



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/NET/011

Agenda: 7

Enforcement of Foreign Bribery Among APEC Economies and International Cooperation

Purpose: Information
Submitted by: United States



**1st APEC Network of Anti-Corruption
Authorities and Law Enforcement Agencies
Meeting
Beijing, China
15 August 2014**



**Enforcement of Foreign Bribery among APEC
Economies and International Cooperation**

Disclaimer

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Foreign Corrupt Practices
Act Unit
Criminal Division, Fraud
Section
U.S. Department of Justice

The comments below are my own and in no way bind the U.S. Department of Justice.

The U. S. Foreign Corrupt Practices Act (FCPA)

Antibribery provisions:

- Prohibit payment, offer of payment, or authorization of payment of bribes, directly or indirectly, to foreign officials, foreign parties, foreign party officials, and foreign candidates for public office

Accounting provisions:

- Books and Records: make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
- Internal Controls: devise and maintain a system of internal accounting controls

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Jurisdiction for FCPA Bribery Cases

Any company incorporated or headquartered in the United States

Any person who is a U.S. citizen or resident

Any company that is an "issuer" on a U.S. stock market, which includes certain foreign companies with American Depository Receipts

Any person or company who acts in furtherance of the violation while in the United States

Anyone who aids and abets or conspires with any of the above

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Successful FCPA Prosecutions Continue

- 55 corporate criminal settlements
- More than \$3 billion USD in penalties and forfeiture.
- 47 convictions of individuals (in FCPA or related charges), including high level executives like CEOs and CFOs
 - Including 40 guilty pleas
 - Including 7 trial convictions

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Recent Examples of Cases Involving APEC Economies

Ralph Lauren Corporation (April 22, 2013)

- \$882,000 criminal penalty
- Included bribes in Argentina

Diebold, Inc. (October 22, 2013)

- \$25,200,000 criminal penalty
- Included bribes in China and Indonesia

Marubeni Corporation (March 19, 2014)

- \$88,000,000 fine
- Included bribes in Indonesia

HP Mexico and HP Russia (April 9, 2014)

- \$58,800,000 fine plus \$2,527,750 forfeiture
- Included bribes in Mexico

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Requests for Mutual Legal Assistance

In the last year and a half, the FCPA unit has made more than 58 requests for mutual legal assistance, including to:

Belgium	Guernsey	Liechtenstein	South Africa
Brazil	Guinea	Luxembourg	Spain
BVI	Hong Kong	Macao	Sweden
China	India	Mexico	Switzerland
Colombia	Indonesia	Netherlands	Tunisia
Curacao	Ireland	Norway	United Kingdom
Cyprus	Israel	Panama	Uruguay
Denmark	Japan	Philippines	
France	Jordan	Russia	
Germany	Latvia	Sierra Leone	

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Current Issues in Mutual Legal Assistance

Data Privacy and State Secret Laws

Often comes up in the context of internal investigations

Companies want to cooperate

Scope of laws is sometimes unclear

Figuring out ways to allow companies to cooperate is mutually beneficial

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Current Issues in Mutual Legal Assistance

Need for Relationship Building

Cooperation is often more difficult
than it might first seem

Open dialog with a trusted partner
is key

Road blocks can be overcome if
both partners are motivated

ACT-NET can be one step forward

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Current Issues in Mutual Legal Assistance

More Parallel Prosecutions

*moving passed
simple mutual legal
assistance*

Too often, MLA requests are
simply processed by a central
authority that is overworked and
under resourced

By their very nature, international
bribery cases involve facts that
should be actively investigated by
more than one jurisdiction

International requests for
evidence in international bribery
cases should initiate a parallel
prosecution

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Examples of Excellent Cooperation in Parallel Investigations

Case	United States	Foreign Economy
Haiti Teleco	Prosecution of two executives, three middle men, and three government officials. Restitution order for Haiti	Haiti- Expelled two former Haitian officials to stand trial in the United States. Provided significant MLA to the U.S.
Pacific Consolidated Industries	Prosecution of two executives. Provided significant MLA to the U.K.	U.K.- Prosecuted the government official. Provided significant MLA the U.S.
CFE	Prosecution of three executives and two middle men (some acquitted) Seizure of brokerage account Provided significant MLA to Mexico	Mexico- Prosecution of the government official. Seizure (pursuant to U.S. MLA request) of a yacht purchased with bribe money Provided significant MLA to the U.S.

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Examples of Issues in MLA Overcome by Parallel Prosecutions

- What allows evidence to be admitted into court in various jurisdictions is often difficult to understand but very important
- Example, U.S. authentication certificate originally transmitted post Haitian earthquake using iPhone picture because of strong interpersonal relationship made clear the importance of receiving the document for an upcoming trial

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Examples of Issues in MLA Overcome by Parallel Prosecutions

- Understanding what will become known to the defendant (or the public) at what times is key for good cooperation
- Example, prosecutors might agree to not share particularly sensitive information (like the name of a cooperator) because if that information was shared it would have to be disclosed.
- Open communication is important so there are no misunderstanding and expectations are managed.

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Questions?

www.justice.gov/criminal/fraud/fcpa

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**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/NET/012

Agenda: 7

Indonesia Experience: International Cooperation in Foreign Bribery Case

Purpose: Information
Submitted by: Indonesia



**1st APEC Network of Anti-Corruption
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KPK
Komisi Pemberantasan Korupsi

**IT'S GREAT
TO BE
HONEST**

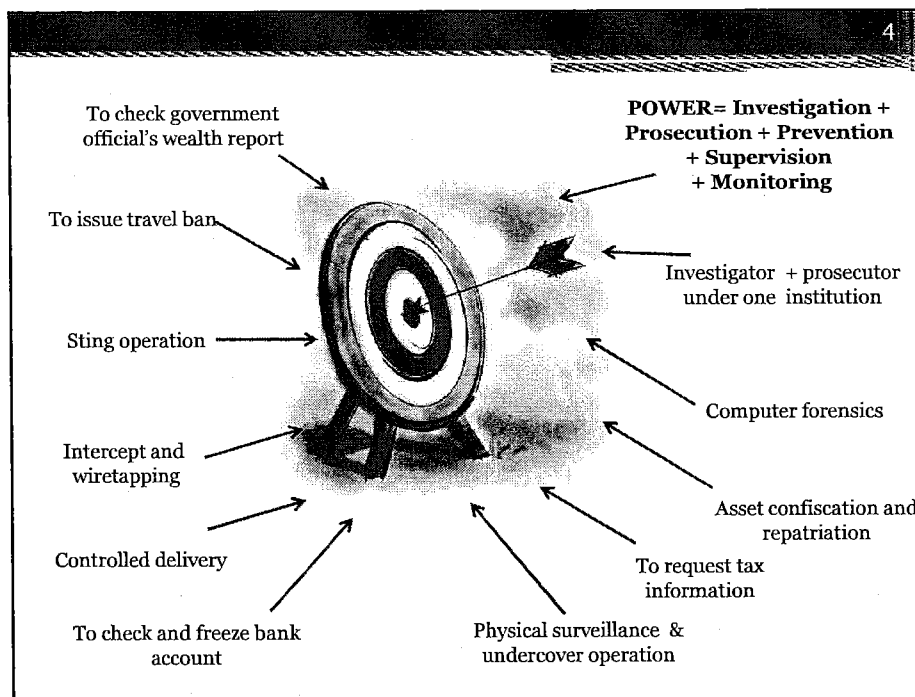
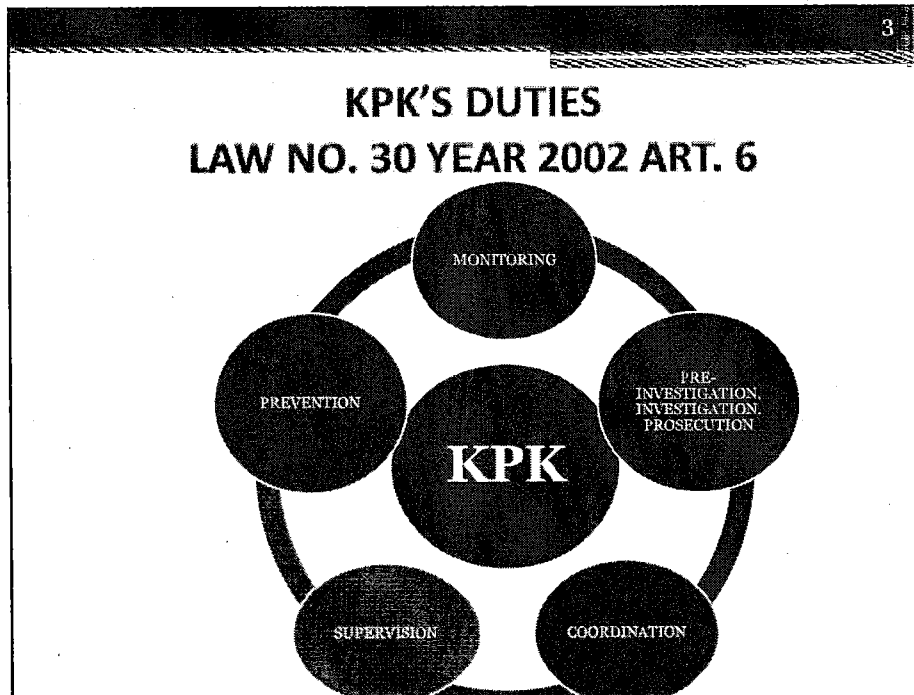
**INDONESIA EXPERIENCE:
INTERNATIONAL COOPERATION IN FOREIGN
BRIBERY CASE**

Presented by:
Corruption Eradication Commission (KPK)

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LEGISLATION

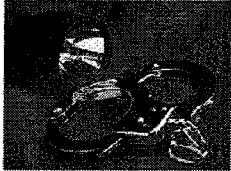
- Law No.31/1999 and Law No. 20/2001 on Corruption Eradication Commission (KPK)
- Conduct pre-investigation, investigation, and prosecution of corrupt practices
- In 2010, KPK can conduct investigation on money laundering case



Corruption Cases

Data for Jan-June 2014:

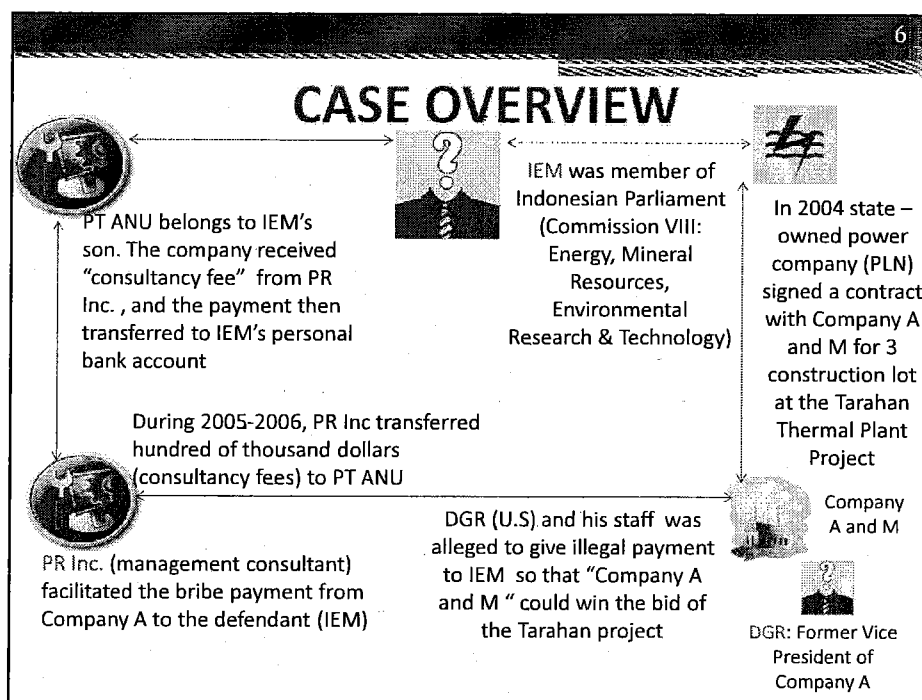
- 7 high level gov't officials (including minister and head of agency)
- 6 suspects from private companies
- 5 governor/mayor/regent
- 2 judges
- 1 parliament member



Recap from 2004 to June 2014:

- 74 parliament members
- 10 judges; 2 prosecutor
- 17 ministers/head of Ministerial Level
- 10 governors; 40 mayors and regents
- 7 commissioners of general election, judicial and anti-monopoly commission
- 4 ambassadors (incl. former chief of National Police) and 4 general counsels
- 1 governor of central bank & 4 deputy governors
- 115 high rank government officials (director general, secretary general, deputy and director)
- 100 high rank officials of the state owned companies and private sectors involved in public corruption

419 individuals (2004-June 2014)
100% Conviction Rate



ENFORCEMENT RESULT

Indonesian Corruption Court charged IEM with conspiracy to violate Article 12b or Article 11 Law No. 31 of 1999 juncto Law No. 21 of 2001

- **Article 12b**

Penalty by life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and at least Rp200,000,000 and a maximum of Rp1,000,000,000.00, shall be imposed on:

b. Civil servant or state administrator who accepts a gift despite the knowledge or reasonable suspicion that the gift was given due to the performance or nonperformance of something in his capacity against his obligations;

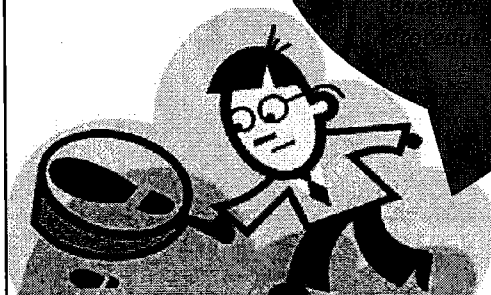
OR

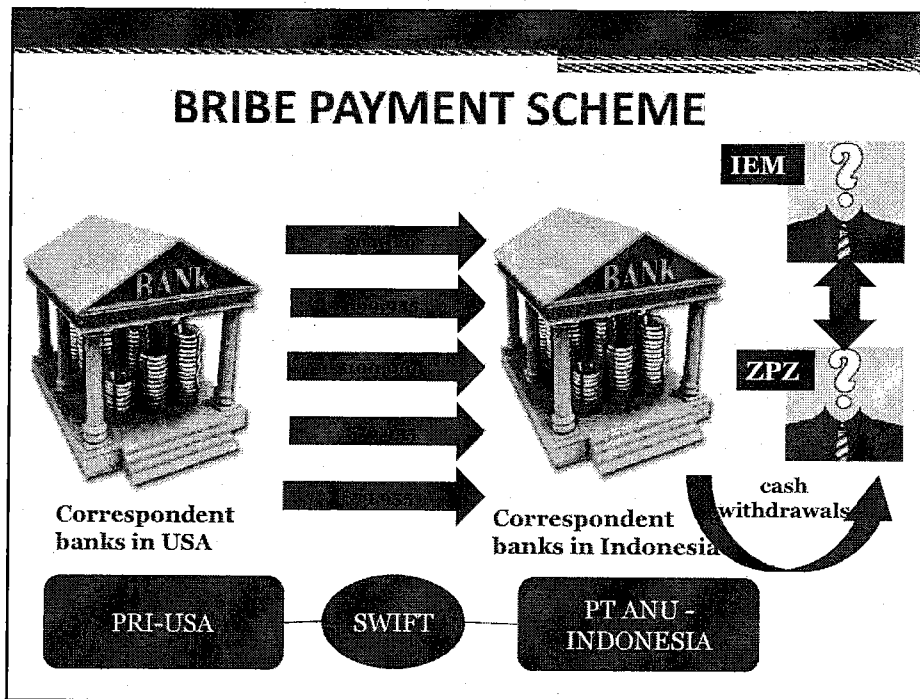
- **Article 11**

Penalty by life or imprisonment for a minimum of 1 year and a maximum of 5 years and at least Rp50,000,000 and a maximum of Rp250,000,000, shall be imposed on any civil servant or state administrator who accepts a gift or a promise despite the knowledge or reasonable suspicion that the gift or promise was given due to the power or authority related to his title, or which the person giving the gift or promise believed to be related to his title.

Types of Evidence:


1. Witness testimony
2. Expert testimony
3. Document
4. Circumstantial evidence (including electronic evidence)
5. Testimony of the accused





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ENFORCEMENT RESULT




- KPK started the investigation in November 2011 after receiving information from FBI in 2010
- FBI gave information about bribe payments from U.S corporate top executives to the Indonesian officials
- IEM was arrested on 11 July 2013
- KPK had been succeeded to prove the defendant (Izedrik Emir Moeis) guilty in violation of Article 11 Law No. 31 of 1999 juncto Law No. 21 of 2001

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VERDICT

the judge has
decided that
Mocis is guilty
of the crime



**3 years imprisonment and criminal fine of IDR
150.000.000**

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COORDINATION BETWEEN KPK -U.S. DOJ-FBI

Investigation

- KPK and FBI conducted joint investigation after FBI provided information of alleged illegal payments made by "A and M" company executives to Indonesian state officials
- FBI provided documents and information related to the case investigation in the United States to KPK

Prosecution

- DOJ and FBI helped Indonesian authorities by giving assistance for the examination of witness in USA
- KPK also received assistance from DOJ to obtain financial transaction documents and e-mail communication between defendants and other individuals involved in the case

COORDINATION BETWEEN KPK-U.S. DOJ-FBI

- KPK prosecutors submitted all data, statement of witness and other evidence to the court on November 2013
- Process of the criminal trial takes 5 (five) months
- The verdict was released on 14 April 2014



Thank you!



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/NET/013

Agenda: 8

A Brief Introduction of China Academy of Discipline Inspection and Supervision

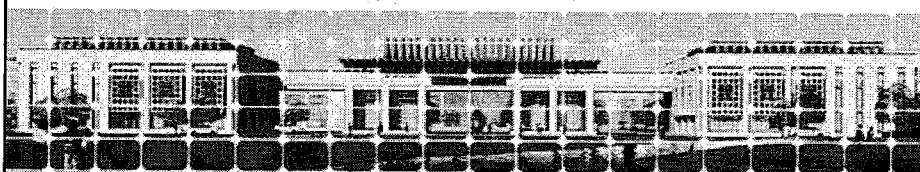
Purpose: Information
Submitted by: China



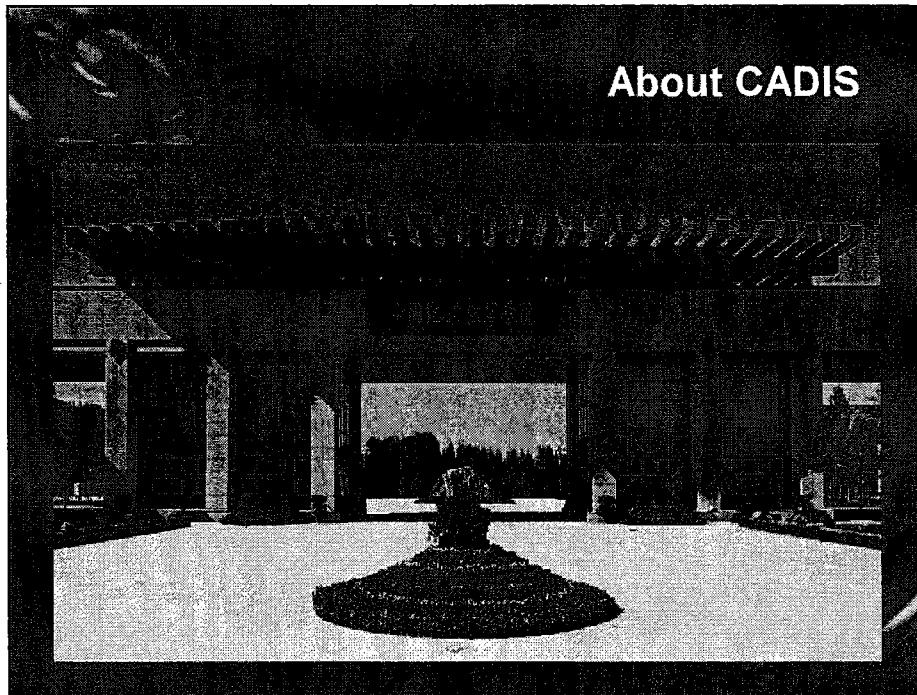
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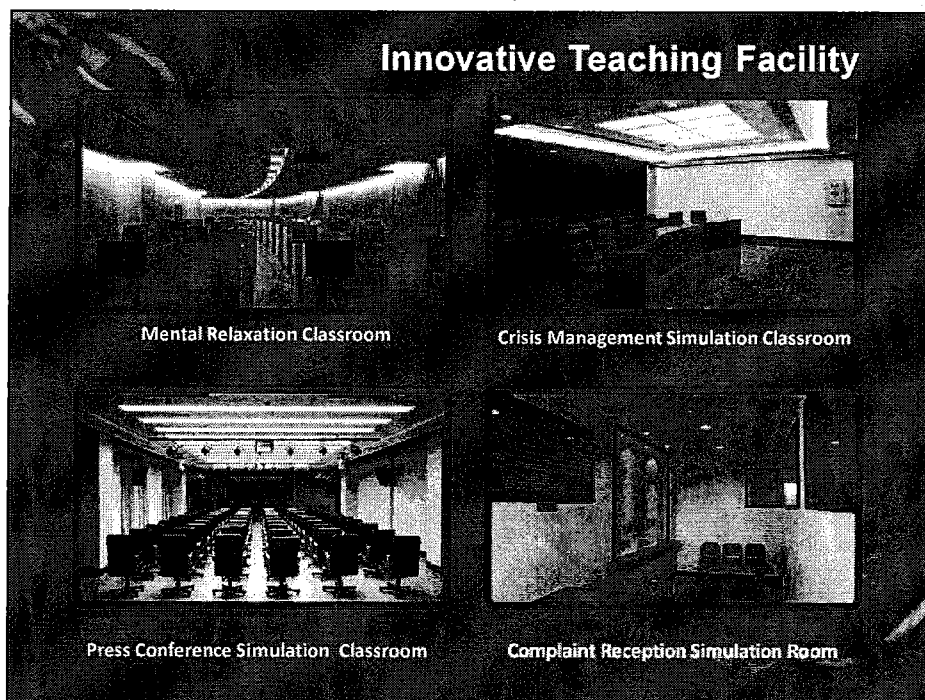


中國紀檢監察學院
CHINA ACADEMY OF DISCIPLINE INSPECTION AND SUPERVISION



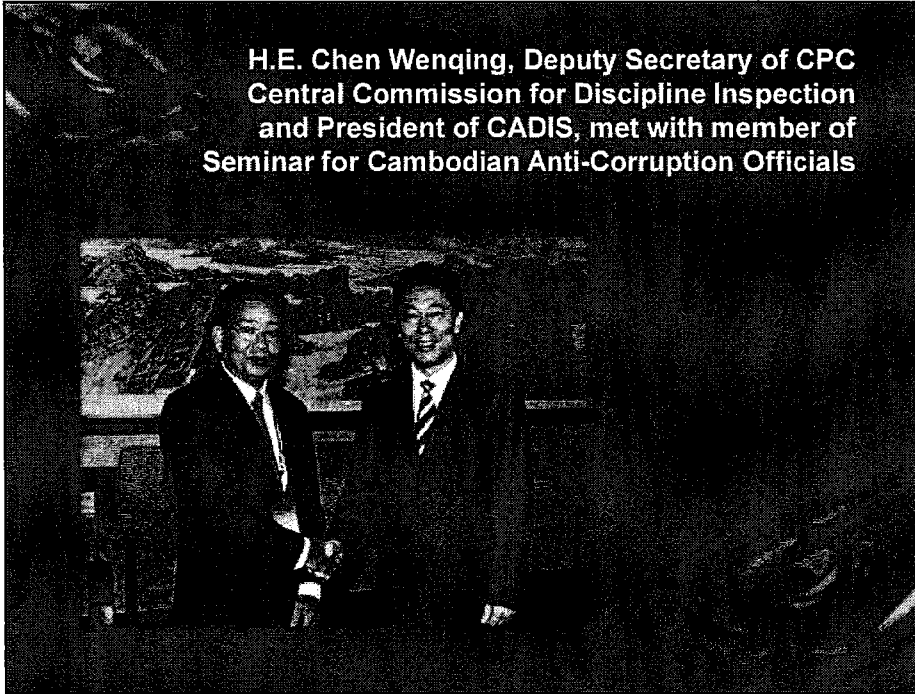
**I. A Brief Introduction of China Academy
of Discipline Inspection and Supervision
(CADIS)**



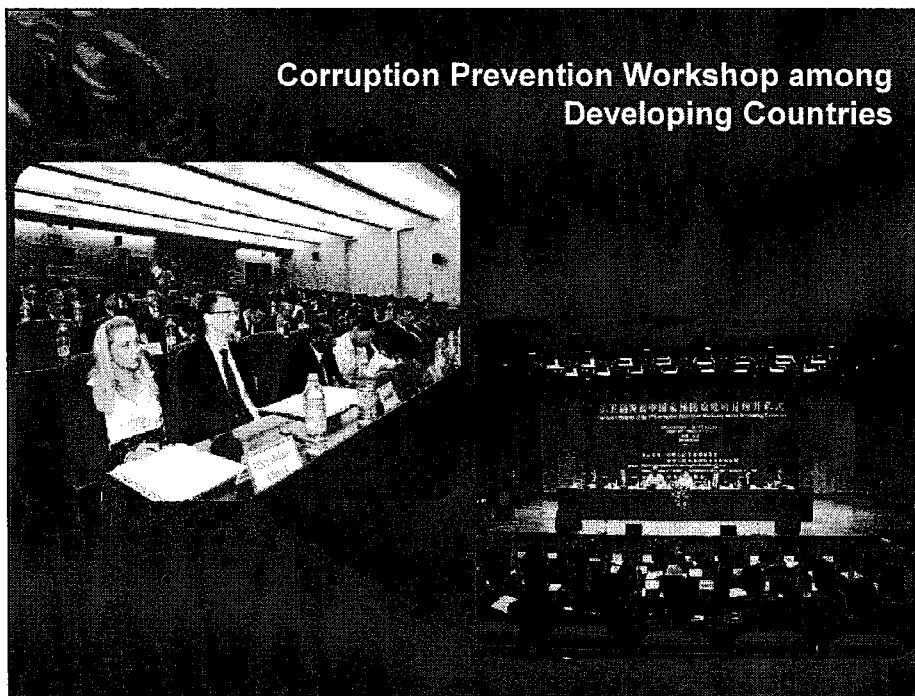


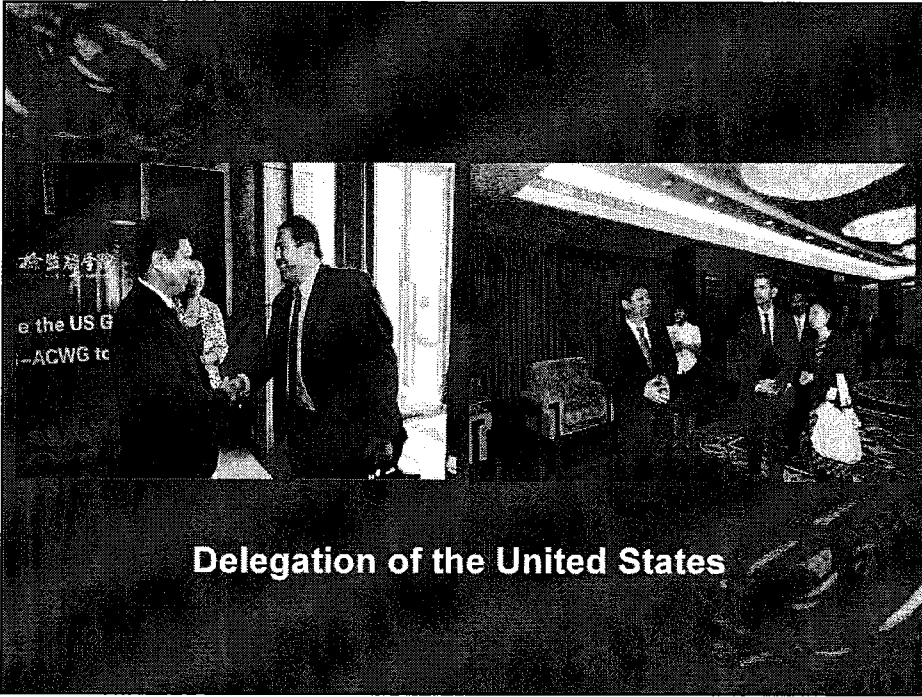
2014/8/18

H.E. Chen Wenqing, Deputy Secretary of CPC Central Commission for Discipline Inspection and President of CADIS, met with member of Seminar for Cambodian Anti-Corruption Officials



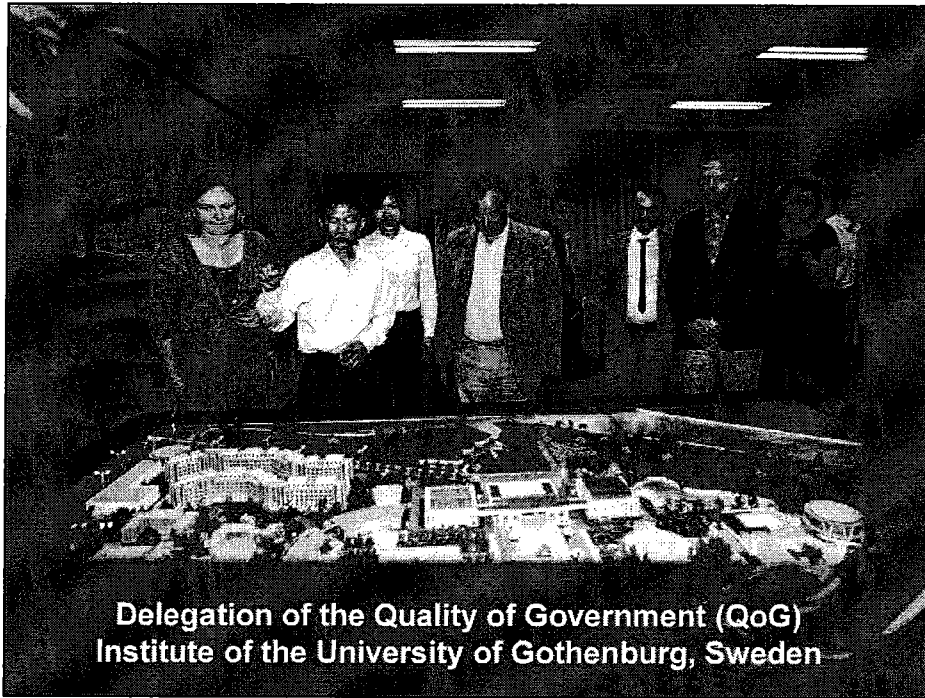
Corruption Prevention Workshop among Developing Countries






Delegation of the United States







**II. WORKSHOP ON ANTI-CORRUPTION
INTERNATIONAL FUGITIVE REPATRIATION
AND ASSET RECOVERY**

- 
- **Sponsor:** Department of International Cooperation, MOS
 - **Organizer:** CADIS
 - **Time:** 3 days in this coming Autumn
 - **Participants:** every member economy is invited to send 2-3 anti-corruption and law enforcement officers to participate

➤ **Form**

- Case study & panel discussion

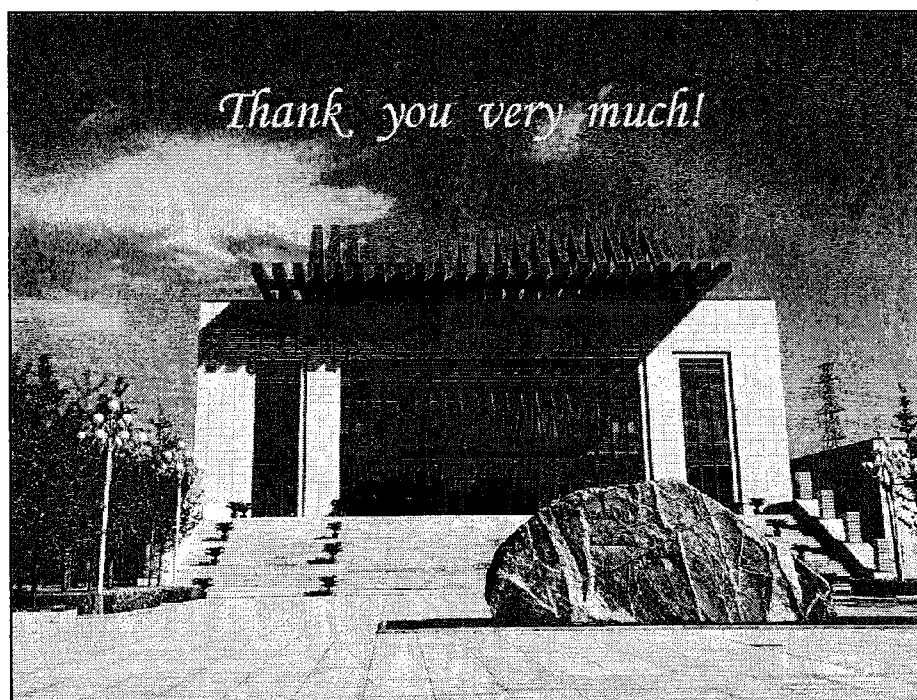
➤ **Lecturer**

- High-level officials
- Veteran investigators and prosecutors
- Renowned anti-corruption experts and scholars

➤ **Focus**

- Feasible approaches
 - Operational procedures
 - Investigative methods & techniques
 - Successful case cooperation examples
- ✓ Participants will also have opportunities to share experiences and best practices in repatriating corrupt fugitives and recovering corruption proceeds

2014/8/18





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/NET/014

Agenda: 5

Asset Recovery and International Anti-Corruption Cooperation

Purpose: Information
Submitted by: United States



**1st APEC Network of Anti-Corruption
Authorities and Law Enforcement Agencies
Meeting
Beijing, China
15 August 2014**

Asset Recovery and International Anti-Corruption Cooperation



OVERVIEW

- **U.S. Kleptocracy Asset Recovery Initiative**
- **Asset Forfeiture and Corruption**
- **International Cooperation: Assistance to/from the United States**

**U.S. DEPARTMENT OF JUSTICE
KLEPTOCRACY
ASSET RECOVERY INITIATIVE**

- **Prosecutor Team Focused on Asset Recovery and Corruption**
 - Asset Recovery Requires Dedicated Resources
- **Attorney General Holder Announcement at African Union Summit Kampala, Uganda 2010**
- **Coordination with U.S. Law Enforcement**
- **Compliments Other U.S. Action to Deny Safe Haven and Support Asset Recovery**

“We must work together to ensure that corrupt officials do not retain the illicit proceeds of their corruption...When kleptocrats loot their nations’ treasuries, steal natural resources, and embezzle development aid, they condemn their nations’ children to starvation and disease. In the face of this manifest injustice, asset recovery is a global imperative.”

**-U.S. Attorney General Eric Holder
Global Forum VI, Doha, Qatar
November 7, 2009**

Overview of Asset Forfeiture in the United States

- Types of forfeiture (admin, civil, criminal)
- Types of forfeitable property
- Money Laundering and Corruption

What Is Asset Forfeiture?



The divestiture,
without compensation,
of property used in a
manner contrary to
the laws of the
sovereign

Why Asset Forfeiture/Recovery?

- Deprive criminals of the profits of their crimes;
- Break up criminal organizations, and prevent the financing of further crimes; and
- Recover stolen assets or provide restitution to victims or the government.

Types of Forfeitable Property

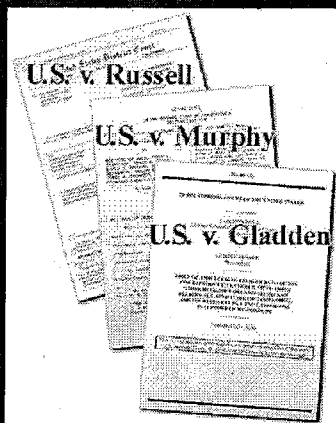


- Real property
- Licenses
- Vehicles
- Bank Accounts
- Cash

Three Types of Forfeiture

- Criminal
- Civil
- Administrative

Criminal Forfeiture



An action that charges a crime against a person and includes the forfeiture of property

(U.S. v. Person)

Administrative Forfeiture

- **Permits a federal law enforcement agency to forfeit property without any judicial involvement if it sends proper notice of the forfeiture action to potential claimants and no one files a claim.**
- **Value cannot exceed \$500,000, and other limitations**

Civil Forfeiture

An *in rem* proceeding brought against the property rather than against the wrongdoer

Civil forfeiture proceedings are based on the legal fiction that the property itself is "guilty"

(U.S. v. Property)

Civil Forfeiture

- **Requires a preponderance of the evidence**
- **Does not depend on conviction**
 - Important for corruption cases in which a criminal prosecution is not feasible
- **Does not depend on ownership**

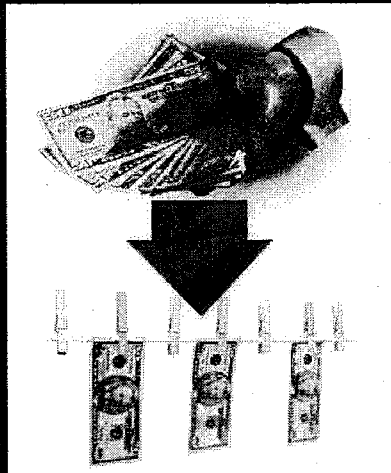
Civil Forfeiture

- | | |
|---|---|
| <ul style="list-style-type: none">▪ There is no need for a criminal conviction.▪ The forfeiture is not limited to property related to a particular transaction.▪ Property of third parties can be forfeited. | <ul style="list-style-type: none">▪ There are statutory time limits.▪ A parallel civil forfeiture case can interfere with a criminal investigation or trial.▪ Third parties are entitled to a jury trial.▪ The forfeiture is limited to property traceable to the offense.▪ A successful claimant is entitled to attorney's fees |
|---|---|

What Can We Forfeit?

- Proceeds of Crime
- Property
- Other Theories
 - Terrorism, etc.

What is Money Laundering?



Money Laundering is collecting in any jurisdiction that seeks to conceal or disguise proceeds from illegal activities (called specified unlawful activities)

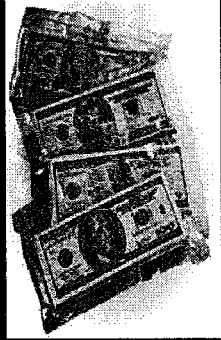
CORRUPTION AND MONEY LAUNDERING

- **CORRUPTION AGAINST A FOREIGN NATION IS A MONEY LAUNDERING SPECIFIED UNLAWFUL ACTIVITY**
- **The bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official → *in violation of foreign law.* 18 U.S.C. 1956(c)(7)(iv)**

OTHER CORRUPTION RELATED OFFENSES

- **International/Interstate Transportation of Stolen Property**
- **Bank Fraud, including Foreign Bank Fraud**
- **Transnational Crimes**
 - **Terrorism**
 - **Wire Fraud, Transport of Stolen Vehicles, Alien Smuggling, etc.**

“Involved in” Money Laundering – 18 U.S.C. § 981(a)(1)(A) –



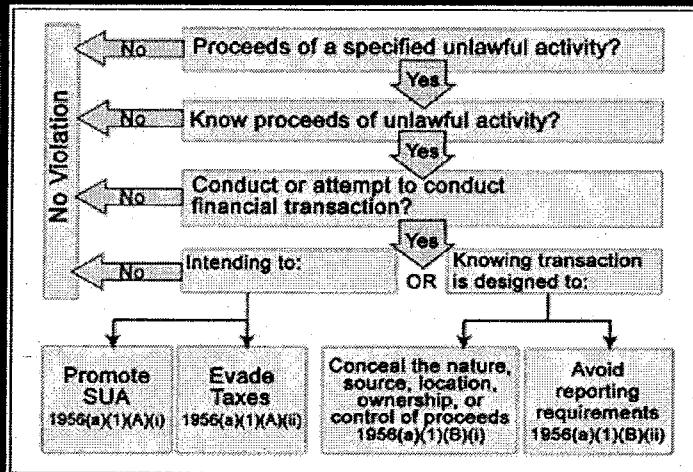
-
-
- **The subject matter of the transaction**
- **Any property used to facilitate the money laundering offense**
-

Money Laundering Statutes

- **Money laundering**
(18 U.S.C. § 1956)
- **Spending**
(18 U.S.C. § 1957)
- **Structuring**
(31 U.S.C. § 5324)
- **Bulk cash smuggling**
(31 U.S.C. § 5332)
- **Unlicensed money transmitting business**
(18 U.S.C. § 1960)

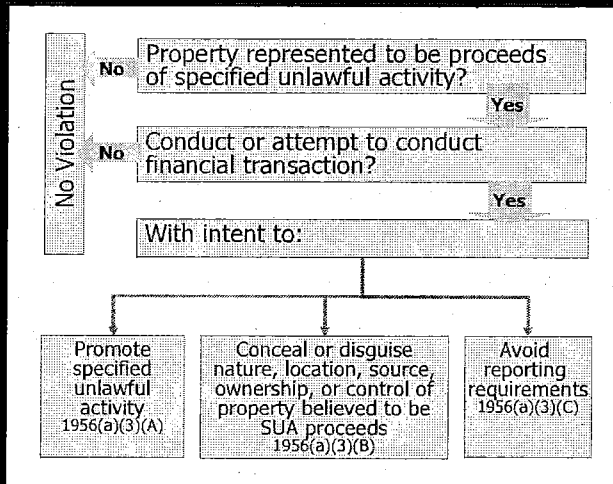
Basic Money Laundering

18 U.S.C. § 1956(a)(1)



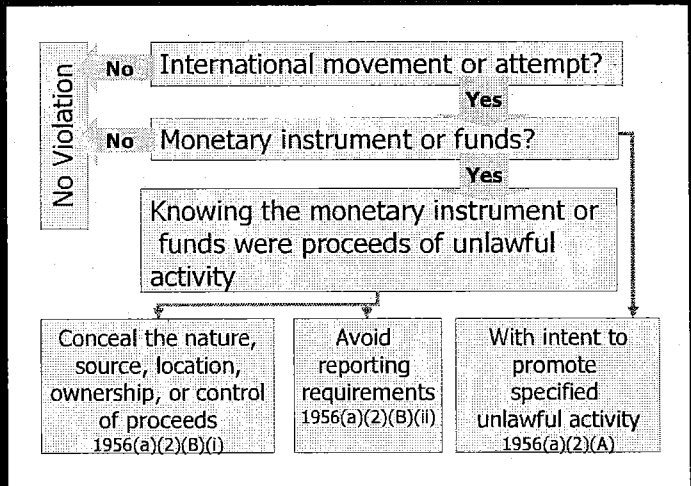
Sting Provision

18 U.S.C. § 1956(a)(2)



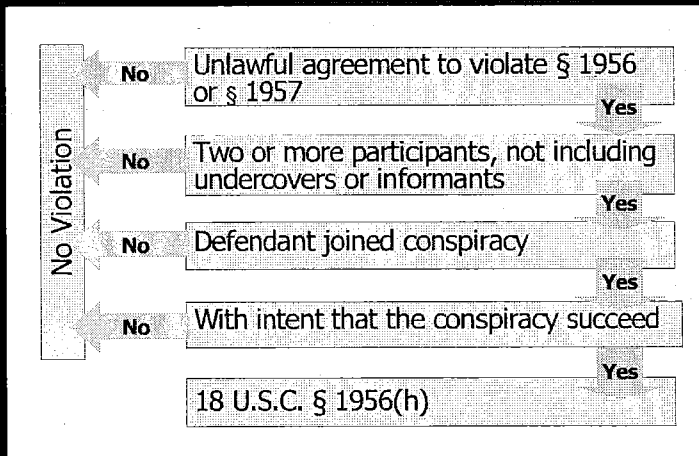
International Money Laundering

18 U.S.C. § 1956(a)(2)



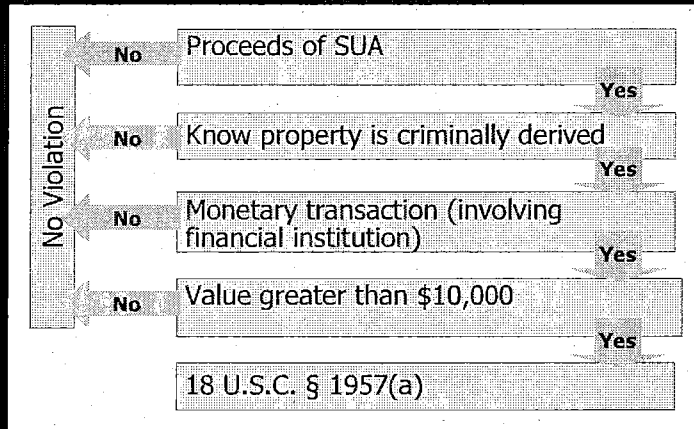
Money Laundering Conspiracy

18 U.S.C. § 1956(h)



Spending Statute

18 U.S.C. § 1957(a)



**International Cooperation
and Assistance from the
United States of America**

ASSISTANCE FROM THE U.S.

- **U.S. Can Initiate Its Own Forfeiture Action**
 - Criminal Forfeiture or Civil
- **U.S. Can Enforce Foreign Forfeiture Judgments**
- **Provisional Restraint Mechanisms**

ENFORCEMENT OF JUDGMENTS

- **Foreign Offense that would be Forfeitable Federal Violation if Committed in the U.S.**
- **Treaty or Agreement**
- **Attorney General Certification**
- **Criminal and Civil Judgments**

ENFORCEMENT OF JUDGMENTS

- **Enforce Judgment Unless**
 - System Incompatible with Due Process
 - No personal jurisdiction
 - No subject matter jurisdiction
 - Insufficient notice to Defendant
 - Judgment obtained by fraud
- **Court Bound by Factual Findings in Foreign Judgment**

PROVISIONAL MEASURES

- **Pre-Trial Restraining Order**
18 U.S.C. § 981(b)(4)
 - Arrested/Charged Abroad
 - Ex-Parte 30-Day Freeze to await evidence
- **Arrest/Seize/Restrict on Probable Cause**
 - Seizure Warrant
 - Arrest Warrant *in rem*

PROVISIONAL MEASURES &

US Request Pending Foreign Proceedings

- **Register, Enforce Foreign Restraining Order**
 - Attorney General Must Certify
 - Treaty or Agreement Required
- **Foreign Request**
 - Affidavit Describing Foreign Action *and* Reasonable Basis to Believe will be Forfeited
 - Hearing Upon Notice (restraint needed, basis)
 - Treaty or Forfeiture Agreement Required

REQUESTS TO U.S. TO OPEN U.S. FORFEITURE CASE

- **Complete Description of the Asset**
 - Include location and approximate value
- **Fact Affidavit to Establish Probable Cause**
 - MUST describe the illegal activity
 - MUST describe connection to asset & target
- **Full Description of Foreign Law**
 - Explain violation and penalty
- **Evidence/More Information**
 - Conviction orders, witness testimony, etc.

REQUESTS TO THE U.S. TO ENFORCE JUDGMENT

- **Complete Description of the Asset**
 - Include location and approximate value
- **Summary of case facts and description of forfeiture proceedings**
- **Certified copy of judgment**
- **Affidavit or sworn declaration stating**
 - Defendant received notice in time to defend
 - Judgment in force and not subject to appeal
- **Additional information as required**

REQUESTS TO U.S. FOR PROVISIONAL RESTRAINT

- **If opening US forfeiture case:**
 - Required info for opening U.S. case
 - Copy of arrest documentation or indictment (BUT need probable cause evidence within 30 days),
- **If in anticipation of enforcement of foreign order:**
 - Required information for enforcement of a Judgment
 - Affidavit or Certified copy of restraining order (BUT need evidence for hearing within 10 days)
- **Additional information as required**

REQUESTS TO THE U.S. FOR EVIDENCE

- **Purpose for which evidence sought**
- **Summary of Facts**
 - Include connection btw target and evidence
- **Description of Offenses Charged or Investigated**
- **Detailed Description of Evidence Sought**
 - Names, addresses, time period, account info...
 - Describe connection to investig/prosecution

REQUESTS TO THE U.S. FOR EVIDENCE

- **Identifying Information on Individuals**
- **Date by which evidence needed**
- **Contact information for persons wishing to be present**
- **Precise Instructions/Forms for authentication**
- *Confidentiality requirements*

REQUESTS TO THE U.S. FOR EVIDENCE

- **Search/Seizure**

- Affidavit establishing Probable Cause
that Evidence

- Relevant to investigation, *in part*

- Can be found at that location

- Full Description of Property to Seize

Elizabeth Aloi
Asset Forfeiture and Money Laundering Section
U.S. Department of Justice
Tel. (202) 514-1263





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/NET/015

Agenda: 8

**Case Study: Indonesia and the United States in the
Tarahan Project Investigation - An Example of
Successful International Cooperation**

Purpose: Information
Submitted by: United States



**1st APEC Network of Anti-Corruption
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Case Study: Indonesia and the United States in the Tarahan Project Investigation

AN EXAMPLE OF SUCCESSFUL INTERNATIONAL COOPERATION

Disclaimer

Nicola J. Mrazek
Senior Litigation Counsel
Foreign Corrupt Practices Act Unit
Criminal Division, Fraud Section
U.S. Department of Justice

These remarks are my own and do not bind the United States Department of Justice.

The prosecutor handling this case for the United States is Assistant Chief Dan Kahn. He is the expert in this matter and should receive all credit for the United States' prosecution.

I take responsibility for any errors.

The U.S. investigation is on-going. Therefore, there are some subjects that I will be unable to discuss.

The Players

The Indonesian Komisi Pemberantasan Korupsi (KPK)

The United States Department of Justice, Criminal Division,
Fraud Section, Foreign Corrupt Practices Act Unit

The Tarahan Project

- Project to provide power-related services to the citizens of Indonesia
- Contracting was performed through Indonesia's Perusahaan Listrik Negara ("PLN")
- The project was valued at roughly \$118 million dollars

The Companies

- French Power Company, identified in the press as Alstom S.A. and its subsidiaries
- Marubeni Corporation and its subsidiaries
- Joined together in the bidding and carrying out of the Tarahan project

The Scheme

- Bribes paid by the companies through two “consultants” to in fact pay bribes to Indonesian officials who had the ability to influence the award of the Tarahan Project contract



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Izedrik Emir Moeis

- Former member of Parliament
- Accepted approximately \$420,000 USD in bribes
- Prosecuted by KPK



PLN Officials

Other Indonesian officials are under investigation for accepting bribes.

For example, an email between employees of the French Power Company on September 18, 2003 discussed concerns of the PLN officials about receiving money from Marubeni and the French Power Company:

- "PLN has expressed their concerns over our 'agent'. They did not like the approach made by the agent. More importantly they concern [sic] whether they can count on the agent or not in regards to 'rewards' issue. They concern [sic] that if we have won the job, whether their rewards will still be satisfactory or this agent only give them pocket money and disappear."

Informal Cooperation

- KPK provided DOJ with informal copies of bank records in October 2011 and May 2012
- Indonesian cooperation significantly furthered U.S. investigation, including the ability to convince defendants to plead guilty and cooperate

Indonesian MLA Request to the U. S.

- U.S. granted access to U.S. cooperators for witness statements and documents
- Indonesia and the U.S. were able to overcome obstacles to proceed in an acceptable in both legal systems
- Indonesia obtained very valuable evidence for prosecution of a high level official

U. S. MLA Request to Indonesia

- Bank records in an admissible format for trial that were crucial to U.S. prosecution
- Proof that PLN is an “instrumentality” of Indonesia
- Proof that officials worked for PLN
- Proof that Moeis worked for Indonesian parliament

Successes to Date

Name	Role	Disposition
Izedrik Emir Moeis	Member of Parliament	Convicted in Indonesia, sentenced to three years
Lawrence Hoskins	Senior Vice President for the Asia Region of French Power Company	Pleaded Guilty in the U.S.
Frederic Pierucci	Vice President of Boiler Global Sales for French Power Company Subsidiary	Pleaded Guilty in the U.S.
William Pomponi	Vice President of Regional Sales for French Power Company Subsidiary	Pleaded Guilty in the U.S.
David Rothschild	Vice President of Regional Sales for French Power Company Subsidiary	Pleaded Guilty in the U.S.
Marubeni Corporation	Partner Company in the Tarahan Project	Pleaded Guilty in the U.S. \$88 million dollar fine

Ladder of Progress Due to Cooperation

