

ANTI-MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM EFFORTS OF OTHER INTERNATIONAL, REGIONAL, AND SPECIALIZED BODIES

A. Regional and Specialized Organizations

1. The Council of Europe adopted the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1990 in Strasbourg. An interesting feature of this convention is that the Council may invite any nonmember state to also accede to the convention.
2. The Council of the European Communities in 1991 issued Council Directive 91/308/EEC on "Prevention of the Use of the Financial System for the Purpose of Money Laundering." This directive is legally binding on member states.
3. The Organization of American States, through its Inter-American Drug Abuse Control Commission (CICAD), adopted the Model Regulations Concerning Laundering Offences Connected to Illicit Drug Trafficking and Related Offences in 1999. The model regulations serve as a guide to member countries for adopting national laws.
4. The Commonwealth Secretariat has prepared the Model Law on the Prohibition of Money Laundering and also published *A Model of Best Practice for Combating Money Laundering in the Financial Sector*.
5. The International Criminal Police Organization (INTERPOL) cooperates with national police departments and other agencies in gathering and sharing information on the movement and laundering of the proceeds of crime. It has also worked to develop model legislation to facilitate obtaining evidence needed in criminal investigations and proceedings to confiscate illegal proceeds.

B. International and Supervisory Bodies

6. In 1988, the Basel Committee on Banking Supervision (formerly known as the Basel Committee on Banking Regulations and Supervisory Practices), established by the central bank governors of the G-10 countries in 1974, issued the Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering. The statement sets out guidelines for bank managements in implementing measures to suppress ML through the banking system. In 1997, the Basel Committee issued the Core Principles of Banking Supervision. Core Principle 15 requires banking supervisors to ensure that banks have strict internal controls, including customer identification, to protect the banks from abuse by criminal elements. While the Basel Committee's recommendations are advisory in character, national bank supervisory bodies throughout the world give them much weight.
7. The International Organization of Securities Commissions, whose members are national securities commissions, stock exchanges, and regional and international organizations, adopted the Resolution on Money Laundering in 1992, setting out anti-money laundering (AML) guidelines for its members. In 1998, it issued its Objectives and Principles, which outlines key measures for securities supervisors to counter fraud and money laundering (ML).

8. Similarly, the International Association of Insurance Supervisors, an association of national insurance supervisors established in 1994, issued Insurance Core Principles in 2000 to guide insurance supervisors in countering fraud and ML. In 2002, it issued the comprehensive Anti-Money Laundering Guidance Note for Insurance Supervisors and Insurance Entities.

C. The Egmont Group

9. The Egmont Group of Financial Intelligence Units of the World, established in 1995 under the sponsorship of the Financial Action Task Force on Money Laundering (FATF), serves as a forum to promote exchange of financial intelligence on ML among financial intelligence units (FIUs) in its member jurisdictions, including assisting countries in establishing or strengthening FIUs.

D. Self-Regulating Bodies

10. The International Federation of Accountants, established in 1977, has issued guidance on the role of auditors in detecting fraud and errors in financial statements, in particular International Standards on Auditing 240.

11. In addition, a group of nine leading international private banks, in cooperation with Transparency International, published the Global Anti-Money Laundering Guidelines for Private Banking (Wolfsberg AML Principles) in 2000, and issued Statement on the Suppression of the Financing of Terrorism in January 2002.

E. Regional Multilateral Development Banks

12. The European Bank for Reconstruction and Development (EBRD) has enhanced its AML measures by increasing staff awareness through training; appointing a money laundering reporting officer; designating an AML coordinator in its Financial Institutions Business Group; and strengthening the representations, warranties, and conditions in EBRD's standard legal documentation. It has also reviewed its internal AML policies and procedures so as to bring them into line with best banking industry practices, and its project integrity policy requires that it direct its principal AML efforts at achieving full compliance with EBRD standards of good business and corporate practice, which include adherence to know-your-customer principles, a due diligence check for each project, investigation of integrity issues, close review and justification for use of offshore financial centers (OFCs) as project investment vehicles, and close project monitoring of compliance with obligations and undertakings. EBRD also encourages governments and domestic institutions to adopt AML policies and procedures in line with international standards, and reviews a country's commitment to AML measures as part of the review of its legal and regulatory framework.

13. The Inter-American Development Bank (IADB) has, over the past years, supported AML efforts through a number of measures to increase awareness of the problem in the Latin America region and to support member countries' AML efforts. It has supported two regional programs of CICAD for AML, training of banking supervisors and employees of regulated financial institutions in seven countries, and training of prosecutors and judges in criminal law enforcement. It is currently considering support for other AML projects including a CICAD program for establishing or strengthening FIUs, and support for the newly established Financial Action Task Force of South America (GAFISUD) in a training program for experts conducting mutual evaluations in nine member countries. It is also looking into recent concerns with respect to financing of terrorism (FT) and taking measures to exercise closer internal controls (including

through its country offices) to ensure that its resources are not diverted. IADB participates as an observer in the regular meetings of FATF, the Caribbean Financial Action Task Force, CICAD, and GAFISUD.

14. The African Development Bank (AfDB) became an observer at FATF meetings in January 2002. Cooperation between AfDB and FATF focuses on (i) information exchange regarding ML and implementation of the Financial Action Task Force on Money Laundering 40 Recommendations by AfDB and its borrowers; and (ii) sensitization of African governments and regional organizations to the need to adopt and implement those recommendations. Additionally, AfDB has adopted measures to prevent it from being used, intentionally or otherwise, in ML or FT. In December 2001, the President wrote to all African finance ministers, governors of central banks, and other subregional financial institutions, emphasizing the importance of AML/combating the financing of terrorism measures; and urged them to take appropriate measures to strengthen existing regulatory and supervisory frameworks. A presidential instruction was also issued to impress on AfDB staff the need to carefully review all bank payments and disbursements to ensure that payments are not made to proscribed persons.

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING: FORTY RECOMMENDATIONS

A. GENERAL FRAMEWORK OF THE RECOMMENDATIONS

1. Each country should take immediate steps to ratify and to implement fully, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention)
2. Financial institution secrecy laws should be conceived so as not to inhibit implementation of these recommendations.
3. An effective money laundering enforcement program should include increased multilateral co-operation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

B. ROLE OF NATIONAL LEGAL SYSTEMS IN COMBATING MONEY LAUNDERING

Scope of the Criminal Offence of Money Laundering

4. Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalize money laundering as set forth in the Vienna Convention. Each country should extend the offence of drug money laundering to one based on serious offences. Each country would determine which serious crimes would be designated as money laundering predicate offences.
5. As provided in the Vienna Convention, the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.
6. Where possible, corporations themselves - not only their employees - should be subject to criminal liability.

Provisional Measures and Confiscation

7. Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offence, or property of corresponding value, without prejudicing the rights of bona fide third parties.

Such measures should include the authority to: (1) identify, trace and evaluate property which is subject to confiscation; (2) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; and (3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered into by parties, where parties knew or should have known that as a result of the contract, the State would be prejudiced in its ability to recover financial claims, e.g. through confiscation or collection of fines and penalties.

C. ROLE OF THE FINANCIAL SYSTEM IN COMBATING MONEY LAUNDERING

8. Recommendations 10 to 29 should apply not only to banks, but also to non-bank financial institutions. Even for those non-bank financial institutions which are not subject to a formal prudential supervisory regime in all countries, for example bureaux de change, governments should ensure that these institutions are subject to the same anti-money laundering laws or regulations as all other financial institutions and that these laws or regulations are implemented effectively.
9. The appropriate national authorities should consider applying Recommendations 10 to 21 and 23 to the conduct of financial activities as a commercial undertaking by businesses or professions, which are not financial institutions, where such conduct is allowed or not prohibited. Financial activities include, but are not limited to, those listed in the attached annex. It is left to each country to decide whether special situations should be defined where the application of anti-money laundering measures is not necessary, for example, when a financial activity is carried out on an occasional or limited basis.

Customer Identification and Record-keeping Rules

10. Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names: they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions).

In order to fulfill identification requirements concerning legal entities, financial institutions should, when necessary, take measures:

- (i) to verify the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity; and
- (ii) to verify that any person purporting to act on behalf of the customer is so authorized and identify that person.

11. Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc. that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).
12. Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal behavior.

Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the account is closed.

These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

13. Countries should pay special attention to money laundering threats inherent in new or developing technologies that might favor anonymity, and take measures, if needed, to prevent their use in money laundering schemes.

Increased Diligence of Financial Institutions

14. Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.
15. If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.
16. Financial institutions, their directors, officers and employees should be protected by legal provisions from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
17. Financial institutions, their directors, officers and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.

18. Financial institutions reporting their suspicions should comply with instructions from the competent authorities.
19. Financial institutions should develop programs against money laundering. These programs should include, as a minimum:
 - (i) the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;
 - (ii) an ongoing employee training program; and
 - (iii) an audit function to test the system.

Measures to Cope with the Problem of Countries with No or Insufficient Anti-Money Laundering Measures

20. Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries, which do not or insufficiently apply these Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these Recommendations.
21. Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries, which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

Other Measures to Avoid Money Laundering

22. Countries should consider implementing feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.
23. Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerized data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.
24. Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks,

payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers

25. Countries should take notice of the potential for abuse of shell corporations by money launderers and should consider whether additional measures are required to prevent unlawful use of such entities.

Implementation, and Role of Regulatory and Other Administrative Authorities

26. The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should co-operate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.
27. Competent authorities should be designated to ensure an effective implementation of all these Recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.
28. The competent authorities should establish guidelines, which will assist financial institutions in detecting suspicious patterns of behavior by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.
29. The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.

D. STRENGTHENING OF INTERNATIONAL CO-OPERATION

Administrative Co-operation

Exchange of general information

30. National administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the International Monetary Fund and the Bank for International Settlements to facilitate international studies.
31. International competent authorities, perhaps Interpol and the World Customs Organisation, should be given responsibility for gathering and disseminating information to competent authorities about the latest developments in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in

consultation with trade associations, could then disseminate this to financial institutions in individual countries.

Exchange of information relating to suspicious transactions

32. Each country should make efforts to improve a spontaneous or "upon request" international information exchange relating to suspicious transactions, persons and corporations involved in those transactions between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

Other Forms of Co-operation

Basis and means for co-operation in confiscation, mutual assistance and extradition

33. Countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions - i.e. different standards concerning the intentional element of the infraction - do not affect the ability or willingness of countries to provide each other with mutual legal assistance.
34. International co-operation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.
35. Countries should be encouraged to ratify and implement relevant international conventions on money laundering such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Focus of improved mutual assistance on money laundering issues

36. Co-operative investigations among countries' appropriate competent authorities should be encouraged. One valid and effective investigative technique in this respect is controlled delivery related to assets known or suspected to be the proceeds of crime. Countries are encouraged to support this technique, where possible.
37. There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.
38. There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity. There should also be

- arrangements for coordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets.
- 39.** To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for coordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets.
 - 40.** Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offence or related offences. With respect to its national legal system, each country should recognize money laundering as an extraditable offence. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgments, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

Annex to Recommendation 9: List of Financial Activities undertaken by business or professions, which are not financial institutions

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.*
3. Financial leasing.
4. Money transmission services.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveler's cheques and bankers' drafts...).
6. Financial guarantees and commitments.
7. Trading for account of customers (spot, forward, swaps, futures, options...) in:
 - (a) money market instruments (cheques, bills, CDs, etc.);
 - (b) foreign exchange;
 - (c) exchange, interest rate and index instruments;
 - (d) transferable securities;
 - (e) commodity futures trading.
8. Participation in securities issues and the provision of financial services related to such issues.
9. Individual and collective portfolio management.
10. Safekeeping and administration of cash or liquid securities on behalf of clients.
11. Life insurance and other investment related insurance.
12. Money changing.

* Including inter alia:
—consumer credit,
—mortgage credit,
—factoring, with or without recourse,
—finance of commercial transactions (including forfaiting).

**FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING:
Special Recommendations on Terrorist Financing**

Washington, 30 October 2001

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

I. Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

II. Criminalizing the financing of terrorism and associated money laundering

Each country should criminalize the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

III. Freezing and confiscating terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

IV. Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

V. International co-operation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and

administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

VI. *Alternative remittance*

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

VII. *Wire transfers*

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers, which do not contain complete originator information (name, address and account number).

VIII. *Non-profit organisations*

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

ESTIMATE OF ADDITIONAL RESOURCES REQUIRED

1. Additional staff positions two (2)
(1 for RSDD and 1 for OGC)

RSDD

Initial work:

- (a) form and operate the staff network to discuss an action plan and scope of work for implementation of the policy (3 person-months); and
- (b) prepare and conduct staff training programs in coordination with OGC, BPMSD, and external experts (1 person-month).

Recurrent work (including the first year)¹:

- (a) monitor implementation of the policy through operating the staff network and periodic reviews (6 person-months);
- (b) provide technical advice to the regional departments as appropriate (5 person-months); and
- (c) prepare for and participate in selected international and regional meetings and workshops, in coordination with relevant departments/offices (1 person-month).

OGC

Initial work:

- (a) assist RSDD in forming the staff network to discuss an action plan and scope of work for the policy implementation (1 person-month); and
- (b) prepare and conduct staff training programs in coordination with RSDD, BPMSD, and external experts (3 person-months).

Recurrent work (including the first year)²:

- (a) provide legal advice and other information to concerned departments/offices (8 person-months);

¹ During the first year of the policy implementation, staff's person-months for the recurrent work will be adjusted considering the workload of the initial work.

² See footnote 1.

- (b) prepare for and participate in selected international and regional meetings and workshops, in coordination with relevant departments/offices (3 person-months); and
- (c) further develop the current close working relationship with other international organizations active in anti-money laundering and combating the financing of terrorism in line with the policy (1 person-month).

2. One-time cost for initial activities

(a)	Staff consultant (10 person-months, OGC)	\$220,000
(b)	Publication of the training manual	\$60,000

3. Recurrent costs

Staff travel for external meetings, seminars, and trainings	\$200,000 ³
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³ Including staff's participation at regular international and regional organizations' meetings and seminars, selected ad-hoc meetings and seminars, and selected training programs with fee. The regular international organizations' meetings and seminars include those of Financial Action Task Force on Money Laundering and Asia/Pacific Group on Money Laundering, and the Global Donor Coordination Meetings led by the International Monetary Fund/World Bank. Participants of training programs with fee will be selected from the regional departments and other relevant departments/offices. The estimate is on the high side and not all may be required or used.