GROUP 3
PHASE 1

ANALYSIS OF CURRENT SITUATION OF MONEY LAUNDERING

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I. A BRIEF OVERVIEW

Money laundering briefly means "making dirty money look clean." It can be defined as, "the processing of the criminal proceeds to conceal their illegal origin." The objective of the money launderer is to disguise the illicit origin of substantial profits generated by criminal activity, so that such profits could be used as if they were derived from a legitimate source.

Money laundering is at the center of all criminal activity, because it is the common denominator of predominantly all other criminal acts. Since it cannot be disassociated from other forms of crime, money laundering becomes an integral part of any transnational organized crime. The transnational criminal organizations have resorted to money laundering in different countries in an effort to legitimize the proceeds of crime.

It needs to be emphasized that money laundering is not a new economic, sociological or legal problem. However, geo-political developments over the last few decades, together with increased economic globalization have resulted in increased international movement of money. The rapid expansion of international financial activity has gone hand in hand with the development of transnational organized crime, which takes advantage of political borders and exploits the differences between the legal systems in order to maximize profits. The organized criminal groups involved are genuinely multinational and pose a very serious threat to the financial stability of all economic systems *viz*, the underdeveloped, the developing and also the highly developed nations of the world.

The extent of money laundering is difficult to estimate since it is an illegal activity for which no exact data or

statistics are available. However, the International Monetary Fund (IMF) has estimated that the aggregate size of money laundering in the world could be somewhere between two to five percent of the world's gross domestic product (GDP). Using 1996 statistics, this would translate into approximately US $590 billion to US $1.5 trillion, which reflects the magnitude of the problem.

In view of the fact, that the goal of the predominant majority of the criminal acts is to generate profits for the individual or the group which carries out the criminal act, the process of the criminal proceeds to disguise their illegal origin becomes essential. It enables the criminal to enjoy the profits derived from crime without jeopardizing their source. Since the activities of organized crime, including drug trafficking, trafficking in illegal firearms, smuggling, prostitution, etc., can generate huge amounts of money, they create an incentive to "legitimize" the ill-gotten gains through money laundering. When criminal activity generates substantial profits, the individuals or groups involved must find a way to control the funds without attracting attention to the underlying criminal activity or the persons involved. Criminals do this by disguising the sources, changing the form or moving the funds to a place where they are less likely to attract attention.

Experience in different countries shows that the general techniques employed to launder money are as follows:

(i) investing dirty money in legitimate business either through shell or fictitious companies or in genuine companies under a false identity;
(ii) acquisition of assets by paying the requisite taxes;
(iii) deposit of money in tax heavens or in banks in non-cooperative countries and remittances back to the host country through normal banking channels;
(iv) use of the underground banking channels for transfer of money;
(v) over invoicing of goods in an apparently normal exports business transaction;
(vi) routing of money through safe tax heaven countries.

Experience further discloses that a money laundering operation basically consists of three phases or stages. The first phase is the "placement", i.e. where cash enters the financial system. The second phase consists of "layering", i.e. where the money is routed through a number of transactions so that any attempt to trace the origin of money is lost. The last or the third phase consists of "integration", i.e. the money is brought back into the economy with the appearance of legitimacy and thus, integrated within the lawful economy leaving no trace of the illegal money to the various law enforcement agencies of the different countries.

II. GLOBAL CONCERN

Realizing the gravity of the problem, the United Nations (UN) adopted the Vienna Convention, 1988 against the Illicit Traffic in Narcotics, Drugs, and Psychotropic substances which, *inter-alia*, incorporated incrimination of money laundering in an international treaty for the first time.

The Financial Action Task Force (FATF) was founded in 1989 by the G7 summit in Paris, to examine methods to combat money laundering. It published its report in 1990, in which the Forty Recommendations were made to combat

the menace of money laundering. The UN saw it's convention against Transnational Organized Crime adopted in November 2000 and this was opened for signature by member states in December 2000. It requires member countries to further intensify and fortify their efforts against money laundering.

The above convention suggests a series of measures to combat the evil of money laundering, including attempts to define the definition and scope of the subject incorporated in Article 6 and 7.

III. LEGISLATION

The current situation with regard to money laundering, as it presently exists in the member countries of the participants attending the course, is very briefly summarized as follows:

In *Japan*, in order to enforce the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which was adopted in 1988 at the UN Drug Committee Treaty Conference, and the Forty Recommendations suggested by FATF in 1990, the "Law Concerning Special Provisions for the Narcotic and Psychotropic Control Law, etc., and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances Through International Cooperation" (hereinafter, the Special Narcotics Law) was concluded on October 2, 1991 and enforced from July 1, 1992. Furthermore, the "Law for the Punishment of Organized Crime and the Control of Criminal Earnings" (hereinafter, the Law for the Punishment of Organized Crimes) was concluded on August 12, 1999, and enforced from February 1, 2000, after the Forty Recommendations were made more comprehensive.

This law widens the predicate offenses and provides the provisions for the laundering of illicit proceeds generated from not only drug-related crimes but also other major offenses which have not been covered under the Special Narcotics Law.

The Special Narcotics Law and the Law for the Punishment of Organized Crimes include the following features:

1. Provisions concerning punishments for money laundering and the disposal of illicit proceeds generated from crimes;
2. Confiscation of intangible property such as bank accounts;
3. A system to secure the subject property so as to ensure forfeiture and collection of equivalent value;
4. Cooperation in conducting confiscation trials in foreign countries;
5. Provisions requiring financial institutions to report suspicious transactions, as countermeasures against money laundering of illicit proceeds generated from crimes.

In *Malaysia*, before the introduction of the Anti-Money Laundering Act 2001, the country did not have any specific law on money laundering. However there are various substantive laws making it an offence for 'laundering' of illegally obtained money or assets. One of the most effective legislation is the Dangerous Drug (Forfeiture of Property) Act 1988 (the FOP Act). Drug abuse and drug trafficking is regarded as the most severe and grave crime in Malaysia since 1983.The government of Malaysia felt that individuals or groups of people involved in this criminal activity should not be allowed to enjoy the benefit of their

ill-gotten gains. Although there is no definition or usage of the term "money laundering" under the FOP, but there is a provision which states that it is an offence for any person either by himself or on behalf of another, to commit the act of laundering of illegally obtained property.

One very important legislation which is related to money laundering activities is the Anti-Corruption Act 1997. Under this legislation, officers of the enforcement agency, that is the Anti-Corruption Agency, have been given the powers, either directly or indirectly through the Public Prosecutor or the High Court, to act in relation to any dealing in property (laundering), seizure and forfeiture of property which are regarded as proceeds from corruption offences.

Another country in the Asia region, *Indonesia*, also pays serious attention to this matter. The Government of the Republic of Indonesia is truly concerned regarding money laundering, as is reflected by its ratification of some of the following important conventions connected with Money Laundering, such as:

1. Ratification of Convention on Psychotropic Substances 1971 (by Law No. 8 Year 1996);
2. Ratification of United Nations Convention Against Illicit Traffic and Psychotropic Substances (by Law No. 7 Year 1997).

The draft of the Anti-Money Laundering Act is still at the discussion stage in the legislature but implicitly already exists in The Criminal Code Article 39, 480 and 481 and within Draft of Criminal Code Revision chapter 601 and 604 which generally puts restriction on anyone who possesses, saves, transfers, invests, pays, buys, deposits suspicious crime-resulted funds and its violation could result in imprisonment and fines.

In *Thailand*, the Money Laundering Control Act BE 2542 (1999) was introduced with the setting up of the Office of Anti-money Laundering by the Government of Thailand. During the first 9 months of it existence the office managed to confiscate a total of more than 240 million bahts. Under the above Act, financial institutions are required to report every transaction of the amount exceeding 2 million bahts to the Office of Anti-money Laundering for investigation. The office also has the power to gather evidence for the purpose of taking legal proceeding against the offenders of predicate offence, which are:

1. relating to narcotics;
2. relating to sexuality;
3. relating to public fraud;
4. relating to misappropriation or fraud or exertion of an act of violent against property or dishonest conduct;
5. of malfeasance in office or judicial office;
6. relating to extortion or blackmail by claiming an influence of a secret society or criminal association;
7. relating to smuggling under the custom law.

In *Nepal*, the extent of money laundering is very difficult to estimate. It is an illegal act for which no statistics are available.

In *India*, money laundering is indulged in both by businessman and corporate business houses to evade taxes as well as by the organized criminal groups to launder dirty money. Money laundering techniques include smuggling, establishment of front companies,

acquisition of commercial and non commercial properties, remittances through *Hawala* or *Hundi*. Over invoicing and double invoicing of goods through foreign remittances and through trading in stock and shares.

The Indian "*Hawala*" or "*Hundi*" system of transaction can be explained as transfer of money through unofficial and non banking channels. The money so transferred often includes the money derived from criminal activities in violation of the country's legislation. As a developing nation, India feels seriously concerned because *Hawala* transactions not only undermine the nation's economy, but also seriously jeopardizes the country's security through terrorist and subversive activities which are often funded from the proceeds of illegal drugs and arms trafficking.

It needs to be emphasized, that at present there is no specific money laundering law in operation in India. A bill to enact the money laundering act "The prevention of Money Laundering Bill" has been introduced in Parliament by the Government of India but the same still remains to be enacted as Law. However, at present there is already a set of legislation existing in India intended to deal with the economic offenders. Such laws/legislation are specifically intended to deprive the offenders of the proceeds and benefits deprived from the commission of offences against the laws of the country.

Besides, such legislation also provides for the confiscation or forfeiture of the proceeds or assets of certain crimes. These include:

(i) Criminal Law (Amendment) Ordinance, 1944
(ii) Customs Act, 1962
(iii) Code of Criminal Procedure, 1973
(iv) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
(v) Narcotic drugs & Psychotropic Substance Act, 1985
(vi) In addition, Indian Statutes also provide preventive detention of foreign exchange racketeers under the conservation of foreign exchange and prevention of smuggling activities (COFEPOSA) Act, 1974
(vii) And the preventive detention of drug traffickers under the prevention of Illicit traffic in Narcotic drugs and psychotropic substances (PITNDPS), Act 1988.

In *Argentina*, the new legislation (Law enacted on March 5, 2000) considers money laundering as an autonomous crime. It means that the laundering of assets is not only penalized when it is obtained from the traffic of narcotics, but also includes other illegal activities such as terrorism, traffic of weapons, of human beings or other human organs, crimes against the Public Administration, and such other offences where the Penal Code provides punishment with a minimum of 3 years in jail. The same law includes the obligation on the part of certain people, that the text specifically mentions, of denouncing operations and/or suspicious activities.

In *Venezuela*, the anti drugs law was enacted and made more comprehensive on September 30, 1993. This law was made to adapt to the current problem relating to drugs and it includes the procedure in cases of money laundering, their prevention, control and inspection of the bank and financial entities by the authorities. With this enactment of the anti-drug law all of those that have benefited from drug trafficking and other crimes are penalized. Besides the

trafficker, it also penalizes the persons that direct the operation, who finance it and those who facilitate the traffic of drugs in any way. The reform was made to article 37 which now penalizes laundering.

The Venezuelan national assembly has also discussed the future enactment of a law that would fight against organized crime. The police, who can carry out operations as hidden agents, can investigate the laundering of money and the traffic of drugs. Equally, it also imposes on banks the obligation of informing the authorities when there is suspicion of an operation of money laundering. The punishment for the crime of money laundering is imprisonment between 15 and 25 years. An anti-corruption law that penalizes the offences relating to public officials has also been provided in Venezuela.

In *Peru*, the Law only punishes money laundering when it emanates from the illicit trafficking of drugs. When the money relates to other offences like corruption, fraud, kidnapping, robbery, etc. it is not covered by money laundering. Thus, in Peru, the activity of money laundering is confined only to the case where drug money is involved. It is also incorporated by law (ordinance legislative) of April 10, 1992, that banks report any unusual or suspicious transaction above ten thousand dollars to the authorities in each case.

Money laundering in *Honduras* is only related to drug trafficking. Before 1993 the money laundering law did not exist. It was only mentioned in one article of the drug law. Since 1998 the money laundering law has been enacted, but it only relates to drugs. However, the attorneys that deal with the said crime are working on some reforms in the law. They are trying to establish a money laundering law related also to other crimes such as stolen vehicles, kidnappings, bank robberies, human trafficking etc.

Uganda is a developing country with a low economic base. Because of this criminals finds it easy to invest their proceeds from illegal activities in Uganda. Since the government needs investors to uplift the economy, little scrutiny is done to establish the origin of huge amounts of money. Currently, there is no legislation in place to cater to money laundering. This is a new concept. However, there is an anti-money laundering committee consisting of experts from the Uganda Revenue Authority, police, immigration, commercial banks and Bank of Uganda. The committee is charged with drafting a law on money laundering. In East Africa, a training workshop on combating money laundering was held in Arusha, Tanzania in August 1999 and has led to the creation of a National Anti-Money Laundering Committee, which are affiliates of the Eastern and Southern Africa Anti-Money Laundering Group (E.A.S.A.A.M.L.G.).

IV. INSTITUTION OF STRs/FIUs

As far as *Japan* is concerned, the Suspicious Transaction Report (STR) system was first introduced into Japanese legislation by the enactment of the Special Narcotics Law. Subsequent to this, the Law for the Punishment of Organized Crimes was enacted in 2000, which introduced a comprehensive STR system. The scope of predicate offenses of money laundering was expanded to almost all organized crimes. Based on the above law, the Japan Financial Intelligence Office (JAFIO) was established in the Financial Agency as

the Japanese Financial Intelligence Unit (FIU).

At present, depository institutions (banks), insurance companies, securities brokers and other non-bank financial institutions are covered in the STR system. However, non-financial institutions or other relevant professionals (so-called "gatekeepers") are not covered. Compliance by financial institutions is mandatory but no legal sanction is provided for non-disclosure of STRs.

The records of the Narcotics Division of the *Malaysia Police Department* reveal that the traffickers in Malaysia are mostly individuals or small groups who capitalize on drug trafficking industry for personal gains. Drug proceeds are sometimes concealed within the proximity of their home or invested in other illegal activities such as loan-sharking and book markings.

Taking into consideration the Forty Recommendations of the FATF on money laundering, the government of Malaysia in the middle of the year 2001 introduced the Anti-Money Laundering Act 2001. It is hoped that the law, with 199 serious offences including drug trafficking, corruption, kidnapping, robbery, human trafficking, gambling and fraud, will provide a strong foundation in countering money laundering in or outside Malaysia.

In *Indonesia*, the Criminal Proceeding Act, 1981 provides that Investigators shall be:

a. an official of the state police of the Republic of Indonesia;
b. a certain official of the civil service who is granted special authority by law.

Referring to this statement, in practice, the police official is an investigator for general crimes such as murder, theft, robbery and so forth. A public prosecutor is also authorized to be the investigator for special crimes such as corruption cases.

In corruption cases, the Attorney General's Office has successfully handled a lot of corruption cases, and saved a large amount of the state's assets.

In *India*, a number of law enforcement agencies (primarily operating under the Ministry of Finance, Government of India) are engaged in collection of intelligence and also investigation of economic offences and frauds, including money laundering. Some of the prominent agencies are as follows:

(i) The Directorate of Revenue Intelligence (DRI)
(ii) The Directorate of Enforcement
(iii) The Economic Intelligence Bureau (EIB)
(iv) The Central Board of Direct Taxes (CBDT)
(v) The Central Board of Excise & Customs (CBEC)

In addition to the above agencies, functioning directly under the Ministry of Finance, the Government of India, the Economic Offences Wing (EOW) of the premier police investigating agency in the country, *viz*, the Central Bureau of Investigation (CBI) also specializes in handling complex investigations relating to economic and financial frauds, including money laundering.

Argentina contemplates setting up a Commission for dealing with activities relating to money laundering (Unidad de Información Financiera — U.F.I. — Financial Information Unit). U.F.I. forces

certain people and corporations or companies to inform of diverse data that looks suspicious. The promulgation of this Law has proved to be very significant for Argentina, which has incorporated most of the Forty Recommendations of the FATF.

In *Venezuela*, the penal action is carried out by the District Attorney (D.A.) of the Public Ministry and it is the D.A. who directs the investigation, giving instructions to the Police in relation to the investigation of the crimes. Since the above law is not as yet approved by the National Assembly, Venezuela does not yet have a legislative instrument to combat money laundering and the criminal organizations involved.

V. PROFILE OF MONEY LAUNDERING CASES PROSECUTED IN JAPAN

In Japan, as a result of enacting the Special Narcotics and the Law for The Punishment of Organized Crimes, the prosecution of money laundering cases has developed increasingly. However, it is difficult to evaluate the effectiveness of money laundering measures because there are only about ten cases utilizing those laws as indicated below:

1. Cases of the Special Narcotics Law

a. In November, 1992, an accused got 7,000,000 yen after handing over stimulant drugs to someone, and deposited this money into an account under an assumed name in a bank in Gifu-city, to disguise the acquisition of illegal profit.
b. In December, 1995, an accused entrusted an acquaintance to remit to the bank account of the acquaintance in Tokyo 800,000 yen as the proceeds of stimulant drug sales, to disguise the acquisition of illegal profits.
c. From June, 1995 till October, 1996, an accused, who was the boss of a gang named "Kokuryuukai" got 290,000 yen every day from stimulant traffickers in his sphere of influence or territory. So he received a total of 147,900,000 yen in illegal profits.
d. From April till June, 1997, an accused got 52,752,500 yen as the proceeds from stimulant drug sales and he remitted the money to a bank account in the United Arab Emirates using the name of his brother to disguise the illegal profit. This case was the first prosecution example in Japan for the act of the overseas remittance of illegal profits.
e. From October, 1997 till March, 1998, an accused got 31,180,100 yen in proceeds from stimulant drug sales, and he remitted the money under an assumed name to a bank in the Islamic republic of Iran, addressed to his mother, to disguise the acquisition of illegal profits.
f. From December, 1998 till July, 1999, an accused got 25,068,000 yen as the proceeds for the sale of regulation drugs (i.e. stimulant drugs) and deposited the money into the account in his common-law wife's name in a bank in Shizuoka Prefecture, to disguise the crime profits.
g. In July, 1999, the accused let his customer remit to a bank account in Higashiosaka-city, held under a false name 55,000 yen as the proceeds of stimulant drug sales.

2. Cases of the Law for the Punishment of Organized Crimes

a. An accused got 3,920,000 yen in proceeds after he handed some obscene videos over to someone and deposited the money into an account with a false name which he established at a post office in Osaka-city.

b. An accused let his customer, remit to a bank account held in a false name in Tokyo 5,907,720 yen as the proceeds for an obscene CDR.
c. An accused runs an enterprise of the corporation by using illegal profit. The accused undertook new stock of Taisyo Life Insurance Company (hereinafter "Taisyo"), by using of property that he got through fraud. The accused and Claremont Capital Holding Co. Ltd. (which the accused acted as Representative Director of) acquired the position of stockholder in Taisyo and he ruled over about 66.8% of Taisyo's published stock. Then, the accused used his authority as a stockholder of the company, in a general meeting of the stockholders of the company held on April 3, 2000, with the purpose of influencing the management of Taisyo to appoint him and three others as director of the company.

VI. PROFILE OF MONEY LAUNDERING CASES IN HONDURAS

At the moment Honduras has three big cases of money laundering, the biggest of which is one of a Colombian organized group. Those members came to Honduras to launder money there, three of them Colombians. They began a business of selling home appliances and electrical domestic equipment. The investigators began an investigation of those businesses, because it was strange that these places were not open to the public, people needed to use a bell door to get in. Also, the Colombian police sent the Honduran investigators information about them, because they found out that some drug dealers that were located in the sea on boats had communication with a cell number in Honduras, so they started a very deep investigation. Finally they found the probable cause to present in court, they began to make searches in the business and in their houses. People got arrested and in the search they found about 60 bank account books, check vouchers where they had paid pilots, they had bought boats, and paid the boat captains, nothing related with the domestic electrical appliance business, so the judge ordered the arrest warrants and confiscated about 8 luxury cars. They froze all the bank accounts and also all the houses that they were building with a cost of over 2 million lempiras. When the investigators were doing the investigation they noticed that in some accounts people received a big amount of money, this money was in the bank for 5 days and in the next week all the money was gone, so the money transfer was very often from these banks in Honduras to the other banks, most of them in Miami, New York, Panama and Mexico. The total amount involved runs into several millions of dollars, and with a further investigation they related bank accounts with other accounts in Central, South and North America, even in Spain and Thailand.

VII. CONCLUSION

In summation, it can be safely stated that national strategies are inherently inadequate in responding to the challenges posed by transnational organized crime, including money laundering, since they cross multiple borders, involve multiple jurisdictions and a multiplicity of laws.

The rapid growth in transnational organized crime and the complexity of the investigation requires a truly global response. At present, the measures adopted to counter organized crime are not only predominantly national, but also different from one country to another. It

is, thus, absolutely imperative to increase global cooperation between the world law enforcement agencies and to continue to develop the tools which will help them effectively counter the transnational organized crime, including money laundering.