

ANNEX C: Summaries of mutual evaluation reports adopted in 2002 – 2003¹

Mutual Evaluation of Korea

The Evaluation Team visited Seoul, Korea from 26 to 29 August 2002.

Conclusions

The Evaluation Team has made a number of recommendations which, if adopted, would further strengthen South Korea's anti-money laundering system. However, the Evaluation Team wishes to conclude by recognising the many important measures the South Korean authorities have taken to ensure that the risk of money laundering is minimised.

The Evaluation Team also wishes to acknowledge the professional and co-operative attitude of the South Korean 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 recommends that South Korea take steps to implement the following recommendations. Some of these matters were already in train at the time of the Evaluation Team's on-site visit and further progress has been made since that time. Where work is underway or a recommendation has already been addressed, this is noted.

Legal

1. South Korea should consider enacting civil confiscation laws, although it appears that the criminal seizure and confiscation laws provide a basic system on which to build. International asset sharing is an important tool and should be added to appropriate laws and agreements.
2. The STR reporting threshold should be lowered from US\$40,000 to US\$10,000 to match the threshold for foreign currency transactions. This should be done immediately so as to enhance the effectiveness of the AML regime in detecting money laundering in financial institutions and in conjunction with Recommendations 9 and 11 below.
3. Article 9, Paras 2 and 3 of the FTRA prohibit information provided in the STRs from being used as evidence in prosecutions and allow bank employees to refuse to testify. The Evaluation Team recommends that the Prosecutor General be given discretion to allow the use of SFT information as evidence where necessary in specific criminal cases.

Financial

4. The Guidelines and Explanatory Notes on Anti-Money Laundering Work should make reference to the types of customer identification documents stipulated in the Act and Enforcement Decree on Real Name Financial Transactions and Guarantee of Secrecy. The guidelines should also incorporate the documents required to verify the identity and legal existence of entities such as client accounts opened by solicitors or accountants, trust, nominee and fiduciary accounts. In addition, the guidelines should include the customer identification

¹ Extract from *Asia/Pacific Group on Money Laundering Annual Report 2002-2003*.

procedures for verification of customer identity in situations where there is no face-to-face contact.

5. The relevant agencies should, wherever possible, provide further guidance through examples of suspicious transactions to aid the financial institutions in their identification of such transactions.
6. The supervisory authorities should strengthen their fit and proper screening of principal shareholders and senior management of financial institutions by conducting checks with the relevant law enforcement agencies. They should also conduct fit and proper checks on persons and the beneficial owners who wish to engage in money-changing business.
7. The Korea Financial Intelligence Unit (KoFIU) is encouraged to conduct joint inspections with other supervisory bodies and government agencies during the initial phase of South Korea's anti-money laundering regime.
8. The Evaluation Team recommends that Korea make the legislative changes to allow supervisory authorities to have unrestricted access, under conditions of secrecy, to customers' records.
9. Legislation should be reviewed to determine if smaller financial institutions ought to remain partially exempted from establishing internal control systems.
10. FSS should enhance its on-site inspection approach in its inspections of financial institutions. Specifically, the checklist used during its on-site examinations should be revised to include periodic checks by bank internal auditors on the effectiveness of the bank's anti-money laundering efforts as well as checks to ensure that financial institutions perform adequate screening procedures when hiring employees. FSS should require its examiners to perform random sampling of customers' files during their on-site inspections to evaluate the financial institutions' customer due diligence standards and anti-money laundering practices. FSS should also consider conducting inspections that focus on the anti-money laundering systems and controls in banks.
11. BOK should require money-changers to retain customer transaction records for at least 5 years, as stipulated in Recommendation 12 of the FATF 40 Recommendations.
12. The government should consider increasing the number of money-changers inspected each year.

Law Enforcement

13. Although it is not a specific requirement of the FATF 40 Recommendations, the introduction of significant cash transaction reporting would have the potential to improve the rate of detection of money laundering and revenue evasion in South Korea, particularly if this information was subject to computerised data mining techniques of the type being developed by KoFIU. The Evaluation Team recommends that South Korea consider the introduction of a significant cash reporting system.
14. The Evaluation Team recommends that KoFIU and the law enforcement agencies to which it refers SFT information work closely together to improve access to and use of SFT information by law enforcement agencies.
15. The Evaluation Team recommends that there needs to be: 1) a national strategy established jointly by the Prosecutor General and KoFIU with input from all relevant agencies to address money laundering and the strategic use of asset forfeiture to fight money laundering; and 2) the establishment of an interagency

review team to routinely review STR data and other information to ascertain trends; develop countermeasures, establish priorities for investigation.

IMF/World Bank-led Assessment of Bangladesh

In October 2002, a detailed assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Bangladesh was prepared by a team of assessors that included staff of the International Monetary Fund (IMF) and the World Bank (WB) and experts under the supervision of IMF and WB staff, and other experts not under the supervision of IMF and WB staff who were selected from a roster of experts in the assessment of criminal law enforcement and non-prudentially regulated activities, provided by the Asia/Pacific Group on Money Laundering.

This assessment was conducted as part of a broader Financial Sector Assessment Program (FSAP) of Bangladesh conducted by the IMF and WB. As part of this process, the AML/CFT Assessment Team prepared both a detailed FSAP report, and a summary Report on the Observance of Standards and Codes (ROSC) for the FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations Combating the Financing of Terrorism.

The recommendations outlined below are taken from the ROSC.

Since the law has just been passed, it is not possible to say with accuracy the effectiveness of implementation. However, it is clear that the capacity and resources for the implementation and enforcement of the new Law need to be greatly enhanced. Thus, the current AML law and AML/CFT regime is materially non-compliant with the FATF 40+8 Recommendations.

Recommended Action Plan to Improve Compliance with the FATF Recommendations

Reference FATF Recommendation	Recommended Action
40 Recommendations for AML	
General framework of the Recommendations (FATF 1-3)	Amend the law and associated circulars to enable compliance with FATF 40 + 8 recommendations.
Scope of the criminal offense of money laundering (FATF 4-6)	Amend the law to more clearly define ML/FT offences.
Provisional measures and confiscation (FATF 7)	Ratify Vienna Convention, have more detailed regulations on the legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation.
General role of financial system in combating ML (FATF 8-9)	AML Act should be enlarged to cover insurance companies and money remittance/transfer companies. The circular should be enhanced to include nonbank financial institutions and other relevant entities subject to AML Act.
Customer identification and record-keeping rules (FATF 10-13)	Ensure that financial institutions should be prohibited from keeping anonymous accounts or accounts in fictitious names and that they should be required to identify customers. Tighten requirements in the Circular for keeping of accounts for others and monitoring of accounts in general

Reference FATF Recommendation	Recommended Action
Increased diligence of financial institutions (FATF 14-19)	Establish the protection of financial institutions from breach of any restriction on disclosure of information to FIU, prohibition on tipping off, making suspicious transaction reporting as legal obligation, and requirement for financial institutions to pay special attention to suspicious transactions and to develop program for AML.
Measures to cope with countries with insufficient AML measures (FATF 20-21)	Amend circular to provide rules on this.
Other measures (FATF 22-25)	Cross border movement of currency should be better monitored. <i>Greater cooperation be established between Customs and Bangladesh Bank (BB)</i> . Data need to be collected and shared.
Implementation & role of regulatory and other administrative authorities (FATF 26-29)	The financial institutions other than banks need to be brought within the Circular and Law.
Administrative Cooperation – Exchange of general information (FATF 30-31)	Amend law to expressly provide for exchange of information between supervisors, BB and enforcement agencies within and outside Bangladesh.
Administrative Cooperation – Exchange of information relating to suspicious transactions (FATF 32)	Set clear rules and procedures for exchange of information and keeping of information.
Other forms of cooperation – Basis & means of cooperation in confiscation, mutual assistance, and extradition (FATF 33-35)	Amend the law to provide for special provisions on mutual assistance and extradition.
Other forms of cooperation – Focus of improved mutual assistance on money laundering issues (FATF 36-40)	Establish clear rules and procedures on mutual assistance be established for expediting sharing of information, freezing of assets, extradition.
8 Special recommendations on terrorist financing	
I. Ratification and implementation of UN Instruments	Ratify the UN International Convention for the Suppression of the Financing of Terrorism 1999.
II. Criminalizing the financing of terrorism and associated money laundering	Amend law to criminalize FT.
III. Freezing and confiscating terrorist assets	Mechanisms be put in place to enable freezing and confiscation.
IV. Reporting suspicious transactions related to terrorism	The law ought to make reporting compulsory. The reporting be extended to other financial institutions and also to other entities.
V. International Cooperation	See recommendations in relation to FATF 33 – 40 above.
VI. Alternative remittance	Money changers need to be monitored and investigation need to be undertaken to detect Hawala systems.
VII. Wire transfers	Ensure that financial institutions, conduct enhanced scrutiny and monitor funds transfers which do not contain complete originator information.
VIII. Non-profit organizations	Relevant ministry in Government needs to ensure that NGOs are properly registered and are held accountable for their action.

Other Recommended Actions

Reference	Recommended Action
Capacity of Bangladesh Bank and the enforcement agencies	Improve the resources and capacity of BB to carry out the AML/CFT measures
Inter agency relationship	Improve cooperation between the various agencies within Bangladesh. Interagency training is needed with judges, prosecutors and State and local level law enforcement, with bank examiners, on how to conduct ML/FT investigations. Further, a task force approach to these types of investigations should be part of the training agenda.
AML/CFT awareness and knowledge	Intensify training for all relevant parties.

Mutual Evaluation of Palau

An APG Evaluation Team visited Palau from 10 to 13 March 2003.

Conclusions

The Republic of Palau at this time does not meet all of the anti-money laundering standards set out in the Financial Task Force's 40 Recommendations. If adequate resources are provided and Palau puts its desire into practice, Palau should be able to reach the international standards within a reasonable time frame. Although a basic legislative platform has been put in place, which avoided the inclusion of Palau on the FATF's NCCT list, there is a need for amendments to the law if Palau is to fully meet international standards. The potential money laundering threat to Palau, from both external and internal sources, is considered significant at this time.

The Evaluation Team has made a number of recommendations which, if adopted, would significantly strengthen Palau's anti-money laundering system. However, the Evaluation Team wishes to conclude by recognising the important measures Palauan authorities have taken to ensure that the risk of money laundering is reduced.

The Evaluation Team also wishes to acknowledge the frank, professional and co-operative attitude of the Palauan 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 recommends Palau take steps to implement the following recommendations. Some of these matters were already in train at the time of the Evaluation Team's on-site visit and further progress has been made since that time. Where work is underway or a recommendation has already been addressed, this is noted.

Co-ordination, overall resourcing

1. Palau should establish an officials committee (eg National Anti-Money Laundering Officials Committee) involving all stakeholders – including heads/senior representatives of BPS, FIC, OAG, Ministry of Finance, Bureau of Immigration and the Head of the FIU – to develop and maintain cross-agency protocols:
 - (i) for operational intelligence, information sharing, investigation and prosecution of significant financial crime/money laundering matters and
 - (ii) to ensure a better balanced, whole-of-government approach to considerations of money laundering issues.
2. Palau should ensure that sufficient skills and expertise are identified to effectively carry out the responsibilities assigned to the FIU, the FIC, the OAG and the BPS, noting that this may involve:
 - (i) full utilisation of existing resources;
 - (ii) increased budgetary resources;
 - (iii) assistance from international and regional bodies.

Legal

3. Palau should amend the Money Laundering and Proceeds of Crime Act (MLPCA) so that:
 - i it applies to foreign offences;
 - ii a seizure order can be extended while a matter is under trial;

- iii a seizure order can be lifted to the extent necessary to provide for legal and other reasonable expenses to be paid for the owner of the property;
- iv seized assets must be managed appropriately;
- v property derived from the proceeds of crime can be confiscated, subject to appropriate safeguards for innocent third parties;
- vi a pecuniary penalty can be ordered if proceeds of crime are not available for confiscation;
- vii existing customers of financial institutions must be identified;
- viii it should not be possible to hold an anonymous account or one in a fictitious name;
- ix records kept for the MLPCA must be available for inspection by the FIU without the need for a court order;
- x reports required to be kept under section 5 of the MLPCA must be given to the FIU;
- xi a financial institution must report transactions that are more than the prescribed limit either on their own or in aggregation with other contemporary transactions;
- xii a financial institution is required to report suspicious or unusual transactions, regardless of the amount;
- xiii the amount that triggers the requirement to notify a cash transaction is reduced;
- xiv customer identification and originator information is required for any wire transfer;
- xv a member of the FIU can be a person who is currently employed in a government agency;
- xvi bank secrecy cannot be invoked as grounds to refuse to provide information about customer identification and transactions to the FIU.

4. Palau should bring the Extradition and Transfer Act of 2001 into effect by making regulations and obtaining approval from the President.

Financial/regulatory

5. Palau should promulgate implementing regulations for the Financial Institutions Commission to set out the reporting, record-keeping, know your customer, internal controls, procedures, and other measures that financial service providers have to put in place to fully comply with the MLPCA.
6. The FIC and the FIU should provide guidance and training to financial service providers on the various anti-money laundering requirements such as the recognition of suspicious transactions.
7. The FIC/FIU should develop policy and procedures for on-site inspections of financial service providers to verify compliance with anti-money laundering requirements.
8. The law should require the reporting of large currency transactions and international wire transfers and remittances (including aggregate transactions within a short time frame) by financial service providers and develop a form to be used for this purpose. Reporting time frame requirements should also be established.
9. International wire transfers and remittances should be included in the suspicious transaction reporting requirements.
10. The definition of suspicious transaction should be broadened to beyond just a known criminal act.

11. The definition of financial institution/cash dealer within the MLPCA should be amended to include persons acting as “money remitters” (“hawala”) along with the current reporting requirement for “money transferors”.
12. Palau should extend supervision, regulation, and the on-site inspection regime to all financial service providers subject to the anti-money laundering laws.
13. Palau should broaden the definition of entities subject to reporting requirements to include vehicle and boat dealers, real estate brokers, precious metals/gems dealers, accountants, attorneys, travel agents, and notaries.
14. Palau should require monitoring and reporting to the FIU for large cross-border currency and monetary instrument shipments, to better identify unusual currency and monetary instrument flow trends.
15. Palau should require financial institutions to maintain a separate log/register for aggregate monetary instrument transactions exceeding \$3,000 in order to help identify suspicious transactions and aid in audit procedures.
16. Palau should adopt anti-terrorist financing legislation with criminal penalties provided, and implement the use of United Nations, US, and other lists for customer searches. [Work in progress]
17. Palau should include in implementing regulations the definition of books and records to be kept as well as a de-minimus threshold for record-keeping of all customer transactions such as \$100 or less.
18. Palau should require within the FIA that audit committees of financial institutions include only outside directors (non-operational management) as members.
19. Palau should include “Fit and Proper” guidelines in implementing regulations for directors, officers, and shareholders of financial institutions.
20. Palau should provide a prohibition within the FIA and implementing regulations against conducting transactions with shell banks.
21. Palau should require within the FIA the identification of non-resident controlling shareholders of financial institutions. Also, in Section 54 (a)(2) of the Act prohibit the use of bearer shares for the stock of financial institutions and cash dealers.
22. Palau should require enhanced due diligence on passthrough/payable through accounts and private banking customers.
23. Palau should require a suspicious transaction report to be filed if a customer or other entity refuses to complete a transaction as a result of a request for information.
24. Palau should add employee background screening requirements to section 13 of the MLPCA and implementing regulations for internal anti-money laundering programs at financial institutions. Also, add large currency transactions to section 13 (a) of the Act and implementing regulations for centralisation of information requirements.
25. Palau should provide for comprehensive identity verification requirements on non-resident customers.
26. Palau should ensure that the Foreign Investment Board has comprehensive investigative processes relating to foreign business investment with enhanced background checks, verification of funding sources, and follow-up procedures to verify compliance with conditions imposed.
27. Palau should provide for information sharing among financial institutions with a safe harbour provision against civil liability.

28. Palau should consider introducing a national identification document requirement for all residents of Palau.
29. Palau should remove the Supreme Court order requirement for the collection and examination of records and other evidence.
30. Section 25 (disallowance of bank secrecy) in the MLPCA should also reference section 19 (suspicious transaction reporting) of the Act.

Law Enforcement/FIU

31. The implementation of the MLPCA is hampered by the failure to create the FIU which is the primary government agency tasked to investigate money laundering activities. This explains the failure of Palau to fully assess the impact of its law. It is therefore imperative that the FIU be established as soon as possible to make the anti-money laundering system of the country a reality.
32. Palau should consider housing the FIU within the FIC for efficiency purposes, and establish the operational readiness of the FIU as soon as possible including staffing, training, computer resources, international cooperation and coordination, and budget.
33. A lack of funding appears to be the basic cause for the non-existence of the FIU. Obviously, the absence of funds effectively precludes the government from hiring and training FIU personnel, financing its operation, and procurement of relevant logistics. It is suggested that the FIU should enjoy financial autonomy to meet its mandate.
34. The reporting requirement of the law is given the highest priority as this is the first step in its implementation. But there are no systems and policies in place to monitor the sources of funds due primarily to the non-creation of the implementing agency. Such systems and policies should be developed and implemented as a matter of priority.
35. The absence of the FIU has created a legal vacuum. In its place, the investigation of money laundering offence is being undertaken by the CIDE or OAG which presently conduct wide-ranging investigation. Such exercise lacks legal foundation. This may necessitate amendment of the law.
36. Since money laundering investigation involves probing the financial aspect of illegal financial transactions, the ordinary policeman is ill-equipped to investigate money laundering offence given his basic police training. The assistance of the Ministry of Finance or the FIC Commission (which is the regulatory agency over banks) should make up for the lack of CIDE skill in this regard.

Training/assistance

37. Palau should develop operating guidelines for the financial sector in relation to anti-money laundering systems and procedures, and all reporting institutions as well as regulatory and enforcement staff involved in the anti-money laundering system should be provided training in this area.
38. The capability of the CIDE and/or FIU may be enhanced through international legal assistance and cooperation that would allow training of its personnel in investigative techniques in other countries. Exchange of information and of personnel must be encouraged.