.

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laundering refer to a series of transactions transforming criminally-derived funds into legitimate funds through financial institutions, for the purpose of concealing the illicit nature and origin of the property from government authorities.

Money laundering negatively impacts economic growth and society at large. It distorts economic order, shields criminal activities, which are associated with crime proceeds, from exposure, and corrupts public officials and our society on the whole.

**B. Characteristics of Money Laundering**

Money laundering is performed systematically and secretly, making it difficult to identify exactly how much money is laundered and what methods are employed. And, it is difficult to criminalize, regulate or crackdown on money laundering with the traditional legal notion and system.

Criminologically, money laundering can be characterized as borderless economic crime or organized crime. Recently, with the rapid development of internet and communication technology, crime proceeds can be moved from one country to another in a matter of hours, by using wire transfers. These factors make the regulation of money laundering more difficult.

**C. Current Situation of Money Laundering Worldwide**

As pointed out, the exact amounts of laundered money are so difficult to assess. However, we can give a rough estimate, by synthesizing various informations. According to Financial Action Task Force (FATF), it is estimated that the amounts of money laundered annually worldwide from the illicit drug trade alone range between 300 billion US dollars and 500 billion US dollars in 1998. Since this

estimate only regards the amount associated with exposed drug crimes, the amounts of illicit money actually laundered worldwide could be five or six times larger.

There have been a number of money laundering cases worldwide. The most famous one is "The Pizza Connection" case. And, one of the most well known money laundering cases that are not associated with drug crime is "Bank of Credit and Commerce International (BCCI)" case. These two cases revealed that money laundering is performed comprehensively, systematically, professionally, diversely<sup>3</sup> and without the check of national borders.

In "The Pizza Connection" case, we could see how various crime groups in different parts of the world formed a network associated with major banks of the United States and Switzerland, and see the linkage between poppy fields of Southeast Asia and the Pizza parlours of the United States. In "BCCI" case, it was revealed that financial experts were deeply involved in money laundering, taking advantage of their expert knowledge, discrepancy between financial systems of individual countries, and financial secrecy protection system. From this case, it was reaffirmed how difficult it is to investigate and regulate money laundering.

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<sup>3</sup> The Canadian police authorities, after examining 150 cases of money laundering, concluded that there are various methods used to launder money from very simple ones to elaborate ones, and that the limit of these methods are only set by the capacity of criminal group's imagination. (Margaret E. Beare & Stephen Schneider, Trading of Illicit Funds: Money Laundering in Canada, Working Paper No.1990-5, Ministry of the Solicitor General, p.XI)

### III. CURRENT SITUATION OF MONEY LAUNDERING REGULATION

#### A. International Efforts

In early 1980's, the international community formed a consensus that a priority should be given to the regulation of money laundering. The efforts of the international community were exerted through the United Nations and other international organizations, and on regional and national level.

##### 1. Before the Conclusion of the 1988 Vienna Convention

It was the Committee of Ministers of the Council of Europe<sup>4</sup> of June 27, 1980 that money laundering problem was first discussed on international dimension. The Committee of Ministers adopted the recommendation (R 80/10) regarding Measures Against the Transfer of Safekeeping of Funds of Criminal Origin, urging European countries to take interest in the regulation of money laundering.

After that, the United States and the United Kingdom established domestic laws making money laundering criminal offense. The United Nations adopted the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on December 19, 1988. As Spain ratified the Convention on August 13, 1990, becoming the 20<sup>th</sup> country to ratify it, the Convention came into force on November 11, 1990.<sup>5</sup>

The Convention provides the conversion and transfer of crime proceeds and the concealment and disguise of the nature or origin of crime proceeds as criminal offense

<sup>4</sup> It is a European inter-governmental organization, with 26 member states. It has adopted many conventions in the area of international criminal justice.

in Article 3, Paragraph 1(b). And, the Convention provides obtaining, possessing or using of crime proceeds with knowledge as criminal offense in Article 3 Paragraph 1(c). The Convention requires that State Parties must implement Article 3 Paragraph 1(b) and that regarding Article 3 Paragraph (c), State Parties should take measures to criminalize it under the domestic law to the extent that it complies with the principles of the Constitution and the basic concepts of the legal system. This Convention has a historic meaning in that it criminalizes money laundering activity. I will go on to the international efforts after this Convention.

##### 2. After the Conclusion of the 1988 Convention

On November 18, 1990, the Council of Europe adopted the Convention on Laundering, Search and Confiscation of the Proceeds from Crime. This Convention aimed at strengthening international cooperation in investigation, search and seizure of proceeds derived from major crimes (felony) such as drug crimes and terrorism which are known to yield large profits. As the finance market of EC (European Community) countries took the course for unification, efforts to counter money laundering through the authority of EC arose in Europe. And as a part of this effort, EC enacted the Council Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering on June 10, 1991.

The prevention of money laundering was also discussed at the summits of G7 countries. At the Toronto summit in 1988, G7 declared the necessity of regulating money laundering.<sup>6</sup> At the Arshur summit in 1989, they made a declaration, inviting

<sup>5</sup> The Republic of Korea deposited the instrument of ratification of the Convention on December 28, 1998.

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all countries to join G7's cooperative efforts to combat drug trafficking and laundering the proceeds<sup>7</sup> and resolved to establish the Financial Action Task Force (FATF).

The FATF was participated by 16 countries and organizations including the G7, the council of European Community and Sweden, etc. The first report of the FATF was made on February 2, 1990, and was released in each participating country on April 19 of the same year. The report is made up of three parts, the first part about the scale and the mechanism of money laundering, the second part about the measures made to counter money laundering, and the third part, including recommendations. The forty recommendations of the third part presented a comprehensive blueprint for the international community in preventing money laundering, having a continuous influence in the international effort to counter money laundering.

The FATF went on to enhance its activities as more countries and organizations joined it. The forty recommendations are being modified continuously. Since OECD functions as the secretariat of FATEF, it has also transformed into a gathering of expert groups independent from other international organizations, and has played a very important role in countering money laundering.

There have been many efforts on regional level as well. The Organization of American States (OAS), which had discussed measures against drug problems, adopted the Model Regulations Concerning Laundering Offences Connected to Illicit Drug Trafficking and Related Offences at the 11<sup>th</sup> meeting of Inter-American Drug

Abuse Control Commission (CICAD) on March 10, 1992. Through this, it was affirmed that in order to combat drug crime which is one of the most formidable problem in American continent, regulation of the proceeds and instrumentality should be conducted in parallel. In Asia, the Asia/Pacific Group on Money Laundering (APG) was established in February 1997. The APG works to enhance cooperation in the region, by conducting studies about the prevention of money laundering in Asia/Pacific region, and issuing evaluations on anti-money laundering measures of Asia/Pacific countries.

On the level of the United Nations, the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana, Cuba in August and September 1990 adopted "Basic Rules for the Control and Prevention of Organized Crime". On December 14, 1990, the General Assembly, through two Resolutions<sup>8</sup>, urged states for their actions to facilitate seizure and confiscation of crime proceeds and to develop effective measures to counter money laundering.

In this atmosphere, the 1<sup>st</sup> session of Commission on Crime Prevention and Criminal Justice (CCPCJ) was held in April 1992 in Vienna. At the 1<sup>st</sup> session of CCPCJ, the participating countries recognized that the regulation of money laundering and flow of crime proceeds is more important than anything to counter crime and that the CCPCJ should place its priority on the discussion of strategy to counter money laundering.<sup>9</sup> In July 1992, the United Nations Economic and Social Council, accepting the recommendation of the CCPCJ, set countering money laundering as the priority of the work of

<sup>6</sup> Political Declaration, paragraph 16

<sup>7</sup> Economic Declaration, paragraph 52

<sup>8</sup> United Nations General Assembly Resolutions 45/107, 45/123

<sup>9</sup> Resolution 1/2

CCPCJ and the UN Crime Prevention and Criminal Justice Programme for four consecutive years.<sup>10</sup> As a consequence, the CCPCJ has had uninterrupted discussion of the prevention of money laundering and flow of crime proceeds since the 2<sup>nd</sup> session of Commission in 1993 and made reports of the result of the discussions, urging the criminalization and strong regulation of money laundering.

On December 4, 1994, the General Assembly adopted a Model Treaty on Mutual Assistance in Criminal Matters. At that time, the General Assembly also adopted the Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the Proceeds of Crime, which provides the framework for the international cooperation in the confiscation and forfeiture of crime proceeds.

### 3. Conclusion of the Convention Against Transnational Organized Crime

In an effort to combat transnational organized crime which poses threat to the safety of the international community, the United Nations held the Ministerial Conference on Organized Transnational Crime in November 1994 in Naples of Italy. This conference adopted an international document entitled the Naples Political Declaration and Global Action Plan against Organized Transnational Crime. The Naples Political Declaration called on the CCPCJ to collect opinions from individual governments regarding the content and the effect of a convention against transnational organized crime. The United Nations General Assembly urged each state party to promptly implement the Naples Political Declaration and Global Action Plan.<sup>11</sup>

In December 1996, the General Assembly, taking notice of a draft convention against transnational organized crime proposed by Poland, called upon the CCPCJ to give priority to the consideration of the finalization of the draft convention.<sup>12</sup> In December 1997, the General Assembly decided to establish an open-ended meeting for the inter-governmental expert group for the draft of a comprehensive international convention against transnational organized crime.<sup>13</sup> In December 1998, the General Assembly called for the establishment of the Ad Hoc Committee to take over the achievement made regarding the draft convention and to finish the project.<sup>14</sup>

The Ad Hoc Committee, after having the informal preparatory meeting in September 1998 in Buenos Aires, held the first session in January 1999. Through ten sessions of meetings, the Convention against Transnational Organized Crime was adopted in September 2000. Among the three supplementary protocols being discussed, the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children”, and the “Protocol against the Smuggling of Migrants by Land, Sea and Air” were approved at the 11<sup>th</sup> session held in October 2000. The approval of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was reserved for more discussions on some issues which have not been agreed on.

At the back of the UN’s positive actions and achievements, there were regional conferences and declarations. They are the Buenos Aires declaration, the Dakar declaration and the Manila declaration.

<sup>10</sup> Resolution 45/107, 45/123

<sup>11</sup> United Nations General Assembly Resolution of December 23, 1994 49/159

<sup>12</sup> Resolution 51/120

<sup>13</sup> Resolution 52/85

<sup>14</sup> Resolution 53/111

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The Buenos Aires declaration was adopted at the regional ministerial workshop of November 1995 which was a follow-up meeting to the Naples Political Declaration and Global Action Plan. The Dakar declaration was adopted at African regional ministerial workshop held in July 1997 in Dakar of Senegal. The Manila declaration was adopted at Asian regional ministerial workshop regarding transnational organized crime and corruption, held in March 1998 in Manila, the Philippines.

Since the contents of this Convention are those that have recently been discussed and agreed on by the international community, they include relatively strong measures to combat money laundering. Article 6 of the Convention criminalizes a wide range of activities related with money laundering, and requires state parties to include all major crimes provided in the Convention as the predicate offense. This is a step forward from the 1988 Convention which provided for the punishment of money laundering only in case it is associated with drug crimes. Article 7 provides diverse and systematic measures to regulate money laundering, including reporting of suspicious transaction. Article 13 also touches upon the efforts to enhance international and regional cooperation among justice, enforcement and regulation agencies of state parties, to implement these measures. Article 12 of the Convention provides confiscation of crime proceeds, usage of records including bank records for the confiscation of crime proceeds, and power to freeze or seizure proceeds. Article 13 provides for international cooperation for confiscation, and Article 14 provides for the disposal of confiscated assets.

4. Conclusion of Convention on Combating Bribery of Foreign Public Officials in International Business Transaction

At the outset, money laundering problem was discussed in association with drug crimes. The discussion about money laundering was developed in such direction that countering money laundering is important to counter not only drug crimes but also organized crimes, especially transnational organized crimes. Recently, the international community perceives that the predicate offenses for the regulation of money laundering should not be restricted to drug crimes and organized crimes, but should be extended to corruption crimes as well. Corruption crimes are not a domestic problem of an individual country. It undermines fair competition of enterprises in the global market place, and provides soil for the growth of transnational organized crimes. The international community has begun its work to combat corruption.

With this background, OECD finalized the Convention on Combating Bribery of Foreign Public Officials in International Business Transaction. This Convention requires state parties to take legislative measures to criminally punish the act of offering bribes to foreign public officials, and to give assistance to each other in investigation and extradition associated with such case. This Convention was adopted at OECD in November 1997, was signed by 34 countries in December 1997, and came into force on February 15, 1999.

In the process of the discussion of this Convention, there was a consensus of opinion that prevention of money laundering and control of crime proceeds is essential for countering corruption. Article 7 of the Convention provides that each state party which has made bribery of its own public official a predicate offense

for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred. Article 8 of the Convention provides that state party shall take measures regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, and shall provide civil, administrative or criminal penalties.

### **B. Efforts Made by Individual Countries**

Countries worldwide have devoted efforts to respond to money laundering problem voluntarily or as they were encouraged by the aforementioned international conventions. They established domestic laws to make money laundering criminal offense, to confiscate proceeds associated with money laundering, and to require financial institutions to report cash transactions over a certain sum. This move was led by common law countries, at the head of which was the United States.

The United States enacted and enforced the Bank Secrecy Act of 1970<sup>15</sup> as early as 1970. In the same year, the United States established the Racketeering Influenced and Corrupt Organizations Act of 1970 (RICO Act) and the Controlled Substances Act of 1970, providing measures to confiscate certain illicit assets or proceeds. In 1986, the Money Laundering Act of 1986<sup>16</sup> was established.

In 1986, the United Kingdom established the Drug Trafficking Offences Act of 1986, providing for the confiscation of certain illicit proceeds, and criminalizing money laundering activities. The United Kingdom is continuing its work to strengthen related laws. Australia established the Proceeds of Crime Act in 1987, criminalizing money laundering and providing for the confiscation of criminally derived assets. In 1988, Australia enacted the Cash Transaction Reports Act of 1988.

Civil law countries were slower than common law countries in coming up with measures to counter money laundering. Japan ratified the 1988 Vienna Convention in 1989 and enacted the implementing laws in 1991, which came into force in 1992. These implementing laws are “Law Concerning Special Provisions for the Narcotics and Psychotropics Control Law, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances through International Cooperation”(the so-called New Drug Law or Anti-Drug Special Law) and “Act Revising Parts of the Hemp Control Act, the Stimulant Control Act and the Opium Act”. The New Drug Act criminalizes money laundering, and provides for the confiscation and forfeiture of illicit proceeds, freezing procedure, international assistance, and reporting of suspicious transactions. However, this Act, which punishes money laundering associated with only drug-related crimes, could not be an effective medium to respond to organized crimes.

With this recognition, Japan established, in 1999, the “Law Concerning the Punishment of Organized Crime and the Control of the Proceeds of Crime (so called Anti-Organized Crime Act)”. This Act provides for stronger punishment of organized crime, and provides for extended

<sup>15</sup> Pub. L. No. 91-508, 401(a), 84 Stat.1114(1970)

<sup>16</sup> Pub. L. No.99-570, 1351-1367, 100 Stat. 3207-3208. This Act is a part of the Anti-Drug Abuse Act of 1986, and is provided in 18 U.S.C. and 33 U.S.C.

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control of money laundering. Under this Act, the predicate offenses for money laundering regulation include drug-related crimes, major crimes (felony) which carry a certain degree of statutory penalty, which are likely to produce large illicit proceeds, and include crimes like prostitution and possession of deadly weapons though they carry lower statutory penalty. The Act also provides punishment for the behavior aimed at managing the business of a corporation by using illicit proceeds derived from the above predicate offenses, and the conduct of disguising, concealing and obtaining the proceeds of crime. The Act also provides measures for the confiscation and forfeiture of the proceeds of crime. The Act requires banks and other financial institutions to report to relevant authorities, suspicious transactions if they are suspected of being derived from illicit proceeds. The Act aims at increasing the efficacy of the control of money laundering by providing mechanisms for international assistance process regarding confiscation and forfeiture.

In Germany, the discussion of money laundering problem began in early 1990's. In 1992, the offense of money laundering was newly included in the criminal law. And an organized crime act called Gesetz zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der Organisierten Kriminalität (OrgKG, vom 15.7.1992) was established to make money laundering activities associated with organized crimes and drug crimes, a criminal offense.

Switzerland was rather late in criminalizing money laundering due to its long-standing policy of giving strong protection to bank secrecy. However, Switzerland underwent a series of major drug-related cases including the Turkey-Lebanon connection case in 1987, and was pressured by the United States and the

European Community to take measures against money laundering. In 1990, Switzerland revised its criminal law to criminalize money laundering.

In 1987, France provided the punishment of money laundering activity (blanchiment de capitaux) in its public sanitation law called le code de la sant publique. Italy had controlled money laundering activity as a part of the control of organized crimes, but did not have legal provisions directly setting out the punishment of money laundering. Money laundering was controlled through the major crime (felony) prevention law of 1978, but this was an indirect way. After ratifying the 1988 Vienna Convention, Italy established the Act against Mafian Organized Crime in March 1990, which provides improved measures against money laundering.

In the past, Hong Kong did not have a central bank, and a policy controlling the exchange of currency. Besides, Hong Kong adopted a complete bank secrecy protection system. For these reasons, Hong Kong was criticized for providing a financial haven for the laundering of drug money. In 1989, however, Hong Kong established the Drug Trafficking (Recovery of Proceeds) Ordinance, and has become active in cracking down on drug crimes and controlling money laundering.

#### **IV. CURRENT STATUS OF MONEY LAUNDERING IN THE REPUBLIC OF KOREA**

##### **A. The Characteristics of Money Laundering in the Republic of Korea**

The economic development and the method of financial transactions in Korea differ from the West and the early developed nations, which are societies that conduct business based on credit.



Therefore, the investigation authorities and tax authorities in Korea are faced with cases of money laundering activity that are different to what foreign authorities face. In general, foreign investigation authorities in the West handle money-laundering cases that involve the smuggling of drug and weapons. In contrast, Korean investigation authorities mostly investigate money-laundering activities that involve bribery of government officials and politicians, embezzlement or breach of trust in the big companies and public funds, and corrupt financial dealings. The investigations revolve around the issues concerning how the funds were transferred to one account to another or how the illicit funds were laundered.

In bribery cases, the people who bribe the officials are usually corporate executives, and the source of the illicit funds is the company's slush funds. Thus, the creation of illicit funds is orchestrated between a company and a financial institution, which make the investigations very difficult. Furthermore, the people who are bribed are mostly politicians or high-ranking government officials who use their power to ensure that the funds are transferred in great secrecy. This also hampers the investigation.

Recently, money laundering techniques have become more sophisticated and operate on an international scale due to active economic trade, massive capital investments from abroad, widespread use of electronic money transfers, international travel, and the liberalization of the foreign exchange market. The sophisticated techniques used by money launderers aggravate the difficult situation.

### **B. The Real Name Financial Transaction System and Money Laundering**

Money laundering in Korea is connected to the enforcement of the Real Name Financial Transaction System in August 12, 1993. Before the enforcement of the Real Name Financial Transaction System, most criminals were able to open a bank account under an anonymous name and use that bank account for money laundering activities. After the money is laundered, the bank account is discarded. But after the Real Name Financial Transaction System (hereafter referred to as the "system") was enforced, criminals were no longer able to open bank accounts under anonymous names. Thus, fake bank accounts were not used for money laundering activities anymore. But, there have been instances where criminals were able to open accounts using the identities of his or her relatives or co-workers in order to launder money through these bank accounts. In other cases, criminals laundered money by making bank accounts using forged identities by enlisting the help of directors or employees who worked at financial institutions.

Although this may sound paradoxical, the investigation authorities have faced more difficulty in tracking money-laundering activities due to this system. Before, most money laundering was centered on bank accounts registered under a fake name. Now, money laundering has taken on a new form, where money is delivered in cash or bank accounts are registered under the criminal's relative or the real identity of an accomplice. Because these types of transactions are legal and do not appear as irregular financial dealings on paper, the money laundering goes unnoticed and the bank accounts are more difficult to trace.

**C. The Size of the Underground Economy and Illegal Funds in the Republic of Korea**

The size of the underground economy in Korea is very difficult to measure. No official government institution has ever announced an official estimate of the size of the underground economy. However, several private research institutions have attempted to estimate the size of the underground economy by using several economic indicators and data.

The Korea Development Institute has estimated that the underground economy in Korea accounts for 15% of the nation's GNP.<sup>17</sup> This estimate was based on analyzing annual household spending in 1994. This analysis was conducted after the enforcement of the Real Name Financial Transaction System. The Korean Tax Research Institute and Korea University's Economic Research Institute were contracted by the Korean government to analyze the size of the underground economy in March 1995. The two organizations estimated that the size of the underground economy during 1993 was about 22% of the nation's GNP. And the Korea Development Institute and other organizations estimated that the

underground economy was closer to 37%~42% of the GNP in 1993. These estimates suggest that the size of the Korean underground economy was between \$56.25 billion<sup>18</sup> and \$138.75 billion in 1993.

The Korea Institute for International Economic Policy said in a recent report that the size of the underground economy accounts for 11%~33% (\$39.8 billion ~ \$121.8 billion) of the nation's GNP in 1998. The dollar/won exchange rate on December 31, 1998 was 1 U.S. Dollar per 1207 Korean Won.

How much money is needed to support the activities in the underground economy of this size? Since the Real Name Transaction System took effect across the nation on August 12, 1993, every citizen was required by law to use their real names for opening a bank account. Between August 13, 1993 and October 12, 1993, all Korean citizens were given a time period to transfer their money to real name bank accounts. Bank accounts opened under fake names were forbidden. Citizens and employees of financial institutions, who did not comply with the laws were fined and penalized. Thus, it was natural that irregularities and misuse of bank accounts surfaced.

Table 1 shows that 31,000 bank accounts which were opened under fake names and had deposits that totaled \$53.8 million remained without transference to real name accounts, while 26 million bank accounts which were opened under real

<sup>17</sup> As for the United States, many experts have estimated that the underground economy in the United States accounts for 10~15% of the nation's GNP. According to the material submitted to the House of Representatives Committee on Appropriations in May 1995, 83% of overall people voluntarily reported their income taxes, whereas only 36% of small business owners did so. Even less, 11 % of small business owners who mainly use cash transactions (the so-called informal traders) voluntarily report their income taxes. It is also estimated that the yearly revenue of prostitution business in the United States amount to 1.2 billion US dollars. This is more than the trading profits of Toyota. The underground economy in Italy is estimated to account for 30% of the nation's GNP.

<sup>18</sup> The exchange rate was 794 won to the dollar as of January 3, 1993 and 808 won as of December 31, 1993. For the sake of convenience in calculation, the rate of 800 won to the dollar is applied to the rest of the text if not specified otherwise. <cf. \$1: 788 won as of 1994. 12. 31., \$1:744 won as of 1995. 12. 31.\$1:844won as of 1996.12.31>

names and had total deposits of \$11.38 billion also remained without reconfirmation by real name in June 1995. The owners of the 31,000 bank accounts opened under fake names were never identified and the money remains in the banks. There were also strong suspicion that the money transferred from fake name bank accounts to real name bank accounts

was illicit money. Thus, experts estimated that the amount of the illicit funds range from \$11.43 billion(C+E) to \$19.37 billion(B+C+D+E). This estimate does not include the amount of cash that the citizens possess in their homes. Taking into consideration that Koreans yet prefer to store cash in their homes instead of saving it in the bank, the amount of illicit money is probably far larger than the official estimate.

**Table 1 Current Status of The Real Name Financial Transaction Act  
(Dated on June 30, 1995)**

(Unit: US dollars)

Real Name Bank Accounts	Total amount in bank accounts	506.8 billion (175 million bank accounts)
	Real Name Bank Accounts	491 billion (146 million bank accounts)
	Bank Accounts opened under another person's name	4.38 billion (2,969,000 bank accounts)
	Bank Accounts without an owner	11.38 billion (26 million bank accounts)
Fake Name Bank Accounts	Total amount in bank accounts	3.54 billion (631,000 bank accounts)
	Transferred to Real Name Bank Account	3.49 billion (600,000 bank accounts)
	Bank accounts that were not transferred	53.8 million (31,000 bank accounts)

## V. EFFORTS TO COMBAT MONEY LAUNDERING IN THE REPUBLIC OF KOREA

### A. General Outlook

Until recently, the Republic of Korea did not possess any direct restrictions that punished criminals engaging in money laundering activities. However, the need for measures to identify money-laundering activity came to light during the process of investigating financial crimes, bribery, drugs, and organized crime. These investigations involved the tracking down of illicit funds.

In other words, until recently, proof of money laundering was used as court evidence to convict the criminal of a felony. The money-laundering evidence was not used to confiscate the proceeds of crimes and the criminal assets or to impose a fine. Therefore, unless the criminal broke any banking laws during the money laundering process, he or she could not be pressed with criminal charges for money laundering. In addition, the illicit money could not be confiscated or be used as criminal evidence to impose a fine except the money which was directly offered to the criminals.

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But after the signing of the 1988 Vienna Convention, which spread awareness of money laundering activity, the international community gradually realized that seizure of illicit profits from criminal activity was necessary in order to prevent the spread of crime. These events coincided with Korea's campaign against abuse of power and graft. On January 5, 1995, the Special Act on Confiscation related with Crimes of Public Officials was enacted. If a public official is found to have accepted bribes, his or her profits and assets attained from the illicit dealings shall be confiscated by this law. Furthermore, any money or assets received in exchange for special favors shall also be confiscated. This special law was a progressive development but since it did not punish criminals engaged only in money laundering and not in other criminal activities, it had severe limitations.

After the 1988 Vienna Convention took effect, the Republic of Korea accepted the provisions in the convention and enacted the Special Act on the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp on December 6, 1995 and included the provision allowing the persecution of criminals engaging in money laundering activity.<sup>19</sup> This special law fully followed the agreements in the 1988 Vienna Convention. Yet, this special law also had limitations. Only criminals engaging in money laundering activities that are connected to drug trafficking (psychotropic drugs, other illegal drugs) could be punished.

Through administrative efforts after the enforcement of the Real Name Financial Transaction System, the Bank Supervisory Agency ordered<sup>20</sup> the directors or presidents of all Korean financial institutions that any employee caught engaging in any kind of money laundering directly or indirectly will be discharged and punished severely.<sup>21</sup>

As a person in charge of criminal investigations, I would like to shed light on the problems we face. Although the Real Name Financial Transaction System prevent money laundering, the system has strengthened the protection of bank secrecy and has made the investigation of illicit funds more difficult. Before the enforcement of the system, it has been relatively easy to trace bank account records with the support of the Bank Supervisory Agency or the submission of official administration documents to all financial institutions. But now, the possession of official administration documents, only allows us to confirm the existence of a specific bank account. Without a warrant, we cannot investigate the bank transaction statement and bank-related documents, nor can we trace the bank accounts related to the suspicious account or bank checks.

In the next section, I would like to explain the legislation activities surrounding the direct restriction on money laundering.

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<sup>19</sup> Korea enacted the Special Act on the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp in January 1995. Korea ratified the 1988 Vienna Convention years later in 1998, due to controversy over some provisions of the Convention, relating to international assistance.

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<sup>20</sup> Bank Supervisory Agency, Guideline for the Prevention of Financial Accident, Article 7

<sup>21</sup> Bank Supervisory Agency, Internal Regulation of Financial Institutions, Article 9

**B. Legislations for Directly Restricting Money Laundering**

As the investigation of money laundering is more closely linked to financial crimes and abuse of power and graft rather than drug-related crimes in Korea, legislation activity has focused on passing a comprehensive money laundering prevention law that will directly restrict money-laundering activity. These efforts have paid off through the selection of the “Act on the Reporting and Usage of Specific Financial Transaction Information” and the “Act on the Regulation and Punishment of Concealing Crime Proceeds” as government bills that were submitted to the regular session of the National Assembly for approval on November 21, 2000. Unfortunately, the bills were not reviewed during the regular session of the National Assembly, but the chances of passing the bill in early 2000 is favorable.

The legislation process for stronger money laundering laws was expedited by the request from abroad, that is, the pressure from the United Nations and OECD, domestic policies focused exposing abuse of power and graft, and opening of the foreign exchange market that allowed inflows of illicit funds and capital flight overseas. The following paragraphs briefly outline the major provisions of the proposed bill.

1. Act on the Regulation and Punishment of Concealing Crime Proceeds

First, let us examine the “Act on the Regulation and Punishment of Concealing Crime Proceeds”. This law was established to eliminate financial funds that support criminal activities and to maintain public order. This law restricts money laundering of illicit profits gained from criminal activity and allows special power of law to confiscate and trace illicit profits.<sup>22</sup>

This law applies broadly to certain criminal activities which are broadly selected as it follows the FATF recommendations substantially.<sup>23</sup> The predicate offenses of this law are certain crimes that involve smuggling, bribery, illegal capital flight and criminal activities that are antisocial in nature and are major crimes (felonies). (Crimes related to drugs are covered by the Special Act on the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp)

*FATF Recommendation [4] : Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalise money laundering as set forth in the Vienna Convention. Each country should extend the offence of drug money laundering to one based on serious offences. Each county would determine which serious crimes would be designated as money laundering predicate offences.*

There are generally two approaches in the way to categorize the predicate offenses of money laundering offense. In England, Germany, and France a “lump sum” approach is used to broadly categorize predicate offenses according to the length and severity of the statutory penalty. In the United States, Japan, Singapore, and other countries, predicate offenses are categorized according to a “case-by-case” approach. The lump sum approach has shortcomings because it is prone to include too many crimes as predicate offenses. Therefore, the “case-by-case” approach was adopted for this law.

<sup>22</sup> Article 1, Act on the Regulation and Punishment of Concealing Crime Proceeds

<sup>23</sup> Article 2 Paragraph 1 of the Act on the Regulation and Punishment of Concealing Crime Proceeds

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The statutory penalty of money laundering crimes is a 5-year prison sentence or less. After selecting major crimes (felonies) that carry a maximum 5-year prison sentence or more, life sentence or death penalty, these felonies were rated according to the severity of the crime, involvement of organized crimes, probability of large illicit profiteering, need for international cooperation, and the impact on the national economy. Crimes that carry a maximum 5-year prison sentence or less but fund organized crime activities was included in this rating. 35 predicate offenses were selected as a result.

The 35 kinds of predicate offenses are divided into five categories.

- (i) Felonies: Manslaughter, Theft and Burglary, Organized crime member (Criminal Law Act, Article 114, Paragraph 1), etc.
- (ii) Crimes that involved organize crime on a professional or repeated basis: Blackmail, Violence, Smuggling (import tax evasion exceeding the amount of US \$41,700)<sup>24</sup>, etc.
- (iii) Illicit profiteering of a large amount of money around legal business activities: Violating the Act on the Aggravated Punishment of Certain Economic Crimes. (Article 3: Illicit profits that exceed US \$416,700; fraud, blackmail, breach of trust) and violation of the Securities Exchange Law, etc.
- (iv) Crimes related to money laundering and crimes listed on International Treaties: Bribery of government officials, forgery and alteration of currency, forgery and alteration of official documents, forgery and alteration of securities,

- (v) bribing foreign public officials, etc. Illegal capital and asset flight with specific focus on taking advantage of the liberalization of the foreign exchange market: Violating the Act on the Aggravated Punishment of Certain Economic Crimes. (Article 4: Assets and capital flight to foreign country), Violation of the Foreign Trade Law (Article 54: Manipulation of import price), etc.
- (vi) Crimes that carry a maximum 5-year prison sentence or less but fund organized crime activities: Gambling, Prostitution, Violation of the the Customs Act (Article 179, Paragraph 3: Smuggling activities), etc.

Especially, the details of sub-paragraph (vi) is shown in Table 2.

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<sup>24</sup> As of December 2000, won is traded at the exchange of 1,200 won to the dollar.

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**Table 2 Predicate Offenses Which Carry a Statutory Penalty (of Under) Five-Year Prison Sentence**

Designation of the offense	Provision	Penalty
Advance acceptance of bribe	Article 129(2) of the Criminal Code	3 years and below
Acceptance of bribe in return for mediation	Article 132 of the Criminal Code	3 years and below
Preparation/conspiracy of counterfeiting of valuable securities, etc.	Article 224 of the Criminal Code	2 years and below
Making false medical certificate	Article 233 of the Criminal Code	3 years and below
Habitual gambling	Article 246(2) of the Criminal Code	3 years and below
Opening gambling place	Article 247 of the Criminal Code	3 years and below
Interference with an auction or a bid	Article 315 of the Criminal Code	2 years and below
Smuggling goods abroad	Article 179(3) of the Customs Law	3 years and below
Prohibition of similar activities (Opening of racing track without permit)	Article 24 of the Bicycle and Motorboat Racing Act	3 years and below
Operating business without permission	Article 30(1) of the Special Act on the Regulation and Punishment of Speculative Acts, etc.	3 years and below
Prohibition of similar activities (Opening of racing track without permit)	Article 50 of the Korean Horse Racing Association Act	3 years and below
Circulation of funds by disguising sales	Article 70(2)(3) of the Specialized Credit Financial Business Act	3 years and below

For details of the predicate offenses, please refer to Appendix A and Appendix B.

In the course of selecting the predicate offenses, inclusion of some offenses was a controversial issue. First, some suggested the exclusion of Article 8 [tax evasion exceeding 200 million won (US \$ 167,000) a year] of the Act on Aggravated Punishment of Certain Offenses from the

predicate offenses. However, it was included in the predicate offenses as the offense of tax evasion of huge sum is a serious crime and considering that it was a predicate offense in the government's draft of 1997 for an anti-money laundering act.

Secondly, whether to include Article 30 [illicit fund raising] of the Political Fund Act was a problem. With regard to this,

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various elements like the essential purpose of the Act on the Regulation and Punishment of Concealing Crime Proceeds, the examples of foreign legislation, and the standard for the scope of predicate offenses were considered. Moreover, there were concerns that inclusion of Article 30 of the Political Fund Act would undermine the political neutrality of the financial intelligence organization. And the Political Fund Act itself contains provisions setting out the acceptance of unauthorized political fund as criminal offense, and the mandatory confiscation of the illicit proceeds. For these reasons, Article 30 was not included in the scope of predicate offenses. However, this issue could give rise to heated arguments as the eradication of political corruption is an important assignment for the anti-corruption round.

Thirdly, there were suggestions to include foreign aggression, insurrection, violation of the National Security Act and violation of the Military Secret Protection Act in the scope of predicate offenses. However, this was not accepted, considering the essential purpose of the Act on the Regulation and Punishment of Concealing Crime Proceeds and the examples of foreign laws.

Fourthly, it was suggested that all of the offenses of embezzlement, breach of trust and fraud be included in the predicate offenses. Considering that this could excessively curb economic activities, economic offenses exceeding 500 million won ( US \$ 416,700) were included in the predicate offenses. This limit was set to prevent economic activities from being overly restricted, while at the same time to ensure the achievement of the essential purpose of the Act on the Regulation and Punishment of Concealing Crime Proceeds. The discussion left a room for considering the extension of the scope of economic offenses to be included in the predicate

offenses in the future.

In the following, I would like to explain some provisions characteristic of this Act. When a predicate offense and another offense which is not a predicate offense are committed concurrently, the law provides that the latter offense is included in the scope of predicate offenses as well. It is because in such a case as this, it is very difficult to identify the exact origin of the crime proceeds. It was noticed that the law could be construed as being incapable of punishing money laundering activities or confiscating proceeds of crime, when the offense which is associated with money laundering and crime proceeds is not identified for reasons of conflict with another offense not covered by the law. (The Special Act on the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp has a similar provision in Article 2 Paragraph 2.)

The law also criminalizes the act of laundering the proceeds of crime in Korea, which originated from the criminal activities committed by foreigners outside Korea.<sup>25</sup> This is aimed at preventing Korea from becoming a financial haven for criminal organizations, and to join the international effort to counter and prevent money laundering. The law clearly sets out that although a criminal activity which is included in the predicate offenses was initiated in a foreign country, it is covered by the law when it is included in the predicate offenses if it is occasioned in Korea and when it is also a criminal offense in the foreign country.

Globalization of international finance and crime has facilitated the movement of illegal funds from country to country. In such circumstance, if Korea implements its

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<sup>25</sup> Article 2 Paragraph 1, Act on the Regulation and Punishment of Concealing Crime Proceeds



second phase plan for liberalizing restrictions on foreign exchange market without measures to prevent the flow of illegal funds into the country, Korea could become a financial haven for money launderers. In order to prevent this, Korea has worked to create a financial intelligence unit which would check the flow of illegal funds in and out of the country, and made the Act on the Regulation and Punishment of Concealing Crime Proceeds to cover offenses committed by foreigners outside Korea.<sup>26</sup>

But, the law requires dual criminality for its application to crimes committed outside the country, in order to ensure legal stability for nationals of foreign countries. It would be unreasonable if a foreigner is punished under a Korean law for laundering funds derived from an activity committed in another country where that activity does not constitute a criminal offense.

In the following, I will explain what is punishable under the Act on the Regulation and Punishment of Concealing Crime Proceeds, and the penalty provided by the Act.

Under the Act, a person who disguises the fact that he or she obtained or disposed of the proceeds of crime, conceals the proceeds of crime or disguises the facts regarding the origin and cause of the proceeds of crime shall be punishable with imprisonment of five years and below or a fine not exceeding 30 million won (US \$25,000).<sup>27</sup> A person who knowingly accepts or receives the proceeds of crime shall be punishable with imprisonment of not more than three years, and a fine not exceeding

20 million won (US \$16,700).<sup>28</sup>

Under this Act, the proceeds of crime include assets derived from the commission of predicate offenses, or assets obtained as the remuneration for the commission of such offenses, funds or assets associated with offenses listed in Appendix B like flight of assets out of the country, assets derived from the proceeds of crime, and assets which is a mixture of the preceding assets and other assets mingled together. Assets derived from the proceeds of crime include assets obtained as the fruit derived from the proceeds of crime, assets obtained at the price of the proceeds of crime, assets obtained at the price of the preceding assets, and other assets obtained through the possession or disposal of the proceeds of crime.<sup>29</sup> For example, they include money obtained by renting the land received as remuneration for the murder for hire (an example of the fruit derived from the proceeds of crime), money earned by selling the land (an example of the assets obtained at the price of the proceeds of crime), stocks purchased with the money received by selling the land (an example of the assets obtained at the price of the preceding assets), and money earned by selling the stocks (other assets obtained through the possession or disposal of the proceeds of crime).

The Act on the Regulation and Punishment of Concealing Crime Proceeds requires certain employees of financial institutions to report suspicious financial transactions. Employees of financial institutions as set out under the Act on the Reporting and Usage of Specific Financial Transaction Information, which will be

<sup>26</sup> The United Kingdom, Australia, Canada and Japan have similar provisions.

<sup>27</sup> Article 3 Paragraph 1, Act on the Regulation and Punishment of Concealing Crime Proceeds

<sup>28</sup> Article 4, Act on the Regulation and Punishment of Concealing Crime Proceeds

<sup>29</sup> Article 2 Sub-paragraph 2, 3 and 4, Act on the Regulation and Punishment of Concealing Crime Proceeds

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explained in the next section, should immediately report to the competent investigative authorities when they come by the fact that assets received through financial transactions are the proceeds of crime, or the fact that their clients are concealing or disguising the proceeds of crime. The employees should not disclose to the clients or other persons associated with the suspicious financial transactions, the fact that they made such reporting to the investigative authorities. Any employee who violated these obligations is punishable by imprisonment of not more than two years, or a fine not exceeding 10 million won (US \$8,300).<sup>30</sup>

In many cases, money laundering is performed by legal persons including corporations, or by agents. Regarding those cases where a representative of a legal person, or an agent, employee or servant of a legal person or an individual violates its provisions in relation to the business of that legal person or individual, the Act provides fines for that legal person or individual as well as punishment for the actual performer of the offense.

The Act also provides an exception to Article 48 of the Criminal Code regarding the confiscation of the proceeds of crime.<sup>31</sup> Whereas the Criminal Code limits the scope of the proceeds of crime subject to confiscation to original articles, the Act on the Regulation and Punishment of Concealing Crime Proceeds expands the scope to the proceeds of crime and assets derived from the proceeds of crime. Under this Act, the property subject to confiscation includes not only corporeal property such as immovable and movable property but also all profits that are generally accepted

as economically valuable. If the property obtained from the commission of offense is converted, it is still confiscable as long as it could be identified and traced.

This Act provides for discretionary confiscation as does Article 48 of the Criminal Code. Whether to confiscate or not is determined by the judgment of the court. Whereas the Special Act on the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp adopts mandatory confiscation for reasons of the pressing necessity for the prevention of drug-related crime and for the international cooperation, and the probability of the reinvestment of the illicit proceeds into crimes, this Act adopts discretionary confiscation as the predicate offenses of this Act embrace various kinds of offenses. It would be reasonable to determine on whether to confiscate or not regarding specific cases.

And this Act provides another exception, other than the provision on confiscation system, to the Criminal Code. The Act provides discretionary collection of the corresponding value to be confiscated.<sup>32</sup> Under the Criminal Code, the collection of the corresponding value is allowed only when the article subject to confiscation cannot be confiscated. This Act provides additional circumstances in which the collection of the corresponding value can be conducted. Those circumstances are those when it is determined unreasonable to confiscate certain asset considering the nature of the asset, the situation of its usage, and the existence of the conflicting rights over the asset.

This Act also contains special provisions on the international cooperation. This Act provides the requirements and restriction

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<sup>30</sup> Article 5, Act on the Regulation and Punishment of Concealing Crime Proceeds

<sup>31</sup> Article 8, Act on the Regulation and Punishment of Concealing Crime Proceeds

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<sup>32</sup> Article 10, Act on the Regulation and Punishment of Concealing Crime Proceeds

on the international assistance given by Korea regarding the execution of a final judgment on confiscation and the freezing of assets for confiscation at the instance of a request made by a foreign country.<sup>33</sup> Unlike the Special Act on the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp which requires the relevant treaty to give such international assistance (Article 64 Paragraph 1), this Act allows international assistance provided on the assurance of reciprocity, concerning the predicate offenses listed in the Act and the offenses provided under Article 3 and 4 of the Act. It should be noticed that the Special Act on the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp is Korea's implementing law for the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, where as the Act on the Regulation and Punishment of Concealing Crime Proceeds is not. The need to promote international cooperation was considered in this Act.

In the next section, I will explain the Act on the Reporting and Usage of Specific Financial Transaction Information.

## 2. Act on the Reporting and Usage of Specific Financial Transaction Information

This Act is aimed at providing the legal framework for the reporting and usage of information on financial transactions, which are necessary for the prevention of money laundering activities through financial transactions, thereby deferring crimes and establishing transparent financial order.<sup>34</sup>

This Act provides the establishment of the Financial Intelligence Unit (FIU) under the Minister of Finance and Economy.<sup>35</sup> Under this Act, the FIU is authorized to deal with the following tasks:

- (i) Arrangement, and analysis of information reported by financial institutions, and provision of such information
- (ii) Regulation and inspection of businesses performed by financial institutions
- (iii) Cooperation and exchange of information with foreign FIUs
- (iv) Other related tasks as designated by the presidential decree

The Act requires certain financial institutions to immediately report to the head of the FIU in the following circumstances.<sup>36</sup>

- (i) If there is sufficient reason to believe that the financial asset obtained in relation to a financial transaction is illegal asset, or that the client of the financial transaction is performing money laundering activity, and if the sum of the financial transaction in question is above certain amount (to be designated by the presidential decree)
- (ii) If there is sufficient reason to believe that the client is dividing up the financial transaction in order to avoid the application of the above provision, and if the total sum of the divided financial transactions amount to a certain amount (to be designated by the presidential decree)
- (iii) If it made a report concerning a financial transaction to the

<sup>33</sup> Article 11, Act on the Regulation and Punishment of Concealing Crime Proceeds

<sup>34</sup> Article 1, Act on the Reporting and Usage of Specific Financial Transaction Information

<sup>35</sup> Article 34, Act on the Reporting and Usage of Specific Financial Transaction Information

<sup>36</sup> Article 4, Act on the Reporting and Usage of Specific Financial Transaction Information

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competent investigative authority under the Act on the Regulation and Punishment of Concealing Crime Proceeds (Article 5 Paragraph 1)

Furthermore, the Act on the Reporting and Usage of Specific Financial Transaction Information ensures the confidentiality of financial information, by prohibiting the employees of financial institutions and the officials of the investigative authorities from leaking the secrets concerning financial transactions, and from using the information for purposes other than the ones provided under the law.<sup>37</sup> The Act also places the FIU under the obligation to provide relevant information to law enforcement authorities including the Prosecutor General, the Commissioner of the National Tax Service, the Commissioner of the Customs Service, the Financial Supervisory Commission, and the Head of the National Police Agency.<sup>38</sup>

**VI. AN EXAMPLE OF KOREA'S  
MONEY LAUNDERING CASE:  
INVESTIGATION OF SECRET FUND  
OF EX-PRESIDENT ROH TAE WOO**

The following is a description of Former President Roh Tae Woo's secret fund case which is one of the most well-known successes in money laundering investigation in Korea.

**A. Background to the Launch of the Investigation**

After the Real Name Financial Transaction System came into effect in Korea on August 12, 1993, there was a rumor going around that an enormous

amount of secret funds in the stock market and private financial businesses needed to be transferred to real name, and that a great deal of money was used to lobby politicians and high-ranking public officials in relation to the secret funds. And the Korean prosecutors' office had kept its eye on this report.

In August 1995, the then Minister of Government Administration accidentally mentioned that he had been contacted by the ex president's people, who asked him to transfer the secret funds totaling 400 billion won (500 million US dollars) to real names. On October 19 of that year, a congressman of the opposition party disclosed at a National Assembly session that Former President Roh Tae Woo's secret fund totaling 400 billion won (500 million US dollars) was broken up into portions and deposited in several different bank accounts under various borrowed names. The evidence produced to back the claim was a bank record of a Shinhan Bank (Seosomun Branch Office) account under the name of Wooil Corporation, in which 10 billion won (12.5 million US dollars) was deposited. On that date, the Director of Loan Department of the Shinhan Bank confirmed that Seosomun Branch Office of his bank held three accounts under borrowed names including the account in Wooil's name and that a total of 30 billion won (37.5 million US dollars) were deposited in these accounts.

The Korean prosecutors' office immediately initiated the investigation into this case with recognition that this case is an unprecedented incident associated with corrupt accumulation of wealth by an ex president. The Korean prosecutors' office was determined to conduct thorough and strict investigation into this case, and to bring the ex president to justice for any corruption substantiated by the investigation, in order to ensure

<sup>37</sup> Article 9 Paragraph 1, Act on the Reporting and Usage of Specific Financial Transaction Information

<sup>38</sup> Article 7, Act on the Reporting and Usage of Specific Financial Transaction Information

social justice and to cut off the corrupt tie between the politicians and the businesses.

### **B. Outline of the Investigation**

On October 20, 1995, the Central Investigation Department of the Supreme Prosecutors' Office obtained the warrants of seizure regarding the suspected bank accounts, and began the tracing of funds. The Korean Supreme Prosecutors' Office interrogated the Director of the Presidential Security Service and the person who took charge of the Financial Division under the President Security Service when Mr. Roh Tae Woo was in office. They stated that Mr. Roh raised and used secret funds while in office and that as he retired from his office, the left-over of the funds was deposited into the accounts opened in the borrowed names. A total of 74 billion won (92.5 million US dollars) had been deposited into these accounts, and the remaining sum at the time was 36.5 billion won (45.63 million US dollars).

The investigation was extended to additional accounts of borrowed names opened in four banks (including the Commercial Bank) for the same purpose. Through the investigation of the bank officials, and the track of funds by the warrants of seizure regarding the accounts, the Prosecutors' Office identified 37 accounts in which Mr. Roh's secret funds were deposited. It also disclosed that as many as 500 bank accounts were involved in this case, as means to launder the funds. Parts of the funds were given as loans to the involved corporations and to purchase real estates.

On November 16 of the same year, Mr. Roh was placed under detention for charges of bribery (the violation of the Act on Aggravated Punishment of Certain Offenses). The former Director of the Presidential Security Service was arrested

for complicity in the crime. Since then, the Prosecutors' Office also investigated as many as 60 persons associated in this case, including the incumbent and former members of the National Assembly, the former Head Secretary for Economy in the Presidential Office, the officials of banks and the persons who lent their names to be used in opening the bank accounts.

On December 7, the Prosecutors' Office began investigation regarding 200 persons including the leaders and officials of corporations such as Samsung, Hyundai, Jinro, LG, and Daewoo, for having offered bribe to Mr. Roh. Regarding the money laundering activities in this case, the Prosecutors' Office investigated 200 persons including the Chairman of Dongbang Oil Corporation and Mr. Roh's brother.

92 public officials including prosecutors, investigators, and the officials of the National Tax Service and the Financial Supervisory Service were put into the investigation of this case.

### **C. Outcome of the Investigation**

#### **1. Size of the Secret Funds**

Judging from the investigation of Mr. Roh and other persons involved, the actual sum of the secret fund raised through the contribution of corporations is believed to amount to as much as 460 billion won (575 million US dollars). However, the sum of the secret funds substantiated or proved by the Prosecutors' Office was 283.8 billion won (354.9 million US dollars). Mr. Roh was indicted for receiving, from the leaders of 35 corporations, bribes ranging from 500 million won (625,000 US dollars) to 25 billion won (31.25 million US dollars), totaling 283.8 billion won (354.9 million US dollars).

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2. How the Fund was Raised

Mr. Roh was the President of Korea for five years from February 25, 1988 to February 24, 1993. As the President, empowered to establish and implement governmental policies, and direct and supervise the head of governmental ministries, he was able to influence the activities of corporations in relation to the selection of the provider of government-run services, the licensing of important businesses, financial assistance, and taxation. He had private meetings with the chairmen or presidents of corporations pretending as if he was interested in the briefing of the operation of the corporations and in hearing the opinion of the business leaders. He received enormous amount of money from these corporations, by hinting that he might exercise his powers to influence their business.

The followings are some of the examples of the way how he collected the funds from the corporations.

- (i) In May 1991, the then President Roh received 10 billion won (12.5 million US dollars) from Chairman Kim of Daewoo Corporation, at his presidential office. He received a total of 24 billion won (30 million US dollars) from Chairman Kim through seven transactions. The money was given to President Roh in return for his influence in awarding the contract for the construction of Jinhae Navy Submarine Base to Daewoo Corporation, and with request for his influence in another bidding for the construction of Wolsung Atomic Power Plant III and IV.
- (ii) In August 1991, President Roh received 10 billion won (12.5 million US dollars) from Chairman Choi of Dongah Corporation, at an office in his presidential house. He received a total of 23 billion won

(28.75 million US dollars) from Chairman Choi through six transactions. The money was given to Mr. Roh in return for awarding the contract for the construction of Asan Bay Navy Base, and with request for his influence on another bidding for the construction of Uljin Atomic Power Plant III and IV.

- (iii) In late November 1990, President Roh received 10 billion won (12.5 million US dollars) from Chairman Chung of Hanbo Corporation, at a secret place near his presidential house. He received a total of 15 billion won (18.75 million US dollars) from Chairman Chung through four transactions. The money was given to Mr. Roh with request for his influence on their Suseo apartment-construction business.
- (iv) President Roh also received a total of 25 billion won (31.25 million US dollars) from Chairman Lee of Samsung Corporation in return for his influence in Samsung's auto manufacturing business, construction business and others. He also received 25 billion won (31.25 million US dollars) from Hyundai Corporation and 21 billion won (26.25 million US dollars) from LG Corporation, by hinting, at private meeting with the leaders of these corporations, that he could give favorable or unfavorable consideration about their businesses.

3. Management of the Fund and Money Laundering

Mr. Roh made Director Lee of the Presidential Security Service to supervise the overall management of the secret fund,

and made the Director of the Financial Division of the Presidential Security Service to directly manage the deposit into and withdrawal from the accounts.

(i) *Money Laundering Through Financial Institutions*

The fund was either deposited into the bank accounts opened under borrowed names or used to purchase the certificate of deposit (CD) in order to conceal the origin or the actual owner of the fund. A total of 37 accounts were opened under borrowed names in 8 branch offices of 5 banks. 12 other accounts under borrowed names were used to move and launder the funds. They purchased the certificates of deposit worth 118.3 billion won (147.88 million US dollars). They were re-sold between December 1992 and February 1993 and deposited into six bank accounts opened under the borrowed names.

While, in October 1993 when the Real Name Financial Transaction System was in force, they opened a real name account, using the identity of an owner of a dormant account in collaboration with a manager of a branch office of a bank. 520 million won (650,000 US dollars) was deposited into this account, and then was withdrawn from it.

(ii) *Money Laundering by Purchasing Real Estates*

They also employed the method of purchasing real estates to launder the funds. Parts of Mr. Roh's secret funds were used to purchase real estates in the name of his relatives. 23 billion won (28.75 million US dollars) was given to the Chairman of Dongbang Oil Corporation (father-in-law of his son) to purchase a building in downtown Seoul and to construct a new building. 12.979 billion won (16.22 million US dollars) was used by his brother in purchasing a building in Seoul and a house in the city of Daegu. 2.35 billion won (2.94 million US dollars) was

used to purchase luxurious mansions in Seoul, which was registered under the name of a third person.

(iii) *Lending Funds to Corporations*

Mr. Roh faced difficulties in using and managing his secret funds deposited at financial institutions, as the Real Name Financial Transaction System became effective. He made his brother-in-law, Keum Jin Ho (former Minister of Commerce and Industry) to launder the funds as follows.

- (a) In September 1993, he lent 60.62 billion won (75.78 million US dollars) to Chairman Chung of Hanbo Corporation at the yearly interest of 8.5% to be repaid after 5 years. This fund had been deposited in six accounts opened at Kookmin Bank. Chairman Chung pretended as if he was the owner of the fund, and deposited the fund into accounts opened under his real name.
- (b) In October of the same year, he laundered 36.28 billion won (45.35 million US dollars) through Chairman Lee of Daewoo Corporation. The fund had been deposited in twelve fake name accounts opened at Seosomun Branch of Shinhan Bank. Daewoo Corporation transferred this fund to accounts opened under its real name, pretending as if it was the true owner of the fund. Mr. Roh lent this fund to Daewoo Corporation.

The bank officials conspired with Mr. Roh or remained silent in this process.

(iv) *Concealing of The Fund in Foreign Country*

The Korean Prosecutors' Office investigated into the allegation that Mr. Roh collected a great sum of secret fund through Yulgok project (an armament build-up project) and concealed the fund by

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depositing at the Bank of Switzerland. In February 1990, it was exposed that Mr. Roh's daughter and son-in-law managed several accounts (each holding 10,000 US dollars or below) at various banks, totaling 200,000 US dollars. The Prosecutors' Office investigated the suspicion that the fund managed by Roh's daughter was a portion of his secret fund.

On November 4, 1995, Korea made a request to the U.S. authorities for provision of information regarding the flow or origin of the above fund managed by Roh's daughter. Two days later, Korea requested the Swiss government to officially confirm whether Mr. Roh's family or relatives held bank accounts at the banks in Switzerland. Because of the limitation of international assistance in criminal investigation, and the difficulty of obtaining evidence in such case as this, the investigation regarding whether Mr. Roh concealed his fund in foreign countries did not yield concrete evidence.

4. How the involved persons were processed

On December 5, 1995, Mr. Roh, the former director of the Presidential Security Service, and the former director of the financial division of the PSS were indicted and placed under detention. The Prosecutors' Office also indicted 12 persons including leaders of corporations. 3 bank officials were prosecuted for summary proceedings.

The prosecution claimed that Mr. Roh should be subjected to life imprisonment and confiscation totaling 283.896 billion won (354.87 million US dollars) for charges of bribery and insurrection. According to the Special Act on Confiscation related with Crimes of Public Officials, the prosecution requested for the freezing of Mr. Roh's entire assets for the purpose of executing confiscation.

On April 17, 1997, after two appeals trials, Mr. Roh was finally sentenced to imprisonment of 17 years and confiscation or collection of 262.896 billion won (328.62 million US dollars) by the Supreme Court.

5. Secret fund of Ex President Chun Doo Hwan

After the investigation was initiated regarding Mr. Roh's secret funds, it was exposed that another former President, Chun Doo Hwan, who held the office from February 25, 1981 through February 24, 1988, had secretly collected funds through similar methods as Mr. Roh used.

At the result of the investigation by the Prosecutors' Office, Mr. Chun was finally sentenced to life imprisonment and confiscation or collection of 220.5 billion won (275.63 billion US dollars) for charges of bribery and insurrection on April 17, 1997 by the Supreme Court.

**VII. CONCLUSION:  
COUNTERMEASURES IN THE  
FUTURE**

**A. Providing Legal Framework**

As crime becomes more organized, globalized, and specialized, it is no longer a domestic problem within an individual country, but it is becoming a serious threat to the safety of the international community, perhaps the human race. The most effective countermeasure against these crimes is depriving the perpetrators of the crimes of all economic profits.

To make it possible, we need the legal framework to criminalize money laundering, and to confiscate illicit proceeds as thoroughly as possible. There are several approaches for providing such legal framework: 1) adding the provision in the criminal code, 2) including the provision in a special law such as a drug-



related special law, 3) including the provisions both in the criminal code and a special law, and 4) enacting a comprehensive money laundering controlling law. Each individual country would choose a pattern based on its legal circumstances.

In order for strong control of money laundering activities, the law should cover a wide scope of predicate offenses, allow extensive confiscation and provide measures to freeze the assets subject to confiscation. The law should provide for strict regulation of financial institutions and should invite their voluntary cooperation. It should also include specific provisions for international cooperation (such as extradition and mutual assistance in criminal matters). If we take these into account, the enactment of a comprehensive money laundering law is the most desirable way.

### **B. Efforts of Law Enforcement Authorities to Strengthen Criminal Punishment**

The enactment of law alone does not ensure the eradication of money laundering. Only when the prosecutors, police officers, tax officials and other law enforcement officials commit themselves to thorough tracking down the flow of illicit proceeds and the perpetrators, the efforts to provide legal framework would lead to successful suppression of crime.

However, the law enforcement authorities are facing increased difficulties in tracing the flow of illicit proceeds for various reasons. The financial institutions are strengthening the protection of bank secrecy. The businesses that the financial institutions deal with are becoming more complex and multifold. The computerization also becomes the cause for increased difficulty in obtaining evidence. And electronic trading and cash-less

transactions, and the liberalization of financial policy have increased the movement of enormous sum of money from country to country.

To effectively cope with this situation, more persons and resources should be put into the law enforcement authorities, for employment and training of experts and development of scientific investigative techniques. The budget for the suppression of crime should be considered as an investment for social welfare.

### **C. Establishment of Credit-based Society, Development of New Taxation Techniques and Increase of Public Awareness**

Money laundering would not be fully controlled only through the judicial and administrative regulation. We need to fundamentally eradicate money laundering by establishing a credit-based society where dirty money is not tolerated.

We need to develop taxation techniques to prevent the evasion of tax. And at the same time, credit dealings should be more widely accepted than cash transactions. Especially, in developing countries, efforts should be made to increase public awareness regarding the tax evasion.

In Korea, the use of credit card has increased dramatically in recent years, and credit dealing is being accepted as an effective means for trade. Korea is planning to implement a comprehensive taxation system for financial income starting from February 1, 2001. When this system is applied in Korea, it will contribute greatly to preventing transactions made under the borrowed or stolen names, which are universally used as a method of laundering money.

#### **D. Strengthening International Cooperation**

Illegal proceeds tend to flow from a strictly controlled place to a place with less regulation. Therefore, the efforts of one or two countries cannot sufficiently address money laundering problem. We need to conclude multilateral and bilateral treaties to facilitate international cooperation in criminal matters, and make domestic law to back up these treaties.

And domestic laws to implement multilateral conventions should be monitored. The monitoring team should be enabled to urge a state party to faithfully implement the convention by making reports on the result of the monitoring. The monitoring on the implementation of OECD anti-bribery convention is a good example of such monitoring.

Furthermore, the international community including the United Nations should continue to make efforts to stop the exploitation of tax haven and offshore banking centers or states.<sup>39</sup>

In this regard, I believe that UNAFEI's recent seminars and studies regarding

money laundering are very timely and desirable. I believe that its work will contribute to the establishment of a safe global community through the suppression of crime not only in Asia region but also in the whole world.

#### **Appendix A**

##### **Major Crimes (regarding Article 2 Paragraph 1)**

1. The offenses provided in the following provisions of the Criminal Code
  - (a) Article 114 Paragraph 1, Part II Chapter 5 Crimes injurious to public security
  - (b) Article 129 through Article 132, Part II Chapter 7 Crimes concerning the duties of public officials
  - (c) Article 207, Article 208, Article 212 (attempts to commit the crimes specified only in Article 207 and 208) and Article 213, Part II Chapter 18 Crimes concerning currency
  - (d) Article 214 through Article 217, Article 223 (attempts to commit the crimes specified only in Articles 214 through 217) and Article 224 (preparation and conspiracies with intent to commit the crime only in Articles 214 and 215), Part II Chapter 19 Crimes concerning valuable securities and postage and revenue stamps
  - (e) Article 225 through Article 227-2, Article 228(1), Article 229 (excluding Article 228 Paragraph 2), Articles 231 through 234 and Article 235 [attempts to commit the crimes specified only in Articles 225 through 227-2, Article 228(1), Article 229 (excluding Article 228 Paragraph 2), Articles 231 through 234], Part II Chapter 20 Crimes

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<sup>39</sup> They include Bahamas, Bermuda, Channel Islands, Gibraltar, Panamas, British Virgin Islands, Lebanon, Lichtenstein and others. (Ingo Walter, *The Secret Money Market*, New York: Harper Business, 1990, pp. 210)

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- concerning documents
- (f) Article 246 Paragraph 2 and Article 247, Part II Chapter 23 Crimes concerning gambling and lotteries
  - (g) Article 250, Article 254 (attempts to commit the crimes specified only in Article 250) and Article 255 (preparation and conspiracies with intent to commit the crime only in Article 250), Part II Chapter 24 Crimes of homicide
  - (h) Article 314 and Article 315, Part II Chapter 34 Crimes against credit, business and auction
  - (i) Articles 323 through 324-5, Article 325 and Article 326, Part II Chapter 37 Crimes of obstructing another from exercising his right
  - (j) Articles 329 through 331, Articles 333 through 340, Article 342 (excluding attempts to commit the crimes specified in Article 331-2, Article 332 and Article 341) and Article 343, Part II Chapter 38 Crimes of larceny and robbery
  - (k) Article 350 and Article 352 (attempts to commit the crime specified only in Article 350), Part II Chapter 39 Crimes of fraud and extortion
  - (l) Article 355 [provided that this article was violated by a person provided in Article 2 Sub-paragraphs 1, 2 and 4 (only including those persons who assist the persons provided under Sub-paragraphs 1 and 2 and deal with a part of that persons' task) of the Act on the Responsibility of Accounting Employees, in relation to his duties and task, knowing that the national treasury or a local government would sustain loss as a result of that violation], Part II Chapter 40 Crimes of embezzlement and breach of trust
  - (m) Article 362, Part II Chapter 41 Crimes concerning stolen property
2. Articles 23, 24 26 and 27 of the Bicycle and Motorboat Racing Act
  3. Article 179 and Article 182 Paragraph 2 (attempts to commit the crime specified only in Article 179) of the Customs Act
  4. Article 54 Sub-paragraph 3 of the Foreign Trade Act
  5. Article 111 of the Lawyers Act
  6. Article 5 of the Illegal Check Control Act
  7. Article 30 Paragraph 1 of the Special Act on the Regulation and Punishment of Speculative Act, etc.
  8. Article 622 and 624 (attempts to commit the crime specified only in Article 622) of the Commercial Code
  9. Article 93 of the Trademark Act
  10. Article 95-8 of the Futures Trading Act
  11. Article 40 Sub-paragraph 1 and Article 42 of the Child Welfare Act
  12. Article 70 Paragraph 1, Paragraph 2 (3) and Paragraph 5 of the Specialized Credit Financial Business Act
  13. Article 24, and Article 25 Paragraph 1 Sub-paragraphs 1 and 2 of the Prevention of Prostitution Act
  14. Article 29 Paragraph 1 of the Sound Records, Video Products and Games Act
  15. Article 207-2 of the Securities Transaction Act
  16. Article 46 and Article 47 Sub-paragraph 1 of the Employment Security Act
  17. Article 70 of the Act on the Control of Firearms, Swords, Explosives, etc.
  18. Article 3, 5 and 7 of the Act on the Aggravated Punishment of Certain

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Economic Crimes

19. Articles 2, 3, 5, 5-2, 5-4, 6 and 8 of the Act on the Aggravated Punishment of Certain Crimes
20. Articles 366, 368 and 370 of the Bankruptcy Act
21. Articles 2 through 4, Article 5 (1) and Article 6 [attempts to commit the crimes specified only in Article 2, Article 3, Article 4 Paragraph 2 (excluding the crimes specified in Article 136, 255, 314, 315, 335, 337 (the latter part), 340 Paragraph 2 (the latter part) and 343 of the Criminal Code) and Article 5 Paragraph 1] of the Act on the Punishment of Violence, etc.
22. Articles 50, 51, 53, 54, 58 and 60 of the Korean Horse Racing Association Act

**Appendix B**

**Predicate Offenses under Article 2**  
**Sub-paragraph 2 (B)**

- Article 25 Paragraph 1(3) of the Prevention of the Prostitution Act
- Article 5 Paragraph 2 and Article 6 of the Act on the Punishment of Violence, etc.
- Article 3 Paragraph 1 of the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions
- Article 4 of the Act on the Aggravated Punishment of Certain Economic Crimes