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December 2, 2005

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

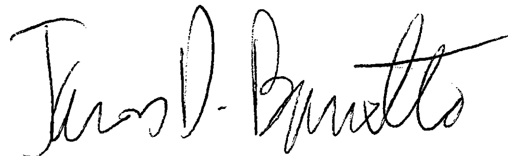
Brian L. Ferrell, Esq.
Chief Counsel
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

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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Vienna, VA 22183

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 management[1] 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.

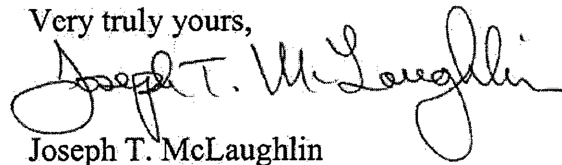
summary of its work to date, which we received on November 16, 2005, is annexed as Exhibit 2.

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

滙業銀行有限公司
Banco Delta Asia S.A.R.L.

www.delta-asia.com

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

Deloitte.
德勤

德勤財務調查服務有限公司
香港中環干諾道中111號
永安中心22樓

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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 form 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.

Article 8

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 Pubic 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 form 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 dissimilation 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 dissimilation 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".

15) Money laundering is the behaviour of concealing or hiding unlawful profit arising from crimes which will attract a penalty of more than 3 years in prison. Initially, such behaviour renders an imprisonment between 2 to 8 years. In this way, the related penalty can be determined according to the seriousness of the crime in a fair manner.

16) Laundering money for organized crimes, especially when they are connected with terrorism and crimes which pose great harm to the community (such as drug trafficking, salve trade, banned weapon and explosive trade) are specially serious. It is therefore fully justified that the related minimum and maximum penalties will be raised by 50%.

17) By the same token, if a criminal commits the same crime repeatedly, penalty should be raised because it is neither inadvertent nor isolated issue but in an organized and systematic manner. From criminal policy point of view, such behaviour is related to organized crime (Article 4, paragraph 3).

18) Besides, if the one who committed the offence has tried to redress the damage done, the law specially allow curtailment of penalty (Article 5).

19) Article 6 aims at fine tuning the regime relating to the criminal liability of an organization which is indulged in money laundering.

20) In Macao law, there is a special provision to trace the criminal liability of an organization which has committed certain special categories of crimes, especially financial crimes.

21) Decree-Law no. 6/96/M, of 15 July (Legal System Relating to Unlawful Behaviour Undermining Public Hygiene and Economy), Article 3 and Decree-Law no. 6/97/M, Article 14 and Decree-Law no. 4/2002, of 15 April (Law Relating to Compliance with International Instruments), Article 17, all stipulate that legal entities can be held liable criminally. This is an exception to general rules under « Criminal Code» , Article 10 relating to liability of a natural person.

22) Now we are going to fulfill a requirement under criminal policy in this enactment by stating standard of liability according to the basic principles of the Macao legal system. Accordingly, it will be made in line with requirements under international law relating to legal liabilities of legal entities involving in money laundering crimes.

23) We believe that the related rule can also apply to, apart from organizations with legal entities, organizations which are not established according to existing regulations or simply not endowed with a legal personality. That is to say, it applies to any community or organization which has a responsible core which is the basic organization structure of the entity. The structure is materially different from its constituent members in its existence. Such an existence indicates that the community or group has formed a mechanism under collective consensus so as to fulfill and realize the common interest of its members.

24) The criteria employed by this legislation in connection with the issue of liability entail connection between the crime and the organization on one hand and a special relationship between the culprit and the organization on the other hand. When only there is "committed crime in the name of the organization and its interest" and acted "by the organization and its representative", and/or the organization and its representative intentionally (even if it is not necessarily intentionally) violate the responsibility of supervising or controlling a third party under his command which causes the crime to happen, then the liability should be shouldered by the organization [Article 6, Paragraph 1, Item (a) and (b)].

25) This legislation re-establishes the Principle of II not precluding personal criminal liability of the culprit (Article 6, Paragraph2).

26) The penalty provisions applied to legal entities are not newly invented ones when compared to Decree-Law no. 6/96/M, Decree-Law no. 6/97/M and decree-Law no. 4/2002.

27) More stringent and precise standards are applied in this legislation to demarcate between principal penalty and additional penalty while the daily amounts for fines have been revised (Article 6, Paragraph 3 and 8).

28) As regards the more severe penalty of disbanding the organization, it is only applicable in the following special situations:

    a) The objective of the organization is to launder money;

    b) The process of the crime indicates that there are individuals who make use of the organization purely or mainly for money laundering.

    (Article 6, Paragraph 7).

29) The legislation stipulates that in the event that a community without a legal personality is fined but has no common or insufficient assets, then its members are liable. That is to say, civil regulations relating to debts owed by community without legal personality (« Civil Code» Article 189 and subsequent articles), and commercial regulations specially for pre-registration third party relationship (« Commercial Code» Article 190) are applicable (Article 6, Paragraph 6).

30) Besides, this legislation also carry preventive measures (Chapter 3 Preventive Provisions).

31) Methods employed in money laundering have become more complicated, sophisticated and transnational. To safeguard the infringed benefit, we need the help of those persons and entities who are inadvertently involved. In view of the fact that their business has direct contact with money laundering and that they are equipped with the appropriate knowledge and technological know-how, they are more effective in discerning and supervising money laundering (Article 7).

32) Simultaneously, there is a need to make use of the research on money laundering and its trend to improve Decree-Law no. 32/93/M and Decree-Law no. 24/98/M so

that loopholes of the parts relating to preventive measures can be plugged, in order to respond to the demand required by international standard.

33) As such, this legislation expands the regime to which preventive measures are applicable. It details all obligations. A rational and effective mechanism for the purpose will be set up by laying down rules relating to supervisory obligations and system to better manage all information collected (Article 7 and 8).

34) We believe that, when executing our duties, there is a conflict between keeping secrecy and obligation to co-operate with an entity rested with authority to prevent and repress money laundering, the latter shall override. Nevertheless, we should pay attention to the fact that the obligation to co-operate could be confined by the limitation applicable to the two parties involved in the act as well as the authority of the concerned entity.

35) The legislation protects the privacy of the general public. The information so obtained shall only be used in criminal litigation process or prevention and repression of money laundering. It also protects the identity of the party who is required by law to perform such obligation (Article 8, Paragraph 5).

36) The preventive mechanism laid down in this legislation will by no means affect the normal functioning of the economy.

37) This legislation only provide the core relating to the preventive measure which directly impacts basic freedom and right. The implementation and execution relating thereto will be left to the detailed rules which will be formulated subsequently. As such, before the preventive measure stipulated in the legislation and its detailed implementation rules have become effective the preventive measures as stipulated in Decree-Law no. 24/98/M shall continue to apply.

DRAFT LEGISLATION

Prevention and Repression of Terrorism

CHAPTER I

GENERAL PROVISIONS

Article 1

Objective

The objective of the Decree-Law is to prevent and repress terrorism.

Article 2

Complimentary Law

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

Article 3

Cases Committed beyond the Jurisdiction of the MSAR

This Law shall apply to cases which fall into the following definitions and committed beyond the jurisdiction of the MSAR with the exception of those covered by international conventions or any agreements relating to judicial aid:

1. Cases which invoke the definitions of crimes under Article 4 and Article 6, Paragraph 1, and/or cases which invoke the definitions of crimes under Article 7 and Article 8, while the cases are committed against the MSAR;
2. Cases which invoke the definitions of crimes under Article 5, Article 6, Paragraph 2, Article 7 and Article 8, while the cases are committed against:

(a) China, but the defendant should either be a resident of the MSAR or physically present in the MSAR;

(b) Foreign countries or international organizations, but the defendant should be found physical present in the MSAR and cannot be extradited to another region or country.

CHAPTER II
CRIMINAL PROVISIONS

Article 4
Terrorist Organizations

1. Terrorist Community, organization or group, means an aggregation of two or more persons, acting in agreement and aiming at committing the following deeds, so as to, through violence, stop, change, overthrow the operation of the established political, economic and social systems of the MSAR, or coerce the public authority to commit an act, refrain from an act or allow an act by another person, and/or intimidate the persons, group of persons or ordinary residents, by the nature of such deeds and the backdrop when they are committed, such deeds can seriously damage the MSAR and the residents so intimidated:

   (a) Crimes relating to the violation of life, intact physique or personal freedom;

   (b) Crimes relating to sabotage of transport and communication safety, communication includes information, telegraph, telephone, radio and television;

   (c) Crimes relating to the creation of flood, avalanche, collapse of constructions, contaminating water and food to be consumed by human beings, by causing fire, explosion, release of radio active materials, poisonous or suffocating gases, or intentionally causing public hazards by spreading diseases, plagues, harmful plants and animals;

(d) Deeds relating to sabotaging permanently or temporarily, wholly or partly the precision of transportation, communication tools or commuting routes, public utilities or facilities which provide or satisfy basic needs of residents, and/or cause such precision to wholly or partly stop functioning or deviate from its normal operation;

(e) Research or develop nuclear weapons, biological or chemical weapons;

(f) Crimes relating to the use of nuclear energy, firearms, biological weapons, chemical weapons, explosive materials, explosive devices, any kind of incendiary tools, and/or use of parcels and mails carrying traps.

2. Advocate, found, join terrorist organization, community or group, or render support, especially through provision of intelligence or materials, shall attract imprisonment of ten to twenty years.

3. Lead or command terrorist community, organization or group shall attract imprisonment of twelve to twenty year.

4. If terrorist community, organization or group, and/or those defined in Paragraph 2 or Paragraph 3 above are in possession of the tools defined in Paragraph 1, Item (f), the minimum and maximum penalties shall be increased by one-third.

5. Any preparatory action with a view to founding a terrorist community, organization or group shall be sentenced to 1 to 8 years in prison.

6. In the event that the defendant has deterred the existence of such community, organization or group, or has made serious attempts, or has caused the authority to avoid the application of such crimes by informing the authority the existence of such community, organization or group, the penalties stipulated in above Paragraphs can be reduced or annulled.

Article 5

Other Terrorist Organizations

1. An aggregation of two or more persons, under their concerted actions, with the objective of committing the deeds as defined in Article 4, Paragraph 1 in order to

violate the inseparable nature, independence of a county or region, or stop, change or overthrow a country, region or international organization from functioning, or coerce the authority concerned to commit an act, refrain from an act or allow an act by another person, and/or intimidate a group of persons or residents of a certain region, while such deeds can seriously damage that country, region or international organization, and/or the residents so intimidated, it shall be construed to be the equivalent of the community, organization and group stipulated in Article 4, Paragraph 1.

2. Provisions of Article 4, Paragraph 2 to Paragraph 6 shall be applicable, mutatis mutandis.

Article 6
Terrorism

1. A deed committed under the intentions as stipulated in Article 4, Paragraph 1 shall attract a penalty of three to twelve years in prison; in the event that the relevant penalty attached to the crime committed is equal or higher than the aforementioned penalty, the relevant penalty shall apply, while the maximum and minimum penalties shall be increased by one-third.
2. A deed committed as stipulated in Article 4 with an intention stipulated in Article 5, Paragraph 1 shall attract the penalty as stipulated in above Paragraph.
3. In the event that making preparation to carry out terrorism crimes as stipulated in the above Paragraphs does not attract a heavier penalty under provisions of other laws, a penalty of one to five years in prison shall apply.
4. In the event that the defendant has, out of his own initiative, abandoned such activities, precluded or lowered to a certain extent the danger arising therefrom, or has prevented the consequence as the law has intended, shall be treated with reduced penalty, or exempted from any penalty.

5. In the event that the defendant has provided practical assistance in the collection of evidence which is vital to the identification of the culprits or their arrest, specially reduced penalty should apply.

Article 7

Financing Terrorism

For those who intend to wholly or partly finance terrorism deeds by providing or raising funds, in the event that such behaviour does not attract a heavier penalty according to provisions of other laws, a penalty of imprisonment for one to eight years shall apply.

Article 8

Provocation of Terrorism

To provoke terrorist behaviour publicly, or provide the setting up of terrorists community, organization or group shall attract a penalty of one to eight years in prison.

Article 9

Additional Penalty

1. For culprits who have been convicted for crimes under Article 4 to Article 8, after due deliberation of the seriousness of the offence, and the conclusion reflected by the fact and the character of the defendants, the following additional penalties can apply:
   (a) Repeal political right for two to ten year;
   (b) Forbid to take up public service for two to ten years;
   (c) For non-residents, to be expelled and banned from entering the MSAR for two to ten years;
   (d) To be subject to court orders.
2. Concurrent sentence can apply to additional penalty.

3. Time deprived due to loss of freedom arising from compulsory measures applied to the defendant, penalty or public order sanction, shall not be taken into consideration in calculation the time periods stipulated in Paragraph 1, Item (a) and Item (b) above.

Article 10

The Criminal Liability of a Legal Entity

1. A legal entity, even established not according to regulation, and community without a legal personality shall be liable to a crime stipulate in Article 4 to Article 8, if one of the following events emerges:
   (a) The organization or its representative has committed a crime under Article 4 to Article 8 in the name and for benefit of the entity;
   (b) A person who is subject to the order of the organization or representative or stipulated in (a) above and for their benefit, has committed a crime under Article 4 to Article 8, and the organization or representative purposely violates the obligation to supervise or control to enable such 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 the fine is imposed on a community which is not endowed with a legal personality, it shall be paid out of the common asset 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, than the disbandment shall apply.
8. The following additional penalties can apply to an entity referred to in Paragraph 1:
   (a) To provided 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 form public sector or other entities;
   (d) To shut down the premises from one month to one 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 disbandment by court order, the termination shall be construed as dismissal without valid reason.

CHAPTER III
PREVENTIVE PROVISIONS

Article 11
Other Decree-Laws Applicable

To prevent and repress crimes related to financing terrorism, Decree-Law no.* /2005, Article 7, Article 8 and Article 9 shall apply, after necessary adjustments.

* Prevention and Repression of Money Laundering.

CHAPTER IV
FINAL PROVISIONS

Article 12

Amendments to « Criminal Litigation Code»

As permitted by Decree-Law no. 48/96/M, of 2 September, and amended by Decree-Law no. 63/99/M, of 25 October and Law no. 9/1999, Article 1 of « Criminal Litigation Code» has been amended to read:

Article 1

(.........)

1. ....
2. ....
   (a) Criminal behaviour as stipulated in Article 4, Article 5 and Article 6 of Decree-Law no. ______/2005* and Article 288 of « Criminal Code» ;

   * Prevention and Repression of Terrorism

   (b) ....
   (c) ....

Article 13

Amendments to « Criminal Code»

As permitted by Decree-Law no. 58/95/M, of 14 November and Law no. 6/2001, Article 5 of « Criminal Code» has been amended to read:

Article 5

(.........)

1. ....
   (a) Criminal deeds committed as stipulated in Article 252 to Article 261 and Article 297 to Article 305;
   (b) ....

(c) ....

I ....

II ....

III ....

(d) ....

2. ....

Article 14

Provisions Repealed

Article 289 and Article 290 of « Criminal Code» shall be repealed.

Representation for the Enactment of "Prevention and Repression of Terrorism"

1) Crimes traditionally dubbed with "terrorism" carry special features. The losses inflicted by such crimes are usually tremendous, the methods employed are various, complicated, precise and transnational. Since the 20th century, it has become a consensus internationally and internally that there is a need to enhance the mechanism to prevent and repress terrorism.

2) Terrorism usually functions within the structure of criminal organization. Apart from seriously infringing the basic value of human beings protected by law, such as life, intact physique and freedom (those are all connected to human dignity), it threatens the tranquility of our society.

3) Internationally, all countries and territories have always been reminded that there is a need to synchronize and complement their own legislations and to establish corresponding mechanisms to reinforce judicial assistance and exchange of information. Nowadays, we all recognize that, in order to successfully fight terrorism, we should rely on an international strategy based on co-operation and responsibility sharing.

4) The major international instrument relating to fighting terrorism is entitled « Convention on the Repression of Financing Terrorism» passed on 9 December 1999 and became effective on 10 April 2002. This convention stipulates methods to prevent and repress the acquisition of financing which will encourage and promote terrorism activities.

5) In addition, the 1373 Resolution passed in the UN Security Council on 28 September 2001 requires all nations to fight terrorism and all activities relating to facilitating terrorism, especially financing.

6) The « United Nations Convention on Combating Transnational Organized Crimes» which was passed on 15 November 2000 and ratified by the People's

Republic of China on 23 September 2003 stipulates the provisions to prevent and repress financial activities relating to organized crimes.

7) In addition, the Financial Action Task Force (FAFT) formulated "Eight Special Proposals Relating to Financing Terrorism" on 31 October 2001.

8) As such, there is a need to cause the Macao legal system to suit the above mentioned international instruments, so as to more effectively combat crimes relating to terrorism which threaten peace, tranquility and security both internally and internationally.

9) As a matter of fact, "Criminal Code" of Macao has already made provisions to define and penalize crimes relating to "Terrorist Organization" (Article 289) and "Terrorism" (Article 290).

10) The above counts are meant to protect the law profit which is the internal public tranquility. It ensures that residents can live in tranquility and security under the protection of the MSAR and that such conditions will remain unchanged.

11) Terrorist organization means the grouping of 2 or more people, under their concerted action, for the purpose of committing crimes as stipulated in Article 289, Item 2 (violation of life, intact physique or personal freedom; undermine communication and transport safety, internationally create public hazards; sabotage; make use of nuclear power, firearms, explosive materials or device, inflammable tools, make use of parcels or mails which carry traps to commit crimes), resort to violence to deter, change or overthrow political, economical and social systems, or coerce the authorities to take a certain act, or abandon an act or tolerate an act by another person, and/or intimidate some people, a group of people or ordinary residents.

12) One who has committed a crime as defined above under the same intention as a terrorist organization shall be deemed to have committed a crime of terrorism.

13) For the laws of Macao to be in line with international instruments, there is a need to sanction terrorism as a crime, so as to safeguard public and international tranquility and protect all people, countries, international organizations from terrorist attacks within or outside the MSAR, and to prevent and repress international terrorism.

14) On the other hand, there is a need to perfect and enhance supervision on economic activities, especially preventive provisions for financial activities, so as to combat "financing terrorism" behaviour effectively.

15) In considering the nature of terrorism crime, related criminal provisions should be grouped under « Criminal Code» , which is the practice of countries which adopt continental laws, there are however reasons to adopt specific legislation to govern it.

16) In doing so, legislation can be accelerated, on the other hand it can effectively solve in a systematic manner the arrangement relating to provisions for international terrorism, and the regulation required by international community about the criminal liability of a legal entity, all these problems can be resolved.

17) Nevertheless, adopting specific legislation should take into consideration carefully how to make it compatible with the basic principles of criminal law system, and to maintain standardization and consistency in managing related matters.

18) Therefore, it is appropriate to include criminal provisions relating to combating terrorism activities in this legislation while relevant provisions of « Criminal Code» are added, in this way a comprehensive and standardized system against terrorism can be formulated.

19) As a matter of fact, if some deeds relating to terrorism are governed by specific legislation while some are kept under « Criminal Code » , it will be incomprehensible. In doing so, it is not only difficult to synchronize all the provisions, it is difficult to explain in theory and in criminal policy why there are different ways of treating the same kind of offence, it is different from protecting

all requirements of law profit. It is especially difficult to explain why there are different systems for penalties and criminal liability for a legal entity.

20) Therefore, this legislation governs all terrorism deeds, including "internal" terrorism deeds and those "international" ones which aim at other countries and regions. In doing so, the existence of different provisions can be avoided, it is also beneficial to the consistency and compatibility of the provisions, thus facilitating the interpretation and application of the law.

21) This legislation expands the area of application of Macao criminal law, it clearly stipulates that MSAR has the obligation to protect China and her citizens from harms inflicted by terrorist attacks: the terrorist crime is committed against the interest of China, while the defendant is found physically present in the MSAR [Article 3, paragraph 2, Item (a)].

22) To protect the internal benefit of Macao by indicting and penalizing terrorist attacks on institutions and citizens of the MSAR, to observe the principle of internal benefit of our country, the absolute trans-regional jurisdiction standards as provided in the « Criminal Code» should be maintained (Article 3, Paragraph 1).

23) To deal with terrorist crimes against foreign institutions or international organizations, corresponding or limited trans-regional jurisdiction standards are formulated: apart from what has been provided in « Criminal Code» Article 5, Paragraph 1, Item C, sub-item (1), (2), (3) about the essential elements and that the defendant should be Macao resident, Macao law can also apply to the situation whereby the defendant is found in the MSAR, but cannot be extradited to another region or country [Article 3, Paragraph 2, Item (b)].

24) As regards typical crime structure and arrangement relating to terrorism and terrorist organization, the logical and general requirements under the model adopted by « Criminal Code» should be followed. That model satisfies the requirements under international instruments, and is clear cut and fulfills the stringent legal technical requirements.

25) As regards the provisions for crimes relating to “terrorism”, the model under « Criminal Code» has been maintained, especially cases under terrorism have been determined to be “inclinable crimes” (the reason is “the case for committing the crime and causing special danger to law profit arises from the special intention of the defendant”), but there is a need for adjustment when take into consideration the modes of crime commitments nowadays.

26) When showing the tools or fundamentals based on which crimes are committed, it is the intention to include cases which have not yet been considered as crimes under criminal law, for example “research or develop biological weapons or chemical weapons” [Article 4, Paragraph 1, Item(e)], sabotage “information” communication safety [Article 4, Paragraph 1, Item (b)] and crimes involving the use of “biological or chemical “weapons [Article 4, Paragraph 1, Item (f)]. Moreover, it also concerns the elimination of difficulties relating to the interpretation and synchronization of criminal provisions, therefore it pays special attention to the issue of overlapping, especially the overlapping of terrorism crime and “sabotage” crime as defined in Article 299 of the « Criminal Code» (it is confined to situation when there is “intention to sabotage, change or overthrow the established political, economical or social systems of the MSAR”).

27) In addition, the legislation has added an item which reinforces the provisions for the protection of law profit in respect of public tranquility, it requires an overall appraisal if the crime case has severely damaged the law profit [Article 4, Paragraph 1 (the last part)].

28) In response to international recommendation, the legislation independently regulates crime relating to “financing terrorism” (Article 7), and convicts “preparatory deeds” for terrorism crimes (Article 6, Paragraph 3). It is envisaged that judicial deliberation, when interpreting the provisions for convicting preparatory deeds, will apply it in situations where there is good reason to “double insure” the related provisions to protect law profit.

29) Finally, to comply with the recommendation for the punitory model under international instrument, the legislation reiterates the system applicable to situations which warrant reduction or exemption of penalty, and maintains the emphasis on "repentant".

30) The provisions for additional penalty in Article 9 of the legislation is based on the special danger to the community caused by terrorism. For additional penalty, the legislation adopted the standards of « Criminal Code» , it provides that additional penalty only applies when the judge has considered the extent of the guilt committed by the defendant, although the penalty is also meant for preventive purpose.

31) Similar to the judicial systems of countries who adopt the continental law, it is appropriate to adopt "mandatory injunction" mechanism in "moratorium on legal proceedings" as provided in Article 263, Paragraph 2 of « Criminal Proceedings Code» of Macao, so as to facilitate the judge to impose the most appropriate and preventive restriction orders or regulations.

32) Article 8 of the legislation imposes penalty on "provocation of terrorism" deeds, but it must be emphasized that such deeds must not be confused with special crimes connected with "abetting".

33) The criminal liability of a legal entity as suggested by this legislation (Article 10), is similar to that proposed in the « Prevention and Repression of Money Laundering» legislation.

34) Economic globalization has given rise to enhanced technology and communication devices, coupled with weaknesses in the financial system, terrorists can make full use of these to obtain fiscal resources.

35) As such, there is a need to establish a surveillance mechanism to investigate and block financial aids to terrorists activities, included in this mechanism are people and entities whose business operations can easily be used as channels for financing

terrorist activities, people and entities who are equipped with the knowledge and technical know-how to identity and supervise such activities should also be included.

36) Thus, such a preventive system is also suitable for prevention and repression of money laundering as well.

37) It is hoped that through the establishment of a preventive system, we can achieve, as suggested by international organizations, the purpose of dealing collectively with money laundering and financing terrorism.

38) Finally, this legislation abolishes the provisions in the « Criminal Code» in respect of crimes relating to terrorism, and amends the applicable provisions in the context of criminal law.

39) In addition, there is an amendment to the « Criminal Proceedings Code» to enable special provisions in the code relating to terrorism and violence to apply to the crimes as defined in this legislation.