

C. Panel 2

Case-based Discussion on Economic Crime

Moderator: And that gives me the pleasure of introducing to you the lady on my left, Mary Lee Warren. And I must say that it is a great honour and privilege for me to sit here next to Mary Lee. She is a high-ranking official in the Department of Justice in the Criminal Division of the United States of America. She is the Deputy Assistant Attorney General and has been for the past 12 years. And before that she had a, I think, very difficult but also very interesting job in the United States Attorney's Office in the southern district of New York where she was the Assistant United States Attorney for 11 years. And she has also dealt with both drugs and organized crime. She will now be moderating the question of the hypothetical case. And Mary Lee, it's my pleasure to hand over to you.

Sub-Moderator: Good afternoon, and I thank our Moderator for that introduction.

Drawing upon the very useful presentations and interventions so far this afternoon, we'll now proceed through a hypothetical case to further describe the threat of economic crimes, and then draw out possible practical measures and mechanisms to prevent or at least reduce opportunities for such crimes. We'll then offer an array of investigative and enforcement options to target and attack such crimes when they are found to occur.

In the broadest macro perspective, we are reminded that large-scale economic crimes can have a serious, if not devastating, impact upon a country's economy and financial stability. Such large-scale economic malfeasance can be crippling to economies in the developing world.

At the same time we must consider in a more personal context the seemingly momentous harm that can be suffered by individuals due to economic crimes, such as consumer fraud. Our hypothetical case today employs a consumer fraud scenario. Consider the real and devastating suffering that can result from such crimes, an impact suffered often by the most vulnerable of our citizens, the elderly and others on fixed incomes.

With that as the briefest of introductions to our excursion today through the realm of economic crimes, I now have the pleasure of introducing the Panellists for this next section of our workshop, experts each one and drawn from representational regions worldwide.

Our first Panellist I'd like to introduce, sitting directly to my right, is Nina Radulovic, Counsellor from the Republic of Slovenia for the Commission for the Prevention of Corruption. She currently serves as Counsellor Legal Advisor for the Commission for the Prevention of Corruption in Slovenia and has been working for the Slovenian Anti-Corruption Unit from its establishment almost four years ago. She was the head of the Slovenian delegation for the negotiation for the UN Convention against Corruption.

Moving next along our line of Panellists, beyond our Chairman today, we have Justice Anthony Smellie, Chief Justice and Mutual Legal Assistance Authority for the Cayman Islands in the Caribbean. Anthony Smellie has been a Justice for 12 years and Chief Justice in the Caymans for seven years. The Cayman Islands government recently reported to the OECD that this island nation is recognized as one of the leading offshore centres offering, among other advantages, a highly developed and sophisticated legal system and an independent and respected judiciary and judicial administration. Chief Justice Smellie ensures that these responsibilities are fully realized in the Cayman Islands.

Our next new panel member is Felix McKenna. He holds the statutory position of Chief Bureau Officer, Detective Chief Superintendent in the Criminal Assets Bureau in Ireland. He has over 30 years' service in the National Police Force, principally in the Detective Branch and he has wide experience in investigating crime in Ireland. Since 1996, he has worked in the Criminal Assets Bureau in the identification and tracing of the proceeds of criminal activity. All high court applications under Ireland's Proceeds of Crime Act of 1996 are taken in his name.

And finally, our final Panellist, our next to last individual on the stage today, is Kwok Man-wai, Tony, Former Deputy-Commissioner and Head of Operations, Independent Commission Against Corruption in Hong Kong. Mr. Kwok has 36 years' law enforcement experience including nine years in the Hong Kong Customs and 27 years with the Hong Kong Independent Commission Against Corruption. Mr. Kwok joined the Independent Commission as an Investigator shortly after its inception in 1975, and by 1996 had been appointed as the Deputy-Commissioner and Head of Operations. He retired in October 2002. Since his retirement he has been providing

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anti-corruption consultancy services to many countries in Asia and Africa.

With that introduction of our new Panellists, let me continue and introduce the hypothetical case. We'll be doing this through a simplified PowerPoint presentation,¹¹ and through this pictorial and sometimes if not cartoon-like account, I believe we'll be able to state the case and set the stage for our issue discussion that will follow.

As to the hypothetical case, once upon a time, in a country called Xanadu, there lived a Mr. Alan who was a manager of a bank, Finebills Bank in Xanadu. Also in Xanadu, we find Mr. Banner who sold real estate for Kondo Incorporated, a Xanadu business. Kondo Incorporated was not doing well financially and Mr. Banner contacted his old friend, Mr. Alan, to request a \$1 million loan from Finebills Banks. Mr. Alan granted the loan without any collateral from Kondo Inc., a violation of the bank's own regulations, and with Mr. Alan's knowing that there was a possibility Kondo Inc. would not be able to repay the loan.

Three months after granting the loan, it was clear that Kondo Inc. could not repay. Mr. Alan was looking for his money. Mr. Banner said, "Do not worry, I have a plan to get the cash".

Mr. Banner, a bit desperate, contacted a close personal friend, Miss Chung, a resident of tropical Youngland, yet another country. Mr. Banner explained his cash flow problem and asked if Miss Chung had any helpful ideas to solve this problem.

She had a quick and positive response. She would set up a "shell" company, or a fictitious company, in Youngland, where she lived, would call this company Lownet Inc., and use this as a vehicle in a consumer fraud scheme. The scheme involved placing an ad over the Internet. The ad promised quick cash, enormous profits; it sounded too good to be true because it was too good to be true.

In the end, the ad said, all you have to do is to purchase an introductory videotape for \$60, and indeed the payment to Finebills Bank for those videotapes was the source of the funds in the fraud as it was planned. Miss Chung's plan was agreed to by Mr. Banner and also Mr. Alan from the bank.

The plan included a scheme to allay any concerns of unsuspecting consumer victims. Miss Chung would pretend to be a Miss Petal in response to any telephone inquiries generated by the Internet ad, and she offered a means for the consumer victims-to-be to confirm the financial soundness of Lownet, the shell company in the scheme.

And to that end, re-enter Xanadu bank manager, Mr. Alan, who would then play his role in the plan giving assurances about Lownet's financial soundness on behalf of Finebills Bank, convince the unsuspecting victims who sent in a total of \$5 million to Lownet for the worthless videotapes.

But there was more to the plan. In order to move and conceal the money sent in, and to this end Miss Chung learned how Finebills Bank in Xanadu disposed of its records. They disposed of the bank records by simply throwing the records in their trash bin behind the bank. She sorted through some of this trash and recovered financial records listing personal identification information of Finebills' banking customers.

In the meantime, she opened a bank account in Youngland for the shell company, Lownet, as part of the larger scheme.

Unsuspecting customers responding to the Internet ads sent in their money to the Lownet account at Finebills in Xanadu. Five million dollars of that money was then transferred to the new account for Lownet in Youngland at a different bank, Goldfingers Bank. Again, it was a total of \$5 million sent to this account in tropical Youngland.

Typical of schemes of this sort, Miss Chung's plan was to keep the money moving and to disguise it using the stolen bank customer identification information. She had her accountant, Miss Dee, assist in opening 15 new accounts in a bank in yet a third country; we'll call it Zeitstaat. Miss Dee, a professional, was living and working in that third country, Zeitstaat.

¹¹ See Part I of this report. For the complete text of the hypothetical case, see Annex B of the document A/CONF.203/13, also contained in Part I of this report.

We'll stop the progress of the economic crime there and leave the next chapter to tomorrow's workshop on money-laundering. In a series of discussion topics on criminal liabilities of the players here, possible liabilities of legal persons, conspiracy, use of shell corporations and the like, we'll review these various topics through a discussion of issues presented by our new Panellists.

Our first issue now for the discussion relates to the new economic crimes. We have new crimes and we have some new tools as we focus on economic crimes in the information age. Criminal justice authorities around the world have learned and are learning the challenges of economic crime today in a time of globalization and international connectivity. They are greatly more sophisticated crimes; their scope is much larger, and the victim pool is greatly expanded.

At the same time, we're asking the question, can the vulnerabilities of the information age also be summoned as strengths in uncovering and attacking such crimes? And to begin our discussion I'm going to call on Felix McKenna from Ireland to give us some insights into the overview of this kind of crime and its attack.

Mr. McKenna:¹² Good afternoon. Thank you, Ms. Moderator and Chairman. It's my pleasure to give you a few thoughts in respect of how organized crime, and particularly the individuals who are involved in economic crime, have used and corrupted the information technology systems that we have throughout the world to benefit their own cause.

Many, many times ago, the new crimes and the new tools, the new crimes are committed against computers and the IT networks which present new opportunities to criminals and the new challenges that law enforcement agencies have like hacking and viruses, denial of the services, and attacks on the websites. It is not an unknown feature if your Internet is switched on to be contacted and approached on the system in respect of your private banking details. Again, it's by bogus institutions trying to elicit your own identifications. Old crimes and the new tools, traditional crimes supported by the use of the Internet and new technology, such as fraud, blackmail and extortion, paedophilia, identity theft, cyber stalking, and other crimes that organized individuals participate in, and they take full advantage of the IT world.

High-tech crime has become phenomenal and it's growing over the last number of years. Computers, and particularly the Internet, provide great benefits to each and every one of us, however, there's a real threat that criminals will exploit these mediums and turn the tool designed to benefit everybody throughout the world into a tool to help themselves commit crime.

Now, a crime that's renowned to everybody throughout the universe is 419 frauds. Sometimes they are referred to as West African or Nigerian fraud letters. This is a type of economic crime that involves the fraudsters focusing in on the victims through the Internet. They will approach them, send them many, many letters, give them a hard luck story about monies that they have inherited and they are unable to invest in legitimate sources, and they encourage the victims that they approach to give away their, shall we say, sacred information like banking details that allows them to deposit monies into bank accounts in a variety of locations. So therefore, that is one particular criminal enterprise that values an IT technology to their great advantage.

In perspective, my own country, and in Ireland, the analysis of where IT fits in, we have in Ireland a computer crime unit that's based in the fraud squad in Dublin. And the activities that they have been involved in for the last number of years clearly shows that the use of technology to facilitate criminal activity has increased. This is reflected by the number of computers that we seize and search and ask the computer crime unit to examine.

I would say that a number of years ago, the only time computer crime units were called in to assist major investigations were in investigations related to terrorism or child pornography. But now that facility is a requirement in nearly all major investigations, particularly if you have money-laundering, computer misuse, terrorism, deception, drugs, blackmail, copyright, trademark and forgery and major frauds in themselves.

And let me just for one second develop on something on how important it is for flexibility and cooperation in investigating an economic crime like what we have in the case study.

¹² Talking points submitted by Mr. McKenna are contained in Part III, B of this report.

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Recently, I assisted a number of other jurisdictions to look at assets that were secreted in Ireland by a number of bank accounts which had been obtained from victims throughout the world from a variety of countries. And the big issue at the end of the investigation was the return and repatriation of the funds to the victims and the identification of the victims themselves. There's an enormous amount of our economic major investment frauds the victim will have lost monies, but they will be very reluctant to come forward and identify that he has been the victim of crime. Thank you.

Sub-Moderator: Have you in Ireland ever been able to identify or calculate the possible number of victims involved in any of these frauds?

Mr. McKenna: In a recent case that I assisted in, the victims amounted to over 500 people and they were spread all over the world between Australia, back into America, England, Ireland and a variety of places around Europe. The monies that were generated amounted to in excess, in America, of \$20 million. In Ireland, we froze in that case 8 million Euros, and in Guernsey there was approximately 6 million secreted away there in a bank account, and a number of other bank accounts in England were also being used. In that particular case itself it involved a huge amount of victims. We identified, I think, about 100 victims out of the 500. They came forward voluntarily because they had large amounts of money invested; the persons with modest amounts of money did not come forward.

Sub-Moderator: And so that was one crime investigated in your bureau. I'm sure you investigate many, and there are bureaus throughout the world doing the same. So the total number of victims must be incalculable.

Mr. McKenna: I'll agree with that.

Sub-Moderator: If we could just quickly turn to Tony Kwok from Hong Kong, and in particular, to round out this overview, if you could talk about the relationship between corruption and these types of crimes.

Mr. Kwok:¹³ Thank you, Ms. Warren.

Firstly, I have a confession to make! While Felix is an expert on economic crime, I am not! I do know a little bit about tackling corruption, having had 36 years' law enforcement experience and I spent 28 years at the Hong Kong Independent Commission Against Corruption (ICAC), in investigating corruption. When I was the Head of Operations there, I actually had 900 investigators assisting me in investigations, and our case load was usually over 1,000 at any one time. And of that over 1,000 case load, invariably there are many which are corruption-related economic crimes, and this was how I learned about economic crime.

So my professional instinct, when looking at this case study, is to look for the corrupt involvement. I just wonder how many of you would appreciate the potential area of corruption involvement in this hypothetical case. How many instances of corruption involvement can you identify? One? Two? Three? For me, I identified five possible areas of corruption involvement.

If you look at the first area, when you have a banker, Mr. Alan, giving a US\$1 million loan to a Mr. Banner without any collateral. Do you really think that he did it for a friendship purpose? Most unlikely. So he was most likely to have received some personal advantage by abusing his position. That personal advantage may be in terms of cash, may be in terms of a gift. We have instances in Hong Kong where a bank manager received a Rolls Royce as a Christmas gift from a businessman. So do you say this is a Christmas gift or do you say this is a bribe? So this is the first instance.

When you go through the case, Miss Chung needs to set up a shell company on this little island. Very often when you set up a shell company you need the professional assistance of a law firm or an accounting firm, and the staff would be delegated to assist him. The staff may well know that this shell company is set up for an illegal purpose, and in order to keep him sweet, Miss Chung would most likely give him some advantage in return for assistance in offering his service for setting up a shell company. So this is the second area of possible corrupt involvement.

¹³ Talking points submitted by Mr. Kwok are contained in Part III, B of this report.

In the third area, where the identity theft was obtained through stealing or getting the information from the rubbish bin of the bank. I think this is one possibility, but more likely than not, in my experience in Hong Kong, is that you usually can obtain this kind of information from the bank staff who steals such information and sells it to these criminals. And unlike the scenario mentioned by Don in Canada, in Hong Kong this is clearly a corruption offence committed by the bank staff if he sells this confidential or personal information in return for advantages.

And the same applies, in fact, when you talk about the credit card. If you have a restaurant waiter getting your credit card who then copies the credit card information with a skimmer. By the end of the day, his skimmer will have skimmed about 100 pieces of information of the customers and he can sell it to the credit card criminal gang for a lot of money, just for the card information. But we prosecute them for corruption.

And then when we go further, you have Miss Chung opening a bank account using this kind of stolen information with the Goldfingers Bank. And more likely than not you have the bank staff who failed to exercise due diligence, helped her to open this account, probably knowing this is for an illegal purpose or for a money-laundering purpose, and in return obtains an advantage from Miss Chung. Again, the bank staff committed a corruption offence if it was in Hong Kong.

And then you go even further where Mr. Alan is abusing his official position and giving a false guarantee to those who make the telephone inquiry, and in return he got the advantage, he also commits a criminal corruption offence if it is in Hong Kong.

So the first message I'd like to share with you is when you investigate or when you deal with economic crime, you must not forget that there is possible corrupt involvement. But the prerequisite is that you must ensure that in your country private sector corruption is a criminal offence. Thank you.

Sub-Moderator: Thank you for the overview and for the special insight that one must always be alert to the connection with corruption.

Now let's move swiftly to issue two, preventive measures. Clearly, if we can prevent these crimes we're in a much better situation than if we have to later investigate and enforce them. If we can prevent them before the victims suffer any harm, we have done a greater good.

First, I'd like us to focus on individual entities in the private sector and in government entities. What are the internal controls that can be applied to those individual entities? And then let's focus, as a second part, outside that on government controls or regulations that can give us additional preventive protection.

To begin on the individual entities, I would like to ask Nina Radulovic from Slovenia to help us.

Ms. Radulovic:¹⁴ Thank you for giving me the words.

I would like to start with a question. Why do you keep your doors locked? This is just pure and simple prevention and such kind of prevention is also possible within the private and also the public sector.

We can improve integrity-based management that relies on incentives and encourages good behaviour. As we have seen, Mr. Alan, from our case, he just by self-dealing breached the duty of care, the duty of loyalty to his employer and also a business judgement rule. If we focus on the public sector, it deals with resources entrusted to it not owned by it. And if we focus on private sector entities they have obligations to the investors.

So prevention is possible in a very simple way. This is to revise systematically and in an organized manner internal organization, the decision-making process. Of course the starting point would be creating a very good working environment that encourages discussion and also fosters open communication. And then it might be very wise to employ the know-your-employee principle. This would mean that you should check references, that you should check the personal integrity of the person you are going to employ. In our case, Mr. Banner might not pass this test.

¹⁴ Talking points submitted by Ms. Radulovic are contained in Part III, B of this report.

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After defining the rules, internal rules, just their existence is not enough. Your employees must know the content of the rules, and what is the most important is to use them in practice. But as we have seen, our Mr. Alan also fails to do.

A clear division of tasks would be very important and the four eyes principle should be fully applied. That means that you divide between decision-making and supervision. According to economic crime surveys, up to 86 per cent of all economic crime detection came from audits and whistleblowers.

And now I would like to introduce this *terminos tecnicos*. Whistle-blowers are informants basically. That means that they disclose wrongdoing or misconduct. Creating safeguards for whistle-blowers, protection of them after they disclose such misconduct on a national level is very important, but anyhow, the Finebills Bank in our case itself should protect its employees that might disclose wrongdoing.

Besides a good working environment, as I already mentioned, not all disclosures should be protected but almost all those that are made in good faith and with reasonable belief. Disclosures might be made to a legal advisor or a supervisor or so on, but I believe that Mr. Kwok is going to explain whistle-blower protection in detail.

I would like to finish with maybe not a warning but exchanging of best practices and experiences, including problems among private sector entities themselves and among the private and public sector, is very important. And in our case it might be that consumer fraud would not happen.

And as a last consequence, this also might bring us to a greater harmonization of legal assistance. I would like to finish maybe with this. Thank you.

Sub-Moderator: Thank you. Ms. Radulovic has given us the best possible segue talking about the importance of cooperation between the private sector and the public sector, for Tony Kwok now to explain a little more about what are model governmental strategies in integrity-building.

Mr. Kwok: Thank you. Again, from my experience in fighting corruption, one very important conclusion is that there is no single solution in fighting corruption. If you want to successfully fight corruption you need a coordinated and comprehensive strategy. My recommended comprehensive strategy is what I would like to say is a four-pronged strategy. It means you fight corruption through deterrence, you fight corruption through prevention, you fight corruption through education, and fourthly, very importantly, is through partnership.

So I have met people from other countries who told me, "I am very concerned about economic crime". So you set up an economic crime bureau. This is good but this is not good enough if the economic crime bureau is solely interested in the investigation and you do not take up the important role of prevention and education and partnership.

So just to share a few points. Deterrence. Deterrence is not merely that you lay down in the legislation that there's a severe penalty for committing the crime. This is not good enough. The criminals don't really look at the book and see what would be the sentence they might receive. They calculate their risk. They look at what is the chance of them being caught. So the importance is that you must have an effective law enforcement capability so that economic crime and corruption is a high risk crime. So the criminal knows that if he is trying to commit this crime there is a good chance he will get caught. Never mind about if he gets caught, he gets a life sentence. This is not that important as a deterrent effect.

Secondly, prevention. If you sum up prevention, it's really two things: one is system, the other is the people. The system I'm sure you know them all. How do you enhance the system? How do you enhance the procedure? How to make sure there is a proper supervision system. How to make sure there is a check and accountability on the discretion and power of the office holder. How to make sure everything is transparent. So that's the system.

The people are probably more important, how to build up staff integrity, and Hong Kong has 30 years of experience in trying to build up a culture of integrity in the public as well as the private sector. For example in the bank, in the banking sector, we learn it from hard experience. In the years of the eighties, we had five banks actually collapse one after the other. And then one of the banks happened to be the third-largest bank in Hong Kong. And why did it collapse? It's because it had all these bad loans of over 400 million US dollars. All these bad

loans are just like this case where the bank managers and directors could not care less in giving out the loans in return for bribes. So we learned it in a very hard way.

In the banking sector we now have a good partnership with the institute of the bank, with the banking association, with the banking regulatory body. For example, we produced a practical guide book for the bank managers telling them exactly what they should do, what should be the code of ethics, and then we run seminars for the bank managers to make sure they know, they are aware of the evil of corruption or illegal practice, the need for honesty and what they should do and should not do, when they should report if they find anything suspicious, et cetera, et cetera, all in the book. So this is a very good typical example of an excellent partnership between the government and the business sector.

And another good example is that we, together with the business community, all these chambers of commerce, we set up an Ethics Development Centre which gives out the resource material, which assists the companies in setting up their own code of ethics for the staff. So in Hong Kong, over 70 per cent of our companies have a code of ethics for their staff. And the code of ethics should be very comprehensive. So it covers not only what they should do or not do, for example, particularly in the area of gifts, when they can receive a gift and when they cannot receive gifts. On the area of entertainment: entertainment always is the starting point to corruption; there's no free lunch! And then the most important aspect is the conflict of interest: when they have a conflict of interest they must report; everything must be transparent. So these are the things that should be laid down clearly in the code of ethics. So this is the sort of thing, again, a very good example of the government working together with the business sector in order to build up integrity in the business sector.

And of course you never forget the general public. And so we have ethics education starting from kindergarten all the way up to university. We created a cartoon figure which is the symbol of honesty.

And we make great use of the media, using the media not only as a means for publicity, but also we have a lot of media commercials. We have television dramas all in a soft way to educate the public about the importance of honesty, integrity, and to get their support to fight corruption and economic crime.

So for all you senior government officials, I think the important thing is that when you look at economic crime, you look at the more strategic level and try to come up with a national strategy to deal with economic crime, probably as I suggest, through this four-pronged approach. Thank you.

Sub-Moderator: Thank you, Mr. Kwok. If I could just ask Justice Smellie to comment briefly on enforcement at this point as it was mentioned before, but enforcement in a very particular sense, the liability of the bank itself, the liability of legal persons. Could you give us just a moment's comment on that?

Justice Smellie: Thank you, Madam Moderator. I think the comment can briefly be made by reflecting on the position of the bank itself in the scenario. Finebills provided the manager who was sufficiently highly placed so that his knowledge, his state of mind can be attributed to the bank itself. One might well consider therefore whether criminal sanctions ought not to be imposed in respect of the bank itself. And whilst it is important to prosecute individuals who are knowingly involved in the sort of activities we are considering, it is an important preventive measure to seek to adopt also to enforce against corporations themselves.

Sub-Moderator: Thank you for that help and we'll continue with you, Justice Smellie, on issue three, "International cooperation and offshore financial centres." In this case, Mr. Banner's close friend, Miss Chung, had a plan to solve his cash flow problem, and she lived in Youngland, an offshore centre, and her plan included the establishment of a shell company there to receive fraud proceeds. Would you discuss for us the difference between a regulated and unregulated offshore centre?

Justice Smellie:¹⁵ Thank you. I recognize the imperatives of time. I've just been reminded that I have even less time than had been thought before. The first observation I feel obliged to make is that it is not to be assumed that in selecting the topic of international cooperation and offshore financial centres, can we regard offshore centres as a special category of jurisdiction or as a group apart. Quite the contrary must be the case. Indeed, the only acceptable position must be that offshore financial centres, as participants in today's global economy, must

¹⁵ Talking points submitted by Justice Smellie are contained in Part III, B of this report.

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accept precisely the same obligations for due diligence, law enforcement and international cooperation as other financial centres.

Acceptance of that principle avoids the need in this forum to arrive at a definition or meaning of just what is an offshore financial centre. Acceptance of the principle also avoids the need in this forum to examine just what are the purposes or functions of offshore financial centres. Suffice it I think to observe that concern as a generic group, offshore centres have been recognized by the Financial Stability Forum of the IMF as posing no threat to global financial stability, but instead as performing an important role in managing and facilitating the flow of international capital. So, too, the conclusion reached by the United Nations Offshore Forum held in the Cayman Islands in March of 2000.

That said, it must also be recognized that not all financial centres, be they offshore or onshore, are equally well-regulated, and where a jurisdiction is in the business of offering ready access to the international financial market without regard for the established standards of regulation, it creates vulnerabilities not just for itself, but also for every other jurisdiction that is connected with it, whether directly or indirectly, through the international financial system. In our global quest to deny organized criminals access to the financial systems, our chain of response is going to be as strong as its weakest link.

There simply therefore is no place any longer in the international financial system for poorly-regulated jurisdictions, and responsibility for proper regulation must be accepted simply as part of the cost of doing business. It is against that backdrop of the reasonable standards and expectations that the hypothetical case scenario, Madam Moderator, arises for consideration.

Indeed, the scenario is not entirely hypothetical. Many of the circumstances described fit very closely with an actual case which engaged the United States and Cayman Islands authorities over a number of years, and I have attempted to give a fuller description of that case in a paper which is available. As the scenario describes, infomercials promising to teach people by use of videotaped courses how to become rich overnight from selling real estate, found a ready market among many unwary members of the public. Tens of thousands of these taped courses were sold for millions and millions of dollars. The courses could not produce the advertised results but were simply a fraud. The real life perpetrators of the fraud, a husband and wife team named the McCorkles needed to launder the proceeds of their fraud to disguise the source of the funds, and so they set about opening bank accounts in the Cayman Islands. They set up companies whose only purpose was to own and operate these bank accounts.

Quite inappropriately, the service providers in the Cayman Islands, who included a company formation agent, our Miss Dee in this scenario, and the banks, simply relied upon the rather quaint notion that because the McCorkles' business was widely advertised on United States television, it must be true and above-board.

Millions of dollars were accepted into their accounts by way of wire transfers from the McCorkles' United States banks accounts. Had proper due diligence been carried out, the banks in both the United States and the Cayman Islands would have been compelled to ask themselves the question whether there was any genuine business activity in the manner in which the McCorkles were soliciting funds from the public. Had they done so, they might well have discovered that the McCorkles held no real estate portfolios of any sort or a loan of the size which could justify the promises which they were making to the people who bought into their programme.

A request came for international legal assistance from the United States to the Cayman Islands pursuant to our mutual legal assistance treaty. But because of a mere technical mismatch between the laws of the two countries, the request almost failed. Under the Cayman Islands law, as it stood at the time, while a restraint order was obtained over the bank accounts, there was a requirement that criminal proceedings had to be instituted against the McCorkles in the United States within seven days of obtaining the restraint order in the Cayman Islands.

As the case was still only at the investigatory stages, the United States authorities were unable to meet that seven-day deadline. The McCorkles challenged it and a restraint order had to be discharged by a Cayman Islands court. Fortunately, however, the bank, having been by then put on notice that it held the proceeds of fraud, and being aware that it might have civil liability to the victims of the fraud, did not allow the funds to be transferred out and they were still available to be re-restrained when the criminal proceedings were instituted

against the McCorkles in the United States. In addition, all relevant documents and all evidential material were obtained from the banks and company agents and provided to the United States authorities in keeping with the treaty.

Now given the constraints of time, I think I will summarize to get to the point of concern here. How do we distinguish between well-regulated and not-well-regulated centres and what are the paradigms? It cannot be overemphasized that there needs to be harmonization of legislation across the borders. As Secretary-General Kofi Annan so succinctly put it, “if crime crosses the borders, so must law enforcement”. It follows therefore that differences, mismatches of the legal systems may not be allowed to be impediments to law enforcement. And while there will never be complete harmonization, there is an obligation on all financial centres, whether they be offshore or onshore, to ensure that there are laws that allow for international cooperation.

Sub-Moderator: Mr. Justice Smellie, I believe we’ll have to leave it there on the important point of harmonization so that we can have true international cooperation. I’d like to move swiftly to issue four, “Investigative techniques and methods in identity theft and following the money”. What tools and capabilities are needed? I’ll ask Mr. Tony Kwok to outline these very swiftly and then for Mr. McKenna to follow swiftly as well.

Mr. Kwok: Thank you. Due to the time limit, I will speak as briefly as possible. I think there are a few things I’d like to share with you. When you investigate an economic crime, you should not just look at “this is fraud”. You should look at a multiplicity of offences. So, for example, in this case you look at fraud, you look at deception, you look at possible false accounting, possible forged documents, you look at conspiracy, you look at attempt, et cetera, et cetera.

The second point is that — I think if you are an investigator you know exactly what I’m talking about — there are two ways of investigating a crime. Either you wait until the crime has been completed and then, like in this case, the money has already been passed to the bank account or even laundered, then somebody makes a complaint and you start the investigation. You can still do it but it’s very, very difficult. The ideal from the investigator’s point of view is the taking of a proactive investigation method. It means that you had the ability to know when the crime was being committed or about to be committed. Then you can use the facilities like telephone intercept, like physical surveillance, like undercover operations, like entrapment, and then by these methods you should be able to get all the culprits rounded up, all in one net.

Of course, in order to be able to use the proactive method, the prerequisite is that you must have an effective complaint system. In this hypothetical case, I just wonder if any one, if he suspects anything, knows the way to report. So the question is really how your country considers how it should set up an effective complaint system, is user-friendly and confidential, so people know where to report and to report confidentially.

So back to this proactive investigation skill. Actually, you can talk on this subject for a long, long time. For example, I think one important aspect is adequate legislation. I have been to many countries advising on corruption, and quite strangely, when you have the most corrupt countries they have the highest standard of human rights! Which means that they will not allow their investigators to use any intrusive methods like surveillance, like telephone intercept, undercover, entrapment, not even, in some countries, allow them to look at anyone’s bank account! So there’s a need to balance human rights with effective law enforcement.

But even, for example, even if we are going to use a telephone intercept, there are a lot of difficulties. Do you have the technical capability to do it? Can you get the cooperation of the manufacturer of the Internet server, get the telephone operator’s assistance? What about the mobile phones? Every criminal is now doing this. They use unidentified prepaid SIM cards, so how to overcome this problem? So these are all the things that one really needs to give it some thought if you really want to be effective in tackling economic crime as well as corruption.

The other method which we use, particularly dealing with conspiracy, when we talk about a large number of people committing offences. By using the conventional methods, usually you are able to get one or two criminals. You will never be able to get to the top. So the way is, if you can get somebody who can implicate the top, you must always try to turn them. We use a technical term, “turn them.” It means that they will become your witness, so they should still have to plead guilty through a kind of plea bargaining, and then they will be able to give you evidence, or at least, give you intelligence about all the previously committed offences and all the possible future offences and all the identities of the bosses of the organized crime gangs. So this kind of a turning method, giving

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conditional immunity to criminals in return for them giving evidence is a very, very useful method which has been tried successfully in Hong Kong. But again, there is a prerequisite, proper witness protection.

Sub-Moderator: Could we just ask that we leave it there in terms of the importance of collecting information? I'll ask Mr. McKenna to follow briefly on the importance of collecting information, and then if you would just continue into our final issue of stopping the funds, freezing and confiscation, in just the briefest two moments.

Mr. McKenna: Thank you very much. Let me share my thoughts in respect of sharing information. If you want to, you've got to ask yourselves the question, what do you need the information for or what stage the investigation is at. From my own experience, the way to actually key in and share information is by way of case conferences if you're dealing with economic crime that involves a number of jurisdictions, and crime is identified as a result of information filtered in from the suspicious transaction reports system in the financial institutions. No victim has made any report. However, law enforcement are aware that this is a major economic crime going down in a number of jurisdictions.

Police officers and practitioners should assemble when they get an initial insight into what is happening, decide who takes ownership of inquiries in each jurisdiction, and also, very importantly, who takes ownership of who is going to call when we take down the complete case, what we say, carry out the knock and do a number of searches and arrest of individuals.

Following on that and based on how we have shared the information up until that stage and the use of it, it's very, very important that we all then have an agreed strategy in respect of when individuals are arrested. As in this case, there is money involved, there is economy involved, there are victims. It's very, very important to have a plan in place whereby we then can go into our courts and automatically freeze all of those accounts. And by way of some of these accounts, perhaps in the middle of the investigation are getting close to the centre point of it, we have the facility within whereby investigators can go to institutions, mainly banks, and alert them to the criminal investigation ongoing and also warn them that if they do any dealings or transfers of monies in those particular accounts they will then be aiding and abetting in money-laundering and may leave themselves open to prosecution.

Now let me go quickly to the main topic of what I'm an expert at and that's seizing of assets. There are a number of things that are required if a jurisdiction wants to bring in a regime to seize assets. Yes, there's the criminal mode whereby this facility is therefore tracing identification in pursuant of assets where individuals are charged with criminal offences and subsequently convicted, and post-conviction a judge will then carry out an inquiry and issue and grant a confiscation order on the assets that are generated by that criminal.

Let me dwell on an alternative strategy that we have developed in Europe, and particularly in Ireland, in respect of what we call "civil confiscation". That is legislation that was introduced called the Proceeds of Crime Act and a second bar of the legislation package was the Exchange of Information for Taxation Purposes Act, and thirdly legislation was introduced to create a task force type unit called the Criminal Assets Bureau. That is staffed by inter-agency individuals, police officers, tax men, social welfare people and support staff. Its objectives are laid down by statute, trace the proceeds of crime, and take whatever appropriate action you can to deny the criminals those proceeds of crime.

Secondly, we also use our revenue acts and were mandated under the act to enforce the revenue acts very, very rigidly against the individuals that we target. Not everybody is a suitable candidate for target by the Criminal Assets Bureau because it's usually the godfathers of crime who have prevented prosecution by mainstream policing of themselves or have continuously stayed outside the revenue acts.

In respect of satisfaction, in respect of public reception to what we do, each country, if it had an agency like what we do, like what I head, criminals themselves, particularly the godfathers, have an art through fear, through that fear factor, of intimidation whereby they would only be known within their own world, that is the under-world, and everybody in the general populace will know second-hand information that these people are involved in crime. What we do in the civil process, we attack their assets. If they have a dwelling house, if they have expensive cars, if they have race horses, we make applications to the high court on the civil standard of proof saying all of these assets are proceeds of crime. The cases are then debated openly in public, the public see what is going on, these people are identified, and I have to say, the label is then stuck to them. All their

neighbours know that the Criminal Assets Bureau are after seizing their house.

And more importantly, for public consumption as well, we sell the dwelling houses at public auction. And everything is done openly and in respect of accountability, the decisions that we make under proceeds of crime, it's not a policeman's final decision. It's a collective process that we have within the bureau. We have lawyers and we have a lot of other experts. But the final arbitrator is the judge in the high court who then gives the decision. And by way of figures, we have collected in, using this methodology of confiscating assets, in excess of 100 million over the past five years. Thank you.

Sub-Moderator: Mr. McKenna, can we thank you for that and turn it back over to our Moderator.

Moderator: Thank you very much. I think that we have the time until about 6:15, and I would like to give Toni Makkai the possibility to answer the question concerning the definition. And I think that we have had quite some discussion on the cooperation part as well, but we will see after Toni has been able to explain to us whether we are still confused or not.

But I would also like to give the possibility to the floor to ask one or two questions if there is someone who feels at this time of the day something that you wanted to know about economic crime but were too afraid to ask. But here is your chance to do so. Are there any interventions? Yes, the distinguished gentleman from the Philippines. You have the floor, Sir.

Questions and Comments from the Floor

Philippines: Thank you, Mr. Chairman. I have a very short question. It maybe answered by any of our Panellists and even the Moderator. We have forgotten one person who is the most vulnerable and whose role is the most crucial in this discussion, the consumer or customer. We only look at the other side of the coin, and that is law enforcement, the role of government. Now my question is, is the consumer or customer entitled to government protection from his own greed or avarice? Thank you.

Sub-Moderator: Certainly. In terms of that Internet ad that was too good to be true, should those people have known not to apply? It's easier sometimes to say it than to convince them of that. The government does have a responsibility, in my view, of educating as much as possible about such ads. If they suggest they can provide greater than clearly they can, there should be information campaigns that could set out red flags to look for that might help consumer groups, particularly in this case the elderly through various senior citizens' programmes. Of course if it's not that kind of fraud, investment fraud, if it's, for example, a kind of drug that's going to produce greater results than it clearly could produce, then most countries have an agency that would not permit that kind of advertising beyond what a drug could produce.

If it's just a get-rich-quick scheme, education seems to be the best way about it, combined with the enforcement effort to show that this kind of advertisement to a vulnerable group, particularly, will not be tolerated by the society.