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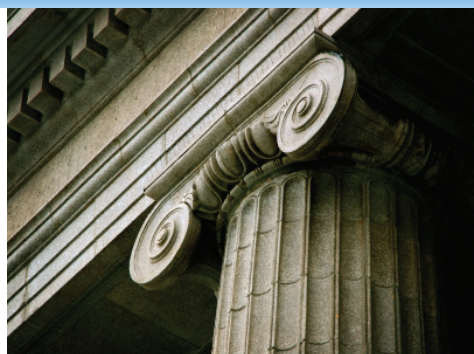
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## Project Against Corruption in Albania (PACA)

# Training Manual

## for Law Enforcement Agencies, Prosecutors and Judges



Instructor's Manual

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## **Project Against Corruption in Albania (PACA)**

# **Training Manual for Law Enforcement Agencies, Prosecutors and Judges**

## **Instructor's Manual**

This publication has been prepared within the framework of the Project against Corruption in Albania (PACA) and with the funding provided by the European Union. The views expressed in this publication can in no way be taken to reflect the official opinion of the European Union and/or the Council of Europe.

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## Foreword

The Investigation of Corruption and Money Laundering and the Search and Seizure of Crime Proceeds - including across borders - call for the use of modern and effective methods by national law enforcement authorities. In the last two decades the Council of Europe has intensified its work in developing and monitoring the implementation of its legal instruments in these fields. The Group of States against Corruption (GRECO) monitors compliance with the Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure, while the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) assess compliance with the relevant global standards.

To assist its member States in putting into practice the recommendations of GRECO and MONEYVAL, the Council of Europe implements technical co-operation projects. This outreach work helps countries benefit from access to the best European experience and knowledge and promotes the mainstreaming of good practices and solutions.

The present manual was developed within the framework of the Project against Corruption in Albania (PACA), a 2,1 million Euro joint project of the Council of Europe and the European Union run from 2009 to 2012. The book is the final product of an extensive project activity comprising a series of trainings with Albanian law enforcement officials. The training programme provided police, prosecutors and judges with vital skills and know-how on the prosecution and investigation of economic crime and tracking of its proceeds. As a result, nine law enforcement officials became certified trainers eligible to train their peers.

The trainings were organised jointly with the Basel Institute on Governance. I would like to take this opportunity to thank their experts, whose professional commitment and knowledge underpinned the successful completion of this important exercise. I thank also our Albanian partners from the Ministry of Interior, the General Prosecutor's Office and the School of Magistrates whose support and expertise were indispensable. Finally, this manual would not have materialised without the dedicated services of Mr Gent Ibrahim, PACA project Long-Term Consultant.



**Ivan Koedjikov**

Head of Action against Crime Department  
Strasbourg, December 2012

## **I. Goals and Objectives**

The goal of this manual is to provide the Albanian School of Magistrates (SoM) and Police Formation Center (PFC) with training plans and materials for the law enforcement agencies, prosecutors and judges on the topical areas relating to: i) detection and investigation of corruption related offences; ii) detection and investigation of money laundering and financing of terrorism related offences; iii) tracking proceeds from crime including international cooperation on these matters; and iv) professional/adult training techniques.

## II. Training Concept

The training program revolves around a centerpiece known as participant-based learning. This is a concept that directly involves the participant in the learning process. The program contains a simulated investigation relating to corruption and money laundering offenses and several workshops that allow the participants to learn by actually doing the task.

The overall training program will last 5 and ½ days. The class size should be limited to 25 participants and the appropriate audience would include judges, prosecutors, judicial investigators, police and financial intelligence unit personnel.

This training will be an interactive program designed to take the practitioner from the basics of a corruption, money laundering or terrorist financing offense to a very advanced level by actually requiring the participants to perform a complex financial investigation. The centerpiece of the program is a five and ½ day “hands on” practical exercise that will replicate a realistic large scale corruption case in which the participants will actually investigate the case gathering approximately 55 pieces of documentary evidence and hundreds of summarized bank records. This will involve the analysis of large volumes of data, gathering and assembling evidence in a manner ready for presentation at trial and establishing the basis for confiscation of assets that are far removed from the original corruption offense. This exercise will be an Albanian specific case designed and created for Albania that incorporates relevant criminal statutes, commercial and banking records and enforcement procedures. The participants will be divided into four person task force teams and will begin the simulated investigation with information obtained from open source data and reports of suspicious banking activity from a foreign jurisdiction. The exercise will take the teams through a maze of financial transactions specifically designed to conceal and disguise the source, location, and ownership of illegal proceeds. The teams will utilize a variety of criminal investigative techniques to identify the witnesses and evidence that will be used to prove each of the elements of a money laundering and corruption violation and direct an asset recovery action. During the 5 and ½ day program this practical exercise will require approximately 20 hours to complete.

Relevant blocks of instruction and workshops will be interspersed into this highly interactive exercise to provide the participants with the skills needed to successfully complete the case and prepare if for trial. Major components of the instruction will include:

- Money laundering concepts;
- The use of electronic tools to organize, sort and retrieve evidence;
- The elements of the relevant criminal statutes: An elements workshop;
- Financial investigative techniques and evidentiary requirements: Source and application of funds analysis;
- Mutual legal assistance techniques: Evidence admissibility issues relating to foreign obtained information;
- International asset recovery and confiscation methods;
- Use of computers to organize, analyze, and present large volumes of financial evidence.

At the conclusion of the program the results of the investigation will be organized and assembled for prosecution. Each group will deliver their case through specifically assigned evidentiary presentations. These will include the processes found in a criminal trial: a summary of the case (opening statement), introduction of the evidence necessary to prove each element of the crime and evidence sufficient to obtain confiscation orders. This final stage can be modified into a mock trial with the addition of 2 class days.

This participatory approach will quickly develop operational capacity because the material will be presented and reinforced through three complimentary learning styles: lecture, an Albanian specific simulated investigation and the trial preparation and presentation of evidence.

Each participant will use a notebook computer containing preinstalled software and all training materials. The work will be conducted in an automated environment using computer applications to organize the evidence and to perform much of the financial analysis.

This program will allow judges, prosecutors and judicial police to fully understand the methodology for organizing a complex corruption case, the use of circumstantial evidence, how evidence is gathered, organization of evidence using specialized financial investigative techniques, methods of proving financial based corruption cases, organization of evidence by the elements of the crime, understanding of how computers can analyze evidence, the admissibility of charts to summarize complex financial evidence, admissibility of foreign based evidence and the use of summary witness.



### III. Course of Instruction

#### 1. Program Schedule

The program schedule should be flexible to accommodate key discussion areas that arise. It is not critical to adhere to exact starting and ending times for each module. However the lead instructor should always be aware of the pace of the class and make adjustments when necessary to assure that all critical topic areas are covered. The following program schedule is a guide that should be used for the orderly presentation of the instruction modules and the time that should be allocated to working simulated case.

The sections below that follow the model program schedule are step by step guides for each lecture module, workshop and simulated case operation.

Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
9:00	<b>Opening Remarks Overview of Program</b>	<b>Elements of the crime Workshop</b>	<b>FIU</b> <i>Guest speaker</i>	<b>Indirect Method of Proving Income</b>	<b>Mechanisms of Asset Forfeiture</b>	Presentation Preparation
10:00	Break	Break			Break	Break
10:30	<b>Overview of Money Laundering</b>	Simulated case continued	Simulated case continued	Simulated case continued	Simulated case continued	Presentations * Case Overview * Elements of the crime * Financial evidence * Asset Confiscation
11:00	Introduction to Simulated Case					
12:00	Lunch	Lunch	Lunch	Lunch	Lunch	
1:00	<b>Electronic Evidence Organization</b>	<b>Mutual Legal Assistance</b>	<b>Financial Investigative Approaches Workshop</b>	<b>JIU prosecutor</b>	<b>Trial Preparation case overview elements of the crime financial evidence asset confiscation</b>	Closing
2:00	Simulated case continued	Simulated case continued				
2:30	Break	Break	Break	Break	Break	
3:00	Simulated case continued	Simulated case continued	<b>Financial Investigative Approaches Presentations</b>	Simulated case continued	Presentation Preparation * Case Overview * Elements of the crime * Financial evidence * Asset Confiscation	
4:00	<b>Elements of the crime</b>	<b>Automated Tools for Analysis</b>	Simulated case continued			
5:00						

## 2. Welcome PowerPoint

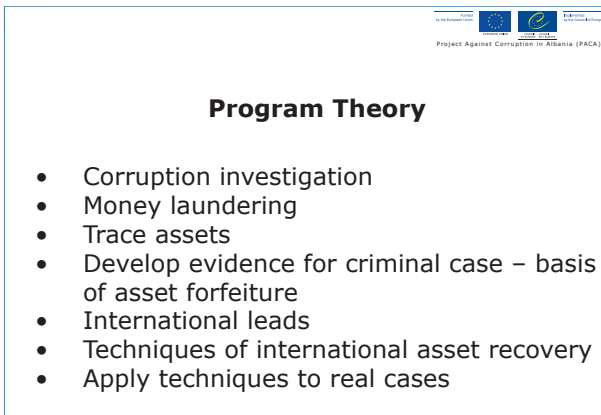
The “Welcome PowerPoint” is used to introduce the instructors and participants and to provide an overview of the program. The first slide will state the name of the program, the location and date.



Welcome To  
Money Laundering, Corruption and Asset Tracing Investigations  
Training Program Albania

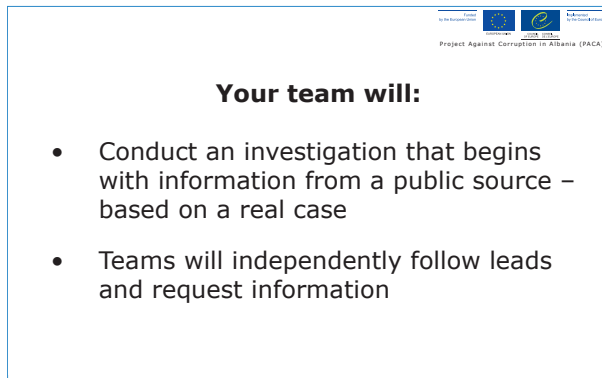
The second slide will introduce the instructors and the participants. The names of the instructors should be included on the slide. Each of the participants should be given an opportunity to introduce themselves and identify their agency and position.

The third slide provides the program theory and an overview of the key sections of the program. Each of these sections should be briefly explained and that the practical exercise is the centerpiece of the program around which the other topics will be brought to life through this “hands on” simulated investigation.



- The fourth slide will be the cue to explain the practical exercise in detail. Please refer to the "Training Concept" section above as a guide for explaining Corruption investigation
- Money laundering
- Trace assets
- Develop evidence for criminal case – basis of asset forfeiture
- International leads
- Techniques of international asset recovery
- Apply techniques to real cases

Program Theory the mechanics and concepts of the exercise.



**Your team will:**

- Conduct an investigation that begins with information from a public source – based on a real case
- Teams will independently follow leads and request information


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- Conduct an investigation that begins with information from a public source – based on a real case
- Teams will independently follow leads and request information

The fifth slide (not pictured here) is used to remind the instructor to explain the materials that have been placed on their computers – the so-called "Participants Folder". This electronic folder will contain 3 sub-folders: Laws, PE Documents and PowerPoint Presentations. The first subfolder, Laws, should contain all of the pertinent Albanian laws relating to corruption and money laundering offenses, mutual legal assistance, the criminal code, the criminal procedures code, the Guidebook to Corruptions Investigations Manual and the Anti-Mafia law. The second subfolder will contain all of the practical exercise (PE) documents and the Investigative File Inventory (IFI) file. The instructor should explain that all PE documents (except documents 1 and 4) have a password which will only be revealed when the group has asked to follow a specific lead. The PE document plus the password will then be provided to the group. The third subfolder contains all of the PowerPoint presentations and mini workshops that will be used in the program.

The sixth slide is used to describe the presentations that will be made by each participant at the end of the program. The presentations will follow the normal trial process: opening statement, introduction of evidence, the use of corroborated

tive financial evidence, obtaining a conviction and finally the offering of evidence to confiscate assets that represent proceeds of the crime.



**Your team will:**

After the investigation, each member of your team will prepare a presentation to the court.

- Explanation of schemes – opening statement
- List the evidence that proves each element of the money laundering crime or the corruption crime
- Financial analysis
- Trace the purchase of two major assets to the criminal activity

After the investigation, each member of your team will prepare a presentation to the court.

1. Explanation of schemes – opening statement
2. List the evidence that proves each element of the money laundering crime or the corruption crime
3. Financial analysis
4. Trace the purchase of two major assets to the criminal activity

Your team will:

The opening statement will provide an overview of the corruption and money laundering scheme. The purpose of this is to organize the facts of the case in a manner that will allow the court to understand the details of the corrupt activity, the method that will be used to prove the crime and the amount of the illegal income. This overview can be divided among 2 or 3 groups, assigning each group a portion of the total scheme.

The second presentation will state the violation that has been charged, identify each element of the statute and specifically indicate each piece of evidence that has proved each element. This should be done by making reference to the document numbers and briefly summarize how the evidence proves each element of the crime. This presentation should be done twice: once for the corruption offense and once for the money laundering charge.

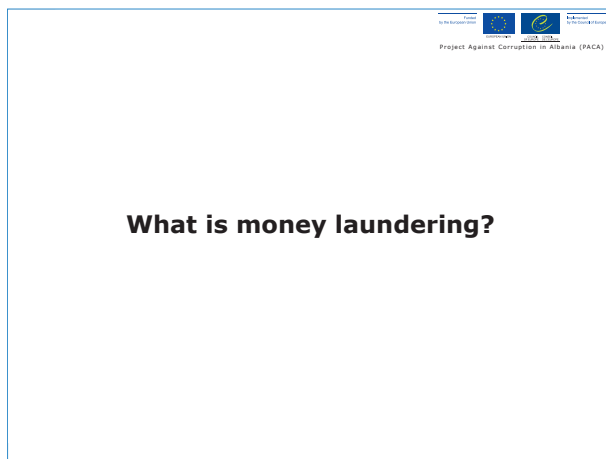
The third presentation will be a source and application analysis to determine the total amount of corruption income that was obtained.

The asset tracing portion will be a presentation that will clearly show the connection of the asset to the corrupt activity. The specific evidence that will prove each step of the movements of the funds will be introduced into evidence.

### 3. Overview of Money Laundering

Approximate time for this section: **30 minutes**

The instructor should begin by asking the participants to give their definition of money laundering. Most definitions will involve statements that money laundering is the process of taking illegally obtained funds and using various transactions to make the money appear to be legitimate. These definitions should be accepted and complimented. However the purpose of this is to set the stage for explaining later – during slide 3 – that money laundering is “what the law says it is”. This will be explained below.



What is money laundering?

The second slide shows a real picture of \$ 205 million U.S. dollars that was seized in a modest house in Mexico City. The source of these funds was from the sale of precursor chemicals used to manufacture illegal drugs. The purpose of this slide is to illustrate that the person who owned this money did not have a good money laundering scheme. This is evidenced by the fact that no one would want to keep this much cash in one place – it is at risk of being destroyed, stolen or confiscated by law enforcement. Additionally, such a large volume of money cannot be easily moved or even spent. It will draw suspicion if large amounts of cash are spent. Therefore it is evident that this person did not have an efficient money laundering process allowing him to quickly move the funds into the financial system where it can be moved around the world in seconds with the click of a wire transfer and can be used to purchase assets with far less suspicion. The point should be made that large scale money laundering often requires a system to place the funds into the financial system.

The third slide is the key issue in this presentation.

## The Scheme vs the Law

### The Scheme

Placement, Layering and Integration are just terms that describe a process

### The Law

Money Laundering is what the law says it is

The scheme vs the Law

The scheme: placement, layering and integration are just the terms that describe the process

The law money laundering is what the law says it is

At the beginning we asked the question, "What is money laundering" and various definitions were given. However, for the purpose of law enforcement (investigation, prosecution and trial) we are not concerned with generic definitions of money laundering. We are only concerned with the language of the law, of the specific language and the elements of the statute. Therefore, for every country, money laundering is "what the law says it is".

This slide first shows the three stages of money laundering:

These stages are discussed because these terms have been used for many years and the participants may have heard them. They are not being discussed in relation to the law. It is very important to emphasize that they are just general terms used to describe the money laundering process and have **no relation** to the law. These terms are not found in the language of the statutes and are therefore **not elements of the crime**.

An explanation of these general terms can be found in the United Nations Office of Drugs and Crime (UNODC) website ([http://www.unodc.un.or.th/money\\_laun-dering/](http://www.unodc.un.or.th/money_laun-dering/)) as follows:

"The process of money laundering can be broken down into three stages - *placement, layering and integration*. These are best viewed as one process. The **placement** stage represents the initial entry of the proceeds from crime into the financial system. This stage serves two purposes - it relieves the criminal of holding and guarding the large physical bulk of cash and it places the money in the legitimate financial stream. The placement stage is considered to be the riskiest, for it is then that the chances of raising suspicion are the greatest.

The first stage of transferring bulk cash proceeds from drugs or other crimes often involves smuggling from one to another country. The amount of cash being smuggled is growing as regulations are introduced to monitor cash moved through commercial and financial institutions.

After placement comes the **layering** stage, which normally consists of a series of transactions designed to conceal the origin of the funds. The layering stage is the most complex and the most international in nature. During this stage for example, the money launderer may begin by moving funds electronically from one country to another, then divide them into investments placed in advanced financial options or overseas markets, moving them constantly to elude detection, each time exploiting loopholes or discrepancies in legislation, and taking advantage of delays in judicial or police cooperation. Countries without appropriate legislation help money launderers by not allowing investigators to following the trail of illicit funds through their financial system.

The final stage of money laundering is termed the **integration** stage because it is at this point the funds return to the criminal appearing to have been obtained from legitimate sources. Having been placed initially as cash and layered through a number of financial operations the criminal proceeds are now fully integrated into the financial system and can be used for any purpose including the financing of more crime.”

The second portion of the slide states: “Money Laundering is what the law says it is”. This means that we must analyze the Albanian money laundering criminal statute. This is contained in Article 287 of the Criminal Code of the Republic of Albania. This code section contains 4 different types of activities (subsections a, b, c and dh) that are criminalized as a money laundering offense. A careful analysis of each of these subsections (dividing them into the elements of the crime) will tell us exactly what money laundering is in Albania. It will be nothing more or nothing less, it is only what the law of Albania says it is. Placement, layering and integration are not legal concepts nor elements of a money laundering offense. They are just terms to describe a general process but have no place in the courtroom.

The Elements of the Crime section below will analyze this statute in greater detail.

#### 4. Simulated case practical exercise

The simulated case practical exercise is based on a real investigation of a senior political official in another country. The facts have been substantially changed but the senior official was taken to trial and convicted of corruption related charges.

Approximately 55 documents have been created for this simulated case. Each document is a potential piece of evidence. The documents are all numbered and password protected. The purpose of this is to have all the documents (evidence) readily available to the participants on the computers but they will not be able to access the evidence unless they request to follow a fruitful lead. The case has been designed to simulate a real investigation as close as possible in a simulated environment. Just as in a real investigation, the evidence exists but is only avail-

able when the investigator / prosecutor pursues all leads. The participants should approach this exercise in the same manner as a real investigation.

During the five day program the participants will be divided into groups of four or five. Each group will be an investigative body and will conduct the simulated investigation and prepare the case for trial independently of the other groups.

The instructors for the program will act as facilitators to assist the groups with the investigation. The case will begin after the "Overview of Money Laundering" module. The instructor will give the following explanations and instructions to the participants:

- The participants will be divided into group of four or five persons;
- Each group will conduct the simulated investigation independently;
- Remind the participants that all program materials, including the practical exercise documents (pieces of evidence), have been electronically loaded on their computers in the folder titled "Participant Folder";
- The case will be initiated by an allegation that originates from open source information – a newspaper article that contains specific information about a Minister in the government. This information is subsequently bolstered with the receipt of a "spontaneous transmittal" of information from the Swiss government;
- The participants will be instructed to open document 1 which is not password protected. They should read the document, discuss the allegations among the group members and decide what specific investigative action should be taken. The participants will then be instructed to open document 4 which is also not password protects. With the receipt of these pieces of information, an official investigation is authorized.

The instructor should now solicit, from the plenary group, ideas on what investigative action should be taken. The requests for investigative action must be specific and not general. In other words, the request should state specifically who they would like to interview, what bank they want to contact, the specific name of the bank account and the specific records to be reviewed. Request should not be overly general such as "we want to get all the bank records for all companies he may be involved with". In Albania there is not a centralized database of bank accounts, therefore this general type of request would not be possible.

While soliciting the specific requests for investigative action from the plenary group, the instructor should list these on the board. At least one of these requests should be to interview the author of the newspaper article and/or obtain the Minister's wealth declaration. The instructor can now give all groups either the interview with the author of the newspaper article (document 3) or the Minister's wealth declaration (document 2). At this point, all groups should have the same three (3) documents.

The reason for addressing the entire group is to show the participants how the investigation will progress in the classroom. The instructor will give all groups the first 3 documents as indicated above in the plenary session.



After they have received these first 3 documents the instructor will show the class how to use the electronic Investigative File Inventory (IFI). The IFI is an Excel spreadsheet that will be found in the Participants Folder, sub-folder "PE Documents" at the bottom of the list of documents. The participants should be directed to open this IFI file. An explanation of this document, how to use it and its' value follows:

### **Investigative File Inventory (IFI)**

Doc #	Witness	Key Word Description	Hyperlink	Money Laundering	Corruption	Asset Forfeiture	Comments
3	Gjika	Reporter	Doc 3.doc	Yes	Yes	Yes	

This IFI is an excel spreadsheet that has been formatted to record each piece of evidence as it is received. The process is extremely simple but the value is great. Direct the participants to record the 3 documents that they have now received in the IFI. The recording should be done as indicated above. The first three columns are self explanatory. The fourth column is to hyperlink the document (evidence) to the spreadsheet. This process is completed with the following steps:

- In the excel spreadsheet (IFI) place the curser in the cell under the hyperlink column;
- Right click on the cell and a menu will appear;
- Select hyperlink;
- From the list of documents in the "insert hyperlink" box, select the document to be linked – in the example above it would be document 3, then click OK.

The columns labeled "money laundering", "asset forfeiture" and "corruption" are to be used to indicate if there is information in this piece of evidence that would relate to any of these items. For example, if the document contained evidence of a money laundering violation you can simply put a "yes" in this column. At the conclusion of a real investigation there may be 200 pieces of evidence that have been gathered. If you want to look at all evidence that relates to money laundering then simple perform a "sort" function on this column and it will give you all pieces of evidence that relate to money laundering. The column labeled "corruption" can be used in a similar way. The "asset forfeiture" column could track the evidence that relates to specific assets. For example if there was evidence relating to the potential confiscation of a house, car and boat, you would just place one of these words in the column if that piece of evidence contained information that would be used to prove the asset was proceeds of corruption.

It should be noted that the IFI contains a second tab at the bottom of the Excel spreadsheet that says "sample". This is a sample of a completed IFI with 170 lines of information filled in (a fictional case). This sample can be used to demonstrate how the information recorded in the IFI can be sorted, filtered and located very quickly using the various Excel tools. For example the following demonstrations can illustrate the value of the IFI.

Click on the "sample" tab at the bottom of the IFI. Show the participants the many lines of information that have been recorded. Explain that the information in the numerous files that have been gathered during a lengthy investigation can be sorted in any manner desired. For example, if they were attempting to find

all evidence supporting the seizure of the "Mercedes", simply place the cursor in the cell labeled "Asset Forfeiture" and click the "Sort & Filter" tab and then click the "Sort A/Z" button. This column will instantly be sorted alphabetically and all information relating to the Mercedes will be grouped together. If you want to sort the witness name in alphabetical order simply place the cursor in the cell labeled "witness" and follow the same procedures as above. If you want to find any key word, witness name, asset name of any word in the comments column, just click the "Find & Select" tab, then select "Find" and type the word or name that you are looking for.

These demonstrations will show the value and simplicity of the electronic file organization tool. This Excel tool can be used in real investigation and adapted to fit the needs of the investigator, prosecutor or judge. The column heading can be changed to accomplish any specific goals or organizing the evidence. A judge could use this tool to keep track of the evidence that is presented and which elements of the crime have been proven. If there are multiple defendants, this tool could easily be adapted and used to keep track of the evidence presented as it related to specific defendants.

What are the values to using the IFI?

- It is an extremely simple way of tracking all of the evidence;
- Any piece of evidence can be quickly found by using a key word search;
- The evidence can be quickly organized by violation or asset confiscation by using the sort function;
- All evidence can be linked to the excel document for quick recall and can be transported on a flash drive;
- It provides a system for making notes or comments for each piece of evidence in one location;
- An expensive and complex case management system is not required. The IFI is completely free to use. It can also be used on the free software Open Office.

The participants should be instructed to use the IFI to record and organize each piece of evidence that is received. All participants should be required to record the first 2 documents to learn the process and become a little familiar with excel. However, only one member of each team needs to record all of the evidence as the case progresses, if the team prefers this method.

### ***Back to the Practical Exercise explanation***

A facilitator will be assigned to assist each table and the class should be allowed approximately one hour to begin working on the case.

After the IFI has been demonstrated and the participants have entered the first 2 documents into the IFI, the instructor should explain that from this point forward each team will work independently on the case. They should review the evidence that they have received and determine what the next investigative step should be. In reviewing each document the team should discuss the evidence that is contained in the document and make a list of all leads to be followed. Failure to do this will result in many critical leads (evidence) being overlooked.

When a team is ready to follow a lead they should tell the facilitator the specific investigative step that they wish to pursue. The facilitator should only provide leads (give them a document) if the request is very specific. When a team asks to follow a specific lead that is provided in the exercise then the facilitator will give them the appropriate document. This will be done by telling them the document number and password. The facilitator will also give the team one paper copy of the document which is to be filed in numerical order in a binder. The participants should be advised not to change any of the document file names as this will create confusion for them.

Each time the team asks to follow a lead and receives a new document they should repeat the process of analyzing the document for additional leads.

To make the job of the facilitators easier, a complete list of practical exercise documents has been created which contains the document number, a description of the document, the password and a guide to the tracking of the leads. See the sample below.

Lead source	Document #	Description	Password	Leads to follow
22a, 30	26	Indian Ocean Factors	845	27
22a, 26	27	LoadMaster Equipment – part 1	249	26,30,31

The tracking guide refers to the 2 columns labeled “lead source” and “leads to follow”. “Lead source” indicates all documents that had leads to the document number on this line. For example, if we look at document 26 the “lead source” column indicates that documents 22a and 30 provided leads to document 26. The “leads to follow” column shows all leads that could be followed from the document. For example, if we look at document 26 the “leads to follow” column indicates that a careful analysis of document 26 should lead the group to document 27.

The participants should be reminded that the goal of the exercise is to establish the evidence that will prove each element of the crimes of corruption and money laundering, trace the assets that have been acquired with the proceeds of the corrupt activity, determine the best legal means to gather evidence through mutual legal assistance and organize the case for trial. Each of these steps requires a thorough understanding of the admissibility of evidence and the need to be organized at all phases of the investigation, trial preparation and the presentation of evidence at trial.

## 5. Elements of the crime

This is the most important presentation of the program. Understanding the elements of the offense is crucial for an efficient investigation and a strong conviction that will stand all appeals. The presentation will remind participants how to divide the language of a criminal statute into the elements that must be proven.

The second portion of this section is an optional workshop. The participants will work in teams and analyze the facts of a case scenario and present the class with the answers to three questions:

- What is the criminal offense that best suits the action described?
- What are the elements of this offense?
- What evidence would you use to prove each one of those elements?
- This workshop is relevant for investigators, prosecutors and judges alike.
- First the Elements of the Crime lecture will be presented.

  
 Project Against Corruption in Albania (PACA)


## Elements of the crime

### money laundering and corruption




Elements of the crime money laundering and corruption

**Slide 2**, which is self explanatory, emphasizes why the elements are important.

  
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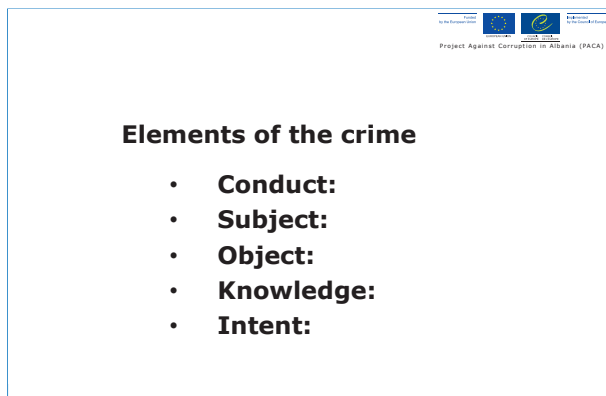
## Why are the elements important?

- Critical to prove criminal case
- Assists in establishing proof for asset tracing, confiscation and recovery
- Facilitates mutual legal assistance

Why are the elements important?

- Critical to prove criminal case
- Assists in establishing proof for asset tracing, confiscation and recovery
- Facilitates mutual legal assistance

**Slide 3** demonstrates how most civil law countries identify the elements. Many Civil Law countries use the approach of dividing the statute into conduct, subject, object and knowledge (and possibly intent) which is common in Albania.



**Elements of the crime**

- **Conduct:**
- **Subject:**
- **Object:**
- **Knowledge:**
- **Intent:**

Elements of the crime

- Conduct:
- Subject:
- Object:
- Knowledge:
- Intent:

For example, a money laundering violation may be divided as follows: conduct (transaction); subject (anyone); object (to conceal); and knowledge (that the source of the funds were from an illegal activity).

Two offenses have been selected for analysis in this class. The first offense is the criminal money laundering statute, Article 287 of the Criminal Code of the Republic Albania. There are many misconceptions regarding the crime of money laundering and this lecture intends to put an end to this. The most important misconception that people are taught, and that this lecture intends to correct, is the idea of “placement, layering and integration”. This exercise looks to show participants that those words are nowhere to be found in their laws. Money laundering is simply what the law of each country says it is. Therefore an analysis of the elements of the Albanian money laundering statute will disclose exactly what money laundering is in Albania.

The second offense that will be analyzed is passive corruption by public officials, Article 259 of the Criminal Code of the Republic Albania.

**Slide 4** displays the text of the Laundering of Crime Proceeds, Article 287 1.a. The participants should be asked to read the statute and list the elements. A representative from one of the groups should be selected to report these elements. Following a discussion of these elements, slides 6 through 9 will disclose the recommended elements (the school solution).

**Criminal Code of the Republic of Albania**  
**Article 287**  
**Laundering of crime proceeds**

1. Laundering of proceeds of crime committed through:
  - a) exchange or transfer of an asset that is known to be a proceed of crime, for hiding or concealing the origin of the asset or for providing help to evade the legal consequences related with the committal of the crime;

**Criminal Code of the Republic of Albania**  
**Article 287**  
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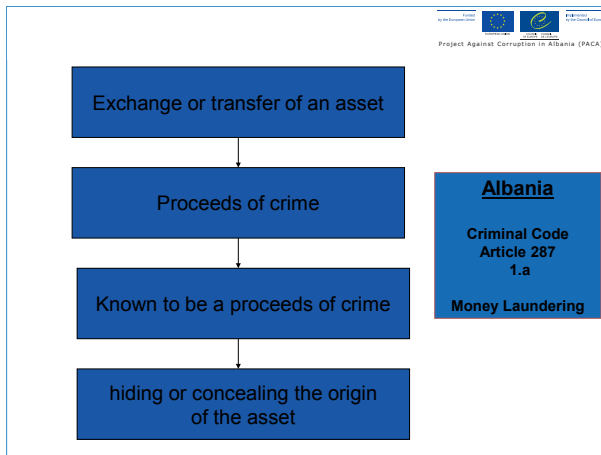
**Slide 5** indicates that the first element is an "exchange or transfer of an asset". Basically any type of financial transaction will satisfy this element including cash, bank check, wire transfer or immoveable object. This element is usually the easiest to prove in a money laundering case.

**Slide 6** indicates that the second element requires that the transaction must be with "proceed of crime". The statute does not provide a specific definition for the term "proceed of crime". This element may be difficult to prove in many instances but it is essential that evidence must be obtained to satisfy the court that the money involved in the transaction originated from some criminal activity.

**Slide 7** indicates that the third element establishes the knowledge requirement. The question is: knowledge of what? It must be proved that the person involved in the transaction knew that the money originated from "proceed of crime".

**Slide 8** indicates that the fourth element requires that the transaction must be for a purpose: "for hiding or concealing the origin of the asset". This element can often be established by proving that the person used a shell company or a nominee to hide the true source of the funds.

**Slide 9** is a summary of the elements of this money laundering statute.



Exchange of transfer of an asset  
 Proceeds of crime  
 Known to be a proceeds of crime  
 hiding or concealing the origin of the asset  
 Albania Criminal Code Article 287 1.a Money Laundering

**Slide 10** contains a copy of the model language for a money laundering statute as recommended in the United Nations Convention Against Corruption (UNCAC), Article 23. It should be noted that the Albanian statute parallels the UNCAC language.

The slide features a title "Money Laundering Art. 23 of UNCAC" in bold black text. Below the title is a paragraph of text: "The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action." At the top right of the slide, there are logos for the Council of Europe, the European Union, and the OSCE, along with the text "Project Against Corruption in Albania (PACA)".

**Money Laundering  
 Art. 23 of UNCAC**

The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action.

**Slides 11 and 12** show the language of the second money laundering violation that is contained in Article 287. It should be noted (after showing slide 13) that this violation is very similar to the language of Article 287 1(a) except that there is no specific requirement (element) to prove a transaction or knowledge. The language of this portion of the statute is very similar to that contained in the UNCAC Article 23 except that the phrase, from Article 23, “knowing that such property is the proceeds of crime” has been omitted. A discussion relating to the lack of a knowledge requirement should be solicited among the participants.

**Criminal Code of the Republic of Albania**  
**Article 287**  
**Laundering of crime proceeds**

1. b) concealment or disguise of the nature, source, location, position, shift of ownership or other rights related to the asset that is proceed of crime;

NOTE: same elements as 1.a except that there is no transaction or knowledge requirement

## **Criminal Code of the Republic of Albania**

### **Article 287**

#### **Laundering of crime proceeds**

1. b) concealment or disguise of the nature, source, location, position, shift of ownership or other rights related to the asset that is proceed of crime;

NOTE: same elements as 1.a except that there is no transaction or knowledge requirement

**Slides 13** and 14 illustrates the third violation that is contained in Article 287 1(c) which is the structuring of financial transactions to avoid the reporting requirements relating to monetary transactions as established in law number 9917 of 2008 “On The Prevention Of Money Laundering And Terrorism Financing”. Law #9917 establishes certain reporting requirements by specified financial entities (as defined in Article 3) relating to transaction of cash and non cash items. Article 287 1(c) makes it a criminal violation to perform or structure financial transactions that are designed to avoid the filing of these required reports by the financial institutions. An example of this activity would be as follows: the person has 10 million lek in drug proceeds; he divides this amount into 10 equal segments of 1 million lek each and deposits these amounts into separate banks for the purpose of avoiding the reporting requirement as established by Law #9917, Article 12. Each element of this crime should be emphasized: 1) the performance of financial activities; 2) with the proceeds of crime; 3) that are structured (the amounts of money are divided into smaller segments); 4) for the purpose of avoiding a reporting requirement established in the money laundering law.



## **Criminal Code of the Republic of Albania Article 287 Laundering of crime proceeds**

1. c) performance of financial activities and fragmented/structured transactions to avoid reporting according to the money laundering law;

AML – CFT law 9917 of 2008:

- Article 4 – identification of clients for certain transactions
- Article 12 – reporting of cash (>1,500,000) and non cash (>6,000,000) transactions
- Article 17 – cross border transfers (>1,000,000) of cash and other valuable items

## **Criminal Code of the Republic of Albania Article 287 Laundering of crime proceeds**

1. c) performance of financial activities and fragmented/structured transactions to avoid reporting according to the money laundering law;

AML – CFT law 9917 of 2008:

- Article 4 – identification of clients for certain transactions
- Article 12 – reporting of cash (>1,500,000) and non cash (>6,000,000) transactions
- Article 17 – cross border transfers (>1,000,000) of cash and other valuable items

**Slide 15** contains the language of Article 259 of the criminal code (Passive corruption by public officials) and begins the analysis of the elements.

## **Criminal Code of the Republic of Albania Article 259 Passive corruption by public officials**

Soliciting or taking, directly or indirectly, by a person who exercises public functions, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in the exercise of his duty

## **Criminal Code of the Republic of Albania Article 259**

### **Passive corruption by public officials**

Soliciting or taking, directly or indirectly, by a person who exercises public func-

tions, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in the exercise of his duty

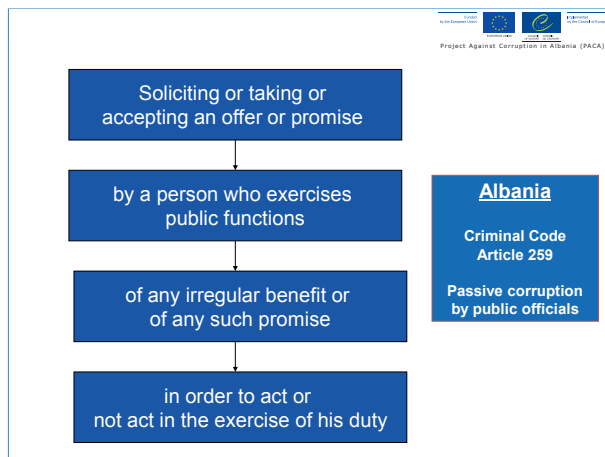
**Slide 16** demonstrates the first element of this crime; the “Soliciting or taking, directly or indirectly ... or accepting an offer or promise”. This element is self explanatory.

**Slide 17** illustrates the second element which is that the action must be taken “by a person who exercises public functions”. This element should be thoroughly discussed since the code does not provide a specific definition for the phrase. It should be noted that a person who exercises public functions could hold a position in either a public or private entity. Often private entities perform public functions. Example of persons who may fit this definition should be discussed.

**Slide 18** contains the third element, that the soliciting, taking, or accepting must relate to “any irregular benefit or of any such promise for himself or for a third person”. Types of “irregular benefits” should be discussed.

**Slide 19** provides the last element, that the irregular benefit was promised or received “in order to act or not act in the exercise of his duty.” Examples of this element could include: the awarding of a non competitive contract; or the failure to sanction a company for a violation.

**Slide 20** is a summary of these elements.



Soliciting or taking or accepting an offer or promise

By a person who exercises public functions

Of any irregular benefit or any such promise in order to act or not act in the exercise of his duty

Albania passive corruption by public officials  
Criminal Code Article 227

At this point, the participants should be reminded that their presentations on the last day of the program will include identifying and proving each element of the selected criminal violation. One of the core goals of this program is to under-

stand the importance of these functions and the need to establish the evidence that will prove each element of the crimes of corruption and money laundering. The participants will select a corruption related violation and a money laundering statute that the defendant (Minister Bala) will be charged with. After identifying the specific statute to be charged, the participants will next state the elements of that crime. Slide 21 is a listing of some of the corruption related violations that may be chosen by the participants for their presentations.

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## Corruption Related Statutes

Article 135 - Theft through abuse of office  
Article 244 - Active corruption by public officials  
Article 245 - Active corruption of the high state officials  
Article 245/1 - Unlawful influence on public officials  
Article 248 - Abuse of office  
Article 256 - Misusing state contributions  
Article 257 - Illegal benefiting from interests  
Article 257/a - Refusal or false declaration of assets  
Article 259 - Passive corruption by public officials  
Article 260 - Passive corruption by high state officials  
Article 319/a - Passive corruption of judges and prosecutors

### Corruption Related Statutes

Article 135 - Theft through abuse of office  
Article 244 - Active corruption by public officials  
Article 245 - Active corruption of the high state officials  
Article 245/1 - Unlawful influence on public officials  
Article 248 - Abuse of office  
Article 256 - Misusing state contributions  
Article 257 - Illegal benefiting from interests  
Article 257/a - Refusal or false declaration of assets  
Article 259 - Passive corruption by public officials  
Article 260 - Passive corruption by high state officials  
Article 319/a - Passive corruption of judges and prosecutors

## 6. Elements of the Crime Workshop

The Elements of the Crime Workshop is **optional** if time permits. This workshop will follow after the Elements of the Crime lecture and discussions.

The participants are already divided by tables and they should prepare the workshop as a team. Each table will be assigned one of the workshop cases and the three following questions will be asked after each case:

- What is the criminal offense that best suits the action described?
- What are the elements of this offense?
- What evidence would you use to prove each one of those elements?

The facilitator should tell the participants that they can select any of the Albanian criminal money laundering or corruption statutes to apply to these cases. The facilitator should also be clear regarding the analysis of the elements of the crime and the facts that would tend to prove each of the elements. The fact patterns provided in each case scenario certainly do not provide all of the evidence needed to completely prove each element and to obtain a conviction. However, the participants should identify the facts contained in the scenario and state which element each fact would tend to prove.

The following 3 case scenarios should be used for this exercise.

### Case 1

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An investigation has disclosed the following facts:

- **Erida Daka**, who is the Minister of Natural Resources and Environment, has purchased a resort home in Sarandë in the County of Vlorë in southern Albania, for ALL 25,000,000. ALL 11,100,000 went through three shell corporations before a wire transfer was made towards the purchase of the house. These funds originated from a subsidiary of Alba Oil Company.
- Alba Oil Company was awarded a ALL 275 million exploration contract from the Albanian Government three months prior to the payment of the house. The area of exploration was in a protected reserve. The contract required pre-approval from the Ministry of Natural Resources and Environment. The Head of Procurement at the Ministry of Natural Resources and Environment, **Gjergj Fico**, signed the approval.
- The remaining payments on the house were made through a series of currency payments.
- The investigation documented that all of **Daka's** legal income was deposited to her bank account. No currency was withdrawn.
- **Fico** is a personal friend of Minister **Daka** and he has received three promotions in the last 5 years

#### Answer the following questions

- ✓ Which offence would you consider charging Minister **Daka** with? Choose only one.
- ✓ What are the elements of this offence?
- ✓ What evidence could be used toward proving each element?

The question here is whether the participants are willing to accept that Minister Daka has received a bribe regardless of the lack of direct evidence. Circumstantial evidence may be enough in this case and the facilitator's work is to spur the discussion. The bottom line is that Daka had the power to have her employee, Mr. Fico, pre-approve the exploration contract in a protected area. After the contract

was approved Daka received an expensive property that she could not have afforded as a public official. In fact, it was proven that she did not disburse any money towards the payment of the house. What are the possible corruption related charges that may be applied in this case?

## Case 2

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An investigation has disclosed the following facts:

- The European Development Bank decided to grant a development loan to Albania for the purchase of medical equipment to be used in Operating Rooms in public hospitals around the country. The total amount for the loan was of USD \$5 million with a fixed interest rate of 5% to be paid over a period of 15 years.
- On 01 March 2009 the call for bids was published. On 31 March 2009 the call for bids closed and the 4 bids were received from Specialised Equipments, Global Solutions, International Medical Supplies and Technical Solutions.
- On 11 March 2009, Specialised Equipments appealed the bid document based on the fact that the technical specifications were too narrow and appeared to be copied from those advertised by International Medical Supplies. Specialised Equipments argued that no other company could possibly participate in the process. The appeal was ruled out.
- Specialised Equipments was ruled out after a careful analysis that determined that their equipment lacked many of the characteristics advertised in the bid. Global Solutions and Technical Solutions presented identical bids. Both companies presented guarantees as requested by the bid documents for the amount of USD \$100.000.00 issued by Credit Suisse Zurich with consecutive numbering on the same day and signed by the same bank representative. This made the Ministry suspicious of collusion between both companies and decided to rule them out of the process.
- On 15 April 2009, the Ministry decided to award the totality of the contract to International Medical Supplies based on the fact that they were the only company capable of offering the necessary equipment in the requested period of time within the amount budgeted, as the total cost of their services was of USD \$4.487.000.00.
- **Ramiz Leka**, Minister of Health, received a total of ALL 23 million in certificates of deposit (CODs) made to the bearer. These CODs were purchased through a bank check paid for by a shell corporation (Seashells Inc.) located in the Bahamas, which is in turn owned by another shell corporation (Starfish Inc.) located in Antigua. Starfish Inc. is owned by International Medical Supplies.
- **Dritan Dervishi**, Head of Procurement at the Ministry of Health, received a total of ALL 11 million in certificates of deposit (CODs) made to the bearer. These CODs were purchased through another bank check paid for by Seashells Inc.

- **Adriatik Geci**, the Technical Specialist at the Ministry of Public Health who drafted the Terms of Reference for the bid, received a total of ALL 5 million in certificates of deposit (CODs) made to the bearer. These CODs were purchased through another bank check paid for by Seashells Inc.

Answer the following questions

- ✓ With which offence would you consider charging Leka, Der-vishi and Geci? Choose only one.
- ✓ What are the elements of this offence?
- ✓ What evidence could be used toward proving each element?

Case # 2 involves a more direct link to the company that received the contract. Would the same corruption related charge be applied against all three public officials?

## Case 2

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An investigation has disclosed the following facts:

- **Bardhi Braka**, Local Governor of the County of Elbasan, awarded two contracts that proved to have been favorably awarded. The evidence showed that in the identification process for each contract, there were companies that were more qualified, bidding at a lower price. Each of these companies was systematically removed for technical reasons that were unwarranted and not valid.
- **There** is no evidence to show direct payments to the governor from either of the two companies that received these highly profitable contracts. However, a financial analysis indicated that during the period these contracts were awarded the governor spent ALL 11,555,200 in excess of his legitimate income. These expenditures were made in currency and from receipts funnelled through a maze of twenty foreign corporations and trusts. None of these corporations or trusts was found to have any economic reality

Answer the following questions

- ✓ With which offence would you consider charging Braka? Choose only one.
- ✓ What are the elements of this offence?
- ✓ What evidence could be used toward proving each element?

Regarding Case 3, in addition to a possible bribery charge, money laundering is also a possibility. Evidence relating to the following elements of money laundering could be considered:

### **Exchange or transfer of an asset:**

Braka has transferred and moved the bribe payments through “a maze of 20 different companies”, and has eventually spent the money. Evidence to demonstrate this could be:

- Bank records from each of the 20 companies, which will prove the movement of money;
- Articles of incorporation for each of the 20 companies, which will prove that they do not have a real operation;
- Tax returns for each of the 20 companies, which will prove that they do not have an economic reality;
- Interviews of the boards of directors of each of the 20 companies, which will prove that someone else (Braka, perhaps) had control over the companies;
- Receipts of expenses during the selected period;
- Proof of property bought during the period;
- Bank account statements and investments during the period;
- Accounting books of any private company that Braka could have owned and could have produced revenue;
- Source and application summary chart or net worth analysis summarizing the above evidence.

### **Proceeds of crime:**

It is not necessary to prove and obtain a conviction for the predicate. This would allow us to consider that bribery from the two companies could have been the predicate offense and that the monies moved around the 20 different shell companies are the proceeds of crime. The following activities could be considered:

- Review the entire procurement files for both contracts;
- Interviews with personnel who may have worked on both cases.

**Knowledge** (that the money involved in the transaction was from the proceeds of crime):

Braka was involved in the awarding of the contract and received a significant amount of money that was received through a convoluted process designed to hide the source of the payments. It would be beneficial to show that Braka had knowledge of the shell companies. Possibly he may have even formed one or more of the companies.

### **Hiding or concealing the origin of the asset:**

Braka’s intent to conceal the origin of the money may also be proven by this knowledge of the formation of the shell companies. To prove it the following circumstantial evidence can be used:

- Bank records from each of the 20 companies, which will prove the movement of money;
- Articles of incorporation for each of the 20 companies, which will prove that they do not have a real operation;

- Tax returns for each of the 20 companies, which will prove that they do not have an economic reality;
- Interviews of the boards of directors of each of the 20 companies, which will prove that someone else (Braka, perhaps) had control over the companies.

## 7. Mutual legal assistance – formal and informal

The Mutual Legal Assistance (MLA) presentation is of extreme importance. Many investigations are delayed, or are even unsuccessful, because of slow or inefficient MLA. The purpose of this presentation is to inform the participants about the different types of MLA, best practices in performing MLA and the different sections that compose an MLA in order to acquire a better understanding.

Globalization has clearly affected the way criminals conduct their businesses and the way law enforcers and jurists must conduct their investigations. Organized crime has transcended traditional borders with the aid of technology, posing an important challenge for prosecutors and investigators.

Several aspects of technology have facilitated the globalization of crime. The communications network has turned the world into a very small place, where telephone calls, e-mails, text messages and faxes have eliminated the distance between people. This improvement in the communication system has led to a growth in international commerce and banking. Through wire transfers, letters of credit, automated teller machines, credit and debit cards and countless other tools we are able to move enormous amounts of money in seconds from one place to another in some cases with great discretion and anonymity. These developments have made it easy for criminals to conduct their activities and harvest their earnings in one region of the world and hide them in a different one.

The gathering of evidence overseas is a key element of modern money laundering and corruption investigations. Additionally, when the investigation ends in successful asset recovery, international cooperation will be essential.

The participants should be cautioned about two issues:

- Never violate the sovereignty or laws of another country
- Always adhere to the internal policies of your agency and the laws of your country

The first portion of this presentation should stress that the goal of MLA is to obtain the necessary evidence, information and intelligence in the fastest and most efficient means possible while adhering to agency policy and respecting the sovereignty of a foreign nation.

International Legal Assistance can be formal or informal, depending on the objective. If it is known that the evidence will be required at trial, all evidence should be gathered through a formal mutual legal assistance request. Formal methods are considered to be bilateral and multilateral treaties, reciprocity letters of request and letters rogatory. However, if the information needed will only be used for leads or intelligence, informal methods can be utilized.



## **Beginning the presentation**

A suggested way of beginning this presentation is by using practical examples from the Simulated Case exercise. Three examples should be chosen: the first relating to the bank records in Switzerland, the second to the interview of a witness (Harvey Cattleman) in the United States and the third to the review of public records (the incorporation of Island Fleets Ltd. in the British Virgin Islands). The participants should be asked what concrete steps they would take to obtain the needed information in each of the above scenarios. Their answers should be written down on a flip chart with all the formal possibilities in one column and the informal possibilities on the other column. The following are some suggested questions and answers that may be used:

### **Banking information**

**Q:** During the simulated case you found that one of the checks used to pay for the vacation house was drawn from a bank account in Switzerland. How would you obtain this information?

**A:** Two possible avenues are as follows:

**1. FIU contact** - If it is merely for information purposes and to determine whether to follow leads, a Financial Intelligence Unit (F.I.U.) contact may be useful, but keep in mind that this information can never be evidence. This is also a good moment to explain to the class what an FIU is. The Egmont Group defined them as "a central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime and potential financing of terrorism; or (ii) required by national legislation or regulation, in order to counter money laundering and terrorism financing."

They have been established for the general purpose of combating money laundering. It is important to note that not all FIUs have the same capabilities. In some countries they function as a law-enforcement organization with powers to investigate and prosecute; in other countries, they have a pure administrative nature with only the power to collect and analyze financial data available in government databases; and others have a hybrid nature whereby they are administrative but have the power to request complete bank information.

A number of FIUs began working together in an informal organization known as the Egmont Group, named after the Egmont-Arenberg Palace in Brussels, where they met for the first time on 9 June 1995. The Egmont Group has now over 135 members and its goal is to provide a forum for FIUs to improve support to their respective national law enforcement agencies.

In the case of the Swiss bank records, it may be possible to request the Albanian FIU to contact the Swiss FIU. However, any information received via this channel would not be admissible in court. Some FIUs would be able to obtain the required bank records while other FIUs may not have this power.

**2. Mutual legal assistance** - If the information is required as evidence, to be introduced in court, then a formal mutual legal assistance request must be used. The various MLA methods available should be discussed: Bilateral treaties, multilateral treaties, letters rogatory and reciprocal letters of request.

The last decades have seen law enforcement struggle to solve the challenges posed by the elimination of borders. Traditionally, letters rogatory were the customary method to obtain legal assistance from foreign jurisdictions in criminal matters. These are formal communications from the judiciary of one country to the judiciary of another country requesting the performance of an act typical of a criminal investigation. However, letters rogatory take a large amount of time. They are extremely formal, which means that they must contain all official signs from the requesting country, such as stamps, signatures, etc. To guarantee their authenticity they must be signed by a person whose signature has been registered and they must be transmitted through the diplomatic pouch from the Ministry of Foreign Affairs of the requesting country to its embassy or consulate in the requested country and then on to the national authorities. This process can take an extreme amount of time and it must be repeated on the way back in order to respect the chain of custody. Clearly, in modern day investigations, when money can be wire transferred at the click of a mouse, this system is becoming obsolete.

Mutual legal Assistance (MLA) treaties have addressed this problem. They are based in either bilateral or multilateral treaties. They are more expeditious and require less formality, always keeping in mind the respect for the other country's sovereignty and for the chain of custody. Each country designates a central authority for direct communication. By eliminating the middleman (the Ministry of Foreign Affairs), requests can be transmitted more swiftly and the communication can become clearer.

But what happens when two countries don't have in place an MLA treaty? It is worth going back and reviewing the provisions that the UNCAC has established regarding this topic in Article 46. UNCAC functions as a multilateral treaty for mutual legal assistance. This is key, as countries signatory to UNCAC do not need to send letter rogatories through the diplomatic channels to foreign authorities. It is enough to send a mutual legal assistance request to the central authority under the formal requirements listed within this instrument.

The convention has established that mutual legal assistance can be used, apart from the traditional purposes, for the recovery of assets. The mutual legal assistance request is subject to some formality, according to Article 46. It must clearly establish the identity of the authority making the request and the subject matter and nature of the investigation. It should also contain a summary of the relevant facts and a description of the assistance sought. It must also mention the identity of the people involved. Finally, it should establish the purpose for which the information will be used. The letter of request must be sent in a language acceptable to the authorities of the requested party. The lack of any of these requirements is reason enough to refuse assistance.

When dealing with mutual legal assistance there are several aspects that must be emphasized. The first is the goal of the request. If the goal is to gather evidence that will later be incorporated into a criminal process and admitted in court, this evidence must be protected at all costs. That means that it should be gathered in accordance to the general principles of criminal law and the chain of evidence must be respected. Countries can and should include in their requests any special procedures needed for the gathering of evidence. This is particularly challenging when it comes to interviewing witnesses. The principle of cross-examination should not be forgotten. The UNCAC is innovative in the sense that it suggests the use of technology to overcome this problem and the use of video conferencing is presented as an option (see Article 32 of UNCAC). The second aspect to be considered is dual criminality. Requesting countries must ensure to qualify the conducts investigated under conducts that are considered criminal offenses in the requested country. Requested countries should also remember that if the fact pattern fits a conduct considered to be a criminal offense the nomenclature should not matter. Precious time is wasted when this is overlooked. Finally, the principle of specialty must be respected. This means that the evidence gathered can only be used for the purposes described.

Requests can also be sent based on the principle of reciprocity, and in this case they are called letters of request.

Finally, it is also possible to use executive agreements, which are put in place by the Executive Branch while the treaties are signed and ratified by the Legislative Branch.

### ***Interview of a witness***

**Q:** During the simulated case you found that a very large check issued to Harvey Cattleman who resides in the United States. It is important to interview this witness to determine the purpose of the check. How would you obtain this information?

**A:** Again there are at least two possible avenues:

**1. Ask the participants how they would make contact with this witness** - If a formal process is the first step used in contacting this witness, it may take 3 to 5 months and the value of the witness is unknown. It may be desirable to utilize informal processes to contact and interview this witness to determine if his testimony may be required at trial. This could be done through a variety of informal means such as contacting law enforcement officials in the country where the witness resides, utilizing Interpol (which may also take a significant amount of time) or making a request through your embassy. Information obtained through these informal processes will assist in determining if the witness testimony will be required at trial. This information can then be obtained as admissible evidence through a formal MLA request.

**2. Articles of incorporations** - or information found in public registries

**Q:** During the investigation you have found several corporations that have been registered overseas, such as Island Fleets or Indian Ocean Factors CH. How would you obtain the articles of incorporation?

**A:** There are ways in which this information can be obtained informally in order to follow leads. Many sources can be used:

**1. Public databases** – This information can be easily obtained in public databases established by governments. In many countries these databases are found on the Internet and are easily accessible. In other cases these databases are not available online. However, it is possible to request this information over the mail by sending forms that can be downloaded from the Internet and paying a small fee.

**2. Through Interpol** – Interpol is the world’s largest international police organization, with 187 member countries. Created in 1923, it facilitates cross-border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat international crime. It aims to facilitate international police co-operation even where diplomatic relations do not exist between particular countries. Its four core functions are: (i) to maintain a secure global police communication services; (ii) to provide operational data services and databases for police; (iii) to offer operational police support services; (iv) training and development.

### ***Verify the commercial activity of Island Fleets***

**Q:** During the investigation you have found documents that prove that a company called Island Fleets owns several assets. It is necessary to verify whether this company has a commercial activity to determine if it is a real company or nothing more than a shell company. To do this, you decide to verify its address in the BVI.

**A:** This can also be done informally, for information purposes. You may want to consider asking a colleague (police to police). By simply placing a phone call and asking a colleague in the BVI to drive by the address and check whether there are in fact offices open to the public, you can save a substantial amount of time. If you decide to continue following the lead for more detailed information a formal MLA request can be sent. You will be able to provide the requested country much more information that can be useful for them to aid in your investigation.

Following the discussion relating to the possible MLA routes that may be taken in our 3 examples (bank records in Switzerland; interview of a witness in the United States; and the review of public records in the BVI), slide 2 should be displayed. This slide summarizes the possible formal and informal MLA approaches. Each item should be discussed and explained

## Types of Assistance Required

### Formal

- Letters rogatory
- Bilateral treaties
- Multilateral treaties
- Letters of request

### Informal

- FIU/Egmont
- Embassy contacts
- Interpol
- Police to police
- Internet research
- Commercial databases
- Government databases
- Be creative

### Formal

- Letters rogatory
- Bilateral treaties
- Multilateral treaties
- Letters of request

### Informal

- FIU/Egmont
- Embassy contacts
- Interpol
- Police to police
- Internet research
- Commercial databases
- Government databases
- Be creative

When obtaining evidence through MLA there are many important considerations, particularly when it comes to admissibility in court. The facilitator should remind the participants that the ultimate goal when doing mutual legal assistance is to obtain evidence and information in the fastest and most efficient means possible while respecting the sovereignty of the foreign country.

**Slide 3** below lists the most commonly used mechanisms in Albania for formal MLA. The instructor should become familiar with each of the processes.

## Mechanisms Available For Formal MLA

- Bilateral agreements with most Balkan countries
- European Convention on MLA in Criminal Matters
  - Second Additional Protocol allows for direct communication by judicial authorities
- UNCAC
- Domestic MLA law (in effect for one year)
  - Also allows for direct communication
  - Letter of Request
  - Letters Rogatory

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  - Also allows for direct communication
  - Letter of Request
  - Letters Rogatory

**Slide 4** describes the MLA process in Albania in general terms from the drafting to the review by the office of the GPO to the review and transmittal by the Central Authority which is the Ministry of Justice.

## Procedures for Formal MLA

- Request is drafted by prosecutor
- Forwarded to General Prosecution Office, MLA department for review
  - Second Additional Protocol allows for direct communication by judicial authorities
- Forwarded to the Ministry of Justice for review and transmittal


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**Slide 5** emphasizes the need for always making personal contact with a representative in the requested country prior to sending the formal MLA. Informal contacts are extremely important to assure the most efficient movement of the formal MLA request. There are a number of benefits to making a personal contact with the proper person in the foreign jurisdiction:

- Determining what activities can be accomplished in the foreign jurisdiction;
- Identify any problem areas;
- Assuring that the MLA request contains all information necessary;
- Obtaining informal assistance when possible.



Project Against Corruption in Albania (PACA)

## Good practices

- Informal / personal contacts by the General Prosecution Office (GPO) are very important
- At the request of the GPO:
  - Requests should be very specific
  - Think about the costs involved

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**Slide 6** a list of questions that a person should consider when considering making an MLA request. The second question in the list is extremely important – What information do I need? The MLA request should state very specifically what information and activities are being requested.

## Questions to answer

- What information do I have?
- What information do I need?
- Who do I approach for such information?
- How do I compile the request for information?
- How do I satisfy both the domestic and foreign legislative requirements?

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- What information do I need?
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- How do I satisfy both the domestic and foreign legislative requirements?

**Slide 7** contains two points that should be thoroughly discussed. The first bullet point relates to assuring that the evidence obtained in a foreign jurisdiction will be legally admissible in an Albanian court. How is the evidence secured in the foreign country? What authentication procedures need to be followed for bank records? How will witness testimony be introduced if he/she is not available at trial? These are just some of the questions that should be considered to assure that the evidence will be admitted in an Albanian court.

The UNCAC states in Article 17 that the rules of the requested country apply in gathering evidence. The convention also states that if it is necessary to follow specific procedures in order to make the evidence admissible in the requesting country, it should be specified in the request.

## Questions to answer

- How do I ensure that the evidence obtained meets admissibility requirements?
- Do I need to inform the suspect of intention to secure assistance of foreign authorities in obtaining evidence abroad?

### Questions to answer

- How do I ensure that the evidence obtained meets admissibility requirements?



- Do I need to inform the suspect of intention to secure assistance of foreign authorities in obtaining evidence abroad?

The second question posed in slide 7 is also a very important consideration. This relates mainly to witness testimony. Does the defendant have the right to cross-examine the witness? If the witness is interviewed in a foreign country and provides a written statement, is this admissible evidence? It may be admissible but the question is what weight will be given to this statement. Given these considerations, it may be necessary to inform the defendant of the intention to interview a witness in a foreign country prior to submitting the MLA request. This will give the subject of the investigation or their counsel an opportunity to participate in the interview and cross examine the witness. The following are some options to be considered for the cross examination of a witness during the investigative stage:

- **Videoconferencing:** Article 46.18 of the UNCAC establishes that when a witness or expert is in the territory of a State Party and has to be heard by the judicial authorities of another State Party, the requesting country may permit the hearing to take place by video conference if it is not possible for the witness to appear in the requested State Party. This is a cost efficient solution that would allow the judge, prosecutor and defense attorney to cross examine the witness in real time.
- **Interview in the Albanian Embassy:** other countries have had the experience of sending the judge, prosecutor and defense attorney overseas to cross examine a witness in their embassy. This way the interview can be conducted on Albanian territory and the witness wouldn't have to travel.

**Slide 8** is emphasizing the fact that admissibility of foreign obtained evidence should be considered for both testimony and document evidence.

**Admissibility of evidence**


- Oral testimony
- Documentary evidence

Admissibility of evidence  
Oral testimony  
Documentary evidence

**Slide 9** makes reference to articles in the UNCAC that relate to MLA for offenses covered by the convention (article 46), extradition (article 44) and the tracing, freezing, seizing and confiscation of assets (article 31). The instructor should read these sections and become familiar with the content.

Article 46 of the UNCAC provides that assistance can be requested for any of the following reasons:

- Taking evidence or statements from persons;
- Effecting service of judicial documents;
- Executing searches and seizures, and freezing;
- Examining objects and sites;
- Providing information, evidentiary items and expert evaluations;
- Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- Facilitating the voluntary appearance of persons in the requesting State Party;
- Any other type of assistance that is not contrary to the domestic law of the requested State Party;
- Identifying, freezing and tracing assets;
- Recovering the instrumentalities or proceeds of crime.



**United nations Convention Against Corruption (UNCAC)**

Countries are bound by UNCAC to render specific forms of MLA in gathering and transferring evidence for use in court, to extradite offenders (**articles 46 & 44**).

Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption (**article 31**).

United nations Convention Against Corruption (UNCAC)

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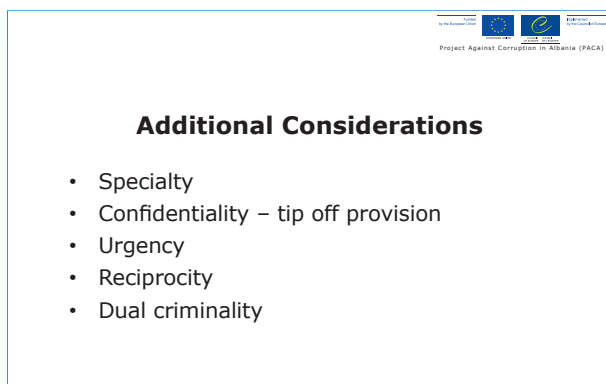
Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption (**article 31**).

The United Nations Convention Against Corruption (UNCAC) came into force on December 14th 2005 and so far has been ratified by approximately 140 countries. It is innovative in two respects:

It aims to function as a multilateral mutual legal assistance treaty. This means that the UNCAC can in fact be used as the legal basis for mutual legal assistance. This, however, must be done with precaution, as some countries ratification is not enough and they will require domestication of the convention before it can be used for mutual legal assistance.

It is the first convention to ever refer to the recovery of assets as a priority in the fight against corruption. This is stated throughout the instrument. In fact, Article 51 states that the return of assets is a fundamental principle of the convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

**Slide 10** makes reference to additional concepts that are important considerations in MLA. An explanation of each of these is found below the slide.



**Additional Considerations**

- Specialty
- Confidentiality – tip off provision
- Urgency
- Reciprocity
- Dual criminality

#### Additional Considerations

- Specialty
- Confidentiality – tip off provision
- Urgency
- Reciprocity
- Dual criminality

**Specialty:** The principle of specialty guarantees that information received through a mutual legal assistance request will only be used for the investigation and the purposes stated in the request.

Paragraph 19 of section 46 of the UNCAC has established that:

“19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the

requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.”

**Confidentiality:** This is an important reminder when sending mutual legal assistance. Particularly, in the early stages of an investigation it is advisable not to take actions that will alert the target. The letter of request can – and should – expressly refer to this issue.

On the UNCAC, this possibility is presented in Article 46, paragraph 20:

“The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party”.

**Urgency:** The UNCAC makes reference to this issue on Article 46, paragraph 24, as follows:

“24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.”

**Reciprocity:** The concept of reciprocity allows countries to send MLA requests in circumstances where there are no bilateral or multilateral treaties. A letter of request (similar to a treaty request) is transmitted through the Central Authority and this request will contain a reciprocity provision that states that the requesting country will honor a similar request from the requested State in the future.

**Dual criminality:** This requirement establishes that the offenses investigated by the requesting country must also be offenses under the requested country’s legislation. Non-compliance with this requirement is enough grounds to reject an MLA request. Article 43.2 of the UNCAC has established that in matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested country place the offense within the same category of offense or denominate the offense by the same terminology as the requesting country. The important consideration should be whether the conduct underlying the offense for which assistance is sought is a criminal offense under the laws of both States Parties. This provision under the UNCAC is extremely useful when facing the great diversity of legal systems and languages that challenge international cooperation.

To avoid dual criminality problems it is advisable to not only make reference to the offenses investigated, but also copy the text of the offense. This will assist the requested country in identifying the underlying conduct of the offense.

## 8. Automated Tools for Analysis

The software program Excel is an excellent electronic tool that can be used to facilitate the analysis of large volumes of data. An extensive PowerPoint has been provided that will describe the step by step processes needed to conduct the following types of analysis of data contained in an Excel spreadsheet:

- Sort by column heading;
- Filters and auto filters;
- Auto filter for payments to a specific entity;
- Subtotals by category and sub-divided by year;
- Combining multiple bank accounts to search for patterns such as cash deposit amounts;
- Pivot table for multiple types of analysis.

The slide below is an example of the detailed explanation that includes a picture of the actual Excel spreadsheet and step by step instructions of each computer command that is required to obtain the desired result.

**Make a Copy of the Original Spreadsheet**

1. Right click on tab at bottom  
2. Select Move or Copy  
3. Check "Create a Copy"  
4. A Copy should appear on your bottom tab

Year	Desc	Amount	Deposit amount	Comments
2005	check	1177.05	3250	122
2005	check	1121.05	3251	378
2005	check	1/26/05	3252	244
2005	check	1/28/05	3253	4,300
2005	deposit	2/1/05		
2005	check	2/4/05	3254	398
2005	check	2/8/05	3255	211
2005	check	2/12/05	3256	578

Due to the time constraints in this program it is recommended that only slides 1 through 6, slides 10 and 11 and slides 14 to 26 be included in the instruction. This will include explaining the layout of the spreadsheet, the theory of the spreadsheet design, the sort by column heading function and pivot tables. If additional instruction is requested on the use of Excel, it should be done outside of the normal program hours such as at lunch or in the evening.

The layout of the spreadsheet includes column headings that reflect each aspect of the items contained on the documents that need to be analyzed. The example used in the PowerPoint presentation is a bank account analysis which includes a heading for each important data field (year, description of transaction, date of transaction, check number, check amount, etc).

The spreadsheet design is critical because once the data has been input into the spreadsheet it may be difficult or time consuming to change the basic layout. The first consideration in designing the spreadsheet is to consider all of the

possible outputs (types of analysis) that are needed. For example, some of the desired outputs may be: to compare the data from multiple accounts, to arrange in chronological order, to obtain totals and subtotals, to analyze certain patterns (cash deposits amounts or dates) or to group by year. If multiple accounts are being analyzed it is usually desirable to format each spreadsheet with the same layout so that the accounts can later be merged into one spreadsheet to perform an overall analysis. It is best to obtain the opinions of various investigators, prosecutors and/or judges to be sure that all outputs are considered in the design.

Slide 2 shows a spreadsheet which has not yet been analyzed. The first thing to do is to always make a copy of the spreadsheet. This can be done in multiple ways: make a tab copy, make a copy using a different file name or back up the original to a different computer or storage device. For the purposes of this program, we will make a tab copy. Slide 3 illustrates the process that is required to make this tab copy. Slide 4 shows the spreadsheet looking exactly the same except that there is an additional tab at the bottom.

Slide 5 demonstrates the sort function. The sort function is extremely easy to perform but extremely powerful and beneficial. For example, after the data has been input into the desired spreadsheet layout there may be 5000 lines of information which would be difficult to comprehend by just looking at each item. However by grouping (sorting) items by payee, source of deposit, date order or ascending amount order, the analysis of the data would be far more efficient. Slide 6 will demonstrate the results of a sort by column heading.

Slides 10 and 11 demonstrate the subtotal function which can be used to obtain totals of and section of spreadsheet.

Slides 14 to 26 illustrated the pivot table function. This process will allow the user to obtain a summary of the entire spreadsheet organized in any manner desired. The slides will demonstrate how all of the transactions can be summarized in groupings by payee and payer and totaled by year. The slides provide clear details of each step required to create the pivot table.

## 9. Financial Investigative Approaches

The 5 and ½ day agenda includes modules on the following:

- Financial Investigative Approaches Workshop;
- Financial Investigative Approaches Presentations;
- Indirect Methods of Proving Income.

The Financial Investigative Approaches Workshop and Presentations are optional. It is recommended that this module only be used if there is a need to place a high emphasis on the financial organization aspects of the investigation. This module will require approximately 2 to 3 hours to complete.

The Indirect Methods of Proving Income module will provide essentially the same information as the other two modules listed above but approaches the topic from a different perspective. For example, the Financial Investigative Approaches Workshop begins by providing the participants with a case scenario and asks them to create a method to present the financial information at trial. They are asked to per-

form this task without any guidance on the suggested format. This is a challenge for the participants to require them to think about the difficulties of organizing large volume of data and to create a methodology that will accurately summarize the information. The Indirect Methods of Proving Income module approaches the topic from the opposite perspective. It first provides a lecture that explains the suggested format and then follows with a practice problem to determine if the participants have understood the concepts. If time permits, all of the modules listed above can be used because the Indirect Method module reinforces the information that is learned in the Financial Investigative Approaches Workshop and Presentations.

The following is an explanation of the Financial Investigative Approaches Workshop and Presentations. The documents for this program are found in the Participants Folder / PowerPoint Presentation / Financial Approaches PE. This sub folder includes the following documents:

- A practical exercise consisting 3 documents (Doc 1, Doc 2, Doc 3);
- An Excel document titled "S and A and NW Worksheet – this is the suggested format to be used for the practical exercise;
- An Excel document titled "S and A and NW Solution – this is the solution for the practical exercise. This document should be password protected.

Begin this class by distributing hard copies of Doc 1 and Doc 2 to the participants and advising them that Doc 3 is in an electronic version only in their participants folder. The participants should review the 3 documents which contain a summary of evidence that has been gathered in this case. Explain that the directions and goals relating to this exercise are found at the top of Doc 1 which reads:

"Review this evidence and determine how the financial evidence would be best organized and presented to the court to most clearly demonstrate the amount of corrupt income **received by Rota** (the Director of Procurement). It is recommended that an Excel spreadsheet be utilized to organize the financial data".

Allow the participants approximately 45 minutes to review the documents and develop a methodology for presenting the financial evidence to the court in a manner that is easily understandable and will clearly demonstrate the total amount of corrupt income. Explain that each group should prepare a presentation of this financial evidence and be prepared to report their findings to the members of the class.

After the 45 minutes, select a group to make a presentation to the class of the methodology that they plan to use. It is suggested that 2 or 3 groups provide presentations depending on the time constraints. After each presentation, it is the task of the instructor to critique the methodology for accuracy and simplicity.

The goals of the exercise are to demonstrate to the participants the need to accurately organize the financial data and the potential difficulty in accomplishing this task. Following the presentations and the critiquing of each, the instructor should show the suggested methodology for organizing and presenting this financial data. This is found in the Excel document titled "S and A and NW Solution" in the tab at the bottom labeled "source and application". The foundation for this Source and Application solution is basically the analysis of the 3 bank accounts including the beginning and ending balances, the deposits and the distributions from the accounts. There is also one additional item included in the analysis which is the cash purchase of the Mercedes.

The instructor should provide an explanation of the source and application method of proof. The information needed for this explanation is contained in the "Indirect Method of Proving Income" section immediately below.

## 10. Indirect Method of Proving Income

Approximate time for this section including workshop: 120 minutes

The documents for this portion of the program are found in the Participants Folder / PowerPoint Presentation / Source and App. This sub folder includes the following documents:

- PowerPoint presentation for the Source and Application lecture
- A workshop practical exercise ("PE – small – Albania"). This document contains 15 facts that will be used as a practice problem for the participants.
- An Excel document titled "S and A workshop – Albania"
- An Excel document titled "S and A solution – Albania". This document is the completed source and application solution for the 15 item practical exercise mentioned above. This document should be password protected.
- PowerPoint presentation titled "S and A solution – Albania". This document is the step by step solution to the 15 item practical exercise mentioned above. This document should be password protected.

### *Lecture overview*

Corruption cases generally involve the theft and misappropriation of funds by government officials or the receiving of external funds (private money) from individuals or companies as bribes. A small percentage of corruption cases deal with non-monetary rewards such as sexual favors or unauthorized promotions. These latter (non-monetary) types of corruption are not the subject of this training program.

The investigation of large-scale monetary corruption should always have a focus on how the money was paid and who received the benefit. This financial investigative aspect can be conducted in a variety of ways depending on the circumstances of the case. The major types of financial investigation can be summarized as follows:

- **Specific item** case using direct evidence;
- **Direct proof of bribe** through the use of marked bills and video taped evidence;
- An **indirect method** of proving illegal income using circumstantial evidence.



## Proving corrupt income

- **Specific Item method – direct evidence**
- **Undercover / Informant case – direct evidence**
- **Indirect method of proof – circumstantial case**
  - **Net Worth**
  - **Source and Application of Funds**

Proving corrupt income

- **Specific Item method – direct evidence**
- **Undercover / Informant case – direct evidence**
- **Indirect method of proof – circumstantial case**
  - **Net Worth**
  - **Source and Application of Funds**

What sort of cases or fact patterns would require the use of one of the above methods? Let's explore some examples of when each of these financial investigative techniques could be used to assist in proving the criminal violations.

**Specific item:** This method would be used when specific payments of bribery or misappropriated government funds can be traced to the official's direct benefit. The evidence would directly prove the linkage between the corrupt activity and the value received by the public official.

**Example:** The Director of Procurement approved a valuable sole source contract to Advanced Technology Corporation in violation of the procurement guidelines. False documentation prepared by the director was discovered that authorized the awarding of the contract. Payments can be document directly from Advanced Technology for the purchase of a Mercedes which is owned by the Director of Procurement. This is direct evidence that proves the specific item purchase of an asset that was for the benefit of the public official who approved the fraudulently awarded contract. In this instance there is no need to use an indirect method of proving income (as described below) because the available evidence is specific and direct.

**Undercover/Informant case - direct proof:** An undercover or covert operation may be able to develop direct evidence of a bribe. On rare occasions an informant or a representative of a private company may provide information to the government officials that a bribe has been solicited from him by a public official. In this instance it may be possible to set up surveillance video and audio equipment that will document the bribe transaction.

**Example:** A private company representative informs law enforcement that a government official has solicited a bribe from the company in order to secure a profitable contract. A covert operation is planned. A meeting in a hotel room is scheduled with the government official. The room is equipped with hidden cameras and audio equipment. The private company official is also provided with marked bills to give if the bribe is solicited. The meeting is held and the government official solicits a bribe in exchange for the contract award and the marked bills are given as the bribe. This conversation is successfully recorded by the video and audio equipment. Again in this instance there is no need to use an indirect method of proving income (as described below) because the available evidence is specific and direct.

**Indirect methods of proving illegal income:** if illegal income can not be traced directly to the corrupt official then an indirect method of proof may be required to corroborate evidence of corrupt payments. For example, if it can be proven that the official spent money during a set period of time that was substantially in excess of his legal income this could be used as circumstantial evidence to prove the amount of illegal income that the person received. In a corruption or money laundering case this type of proof would be used in conjunction with other evidence that established the corrupt activity such as bid rigging or other misappropriation of funds.

There are two main methods for proving illegal income through an indirect method. These are the Net Worth method and the Source and Application of Funds method (also referred to as the expenditures method). There is also a method called the Cash Flow Analysis but it has been used less frequently.

The net worth method is considered to be somewhat confusing and is difficult to explain at trial if the judge is not familiar with it. Therefore this method will not be discussed here.

The concept of the Source and Application method is relatively simple and will be used in this program as the preferential indirect method of proving income. The basic theory for this method is that the person under investigation spent far more money during a set period of time that he had legally available to him. This concept expressed in a formula would appear as follows:

For the set period January 1, 2008 to December 31, 2008 the defendant had:

Total expenditures and other applications of money	210,000,000
Total of known and legal sources of income	<u>30,000,000</u>
Equals illegal or unexplained income	180,000,000

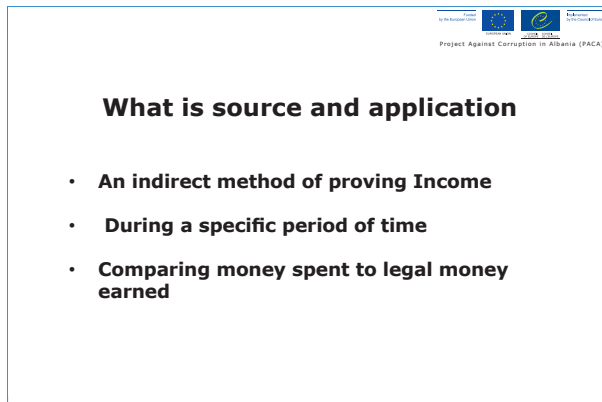
This is a circumstantial and indirect method of proving the person's true income from all sources, both legal and illegal. This evidence could then be used as corroborative evidence to prove certain elements of the crime that has been charged. A full explanation of the Source and Application method will be explained later in this manual.

The following section will explain in detail the Source and Application method and illustrate it with the PowerPoint slides that will be used in the class.

## Source and Application of Funds Method

As indicated above, proving corrupt income will often require the use of circumstantial evidence - an indirect method of proving income. It will not always be possible to trace the specific corruption income from the illegal activity directly to the receiver of the bribe or the one who benefited from the misappropriation of the government funds.

The Source and Application of Funds method of proving illegal income analyzes all financial transactions of the subject of the investigation during a set period of time. For example, the set period may be a calendar year such as 1 January 2008 to 31 December 2008 or any other time frame such as 14 March 2008 to 21 April 2009. This set period can be any time that the investigator believes will demonstrate an increase in spending or wealth far above their legal means of the subject of the investigation. This method compares the money spent, saved and used in any manner (application) to the **known** and **legal** income that the person earned during the set time period.



What is source and application

- **An indirect method of proving Income**
- **During a specific period of time**
- **Comparing money spent to legal money earned**

What is source and application

- **An indirect method of proving Income**
- **During a specific period of time**
- **Comparing money spent to legal money earned**

When using the Source and Application, the total expenditures (and any other applications of money) for the set period of time are added together; the total known and legal source of income for the same period are added; and then the known and legal sources are subtracted from the total expenditures (applications). The simple formula is set forth below in slide 4:

## What is source and application

### Total Expenditures

- **Total Sources of Legal Income**

= **Funds from Unknown Sources**




What is source and application

### Total Expenditures

- **Total Sources of Legal Income**

= **Funds from Unknown Sources**

The chart in slide 5 below is a simple example of a completed Source and Application.


 Project Against Corruption in Albania (PACA)

Dervishi Analizë e burimit & përdorimit të fondeve			
Burimet e fondeve		Përdorimi i fondeve	
	Shuma 2008		Shuma 2008
Trashëgimia	5,000,000	Punime hidraulike - para në dorë	4,476,000
Bank #2 - letrica e çeljes	0	Lende drusore - gëk	17,780,000
Bank #3 - letrica e çeljes	3,198,000	Punëtorë - para në dorë	8,500,000
Bank #3 - interesi i fituar	435,600	Bank #2 - mbyllje bilanci	15,790,000
Mercedes - fitimet e shitjes	7,800,000	Condo - para pagesë	38,000,000
Rroga e shtetit	11,500,000	Condo - pagesa mujore	4,000,000
Te ardhurat nga qiraja	1,920,000	Bank #3 - mbyllje bilanci	6,858,000
		Mercedes - pagesa mujore	510,000
		Mercedes - shlyetje kredie	7,120,000
		skafi SeaRay	5,806,000
		Pagesa për Mastercard-in	16,304,000
		Shpenzime personale për jetesë - me ç	11,858,000
		Shpenzime personale për jetesë - me ç	3,908,000
		Taksa të paguara	2,440,000
		Taksa të paguara për sigurimet shoqë	760,000
		Ushëtimi për ski në Zvicër	3,680,000
<b>Totali i burimeve</b>	<b>29,853,600</b>	<b>Totali i përdorimeve</b>	<b>147,852,000</b>
		<b>Minus: Totali i burimeve</b>	<b>29,853,600</b>
		<b>Burime të paditura</b>	<b>117,998,400</b>

What types of financial transactions would be included in the "Source of Funds" section and what transactions would be recorded in the "Application of Funds" section? The following 2 slides give examples of known and legal sources of funds that would be include in the "Source of Funds" section. Most of these are very straightforward: the person's salary, any business profits, the interest and dividends earned from bank accounts or investment accounts, and insurance proceeds that may have been received from an insurance policy as a result of an accident, theft or death.

## Sources of Funds

- **Salary/Wages**
- **Net business profit**
- **Interest and dividend income**
- **Insurance Proceeds**



Sources of funds salary/wages

Net business profit

Interest and dividend income

Insurance proceeds

The next slide shows additional examples of legal sources of income such as the proceeds from the sale of an asset, loans, gifts, inheritances, awards and gambling winnings. Loans obtained by a person require an additional explanation. The loan should only be included in the computation if the person received the funds and had discretionary use of the money. For example, if the person received a personal loan from a bank and the money was given directly to the person to be used in any way, then this would be considered a source of funds. However if the bank gave the person a loan to purchase a house, these funds never go directly to the borrower to be used in any way. These funds will be paid directly from the bank to the seller of the house or to an escrow account. Therefore the borrower did not have discretionary use of the money. In this case the loan will not be shown as a source of income and the purchase price of the house would not be shown as an application. Only the actual amounts of money paid by the person (down or initial payment and the monthly loan payments) would be included in the "Application of Funds" section. Loans will only be shown as a source of funds if the borrower is given the money and has discretion to use it in any manner.

  
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## Sources of Funds

- Sale of an asset 
- Loans, gifts and inheritances, awards 
- Gambling winnings 
- Beginning cash on hand
- Beginning bank balance

Sources of funds

Sale of an asset

Loans, gifts and inheritances, award

Gambling winnings

Beginning cash on hand

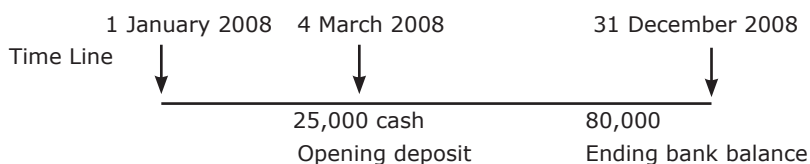
Beginning bank balance

Also referring to the slide above, all bank accounts owned or controlled by the person must be identified and the records obtained. In analyzing each bank account, three basic things must be done. First, all deposits must be analyzed in an attempt to identify the source and purpose of all funds received. Any deposits that can be identified (with evidence) as **known** and **legal** sources of income, will be included in the "Sources of Funds" section. Unidentified, deposits such as cash, will not be included in either the Sources or Applications sections. Second, all the withdrawals must be analyzed to determine the disposition of the funds. Any withdrawals that can be proven to be expenditure or other identifiable application of funds will be included in the Application section. Cash withdrawals will normally not be included as an Application because proof was not established as to how the money was used.

The third analysis that must be done with each bank account is simply to determine the balance of the account at the beginning of the period and the balance at the end of the period. The beginning balance will be included in the "Source of Funds" section and the ending balance will be included in the "Application of Funds" section. The drawing below is a time line that illustrates that the focus is on the beginning and ending dates of the period of investigation. The balances on these exact dates should be determined and included in the appropriate sections of the source and application analysis.



What if the bank account was opened in the middle of the period with a 25,000 cash deposit? See the illustration below. What would be the beginning balance of this account that should be included in the “Source of Funds” section? The answer is: the balance at the beginning of the period is Zero since the account was not open on 1 January 2008. Also the opening deposit should not be included as a source because it is not a known and legal source of income – the source of the cash is undetermined.



**Slide 8** below indicates how the beginning and ending balances in a bank account should be recorded in Source and Application worksheet.

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## Bank Balances

- Place the ending bank balance in the Application section
- Place the beginning balance in the Sources section

**Source & Application of Funds Analysis**

Sources of Funds	Amount 2008	Applications of Funds	Amount 2008
Citibank - opening balance	159'900	Citibank - ending balance	342'900

Bank balances

- Place the ending bank balance in the Application section
- Place the beginning balance in the Sources section

Source and application of funds analysis

Sources of funds amount 2008 citibank – opening balance

Applications of funds


Amount 2008

342,900

159,900

Cash on hand is an item that needs to be considered but may be very difficult to document or estimate. The amount of cash on hand that a person has on the date of the beginning of the Source and Application period will be included as a source of legitimate income. What is meant by cash on hand: this is the total amount of currency that a person has outside of any bank accounts or any other financial institution; this is actual currency that a person may have stored in their house, in a hole in the back yard or kept in any physical place. It will usually be almost impossible to establish the exact amount of cash on hand for the beginning and ending dates of the investigative period. However it is important to establish the best estimate possible for the cash on hand on these dates. This can be accomplished by interviewing the suspect, reviewing records such as financial statements filed by the suspect and wealth statements mandated by law. Often from a review of this information an estimate of the maximum cash on hand can be determined.


What type of items should be included in the Application section of the Source and Application worksheet? The following two slides, 9 and 10, give some examples of these items:



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## Applications of Funds

- **Asset purchases**
- **Personal living expenses**
  - **rent, mortgage, utilities, food, clothing**
- **Insurance**
- **Credit Card payments**



### Application of Funds


- Asset purchases
  - Personal living expenses
    - rent, mortgage, utilities, food, clothing
    - Insurance
  - Credit Card payments
- The purchase of an asset is recorded as an Application. For example if a person purchases a car for 500,000 with cash or a bank check then this amount would be included in the worksheet as an application. However if a person purchases an asset such as a house and obtains a loan for a portion of the purchase price, it is best to only include the actual amount that has been paid by the person. In other words, if a person purchases a new house for 45,000,000 but he only



pays 10,000,000 as a down payment from his own funds and obtains a loan at a bank for the remaining 35,000,000, then you would only include the 10,000,000 in the Application section. The loan amount would not need to be included in the Source section since the person never had discretionary use of these funds;

- All personal living expenses that can be documented with evidence will be an Application. This would include the amounts paid for rent, insurance utilities and the purchase of clothes, food or any other personal item;
- Credit card payment should be recorded as an application. It is important to note that only the payment should be recorded, not the total purchases. For example, during a one month period the person may have made purchases totaling 500,000 but only made a payment of 10,000. In this case only the 10,000 would be an application and you would not record the total purchases or the balance owed on the credit card.




The following slide gives additional examples of items to be included in the Application section:



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## Applications of Funds

- **Investments**
- **Gifts to others**
- **Travel**
- **Ending bank accounts**
- **Ending cash on hand**
- **Payments on a loan**

Applications of Funds

Investments

Gifts to others

Travel


Ending bank accounts

Ending cash on hand

Payments on a loan

- Money invested in stocks, bonds or any other type of investment should simply be included as an Application;
- Gifts to others, travel or any other expenditure that can be completely documented will be an application of funds;
- As mentioned above the ending balance of each bank account will be included as an application. This will be the exact balance on the last day of the investigative period;
- The best estimate, based on facts introduced into evidence, for cash on hand at the ending date of the period will be an application;
- Payments made on loans are also an application.


**Slide 11** lists the main defenses that are usually raised at trial regarding the introduction of the Source and Application computation. The following is a brief explanation of the actions necessary to overcome or counter each of the defenses if raised at trial.



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## Overcoming Defenses

- **Cash on hand defense**
- **Loans and gifts from family/friends**
- **Nominees**



Overcoming defences Cash on hand defense Loans and gifts from family/friends nominees

- As previously mentioned cash on hand can be difficult to prove. Therefore this is often the first objection that the defense will have to the results of the Source and Application. The defense will claim that the person had a large amount of concealed cash at the beginning of the period and that is the source of cash that was used to make the expenditures that are enumerated in the computation. If the evidence submitted by the defense is credible then the burden will be on the prosecution to disprove that alleged amount of cash on hand;
- Loans or gifts are another defense often used to challenge the computation. The claim by the defense will be that the person obtained large amounts of undocumented loans or gifts from private sources such as friends or relatives and this is the source of the funds that was used to make the expenditures;

- Another common defense is that the assets allegedly purchased by the subject are actually owned by a different person. In fact, the documented evidence may show that the assets are registered in the name of the other person. It will be the job of the prosecution to show that the money used to pay for these assets actually originated from the subject and the other person is simply a nominee holder.

### **Source and Application Workshop**

Following the lecture portion of this module, a short practical exercise will be used to test the knowledge of the participants. This will not be a graded test. This exercise consists of a statement of facts relating to an investigation of a fictitious person (see the file "PE – small – Albania" in the Participants Folder). There are 15 items in this document. The participants should read each item and determine if there is financial information that should be included in the Source and Application computation. The participants should use the electronic spreadsheet to enter the financial data into the appropriate source or application section (see the file "S and A worksheet – Albania" in the Participants Folder). This Excel document has been formatted with the Source and Application template including the mathematical formulas. The participants should be given approximately 30 minutes to complete this workshop and members of a group can work together if needed.

The PowerPoint "S and A solution - Albania" contains the answers for the workshop problem. Each slide of the PowerPoint shows the individual solution for each item with a number reference. This PowerPoint should be password protected and included in the Participants Folder that is installed on all of the computers. This will prevent the participants from accessing the solution while working on the problem.

Most of the answers to each item are self explanatory; however, a few will require explanation and a discussion of some common errors.

- Item 1: The cement pouring is not included because it was paid in 2009;
- Item 2: No action because the land was purchased in 2009;
- Item 3: No action because the value of the land is not a transaction, an estimated value is never included in a source and application;
- Item 4: The value of the inherited house is not a Source because there are no funds available from this house – it has not been sold nor has there been a loan taken against it;
- Item 5: The beginning balance for this account on January 1, 2010 is zero because the account was not open on this date. A common error is the desire to include the initial deposit into the account on February 5 as the opening balance. This opening cash deposit has no relevance to the balance of the account on January 1, 2010 which is the beginning date for the investigative period. Additionally the cash deposit is not a known legal source of income. Therefore it would not be included as a Source of Funds in any situation.
- Item 6: It is only necessary to include only the actual money movements made by the subject of the investigation. In this

case that would include only the initial down payment on the house and the subsequent monthly loan payment. It is not necessary to include the purchase price or the loan amount on the house. The subject never had discretionary use of the money from the house loan, therefore it does not have to be listed as a source of funds;


- Item 7: The interest earned on the account is a known legal source of income. Even if the money deposited to the account was all bribe money, the interest earned on the account is from a known and legal source. The interest is not bribe money. The formula will give us the total amount of illegal income earned by the subject during the period of the investigation;
- Item 8: Each specific transaction here is listed as a Source or an Application. During 2010 he made 3 monthly payments totaling 510,000. The proceeds of the sale of the car in 2010 is a known and legal source of funds (7,800,000 in cash). The final payment on the loan (7,120,000 in cash) is an application. Since we do not know what he did with the remaining proceeds from the sale, this amount (680,000) cannot be included as an application;
- Item 9: The purchase of the boat is an application even if he loaned the money to the sister. If in fact the money really was loaned to the sister it could be listed in the application section as "loan to sister";
- Item 10: Only the credit card payment should be reflected as applications. The beginning balance, ending balance and the monthly charges do not have to be included in the calculation. Only the actual movements of money (payments) need to be included;
- Item 11: Self explanatory;
- Item 12: Self explanatory;
- Item 13: Self explanatory;
- Item 14: Self explanatory;
- Item 15: Self explanatory.

## 11. Asset Confiscation mechanisms

Placing the "Asset Recovery Mechanisms" at the very end of the Program is similar to real life. Asset recovery doesn't happen abruptly, it is the final step of a very long process that involves asset tracing, mutual legal assistance, obtaining a court ruling and finally recovering the stolen wealth.

At this point, the participants should be approaching the end – or have finished – the practical exercise, and all that is left is to discuss the different ways in which they could recover the proceeds of the criminal activity. The discussion will go from the general to the specific, from the general international practices to what is available in Albania.

**Slide 2** emphasizes that the UNCAC has a major focus on asset recovery. The slide makes reference to Chapters II, III, IV and V in generally terms. The instructor should read these chapters and be familiar with the contents.

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## Asset Confiscation and Recovery International Standards

### United Nations Convention Against Corruption UNCAC

Chapter V on Asset Recovery is a major breakthrough and is closely linked to the other chapters of the Convention.

- **Prevention:** Chapter II contain provisions on prevention of the diversion of funds, in particular of corruption (art. 8) and money-laundering (art. 14).
- **Criminalization:** Chapter III establishes the criminal offences.
- **International Co-operation:** Chapter IV provisions on international cooperation relating to asset recovery.


## Asset Confiscation and Recovery International Standards

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- **Criminalization:** Chapter III establishes the criminal offences.
- **International Co-operation:** Chapter IV provisions on international cooperation relating to asset recovery.

**Slide 3** makes reference to Article 31 of the UNCAC which states (paraphrased) that each State Party shall take such measures as may be necessary to enable confiscation of proceeds and instrumentalities of crime or the corresponding value. The instructor should be familiar with this article.

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## Article 31 of UNCAC

## Article 31 of UNCAC

Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

- (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
- (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

**Slide 4** makes reference to Article 54 of the UNCAC that encourages State parties to enact non-conviction based confiscation legislation in certain cases.




### Article 54 of UNCAC

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

## Article 54 of UNCAC

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

**Slide 5** lists the four main mechanisms for recovering stolen assets. Some countries may have all four of them, while others may only have one available. Each of the four mechanisms will be discussed individually and they will all be compared at the end.



### Asset Confiscation Mechanisms International Standards

- Conviction based
- Non conviction based forfeiture
- Civil action
- Civil law suit


## Asset Confiscation Mechanisms International Standards

- Conviction based
- Non conviction based forfeiture
- Civil action
- Civil law suit

The first mechanism, common to all systems, is criminal confiscation, which is based on the conviction of a person by a court of law (slide 6 below). This is founded on the general principle of law that establishes that no one shall profit from his or her own wrongdoings. There are three main characteristics particular to this mechanism:

- **It requires a criminal conviction:** Basing the confiscation on a criminal conviction implies a series of details that need to be addressed. This means that the action is “in persona”, in other words, that the action is carried out against the person. If this person has died or absconded, the action is lost. Also, because we are dealing with a criminal process, the statute of limitations will be subject to the criminal procedure, which means that it will most likely be very limited.
- **The standard of proof is criminal:** This means that it is very high. If a conviction is required then all facts must be proven beyond a reasonable doubt. This is because an individual’s personal liberty is at stake and for this reason there should be no doubt as to his/her guilt.
- **The burden of the evidence is on the State:** Again, this action is *in personae*, the liberty and freedom of movement of an individual can be limited at the end of this process. This tightens the controls on the State’s machinery and enhances the guarantees for the individual. The State must prove beyond a reasonable doubt the defendant’s participation in the events.

The substitute asset provision of Article 36 of the Albanian criminal code is very important. It allows the court to issue a confiscation order for assets not directly linked to the predicate offense when the direct criminal proceeds cannot be located.

  
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### Conviction Based

- Criminal Forfeiture
- High standard of proof required
- Substitute assets possible
  - Albanian criminal code, article 36 “ç) of any other asset, whose value corresponds to the criminal act proceeds”

### Conviction-based

- Criminal Forfeiture
- High standard of proof required
- Substitute assets possible
- Albanian criminal code, article 36 “ç) of any other asset, whose value corresponds to the criminal act proceeds”


**Slide 7** highlights non-conviction forfeiture This process is usually found in common law countries, however in the past few years a number of civil law countries have enacted various forms of non-conviction based forfeiture. It is also called *in rem*, since it targets the assets or is “against the thing” and not the individual.

Article 54(1)(c) of UNCAC indicates that each State Party shall:

“Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.”

Non-conviction based forfeiture usually has a lower standard of proof than conviction based. In Albania, only reasonable suspicion is required to seize the asset and then the burden shifts to the owner of the property to prove that it was acquired with legal funds. If the owner fails in this burden, then the court may issue an order of confiscation.

Some countries have non-conviction based laws that apply only in certain types of cases such as when the defendant is dead or a fugitive. Albania’s Anti Mafia allows this type of confiscation for limited types of crimes. Other countries, such as the United States, allow con-conviction based forfeiture in most cases.



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## Non-Conviction Based Forfeiture

- In rem process
- Lower standard of proof
  - Anti-Mafia law
    - Reasonable suspicion (articles 3 and 24)
    - Burden shifts to defendant (article 24)
- Unrestricted and restricted
  - Limited to death, fugitive or special circumstances
  - Unrestricted

### Non-Conviction Based Forfeiture

- In rem process
- Lower standard of proof
  - Anti-Mafia law
    - Reasonable suspicion (articles 3 and 24)




- Burden shifts to defendant (article 24)
- Unrestricted and restricted
  - Limited to death, fugitive or special circumstances
  - Unrestricted

**Slide 8** below refers to Civil actions. These are very particular to civil law countries, based on the Napoleonic tradition. Although the purpose of a civil action is to redress, it is not the same as a civil lawsuit and this must be underlined. The civil action runs parallel to the criminal investigation. During the investigative stage of the process, the victim (in corruption cases, this would be the State) can be constituted as a civil party to the process. The civil action only prospers if the criminal investigations prospers and makes it to trial because they are the same process and the same judge will judge them both. If at any point the criminal investigation is stopped before reaching trial, the civil action stops as well. However, if the trial takes place and the defendant is found not guilty, this does not imply that he or she cannot be found civilly liable. The civil action can be considered a hybrid between conviction-based forfeiture and a non-conviction based forfeiture.

It is useful to think about the criminal process as a train engine and the civil action is a wagon attached to the engine. The civil action cannot move unless the engine moves. It needs the engine to make it to the final station, which is the trial. Once they have both reached this "final station" they can both achieve different solutions.

Civil actions are a very useful tool for asset repatriation, as victim countries can become civil parties to a criminal process in order to recover assets at the end of the proceedings.



## Civil Action

- Runs within the criminal process
- Doesn't require conviction
- Undertaken by the State or a victim

### Civil Action

- Runs within the criminal process
- Doesn't require conviction
- Undertaken by the State or a victim

**Slide 9** below refers to civil law suits. Where a criminal prosecution is not possible or practicable and civil asset recovery unavailable, the victim or a State may need to resort to civil litigation. This aims to provide a remedy either by requiring the respondent to pay compensation or for the return of the assets to the plaintiff.


Advantages to the taking of civil proceedings are that the claimant retains greater control over the case, the burden of proof is lower than in criminal cases, that usually more inferences can be drawn, that the absence of the respondent is not usually a bar to the action and that there are far ranging powers to seize and freeze documents and assets.

Disadvantages include the cost of bringing a civil action and that sometimes evidence obtained through mutual legal assistance cannot be used in civil litigation.

This legal mechanism is not dependent on government-to-government cooperation through criminal MLA. In relation to foreign assets, a State will bring a private action in the civil courts of the foreign jurisdiction where corruptly acquired assets are located. The civil process has been particularly successful in international cases involving public officials where a criminal conviction of corruption is difficult or impossible to obtain. The benefits of civil proceedings include a lower standard of proof and the absence of a defendant not serving as a bar to moving forward in the proceedings. The court is satisfied as long as the defendant has been properly served notice of the proceedings.

Civil courts retain some of the benefits of criminal action, including the ability to freeze, overcome bank secrecy, and even in some cases order search/seizure actions. Moreover, restraint orders can be placed upon banks to prevent asset dispersal.

Nevertheless, prosecutors and law enforcement agencies sometimes can be more effective for timely freezing/restraining orders than civil courts, and they have greater intrusive powers. Many practitioners have found that effective programs to recover corruptly acquired assets often use a coordinated package of criminal and civil measures to secure and recover assets. Where criminal mechanisms can secure but not recover the assets, civil proceedings can intervene.



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- Can be filed in foreign jurisdictions
- Standard of proof
- Need private lawyer
- Possibly expensive
- Not limited by public action

#### **Civil law suit**

- Can be filed in foreign jurisdictions
- Standard of proof

- Need private lawyer
- Possibly expensive
- Not limited by public action

**Slide 10** begins the discussion of Albanian specific asset confiscation provisions. Article 36 of the criminal code provides for conviction based confiscation. The instructor should be thoroughly familiar with this article.



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## Article 36 of Criminal Code

**Allows confiscation of:**

- objects that are means for committing the crime
- criminal act proceeds
- any other asset, whose value corresponds to the criminal act proceeds;
- Objects illegal to possess

**Merger of assets:** If proceeds are merged with legal money, the proceeds are confiscated up to the value of the criminal act proceeds

Article 36 of Criminal Code

**Allows confiscation of:**

- objects that are means for committing the crime
- criminal act proceeds
- any other asset, whose value corresponds to the criminal act proceeds;
- Objects illegal to possess

**Merger of assets:** If proceeds are merged with legal money, the proceeds are confiscated up to the value of the criminal act proceeds

**Slide 11** makes reference to Article 274 of the Criminal Procedure Code that authorizes pre-conviction seizure. The instructor should be thoroughly familiar with this article.

## Article 274 Criminal Procedure Code

### Allows seizure (prior to conviction) of:

- proceeds of the criminal offence
- any other kind of property permitted to be confiscated under Article 36 of the Criminal Code.

Article 274 Criminal Procedure Code

### Allows seizure (prior to conviction) of:

- proceeds of the criminal offence
- any other kind of property permitted to be confiscated under Article 36 of the Criminal Code.

**Slide 12** refers to the Anti-Mafia law that authorizes non-conviction based forfeiture for proceeds of crime relating to specified offenses. The instructor should be thoroughly familiar with this all provisions of this law.

## Non Conviction Asset Forfeiture

### Law 10 192 of 2009 – Anti-Mafia law

- Article 3: allows confiscation – reasonable suspicion
  - Participation in organized crime group
  - Participation in terrorist group
  - Trafficking in persons
  - Trafficking in weapons
  - Drugs
  - Exploitation of prostitution
  - **Money laundering**

Non-conviction asset forfeiture


### Law 10 192 of 2009 – Anti-Mafia law

- Article 3: allows confiscation – reasonable suspicion
  - Participation in organized crime group
  - Participation in terrorist group
  - Trafficking in persons
  - Trafficking in weapons
  - Drugs

- Exploitation of prostitution
- **Money laundering**

It is recommended that slides 13, 14 and 15 be retained but not used (simply right click on the slide and choose the "hide" option). These slides relate to the theory that the Anti-Mafia law could be used to seize and forfeit property in corruption cases since these offenses are predicates under the money laundering statute. This theory is put forth in the Guidebook to Corruption and Financial Crimes Investigations (OPDAT / PACA). This theory certainly appears to have some merit but does not appear to be readily accepted by the prosecution and the judiciary. The slides are available if the instructor wishes to raise the issue and create a discussion.

**Slide 16** below emphasizes the fact that a financial investigation that indicates a person has substantial assets which exceed his legal means can be used to establish reasonable suspicion enabling the application of the Anti-Mafia law. This is one example of how a source and application method of proving income could be effectively used.



## Proof Required for Seizure

**Anti Mafia Law - Article 11** states:

“At the motivated request of the prosecutor, the court orders the sequestration of assets of the persons according to article 3 of this law, when there is a reasonable suspicion based on indicia that show that the person may be included in criminal activity and has assets or income that do not respond obviously to the level of income, profits or lawful activities declared...”

Proof Required for Seizure

**Anti Mafia Law - Article 11** states:

“At the motivated request of the prosecutor, the court orders the sequestration of assets of the persons according to article 3 of this law, when there is a reasonable suspicion based on indicia that show that the person may be included in criminal activity and has assets or income that do not respond obviously to the level of income, profits or lawful activities declared...”

**Slide 17** is a reminder that the forfeiture of assets requires a thorough tracing of the criminal proceeds and identification and evidence of the predicate offense.

## Asset tracing investigation

Recovery of assets must be preceded by an investigation aimed at:

- Identification
- Tracing
- Freezing
- Seizing

### Asset tracing investigation

Recovery of assets must be preceded by an investigation aimed at:

- Identification
- Tracing
- Freezing
- Seizing

## 12. Trial Preparation

Following the completion of the simulated case investigation, each group should be assigned two presentations relating to the organization of the case. Each presentation should be 5 to 7 minutes in duration. These specific presentations will be listed later in this section.

The practical exercise was investigated as one complex case. However it can easily be divided into three distinct sections:

1. The loan approved by the DFID to the Government of Albania, which involved the purchase of mining equipment. This will be referred to as the "Loadmaster scheme".
2. The contracts awarded by the Ministry of Internal Development to Albania Logging and International Timber as a result of the extorted bribe payments. This will be referred to as the "Bribe scheme".
3. The exploration contracts given by the Ministry of Internal Development to Global Mining. This will be referred to as the "Global Mining scheme".

The presentations, which will be given on the last day, will follow the general concept of a trial but will not be mock trial. Its purpose is to allow the participants to demonstrate their knowledge in an interactive and dynamic manner. The presentations will be in three general categories following the process of a trial; 1) an overview of the case (similar to an opening statement), 2) the introduction of evidence to prove each charge, 3) and the evidence required to trace and forfeit assets. The following is an overview of the general categories;

- The first 3 presentations will be similar to an opening statement relating to the schemes references above. Each of these will be an overview of the specific scheme tracing the money flow and illustrating the money laundering mechanisms. No evidence will be referenced in these presentations.
- The scheme overviews will be followed by 4 presentations of evidence that will prove various corruption and money laundering charges. These 4 presentations, which are referred to as the Elements of the Crime presentations, will be composed of 3 distinct requirements.
  - The first requirement is that the presenter state the criminal statute that is being charged. For example, "We are charging the defendant with one count of money laundering in violation of Article 287 (1)a."
  - The second requirement is that the elements of this crime are clearly stated (not just a reading of the statute). For example, "The element of Article 287 are:
    - That there was an exchange or transfer of an asset
    - The property involved in the exchange or transfer was from proceeds of a crime
    - The person making the exchange or transfer had knowledge that the proceeds were from crime
    - The purpose of the exchange or transfer was to conceal or hide the origin of the property involved in the transaction
  - The third requirement is that the presenter must show the specific evidence, referencing the document number that will prove each element. Each element should be proved one at a time.
- The last 3 presentations will be a tracing of the purchase of assets that were acquired with proceeds of crime. Each of these presentations should begin with identifying the specific asset and then trace each financial transaction back to the illegal income thereby connecting the asset to the underlying criminal conduct. Each transaction should be referenced with the evidence (document number).

The presentation assignments are based on the assumption that there will be 5 groups in the class. It is suggested that the instructor make the assignments (2 per group) as follows:

**Group #1** This group will be assigned two presentations relating to the LoadMasters portion of the case. Participants will be assigned the following tasks:

Team member #1 will provide an overview of the LoadMasters scheme (similar to an opening statement at trial). The explanation of this scheme should include the misappropriation of funds through LoadMasters, the Swiss bank account, the real Indian Ocean Factors and describe how the defendant anonymously acquired ALMO Ltd and the purchase of the vacation home through ALMO. This exercise will assist the prosecution in clearly organizing their case and understanding the complete scheme that needs to be proven.

Team member #2 will be assigned an Elements of the Crime presentation. The team will select one corruption related charge (possibly Article 248, Abuse of Office). They will state the charge and then state clearly each element of this crime. The last portion of this task will be to introduce the evidence that proves each element. The evidence, by document number, should clearly be matched to each element.

**Group #2** This group will be assigned two presentations relating to the Bribery schemes. Participants will be assigned the following tasks:

Team member #1 will provide an overview of the Bribery scheme. The explanation of this scheme should include how the bribes were solicited, the benefit received by the Minister, the purpose of the bribes and an overview of how the assets were acquired.

Team member #2 will be assigned an Elements of the Crime presentation. The team will select one corruption related charge (possibly Article 260, Passive Corruption by High State Officials). The speaker will state the charge and then state clearly each element of this crime. The last portion of this task will be to introduce the evidence that proves each element. The evidence, by document number, should clearly be matched to each element.

**Group #3** This group will be assigned two presentations relating to the Global Mining scheme. Participants will be assigned the following tasks:

Team member #1 will provide an overview of the Global Mining scheme. The explanation of this scheme should include payments to the RG Horman account, the accounting records of Global Mining, the benefit received by the Minister, the attempt to hide the RG Horman account in the brother's name and the hidden transactions used to purchase the land by the Minister.

Team member #2 will be assigned an Elements of the Crime presentation. The team will select one money laundering charge (possibly Article 287 (1)a). The speaker will state the charge and then state clearly each element of this crime. The last portion of this task will be to introduce the evidence that proves each element. The evidence, by document number, should clearly be matched to each element.

**Group #4** This group will be assigned two presentations relating to the LoadMasters portion of the case. Participants will be assigned the following tasks:

Team member #1 will be assigned an Elements of the Crime presentation. The team will select one money laundering charge (possibly Article 287 (1)a) relating to the LoadMasters portion of the case. The speaker will state the charge and then state clearly each element of this crime. The last portion of this task will be to introduce the evidence that proves each element. The evidence, by document number, should clearly be matched to each element. An important point to note here is that "an exchange or transfer" (a transaction) must be chosen that is clearly proceeds of a crime. For example, the money transferred from LoadMasters to the Swiss account is not a transaction with proceeds of a crime. Those transactions are the actual predicate offense (the misappropriation of funds resulting in the abuse of office violation). Once the money is in the Swiss account, it now becomes proceeds of the crime. All transactions from this point forward (payments out of the Swiss account) could be money laundering transactions if all elements can be proven. A good "transfer" to chose for this presentation may be the payments from the Swiss account that were ultimately used to purchase the ALMO vacation house. This is because these transfers can be proven to be an



attempt to conceal or hide the source of the money (the shell company account in Switzerland, the anonymous purchase of the ALMO company and the purchase of bank checks with the money from the Swiss account).

Team member #2 will explain the purchase of the vacation house owned by ALMO Ltd. and the basis for its forfeiture. This will be accomplished by having the team member provide a summary of this evidence which clearly shows the link between the purchase of the house and the illegal activity. A flow chart could be used to demonstrate the flow of money from the corrupt activity to the ultimate purchase of the house. Each movement of money should be supported by the evidence, by document number, to clearly establish the connection to the predicate offense.

**Group #5** This group will be assigned two presentations relating to the forfeiture of assets. Participants will be assigned the following tasks:

Team member #1 will explain the purchase of the London property and the basis for its forfeiture. This asset should be traced from the original bribe money through the London real estate agent to the eventual purchase. Each movement of money should be supported by the evidence, the document number, to clearly establish the connection to the predicate offense.

Team member #2 will explain the purchase of the house in Sun Valley, Idaho in the US and the basis for its forfeiture. This will be accomplished by having the team member provide a summary of this evidence which clearly shows the link between the purchase of the house and the illegal activity. A flow chart could be used to demonstrate the flow of money from the corrupt activity to the ultimate purchase of the house. Each movement of money should be supported by the evidence, by document number, to clearly establish the connection to the predicate offense.

It is recommended that the presentations be delivered in the following order:

1. Overview of the LoadMasters scheme
2. Overview of the Bribery scheme
3. Overview of the Global Mining scheme
4. Elements of the Crime – one corruption related charge regarding the LoadMasters scheme.
5. Elements of the Crime – one corruption related charge regarding the Bribery scheme.
6. Elements of the Crime – one money laundering charge regarding the LoadMasters scheme.
7. Elements of the Crime – one money laundering charge regarding the Global Mining scheme.
8. Basis for its forfeiture - the purchase of the London property
9. Basis for its forfeiture - the purchase of the vacation house owned by ALMO Ltd.
10. Basis for its forfeiture - the purchase of the house in Sun Valley, Idaho in the US

The assignment of the presentations should be made in the afternoon prior to the last day of the program. The participants should be given at least 3 hours for this trial preparation phase. The instructors should frequently observe the progress of each group and assure that their preparations are meeting the goals.

## 13. Presentations

The presentations by the participants are the culmination of the program. Each presentation should be critiqued by the instructors and the participants.