

V. ANTI-MONEY LAUNDERING – GENERAL ANALYSIS AND RECOMMENDATIONS *

A. Introduction

The terms of reference for the anti-money laundering component of this project call for reviewing and recommending measures for strengthening the overall legal framework of the PRC to combat money laundering primarily through its financial institutions; recommending measures for strengthening the capabilities of the financial regulatory agencies and law enforcement authorities to effectively combat money laundering; and recommending measures for enhancing the capabilities of financial institutions to carry out effective due diligence through customer identification, suspicious transactions reporting and record-keeping.

The purpose of this report is to: (a) assess the current state of the overall legal and institutional framework to combat money laundering in the PRC; (b) review the three new anti-money laundering legal instruments adopted by the PBC and, (c) make recommendations to strengthen the anti-money laundering legal and institutional framework in the PRC. These assessments are being made in the context of the main elements of the applicable international standards and by comparison with the best practices prevailing in other countries, primarily in Asia. In making international comparisons, this report refers to a selected group of key jurisdictions whose circumstances and experience are more relevant to the PRC. This frame of reference for the assessment is also broadly consistent with the *Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Standard*,¹ which was jointly endorsed by the International Monetary Fund, the World Bank and the Financial Action Task Force (FATF) in late 2002, because this template will form the basis for future international assessments and evaluations of a country's observance of AML/CFT standards.

B. Background to the Money Laundering Problem

* The content of this section was prepared by Herbert Morais and Guang Yang.

¹ This document was jointly adopted by the IMF, World Bank, and FATF at the end of 2002.

As the PRC becomes more integrated into the global economy with WTO membership and enjoys greater prosperity, the opportunities for commission of transnational financial crimes, such as money laundering, expand. Published reports indicate that money laundering in the PRC has increased to about Rmb 200 billion (US\$ 25 billion) annually, representing about 2% of the nation's GDP. This is roughly equivalent to the PRC's total export earnings (US\$ 22.5-24.0 billion) in 2001-02. Such activity impedes the country's ability to increase its foreign exchange reserves at a faster pace, which have grown at the rate of about US\$ 10-12 billion annually since 1999². The country remains largely a cash-based economy, which helps explain why cash smuggling remains a serious problem.

The Government is well aware of the seriousness of money laundering problem and appears intent on dealing with it, as evidenced by a series of legal measures that it has adopted in recent years, most notably in 2002-03. The PRC has not yet become a member of the Asia Pacific Group on Money Laundering (APG) (because of the unresolved issue of Taipei, China membership in APG) or the FATF, although Hong Kong, SAR, China is a member of both groups. It is important to note, however, that Hong Kong's membership preceded its reunification with the PRC in 1997.

C. Current State of the Legal and Institutional Framework

1. International Legal Commitments

The PRC has signed the three major international conventions dealing with money laundering: (1) the *United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances 1988* (the Vienna Convention), which was the first treaty to call on all countries to criminalize money laundering of funds derived from drug-related offences; (2) the *United Nations Convention Against Transnational Organized Crime 2000* (the Palermo Convention); and (3) the *International Convention on the Suppression of the Financing of Terrorism 1999*, which is relevant because money laundering is one of the known sources of terrorist financing. However, the PRC has so far only ratified the Vienna Convention and the

² see Huang Ying, "Money Laundering Challenges PRC's Economy", People's Daily Online, July 9, 2002

Palermo Convention³. Early action on ratification of the other Terrorist Financing Convention would reinforce the PRC's international commitment to action on this problem.

It is also recommended that the PRC sign and ratify the United Nations Convention Against Corruption, which was adopted in December 2003, as corruption is one of the major sources or predicate offences of money laundering. Like the other Conventions, this Convention also includes a specific provision calling on signatories to criminalize the laundering of the proceeds of corruption.

Although the PRC is not a member of the APG or the FATF, discussions with Government officials confirmed that it fully supports international standards to combat money laundering, particularly the FATF's Forty Recommendations (*FATF 40*).⁴ It was less clear what specific steps the PRC has taken to implement the FATF's Special Recommendations on Terrorist Financing (*FATF 8*). In this regard, it is worth noting that a FATF team visited Beijing on 27-28 March 2003 for discussions with the Government on its efforts to fight money laundering in the context of *FATF 40+8*, to hear the PRC's comments on the then ongoing review of the former *FATF 40* (1996 version), and to discuss future steps, including FATF's mutual evaluation procedures.

2. A National Law to Criminalize Money Laundering

A review of the various national laws, rules, regulations and administrative measures reveal that the PRC has made a good start in establishing the key pillars of a legal and institutional framework to fight money laundering. However, there is still much more that needs to be done to strengthen this legal framework by adhering more closely to the evolving international standards (*e.g.*, *FATF 40 + 8*) and best country practices; spelling out more fully some of the general rules that have been promulgated; and training staff of key agencies, such as the PBC, and staff of the other financial institutions and the law enforcement authorities.

Consistent with its international commitment under the Vienna Convention, the PRC explicitly criminalized money laundering under the *Criminal Law* of the People's Republic of

³ The National People's Congress ratified the Palermo Convention on 27 August 2003.

⁴ The FATF 40 were substantially revised and re-issued by the FATF in late June 2003. All references in this report to FATF 40 will be to this latest 2003 document.

China amended in March 1997 (hereinafter referred to as the *Criminal Law*). Under Article 191 of the *Criminal Law*, as amended in the Third Amendment of the *Criminal Law* on Dec. 29, 2001, any person who knowingly engages in laundering funds obtained from four predicate offences (drug trafficking crimes, crimes committed by organized crime groups, smuggling, or terrorist crimes) may be punished for the crime of money laundering. Money laundering is defined as covering the provision of fund accounts, conversion of property into cash or other financial instruments, transferring capital or accounts, remitting funds to foreign jurisdictions, and covering up or concealing the criminal origin of such funds. The language of the provision suggests that it would encompass acts of aiding and abetting, or attempting to commit, the offence. The penalty for the offence is 5-10 years' imprisonment, plus a fine of not less than 5 percent but not more than 20 percent of the amount laundered. Where an entity commits the crime, the penalty is a fine imposed on the entity (the amount is not specified but presumably it is the same as for individuals) but only a maximum of 5 years' imprisonment for those persons responsible unless "the circumstances are serious" ("serious" is not defined) in which case a maximum of 10 years' imprisonment is allowed. The reason for the difference in penalties between individuals and entities is unclear.

It is significant to note that Article 191 of Criminal Law defines the money laundering crime in the broadest terms to cover all persons or entities who ("whoever") commit the acts specified in this provision. At the same time, however, Article 191 of the *Criminal Law* lists only four predicate offences. This falls short of international standards, which call on countries to apply the crime of money laundering to "all serious offences with a view to including the widest range of offences" (*FATF 40, Recommendation 1*). The *Glossary* attached to the *FATF 40* lists twenty "designated categories of offences" that are recommended for inclusion as predicate offences under *Recommendation 1*. In this context, it may be noted that several other serious offences that are typically included as predicate offences in the anti-money laundering laws of other developed and Asian countries⁵ and *Hong Kong, SAR, China* are missing from Article 191 of the *Criminal Law* (e.g., cheating, fraud, embezzlement, kidnapping, corruption, extortion and blackmail, and sex-trafficking offences.). Therefore, Article 191 of the *Criminal Law* should be

⁵ These include the United States, the United Kingdom, Australia, New Zealand, Canada and several European countries, plus Indonesia, Malaysia, Thailand, the Philippines and South Korea.

amended to cover all serious offences or a longer list of predicate offences so as to more closely adhere to international standards and best country practices. Government officials, including those at the PBC, the MPS, and the SPP, acknowledge that the *New Criminal Law's* net needs to be cast much wider to capture several more predicate offences.⁶

Article 174 of the *Criminal Law* also makes punishable the establishment or operation of a commercial bank or any other banking institution without the approval of the PBC. It is not clear from the language of this provision that it would catch informal money-transmission services or alternative remittance systems. However, this provision was referred to by PBC officials as prohibiting illegal money-transmission activities; and, if this is the case, this provision should be amended to require the licensing and regulation of money-transmissions services as called for explicitly by FATF 40 (Recommendation 23) and FATF 8 (Recommendation VI). The crime stipulated in Article 174 of the *Criminal Law* is punishable by imprisonment of up to 10 years and a fine of between Rmb 20,000 to Rmb 500,000.

The *Criminal Law* also contains authority under Article 191 for the Government to seize and confiscate proceeds and gains derived from crimes. Under the *Criminal Procedure Law of the People's Republic of China* (promulgated in 1979 and amended on March 17, 1996) and certain other regulations,⁷ the courts, the prosecution and the police are authorized to seize, freeze, and confiscate assets while a case is under investigation. A court order is not required. It is important to note, however, that these provisions are general in nature and apply to all crimes and have not been specially tailored to address some of the unique features faced in the money laundering situation such as the conversion of the proceeds of crime into other forms of assets, capital flight of such proceeds to other jurisdictions, protection of the rights of bona fide third parties, and confiscation without criminal conviction (civil forfeiture).

Copies of the relevant provisions of the Criminal Law, referred to above, are set out in Appendix D.

⁶ See, e.g., Jiang Zhang, "Basic Countermeasures Against Money Laundering Crime in PRC", paper presented at a Conference on Combating Money Laundering and Financial Crimes, Vancouver, Canada, October 2000. Mr. Zhang is an official of the MPS.)

⁷ Principal among these are the *Administrative Regulations for Financial Institutions on Assisting in Seizing, Freezing and Confiscating Funds*, issued by PBC in 2002; and *Notification on Inquiring, Freezing and Seizing Bank Deposits of Enterprises, Entities and Organizations*, issued by PBC, SPP and MPS in 1993.

To sum up, the current national law that criminalizes money laundering consists essentially of two brief provisions in the general criminal code of the country. These two provisions only criminalize the laundering of proceeds from four predicate offences and establish penalties for them. The *Criminal Law* does not set up the detailed rules for closely regulating the conduct of financial institutions and other persons or entities to prevent money laundering nor does it set up an institutional framework for doing so. While Article 191 of the *Criminal Law* could usefully be amended to broaden and strengthen the criminalization of money laundering, the best long-term approach for the PRC to take is to promulgate a separate and comprehensive national anti-money laundering law at the Basic Law level, in line with international standards and best country practices.

3. The PBC's Regulation and Administrative Measures

Since 2000, the State Council, PBC, SAFE and the General Bureau of Customs have adopted a number of separate regulations and measures which, though not cast explicitly as anti-money laundering rules, began to lay the foundation for implementing a new anti-money laundering legal regime in the country. Among the more notable of these measures are the *Notice on Management of Large-Value Cash Payments* (issued by the PBC on August 15, 1997) and the *Rules on Real Name for Opening of Individual Deposit Accounts* (issued by the State Council on March 20, 2000). In the hierarchy of laws in the PRC legal system, these legal measures were adopted at a level of rule-making below that of a Basic Law, which is the highest form of law promulgated by the NPC.

On September 17, 2003, the PBC issued the following regulation and administrative measures (hereinafter referred to as the “three regulations”), which became effective on March 1, 2003, establishing a set of anti-money laundering rules for financial institutions falling within the PBC’s and SAFE’s supervision. These three sets of rules also fall below the level of a Basic Law:

- (1) *Regulation on Anti-Money Laundering for Financial Institutions (administered by PBC);*
- (2) *Administrative Measures for Financial Institutions Governing Large Value and Suspicious Renminbi Transactions (administered by PBC); and*
- (3) *Administrative Measures for Financial Institutions Governing Large Value and Suspicious Foreign Exchange Transactions (administered by SAFE).*

The two *Administrative Measures* spell out the general prescriptions in the *Regulation*.

A review of the above three regulations indicates that the PBC has made an excellent start in establishing the basic elements of a legal and institutional framework for closely monitoring financial institutions and their financial transactions so as to prevent and punish money laundering. These measures appear to “cover the territory” reasonably well in terms of broad adherence to the applicable international standards, notably *FATF 40* (e.g., *Recommendations 5-16*) covering customer due diligence, reporting of large-value and suspicious transactions, record keeping, establishment of internal controls and systems, establishment of a regulatory supervision or financial intelligence role for the PBC, and a leadership role for the PBC in organizing and conducting due diligence training for financial institutions. However, the real test of the effectiveness of these new instruments will come from how well they are implemented. In this regard, there are several specific areas in which the new legal instruments could be strengthened to assure effective implementation pending the promulgation of a new national anti-money laundering law at the Basic Law level.

Detailed comments on the PBC’s three regulations are provided in Appendix D. The following is a summary of the key comments and recommendations for the Government’s and the PBC’s consideration:

- The definition of the money laundering crime used in Article 3 of *Regulation on Anti-Money Laundering for Financial Institutions* (hereinafter referred to as the *AML Regulation*) is somewhat at variance with Article 191 of the *Criminal Law* insofar as it adds “other crimes” to the list of four predicate offences. A lower-level regulation cannot alter a Basic Law, which is higher in status in the hierarchy of laws. This inconsistency with the *Criminal Law* could create problems or confusion in the implementation and enforcement of the *Regulation*. The most desirable solution is to amend Article 191 of Criminal Law to cover more predicate offences (as noted earlier); and, pending such amendment, the reference to “other crimes” should be deleted from Article 3.
- The requirements for customer due diligence and reporting of large-value and suspicious transactions for financial institutions are formulated in a very general manner. They need to be spelled out more fully in order to provide clear and precise guidelines to financial institutions and their staff on exactly how they are to comply with the new rules.

Specific guidance for this may be obtained from the detailed prescriptions set out in the following two key documents:

- (a) *FATF 40, Recommendations 5-16* dealing with Customer Due Diligence and Record-Keeping (Recommendations 5-12) and Reporting of Suspicious Transactions (Recommendations 13-16); and
 - (b) Basel Committee on Banking Supervision, *Customer Due Diligence for Banks*, dated October 2001.
- It is recommended that the PBC prepare and issue prescribed forms to all financial institutions, as done by several other countries⁸. It is understood that SAFE has issued guidelines and reporting forms on 18 March 2003. Examples of guidelines and prescribed forms may be found on the websites of the Hong Kong Monetary Authority, the Monetary Authority of Singapore, and FINTRAC Canada (to cite three examples).
 - The definition of “financial institutions” in Article 2 of the AML Regulation covers only banking-type institutions. The FATF 40 definition of financial institutions includes thirteen categories of persons or entities that conduct business in or provide financial services. Within the framework of the PBC’s powers, amendments would therefore be needed to cover such other entities as informal money-transmission services or alternative remittance systems, leasing companies, portfolio management firms and money changers. In addition, outside the PBC framework, separate regulations would be needed to also cover non-bank financial institutions, such as securities firms and insurance companies, which fall within the FATF definition of financial institutions. Finally, “designated non-financial businesses and professions” (sometimes referred to as “gatekeepers”), such as casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals and accountants, and trust and company-services providers, who have increasingly attracted attention recently as providers of financial services, should be subject to the country’s anti-money laundering rules. As the laws and regulations governing financial institutions are tightened, money launderers are likely to seek alternative ways of laundering their funds

⁸ Notably, the United States, the United Kingdom, Australia, New Zealand, Canada, Singapore, Thailand, South Korea, the Philippines and Hong Kong, SAR, China.

outside the formal banking system. Therefore, these serious gaps in the current anti-money laundering legal framework should be filled quickly if the new laws are to be effective in fighting money laundering in all its forms.

- The confidentiality and bank secrecy rules stipulated in the *Commercial Bank Law of the People's Republic of China* (promulgated by the Standing Committee of the National People's Congress in 1995, hereinafter referred to as the *Commercial Bank Law*), Articles 29 and 30 will need to be revised to make clear that the reporting of large and suspicious transactions by financial institutions is exempt from those rules. There should also be an explicit new rule (“safe harbor rule”) granting immunity from criminal and civil liability for financial institutions and their staff reporting large and suspicious transactions when acting in good faith (see *FATF 40, Recommendation 14*).
- The requirement that financial institutions submit multiple reports of large and suspicious transactions to various agencies at various levels is undesirable. There is also a lack of symmetry in the reporting provisions among the three rules. This process should be simplified and streamlined to provide for a single line of reporting to an autonomous FIU, consistent with international standards (see *FATF 40, Recommendation 26*), in view of the highly specialized skills needed to analyze suspicious transaction reports, to coordinate action by all concerned agencies including law enforcement authorities, and to cooperate with the FIUs in other countries in the investigation and prosecution of money laundering cases, the freezing and confiscation of laundered assets, and the extradition of suspected money launderers. Nearly 70 countries have joined the Egmont Group of Financial Intelligence Units. In the Asian region, *Indonesia, Malaysia, the Philippines, South Korea, Singapore, Thailand and Hong Kong, SAR, China* have established FIUs; and so have many developed countries such as *the United States, Canada, the United Kingdom, Australia, New Zealand* and several *European states*. A single reporting line will also better preserve the confidentiality of such reports and reduce the risk of “tipping off”. Pending the establishment of a national FIU, the PBC and SAFE will effectively serve as the FIUs for banking-type financial institutions. It is highly recommended that the PRC join the Egmont Group so as to benefit from its advice and technical assistance in establishing and strengthening its FIU.

- The penalties set out in the three regulations (*e.g.*, fines and administrative sanctions) are much lower than those set out in Article 191 of the *Criminal Law* (which also provides for imprisonment), which is curious, and also inconsistent with and below international standards which call for the imposition of “effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative” (*see FATF 40, Recommendations 2 and 17*) and the practice of many other countries.
- As of March 2003, the PRC has bilateral judicial assistance agreements on criminal matters with 24 countries and extradition agreements with 15 countries. The PBC measures are rather thin on international cooperation and mutual assistance arrangements, which are critical to the success of any anti-money laundering program in view of the transnational characteristic of the money laundering crime which frequently involves the rapid movement and conversion of money or value between jurisdictions. Specific provisions to deal with this issue should be included in the law, in line with international standards and best practices.
- None of the three regulations includes integrity standards or fit-and-proper tests to ensure that criminals or their associates are prevented from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution) (*see FATF 40, Recommendation 23*).
- Apart from the inclusion of terrorist crimes as a predicate offence, there is an absence of provisions to adhere to *FATF 8* which calls, *inter alia*, for specific action to license and regulate alternative remittance systems, to closely monitor international wire transfers, and to regulate non-profit bodies like charities.

4. Institutional Arrangements

It is only seven years since the PRC first criminalized money laundering under the amended *Criminal Law*. No formal institutional arrangements were established in 1997, either in terms of establishing a centralized FIU or anti-money laundering agency or a regulatory framework to ensure that financial institutions and other persons or entities observed customer due diligence requirements or reported suspicious financial transactions in accordance with international standards like *FATF 40*. Thus, the responsibility for implementing Articles 191 and 174 of the *Criminal Law* rested primarily with the law enforcement authorities such as the MPS and the SPP.

The adoption of the three regulations represents a long overdue and welcome attempt to establish the foundations of an institutional framework to implement the anti-money laundering legal regime governing the country's financial institutions. While general rules have been formulated, the detailed institutional arrangements to implement these three regulations are in the process of being established and are, therefore, still in a very rudimentary and planning stage. PBC is clearly giving priority to establishing the structure, organization, staffing and training elements of such arrangements. For a start, it has established an Anti-Money Laundering Unit in its Security Bureau, and a Payment Transactions Monitoring Division in its Payment and Settlement Office to analyze large and suspicious transaction reports. SAFE has also initiated similar arrangements, including the issuance of some guidelines and reporting forms in March 2003. With the adoption of these three rules, the PBC and SAFE now assume shared responsibilities for the prevention of money laundering in banking-type financial institutions supervised by them. It is too early to make any assessment of these institutional arrangements. What is clear, however, is that PBC and SAFE should closely coordinate their efforts to ensure that the new anti-money laundering rules are applied uniformly and with equal effectiveness. Furthermore, at this critical institution-building phase, PBC and SAFE would benefit greatly from early donor support in the training of their staff and in establishing needed new systems.

At the level of the banking institutions, there is little evidence that most of the banks in the country, especially smaller banks, have been implementing customer due diligence requirements prior to the adoption of these three regulations. The meeting with the Bank of China officials (from its Legal and Compliance Department) was very encouraging insofar as it revealed that this major bank had taken several concrete internal measures to sensitize its staff on the problem, to conduct training programs, to issue a detailed *Handbook on Money Laundering*, to implement strict customer identification procedures and formats for reporting of large value and suspicious transactions, to maintain records for at least 5 years and to monitor its overseas branches' compliance with PRC laws and the PBC's policies.

The meeting with the CSRC confirmed that, although it has been aware of the money laundering problem and its potential for abuse in the securities industry, it has not yet taken steps similar to PBC to establish regulations for the sector. The CSRC had requested the Securities Industry Association (a self-regulatory body) two years ago to issue guidelines to its members but it was not aware of the issuance of any written guidelines. The CIRC did not respond to our

request for meetings. However, it is understood that, like the CSRC, the CIRC has also not taken any concrete steps yet to establish regulations for the insurance sector.

At the law enforcement level, published reports indicate that about 70 money laundering cases are now under investigation but it was difficult to obtain confirmation about the number or status of these cases (including data on seizure of assets) due to confidentiality concerns on the part of the SPP.

Given the very early stage of development of the institutional arrangements at the PBC, and the absence of or slow progress in this area at the other financial regulatory institutions mentioned above, it is clear that the staff of all these institutions would benefit greatly from the provision of training programs designed to familiarize their staff with the unique features of money laundering and the methods of detecting and preventing the crime.

D. Summary of Findings and Overall Assessment

The PRC has a multiplicity of laws and regulations at all levels of the legal hierarchy touching on the prevention of financial crimes. This gives rise to a number of conflicting rules. Concrete information on law enforcement efforts (*e.g.*, quantitative data on the number of cases investigated and prosecuted, and amount of assets seized or confiscated) to investigate and prosecute money laundering crimes is limited because of a reluctance to divulge confidential information. Nevertheless, there is a sufficient basis on which to make an assessment of the overall legal and institutional framework. Based on the findings, the following recommendations are presented for the consideration of the PRC Government, PBC and other concerned agencies:

1. Promulgation of a new Basic Law Against Money Laundering

The Government should give serious and urgent consideration to promulgating a new Basic Law Against Money Laundering that would target all persons and entities that provide financial services (and not just banking financial institutions) and that could potentially be used for money laundering. This means that such a Basic Law would cover not only banking-type financial institutions (as the three PBC regulations do) but also non-bank financial institutions (such as securities firms and insurance companies, leasing companies, informal money-transmission services or alternative remittance systems, and money changers), and any other persons and

entities (“non-financial businesses and professions”, also known as “gatekeepers”) providing financial services that could pose a money laundering risk (*e.g.*, casinos, real estate agencies, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals and accountants, and trust and company service providers).

The adoption of a higher-level Basic Law will have a number of distinct benefits:

- (1) It will clearly demonstrate the Government’s determination to stamp out money laundering in all sectors;
- (2) It will place the level of law and regulation over money laundering and the financing of terrorism at the highest level in the legal hierarchy of PRC laws, thereby giving it more stature and importance. This will, in turn, reduce conflicts of rules between lower-level regulations and higher-level Basic Laws, as illustrated earlier.
- (3) With an overarching Basic Law, all concerned regulatory agencies (*e.g.*, PBC, CBRC, SAFE, CSRC, CIRC, and the General Bureau of Customs) would be under a more explicit legal obligation to implement concrete measures to regulate their respective sectors by issuing Implementing Regulations tailored to their sectors as the PBC has already done.
- (4) Last, but not least, a new and comprehensive overarching Basic Law Against Money Laundering will enable the PRC to achieve full observance of all the relevant international standards including FATF 40, FATF 8 and the International Conventions.

A new Basic Law Against Money Laundering must include the following key elements to meet international standards and follow best country practices:

- (1) Properly criminalize money laundering to cover all serious offences or a longer list of predicate offences, target all persons and entities that could potentially be used in money laundering, and stipulate “effective, proportionate and dissuasive sanctions” or penalties.
- (2) Establish more comprehensive preventive measures for all financial institutions and other persons and entities to implement effective customer due diligence procedures, report suspicious transactions, establish integrity standards for their officials, set up internal controls including audit, and train staff.

- (3) Waive bank secrecy rules and establish “safe harbor” rules to protect financial institutions and their staff from criminal and civil liability for reporting suspicious transactions.
- (4) Establish a single FIU to serve as a national center to coordinate, receive and analyze suspicious transaction reports, as has been done by nearly 84 other jurisdictions around the world. In addition, it would be desirable to establish an inter-agency coordination council or committee to ensure close policy and enforcement coordination among all concerned government agencies, especially the FIU, the law enforcement authorities, and the financial regulatory bodies.
- (5) Clearly stipulate and demarcate the responsibilities of the FIU and the law enforcement authorities for analysis, investigation, prosecution, confiscation, and international cooperation and mutual assistance with other countries.
- (6) Elaborate on the powers and procedures for freezing, seizure and confiscation of money laundering proceeds to deal with some of the unique problems faced in the case of money laundering investigations and prosecutions and provide for the protection of the rights of bona fide third parties.
- (7) Establish an effective financial regulatory and supervisory framework to closely monitor all financial institutions (*i.e.*, not only banking institutions, but also securities firms, insurance companies, and other similar financial entities) and other persons and entities that provide financial services that could be misused for money laundering, arming them with effective sanctions that could be applied against both individuals and institutions.
- (8) Establish comprehensive provisions for international cooperation and mutual assistance with other countries, which is critical in view of the transnational characteristics of the money laundering crime.

For the information and guidance of the PRC Government and PBC, a table is attached in Appendix D, setting out in outline form these key elements of an effective anti-money laundering legal and institutional framework.

These “key elements” have been identified on the basis of: (a) all relevant international standards applicable to money laundering and the financing of terrorism, and (b) an international

comparison of national anti-money laundering laws (“best practices”) of the following selected key jurisdictions which have promulgated comprehensive national laws against money laundering and the financing of terrorism in the last few years:

Developing Countries in Asia	Developed Countries
Hong Kong, SAR, China	Australia
Indonesia	Canada
Malaysia	Japan
Philippines	New Zealand
Singapore	United Kingdom
South Korea	United States
Thailand	European Union countries

The following points should be kept in mind in reviewing the attached table:

- The “key elements” have been chosen to reflect all relevant international standards, notably FATF 40, FATF 8, the three International Conventions, and other applicable standards (*e.g.*, the Basel Committee guidelines on Customer Due Diligence).
- The “key elements” have also been selected by reference to the relevant United Nations Model Laws, including the most recent UNODC Model Money Laundering, Proceeds of Crime and Terrorism Financing Bill 2003.
- The selection of key jurisdictions represents a good sample of recently-adopted anti-money laundering laws, which most closely approximate the international standards and country “best practices”.
- This sampling of key jurisdictions reveals a very wide range of legislative provisions, ranging from concise legislative texts (10-15 pages) to much more comprehensive laws (hundreds of pages), and from basic provisions to very detailed provisions. The shorter laws have generally been supplemented by the issuance of implementing regulations to elaborate on the general provisions of the basic laws. Given the wide range of legislative provisions and the level of detail in provisions, the task of making international comparisons on a provision-by-

provision basis for each key element is a formidable one and would require much more time and analysis than is available under this project.

- The sampling of key jurisdictions has been chosen to blend the recent experience of both developing countries in Asia and the experience of major developed countries. On balance, the precedents chosen from Asia represent a more relevant and useful model for PRC since they are less complex on the whole and appear to be more suitable for a country that is in the early stages of establishing the foundations of an effective anti-money laundering framework. It is important to appreciate that the more sophisticated Western models are tailored to countries that have had a much longer tradition of legislation and financial regulation. We would strongly recommend the legislative models of Hong Kong, SAR, China, Malaysia, Philippines, Singapore, South Korea and Thailand as most relevant and appropriate for the PRC to follow.
- International country comparisons have not been possible for a number of the key elements (*e.g.*, requirements relating to financing of terrorism, the regulation of “designated non-financial businesses and professions”, and the broadened definitions of “financial institutions” and “predicate offences”) as these requirements have only been very recently introduced by FATF 8 and the June 2003 revised FATF 40. Most countries are still in the process of implementing these new requirements.

Thus, the table in Appendix D, provides international country comparisons in a broad brush manner. The jurisdictions that have been listed under international country comparisons should, therefore, be seen as those that have satisfied all or most of the key elements mentioned. The main differences between the different jurisdictions is largely in the level of detail or scope of coverage of the provisions. It may be assumed that most of these jurisdictions substantially meet the minimum requirements of the relevant international standards. A detailed provision-by-provision international country comparison analysis will require more time and analysis than is possible under this project.

2. *Interim Measures*

Pending the promulgation of a new Basic Law Against Money Laundering, the following interim measures may be considered by the PRC Government and PBC:

- The *Criminal Law* should be amended to increase the scope of predicate offences from the present four offences to “all serious offences” or a longer list of predicate offences, in line with international standards (*FATF 40, Recommendation 1*) and best country practices. Whichever approach the PRC adopts, it should at a minimum include a range of offences within each of the “designated categories of offences” listed in the Glossary to *FATF 40*.
- Amend or suitably elaborate on the three PBC regulations as recommended.
- Other financial regulatory agencies, such as CRSC and CIRC, should be urged to move swiftly to adopt regulations and other measures similar to those adopted by the PBC, to fill the current serious gap in regulation over securities firms and insurance companies.
- The bank secrecy provisions in the *Law on Commercial Banks* (Articles 29 and 30) should be amended to provide an exemption for the reporting of large-value and suspicious transactions, and also to incorporate a “safe harbor” rule that would grant institutions and officials reporting such transactions immunity from criminal and civil liability when acting in good faith.
- Training of regulatory staff (*e.g.*, of PBC, SAFE, CBRC, CSRC and CIRC) and staff of financial institutions will be critical to the successful implementation of the PRC’s anti-money laundering legal framework. First priority should be given to training of the financial regulatory staff. Then, the excellent BOC model should be replicated in all other banks, especially the smaller banks. The Government, supported by the PBC, SAFE, CBRC, CSRC and CIRC, should also assist financial institutions (including non-bank financial institutions) in implementing training programs and internal control systems to prevent money laundering. Given the sheer magnitude of this task in the world’s largest country, serious consideration should be given to the use of video training materials to reduce costs and make training programs more appealing.

- The Government should seriously consider the provision of suitable incentives to financial institutions to cooperate more effectively, including making arrangements for the sharing the proceeds of seized and confiscated assets with them.
- Current and future regulations should incorporate explicit provisions incorporating the *FATF 8 Recommendations on Terrorist Financing*, especially on the licensing and regulation of alternative remittance systems, closer monitoring of international wire transfers, and closer monitoring of non-profit bodies such as charities.
- Given that public understanding and support is critical for the success of anti-money laundering programs, the Government should give high priority to undertaking outreach activities with civil society. Holding workshops and seminars in different regions or beaming special television documentaries would be helpful in this regard.
- The Government should also develop stronger public-private partnerships in fighting money laundering. The private sector should be enlisted as a key ally in the fight against money laundering.
- Given the strong transnational characteristics of money laundering, it is important for the Government to expand its bilateral cooperation and mutual assistance agreements to facilitate the investigation of money laundering cases and the seizure and confiscation of criminal proceeds, including arrangements for the sharing of seized and confiscated assets with other cooperating jurisdictions. However, the absence of such agreements in the meantime should not prevent voluntary cooperation in view of the common interest of all countries to stamp out money laundering.