

GROUP 2

THE ECONOMIC CRIME INCLUDING MONEY LAUNDERING; ITS LEGAL AND FINANCIAL IMPLICATIONS

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I. INTRODUCTION

There is a strong belief among the members of Group 2 that economic crimes, including money laundering constitute a serious threat to national economies, and respective governments. Economic crimes can have a devastating effect on a national economy since potential victims of such crimes are far more numerous than those in other forms of crime. Economic crimes also have the potential of adversely affecting people who do not, prima-facie, seem to be the victims of the crime. For example, tax evasion results in loss of government revenue, thus affecting the potential of the government to spend on development schemes thereby affecting a large section of the population who could have benefited from such government expenditure. A company fraud not only results in cheating of the people who have invested in that company but may also adversely impact investors' confidence thereby affecting the growth of the economy. There have also been instances of manipulation of stock markets resulting in the loss of a substantial amount of assets of the small investors. Corruption not only results in loss of citizens' rights but also has the potential of ruining the moral fabric of the society. Therefore, economic crimes constitute a serious threat to the national economy and system of governance.

Therefore, our Group sees as vital the clear identification of incentives of economic crime on a national and international scale. There is a potential need on behalf of our members to seriously look at the efficiency and transparency of the legal systems adopted.

Being aware of the incessant increase and rich variety of forms of economic crime, the impressive sophistication of money laundering operations and techniques, the Group deems as necessary the acknowledgment of each governmental strategy, so far pursued, in order to counter the offensive of organized economic crime.

II. THE MAJOR FORMS OF ECONOMIC CRIME

The participating countries in Group 2, demonstrate various levels of performance in the criminalization of economic offences, depending on the legal systems adopted. In addition to traditional forms of economic crimes, new schemes to defraud people and governments are used incessantly by criminals to challenge the law enforcement mechanism. They are aided in their efforts by the ongoing revolution in the area of information technology. Generally speaking the fraud schemes, embezzlement, breach of trust, loan sharking, tax evasion or crimes in the fiscal area, trafficking in goods and humans, counterfeiting of currency and other securities prevail in most countries.

Some countries are faced with predominant criminal offences, like in Albania, where the law enforcement authorities need to deal mainly with tax evasion offences. In Albania, these forms of crimes are developed, due to clear deficiencies in fiscal legislation and a series of cumbersome bureaucratic procedures.

The major commercial companies that operate in oil, fuel and the construction area in this country are

illegally favoured, thanks to their consistent ties with decision-making political groupings.

The key people that work on a day-to-day basis in the fiscal and customs authorities are sometimes politically appointed, facilitating the functioning of tax evasion.

The money evaded is used to invest and expand other illegal activities or strengthen the existing ones.

Some other countries like Bangladesh or Laos have the problem of trafficking in human beings and smuggling of various commodities. In Laos, while the traditional economic offences were smuggling of goods along the borders, now there is a tendency of illegal smuggling of vehicles and other construction goods such as cars, trucks, cement, steel and so on.

Vanuatu is considered a tax heaven, and criminals cunningly use it as a base for shell companies and offshore financial centres for their illicit funds.

In Japan, in addition to corruption and corporate crimes, seemingly the situation favours the fraud scheme and loan sharking that make up the largest portion of economic crime occurring in this country. Concerning fraud, three types of crime prevail: investment fraud promising high returns, “ore ore” (it’s me, it’s me) frauds and fictitious billing. Due to technological advancement “ore ore” frauds and fictitious billing are committed using mobile phones, the internet and fictitious bank accounts.

Apart from the traditional economic offences, India has been witnessing highly organized criminal acts of counterfeiting of currency and other government securities such as registration stamps, postal stamps, etc.

III. MONEY LAUNDERING AND ITS MODUS OPERANDI

It is widely accepted that money laundering can be defined as the process of legitimizing “ill-gotten wealth”. It is an act which follows the commission of a predicate crime so as to use the proceeds of crime as if derived from a legitimate source. Thus, the process of money laundering involves disguising of illegal assets, converting them into legal gains, and removing them from access by the criminal justice system while retaining their economic value.

With the globalization of economies, the act of money laundering often involves complicated financial transactions in multiple jurisdictions; thus making it virtually impossible to trace the origin of such funds.

With the growing activities of trans-national organized crime syndicates, the laundering of criminally derived gains is fast becoming a lucrative and sophisticated business across the globe involving lawyers, accountants, bankers, etc.

The need for criminalizing the act of money laundering stems from the fact that hitting at the flow of proceeds of crime is an important instrument in hurting the criminals, especially those engaged in organized crime. People who engage in criminal activity, with the motive of seeking huge financial gains, are found to be highly vulnerable to attack on the proceeds of crime.

Criminalization of money laundering activities is, therefore, perceived to work as a threat to criminal gains, thus acting as a deterrent to criminal activities.

In some countries, which lack the respective legislation, this mechanism of money laundering moves more quickly and smoothly.

In countries like Albania, the major part of illegal proceeds is derived from trafficking in drugs and human beings at the transnational level. The huge gains profited are invested by formal means in legitimate businesses, such as construction companies and in the lubricants trade.

In Japan, a money laundering scheme is implemented through the purchasing of bearer securities, use of fictitious accounts and remittance to foreign bank account for the purpose of concealing the true ownership and origin of the money.

In countries like India, money laundering takes place through over invoicing of exports, under invoicing of imports, investment through shell companies and extensive use of hawala channels in the transmission of money.

Obviously, the process of money laundering goes through a consolidated three-tier mechanism, like placing, layering and integrating of illegal proceeds. The first stage is the introduction of money, obtained by illegal activities, into the financial system. The second stage is the conversion of money in as many banks as possible, especially abroad. The third stage is the reinvesting or integrating of this money into the economy, taking the shape of legitimate businesses.

IV. CRIMINALIZATION OF MONEY LAUNDERING AND ITS ENFORCEMENT AS A PRESSING NEED

By a thorough inspection and examination of respective local criminal legislation and the legal means at the disposal of governments to suppress organized crime, it would be reasonable to acknowledge that the legal system to counter money laundering needs considerable strengthening at the global level and a lot of work is required to tackle the menace of the effects of money laundering

In addition, the legal structures on money laundering differ greatly from one country to another since criminalization of money laundering is dependant upon the economic, social, political and psychological backgrounds that these countries offer.

Actually, we may group countries, based on a three tier assessment device, with regard to the scope of concerns expressed by them on money laundering.

First tier countries, such as Japan and Albania, have well-defined laws against money laundering. They have also set up FIUs which provides and shares relevant information on money laundering with investigative authorities.

In Japan, the Anti-Organized Crime Law came into force in February 2000. This law expanded the scope of predicate offences of money laundering, from traditional drug crime to various serious crimes.

In addition, this law provides for the suspicious transactions reporting systems for these offences, and it unifies money laundering crime information. After arrangement and analysis, the chief of the FIU is eligible to share the relevant information with investigation authorities. A Bill to revise the Anti Organized Crime Law is now under discussion at the National Diet in order to ratify the UN Convention against Transnational Organized Crime.

Second tier countries are those who have enacted or are in the process of enacting legislation to counter-money laundering. India and Bangladesh can be placed in this category since they have enacted legislation on money laundering which defines predicate offences; a suspicious transaction, etc. and seeks to put a Financial Intelligence Unit in place. However, the specialized system, to be put in place to combat money-laundering operations, will take time to bear fruit.

The third tier are countries like Laos, which are yet to give their full attention to this matter.

The enforcement of law on economic crime, especially on money laundering is becoming a serious handicap or impediment to the normal functioning of the rule of law. The level of law enforcement differs greatly among countries.

More specifically in Albania, there is challenging legislation, when it comes to the compliance with standards of major international treaties and conventions that universally cover the issues of transnational organized crime, including money laundering, but the level of law enforcement is still modest.

Several perpetrators of economic crime may be considered as “untouchable”, because they manage to waive their appearance in courts of law, thanks to their consistent relations with ruling corrupt political clans.

We have to bear in mind that the money laundering operations are obviously facilitated through loopholes in our legal systems. The whole process of placing, layering and integrating of the illegal proceeds in money laundering poses a serious threat to the integrity of national and international financial institutions. Weak central banks, existence of illegal non-banking institutions and the failure on behalf of intergovernmental structures responsible within FIU to perform adequately and professionally their vital responsibilities in detecting and preventing suspicious transactions are some of the issues which need to be addressed to make the detection of money laundering more effective.

Eventually, each country needs to seriously revise their local legal policies, in the light of relevant international engagements, in order to invoke more efficient money laundering deterrent devices.

V. THE EFFICIENCY OF NATIONAL LEGISLATION IN THE LIGHT OF THE UN TOC CONVENTION

The establishment of a reliable legal system composed of deterrent measures against organized crime, including money laundering, marks a major step forward, which many countries should take in defining their viable national strategies.

The most serious obstacles which these countries encounter in their attempts to mitigate the negative impact of organized crime on respective economies, is the lack of substantially effective legislation capable of confronting the complex nature of various crimes, including money laundering.

The legislative body in each respective country should pay full attention to enact laws that are up-dated with the latest tendencies of organized crime and the most recent developments on *modi operandi* in money laundering. This is to say; at least countries should define a long list of predicate offences that are likely to put in motion the money laundering process.

Confiscation and seizure instruments should be in place as an effective instrument to dismantle the substance of such offences. In addition to that, the countries should be aware that without an appropriate international cooperation mechanism and mutual assistance instruments, no positive result, in the fight against organized crime, will be yielded.

Therefore, it is imperative for all countries to further encourage the instalment of a system of norms which operates in a dynamic way in the common interest of the states sharing the same concerns and problems.

VI. THE PREDICATE OFFENCES

Generally speaking, the countries share different approaches with regard to the legislation on predicate offences. The long list approach is the predominant thesis. The countries that advocate the long list approach reason that if the threshold approach is taken the scope of predicate offences will be too wide. Therefore the offences that have a possibility of generating illegal proceeds should be listed.

The sources of law that cover the list of predicate offences are different in the countries. Albania exposes this list of predicate offences through the Penal Code. Six sections in this Code deal with the various legal nature of predicate offences. There is a severe penalization strategy for the commission of these predicate offences considered as serious offences, where the minimum level of punishment is 5 years. The money laundering offence is foreseen in this code as an offence with different levels of punishment, depending on seriousness, the level of cooperation and the danger to the economy and society this offence entails.

India follows the list approach for identifying the predicate offences for money laundering. The list includes offences committed under the Indian Penal Code and covers offences committed against the State, body and property; The Narcotics Drugs and Psychotropic Substances Act 1985; The Arms Act 1959; The Wild Life (Protection) Act 1972; The Immoral Traffic (Prevention) Act 1956; and The Prevention of Corruption Act 1988. The Indian law on money laundering broadly covers the predicate crimes identified in the UN Convention on Trans-national Organized Crimes.

In Japan, predicate crimes, other than traditional drug related offences which are listed in a special law on

drugs, are defined in the Anti-Organized Crime Law, Article 2. Predicate crimes are certain crimes provided under approximately 70 different laws including the criminal law, stimulant drug control law, and immigration-control and refugee-recognition law. For example, murder, fraud, counterfeit of currency, crimes related to firearms, habitual gambling, robbery, distribution of indecent materials and collective illegal immigration are some of the predicate crimes.

In Bangladesh, the predicate crimes are defined in Penal Code-1860. For example, cheating conduct, such as cheating by impersonation, etc. Bangladesh backs the idea of a long list of predicate offences.

Laos has no money-laundering Act. The traditional forms of economic crimes, such as fraud, embezzlement and breach of trust are taken care of in the Penal Code. The Laos government is currently drafting a money laundering law and will submit it to the next National Assembly. This law will be in conformity with the UN conventions which Laos has already ratified such as: The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances and The United Nations Convention against Transnational Organized Crime.

VII. CONFISCATION AND SEIZURE MEASURES

Confiscation and seizure instruments are a potential means in the hands of the prosecution authorities to suppress the substance of crime. However, to make them effective, it is imperative that broad powers are stipulated in the laws so as to effectively deal with the incidence of proceeds of crime.

In Albania confiscation and seizure procedures are in place in their Civil Code. The spirit of this procedural law doesn't give full and lengthy powers to the prosecution office in this matter. In such cases a heavy onus of proof lies with the prosecution to satisfy the necessity of granting confiscation and seizure orders by the court, even the guilt of the subject must be proved- i.e. the convicted person has played an active role in achieving the common goals (laundering the illegal proceedings) in a structured organized group.

In India, the Prevention of Money Laundering Act 2002 empowers the Enforcement Directorate to investigate crimes of money laundering. The Director or other officers of the Directorate can attach property, believed to be proceeds of crime as per the schedule, for a period not exceeding ninety days. Similarly, these officers can search premises, break open lockers, etc., seize records or property and search and arrest persons.

The Act provides for setting up of Adjudicating Authorities for adjudicating cases related with money laundering. If after a hearing the Adjudicating Authority decides that any property is involved in money laundering, it will confirm the attachment pending proceedings relating to the predicate crime before a court. Once the guilt of the person is proved in the trial, an order confiscating the property shall be made. When a person is accused of having committed the offence of money laundering, the burden of proving that proceeds of crime are untainted property is on the accused. An appeal against the order of the Adjudicating Authority will lie with the Appellate Tribunal.

Japan has an advanced system of confiscation and seizure measures. In addition to the Penal Code provisions which provide for confiscation measures, the Anti-Organized Crime Law stipulates that confiscation and collection of equivalent value orders will be made at the same time as the sentence for the main conviction is given.

In addition, the law allows confiscation of not only tangible items and financial credits but also proceeds derived from criminal acts and this law allows attachment of the above stated items in order to ensure confiscation and collection of the equivalent value.

According to the Criminal and Criminal Procedure Law of Lao PDR, the prosecuting and investigative authorities can issue an order seizing illegal proceeds during the investigation of economic crimes, including Money Laundering.

In Bangladesh, it is the authority of the Court to order confiscation, freezing or forfeiture of proceeds of

crime under the Special Powers Act 1974, The Negotiable Instrument Act 1881, The Anti-Corruption Act 1957, and Money Laundering Prevention Act 2002.

In Vanuatu, The Serious Offences (Confiscation of Proceeds) Act 1989 deals with confiscation and seizure of the proceeds of crime.

VIII. MUTUAL LEGAL ASSISTANCE

International cooperation is essential in identification, tracking and prosecuting of illegal proceeds of crime.

Albania has implemented Reciprocity Treaties with neighbouring countries, like Greece, Italy and Macedonia, for exchanging vital information on matters related to the dynamic conversion of illegal proceeds.

The Prevention of Money Laundering Act 2002 provides for mutual legal assistance in India by making enabling provisions for agreements with foreign countries to enforce this Act, assistance to a contracting State in the investigation of an offence, reciprocal arrangements for processes and assistance for transfer of accused persons and attachment, seizure and confiscation of property in a contracting State or India.

In the case of Japan, the basic law covering mutual legal assistance is the Law on Mutual Legal Assistance in Criminal Matters. In addition, the Anti-Organized Crime Law stipulates mutual assistance in the execution of court orders for confiscation, collection of equivalent value and securance in criminal cases occurring in foreign countries and this law also stipulates the provision of information regarding suspicious transactions to foreign authorities.

Lao PDR made extradition treaties with Vietnam in 1999, Thailand in 2000, and China and Cambodia in 2001. To tackle crime, including Money Laundering, it is necessary to build cooperative relationships with other countries, as well as to enact laws regarding mutual legal assistance in criminal matters.

In Bangladesh, The Money Laundering Prevention Act 2002 provides for mutual legal cooperation to other countries upon request.

In Vanuatu, The Mutual Assistance in Criminal Matters Act 2002 deals with mutual legal assistance.

IX. ISSUES UNDER SCRUTINY

The members of Group 2 consider that the extent of problems encountered with economic crime, including money laundering, has grown in recent years.

There is a general consensus on the sources and nature of problems that organized economic crime, including money laundering, expose each country.

The trend of increasing scale of organized economic crime, including money laundering, is strongly believed to be a direct consequence of the following major causes.

1. The failure of national legislation to meet the up-dated standards and norms on fighting organized economic crime, including money laundering.
2. Inadequate level of local legislation to resist the offensive nature of organized economic crime, including money laundering.
3. The lack of preparedness of the present financial - institutional framework in many countries and ineffective investigative practices to deal effectively with the complexity of the nature of money laundering.
4. The poor performance of law enforcement agencies, on account of the low level of authority and means provided to them.

5. An ineffective system of mutual legal assistance has been found to be another factor hindering the tackling of transnational organized economic crime, including money laundering.
6. Fictitious bank accounts are often used as tools to commit fraud and money laundering, and cell phones and the internet are frequently used for committing fraud and drug offences. Therefore, such tools that are often used to commit the above crimes need to be controlled properly. In addition financial institutions, telephone carriers and internet service providers should take responsibility for preventing their services from being misused as criminal tools.

X. FUTURE CHALLENGES

Group 2 concludes that joint efforts made by each country, in developing a reliable strategy of a vigorous domestic enforcement of law as well as international cooperation, is the most effective means to cope with problems related to economic crime, including money laundering. It would also be beneficial to adopt some of the following measures:

1. First and foremost it is important that the number of state parties to the TOC convention should be increased.
2. Given the fact that the TOC convention gives due consideration to diversities of the legal and financial system of member states and allows each state party to exercise discretionary power to a certain degree, it is feared that those committing economic crimes, including money laundering, may target countries with lenient legal provisions and international criminal organizations may end up setting a strong foothold in these countries, even if every State accedes to the Convention. In order to dispel such concerns States Parties should be encouraged to apply article 34 paragraph 3 of the TOC convention which stipulates “each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime”, since a thorough revision of the convention, increasing the mandatory provisions, is not possible in the near future.
3. Borderless criminal justice is essential in order to deal with borderless economic crimes including money laundering. Group 2 considers it necessary that any sense of turfdom embedded in the criminal justice system of each country be removed.
4. It should be recognized that information sharing is important in order to suppress cross-border crimes. Items of information to be shared are as follows: suspicious transaction reports; information relating to offences and suspects modus operandi and others. Despite some countries’ efforts to exchange information on economic crimes, including money laundering, it has become more evident that “information sharing” instead of information exchange is more necessary.
5. To have a unified standard for Criminalization of common criminal offences occurring in each country. Grant authority for universal jurisdiction on the above offences to all countries.
6. The adaptation in local legislation of legal criteria applicable to an increase in scope of predicate offences, which would enable the successful combating of organized economic crime, including money laundering.
7. The establishment of viable practices on confiscation and seizure measures, through the renewed legal concepts that enhance the powers of prosecuting authorities.
8. The financial institutions, telephone carriers and internet service providers should take responsibility for preventing their services from being misused as criminal tools. In view of this, the following will be in order:
 - (a) Reinforce personal identification in financial institutions through know your customer identification norms. Impose sanctions on financial institutions when this is neglected. Criminalize the selling, purchasing and transferring of bank accounts in the case of Japan.
 - (b) Create regulations to prevent the use of cell phones for criminal acts. Impose sanctions on cell phone companies when the above regulations are violated.
 - (c) Create regulations to prevent the use of the Internet for criminal acts. Impose sanctions on Internet service providers when these regulations are violated.

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9. The proper attention should be given to the establishment of mutual legal assistance practices, through the means of legal and political instruments. Frequent informal correspondence between officials in charge should be encouraged.
10. The development of high expertise within each FIU is crucial in fighting economic crime, including money laundering.
11. Conducting academic workshops at the local and broader level, in addressing the interactive and interrelated matters exposed in the routine activity of the responsible financial and non-financial institutions and independent professions.
12. Intensive publication through the mass-media or other sources of the issues and concerns, relating to the personality and dynamic of organized economic crime, including money laundering.

A strong commitment to the goal of establishing a regime of measures incorporating the above will go a long way in building a society free of crime.