Burma’s Toothless Money Laundering Law

Burma’s ruling junta has enacted a new “Control Money Laundering Law” (Law No 6/2002). The law’s objective, listed in chapter II, is to prevent individuals from controlling assets purchased with money from illegal exchanges. Importantly, it also maps out co-operation with international and regional organizations and neighboring countries for controlling money and property obtained by illegal means.

The law has eleven chapters, vague and speculative. All that it does is to form a Central Control Board. The board’s composition betrays its purpose. Its chairman is the Minister of Home Affairs while the Minister of Finance and Revenue act as Deputy Chairmen. Within the nine-member committee, the Deputy Chief Justice and the Attorney General are ranked as the fourth and the fifth member respectively, in addition to the Police Director General Secretary of the Myanmar Police Force. The Control Board, in short, functions as the prosecuting body. S. 4 (b) of the Law states their role of, “supervision and directing in taking action”, and S (c) states that they serve in “directing the investigation.” How the Deputy Chief Justice can be a member of the Control Board, and one subordinate in rank to the Home Minister, is unclear.

The law’s fatal flaw is its failure to prescribe a definite monetary and property value, which would render persons liable to prosecution. Under a law of this kind, such a specification is the core ingredient. This cannot be left to the rule-making process, to take effect later, as has been done in section 8 b (a). The law does not prescribe the formation of the operative part of the investigation body; it merely gives the power to the Central Control Board to form such a body. This delegation of power in S 9(a) of the Law is excessive and involves the delegation of an essential legislative
function, being ultra-vires of the parent statute. The tenure of the body is extended on a case-by-case, ad-hoc basis, against the norms of Rule law, and the body is bound to fall victim to corruption. Power of arrest or detention is not provided. The stipulation of a right to seizure and search without stating the procedural law is bound to lead to arbitrariness, torture, and illegalities. The law thus constitutes an attempt to create an extra-legal prosecution body.

The law is silent as to the jurisdiction of relevant courts and the application of criminal law and criminal procedure codes. There is no judicial review. Chapter II, Sec 16 says, “The Government may pass order for confirmation.” Section 17 states that, “The decision shall be final and conclusive”. Section 22 states, “imprisonment may extend to a maximum of an unlimited period” while Section 33 puts the burden of proof on the offender. Section 40 calls for “prior sanction of the Ministry of Home Affairs”.

In short, the Money Laundering Law is a law above the law, a law unto itself, a whitewash that does not meet international standards on its own admission. It is a control rather than a prohibition, a well-crafted word for the offenders to understand. Previously, three laws covered most of the concerns now covered by the Control of Money Laundering Law. One is the Central Bank of Myanmar Law of 1990 (SLORC Law No. 16/90, finally amended as Law 7/94). Burma has signed the 1998 United Nations Convention, Illicit Traffic in Narcotic Drugs and Psychotropic Substances, at the Vienna Convention (with some reservations). The Narcotic Drugs and Psychotropic Substances Law contained all but a few new provisions, which have been introduced in the Money Laundering Law. The US Drugs Enforcement Administration (DEA) stated that the Central Committee for Drug Abuse Control CCDAC “continues to suffer from a lack of adequate resources to support its law enforcement mission.” This Law will meet a similar fate. The Money Laundering Law includes other offences related to smuggling and trafficking, as well as offences related to the smuggling of women and children and cyber crimes. There also exists a Financial Action Task Force (FAT), designated in the money laundering legislation of Resolution No AGN/66/ RES/15 Article 28 ICPO- Interpol General Assembly, 66th session, New Delhi- October 1997.

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The Money Laundering Law does not address the smuggling of bulk cash into or out of Burma. “Suspicious transactions,” however, should be broadly defined. Information exchange regarding cross-border financing should have been given an important place in the law. However, information sharing mechanisms and extradition procedures have not been provided for.
The SPDC held a press conference on July 18 in promulgation of this law, promising that there will not be any nationalization. Furthermore, the junta made the assurance that, “according to section 5(a) of the law, ten offences have been included,” and that Burma has complied with the UN Convention and its protocols. The press conference is evidence for the motives behind enacting the law. Assurance has once again been given to foreign investors.

Money laundering has criminalized Burma and its economy. It is now beyond the junta’s control, a situation to which the junta reacts by creating said legislation. The junta has apparently realized that money laundering is bad for business, investment, development, and the rule of law. The law should be seen with guarded optimism in light of the junta’s contempt for matters of the law. The law states as one of its objectives, “to co-operate in the neighboring countries regarding the law.” A Xinhua news agency report stated that the law was meant, “to strengthen cooperation with international and regional organisations and neighboring countries in its fight against crime.” Thailand is Burma’s main neighbor of concern. A currently sour relationship with Thailand means that the problem of money laundering is bound to intensify. The political situation in Burma is characterized by a lack of rule of law and ineffective law enforcement. The new money laundering law promises nothing and is likely to be seen as a hoax. Realizing this situation, the SPDC held a press conference to clarify this issue. It promised that there would not be any nationalization. Furthermore, it said that according to S 5(a) of the Law, ten offences have been included and that Burma has complied with the UN Convention and the three protocols. However, It will neither woo foreign investors nor edge on the dialogue process. The introduction of viable laws and their enforcement are no doubt necessary. More important still is the restoration of a regime based on the rule of law.