

SUMMARY OF DISCUSSIONS

The discussion sessions were chaired by Mr. Ricardo V. Paras III, Chief State Counsel, Department of Justice of the Republic of the Philippines.

Mr. Panumas Achalaboon, Public Prosecutor, International Affairs Department, Office of the Attorney General, Thailand, sat as Co-Chair, by consensus of the participants.

Mr. Haruhiko Ukawa, Deputy Director of UNAFEI, supported the Chairs as General Editor of the discussion sessions.

Topic (i): Measures to get information to identify and trace the proceeds of corruption, including effective use of FIU information.

In this first part of the discussion session, the participants addressed their experiences with Financial Intelligence Units (FIUs); the desirable qualities or character of FIUs; the use of information held by FIUs; and asset declaration.

All but one of the participating countries had already established FIUs and the participants discussed their experience with such institutions. They addressed the matter of **obtaining information** from financial institutions: co-operation and compliance from financial institutions are essential for an FIU's operation. Chair Paras enquired of the participants about the willingness of financial institutions to comply with know-your-customer rules, Suspicious Transaction Reports (STRs) and other reporting requirements. A participant from the Philippines responded that compliance in his country is generally satisfactory. The terrorist attacks of 9/11 led to increased acceptance on the part of financial institutions that political leadership demands more stringent records and anti-money laundering measures. As global financial transactions tightened after 9/11, the financial institutions accepted that an era of financial reporting had arrived and that the prudent provider of financial services would know his or her customers well. The participant from Malaysia also voiced confidence in the level of compliance in his country, but a visiting expert to the seminar expressed some reservation as to the willingness of financial institutions to divulge information to FIUs. It was noted that the effective discharge of FIU duties is directly tied to their independence. The participants echoed this principle throughout the discussions.

This discussion of the **importance of independence** for FIUs led the participants to focus on the elements required for an FIU to function at optimal efficiency. To prevent the use of private financial information for political gain the participants agreed that FIUs must be politically neutral. They further agreed that sufficient human and financial resources were indispensable.

The discussion also addressed the **use of information** held by FIUs, both between domestic law enforcement agencies and international counterparts. All agreed that the use of information held by FIUs should not be heavily restricted. Links between the FIU and its country's law enforcement agencies ensure that the FIU's work is an effective contribution to the fight against financial crime in all its forms. A visiting expert from the USA explained that authorized US law enforcement agencies had direct access to all Suspicious Activity Reports (SARs) and STRs filed with FinCEN, the US Department of Treasury's FIU. Law enforcement agencies do not have to wait for FinCEN to analyse or forward any of the information. This is particularly useful because FIUs are not necessarily aware of the relevance of particular pieces of information they acquire. Regarding international exchange of information, a participant from the Philippines explained that the Philippine AMLC has both proactive and reactive functions in exchanging intelligence via Egmont Secure Web.

Regarding **asset declaration** by government officials, the participants discussed the requirements of the respective countries and the relative merits and demerits of differing levels of stringency. The Philippine requirements are extensive, encompassing the assets and liabilities of spouses, children and extended family. Annual updates are also required. A participant questioned the practicality of requiring politicians to file asset declarations. Both the Philippines and the USA make such requirements of parliamentarians. A visiting expert from the USA explained that the US has both public and non-public agency reports and both

government officials and politicians must disclose their assets. Chair Paras mentioned time/response limits to more properly implement the requirement to disclose assets and liabilities. Participants then discussed what constitutes an appropriate time limit to place upon investigations of declarations.

Topic (ii): The development of laws and international co-operation to actualize freezing, confiscation, and recovery of the proceeds of corruption, including prevention, criminalization and prosecution of money-laundering.

The participants discussed the responsibilities incumbent on signatories to the UNCAC. Each participating country is a signatory to the UNCAC, and most have ratified it. The participants also addressed various aspects of the financial investigation process: identification, freezing, confiscation, and repatriation of the proceeds of crime. The participants also discussed measures against cash smuggling, including the requirements placed upon financial institutions regarding foreign currency exchange. Finally, they also addressed international co-operation in asset recovery.

Regarding **freezing**, the participating countries have differing requirements and procedures; some permit administrative freezing by law enforcement authorities, but most require judicial involvement through court orders. Some participating countries do not permit the use of freezing orders to secure non conviction-based forfeiture.

One expert cautioned against issuing freezing orders too early in an investigation, stating instead that finding intelligence and building a network are more useful long-term objectives than simply seizing funds once identified.

Other matters relating to freezing orders which the participants discussed include the procedures for *ex parte* orders, the most desirable period of validity of freezing orders and the need to protect third parties. One expert pointed out that the temporary UN Security Council Resolution 1373 makes freezing of terrorist assets an obligation.

More detailed discussion of **non conviction-based forfeiture** (NCB) then followed. UNCAC Art. 54.1 (c) requires States Parties to consider taking such measures as may be necessary to allow NCB in order to render mutual legal assistance (MLA), but not all of the participating countries provide for NCB.

Chair Paras explained that NCB is used in the Philippines and extolled its usefulness when the defendant cannot be prosecuted because of death, flight or absence. Further advantages of NCB forfeiture are that it may allow for a lower burden of proof than the “beyond a reasonable doubt” standard required of criminal conviction, and that jurisdiction can be more easily established in NCB cases. In criminal cases, the action is *in personam* and the physical presence of the defendant is essential, but an NCB case is *in rem*, a procedure against the asset, rather than the person, and jurisdiction can be established by serving a summons on the title holder. In the event that the title holder cannot be located, the summons can be served by publication.

Regarding **international co-operation in asset recovery**, the participants noted that repatriation of stolen assets is not automatic and that requests for assistance must be filed in accordance with the UNCAC or other relevant instruments. In this regard, the General Editor spoke of the importance of a strong network of practitioners who make active use of informal channels of communication. Such measures can be used immediately; they do not require any legislative changes or other reform. Informal consultation regarding draft requests can increase the request’s executability and avoid later procedural difficulties in the requested state. Participation in international fora such as the Good Governance Seminars or other UNAFEI training programmes can facilitate the building of such a network of practitioners and the sharing of experience and expertise.

At the conclusion of the discussion sessions, the following Recommendations were adopted by consensus.