

联合国《反腐败公约》(2003)

United Nations Convention against Corruption (2003)

背景：第五十八届联合国大会于2003年10月31日通过《反腐败公约》，2003年12月9日起开放签署，公约将在第30个签署国批准后第90天生效。这是联合国历史上通过的第一部指导国际反腐败斗争的法律文件。中国已于2003年12月10日签署了此公约。公约分八章七十一条，对如下问题作了法律规范：“腐败”的概念，“公职人员”的概念和其他相关的概念，挪用或转用犯罪、财产非法增加罪、贿赂外国官员和国际组织官员行为的定罪、“双重犯罪原则”的适用、在引渡合作中不将腐败犯罪视为“政治犯罪”、被非法转移国外资产的追回机制、被追缴资产的返还或处置、被追缴资产的“分享”等，从而为世界各国政府执行对各种腐败行为的定罪、惩处、责任追究、预防、国际法律合作、资产追回以及履约监督机制提供了法律依据。现摘录公约中第十四条预防洗钱的措施，第二十三条对犯罪所得的洗钱行为和第五十八条金融情报机构。

Article 14

Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters[1]:

(a) To include on forms for the electronic transfer of funds[2] and related messages accurate and meaningful information on the originator[3];

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny[4] to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 23

Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

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

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 58

Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

[1] remitter [ri5mitE] 汇款业务机构, 汇款人

[2] electronic transfer of funds:电子转账。指任何基于发起人的利益(自然人或法人), 由金融机构通过电子方式进行的交易。这使得在另一个金融机构的受益人能够获得一笔资金。发起人和受益人可能是同一个人。

[3] originator[E`riIdVEneltE(r)] 发起人。发起人是账户的持有者。如果没有账户, 发起人指要求金融机构进行电子转账的人(自然人或法人)。

[4] scrutiny[5skru:tini] 详细审查