

Mr. OSWALDO TRIGUEIRO DO VALE FILHO  
President of the National Council of Attorneys General –  
Conselho Nacional dos Procuradores Gerais dos Estados e da União  
Rua Rodrigues de Aquino. s/n. 3º andar. Centro - PC 58013-030 -  
João Pessoa/PB  
Brasil

5 April 2013

Dear Mr. President,

Thank you very much for your email dated 30 March 2013 inviting me to participate in a public session that will discuss the possible negative consequences of the approval of the PEC 37/2011 next 24<sup>th</sup> April 2013, 11:00 a.m., at the National Congress in Brasília, the Federal Capital. I am honored and appreciated. However, I am sorry to inform you that I can not possibly make it due to a previous commitment.

I am writing this letter in my capacity as Secretary General of the International Association of Anti-Corruption Authorities and Vice President of International Association of Prosecutors to share with you some of my opinions on the role of prosecutors in conducting criminal investigations.

Nowadays, prosecutors are authorized to conduct criminal investigations is more prevalent in most countries of the world no matter civil law or common law system. Actually prosecutors are tasked with criminal investigation authorities has become an international practice. According to my knowledge, the legal basis for prosecutors tasked with criminal investigations may be summarized as the following:

#### 1. Domestic laws and International conventions

In many countries, prosecutors are authorized to conduct criminal investigations are stipulated in its domestic laws such as constitutional law, criminal law or criminal procedure law or even some practitioners standards. For instance, in the United States, although most criminal investigations are conducted by police or federal investigation bureau, however, American Bar Association Standards for Criminal Justice—Prosecutorial Investigations authorize the prosecutors to conduct some supplementary investigations so as to make sure the criminal case being prosecuted impartially and prosecutors are authorized to conduct investigations in corruption cases. In the UK, although most of criminal cases are investigated by the police, the prosecutors can also conduct some investigations to the most severe criminal cases. In Germany and France, the Criminal Procedure Code authorizes prosecutors with the power both to conduct criminal investigations or direct the police to conduct criminal investigations. In China, the Constitutional Law and Criminal Procedure Law empower prosecutors to conduct supplementary investigations to general criminal cases and conduct direct investigations to corruption, human rights infringement and dereliction of duty. We can also easily find similar cases in Italy, Japan and South Korea etc. Further more, international conventions also authorize prosecutors to conduct criminal investigations. Besides the Istanbul Protocol - Arts. 2 and 3.b, the UNCAC, Merida Convention, Arts. 39.1, and 48.1.a. - Palermo Convention, Arts. 27.1, a and d, and 29.1, I would like to draw your attention to the Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, in its article 15, it stipulated that "Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences".

#### 2. The checks and balances between prosecutors and police

The system of checks and balances is a part of Constitution in many countries. It guarantees that no part of the government becomes too powerful. If exclusive power for conduct criminal

investigations were given to the police, and moved away from the Public Prosecution, the police will become too powerful to be supervised. It may easily lead to another corruption in the end. However, some power for criminal investigations such as investigations into corruption cases remained to prosecutors may constitute a system of checks and balances.

### 3. Criminal investigations are follow-ups of public prosecutions

Nowadays, prosecutors are tasked with public prosecutions is a common international practice in all over the world. But, the problem is how to initiate a successful public prosecution without the power of criminal investigations. Prosecutors need to find the whole truth of the case before he can initiate a public prosecution against the criminal case. In this case, the role of prosecutors decides that they need to conduct criminal investigations rather than they like to conduct criminal investigations. Actually, it is prevalently accepted that criminal investigations are follow-ups of public prosecutions. So in many countries, prosecutors are authorized to conduct supplementary investigations to criminal cases, such as the USA and China etc.

I am content that this letter may be shared with those who have an interest in this matter and that it can be made public if required.

With my warmest regards,

Ye Feng  
Secretary General of International Association of Anti-Corruption Authorities  
Vice President of International Association of Prosecutors  
Member of Prosecuting Committee of the Supreme People's Procuratorate of China