GROUP 3

MEASURES TO DEPRIVE RINGLEADERS AND CRIMINAL ORGANIZATIONS OF CRIME PROCEEDS AND PUNISH THEM EFFECTIVELY

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I. INTRODUCTION

The Group agreed to conduct its discussion in accordance with the following agenda:

A. Measures to Deprive Criminals of Criminal Proceeds

1. Confiscation:
   - 1.1 Measures to secure confiscation:
     - (a) Measures for identifying and tracing proceeds of crime;
     - (b) Measures for freezing and seizure of proceeds of crime;
   - 1.2 Burden of proof concerning the scope of "proceeds".
2. Use of Money Laundering Offence;
3. Inter-agency Co-ordination and Co-operation with FIU and others;
4. International Co-operation:
   - 4.1 Mutual legal assistance to identify, trace, freeze and confiscate proceeds of crime, and return the proceeds or share the assets;
   - 4.2 International co-operation between FIUs.

B. Measures to hold Ringleaders and Criminal Legal Persons Accountable

1. Use of the Offences of Conspiracy/Criminal Organization or Accomplice Clauses;
2. Application of Effective, Proportionate and Dissuasive Sanctions for Criminals and Legal Persons.

II. MEASURES FOR IDENTIFYING AND TRACING PROCEEDS OF CRIME

A. The Current Situation in Participants' Countries

Mr. Endo began by stating that, in Japan, there are three methods to identify and trace the proceeds of crime. Firstly, the public prosecutors start the investigation by receiving the reports concerning suspicious transactions from the Financial Intelligence Unit (FIU). Nevertheless, there is no law concerning the minimum amount of cash transaction that the commercial banks have a legal obligation to report to the FIU. Secondly, the tax agency reports the tax evasion cases to the public prosecutors. Lastly, the public prosecutors may initiate investigation of the proceeds of crime by themselves.

Mr. Maysakun stated that there are two ways to identify and trace the proceeds of crime in Thailand. First of all, the financial institutions have a legal obligation to report all cash transactions of ฿2,000,000 (Thai Baht) (approximately US$50,000) or more, or any suspicious transaction, to the Anti-Money Laundering Office (AMLO). After receiving transaction reports, the AMLO will process, examine and analyse the reports, followed by an investigation if necessary. Finally, after the police or the Department of Special Investigation personnel (DSI) have arrested the suspects for committing the predicate offences, the police or the DSI may report to the AMLO that the suspects' assets are related to the predicate offences.

Mr. Sikandar stated that in Pakistan the commercial banks have a legal obligation to report any suspicious transaction to the Central Bank. However, there is no single law concerning the minimum amount of cash involved before the commercial banks have an obligation to report to the Central Bank. Mr. Paul stated that, in Panama, the financial institutions have a legal obligation to report all cash transactions worth more than US$10,000, or any suspicious transactions, to the Financial Analysis Unit (FAU). After receiving the reports, the FAU will process, examine and analyse the reports.

Many participants suggested that in order to identify and trace the proceeds of crime effectively, investigators need to utilize FIU's records to support their investigations.

However, Visiting Expert Mr. Turone suggested that investigation of money flow is much more than obtaining information from FIUs. In many cases, detailed and strategic investigation in a conventional manner can reveal circumstantial evidence for money flows even if the transaction was made in small amounts.

After a long discussion, all participants unanimously agreed that in order to identify and trace the proceeds of crime effectively, the law in respective countries should be amended or added to. Firstly, every country should establish an FIU. Secondly, the law should state that financial institutions, such as commercial banks, have a legal obligation to keep records of transactions for a substantial time and to report certain minimum amounts of cash transactions and any suspicious transaction to the FIU.

B. Opening a Bank Account

Ms. Sakonji, Mr. Suzushima and Mr. Endo stated that Japan does not have a national identification (ID) system in place. Therefore, a photo ID card is not a prerequisite for a Japanese citizen to open a bank account. If a Japanese citizen would like to open a bank account, he or she needs to provide a driver's licence, an insurance card or other means of identification to the bank employee. Opening a bank account using a false name is very common practice in Japan. If caught, the perpetrator will be charged with a fraudulent offence. However, if a foreigner who resides in Japan would like to open a bank account, he or she has to provide an alien registration card to the bank employee. The municipality has the sole authority to issue the alien registration card to the foreigner. A passport is not a prerequisite for a foreigner to open a bank account in Japan. An ad hoc lecturer, Mr. Sadahiro, stated that if a bank's customer transfers ¥2,000,000 or more to a bank account in foreign country, a bank has a legal obligation to report this transaction to the respective authority. Moreover, if a bank's customer would like to withdraw money worth more than ¥100,000 yen, he or she connot do so by Automated Teller Machine (ATM). Under a recent regulation, he or she must be present at the bank to withdraw more than ¥100,000. Unsurprisingly, this new regulation receives numerous complaints from business circles because it is troublesome and time-consuming both for the banks and the customers.

The participant from Thailand stated that, in order to comply with the FATF Recommendations for financial institutions to obtain information about the true identity of the person with whose name an account is opened, Thailand has implemented a Know Your Customer measure. So, if a Thai citizen would like to open a bank account, he or she needs to provide a photo citizen identification card or other identification cards issued by any government agency to the bank employee. In the case of a foreigner residing in Thailand wanting to open a bank account, he or she needs to provide a passport and a local address to the bank employee.

The participant from Panama stated that if a Panamanian wants to open a bank account, a citizen photo identification card is required. On the other hand, a foreigner must provide a passport, a local address and a credit reference to a bank employee if he or she wants to open a bank account in Panama.

The participant from Pakistan stated that if a Pakistani would like to open a bank account, he or she needs to provide a photo identification card to the bank. However, if a foreigner who resides in Pakistan wants to open a bank account, he or she has to provide a passport and a local address to the bank employee.

The participant from Myanmar stated that if a Myanmar citizen would like to open a bank account, he or she needs to provide the name, address, occupation, Citizen Scrutiny Card number, and National Registration Certificate number to the bank personnel. On the other hand, if a foreigner wants to open a bank account, he or she is required to provide his or her Foreigner's Registration Certificate number,

passport number and visa number to the bank employee.

All participants unanimously concluded that in compliance with the Customer Identification measures of FATF Recommendations, documents such as a photo identification card should be a prerequisite to open a bank account; a prospective customer's permanent address also has to be provided to the bank personnel, and appropriate measures to prevent and tackle fake identifications should be put in place.

III. MEASURES FOR FREEZING AND SEIZURE OF PROCEEDS OF CRIME

A. Procedures for Freezing Criminal Proceeds in Participants' Countries

The participant from Panama stated that the public prosecutor in Panama can freeze all kinds of proceeds of crime, but in case of bank accounts, the public prosecutor needs approval from the court. However, the public prosecutor should have probable cause that the assets are related to the crime before freezing the assets.

The participant from Thailand stated that in Thailand, before filing the petition to the court, if the AMLO (the Transaction Committee) has probable cause to believe that the assets related to the predicate offences may be transferred, distributed, placed, layered or concealed, the AMLO has the power to seize the assets temporarily for a period not exceeding 90 days. Moreover, after the public prosecutor files a petition to forfeit the assets, if there is probable cause to believe that there may be a transfer, distribution, or placement of any assets related to the predicate offences, the public prosecutor might file a petition to the court to order a temporary seizure of the assets.

The participant from Myanmar stated that in Myanmar if the public prosecutor has probable cause to believe that the assets are related to the crime, the public prosecutor can temporarily freeze the assets.

The participants from Japan stated that in Japan, before filing a lawsuit or if a trial is pending, if the public prosecutor has probable cause to believe that the assets are derived from crime, the public prosecutor may request the court to temporarily freeze the proceeds of crime.

All the participants agreed that confiscation of crime proceeds is as important as the punishment of criminals itself. In addition, investigation of crime and confiscation of crime proceeds should be carried out simultaneously. More importantly, it is essential to have necessary measures to temporarily freeze the assets even before trial.

B. Confiscation of Proceeds of Crime

The Group learned that under Article 12 of the United Nations Convention against Transnational Organized Crime: "1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of: (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds; (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention; 2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation; 3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds; 4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds; 5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime."

Participants from Japan, Thailand, Myanmar, Pakistan and Panama all stated that their legislations are, in general, in accordance with Article 12 of the TOC Convention numbers 1-5.

The participant from Pakistan stated that there are two laws in Pakistan concerning the proceeds of crime. Firstly, the Control of Narcotic Substances Act of 1997 (ANF) specifies that if the court convicts a

defendant in a drug-related case, the investigating officer will write an application for forfeiture of the defendant's assets. The investigating officer will provide details of the defendant's assets including his or her associate's assets. If the court is satisfied that the assets were obtained through drug trafficking, the court can order the forfeiture of the assets to the Federal Government. Lastly, the National Accountability Bureau Ordinance of 1999 provides that politicians and federal and local officers who commit corruption or embezzlement offences could be fined amounts equal to the amount embezzled or acquired through corruption.

One of the participants suggested that the investigator has to identify the proceeds of crime at the earliest opportunity in order to temporarily freeze the assets and prevent the offender from transferring the assets to the third person.

One of the participants from Japan stated that the criminal justice agencies disproportionately focus on the punishment of the defendants and pay little attention to the confiscation of the proceeds of crime. This trend should be changed. The Group agreed that the criminal justice agencies should also pay much needed attention to the confiscation of proceeds of crime in order to discourage the offenders from acquiring assets through crime.

All the participants agreed that legislation should empower courts to confiscate assets when transferred to a third person or when intermingled with property from legal sources. The current awareness of the confiscation of proceeds of crime among investigative agencies and judges is very limited. More training should be provided to them in order to combat transnational organized crime effectively.

All the participants also stated that after the court forfeits the proceeds of crime, the proceeds of crime will go to the State's treasury. Some of the participants expressed the necessity of creating a system to distribute at least a part of confiscated assets to the victims.

C. Burden of Proof Concerning the Scope of "Proceeds"

The participant from Thailand stated that, in Thailand, the burden of proof will be on the public prosecutor to prove preponderance of evidence that the assets named in the petition are related to the predicate offences. If the public prosecutor can meet that standard of proof, the judge must order the forfeiture of the assets to the State.

The participants from Japan stated that, in Japan, the burden of proof will be on the public prosecutor to prove beyond reasonable doubt that the defendant committed a predicate offence or a money laundering offence, and that the defendant's assets are related to the predicate offence(s).

The participant from Panama stated that, in Panama, in drug-related cases, the burden of proof will be shifted to the defendant to prove how he or she acquired the assets. The defendant has to prove in a court of law that the assets were acquired through legitimate means. If the defendant cannot prove this, the judge will forfeit his or her assets to the State. However, in other criminal cases, the burden of proof will be on the public prosecutor to prove beyond reasonable doubt that the defendant committed a crime, and that the defendant's assets are related to the crime.

The participant from Pakistan stated that, in Pakistan, the burden of proof for the confiscation of proceeds of crime will be shifted to the defendant to prove that his or her assets are not related to the crime.

The visiting expert, Mr. Turone, stated that in regular criminal confiscation, the public prosecutor has to prove beyond reasonable doubt that the defendant committed a major crime, such as criminal associations, and that the defendant's assets are derived from major crime without any inversion of the burden of proof. It can be compared to the common law 'forfeiture *in personam*'. However, he also stated that in order to solve this problem, the Italian legislature introduced two different legal remedies which are conceived in such a way as to reach and confiscate the consolidated sections of criminal economy. The first remedy, the judicial remedy, which is called the special criminal confiscation of unjustified assets, is a very peculiar mechanism introduced by the Italian legislators which provides a further instance for compulsory criminal confiscation, suitable for striking at sections of the consolidated criminal economy, and allowing some

inversion of the burden of proof under a number of strict conditions. Moreover, this law applies only to persons convicted of major organized crime offences such as drug trafficking, mafia association, trafficking in persons, extortion and money laundering. The second remedy, the old administrative confiscation, is the one provided by an older anti-mafia statute which allows the public prosecutors to seize and confiscate criminal assets outside criminal proceedings, and with a looser rule of evidence. This possibility, concerning mafia crimes and drug crimes, is provided through a non-penal and administrative procedure judicially guaranteed, as it is ruled by law and controlled and decided by a judge. This old legal instrument, unlike the first remedy, is applied without any need for criminal conviction of the affected person. This legal remedy is somehow similar to the common law 'forfeiture *in rem*'.

Mr. Endo stated that, in Japan, the burden of proof for confiscating the proceeds of crime is too difficult to prove. The public prosecutor has to prove beyond reasonable doubt that the proceeds of crime are related to the predicate crime. In his opinion, in order to confiscate the proceeds of crime, the burden of proof should be on the public prosecutor to prove preponderance of evidence that the proceeds of crime are related to the predicate crime. Besides, one of the participants suggested that the burden of proof should be shifted to the defendant to prove how he or she acquired the assets. However, shifting the burden of proof requirement should not apply to the third person who acts in good faith.

D. Procedure of Confiscation

Mr. Turone also commented that there are two main legal procedures of the confiscation of the proceeds of crime. Firstly, the criminal confiscation is known in the common law system as 'forfeiture *in personam*.' This is the regular confiscation, which concerns a convicted person, with respect to assets directly proven to be criminal assets without any inversion of the burden of proof. The second procedure of the confiscation is known in the common law system as 'forfeiture *in rem*.' This unique procedure applies without any need for a criminal conviction of the affected person. A confiscation principle similar to the *in rem* procedure is in use in the Italian legal system and he believed that all members of the Council of Europe adopted a similar procedure because the signatory States abide by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime to adopt the same legal remedy as other signatory States.

IV. INTER-AGENCY CO-ORDINATION AND CO-OPERATION WITH FIUs AND OTHERS

The participants from Japan stated that, in Japan, the tax agency, the police force and the public prosecutor's office work hand in hand to identify, trace and examine the proceeds of crime.

The participant from Panama stated that, in Panama, the public prosecutor's office has a good working relationship with the banks and other financial institutions. Bank employees also receive comprehensive training from experts concerning how to identify fake photo identification cards and how to identify suspicious transactions.

The participant from Thailand stated that the police force has harmonious co-operation with the AMLO because many of AMLO's personnel came from the police force; the incumbent Secretary-General of AMLO is also former police officer.

All the participants agreed that co-operation and co-ordination among agencies is indispensable in fighting transnational organized crime in order to deprive criminals of illicit proceeds.

A. International Co-operation between FIUs

The participant from Thailand stated that Thailand is a member of the Egmont Group, which is an international group of Financial Intelligence Units (FIU) from 95 member countries. It serves as a co-ordinating centre for the exchange of information on financial transactions in the prevention and suppression of money laundering. To date, Thailand has signed the Memorandum of Understanding Concerning Co-operation in the Exchange of Financial Intelligence Related to Money Laundering (MOU) with 23 countries. In addition, Thailand is also a founding member of the Asia-Pacific Group on Money Laundering (APG), which is a regional anti-money laundering group. The APG was established in 1997 to help jurisdictions within the Asia-Pacific region to adopt and enforce internationally accepted standards. This includes enacting laws which criminalize the laundering of the proceeds of crime, and dealing with mutual legal assistance, confiscation, forfeiture and extradition. It also provides guidance for setting up systems to report and

investigate suspicious transactions.

Mr. Sadahiro from JAFIO, in his lecture, stated that information exchange among FIUs by utilizing a highly encrypted network system is faster than that of the investigative authorities. However, the Japanese FIU is not allowed to exchange information with foreign FIUs unless Japan establishes an information exchange agreement with those foreign countries. Currently, Japan has made such agreements with eight countries' FIUs: Australia, Belgium, Canada, Hong Kong, Singapore, South Korea, Thailand and the UK.

The participant from Myanmar stated that transnational organized crime is a threat that cannot be fought in isolation and cannot be solved by a single State. Myanmar inevitably needs to establish an FIU in order to identify, detect, examine and analyse suspicious transactions. To date, Myanmar has not established an FIU. However, Myanmar is willing to co-operate with foreign countries concerning exchange of information among FIUs.

The participant from Pakistan stated that the Pakistani Government has placed the Anti-Money Laundering Bill 2005 before the national assembly, proposing four-year imprisonment sentences for money laundering. The bill would also establish a Financial Intelligence Unit (FIU) which will be known as the National Financial Intelligence Center (NFIC) in the State Bank of Pakistan, the country's central bank. The NFIC will operate under the supervision of the Minister of Finance. Until now, the national assembly has not yet enacted this law, but it is widely expected that the national assembly will pass this law before the end of this year. However, Pakistan regularly exchanges information with all friendly and non-hostile States, whether they are coalition partners and have signed extradition treaties with Pakistan or not. Moreover, Pakistan also regularly exchanges information and shares intelligence concerning criminal matters with those countries.

All the participants unanimously agreed that nowadays we live in a borderless world. One country, no matter how powerful it is, cannot fight transnational organized crime alone. International co-operation among FIUs becomes more and more necessary, even indispensable, if all countries want to completely eradicate transnational organized crime.

V. MUTUAL LEGAL ASSISTANCE TO IDENTIFY, TRACE, FREEZE AND CONFISCATE PROCEEDS OF CRIME, AND RETURN THE PROCEEDS OR SHARE THE ASSETS

Deputy Director Senta stated that there are two important methods of international co-operation. First of all, law enforcement co-operation is a channel for international co-operation which is a very quick and efficient way to get information.

Secondly, mutual legal assistance and extradition are formal channels for international co-operation so they require legal procedures, sometimes lengthy. However, this method is essential in obtaining evidence that is admissible in a court of law because the information obtained through law enforcement co-operation is in many cases inadmissible in court.

Ideally, in order to obtain key evidence located in a foreign country the relevant countries need to conclude a Mutual Legal Assistance Treaty (MLAT). But in the real world, it is almost impossible for each country to sign an MLAT with every other country on the world map. Therefore, the reciprocity of mutual legal assistance without signing a treaty is the answer for obtaining evidence that is admissible in a court of law because it is quick, informal in nature and merely requires the willingness of the two countries to engage in this practice. However, the reciprocity of mutual legal assistance without signing a treaty is not applicable in every country. In some countries, their Constitutions and their legal principles may not permit them to utilize the method of reciprocity of mutual legal assistance without signing a treaty. Therefore, in those countries, the only way to obtain evidence located in a foreign country, and make sure that it is admissible in a court of law, is by signing an MLAT with that foreign country, or to regard universal conventions, such as the TOC Convention, as a legal basis for international co-operation.

Participants from Thailand and Panama also stated that if evidence is located in a foreign country and if the investigator merely uses a formal channel, the evidence might be destroyed. Therefore, the investigator needs the co-operation of his or her counterpart in the foreign country to preserve the evidence. The prosecutor

might call his or her counterpart to preserve the evidence before the formal request reaches the competent agency in the respective country. This kind of practice is called informal law enforcement co-operation.

Participants from Thailand and Japan commented that if the evidence is located in a foreign country, most investigators will give up trying to collect that evidence because most investigators believe that using formal requests is complicated and time-consuming.

Professor Senta commented that investigators have to change their mindset and should not give up when they find important evidence out of their own countries. According to his experience, he has succeeded in many cases in overcoming the difficulties of both formal and informal international co-operation, which at first seemed to be impossible. The easiest and most effective way is to make a phone call to a concerned agency to find out the best way to proceed. He repeatedly stressed that investigators must change their mindset. If they face any difficulty, they should never give up the international co-operation methods.

Visiting Expert Mr. Turone stated too that investigation and prosecution of the proceeds of crime must be allowed to develop beyond national borders. He also emphasized that legal reciprocal agreement between countries, bilateral and multilateral agreements concerning identifying, tracing, freezing and confiscating proceeds of crime and returning the proceeds and sharing the assets are extremely critical if all countries want to tackle this problem effectively. He also stated that, in 1990, the Council of Europe promoted the International Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime. The main purpose of this Convention is to seize and confiscate criminal assets on an international scale, since the Convention requires each signatory State, on the request of another signatory State, to seize assets in view of a request for international confiscation and also to permit the confiscation of criminal assets in its own territory. He emphasized that the Convention of the Council of Europe on money laundering is based on a philosophy which strongly favours a network of interconnected asset investigations to be expanded on an international scale in view of a series of international confiscations as the most effective investigative tool against transnational organized crime and its profit-oriented dimension. He also pointed out that a request based on the reciprocity of mutual legal assistance without a treaty is not as effective as a request based on a treaty. Because of the informality of a request not backed by a treaty, the requested State does not have the obligation to co-operate with the requesting State. Many participants stated that regardless of the existence of an MLAT, making a request is an important mode of international co-operation to fight transnational organized crime. The investigators must creatively utilize all modes of international co-operation available if they want to eradicate transnational organized crime.

VI. MEASURES TO HOLD RINGLEADERS AND CRIMINAL LEGAL PERSONS ACCOUNTABLE

A. Use of Offences of Conspiracy/Criminal Organization or Accomplice Clauses

Professor Ikeda began by stating that Article 5 of the United Nations Convention against Transnational Organized Crime (TOC Convention) provides that each State Party shall adopt either a conspiracy offence or a participation offence as a criminal offence in their domestic laws. The conspiracy offence is a common law concept. On the other hand, the participation offence is a civil law concept. They simply mean that one or more other persons agree to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit. She also stated that the main purpose of a conspiracy offence or a participation offence is to punish the ringleaders.

The participant from Thailand stated that section 210 of the Thai Penal Code provides that whenever five persons or more conspire to commit any offence in the Thai Penal Code punishable with a maximum term of imprisonment of one year or more, any such person is said to be a member of a criminal association, and shall be punished with imprisonment not exceeding five years or a fine not exceeding ฿10,000, or both. In addition, if it is a conspiracy to commit an offence punishable with death, imprisonment for life or imprisonment of ten years or more, the offender shall be punished with imprisonment of two to ten years and fine of ฿4,000 to ฿20,000.

He also stated that this law has some flaws. Firstly, in order to commit a conspiracy offence, five persons or more must conspire to commit any offence in the Thai Penal Code, but the Thai Penal Code has been promulgated since 1956. Inevitably, it does not cover all the major criminal offences such as drug trafficking,

tax evasion, customs evasion, bid rigging and share manipulation. For instance, if five persons or more conspire to commit a drug trafficking offence, under Thai law, those persons do not commit a conspiracy offence. Therefore, Thailand needs to enact new legislation that clearly states the definition of the conspiracy offence in order to comply with the TOC Convention. Secondly, it is extremely difficult to prove in a court of law that the suspects committed a conspiracy offence because the serious crime that the persons agreed to commit has not actually occurred.

The participants from Japan stated that Japan has not enacted the conspiracy offence Bill yet. Currently, the Bill is pending in the Diet. In addition, they firmly stated that in order to comply with the TOC Convention, Japan has to pass this Bill as soon as possible.

The participant from Pakistan stated that Pakistan has adopted the conspiracy offence. Section 120A of the Pakistan Penal Code provides that when two or more persons agree to do an illegal act such an agreement is designated a criminal conspiracy.

The participant from Panama stated that in the Penal Code of his country, under the name Illicit Association (section 242, 242-A, and 242-B) the conspiracy offence is a crime, in compliance with Article 5 of the TOC Convention.

The participant from Myanmar stated that the conspiracy offence exists in Myanmar. Section 565 of the Myanmar Penal Code provides that when three persons or more conspire to commit a crime, it is said that they commit a conspiracy offence.

Most participants agreed that to tackle transnational organized crime at its root, the ringleaders have to be severely punished and their assets have to be confiscated. Typically, most organized crimes are committed by so-called 'small fish' who receive the order from the ringleaders. When the crime is detected, the small fish will be caught and punished. The ringleaders will get away with impunity. This trend has to be changed. The ringleaders have to be held accountable and severely punished for their involvement. Most participants also believe that one of the most efficient tools to combat ringleaders is to adopt the conspiracy and participation offence legislation in order to allow the investigators to search, freeze and seize the ringleaders' assets at the earliest opportunity.

However, many participants stated that the conspiracy and participation offence also creates some controversy. First of all, it is very difficult to prove in court that the suspects committed the conspiracy offence because the serious crime that the persons agreed to commit has not actually occurred. Secondly, in order to prove in court that the defendants committed a conspiracy or participation offence, the investigators desperately need special investigative techniques such as electronic surveillance to build up solid evidence against the offenders. However, electronic surveillance is not allowed in many countries. For instance, in Pakistan, it is illegal to wiretap or intercept a phone. Thirdly, the conspiracy offence may in some countries be against constitutional or legal principles because it punishes persons for mere agreement to commit a crime, not for committing a crime *per se*.

B. Application of Effective, Proportionate and Dissuasive Sanctions for Criminals and Legal Persons

All the participants acknowledged the importance of not allowing criminals to disguise their offences under legal entities. Therefore the Group agreed that their domestic law and measures concerning the liability of legal persons should be placed in accordance with Article 10 of the TOC Convention.

VII. CONCLUSION

All the participants unanimously agreed that:

(a) In order to identify and trace the proceeds of crime effectively, the law in respective countries should be amended or added to. Firstly, every country should establish an FIU. Secondly, the law should state that financial institutions, such as commercial banks, have a legal obligation to keep records of transactions for a substantial period of time afterwards and to report a certain minimum amount of cash transactions and any suspicious transaction to the FIU;

(b) States need to comply with the Customer Identification measures of FATF Recommendations, such as a photo identification card to be a prerequisite to open a bank account, a prospective customer's permanent address also to be provided to the bank personnel, and appropriate measures put in place to prevent and tackle fake identifications;

(c) Confiscation of crime proceeds is as important as the punishment of criminals. In addition, investigation of crime and confiscation of crime proceeds should be carried out simultaneously. More importantly, it is essential to have necessary measures to temporarily freeze the assets even before a trial;

(d) Legislation should empower courts to confiscate the illicit assets when they are transferred to a third person or become intermingled with property from legal sources;

(e) Awareness of the methods of the confiscation of proceeds of crime among investigative agencies and judges is also very limited. More training should be provided to them in order to combat transnational organized crime effectively;

(f) Shifting of the burden of proof from the public prosecutor may raise concerns for the principle of presumed innocence. However, the level of proof shall be eased to the preponderance of evidence that the proceeds of crime are derived from the predicate crime, if the domestic legal principle allows such a measure;

(g) Co-operation and co-ordination among agencies, such as police, public prosecutors and FIUs is indispensable in fighting transnational organized crime in order to deprive the criminals of illicit proceeds;

(h) Nowadays we live in a borderless world. One country, no matter how powerful it is, cannot fight transnational organized crime alone. International co-operation among FIUs is more and more necessary, even indispensable, if all countries want to completely eradicate transnational organized crime;

(i) Regardless of the existence of an MLAT, making a request is the most important mode of international co-operation to fight transnational organized crime. The investigators must creatively utilize all modes of international co-operation available if they want to eradicate transnational organized crime;

(j) To tackle transnational organized crime at its root, the ringleaders have to be severely punished and their assets have to be confiscated. The Group considered the conspiracy and participation offences as some of the most efficient tools to combat ringleaders in order to allow the investigators to search, freeze and seize the ringleaders' assets at the earliest opportunity.

In conclusion, all participants acknowledged that it is extremely crucial to have a uniform attitude toward transnational organized crime under the guidance of the TOC Convention so that there is no safe haven for criminals.