

## **ANNEX D: Summaries of mutual evaluation reports adopted in 2000 – 2001<sup>1</sup>**

### **Mutual Evaluation of Samoa**

Samoa was the subject of a joint mutual evaluation by the Asia Pacific Group on Money Laundering (APG) and the Offshore Group of Banking Supervisors (OGBS). The evaluation team visited Samoa from 19 to 22 February 2001.

#### **Conclusions**

Samoa does not have a major drug or organised crime problem. The extent of money laundering relating to overseas proceeds is unknown. Whilst few cases of suspected money laundering have been identified or investigated, Samoa has the potential to be used for money laundering purposes. It is a tax haven, has no foreign exchange regulations and has efficient domestic and offshore banking systems.

Samoa does not at this time meet the anti-money laundering standards set out in the Financial Action Task Force's Forty Recommendations. Samoa has expressed an intention to comply with international anti-money laundering standards. If that intention is put into practice, Samoa should be able to reach the international standards within a reasonable time frame. Although there is a legislative platform in place, there is need for further steps to be taken to amend the law if Samoa is to meet international standards.

There is also a need to ensure that regulators, law enforcement agencies and prosecutors have the skills and resources to effectively identify, investigate and prosecute money laundering offences. The basis for a professional and well managed law enforcement system exists; however, the police and customs service have very limited capacity and experience in the area of financial crime generally. Additional resources and further training of relevant personnel will be required to enable them to effectively carry out their responsibilities both at the domestic level and within the offshore centre.

The evaluation team concludes by recognising the important steps that Samoan authorities have already taken to combat money laundering in their jurisdiction. It also wishes to acknowledge the competence and professionalism of officials in both the financial and legal sectors, and Samoa's expressed willingness to meet the international standards within a reasonable time frame.

#### **Recommendations**

The Evaluation Team made a number of recommendations designed to strengthen Samoa's anti-money laundering system. Several of the matters identified within the recommendations are already being addressed by the relevant authorities. In such instances, the efforts already undertaken have been recognised by the wording "work in progress." Some of these recommendations include:

- sign, ratify and implement the Vienna Convention (*United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*) and Palermo Conventions at the earliest opportunity;
- issue regulations and/or guidelines to the financial sector in order to provide clear guidance on how financial organisations can fulfill their obligations under the Money Laundering Prevention Act 2000 (MLPA). (Work in progress);

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<sup>1</sup> Extract from *Asia/Pacific Group on Money Laundering Annual Report 2000-2001*.

- introduce statutory customer identification requirements for all financial institutions, with relevant provisions to be included in both the money laundering and regulatory laws and ensure that the customer identification requirements relate to the opening of all account and to on-going relationships;
- remove the \$30,000 threshold for record-keeping of information related to transactions and the reporting of suspicious transactions contained in section 12 of the MLPA;
- remove all remaining constraints in the regulatory laws that prevent access by the regulators to all records maintained by financial institutions, including customer records. (Work in progress);
- introduce specific provisions in the MLPA to permit the Money Laundering Authority, as part of its powers and duties, to co-operate and exchange information with foreign counterpart FIUs;
- take measures to ensure a clear distinction in operational terms between the role of the Central Bank as the MLA and its role as supervisor of the banking system. (Work in progress);
- remove the obligation on the auditors (contained in some of the regulatory laws) to forewarn financial institutions of the intention to report suspicious activity or evidence of criminal activity and malpractice to the regulatory authorities;
- introduce common provisions in all the regulatory laws requiring that shareholders and directors of financial institutions are fit and proper and review the background of all existing shareholders and directors of offshore financial institutions to establish whether they meet fit and proper criteria;
- extend the current system of on-site examinations of the domestic banks by the Central Bank to include specific attention to the banks' compliance with their obligations under the MLPA. (Work in progress);
- implement measures in the short term to "immobilise" bearer shares issued by IBCs, by requiring their safe-keeping by licensed financial institutions; and in the longer-term to remove the ability for any company to issue bearer shares;
- develop the capacity and expertise of the police to enable them to assist with money laundering investigations and provide training to the agencies with powers conferred by section 19 of the MLPA, to assist them in the exercise of those powers.
- recruit additional staff into the Office of the Registrar of International and Foreign Companies to improve the depth of regulatory and accounting skills and resources. (Work in progress).

At the APG's Fourth Annual Meeting, members heard a response from Samoa, noting Samoa's commitment to international anti-money laundering measures and that work had already begun to address some of the deficiencies identified in the report but that a lack of resources/capacity was a problem.

## **Mutual Evaluation of Chinese Taipei**

The Evaluation Team visited Chinese Taipei, from 26 to 29 March 2001.

### **Conclusions**

Chinese Taipei has taken some important steps to combat money laundering. Its recently enacted anti-money laundering legislation conforms to international standards in relation to creating a money laundering offence and requiring the reporting of suspicious transactions and a co-ordinated anti-money laundering policy is now beginning to take shape.

The Evaluation Team has made a number of recommendations which, if adopted, would further strengthen Chinese Taipei's anti-money laundering system. Many of the recommendations relate to amendments to the Money Laundering Control Act to clarify certain vague areas and legislatively to provide for systems that will comply with the FATF's Forty Recommendations.

The fairly large number of recommendations is to be taken in the context of enhancing and fine-tuning Chinese Taipei's existing anti-money laundering system. The Chinese Taipei authorities made it clear that they would appreciate receiving specific recommendations from the Team. It is also noted that some of the recommendations relate to problems which have already been identified and are being addressed by the Chinese Taipei authorities.

The Evaluation Team wishes to conclude by recognising the many important measures Chinese Taipei has taken to ensure that the risk of money laundering is minimised and the political and official commitment to improving its anti-money laundering system. The Evaluation Team also wishes to acknowledge the very professional and co-operative attitude of the authorities with whom it dealt in the course of this mutual evaluation and to thank them for the assistance they provided to the Evaluation Team throughout the evaluation process.

### **Recommendations**

The Evaluation Team made a number of recommendations. The Chinese Taipei authorities are already addressing several of these issues, and where this applies the recommendation is marked "work in progress" in recognition of the fact. Some of these recommendations include:

- amendments to Money Laundering Control Act and related matters, including that consideration be given to the creation of an "assets forfeiture fund" into which confiscated funds are deposited; provisions be introduced which allow for the freezing of assets at the request of another jurisdiction; Article 14 of the MLCA be amended to spell out the procedures necessary to provide the mechanisms to make and receive mutual legal assistance requests and, in appropriate circumstances, to exchange information with law enforcement and regulatory authorities; and amendments to the law to include "structuring" or "smurfing" as an offence.
- the Evaluation Team believes that Chinese Taipei's efforts would be enhanced if the Public Prosecutor's Office exercised greater co-ordination and oversight authorities and recommended that the Public Prosecutor, in conjunction with the MLPC form a working group of all relevant agencies;
- legislative amendments that would provide the necessary authority to conduct undercover operation and controlled deliveries in money laundering matters should be introduced [work in progress] and the authorities should establish guidelines for the conduct of undercover operations including the use of controlled deliveries;

- although it has been made illegal, the full extent of underground banking is unknown to government authorities. This avenue of money laundering is therefore open to abuse and it is recommended that this illegal activity be fully investigated;
- the Evaluation Team made a number of detailed recommendations regarding the sample set of guidelines issued by the Bankers Association;
- in relation to the role of the Central Bank and Money Laundering Prevention Center, all inspection programs should include a specific reference to verify that training programs are up to date. The inspection process should include both induction and yearly refresher training;
- in relation to significant currency transactions, the Evaluation Team recommended that the authorities should introduce laws to reduce the amount of significant currency transactions to NT\$1million and report these transactions to the MLPC [work in progress] and that a specific reporting period should be defined as part of the proposed amendment .The Team also recommended that this reporting obligation apply to all non bank financial institutions;

At the APG's Fourth Annual members heard a response from Chinese Taipei indicating a positive response to the recommendations contained in the report.

### **Mutual Evaluation of Labuan International Offshore Finance Centre**

Labuan is an international offshore financial centre (IOFC) established by the Malaysian Government in 1990. Labuan IOFC is the third jurisdiction in the Asia/Pacific region to be evaluated jointly by APG and the OGBS.

It was decided that separate evaluations of the Labuan IOFC and Malaysia would be appropriate and effective in the circumstances but that the evaluation of Labuan IOFC would of course need to take into account the national laws of Malaysia which apply in Labuan.

The evaluators visited Labuan IOFC from 2 to 4 April 2001 and Kuala Lumpur on 5 and 6 April 2001.

#### **Conclusions**

Labuan IOFC does not appear to have a serious organised crime or money laundering problem. While there is as yet no comprehensive anti-money laundering law in Malaysia, the new Anti-Money Laundering Bill 2001 has just been introduced which when passed should significantly enhance the anti-money laundering regime. An assessment that Labuan IOFC fully complies with the Forty FATF Recommendations is contingent upon passage of this legislation.

The Evaluation Team has made several recommendations which, if adopted, would further strengthen Labuan IOFC's anti-money laundering system. However, the Evaluation Team wishes to conclude by recognising the many important measures mainland Malaysian and Labuan authorities have taken to ensure that the risk of money laundering in Labuan IOFC is minimised.

The Evaluation Team also wishes to acknowledge the very professional and co-operative attitude of the Labuan and Malaysian authorities with whom it dealt in the course of this mutual evaluation.

## **Recommendations**

In order to address the issues identified during the mutual evaluation, the Evaluation Team recommended that Labuan IOFC take steps to implement a number of recommendations, including:

- introduce amendments to the regulatory laws to rationalise the secrecy provisions, and to remove any perceived impediment to the access by the Labuan Offshore Financial Services Authority (LOFSA) of information relating to the business of regulated entities, including the identity of customers.
- make explicit the ability of LOFSA to acquire information from regulated institutions on behalf of overseas regulatory authorities, and clarify that the sharing of information is not restricted in relation to customer details, subject to reciprocal confidentiality provisions;
- produce updated guidelines for the financial sector in relation to anti-money laundering systems and procedures, once the Anti-Money Laundering Bill 2001 is enacted;
- introduce procedures into the on-site examination process undertaken by LOFSA to focus on institutions' compliance with proper anti-money laundering systems;
- require both the internal and external auditors, as part of their audits, to report routinely on their assessment of the adequacy of the anti-money laundering systems and controls;
- amend the guidelines for internal auditors to indicate the extent to which their work should address money laundering issues;
- introduce a general obligation on auditors to report immediately to LOFSA any evidence of criminal activity that they might acquire in the course of their audit of regulated institution and provide the auditors with statutory protection against civil liability for making such reports.
- introduce a statutory requirement that the controllers and directors of all trust companies should be fit and proper, in line with the requirement applicable to other sectors of the IOFC.

At the APG's Fourth Annual Meeting members heard a response from Labuan which indicated that it thought that the evaluation report was fair and positive and that all the recommendations would be seriously considered.

## **Mutual Evaluation of Macau,China**

Macau,China was the fourth jurisdiction in the Asia/Pacific region to be evaluated jointly by the APG and the OGBS.

The evaluators visited Macau,China from 9 to 11 April 2001.

## **Conclusions**

Macau's significant dependence on gambling activities and the free movement of cash across its borders mean that Macau needs to ensure that it adopts international best practice to address money laundering. The Macau authorities told the Evaluation Team that this is vital for ensuring Macau's future economic growth as well as to promote a reputation that it is not harbouring or becoming a transit for money laundering activities.

Macau has taken some important steps to combat money laundering. Macau's recently enacted anti-money laundering legislation conforms with international

standards in relation to creating a money laundering offence and requiring the reporting of suspicious transactions, but it is too early to make definitive conclusions about the effectiveness of the legislation. It is however clear that there are too few suspicious transaction reports and therefore investigations into money laundering and that there is considerable scope to enhance the law enforcement regime.

The Evaluation Team has made a number of recommendations which, if adopted, would strengthen Macau's anti-money laundering system.

The Evaluation Team wishes to acknowledge the co-operative attitude of the Macau SAR authorities with whom it dealt in the course of this mutual evaluation and to thank them for the assistance they provided to the Evaluation Team throughout the evaluation process.

### **Recommendations**

The Evaluation Team made a number of recommendations. The Macau, China authorities are already addressing several of these issues, and where this applies the recommendation is marked "work in progress" in recognition of the fact. Some of these recommendations include:

- the Monetary Authority of Macau (AMCM), the Department for Financial Services, the Department for Economic Services and the Macau Trade and Investment Promotion Institute should pursue a concerted and co-ordinated approach to raise awareness and provide training on the issue of money laundering;
- given Macau's unique dependence on gambling activities, the need to address money laundering issues should be facilitated by strong public education programs to facilitate greater "buy ins" and better co-operation from the public. [Work in Progress];
- the Department for Economic Services should provide guidelines on money laundering and anti-money laundering measures to the industries which it supervises and the AMCM should review its guidelines on money laundering to the banking sector with the objective of updating and enhancing their contents. [Work in Progress];
- in relation to confiscation, the various provisions that may be applied to confiscate the proceeds of crime should be clarified to make clear which rules govern money laundering cases, depending on the predicate offences;
- in order to facilitate the monitoring of cash movements and for the purpose of financial intelligence, the Macau Government could consider introducing a requirement to report cash carried in and out of Macau across its borders. Should such requirements be introduced, certain enforcement measures would also have to be carried out to penalise instances of non-declaration or false declaration;
- the proposed reform of the gambling industry should, inter alia, aim to improve the regulation and transparency of all entities involved, as well as the 'fit an proper' testing of all operators, managers and staff of casinos. [Work in Progress];
- all casino junket tour operators should be licensed and consideration should be given to ensuring that all participants on junket tours are identified;
- the functions, powers, staffing levels and supervisory capacity of the Gambling Inspection and Co-ordination Services need to be considered to determine whether they need to be enhanced or whether a separate statutory body should be created to oversee the law enforcement aspects of casino operations.

- the capacity of the supervisory agencies needs to be enhanced further to ensure that dedicated resources can be devoted to address suspicious transactions in the various sectors under their supervision.
- a more co-ordinated approach needs to be considered to ensure that the identification, reporting and prosecution of money laundering activities can be done more successfully and speedily. A central, multi-disciplinary agency (usually referred as a financial intelligence unit), responsible for receiving, analysing and disseminating to the competent authorities disclosures of financial information concerning suspected proceeds of crimes should be put in place.
- immediate efforts should be made to ensure improved co-operation in the areas of drafting/amending of anti-money laundering legislation, enforcement of the law and international co-operation;
- a mechanism (e.g. a working group) should be put in place as soon as possible to ensure co-ordination among all relevant government agencies that are involved in the fight against money laundering, in consultation with relevant associations, financial and non-financial institutions. One purpose of this mechanism would be to review money laundering trends and typologies and to develop a co-ordinated strategy to detect and attack money laundering in Macau.  
[Work in Progress]