

ANNEX C: Summaries of mutual evaluation reports adopted in 2003 – 2004¹

Mutual Evaluation of the Philippines

The Evaluation Team visited Manila, Philippines in November 2003.

Conclusions

The Evaluation Team found that in a relatively short time, the Philippines has made substantial progress in devising and legislating a comprehensive anti-money laundering regime. The Anti-Money Laundering Council (AMLC) has made significant initial progress towards fulfilling its role as an effective FIU. The basic structures to receive and process STRs are in place, and a good degree of co-ordination with other law enforcement agencies has already been achieved.

In addition, the Evaluation Team found that the Philippines has made significant progress towards investigating and prosecuting money laundering with the establishment of the AMLC and the enactment of relevant laws. However, additional support and resources need to be given to law enforcement agencies tasked with investigating predicate offences and associated money laundering activities. This is particularly so in the case of the Ombudsman's Office, which has been given the legal means but not the capabilities to effectively investigate and prosecute corruption related offences.

Recommendations

In order to address the issues identified during the mutual evaluation, the Evaluation Team recommends that the Philippines 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

The offence provisions of the Anti-Money Laundering Act (AMLA) are generally adequate but proof of their worth will be in the implementation and the results (particularly convictions) achieved. Whilst the money laundering offence has coverage of predicate offences that the Philippines regards as income generating offences, the overall effectiveness of the system would be enhanced by a broadening of the offences to include, for example, other serious offences such as tax evasion. The Evaluation Team notes the Philippines authorities' advice that tax fraud may be deemed covered by the general fraud provisions (Swindling or Estafa) of the Revised Penal Code of the Philippines, which is one of the predicate crimes in the AMLA, but specific coverage of tax evasion as a predicate offence would be helpful. In time, the range of unlawful activities will need to be broadened to meet the requirements of the 2003 FATF Forty Recommendations.

It is understandable that it may take some time for the system to start producing results, but the absence of any convictions for the money laundering offence to date is not encouraging. All agencies involved in the investigation and prosecution, as well as the judiciary, must be alert to the need for timely processing of complaints, inquiries and trials. It is recommended that training in all sectors continue apace, and that from an operational perspective priority be given to obtaining initial convictions. This will have an immediate and positive effect in terms of spreading the message,

¹ Extract from *Asia/Pacific Group on Money Laundering Annual Report 2003-2004*.

increasing public awareness and support for the measures contained in the AMLA, and enhancing the effectiveness of the law.

It is recommended that the legislature give priority to finalising and enacting the Anti-Terrorism Bill. Presently, there appear to be some difficult issues (including local issues) involved in defining terrorism, given the varying degrees of active and militant dissent in different regions of the country. It is recommended that the Bill be amended prior to passage to fully reflect aspects of the Convention for the Suppression of Financing of Terrorism and to make it an offence to finance terrorist organizations or entities as well as terrorist acts. In addition, the financing of terrorism should be designated an unlawful activity under the AMLA.

The Philippines should also fully implement the Convention on Transnational Organised Crime by criminalizing participation in an organised criminal group, and making it a predicate offence for the purpose of money laundering.

The AMLA contains provisions on freezing and civil forfeiture but serious implementation issues arise. It seems clear that, following amendment earlier this year, the section 10 freezing procedure is not working as intended. Serious consideration ought to be given by the legislature to re-amending the provision and returning power to the AMLC to order initial freezing, subject to rights of further extension by the courts. This will be necessary to ensure effective implementation of the forfeiture of the proceeds of crime, and also for the requirements to freeze without delay terrorist funds or property (if, as presently intended, the freezing mechanism for terrorist funds will also rely on the section 10 procedure in the AMLA).

Revised Rules of Court on civil forfeiture ought to be prepared to underpin the section 12 procedure and to give clear guidance to prosecutors and the court. No final forfeiture orders have yet been made by the courts and it is recommended that efforts be made to obtain orders as quickly as possible to evidence effective implementation. Overall, the Philippine authorities should consider specific and comprehensive legislation to allow for the identification, tracing, freezing and confiscation of assets (ie proceeds of crime legislation) rather than continuing to rely on the piecemeal approach taken under certain provisions of AMLA, the 1997 Revised Rules of Civil Procedure, and other Rules (including Rules yet to be promulgated).

The AMLC has power to examine bank deposits under an exemption to the bank secrecy laws in the Philippines. Whilst acknowledging efforts to date, it is recommended that the authorities take a more proactive role in the examination of accounts. It is also recommended that further changes be considered to the bank secrecy laws to enable other law enforcement agencies to make direct inquiry and examination of bank accounts by court order in relation to all serious criminal offences under investigation. There remains a strong culture of bank secrecy in the Philippines and until law enforcement authorities are given adequate tools to follow funding trails and to identify property and other proceeds of crime money laundering with continue to pose a serious threat. This is particularly so in the case of the Ombudsman's Office, which has a pressing need for such measures to effectively investigate offences by public officers. It is recommended that serious consideration be given to removal of the requirement to establish probable cause of a predicate or money laundering offence before banks accounts can be examined under section 11 of AMLA in view of the low number of inquiries and examinations carried out following enactment of the law.

Training for the judiciary is recommended. Whilst it may be difficult for the AMLC or local law enforcement agencies to undertake this training themselves, it may be possible to obtain outside expert assistance for some training programmes.

The Anti-Terrorism Bill under consideration relies upon the provisions of the AMLA for freezing and forfeiture of monetary instruments and property used or intended to be used in terrorist activities. It is recommended that an executive authority (rather than a court) be given the power to freeze funds in order to meet effective implementation compliance with Special Recommendation III. This could be achieved by returning the power to freeze under section 10 of the AMLA to AMLC.

It is also recommended that provisions be included in the Bill for the designation of terrorist organizations and entities, and for the freezing and forfeiture of their assets, to enable effective implementation of relevant UN Security Council Resolutions, in particular UNSCR 1267 and its successors.

Financial

The AMLC should move forward as quickly as possible to effective implementation of all its procedures and systems, particularly for receiving and analysing CTRs as well as STRs. This to a large part depends upon progress with the computerisation project, and will necessitate additional staffing inputs. As at October 2003, only 34 of the existing 64 positions have been filled, although an additional 7 staff were expected to be hired by end 2003, principally in relation to the computerisation project. The stated target is to reach approved staff levels by mid 2004, and the AMLC is strongly encouraged to adhere to and meet this target of a full staffing complement. The AMLC should also consider ways of reducing the burden for CTR reporting, given the unnecessarily high number of transactions caught.

The computerisation project is costly and will require five years to implement fully. Current funding has been put in place for the first two years to initially get the system up and running, but an estimated additional US\$4 million will be required over the remaining three year period. It is hoped that this funding will be made available by the Philippine Government (and possibly through other available sources) as and when required. Funding notwithstanding, the Evaluation Team recommends that an appropriate computer system be put in place as soon as possible. Without an efficient computer system, the effectiveness of the reporting regime will be jeopardized.

The AMLC should work with the supervisors and regulators of covered institutions to prepare and circularise detailed and cross sector consistent guidelines to assist in the identification of suspicious or unusual transactions, so as to supplement the limited guidance given in the definition of suspicious transaction in the AMLA. These guidelines will need to reflect both domestic and international trends and typologies, and should be periodically updated. Since the CTR data base is not yet established and operative, it may prove difficult to carry out comprehensive domestic trend research in the short to middle term.

The AMLC is also encouraged to work towards establishing MOUs with foreign counterparts to facilitate information exchange. The agreements ought to include specific safeguards on privacy and data protection, consistent with local and international standards.

The AMLC should be given a clear legislative mandate to receive and disseminate STRs relating to the financing of terrorism both domestically and internationally. This could be achieved by inserting an STR provision in the Anti-Terrorism Bill currently under consideration. The AMLA could also be amended to include the financing of terrorism as an unlawful activity.

Law Enforcement

It is recommended that consideration be given to extending direct powers of investigation into bank accounts to other law enforcement agencies, such as the NBI, and/or to broadening the list of predicate offences to enable the agencies to gain greater access to bank accounts through the AMLC.

The AMLC should consider designing and coordinating financial investigator programmes for domestic law enforcement agencies to be run on a regular basis over a period of at least one week. Such courses are necessary to train law enforcement agency investigators in the rudiments of money laundering investigative techniques.

Corruption in the public sector remains a significant problem in the Philippines. Until it is successfully tackled at all levels, the current efforts to effectively implement the investigation and prosecution of money laundering activities will be significantly compromised.

The relevant agencies should be given the legal mandate and necessary resources to investigate financing of terrorism, once it is criminalized under the Anti-Terrorism Bill.

IMF Assessment of Cook Islands

In February 2004, a detailed assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Cook Islands was prepared by a team composed of staff of the International Monetary Fund, an expert under the supervision of Fund staff, and another expert not under the supervision of Fund staff who was selected from a roster of experts in the assessment of criminal law enforcement and non-prudentially regulated financial activities,¹ provided by the APG.

Conclusions

Overall, the Evaluation Team found that the Cook Islands has achieved substantial progress in bringing its AML/CFT legislative and regulatory framework in line with the relevant international standards in a relatively short period of time. That said, significant challenges remain as far as overall implementation is concerned, which impacts on the Cook Islands' compliance with the FATF 40+8 Recommendations. In summary, the Cook Islands complies fully only with those FATF Recommendations which focus primarily on legislative action apart from CFT, but does not comply with effective implementation on those matters.

Recommendations

Reference FATF Recommendation	Recommended Action
40 Recommendations for AML	
General framework of the Recommendations (FATF 1–3)	Ratify the Vienna Convention and ensure that domestic legislation is in place for its implementation.
Scope of the criminal offense of money laundering (FATF 4–6)	
Provisional measures and confiscation (FATF 7)	Make criminal forfeiture mandatory for any serious offense where proceeds are detected.
General role of financial system in combating ML (FATF 8–9)	
Customer identification and record-keeping rules (FATF 10–13)	The conflict between the FTRR and the FTRA should be resolved as a matter of priority by eliminating any provision in the Regulations that diminishes the scope of the identification requirements set forth by the FTRA.
Increased diligence of financial institutions (FATF 14–19)	<p>The FSC should undertake an initial process to determine whether banks have adequate record-keeping systems and procedures to provide assurance that compliance will be maintained.</p> <p>The FIU and FSC should open up further dialog with financial institutions to determine the level of understanding of suspicious activity concepts to identify potential gaps or bottlenecks in the process. Initiatives toward this end should also focus on clarifying what constitutes the tipping off of a customer.</p>

¹ The AML/CFT team included Mr. Peter Csonka (Senior Counsel, LEG) and Mr. Steven Gilbert (Consultant, MFD) as well as Mr. Simon Leung (Senior Inspector of Police, Hong Kong SAR) who was the Independent AML/CFT Expert (IAE).

Reference FATF Recommendation	Recommended Action
Measures to cope with countries with insufficient AML measures (FATF 20–21)	The FIU and/or the FSC should issue the draft guidance notes that address enhanced scrutiny for countries that do not have adequate AML/CFT regimes.
Other measures (FATF 22–25)	
Implementation & role of regulatory and other administrative authorities (FATF 26–29)	<p>The government should introduce statutory fit-and-proper tests for directors, managers, and significant shareholders at the time of licensing/change in ownership of all regulated financial institutions similar to those contained in the banking law. In addition, the fit-and-proper test should be made an ongoing requirement.</p> <p>As part of the FSC’s overall development, it would be helpful to set forth a strategic plan specifically addressing AML/CFT issues to be included among the other supervisory initiatives it must undertake. This would include performing a risk assessment of regulated institutions to aid in the allocation/prioritization of examination resources, as well as key steps needed to develop appropriate supervisory guidance and procedures. This exercise could be conducted in cooperation with the FIU to enable the sharing of information, techniques, and resources.</p> <p>The level of resources in the FSC’s Supervisory Division should be assessed once the rationalization of licensing has been completed to ensure it has adequate human and other resources to carry out its supervisory and compliance role.</p> <p>The FIU’s Compliance Officer Position should be filled to ensure that all areas of risk related to the operation of licensed institutions are adequately covered.</p>
Administrative Cooperation—Exchange of general information (FATF 30–31)	The basis and extent of cooperation of the FSC with other domestic authorities should be expanded in the FSC Act.
Administrative Cooperation—Exchange of information relating to suspicious transactions (FATF 32)	
Other forms of cooperation—Basis and means of cooperation in confiscation, mutual assistance, and extradition (FATF 33–35)	Ratify the Vienna Convention and ensure that domestic legislation is in place for its implementation.
Other forms of cooperation—Focus of improved mutual assistance on money laundering issues (FATF 36–40)	

Reference FATF Recommendation	Recommended Action
8 Special recommendations on terrorist financing	
I. Ratification and implementation of UN Instruments	Ratify the ICSFT and ensure that domestic legislation is in place for its implementation Implement the UN SCRs on FT.
II. Criminalizing the financing of terrorism and associated money laundering	Criminalize FT as a matter of priority and include it among “serious offenses” so that it is a predicate offense for ML.
III. Freezing and confiscating terrorist assets	Adopt as matter of priority legislation that provides for the freezing of terrorist funds and enables the effective implementation of UN SCRs on FT.
IV. Reporting suspicious transactions related to terrorism	Ensure, if necessary by issuing regulation, that the CIG regularly circulate UN and other terrorist watch-lists to financial institutions and keeps them abreast of new developments.
V. International Cooperation	Ratify the ICSFT and ensure that domestic legislation is in place for its implementation. Implement the UN SCRs on FT.
VI. Alternative remittance	N/A
VII. Wire transfers	N/A
VIII. Nonprofit organizations	N/A