

# ANTI-CORRUPTION BUREAU: BRUNEI DARUSALAM'S EFFORT IN IMPLEMENTING UNCAC CH.II & CH.V



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BRUNEI DARUSSALAM

# Brunei Darussalam's contribution in the fight against corruption

## Party to UNCAC:



- ▶ Signatory on 11 December 2003
- ▶ Ratified on 2 December 2008
- ▶ Reviewed on Chapter III and IV of the UNCAC completed in 2012
- ▶ Brunei Darussalam will be reviewed on its implementation of UNCAC Chapter II & V in year 4 of second cycle
- ▶ Conducted country visit and review of Sri Lanka for Chapter II & V in March 2017 together with Palau



# CHAPTER II OF UNCAC

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Preventive measures

# Article 5 - Preventive anti corruption policies and practices



- ▶ Assignment Paper (AP) which deals with current affairs that requires immediate preventive anti corruption policies and practices
  - a) Introduction of Good Practices in gift handling
  - b) Participation and involvement in mega government project such as the plantation of Laila rice for Ministry of Industry and Primary Resources (MIPR)
- ▶ Research Paper (RP) which study and recommends preventive anti corruption policies and practices to government ministries and departments that are corruption sensitive



## Article 6 - Preventive anti corruption body or bodies

- ▶ In 2003, the Anti Corruption Bureau (ACB), Brunei Darussalam realised that measures alone may not provide comprehensive and long term solutions to address corruptions issues, and ACB had embark to set up Prevention Section.
- ▶ The Prevention Section supplements the other branches of ACB i.e., the Investigation and the Education Section in the fight against corruption.

# CAP 131- PCA:

## Duties of Director and Officers of Bureau in corruption prevention efforts:



**4A.** It shall be the duty of the Director and Officers of the Bureau to :

*(d)* instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person;

*(e)* advise heads of public bodies of any changes in practice, systems or procedure compatible with the effective discharge of the duties of the public bodies as the Director thinks necessary to reduce the likelihood of the occurrence of corruption;

*(f)* educate the public against corruption; and

*(g)* Enlist and foster public support in combating corruption.

# Article 7 - Public Sector

- ▶ In Brunei Darussalam, two independent departments Public Service Department (PSD) and Public Service Commission (PSC) are tasked with recruitment of all government officers to ensure all hiring in the public sector is carried out independently and fairly based on merit, equity and aptitude



# Article 8 - Codes of conduct for public officials

- ▶ Governed and guided by the Public Service Commission Act Cap 83 or more commonly referred to as General Order (GO) and circulars issued from time to time by the Prime Minister's Office





# Article 9 - Public procurement and management of public finances

- ▶ Governed and guided by the Financial Regulations (FR) and the circulars issued from time to time by the Prime Minister's Office





# Article 10 - Public reporting

- ▶ Reporting Centre at Headquarter, Bandar Seri Begawan and another branch at other district, Kuala Belait.
- ▶ Providing 24 hours hotline with assigned duty officer
- ▶ E-channel: fax, email, sms, whatsapp.
- ▶ Telephone
- ▶ In person
- ▶ By mail

# Article 11 - Measures relating to the judiciary and prosecution services

- ▶ In Brunei Darussalam, the judiciary and prosecution services are two separate and independent entities whereby one has no influence over the decision making process of another



# Article 12 - Private sector

- ▶ Provision to penalise and to prosecute **any person or any agent** in the private sector who committed corruption offences under Section 5 / Section 6 of the Prevention of Corruption Act (PCA), Brunei Darussalam





# Article 13 - Participation of society

- ▶ Dialogues with the business communities e.g., Chinese Chamber of Commerce, Malay Chamber of Commerce and Brunei Darussalam Motors Association
- ▶ Integrity Corner in schools
- ▶ Joint endeavour with other agencies/higher learning institution.

# Article 14 - Measure to prevent money-laundering

- ▶ Establishment of Financial Intelligence Unit (FIU) under the Ministry of Finance (MOF) in Feb 2007. Brunei Darussalam' FIU became a member of the Egmont Group in June 2014
- ▶ Formation of the National Anti-Money Laundering and Combating the Financing of Terrorism Committee (NAMLC) to monitor Brunei's compliance to FATF Recommendations and to establish and monitor Anti Money Laundering national strategies where ACB is also a member.



# Article 14 - Measure to prevent money laundering

- ▶ Implementation of the Anti Money Laundering's legislations
  - a) Criminal Asset Recovery Order 2012
  - b) Anti Terrorism Order 2011
  - c) Anti Terrorism (Terrorist Financing) Regulations 2013





# CHAPTER V OF UNCAC

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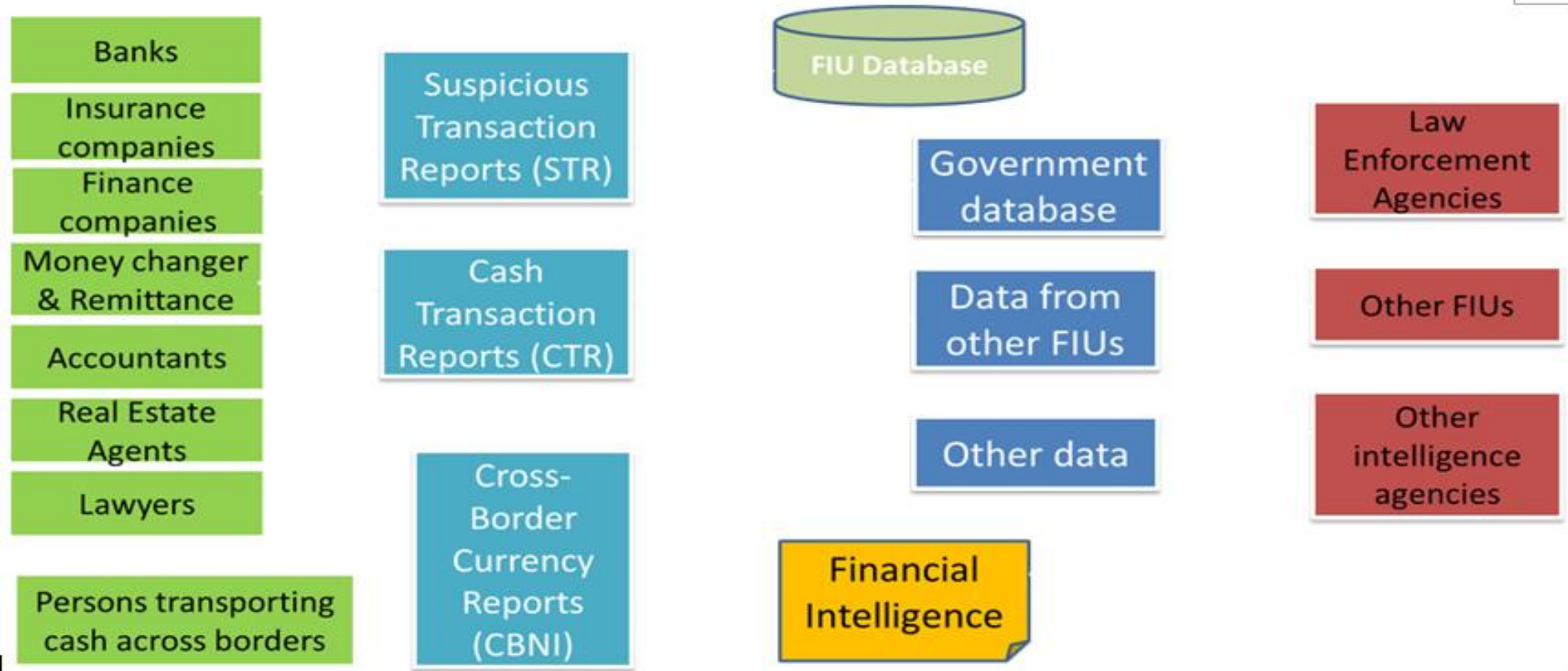
## Asset Recovery



# Article 52 - Prevention and detection of transfers of proceed of crime



Mechanism for Prevention and Detection of transfer and proceed of crime in Brunei Darussalam



# Article 53 - Measures for direct recovery of property



## Criminal Asset Recovery Order, 2012 (CARO)

- ▶ Brunei Darussalam enacted new proceeds of crime legislation, namely the Criminal Asset Recovery Order which came to effect on 16th June 2012 Part V of the Order deals with Foreign requests for recovery of criminal proceeds which contains provisions on:
  - Foreign Requests for Brunei Restraining Orders
  - Requests for the Enforcement of Foreign Restraining, Confiscation and Benefit Recovery Orders

# Article 53 - Measures for direct recovery of property

- *Foreign Requests for Location of Proceeds of Crime*
  - *Powers of Investigation for a Foreign Serious Offence*
  - *Sharing of Confiscated Property and Asset Sharing Agreements*
- ▶ Central Authority is the Attorney General's Chamber (AGC) and all requests are to be made to and by the AGC only





Article 54 - Mechanisms for recovery of property through international cooperation in confiscation

Article 55 - International cooperation for purpose of cooperation

Article 56 - Special cooperation

Article 57 - Return and disposal of assets

- ▶ These four articles are explained under the Case Law PP v David Chong



# PP v David Chong

- ▶ Brunei's first successful mutual legal assistance request for recovery of criminal proceeds.
- ▶ Assistance rendered by Government of Singapore
- ▶ Case was first investigated in 2009
- ▶ Case was prosecuted and convicted in November 2013
- ▶ Mutual Legal Assistance request was transmitted in May 2014
- ▶ Completion of Mutual Legal Assistance Request was in August 2014



# PP v David Chong

- ▶ On 27 November 2013, the High Court of Brunei convicted Mr Chong in Criminal Trial No. 25 of 2012 and on 28 November 2013, sentenced him to a total of 6 years and 4 months' imprisonment for 34 charges under the Prevention of Corruption Act, four charges of cheating, and two charges of fraudulently destroying documents
- ▶ After Chong was sentenced in 2013, the Court made a benefit recovery order under CARO in respect of funds in Chong's bank accounts in Singapore, ordering the defendant to pay to the State the sums of SGD \$219,838.10 and USD \$326,174.55 (BND \$250,903.50 ) within nine months of the order

# PP v David Chong

- ▶ Over BND\$800,000 from Defendant's Singapore bank accounts were finally repatriated to Brunei Darussalam in November 2014 and placed in our Criminal Assets Confiscation Fund.



# Article 58 - Financial Intelligence Unit

The establishment of Financial Intelligence Unit (FIU) under the Ministry of Finance (MOF) in Feb 2007 which was later known as Financial Intelligence and Enforcement Section. Subsequently, FIU became a member of the Egmont Group in June 2014.





# Article 59 - Bilateral and multilateral agreements and arrangements

PP v David Chong

Bilateral arrangements with Singapore and multilateral arrangements with Singapore and Malaysia.

Cap 155 Summonses and Warrants (Special Provision)- an act to make provision for the service in Brunei Darussalam of summonses and other process issued by courts in Malaysia and Singapore, and for matters connected therewith.





# Learning from Experience

## 1) Need to Start Mutual Legal Assistance process early

- To start early to coordinate with your local law enforcement for information
- May not be aware of the number of processes that need to be completed under the requested country's laws in order for request to be fulfilled

## 2) Time had to be factored in to take into account

- Court Process to endorse our benefit recovery order in Singapore Court
- Enforcement Agency in requested country's referral of local domestic investigations to be closed in order for money transfers to begin;

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# Learning from Experience

- Court Process under Singapore law that requires local seizures to be reported to Judge/Magistrate
- Third party claims
- Time for Appeal in Brunei to Lapse
- Approval by Law Ministry of Requested State
- Bank requirements to release the monies
- One of Defendant's accounts was a shares account so shares had to be sold of
- Had to move fast because otherwise the Defendant would face an additional 5 years imprisonment



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# Learning from Experience

- 3) Need to comply with requested country's requirements otherwise your request will be delayed
  
- 4) Communication between all Stakeholders Essential
  - Communication between Central Authorities
  - Communication between Central Authority and Law Enforcement Agency





# Challenges:

## 1) High Cost of International Cooperation

Limited resources available in terms of manpower and financial.

## 2) Commitment and Full cooperation of the law enforcement agency in other jurisdiction.

Full commitment and cooperation is the key to successful implementation

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# Challenges:

## 3) Countries claiming rights to asset to be recovered

- Technically, the country where the funds are located can also claim the monies in their jurisdiction. In our case, Singapore voluntarily gave us back all the proceeds of crime
- However, if a country disputes and states they want to also claim the proceeds, then you are in a sticky situation - further negotiations may need to be had
- Hence the importance of countries to have provisions in place for asset sharing agreements



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# Challenges:

## 4) Assets to be recovered related directly to criminal activity

- Important for requesting country to provide evidence that the assets that you are requesting are linked to the criminal offence or unlawful activity

## 5) Bureaucratic processes

- Delay in Court processes
- Foreign key witness reluctance to testify in Court due to lengthy court proceeding.



**THANK YOU  
FOR  
YOUR ATTENTION**

