

Sequencing of events so as to ensure compliance with the International Standards in respect of fighting money laundering.

Step 1

Commencement of the Process

- a) At all times communicate with the APG to keep it informed of any developments as they occur. Final draft legislation/regulations should be provided for comment to the ADB, WB, IMF and some members of the FATF. A copy of any action plan particular to a country should be provided to the FATF and the APG Secretariats.

- b) Establish a high level committee to develop and approve policy and to issue drafting guidelines following the determination of the basic sub-policy decisions that will include:
 1. The basic structure of the legal regime.
 2. The guideline issuing power of any financial intelligence unit (“FIU”). Such guidelines are effectively non-bank financial institution prudential statements (soft law).
 3. Where is the FIU to be placed? Within an existing structure? What model is to be adopted?
 4. What will be the definition of “financial institution” for the purposes of the laws?
 5. Will cross border movement of money be regulated by reporting to an FIU?
 6. What crimes are to be predicate offences for the purposes of the law? Is the threshold model to be adopted?
 7. To whom and under what circumstances may information be shared internationally by the FIU, beyond the minimum requirements?

Legislation should include the following matters in order to comply with the FATF 40 plus 9 :

Legal systems

1. Criminalization of money laundering and terrorist financing
 - a. Criminalize money laundering and terrorist financing,
 - b. Predicate offences,¹
 - c. State of mind,
 - d. Corporate liability,
 - e. Perpetrator liability,
 - f. Scope and definition of financial institutions covered,²
 - g. Protection of informers and information.
2. Seizure, confiscation and forfeiture
 - a. Confiscation of direct and indirect proceeds of crime and terrorist assets,
 - b. Enforcement of confiscation orders,
 - c. Third party liability,
 - d. International aspects of confiscation.
3. Integrity standards.

Financial Institution requirements and obligations

4. Customer identification.
5. Suspicious transaction reporting (including the suspicion of terrorist purposes).
6. Record keeping.
7. Cash transaction reporting.³
8. Privacy laws and reporting disclosures.
9. Internal controls, compliance program and audit.
10. Reporting of wire transfer.
11. Special requirements in respect of politically exposed persons.⁴

¹ Refer to “Designated categories of offences” as set out in the Glossary to the Forty Recommendations of the FATF dated 20 June 2003.

² Refer to “Designated non-financial businesses and professionals” and financial institutions” as set out in the Glossary to the Forty Recommendations of the FATF dated 20 June 2003.

³ Recommended to be USD/EUR 15,000 for occasional customers to an FI, USD/EUR 3000 for casinos and USD/EUR 15,000 for dealers of precious metals and precious stones when cash transactions are involved.

12. Secrecy requirements overridden.

13. Tipping off.

Financial intelligence unit establishment

14. Establishment and organizational structure.

15. Core functions:

- a) receive reports,
- b) set guidelines,
- c) investigate,
- d) analyze,
- e) advise enforcement agencies after completion of investigation,
- f) keep statistics,
- g) share information internally and internationally.

16. Powers

- a) audit of compliance by financial institutions,
- b) to enter, examine and take copies,
- c) to destroy records,
- d) to enforce guidelines and compliance,
- e) to make requests for information from all financial institutions or from non financial institutions,
- f) to cooperate with government agencies.

17. Possible additional functions

- a. The treatment by the FIU of suspected corruption by leaders, politicians and public officials,
- b. The security of the FIU and its staff,
- c. The ability of the FIU to warn financial institutions, either specifically or generally, in respect of anticipated money laundering, terrorist financing or fraud,
- d. The power to authorize entrapment procedures for a financial institution as an aid to investigations and/or prosecution or money laundering or financing of terrorism,

⁴ Refer to the definition of "Politically Exposed Persons" in the Glossary to the Forty Recommendations of the FATF of 20 June 2003

- e. The power of the FIU to request information from any financial institution in respect of a suspicious transaction, notwithstanding that the requested financial institution has not lodged a report in respect of the suspicious transaction being inquired into,
- f. Search warrant power,
- g. Oral examination powers,
- h. Limit on the use of evidence.

18. Secrecy obligations.

19. Privacy safeguards.

Freezing, seizure and forfeiture

20. Freezing of property.

21. Forfeiture of property.

22. Property tracking.

23. Rights of third parties protected.

24. Appeals.

International Mutual Assistance

25. Cooperation with a foreign state

- a. Power to obtain search warrants,
- b. Property tracking,
- c. Freezing and forfeiture of property,
- d. Evidence orders,
- e. Asset sharing.

Miscellaneous matters

26. Absconded persons and the effect upon forfeiture.

27. Standard or level of proof.

28. Agent provocateur.

29. Admissibility of foreign evidence and laws.

30. Proof of service.

31. Regulation making powers.

32. Indemnity.

Step 2

Parallel legal issues to be addressed simultaneously with the establishment of the AML/CFT legal regime

1. Drawing and enactment of criminal laws as required to criminalize both money laundering and terrorist financing, if not covered in the AML law.
2. Drawing and enactment of a general mutual assistance in criminal matters law, if not covered in AML law.
3. Drawing and enactment of an extradition law. To include money laundering and terrorist financing.
4. The negotiation of treaties pursuant to the mutual assistance and extradition legislation is such that consideration must be given as to which countries are to be approached first for such treaties. The negotiations in respect of such treaties take time and thus must be targeted. Key members of the FATF place high regard on such treaties when considering compliance issues.
5. Drawing and enacting an International Evidence Act.
6. Accession and Ratification of: -
 - a. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded 1988 (“the Vienna Convention”).
 - b. The United Nations Convention on Transnational Organized Crime, concluded 2000 (“the Palermo Convention”),
 - c. The United Nations Convention for the Suppression of the Financing of Terrorism, concluded 1999, and
 - d. The United Nations Convention against Corruption, concluded 2003,
7. Consideration of the United Nations Security Council Resolutions relevant to AML and CFT and their adoption through a law especially drawn for such.

Step 3

Implementation

Implementation should be staged so as to ensure that the action taken reflects operational capacity, as it is developed.

The following is a suggested order of implementation once the basic legal regime is in place:

1. Budget for the FIU to be determined and provided.
2. Staff to be identified for the FIU.
3. FIU guidelines require to be drawn in readiness for operations to commence.
4. Corporate structure to be developed.
5. Operational Manuals to be prepared based upon models available.
6. Regulations require to be drawn before the law comes into operation.
7. Training materials to be developed.
8. The FIU to be established with staff appointed and premises and equipment provided.
9. The IT requirements for the FIU and large financial institutions to be identified, so as to ensure suitable transactional reporting when such commences.
10. The regulations require implementation. The following is a suggested order, but may depend upon the content of the regulations. All matters below should be included within the regulations.
 - a. Assent to or the operation of the following regulations to be in a staged manner for non-bank financial institution and appropriate banks:
 - i) Development of AML/CFT programs, policies and training by financial institutions,
 - ii) Introduction of know your customer requirements for non-bank financial institution (assuming that the Central Bank has already placed such a requirement within a prudential statement for banks),
 - iii) Suspicious transaction reporting to commence,
 - iv) Reporting of transactions over the set thresholds to commence,

- v) Compliance audit by FIU of financial institutions for compliance with the law, using, where appropriate, the existing regulatory authorities as agents of the FIU when they carry out their audits. This will ensure that there is no duplication of work,
- vi) Establish internal supervision systems for monitoring the operations of the FIU,
- vii) The development of typologies.
- b. Introduction of cross border transaction reporting to the FIU.
- c. Drawing MOU, if required, with other government instrumentalities so as to define the relationship with the FIU,
- d. Drawing and negotiating MOU with foreign FIU and like bodies, including foreign police forces, where appropriate, for the sharing of information by the FIU,

11. Training and other requirements

- i. Training of FIU staff, including transaction analysis and financial evaluation as well as all other operational matters,
- ii. Training of bank and non bank financial institution staff in respect of money laundering by the holding of workshops,
- iii. Financial institutions to appoint AML/CFT officers to be responsible for internal training, policy and transactional reporting, Attendance at workshops to be compulsory for designated staff of financial institutions,
- iv. Formation of necessary working groups- FIU/financial institution for implementation of the law,
- v. Government working groups to be formed,
- vi. Public dissemination and socialization program to be developed and conducted,
- vii. Police investigations unit to be established and/or officers of existing criminal investigations units to be trained in AML/CFT,

- viii. Relevant Government officers (members of Parliament, senior public servants, police, judiciary, prosecutors, customs, existing regulatory bodies etc.) to be trained by workshops in relation to compliance issues and, where appropriate, audit requirements under the law,
- ix. Prosecutors/government lawyers to be trained in the making of forfeiture applications and the processing of international requests.

Step 4

Parallel and immediate action to be taken by a Central Bank.

1. The issue, or review of prudential statements concerning AML/CFT, including, know your customer, transactional reporting, list of terrorist entities and other matters that may assist in AML/CFT and that are permitted by the regulations and legal regime for the Central Bank. This may also include the preparation of bank internal policies and training programs, copies of which are to be lodged in the Central Bank.
2. The training of the Central Bank staff in relation to both AML/CFT and the auditing of compliance in respect of prudential statements dealing with AML.
3. Undertaking such training of bank staff as may be required or desirable to assist in the compliance by the banks in respect of the AML/CFT prudential statements. This is a matter that may be precluded by the regulations for the Central Bank.
4. Develop an audit program for AML/CFT to be an addition to existing audit/on site inspection programs of the Central Bank.

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