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December 2, 2005

By mail and e-mail: regcomments@fincen.treas.gov

Brian L. Ferrell, Esq.
Chief Counsel
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Banco Delta Asia S.A.R.L. (RIN 1506-A83)

Dear Mr. Ferrell:

Further to our meeting on November 30, 2005 with you and your colleagues, I am enclosing a letter from Joseph T. McLaughlin at Heller Ehrman LLP that sets forth the new information you invited us to submit.

Very truly yours,



James D. Barnette

Enclosure

cc: Joseph T. McLaughlin, Esq.

HellerEhrman_{LLP}

December 2, 2005

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Re: Banco Delta Asia S.A.R.L. (RIN 1506-A83)

Dear Mr. Ferrell:

We appreciated the opportunity to meet with you and your colleagues to discuss the recent, new developments regarding our client, Banco Delta Asia S.A.R.L. (the "Bank"). Much has changed since the Financial Crimes Enforcement Network ("FinCEN") published the Notice of Findings and Rulemaking (the "Notice") in the Federal Register and the comment period with respect to that Notice expired.

In order to apprise FinCEN and the Department of the Treasury of the new developments relevant to the rulemaking, we request that FinCEN re-open the comment period for the proposed rule, and consider the following new information:

1. The Bank's new management¹ has confirmed in writing that all North Korean-related accounts have been closed and that all funds in these accounts are being held in suspense accounts at the discretion of the Macau Monetary Authority. A copy of the Bank's confirmation letter (without attachment), dated November 15, 2005, is annexed as Exhibit 1.

2. Deloitte & Touche Forensic Services Limited ("Deloitte"), which was retained by the Bank's new management with the approval of the Macau Monetary Authority, has commenced its engagement to devise and implement new and enhanced anti-money-laundering ("AML") and related policies and procedures at the Bank. A copy of Deloitte's

¹ As we noted in our comment letter dated October 17, 2005, the Chief Executive of Macau appointed, by decree, a three-member Administrative Committee to run the Bank in lieu of senior management. The Administrative Committee, in turn, appointed monitors for each functional department of the Bank.

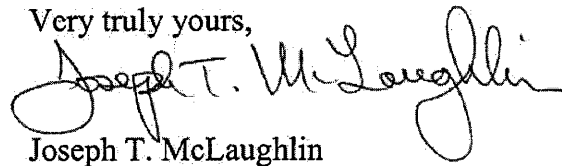
summary of its work to date, which we received on November 16, 2005, is annexed as Exhibit 2.

3. Macau's proposed AML and Combating the Financing of Terrorism laws, which will create substantial criminal penalties for violations, were filed with the Macau Legislature on October 28, 2005 and are expected to be adopted in the near future. Courtesy English translations of these proposed laws and their legislative backgrounds are annexed as Exhibit 3.

4. Since the end of the comment period, we have continued to conduct interviews of Bank employees concerning matters raised in the Notice. We are continuing to work with the Bank and Ernst & Young to investigate these matters.

In addition, as discussed, my colleagues and I will travel to Macau in mid-January to meet with Bank officials, including the members of the Administrative Committee, and representatives of the Macau Monetary Authority to review the Bank's progress in implementing the changes we described during the meeting, as well as the status of matters described in this letter. After that visit, we will request an additional meeting with you and your colleagues, at which point we will renew our request that FinCEN revoke the Notice. In the interim, we would appreciate your re-opening the comment period until that time to receive this letter and other new information from the Bank.

Very truly yours,



Joseph T. McLaughlin

Attachments

Exhibit 1

Administrative Committee
Banco Delta Asia S.A.R.L.
Rua do Campo, No 39-41
Macau SAR of The Peoples' Republic of China

Date: 15 November, 2005

Heller Ehrman
35th Floor, One Exchange Square
8 Connaught Place,
Central, Hong Kong

Ref: AC-34/05

Dear Mr. Phillips,

We are writing to confirm that all accounts maintained with Banco Delta Asia S.A.R.L. ("BDA") by the entities and individuals listed in the Appendix to this letter are closed.

In connection with any funds standing to the credit of those accounts, we sought and obtained directions from the Monetary Authority of Macau to place those funds in a suspense account. The funds will remain in the suspense account pending further directions from the Monetary Authority of Macau.

Yours faithfully,

Signed 
(Authorised Signatory)

Name: H. Sousa

Signed 
(Authorised Signatory)

Name: Cary Lei

Exhibit 2

PRIVATE AND CONFIDENTIAL

Banco Delta Asia S.A.R.L. (“Banco Delta Asia”)

1 Summary of our engagement scope of work

1.1 Our approach is designed to address the stated needs of the Administrative Committee to assist in the development of an AML compliance program framework for Banco Delta Asia in line with international standards in anticipation of the enactment of the new AML law in Macau expected shortly.

1.2 As instructed by the Administrative Committee, the principles underlying the approach to this engagement are:

- **Design a new, international standard AML compliance program** – Our engagement is focused on providing a framework for a new, international standard AML compliance program for the bank on a go forward basis. We have not been asked to review the current compliance program in place at the bank and will offer no findings or opinion on the past or current situation with respect to AML compliance policies, procedures and controls.
- **Develop a risk based approach assuming current business portfolio of BDA** - As future status and control of the bank is unclear, we have agreed with the Administrative Committee that the framework compliance program should be driven by an assessment of AML risk inherent in the bank’s current business activities in Macau. We have therefore started with a first phase to develop a draft AML risk framework for the bank as it is currently constituted to inform the development of a risk based approach to framework AML policies and procedures.
- **Develop policies and procedures at a framework level to guide and monitor future implementation** - The nature of our work is to provide a high level framework for international standard AML policies and procedures that can be subsequently implemented by the bank. As described below the third phase of our engagement is to develop an implementation plan to be used by the Administrative Committee to monitor the progress of implementation at the bank of the recommended AML risk and policies and procedures frameworks developed in earlier phases.

1.3 As detailed in our engagement letter, the three phases of our scope of work are:

- Phase 1 – AML Risk Framework Development

- Phase 2 – AML Policies and Procedures Framework Development
- Phase 3 – AML Compliance Implementation plan

1.4 Each of these phases is described below.

Phase 1 – AML Risk Framework Development

1.5 Phase 1 involves the following activities which were conducted over a two week period:

Activities

- Review of business, products, clients and distribution channels
 - Interview of key business personnel
 - Development of a draft AML Risk Framework
 - Validation of the risk framework with the Administrative Committee
-

1.6 A draft AML Risk Framework was submitted in the form of a presentation at the end of week two and was followed by a review meeting to discuss and validate the risk framework before commencement of Phase 2. The Risk Framework will require sign-off from the Administrative Committee before progressing to Phase 2.

Phase 2 – AML Policies and Procedures Framework Development

1.7 Upon validation of the Risk Framework in Phase 1 with the Administrative Committee, we will commence phase 2. Phase 2 involves the development of an AML Policies and Procedures Framework consistent with the draft Risk Framework. We envisage Phase 2 will be conducted over a four week period, focusing on the areas outlined below:

AML Policies and Procedures Framework Development

- Know Your Customer / Customer Identification / Acceptance and Due Diligence
 - Account and Transaction Monitoring
 - Training and Staff Awareness needs assessment
 - Policies and process for Independent Review of AML Compliance Effectiveness
 - Draft AML Policies and Procedures Framework
 - Validation of the policies and procedures framework with the Administrative Committee
-

- 1.8 Phase 2 is anticipated to culminate at week four with the submission of a draft AML Policies and Procedures Framework in the form of a presentation, followed by a review meeting to discuss and validate the AML Policies and Procedures Framework before commencement of Phase 3. The Policies and Procedures Framework will require sign-off from the Administrative Committee before progressing to Phase 3.

Phase 3 – AML Compliance Implementation Plan

- 1.9 Upon validation of Phase 2, we will commence Phase 3. Phase 3 involves the development of a high level road map for the implementation of draft AML risk framework and AML Policies and Procedures Framework. The implementation plan is intended to facilitate the ability of the Administrative Committee, and/or other regulators such as the Macau Monetary Authority, to monitor the progress of the bank's implementation of the risk framework and AML policies and procedures framework going forward. The implementation plan will be completed over a two week period and include the following:

- Recommendations and implementation strategy; and
- Implementation plan including timing, resourcing and implementation options

2 Current status of our engagement

- 2.1 We have completed Phase 1 of the engagement and discussed our draft AML risk framework with the Administrative Committee on 15 November 2005. We are currently awaiting validation of the draft AML risk framework by the Administrative Committee.
- 2.2 While awaiting validation of the draft AML risk framework by the Administrative Committee, we are currently planning for the commencement of Phase 2 of the engagement.

3 Estimated time to completion

- 3.1 We estimate to complete Phase 2 of the engagement within the next four weeks from the date of validation of Phase 1 by the Administrative Committee. We anticipate receiving validation for Phase 1 this week.
- 3.2 We envisage that Phase 3 will take two weeks after validation of the policies and procedures framework by the Administrative Committee.

Exhibit 3

Draft Legislation

Prevention and Repression of Money Laundering

CHAPTER I GENERAL PROVISIONS

Article 1 Objective

This Law stipulates measures for the prevention and repression of money laundering.

Article 2 Complementary Law

The provisions of « Criminal Code» shall complement and apply to the crimes defined in this Law.

CHAPTER 2 CRIMINAL PROVISIONS

Articles 3 Money Laundering

1. For the purpose of this Law, profit is defined as illicit properties derived from crimes which entail a maximum penalty of over 3 years in prison. It covers assets generated by such illicit properties, notwithstanding that the act is committed by any means in a collusion.

2. To conceal the unlawful source of the profit or to help the culprit and his accomplices to escape criminal proceedings, anyone who transfer or converts such profit or facilitates such activities shall be imprisoned for 2 to 8 years.
3. To conceal or cover up the real nature, source, origin, disposal, transfer or the identity of the owner shall attract the same penalty as stipulated in above Paragraph.
4. If the unlawful event has been committed outside the jurisdiction of the MSAR but is also deemed unlawful under the legal system of the government who has jurisdiction, the penalties stipulated in Paragraph 2 and Paragraph 3 shall also apply.
5. Legal proceedings relating to profit generating crimes which conform to indictment cannot be instigated without complaints. If there is no timely complaint, the above mentioned events will not be subject to any penalty. However, if such profits are generated from unlawful events which conform to indictment as stipulated in Article 166 and Article 167 of the « Criminal Code» , they shall not be excluded.
6. The penalties for the above provisions shall not exceed the maximum penalties applied to crimes which generate the related profits and conform to the indictment.
7. To suit the requirements stipulated in the above Paragraph, if the related profit is derived from two or more unlawful events conforming to the indictment, the maximum penalty applied in the above Paragraph shall be the highest of penalties applied to all these crimes which conform to indictment.

Article 4

Accentuated Penalty

Penalties shall increase by 50%, but not to exceed what are stipulated in Paragraph 6 and Paragraph 7 of Article 3 above, if one of the following events emerges:

1. Money laundering crime has been committed by criminal organization or triad, or by members or supporters of criminal organization or triad;
2. The unlawful events which generate profit and conform to indictment are related to terrorism, illicit traffic in narcotic drugs and psychotropic substances, international slave trade or banned weapons and explosives;
3. The culprit is a repeated offender in money laundering.

Article 5
Relieved Penalty

1. If the accused, before the start of the first trial, has redressed all the damages done to the victim in respect of the crime which generates the related profit and conforms to the indictment, and it has not done any harm to a third party, penalty can be reduced.
2. If the damage has been partly redressed, special deduction in penalty can apply.

Article 6
Criminal Liability of a Legal Entity

1. A legal entity, even if established not according to regulations, and community without a legal personality shall be liable to a crime relating to money laundering, if one of the following events emerges:
 - a) The organization or its representative has committed a crime in money laundering in its name for a profit;
 - b) One who is subject to the order of the organization or representative as stipulated in (a) above and for their benefit, has committed a crime in money laundering, and the organization or representative purposely violates the obligation to supervise or control to enable the crime to happen.
2. The liability of the entity stipulated in the last Paragraph shall not exclude the personal liability of the individuals involved.
3. The principal penalty applicable to the entity for the crime stipulated in Paragraph 1 shall be:
 - a) Fines;
 - b) Disbandment by court order.
4. Fines are payable on a daily basis, the minimum is 100 days, the maximum is 1000 days.
5. Daily fine shall be fixed at MOP100 to MOP20,000.

6. If a fine is imposed on a community which is not endowed with a legal personality, it shall be paid out of the common assets of the community, in the event that there is no common asset or insufficient common asset, members shall be liable for the fine according to the responsibility of each individual.
7. It is only when the founder of the entity has the sole intention of committing the crime as mentioned in Paragraph 1 by making use of the entity, or the crime has been repeated to indicate that its members or administrative personnel have the sole or major intention to make use of the entity to commit the crime, the disbandment penalty shall apply.
8. The following additional penalties can apply to an entity referred to in Paragraph 1:
 - a) To provide bail for good behaviour according to provisions of Decree-Law no. 6/96/M, of 15 July;
 - b) To be banned from engaging in certain business or profession for 1 – 10 years;
 - c) To be deprived of subsidies or grants from public sector or other entities;
 - d) To shut down the premises for 1 month to 1 year according to provisions of Decree-Law no. 6/96/M, of 15 July;
 - e) To shut down the premises for ever;
 - f) To publicize the verdict.
9. If employment contracts are terminated due to a court disbandment, the termination shall be construed as dismissal without good reason.

CHAPTER III PREVENTIVE PROVISIONS

Article 7 Scope

The following entities shall fulfill the obligations stipulated in Article 8:

1. Entities regulated by the Monetary Authority of Macao, particularly Credit Institutions, Finance Companies, Offshore Financial Institutions, Insurance Companies, Money Changers and Remittance Companies;

2. Entities subject to supervision of the Gaming Inspection and Co-ordinating Bureau, particularly entities who are involved in gambling business, lottery draw, book making and intermediaries in the casinos;
3. Merchants who are involved in the trading of precious articles, particularly pawn shops and entities involved in transactions relating to precious metals, gems and luxury transportation vehicles;
4. Real properties intermediaries, or entities who purchase real properties for resell purpose;
5. Lawyer, legal representatives, notaries, the Registrar, auditors, accountants and tax consultants who participate or assist in the following activities:
 - a) Buying and selling real properties;
 - b) Managing, on behalf of clients, cash, securities or other assets;
 - c) Managing bank accounts, savings accounts or securities accounts;
 - d) Raising funds for the establishment, operation or management of companies;
 - e) Establishing, managing or operating legal entities or entities without legal personality, or buying and selling commercial entities.
6. Entities which provide manpower services, when they are preparing or proceeding to conduct the following activities for their clients:
 - a) Establishing a legal entity by acting as an attorney;
 - b) Acting as administrator, secretary, shareholder of a company, or corresponding positions of other legal entities;
 - c) Providing company premises, commercial address, facilities and/or administrative or postal address for a company or other legal entities or entities without legal personality;
 - d) Acting as administrator for a trust fund or trust organization;
 - e) Acting as shareholder without incurring profit or loss which belong to other persons;
 - f) Carrying out necessary steps to cause a third party to act in a manner according to (b), (d) or (e) above.

Obligation

1. The entities stipulated in Article 7 should perform the following obligations:
 - a) Should know the identities of the contracting parties, clients or punters, discern if there are indications that money laundering or large amount of cash are involved in the activities;
 - b) In the event that there is situation indicating activities mentioned in Item (a) above, identify all activities in process;
 - c) If denied of the vital information necessary to discharge the obligation stipulated in Item (a) and Item (b) above, should refuse to perform the activities as requested;
 - d) Retain the related documents for a reasonable period in connection with obligations stipulated in Item (a) and Item (b) above;
 - e) In the event that there are indications of money laundering, activities should be reported;
 - f) Should co-operate with entities which are vested with the authority to prevent and repress money laundering.
2. When performing the activities stipulated in Article 7, Paragraph 5, lawyers and legal representations need not provide, in performing obligations as stipulated in Item (e) and Item (f) above, the following information: information obtained in appraising client's legal status and providing legal advices, information obtained in representing a client in a litigation, and information involving a particular legal proceeding, including information relating to proposal to proceed or avoid certain legal proceedings, regardless whether such information has been obtained before, during or after litigation.
3. To perform obligations stipulated in Paragraph 1, Item (e) and Item (f), the information so provided in good will shall not constitute breach of secrecy, the provider of such information shall not be liable in any respect.
4. Not to divulge to contracting parties, clients, punters or any third persons any fact acquired from performing duties, and discharging obligations stipulated in Paragraph 1, Item (e) and Item (f).

5. Information obtained from performing obligations stipulated in Paragraph 1 can only be used in criminal litigation proceedings, or prevention and repression of crimes relating to money laundering.

CHAPTER IV
FINAL AND TRANSITIONAL PROVISIONS

Article 9
Detailed Provisions

1. The Administrative Regulation shall stipulate the conditions precedent and content of the obligations contained in Article 8 and the supervision system relating to the performance of such obligations and punitive measures for not performing such obligations.
2. The authority to collect, analyse and provide the information obtained in accordance with the provisions of Article 8, Paragraph 1 should be vested with a newly established entity or an established entity, and that entity should comply with the following requirements:
 - a) Establish and maintain a data base to keep the information collected;
 - b) Should not instigate any criminal investigation;
 - c) Cross analyse the information collected and report to the Public Prosecution Office suspected crimes relating to money laundering;
 - d) Provide information to entities who are vested with the authorities to prevent and repress money laundering upon receipt of their requests supported by valid and sufficient reasons;
 - e) Fulfill regional agreements or any instruments relating to international law, provide information to entities outside MSAR in accordance with the requirements stated in Item (d) above;
 - f) Observe secrecy obligation.
3. The entities mentioned in Paragraph 2 above, in discharging its functions conferred by law, can request any public or private entities to provide information.

Article 10
Provisions Repealed

The following provisions shall be repealed:

- a) Provisions of Article 10, Article 14, Paragraph 3, Paragraph 4 and Paragraph 5 of Article 18 of Decree-Law no. 6/97/M, of 30 July;
- b) Decree-Law no. 24/98/M, of 1 June, without prejudice to the application of the provisions of the next Article.

Article 11
Transitional Arrangement

1. Before the Administrative Regulation stipulated in Article 9, Paragraph 1 becomes effective, Decree-Law no. 24/98/M, of 1 June shall continue to apply.
2. After the Administrative Regulation stipulated in Article 9, Paragraph 1 has become effective, the entities stipulated in Article 7 shall start performing the obligations stipulated in Article 8.

Article 12
Amendment to Decree-Law no. 6/97/M, of 30 July

1. Decree-law no. 6/97/M, of 30 July, Article 1, Paragraph 1, Item (u) shall be amended to read:
(u) Money Laundering.
2. To apply provisions of Decree-Law no. 6/97/M, of 30 July, Article 10 shall be construed as applying provisions of Article 3 of this Decree-Law provided that the situation of accentuated penalty exists, according to Article 4.

Article 13
Commencement

This Decree-Law shall come into force on the next day of its promulgation.

Representation for the Enactment of “Prevention and Repression of Money Laundering”

- 1) Nowadays, it is the consensus of the international world and the MSAR that there should be a legal mechanism whereby the activities relating to money laundering should be effectively prevented and repressed.
- 2) To combat money laundering crime means curbing organized and highly dangerous crimes, which include drug trafficking, slave trade, arms sales, bribery and terrorism. It forms a very important part in our efforts to combat the aforementioned crimes. Combating money laundering pin-points all these crimes. The funds arising from all these crimes will in turn finance and facilitate the existence of all these criminal behaviours. The trend for the further development of anti-money laundering policy emphasizes on prevention and curbing the covering up of fact that such assets are derived from crimes.
- 3) Money laundering involves the movement of huge sums of funds. It seriously disturbs economic activities, promotes black market, sabotages lawful economic activities, disturbs the normal goods and money circulation norm and creates unfair competition. It further undermines financial system, causes an organization to lose its reputation and promotes the evil impression that a criminal can stay out from punishment he deserves and crime is the best way to make quick money.
- 4) We believe that money laundering impairs course of justice. It prevents the government from identifying assets arising from serious crimes and have them confiscated.
- 5) At the moment, there are many ways and means employed in money laundering. They are complicated and precise, moving swiftly across country boundaries. High techniques and quick communications are deployed for the purpose so that the activities can involve operators in different sectors and financial systems, at

different geographical locations far apart from each other. Criminals know how to make use of the loopholes and soft spots of the financial systems to commit crimes.

- 6) Today, we all realize that curbing money laundering depends very much on a concerted international strategy based on international co-operation and sharing of responsibility. To realize such strategy, the legislations of all countries should complement one another while surveillance on financial activities should be strengthened. The stance has been clearly stipulated in all related international documents, particularly « UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances » , « United Nations Convention against Transnational Organized Crime» , and the 40 recommendations of the Financial Action Task Force (FATF).
- 7) The existing legislative mechanism of Macao is not sufficient for the SAR to fulfill its international obligation in this respect. It is also not compatible with the criminal affair policy of Macao relating to prevention and repression of criminal activities in the region.
- 8) In accordance with the provisions of Article 10 of the Organized Crime Act, approved by Decree-Law no. 6/97/M, of 30 July, behaviour relating to the transfer, conversion and dissimulation of illicit assets is considered to be an offence.
- 9) Nevertheless, to keep surveillance on financial activities, the Financial System Act, approved by Decree-Law no. 32/93/M, of 5 July and Preventive Measures Relating to Transfer, Conversion and Dissimulation of Illicit Assets Act, approved by Decree-Law no. 24/98/M, of 1 June, need to be improved. The surveillance system should be strengthened. Moreover, the definitions of the offences under Article 10 of Decree-Law no. 6/97/M are not comprehensive, which give rise to difficulty in interpretation. At the same time, the related crimes are included in legislations relating to organized crimes which entails very stringent penalty and litigation process. When making deliberation, the court considers that the original intention of the legislation is to group “transfer, conversion and dissimulation of illicit assets”

into the realm of organized crimes, or practicably, into crimes of “Triads”. Consequently, money laundering will be excluded from the definition of organized crimes.

- 10) According to Article 3 of this legislation relating to the definition of money laundering, it is clearly stipulated that the infringed law profit is “the legal right for the government to confiscate assets which have been proven to have been acquired from serious crimes”. In such a manner, there will be no misunderstanding to construe that money laundering is merely an offence to protect the law profit infringed by a “precedent crime”.
- 11) Criminal law of Macao also emphasizes the uphold of “legal right of a country or region to retain proven unlawful profits derived from places outside Macao”. However, the deed should be construed to be an offence under the criminal law of MSAR.
- 12) Conviction along this direction is in line with the trend of policy guideline under international law. Technically, it clearly lays down the concept of the related crime to facilitate the inclusion of behaviour in respect of concealing and hiding assets arising from serious crimes and other crimes specially harmful to the community, such as organized crimes, terrorism, financial crimes especially bribery, drug trafficking, slave trade and arms sales.
- 13) Moreover, a definition for “profit” has been concluded. It means the assets derived from crimes which carry maximum penalty of over 3 years in prison.
- 14) We consider it imperative to define in a stringent and precise manner all behaviours relating to the crime to avoid enlarging in an unlimited manner the related domain and to differentiate between the phenomena belong to criminal law study and criminal policy. That is to say that we have to treat separately the two different crimes, “stolen goods” and “material aid”, according to Article 227 and Article 228 of the “Criminal Code”.

