COMBATING ILLICIT NARCOTICS TRAFFIC IN TAIWAN: THE PROPOSED MONEY LAUNDERING CONTROL ACT

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I. INTRODUCTION

Illicit drug trafficking and money laundering are inextricably linked and significant problems that transcend national borders.[1] The need for drug traffickers to conceal proceeds derived from the illicit drug trade threatens financial institutions, because money launderers often utilize banks and other legitimate financial institutions to "clean" dirty money.[2] Additionally, the use of laundered money is often necessary to ensure the success of other illegal activities, such as bribery, smuggling, fraud, and tax evasion.[3] Because it cripples financial systems, weakens law enforcement, and, by supporting drug trafficking, contributes to health problems, money laundering has a detrimental effect on nearly every aspect of society.

The Republic of China (Taiwan) is currently experiencing the effects of drug abuse by its youth.[4] In addition, Taiwan is receiving pressure from the international community, especially the United States and the parties to the Basle Committee on Banking and Supervisory

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1. According to the official estimates of the United Nations, global money laundering amounts to approximately $120 to $500 billion each year. Additionally, money laundering has become widespread in more than 125 countries around the world, some of which do not criminalize money laundering. *See* U.S. DEP'T OF STATE, BUREAU FOR INT'L NARCOTICS & LAW ENFORCEMENT AFFAIRS, FINANCIAL CRIME AND MONEY LAUNDERING, *in* INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT 19-20 (1995).

2. Money launders include drug traffickers, arms smugglers, and organized crime figures. "Dirty" money includes proceeds derived from the narcotics traffic, illegal casinos, bribery, extortion, loansharking, prostitution, and other businesses run by organized crime. *See* INGO WALTER, SECRET MONEY 40 (1985).

3. *See* Lisa A. Barbot, Note, *Money Laundering: An International Challenge*, 3 TUL. J. INT'L & COMP. L. 161, 162-63 (1994); and Konstantin D. Magliveras, *Defeating the Money Launderer - The International and European Framework*, J. BUS. L. 161, 161-62 (1992).

4. By the same token, the sharp increase in the number of drug offenders has greatly changed the structure and age of the prison population. Over the past few years, larceny convicts comprised the single largest group behind bars in Taiwan. However, these prisoners are now greatly outnumbered by inmates convicted for drug offenses, constituting 58% of the total prison population, nine times that of larceny inmates. This figure is a far cry from five years ago when drug inmates accounted for less than 20% of total inmate population. The fact that for every 1.7 inmates there is a drug offender not only exacerbates the already formidable problem of overcrowding, but also poses profound challenges to penal policy in general and prison life management in particular. *See* TAIWAN MINISTRY OF JUSTICE, STATISTIC DEP'T, SEPT. 15, 1995 (Chin.) [hereinafter 1995 MOJ STATISTICS].

Practices (Basle Committee).[5] Taiwan's position as a narcotics traffic transfer point and a money laundering depot for international drug smugglers and international organized crime is the chief concern of the international community.[6]

To aid in the prevention of money laundering offenses in Taiwan, the Ministry of Justice (MOJ) proposed a statute called the *Hsi Chíen Fang Chín Fa*, or Money Laundering Control Act (MLCA).[7] The MOJ presented the proposed MLCA to the Executive Yuan of the Taiwanese government for approval.[8] The Executive Yuan approved the MLCA on April 20, 1995 and forwarded it to the Legislative Yuan for final legislative approval. Final passage of the MLCA is expected to occur in 1996.

The MLCA will have a dual purpose. It is viewed, especially by the MOJ, as the best means in which to arm financial institutions and law enforcement authorities with the weapons needed to combat both drug trafficking and money laundering in Taiwan. It should enhance the legal structure for financial transactions and aid in developing Taiwan into a

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5. *See infra* notes 146-53 and accompanying text discussing the Basle Committee on Banking Regulations and Supervisory Practice.

6. The 1993 International Narcotics Control Strategy Report, submitted by the State Department to the U.S. Congress on April 4, 1994, depicted Taiwan as an important heroin transit point as well as a major drug money laundering center. However, Ying-jeou Ma, Minister of the Ministry of Justice (MOJ) for Taiwan, argued that drug traffickers do not need to smuggle drugs into Taiwan because Taiwan is not a necessary transit point. The ROC government has also taken a firm stance against drugs, further supporting the notion that drug traffickers should ship their contraband directly to their destination. Finally, Taiwan already possesses a large drug market, thus begging the question of why the drugs should be shipped elsewhere. Ying-jeou Ma, War on Drugs: The Experience of The Republic of China on Taiwan, Address Before the Annual Conference of National Association of Attorneys General (June 22, 1994).

7. The proposed draft of the MLCA has been translated by the author and appears in the appendix *infra*.

8. The MOJ completed the draft MLCA, including sixteen articles, in December 1994, and submitted it to the Executive Yuan (Cabinet). The Executive Yuan approved and revised the drafted MLCA , which included fifteen articles. MLCA will become effective six months after ratification by the Legislation Yuan (similar to the U.S. Congress) and promulgation by the President of the Republic of China pursuant to Article 15 of the MLCA.

The Constitution of the Republic of China, adopted in 1946 and amended in 1991, 1992, and 1994, provides for a central government with five branches. One of these branches is the Executive Yuan which is responsible for national policy making and implementation. The government of the Republic of China is headed by the President of Taiwan, who is currently elected by the National Assembly and who will be popularly elected after March 1996. The president is the highest representative of the nation, possessing specific constitutional powers to conduct national affairs. For background on the Constitution of Taiwan, see generally GOVERNMENT INFORMATION OFFICE, CONSTITUTION OF THE REPUBLIC OF CHINA (6th ed. Oct. 1994) (Taiwan).

regional financial center,[9] and, ultimately, it will result in deterring money laundering in Taiwan. Furthermore, the MLCA substantially complies with international guidelines that prohibit money laundering, such as those put forward by the Financial Action Task Force (FATF),[10] and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (1988 UN Convention).[11]

This Article contains two analytical sections. Section II discusses the trafficking of illicit drugs and efforts worldwide to control it. Special emphasis is placed on Taiwan's current anti-drug agencies and their policies, and the current state of narcotics control efforts in Taiwan. These policies are compared with international efforts at narcotics control as well as localized efforts in the United States, the United Kingdom, and by the member nations of the European Union.[12] Based on this analysis, the Article formulates recommendations for Taiwan to modify its drug and narcotics control policies and its enforcement mechanisms.

Section III of this article focuses on Taiwan's proposed Money Laundering Control Act, which is awaiting final approval by the Taiwan Legislative Yuan. This section provides a basic overview and definition of money laundering and its practical criminal application in Taiwan. After introducing this problem, Taiwan's methods for dealing with the problem are compared to those of selected international organizations. The money laundering regimes of the UN, World Trade Organization (WTO), Organization of American States (OAS), European Union (EU), United States, United Kingdom, and Australia shall be examined.

A key theme of this article is the responsibility of financial institutions for the illegal transactions conducted by money launderers

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9. Dennis Engbarth, *Taiwan: Draft Bill Lays Down Heavy Fines*, SOUTH CHINA MORNING POST, Apr. 21 1995, *available in* LEXIS, ASIAP Library, Taiwan File; *Taiwan: Executive Yuan Approves Draft of New Money Laundering Law*, CHINA ECO. NEWS SERV., Apr. 21, 1995, *available in* LEXIS, ASIAP Library, Taiwan File.

10. The Financial Action Task Force is an anti-money laundering organization comprised mostly of industrialized nations and several regional organizations. *See infra* note 145 and accompanying text (discussing Financial Action Task Force recommendations).

11. *See infra* notes 155-56 and accompanying text.

12. The members of the European Union, a single trading unit based on the Treaty on European Union (Maastricht Treaty) which came into force in 1993, are Belgium, France, Denmark, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. Subsequently, Iceland, Finland, and Austria became members of the EU in January 1995. Treaty On European Union, Feb. 7, 1992.

through their facilities.[13] This theme shall be elaborated in Part II which examines several methods that have been developed to strengthen financial institutions. These include audit trails, identification of customers, suspicious transactions reports, the creation of training programs for banks' and financial institutions' employees, and the establishment of methods of internal control over banking operations.

II. ILLICIT NARCOTICS TRAFFICKING CONTROL

A drug is defined as "any substance other than food which by its chemical nature affects the structure or function of the living organism."[14] Trafficking of illegal drugs creates serious problems for a nation's overall social and economic well-being, and has critical impact on individual health.[15] Drug addiction and crime are inextricably linked together to undermine public security.[16]

In response to drug-related problems, most countries throughout the world employ *de jure* drug prohibition and criminal sanctions to curtail narcotics-related activities. These comprehensive anti-drug trafficking laws contain, *inter alia*, provisions pertaining to the prevention of money laundering, the definition of relevant offenses and their criminal sanctions, the confiscation of illicit proceeds, extradition, mutual legal assistance, and control of precursor and essential chemicals.[17] Such rules are a response to the hundreds of millions of unregulated dollars that have been generated by drug traffickers and which have had a devastating effect on many countries. Drug money has disrupted many nations'

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13. *See* Michael Levi, *Money Laundering Legislation and Fraud*, *in* BANKS: FRAUD AND CRIME 29, 30 (Joseph J. Norton ed., 1994).

14. NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, DRUG USE IN AMERICA: PROBLEM IN PERSPECTIVE 9 (Joint Comm. Print 1973).

15. For background on the definition and contents of the drug problem, see THE WHITE HOUSE CONFERENCE FOR A DRUG FREE AMERICA, FINANCIAL REPORT 1-5 (June 1988).

16. *See id*.; *see also* David N. Nurco, et. al., *The Drug-Crime Connection*, *in* HANDBOOK OF DRUG CONTROL IN THE UNITED STATES 71 (James A. Inciardi ed., 1991).

17. *See* UNITED NATIONS: CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, U.N. Doc. E/C.82/15 (1988), 28 I.L.M. 493-526 (1989) [hereinafter 1988 U.N. Convention]. Precursor, or essential chemicals, are used to process cocoa into cocaine. However these chemicals also have legitimate industrial uses, increasing the difficulties of tracking their location. *See* GAO, THE DRUG WAR: EXTENT OF PROBLEMS IN BRAZIL, ECUADOR, AND VENEZUELA 5 (1992).

economic planning and growth, their political integrity,[18] and their social welfare.[19]

Additionally, the enormous proceeds derived from drug trafficking are the primary reason why law enforcement authorities can never fully stamp out drug traffickers.[20] Drug trafficking has become so profitable that a new wave of drug traffickers will always be available to replace the older ones should law enforcement authorities successfully battle current drug producers.

A. Current Taiwanese Anti-Drug Control Laws and Policies

Illicit drug abuse and trafficking have not always been serious societal problems in Taiwan. Drug abuse in Taiwan was not a problem until 1970 and became only a minor one during the 1970s and 1980s. At that time, some teenagers and young adults sniffed glue, used pentazocine, methaqualone, and sedatives. Their number was rather limited, however, and heroin or morphine addicts were generally found only in the criminal underworld.

The situation worsened dramatically in 1990 when amphetamines suddenly replaced soft drugs as the most popular drugs in Taiwan and their abuse spread at an astonishing rate.[21] Meanwhile, heroin consumption also jumped in the period 1990 to 1993, gaining status as a major recreational drug along with amphetamines and marijuana. A look at the volume of illegal drugs seized,[22] and the number of people

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18. In August 1989, the Medellin cartel, a Colombian drug trafficking ring, assisted the leading presidential candidate, Luis Carlos Galan, who once opposed illegal drug trade activities. INTERNATIONAL HANDBOOK ON DRUG CONTROL 3 (Scott B. MacDonald and Bruce Zagaris eds., 1992).

19. James Ostrowski, *The Moral and Practical Case for Drug Legalization*, 18 HOFSTRA L. REV. 607, 608 (1990).

20. *See* United States v. Mendenhall, 446 U.S. 544, 561-62 (1980).

21. A few sociologists have referred to drug abuse as resulting from double-digit economic growth, low inflation, and minimal unemployment, which steadily pushed economic prosperity in Taiwan towards new heights. The process of democratization further loosened social discipline and increased drug abuse. Shawn Ching-Hsian Tsai, Research for Economic Crime, Prevention of Money Laundering Offenses, Address at the 1993 Symposium on the Comparison Between the Legal Systems of China and Taiwan, Taipei.

22. Taiwanese law enforcement agencies seized 1,113 kilograms of heroin, morphine, and marijuana, and 3,357 kilograms of methamphetamine (including precursor, essential chemical, and raw materials), up 133% and 17% respectively from the previous year. 1995 MOJ STATISTICS, *supra* note 4. According to the records of the MOJ Statistics Department, in fact, there were more heroin seizures in 1993 than those in the previous nine years combined, and the 1993 figure was a 23-fold increase over the level in 1989. *Id.* Subsequently, the Ministry of Justice Investigation

convicted for drug offenses from 1989 to August 1995,[23] presents a clear picture of just how grave the problem has become. (See Table 1).

Table 1

	1989	1990	1991	1992	1993	1994	Jan.-Aug. 1995
Drug offenses charged with Narcotics Eradication Statute	2,901	2,743	5,073	12,134	19,386	15,803	5,961
Drug offenses charged with Narcotic Drugs Control Statute	923	2,392	20,916	33,502	36,971	25,035	14,572

Source: Statistics Department, MOJ, Taiwan, September 18, 1995.

In Taiwan, the production, trafficking, dealing, possession and use of narcotic drugs are all *de jure* criminal offenses. In addition to the Criminal Code, there are two primary regulations: the Narcotics Eradication Statute (NES)[24] and the Narcotic Drugs Control Statute (NDCS),[25] which punish drug offenses with penalties ranging from monetary sanctions to death.

Illegal foreign narcotic resources are a major cause of Taiwan's drug problem. The Ministry of Justice Investigation Bureau (MJIB) recently found evidence showing that certain international drug rings plan to establish or have already established drug depots in Taiwan to facilitate their local drug sales operations. Such arrangements are intended to

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Bureau (MJIB) built a large, specially-designed storage room for seized drugs in accordance with the actual need. *Id.* By the end of May, 1994, the volume of drugs confiscated reached 1,732 kilograms, again a record. *Id.*

23. In 1993, 47,836 persons were convicted for drug offenses, accounting for 31.66% of total convicted criminals, up 70% from 1992 and 3.26 times the figure from 1991. *Id.* Among the 47,836 drug offenders, about 93% were pure users or dealer-users, the rest were pure producers, traffickers, dealers or possessors. *Id.*

24. The Narcotics Eradication Statute includes twenty-two articles, which were enacted on June 3, 1955, and amended on June 21, 1973, and July 27, 1982.

25. The Narcotic Drugs Control Statute has sixteen articles, which were enacted on Nov. 11, 1929, and amended on Nov. 7, 1931, Aug. 11, 1942, Mar. 27, 1954, Jun. 14, 1973, Apr. 4, 1979, Jul. 2, 1980, and Nov. 22, 1991.

accommodate series of transactions over long periods of time, rather than the one-shot dealings, that have been the norm in the past.

1. Current Taiwanese Anti-Drug Control Agencies' Efforts and Policies

The Central Counter Narcotics Joint-Meeting Coordinating and Supervisory Board (Counter Narcotics Board), a Cabinet level agency, is currently in charge of monitoring the growth in drug abuse and drug-related crimes in Taiwan.[26] In Taiwan, the law enforcement agencies that deal with drug-related activities include the National Police Administration (NPA), the MJIB, the Military Police Command, and the Customs Service. The overall narcotics control strategy designed by the Counter Narcotics Board follows a three-pronged approach involving: 1) drug control enforcement; 2) drug prevention; and 3) drug rehabilitation which leads to the extermination of drug sources and minimizes illegal drug demand.[27] The next stage in the anti-drug trafficking process involves controlling the laundering of proceeds derived from drug trafficking.

Currently, Taiwan has no single law that deals specifically with money laundering. Taiwan presently relies on a few related banking regulations and its Criminal Code to prohibit money laundering. The absence of a specific law has resulted in implicit loopholes. To close those loopholes, Taiwanese law enforcement agencies have issued several orders designed to strengthen enforcement mechanisms.[28]

As with any country with illicit drug problems, drug trafficking in Taiwan forces drug users to obtain money needed to support their drug habits through criminal means, and corrupts individuals with the lure of enormous profits. In order to stem this problem, drug addicts have been

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26. In May, 1993, the Executive Yuan of Taiwan, responded to the number of drugs and narcotics entering Taiwan by proclaiming that the Ministry of the Interior will work with other concerned ministries to establish the Central Counter-Narcotics Coordinating and Supervisory Board. TAIWAN MINISTRY OF JUSTICE, INVESTIGATION BUREAU, BRIEF INTRODUCTION OF ECONOMIC PREVENTION CENTER 2 (1995). On December 24, 1993, the Executive Yuan upgraded the Central Counter-Narcotics Joint-Meeting Coordinating and Supervisory Board to the Cabinet level in light of the worsening rate of drug use throughout the nation. *Id.*

27. *See* Ying-jeou Ma, *supra* note 6.

28. For further discussion of current regulations governing accused money launderers in Taiwan, see *infra* Part III(A)(3).

designated criminals under Taiwan's laws,[29] and punishments are harsh. For heroin users, a first-timer can get three to seven years of imprisonment; a second-timer gets a minimum five years; a third-timer gets life imprisonment or death. However, such laws have clearly had only a limited effect on drug use.

No single country in the world has single-handedly completely won the war on drugs. Efforts in Taiwan have been no exception. For instance, even though Taiwan produces no opium poppies, opium-derived drugs like heroin and morphine are still found in Taiwan. These drugs are imported into from the Golden Triangle (e.g., Thailand, Burma and Laos) and Mainland China. Therefore, international cooperation is recognized as an essential element of Taiwan's anti-drugs efforts.[30] Increased cooperation with international counterparts could effectively expand anti-drug regions, thereby diminishing the number of sources that smuggle drugs in from abroad.

2. Prevention of the Drug Epidemic in Taiwan

The anti-drug war is destined to be a protracted and difficult one. The ROC is a newcomer to this war and can draw from the experiences of more "advanced" countries, such as the United States, and the United Kingdom.

As with the cocaine industry of the other countries, Taiwanese drug traffickers have significant political clout. These "gangster politicians"[31] function as power brokers, and are attempting to gain

29. Chapter Twenty of the Criminal Code of Taiwan governs persons who commit offenses relating to opium, such as manufacturing opium, selling or transporting morphine, cocaine, heroin, or relevant compounds. It states that offenders shall be punished with imprisonment for not more than seven years and a fine of not more than 10,000 yuan should be imposed. This Chapter also stipulates that the narcotic will be confiscated.

30. In the end of 1993 and beginning of 1994, the MJIB called three international conferences to discuss drug enforcement problems with participants from more than 24 countries. The Drug Enforcement Administration (DEA) of the U.S. Department of Justice set up an office in Taiwan to coordinate intelligence with the NPA and the MJIB. The NPA and MJIB are also building ties with Southeast Asian countries near Thailand, Burma, and Laos. On June 19, 1994, the MJIB, in cooperation with the Japanese Police, broke up a Mainland China-Taiwan-Japan amphetamine smuggling ring where mainland fishing boats were used by Taiwan drug dealers to transport 151 kilograms of methamphetamine from the mainland China to Japan. Yomiuri Shimbun, *Police Learned Chinese Ring Has 80% Smuggling Success*, DAILY YOMIURI, May 28, 1994, at 2, *available in* LEXIS, NEWS Library, CURNWS File.

31. "Gangster politician" refers to members of the political process who use their partisan influences to facilitate their illegal activities.

legitimacy by funding political campaigns.[32] Traffickers then use their political influence to diminish the potency of law enforcement efforts against the drug trade. Pursuant to this scheme, drug traffickers have penetrated and corrupted nearly every important national institution, such as the police forces, the legislature, and the judiciary.

Apart from the Golden Triangle, Thailand, Burma, and Laos, the largest importer of drugs to Taiwan is Mainland China. Chinese drug producers achieved this status by sending their drugs via fishing boats or through Hong Kong via air couriers. Gangsters in Taiwan have been known to cooperate with their Mainland Chinese counterparts in these money laundering endeavors.[33] Taiwan must, therefore, confront drug traffickers and suppliers along these "frontlines" while continuing to work closely with the neighboring governments of Thailand, Hong Kong, and Mainland China.[34] The Chinese cannot afford to lose this "Second Opium War"[35] and Taiwan does not want to repeat this chapter of history.[36]

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32. Taiwan drafted a law preventing gangsters and violent criminals from participating in campaigns for a public office. The drafted law also disqualified offenders who have been convicted of violent or drug-related crimes from running for public office. *See Taiwan: Taiwan to Bar Gangsters from Running in Polls*, REUTER TEXTLINE, Jan. 22, 1995, *available in* LEXIS, ASIAPC Library, Taiwan File.

33. MJIB discovered on November 15, 1995, that Taiwanese gangsters smuggled counterfeit mainland China currency (known in China as, *Jên Min Pi*) and contraband goods into mainland China in exchange for Taiwanese currency (known in Taiwan as, *Hsin T'ai Pi* or New Taiwan Dollar) which then flowed into mainland China and was collected by mainland China gangsters. *Chung Yuang Jih Pao*, CENTRAL DAILY NEWS, Dec. 16, 1995, at 3 (Chin.). The Taiwanese gangsters deposited over the equivalent of US$280 million into Kinmen, an island of Taiwan opposite mainland China, and wire transferred it to Taiwan-based bank accounts to avoid investigations for the past two years. *Id.*

34. *See Taiwan Calls on HK to Help Battle Drug Smuggling*, REUTERS WORLD SERVICE, May 31, 1995, *available in* LEXIS, ASIAPC Library, Taiwan File.

35. The British East India Company began selling opium, also known as *afyun*, into mainland China in 1773. Opium eventually became the major British export to the Manchu Dynasty. Recognizing the dangers of this trade, an official named Tzer-shyu Lin urged his government to prohibit the export of the opium in order to preserve the national health. However, his actions ignited a war in which Britain combined forces with seven other opium exporting countries and invaded China. This so-called "Opium War" (1839-1842) signaled the end of the Manchu Dynasty, freeing the importation of opium into mainland China. *See generally* SSß-YÜ TÉNG, CHANG HSI AND THE TREATY OF NANKING 1842, at 69-71 (1944).

36. At the conclusion of the Manchu Dynasty (1644-1911), after the Opium War of 1842, at least ten percent of the Chinese population were opium users. *See* DESMOND MANDERSON, FROM MR. SIN TO MR. BIG: A HISTORY OF AUSTRALIAN DRUG LAWS 45 (1993).

B. A Comparison of Taiwan's Narcotics Control Regimes with Other Selected Regimes

Stephen D. Walsh noted that "the history of the human race has also been the history of drug abuse."[37] Despite the lengthy existence of this global plague, individual countries traditionally have not engaged in international cooperation to solve this problem.[38] Currently, in response to growing international concern over drug issues, the UN has substantially increased its efforts against drug abuse and drug trafficking.[39] Additionally, more countries than ever have expressed their willingness to combat the international illicit narcotics trade.

1. Intergovernmental Anti-Drug Trafficking Organizations Subregimes

Intergovernmental regimes designed to deal with criminal activities have been minimizing the disparities between divergent legal systems.[40] Consequently, in addition to the cooperation between governments and international organizations to combat criminal activities, special tools, known as subregimes, have been created to address specified criminal activities.[41] These subregimes monitor and govern international drug trafficking. The existence of these subregimes reflects a commitment by governments and international organizations to combat illicit drug trafficking and other forms of illegal criminal activity by increasing international cooperation.[42]

The intergovernmental anti-drug laundering regime is "soft law,"[43] setting minimum standards that possess no legal binding effect on

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37. Stephen D. Walsh, *Some Aspect of International Drug Control and Illicit Drug Trafficking, in* INTERNATIONAL DRUG TRAFFICKING 101-13 (Dennis Rowe ed., 1988).

38. Bruce Zagaris & Constantine Papavizas, *Using the Organization of American States to Control International Narcotics Trafficking and Money Laundering*, 57 REVUE INT'L DE DROIT PENAL 119, 120 (1986).

39. For a discussion of U.N. anti-drug efforts, see *infra* notes 59-66 and accompanying text.

40. *See* Bruce Zagaris & Elizabeth Kingma, *Asset Forfeiture International and Foreign Law: An Emerging Regime*, 5 EMORY INT'L L. REV. 445, 447 (1991).

41. *Id.*

42. *See* Bruce Zagaris & Sheila M. Castilla, *Constructing an International Financial Enforcement Subregime: The Implementation of Anti-Money-Laundering Policy*, 19 BROOK. J. INT'L L. 872, 874 (1993).

43. A "soft law," the antonym of "firm law" or "hard law," is a legally significant international rule emanating from specific national authorities that is intended to be enacted into national law or administrative rules in accordance with the substance of the rule. However, it

signatory nations, as opposed to "hard law," which create forcible obligations on members.[44] This soft law could evolve into multi-jurisdictional compliance procedures for those operating cross-border. A successful intergovernmental regime, however, depends upon the effectiveness of its members in enacting their own legislation to incorporate into the intergovernmental regime. In order to successfully combat international drug activity, each country must amend its domestic laws and approve international agreements in accordance with the policies of the international anti-drug regime.

a. The 1988 UN Drug Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

The UN has played a key role in influencing the international community's fight against illicit drug trafficking and money laundering.[45] The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was passed in 1988 (1988 UN Convention).[46] This Convention created internationally recognized drug trafficking offenses that are to be criminalized under the domestic laws of the Convention's signatory countries. In addition, the 1988 UN Convention also adopted a framework for international cooperation to bring traffickers and the recipients of drug trafficking proceeds to justice.[47]

According to the requirements of Article 3(1)(a) of the 1988 UN Convention, the UN requests its members to establish modern codes of criminal offenses that address all aspects of illicit drug trafficking in national legal systems.[48] Article 3(1)(b) of the 1988 UN Convention is more specific, requiring parties to stipulate money laundering as a criminal offense.[49] Further, Article 5(1) of the 1988 UN Convention[50]

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should be noted that there is no obligation nor penalty for failure to observe soft law. *See* JOSEPH GOLD, INTERPRETATION: THE IMF AND INTERNATIONAL LAW 401 (forthcoming, 1996).

44. *See* Zagaris & Kingma, *supra* note 40, at 452.

45. *See* Sharon A. Gardner, *A Global Initiative to Deter Drug Trafficking: Will Internationalizing the Drug War Work?*, 7 TEMPLE INT'L & COMP. L. J. 287, 293 (1993).

46. The 1988 U.N. Convention supplements and reinforces several earlier U.N. measures contained in the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol 11 I.L.M. 804 (1972) and the 1971 Convention on Psychotropic Substances 10 I.L.M. 261 (1971). *See* 1972 Protocol to the U.N. Single Convention on Narcotic Drugs of 1961, 11 I.L.M. 804, and Convention on Psychotropic Substances, 10 I.L.M. 261.

47. *Id.*

48. *See* 1988 U.N. Convention, *supra* note 17, art. 3(1)(a) ("Each party shall adopt such measures as may be necessary to establish as criminal offenses under its domestic law.").

49. Article 3(1)(b)(i) of the 1988 U.N. Convention, *supra* note 17, provides:

requires each member nation to empower its courts or other competent authorities to confiscate the proceeds and converted property derived from drug trafficking. Under Article 5(6)(b) of the 1988 UN Convention, the authorities can also seize proceeds, including those which are intermingled with property procured from legitimate sources.[51]

Although Taiwan is not a member of the 1988 UN Convention, the vigorous narcotics enforcement campaign mounted by Taiwanese authorities demonstrates substantial progress towards compliance with the goals of the 1988 UN Convention. Under the proposed Money Laundering Control Act, Taiwan has implemented key provisions of the 1988 UN Convention, such as control of precursor chemicals, and increased investigation of money laundering operations. Additionally, Taiwan is taking substantial steps of its own to eradicate the problem of narcotics trafficking.

> The conversion or transfer of property, knowing that such property is derived from any offense or offenses established in accordance with sub-paragraph (a) [which lists drug offenses] . . . , or from an act of participation in such offense or offenses, for the purpose of concerning or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offense or offenses to evade the legal consequences of his actions.

Id. Article 3(1)(b)(ii) of the 1988 U.N. Convention, *supra* note 17, provides:

> The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property is derived from an offense or offenses established in accordance with subparagraph (a) . . . , or from an act of participation in such offense or offenses.

Id.

50. Article 5 of the 1988 U.N. Convention, *supra* note 17, provides:

> Each Party shall adopt such measures as may be necessary to enable confiscation of:
> (a) proceeds derived from offenses established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;
> (b) narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offenses established in accordance with article 3, paragraph 1.

Id.

51. Article 6(b) of 1988 U.N. Convention, *supra* note 17, provides:

> If proceeds have been intermingled with property acquired form legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

Id.

b. Recommendations of the Chemical Action Task Forces

The Group of Seven industrial countries (G-7) recognized that illicit drugs contributed to serious societal problems.[52] To promote efficient cooperation pertaining to anti-drug remedies, the 1989 Declaration of the G-7 Economic Summit in Paris[53] established the Chemical Action Task Forces (CATF)[54] in 1990. CATF encourages the signature participants to refashion the 1988 UN Convention in order to facilitate international cooperation in curbing the global narcotic cultivation and trafficking of psychotropic substances.[55] For example, drug traffickers currently obtain the necessary chemicals for their illicit purposes from legitimate commercial enterprises. In response, the CATF provides a list of recommended chemicals to be controlled, which was ultimately approved at the 1988 UN Convention.[56] The CATF also developed "measures to facilitate the identification, tracing, freezing, seizure, and forfeiture of drug crime proceeds."[57]

The CATF's methods to control the use of legitimate chemicals were adopted by the UN International Narcotic Control Board in April 1993. Taiwan, although not an official member, also adopted the CATF recommendations in its Enforcement Rule of the Narcotic Drug Control (Enforcement Rule) which comprised the catalog of chemicals to be controlled.[58] The Enforcement Rule establishes the scope of the

52. *See* Magliveras, *supra* note 3, at 166.

53. The 1989 Paris Economic Summit partners included Canada, France, Germany, Japan, Italy, the United Kingdom, and the United States (also known as Group of Seven), along with the participation of the Commission of the European Communities. 1989 Paris Economic Summit, 28 I.L.M. 1299 (1989).

54. CATF members are not limited to the Group of Seven countries for the enhancement of international anti-drug cooperation. The members of the CATF include Argentina, Australia, Belgium, Bolivia, Brazil, Canada, China, Colombia, Ecuador, France, Germany, Hungary, India, Italy, Japan, the Netherlands, Pakistan, Peru, Spain, Sweden, Switzerland, Thailand, the United Kingdom, the United States, the U.N. International Narcotics Control Board, the Organization of American States, and the Commission of the European Communities. *See* GAO, ILLICIT NARCOTICS: RECENT EFFORT TO CONTROL CHEMICAL DIVERSION AND MONEY LAUNDERING 12 n.2 (1993).

55. *See* Canada, European Community, France, Federal Republic of Germany, Italy, Japan, United Kingdom, and United States: Declaration on Human Rights and Economic Declaration from the Paris Economic Summit (1989 Paris Economic Summit), held at Paris, France, on July 15 & 16, 1989, 28 I.L.M. 1292, 1299 (1989).

56. *See supra* note 56.

57. 1989 Paris Economic Summit, *supra* note 53, at 1299.

58. The Enforcement Rule of the Narcotic Drug Control announced by the Department of Health, Executive Yuan of Taiwan, on April 23, 1982, amended three times in 1984, 1993, and 1994 (Chin.).

competent agencies' duties, including forfeiture provisions and the penalties for those who violate its provisions.[59]

2. Selected Regional Regimes

The effort to combat global drug trafficking is complex, because drug trafficking occurs in many ways and involves numerous countries. Therefore, to ensure the success of the anti-drug effort, the nations within each region must first raise the level of cooperation among themselves. The cultural similarities and geographic proximity of nations within a given region facilitates this kind of cooperation. The failure of individual nations to cooperate within the region almost ensures the spread of the drug usage throughout that area.

a. Comparative Analysis of the OAS Regime[60]

Many members of the OAS are major drug producing and transit countries, especially Peru, Bolivia, and Colombia.[61] Drug-related activities account for a majority of these nations' incomes. It is for this reason that the CATF's recommendations, which calls for the adoption of chemical control procedures, have been difficult to act upon in the OAS. These guidelines require the commitment of a substantial amount of resources that many less-industrialized nations, like the OAS members, simply do not possess. As a result, most of the international efforts to battle drug cultivation and trafficking has focused on narcotics eradication and the development of alternative plants or industries.[62]

However, the OAS has taken steps toward conforming to the CATF's recommendation. These steps include OAS approval of the

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59. *Id.*

60. The Organization of American States (OAS) was established in 1948 after the ninth Pan-American Conference. The purpose of the OAS is to strengthen security in the Western Hemisphere, to settle disputes between members, and to promote the cooperation of economy, society, and culture within the signatories. OAS CHARTER arts. I & IV. Currently, the OAS has 35 members: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba (participation suspended in 1962), Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Surinam, Trinidad and Tobago, the United States, Uruguay, and Venezuela. CIA, THE WORLD FACTBOOK 507 app. C (1995).

61. *See* Gardner, *supra* note 45, at 288.

62. *See* Michael J. Dziedzic, *The Organization of American States and Drug Control in the Americas*, *in* INTERNATIONAL HANDBOOK ON DRUG CONTROL, *supra* note 18, at 397, 400.

Model Regulation to Control Chemical Precursors and Chemical Substance, Machines and Material (Model Regulation), which identified 36 "controlled" chemicals. Further, the Model Regulation requires OAS countries to control the licensing of manufacturers and traders, to maintain records, and provide reports on chemical manufacturing and transshipment. In November 1986, the OAS approved the creation of the Inter-American Drug Abuse Control Commission (CICAD), which coordinates the activities of contracting parties and raises the effectiveness of this anti-drug regime.[63]

b. Comparison with EU Directives

The EU Member States have been leaders in adopting laws and regulations governing the control of licit and illicit drugs. Unlike the free chemical trade being conducted within the European Union, European countries have created two regulations to control the diversion of exported chemicals. The first regulation governs the external trade of twelve chemicals listed in the 1988 UN Convention. The second regulation amended the initial regulation and now incorporates all twenty-two chemicals listed in the 1988 UN Convention. In addition, the European Union has attempted to control both drugs and their precursors by negotiating with drug producing and trafficking countries for import notification or permission. These efforts, however, have proven to be ineffective because the counterpart nations have regularly failed to comply with the negotiation terms. For example, Colombia, the largest manufacturer of cocaine, does not require advance notice of domestic drug trade.

3. Selected National Regimes

A national regime is the basic combat unit against domestic and international drug problems. In general, international and regional anti-drug regimes require each signatory country to establish criminal offenses and penalties for illegal drug trafficking under its domestic laws and legal frameworks.[64] Thus, only when each national strategy is sound will the war against drugs be successful. Each signatory country must pattern its

63. *Id.* at 401.

64. *See* David P. Stewart, *Internationalizing The War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 18 DEN. J. INT'L L. & POL'Y 387, 387-88 (1990).

own anti-drug laws after established international and regional guidelines to promote uniformity throughout the network.

a. Relevant U.S. Anti-Drug Laws

The United States has the largest illicit drug market because it has the largest number of drug users in the world. Traditionally, drug control policies in the United States have focused on "reducing both the supply and the demand for illicit drug[s],"[65] pursuant to the enactment of the Harrison Act in 1914.[66] However, these policies have not succeeded in the war on drugs.

By the early 1970s, drug traffickers, especially South American cocaine and Southeast Asian heroin dealers, utilized various channels, including "body packers,"[67] to smuggle their drugs into the United States. In response, the United States developed a national strategy in 1989 to combat widespread drug use and attendant violent crime, damage to the national health, and strains on relationships with allies.[68] The strategy also united the efforts of various anti-drug agencies, including the Drug Enforcement Agency, the Federal Bureau of Investigation, the Coast Guard, and the Department of Defense.[69]

This strategy supplemented the efforts already being made under the 1986 Maritime Drug Law Enforcement Act.[70] Under this Act, U.S. law enforcement authorities have the right to search vessels without warrants.[71] The Act expands the jurisdictional basis of U.S. courts to conduct such searches at sea.[72] As such, the U.S. Supreme Court has staunchly supported the various methods utilized by U.S. anti-drug

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65. James A. Inciardi, *American Drug Policy and the Legalization Debate*, *in* THE DRUG LEGALIZATION DEBATE 7, 9 (James A. Inciardi ed., 1991).

66. *Id.*

67. Drug traffickers (i.e., Colombia's drug dealers) hire couriers to swallow heroin encased in condoms or other packaging, disgorging their contraband to drug dealers at a destination such as Miami. For useful background on the "body packers," see Alison Mylander Gregory, *Smugglers Who Swallow: The Constitutional Issues Posed by Drug Swallowers and Their Treatment*, 56 U. PITT. L. REV. 323, 323-65 (1994); Mireya Navarro, *Colombia's Heroin Couriers: Swallowing and Smuggling*, N.Y. TIMES, Nov. 2, 1995, at A1 & A12.

68. GAO, THE DRUG WAR: EXTENT OF PROBLEMS IN BRAZIL, ECUADOR, AND VENEZUELA 2 (1992).

69. *See* Michael J. Munn, *The Aftermath of* Austin v. United States*: When is Civil Forfeiture an Excessive Fine?*, 3 UTAH L. REV. 1255, 1255 (1994).

70. 46 U.S.C. app. §§ 1901-04 (1988).

71. *Id.* §§ 1903-04.

72. *Id.* § 1903.

authorities, regardless of international questions of its legality, to capture drug offenders around the world.[73]

b. U.K. Drug Control Provisions and Policies

Authorities in the United Kingdom, including the newly established Drugs Unit of the National Criminal Intelligence Service,[74] employ anti-drug policies that comply with local requirements and international agreements relating to anti-drug activities. U.K. authorities also actively engage in international cooperation to attack drug-related criminal activities.[75] To that end, the United Kingdom signed the 1989 UN Convention in 1991, which strives to achieve the goals of the 1988 UN Convention.

The U.K. domestic anti-drug policies focus on drug abuse treatment, drug abuse education, and law enforcement**.** U.K. anti-drug efforts increased in 1994. The British strategy, "Tackling Drugs Together," is designed to keep the community safe from drug-related crimes. The strategy is also committed to reducing the health risks of drug abuse, while helping young people resist the temptation of drugs.

C. Recommendations for Modification of Taiwanese Anti-Drug Control Policies and Laws

Unlike South American countries whose economic problems and lack of resources limit their ability to commit to programs of counternarcotics,[76] combating narcotic activities is a national priority in Taiwan. Taiwan is willing and able to provide virtually unlimited

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73. *See* United States v. Alvarez-Machain, 504 U.S. 655 (1992) (unilateral abduction of a Mexican national by federal agents did not violate U.S.-Mexico extradition treaty or U.S. Constitution); *see also* Michael G. Mckinnon, *United Sates v. Alvarez-Machain: Kidnapping in the "War on Drug"—A Matter of Executive Discretion or Lawlessness?*, 20 PEPPERDINE L. REV. 1503, 1503-62 (1993).

74. The National Criminal Intelligence Service (NCIS) was founded on April 1, 1992 to "provide a creative and dynamic national criminal intelligence service." NCIS, *An Article on the National Criminal Intelligence Service*, *in* The Eleventh International Symposium On Economic Crime 728 (1993). NCIS has also collected and analyzed the "national coordination of intelligence regarding serious, organized and cross-border crime." *Id.*

75. The United Kingdom has participated in various international anti-drug regimes, such as the Dublin Group, the FATF, and the U.N. International Drug Control Program to contribute its anti-drug efforts to international anti-drug control. *See* INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 1, at 394-96.

76. *See* GAO, *supra* note 17, at 1.

resources to combat the drug epidemic. Taiwan's geographic location facilitates the war on drugs. Unlike the United States and the European Union, Taiwan is a small island nation with a limited number of points in which drug traffickers can smuggle their drugs. Taiwan's geographic advantage allows governmental agencies to monitor the importation of illegal narcotics more effectively.

In addition to controlling the importation of narcotic products from abroad, Taiwanese legislators and law enforcement agencies must restrict the spread of precursor and essential chemicals,[77] which have legitimate industrial uses but which are often utilized to produce narcotics within Taiwan. The closer monitoring of these essential elements of narcotics production will help destroy the image of Taiwan as a drug processing center.

Compared to the wide-spread anti-drug strategies employed in the United States, the United Kingdom, and the European Union, Taiwan's strategies seem to offer a relatively sound, pragmatic approach that is not overly cost-intensive. Together with international anti-drug institutions and countries, Taiwan must increase its efforts to set up bilateral and multilateral counternarcotics agreements.[78] These efforts should include fulfilling its international responsibilities by working more closely with the international community to increase drug intelligence exchanges and conduct joint efforts to investigate and prosecute narcotics traffickers.[79] Taiwan also needs to protect individuals who come forward to testify against drug traffickers and organized crime. Taiwan should follow the model already established by the United States and create its own Witness Protection Act.[80] Moreover, Taiwan must enhance its financial controls to address the money laundering situation. Finally, a revamping of passport laws should be initiated to prevent Taiwan from remaining a "safe haven" for international drug fugitives.

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77. *See id.* at 5.

78. Taiwan and the U.S. signed a bilateral counternarcotics agreement (in fact, a memorandum of understanding) in which both nations' anti-drug authorities can testify in each other's courts against illicit drug traffickers. *See* NARCOTICS STRATEGY REPORT, *supra* note 1, at 285. The Agreement was represented by both the Taipei Economic and Culture Representative Office in the United States and the American Institute in Taiwan in 1993 (both institutes are semi-official agencies). *Id.*

79. *See* GAO, *supra* note 1, at 284.

80. The U.S. version of the Witness Protection Act provides for the relocation and protection of witnesses who agree to testify against organized crime. *See* 18 U.S.C. § 3521.

III. PROVISIONS OF THE MONEY LAUNDERING CONTROL ACT

Money laundering is defined as "the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate."[81] Sophisticated laundering converts "dirty money" obtained from drug trafficking or other criminal activities into "legitimate money," which can then be used for any purpose.[82] Increases in money laundering activities directly undermine public security: "[E]very dollar laundered means another dollar available to support new supplies of [illegal narcotics] on streets of this country."[83] Indeed, because of its insidious nature, money laundering and criminal activity involving the financial industry, poses a far greater threat to society than conventional criminal activity.

Cash is the main intermediary in illegal trade because it can be transferred without documentation.[84] Nevertheless, drug traffickers prefer laundering dirty money rather than keeping the cash in small denominations.[85] As a result, many countries have enacted regulations,

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81. PRESIDENT'S COMMISSION ON ORGANIZED CRIME, INTERIM REPORT TO THE PRESIDENT AND THE ATTORNEY GENERAL, THE CASH CONNECTION: ORGANIZED CRIME, FINANCIAL INSTITUTIONS AND MONEY LAUNDERING 7 (1984).

82. A number of methods of money laundering are commonly used, such as smuggling currency to a more "helpful" jurisdiction, converting cash into negotiable instruments, using facilities of tax and finance havens, transferring money into or through front or shelf companies, feeding money through casinos or other gambling arrangements, using credit cards or debit cards from tax haven banks, using false or inflated invoices, using the facilities of underground or parallel banking systems, buying goods for cash, promoting events such as sporting events, and clearing the money by using it as finance. *See* Andrew Haynes, *Money Laundering & Changes in Int'l Banking Regulations*, 11 J. INT'L BANKING. L. 454 (citing William Gilmour, Speech, *International Initiatives in Controlling Money Laundering*, London, Oct. 9, 1991).

83. S. REP. NO. 433, 99th Cong., 2d Sess. 4 (1986) (statement of Sen. Joseph Biden).

84. However, cash does not completely obscure all transactions, particularly those involving large dollar amounts. Therefore, launderers amplify and layer their illicit proceeds by utilizing various methods of money laundering. Money laundering includes not only cash, but also valuable securities, real estate, precious jewelry, and other valuables to cover its illegal trace.

85. Without regard to the difficulty of tracing cash, launderers desire to wash "dirty money" for the following reason:

> Illegal-source cash can be difficult to handle due to its sheer physical volume, particularly with large amounts of cash in small denominations. In addition, criminals need to use their funds without suspicion as to their source. This is why laundering illegally generated cash is so important to the success of large-scale criminal enterprises.

Laura M. L. Maroldy, *Recordkeeping and Reporting in an Attempt to Stop the Money Laundering Cycle: Why Blanket Recording and Reporting of Wire and Electronic Funds Transfers is Not the Answer*, 66 NOTRE DAME L. REV. 863, 866 (1991); *see also* Maura E. Fenningham, Note, *A Full*

such as the U.S. Bank Secrecy Act, that require financial institutions to report certain currency transactions to block launderers from utilizing the financial system to achieve their ends. To evade such controls, money launderers enter a web of transactions, obscuring the source of money, and reduce the likelihood of detection.

Generally speaking, money launderers utilize three steps to wash their "dirty money."[86] The first step is placement, which involves the physical placement of proceeds derived from illegal activities.[87] The second step of the laundering processes is layering, which involves structuring numerous financial transactions to disguise the trace.[88] Finally, launderers will proceed with integration, which gives apparent legitimacy to the criminally derived wealth.[89]

Although the process of money laundering has been broken down into three steps, it is generally agreed by law enforcement and regulatory officials that the point at which criminals are most vulnerable to detection is the "placement" stage.[90] Placement is the concealing of illicit proceeds by converting the cash to another medium that is either more convenient or less suspicious for purposes of exchange, such as property, cashier's checks, or money orders; or depositing the funds into a financial institution account for subsequent disbursement. Launderers are especially vulnerable when they attempt to "place" illicit proceeds within legitimate banking systems.[91]

The methods used by money launderers to clean their illicit proceeds are varied. They might clean proceeds through bogus property companies; theft of company funds; bank complicity; cash deposits; and currency exchanges. In nearly every case, a legitimate banking institution is used. Thus, there are two parties responsible for the laundering. Law enforcement authorities can prosecute the money launderers themselves or they may choose to prosecute the financial institutions that assist in or

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Laundering Cycle is Required: Plowing Back the Protection to Carry on Crime is the Crime Under 18 U.S.C. §1956(a)(1)(A)(i), 70 NOTRE DAME L. REV. 891, 892-93 (1995).

86. *See* CHARLES A. INTRIAGO, INTERNATIONAL MONEY LAUNDERING 7 (1992).

87. *Id.*

88. *Id.* at 9.

89. *Id.* at 10.

90. GAO, MONEY LAUNDERING: THE USE OF BANK SECRECY ACT REPORTS BY LAW ENFORCEMENT COULD BE INCREASED 1 (May 1993).

91. GAO, MONEY LAUNDERING: NEEDED IMPROVEMENTS FOR REPORTING SUSPICIOUS TRANSACTIONS ARE PLANNED 10 (May 1995).

abet money laundering. Potentially, both can be prosecuted under many criminal codes.

Many criminological scholars and law enforcement authorities believe that the best way to discourage money laundering is to seize their drug trade proceeds.[92] To this end, many countries, such as the United States, Australia, the European Union, and Taiwan, requires financial institutions to report suspicious transactions.

A. Overview of the Proposed Taiwan Money Laundering Control Act

The purpose of enacting a money laundering law is to dissuade and deter criminal activity by greatly diminishing the expectations of profit and placing a high risk of punishment or penalties on the necessary collaborators in the financial and business communities. Money laundering laws that impose mandatory prison terms and fines can drive many drug trafficking operations out of business and deter potential successors.

1. Nexus between Narcotics Control and Money Laundering

Money laundering is the lifeblood of narcotics trafficking. An international consensus has developed whereby money laundering is treated as a regulatory and law enforcement priority.[93] Obviously, money laundering plays a vital role in furthering the activities of narcotics traffic. "Money laundering is a crucial financial underpinning of organized crime and narcotics trafficking."[94] Drug traffickers "need money laundering to conceal the billions of dollars in cash generated annually in drug sales and to convert [their] cash into manageable form."[95]

Due to the relationship between money laundering and narcotics trafficking, law enforcement authorities believe that "if 'drug money' cannot find its way back to narcotics producers, the importation of the

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92. *See* Ethan A. Nadelmann, *Negotiations in Criminal Law Assistance Treaties*, 33 AM. J. COMP. L. 467, 467-470 (1985).

93. International Organization of Securities Commissions (IOSCO), *IOSCO Working Party Number 4: Report on Money Laundering*, *in* THE ELEVENTH INTERNATIONAL SYMPOSIUM ON ECONOMIC CRIME 2 (1993). IOSCO is a global association responsible for regulating securities and futures markets.

94. S. REP. NO. 433, *supra* note 83.

95. *Id.*

drugs may decline."[96] Therefore, law enforcement authorities have focused on disconnecting the nexus between narcotic trafficking and money laundering in order to halt the spread of the drug trade.[97]

2. Money Laundering Offenses and Examination of the MLCA

Taiwan's proposed MLCA is the first comprehensive statute designed to curb money laundering in Asia. The aim of the MLCA is to quell not only drug-related revenues but also criminal proceeds from all kinds of money laundering activities.[98]

Although money laundering of illicitly gained funds has become a major international problem in the past decades, money laundering was not taken seriously in Taiwan until the outburst of money laundering exchanges between Taiwan and Hong Kong in April 1990.[99] Until now, Taiwan has lacked a comprehensive set of regulations to deal with such types of crimes. As a result, domestic and foreign criminal gangs often made use of the loopholes in existing laws and treat Taiwan as a point for money laundering. The incomplete legal response to money laundering posed a challenge to the social order and the soundness of Taiwan's financial system. Moreover, the activities of criminals further hindered

96. *See* Abraham Abramovsky, *Money-Laundering and Narcotic Prosecution*, 54 FORDHAM L. REV. 471, 472 (1986).

97. To some extent money laundering is an essential element of not only drug trafficking but also other criminal activities because laundered money allows criminals to use the proceeds derived from drug trades in legitimate business. *See* Duncan E. Alford, *Anti-Money Laundering Regulations: A Burden on Financial Institutions*, 19 N.C. J. INT'L & COM. REG. 435, 435 (1994); Peter E. Meltzer, *Keeping Drug Money from Reaching the Wash Cycle: A Guide to the Bank Secrecy Act*, 108 BANKING L.J. 230, 230 (1991); Geoffrey W. Smith, *Competition in the European Financial Services Industry: The Free Movement of Capital Versus the Regulation of Money Laundering*, 13 U. PA. J. INT'L BUS. L. 101, 128 (1992).

98. MLCA arts. 2, 3, *infra* app.

99. For example, in 1990, a businessman from Hong Kong was kidnapped and the ransom paid was "washed" through a Taiwanese bank account. Mr. Wang Teh-huei, a Hong Kong and Chinachem chairman, was kidnapped and held for US$60 million on April 10, 1990. Half of the money had been paid, but Mr. Wang had not been released. Part of the ransom (US$28 million) was remitted to a Mainland China bank through another bank in France before it was deposited in a Hong Kong bank account and sent to the First Commercial Bank in Taipei, Taiwan. Once in Taipei, the money was divided into specific denominations and deposited in more than 10 accounts with Taiwanese banks and withdrawn in New Taiwanese dollars, most of which were seized by the MJIB. *See* Judgment *80-Shang-I-Tze* 2681 of the Taiwan High Court, translated from the Official Taiwan High Court Decision (Chin.).

the goal of developing the capitol, Taipei, as a regional financial center.[100]

Consequently, the primary objective of the MLCA is to establish standards of operation for financial institutions to minimize illicit laundering and thus restore confidence in Taiwan's financial systems. Money laundering is prohibited and criminalized by the MLCA.[101] Criminal activity includes any crime specified in Article 3(1)(a) of the 1988 UN Convention and any other non-criminal activity designated as such for the purposes of the MLCA.[102]

The MLCA defines money laundering as any effort to utilize legal or illegal financial institutions to disguise the origins of and legalize funds derived from major crimes, such as drug trafficking, smuggling, kidnapping, economic crimes, corruption, prostitution or vote-buying in election, and thereby escape criminal prosecution.[103] Moreover, the MLCA expands the definition of money laundering offenses that was already in place to include the proceeds of certain foreign crimes (including those committed in Mainland China).[104] Under the MLCA, the proceeds of such foreign criminal offenses may be subject to forfeiture to the extent that they are related to a money laundering violation, unless they are not punishable according to the law of the location where they occurred.[105]

Persons violating the MLCA will be given a fine or sentenced to prison, or both.[106] A violator engaging or assisting in laundering money will be sentenced to a jail terms of one to five years, plus fines of between $38,000 and $380,000.[107] To avoid recidivism, the MLCA provides that repeat offenders will be subject to lengthy imprisonment sentences (between one and seven years) and more fines (between $38,300-383,000).[108] Moreover, the money launderers' gross proceeds, and

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100. *See* Engbarth, *supra* note 9.

101. Article 9 of the MLCA requires that money laundering be prohibited and confirms that money laundering will be made a criminal offense. MLCA art. 9, *infra* app.

102. Article 3 of the MLCA imitates Article 3(1)(b) of the 1988 U.N. Convention, see *supra* note 17.

103. MLCA art. 3, *infra* app.

104. *Id.* arts. 3(2), 3(3).

105. *Id.* art 3(2) (using an exchange rate of New Taiwan dollar 27.55 to US$1.00 in effect on February 5, 1996).

106. *Id.* art. 9.

107. *Id.*

108. MLCA art. 9, *infra* app.

property traceable to such proceeds, are subject to criminal forfeiture and seizure. [109]

The MLCA creates a "dual system" of obligations that requires financial institutions to report any suspicious transactions to authorities,[110] and to keep records of certain large transactions.[111] Financial institutions[112] are required to keep precise records of the identities and transactions of clients for transactions in excess of a certain amount to be set jointly by the Ministry of Finance, the Central Bank of China, and the MOJ.[113] Furthermore, the MLCA requires financial institutions to establish their own methods to watch for, prevent, and control money laundering.[114] Violations of these requirements are punishable by fines.[115]

3. Defenses Currently Used by Accused Money Launderers in Taiwan

Pending approval of the MLCA by the Legislative Yuan, Taiwan continues to govern money laundering offenses through regulations of certain authorized agencies and several administrative guidance declarations. Since the Legislature Yuan failed to timely establish a legal system to enforce money laundering cases while awaiting the passage of the MLCA, Taiwan has been forced to rely on these alternative provisions. Notwithstanding certain loopholes in these alternative provisions, Taiwan has successfully prosecuted money laundering offenders.

For example, contraband goods used for any criminal purpose are also forfeited, whether belonging to the criminal or not.[116] The proceeds

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109. *Id.* art. 12.

110. *Id.* art. 8(1).

111. *Id.* art. 7.

112. In addition to banks, all securities firms, investment consulting firms, futures trading companies, insurance firms, credit card companies, trust and investment companies, bill finance companies, the postal organizations (which manage the business of saving and remittance), credit cooperatives, farmers' and fishermen's credit departments, and other organizations designated by the Ministry of Finance will be included in the MLCA. *Id.* art. 5.

113. MLCA art. 7, *infra* app.

114. *Id.* art. 6.

115. *Id.* art. 7.

116. CRIMINAL CODE, arts. 38 (Taiwan) (regulating forfeit provisions), 349(3) (ruling offenses of receiving stolen property), *reprinted in* LAWS OF THE REPUBLIC OF CHINA, FIRST SERIES--MAJOR LAWS (compiled and translated by Law Revision Planning Group, CUSA, The Executive Yuan, 1961) [hereinafter LAWS OF CHINA].

derived from criminal activities are forfeited in accordance with the criminal code as receipt of stolen property. Moreover, to prevent the corruption of public servants, all bribes offered in exchange for voting rights,[117] or for other specified purposes,[118] are forfeited. Meanwhile, the Taiwanese Supreme Court has upheld the principle of "obliged forfeit," under which proceeds of drug sales must be forfeited after their identification.[119] However, the Court also noted that discovery of the proceeds at the crime scene is not a precondition to forfeiture.[120]

To protect customers' confidence in the account information possessed by financial institutions, Taiwan criminalizes any act committed by a financial institution or governmental employee that divulges such confidential information to third parties,[121] unless otherwise provided by law or by regulations from a competent authority.[122] In addition, Taiwanese administrative regulations have supplemented the loopholes in the regulations which cannot be amended immediately. Pursuant to these rules, financial institutions must identify customers and record withdrawal dates when the amounts in question surpass $38,500 per banking transaction.[123] Individual international transactions of more than $5,000,000 per year should be forwarded to the Central Bank for a permissible purchase and sale.[124]

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117. LAW GOVERNING THE ELECTION AND RECALL OF PUBLIC FUNCTIONARIES, arts. 45, 89, 90, 91 (Taiwan); CRIMINAL CODE, art. 134 (Taiwan).

118. STATUTE ON PENAL PROVISION FOR CORRUPTION, arts. 4-6 (Taiwan); CRIMINAL CODE, art. 142, *reprinted in* LAWS OF CHINA, *supra* note 116.

119. Taiwan Supreme Court, Verdict No. 11 (1979).

120. *Id.*

121. CRIMINAL CODE, art. 132, *reprinted in* LAWS OF CHINA, *supra* note 116.

122. BANKING LAW OF 1983, art. 48(2) (Taiwan). The Banking Law of the Republic of China (Banking Law), with 7 chapters and 140 articles, is the primary banking statute in Taiwan. It describes the powers and duties of all banks in Taiwan, both domestic and foreign, through regulations governing their operations. The original Banking Law was passed in 1931 and has been amended 12 times. For a background in the Banking Law of Taiwan, see Li-Chung Lee, *What Next for Banking in Taiwan,* AM. U. LL.M. INT'L BULL. 11-14 (Summer 1994); Jann Kaufman Winn, *Banking and Finance in Taiwan: The Prospect for Internationalization in the 1990s*, 22 INT'L LAW. 907, 907-952 (1991).

123. MINISTRY OF FINANCE TO THE ROC, Promulgation No. 160 (1980).

124. FUNDS TRANSFER ACT (Taiwan).

B. Responsibility of Financial Institutions for Failure To Report Suspicious Transactions

Money laundering and other financial crimes[125] have increased in the wake of global measures which have deregulated international financial systems. Both domestic and international authorities agree that commercial banks and other financial institutions must shoulder the increased regulatory burdens as a result of criminal activity; and these institutions, in turn, pass the costs onto customers through higher fees or lower interest rates.[126] These burdens include keeping close track of all deposits and withdrawals exceeding a certain amount, and maintaining records of all clients involved in large capital movement.[127] In addition, other financial institutions are obligated to provide customer names, identifications, and addresses for future investigations, if necessary, by law enforcement authorities.[128] Failure to provide suspicious transaction reports by financial institutions can lead to fines of up to the equivalent of U.S. $566,000.[129]

In addition to the anti-money laundering provisions, most countries have adopted a number of other countermeasures to curb money laundering, including training their staffs in preventive techniques. Although banks are required to report suspicious transactions, there is very little guidance provided to them, especially training for bank employees, which would enable them to recognize suspicious transactions or to report such activity.

C. Reporting Suspicious Transactions vs. Customer Confidentiality Rights

Financial institutions are in a unique position to help identify money launderers by reporting suspicious transactions to law enforcement

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125. For example, within the European Union, intervention in financial crimes has been restricted to money laundering, which involves the abuse of the financial system generally for the purposes of the concealment or conversion of criminal revenue, Council Directive 91/308, art. 1, 1991 O.J. (L 166) 77, and insider dealing, which is concerned with the use of privileged price-sensitive information to earn a profit in particular securities transactions, Council Directive 89/592, arts. 1 & 2, 1989 O.J. (L 334) 1. *See* George Walker, *European Banking and Investment Services - A Study in Policy Indeterminence* (1995) (unpublished Ph.D. dissertation, University of London).

126. *See* Alford, *supra* note 97, at 437.

127. *Id.* at 445.

128. *Id.* at 438.

129. *See, e.g.*, MLCA, arts. 7 & 8, *infra* app.

authorities. These reports have, in fact, led to the initiation of major investigations into various types of criminal activity. Currently there are two general methods of reporting suspicious transaction systems that are used by financial institutions throughout the world. One system, based on suspicion, was developed in many European countries such as the United Kingdom and requires that all suspicious transactions be reported. The primary disadvantage of this system is that there is no specific definition for a "suspicious transaction." The other system was adopted by the United States and seven other countries,[130] and requires financial institutions to report all transactions exceeding a specified amount, whether suspicious or not. Under this system, a financial institution is always focused on routinely reporting large transactions rather than potential criminal activity.[131] By restricting the reporting requirements, customer confidentiality is maintained to a larger degree than in the other system.

Both of these systems, however, have raised questions concerning whether financial institutions should be authorized to report suspicious transactions, which often creates civil liability for themselves. Because of these concerns, most countries have enacted or amended provisions to provide exceptions from civil liability for financial institutions and their employees who report suspicious transactions.[132] For instance, financial institutions can voluntarily report suspicious transactions to law enforcement agencies without notifying their customers.[133] Without these exceptions, "the broad discretionary power granted to law enforcement authorities may severely infringe upon [constitutionally guaranteed] individual freedom."[134] However, in order to prevent

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130. According to the Department of the Treasury, there are nine countries which require the reporting of currency transactions over a specified amount: Australia, Brazil, Costa Rica, Ecuador, Norway, Paraguay, the United States, Uruguay, and Venezuela. GAO/GGD-95-156, MONEY LAUNDERING: NEEDED IMPROVEMENTS FOR REPORTING SUSPICIOUS TRANSACTIONS ARE PLANNED 1, 1 n.4 (May 1994).

131. Letter form John J. Byrne, Senior Federal Counsel, The American Bankers Association, to Norman J. Rabkin, Director, Administration of Justice Issues, GAO (Mar. 28, 1995); *see also* GAO/GGO-95-156, *supra* note 130, ch. 1.2.

132. For example, the U.S. Congress enacted the Annunzio-Wylie Anti-Money Laundering Act in 1992, which provides that a financial institution reporting a suspicious transaction is exempt from civil liability under any regulation, such as the right to Financial Privacy Act. *See* GAO, *supra* note 130, ch. 1.4

133. *See* Bruce Zagaris, *Money Laundering: An International Control Problem*, *in* INTERNATIONAL HANDBOOK ON DRUG CONTROL, *supra* note 18, at 19, 21.

134. S*ee* Abramovsky, *supra* note 96, at 471-505 (suggestions on how to effectively balance governmental interest in fighting drug traffickers and constitutional rights of public).

financial institutions from abusing their reporting privileges, these laws have imposed a duty of good faith on the institutions and personal liability onto the employees who misuse their responsibilities.

D. The MLCA in Comparison to International Requirements

In this era of tremendous mobility, high technology, and liberalization of international financial systems, a dimension of great sophistication has emerged onto the international money laundering scene. An appropriate example is the Bank of Credit and Commerce International (BCCI) scandal which was uncovered in July 1991. It was discovered that BCCI shielded money laundering transactions of several global entities from banking supervision and external audits.[135] Moreover, BCCI took advantage of its global financial network and high technology to aid drug traffickers in money laundering.[136]

To successfully attack money laundering offenses that transcend domestic boundaries, an international money laundering control regulation is a *conditio sine qua non* to combat money laundering activities in the global market. The issue of how to prevent the criminal laundering of proceeds through the financial system has increasingly attracted attention from legislative authorities. Law enforcement agencies

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135. Phyllis Solomon explained the BCCI case as follows:

> The launderers deposited drug money into non-BCCI banks in the United States. They then wired the money to an account at BCCI in Tampa, Florida, which they had opened specially to launder money. The launderers then had transferred the money by wire through a non-BCCI New York bank to BCCI headquarters in Luxembourg. The launderers then wired the money to BCCI in London, with instructions to place it in a certificate of deposit. The launderers used this certificate as security for a loan in the Bahamas to a front corporation set up by the narcotics dealers. Next, they wired the loan proceeds back into the undercover account in Tampa, after which they transferred it to BCCI in Uruguay. Finally, from Uruguay, the launderers transferred the funds into cash in Colombia, where the narcotics dealers could access the "clean money."

Phyllis Solomon, *Are Money Launderers All Washed up in the Western Hemisphere? The OAS Model Regulations*, 17 HASTINGS INT'L & COMP. L. REV. 433, 437 (1994); *see also* GAO/GGD-94-68, FOREIGN BANK: INITIAL ASSESSMENT OF CERTAIN BCCI ACTIVITIES IN THE U.S. (1992) (reviewing BCCI's U.S. operation and discussing whether federal banking regulations can block such collapse repeatedly).

136. For a discussion of BCCI, see generally GAO, INTERNATIONAL BANKING: STRENGTHENING THE FRAMEWORK FOR SUPERVISING INTERNATIONAL BANKS (1994); HER MAJESTY'S STATIONERY OFFICE (British Governmental Reports), INQUIRY INTO THE SUPERVISION OF THE BANK OF CREDIT AND COMMERCE INTERNATIONAL (the "Bingham Inquire") (Oct. 22, 1992); Bank of England, Press Notice, *Report of the Bingham Inquiry: Bank of England Responses* (Oct. 22, 1992).

and financial supervisors in a number of countries, such as the United States, the United Kingdom, and Australia, as well as in regional organizations, have substantially increased cooperation among themselves in an effort to slow down the money laundering process.

1. Intergovernmental Anti-Money Laundering Organizations Subregimes

In addition to the use of domestic financial institutions to launder their proceeds, launderers also take advantage of international financial institutions to compensate for the domestic banks' limited capacity to launder without detection by law enforcement authorities.[137] Domestic money laundering is much more simple than international money laundering, which involves the placement of illicit proceeds into foreign bank accounts by smuggling them abroad, via courier, or by electronic funds transfer. Thus, an international money laundering scheme makes use of the legal disparities between at least two different jurisdictions.

To this end, establishing international cooperative efforts to combat international money laundering through agreements or "soft laws,"[138] has become more important than ever. The purpose of an international anti-money laundering agreement is not only to prohibit launderers from washing their illicit proceeds through financial institutions.[139] An international anti-money laundering agreement may include criminalization by all signatory countries of activities that permit the laundering of drug money.[140]

The signatory countries could also cooperate in exchanging financial information during investigations and prosecutions of money launderers, seizing drug proceeds, and sharing the assets seized from drug traffickers. However, effective enforcement of an international agreement is subject to the constitutional and basic legal framework of each signatory country.

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137. *See* Alford, *supra* note 97, at 440.

138. *See supra* note 43.

139. *See* Bruce Zagaris & Scott B. MacDonald, *Money Laundering, Financial Fraud, and Technology: The Perils of An Instantaneous Economy*, 26 GEO. WASH. J. INT'L L. & ECON. 61, 64 (1992).

140. *See id.* at 65.

a. 1988 UN Convention

One aim of the 1988 UN Convention 1988[141] is to criminalize the laundering of drug proceeds. The 1988 UN Convention provides the basic framework for advanced international anti-money laundering regimes. The 1988 UN Convention provides for extradition between signatories in criminal cases involving money laundering, and stipulates that bank secrecy should be lifted during relevant criminal investigations.[142] The 1988 UN Convention also defined money laundering as those activities linked with the conversion or transfer of property, or the concealment or the disguise of the true nature of property, knowing that such properties are derived from drug trafficking.[143]

b. Review of the Recommendations of the FATF

At the 1989 Paris Economic Summit,[144] member nations established the FATF to recommend ways of controlling money laundering. The FATF's report contains a 40-point programme to deal with money laundering and asset forfeiture on a global scale. This report also defines the extent and nature of the money laundering process.

The FATF encouraged not only its members,[145] but also those nations beyond its membership, to establish money-laundering laws that cover the criminalization, reporting, and confiscation of illicitly derived assets. Further, the FATF works both independently and in cooperation with other organizations to establish and strengthen member and nonmember infrastructures designed to control money laundering. The FATF also encourages its members to amend their bank secrecy regulations, so as to require bank employees to report suspicious transactions without offending customer confidentiality codes.

The focus of the FATF recommendations is to ensure that countries have comprehensive domestic anti-money laundering legal frameworks to detect, deter, and report criminal activity and that these

141. *See* 1988 U.N. Convention, *supra* note 17.

142. *See* Solomon, *supra* note 135, at 441.

143. *See* U.N. Convention, *supra* note 17, art. 3(1)(b).

144. *See* 1989 Paris Economic Summit, *supra* note 53, at 1299.

145. FATF members are Austria, Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, the European Union, and the Gulf Cooperation Council.

frameworks readily involve law enforcement authorities, regulatory agencies, and financial institutions. However, the FATF still faces barriers in enforcing its recommendations, as it lacks governing authority over its members.

c. Basle Committee on Banking Regulations and Supervisory Practices

The Basle Supervisory Committee is an organization formed by the world's twelve most powerful capitalist nations to discuss banking supervision.[146] The Committee issued its Statement of Principles[147] (the Statement) at the end of 1988 to guide bank regulators in preventing criminal use of the banking system for the purpose of money-laundering. The key objective of the Statement is to prevent financial institutions from associating with criminal activity and, thus, to maintain the integrity of the banking system.[148]

The Basle Committee has formulated a plan[149] that advocates vigilance against criminal use of the payments system, implementation by banks of effective preventive safeguards, and cooperation with law enforcement agencies. In addition, the Statement also established an

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146. The Basle Committee was established at the end of 1975, after the failure of Bankhaus Herstatt in West Germany, by the Central Bank Governors of the Group of Ten countries for the primary purpose of providing its members with a regular forum for cooperative discussion and efforts in the prudential banking supervision areas. In fact, the Group of Ten has twelve countries: Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom, and the United States. *See* Joseph J. Norton, *Devising International Banking Supervisory Standards*, *in* 3 INTERNATIONAL BANKING & FINANCE LAW 171 (1995).

147. The Basle Committee is made up of representatives of the central banks and supervisory authorities of its twelve parties, under the auspices of the Bank of International Settlements. At the end of 1988, the Basle Committee published a Statement of Principles for guiding bank regulators. The aim of the Statement of Principles is to encourage banks to adopt a common position to make sure that they are not being utilized to launder transactions. The Statement of Principles also encourages the management of banks to put in place effective procedures to ensure that all employees conducting business with their institutions are properly identified. However, the Statement of Principles is not a treaty and it has no legal effect. *See generally* BASLE COMMITTEE ON BANKING AND SUPERVISORY PRACTICES, STATEMENT OF PRINCIPLES: PREVENTION OF CRIMINAL USE OF THE BANKING SYSTEM FOR THE PURPOSE MONEY-LAUNDERING (STATEMENT OF PRINCIPLES) 1, 3 (1988).

148. Scott E. Mortman, Note, *Putting Starch in European Efforts to Combat Money Laundering*, 60 FORDHAM L. REV. 429, 440 (1992).

149. With a view towards assisting in the suppression of money-laundering through the banking system, both nationally and internationally, the Basle Committee sets out a four-part plan: customer identification; compliance with laws; cooperation with law enforcement authorities; and adherence to the Statement. STATEMENT OF PRINCIPLES, *supra* note 147, at 1-3.

ethical code of conduct for central bank supervisors to adopt and implement.[150]

In response to the failure of BCCI, the Basle Committee issued a "Minimum Standard for the Supervision of International Banking Groups and their Cross-Boarder Establishments" (the Minimum Standards) in July, 1992.[151] The purpose of the Minimum Standard is to ensure that all banks conducting international financial activities are properly supervised by a single authority.[152] This single authority has all the necessary information for it to exercise that supervision effectively, particularly as to avoid situations of consolidation.[153]

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150. *See* Lowell Quillen, *The International Attack on Money Laundering: European Initiatives*, 1991 DUKE J. COMP. & INT'L L. 213, 217.

151. BASLE COMMITTEE ON BANKING SUPERVISION: REPORT ON MINIMUM STANDARDS FOR SUPERVISION OF INTERNATIONAL BANKING (1992), *available in* LEXIS, INTLAW Library, BDIEL File [hereinafter MINIMUM STANDARDS]. The Basle Committee, with the endorsement of the central-bank Governors of the Group of Ten countries issued the Minimum Standards for the Supervision of International Banking Groups and their Cross-Boarder Establishments, in response to the continued rapid growth of international banking activities. The Minimum Standard also is a supplement to the Revised Basle Concordat on Principles for the Supervision of Banks' Foreign Establishments of July 1983, 22 I.L.M. 900, 901 (1983).

152. The Minimum Standards were summarized by the Basle Committee in its own terms:

> 1. All international banking groups and international banks should be supervised by a home-country authority that capably performs consolidated supervision . . . .
>
> 2. The creation of a cross-border banking establishment should receive the prior consent of both the host-country supervisory authority and the bank's and, if different, banking group's home-country supervisory . . . .
>
> 3. Supervisory authorities should possess the right to gather information from the cross-border banking establishments of the banks or banking groups for which they are the home-country supervisor . . . .
>
> 4. If a host-country authority determines that any one of the foregoing minimum standards has not met to its satisfaction, that authority could impose restrictive measures necessary to satisfy its prudential concerns consistent with these minimum standards, including the prohibition of the creation of banking establishments.

MINIMUM STANDARDS, *supra* note 151.

153. The meaning of "consolidation" referred to in this article is the preparation of consolidated returns covering a group or part of a group. The terminology "consolidated supervision" means a qualitative assessment of the overall strength of a group, to which one authority takes prime responsibility for supervising and evaluating the potential impact of other group companies. The growing internationalization of banking and capital markets has resulted in increased complexities regarding banking supervision. The Basle Committee issued a series of documents to clarify the responsibility of home and host supervision of international banks. The purpose of the Basle Committee is to examine the totality of each bank's business worldwide through the technique of consolidation. The earliest publication of the Basle Committee was the 1975 Basle Concordat. This was reinforced in 1983 and supplements were circulated in April

The Statement published by the Basle Committee is not a treaty and it has no legal effect on its members. Moreover, Taiwan is not a member of the Basle Committee. However, the MLCA adopted the spirit of the Statement into its substantive provisions. For example, under the MLCA, failure to maintain transaction records, identify customers, report suspicious transactions, and establish internal control systems by banks could result in sanctions for financial institutions.[154]

d. WTO and GATS Approaches to Combat Money Laundering

The General Agreement on Trade and Services (GATS)[155] and the World Trade Organization (WTO)[156] may play a significant role as an economic sanction to countries which refuse to criminalize money laundering.[157] Unlike the General Agreement on Tariffs and Trade (GATT),[158] an international multilateral treaty for trade, the WTO is an international organization and treaty structure created to continually carry out the work of GATT. The goal of the WTO's agreements is the liberalization of international trade in goods and services. GATS, one of the more influential annexes to the WTO,[159] emphasizes the liberalization of international trade in services, including banking.[160]

1990, as well as in July 1992. *See generally* BASLE COMMITTEE, REPORT TO THE GOVERNORS ON THE SUPERVISION OF BANK'S FOREIGN ESTABLISHMENTS (1975); COMMITTEE ON BANKING REGULATIONS AND SUPERVISORY PRACTICES: REVISED BASLE CONCORDAT ON PRINCIPLES FOR THE SUPERVISION OF BANK'S FOREIGN ESTABLISHMENTS (1983), 22 I.L.M. 900 (1983); INFORMATIONAL FLOWS BETWEEN BANKING SUPERVISORY AUTHORITIES (1990); MINIMUM STANDARDS, *supra* note 151.

154. MLCA arts. 6, 7, 8, *infra* app.

155. The General Agreement on Trade in Services (GATS) is a result of the Uruguay Round of Multilateral Trade Negotiations, creating new international obligations in the area of services, including any service in any sector except services supplied in the exercise of government authority. 33 I.L.M. 1167, 1168-69 (1994).

156. The World Trade Organization (WTO) is a new institution designed to help facilitate international cooperation on trade and economic relations. *See* Agreement Establishing the World Trade Organization, 33 I.L.M. 1144 (1994).

157. *See* Matthew B. Comstock, *GATT and GATS: A Public Morals Attack on Money Laundering*, 15 NW. J. INT'L L. & BUS. 139, 163-69 (1994).

158. The General Agreement on Tariffs and Trade (GATT), Oct. 30, 1947, 61 Stat. A5, 55 U.N.T.S. 187.

159. *See* Mary E. Footer, *The International Regulation of Trade in Services Following Completion of the Uruguay Round*, 29 INT'L LAW. 453, 460 (1995).

160. Article I(2) of the GATS defines the scope of services:

> (a) from the territory of one Member into the territory of any other Member;

GATS allows financial institutions to establish subsidiaries within the jurisdictions of other contracting nations of the WTO. Substantively, "most-favored nation treatment,"[161] one of the core obligations of GATS, applies to the movement of financial services.[162]

The WTO, the successor to the GATT,[163] contains a dispute settlement procedure in which a WTO/GATT panel reconciles the disputes claimed by a contracting party against another who allegedly acted inconsistently with GATT/WTO treaty obligations.[164] During the resolution period, contracting parties are allowed to suspend concessions to the alleged violators as a penalty, increasing the likelihood that those parties will eventually comply with GATT obligations.[165] In addition, members of the WTO who criminalize money laundering may impose sanctions, such as tariff barriers, against those nations that fail to designate money laundering as a crime. These trade sanctions not only block the spread of money laundering, but also boost free trade among nations.[166]

> (b) in the territory of one Member to the service consumer of any other Member;
>
> (c) by a service supplier of one Member, through commercial presence in the territory of any other Member; and
>
> (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

GATS, *supra* note 155, art. I(2), at 1168.

161. Article II of the GATS provides that "with respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favorable than that it accords to like services and service suppliers of any other country." GATS, *supra* note 155, art. II, at 1168.

162. Financial service referred to in the GATS is all insurance-related services and all banking and other financial services (excluding insurance) according to the Annex on Financial Services. GATS, *supra* note 155, Annex on Financial Services, at 1190.

163. Article XXIII of the GATT reads:

> If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement (General Agreement on Tariffs and Trade) is being nullified or impaired or that the attainment of any object of the Agreement is being impeded as the result of (a) the failure by another contracting party to carry out its obligations under this Agreement, (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or (c) the existence of any other situation.

GATT, *supra* note 158, art. XXIII.

164. For discussion of the GATT dispute settlement system, see 1 PIERRE PESCATORE ET AL., HANDBOOK OF WTO/GATT DISPUTE SETTLEMENT 70-79 (1995).

165. *See* Comstock, *supra* note 157, at 171.

166. *See id.* at 173.

2. Selected Regional Anti-Money Laundering Regimes

In addition to international cooperation, regional strategies to combat money laundering have precipitated regional cooperation by focusing on the relevant nations' similar cultures and legal systems. Moreover, regional anti-money laundering strategies have become a catalyst for the convergence of international efforts to combat money laundering.

a. Organization of American States' Anti-Money Laundering Regime[167]

South America and the Caribbean are recognized as the primary sources of the world's money laundering problem.[168] This is so because both Bolivia and Columbia contain some of the biggest producers of narcotics.

The Organization of American States, closely supported by the G-7 nations,[169] encourages member countries to adopt the criteria of the 1988 UN Convention and the recommendations of the FATF as the models by which to implement money laundering laws.

After issuing in 1990 a "Declaration and Programme of Action" concerning laundered money derived from narcotics trafficking, the OAS established the Inter-American Drug Abuse Control Commission (CICAD) to draft a number of legislative and administrative recommendations dealing with money laundering control and asset forfeiture of drug-related trafficking undertakings within OAS countries.[170] In March 1992, CICAD adopted the Model Regulation Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses (OAS Laundering Regulation),[171] which defined money laundering-related activities, criminalized money laundering, and provided for the seizure and sharing of property and proceeds both within

167. *See* OAS CHARTER, *supra* note 60.

168. *See* INTRIAGO, *supra* note 86, at 38.

169. The Group of Seven nations understood that the efforts to fight money laundering and drug problems cannot be successful without cooperation of the OAS. *Id.*

170. *See* Zagaris & Kingma, *supra* note 40, at 476 & n.117.

171. The Model Regulation Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses, OAS Doc. OEA/Ser.L./XIV 2, CICAD/INF.58/92 (July 9, 1992) was adopted by the Inter-American Drug Abuse Control Commission on March 10-13, 1992, and by the OAS in May 18-23, 1992. Barbot, *supra* note 3, at 175-76.

and outside the region.[172] This OAS Laundering Regulation further requires members to relax their secrecy laws, maintain financial transaction records, and report suspicious financial transactions.[173] Additionally, the OAS Laundering Regulation contains detailed approaches for cooperation between international institutions in enforcing foreign judgments.[174] Similar to FATF, the OAS Laundering Regulation is not legally binding on its members. Consequently, the success of such anti-money laundering efforts is dependent upon the willingness of individual OAS members to implement the OAS Laundering Regulation domestically.[175]

b. EU Anti-Money Laundering Directive

The European Union formerly contained the world's major money laundering states, in part because the European Union did not officially acknowledge the problem until the late 1980s.[176] As a result, the European Union responded by adopting its Money Laundering Directive (Directive),[177] on June 10, 1991, which implements the 1988 UN Convention and includes the forty recommendations of the FATF. The Directive contains a considerable amount of overlap with other international agreements,[178] including the Basle Statement of Principle[179] and the Council of Europe Convention of 1990 on Laundering, Search, Seizure and Confiscation of Proceeds from Crime.[180]

The Directive, which became effective in January 1993, requires member states to make the laundering of proceeds derived from drug

172. *See* Barbot, *supra* note 3.
173. *See id.* at 176-77 & n.66.
174. *See* INTRIAGO, *supra* note 86, at 42.
175. *See* Barbot, *supra* note 3, at 176.
176. *See* Magliveras, *supra* note 3, at 167.
177. *See* Council Directive 91/308, *supra* note 125.
178. *See id.* pmbl.
179. *See* STATEMENT OF PRINCIPLES, *supra* note 147, at 3.
180. The Convention of 1990 on Laundering, Search, Seizure, and Confiscation of Proceeds from Crime has attempted to coordinate its members to combat and prosecute money laundering. *See* Hans G. Nilsson, *The Council of Europe Laundering Convention: A Recent Example of a Developing International Criminal Law*, 2 CRIM. L.F. 419, 425-26 (1991). The Council of Europe was founded in 1949 as the first European political association. THE COUNCIL OF EUROPE, THE COUNCIL OF EUROPE 46-47 (1970).

trafficking a criminal offense.[181] Without doubt, the Directive is "an essential measure in the protection of the financial integrity of the single market of the European Union."[182] The Directive also harmonizes the anti-money laundering legislation between the member states, and it is hoped that it will become "an effective deterrent where other international initiatives lack force."[183]

According to the Directive, member states' financial and credit institutions are obligated to identify customers,[184] keep records of transactions,[185] and report suspicious transactions without a breach of customer disclosure restrictions.[186] Moreover, the Directive requires financial and credit institutions to cooperate with law enforcement agencies and authorities,[187] and to establish internal control and communication procedures for monitoring suspicious transactions.[188] The Directive also forbids a financial institution from further participating in a transaction if it suspects that money laundering is in operation. The Directive adopts a suspicion-based reporting system, as developed in the United Kingdom, rather than the American and Australian models of reporting all transactions over a certain dollar amount regardless of suspicion.

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181. All EU members have deemed the laundering of money from drug trafficking a criminal offense to complement the EU Money Laundering Directives with a complete anti-money laundering system. Additionally, a majority of members, including Germany, Belgium, Ireland, Italy, the Netherlands, and the United Kingdom have extended the scope of money laundering to cover all criminal activities. Denmark and Greece also enlarged the scope of laundered proceeds to cover criminal activities other than drug trafficking, such as extortion, kidnapping, and smuggling. The remaining members, France, Spain, and Portugal are expected to do so in the immediate future. *See generally* BUREAU OF NATIONAL AFFAIRS, BANKING REPORT, REPORT SHOWS EU MEMBER STATES ARE ADOPTING MONEY LAUNDERING LAW (Mar. 1995).

182. Richard Parlour, *Money Laundering in the New Europe*, 10 J. INT'L BANKING L. 435, 435 (1993).

183. *Id.*

184. Article 3 of Council Directive obliges financial and credit institutions to identify their customers by means of supporting evidence when beginning a business relationship. Identification of customers also applies with regard to any transaction involving a sum amounting to European currency units 15,000 (US$18,000) or more, whether or not carried out in a single operation or several linked transactions. Council Directive 91/308, *supra* note 125, art. 3.

185. *Id.* art. 4.

186. *Id.* art. 9.

187. *Id.* arts. 6-7.

188. ALFORD, *supra* note 97, at 460-64.

3. Selected National Anti-Money Laundering Regimes

Global money laundering activity has surged with the internationalization of organized crime. The development of global markets for illicit goods and services has extended past national boundaries. However, responsive measures exclusively adopted at an international level, without taking account of national coordination and cooperation, would have limited effects.

There is a consensus among most nations that international anti-money laundering policy must be complemented by strong domestic anti-money laundering policies. Therefore, in addition to international cooperation, each country has attempted to control money laundering through the enhancement of current money laundering regulations and increased efforts by local law enforcement agencies.

a. U.S. Anti-Money Laundering Provisions

In order to combat money laundering, the U.S. Congress enacted several laws and, although these laws are generally intended to obstruct the laundering of money connected with illegal drugs, the U.S. courts have extended them to cover illegal gangland operations and federal income tax evasion schemes.[189] However, the U.S. Supreme Court ruled that seizure and forfeiture of legitimate property obtained by or used in illegal activities is subject to constitutional limitations.[190]

U.S. law enforcement agencies have accepted the view that "going after the money" is the most effective way to catch and hurt organized crime.[191] U.S. efforts to control money laundering, therefore, focus on tracing illegal proceeds. The Bank Secrecy Act,[192] enacted in

189. *See* G. Philip Rutledge, Money Laundering Offenses in the United States: A Brief Overview, Address at the Eleven International Symposium on Economic Crime: Cross Board Commercial Crime Communicates at Risk (Sept. 12-18, 1993); *see also* U.S. v Pavlico, 961 F.2d 440, 447-48 (1991) (determining a forty-year prison sentence for conviction of violating reporting requirement and nine counts of mail fraud did not constitute cruel or unusual punishment).

190. Austin v. U.S., 113 S. Ct. 2801, 2805-06 (1993).

191. *See* Ethan A. Nadelmann, *Unlaundering Dirty Money Abroad: U.S. Foreign Policy and Financial Secrecy Jurisdictions*, 81 INTER-AMERICAN L. REV. 353, 354 (1986); NICHOLAS DORN, ET AL., TRAFFICKERS: DRUG MARKETS AND LAW ENFORCEMENT 69 (1992).

192. Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended at 12 U.S.C. §§ 1730d, 1829b, 1951-1959) (1982 & Supp. IV 1986) and 31 U.S.C. §§ 321, 5311-5324 (1982 & Supp. III 1985), *amended by* 31 U.S.C §§ 5312(a)(2)(T), (u)(5), 5316(a)(1)-(2), 5316(d), 5317(b)-(c), 5318(a)-(f), 532(a)(1), (4)-(6), (b)-(d), 5322(a)-(c), 5323(2)-(d), 5324.

1970, and the Money Laundering Control Act of 1986 (Act)[193] are two of the primary weapons against money laundering in the United States. Additionally, the Crime Control Act of 1990[194] contain provisions addressing money laundering.

To implement the Bank Secrecy Act's requirements,[195] Treasury Department regulations require that financial institutions[196] and certain types of businesses file a report for each deposit, withdrawal, exchange, or other payment or transfer,[197] by, through, or to such financial institutions or businesses that involve more than U.S. $10,000 in currency.[198] Violation of the Bank Secrecy Act can result in criminal or civil penalties, or both.[199] In 1990, the Treasury Department modified the Currency Transaction Report (CTR) form to require financial institutions to report those transactions considered suspicious, rather than simply establishing a monetary figure of $10,000. Therefore, the CTR could be utilized to report suspicious transactions of any dollar amounts, thereby blocking attempts by launderers to escape suspicious transaction reports by transferring amounts less than $10.000. The Bank Secrecy Act not only makes the laundering of proceeds from specified illegal activities a federal crime, but also encompasses a wide range of additional criminal

193. The Money Laundering Control Act, 18 U.S.C. §§ 1956-1957 (1986), has been supplemented by the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207-21 (1986) (codified at other sections of the U.S. Code), the Anti-Drug Abuse Act, Pub. L. No. 100-690, 18 U.S.C. §§ 6181-6187, 102 Stat. 4181, 4354-59 (1988) (codified at other section of the code); and the Crime Control Act, Pub. L. No. 101-647, 104 Stat. 4789 (1990) (codified at other sections of the U.S. Code).

194. 31 C.F.R. § 103.22(a) (1988).

195. The Bank Secrecy Act requires financial institutions to maintain records and report certain transactions exceeding $10,000 that involve currency and monetary instruments. *See supra* note 192.

196. The term "financial institutions" is defined to include banks, federally regulated securities brokers, currency exchange houses, funds transmitters, check-cashing businesses, telegraph companies, casinos, and any institution subject to state or federal banking supervisory authority. 31 C.F.R. 103.11(n) (1995).

197. *See* 31 U.S.C. § 5313 (West 1995).

198. Currently, the Treasury provides four forms that various financial institutions and businesses are required to file based on the Bank Secrecy Act. The four kinds of reports are: Currency Transaction Report, Internal Revenue Service (IRS) Form 4789; Currency Transaction Report by Casino, IRS Form 8362; Report of International Transpiration of Currency or Monetary Instruments, Customs Forms 4790; and Report of Foreign Bank and financial Accounts, Treasury Form TDF 90-22.1.

199. *See* 31 U.S.C. § 5322 (West 1995).

offenses, including the evasion of filing a report,[200] espionage, trading with the enemy, and tax evasion.

The Annunzio-Wylie Anti-Money Laundering Act (the Anti-Money Laundering Act),[201] effective on October 28, 1992, supplements previous anti-money laundering statutes and requires the reporting financial transactions that appear suspicious, even if they fail to exceed $10,000. The Anti-Money Laundering Act also implicitly recognizes that money laundering occurs when property derived from unlawful activity is used in financial transactions that are designed to disguise or conceal the nature, source, ownership, or control of the property. Therefore, the Anti-Money Laundering Act also encompasses those financial transactions conducted to promote illicit activities which avoid the transaction reporting requirement and evade taxes because no money is exchanged.[202]

The U.S. Congress recognized the importance of structured financial transaction reports for its anti-money laundering scheme. Therefore, Congress enacted the Money Laundering Suppression Act of 1994 (MLSA) to support the Justice and Treasury Departments in their efforts to enforce a structural requirement of reporting suspicious transactions.[203] The MLSA represents the third amendment to the anti-

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200. Ratzlaf v. United States, 114 S. Ct. 655 (1994) (government must prove that defendant has knowledge that his conduct was illegal, i.e., an intent to evade filing of a Currency Transaction Report). For additional discussion on *Ratzlaf* and structured transaction reports, see Thomas M. DiBiagio, *Proof of a Defendant's Knowledge that His Conduct is a Crime and the Federal Monetary Transaction Reporting Requirements after Ratzlaf*, 99 DICK. L. REV. 393, 405 (1995); Lindsey H. Simon, Note, *The Supreme Court's Interpretation of the Word "Willful": Ignorance of the Law as an Excuse to Prosecutions for Structuring Currency Transactions*, 85 NW. U. J. CRIM. L. & CRIMINOLOGY 1161, 1161 (1995); see also John V. Ivsan, *Information Liability and International Law: A Post-Ratzlaf Comparative Analysis of the Effect of Treasury Reporting Requirements on International Transfers*, 21 OHIO N.U. L. REV. 263 (1994); Stephen W. Litke, *Ratzlaf v. United States: Prosecuting Money Laundering Gets Tougher*, 30 TULSA L.J. 447 (1994).

201. The Annunzio-Wylie Anti-Money Laundering Act is named for two retiring congressmen of the House Banking Committee, Rep. Frank Annunzio, Chairman of the Financial Institutions Subcommittee, and Rep. Chalmers Wylie. Both congressmen contributed to the passage of the Anti-Money Laundering Act, which was a response to the financial scandal of The Bank of Credit and Commerce International for money laundering violations. Annunzio-Wylie, Anti-Money Laundering Act, 31 U.S.C. §§ 5312 *et seq.* (West 1995).

202. The Anti-Money Laundering Act expands the term "financial transaction" to include an exchange of real property or conveyances (car, boats, or airplanes) also consisting of the use of a safe box in financial institutions to transfer or secure funds or other transactions of precious property. 18 U.S.C. §§ 1956(c)(3) & (4) (West 1995); *see also* Currency and Foreign Transactions Reporting Act (CFT Act) 31 U.S.C. §§ 5313 *et seq.* (1995).

203. *See* H.R. REP. NO. 438, 103d Cong., 2d Sess. 15 (1994).

structuring provisions, serving to overrule the intent requirement contained in a previous version.[204] Meanwhile, the U.S. government has also encouraged other countries to legislate against money laundering. Countries as powerful as Japan, Germany, and Switzerland have been persuaded to enact laws against money laundering offenders so as to provide a basis for mutual assistance.[205]

b. U.K. Anti-Money Laundering Provisions[206]

U.K. legislation first imposed criminal liability in 1983 for financial institutions that assist in the disposition of proceeds from drug trafficking or terrorism.[207] Thereafter, the U.K. legislation further developed provisions to address the problems concerning money laundering in 1986. Britain's principle approach to money laundering has focused on three areas: drugs, terrorism, and other crimes. The chief piece of legislation is the Drug Trafficking Offenses Act 1986 (DTOA),[208] which took force in January 1987, and included the offense of money laundering. The DTOA contains provisions for the investigation of suspected drug-derived assets prior to arrest, the freezing of assets on arrest or upon issuance of a summons, and the issuance of confiscation orders following a conviction.

The key provision relating to money laundering in British law is Section 24 of the DTOA,[209] which makes it a criminal offense to assist a drug trafficker in retaining the benefits of his proceeds.[210] It is aimed at those who actually launder drug money and makes the crime punishable by a maximum of fourteen years imprisonment or a fine, or both.[211] The offense is committed by anybody who, knowing or suspecting that another person is a drug trafficker, either holds or controls the proceeds of

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204. *Id.* at 22; *see also* Simon, *supra* note 200, at 1161-88.

205. *See* International Narcotic Control Strategy Report, *supra* note 1, at 2.

206. Although the United Kingdom, as referred to in this Article, is a unitary state, consisting of Great Britain and Northern Ireland, it does not have a single legal system. Instead, England and Wales, Scotland, and Northern Ireland all have their own legal systems, with considerable differences in law, organization, and practice. *See generally* HER MAJESTY'S STATIONERY OFFICE, ASPECTS OF BRITAIN: BRITAIN'S LEGAL SYSTEM (1993).

207. *See* Levi, *supra* note 13, at 29.

208. Drug Trafficking Offenses Act (DTOA), 1986, ch. 32 (Eng.). The similar Act for Scotland is the Criminal Justice Act, 1987, ch. 41.

209. *See generally*, K. D. Magliveras, *The Regulation of Money Laundering in the United Kingdom*, J. BANKING L. 525 (1991).

210. DTOA, *supra* note 208, § 24(A).

211. *Id.*

drug trafficking, or puts funds at his or her disposal, or, gives him or her any help in investing those proceeds.[212] The DTOA provides financial institutions with protection from suit by customers for breaches of confidentiality.[213] Furthermore, the DTOA also allows police or customs authorities to give consent for banks to continue servicing accounts after suspicious activity has been disclosed to the authorities.[214]

The Criminal Justice Act of 1988 does not contain a money laundering offense. However, although there is no obligation to disclose information to the proper authorities about crimes which are not suspected to be drug- or terrorist-related, Section 98 of the Criminal Justice Act of 1988 affords protection from suit where suspicion is disclosed that "property" derives from, or is connected with, an indictable offense.

The DTOA allows law enforcement agencies to apply for production orders from a circuit judge that may then be served on a financial institution. In appropriate circumstances a search warrant may be granted by the judge. When orders are granted or are sought under DTOA, any person who knows of the investigation and then makes a disclosure that is likely to prejudice the investigation commits a criminal offense punishable by up to 5 years imprisonment or a fine, or both.[215]

Section 14 of the Criminal Justice (International Co-operation) Act 1990 (1990 Criminal Justice Act), the subsequent implementation of the 1988 UN Convention, imposes an obligation on those individuals with knowledge that certain property was derived through drug trafficking channels to report such information to the proper authorities. Similarly, it is a criminal offense for such people to conceal, disguise, convert, transfer, or remove that property from the jurisdiction of the courts for the purpose of assisting any person in avoiding prosecution for a drug trafficking offense or the making or enforcement of a confiscation order.

The United Kingdom is the first EU member to adopt the EU Money Laundering Directive. The Money Laundering Regulations of 1993 were devised to implement the EU Directive,[216] and to fulfill the

212. *Id.*
213. *See generally id.*
214. *See generally id.*
215. *Id.* § 31.
216. Money Laundering Regulations 1993, SI 1993/1933 (Eng.) was created on July 28, 1993, and became effective on April 1, 1994. The Regulation adopted the EU Money Laundering Directive according to the European Communities Act of 1972.

purposes of the Criminal Justice Act of 1993.[217] Moreover, in order to protect the City of London, one of the world's foremost financial centers, from being exploited by criminal elements,[218] financial institutions are required to report a person who, in the course of his work or profession, learns facts that leads him to suspect that someone else is laundering, directly or indirectly, the proceeds of a criminal offense involving drugs. Failure to report this suspicious activity is in itself a serious offense.[219]

c. Australian Money Laundering Regulations

Australia is one of the few countries that has enacted a specific anti-money laundering legislation.[220] Moreover, Australia is among the leaders in its innovative efforts in financial reporting requirements and its vigorous enforcement of comprehensive anti-money laundering laws in the Asian and Pacific regions.[221] However, Australia has not completely deterred money laundering offenses by drug traffickers who use Australia as a transfer point for drugs and criminal proceeds.[222] In response, Australia has enacted the Proceeds of Crime Act of 1987 (1987 Crime Act). This legislation specifically addresses the problem of utilizing financial institutions for illicit domestic and international transactions.[223] The 1987 Crime Act also covers tax evasion and other criminal activities,[224] while calling for asset forfeiture for all criminal activities.[225]

Similar to the United States, Australia also adopted a financial transaction reporting system to trace the suspicious transactions of illicit proceeds.[226] The Financial Transaction Report Act of 1988 [227] requires "cash dealers"[228] to report certain transactions over Aus.$10,000,[229] or

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217. *See* Gerard McCormack, *Money Laundering and Banking Secrecy*, 16 COMPANY LAW 6, 10 (1995).

218. *See* Magliveras, *supra* note 3, at 183.

219. Criminal Justice Act, 1993, ch. 36, § 19 (Eng.).

220. *See* Zagaris & Castilla, *supra* note 42, at 926.

221. *See* INTERNATIONAL NARCOTIC CONTROL STRATEGY REPORT, *supra* note 1, at 531; Zagaris & Castilla, *supra* note 42, at 928.

222. *Id.*

223. Proceeds of Crime Act, No. 87, § 81 (1987) (Austl.).

224. *See* INTRIAGO, *supra* note 86, at 77.

225. Proceeds of Crime Act, No. 87, §§ 19, 20 (1992) (Austl.).

226. *See* INTRIAGO, *supra* note 86, at 77.

227. Financial Transaction Report Act (FTRA), No. 64 (1988) (Austl.).

228. According to the FTRA, the "cash dealers" are defined as all mainstream financial and insurance companies and intermediaries, securities dealers and futures brokers, trustees, dealers in

any suspicious transactions,[230] to the Australian Financial Transaction Report Agency. However, like the American efforts, Australian authorities have been unable to effectively monitor criminal transactions solely on the structure of reporting and monitoring individual, and not money laundering group, transactions.[231]

In recognition of the essential need for international cooperation to combat international money laundering, Australia signed the 1988 UN Convention in 1989 and became a member of the FATF.[232] Furthermore, seizure of drug-related assets and extradition protocol were Australia's focal points during negotiations with the U.S. on the Mutual Assistance in Criminal Matters Act of 1987.[233]

IV. CONCLUDING OBSERVATIONS AND FINAL RECOMMENDATIONS

Along with the development of high-tech telecommunications and financial liberalization and globalization,[234] Taiwan experiences the threat of money laundering more than ever. To combat this threat, Taiwan drafted the MLCA. While engaging in activities to complete its own efforts in the global effort to fight money laundering, Taiwan has endeavored to build upon, rather than duplicate, the efforts of other nations and international organizations.[235] In particular, Taiwan has looked to the 1988 UN Convention, the forty recommendations propounded by the FATF, various European directives, and efforts by the OAS and CICAD, as important sources of international money laundering legislation.

Additionally, Taiwan must resolve the problems surrounding its unique societal situation and financial customs. The preferred medium of

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monetary including travelers checks and money orders, coin and bullion dealers, casinos and bookmakers. *Id.* § 3.

229. *Id.* § 4(3).

230. *Id.* § 16.

231. *See* Andrew Haynes, *Money Laundering and Changes in International Banking Regulation*, 11 J. INT'L BANKING L. 454, 459 (1993).

232. *Supra* note 145.

233. *See* Zagaris & Castilla, *supra* note 42, at 926.

234. *See* Mary E. Footer, *GATT and the Multilateral Regulation of Banking Services*, 27 INT'L LAW. 343, 343 (Summer 1993).

235. Article 14 of the MLCA mandates government agencies to cooperate on a reciprocal basis with foreign governments or other international bodies to curb cross-border money laundering. MLCA art. 14, translated from The Explanation of the Reasons for Enacting the Money Laundering Control Act (Chin.). MLCA art. 14, *infra* app.

exchange is cash, yet Taiwan maintains inadequate records with respect to these payments, thus enabling payors to avoid easy identification. Therefore, use of alternative payment mechanisms, i.e., check and credit card, may be encouraged in order to avoid the accidental delivery of money to launderers.[236]

Taiwanese law enforcement agencies must also confront "underground financial systems,"[237] which have rapidly begun to rival conventional financial systems in terms of efficiency and capabilities.[238] The creditors of the underground financial system are attracted by huge profits and take advantage of the weak regulatory scheme to make illegal loans. Such emergency underground financial systems include loans sharks, mutual financial assistance groups,[239] pawnshops, and private lenders. Trafficking in illicit proceeds in Taiwan is not difficult, partly because legitimate and illegitimate funds are intermingled through the

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236. Payment by currency substitutes may be the most substantial contribution to the fight against money laundering. In the seventeenth century, Europeans developed a payment system called "goldsmith's notes," a payment mechanism in which businessmen deposited their money with a goldsmith, and the goldsmith issued a certificate to the depositor. The goldsmith could lend the deposited money to the third parties and was responsible to the depositors as a bailee or custodian. This system transferred the funds safely without physical delivery of money. *See* Benjamin Geva, *From Commodity to Currency in Ancient History—On Commerce, Tyranny and the Modern Law of Money*, 25 OSGOODE HALL L.J. 115, 146 (1987). Similarly, the Chinese in the Tang Dynasty (618-907 A.D.) developed a *Feì Chìen* (flying money) system, in which an individual deposited his currency into Chìen Chuang (banking house in former time) authorized by provincial administrations to get a certificate as money itself. The holder could go to a *Chìen Chuang* to cash the certificate at face value. *See* Barry A. K. Rider, *Fei Ch'ien Laundries—The pursuit of flying money*, 1 J. INT'L PLAN. 77, 77 (1992).

237. The underground investment companies rose to prominence in 1986 and 1987, creating major political, economic, and financial problems for Taiwanese authorities and investors. In less than five years, Hung Yuan investment company, the largest underground investment company, together with 170 smaller investment companies, were estimated to have taken the equivalent of US$8 billion from more than a million investors in Taiwan. James McGregor, *Fate of a Gray-Market Behemoth in Taiwan could Cause Financial and Political Tremors*, ASIAN WALL ST. J. WEEKLY, Nov. 20, 1989, at 1, *available in* Westlaw, TRD&IND Database.

238. For a further discussion of underground financial systems, see generally B. V. Kumar, *Flight Capital Operations and the Developing World: Underground Financial System and Drugs and Dirty Money* (1992); W. Cassidy, *Fei-Chíen*, Flying Money: A Study of Chinese Underground Banking, Address at the 12th Annual International Asian Organized Crime Conference (1990).

239. The mutual financial assistance groups (known in Taiwan as *Hu Chu Hui* or *Piao Hui*) are one of the traditional Chinese private sources of income. Private individuals who are acquainted or related with each other originate a group to bid certain amounts of money (destined money) to their private money pool monthly. The lowest bidder in the pool receives the funds for that month, while never receiving more than one allocation. The bidder must then pay monthly to the group based on the bid amount until the last bidder receives the destined money without drawing a lot number. *See generally* Winn, *supra* note 122, at 917.

underground financial system, which has become sophisticated enough to process large loans and stock trades that rival the exchanges.[240] This trend can cause not only economic and political problems but also strikes at the stability of legitimate financial systems. Further, the efficiency of paperless and practically recordless underground financial systems, which are capable of transferring substantial amounts of money, is a clear attraction for launderers.[241]

Now more than ever, money launderers can easily wash proceeds derived from criminal activities because of the growth of underground financial systems. In response, the Department of Monetary Affairs of the Ministry Of Finance has drafted a body of rules that encourages financial institutions to make unsecured small loans to debtors who may be prone to resort to underground financial systems for credit.[242] In addition, Taiwan must pay close attention to illegal loan sharks, who charge exorbitant monthly interest rates and who maintain close ties with drug traffickers.[243] Furthermore, prohibiting "Money Politics"[244] is necessary not only for Taiwan to block channels of laundering money, but also to enable a legitimate democratic political system to operate effectively.

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240. Taiwan's underground economy volume is estimated to be 25 percent as large as the legitimate economy. *See* THE INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 1, at 528; Jann Kaufman Winn, *Creditors' Rights in Taiwan: A Comparison of Corporate Reorganization Law in the United States and the Republic of China*, 13 N.C. J. INT'L L. & COM. REG. 410 (1988).

241. *See* Rider, *supra* note 236, at 88.

242. On February 20, 1995, the Department of Monetary Affairs drafted Guidelines for Promoting the Small Loan Business by Local Banks (Guidelines) persuading financial institutions to loan to businessmen who have emergency needs. The Guidelines also authorize the establishment of financial companies active in the loan extension business. *See* Philip Liu, *Taiwan: MOF Wants Illegal Financial to Withdraw*, BUSINESS TAIWAN, Feb. 20, 1995, *available in* LEXIS, ASIAPC Library, TAIWAN File.

243. *Taiwan: New Investigation Bureau Crackdown Shutters 70 Loan Sharks*, CHINA ECO. NEWS SERV., Sept. 2, 1995, *available in* LEXIS, ASIAPC Library, ALLASI File.

244. In Taiwan, the term "Money Politics" refers to the bribes that candidates offer the electorate to ensure their election. In return, the newly elected officials provide favorable services to the voters.

APPENDIX: DRAFT OF THE MONEY LAUNDERING CONTROL ACT OF THE ROC

Article 1

This Act is specially enacted for the purpose of controlling money laundering and pursuing severe crimes.

Article 2

The "money laundering" referred to in this Act shall mean the following acts:

(1) Glossing over or hiding the nature, source, location, ownership or other rights of the properties or interests on assets obtained from the result of severe crimes committed by oneself or other persons.

(2) Receiving, transporting, storing, intentionally buying, or acting as a broker to manage the properties or interests on assets obtained from the result of the severe crimes committed by other persons.

Article 3

The "severe crimes" referred to in this Act shall mean the following crimes:

(1) Crimes for which the minimum principal punishment sentenced by the court is imprisonment of five years or longer.

(2) The crimes undermining public morality set forth in Article 233, 240 III, 241 II & III and 243 I of the Criminal Code.

(3) The crimes set forth in Articles 8 I & II, 10 I & II and 11 I & II of the Statute for the Control of Fire Arms, Ammunition and Harmful Knives.

(4) The crimes set forth in Articles 2 I & II and 3 I & II of the Statute for Punishment of Smuggling.

(5) The crime in contravention of Article 155 I & II as set forth in Article 157 I as set forth in Article 175 of the Securities Exchange Law.

(6) The crime set forth in Article 125 of the Banking Law.

(7) The crimes set forth in Article 154 and 155 of the Bankruptcy Law.

(8) Crimes set forth in Articles 142 I and 144 of the Criminal Code, and Articles 89 I & II, 91-1 I, and 91-1 I of the Law Governing the Election and Recall of Public Functionaries.

The acts of illegally manufacturing, transporting, and selling, narcotic drugs or substances which affect the mind outside of the territory of the Republic of China shall be deemed the commissions of the aforesaid severe crimes, unless the said acts are not punished in accordance with the law of the place of act.

The acts of illegally manufacturing, transporting, and selling, narcotic drugs or substances which affect the mind in the mainland China shall also be deemed severe crimes referred to in Paragraph 1.

Article 4

The interests resulting from the properties or interests on assets obtained in the commission of the crimes referred to in this Act shall mean one of the following items:

(1) The properties or interests on assets obtained directly from the commission of crimes.
(2) The remuneration obtained from the commission of crimes.
(3) The properties or interests on assets deriving from the objects as set forth in the above two items. But those obtained by a third party in good faith shall not be subject to provisions hereof.

Article 5

The financial institutions referred to in this Act include the following organizations:

(1) Banks
(2) Trust and investment companies
(3) Credit co-operative societies
(4) Credit department of farmers' associations
(5) Credit department of fishermen's associations
(6) Postal institutions which also manage the business of saving and remittance
(7) Bills finance companies
(8) Credit card companies
(9) Insurance companies
(10) Securities dealers
(11) Securities investment and trust enterprises
(12) Securities finance enterprises
(13) Securities investment consulting enterprises
(14) Securities central depository enterprises

(15) Future dealers
(16) Other institutions designated by the Ministry of Finance

Article 6

Financial institutions shall establish the matters to be noted of the prevention and control of money laundering, and the said matters shall be reported to the Ministry of Finance for recordation, and the contents thereof shall include the following items:

(1) The operation and internal control procedures for money laundering prevention.
(2) Regularly holding and participating in on-job-training of money laundering prevention.
(3) Assigning specialized persons to take care of the coordination and supervision of the implementation of these points for attention.
(4) Other items designated by the Ministry of Finance.

Article 7

For currency transactions reaching more than a certain amount, the financial institutions shall have to ascertain the identity of customers and keep the transaction records as evidence. The amount and the scope of the currency transaction, procedure for ascertaining identity of customers, and the manner and period of keeping the transaction records as evidence referred to in the preceding paragraph shall all be decided by the Ministry of Finance after negotiating with the Ministry of Justice and the Central Bank of China.

Any person who violates the provisions of the first paragraph of this Article shall be punishable by a fine of more than NT$200,000 and less than NT$1,000,000.

Article 8

For any transaction which is suspected to be money laundering, the financial institution concerned shall report the case to the designated agency.

The abovesaid report and information shall exempt the financial organization concerned from the obligation of confidentiality.

The designated agency and the scope of accepting reports referred to in the first paragraph shall be decided by the Ministry of Finance. After negotiating with the Ministry of Interior, Ministry of Justice and the Central Bank of China.

Any person who violates the provisions of the first paragraph shall be punishable by a fine of more than NT$300,000 and less than NT$1,500,000.

Article 9

Any person who launders money shall be punished with imprisonment of not more than five years and, in addition thereto, a fine of not more than NT$3,000,000.

Any person who takes the commission of the above crime as routine business shall be punished with imprisonment of more than one year and less than seven years and, in addition thereto, a fine of more than NT$1,000,000 and less than NT$10,000,000.

In case that the representative of a laundering person, the agent of a laundering person or a natural person, an employee or other workers commit the abovesaid two crimes due to the performance of their business, in addition to the persons taking such actions being punishable, the said laundering person or natural person shall also be punishable by fines provided for respectively in each of the abovesaid paragraphs. However, if the representative of a laundering person or the natural person has used best effort to prevent the occurrence of the said crimes, then he shall not be subject to the provisions of this paragraph.

Persons who commit the crimes set forth in the preceding three paragraphs and give themselves up to the law within six months after the commission of the crime shall be exonerated from the provided punishments; if they give themselves up to the law later than six months after the commission of the crime, the punishments imposed on them shall be decreased or exonerated; if they confess their crimes during the courts of investigation or trial, the punishments imposed on them shall be decreased.

Article 10

The lineal relatives by blood, spouse, or other relatives living together and jointly owning properties with a person committing any of the crimes provided for in the preceding Article who obtain the properties or interests on assets derived from the result of a severe crime committed by the said person shall be exempted from punishment.

Article 11

Any government employee who reveals or hands over documents, pictures, information or articles relating to the report of a suspected transaction or crime of money laundering to another person shall be punished with imprisonment of not more than three years.

Any employee of a financial institution who is not a government employee reveals or hands over the documents, pictures, information or other articles relating to the report of suspected money laundering transaction or a suspected crime of money laundering to another person shall be punished with imprisonment of not more than two years, detention, or a fine of not more than NT$500,000.

Article 12

The properties or interests on assets obtained by a person from the result of the crimes in violation of this Act committed by the said person, other than such which should be returned to the injured party or a third party, shall be confiscated, no matter whether they belong to the offender or not. If they can not be confiscated in whole or in part, the price thereof shall be recovered from his (or her) assets.

In order to ensure that the aforesaid properties can be recovered from the offender's assets, the offender's assets may be seized when it is deemed necessary.

Article 13

In case any fine imposed in accordance with the Act has not been paid within the prescribed time limit, the case shall be referred to the court for compulsory execution.

Article 14

For the purpose of controlling international money laundering activities, the government may, based on the reciprocal principle, enter into cooperative treaties, or other international written agreement in regard to the control of money laundering with foreign governments, institution or international organizations.

Article 15

This Act shall come into force six months after promulgation.