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**How China Fights Money Laundering:
Recent Developments in Regulation and
Supervision**

Nicole Schulte-Kulmann

(Research Group on the Political Economy of China, Trier University)

China Analysis is edited by:

Sebastian Heilmann
Professor of Government / Political Economy of China
Department of Political Science
Trier University, 54286 Trier, Germany
E-mail: china_analysis@chinapolitik.de

Nicole Schulte-Kulkmann*

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* Nicole Schulte-Kulkmann, Ph.D.; Researcher, Research Group on the Political Economy of China, Trier University, Germany

I. Introduction

Since the inauguration of the Financial Action Task Force on Money Laundering (FATF)¹ in 1989, the crime of money laundering – i.e. “any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources”² – has attracted more and more attention, nationally as well as internationally. Moreover, the terrorist attacks of September 11, 2001 brought to the fore the close connection between money laundering and the financing of terrorist activities, thus highlighting once again the importance of the fight against money laundering. Since then, more and more nations have joined the anti-money laundering efforts of the international community³ and have established the requisite legal and institutional provisions at the national level.

The People’s Republic of China (PRC)⁴, which to date still must be considered a ‘magnet’ for money laundering activities – laundering up to 300 to 400 billion Renminbi (RMB) Yuan (approximately 37.55 to 50.06 billion US\$) every year⁵ – has recently also become more and more aware of this problem. For one, this development is owed to international pressure as well as to the determination of the Chinese government to act as a reliable partner in the fight against financial crimes in the regional context as well as on the international stage. Moreover, the PRC also considers the fight against money laundering as a device for reigning in related internal problems such as rampant corruption and terrorist secessionist activities.⁶ Therefore, the Chinese government more and more considers the fight against money laundering as essential for safeguarding not only a healthy economic and financial environment but also for defending social stability in an encompassing sense.⁷ Thus, in order to effectively reign in money laundering activities, the Chinese government already has enacted several legal norms and established some institutions since the late 1990s and particularly since 2003 in order to carry out specific money laundering activities.⁸ However, these legal norms and the related institutional design did not fully comply with international anti-money laundering

¹ In July, 1989, G7 member states inaugurated the FATF during their summit in Paris. Initially, the mandate of the FATF comprised the observation and analysis of international anti-money laundering cooperation as well as the elaboration of concrete recommendations for the improvement of anti-money laundering activities. Today, the FATF is to be considered as the leading organization in the field of anti-money laundering. The FATF ‘40+9 Recommendations’ on money laundering and terrorist financing constitute international standards which have to be considered as binding for FATF member states as well as for non-members. For more details on the FATF see Kremer 2004. Information also is available at: <http://www.fatf-gafi.org/>.

² Definition by Interpol; available at:

<http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/default.asp> [visited: 02.01.2007]

³ Currently, the FATF has 31 member states plus the EU Commission and the Gulf Cooperation Council; in January, 2005, the PRC has been granted observer status with the FATF. Furthermore, there are several regional organizations which use the FATF Recommendations as guidelines for their respective anti-money laundering efforts (information available at: http://www.fatf-gafi.org/document/52/0,2340,en_32250379_32237295_34027188_1_1_1_1,00.html [visited 09.01.2007])

⁴ The term ‘PRC’ in this article refers to mainland China, exclusive of Hong Kong Special Administrative Region and Macao Special Administrative Region

⁵ “Yanghang fanxiqian zhongxin zhuren nuchi: fangdichanye xiqian mingmuzhangdan [Director of the anti-money laundering centre of the central bank displeased: money laundering in the real estate sector is flagrant]”; in: *Zhongguo Jingji Zhoukan*, 13.03.2006; available at: <http://cn.biz.yahoo.com/060312/16/gfrj.html> [visited 12.01.2007]

⁶ “Anti-money Laundering in China: the status quo and prospects” – Speech of Mr. Zhou Xiaochuan, Governor of the People’s Bank of China at the first meeting of the Ministerial Joint Conference on AML, 27.08.2004; available at: <http://www.pbc.gov.cn/english/detail.asp?col=6500&ID=54> [visited: 28.01.2007]

⁷ “Zhou Xiaochuan: fanxiqian shi wo zhengfu de yixiang zhongyao zhanlüe renwu [Zhou Xiaochuan: The fight against money laundering constitutes an important task for our government]”; in: *Zhongguo Jingji Shibao*, 29.08.2004; available at: <http://www.people.com.cn/GB/shizheng/1027/2748955.html> [visited: 17.01.2007]

⁸ For a detailed overview, see Obst 2005, Schulte-Kulmann 2006

standards. Particularly the complete lack of a distinct Anti-money Laundering Law let the Chinese anti-money laundering regime fall short of international straightedges and confounded the aspiration of the PRC to obtain full membership with the FATF. However, throughout the year 2006, the PRC considerably increased her anti-money laundering regulatory and supervisory efforts and enacted several new pieces of anti-money laundering legislation in a very quick row. This new legislation will come into force by January to March 2007.

This article aims at introducing and explaining the main contents of the new Chinese anti-money laundering legislation and at evaluating its contribution to the efficiency and effectiveness of anti-money laundering supervision and regulation in the PRC.

II. Recent Modifications to the Chinese Anti-money Laundering Legal Framework

Recent modifications to the Chinese Anti-money Laundering (AML) legal framework pertain to revisions to the Criminal Law, the adoption of the Anti-money Laundering Law, as well as to the adoption of two administrative regulations on AML – the “Rules for Anti-money Laundering by Financial Institutions” and the “Administrative Measure for the Reporting by Financial Institutions of Large-Value and Suspicious Transactions”.

1. Revision to the Criminal Law

Money laundering has only been established as a crime in the PRC since the late 1990s. In March 1997, the Criminal Law was revised to the effect that art.191 now refers to the offence of ‘money laundering’.⁹ However, art.191 Criminal Law did not and still does not establish money laundering as an offence in itself; instead, money laundering is only punishable if other so-called ‘upstream crimes’ or ‘predicate crimes’ have been committed in advance. These predicate crimes originally included drug trade, organized crimes of a criminal syndicate nature, and smuggling crimes.¹⁰ Then, in response to the terrorist attacks of September 11, 2001, the Standing Committee (SC) of the National People’s Congress (NPC) again revised art.191 Criminal Law in December 2001 and included the offence of terrorist activities as an additional predicate crime.¹¹

However, as the catalogue of predicate crimes only comprised four different offences it was not to be considered sufficiently comprehensive and, moreover, it did not match international standards established by the Financial Action Task Force on Money Laundering (FATF)¹² ‘40+9 Recommendations’. The FATF requests states to “apply the crime of money laundering *to all serious offences*, with a view to including *the widest range* of predicate offences” (Recommendation 1).¹³ This means, in fulfilment of this obligation, states might assign all offences as predicate crimes; specify certain ‘serious’ offences as predicate crimes; or earmark those offences as predicate crimes which are subject to certain penalties of imprisonment; or

⁹ Guo n.d.: 12.

¹⁰ “Zhongguo fanxiquan fazhi jianshe [Establishment of an anti-money laundering legal framework in China]”; available at: <http://cn.biz.yahoo.com/050713/124/b5p0.html> [visited: 05.01.2007]

¹¹ *ibid.*

¹² In July, 1989, G7 member states inaugurated the FATF during their summit in Paris. Initially, the mandate of the FATF comprised the observation and analysis of international anti-money laundering cooperation as well as the elaboration of concrete recommendations for the improvement of anti-money laundering activities. Today, the FATF is to be considered as the leading organization in the field of anti-money laundering. The FATF ‘40+9 Recommendations’ on money laundering and terrorist financing constitute international standards which have to be considered as binding for FATF member states as well as for non-members. For more details on the FATF see Kremer 2004. Information also is available at: <http://www.fatf-gafi.org/>.

¹³ The text of Recommendation One is available at: http://www.fatf-gafi.org/document/28/0,2340,en_32250379_32236930_33658140_1_1_1_1,00.html [visited 03.01.2007]; author’s emphasis.

use a combination of these approaches.¹⁴ Furthermore, the FATF also itemizes a certain number of offences which should necessarily be considered predicate crimes.¹⁵

From the outset, Chinese legal experts agreed on the necessity to broaden the catalogue of predicate crimes for money laundering.¹⁶ Thus, the inclusion of additional offences as predicate crimes was the focus of the sixth revision to the Criminal Law adopted by the NPC SC on June 29, 2006; the revised version of the Criminal Law went into force the same day.¹⁷

1.1 Art.191 Criminal Law

Firstly, the revision to art.191 added three new offences as predicate crimes: corruption and bribery, crimes of disrupting the order of financial administration, and financial fraud crimes. As a result, art.191 Criminal Law now contains the following predicate crimes: drug crimes, organized crimes of a criminal syndicate nature, smuggling crimes, terrorist crimes, crimes of corruption and bribery, crimes of disrupting the order of financial administration, and financial fraud crimes. However, this revision to art.191 alone would not have sufficed to harmonize Chinese criminal legislation with international AML standards since the enumeration of only seven predicate crimes clearly falls short of FATF recommendations illustrated above. Therefore, art.312 Criminal Law has also been submitted to revision.

1.2 Art.312 Criminal Law

Prior to the sixth revision to the Criminal Law, art.312 referred to the concealment and handling of illegally acquired *goods* and read as follows: “Whoever knowingly conceals, transfers, purchases or helps to sell illegally acquired goods shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined.”¹⁸ This provision, for one, has been changed to cover illegally acquired *proceeds and gains derived therefrom*; furthermore, for offences under this provision which qualify as ‘serious’, the degree of penalty also has been elevated. Art.312 Criminal Law now reads as follows: “Whoever, while clearly knowing that funds are illegally obtained proceeds and gains derived therefrom covers up and conceals these by means of hiding, transferring, purchasing or helping to sell them or by any other means shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three but not more than seven years and shall also be fined.”¹⁹

¹⁴ *ibid.*

¹⁵ This list comprises the following offences: participation in an organised criminal group and racketeering; terrorism, including terrorist financing; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; fraud; counterfeiting currency; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; kidnapping, illegal restraint and hostage-taking; robbery or theft; smuggling; extortion; forgery; piracy; and insider trading and market manipulation (“Designated categories of offences”; available at: http://www.fatf-gafi.org/glossary/0,2586,en_32250379_32236889_35433764_1_1_1_1,00.html#34277114 [visited: 13.01.2007]).

¹⁶ “Fanxiqian zhongguo zheng mianlin san fangmian tiaozhan [China faces three challenges in the area of anti-money laundering]”; in: *Fazhi Ribao*, 29.11.2005; available at: http://www.legaldaily.com.cn/misc/2005-11/29/content_227033.htm [visited: 03.01.2007]

¹⁷ The Chinese text of the Revision is available at: http://www.chinacourt.org/flwk/show1.php?file_id=111195 [visited: 07.01.2007]

¹⁸ The English text of the Chinese Criminal Law prior to the sixth revision is available at: <http://www.cecc.gov/pages/newLaws/criminalLawENG.php> [visited: 07.01.2007]; the respective Chinese text is available at: <http://www.cecc.gov/pages/selectLaws/laws/criminalLaw.php> [visited: 07.01.2007].

¹⁹ Author’s translation

According to the Deputy Director of the Criminal Law Department of the NPC SC Legislation Work Committee [*quanguo renda changweihui fazhi gongzuoweiyuanhui*], Huang Taiyun, art.191 Criminal Law now covers all *serious* predicate crimes to money laundering whereas *minor* predicate crimes are covered by art.312.²⁰ Thus, in the end, art.191 and art.312 Criminal Law taken together cover *all* offences as predicate crimes. Consequently, after the latest revision, the Chinese Criminal Law lives up to international AML standards.

However, the apportioning of stipulations regarding predicate crimes to two distinct legal norms has been disputed in the PRC. The working group responsible for drafting the AML Law suggested to the working group responsible for drafting the revision to the Criminal Law to consider instead a substantial expansion of the list of predicate crimes;²¹ particularly the Chairman of the AML Law Drafting Group, Prof. Yu Guangyuan, held that it would be desirable and supportive for efficiently fighting money laundering to incorporate the widest possible range of offences into the list of predicate crimes.²² This dissent has its roots in a jurisprudential dispute in the PRC as to the elements of crime and the subsequent classification of the crime. In essence, it is disputed whether the offence of money laundering constitutes a crime of disrupting the order of financial administration (chapter III, section 4 Criminal Law) or a crime of impairing judicial administration (chapter VI, section 2 Criminal Law).²³ Art.191 Criminal Law belongs to chapter III, section 4; therefore, money laundering related to serious predicate crimes constitutes a crime of disrupting the order of financial administration whereas art.312 belongs to chapter VI, section 2 Criminal Law indicating that money laundering related to all other offences constitutes a crime of impairing judicial administration. As long as the dispute is not decided, it is not likely that criminal law provisions governing the crime of money laundering will be unified.

2. Anti-money Laundering Law and Anti-money Laundering Administrative Regulations

Until October, 2006, no separate Anti-money Laundering Law (AML Law) was in force in the PRC. The lack of such a piece of legislation had been a major stumbling block for the deeper integration of the PRC into the international AML regime. The adoption of the AML Law was particularly required as a precondition for full FATF membership of the PRC. Therefore, drafting of the AML Law already started in March 2004. Under the aegis of the Law Department of the Budgetary Affairs Commission of the NPC SC [*quanguo renda changweihui yusuan gongwei fa'anshi*] a 'leading group' had been formally established which comprised the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Finance, Ministry of Commerce (MOFCOM), Ministry of Foreign Affairs, General Administration of Customs, State Administration of Industry and Commerce, State Administration of Foreign Exchange (SAFE), China Banking Regulatory Commission (CBRC), China Securities Regulatory Commission (CSRC), China Insurance Regulatory Commission (CIRC), People's Bank of China (PBoC) – the Chinese Central Bank – and 17

²⁰ "Fanxiqianfa qicao neiqing [Insider information on the drafting of the Anti-money Laundering Law]"; in: *Liaowang Xinwen Zhoukan*, 08.05.2006; available at: <http://www.outlookweekly.cn/06-18/18-09.htm> [visited: 17.01.2007]

²¹ "Fanxiqianfa qicao neiqing [Insider information on the drafting of the Anti-money Laundering Law]"; in: *Liaowang Xinwen Zhoukan*, 08.05.2006; available at: <http://www.outlookweekly.cn/06-18/18-09.htm> [visited: 17.01.2007]

²² "Fanxiqian zhongguo zheng mianlin san fangmian tiaozhan [China faces three challenges in the area of anti-money laundering]"; in: *Fazhi Ribao*, 29.11.2005; available at: http://www.legaldaily.com.cn/misc/2005-11/29/content_227033.htm [visited: 03.01.2007]; „Zhuanfang: fanxiqianfa qicao gongzuo xiaozu zuzhang Yu Guangyuan jiaoshou tan fanxiqian yu fanfubai [Special report: Prof. Yu Guangyuan, chairman of the Anti-money Laundering Law drafting group talks about anti-money laundering and the fight against corruption and bribery]"; *Internet discussion staged on 'Justice Net' (zhengyiwang)*, 28.04.2006; available at: <http://www.jcrb.com/bbs/honour/index1.php?tid=68> [visited: 18.01.2007]

²³ Zhang/Liu 2004

other ministries and state agencies. This ‘leading group’ was responsible for drafting the AML Law and for preparing all relevant political decisions during the legislative process.²⁴ In 2004, membership of the ‘leading group’ was extended and since then comprises 23 ministries and state agencies.²⁵

However, it is worth mentioning that legislative work in the case of the AML Law differed from the standard process. Customarily, as a first step, drafts are prepared by the relevant ministries and commissions and are then transferred to the State Council’s Office of Legislative Affairs for deliberation. Then, in a second step, the Office of Legislative Affairs transmits the revised drafts to the NPC SC. In the case of the AML Law, the Budgetary Affairs Commission of the NPC SC had been directly mandated with drafting the Law.²⁶ This departure from the standard drafting process stresses the importance which has been attributed to the quick and smooth adoption of the AML Law by the Chinese political leadership. Thus, in December, 2005, a first draft of the AML Law was submitted to the NPC SC; deliberation of the draft law started formally in April, 2006.²⁷

However, disputes about the specific contents of the AML Law time and again protracted the drafting process. As a result, the adoption of the AML Law – initially scheduled for the end of 2005²⁸ and then for August, 2006²⁹ – has been repeatedly postponed;³⁰ finally, the AML Law has been adopted on October 31, 2006³¹ and came into force on January 1, 2007.

Furthermore, on November 14, 2006, the PBoC as the ministry in charge³² also promulgated two administrative regulations which serve as implementation rules for the AML Law: “Rules

²⁴ “Fanxiqianfa kuangjia chuding [Initial steps towards the establishment of an anti-money laundering legal framework]”; in: *21 Shiji Jingji Baodao*, 28.07.2004; available at: <http://business.sohu.com/20040728/n221240742.shtml> [visited: 02.01.2007]

²⁵ “Zhongguo ‘fanxiqianfa’ yi jinru fachengxu [‘Anti-money Laundering Law’ has been put onto legislation plan]”; in: *News Guangdong*, 24.03.2005; available at: <http://www.southcn.com/law/fzst/fxqf/fxqflfdt/200503240704.htm> [visited: 25.01.2007]. The members of the ‘leading group’ described above also participate in the ‘Joint Ministerial Conference on Anti-Money Laundering’ (JMC) which has been inaugurated by the State Council in order to facilitate inter-ministerial cooperation in the area of anti-money laundering (see below, note 83); for more details on the JMC see also Schulte-Kulkmann 2006: 228-229

²⁶ “Fanxiqianfa kuangjia chuding [Initial steps towards the establishment of an anti-money laundering legal framework]”; in: *21 Shiji Jingji Baodao*, 28.07.2004; available at: <http://business.sohu.com/20040728/n221240742.shtml> [visited: 02.01.2007]

²⁷ “Fanxiqianfa cao’an jiang shouci jinxing shenyi [Draft anti-money laundering law undergoes consideration for the first time]”; in: *Zhongguo Zhengquan Bao*, 18.04.2006; available at: <http://cn.biz.yahoo.com/06-04-18/h0rp.html> [visited: 18.01.2007]

²⁸ “Zhongguo ‘fanxiqianfa’ yi jinru fachengxu [‘Anti-money Laundering Law’ has been put onto the legislation plan]”; in: *News Guangdong*, 24.03.2005; available at: <http://www.southcn.com/law/fzst/fxqf/fxqflfdt/200503240704.htm> [visited: 25.01.2007]

²⁹ “Fanxiqianfa qicao zu zuzhang: fanxiqian zhuguanbumen ying shi yanghang [Head of the anti-money laundering drafting group: The main regulatory institution in anti-money laundering must be the central bank]”; in: *Xinjing Bao*, 29.04.2006; available at: <http://news.sina.com.cn/c/2006-04-29/01108816120s.shtml> [visited: 02.01.2007]

³⁰ “‘Fanxiqianfa’ 6 yue tijiao er shen you nandu [Submitting the Anti-money Laundering Law for the second reading in June proves difficult]”; in: *Zhongguo Zhengquanbao*, 12.06.2006; available at: <http://cn.biz.yahoo.com/06-06-12/hpia.html> [visited: 12.01.2007]

³¹ “Zhonghua renmin gongheguo fanxianqianfa”; Chinese text available at: <http://cn.biz.yahoo.com/061102/32/jpup.html> [visited: 02.01.2007]

³² The PBoC – the Central Bank – is directly subordinated to the State Council, the Chinese executive, and ranks as a ministry.

for Anti-money Laundering by Financial Institutions”³³ [henceforth: *Rules 2006*] and “Administrative Measures for the Reporting by Financial Institutions of Large-Value and Suspicious Transactions”³⁴ [henceforth: *Measures 2006*].³⁵ These two sets of administrative regulations will both come into force on March 1, 2007. The main contents of the AML Law and of the two implementation rules as well as the controversial aspects of the legislation are presented in the following paragraphs.

Preliminary Remarks

First of all, Chinese AML legislation and regulation echoes the internationally well established and “oft-stated goal of anti-money laundering regimes, [... namely] to protect the integrity of the financial system”.³⁶ Besides this more general aim, the Chinese government basically pursued two main objectives with drafting the new AML Law, one of these objectives mirrors internal concerns, the other external concerns.

For one, AML in the PRC is closely connected to the fight against corruption. Government officials laundering ‘black money’ received from corruption and bribery contribute to a large proportion of all money laundering activities in the PRC.³⁷ Apart from the substantial direct economic costs of corruption,³⁸ this ‘public bad’ also brings about political costs such as low government credibility and quality of public services,³⁹ and, finally, threatens the very legitimacy of the ruling Chinese Communist Party (CCP). Up to now anti-corruption campaigns have been rather ineffectual, in particular with regard to high-level and high stakes corruption;⁴⁰ thus, the Chinese government aimed at intensifying deterrence by incorporating corruption and bribery into the AML Law as predicate crimes. Furthermore, by the end of 2005, the CCP Central Committee Disciplinary Inspection Committee joined the ‘leading group’ which was responsible for drafting the new AML Law.⁴¹ This also highlighted the determination of the Chinese political leadership to employ the AML Law as a means for fighting cor-

³³ Jinrong jigou fanxiqian guiding; Chinese text available at: http://www.law-lib.com/law/law_view.asp?id=178905 [visited: 16.01.2007]; English text available at: http://www.chinadaily.com.cn/china/2007-01/11/content_781484.htm [visited: 20.01.2007]

³⁴ Jinrong jigou da’e jiaoyi he keyi jiaoyi baogao guanli banfa; Chinese text available at: <http://business.sohu.com/20061114/n246385759.shtml> [visited: 16.01.2007]

³⁵ In the PRC, there exist different forms of legal norms: formal laws (*falü*) (enacted by the NPC SC [*jiben falü*] or NPC [*falü*]), administrative regulations (*xingzheng fagui*), enacted by the State Council. These ‘administrative regulations’ can be divided into the following sub-categories: ‘regulation’ [*tiaoli*], ‘rules’ [*guiding*], ‘measures’ [*banfa*], ‘circular’ [*tongzhi*], ‘public announcement’ [*gonggao*], ‘official comment’ [*yijian*], ‘decision’ [*jueding*] etc., local decrees (*difangxing fagui*), autonomous decrees (*zizhi tiaoli*), special decrees (*danxing tiaoli*) (enacted by the People’s Congress of a province, autonomous region, municipality directly under the central government and the Standing Committee thereof), departmental rules (*guizhang*, enacted by the various ministries, commissions, the People’s Bank of China, the Auditing Agency, and bodies directly under the State Council exercising regulatory functions). For more details, see Heilmann/Schulte-Kulkmann/Shih 2004. See also: Legislation Law of the People’s Republic of China (English text available at: http://www.novexc.cn.com/legislat_law_00.html [visited 26.01.2007])

³⁶ art.1 AML Law; quotation from Reuter/Truman 2004: 129 (author’s omission)

³⁷ “‘Zhongguo tese’ xiqian [Money laundering with ‘Chinese characteristics’]”; in: *Epoch Times (Dajiyuan)*, 23.03.2001; available at: <http://www.epochtimes.com/gb/1/3/23/n61718.htm> [visited: 03.01.2007]

³⁸ According to official Chinese estimates, every year tax revenues amounting to 100 billion RMB Yuan are lost due to money laundering activities (“Fanxiqianfa chutai jianxingjianjin [Adoption of the Anti-money Laundering Law gradually approaches]”; in: *Zhongguo Jingji Zhoukan*, 05.12.2005; available at: <http://cn.biz.yahoo.com/051204/16/ebxk.html> [visited: 14.01.2007])

³⁹ Reuter/Truman 2004: 42

⁴⁰ For a detailed analysis of the effects of anti-corruption campaigns in the PRC see Wedeman 2005

⁴¹ *ibid.*

ruption since the CCP itself is vitally interested in wiping out corruption which inflicts severe damage to its public image and legitimacy.⁴²

As for the external aim pursued by the Chinese government with drafting the new AML law, it has to be mentioned that harmonizing the national AML regulatory regime with international standards by enacting the relevant AML legislation is essential for the international esteem of the PRC, one of the last strategically important countries to join the FATF.⁴³ The fact that the PRC has not yet achieved full FATF membership stands in stark contrast to the self-assessment of China as a regional and ‘great’ power.⁴⁴ As such, the PRC is prepared to assume responsibility for regional security in a most comprehensive sense which also includes the fight against money laundering.⁴⁵ But since the PRC has not yet acceded to the FATF the Chinese government is not able to affect AML standard setting and policy making at the international level. Only as an ‘insider’ will the PRC be able to exert influence on the development of international norms and standards which will, later on, constitute the ‘straightedge’ against which the Chinese behaviour in the area of AML will be judged.⁴⁶ Consequently, the Chinese government is strongly interested in securing a voice in the process of international AML regulation.⁴⁷

Moreover, the Chinese government is aware that decisive efforts to improve the currently insufficient AML regime in the PRC are required in order not to impair the international reputation of the PRC and the Chinese financial system.⁴⁸

Finally, since money laundering activities and financial support to terrorist activities are closely connected, the AML Law also contains reference to the suppression of the financing of terrorism as an objective of that piece of legislation (art.36).⁴⁹ However, a general review of comments from Chinese officials involved with the drafting process of the new AML Law and of the relevant NPC SC debates as purported by the official media reveals that the emphasis with national as well as with international AML work is clearly laid on the supposed posi-

⁴² This view is made clear by the Working Report of the CCP Central Committee Disciplinary Inspection Committee adopted during the 16th CCP Party Congress on November 14, 2002 (cf. Obst 2005: 101, note 6); “China attaches great importance to anti-corruption: senior CPC official”; in: *People’s Daily*, 16.03.2004; available at: http://english.people.com.cn/200403/16/eng20040316_137615.shtml [visited 09.01.2007]

⁴³ “Law delay sets back China entry to anti-laundering body”; in: *South China Morning Post*, 16.01.2006

⁴⁴ „Zhuanfang: fanxiqianfa qicao gongzuo xiaozu zuzhang Yu Guangyuan jiaoshou tan fanxiqian yu fanfubai [Special report: Prof. Yu Guangyuan, chairman of the Anti-money Laundering Law drafting group talks about anti-money laundering and the fight against corruption and bribery]”; *Internet discussion staged on ‘Justice Net’ (zhengyiwang)*, 28.04.2006; available at: <http://www.jcrb.com/bbs/honour/index1.php?tid=68> [visited: 18.01.2007]

⁴⁵ Cf. Wang, Feiling 1999: 37/38.

⁴⁶ Cf. Lim 1998: 117.

⁴⁷ “Yanghang: fanxiqianfa ji yu guoji biaoqun jiegui you jiehe zhongguo guoqing [Central bank: AML Law matches international standards as well as the Chinese national situation]”; in: *Zhongguo Xinwenwang*, 10.11.2006; available at: <http://cn.biz.yahoo.com/061110/36/jtn8.html> [visited: 13.01.2007]

⁴⁸ „Zhuanfang: fanxiqianfa qicao gongzuo xiaozu zuzhang Yu Guangyuan jiaoshou tan fanxiqian yu fanfubai [Special report: Prof. Yu Guangyuan, chairman of the Anti-money Laundering Law drafting group talks about anti-money laundering and the fight against corruption and bribery]”; *Internet discussion staged on ‘Justice Net’ (zhengyiwang)*, 28.04.2006; available at: <http://www.jcrb.com/bbs/honour/index1.php?tid=68> [visited: 18.01.2007]; “Fanxiqianfa qicao neiqing [Insider information on the drafting of the Anti-money Laundering Law]”; in: *Liaowang Xinwen Zhoukan*, 08.05.2006; available at: <http://www.outlookweekly.cn/06-18/18-09.htm> [visited: 17.01.2007]

⁴⁹ „Zhuanfang: fanxiqianfa qicao gongzuo xiaozu zuzhang Yu Guangyuan jiaoshou tan fanxiqian yu fanfubai [Special report: Prof. Yu Guangyuan, chairman of the Anti-money Laundering Law drafting group talks about anti-money laundering and the fight against corruption and bribery]”; *Internet discussion staged on ‘Justice Net’ (zhengyiwang)*, 28.04.2006; available at: <http://www.jcrb.com/bbs/honour/index1.php?tid=68> [visited: 18.01.2007]

tive effects of AML on the fight against corruption. This means, the PRC values AML mainly because of internal policy concerns whereas the international community – at least since the terrorist attacks of September 11, 2001 – is more concerned with the impact of AML on the efforts to curb the financing of terrorist activities and therefore favours a transnational, security-related reading of AML regulation.⁵⁰

Part I: General Provisions

Purpose of the Law

According to art.1 AML, the new legislation aims at “preventing money laundering activities, safeguarding the financial order, and restraining the crime of money laundering and related crimes.” Accordingly, the Administrative Regulations aim at “preventing money laundering activities, at standardizing anti-money laundering regulation and financial institutions’ anti-money laundering work and at safeguarding the financial order” (art.1 Rules 2006) and at “preventing the misuse of financial institutions for money laundering purposes and at standardizing financial institutions’ large-value transaction reports and suspicious transaction reports” (art.1 Measures 2006).

This means, the AML Law as well as the AML Administrative Regulations mainly focus on monitoring and prevention of money laundering activities; the punishment of the crime of money laundering and related crimes is covered by the relevant provisions of the Criminal Law.⁵¹

Definition of Money Laundering and Predicate Crimes

Obviously, in order to efficiently combat money laundering activities, it is necessary to unequivocally define the elements of the crime ‘money laundering’. But during the process of drafting the AML Law there was considerable disagreement as to the exact definition of ‘money laundering’.⁵² As a consequence, the various drafts of the AML Law did not contain a definition of ‘money laundering’ but only of ‘anti-money laundering’. This has been criticized constantly and emphatically by members of the NPC SC during the readings of the draft.⁵³ However, this deficiency has not been eliminated in the final text and thus the AML Law adopted by the NPC SC still does not contain a definition of ‘money laundering’ but only a definition of ‘anti-money laundering’. This means, the exact meaning and elements of crime of ‘money laundering’ must be deduced from the definition of ‘anti-money laundering’ which

⁵⁰ This standpoint of the international community is revealed, for example, at the most basic level by the fact that – starting in 2001 – “anti-money laundering” is almost always mentioned in the same breath with “combating the financing of terrorism”; quite to the contrary, Chinese official announcements only refer to “anti-money laundering” and omit the adjunct “combating the financing of terrorism”.

⁵¹ “‘Fanxiquanfa’ cao’an tijiao shenyi [Draft AML Law submitted for deliberation]: in: *Caijing*, Nr.158 (01.05.2006); available at: <http://www.caijing.com.cn/cns/scyfz/other/2006/05/01/1629962.html> [visited: 15.01.2007]; “Quanguo renda changweihui tongguo fanxiquanfa [NPC SC adopts AML Law]”; *Zhongguo Xinwenwang*, 31.10.2006; available at: <http://cn.biz.yahoo.com/061031/36/jp5t.html> [visited: 31.01.2007]

⁵² “‘Fanxiquanfa’ liu yue tijiao er shen you nandu [Submission of the ‘AML Law’ for a second reading in June encounters difficulties]”; in: *Zhongguo Zhengquan Bao*, 12.06.2006; available at: <http://cn.biz.yahoo.com/06-06-42/hpia.html> [visited: 12.01.2007]

⁵³ “Fayan zhaideng: fanxiquanfa cao’an [Excerpt from the deliberation: The draft AML Law]”; *Zhongguo Rendawang*, 29.04.2006; available at: <http://npc.cn/zgrdw/common/zw.jsp?label=WXZLK&id=348924&pdm=110106> [visited: 12.01.2007]; “Fayan zhaideng: fenzu shenyi fanxiquanfa cao’an [Excerpt from the deliberation: draft AML Law discussed in groups]”; *Zhongguo Rendawang*, 26.08.2006; available at: <http://www.npc.gov.cn/zgrdw/common/zw.jsp?label=WXZLK&id=351694&pdm=1125> [visited: 12.01.2007]

reads as follows (art.2 AML Law): “The present law terms anti-money laundering any measures taken according to this law which aim at the prevention of the use of various methods of the disguising and hiding of the source and nature of illicit income and the subsequent proceeds that have come from drug crimes, organized crimes of a criminal syndicate nature, terrorist crimes, smuggling crimes, crimes of corruption and bribery, crimes of disrupting the order of financial administration, financial fraud crimes and other crimes.”⁵⁴

Obviously, the enumeration of predicate crimes in the AML Law differs slightly from that contained in art.191 Criminal Law insofar that art.191 contains a terminal list of seven predicate crimes whereas art.2 AML Law adds the phrase “and other crimes” to the enumeration of the seven predicate crimes. As has been mentioned above, there was a dispute between members of the AML Law drafting group and the NPC SC Legislation Work Committee responsible for drafting the revision to the Criminal Law. Whereas the former preferred to adopt a much more comprehensive enumeration of predicate crimes according to international trends,⁵⁵ the latter held that limiting the enumeration only to serious crimes was sufficient.⁵⁶ Thus, officials from the AML Law drafting group and from the NPC SC Legislation Work Committee employed a compromise: the addition of the phrase “and other crimes” to art.2 AML Law is meant as a first step; successively, other crimes are to be added to the catalogue of predicate crimes until finally all sorts of crimes will be covered.⁵⁷ In the meantime, the phrase “and other crimes” is matched by the relevant revision to art.312 Criminal Law which now establishes all other crimes but those explicitly mentioned in art.191 as predicate crimes to money laundering, too.

The Rules 2006 and Measures 2006 do not contain any definition of the terms ‘money laundering’ or ‘anti-money laundering’.

Scope of Application and Addressees

According to art.3 AML Law, “financial institutions established on the territory of the PRC as well as designated non-financial institutions which are legally obligated to carry out anti-money laundering duties must take measures for prevention and monitoring, they must establish a comprehensive customer identification system, a system for storing customer identification materials and transaction records, a reporting system for large-value and suspicious transactions, and they must fulfil their anti-money laundering obligations.” Art.34 AML Law explicates which specific sorts of financial institutions are the addressees of the AML Law: “The term financial institution as used in this law refers to policy banks⁵⁸, commercial banks,

⁵⁴ Author’s translation, following Finder 2006: 1.

⁵⁵ “Fanxiqian zhongguo zheng mianlin san fangmian tiaozhan [China faces three challenges in the area of anti-money laundering]”; in: *Fazhi Ribao*, 29.11.2005; available at: http://www.legaldaily.com.cn/misc/2005-11/29/content_227033.htm [visited: 03.01.2007]; „Zhuanfang: fanxiqianfa qicao gongzuo xiaozu zuzhang Yu Guangyuan jiaoshou tan fanxiqian yu fanfubai [Special report: Prof. Yu Guangyuan, chairman of the Anti-money Laundering Law drafting group talks about anti-money laundering and the fight against corruption and bribery]”; *Internet discussion staged on ‘Justice Net’ (zhengyiwang)*, 28.04.2006; available at: <http://www.jcrb.com/bbs/honour/index1.php?tid=68> [visited: 18.01.2007]

⁵⁶ See above, section II.1

⁵⁷ “Zhuanfang: fanxiqianfa qicao gongzuo xiaozu zuzhang Yu Guangyuan jiaoshou tan fanxiqian yu fanfubai [Special report: Prof. Yu Guangyuan, chairman of the Anti-money Laundering Law drafting group talks about anti-money laundering and the fight against corruption and bribery]”; *Internet discussion staged on ‘Justice Net’ (zhengyiwang)*, 28.04.2006; available at: <http://www.jcrb.com/bbs/honour/index1.php?tid=68> [visited: 18.01.2007]

⁵⁸ In 1994, three so-called ‘policy-banks’ have been established: Agricultural Development Bank, State Development Bank, Chinese Im- and Export Bank. These banks are tasked with granting loans to industrial branches and projects which are politically favoured (Fischer/Schüller 2003: 68).

credit cooperatives, postal savings institutions, fund management companies, securities companies, commodity brokerage companies, insurance companies established according to law as well as to other institutions which are engaged in the financial sector and which are designated and disclosed by the administrative department of the State Council in charge of AML.” This stipulation is complemented by the relevant provisions of the Rules 2006 and Measures 2006 which contain enumerations of financial institutions covered by the respective regulations.⁵⁹

The term financial and non-financial institutions “established on the territory of the PRC” refers to national Chinese financial and non-financial institutions as well as to branches of foreign financial and non-financial institutions operating in the PRC.⁶⁰ Finally, the AML Law and Administrative Regulations also apply to foreign-invested commercial banks.⁶¹ Detailed provisions as to the implementation and operation of AML systems by the addressees of the AML Law are contained in Part III of the AML Law and will be explained below.

Prior to the enactment of the AML Law, existent AML legal rules – Rules on Anti-money Laundering for Financial Institutions,⁶² Administrative Measure on the Reporting of Large-Value and Suspicious Renminbi Payment Transactions,⁶³ and Administrative Measure on the Reporting by Financial Institutions of Large-Value and Suspicious Foreign Exchange Transactions⁶⁴ adopted by the PBoC in January, 2003 and effective as of March, 2003 – only addressed banking financial institutions (i.e. policy banks, commercial banks, urban and rural credit cooperatives and their unions, and postal savings institutions⁶⁵) as well as financial institutions “that run foreign exchange business”.⁶⁶ Thus, the new AML Law in conjunction with the Administrative Regulations considerably extends the scope of AML addressees in the area of financial businesses. But, the “specific non-financial institutions” referred to in art.3 AML Law are mentioned neither in the Rules 2006 nor in the Measures 2006; consequently, the scope of the two Administrative Regulations is explicitly limited to financial institutions.

However, drafters of the AML Law have been well aware that international AML standards also demand the application of AML requirements to certain non-financial businesses and

⁵⁹ “These Rules apply to the following financial institutions established on the territory of the People’s Republic of China according to law: 1) commercial banks, urban credit cooperatives, rural credit cooperatives, postal savings institutions, and policy banks; 2) securities companies, commodity brokerage companies, fund management companies; 3) insurance companies, insurance asset management companies; 4) trust investment companies, asset management companies, finance companies, financial leasing companies, vehicle financing companies, currency brokerage companies; 5) other financial institutions designated and disclosed by the People’s Bank of China.” (art.2, para.1 Rules 2006; art.2, para.1 Measures 2006). “The stipulations of these Rules also apply to financial institutions offering remittance services, clearance and settlement services, and fund marketing services.” (art.2, para.2 Rules 2006; art.2, para.2 Measures 2006).

⁶⁰ Finder 2006: 2

⁶¹ Statement of Ms. Cai Yilian, Deputy Director of the Anti-money Laundering Department of the PBoC (“Fanxiqian tixi jian wanshan – waizihang naru jianguan [The anti-money laundering system will be completed step by step – foreign-invested commercial banks will also be subject to regulation]”; in: *Shanghai Zhengquan Bao*, 20.12.2006; available at: <http://cn.biz.yahoo.com/061219/4/kb5h.html> [visited: 20.01.2007])

⁶² “Jinrong jigou fanxiqian guiding”; available at: <http://www.cas.ac.cn/html/Dir/2003/01/03/6576.htm> [visited: 20.01.2007]

⁶³ “Renminbi da’e he keyi zhifu jiaoyi baogao guanli banfa”; available at: <http://www.cas.ac.cn/html/Dir/2003/01/03/6580.htm> [visited: 20.01.2007]

⁶⁴ “Jinrong jigou da’e he keyi waihui zijin jiaoyi baogao guanli banfa”; available at: <http://www.cas.ac.cn/html/Dir/2003/01/03/6638.htm> [visited: 20.01.2007]

⁶⁵ art.2 Rules on Anti-money Laundering for Financial Institutions; art.3 Administrative Measure on the Reporting of Large-Value and Suspicious Renminbi Payment Transactions; Obst 2005: 104

⁶⁶ art.2 Administrative Measure on the Reporting by Financial Institutions of Large-Value and Suspicious Foreign Exchange Transactions

professions, such as lawyers, notaries, and other independent legal professionals, accountants, real estate agents, dealers in precious metals and stones, and casinos (FATF Recommendation 12).⁶⁷ Moreover, the PRC has also already experienced the expansion of money laundering activities from the banking sector to other financial and non-financial businesses and therefore recognizes the need to adjust AML legislation and regulation accordingly.⁶⁸ Thus, the first draft of the AML Law, submitted to the NPC SC for deliberation in April, 2006, contained a provision which explicitly enumerated banking financial institutions, insurance companies, securities financial institutions, postal savings institutions, real estate agents, dealers in precious metals and stones, auctioneers, lawyers, accountants and other non-financial businesses as AML obligates.⁶⁹ However, subsequent to the first reading, the draft AML Law has been presented to representatives of the branches and professions which according to the draft would have been obliged to implement AML requirements. These representatives had been very critical and renunciatory vis-à-vis the proposed stipulations. In essence, they feared higher operational costs, deterrence of clients as well as conflicts with their responsibility to uphold professional confidentiality were they obliged to implement AML duties such as the submission of large-value and suspicious transaction reports.⁷⁰ The accountants in particular opposed the expansion of AML obligations to their profession. They feared that, in addition to the negative implications on their work mentioned above, “blowing the whistle” would induce clients to sue their accountants.⁷¹

Furthermore, officials from the PBoC raised the objection that in the PRC there were so far no experiences with AML regulation in the area of non-financial institutions; thus, it was proposed to better learn from practical experiences than anchoring stipulations as to AML obligations for non-financial institutions in the AML Law beforehand.⁷² This mechanism is quite typical for regulation in the PRC in general; in most cases, legal developments do not prescribe and instruct practical developments; instead, legal provisions are often drafted according to prior practical experiences. Thus, upon the proposal of the NPC Legal Affairs Commission, the relevant stipulation which explicitly specified real estate agents, dealers in precious metals and stones, auctioneers, lawyers, accountants and other non-financial businesses as AML obligates was deleted from the draft law.⁷³

⁶⁷ “Yanghang: Fanxiqianfa bu hui yingxiang geren yinsi he shangye jimi [Central Bank: The AML Law must not interfere with the privacy of individuals nor with company secrets]”; in: *Zhongguo Qingnian Bao*, 02.11.2006; available at: <http://cn.biz.yahoo.com/061102/143/jpv0.html> [visited: 10.01.2007]

⁶⁸ “Yanghang fanxiqian zhongxin zhuren nuchi: fangdichanye xiqian mingmuzhangdan [Director of the Central Bank’s anti-money laundering centre enraged: in the real estate sector money is laundered brazenly]”; in: *Zhongguo Jingji Zhoukan*, 13.03.2006; available at: <http://cn.biz.yahoo.com/060312/16/gfrj.html> [visited: 12.01.2007]

⁶⁹ “‘Fanxiqianfa’ cao’an tijiao shenyi [Draft AML Law submitted for deliberation]”; in: *Caijing*, Nr.158 (01.05.2006); available at: <http://www.caijing.com.cn/cns/scyfz/other/2006/05/01/1629962.html> [visited: 15.01.2007]

⁷⁰ “Fanxiqianfa cao’an gaidong – yiwu zhi zheng cheng jiaodian [Revision of the draft AML Law focuses on the dispute about duties]”; in: *21 Shiji Jingji Baodao*, 24.08.2006; available at: <http://info.research.hc360.com/2006/08/24090422122.shtml> [visited: 15.01.2007]

⁷¹ *ibid.*; see also: Chinese Institute of Certified Public Accountants (CICPA) 2005

⁷² Cf. statement of Chen Xiaoyun, Chief of the Division of Laws and Regulations in the Legal Department of the PBoC (“Yanghang: Fanxiqianfa bu hui yingxiang geren yinsi he shangye jimi [Central Bank: The AML Law must not interfere with the privacy of individuals nor with company secrets]”; in: *Zhongguo Qingnian Bao*, 02.11.2006; available at: <http://cn.biz.yahoo.com/061102/143/jpv0.html> [visited: 10.01.2007]

⁷³ “Fanxiqianfa cao’an er shen linshi dongjie zijin bude chaoguo sishiba xiaoshi [Draft AML Law prepared for the second reading stipulates that the temporary freezing of funds may not exceed 48 hours]”; in: *Shanghai Zhengquanbao*, 23.08.2006; available at: <http://cn.biz.yahoo.com/06-08-4/itbr.html> [visited: 12.01.2007]

Legality of the Administration of Anti-money Laundering

The AML Law particularly emphasizes the subordination of AML administrative measures under the law. According to art.5 AML Law, information about the identity of financial institutions' customers as well as about transactions must be kept in confidence; information obtained by violating the relevant legal provisions must not be utilized. Moreover, the administrative organs responsible for AML, i.e. the "administrative department of the State Council in charge of AML" and "other ministries and organs endowed by law with AML competences" may use information about financial institutions' customers and about transactions only for the purpose of conduction AML administrative inspections. Finally, judicial organs may use legally obtained information about financial institutions' customers and about transactions only in the course of AML criminal proceedings.

This provision aims, for one, at reconciling as far as possible banking confidentiality with the requirements of AML. Moreover, strictly limiting the applicability of information and evidence obtained through AML measures such as Customer Due Diligence and transaction reports to AML investigations and AML proceedings aims at limiting the scope of regulatory competence as well as at preventing the possible abuse of these kinds of information by AML regulatory authorities.⁷⁴ But, on the other hand, the AML Law does not cover the question of compensation in case of abuse of AML information.⁷⁵ Thus, the relevant provisions forbidding the abuse of information are not suitable to dispel the scepticism of financial institutions and customers regarding the reconcilableness of AML, on the one hand, and banking and personal secrets, on the other hand.

Finally, while art.5 AML Law aims at protecting the legal rights and interests of financial institutions and their customers, art.6 AML Law, art.16 Rules 2006 protect financial institutions and their staff against claims of liability for actions taken in the course of fulfilling their AML obligations;⁷⁶ this corresponds to FATF Recommendation 14a.

Popular Support of Anti-money Laundering

Finally, Part I of the AML Law closes with a provision detailing popular support for AML: "If any unit or person detects money laundering activities, this unit or person has the right to report to the administrative agency in charge of AML or to the organs of public security. The organ which receives the report must keep the identity of the reporting person and the contents of the report in confidence." (art.7 AML Law). Already in 2005, the 'China Anti-money Laundering Monitoring and Analysis Centre' [*zhongguo fanxiqian jiance fenxi zhongxin – CAMLMAC*]⁷⁷ began collecting cues on money laundering submitted by the populace on the legal basis of the "Instructions of the China Anti-money Laundering Monitoring and Analysis Centre on Reporting Money Laundering Suspicions to the Authorities" published by CAMLMAC in 2005.⁷⁸ The Instructions detail who may submit reports (art.2: the populace

⁷⁴ "Yanghang: fanxiqianfa ji yu guoji biao zhun jiegui you jiehe zhongguo guoqing [Central bank: AML Law matches international standards as well as the Chinese national situation]"; in: *Zhongguo Xinwenwang*, 10.11.2006; available at: <http://cn.biz.yahoo.com/061110/36/jtn8.html> [visited: 13.01.2007]

⁷⁵ "Fayan zhaideng: fenzu shenyi fanxiqianfa cao'an [Excerpt from the deliberation: draft AML Law discussed in groups]"; *Zhongguo Rendawang*, 26.08.2006; available at: <http://www.npc.gov.cn/zgrdw/common/zw.jsp?label=WXZLK&id=351694&pdmc=1125> [visited: 12.12.2006]

⁷⁶ art.6 AML Law: "Financial institutions and their staff are protected by law when submitting large-value and suspicious transaction reports in fulfilment of their statutory anti-money laundering obligations" (author's translation); the text of art.16 Rules 2006 is identical.

⁷⁷ For a detailed description of CAMLMAC, see below *Part II: Anti-money Laundering Regulation*

⁷⁸ "Zhongguo fanxiqian jiance fenxi zhongxin shexian xiqian xingwei jubao xuzhi"; PBoC 2005: 24-25

and judicial persons); which behaviour may be reported,⁷⁹ which sort of information must be contained in the report,⁸⁰ and how reports can be submitted to CAMLMAC.⁸¹ Thus, the Instructions are, again, the legal harbinger to the stipulation contained in art.7 AML Law.

However, members of the NPC SC have criticized during the debate that art.7 AML Law does not make it clear whether this provision establishes a legal obligation or simply a right which people may choose to assert or not; the Instructions are also of no help in resolving this question since they, too, only state that natural and legal persons “may” disclose suspicions of money laundering to CAMLMAC.

Part II: Anti-money Laundering Regulation

Part II of the AML Law (art.8-14) covers the organisation of the national AML work and details the institutional framework of AML regulation. These provisions of the AML Law are mirrored by art.3 to art.7 Rules 2006 and art.3 to art.4 Measures 2006.

Institutions Responsible for Anti-money Laundering Regulation

According to art.8 AML, “the administrative department of the State Council in charge of anti-money laundering organizes and coordinates the national anti-money laundering work, it is responsible for the implementation of financial oversight for anti-money laundering purposes, it issues – alone or together with the relevant organs for financial regulation of the State Council – anti-money laundering regulations for financial institutions, it monitors and supervises financial institutions’ fulfilment of anti-money laundering obligations, it monitors suspicious transactions and activities within its field of responsibility and exercises other anti-money laundering responsibilities according to the laws and to the State Council’s regulations” [para.1]. “The organs of the administrative department of the State Council in charge of anti-money laundering monitor and supervise within the field of responsibility of the administrative department of the State Council in charge of anti-money laundering financial institutions’ fulfilment of anti-money laundering obligations” [para.2].

This provision establishes substantial AML competences for the “administrative department of the State Council in charge of anti-money laundering”; however, the AML Law does not explicate which institution is to be considered the “administrative department of the State

⁷⁹ art.3: “Any behaviour which aims at concealing and disguising by any means the origin and the character of illicit income and the subsequent proceeds that have come from drug crimes, organized crimes of a criminal syndicate nature, terrorist crimes, smuggling crimes, crimes of corruption and bribery so that they appear to have originated from legitimate sources constitutes an act of money laundering. In case that a natural or a judicial person discovers such behaviour, he may report it to the China Anti-money Laundering Monitoring and Analysis Centre.”

Thus, interestingly, the Instructions as a low level administrative regulation do contain an unequivocal definition of the crime “money laundering” whereas the AML Law fails to do so (see above: *Part I: General Provisions - Definition of Money Laundering and Predicate Crimes*). However, since the definition of money laundering contained in the Instructions does not conform to higher level legal norms, i.e. the Chinese Criminal Law, as far as the scope of predicate crimes is concerned (contrary to art.191 Criminal Law, the Instructions do not list crimes of disrupting the order of financial administration and financial fraud crimes as predicate crimes), the Instructions will have to be revised in order to avoid legal inconsistency.

⁸⁰ art.4: “The report must contain at least details about the source of the report, the regional location of the source, the name of the reported person / the appellation of the reported judicial person, the branch of its business activities, its rank or occupational position, the place of discovery, a description of the sort of crime which is suspected, a description of the facts which hint at money laundering as well as other essential elements; further information is contained in the reporting form.”

⁸¹ art.5: „Reports may be submitted by telephone, in writing, by fax, by email and by other means.”

Council in charge of anti-money laundering”. According to Yu Guangyuan, Director of the Law Department of the NPC SC Budgetary Affairs Commission and Chairman of the AML Law drafting group, the PBoC must be considered the “administrative department of the State Council in charge of anti-money laundering”. This interpretation is in line with the stipulations of the Law on the PBoC (PBoC Law) which states that the PBoC will “guide and arrange anti-money laundering work in the financial sector and monitor fund movement for anti-money laundering purpose.”⁸² Furthermore, the PBoC also heads the Joint Ministerial Conference on Anti-money Laundering which serves as a coordinating mechanism for national AML work.⁸³ Finally, the Rules 2006 promulgated by the PBoC itself on November 14, 2006, stipulate that “the People’s Bank of China is the administrative department of the State Council in charge of anti-money laundering” (art.3). However, there also exist interpretations which consider the AML-Bureau of the PBoC as the “administrative department of the State Council in charge of anti-money laundering.”⁸⁴

The official explanation for the failure of the AML Law to explicitly designate the PBoC as the “administrative department of the State Council in charge of anti-money laundering” refers to the ongoing government restructuring in the PRC. Governmental agencies involved in drafting the AML Law state that due to this restructuring it is not possible for the time being to come to a final decision as to which agency should be responsible for fulfilling the responsibilities assigned to the “administrative department of the State Council in charge of anti-money laundering”. If in the future responsibilities will be transferred from one institution to another, the wording of the AML Law need not be changed in each such case because only ‘generic terms’ for the agency in charge have been employed instead of its specific title. This, it is argued, contributes to legal constancy.⁸⁵

⁸² art.4, no.10 Law on the People’s Bank of China. The English text is available at:

<http://www.pbc.gov.cn/english/detail.asp?col=6800&ID=22&keyword=laundering> [visited: 18.01.2007].

Whereas the Three Administrative Regulations only address credit institutions, the responsibilities of the PBoC laid down in art.4, no.10 Law on the People’s Bank of China extend to all financial institutions (Obst 2005: 102, note 13). This means, as a consequence of the adoption of the Three Administrative Regulations and the revision of the Law on the People’s Bank of China the authority to supervise commercial banks – which had been transferred to the newly established CBRC in April 2003 – has been retroceded to the PBoC as far as the supervision of compliance with AML is concerned (“Fang yanghang fanxiqianju juzhang [A visit to the Director of the Anti-money laundering Bureau of the Central Bank]”, in: *Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/128/b5xu.html> [visited: 07.01.2007])

⁸³ In May, 2002, the State Council established the ‘Joint Ministerial Conference on Anti-money Laundering’ [*fanxiqian gongzuo buji lianxihuiyi zhidu – JMC*]. At the beginning, the JMC was headed by the Minister of Social Security and was comprised of 16 ministries and commissions under the State Council (“Zhongguo fanxiqian xietiaojizhi [Coordination of anti-money laundering in China]”; *Yahu Caijing*, 13.07.2005 (available at: <http://cn.biz.yahoo.com/050713/124/b5p2.html> [visited: 27.01.2007])). One year later, in May 2003, the State Council assigned the Chairmanship to the President of the PBoC; in July 2004, the State Council expanded membership of the JMC to 23 ministries and commissions upon the suggestion of the PBoC (“2004 nian fanxiqian gongzuo dashiji [Record of important events in anti-money laundering 2004]”; *Yahu Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/124/b5r1.html> [visited: 05.01.2007])). Today, the JMC comprises the following members: PBoC (Chairmanship), Supreme People’s Court, Supreme People’s Procuratorate, State Council Administrative Bureau [*guowuyuan bangongting*], Ministry of Foreign Affairs, Ministry of Public Security, Ministry of State Security, Ministry of Supervision, Ministry of Justice, Ministry of Finance, Ministry of Construction, MOFCOM, General Administration of Customs, State Bureau of Taxation, State Administration for Industry and Commerce, State Administration of Radio, Film and Television, State Council Office of Legislative Affairs, CBRC, CSRC, CIRC, SAFE, State Postal Bureau, People’s Liberation Army General Staff Department (“2004 nian fanxiqian gongzuo dashiji [Record of important events in anti-money laundering 2004]”; *Yahu Caijing*, 13.07.2005 (available at: <http://cn.biz.yahoo.com/050713/124/b5r1.html> [visited: 05.01.2007])). See also: PBoC 2005: 6; Schulte-Kulmann 2006: 228-229

⁸⁴ “‘Fanxiqianfa’ cao’an tijiao shenyi [Draft Anti-money Laundering Law submitted for deliberation]”; in: *Caijing*, Nr. 158 (01.05.2006)

⁸⁵ *ibid.*

However, the opaque wording employed in the AML Law seems to be owed not so much to the necessities of government restructuring but to inter-departmental conflicts of competence.⁸⁶ From the very beginning, the AML Law drafting process had been burdened by several controversies. Most prominently amongst them figured the problem that it was difficult to reach a consensus on the question of how to coordinate AML work at the national level.⁸⁷ Members of the ‘leading group’ responsible for drafting the new AML Law disagreed about whether the responsibility for coordinating the AML activities of the relevant ministries and commissions should be assigned to the PBoC or directly to the State Council.⁸⁸

However, for the time being this dispute was solved with the adoption of the Rules 2006 and the Measures 2006 in November, 2006 in favour of the PBoC. Art.3 Rules 2006 stipulates that “the People’s Bank of China is the administrative department of the State Council in charge of anti-money laundering, the People’s Bank of China monitors and supervises the anti-money laundering work of financial institutions according to law.” Art.3 Measures 2006 specifies that “the People’s Bank of China and its sub-branches monitor and supervise the submission of large-value transaction reports and suspicious transaction reports by financial institutions.” These provisions endow the Central Bank with considerable competences and influence both regarding the operative fight against money laundering and regarding the definition of political guidelines in the area of AML.⁸⁹

Moreover, the AML Law is not clear as to the delineation of the respective competences of the PBoC, on the one hand, and of the other relevant financial regulatory authorities – i.e. the CSRC, the CBRC, and the CIRC – on the other hand. Art.8 AML Law stipulates that “the administrative department of the State Council in charge of anti-money laundering [i.e. the PBoC] issues – *alone or together with* the relevant organs of the State Council in charge of financial regulation [i.e. CSRC, CBRC, CIRC] – anti-money laundering regulations for financial institutions.” This provision is mirrored by art.5, no.1 Rules 2006. Furthermore, art.9 AML Law decrees that “the relevant financial regulatory organs of the State Council [i.e. CSRC, CBRC, CIRC] *participate* in the adoption of anti-money laundering rules for financial institutions subject to regulation, they *participate* in drawing up requirements for financial institutions subject to regulation regarding the establishment of a comprehensive anti-money laundering control system according to the rules, and they *participate* in the implementation of other relevant anti-money laundering obligations in accordance with the laws and the rules of the State Council.” Thus, it is not clear, for example, whether the PBoC may adopt AML regulations alone; the wording of art.8 AML Law can be interpreted as authorizing the PBoC to monopolize rule-making in the area of AML regulation and bypassing the CSRC, CIRC, and CBRC. But, on the other hand, according to art.9, participation of the other financial regulatory organs seems to be obligatory.

Again, the provisions of the two administrative regulations offer a certain degree of clarification. Art.3 Rules 2006 stipulates broadly that “the CBRC, CSRC and CIRC implement anti-

⁸⁶ Cf.: „Zhuanfang: fanxiqianfa qicao gongzuo xiaozu zuzhang Yu Guangyuan jiaoshou tan fanxiqian yu fanfubai [Special report: Prof. Yu Guangyuan, Chairman of the Anti-money Laundering Law drafting group talks about anti-money laundering and the fight against corruption and bribery]”; *Internet discussion staged on ‘Justice Net’ (zhengyiwang)*, 28.04.2006; available at: <http://www.jcrb.com/bbs/honour/index1.php?tid=68> [visited: 18.01.2007]

⁸⁷ “Fanxiqianfa lifa jiaodian zhi zheng [Controversial aspects of the Anti-money Laundering Law]”; in: *21 Shiji Jingji Baodao*, 15.09.2005; available at: <http://www.nanfangdaily.com.cn/jj/20050915/zj/200509150025.asp> [visited: 06.01.2007]

⁸⁸ *ibid.*

⁸⁹ *ibid.*

money laundering regulation in their respective fields of responsibility.” Other provisions specify the areas of shared responsibility: measures detailing the implementation of Customer Due Diligence⁹⁰ and Record Keeping⁹¹ by financial institutions are collectively adopted by the PBoC and CSRC, CBRC, and CIRC; moreover, “the PBoC – together with the CBRC, CSRC, CIRC – guides the self-regulatory organs of the financial branches with the adoption of anti-money laundering regulations for the respective branches.” (art.12 Rules 2006). Regarding the implementation of measures for the submission of transaction reports, the PBoC enjoys exclusive competence (art.11, para.2 Rules 2006).⁹²

However, neither art.8 AML Law and art.9 AML Law nor the provisions of the Rules 2006 referred to above do clarify whether the other financial regulatory organs participate in rule-making as equals or only in advisory capacity and whether or not they are subject to directives of the PBoC. In any case, resulting from these legal uncertainties, the occurrence of conflicts of competence is very likely.

Establishment of a Financial Intelligence Unit

Art.10 AML Law stipulates that “the administrative department of the State Council in charge of anti-money laundering establishes an Anti-money Laundering Intelligence Centre, the Anti-money Laundering Intelligence Centre is responsible for collecting and analyzing large-value transaction reports and suspicious transactions reports, for submitting in accordance with the rules the results of the analyses to the administrative department of the State Council in charge of anti-money laundering and for the execution of other obligations as stipulated by the administrative department of the State Council in charge of anti-money laundering.” This provision is supplemented by art.6 Rules 2006 and art.4, para.2 Measures 2006. The establishment of a Financial Intelligence Unit (FIU) is in line with FATF Recommendation 26.

Art.6 Rules 2006 further details the provision by enumerating the specific duties of the FIU: “The People’s Bank of China establishes the China Anti-money Laundering Monitoring and Analysis Centre which fulfils the following duties according to law: 1) Receipt and analysis of large-value and suspicious RMB-transaction reports and large-value and suspicious foreign exchange transaction reports; 2) establishment of a national anti-money laundering data-base for the purpose of adequately retaining reports and information about large-value and suspicious transactions submitted by financial institutions; 3) submission of the results of the analyses to the People’s Bank of China in accordance with the rules; 4) requesting financial institutions to immediately replenishing and correcting large-value transaction reports and suspicious transaction reports; 5) exchange of information and materials with the relevant foreign institutions upon authorization through the People’s Bank of China; 6) the fulfilment of other duties as determined by the People’s Bank of China.” Finally, art.6, no.4 Rules 2006 is further detailed by art.4, para.2 Measures 2006: “In case that the China Anti-money Laundering Monitoring and Analysis Centre discovers that large-value transaction reports or suspi-

⁹⁰ art.9, para.2 Rules 2006: “The necessary measures for the implementation of the above-mentioned rules [regarding the establishment and implementation of a system for the recognition of customers’ identities] will be adopted jointly by the PBoC and the CBRC, CSRC, and CIRC” (author’s translation; author’s addendum)

⁹¹ art.10, para.2 Rules 2006: “The necessary measures for the implementation of the above-mentioned rules [regarding the storage of information about customers’ identities, information about transactions, account books and other relevant materials] will be adopted jointly by the PBoC and the CBRC, CSRC, and CIRC” (author’s translation; author’s addendum)

⁹² art.11, para.2 Rules 2006: “The necessary measures for the implementation of the above-mentioned rules [regarding the submission of large-value and suspicious RMB transactions and foreign exchange transactions by financial institutions to the anti-money laundering financial intelligence unit] will be adopted by the PBoC” (author’s translation; author’s addendum)

cious transaction reports submitted by financial institutions are fragmentary or erroneous in central aspects, it may request the submitting financial institution to complete and correct these reports, the financial institution is obliged to accomplish the completion and correction within five workdays after receiving the request.”

This provision of the AML Law concerning the ‘FIU’ is, again, flawed with legal uncertainties. For one, the AML Law does not explicate which institution in particular is to be considered the “Anti-money Laundering Intelligence Centre”; thus, in the same vein as with the “administrative department of the State Council in charge of anti-money laundering” it remains unclear which institution is legally entitled to exercise the respective competences contained in art.10 AML Law.

Prior to the enactment of the AML Law, two institutions responsible for the specific duties now assigned to the “Anti-money Laundering Intelligence Centre” had already been established in the PRC. For one, the PBoC re-named its ‘Security Bureau’ [*baoweiju*] as ‘Anti-money Laundering Bureau’ [*fanxiqianju* – henceforth: “AML Bureau”] in September, 2003.⁹³ The AML Bureau is responsible for the “organisation and coordination of the national anti-money laundering work; for studying and promulgating anti-money laundering regulations and policies for financial institutions; for international cooperation and exchange in the area of anti-money laundering; for collecting and analysing information about suspicious RMB payment transactions, suspicious foreign exchange payment transactions and other suspicious transactions submitted by the respective organizations, for submitting this information to the judicial authorities in case a crime is suspected and for supporting the judicial organs’ investigations if money laundering is suspected”,⁹⁴ as well as for monitoring the compliance of financial institutions with AML regulations.⁹⁵ In case that the AML Bureau discovers violations of these regulations, it is authorized to impose sanctions on the financial institutions in question.⁹⁶ Should there be reason to entertain the suspicion that a financial institution or its employees deliberately violated the relevant regulations in order to engage in money laundering, the AML Bureau has to call in the police and justice authorities.⁹⁷

Furthermore, the ‘China Anti-Money Laundering Monitoring and Analysis Centre’ [*zhongguo fanxiqian jiance fenxi zhongxin* – henceforth: “CAMLMAC”] was established in April, 2004 as a separate agency directly subordinated to the PBoC.⁹⁸ CAMLMAC fulfils different tasks. For one, CAMLMAC is responsible for the collection and subsequent analysis of information about all sorts of money laundering activities. Insights derived therefrom are submitted to the relevant AML authorities. Moreover, CAMLMAC collects, analyses and files all reports about large-value and suspicious RMB- and foreign exchange transactions which are submit-

⁹³ “Fanxiqianfa lifa jiaodian zhi zheng [Controversial aspects of the Anti-money Laundering Law]”; in: *21 Shiji Jingji Baodao*, 15.09.2005; available at: <http://www.nanfangdaily.com.cn/jj/20050915/zj/200509150025.asp> [visited: 06.01.2007]

⁹⁴ Cf.: “Fanxiqianju (baoweiju) [Anti-money Laundering Bureau (Security Bureau)]; available at: <http://www.pbc.gov.cn/renhangjianjie/jigousheji/neishejigou/fanxiqianju.asp> [visited: 11.05.2006]

⁹⁵ “Fang yanghang fanxiqianju juzhang [A visit to the Director of the Anti-money laundering Bureau of the Central Bank]”, in: *Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/128/b5xu.html> [visited: 07.01.2007]

⁹⁶ art.46 Law on the People’s Bank of China; art.20 Rules for Anti-money Laundering by Financial Institutions; art.23, art.24 Administrative Measure for the Reporting of Large-value and Suspicious RMB Payment Transactions.

⁹⁷ art.46 Law on the People’s Bank of China

⁹⁸ “Fanxiqianfa lifa jiaodian zhi zheng [Controversial aspects of the Anti-money Laundering Law]”; in: *21 Shiji Jingji Baodao*, 15.09.2005; available at: <http://www.nanfangdaily.com.cn/jj/20050915/zj/200509150025.asp> [visited: 06.01.2007]

ted to CAMLMAC by financial institutions.⁹⁹ This information is used to build up a national AML data-base step by step.¹⁰⁰ Furthermore, CAMLMAC also conducts research on developments and trends in money laundering activities; the findings are used as a guideline for political decisions on AML measures. Finally, upon authorization through the PBoC, CAMLMAC serves as a liaison for international cooperation in the area of AML as well as for information exchange with foreign FIU.¹⁰¹ In order to carry out the daily work, CAMLMAC comprises of an office, a research department, an intelligence department, five departments for the analysis of financial transactions, an investigation department, a technical support department, a department for international exchange, a department for financial affairs, and a human resources department.¹⁰² CAMLMAC started operational work on August 16, 2004.

However, from the stipulations of the AML Law it does not become clear whether the PBoC AML Bureau or CAMLMAC must be considered the Chinese 'FIU'; only the two Administrative Regulations are more explicit as they employ the term "China Anti-money Laundering Monitoring and Analysis Centre"; thus, one can conclude that CAMLMAC is to be considered the Chinese FIU.

According to the organizational set-up of CAMLMAC described above, CAMLMAC is basically designed as an "administrative-type" FIU.¹⁰³ FIU of this variety are not directly connected to the judicial and/or law-enforcement agencies, but established – in the case of the PRC – with the Central Bank (i.e. PBoC). Since CAMLMAC has been established as a separate agency directly subordinated to and supervised by the PBoC,¹⁰⁴ it can be regarded as an "autonomous" FIU.¹⁰⁵ The main advantage of such an FIU is that it functions as a "buffer" between financial and non-financial institutions and professions subject to reporting requirements in AML, on the one hand, and law-enforcement agencies, on the other hand. This means, since institutions subject to reporting requirements are not reporting directly to law-enforcement agencies, they might feel freer to report transactions even if they are not able to fully substantiate their suspicions; instead, it is the task of the FIU to filter out the cases where suspicion of money laundering is indeed justified. Only after suspicions are substantiated, information about certain cases is transferred to the law-enforcement authorities.¹⁰⁶

⁹⁹ "Fanxiqian jiance fenxi [Anti-money laundering monitoring and analysis]"; *Yahu Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/124/b5qk.html> [visited: 05.01.2007]. The "Instructions of the China Anti-money Laundering Monitoring and Analysis Centre on Reporting Money Laundering Suspicions to the Authorities [Zhongguo fanxiqian jiance fenxi zhongxin shexian xiqian xingwei jubao xuzhi]" published by CAMLMAC in 2005 (PBoC 2005: 24-25) can be regarded as the legal basis for the operation of CAMLMAC. Art.2, sentence 2 of the Instructions reads: "The China Anti-Money Laundering Monitoring and Analysis Centre is a special institution, established by the People's Bank of China for the purpose of collecting, analysing, monitoring and dispersing anti-money laundering intelligence; the People's Bank of China fulfils its task of organizing and coordination the national anti-money laundering work by dint of the China Anti-Money Laundering Monitoring and Analysis Centre."

¹⁰⁰ art.6, no.2 Rules 2006

¹⁰¹ *ibid.*; art.6, no.5 Rules 2006

¹⁰² "Zhongguo fanxiqian jiance fenxi zhongxin [Chinese Anti-Money Laundering Monitoring and Analysis Centre]"; *Yahu Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/124/b5qw.html> [visited: 05.01.2007]; see also: <http://www.camlmac.gov.cn>

¹⁰³ IMF/Worldbank 2004: 10

¹⁰⁴ "Fanxiqianfa lifa jiaodian zhi zheng [Controversial aspects of the Anti-money Laundering Law]"; in: *21 Shiji Jingji Baodao*, 15.09.2005; available at: <http://www.nanfangdaily.com.cn/jj/20050915/zj/200509150025.asp> [visited: 06.01.2007]

¹⁰⁵ IMF/Worldbank 2004: 10

¹⁰⁶ *ibid.*

This institutional design, for one, has the advantage of positioning the FIU as a more technical and neutral entity which therefore enjoys more confidence from institutions subject to reporting requirements; this, in turn, is likely to positively affect reporting habits. But, on the other hand, since law enforcement agencies only receive reports after these have undergone scrutiny at the FIU, this may cause delays in the application of law-enforcement measures so that money launderers may be able to blur their traces. This is especially true if the FIU does not dispose of sufficient human resources in order to timely analyse huge amounts of reports.¹⁰⁷

A closer analysis of the AML Law and Administrative Regulations reveals that FIU functions are not assigned exclusively to CAMLMAC. According to international standards, FIU are expected to fulfil the following three core functions: 1) receipt of (large value and suspicious) transaction reports submitted by financial institutions, 2) analysis of these reports, and 3) dissemination of information to the relevant (national and international) judicial and law enforcement agencies.¹⁰⁸ As has been stated above, CAMLMAC fulfils only two of these three core FIU functions: it receives reports about large-value and suspicious transactions submitted by financial institutions, and it analyses these reports.¹⁰⁹ As far as the third core function – dissemination of information to the relevant judicial and law enforcement authorities – is concerned, this task is assigned to the PBoC AML Bureau¹¹⁰ which receives the results of the analyses conducted by CAMLMAC.¹¹¹ Furthermore, the original competence of exchanging AML information and intelligence with foreign counterparts has also been vested with the PBoC AML Bureau; it is only upon authorization through the PBoC that CAMLMAC may exchange information with foreign FIU.¹¹²

This means, the FIU responsibilities of CAMLMAC have been cut back and two distinct institutions (CAMLMAC and PBoC AML Bureau) now fulfil functions normally assigned to one single FIU. This results from the fact that in the PRC to date no consensus has been reached as to the respective administrative locations of CAMLMAC and PBoC AML Bureau, respectively, within the AML regulatory framework.

Indeed, the first draft of the AML Law contained a provision which assigned all three core FIU functions to CAMLMAC and consequently authorized CAMLMAC to transmit information about large-value and suspicious transactions suspected to be connected to money laundering directly to the judicial authorities and to share the results of analyses of transaction reports with the judicial authorities.¹¹³ However, this provision which would have strength-

¹⁰⁷ *ibid.*: 11

¹⁰⁸ In June 2004, the Egmont Group approved the following definition of a FIU: “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” (Egmont Group 2004: 3).

¹⁰⁹ art.10 AML Law; art.6, no.1 Rules 2006

¹¹⁰ art.13 AML Law; art.5, no.5 Rules 2006; “Fanxiqianfa ben yue shenyi [Anti-money Laundering Law under consideration this month]”; in: *Jingji Guangchabao*, 11.04.2006; available at: <http://www.chinacourt.org/public/detail.php?id=201333> [visited: 16.01.2007]

¹¹¹ art.10 AML Law; art.6, no.3 Rules 2006

¹¹² According to art.5, no.6 Rules 2006 the PBoC is in charge of exchanging AML information and intelligence with foreign counterparts, but art.6, no.5 Rules 2006 stipulates that CAMLMAC fulfils this task upon authorization through the PBoC.

¹¹³ “Fanxiqianfa cao’an er shen linshi dongjie zijin bude chaoguo sishiba xiaoshi [Draft AML Law prepared for the second reading stipulates that the temporary freezing of funds may not exceed 48 hours]”; in: *Shanghai Zhengquanbao*, 23.08.2006; available at: <http://cn.biz.yahoo.com/06-08-4/itbr.html> [visited: 12.01.2007]

ened the institutional position of CAMLMAC¹¹⁴ was eliminated from successive drafts.¹¹⁵ This can be regarded as a consequence of a dispute as to whether FIU competences should be transferred to one or the other of the two institutions or to a distinct institution to be established anew and directly subordinated to the State Council.¹¹⁶ However, the latter case would have resulted in a loss of influence of the PBoC in AML regulation; thus the PBoC prefers to grade up both institutions connected to the Central bank (i.e. PBoC AML Bureau and CAMLMAC) with FIU and AML responsibilities.¹¹⁷ But, since the two agencies fulfilling FIU responsibilities are, for one, an integral part of the PBoC (AML Bureau) or directly subordinated to the PBoC (CAMLMAC), their independence – which is a central requirement for FIU – is questionable;¹¹⁸ even more so since the Central Bank itself is not secure from political interference.¹¹⁹ This situation is precarious since in order to successfully carry out its functions, particularly collecting financial information which is of a confidential nature from institutions subject to reporting requirements and sharing this confidential information with foreign FIU, the FIU heavily relies on trust. This trust can only be generated by utmost objectivity in decision-making, prudent analysis of incoming reports and the effective protection of confidential information and all this, again, requires a high degree of autonomy.¹²⁰

Furthermore, the PBoC AML Bureau has been vested with a number of additional competences typically associated with a FIU.¹²¹ Regarding supervisory and regulatory competences, the PBoC AML Bureau has the power to supervise financial institutions regarding their compliance with AML regulations.¹²² If necessary, the AML Bureau is entitled to impose sanctions such as administrative punishment and fines against financial institutions which fail to properly implement AML requirements.¹²³ The AML Bureau also participates in drafting AML regulations.¹²⁴ Furthermore, the PBoC AML Bureau closely cooperates with the Ministry of Public Security [*henceforth: MoPS*] in AML. Already in March, 2005, the PBoC and the MoPS jointly adopted the “Rules on the Cooperation between the Ministry of Public Security and the People’s Bank of China in the Area of Investigating Suspicious Transactions”.¹²⁵

¹¹⁴ “Fanxiqianfa qicao zu zuzhang: fanxiqian zhuguanbumen ying shi yanghang [Head of the anti-money laundering drafting group: The main regulatory institution in anti-money laundering must be the central bank]”; in: *Xinjing Bao*, 29.04.2006; available at: <http://news.sina.com.cn/c/2006-04-29/01108816120s.shtml> [visited: 02.01.2007]

¹¹⁵ “Fanxiqianfa cao’an er shen linshi dongjie zijin bude chaoguo sishiba xiaoshi [Draft AML Law prepared for the second reading stipulates that the temporary freezing of funds may not exceed 48 hours]”; in: *Shanghai Zhengquanbao*, 23.08.2006; available at: <http://cn.biz.yahoo.com/06-08-/4/itbr.html> [visited: 12.01.2007]

¹¹⁶ art.6, no.3 Rules 2006; “Fanxiqianfa lifa jiaodian zhi zheng [Controversial aspects of the Anti-money Laundering Law]”; in: *21 Shiji Jingji Baodao*, 15.09.2005; available at: <http://www.nanfangdaily.com.cn/jj/20050915/zj/200509150025.asp> [visited: 06.01.2007]; “Fanxiqianfa ben yue shenyi [Anti-money Laundering Law under consideration this month]”; in: *Jingji Guangchabao*, 11.04.2006; available at: <http://www.chinacourt.org/public/detail.php?id=201333> [visited: 16.01.2006]

¹¹⁷ “Fanxiqianfa lifa jiaodian zhi zheng [Controversial aspects of the Anti-money Laundering Law]”; in: *21 Shiji Jingji Baodao*, 15.09.2005; available at: <http://www.nanfangdaily.com.cn/jj/20050915/zj/200509150025.asp> [visited: 06.01.2007]

¹¹⁸ “Fanxiqianfa ben yue shenyi [Anti-money Laundering Law under consideration this month]”; in: *Jingji Guangchabao*, 11.04.2006; available at: <http://www.chinacourt.org/public/detail.php?id=201333> [visited: 16.01.2007]

¹¹⁹ The PBoC remains subject to State Council directions (Fischer/Schüller 2003: 68).

¹²⁰ IMF/Worldbank 2004: 23-24.

¹²¹ Cf. Schott 2002: VII-14 – VII-17.

¹²² art.8 AML Law; art.5, no.3 Rules 2006; art.3 Measures 2006

¹²³ art.25 Rules 2006; art.18 Measures 2006

¹²⁴ art.8 AML Law; art.5, no.1, art.12 Rules 2006

¹²⁵ “Gonganbu zhongguo renmin yinhang guanyu keyi jiaoyi xiansuo hecha gongzuo de guiding” (“Gonganbu he zhongguo renmin yinhang jiang lianshou xiezuo fanxiqian [Ministry of Public Security and People’s Bank of China will cooperatively fight against money laundering]”; in: *Renmin Ribao*, 25.03.2005; available at: <http://legal.people.com.cn/GB/42735/3271349.html> [visited: 25.01.2007])

Based on this legal provision, the MoPS sent liaison officers to the PBoC by the end of 2005. These liaison officers are tasked with 1) coordinating the efforts of the public security agencies and of the PBoC regarding the prevention and suppression of money laundering activities; 2) offering advice to the AML departments of the PBoC on the analysis of suspicious transactions, supporting the process of analysis and investigation, and submitting proposals concerning the execution of administrative AML inspections; 3) supporting the screening of suspicious transactions evidence; 4) planning of investigations of suspicious transactions through the public security agencies, communicating the results of the investigations to the PBoC, indicating organisations and persons suspicious of money laundering to the PBoC; 5) organising consultations between the MoPS Economic Crime Investigation Department and the AML departments of the PBoC, summarizing the relevant AML experiences etc.¹²⁶

Taking the close cooperation between the PBoC and the MoPS into account, it becomes obvious that the PBoC AML Bureau also features characteristics of a law-enforcement-type FIU. Institutionally, law-enforcement-type FIU are typically close to law-enforcement agencies, such as, in the case of the PRC, the MoPS and the MoPS Economic Crime Investigation Department, benefiting from their expertise and access to intelligence. Furthermore, information received by the FIU can easily and quickly be submitted to its law-enforcement counterparts, thereby increasing the usefulness of such information in investigations. Additionally, law-enforcement-type FIU typically also possess law-enforcement powers themselves, such as freezing transactions, conducting interrogations, and conducting searches.¹²⁷ As will be illustrated below,¹²⁸ the PBoC AML Bureau as well as the local branches of the PBoC also dispose of such competences. Thus, in the final analysis, CAMLMAC – which is the explicitly designated FIU – in essence only fulfils the most basic FIU tasks of collecting, storing and transmitting transaction reports to the PBoC AML Bureau whereas the PBoC AML Bureau de facto also acts as a law-enforcement-type FIU endowed with powerful competences.

There can only be speculation as to the reasons for establishing two ‘FIU-type’ agencies or, to put it another way, a ‘two-headed’ FIU. In any case, as has been mentioned above, since financial institutions subject to reporting requirements often are more comfortable with reporting their money laundering suspicions to non-law-enforcement agencies, it makes sense to design the agency financial institutions are dealing with in the first place – CAMLMAC – as an administrative type FIU. This might positively influence financial institutions’ reporting behaviour. By adding a second, law-enforcement-type FIU (i.e. PBoC AML Bureau) to the structure, the advantages of such a FIU – highly efficient law-enforcement use of financial disclosure information, rash law-enforcement reaction to indications of money laundering, quick and easy exchange of financial intelligence with law-enforcement agencies¹²⁹ – can simultaneously be brought to bear without ‘scaring off’ financial institutions and negatively influencing their reporting behaviour.

Part III: Anti-money Laundering Obligations of Financial Institutions

As has been explained above, the AML Law as well as the Rules 2006 and Measures 2006 apply to banking and certain non-banking financial institutions. These financial institutions are subject to a number of AML obligations detailed in the AML Law and Administrative Regulations.

¹²⁶ PBoC 2005: 43

¹²⁷ IMF/Worldbank 2004: 13-14

¹²⁸ On sanctions, see below *Part III: Anti-money Laundering Obligations of Financial Institutions*; on AML inspections and freezing, see below *Part IV: Anti-money Laundering Inspections*

¹²⁹ IMF/ Worldbank 2004: 14

Establishment of an Internal Anti-money Laundering Control System

According to art.15 AML Law, art.8 Rules 2006, financial institutions must establish an internal AML control system. In particular, each branch of a financial institution must set up a specific occupational position or must designate an existent position which is responsible for AML compliance; this means, financial institutions are obliged to install an AML Compliance Officer.¹³⁰ Furthermore, financial institutions have to develop internal rules of conduct regarding AML which are binding for all staff. The leading personnel of financial institutions are responsible for the proper implementation and functioning of the internal AML control system. Finally, financial institutions are obliged to conduct vocational AML training measures for their employees on a regular basis (art.22 AML Law, art.8 Rules 2006).¹³¹ All these requirements regarding financial institutions' internal AML control systems conform to international AML standards, i.e. FATF Recommendation 15.

Customer Due Diligence

According to Art.16 AML Law, art.9 Rules 2006, financial institutions are obliged to establish and implement a comprehensive Customer Due Diligence (CDD) or Know-Your-Customer system. This means, when entering into a business relationship with clients, financial institutions have to implement certain procedures in order to determine and verify the identity of their customers. Particularly, financial institutions are obliged to ask for information about the client's identity and must verify this information with reference to valid ID documents provided by the client. Financial institutions may also contact the public security organs as well as industrial and commercial regulatory institutions in order to collect the necessary information about customers in the course of the CDD process (art.18 AML Law). Furthermore, in case that information about the customer's identity changes, financial institutions are obliged to update the relevant information immediately (art.19, para.2 AML Law; art.9, no.1 Rules 2006). In any case, financial institutions must not deal with clients under conditions of anonymity or pseudonymity and must not offer any financial services whatsoever to clients who refuse to reveal and authenticate their true identity. These provisions apply to customers as natural persons as well as legal persons.

Moreover, financial institutions are not only obliged to verify their customers' identities; indeed, the AML Law and Rules 2006 apply an enhanced CDD insofar that financial institutions are also required to collect additional information about their customers' general business background and behaviour. In particular, financial institutions have to know the aim, destination and character of financial transactions as well as the beneficiary of a transaction (art.9, no.2 Rules 2006). Thus, financial institutions can develop customer-specific business and risk profiles upon this informational basis. As a result, financial institutions are in a better position to identify possible discrepancies between their customers' current activities and their 'regular', expected activities. This, in turn, allows financial institutions to determine more easily and certainly whether unusual or suspicious activities exist. Finally, financial institutions have to make sure that third parties or foreign financial institutions they are dealing with as intermediaries also properly apply CDD procedures and that the relevant information about the customers is transmitted to them.¹³²

¹³⁰ See also: Yu 2006

¹³¹ For AML vocational training, see also below: *Anti-money Laundering Vocational Training*

¹³² art.17 AML Law [concerning third parties]; art.9, no.4 Rules 2006 [concerning foreign financial institutions]

The legal provisions regarding CDD basically correspond to FATF Recommendations 5 and 9, respectively. However, in two important aspects, the AML Law and Regulations deviate from international AML standards and FATF Recommendations in particular. For one, as has already been elaborated above,¹³³ AML obligations in general and CDD procedures in particular only apply to financial institutions; specific non-financial institutions and professions such as casinos, real estate agents, dealers in precious metals and stones, lawyers, and notaries are not subject to CDD requirements as prescribed by FATF Recommendation 12. Furthermore, the FATF calls for the submission of politically exposed persons to extended CDD procedures (Recommendation 6). In principle, this stipulation is matched by the aim of the Chinese government to use AML regulation and legislation also as a tool for fighting corruption.¹³⁴ Accordingly, the first draft of the AML Law indeed stipulated that the financial accounts of politically exposed persons must be stringently monitored.¹³⁵ However, a revised version of the draft AML Law submitted to the NPC SC for deliberation in August 2006 no longer contained this provision concerning politically exposed persons. Instead, the second draft demanded that only the financial accounts and financial transactions of civil servants involved with disciplinary or criminal investigations are closely monitored.¹³⁶ According to the Chairman of the AML Law Drafting Group, Yu Guangyuan, this provision was indispensable for the effective use of the AML Law in the fight against corruption.¹³⁷ But upon suggestion of the NPC Legal Affairs Commission [*quanguo renda falü weiyuanhui*] this provision was again eliminated from the draft and is also not contained in the AML Law.¹³⁸

During the deliberations different parties brought forward legal as well as practical arguments supporting the elimination of the provision. As far as legal arguments are concerned, members of the NPC SC as well as exponents of local authorities and ministries held that the Law on Administrative Supervision as well as the Criminal Procedure Law already contained provisions which enable disciplinary and procuratorial organs to investigate the financial accounts of civil servants subject to disciplinary or criminal proceedings.¹³⁹ Thus, additional provisions in the AML Law would be redundant. However, this reasoning is not very convincing since the AML Law contains other provisions, for example regarding searching financial institutions for evidence, questioning the staff of financial institutions (art.23, art.24) or freezing of suspects' deposits or remittances (art.26) which are also matched by provisions of the Criminal Procedure Law and have nevertheless not been omitted from the AML Law.

The PBoC, too, opposed the stipulations contained in the draft AML Law as to the monitoring of civil servants' financial accounts and transactions, but this opposition was grounded in practical concerns. The PBoC held that albeit financial institutions are obliged to cooperate in AML investigations, it would mean a significant additional burden to financial institutions to monitor all financial transactions of a civil servant customer in case he becomes involved in investigations; thus, it would be considerably difficult to practically implement the respective

¹³³ See above, *Part I: General Provisions – Scope of Application and Addressees*

¹³⁴ “China attaches great importance to anti-corruption: senior CPC official”; in: *People's Daily*, 16.03.2004; available at: http://english.people.com.cn/200403/16/eng20040316_137615.shtml [visited 29.01.2007]

¹³⁵ “Fanxiquanfa jiang yanguan guanyuan zhanghu [Anti-money Laundering Law will establish strict control over officials' bank accounts]”; in: *Xinjing Bao*, 20.12.2005; available at: <http://www.xibaipo.gov.cn/node2/node4/node8/userobject1ai397220.html> [visited: 22.01.2007]

¹³⁶ “Fanxiquanfa cao'an quxiao dui she'an gongzhirenyuan zhanghu jiance de guiding [Draft AML Law skips provision that financial accounts of civil servants involved in investigations must be closely monitored]”; *Xinhua*, 22.08.2006; available at: <http://npc.people.com.cn/GB/28320/69550/69690/4730937.html> [visited: 11.01.2007]

¹³⁷ *ibid.*

¹³⁸ *ibid.*

¹³⁹ *ibid.*

provision.¹⁴⁰ But, compared to the regular responsibilities of financial institutions concerning the implementation of CDD and the monitoring of large-value and suspicious transactions as already contained in the AML Law, the obligation to monitor the relevant civil servants' accounts and transactions would not have carried much additional weight; thus, the reasoning of the PBoC does not seem very substantial and was accordingly opposed by members of the NPC during deliberations.¹⁴¹

Thus, given that the deleted provisions targeted prominent political figures as well as – potentially – high-level civil servants, the omission may be attributed to political influence. To date, corruption is rampant in the PRC and all administrative levels are infected; even top level civil servants and senior political leaders themselves as well as their family members are involved.¹⁴² These persons form powerful 'special interest groups' and collide with local and foreign businesses in order to extract illegal gains from development and economic restructuring¹⁴³ which need to be laundered. Moreover, with the help of the media and even academics, these groups have already successfully stalled some legislative proposals which compromised their interests.¹⁴⁴ Therefore, it seems likely that these special interest groups also succeeded in convincing law makers to delete the provision concerning the monitoring of financial assets and transactions of politically exposed persons and civil servants subject to investigations from the draft AML Law. Moreover, in June 2006, the CCP issued revised regulations requiring leading cadres to explain, amongst others, their financial situation and investment activities to the CCP.¹⁴⁵ Taken together with the omission of the stipulation of the draft AML Law in question this indicates that the Chinese leadership prefers to deal with corruption and the related money laundering through internal party mechanisms instead of transferring investigative and sanctioning powers to administrative and judicial organs. Thus, in the final analysis, by deleting the relevant provision from the draft AML Law the chance to improve the efficiency of anti-corruption work has been missed.

Record Keeping

According to art.19, para.1 AML Law, art.10 Rules 2006, financial institutions are obliged to establish a system for storing all information received about their customers' identities during the CDD process as well as for storing large value and suspicious transaction records. Each type of record must be kept for a minimum of five years, commencing from the point of time of the cessation of the business relationship between the financial institution and the customer or from the point of time a transaction has been completed (art.19, para.3 AML Law). This provision is in line with FATF Recommendation 10. In case that a financial institution is dissolved after it has applied for bankruptcy, it must submit all materials about its former customers as well as all transaction records to an agency appointed by the relevant department of the State Council (art.19, para.4 AML Law). Hitherto, the State Council has not yet designated the accordant institution.

¹⁴⁰ *ibid.*

¹⁴¹ "Fayan zhaideng: fenzu shenyi fanxiqianfa cao'an [Excerpt from the deliberation: draft AML Law discussed in groups]"; *Zhongguo Rendawang*, 26.08.2006; available at:

<http://www.npc.gov.cn/cwh/common/zw.jsp?label=WXZLK&id=351694&pdmc=fyzy> [visited: 12.02.2007]

¹⁴² Cf.: "Jury still out on whether Beijing will take on entrenched interest groups"; in: *South China Morning Post*, 23.10.2006

¹⁴³ *ibid.*

¹⁴⁴ "New warning against special interests – Academic adds voice to chorus urging vigilance against self-seeking groups"; in: *South China Morning Post*, 11.10.2006

¹⁴⁵ "Party resurrects rule book for cadres"; in: *South China Morning Post*, 30.06.2006

Reporting of Large-Value and Suspicious Transactions

According to art.20 AML Law, art.11 Rules 2006, financial institutions are obliged to establish a system for reporting large value transactions and suspicious transactions; this provision mirrors FATF Recommendation 13. Particularly, financial institutions must designate a staff member who is responsible for the transmission of transaction reports; they also have to implement an internal control system for supervising the reporting process and have to issue correspondent internal procedure rules. The PBoC must be informed about the details of the control system and about the internal rules. Finally, financial institutions have to supervise and control the reporting behaviour of their local branches (art.5 Measures 2006). All transaction reports must be submitted to CAMLMAC (art.11 Rules 2006).

In 2004, the PBoC initiated the establishment of a nation-wide electronic network which shall connect all banking financial institutions. The transmission of large value and suspicious transaction reports by banking institutions via this network started in February, 2005. However, by the end of 2005, only 91% of all banking institutions subject to reporting requirements had been connected to the network and submitted their transaction reports via the network.¹⁴⁶ Moreover, such a reporting network has not yet been established for the submission of transaction reports by non-banking financial institutions. This means, to date there still exist considerable bolt-holes for money launderers.

Prior to the enactment of the AML Law and Regulations, there existed a two-tiered system for reporting financial transactions. According to the “Circular on the Improvement of Reporting Large-Value and Suspicious Transactions” adopted by the PBoC on December 14, 2004,¹⁴⁷ financial institutions were obliged to submit large-value and suspicious RMB transaction reports to CAMLMAC; large-value and suspicious foreign exchange transactions had to be reported by financial institutions to the AML Section established with the SAFE Supervision and Inspection Department in September, 2004.¹⁴⁸ The SAFE AML Section then forwarded these reports to CAMLMAC. In a second step, CAMLMAC scrutinized all reports. Those cases which were considered as suspicious of money laundering were submitted to the PBoC AML Bureau for further examination. In case the suspicion of money laundering was confirmed, the AML Bureau communicated the relevant information to the Ministry of Public Security.¹⁴⁹ Consequently, three different institutions – CAMLMAC, PBoC AML Bureau and SAFE Supervision and Inspection Department/AML Section – had been involved in collecting large value and suspicious transaction reports.

¹⁴⁶ PBoC 2005: 16

¹⁴⁷ Zhongguo renmin yinhang guanyu zuohao da'e he keyi jiaoyi baogao shangbao youguan gongzuo de tongzhi
¹⁴⁸ “Zhongguo waihuiguanliju she fanxiqian chu [Safe establishes Anti-money Laundering section]”; *Xinhua*, 02.10.2004; available at: www.people.com.cn/GB/shizheng/1027/2898134.html [visited: 09.01.2007]

¹⁴⁹ Cooperation between the AML Bureau of the PBoC and the Ministry of Public Security at that time was based on the mutual ‘Rule on the Cooperation between the Ministry of Public Security and the People’s Bank of China in the area of investigating suspicious transactions [*gonganbu zhongguo renmin yinhang guanyu keyi jiaoyi xiansuo hecha gongzuo de guiding*]’ (“Gonganbu he zhongguo renmin yinhang jiang lianshou xiezuo fanxiqian [Ministry of Public Security and People’s Bank of China will cooperatively fight against money laundering]”; in: *Renmin Ribao*, 25.03.2005; available at: <http://legal.people.com.cn/GB/42735/3271349.html> [visited: 25.01.2007]); today, the relevant legal provision is contained in art.13 AML Law. For a detailed analysis of the AML reporting mechanism which was in place prior to the enactment of the AML Law and Regulations, see Schulte-Kulmann 2006.

The reporting mechanism for large-value and suspicious RMB- and foreign exchange transactions described above rests on the stipulations of the ‘Circular on the Improvement of Reporting Large-Value and Suspicious Transactions’ adopted by the PBoC on December 14, 2004 (see above, note 98) and therefore differs from the reporting methods described in art.16, 17, 20 ‘Administrative Measure for the Reporting of Large-Value and Suspicious RMB Payment Transactions’ and art.11, 14, 16 ‘Administrative Measure for the Reporting of Large-Value and Suspicious Foreign Exchange Transactions’, respectively.

However, this “three-wheeled cart”¹⁵⁰ was considered as highly inefficient. Most importantly, each one of the three regulatory institutions confronted banking institutions with different standards and requirements regarding the filing of transaction reports and the submission of AML statistical data. This resulted in extremely high work load and confusion for banking institutions and their staff. Consequently, in order not to be criticized, banking institutions developed a habit of ‘defensive’ or ‘wild’ reporting resulting from the conviction that in case of doubt it might be preferable to submit a report than to abstain from doing so.¹⁵¹ But, the more reports, the higher the difficulty for the recipient agencies to sieve the de facto money laundering incidents – as a consequence, the “signal-to-noise ratio” is significantly lowered.¹⁵² This problem is illustrated by the numbers of transaction reports received by CAMLMAC in the past. In 2005, banking institutions already connected to the reporting network submitted 102 million large-value RMB-transaction reports and 9.35 million large-value foreign exchange transaction reports to CAMLMAC; in the same year, CAMLMAC received 283.400 suspicious RMB-transaction reports and 1.99 million suspicious foreign exchange transaction reports.¹⁵³ Consequently, the three-tiered reporting system was also criticized as inefficient by International Monetary Fund experts who were tasked with evaluating the Chinese AML regulatory system.¹⁵⁴

The AML Law and Administrative Regulations now establish a “two-wheeled cart”¹⁵⁵ AML reporting system with only CAMLMAC and the PBoC AML Bureau responsible for receiving transaction reports, but the details of the reporting system still remain rather complicated. The ‘standard’ way of reporting as stipulated by the AML Law and Administrative Regulations proceeds as follows: financial institutions submit large-value and suspicious RMB-transaction reports and foreign exchange transaction reports to CAMLMAC. CAMLMAC collects and analyses these reports; then, the results of the analyses are submitted to the PBoC AML Bureau.¹⁵⁶

However, art.7, para.1 Measures 2006 stipulates that “financial institutions must, within five workdays after a large-value transaction has been executed, immediately report electronically to the China Anti-money Laundering Monitoring and Analysis Centre via the financial institution’s headquarters or via a station appointed by the headquarter. In case there is no headquarter or in case it is not possible to report via the financial institution’s headquarter or via a station appointed by the headquarter, the PBoC will separately determine how the submission of transaction reports must be executed.”¹⁵⁷ This provision refers to a stipulation which had al-

¹⁵⁰ “Fanxiqianfa ben yue shenyi [Anti-money Laundering Law under consideration this month]”; in: *Jingji Guangchabao*, 11.04.2006; available at: <http://www.chinacourt.org/public/detail.php?id=201333> [visited: 16.01.2007]

¹⁵¹ *ibid.*

¹⁵² Reuter/Truman 2004: 107. The National Chinese Anti-Money Laundering Report 2005 also mentions the problem of ‘defensive reporting’ by banking institutions (PBoC 2005: 21).

¹⁵³ PBoC 2005: 18-20; all these transaction reports were submitted by only 285 banking financial institutions which had already been integrated into the national reporting network at that time (PBoC 2005: 16).

¹⁵⁴ “Fanxiqianfa ben yue shenyi [Anti-money Laundering Law under consideration this month]”; in: *Jingji Guangchabao*, 11.04.2006; available at: <http://www.chinacourt.org/public/detail.php?id=201333> [visited: 16.01.2007]

¹⁵⁵ *ibid.*

¹⁵⁶ art.10 AML Law; art.6, no.3 Rules 2006

¹⁵⁷ Author’s emphasis. Art.8 Measures 2006 refers to suspicious transaction reports and reads accordingly: “Financial institutions must report suspicious transactions to their headquarters, the headquarters or a station appointed by the headquarter must, within ten workdays after the suspicious transaction has been executed, submit the report to the China Anti-money Laundering Monitoring and Analysis Centre. *In case there is no headquarter or in case it is not possible to report via the financial institution’s headquarter or via a station appointed by the*

ready been contained in the Draft Regulations for Anti-money Laundering by Banking Institutions, Draft Regulations for Anti-money Laundering by Insurance Institutions, Draft Regulations for Anti-money Laundering by Securities and Futures Institutions [*henceforth*: “*Three Draft Regulations*”] promulgated by the PBoC on April 12, 2006.¹⁵⁸ The Three Draft Regulations detailed the respective roles of the PBoC, the local branches of the PBoC and of CAMLMAC with respect to the collection of transaction reports.¹⁵⁹ According to the Three Draft Regulations, large-value and suspicious RMB-transactions as well as foreign-exchange transactions must both be reported to CAMLMAC via the financial institutions’ headquarters or via the local branches of the PBoC. The reporting mechanism as described by the Three Draft Regulations proceeds as follows: in case a financial institution (i.e. banking institutions, insurance institutions, securities companies, futures brokerage companies, fund management institutions) detects a large-value or a suspicious financial transaction it is obliged to report this transaction immediately to the financial institution’s headquarters. These reports are collected at the financial institution’s headquarters; once a week, at the first working-day of the week, the headquarters submit the reports to CAMLMAC.¹⁶⁰ In case that a financial institution is convinced that not immediately reporting will result in an unrecoverable transfer of suspicious funds or will hamper the investigation of suspicious transactions, it may directly report to the local branch of the PBoC and must simultaneously inform its headquarters.¹⁶¹ If a financial institution suspects that a financial transaction is related to a crime, it must immediately report to the local police and to the local branch of the PBoC and must also inform its headquarters.¹⁶²

Against this background of legislative history, art.10 AML Law; art.6, no.1, art.11, art.21 Rules 2006; art.7, para.1, art.8 Measures 2006 can be interpreted to the effect that today both, CAMLMAC as well as the provincial level branches of the PBoC, are involved in the collection of transaction reports. The PBoC local branches become involved in cases referred to by art.7, para.1 Measures 2006 and art.8 Measures 2006; the formulation “in case it is *not possible* to report via the financial institution’s headquarter or via a station appointed by the headquarter” (author’s emphasis) may well mirror the stipulation contained in the Three Draft

headquarter, the PBoC will separately determine how the submission of transaction reports must be executed.”
(author’s accentuation)

¹⁵⁸ “Zhengquan, qihuo ye jinrong jigou fanxiqian guiding (zhengqiu yijian gao) [Rules for anti-money laundering by securities and futures institutions (draft soliciting comments from the public)]”; Chinese text available at: <http://210.74.35.18/jryw/200604121102.htm> [visited: 03.01.2007], “Baoxianye jinrong jigou fanxiqian guiding (zhengqiu yijian gao) [Rules for anti-money laundering by insurance institutions (draft soliciting comments from the public)]”; Chinese text available at: <http://www.rmic.cn/action/news/newsContentAction?newsID=19090> [visited: 03.01.2007], “Yinhangye jinrong jigou fanxiqian guiding (zhengqiu yijian gao) [Rules for anti-money laundering by banking institutions (draft soliciting comments from the public)]”; Chinese text available at: <http://210.74.35.18/jryw/200604121103.htm> [visited: 03.01.2007]

¹⁵⁹ art. 12, art.15, art.18 Draft Regulations for Anti-money Laundering by Banking Institutions, art.12, art.13, art.16 Draft Regulations for Anti-money Laundering by Insurance Institutions, and art.14, art.15, art.21 Draft Regulations for Anti-money Laundering by Securities and Futures Institutions, respectively.

¹⁶⁰ art.12, art.15, para.1 Draft Regulations for Anti-money Laundering by Banking Institutions; art.12, art.13, para.1 Draft Regulations for Anti-money Laundering by Insurance Institutions; art.14, art.15, para.1 Draft Regulations for Anti-money Laundering by Securities and Futures Institutions

¹⁶¹ art.18, para.1 Draft Regulations for Anti-money Laundering by Banking Institutions; art.16, para.1 Draft Regulations for Anti-money Laundering by Insurance Institutions; art.21, para.1 Draft Regulations for Anti-money Laundering by Securities and Futures Institutions

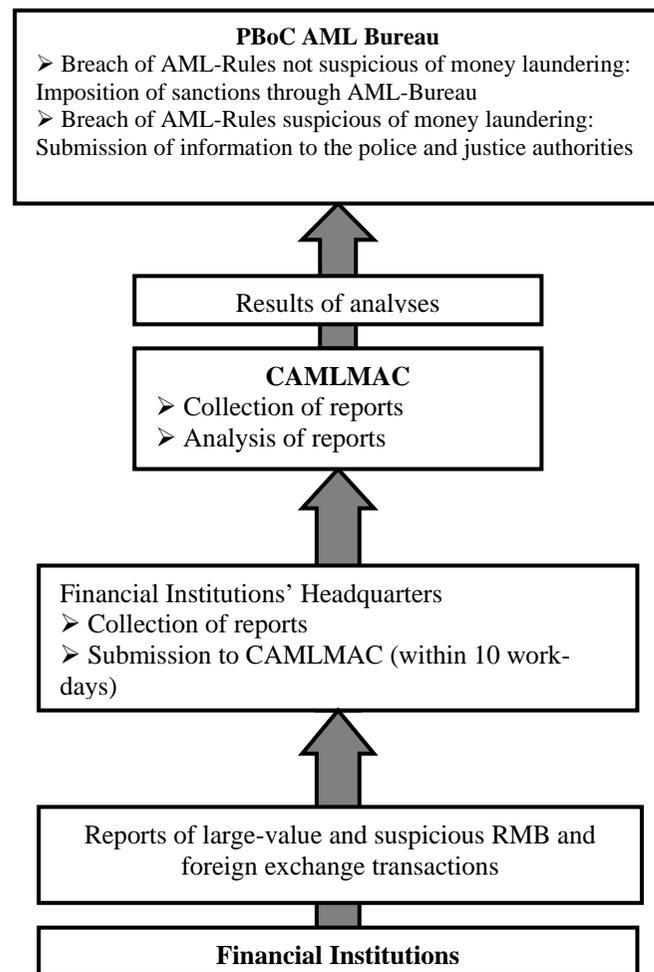
¹⁶² art.18, para.2 Draft Regulations for Anti-money Laundering by Banking Institutions; art.16, para.2 Draft Regulations for Anti-money Laundering by Insurance Institutions; art.21, para.2 Draft Regulations for Anti-money Laundering by Securities and Futures Institutions

Regulations concerning exigent circumstances¹⁶³ or the suspicion of a crime.¹⁶⁴ Thus, taken together, the AML Law and Administrative Regulations now establish two procedures for the reporting of transactions, one ‘standard’ procedure and one ‘emergency’ procedure. The figure below illustrates these two procedures.

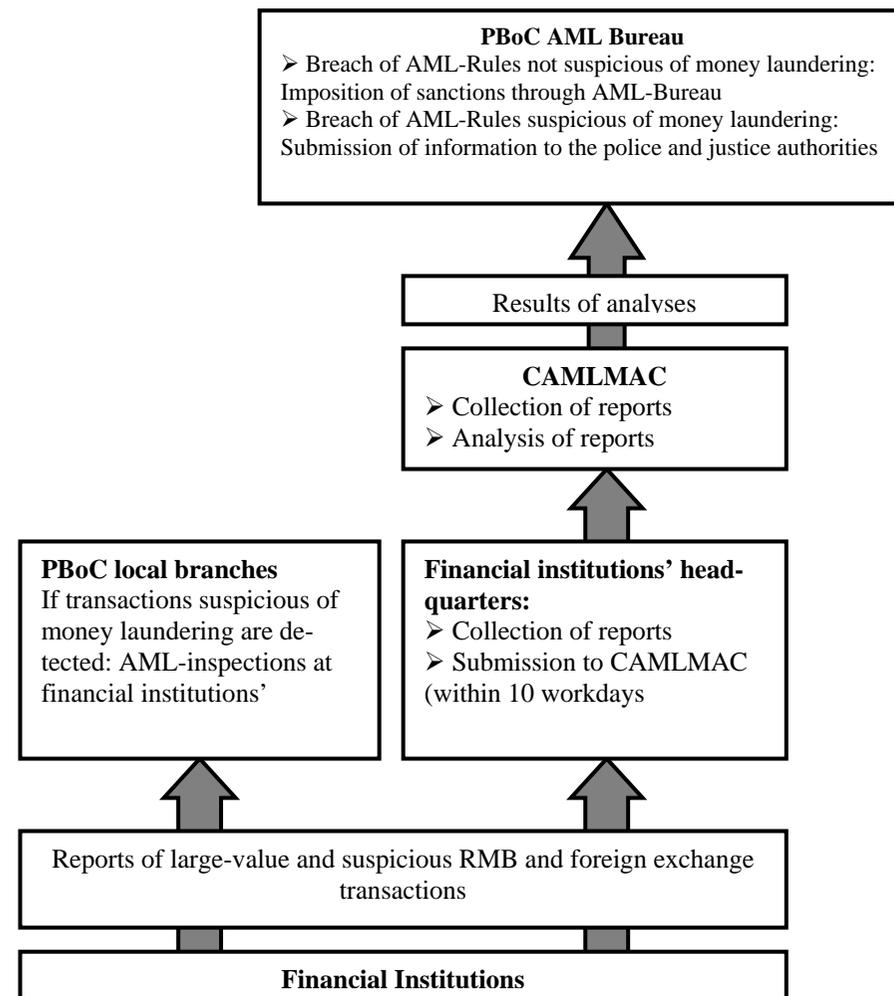
¹⁶³ art.18, para.1 Draft Regulations for Anti-money Laundering by Banking Institutions; art.16, para.1 Draft Regulations for Anti-money Laundering by Insurance Institutions; art.21, para.1 Draft Regulations for Anti-money Laundering by Securities and Futures Institutions

¹⁶⁴ art.18, para.2 Draft Regulations for Anti-money Laundering by Banking Institutions; art.16, para.2 Draft Regulations for Anti-money Laundering by Insurance Institutions; art.21, para.2 Draft Regulations for Anti-money Laundering by Securities and Futures Institutions

a) 'standard' reporting mechanism



b) 'emergency' reporting mechanism



Definition of “Large-value” and “Suspicious” Transactions

Since the PBoC adopted the Rules for Anti-money Laundering by Financial Institutions, Administrative Measure for the Reporting of Large-Value and Suspicious RMB Payment Transactions, and Administrative Measure for the Reporting by Financial Institutions of Large-Value and Suspicious Foreign Exchange Transactions in March 2003, the definitions contained in these rules concerning large-value and suspicious transactions were constantly criticised as too opaque and therefore in need of clarification.¹⁶⁵ Thus, taking these criticisms into account, the definitions of “large-value” and “suspicious” financial transactions now have been completely revised on the basis of the practical experiences of the past three years.

Art.9, para.1 Measures 2006 lists four different sorts of transactions which are to be considered as large-value transactions: 1) cash transactions which, as a single transaction or as the accumulated amount of multiple interconnected transactions, exceed 200.000 RMB Yuan within one day or exceed 10.000 US\$ or its equivalent within one day; 2) fund transfers among the bank settlement accounts of legal persons, other organisations and small private companies [*getihu*] which, as a single transaction or as the accumulated amount of multiple interconnected transactions, exceed 2 million RMB Yuan within one day or exceed 200.000 US\$ or its equivalent within one day; 3) fund transfers among individual bank settlement accounts or between the settlement accounts of individuals and legal persons, other organisations and small private companies [*getihu*] which, as a single transaction or as the accumulated amount of multiple interconnected transactions, exceed 500.000 RMB Yuan within one day or exceed 100.000 US\$ or its equivalent within one day; 4) cross border financial transactions between parties one of which is a natural person and which, as a single transaction or as the accumulated amount of multiple interconnected transactions, exceed 10.000 US\$ or its equivalent within one day. Moreover, art.9, para.3 Measures 2006 stipulates that in case a customer conducts a financial transaction with securities companies, commodity brokerage companies, fund management companies, insurance companies, insurance asset management companies, trust investment companies, asset management companies, finance companies, financial leasing companies, vehicle financing companies, currency brokerage companies, and other financial institutions and if funds are transferred via a bank settlement account, commercial banks, urban credit cooperatives, rural credit cooperatives, postal savings institutions, and policy banks must report these transactions as large-value transactions to CAMLMAC according to art.9, nos.2, 3 & 4 Measures 2006. Furthermore, art.10 Measures 2006 stipulates that in nine specified cases banks may abstain from reporting a large-value transaction when the institution comes to the conclusion that the transaction in question is not to be considered as “suspicious”.¹⁶⁶

On the whole, the regulations concerning large-value financial transactions follow an objective approach; i.e. financial institutions are required to report any and all transactions that are valued over the specified threshold value. However, this approach bears the problem that it generates an enormous amount of reports. In 2005, CAMLMAC already received 111 million reports about large-value and suspicious RMB transactions and foreign exchange transactions;¹⁶⁷ however, the more reports, the higher the difficulty of sieving the de facto money laundering incidents.

¹⁶⁵ “Fanxiqian zhongguo zheng mianlin san fangmian tiaozhan [China faces three challenges in the area of anti-money laundering]”; in: *Fazhi Ribao*, 29.11.2005; available at: http://www.legaldaily.com.cn/misc/2005-11/29/content_227033.htm [visited: 03.01.2007]

¹⁶⁶ For example, if a customer transfers his savings to another account he has already established with the same bank after the expiration of a savings contract; interbank lending; fund transfers to international financial institutions or to foreign governments etc. The PBoC has the right to decide on further exceptional cases (art.10, no.10)

¹⁶⁷ “Yanghang wancheng fanxiqianfa cao’an [Central bank completes Anti-money Laundering Law draft]”; in: *Dongfang Zaobao*, 23.03.2006; available at: <http://cn.biz.yahoo.com/060322/16/gl0x.html> [visited: 25.01.2007]

As far as “suspicious” financial transactions are concerned, the Measures 2006 itemize examples for transactions which must be regarded as “suspicious” by banking, securities, and insurance financial institutions, respectively. Art.11 Measures 2006 contains a list of 18 examples for suspicious transactions to be reported by commercial banks, urban credit cooperatives, rural credit cooperatives, postal savings institutions, and policy banks; securities companies, commodity brokerage companies, and fund management companies are obliged to report at least 13 sorts of suspicious transactions (art.12 Measures 2006), and art.13 Measures 2006 lists 17 suspicious transactions to be reported by insurance companies.

Such lists of examples for suspicious transactions have already been contained into the Three Administrative Regulations; however, the examples have undergone revision and now are expected to be more clearly and better suited to guide financial institutions’ staff who are to refer to these examples when deciding whether concrete transactions are to be considered as suspicious or not. However, the examples are not meant as objective patterns against which to judge whether a transaction is suspicious or not; quite to the contrary, the Measures 2006 follow a subjective, risk-oriented approach. This means, every single transaction has to be considered against the background of the customer’s regular business transactions (i.e. amount of transactions, direction of transactions, methods of transactions, usage of transferred funds etc.), the peculiarities of the business environment, the customer’s general financial position, etc.¹⁶⁸ In cases where major deviations occur from these regular patterns which can not be explained plausibly there is reason for the financial institution to assume that a suspicious transaction has been processed. This means, the risk-based, subjective approach to detecting suspicious transactions is very demanding and requires a comprehensive knowledge of customers’ business activities, broad experience with money laundering methods as well as a good judgement on the side of the staff of financial institutions. Since Chinese financial institutions, particularly those in more remote and rural areas, to date still face a significant shortage of sufficiently qualified personnel, the successful implementation of the reporting requirements is by no means assured.

Finally, in case that a financial transaction qualifies at the same time as a large-value transaction and as a suspicious transaction, financial institutions must submit a large-value transaction report as well as a suspicious transaction report (art.16, para.1 Measures 2006). In case a financial transaction features two different criteria for large value transaction, financial institutions have to submit two separate large value transaction reports (art.16, para.2 Measures 2006).

Anti-money Laundering Vocational Training

In order to prevent infringement of AML regulations due to nescience, the AML Law also obliges financial institutions to offer AML training measures to their staff as well as to conduct AML propaganda (art.22 AML Law). The PBoC guides the propaganda and training as to content.

Already in April 2004, the PBoC announced the “Plan on Conducting Anti-money Laundering Propaganda Campaigns in 2005”¹⁶⁹ which aimed at instructing financial institutions and

¹⁶⁸ Art.14 Measures 2006 stipulates that “if financial institutions and their staff detect other transactions than those mentioned in art.11, 12 & 13 of these Measures, and if financial institutions consider these transactions suspicious regarding the funds involved, the frequency, the destination, the character etc. of the transaction, and if financial institutions - after an analysis - come to the conclusion that the transactions in question are suspicious of money laundering, financial institutions must submit a suspicious transaction report to CAMLMAC.”

¹⁶⁹ “2005 nian fanxiqian xuanchuan huodong fang’an”

their branches how to properly conduct AML propaganda and vocational training.¹⁷⁰ Vocational training, for one, is essential since staff in many financial institutions is familiar neither with the legal foundation of AML regulation nor with the practical implementation of AML legal rules. What is even worse, many financial institutions and their staff consider money laundering as a peccadillo and are therefore not prepared to implement AML regulations as determinedly as necessary.¹⁷¹ Finally, bribery also easily seduces personnel not to implement AML regulations strictly.¹⁷² These problems related to the professional attitude towards AML are meant to be addressed by AML propaganda as prescribed by the AML Law. However, more often than not AML work collides with financial institutions' notion of self interest. Since many financial institutions fear that scrutiny of the identity and business background might disquiet their customers, CDD in particular is often neglected in order not to deter potential customers or to prevent existing customers from transferring their deposits to other institutions. This negligence also frequently occurs in cases where obvious discrepancies strongly entertain the suspicion of the customer's money laundering intentions.¹⁷³ Therefore, it seems questionable whether financial institutions will assiduously conduct AML propaganda even if this counters their institutional self-interest. But, neglect of AML vocational training and propaganda will also lead to the imposition of sanctions;¹⁷⁴ thus, there might be a certain incentive for financial institutions to live up to these obligations established by the AML Law.

Part IV: Anti-money Laundering Inspections

Anti-money Laundering Inspections

Chapter IV of the AML Law deals with the special competences of PBoC AML Bureau – as well as the AML Bureaus of the local level branches of the PBoC – to conduct AML inspections at financial institutions'. Art.23, para.1 AML Law stipulates that “in case that the administrative department of the State Council in charge of anti-money laundering or its provincial level local branches discover suspicious transactions and activities and have to conduct inspections they are allowed to carry out inspections at the financial institutions’, financial institutions are obliged to cooperate and, for example, to hand over the relevant documents and materials.”¹⁷⁵ During these inspections, the PBoC and its local branches¹⁷⁶ are particularly empowered to 1) enter financial institutions’ offices in order to carry out the inspections (art.18, no.1 Rules 2006); 2) interrogate financial institutions’ staff (art.24 AML Law; art.18,

¹⁷⁰ PBoC 2005: 59.

¹⁷¹ “Fanxiqianfa kuangjia chuding [The basic legal framework for anti-money laundering has been established]”; in: *21 Shiji Jingji Baodao*, 28.07.2004; available at: <http://business.sohu.com/20040728/n221240742.shtml> [visited: 02.01.2007]; “Fang yanghang fanxiqianju juzhang [A visit to the Director of the Anti-money laundering Bureau of the Central Bank]”; in: *Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/128/b5xu.html> [visited: 07.01.2007]

¹⁷² Guo n.d.: 9.

¹⁷³ “Fanxiqian zhongguo zheng mianlin san fangmian tiaozhan [China faces three challenges in the area of anti-money laundering]”; in: *Fazhi Ribao*, 29.11.2005; available at: http://www.legaldaily.com.cn/misc/2005-11/29/content_227033.htm [visited: 03.01.2007]; Guo n.d.: 7; “Fang yanghang fanxiqianju juzhang [A visit to the Director of the Anti-money laundering Bureau of the Central Bank]”; in: *Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/128/b5xu.html> [visited: 07.01.2007]

¹⁷⁴ art.31, no.3 AML Law

¹⁷⁵ This provision is mirrored by art.21 Rules 2006

¹⁷⁶ According to art.21, para.2 Rules 2006 the following local branches of the PBoC are endowed with these specific powers: PBoC Headquarters, PBoC Shanghai Head Office, branches of the PBoC, PBoC business management department, PBoC central urban sub-branches in provincial capital cities, PBoC deputy central urban sub-branches.

no.2, art.22, para.1 Rules 2006); 3) winnow and mimeograph information and material about customers, transaction records and other relevant information and materials; in case that these kinds of information are in danger of being transferred, destroyed, concealed, or manipulated, the PBoC and its local branches are empowered to confiscate and seize the relevant materials (art.25, para.1 AML Law; art.18, no.3, art.22, para.1 Rules 2006); 4) inspect financial institutions' electronic data processing systems (art.18, no.4 Rules 2006). In case that the evidence obtained during the inspections does not suffice to dispel the suspicion of money laundering, the PBoC and its local branches are obliged to turn the case over to the judicial authorities (art.26, sentence 1 AML Law; art.23, sentence 1 Rules 2006).

AML inspections had already been conducted prior to the enactment of the AML Law. From April to July 2004, the newly established PBoC AML Bureau conducted a first nation-wide AML inspection of banking institutions. During this inspection, the AML work of 182 branches of commercial banks was examined randomly;¹⁷⁷ in 2005, the AML-Bureau continued monitoring the compliance of commercial banks with AML regulations on a broader basis. Thus, throughout the year 2005 the AML Bureau together with local PBoC branches inspected 3351 banking institutions,¹⁷⁸ about 600 commercial banks were penalized because of breach of AML provisions; fines imposed amounted to a total of 56.29 million Yuan.¹⁷⁹

However, at that time, there existed no specific legal foundation for AML inspections other than the rather broad provision of art.32, no.9 PBoC Law which stipulates that the "People's Bank of China may conduct supervision and examination on the following activities of financial institutions, other institutions and individuals: compliance with anti-money laundering regulations". Particularly, there were no legal provisions as to the performance of inspections and as to financial institutions' legal rights and duties. This deficiency has been remedied by the enactment of the AML Law and Regulations.

Art.24, 25 AML Law and art.18, para.2, para.3, para.4 Rules 2006 contain a detailed description of the inspection operations.¹⁸⁰ Particularly financial institutions' legal rights have been strengthened as they now may legitimately refuse inspections in case inspectors violate the legal specifications.¹⁸¹

¹⁷⁷ "Fang yanghang fanxiqianju juzhang [A visit to the Director of the Anti-money laundering Bureau of the Central Bank]", in: *Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/128/b5xu.html> [visited: 07.01.2007]; "2004 nian fanxiqian gongzuo dashiji [Record of important events in anti-money laundering 2004]", in: *Yahu Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/124/b5r1.html> [visited: 05.01.2007]

¹⁷⁸ PBoC 2005: 15.

¹⁷⁹ "Yanghang wancheng fanxiqianfa cao'an [Central bank completes draft of the Anti-money Laundering Law]", in: *Dongfang Zaobao*, 23.03.2006; available at: <http://cn.biz.yahoo.com/060322/16/gl0x.html> [visited: 25.03.2006]. However, according to the provisions contained in the new AML Law, the PBoC and its branch offices are no longer authorized to sanction financial institutions. For details, see below, *Part VI: Legal Duties and Responsibilities*.

¹⁸⁰ "Prior to an on-site examination, the People's Bank of China or its branch offices shall fill in an application form for on-site examination, specify the institution to be examined, the content and intended time of examination and conduct the examination after approval by the responsible person of the People's Bank of China, or its branch offices." (art.18, para.2 Rules 2006). "An on-site examination shall be conducted by at least two examiners, with the presentation of a law-enforcement warrant and an examination notice. In the case that less than two examiners show up for an on-site examination, or no law-enforcement warrant or examination notice is presented, a financial institution has a right to refuse examination." (art.18, para.3 Rules 2006). "After the completion of an on-site examination, the People's Bank of China, and its branch offices shall produce an on-site examination opinion, affix the official seal on and deliver it to the examined institution. The content of an on-site examination opinion shall include a description of the examination, assessment, and advice on the necessary improvement and measures." (art.18, para.4 Rules 2006).

¹⁸¹ art.18, para.3 Rules 2006

On the whole, the competence of the PBoC and its local branches to inspect and search financial institutions mirrors the stipulations contained in FAFT Recommendation 27 and Recommendation 28.

Besides inspecting and searching financial institutions, the PBoC and its local branches are endowed with additional judicial and prosecutorial competences. Particularly, in cooperation with the judicial authorities, the PBoC and its local branches are also empowered to temporarily freeze customers' accounts.

Temporary Freezing of Funds and Accounts

Art.26, para.1 AML Law stipulates that: "In case that the evidence obtained during the inspections does not suffice to dispel the suspicion of money laundering, the case must be submitted immediately to the responsible judicial authorities. In case a customer wishes to transfer funds abroad from an account targeted by the inspection, measures to temporarily freeze this account may be implemented upon authorization through the responsible person with the administrative department of the State Council in charge of anti-money laundering." Art.23, para.1 Rules 2006 further details the procedure: "In case that the evidence obtained during the inspections does not suffice to dispel the suspicion of money laundering, the case must be submitted immediately to the responsible judicial authorities. If a customer wishes to transfer funds abroad from an account targeted by the inspection, financial institutions must immediately inform the local branch of the PBoC. The PBoC may implement measures to temporarily freeze this account upon authorization through the respective responsible person and accordingly informs the financial institution in writing, financial institutions are obliged to immediately implement this order upon receipt." However, the judicial authorities have the final say as to the continuation of the freezing (art.26, para.2 AML Law): "After the judicial authorities have been informed [that the responsible person with the PBoC decided to temporarily freeze an account – *author's addendum*] they must decide immediately whether the freezing measures should be maintained or not. If the judicial authorities come to the conclusion that the freezing should be continued, they take measures for freezing according to the Criminal Procedure Law; if the judicial authorities come to the conclusion that the freezing should not be continued, they must immediately inform the administrative department of the State Council in charge of anti-money laundering accordingly, the administrative department of the State Council in charge of anti-money laundering must immediately order the financial institution to cancel the freezing measures."¹⁸²

In any case, the temporary freezing of funds must not exceed 48 hours: "A temporary freezing must not exceed 48 hours. In case that no notice on continued freezing is received from the judicial authorities within 48 hours after a financial institution has taken measures for temporary freezing according to the request of the administrative department of the State Council in charge of anti-money laundering, it must immediately lift the temporary freezing" (art.26 para.3 AML Law).

¹⁸² art.23, para.2 Rules 2006 gives further details: "After the judicial authorities have been informed [that the responsible person with the PBoC decided to temporarily freeze an account – *author's addendum*] and if there are convinced that that the freezing must be maintained, financial institutions are obliged to cooperate with the judicial authorities after they have received the judicial authorities' order to maintain the freezing. If the judicial authorities come to the conclusion that the freezing should not be continued, the PBoC must – after receiving the information of the judicial authorities not to maintain the freezing – immediately inform the financial institution in writing to cancel the freezing measures."

However, the AML Law and Regulations do not contain any provisions as to compensation in case that temporary freezing measures have been taken erroneously or in violation of the law. The lack of such a provision has been heavily criticized by members of the NPC and NPC SC during deliberations of the various drafts of the AML Law.¹⁸³ Since even the temporary freezing of funds constitutes a severe interference with a customer's business activities, delegates held that in case the suspects are not involved in money laundering activities there should be compensation for the aggrieved parties.¹⁸⁴

Part V: International Cooperation

The AML Law also aims at strengthening and improving international cooperation of the PRC in the field of AML: "The People's Republic of China participates, based on the international treaties the PRC has signed or ratified and according to the principle of equality and mutual benefit, in international anti-money laundering efforts" (art.27 AML Law). Particularly, the PBoC is responsible for representing the PRC government in AML cooperation with foreign governments and with international organizations; the PBoC is also responsible for exchanging information and materials with foreign AML agencies (art.28 AML Law). However, upon authorization through the PBoC, in practice CAMLMAC acts as the counterpart of foreign FIU.¹⁸⁵ Finally, the AML Law also provides for judicial cooperation between Chinese and foreign authorities in AML investigations (art.29 AML Law). This provision mainly aims at repatriating corrupt Chinese officials who fled abroad which is a major concern of the Chinese government in its campaign against high-level corruption.¹⁸⁶

However, the exchange of financial intelligence and judicial cooperation with foreign counterparts is still in its infancy. Only in November, 2005, CAMLMAC signed for the first time a Memorandum of Understanding with the FIU of the Republic of Korea in order to strengthen bi-lateral cooperation in collecting, using and analysing information about money laundering and financial transactions.¹⁸⁷ Later on, in March 2006, the PBoC and the Russian FIU signed a correspondent agreement which stipulates closer cooperation between the two nations in the areas of information exchange, vocational training, organizational development and research in order to combat money laundering and the financing of terrorism more effectively.¹⁸⁸

¹⁸³ "Fayan zhaideng: fanxiqianfa cao'an [Excerpt from the deliberation: The draft AML Law]"; *Zhongguo Rendawang*, 29.04.2006; available at:

<http://npc.cn/zgrdw/common/zw.jsp?label=WXZLK&id=348924&pdm=110106> [visited: 12.01.2007]; "Fayan zhaideng: fenzu shenyi fanxiqianfa cao'an [Excerpt from the deliberation: draft AML Law discussed in groups]"; *Zhongguo Rendawang*, 26.08.2006; available at:

<http://www.npc.gov.cn/cwh/common/zw.jsp?label=WXZLK&id=351694&pdm=fyzy> [visited: 12.01.2007]

¹⁸⁴ *ibid.*

¹⁸⁵ According to art.5, no.6 Rules 2006 the PBoC is in charge of exchanging AML information and intelligence with foreign counterparts, but art.6, no.5 Rules 2006 stipulates that CAMLMAC fulfils this task upon authorization through the PBoC.

¹⁸⁶ „Zhuanfang: fanxiqianfa qicao gongzuo xiaozu zuzhang Yu Guangyuan jiaoshou tan fanxiqian yu fanfubai [Special report: Prof. Yu Guangyuan, chairman of the Anti-money Laundering Law drafting group talks about anti-money laundering and the fight against corruption and bribery]"; *Internet discussion staged on 'Justice Net' (zhengyiwang)*, 28.04.2006; available at: <http://www.jcbr.com/bbs/honour/index1.php?tid=68> [visited: 18.01.2007]

¹⁸⁷ "China, ROK to cooperate in anti-money laundering and terrorism financing"; in: *People's Daily*, 16.11.2005; available at: http://english.peopledaily.com.cn/200511/16/eng20051116_221505.html [visited: 18.01.2007]

¹⁸⁸ "Russia, China Sign Multibillion-dollar Contracts During Putin's Visit"; *RIA Novosti*, 21.03.2006; available at: http://www.kross.ro/russia_china_sign_multibillion_dollar_contracts_during_putins_visit [visited: 20.01.2007]; "Yanghang wancheng fanxiqianfa cao'an [Central bank completes draft of the Anti-money Laundering Law]"; In: *Dongfang Zaobao*, 23.03.2006; available at: <http://cn.biz.yahoo.com/060322/16/gl0x.html> [visited: 25.03.2006]

In more general terms, the commitment to international cooperation mirrors the conviction of the Chinese government that one nation's efforts alone will not suffice to effectively fight the crime of money laundering which is essentially of a transnational nature. Particularly, the Chinese government attributes high importance to joining the FATF as a full member. In January, 2005, the PRC had already been granted observer status.¹⁸⁹ The adoption of the AML Law constitutes the most important pre-condition for full FATF membership.¹⁹⁰ Until full FATF membership is achieved, the Chinese government will not be able to affect AML standard setting and policy making at the international level; therefore, it lies in the strongest national interest of the PRC to join the FATF and thus to secure a voice in the process of international AML regulation.¹⁹¹

At the regional level, the PRC has already been successful in joining AML regulatory bodies. In October, 2004, the Chinese government together with the governments of the Russian Federation, Kyrgyzstan, Republic of Belarus, Kazakhstan, and Tadzhikistan founded the 'Eurasian Group on Combating Money Laundering and Financing of Terrorism' (EAG).¹⁹² It is the main objective of EAG member states to cooperatively fight against money laundering, corruption and terrorism in their region.¹⁹³ Furthermore, particular emphasis is laid on mutual assistance with the implementation of the FATF '40+9 Recommendations' as well as on carrying out mutual evaluations of the member states' national AML regimes.¹⁹⁴ Finally, the EAG also plans to conduct a variety of measures of technical cooperation together with partners such as FATF, World Bank, IMF, United States etc.¹⁹⁵

The PBoC, too, is engaged in technical cooperation with different states and international organizations. To date, several training measures for PBoC personnel involved with AML work have been implemented together with foreign partners, mainly with the IMF and World Bank as well as with the U.S., Great Britain, Canada, Australia, Russia, Belgium, and Italy.¹⁹⁶ In the area of legislation, the German 'Gesellschaft für Technische Zusammenarbeit' – GTZ (German Corporation for Technical Cooperation) advised the Budgetary Affairs Commission of

¹⁸⁹ "FATF welcomes China as an observer"; available at: <http://www.fatf-gafi.org/dataoecd/51/2/34423127.pdf> [visited: 09.01.2007]

¹⁹⁰ "Fanxiqianfa lifa jiaodian zhi zheng [Controversial aspects of the Anti-money Laundering Law]"; in: *21 Shiji Jingji Baodao*, 15.09.2005; available at: <http://www.nanfangdaily.com.cn/jj/20050915/zj/200509150025.asp> [visited: 06.01.2007]

¹⁹¹ "Anti-money Laundering in China: the status quo and prospects" – Speech of Mr. Zhou Xiaochuan, Governor of the People's Bank of China at the first meeting of the Ministerial Joint Conference on AML, 27.08.2004; available at: <http://www.pbc.gov.cn/english/detail.asp?col=6500&ID=54> [visited: 28.01.2007]; "Yanghang: fanxiqianfa ji yu guoji biao zhun jiegui you jiehe zhongguo guoqing [Central bank: AML Law matches international standards as well as the Chinese national situation]"; in: *Zhongguo Xinwenwang*, 10.11.2006; available at: <http://cn.biz.yahoo.com/061110/36/jtn8.html> [visited: 13.01.2007]

¹⁹² For more information visit: <http://www.euroasiangroup.org>. Today, the EAG has the following member states: Belarus, China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. Additionally, the following states and international organizations hold observer status with the EAG: Afghanistan, Armenia, Georgia, Germany, France, Italy, Japan, Lithuania, Moldova, Turkey, Ukraine, United Kingdom, United States; FATF, Worldbank, IMF, UN Office for Drugs and Crime, Commonwealth of Independent States, Shanghai Cooperation Organization, Collective Security Treaty Organisation, Eurasian Economic Community, Interpol, Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), OSCE (information available at: <http://www.eurasiangroup.org/index-4.htm> [visited: 10.01.2007])

¹⁹³ "Declaration on the Establishment of the Eurasian Group on Combating Money Laundering and Financing of Terrorism"; available at: <http://www.euroasiangroup.org/declaration.pdf> [visited: 10.01.2007]

¹⁹⁴ "The EAG Primary Objectives"; available at: <http://www.eurasiangroup.org/index-1.htm> [visited: 10.01.2007]

¹⁹⁵ *ibid.*

¹⁹⁶ PBoC 2005: 52-58

the NPC SC on drafting the AML Law;¹⁹⁷ the Asian Development Bank also supported the drafting process.¹⁹⁸

On the whole, the decision to join the FATF as well as the cooperation with the EAG mirrors more general foreign policy principles followed by the Chinese government. For one, the PRC favours multi-lateral cooperation with more informal, working-level or expert-level international bodies which are only weakly institutionalized.¹⁹⁹ Since the FATF should not be strictly considered as a formal International Organization but more as a ‘transnational regulatory organization’,²⁰⁰ it fits the Chinese preferences for more informal multi-lateral cooperation.

In particular, the FATF is characterized by a relatively high degree in informality of structure and modes of cooperation; i.e. the FATF is not founded upon a Charter and does not dispose of a formal organizational infrastructure.²⁰¹ Moreover, substantial work is carried out mainly at the working level and involves experts from member states rather than high-ranking political officials. This means, participants are not constrained by diplomatic pressures in elaborating AML policies.²⁰² Consequently, FATF prescriptions such as the ‘40+9 Recommendations’ do not unfold bindingness as sources of international law but must instead be considered as ‘soft law’. The authority of soft law depends mainly on the voluntary subjugation of member states – and increasingly also non-member states – due to the organization’s reputation as well as the peer pressure amongst member states.²⁰³ Thus, because of the informal organizational structure of the FATF, the issuance of prescriptions which are not legally binding (at least in the formal sense of the word) as well as, finally, a consensual decision mode,²⁰⁴ the PRC does not perceive FATF membership as limiting national decision making leeway and national sovereignty; this, in turn, constitutes a vital precondition for the participation of the PRC in multilateral cooperation schemes. In the same vein, participation in FATF as well as in EAG evaluations is acceptable to the Chinese government only because these evaluations are carried out as ‘peer reviews’ under the condition of equality. Thus, the evaluation mechanism does not violate the notion of ‘equality’ which as part of the Five Principles of Peaceful Coexistence still exerts a high degree of influence on Chinese foreign policy making.²⁰⁵

Furthermore, the PRC also values the establishment of multi-lateral cooperation schemes as a counterweight to American political influence in the East Asian region which is perceived by the Chinese government as potentially hegemonic and thereby threatening.²⁰⁶ This means, PRC involvement with the EAG mirrors the desire of the Chinese government to secure the opportunity to influence to process of international norm making in the area of AML according to Chinese national interests and requirements and not to completely surrender this area to

¹⁹⁷ Information available at: http://www.gtz-legal-reform.org.cn/en/BAC_activity-plan.html [visited: 10.01.2007]

¹⁹⁸ In the final stages of the drafting process, the Asian Development Bank offered technical support as well as 400.000 US\$ to the Chinese government on order to quickly conclude the drafting process (“Yazhou kaifa yinhang jiang wei zhongguo fanxiqian tigong fazhi jishu yuanzhu [Asian Development Bank will offer legal and technical support in the area of anti-money laundering to China]”; in: *Shanghai Zhengquanbao*, 26.09.2006; available at: <http://cn.biz.yahoo.com/06-09-/4/ja91.html> [visited: 20.01.2007])

¹⁹⁹ Cf. Wang, Jianwei 1999: 89

²⁰⁰ Kremer 2004: 10

²⁰¹ *ibid.*: 6

²⁰² *ibid.*: 8-10

²⁰³ *ibid.*: 4, note 7

²⁰⁴ *ibid.*: 7

²⁰⁵ “‘Five Principles’ guiding national relations turn 50”; in: *People’s Daily*, 29.06.2004; available at: http://english.people.com.cn/200406/29/eng20040629_147877.html [visited: 10.01.2007]

²⁰⁶ Godwin 1998: 173

the already strong American influence.²⁰⁷ What is more, the close cooperation with the Russian Federation in establishing the EAG manifests the good Sino-Russian bilateral relationship which is also cultivated by both governments as a potential counterweight to American regional influence.²⁰⁸

Finally, support for the establishment and work of the EAG also mirrors the self-perception of the PRC as a regional power. As such, the PRC is prepared to assume responsibility for regional security in a most comprehensive sense which also includes the fight against money laundering and the financing of terrorism;²⁰⁹ on the other hand, as a regional power the PRC also claims a prominent position in the process of rule making.

Part VI: Legal Duties and Responsibilities

The final part of the AML Law (art.30-33) deals with breaches of legal duties and responsibilities through employees of the PBoC and of financial institutions, on the one hand, as well as through financial institutions themselves, on the other hand.

In case that the employees of the administrative department of the State Council in charge of AML (PBoC) or other ministries and state agencies in charge of AML commit one of the following breaches of duties, they are subject to administrative punishment: 1) if they conduct investigations and inspections or take temporary freezing measures in breach of law; 2) if they disclose state secrets, business secrets or confidential personal information they have obtained in the course of AML work; 3) if they impose administrative punishment upon institutions or staff in breach of the law; 4) in case they display any other form of behaviour which does not conform to the licit exercise of their duties (art.30 AML Law).

In case that financial institutions themselves do not live up to their internal AML obligations – i.e. failure to build up an internal AML control system; failure to set up a specific mechanism or to designate an existent mechanism which is responsible for AML compliance; failure to conduct AML vocational training – the administrative department of the State Council in charge of AML (PBoC) or its relevant local level (i.e., in this case, above the township level) branches will order the respective financial institutions to correct the shortcomings; if the circumstances are serious, the relevant financial regulatory agencies – i.e. the CBRC for banking financial institutions, the CSRC for securities and futures financial institutions, and the CIRC for insurance financial institutions – shall order the financial institution in question to take disciplinary actions against the directly responsible director and high-ranking managers of the institution as well as against other directly responsible personnel (art.31 AML Law).

In case that financial institutions commit other forms of neglect of AML duties – i.e. failure to properly implement CDD and record keeping measures; failure to properly submit large-value transaction reports and suspicious transaction reports; disclosure of relevant information and intelligence; refusing and obstructing AML inspections; refusal to hand over the relevant materials to AML inspectors or deliberately handing over false information – the administrative department of the State Council in charge of AML or its relevant local level (i.e., in this case, above the township level) branches will order the respective financial institutions to correct the shortcomings. If the circumstances are serious, the administrative department of the State

²⁰⁷ Cf.: “Fanxiqiangongzuobujilianxihuiyi kai dierci gongzuohuiyi [Joint Ministerial Conference on Anti-money Laundering holds second work meeting]”; in: *Jinrong Shibao*, 05.09.2005; available at: http://finance.sina.com.cn/money/bank/bank_hydt/20050905/09441941601.shtml [visited: 27.01.2007]

²⁰⁸ Gottwald/Kirchberger 2001: 12-13

²⁰⁹ Cf. Wang, Feiling 1999: 37/38

Council in charge of AML or its relevant local branches will, for one, impose a fine of more than 200.000 RMB Yuan and less than 500.000 RMB Yuan on the financial institution in question. Furthermore, a fine of more than 10.000 RMB Yuan and less than 50.000 RMB Yuan will be imposed on the financial institution's directly responsible director and high-ranking managers as well as against other directly responsible personnel (art.32, para.1 AML Law). In case that the successful launderer of money results from the above mentioned shortcomings of the financial institution, the administrative department of the State Council in charge of AML or its relevant local branches will, for one, impose a fine of more than 500.000 RMB Yuan and less than 5 million RMB Yuan on the financial institution; additionally, a fine of more than 50.000 RMB Yuan and less than 500.000 RMB Yuan will be imposed on the financial institution's directly responsible director and high-ranking managers as well as against other directly responsible personnel. If the circumstances are serious, the administrative department of the State Council in charge of AML may propose that the relevant financial regulatory agencies (i.e. CSRC, CBRC, CIRC) order the financial institution in question to discontinue its business activities and to reorganize or that the relevant financial regulatory organs deprive the financial institution of its business license (art.32, para.2 AML Law). Moreover, according to art.32, para.3 AML Law, the administrative department of the State Council in charge of AML may also propose that the relevant financial regulatory agencies order the financial institution in question according to law to take disciplinary measures against its responsible director, high-ranking managers and other directly responsible personnel or the administrative department of the State Council in charge of AML may propose that these persons will be divested of office and relegated and prohibited to take any other occupational position in the respective financial branch in the future.

Art.31 and art.32 AML Law mirror a transfer of competences regarding the sanctioning of financial institutions. Prior to the enactment of the AML Law, according to art.46 PBoC Law, the PBoC was in charge of taking sanctions (i.e. warning, confiscation of illegal gains, fines) against financial institutions disregarding their AML obligations. The Draft Rules for Anti-money Laundering by Securities and Futures Institutions, Draft Rules for Anti-money Laundering by Insurance Institutions and Draft Rules for Anti-money Laundering by Banking Institutions published by the PBoC in April, 2006, also contained stipulations which assigned the authority to sanction financial institution to the PBoC by reference to art.46 PBoC Law.²¹⁰ However, the AML Law transferred these competences back to the financial regulatory agencies originally responsible for the supervision of the respective financial sectors, i.e. the CBRC, CSRC, and CIRC.

However, it is not clear whether the authority assigned to the CSRC, CIRC and CBRC is absolute or dependent on the discretion of the PBoC. The AML Law reads that the "administrative department of the State Council in charge of anti-money laundering *may propose* that the financial regulatory agencies in charge order the financial institution in question to discontinue its business activities and to reorganize or that the relevant financial regulatory organs deprive the financial institution of its business license"²¹¹ and that the "administrative department of the State Council in charge of anti-money laundering *may propose* that the financial regulatory agencies in charge order the financial institution in question according to law to take disciplinary measures against its responsible director, high-ranking managers and other directly responsible personnel or the administrative department of the State Council in charge of anti-money laundering *may propose* that these persons will be divested of office and rele-

²¹⁰ art.31 Draft Rules for Anti-money Laundering by Securities and Futures Institutions, art.26 Draft Rules for Anti-money Laundering by Insurance Institutions, art.29 Draft Rules for Anti-money Laundering by Banking Institutions

²¹¹ art.32, para.2 AML Law; author's emphasis

gated and prohibited to take any other occupational position in the respective financial branch in the future.”²¹² Regarding these stipulations, two questions arise: for one, it is not clear whether it is obligatory for the PBoC to submit a proposal to the financial regulatory agencies (“*may* [keyi] propose”) or whether the PBoC can abstain from such a proposal, depending on its discretion. Furthermore, it is not clear whether the “proposal” [jianyi] is to be regarded as a non-binding recommendation or as a mandatory order. Accordingly, it is not clear whether the financial regulatory agencies have the right to diverge from a – non-binding – proposal or whether they must adhere to a binding order. In the first case, the authority of these agencies in financial regulation in general as well as in AML in particular would have been strengthened; in the latter case, the PBoC would have secured its regulatory capacity to oversee financial institutions’ conduct in the area of AML whereas the CSRC, CIRC, and CBRC would act only as auxiliary agents. Only the implementation of the AML Law will shed light on the practical meaning of these stipulations.

III. Conclusion

To date, money laundering in the PRC is spreading inexorably; the progressive international integration and opening up of the Chinese financial services sector as a consequence of China’s accession to the WTO will likely aggravate the problem. The rudimentary anti-money laundering legal and institutional framework which was in place until January 1, 2007 was by no means capable of embanking money laundering activities in the PRC. The Chinese government realized this problem and started the process of drafting a new Anti-money Laundering Law already in 2004. The spread of money laundering and thus the growing threat to the stability of the national financial system, international pressure to harmonize Chinese legislation with international anti-money laundering standards as well as the determination of the Chinese government to join international anti-money laundering regulatory bodies and thereby to influence international standard setting in the area of anti-money laundering according to Chinese national interests all contributed to the relatively quick completion of the drafting process and the adoption of the Anti-money Laundering Law in October, 2007. This new Law as well as the corresponding administrative regulations only comprise the most basic internationally accepted anti-money laundering provisions. Besides, some elementary provisions – such as the extension of anti-money laundering duties to non-financial businesses and professions, special attention to politically exposed persons, an unequivocal definition of the crime ‘money laundering’, a comprehensive list of predicate crimes to money laundering etc. – have not been included in the Anti-money Laundering Law.

Moreover, the institutional design of the anti-money laundering regulatory regime set up by the new Anti-money Laundering Law and Administrative Regulations is also quite inexplicit regarding the delineation of the competences of the regulatory agencies involved with anti-money laundering. But, 19 different ministries have been involved with drafting the Anti-money Laundering Law and, accordingly, “the more ministries involved, the more difficult it is to coordinate them and to demarcate the respective duties and competences.”²¹³ Thus, many disputes – for example as to disambiguating the agency responsible for national anti-money laundering regulation and as to the clear-cut assignment of FIU responsibilities and compe-

²¹² art.32, para.3 AML Law; author’s emphasis

²¹³ Statement of Yu Guangyuan, Chairman of the AML Law Drafting Group (“Fanxiqianfa qicao neiqing [Insider information on the drafting of the Anti-money Laundering Law]”; in: *Liaowang Xinwen Zhoukan*, 08.05.2006; available at: <http://www.outlookweekly.cn/06-18/18-09.htm> [visited: 17.01.2007])

tences – and “one hundred different views on the draft”²¹⁴ were not reconciled during the drafting process.

But, the adoption of the Anti-money Laundering Law was, on the one hand, important for the international reckoning of the PRC in anti-money laundering. On the other hand, time was particularly pressing given that the formal accession of the PRC to the FATF is scheduled for June 2007.²¹⁵ Thus, given the exigent need for a legal foundation for anti-money laundering in the PRC and high international pressure,²¹⁶ law makers were prepared to accept the anti-money laundering law despite the fact that many members of the NPC and NPC SC were of the opinion that the new law from the very outset was unsuitable for sufficiently preventing and deterring money laundering activities.²¹⁷

But, nevertheless, it is to be expected that – once the PRC has acceded to international anti-money laundering bodies such as the FATF – international cooperation will likely give positive momentum to the further legal and institutional evolution and improvement of the national Chinese anti-money laundering regulatory framework. Thus, despite the deficiencies and shortcomings of the new Anti-money Laundering Law mentioned above, the adoption of the law is important as a ‘primer’ since the overall success of international anti-money laundering efforts highly depends on the successful integration of the PRC as a strategically important actor.

²¹⁴ “Fanxiqianfa cao’an er shen linshi dongjie zijin bude chaoguo sishiba xiaoshi [Draft AML Law prepared for the second reading stipulates that the temporary freezing of funds may not exceed 48 hours]”; in: *Shanghai Zhengquanbao*, 23.08.2006; available at: <http://cn.biz.yahoo.com/06-08-4/itbr.html> [visited: 12.01.2007]

²¹⁵ “China to combat money laundering”; in: *China Daily*, 26.12.2006; available at: http://www.chinadaily.com.cn/china/2006-12/26/content_767524.htm [visited: 20.01.2007]. The original target date (accession to the FATF by the end of 2005 [“Zhongguo ‘fanxiqianfa’ yi jinru fachengxu [‘Anti-money Laundering Law’ has been put onto legislation plan]“; in: *News Guangdong*, 24.03.2005; available at: <http://www.southcn.com/law/fzzt/fxqf/fxqflfdt/200503240704.htm> [visited: 25.01.2007]) already had to be postponed due to the difficult drafting process.

²¹⁶ “Fang yanghang fanxiqianju juzhang [A visit to the Director of the Anti-money laundering Bureau of the Central Bank]”, in: *Caijing*, 13.07.2005; available at: <http://cn.biz.yahoo.com/050713/128/b5xu.html> [visited: 07.01.2007]

²¹⁷ “‘Fanxiqianfa’ cao’an tijiao shenyi [Draft Anti-money Laundering Law submitted for deliberation]”; in: *Caijing*, Nr. 158 (01.05.2006)

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