Manual on

Countering Money Laundering and the Financing of Terrorism

Asian Development Bank
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Manual on Countering Money Laundering and the Financing of Terrorism

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FOREWORD

This manual is intended to serve as a useful reference guide to governments and financial institutions regarding measures to combat money laundering and the financing of terrorism. The increasing incidence of these financial crimes has highlighted the serious threat to the integrity of national and international financial systems, and the urgent need for decision-makers in governments and financial institutions to take measures to prevent and punish such crimes. These measures include:

- adoption of national laws and regulations to criminalize and punish money laundering and the financing of terrorism;
- establishment or strengthening of government agencies (particularly financial intelligence units) to monitor and analyze money laundering and terrorist financing trends and reports of suspicious transactions;
- adoption of measures by financial institutions, including strict implementation of “Know Your Customer” rules, and reporting of suspicious transactions;
- training of staff of government agencies and financial institutions; and
- mutual legal assistance among countries’ law enforcement authorities and institutions.

The information and materials compiled in this manual provide guidance to decision-makers on:

- the basic facts of money laundering;
- the negative economic effects of money laundering on economic development;
- the international conventions and standards that have established legal obligations or benchmarks for combating money laundering and the financing of terrorism;
- samples of prevention guidelines for financial institutions; and
- selected models of laws or regulations on combating money laundering and the financing of terrorism.

The manual includes international conventions, standards, guidelines, recommendations, and model laws prepared by various international and regional organizations, national authorities and other bodies involved in combating money laundering and the financing of terrorism. The Asian Development Bank (ADB) gratefully acknowledges all organizations that consented to include their valuable documents in this publication.

This manual has been prepared as a component of ADB’s regional technical assistance project (T.A. No.5967)--Countering Money Laundering in the Asian and Pacific Region. Motoo Noguchi, Counsel, ADB, was responsible for the overall coordination, compilation, and publication of the manual. Herbert V. Morais of Dewey Ballantine LLP (the international consultants for the project) was responsible for its compilation. Rick McDonell, Head of the Asia/Pacific Group on Money Laundering (APG) Secretariat, provided technical advice.

This manual is available online from the APG website at http://www.apgml.org. The manual will be updated from time to time. Please forward suggestions for improving the manual to the APG Secretariat, based in Sydney, Australia, at mail@apgml.org.
To order a book version of the manual, visit ADB’s website at http://www.adb.org and follow the procedure on its publication page. Requests and questions regarding ordering and shipment should be sent to ADB, as instructed on the website, and not to the APG Secretariat.

For more advice and assistance on anti-money laundering and countering the financing of terrorism, visit APG’s website, or contact the APG Secretariat.

We hope you find this manual informative and useful.

January 2003

Arthur M. Mitchell
The General Counsel
Asian Development Bank
I. WHAT IS MONEY LAUNDERING?

Introduction

This section discusses the basic facts and issues associated with the fight against money laundering. It includes extracts from documents prepared by the Financial Action Task Force, and the United Nations’ Office for Drug Control and Crime Prevention.

It also defines and examines money laundering and its unique features or typologies, the laundering cycle, the magnitude of the problem, where and how it occurs, the adverse economic impact of money laundering on the integrity of the financial system and business activities generally, and the measures that could be taken to combat money laundering.
Financial Action Task Force on Money Laundering: Basic Facts

What is money laundering?

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source.

Illegal arms sales, smuggling, and the activities of organized crime, including for example drug trafficking and prostitution, can generate huge sums. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimize” ill-gotten gains through money laundering.

When criminal activity generates substantial profits, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the people involved. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.

In response to increasing concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a coordinated international response. One of the first tasks of the FATF was to develop Recommendations, 40 in all, which set out the measures national governments should take to implement effective anti-money laundering programs. They were published in 1996.

Members of the FATF include 29 countries and jurisdictions—including the major financial center countries of Europe, North and South America, and Asia—as well as the European Commission and the Gulf Co-operation Council.

The FATF works closely with other international bodies involved in combating money laundering. While the OECD houses its secretariat, the FATF is not part of the organization. However, where OECD and FATF efforts complement each other, such as on bribery and corruption or the functioning of the international financial system, the two secretariats consult with each other and exchange information.

What is the scale of the problem?

By its very nature, money laundering occurs outside the normal range of economic statistics. Nevertheless, as with other aspects of underground economic activity, rough estimates have been put forward to give the problem some sense of scale.

The International Monetary Fund, for example, has stated that the aggregate size of money laundering worldwide could be somewhere between 2% and 5% of global gross domestic product.

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1 This text was taken directly from the FATF website at http://www.oecd.org/fatf.
Using 1996 statistics, these percentages would indicate that money laundering ranged between USD$590 billion and $1.5 trillion. The lower figure is roughly equivalent to the value of the total output of an economy the size of Spain.

How is money laundered?

In the initial or placement stage of money laundering, the launderer introduces his illegal profits into the financial system. This might be done by breaking up large amounts of cash into less conspicuous, smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.

After the funds have entered the financial system, the second--or layering--stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channeled through the purchase and sale of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not cooperate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.

Having successfully processed criminal profits through the first 2 phases of the money-laundering process, the launderer then moves them to the third stage—integration—in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds in real estate, luxury assets, or business ventures.

Where does money laundering occur?

As money laundering is a necessary consequence of almost all profit generating crime, it can occur practically anywhere in the world. Generally, money launderers tend to seek out areas in which there is a low risk of detection due to weak or ineffective anti-money laundering programs. Because the objective of money laundering is to get the illegal funds back to the individual who generated them, launderers usually prefer to move funds through areas with stable financial systems.

Money laundering activity may also be concentrated geographically according to the stage the laundered funds have reached. At the placement stage, for example, the funds are usually processed relatively close to the underlying activity; often, but not in every case, in the country where the funds originate.

With the layering phase, the launderer might choose an offshore financial center, a large regional business center, or a world banking center--any location that provides an adequate financial or business infrastructure. At this stage, the laundered funds may also only transit bank accounts at various locations where this can be done without leaving traces of their source or ultimate destination.
Finally, at the integration phase, launderers might choose to invest laundered funds in still other locations if they were generated in unstable economies or locations offering limited investment opportunities.

**How does money laundering affect business?**

The integrity of the banking and financial services marketplace depends heavily on the perception that it functions within a framework of high legal, professional, and ethical standards. A reputation for integrity is one of the most valuable assets of a financial institution.

If funds from criminal activity can be easily processed through a particular institution--either because its employees or directors have been bribed or because the institution ignores the criminal nature of such funds--the institution could be drawn into active complicity with criminals and become part of the criminal network itself. Evidence of such complicity will have a damaging effect on the attitudes of other financial intermediaries, and of regulatory authorities, as well as ordinary customers.

As for the potential negative macroeconomic consequences of unchecked money laundering, the International Monetary Fund (IMF) has cited inexplicable changes in money demand, prudential risks to bank soundness, contamination effects on legal financial transactions, and increased volatility of international capital flows and exchange rates due to unanticipated cross-border asset transfers.

**What influence does money laundering have on economic development?**

Launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centers, but inadequate controls, are particularly vulnerable as established financial center countries implement comprehensive anti-money-laundering regimes.

Differences between national anti-money-laundering systems will be exploited by launderers who tend to move their networks to countries and financial systems with weak or ineffective countermeasures.

Some might argue that developing economies cannot afford to be too selective about the sources of capital they attract. But postponing action is dangerous. The more it is deferred, the more entrenched organized crime can become.

As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country’s commercial and financial sectors are perceived to be subject to the control and influence of organized crime.

**What is the connection with society at large?**

The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organized crime can infiltrate financial institutions, acquire control of
large sectors of the economy through investment, or offer bribes to public officials and, indeed, governments.

The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and, ultimately, the democratic institutions of society. This criminal influence can undermine countries undergoing the transition to democratic systems. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.

**How does fighting money laundering help fight crime?**

Money laundering is a threat to the good functioning of a financial system, however, it can also be the Achilles heel of criminal activity.

In law enforcement investigations into organized criminal activity, it is often the connections made through financial transaction records that allow hidden assets to be located and that establish the identity of the criminals and the criminal organization responsible.

When criminal funds are derived from robbery, extortion, embezzlement or fraud, a money-laundering investigation is frequently the only way to locate the stolen funds and restore them to the victims.

Most importantly, however, targeting the money laundering aspect of criminal activity and depriving the criminal of his ill-gotten gains means hitting him where he is vulnerable. Without a usable profit, the criminal activity will not continue.

**What should individual governments be doing about it?**

A great deal can be done to fight money laundering and, indeed, many governments have already established comprehensive anti-money laundering regimes. These regimes aim to increase awareness of the phenomenon—both within the government and the private business sector—and then to provide the necessary legal or regulatory tools to the authorities charged with combating the problem.

Some of these tools include making the act of money laundering a crime; giving investigative agencies the authority to trace, seize and ultimately confiscate criminally derived assets; and building the necessary framework for permitting the agencies involved to exchange information among themselves and with counterparts in other countries.

It is critically important that governments include all relevant voices in developing a national anti-money laundering program. They should, for example, bring law enforcement and financial regulatory authorities together with the private sector to enable financial institutions to play a role in dealing with the problem. This means, among other things, involving the relevant authorities in establishing financial transaction reporting systems, customer identification, record keeping standards, and a means for verifying compliance.
Should governments with measures in place still be concerned?

Money launderers have shown themselves through time to be extremely imaginative in creating new schemes to circumvent a particular government’s countermeasures. A national system must be flexible enough to be able to detect and respond to new money-laundering schemes.

Anti-money laundering measures often force launderers to move to parts of the economy with weak or ineffective measures to deal with the problem. Again, a national system must be flexible enough to extend countermeasures to new areas of its own economy. Finally, national governments need to work with other jurisdictions to ensure that launderers are not able to continue to operate merely by moving to another location in which money laundering is tolerated.

What about multilateral initiatives?

Large-scale money laundering schemes invariably contain cross-border elements. Since money laundering is an international problem, international cooperation is a critical necessity in the fight against it. A number of initiatives have been established for dealing with the problem at the international level.

International organizations, such as the United Nations or the Bank for International Settlements, took some initial steps at the end of the 1980s to address the problem. Following the creation of the FATF in 1989, regional groupings—the European Union, Council of Europe, Organization of American States, to name just a few—established anti-money laundering standards for their member countries. The Caribbean, Asia, Europe, and southern Africa have created regional anti-money laundering task force-like organizations, and similar groupings are planned for western Africa and Latin America in future.

What role does FATF play?

The FATF is a multi-disciplinary body that brings together the policy-making power of legal, financial and law enforcement experts from its members. The FATF monitors members' progress in implementing anti-money laundering measures; reviews and reports on laundering trends, techniques and counter-measures; and promotes the adoption and implementation of FATF anti-money laundering standards globally.

What are the Forty Recommendations?

Drafted by the FATF in 1990, and revised in 1996, the Forty Recommendations are a comprehensive blueprint for action against money laundering. They cover the criminal justice system and law enforcement; the financial system and its regulation; and international cooperation. Each FATF member has made a firm political commitment to combat money laundering based on them.

The Forty Recommendations are recognized as the international standard for anti-money laundering programs. A number of non-FATF member countries have used them in developing their efforts to address the issue.
United Nations Office for Drug Control and Crime Prevention: Basic Facts

Introduction to Money Laundering

Every criminal needs to "launder" the proceeds of crime, but where organized crime, drug trafficking and corruption are involved, the consequences of money laundering are bad for business, development, government and the rule of law.

Because they deal with other people's money, banks (and other financial and professional institutions) rely heavily on a reputation for probity and integrity. Banks need their good name to build business. A financial institution with a reputation for shady dealing will be shunned by legitimate enterprise. The prestige of even a major bank that is revealed to have assisted in the laundering of money can be severely damaged. Money laundering is bad for business.

An international financial centre that is used for money laundering can become an ideal financial haven. An international financial centre perceived to be opening its doors to drug traffickers' cash and organized crime will eventually fail to keep the accounts of major legitimate corporations because they fear tarnishing their own reputation by association. Developing countries that attract "dirty money" as a short-term engine of growth can find it difficult, as a consequence, to attract the kind of solid long-term foreign direct investment that seeks stable conditions, good governance and which can help them sustain development and promote long-term growth. Money laundering is bad for development.

Left unchecked, money laundering can erode a nation's economy by changing the demand for cash, making interest and exchange rates more volatile, and by causing high inflation in countries where criminal elements are doing business. The siphoning away of billions of dollars a year from normal economic growth poses a real danger at a time when the financial health of every country affects the stability of the global market. Money laundering is bad for the economy.

Most disturbing of all, money laundering empowers corruption and organized crime. Corrupt public officials need to be able to launder bribes, kickbacks, public funds and, on occasion, even development loans from international financial institutions. Organized criminal groups need to be able to launder the proceeds of drug trafficking and commodity smuggling. Terrorist groups use money-laundering channels to get cash to buy arms. The social consequences of allowing these three groups access to the capacity to launder money can be disastrous. Taking the proceeds of their crimes from corrupt public officials, traffickers and organized crime groups is one of the best ways to stop them in their tracks.

In recent years, the international community has become more aware of the dangers that money laundering poses in all these areas, and many governments and jurisdictions have committed themselves to taking action. The United Nations and the other international organizations are committed to helping them in any way they can.

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1 This text was taken directly from the United Nations Office for Drug Control and Crime Prevention (UNODCCP) website at http://www.odccp.org. The UNODCCP was renamed the United Nations Office on Drugs and Crime (UNODC) on 1 October 2002.
Money Laundering and Globalization

Criminals are now taking advantage of the globalization of the world economy by transferring funds quickly across international borders. Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money laundering more urgent than ever.

The deeper "dirty money" gets into the international banking system, the more difficult it is to identify its origin. Because of the clandestine nature of money laundering, it is difficult to estimate the total amount of money that goes through the laundry cycle. Estimates of the amount of money laundered globally in one year have ranged between $500 billion and $1 trillion. Though the margin between those figures is huge, even the lower estimate underlines the seriousness of the problem governments have pledged to address.

There have been a number of developments in the international financial system during recent decades that have made the three F's-finding, freezing and forfeiting of criminally derived income and assets-all the more difficult. These are the "dollarization" (i.e. the use of the United States dollar in transactions) of black markets, the general trend towards financial deregulation, the progress of the Euromarket and the proliferation of financial secrecy havens.

Fuelled by advances in technology and communications, the financial infrastructure has developed into a perpetually operating global system in which "megabyte money" (i.e. money in the form of symbols on computer screens) can move anywhere in the world with speed and ease.

The Money Laundering Cycle

Money laundering is the process that disguises illegal profits without compromising the criminals who wish to benefit from the proceeds. There are two reasons why criminals -- whether drug traffickers, corporate embezzlers or corrupt public officials -- have to launder money: the money trail is evidence of their crime and the money itself is vulnerable to seizure and has to be protected. Regardless of who uses the apparatus of money laundering, the operational principles are essentially the same. Money laundering is a dynamic three-stage process that requires:

- placement, moving the funds from direct association with the crime;
- layering, disguising the trail to foil pursuit; and,
- integration, making the money available to the criminal once again with its occupational and geographic origins hidden from view.

These three stages are usually referred to as placement, layering and integration.
The placement stage represents the initial entry of the funds into the financial system. For the drug trafficker, in particular, this is not necessarily an easy task. The immense cash profits of the illegal drug trade can pose an enormous problem. Cash is awkward to deal with regularly and in bulk: $200,000 in $10 bills weighs 40 lbs. Banknotes are also easily lost, stolen or destroyed.

After placement comes layering, which usually consists of a series of transactions designed to conceal the origin of the funds. This is the most complex stage of the process, and the most international in nature. The money launderer might begin by sending funds electronically from one country to another, then break them up into investments in advanced financial options or in overseas markets, moving them constantly to evade detection, each time hoping to exploit loopholes or discrepancies in legislation and delays in judicial or police cooperation.

The final stage of money laundering is termed the integration stage because it is at this point that the funds return fully assimilated into the legal economy. Having been placed initially as cash and layered through a number of financial operations, the criminal proceeds are fully integrated into the financial system and can be used for any purpose.

**The Ten Fundamental Laws of Money Laundering**

- The more successful a money laundering apparatus is in imitating the patterns and behaviour of legitimate transactions, the less the likelihood of it being exposed.
- The more deeply embedded illegal activities are within the legal economy and the less their institutional and functional separation, the more difficult it is to detect money laundering.
• The lower the ratio of illegal to legal financial flows through any given business institution, the more difficult it is to detect money laundering.
• The higher the ratio of illegal "services" to physical goods production in any economy, the more easily money laundering can be conducted in that economy.
• The more the business structure of production and distribution of non-financial goods and services is dominated by small and independent firms or self-employed individuals, the more difficult the job of separating legal from illegal transactions.
• The greater the facility of using cheques, credit cards and other non-cash instruments for effecting illegal financial transactions, the more difficult it is to detect money laundering.
• The greater the degree of financial deregulation for legitimate transactions, the more difficult it is to trace and neutralize criminal money.
• The lower the ratio of illegally to legally earned income entering any given economy from outside, the harder the job of separating criminal from legal money.
• The greater the progress towards the financial services supermarket and the greater the degree to which all manner of financial services can be met within one integrated multi-divisional institution, the more difficult it is to detect money laundering.
• The greater the contradiction between global operation and national regulation of financial markets, the more difficult the detection of money laundering.
THE NEGATIVE EFFECTS OF
MONEY LAUNDERING ON
ECONOMIC DEVELOPMENT

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For
The Asian Development Bank
Regional Technical Assistance Project No.5967
Countering Money Laundering in
The Asian and Pacific Region

May 2002
The negative economic effects of money laundering on economic development are difficult to quantify, yet it is clear that such activity damages the financial-sector institutions that are critical to economic growth, reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption, which slow economic growth, and can distort the economy's external sector—international trade and capital flows—to the detriment of long-term economic development. Developing countries' strategies to establish offshore financial centers (OFCs) as vehicles for economic development are also impaired by significant money-laundering activity through OFC channels. Effective anti-money-laundering policies, on the other hand, reinforce a variety of other good-governance policies that help sustain economic development, particularly through the strengthening of the financial sector.

**The financial sector.** A broad range of recent economic analyses points to the conclusion that strong developing-country financial institutions—such as banks, non-bank financial institutions (NBFIs), and equity markets—are critical to economic growth. Such institutions allow for the concentration of capital resources from domestic savings—and perhaps even funds from abroad—and the efficient allocation of such resources to investment projects that generate sustained economic development.

Money laundering impairs the development of these important financial institutions for two reasons. First, money laundering erodes financial institutions themselves. Within these institutions, there is often a correlation between money laundering and fraudulent activities undertaken by employees. At higher volumes of money-laundering activity, entire financial institutions in developing countries are vulnerable to corruption by criminal elements seeking to gain further influence over their money-laundering channels. Second, particularly in developing countries, customer trust is fundamental to the growth of sound financial institutions, and the perceived risk to depositors and investors from institutional fraud and corruption is an obstacle to such trust.

By contrast, beyond protecting such institutions from the negative effects of money laundering itself, the adoption of anti-money-laundering policies by government financial supervisors and regulators, as well as by banks, NBFIs, and equity markets themselves, reinforce the other good-governance practices that are important to the development of these economically critical institutions. Indeed, several of the basic anti-money-laundering policies—such as know-your-customer rules and strong internal controls—are also fundamental, longstanding principles of prudential banking operation, supervision, and regulation.

**The real sector.** Aside from money laundering's negative effect on economic growth through its erosion of developing countries' financial sectors, money laundering has a more direct negative effect on economic growth in the real sector by diverting resources to less-productive activity, and by facilitating domestic corruption and crime, which in turn depress economic growth.

As can be seen from the various money-laundering typologies reports, money laundered through channels other than financial institutions is often placed in what are known as "sterile"
investments, or investments that generate little additional productivity for the broader economy, such as real estate, art, antiques, jewelry, and luxury automobiles. For developing countries, the diversion of such scarce resources to less-productive domestic assets or luxury imports is a serious detriment to economic growth. Moreover, criminal organizations can transform productive enterprises into sterile investments by operating them for the purposes of laundering illicit proceeds rather than as profit-maximizing enterprises responsive to consumer demand and worthy of legitimate investment capital.

Money laundering also facilitates crime and corruption within developing economies, which is antithetical to sustainable economic growth. Just as an efficient financial sector is a key "input" to other productive processes in a developing economy—such as manufacturing—an efficient money-laundering channel is a key "input" to crime because the financial proceeds from crime are less valuable to the criminal (in a sense, an "unfinished product") than are laundered funds. The less expensive the money-laundering "input" to crime is as a result of lax anti-money-laundering policies, the more "productive" (active) the criminal element will be, just as in any industry or business. As numerous studies have demonstrated from statistical and anecdotal evidence, substantial crime and corruption act as a brake on economic development, while other studies have shown that anti-money-laundering policies can deter such activity.

The external sector. Unabated money laundering can also impair a developing country's economy through the country's trade and international capital flows. The well-recognized problem of illicit capital flight from developing countries is typically facilitated by either domestic financial institutions or by foreign financial institutions ranging from offshore financial centers to major money-center institutions such as those in New York, London, or Tokyo. Given that illicit capital flight drains scarce resources from developing economies, transnational money-laundering activity helps impair developing-country growth. By contrast, there is little evidence that the imposition of anti-money-laundering policies in a given jurisdiction spurs a significant flight of capital to more lax jurisdictions. Moreover, just as the confidence that developing-country citizens have in their own domestic financial institutions is critical to economic growth, the confidence that foreign investors and foreign financial institutions have in a developing country's financial institutions is also important for developing economies because of the role such confidence plays in investment decisions and capital flows.

Money laundering can also be associated with significant distortions to a country's imports and exports. On the import side, criminal elements often use illicit proceeds to purchase imported luxury goods, either with laundered funds or as part of the process of laundering such funds. Such imports do not generate domestic economic activity or employment, and in some cases can artificially depress domestic prices, thus reducing the profitability of domestic enterprises.

Offshore financial centers (OFCs) as a development strategy. Over the past decade dozens of OFCs have been created as part of developing countries' (or territories') efforts to develop their domestic economies through the provision of international financial services. These OFCs can be classified along a spectrum from "notional" OFCs (those that provide minimal financial services other than simply being a jurisdiction in which "name plate" operations may be established) to "functional" OFCs (those that provide a wide-range of value-added financial services).
Studies of the effectiveness of establishing an OFC as an economic-development strategy have shown that notional OFCs contribute little to the surrounding economy and do not form the basis for sustained economic growth. First, notional OFCs are virtually costless to establish, and therefore competition among them for customers is severe. Second, because notional OFCs provide little value-added services, such OFCs generate almost no economic demand for the surrounding "real" economy in terms of employment, goods, or services.

On the other hand, truly functional OFCs require significant investments in infrastructure—such as communication facilities, and even a skilled labor force—thereby limiting the pool of competing OFCs and increasing the commercial returns to those OFCs that emerge as strong competitors. Moreover, functional OFCs benefit their surrounding "real" economies through their demand for goods, services, and an educated workforce to support the OFCs' value-added activities.

This distinction between notional and functional OFCs becomes critical to assessing the economic effect of money laundering on OFCs as an economic development tool. Money laundering per se does not require the more costly value-added services of a functional OFC, and therefore may gravitate to merely notional OFCs—the very type of OFC least able to contribute to the country's real economy. By contrast, legitimate international capital is more likely to require the services of a functional OFC and will be deterred from making extensive use of an OFC tainted by widespread allegations of money laundering and the associated activities of fraud and corruption. Thus, for a country to implement a successful economic-development strategy based on the establishment of an OFC, the strategy must adopt measures to control money-laundering activity through the OFC.

Moreover, International Monetary Fund studies suggest that smaller countries can become favored by large-scale money launderers for short periods of time, causing a sharp surge in financial activity, followed by an equally sharp decline, resulting in severe macroeconomic instability as local authorities are unable to take offsetting monetary or exchange-rate measures.
I. BACKGROUND

There has been little research into the economic effect that money laundering has on economic development. Most of the formal economic analysis brought to bear on money laundering has been for the purpose of quantifying the extent of the activity rather than its effects and even those few studies that have considered money laundering's economic consequences have focused on the global financial system rather individual economies.

Arguments put forward for policy inaction. In the absence of research on money laundering's effect on developing economies, some observers have advanced the view that developing-country governments should not devote scarce resources to policies designed to reduce money laundering activity, thus implying that the optimal course of action for developing countries with respect to money laundering is what might be called the inaction policy. The defense of the inaction policy is based on 3 interrelated arguments, each of which is flawed:

- "Money-laundering funds flow from developed economies to developing economies, and therefore money laundering results in a flow of capital to developing countries." As will be shown later, this argument is not supported by the data and, indeed, money laundering facilitates illicit capital flight from developing economies.

- "To the extent that money laundering encourages economy-depressing crime, that crime occurs in developed economies, and developing-country governments should not be spending their limited resources on preventing crime in developed economies." The data suggest that much of the economic damage done by money laundering through developing-country channels is at the expense of developing economies.

- "The imposition of anti-money-laundering financial regulations discourages the use of developing-country banks and encourages citizens to move their savings offshore." On the contrary, there is evidence that a stronger financial regulatory regime encourages the use of the financial system subject to such regulation and, indeed, a review of net financial

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3 For example, see Times of India editorial, "This Won't Wash," September 21, 2001, which relates this widespread sentiment but nonetheless concludes that the argument is invalid: "The argument that developing economies cannot afford to be too selective about the source of the capital they attract is a dangerous fallacy."
flows from banking systems during periods in which anti-money-laundering policies have been imposed shows no evidence of savings-flight in response to such policies.

Perhaps more important than the weaknesses of these 3 arguments individually is the fact that they do not account for what might be considered the other side of the balance sheet: the other negative effects (unrelated to the inaction defense) that money laundering has on economic development. This paper will consider these other effects in detail.

Approach of this study. As noted previously, there has been little economic research into the effect of money laundering on economic development. Viewed from a different perspective, however, there is actually an enormous body of economic-development literature that speaks, albeit indirectly, to the economic effects of such activity on economic development. Such research is focused on all the factors that may affect economic development—political, cultural, social, legal, technological, etc.

To make use of this reservoir of research, one must only connect money laundering to these economic-development factors, and then review the well-established roles these elements play in economic development. Therefore, this paper will (a) assess the role of money laundering in these broader issues and (b) briefly review, as appropriate, the impact of these matters on economic development.

Stages and directional flows of money laundering: some terminology. When discussing the stages of money laundering, this paper will use the 3-part terminology that has been widely adopted: placement (insertion of illicitly obtained funds into the money-laundering process), layering (undertaking transactions to obscure the source of the funds), and integration (the return of the funds to the economy for use by the criminal claimant).

When considering the effect of money laundering on developing economies, it is particularly useful to distinguish among 5 directions that the money-laundering flows may take with respect to such economies, as illustrated in Figure 1.

1. Domestic money-laundering flows, in which illegal domestic funds are laundered within the developing country's economy and reinvested or otherwise spent within the economy.

2. Returning laundered funds originate in the developing country, are laundered (in part or in full) abroad, and returned for integration.

3. Inbound funds, for which the predicate crime occurred abroad, are either initially laundered ("placed") abroad or within the developing country, and ultimately are integrated into the developing economy.

4. Outbound funds, which typically constitute illicit capital flight from the developing economy, do not return for integration in the original economy.
5. *Flow-through* funds enter the developing country as part of the laundering process and largely depart for integration elsewhere, thus playing little or no role in the economy itself (although the "fees" for money laundering activity may remain).

As will become clear, the implications of money-laundering for developing-country economic growth differ depending on which of these flows is being examined. For 3 of these types of flows—domestic, returning, and outbound—the "predicate crime" (defined as the criminal activity which gives rise to the financial proceeds being laundered) occurs within the developing economy itself, while inbound funds are typically controlled by criminal elements during or even after placement.

*Sector-by-sector economic analysis*. This paper will assess the economic effects of money laundering by examining each of the 3 major economic sectors in turn. First, because money laundering is closely associated with the financial sector, the effects on the economy through the financial system will be considered in depth in Section II. Second, the more direct effects of money laundering on the real sector (i.e., manufacturing and non-financial services) will be addressed in Section III. Third, the paper will examine the effects on money laundering through the external sector (international capital and trade flows) on economic development in Section IV.1

Because of the unique nature of smaller economies acting as offshore financial centers (OFCs), Section V will separately examine the harmful effect that money-laundering activity through OFCs has on these smaller countries' efforts to use the OFC industry as a vehicle for

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1 The *government sector* is typically considered a fourth sector in an economy's national accounts, but in this paper will be considered along with the real sector because of the similarity of issues.
economic development. Finally, other issues germane to money-laundering and economic development will be reviewed in Section VI, with conclusions outlined in Section VII.

It is important to distinguish between longer-term, sustainable economic development and the narrower question of short-term economic stimulus. Indeed, as noted later, money-laundering activities can, in some special cases, provide a temporary boost to economic activity in the short term but only at the expense of longer-term economic growth and development.

II. THE FINANCIAL SECTOR: MONEY LAUNDERING UNDERMINES DOMESTIC CAPITAL FORMATION

Although money laundering does not require the use of formal financial institutions, reviews of money-laundering typologies consistently indicate that banks, equity markets, and non-bank financial institutions (NBFIs), such as insurance companies, are a favored means of laundering illicit funds both internationally and within developing countries. The reason for this preference lies in the efficiency that financial institutions can provide for the money launderer: just as financial institutions are a critical component in the financing of the legitimate economy, they can be a low-cost vehicle for the illicit economy to launder funds. The money-laundering phases of greatest concern when considering the impact on a developing country's financial institutions are the placement and layering phases, wherein the illicit funds are being laundered but have not yet been fully integrated into the economy for use by the funds' claimants as consumption goods, or as investments in ostensibly legitimate businesses (as discussed in Section III on the real sector of the economy).

From an economic development standpoint, the central importance of money laundering through financial institutions is threefold. First, money laundering erodes financial institutions themselves. Second, the development of sound, reliable banks and NBFIs is a crucial element in overall economic development: indeed, such institutions have come to be recognized as essential for such development and—particularly in developing countries—customer trust is fundamental to the growth of sound financial institutions. Third, beyond protecting such institutions from the negative effects of money laundering itself, the adoption of anti-money-laundering policies by government financial supervisors and regulators, as well as by banks and NBFIs, can reinforce the other good-governance practices that are important to the development of these economically critical institutions.

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1 For example, under-invoicing of exports can effectively launder, in an outbound direction, fraudulently acquired wealth from domestic developing-country sources. CITE FATF typology. See discussion of the effects of mis invoicing on economic development in Section IV.C.
2 This conclusion emerges from a review of the Financial Action Task Force's typologies reviews.
3 Tom Naylor of McGill University in Montreal notes that informal remittance houses, such as hawala, are insufficient to handle the volumes of money to be laundered as larger banks in the formal financial system. "Cheap and Trusted," Economist, Nov. 24, 2001, p. 71. The Economist quotes Martin Comley of the UK’s National Criminal Intelligence Service as reporting that some informal remittance houses with larger volumes of transfers must increasingly rely on formal banking institutions.
A. Money laundering erodes financial institutions.

Pervasive money laundering through developing-country financial institutions erodes these institutions in 3 broad ways: by increasing the probability individual customers will be defrauded by corrupt individuals within the institution; by increasing the probability that the institution itself will become corrupt or even controlled by criminal interests, again leading to customers being defrauded; and by increasing the risk of financial failure faced by the institution as a result of the institution itself being defrauded. Such dangers come under the formal heading of operational risk, and can contribute significantly to reputational risks faced by banks.1

These 3 factors can emerge separately or together—indeed, they can reinforce each other—and they are particularly likely to increase operational risks, particularly via fraud, and reputational risks faced by banks. Of course, any operational (or other) damage caused by money laundering also worsens reputational damage and vice versa: a sudden loss of reputation can threaten the institution’s substantive financial position with, in the extreme case, a run on its deposits. This vulnerability exists regardless of which of the 5 directional flow of funds (as shown in Figure 1) is occurring.

Money laundering activity increases the probability that individual customers, or the institution itself, will be defrauded by corrupt individuals within the institution. Major money-laundering episodes undertaken by individuals within otherwise legitimate financial institutions often involve financial fraud by those same individuals. In particular, FATF reports that, after narcotics trafficking, financial crime is the most frequent predicate crime that gives rise to the proceeds to be laundered.2

One factor driving the rise in financial crime is likely the rapid increase in recent decades of financial activity in proportion to overall economic activity. For example, between 1990 and 2000 the nominal gross domestic products of Thailand, Malaysia, and the Philippines rose 124%, 185%, and 206%, respectively, whereas the nominal level of bank deposits3 in these economies increased by 237%, 379%, and 504% respectively—typically around twice the GDP increase. Just as financial activity and financial crime grow together, financial crime and money laundering grow together, as each facilitates the other.4 In human terms, employees willing to engage in money laundering are less likely to abstain from fraud or actively prevent it as part of their duties. Although difficult to quantify, this relationship emerges clearly from a review of substantial fraud committed within banks. Some recent examples are:

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1 The other 4 forms are credit risk (for example, default by borrowers), market risk (for example, adverse changes in interest rates), liquidity risk (a shortfall in resources to meet obligations), and legal risk (exposure to adverse claims against the institution). See, for example, Federal Reserve Board, Commercial Bank Examination Manual. Credit risk unrelated to money laundering activity can be reduced by anti-money-laundering policies, as discussed in Section II.C.


3 International Monetary Fund, International Financial Statistics, lines 24 (demand deposits) and 25 (time, savings, and foreign currency deposits).

4 In this regard, the same analysis outlined in Section III.B with respect to the role of money-laundering in facilitating non-financial crime is equally applicable to the financial crime (especially fraud) discussed here.
- **People’s Republic of China (PRC).** The Bank of China, on which the U.S. Office of the Comptroller of the Currency (OCC) recently levied a $20 million fine because employees committed "favoritism, committed irregularities, issued fraudulent letters of credit, and facilitated loan frauds"\(^1\) in the bank’s New York operations, recently was a victim itself. Two branch managers and an assistant manager at the Kaiping branch, allegedly colluded with a government official and contacts in Hong Kong, to defraud the bank of $75 million. The Chinese personnel have absconded to Canada, but 2 people in Hong Kong, according to newspaper reports, have been charged with abetting money laundering.\(^2\) Following disclosure of the incident, there was a run on the bank's Kaiping branch.\(^3\) Although the branch’s financial losses will be absorbed by this state-owned bank, Bank of China’s reputation has suffered, and plans to list its Hong Kong subsidiary on public stock exchanges are now in question.\(^4\)

- **France.** Beginning in late 2001, French authorities launched a series of investigations into officials of France’s leading banks in connection with fraud, tax evasion, and money laundering. According to press reports, “thousands of French cheques, some of them stolen, were ‘endorsed’ or signed over to new beneficiaries before being cashed at money-changers in Israel”, and then the proceeds were returned to France through correspondent banking relationships.\(^5\) The amounts involved exceeded $70 million.

- **Germany.** Since its bankruptcy in 1995, Dusseldorf prosecutors have been investigating 10 former employees of a private bank, BVH, on "suspicion of fraud, disloyalty and money laundering"\(^6\). It has now been alleged that the bank laundered funds in the form of bogus credits, and redirected them to a firm believed to have belonged to Osama Bin Laden's Al-Qaida network.\(^6\)

In the PRC and Germany, the victimized institution was severely damaged or even destroyed by the combination of allegations of fraud and money laundering. As will be discussed below, the largest blow to the Swiss banking system occurred in the 1970s as a result of a similar combination of fraud and money laundering.

It is not unusual in any jurisdiction for spectacular bank failures to stem from the actions of a few individuals, or even a single employee, as exemplified by the infamous Barings case. Such consequences are even more likely in smaller countries with less sophisticated regulatory control over banking processes. For example, in Estonia, a once-respected manager and majority shareholder of ERA Bank recently came under investigation in connection with the

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3 Corruption in PRC’s Banking Sector.
bank's collapse in 1999. Media reports indicate the manager could face charges of "fraud, plunder, and money laundering" among other crimes.¹

**Money laundering increases the probability that the financial institution itself will become corrupt or even controlled by criminal interests.** The possibility is even greater in a developing country that criminal interests can eventually control an entire financial institution. First, such institutions tend to be smaller, which makes the task of control easier. Second, developing country financial regulation and supervision tends to be less rigorous than that in developed countries, which themselves have problems with criminal penetration of institutions or lower-level fraud.

As summarized in a paper prepared by the Management Development and Governance Division of the United Nations Development Programme,

> businesses that are effective venues for money laundering, such as banks and casinos, risk criminal takeovers. In countries such as the former Soviet Union, where banking regulations are lax or poorly enforced, financial institutions have been established and taken over by organized crime groups.

There are many indications that the volumes of illicit funds in developing-economy banking systems are substantial. At such high levels, the influence of criminal interests over financial institutions becomes a serious concern.

**The reputational consequences: loss of critical investor trust.** The adverse effects of money laundering on developing-country financial institutions discussed above constitute clear operational risks to the financial soundness of the institution. But such risks also give rise to, and are compounded by, another adverse factor: reputational risk, or the loss of a reputation for integrity. Financial experts often emphasize the role of a financial institution’s reputation in promoting the soundness of that institution.

> A reputation for integrity... is one of the most valued assets by investors ... Various forms of financial system abuse may compromise financial institutions' and jurisdictions' reputation, undermine investors' trust in them, and, therefore, weaken the financial system.²

The connection between the 3 substantive effects mentioned previously and the reputational effect is simple: a potential user of a financial institution is less likely to risk his or her own funds in the institution if it becomes widely known that the institution: is more likely to contain individuals willing to commit fraud (the first substantive risk discussed); is a criminal institution itself (the second substantive risk) and therefore may defraud the individual; or may

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become insolvent and unable to return the committed funds. As the non-profit International Financial Risk Institute (IFRI\(^1\)) based in Switzerland summarized the issue:

*Reputational risk arises from operational failures, failure to comply with relevant laws and regulations, or other sources. Reputational risk is particularly damaging for banks since the nature of their business requires maintaining the confidence of depositors, creditors and the general marketplace.*

Compounding the reputation effect yet further is that the reputational problems can exist on a wholesale level: even if retail investors are unaware or unconcerned with a financial institution’s reputation, other financial entities—such as those with a potential correspondent banking relationship with the disreputable institution—will be reluctant to do business with that institution for fear that its own valuable reputation will be contaminated. Moreover, it is important to recognize that the loss of reputation can have severe effects on a financial institution (and an entire nation's financial system) even without the coordinated sanction process such as that associated with FATF activity, as discussed later. Research shows that the negative effect of a damaged reputation on the viability of a bank is more than theoretical: examples abound.\(^2\) For example, as noted with the recent Bank of China scandal discussed previously, large-scale runs on banks can occur in addition to more difficult to observe reluctance among potential customers to make use of the bank.

Such consequences are particularly acute for developing countries with financial systems in their infancy: recently in Croatia, a "rogue trader" who lost approximately $100 million while working at Croatia's third largest bank, is at the center of Eastern Europe's largest speculation scandal. Eduard Nodilo brought his employer, German-owned Rijecka Banka, "almost to its knees by the losses" and had to be bailed out by Croatia’s central bankers. As a result of the losses, the German owner, Bayerische Landesbank, has returned its 60% stake—once worth $76 million—to the Croatian government for the token sum of $1. As press accounts noted, Croatia's banking system "remains fragile … While the government has assured investors that their money is safe, the affair has shaken public confidence."\(^3\) The “reputational” factor is even more important for offshore financial centers suspected of engaging in flow-through money laundering activity on a significant scale, as discussed in Section V.)

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1. "The IFRI was established as a not-for-profit foundation under the supervision of the Swiss Federal Authorities in 1984. The founders of the Institute include the world’s leading derivative exchanges, a number of large OTC providers, auditing companies, information service providers, market regulators, certain end-users." IFRI 2002, http://risk.ifci.ch.
2. As an International Chambers of Commerce manual on corporate practices noted, "any business, whether a financial institution, professional service, industrial enterprise, charitable NGO or otherwise, caught in the web of money laundering could have its reputation irreparably damaged. Its directors, management, and staff could be the subjects of private and public investigations out of which indictments and prosecutions could arise. At best, it would be a public relations nightmare. It only takes one unethical person who has the discretion to make decisions to jeopardize an entire organization. A reputation for integrity takes many years to build, and only a few moments to damage, debase, decimate or destroy." ICC, *Corporate Practices Manual on Extortion and Bribery* (1999).
B. Money laundering weakens the financial sector's role in economic growth.

The previous section reviewed the various ways in which money laundering activity erodes financial institutions. To assess the implications of this problem for economic development, it is useful to review the linkage between the strength of developing-country financial institutions and economic growth in developing economies. In particular, in developing countries investor confidence—which is diminished by money laundering activity—plays a special role in the linkage between financial institutions and economic growth.

**Strong developing-country financial institutions are critical to economic growth.** Although a comprehensive review of the linkage between strong financial institutions and developing-country growth is beyond the scope of this paper, the detrimental effects that money laundering has on developing-country financial institutions makes it necessary to review the importance of this linkage. Over the past decade, several in-depth studies have been undertaken to assess the role of financial institutions in economic growth, and the results have been consistent and unambiguous: economic growth depends on sound domestic financial institutions. As summarized in a recent (2001) report that reviewed the available evidence:

> A large body of research finds that financial development exerts a large positive impact on economic growth. The conclusion emerges from cross-country studies, industry-level studies, firm-level studies, and time-series evaluations. Furthermore, the positive link between financial development and economic growth hold after controlling for other growth determinants...¹

The study further notes that this strong linkage has been found to be causal: it is not simply that faster-growing economies have stronger financial institutions, but that stronger financial institutions drive faster economic growth. The force of this finding cannot be overemphasized: since the first studies into the linkage between financial institutions and economic growth began in the 1960s, researchers have believed that the form of a developing country’s dominant financial institutions—banks vs. equity markets vs. NBFIs—would prove to be the critical factor in economic growth; yet the preponderance of the research shows that it is the strength of the financial institutions—regardless of the form they take—that is the most important factor. The critical role that banks, NBFIs, and equity markets play in economic development is through their function in capital formation and allocation—a particularly crucial role in developing economies where such capital is scarce when compared to its greater availability in industrialized economies. Indeed, the World Bank identifies "developing local capital markets and banking systems"² as one of the 3 fundamental tasks necessary for economic development (the others being governmental reform and the enhancement of physical infrastructure).

**Confidence and reputation play a special role in developing economies' financial systems.** Money laundering's negative impact on financial institutions is of particular concern in a

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developing-country context for at least 2 reasons. First, in many of these countries the largest, most sophisticated financial institutions have historically relied heavily on public funds rather than private deposits, and the success of wide-ranging financial reforms will depend in part on the sustained expansion of individual savers' trust in these institutions as private capital replaces public capital. As the World Bank notes in its mission statement, "sound financial systems [are] essential for private entrepreneurs to emerge, for business to flourish, and for local people and investors from abroad to find the confidence to invest, and create wealth, income, and jobs."

Second, financial institutions in developing countries are often undergoing a transition from being state-owned to private-investor ownership and control. Yet, studies have shown that private investors are more reluctant to commit funds to obtain ownership in enterprises cited for corruption. Research supports this view: one study statistically examined nearly 70 cases and concluded that “the evidence is clear that the announcement that a firm has allegedly been involved in corrupt activities is typically associated with materially negative equity return at the time of the announcement,” indicating the investors are less likely to hold shares in the firm.

Finally, from a developing country's policymaking standpoint, there are other issues that must be taken into account, and foremost among these is the effect that international anti-money-laundering measures are likely to have on the developing country's economy. In the extreme, a country with lax anti-money-laundering enforcement measures can be subject to formal legal sanctions by important trade and investment partners. Such sanctions need not involve governments directly, as demonstrated by the damaging international-bank ban on U.S. dollar transactions with Vanuatu undertaken in response to the inadequacy of anti-money-laundering measures in that jurisdiction. Even outside the realm of anti-money-laundering efforts, developing countries may be unable to gain full access to international economic resources as a result of money laundering problems—actual or perceived—as shown by suggestions that the IMF should reconsider its continuing financial assistance to the Russian Federation in light of evidence that such assistance was being misappropriated on a large scale and laundered "outbound" by criminals in the form of capital flight. Similarly, several economic organizations reportedly sparked "a run" on a Bosnian bank when they moved their funds out of the institution after indications that the bank was allegedly involved in money laundering. Economic aid from developed countries can be contingent upon progress on anti-money-laundering efforts.

Given the problem of measuring the magnitude of money laundering, it is doubly difficult to quantify the damage of money-laundering flows on developing countries’ financial systems.

3 International Monetary Fund, "IMF Concludes Article IV Consultation with Vanuatu", September 5, 2000. "Activity in the offshore financial center remained weak in 1999. Much of this weakness may have followed allegations of money laundering levied against some offshore institutions, which led several major international banks to ban U.S. dollar transactions with Vanuatu." Id.
5 “Activities underlying financial system abuse and financial crime are, by definition, concealed and therefore direct observation by the macroeconomist or statistician is not possible... Thus, an adequate measure of financial system abuse remains illusive.” IMF Background Paper 2001, p. 10.
Thus, by undermining these institutions and the developing-country financial systems to which they belong, money-laundering activity undermines capital formation within developing economies. This negative economic effect associated with developing countries’ financial systems exists even before considering money laundering’s more direct effects on the real economy (outlined in Section III), or through the damage to the external sector (Section IV). As discussed in the next section, however, anti-money-laundering policies can positively contribute to stronger financial institutions in developing countries.

C. Anti-money-laundering reforms support financial institutions through enhanced financial prudence

Several of the core anti-money-laundering policies are also policies that promote overall good governance of financial institutions, and therefore have positive secondary effects on economic development.

*Strong correspondence between anti-money-laundering policies and financial good-governance rules.* As noted in the previous section, a strong rule of law governing financial institutions in developing countries is a fundamental prerequisite for economic growth. Anti-money-laundering policies are a constituent element in the good-governance policies that form a solid rule-of-law environment for developing-country financial institutions. A strong indicator of this is the large overlap that exists between the prudential financial-stability rules promoted by governmental and inter-governmental organizations on the one hand, and fundamental anti-money-laundering policies on the other.

Most significantly, the Bank for International Settlements (BIS), the purpose of which is to promote "cooperation among central banks and other agencies in pursuit of monetary and financial stability,"¹ has endorsed key elements of the anti-money-laundering practices as explicitly supportive of sound banking practices that reduce financial risks for individual banks and, by extension, national and international financial systems as a whole. In 1988, BIS's Committee on Banking Supervision (the Basel Committee) stated that while "the primary function of [banking supervisory agencies] is to maintain the overall financial stability and soundness of banks rather than to ensure that individual transactions conducted by bank customers are legitimate", they should nevertheless address the use of banks by criminals:

...Public confidence in banks, and hence their stability, can be undermined by adverse publicity as a result of inadvertent association by banks with criminals. In addition, banks may lay themselves open to direct losses from fraud, either through negligence in screening undesirable customers or where the integrity of their own officers has been undermined through association with criminals.²

Notably, the Basel Committee's endorsement of anti-money-laundering banking practices arose originally from the need to address the potential damage to banks from significant money-laundering activity, namely reputational damage ("public confidence … undermined") and/or

fraud by criminal customers, or employees corrupted by such customers. In 1997, the Basel Committee published its *Core Principles for Banking Supervision* which further elaborated the importance of "know your customer" (KYC) banking rules as a prudential risk-management issue, again citing the potential for reputational damage and fraud if such policies are absent, and identified KYC rules as an integral element of a bank's "internal control" mechanism for risk management.

More recently, however, the Basel Committee recognized the strong parallels between KYC and sound banking practices for reasons unrelated to the harmful financial effects of money laundering, and endorsed, implicitly or explicitly, many anti-money-laundering practices "from a wider prudential perspective":

KYC is most closely associated with the fight against money-laundering [but] the Committee's interest is from a wider prudential perspective. Sound KYC policies and procedures are critical in protecting the safety and soundness of banks and the integrity of banking systems.

Sound KYC procedures must be seen as a critical element in the effective management of banking risks. KYC safeguards go beyond simple account opening and record-keeping, and require banks to formulate a customer acceptance policy and a tiered customer identification programme that involves more extensive due diligence for higher-risk accounts, and includes proactive account monitoring for suspicious activities.

The Basel Committee's interest in sound KYC standards originates from its concerns for market integrity and has been heightened by the direct and indirect losses incurred by banks due to their lack of diligence in applying appropriate procedures. These losses could probably have been avoided and damage to the banks' reputation significantly diminished had the banks maintained effective KYC programmes.

Indeed, the report concluded that "effective KYC procedures embrace routines for proper management oversight, systems and controls, segregation of duties, training and other related policies."

One clear example of how strong KYC policies promote sound banking practices, aside from their anti-money-laundering role, can be seen in the prudential problem of "concentration risk" (an element of credit risk), which is the problem of a bank putting too many of its eggs in a single customer's basket. If the customer encounters financial problems—or simply abandons the bank for other reasons—the bank is put at risk. Thus, prudent banking policy demands that no single customer becomes a dominant client. Yet, given the many close financial interrelationships that may exist among seemingly independent clients, managing concentration risk implies

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1 See Section II.A.
2 BIS, Core Principles for Banking Supervision (1997).
5 BIS, Customer Due Diligence for Banks, 2001, introduction.
6 BIS, Customer Due Diligence for Banks, 2001, paragraph 55.
thorough knowledge of the institution's customers—are they related, or even fronts for the same client? As the Basel Committee has noted,\(^1\) the concentration risk is particularly acute for banks that have a substantial client base of "politically exposed persons" (PEPs) who seek to mask their financial relationships through the use of many intermediaries, each of which appears to be an individual actor from the viewpoint of a bank lacking adequate KYC practices.

As illustrated in Figure 2, without knowing the true nature of its counterparties, a bank may be under the mistaken impression that it has a low concentration risk because no one counterparty constitutes more than 10% of the bank's business (assets, deposits, etc.), yet several of these apparently independent counterparties may be effectively the same entity because of their control by a PEP. Given that PEPs with large financial resources often fit the profile of individuals engaged in money laundering, a strong KYC policy in the presence of PEP clients serves both anti-money-laundering and concentration-risk-avoidance purposes.

Similar prudential reasons for sound anti-money-laundering practices exist in equity markets. For example, the International Organization of Securities Commissions, which is charged with "the protection of investors; ensuring that markets are fair, efficient and transparent;"
[and] the reduction of systemic risk" states in Section 8.5 *Objectives and Principles of Securities Regulation* that regulators "should also require that market intermediaries have in place policies and procedures designed to minimize the risk of the use of an intermediary's business as a vehicle for money laundering."

**Private institutions and associations often adopt parallel rules.** The parallels between several anti-money-laundering practices and financial prudence policies can also be seen in the degree to which private financial institutions and their associations adopt similar practices for their own sound-business purposes. For example, the Swiss Bankers Association (SBA) recently stated that its member banks

> are fully aware that "know-your-customer" (KYC) principles are not only a tool for combating financial crime but play an important role in the proper running of banking and securities business within the financial institution.... Swiss banks introduced in 1977—after negative experiences of a bank having neglected just this—the SBA's Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence [on customers].

This "negative experience" to which the SBA alludes was perhaps the worst financial scandal in Switzerland's history, the 1977 "Chiasso" affair, in which 2 Credit Suisse officials engaged in fraud and money laundering at one of the bank's Italian branches. The episode cost Credit Suisse $830 million, caused a run on the branch, and led Swiss bankers to create their own code of conduct on the acceptance of suspicious funds—a code that was studied carefully when the first international anti-money-laundering policies were developed in the 1980s.

Even outside the banking sector, other private financial institutions and their associations often voluntarily adopt KYC rules for reasons unrelated to money laundering. For example, such rules are contained in the bylaws of the New York Stock Exchange (Rule 405) and the U.S. National Association of Securities Dealers (Article III section 2) to improve the reputation and credibility of these financial institutions. Of particular relevance to offshore financial centers (discussed in detail in Section V), the accounting firm KPMG found that in the Cayman Islands “most fraud was discovered by the company through internal mechanisms such as existing internal controls, internal audits, or informants” and only rarely does an external auditor identify fraudulent activity. Such internal controls are closely related to anti-money-laundering practices.

**The cost burden of anti-money-laundering policies on financial institutions must be assessed in context.** Procedures involved in anti-money-laundering policies can impose additional costs on financial institutions. For example, one researcher (Mascianandara, 1999) attempted to quantify such costs within the Italian banking system and concluded that such policies are sometimes at odds with banking efficiency.

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1 Letter from the Swiss Bankers Association to the Basel Committee (Mar. 28, 2001).
3 *Objectives and Principles of Securities Regulation* at http://newrisk.ifci.ch/144440.htm
4 KPMG, 1999 Caribbean Fraud Survey Report: Cayman Islands, p. 10.
Nevertheless, other considerations must be borne in mind when considering these efficiency costs. First, such “gross” institutional costs must be weighed against the broader benefits of such policies on the institution, the wider financial system, and the surrounding economy, as outlined in this paper. Indeed, as discussed above, private financial institutions and their associations often make independent decisions to adopt internal policies that reduce the likelihood of money laundering through their channels, which suggests that the costs of policies can be outweighed by the benefits.

Second, as the previously cited Masciandara paper noted, an improvement in the form and efficacy of anti-money-laundering regulations can address some of the concerns regarding costs that institutions must bear. Indeed, Masciandara showed that in the early 1980s Italian anti-money-laundering regulations were more burdensome and less effective than they were after changes were made.

Third, the need for international coordination to fight money laundering is often discussed from a law-enforcement perspective, yet such coordination also serves to reduce the economic costs to financial institutions of anti-money-laundering efforts. For example, if banks of only a single jurisdiction within a region implement anti-money-laundering policies, whatever administrative costs are associated with these policies will be borne by those banks, and not their competitors in other jurisdictions, implying that the costs cannot be passed along to customers who have alternative, nearby banks without such costs, thus creating a competitive imbalance with respect to such costs (although offsetting these costs will be certain commercial benefits, as discussed previously). Equal action by all jurisdictions will reduce this inequity by allowing all banks subject to such costs to better pass them along to their customers.

III. THE REAL SECTOR: MONEY LAUNDERING DEPRESSES GROWTH

Aside from its negative effect on economic growth through its erosion of developing countries' financial sectors, money laundering also has a more direct negative effect on economic growth in the real sector by diverting resources to less-productive activity, and by facilitating domestic corruption and crime, which, in turn, depress economic growth.

A. Money laundering distorts investment and depresses productivity

The flow of laundered illicit funds follows a path through the economy that is different than that such funds would take if they were not being laundered. As can be seen from the various money-laundering mechanism typologies reports, money laundered through channels other than financial institutions is often placed in what are known as "sterile" investments, or investments that do not generate additional productivity for the broader economy. Real estate is the foremost example of such sterile investments; others include art, antiques, jewelry, and high-value consumption assets such as luxury automobiles.

Criminal organizations can transform productive enterprises into sterile investments by operating them for the purposes of laundering illicit proceeds rather than as profit-maximizing enterprises responsive to consumer demand and worthy of legitimate investment capital.
Commitment of the economy's resources to sterile, as opposed to productive, investments (or to normal consumption expenditures that drive productive investments through higher demand) ultimately reduces the productivity of the overall economy. Finally, funds that are being laundered through the purchase of certain targeted assets—real estate is often favored—will drive the prices of such assets up, causing overpayment for them throughout the economy, thus "crowding-out" productive investment to less-productive uses.¹ This dynamic further erodes economic growth.

The magnitude of these effects is difficult to quantify, but is demonstrably substantial given sufficient levels of money laundering activity. One statistical study² of the economic effect of illegal drug exports from Colombia on the Colombian economy reported that the macroeconomic benefits that would otherwise be expected from the narcotics’ export revenues were, in fact, significantly offset “by concentrating [illegal proceeds] spending in real estate [and therefore] drug traffickers’ money created distortions in the resource allocation process.”³

Reduced economic activity from excess expenditure on more "sterile" sectors such as real estate can be seen in the input-output matrices of developing economies. Expenditure in sectors more often appearing in money laundering typology reports are associated with lower-than-average economic output. This perspective, first used in a study for Australia's AUSTRAÇ (see textbox⁴) is not readily applicable to the 4 directional flows of money laundering activity involving the external sector; as shown in Figure 1, but could perhaps be developed into part of a broader technique for estimating the economic damage caused by money laundering through non-financial channels.

¹ AUSTRAÇ 1995, chapter 11.
³ Molina (1995), p. 17. Further distortions were caused by the much higher inflow of illegal imports financed by drug money; such imports were consumed by the criminal class and caused a sharp reduction in the aggregate demand for domestic Colombian-produced goods, which further eroded economic development. Id.
Note that this drag on economic productivity in the real sector is separate from the effects of erosion of the financial sector as discussed in Section II or, as discussed later, the damage caused by facilitating corruption and crime (III.B), and/or negative economic effects transmitted through the country’s external sector (IV).

B. Money laundering facilitates corruption and crime at the expense of economic development.¹

Money laundering reduces criminals' cost of crime, thereby increasing the level of crime. Interestingly, just as an efficient financial sector is a key "input" to other productive processes in a developing economy—such as manufacturing—an efficient money-laundering channel is a key "input" to crime because the financial proceeds from crime are less valuable to the criminal (in a sense, an "unfinished product") than are laundered funds. The less expensive the money-laundering "input" to crime is as a result of lax anti-money-laundering policies, the more "productive" (active) the criminal element will be, just as in any industry or business.

¹ "Corruption" may sometimes be distinguished from "crime" in that the latter depends on the particular legal regime in question, whereas the former has a broader economic meaning.
Theoretically, the role of money laundering can be viewed using simple modifications to a conventional supply-and-demand framework. As shown in Figure 3 in the left diagram, the level of crime ($Q$) is determined by the intersection of criminals' marginal cost ($MC$) and the criminals' marginal revenue from undertaking one more criminal act ($MR$), which can be seen as simply the list of crime opportunities ranked from the most profitable (on the left) to the least profitable (on the right). The criminal element will continue to commit crimes (take advantage of crime opportunities) until the costs of doing so consume all the proceeds of crime.

The diagram on the right illustrates the effect of reducing the cost of money laundering (by lowering its risk, for example) to the criminal: the $MC$ line shifts to the right because the criminal can undertake more crime for the same cost (or the same amount of crime for less cost). The intersection of the new $MC$ line and the same $MR$ line (same crime opportunities) imply more crime ($Q$ is larger) and, at the margin, these additional crimes will become smaller (more "petty"; of course, all of the higher-value crimes will continue to be committed). This greater crime revenue can then become domestic laundered money, whereby it is "reinvested" in further criminal activity.

Professor Donato Masciandaro tested this phenomenon when he examined the relationship in Italy among the imposition of anti-money-laundering regulations, identifiable money-laundering activity, and identifiable crime in 95 Italian districts during the 1980s:

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1 To simplify the diagram, the risk of being caught and punished is incorporated in this line as a "cost" to the criminal.
...we showed how money laundering can be seen as a multiplier of criminal financial activities. Transforming potential into effective purchasing power, money laundering allows the reinvestment of laundered illegal funds, thus playing a crucial role in strengthening ties between the real and financial side of a criminal economy.\(^1\)

The paper finds an inverse relationship between money-laundering activity and the level of anti-money-laundering regulation.\(^2\)

As in the case of Italy, the ease of money laundering in the financial sector attracts increased criminal activity in the real economy. This can be seen clearly even in larger, more-developed countries where money laundering is a major problem. In Switzerland, for example:

A leading Swiss lawyer has warned that Russian mafia groups are increasingly infiltrating the country's economy in spite of the adoption of stricter laws against money laundering. The Attorney-General, Carla del Ponte, said Russian criminals had established footholds in some 300 Swiss companies, attracted by the Swiss tradition of conducting banking business in secret. ...She said the country faced a growing risk of becoming embroiled in gang violence.\(^3\)

Similar examples can be found in other countries where money laundering is a problem. Israel, a significant money-laundering center, has seen criminal elements penetrate the economy with the proceeds (See textbox). A study of the money laundering problem in Brazil suggests that the infiltration of Russian, Nigerian, Korean, and other organized crime elements into the Brazilian economy in the early 1990s was due in part to the attractiveness of Brazil's "large and modern financial services sector" which attracted money-laundering activity from abroad.\(^4\)

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\(^2\) Donato Masciandaro (1999) See also, Gideon Yaniv, Tax Evasion, Risky Laundering, and Optimal Deterrence Policy, International Tax and Public Finance, 6, 27-38 (1999). Yaniv puts forth an economic model to support the contention that money laundering is a riskier (more costly) enterprise than mere tax evasion and, as a corollary, there may be a higher social return in pursuing money laundering investigations than tax-evasion investigations.

\(^3\) Russian Mafia threatens Switzerland, BBC, August 8, 1999.

Higher crime and corruption reduces economic growth. Given the linkage between money laundering and domestic crime, the final linkage to be examined is that between the higher rate of corruption and crime facilitated by money laundering and developing countries' economic growth. Here again, much economic research demonstrates that corruption and crime deter such growth. A 1997 review of the research completed in this area concluded that "corruption has its adverse effects not just on static [economic] efficiency but also on investment and growth."\(^1\) This confirms an earlier literature review that reported that "most studies conclude that corruption slows down development."\(^2\) As summarized in a paper by the Management Development and Governance Division of the United Nations Development Programme which reviewed the conclusion reached in other studies:

...cross-country research suggests that high corruption levels are harmful to economic growth. When corruption is associated with organized crime, legitimate business is discouraged, the allocation of resources is distorted, and political legitimacy is compromised.\(^3\)

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Overall, the economic damage caused by corruption is an unambiguous finding in the economic literature, and the money-laundering process is a key facilitator of such corruption. The damaging economic effects of corruption facilitated by money laundering are particularly acute in the public sector in many developing countries because of the larger role the government often plays in providing goods and services.

C. Money laundering can increase the risk of macroeconomic instability

The International Monetary Fund has identified 2 mechanisms by which significant volumes of money-laundering flows can induce macroeconomic instability in a developing country. First, there is the "hot money" problem: large money-laundering flows through a particular region are often triggered by specific episodes of political flux, such as the fall of the Soviet Union or the brief but lucrative reign of a corrupt dictator, and, therefore, the financial flows that accompany the money laundering activity are unstable, which can contribute to the instability of exchange rates, monetary aggregates (the amount of money available in an economy), and general price levels (inflation).

Second, the IMF has noted that because some phases of money laundering transactions are "underground" or in the informal sector of the economy, such transactions do not appear in official monetary and financial statistics, thus giving misleading information to policymakers attempting to manage macroeconomic variables, such as monetary levels, interest rates, inflation, and exchange rates.

A third problem can arise, as seen during the international financial crises in 1997 and 1998, whereby financial problems in one jurisdiction can be transmitted to other jurisdictions through the "contagion effect," and such financial problems can quickly become larger, macroeconomic problems. A factor underlying the contagion effect is the perception that whatever serious problem sparked a liquidity crisis in one financial institution or system may also exist, heretofore unappreciated, in another financial institution or system. Another factor is that there are perceived to be a significant number of interrelationships between the problem institution and other jurisdictions that will raise the possibility of liquidity problems in the former being spread to the latter. Significant money-laundering activity can exacerbate both these problems.

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3 Quirk (1996).
factors, as the discussion of "reputational effects"—which drive investor perceptions—in Section II.A demonstrates.

IV. THE EXTERNAL SECTOR: MONEY LAUNDERING DISTORTS CAPITAL AND TRADE FLOWS

Laundering of outbound illicit funds constitutes the facilitation of illicit capital flight, which drains resources from developing economies, and extensive money laundering of all forms can deter legitimate inward foreign direct investment (FDI) beneficial to sustained economic growth.

A. Outbound flows: facilitating illicit capital flight

The obvious effect of illicit capital flight is to worsen the scarcity of capital in developing countries. As IMF economists summarized the issue:

> The costs of capital flight are well known: they include a loss of productive capacity, tax base, and control over monetary aggregates—imposing a substantial burden on the public at large and rendering policymaking more difficult.¹

In many cases, such capital flight has been enormous.

Money laundering can be seen as a key element in illicit capital flight from throughout the developing world. Each of the major episodes of rapid, large-scale illicit² capital flight from developing (and transition) countries has been facilitated with identifiable centers of money laundering activity.³ The well-known (if extreme) example of Russia's illicit capital flight has been thoroughly reviewed elsewhere and need not be repeated in detail here. Yet it is important to note that much of those funds were laundered first through domestic Russian financial institutions, and ultimately through OFCs in the South Pacific, Mediterranean, and the islands in the UK orbit. To the extent these funds were not repatriated after being laundered (were "outbound"), money laundering at home and abroad helped drain resources from the economy through the external sector. (To the extent that the funds were repatriated—"returning"—they were under criminal control, and gave rise to the economic problems discussed in Section III.)

The massive illicit capital flight from Nigeria since the mid 1990s also made full use of money-laundering centers in the developed world, and were largely not being repatriated—contrary to the notion that money laundering is a problem involving illicit developed country funds being laundered in the developing world. The UK's financial supervisory authorities estimate that illicit transactions in UK accounts that originated in Nigeria amounted to about $1.3

¹ Prakash Loungani and Paolo Mauro, Capital Flight from Russia (2000).
² Capital flight can also consist of non-illicit funds, but these are not germane to this paper.
billion between 1996 and 2000.\textsuperscript{1} Domestic institutions can also serve as the preferred initial "placement" institutions for illicit capital flight: the Central Bank of Zambia recently suspended the license of a major private bank, United Bank of Zambia, after allegations of outbound money laundering, according to press reports.\textsuperscript{2}

Although regions with large-scale illicit capital flight, such as Russia and Africa, attract the greatest attention in the press and among academics, the problem is pervasive and often operates on a more regional or local level. For example, Pakistan's central bank governor recently put pressure on the United Arab Emirates to tighten controls on money-exchange operations. According to press reports, Dubai, the commercial capital of the UAE, is a hub for money changers, and the biggest market for Pakistani rupees outside of Pakistan itself.\textsuperscript{3}

As an extensive UN study of the effect of money laundering on Russia noted, "In the Russian Federation, money laundering is always linked to the problem of capital flight and a subsequent lack of investments"\textsuperscript{4} It is estimated that the amount of illicit capital flight laundered from Russia exceeds $100 billion,\textsuperscript{5} implying an enormous drain on investment resources.\textsuperscript{6}

Despite claims to the contrary, anti-money-laundering regulations do not appear to cause significant capital flight. Ironically, the prospect of capital flight has been invoked to prevent or delay the imposition of anti-money-laundering measures on the grounds that deposits will be transferred to more lax regulatory environments (or funds will be put "under the mattress") as depositors seek greater secrecy from governments. Yet a review of the key financial indicators that would suggest such a response by investors does not confirm this theory.

\textsuperscript{3} Pakistan moves on money laundering, BBC News, Nov. 6, 2001, at http://news.bbc.co.uk/hi/english/business/newsid_1641000/1641138.stm
\textsuperscript{4} UN Report 2001, p. 15.
\textsuperscript{5} Id. Chapter 2.
\textsuperscript{6} Although a substantial portion of these laundered funds were returning to Russia after being laundered abroad (as opposed to being strictly outbound), these were under the control of criminal elements, leading to the economic problems discussed in Section III.B.
Recent Implementation of Anti-Money-Laundering Policies and the Use of Banks in NCCTs.

Figure 4

Hungary

St. Kitts and Nevis

Guatemala

Not adjusted for inflation

Action

Action

Action
Recent Implementation of Anti-Money-Laundering Policies and the Use of Banks in NCCTs (continued)

Figure 4

Philippines

St. Vincent and Grenadines

Israel
Figure 4 presents the level of bank deposits (indexed at January 2000 = 100 and adjusted for inflation of the country in question) in those countries and territories that have, according to FATF's 2002 update, been identified as "non cooperative" (NCCTs) yet have recently taken significant anti-money-laundering actions. In no case is there a discernable decline in bank deposits in anticipation of the adoption of the policy in question, the formal enactment of which is indicated by the arrow indicating the month of the "action" for each respective country. Although this simple look at changes in net financial levels does not prove the absence of a "depositors’ flight" effect from proposed anti-money-laundering policies, it does challenge the assertion that such an effect exists or is significant. (More time must pass before the post-enactment effects can be measured. It is likely, however, that depositors fearing the legislation in question would remove their funds before the policy was imposed, if at all. In some cases, the effective date of the legislation may come well after the law's enactment.)

Anecdotal evidence suggests that international investors are generally comfortable with the adoption of anti-money-laundering policies, even if qualms are expressed in the shorter term. For example, in Switzerland,

> the managing director of privately owned DBTC, said that 2 years ago the bank founded a special compliance department to check each new account and verify whether the money came from legitimate sources. According to their experience, "customers gradually get used to the disclosure process," said [the director]. He predicted that in time such departments would be standard in all banks worldwide."

Similarly, in its March 2001 review of the Bahamian economy, the Inter-American Development Bank reported that industry experts believed that, despite the government’s recent regulatory efforts to respond to the country’s status as a FATF “non-cooperative” country, the financial sector would, “notwithstanding some short-term adjustment costs, ... retain its vitality over the medium and long term.”

B. Inward capital flows: depressing foreign investment

As discussed in Section III.B, money laundering facilitates an increase in domestic crime and corruption in domestic economies. A large body of economic research shows that a high incidence of such activity deters inward portfolio investment and foreign direct investment to developing economies. For example, as the IMF recently noted,

1 International Monetary Fund, *International Financial Statistics*, various months, line 24 (demand deposits) and line 25 (time, savings, and foreign currency deposits). Not all aspects of the anti-money-laundering policies implemented directly affected the banking sector.

2 A more thorough examination of this question would seek other possible factors affecting deposit levels, and would also consider other financial institutions and channels, particularly capital outflows from the economy. The consistency of the results shown across the 7 countries and territories provides some level of increased confidence in the conclusion drawn here.


... Such allegations or actions can through reputational effects affect the willingness of economic agents, particularly those outside the country, to conduct business in a given country (e.g. inward investment, banking correspondent relationships) with adverse consequences.¹

Overall, the effect of extensive money laundering in a developing country on foreign investment in many ways parallels the effects outlined with respect to the damage to the financial sector, as discussed in Section II. These parallel effects on foreign investment, however, are in many ways more serious because of the special benefits, such as technology, labor skills and know-how, and immediate access to international distribution channels, that such foreign resources bring to developing economies.

C. Trade: distorting prices and content

A money laundering technique that does not directly involve the financial system or expenditures in the real domestic economy is the use of inaccurate pricing ("mis invoicing") of imports or exports to hide the transfer of funds during the layering process within what appears to be a value-for-value transaction. When such transactions are extensive, the impact on a country's entire external sector can be substantial. In Nigeria, for example, government officials have claimed that the country's official exchange rate was difficult to manage from a policy perspective because

the exchange rate differential reflected to a large extent a premium that purchasers of foreign exchange were willing to pay to falsify import documents so that they could evade customs duties, or to make transfers that were otherwise restricted (e.g., capital flight) or illicit (e.g., money laundering).²

In other words, the demand for foreign exchange was being inflated by money-laundering activities using trade channels, thus driving up the "price" of foreign exchange, which is the exchange rate. By driving up the Nigerian exchange rate, the mere technique of using trade as a money laundering technique had reduced the competitiveness of Nigerian (non-dollarized) exports on world markets, thus slowing the country's economic growth.

The content of trade—particularly imports—can also be warped by money laundering activity. For example, a corrupt official may wish to launder his illicit funds outside the country and return the proceeds to the country for his own consumption and enjoyment. Yet, bringing large amount of funds into back into the developing country might nullify the laundering effort, and therefore a more effective laundering technique would be to "integrate" the funds abroad by buying foreign goods rather than repatriating the funds for domestic purchases. Thus, growth-enhancing domestic demand is shifted to imports solely by the need to obscure the existence of the illicit funds. A salient example of this problem was highlighted in the study of the economic effects of Colombian drug money, cited previously.

¹ IMF Background Paper 2001
V. OFFSHORE FINANCIAL SECTORS: MONEY LAUNDERING HINDER THEIR DEVELOPMENT ROLE

Recently, there have been 2 parallel developments with respect to offshore financial centers (OFCs). First, dozens of OFCs have been created as part of developing countries' (or territories') efforts to develop their domestic economies through the provision of international financial services. Second, OFCs have become an increasing concern in efforts to curtail transnational money laundering activity. Thus, the effect of money laundering on the establishment of OFCs as an economic development strategy warrants special focus here.¹

A. OFCs as an economic-development strategy

Over the past 2 decades, dozens of small countries and territories have established OFCs as an element—often the main element—of the government’s overall economic development strategy. As one development economist summarized the phenomenon, for many small countries the creation of an OFC “is seen as a panacea for their economic disadvantages”.²

Yet jurisdictions seeking to use OFCs as vehicles for economic development face 2 enormous challenges, the solutions to which are somewhat contradictory. First, the jurisdiction must be competitive with other jurisdictions in a variety of factors, including “price” or the sum total of fees, as well as a regulatory environment that is not burdensome for potential customers. In attempting to be competitive by these standards, an OFC could choose to feature itself as a “name plate” OFC that provides a jurisdiction in which a financial institution or corporation may be established, but few if any other services. Such OFCs are called notional OFCs because they often allow for institutions that are little more than “brass plates” with little substantive value added by the OFC itself.

The OFCs that have been the most successful both in terms of the OFCs’ own growth and the OFC sector’s economic contribution to the rest of the economy have been those that have built a foundation of higher-level financial services. These functional OFCs provide a significant degree of economic functionality, or value-added, to the transactions undertaken in the jurisdiction. In reality, most OFCs lie on a spectrum between the extreme definitions of notional and functional.³ Moreover, many OFCs have chosen to target a market “niche” in terms of financial instrument (e.g., Bermuda and insurance) or region (e.g., Malaysia’s Labuan and Southeast Asia) or even currency (the Channel Islands and Eurodollars). In each case, however,

¹ There has been some skepticism that the negative effects of money laundering on economic development apply to OFCs because most of the funds being laundered are foreign in origin and are re-invested outside of the OFC (are "flow-through" funds) and thus provide the OFC with the benefit of its “cut” without otherwise damaging the economy surrounding the OFC. For example, see Gianluca Fiorentini and Sam Peltzman, The Economics of Organized Crime, Introduction, p. 23 (1995) asserts that most economists are skeptical about the efficacy of giving incentives to small developing economies to comply with anti-money-laundering initiatives because there are very few "short-run" negative externalities for the small economies.


³ Hampton uses the term “compound” to describe intermediate OFCs, but this paper will use only the 2 terms for clarity.
the OFC has made an explicit or implicit decision regarding the level of services the OFC will provide.

To examine the effect of money laundering on the economy in which an OFC is located, the most important phenomenon to recognize is that functional OFCs tend to contribute to economic growth whereas notional OFCs do not. Functional OFCs typically have "back offices" and larger "front offices" that undertake the functional financial activities, while providing direct employment (office workers) and indirect employment (goods and services to the OFC institutions).

As a study by Professor Mark Hampton demonstrated, functional OFCs have been far more effective at generating domestic economic growth and employment than have notional OFCs.1 “Notional” OFCs have a “nominal” contribution to employment (less than 3% of the workforce) and GDP (less than 10%),2 whereas "functional" OFCs often make contributions that are several multiples of these levels.

Case studies of specific OFC contributions to their host economies consistently cite the role that the provision of truly functional OFC services play in supporting economic development.3 (See text box on BVIs.). As another development economist reviewing the issue concluded:

... outside of centres such as the Channel Islands, the Isle of Man, and a few of the Caribbean havens, offshore services appear to make a relatively small contribution to both GDP and employment.4

Yet another study by the Organization of Eastern Caribbean States (OESC) concluded that while Caribbean OFCs had made significant contributions to their host economies in some circumstances, "it is premature for OESC policymakers to view the offshore sector as replacing the [traditionally important] agriculture sector at least in the short- and medium term."5 In sum, for a country or territory to use an OFC as a development strategy, it must make significant investments and have the patience to build a reputation, clientele, and linkages to the surrounding economy.

4 Id. p. 157-175.
The establishment and encouragement of an OFC by a country or territory seeking to obtain broader economic benefits from the OFC must recognize that such benefits will be extremely limited unless investments are made in building a "functional" OFC and the OFC's reputation is maintained. A strategy whereby the OFC is merely "notional", and therefore less expensive to maintain, will lead to few benefits to the broader economy and, perhaps, put at risk the country's political and economic integrity. This conclusion is supported by several significant episodes in which otherwise successful OFCs were dealt serious commercial blows as a result of scandals affecting their reputation among international investors.

For example, the Isle of Man, which is now considered a high-end functional OFC that contributes substantially to the island's economy, initially had somewhat lax supervision and suffered a major financial scandal beginning in the late 1970s. As a result, the OFC's reputation was damaged, investors pulled back, and the OFC's contribution to the island's economic development lagged behind. In response, government and industry worked together to bolster the monitoring of financial operations. A subsequent study confirmed that this stronger policy was key to the Isle of Man's recovery as an OFC: survey respondents from OFC institutions stated that

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the post-scandal “more rigorous” regime was “crucial” to reestablish positive investor relationships.

* A large number of respondents cited the creation of the [Manx] FSC in 1983 as the critical turning point for the island’s attractiveness to legitimate offshore investors."

* Findings suggest that the major reason for growth was the establishment of a proactive regulatory regime which enabled the island to develop a superior reputation in the world of offshore finance.1

Similarly, in the 1970s, the Bahamas was the third-largest offshore banking center. Largely as a result of widespread publicity concerning drug trafficking and corruption of its institutions, by the end of the 1980s it had fallen to 11th place.2 In an extreme case, Panama's growth as an OFC was reversed as the volume of money laundering expanded to such levels that the entire financial system was viewed as corrupt, and funds withdrew from the Panamanian financial system even before the U.S. government began applying sanctions against it. As one researcher noted, even narcotics traffickers came to see Panama as a disreputable and unreliable financial center.

By contrast, the government and OFC industry officials of the British Virgin Islands (BVI, see previous textbox) have sought to maintain a “clean” reputation with respect to financial crime by undertaking a series of regulatory and supervisory measures. These actions are aimed at sustaining the economic strength of the OFC sector in the BVI.3 Indeed, in the 1997 ECCB study of the BVI’s economic benefits from the islands’ OFC makes clear that the loss of the OFC’s reputation would have devastating effects on the BVI economy: “any significant shock to revenues, e.g. as a result of a scandal in the offshore financial sector ... will result in an economic contraction.”4 Further evidence of an OFC's motivation to maintain rules to prevent scandal can be seen in Switzerland's "Chiasso" affair in 1977, and the Swiss Banking Association's adoption of KYC rules, as discussed in Section II.C.

It is also important to note that the economic damage that an OFC scandal can do to its host country can extend beyond the direct withdrawal of OFC business. In particular, developing countries seeking to build truly functional OFCs capable of contributing to the underlying economy must make significant investments in telecommunications and travel infrastructure, as well as preparing the labor force to support the industry. A decline in OFC activity puts those investments at risk, leaving the government with the liabilities.

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1 Hampton (1996) p. xi. This is similar to the experience in Switzerland, where the failure of a Swiss bank in the 1970s led the Swiss Bankers Association to tighten its own rules, as discussed in Section II.C.
3 See, for example, Michael Riegels, "Financial Services in the British Virgin Islands," *Bulletin*, p. 143 (1992), in which an industry leader draws a sharp distinction between the BVI’s status as a “tax haven,” which BVI officials defend vigorously, and the BVI’s clean reputation regarding the OFC’s use for money laundering and its strong prudential regulations.
Moreover, many smaller island OFCs are heavily dependent on tourism, and a scandal arising from the financial sector could have spillover effects on the volume of tourism, either through a direct loss of financial clients or through the knock-on loss of a "safe" reputation.

VI. CONCLUSION

The negative economic effects of money laundering on economic development are difficult to quantify, just as the extent of money laundering itself is difficult to estimate. Nonetheless, it is clear from the evidence that allowing money laundering activity to proceed unchallenged is not an optimal economic-development policy because it damages the financial institutions that are critical to economic growth, reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption, and can distort the economy's international trade and capital flows to the detriment of long-term economic development. Developing countries' strategies to establish OFCs as vehicles for economic development are also impaired by significant money-laundering activity through OFC channels. Effective anti-money-laundering policies, on the other hand, reinforce a variety of other good-governance policies that help sustain economic development, particularly through the strengthening of the financial sector.
II. INTERNATIONAL CONVENTIONS AND STANDARDS

Introduction

This section contains the full original texts of some key international conventions and standards to combat money laundering and the financing of terrorism. The texts were taken from the organizations’ websites and are reproduced here with their consent.

The documents provide useful information on the international legal framework for attacking the problem of money laundering and the financing of terrorism, including both the legal obligations assumed by several countries, and the norms and principles which should influence national legal regimes in criminalizing and punishing these offences, establishing government agencies and implementing mutual legal assistance with other countries. The documents also include international standards, benchmarks, and recommendations for countries to adopt.

All these international conventions, standards, and recommendations recognize that each country would need to take account of local factors in designing their laws and strategies to combat money laundering.
The Parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

Deeply concerned also by the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity,

Recognizing the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,

Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,

Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic,

Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances,

Determined to improve international co-operation in the suppression of illicit traffic by sea,
Recognizing that eradication of illicit traffic is a collective responsibility of all States and that, to that end, coordinated action within the framework of international co-operation is necessary,

Acknowledging the competence of the United Nations in the field of control of narcotic drugs and psychotropic substances and desirous that the international organs concerned with such control should be within the framework of that Organization,

Reaffirming the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody,

Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences,

Recognizing also the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic,

Desiring to conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problem as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances,

Hereby agree as follows:

**Article 1**

**DEFINITIONS**

Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout this Convention:

(a) "Board" means the International Narcotics Control Board established by the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(b) "Cannabis plant" means any plant of the genus Cannabis;

(c) "Coca bush" means the plant of any species of the genus Erythroxylon;

(d) "Commercial carrier" means any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;

(e) "Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United nations;
(f) "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;

(g) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1 of the Convention;

(h) "1961 Convention" means the Single Convention on Narcotic Drugs, 1961;


(j) "1971 Convention" means the Convention on Psychotropic Substances, 1971;

(k) "Council" means the Economic and Social Council of the United Nations;

(l) "Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;

(m) "Illicit traffic" means the offences set forth in article 3, paragraphs 1 and 2, of this Convention;

(n) "Narcotic drug" means any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(o) "Opium poppy" means the plant of the species Papaver somniferum L;

(p) "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 3, paragraph 1;

(q) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(r) "Psychotropic substance" means any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971;
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Article 2

SCOPE OF THE CONVENTION

1. The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

Article 3

OFFENCES AND SANCTIONS

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

   (a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

      (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the
provisions of the 1961 Convention and the 1961 Convention as amended;

(iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

(iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;

(b) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;

(c) Subject to its constitutional principles and the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;

(ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;
(iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

4. (a) Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.

(b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

(c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

(d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

5. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious, such as:

(a) The involvement in the offence of an organized criminal group to which the offender belongs;

(b) The involvement of the offender in other international organized criminal activities;

(c) The involvement of the offender in other illegal activities facilitated by commission of the offence;

(d) The use of violence or arms by the offender;
(e) The fact that the offender holds a public office and that the offence is connected with the office in question;

(f) The victimization or use of minors;

(g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;

(h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

6. The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

7. The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph 1 of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

8. Each Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph 1 of this article, and a longer period where the alleged offender has evaded the administration of justice.

9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings.

10. For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.

11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

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**Article 4**

**JURISDICTION**

1. Each Party:
(a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

(i) The offence is committed in its territory;

(ii) The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed;

(b) May take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

(i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;

(ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;

(iii) The offence is one of those established in accordance with article 3, paragraph 1, subparagraph (c)(iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1.

2. Each Party:

(a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

(i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed; or

(ii) That the offence has been committed by one of its nationals;

(b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.
Article 5

CONFISCATION

1. Each Party shall adopt such measures as may be necessary to enable confiscation of:
   (a) Proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;
   (b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences established in accordance with article 3, paragraph 1.

2. Each Party shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article, for the purpose of eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:
   (i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or
   (ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

(b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the requested Party shall take measures to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party.

(c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or
multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.

(d) The provisions of article 7, paragraphs 6 to 19 are applicable *mutatis mutandis*. In addition to the information specified in article 7, paragraph 10, requests made pursuant to this article shall contain the following:

(i) In the case of a request pertaining to subparagraph (a)(i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

(ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.

(e) Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.

(f) If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.

(g) The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article.

5. (a) Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures.

(b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:

(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;
(ii) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(b) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

(c) Income or other benefits derived from:

(i) Proceeds;

(ii) Property into which proceeds have been transformed or converted; or

(iii) Property with which proceeds have been intermingled

shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

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**Article 6**

**EXTRADITION**

1. This article shall apply to the offences established by the Parties in accordance with article 3, paragraph 1.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. The Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. The Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall:

   (a) If it does not extradite him in respect of an offence established in accordance with article 3, paragraph 1, on the grounds set forth in article 4, paragraph 2, subparagraph (a), submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party;

   (b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 4, paragraph 2, subparagraph (b), submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.
11. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

12. The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

Article 7

MUTUAL LEGAL ASSISTANCE

1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1.

2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
   (a) Taking evidence or statements from persons;
   (b) Effecting service of judicial documents;
   (c) Executing searches and seizures;
   (d) Examining objects and sites;
   (e) Providing information and evidentiary items;
   (f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
   (g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

3. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

4. Upon request, the Parties shall facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.

5. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.
7. Paragraphs 8 to 19 of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 8 to 19 of this article in lieu thereof.

8. Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.

9. Requests shall be made in writing in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be notified to the Secretary-General. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

   (a) The identity of the authority making the request;
   (b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;
   (c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
   (d) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;
   (e) Where possible, the identity, location and nationality of any person concerned;
   (f) The purpose for which the evidence, information or action is sought.

11. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.
13. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

14. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

15. Mutual legal assistance may be refused:
   (a) If the request is not made in conformity with the provisions of this article;
   (b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordure public or other essential interests;
   (c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;
   (d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

16. Reasons shall be given for any refusal of mutual legal assistance.

17. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

18. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

19. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.
20. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

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**Article 8**

**TRANSFER OF PROCEEDINGS**

The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice.

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**Article 9**

**OTHER FORMS OF CO-OPERATION AND TRAINING**

1. The Parties shall co-operate closely with one another, consistent with their respective domestic legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established in accordance with article 3, paragraph 1. They shall, in particular, on the basis of bilateral or multilateral agreements or arrangements:

   (a) Establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 3, paragraph 1, including, if the Parties concerned deem it appropriate, links with other criminal activities;

   (b) Co-operate with one another in conducting enquiries, with respect to offences established in accordance with article 3, paragraph 1, having an international character, concerning:

      (i) The identity, whereabouts and activities of persons suspected of being involved in offences established in accordance with article 3, paragraph 1;

      (ii) The movement of proceeds or property derived from the commission of such offences;

      (iii) The movement of narcotic drugs, psychotropic substances, substances in Table I and Table II of this Convention and instrumentalities used or intended for use in the commission of such offences;

   (c) In appropriate cases and if not contrary to domestic law, establish joint teams, taking into account the need to protect the security of persons and of
operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected;

(d) Provide, when appropriate, necessary quantities of substances for analytical or investigative purposes;

(e) Facilitate effective co-ordination between their competent agencies and services and promote the exchange of personnel and other experts, including the posting of liaison officers.

2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement and other personnel, including customs, charged with the suppression of offences established in accordance with article 3, paragraph 1. Such programmes shall deal, in particular, with the following:

(a) Methods used in the detection and suppression of offences established in accordance with article 3, paragraph 1;

(b) Routes and techniques used by persons suspected of being involved in offences established in accordance with article 3, paragraph 1, particularly in transit States, and appropriate countermeasures;

(c) Monitoring of the import and export of narcotic drugs, psychotropic substances and substances in Table I and Table II;

(d) Detection and monitoring of the movement of proceeds and property derived from, and narcotic drugs, psychotropic substances and substances in Table I and Table II, and instrumentalities used or intended for use in, the commission of offences established in accordance with article 3, paragraph 1;

(e) Methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;

(f) Collection of evidence;

(g) Control techniques in free trade zones and free ports;

(h) Modern law enforcement techniques.

3. The Parties shall assist one another to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 2 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote co-operation and stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.
Article 10

INTERNATIONAL CO-OPERATION AND ASSISTANCE FOR TRANSIT STATES

1. The Parties shall co-operate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programmes of technical co-operation on interdiction and other related activities.

2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

3. The Parties may conclude bilateral or multilateral agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article and may take into consideration financial arrangements in this regard.

Article 11

CONTROLLED DELIVERY

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.

Article 12

SUBSTANCES FREQUENTLY USED IN THE ILLICIT MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. The Parties shall take the measures they deem appropriate to prevent diversion of substances in Table I and Table II used for the purpose of illicit manufacture of narcotic drugs or psychotropic substances, and shall co-operate with one another to this end.
2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, together with all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:
   (a) That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;
   (b) That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action, it shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by the Parties and the comments and recommendations of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a two-thirds majority of its members to place a substance in Table I or Table II.

6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States and other entities which are, or which are entitled to become, Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party one hundred and eighty days after the date of such communication.

7. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within one hundred and eighty days after the date of notification of the decision. The request for review shall be sent to the Secretary-General, together with all relevant information upon which the request for review is based.
   (b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit their comments within ninety days. All comments received shall be submitted to the Council for consideration.
(c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States and other entities which are, or which are entitled to become, Parties to this Convention, to the Commission and to the Board.

8. (a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Table I and Table II which are carried out within their territory.

(b) To this end, the Parties may:

   (i) Control all persons and enterprises engaged in the manufacture and distribution of such substances;

   (ii) Control under license the establishment and premises in which such manufacture or distribution may take place;

   (iii) Require that licensees obtain a permit for conducting the aforesaid operations

   (iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.

9. Each Party shall, with respect to substances in Table I and Table II, take the following measures:

   (a) Establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close cooperation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions.

   (b) Provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance.

   (c) Notify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances, including in particular information about the means of payment and any other essential elements which led to that belief.

   (d) Require that imports and exports be properly labeled and documented. Commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names, as stated in Table I or Table II, of the substances being imported or exported, the quantity being imported or
exported, and the name and address of the exporter, the importer and, when available, the consignee.

(e) Ensure that documents referred to in subparagraph (d) of this paragraph are maintained for a period of not less than two years and may be made available for inspection by the competent authorities.

10. (a) In addition to the provisions of paragraph 9, and upon request to the Secretary-General by the interested Party, each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities of the importing country:

(i) Name and address of the exporter and importer and, when available, the consignee;

(ii) Name of the substance in Table I;

(iii) Quantity of the substance to be exported;

(iv) Expected point of entry and expected date of dispatch;

(v) Any other information which is mutually agreed upon by the Parties.

(b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

11. Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10 of this article, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process.

12. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

(a) The amounts seized of substances in Table I and Table II and, when known, their origin;

(b) Any substance not included in Table I or Table II which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

(c) Methods of diversion and illicit manufacture.

13. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Table I and Table II.

14. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in Table I or Table II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.
Article 13

MATERIALS AND EQUIPMENT

The Parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.

Article 14

MEASURES TO ERADICATE ILLICIT CULTIVATION OF NARCOTIC PLANTS AND TO ELIMINATE ILLICIT DEMAND FOR NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

2. Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

3. (a) The Parties may co-operate to increase the effectiveness of eradication efforts. Such co-operation may, inter alia, include support, when appropriate, for integrated rural development leading to economically viable alternatives to illicit cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. The Parties may agree on any other appropriate measures of co-operation.

(b) The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.

(c) Whenever they have common frontiers, the Parties shall seek to co-operate in eradication programmes in their respective areas along those frontiers.

4. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based, inter alia, on the recommendations of the United Nations, specialized agencies of the United Nations such as the World Health Organization, and other competent international organizations, and on the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking, held in 1987, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation. The Parties
may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

5. The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Table I and Table II which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances.

Article 15

COMMERCIAL CARRIERS

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established in accordance with article 3, paragraph 1; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for the commission of offences established in accordance with article 3, paragraph 1. Such precautions may include:

   (a) If the principal place of business of a commercial carrier is within the territory of the Party:

      (i) Training of personnel to identify suspicious consignments or persons;

      (ii) Promotion of integrity of personnel;

   (b) If a commercial carrier is operating within the territory of the Party:

      (i) Submission of cargo manifests in advance, whenever possible;

      (ii) Use of tamper-resistant, individually verifiable seals on containers;

      (iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious circumstances that may be related to the commission of offences established in accordance with article 3, paragraph 1.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas co-operate, with a view to preventing unauthorized access to means of transport and cargo and to implementing appropriate security measures.
Article 16

COMMERCIAL DOCUMENTS AND LABELLING OF EXPORTS

1. Each Party shall require that lawful exports of narcotic drugs and psychotropic substances be properly documented. In addition to the requirements for documentation under article 31 of the 1961 Convention, article 31 of the 1961 Convention as amended and article 12 of the 1971 Convention, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as set out in the respective Schedules of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the quantity being exported, and the name and address of the exporter, the importer and, when available, the consignee.

2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported be not mislabeled.

Article 17

ILLICIT TRAFFIC BY SEA

1. The Parties shall co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.

2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, inter alia:
   
   (a) Board the vessel;
   (b) Search the vessel;
   (c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.
6. The flag State may, consistent with its obligations in paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.

7. For the purposes of paragraphs 3 and 4 of this article, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to do so, and to requests for authorization made pursuant to paragraph 3. At the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.

8. A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.

9. The Parties shall consider entering into bilateral or regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

10. Action pursuant to paragraph 4 of this article shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

11. Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.

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**Article 18**

**FREE TRADE ZONES AND FREE PORTS**

1. The Parties shall apply measures to suppress illicit traffic in narcotic drugs, psychotropic substances and substances in Table I and Table II in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

   (a) To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower the competent authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to search crew members, passengers and their baggage;

   (b) To establish and maintain a system to detect consignments suspected of containing narcotic drugs, psychotropic substances and substances in Table I and Table II passing into or out of free trade zones and free ports;
(c) To establish and maintain surveillance systems in harbour and dock areas and at airports and border control points in free trade zones and free ports.

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**Article 19**

**THE USE OF THE MAILS**

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles of their domestic legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall co-operate with one another to that end.

2. The measures referred to in paragraph 1 of this article shall include, in particular:
   (a) Coordinated action for the prevention and repression of the use of the mails for illicit traffic;
   (b) Introduction and maintenance by authorized law enforcement personnel of investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Table I and Table II in the mails;
   (c) Legislative measures to enable the use of appropriate means to secure evidence required for judicial proceedings.

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**Article 20**

**INFORMATION TO BE FURNISHED BY THE PARTIES**

1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of this Convention in their territories and, in particular:
   (a) The text of laws and regulations promulgated in order to give effect to the Convention;
   (b) Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by persons so engaged.

2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.
**Article 21**

**FUNCTIONS OF THE COMMISSION**

The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular:

(a) The Commission shall, on the basis of the information submitted by the Parties in accordance with article 20, review the operation of this Convention;

(b) The Commission may make suggestions and general recommendations based on the examination of the information received from the Parties;

(c) The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board;

(d) The Commission shall, on any matter referred to it by the Board under article 22, paragraph 1(b), take such action as it deems appropriate;

(e) The Commission may, in conformity with the procedures laid down in article 12, amend Table I and Table II;

(f) The Commission may draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

**Article 22**

**FUNCTIONS OF THE BOARD**

1. Without prejudice to the functions of the Commission under article 21, and without prejudice to the functions of the Board and the Commission under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention:

(a) If, on the basis of its examination of information available to it, to the Secretary-General or to the Commission, or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to furnish any relevant information;

(b) With respect to articles 12, 13 and 16:

(i) After taking action under subparagraph (a) of this article, the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 12, 13 and 16;
(ii) Prior to taking action under (iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;

(iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

2. Any Party shall be invited to be represented at a meeting of the Board at which a question of direct interest to it is to be considered under this article.

3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

5. In carrying out its functions pursuant to subparagraph 1(a) of this article, the Board shall ensure the confidentiality of all information which may come into its possession.

6. The Board's responsibility under this article shall not apply to the implementation of treaties or agreements entered into between Parties in accordance with the provisions of this Convention.

7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 32.

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**Article 23**

**REPORTS OF THE BOARD**

1. The Board shall prepare an annual report on its work containing an analysis of the information at its disposal and, in appropriate cases, an account of the explanations, if any, given by or required of Parties, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.
**Article 24**

APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic.

**Article 25**

NON-DEROGATION FROM EARLIER TREATY RIGHTS AND OBLIGATIONS

The provisions of this Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

**Article 26**

SIGNATURE

This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

(a) All States;

(b) Namibia, represented by the United Nations Council for Namibia;

(c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence.

**Article 27**

RATIFICATION, ACCEPTANCE, APPROVAL OR ACT OF FORMAL CONFIRMATION

1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 26, subparagraph (c). The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the Secretary-General.
2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

Article 28

ACCESSION

1. This Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional economic integration organizations referred to in article 26, subparagraph (c). Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

Article 29

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.

2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to this Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. For each regional economic integration organization referred to in article 26, subparagraph (c) depositing an instrument relating to an act of formal confirmation or an instrument of accession, this Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1 of this article, whichever is later.
**Article 30**

DENUNCIATION

1. A Party may denounce this Convention at any time by a written notification addressed to the Secretary-General.

2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

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**Article 31**

AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to the Secretary-General, who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed to have been accepted and shall enter into force in respect of a Party ninety days after that Party has deposited with the Secretary-General an instrument expressing its consent to be bound by that amendment.

2. If a proposed amendment has been rejected by any Party, the Secretary-General shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with Article 62, paragraph 4, of the Charter of the United Nations. Any amendment resulting from such a conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretary-General.

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**Article 32**

SETTLEMENT OF DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

3. If a regional economic integration organization referred to in article 26, subparagraph (c) is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to request an
advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any Party having made such a declaration.

5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

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**Article 33**

**AUTHENTIC TEXTS**

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

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**Article 34**

**DEPOSITARY**

The Secretary-General shall be the depositary of this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE AT VIENNA, in one original, this twentieth day of December one thousand nine hundred and eighty-eight.
United Nations Political Declaration and Action Plan against Money Laundering

Political Declaration and Action Plan against Money Laundering
adopted at the Twentieth Special Session of the United Nations General Assembly
devoted to "countering the world drug problem together"
New York, 10 June 1998

POLITICAL DECLARATION

Drugs destroy lives and communities, undermine sustainable human development and generate crime. Drugs affect all sectors of society in all countries; in particular, drug abuse affects the freedom and development of young people, the world's most valuable asset. Drugs are a grave threat to the health and well-being of all mankind, the independence of States, democracy, the stability of nations, the structure of all societies, and the dignity and hope of millions of people and their families; therefore:

We, the States Members of the United Nations,

Concerned about the serious world drug problem, having assembled at the twentieth special session of the General Assembly to consider enhanced action to tackle it in a spirit of trust and cooperation,

1. Reaffirm our unwavering determination and commitment to overcoming the world drug problem through domestic and international strategies to reduce both the illicit supply of and demand for drugs;

2. Recognize that action against the world drug problem is a common and shared responsibility requiring an integrated and balanced approach in full conformity with the purposes and principles of the Charter of the United Nations and international law, and particularly with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in internal affairs of States, and all human rights and fundamental freedoms. Convinced that the world drug problem must be addressed in a multilateral setting, we call upon States which have not already done so to become a party to and fully implement the three international drug control conventions. Also, we renew our commitment to adopting and reinforcing comprehensive national legislation and strategies to give effect to the provisions of those conventions, ensuring through periodic reviews that the strategies are effective;

3. Reaffirm our support for the United Nations and its drug-control organs, especially the Commission on Narcotic Drugs, as the global forum for international cooperation against the world drug problem and resolve to strengthen the functioning and governance of these organs;
4. Undertake to ensure that women and men benefit equally, and without any discrimination, from strategies directed against the world drug problem, through their involvement in all stages of programmes and policy-making;

5. Recognize with satisfaction the progress achieved by States, both individually and working in concert, and express deep concern about the new social contexts in which the consumption of illicit drugs, particularly of amphetamine-type stimulants, is taking place;

6. Welcome the efforts of the wide range of people working in various fields against drug abuse and are encouraged by the behaviour of the vast majority of youth who do not consume illegal drugs, and decide to give particular attention to demand reduction, notably by investing in and working with youth through formal and informal education, information activities and other preventive measures;

7. Affirm our determination to provide the necessary resources for treatment and rehabilitation and to enable social reintegration to restore dignity and hope to children, youth, women and men who have become drug abusers, and to fight against all aspects of the world drug problem;

8. Call upon the United Nations system and invite the international financial institutions, such as the World Bank and the regional development banks, to include action against the world drug problem in their programmes, taking into account the priorities of States;

9. Call for the establishment or strengthening of regional or subregional mechanisms, when needed, with the assistance of the United Nations International Drug Control Programme and the International Narcotics Control Board, and invite those mechanisms to share experiences and conclusions resulting from the implementation of national strategies and to report on their activities to the Commission on Narcotic Drugs;

10. Express deep concern about links between illicit drug production, trafficking and involvement of terrorist groups, criminals and transnational organized crime, and are resolved to strengthen our cooperation in response to those threats;

11. Are alarmed by the growing violence resulting from links between illicit production of and illicit trafficking in arms and drugs, and resolve to increase our cooperation in stemming illegal arms trafficking and to achieve concrete results in this field through appropriate measures;

12. Call upon our communities, especially families, and their political, religious, educational, cultural, sports, business and union leadership, non-governmental organizations and the media worldwide to actively promote a society free of drug abuse, especially by emphasizing and facilitating healthy, productive and fulfilling alternatives to the consumption of illicit drugs, which must not become accepted as a way of life;

13. Decide to devote particular attention to the emerging trends in the illicit manufacture, trafficking and consumption of synthetic drugs, and call for the establishment or strengthening by the year 2003 of national legislation and programmes giving effect to the Action Plan against
Illicit Manufacture, Trafficking and Abuse of Amphetamine-type Stimulants and their Precursors, adopted at the present session;

14. Decide to devote particular attention to the measures for the control of precursors, adopted at the present session, and further decide to establish the year 2008 as a target date for States, with a view to eliminating or significantly reducing the illicit manufacture, marketing and trafficking of psychotropic substances, including synthetic drugs, and the diversion of precursors;

15. Undertake to make special efforts against the laundering of money linked to drug trafficking and, in that context, emphasize the importance of strengthening international, regional and subregional cooperation, and recommend that States that have not yet done so adopt by the year 2003 national money-laundering legislation and programmes in accordance with relevant provisions of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, as well as the measures for countering money-laundering, adopted at the present session;

16. Undertake to promote multilateral, regional, subregional and bilateral cooperation among judicial and law enforcement authorities to deal with criminal organizations involved in drug offences and related criminal activities, in accordance with the measures to promote judicial cooperation, adopted at the present session, and encourage States to review and, where appropriate, to strengthen by the year 2003 the implementation of those measures;

17. Recognize that demand reduction is an indispensable pillar in the global approach to countering the world drug problem, commit ourselves to introducing into our national programmes and strategies the provisions set out in the Declaration on the Guiding Principles of Drug Demand Reduction, 8 to working closely with the United Nations International Drug Control Programme to develop action-oriented strategies to assist in the implementation of the Declaration, and to establishing the year 2003 as a target date for new or enhanced drug demand reduction strategies and programmes set up in close collaboration with public health, social welfare and law enforcement authorities, and also commit ourselves to achieving significant and measurable results in the field of demand reduction by the year 2008;

18. Reaffirm the need for a comprehensive approach towards the elimination of illicit narcotic crops in line with the Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and Alternative Development adopted at the present session; 9stress the special importance of cooperation in alternative development, including the better integration of the most vulnerable sectors involved in the illicit drug market into legal and viable economic activities; emphasize the need for eradication programmes and law enforcement measures to counter illicit cultivation, production, manufacture and trafficking, paying special attention to the protection of the environment; and, in this regard, strongly support the work of the United Nations International Drug Control Programme in the field of alternative development;

19. Welcome the United Nations International Drug Control Programme's global approach to the elimination of illicit crops and commit ourselves to working closely with the United Nations International Drug Control Programme to develop strategies with a view to eliminating or significantly reducing the illicit cultivation of the coca bush, the cannabis plant and the opium
poppy by the year 2008. We affirm our determination to mobilize international support for our efforts to achieve these goals;

20. Call upon all States to take into account the outcome of the present session when formulating national strategies and programmes and to report biennially to the Commission on Narcotic Drugs on their efforts to meet the above-mentioned goals and targets for the years 2003 and 2008, and request the Commission to analyse these reports in order to enhance the cooperative effort to combat the world drug problem.

These are new and serious promises which will be difficult to achieve, but we are resolved that such commitments will be met by practical action and the resources needed to ensure real and measurable results; Together we can meet this challenge.

Resolution S-20/4 D
Countering Money-Laundering

The General Assembly,

Recognizing that the problem of laundering of money derived from illicit trafficking in narcotic drugs and psychotropic substances, as well as from other serious crimes, has expanded internationally to become such a global threat to the integrity, reliability and stability of financial and trade systems and even government structures as to require countermeasures by the international community as a whole in order to deny safe havens to criminals and their illicit proceeds,

Recalling the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, according to which all parties to the Convention are required to establish money-laundering as a punishable offence and to adopt the measures necessary to enable the authorities to identify, trace and freeze or seize the proceeds of illicit drug trafficking,

Recalling Commission on Narcotic Drugs resolution 5 (XXXIX) of 24 April 1996,(21) in which the Commission noted that the forty recommendations of the Financial Action Task Force established by the heads of State or Government of the seven major industrialized countries and the President of the European Commission remained the standard by which the measures against money-laundering adopted by concerned States should be judged, as well as Economic and Social Council resolution 1997/40 of 21 July 1997, in which the Council took note with satisfaction of the document entitled "Anti-drug strategy in the hemisphere", approved by the Inter-American Drug Abuse Control Commission of the Organization of American States at its twentieth regular session, held at Buenos Aires in October 1996 and signed at Montevideo in December 1996, and urged the international community to take due account of the anti-drug strategy in the hemisphere as a significant contribution to the strengthening of the Global Programme of Action adopted by the General Assembly at its seventeenth special session,(22)
Recognizing the political will expressed by the international community, especially as reflected in such initiatives as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, adopted in 1990 by the Committee of Ministers of the Council of Europe, the Ministerial Communiqué of the Summit of the Americas Conference Concerning the Laundering of Proceeds and Instrumentalities of Crime, held at Buenos Aires in December 1995, and by such bodies as the Inter-American Drug Abuse Control Commission of the Organization of American States, the Asia/Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Offshore Group of Banking Supervisors and the Commonwealth, all of which are well-recognized multilateral initiatives aimed at combating money-laundering and constitute legal or policy frameworks within which concerned States are defining and adopting measures against money-laundering,

Aware that the proceeds of illicit drug-trafficking and other illicit activities, which are laundered through banks and other financial institutions, constitute an obstacle to the implementation of policies designed to liberalize financial markets in order to attract legitimate investment, in that they distort those markets,

Emphasizing that there is a need to harmonize national legislation with a view to ensuring appropriate coordination of policies for combating money-laundering, without prejudice to the action each State is undertaking within its own jurisdiction to combat this form of criminality,

Recognizing the need to promote and develop effective mechanisms for the pursuit, freezing, seizure and confiscation of property obtained through or derived from illicit activities, so as to avoid its use by criminals,

Recognizing that only through international cooperation and the establishment of bilateral and multilateral information networks such as the Egmont Group, which will enable States to exchange information between competent authorities, will it be possible to combat effectively the problem of money-laundering,

Emphasizing the enormous efforts of a number of States to draw up and apply domestic legislation that identifies the activity of money-laundering as a criminal offence,

Realizing the importance of progress being made by all States in conforming to the relevant recommendations and the need for States to participate actively in international and regional initiatives designed to promote and strengthen the implementation of effective measures against money-laundering,

1. Strongly condemns the laundering of money derived from illicit drug traffickling and other serious crimes, as well as the use of the financial systems of States for that purpose;

2. Urges all States to implement the provisions against money-laundering that are contained in the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of 1988 and the other relevant international instruments on money-laundering, in accordance with fundamental constitutional principles, by applying the following principles:
(a) Establishment of a legislative framework to criminalize the laundering of money derived from serious crimes in order to provide for the prevention, detection, investigation and prosecution of the crime of money-laundering through, inter alia:

(i) Identification, freezing, seizure and confiscation of the proceeds of crime;
(ii) International cooperation; and mutual legal assistance in cases involving money-laundering;
(iii) Inclusion of the crime of money-laundering in mutual legal assistance agreements for the purpose of ensuring judicial assistance in investigations, court cases or judicial proceedings relating to that crime;

(b) Establishment of an effective financial and regulatory regime to deny criminals and their illicit funds access to national and international financial systems, thus preserving the integrity of financial systems worldwide and ensuring compliance with laws and other regulations against money-laundering through:

(i) Customer identification and verification requirements applying the principle of "know your customer", in order to have available for competent authorities the necessary information on the identity of clients and the financial movements that they carry out;
(ii) Financial record-keeping;
(iii) Mandatory reporting of suspicious activity;
(iv) Removal of bank secrecy impediments to efforts directed at preventing, investigating and punishing money-laundering;
(v) Other relevant measures;

(c) Implementation of law enforcement measures to provide tools for, inter alia:

(i) Effective detection, investigation, prosecution and conviction of criminals engaging in money-laundering activity;
(ii) Extradition procedures;
(iii) Information-sharing mechanisms;

3. Calls upon the United Nations Office for Drug Control and Crime Prevention to continue to work, within the framework of its global programme against money-laundering, with relevant multilateral and regional institutions, organizations or bodies engaged in activities against money-laundering and drug trafficking and with international financial institutions to give effect to the above principles by providing training, advice and technical assistance to States upon request and where appropriate.
UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Article 1

Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2

Use of terms

For the purposes of this Convention:

(a) “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

(b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(c) “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;
“Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

“Regional economic integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence.

Article 3
Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and

(b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

(a) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State.

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5

**Criminalization of participation in an organized criminal group**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

   (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

      (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

      (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

          a. Criminal activities of the organized criminal group;
          b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

   (b) Organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.
Article 6

Criminalization of the 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 counseling 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 all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

   (c) For the purposes of subparagraph (b), 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;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7

Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions 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 identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 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. 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.
4. 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 8

Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

   (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

   (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9

Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.
Article 10

**Liability of legal persons**

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11

**Prosecution, adjudication and sanctions**

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.
6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12
**Confiscation and seizure**

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

   - (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;
   - (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.
8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 13
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;
(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

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

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

   (a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account
designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

   (a) The offence is committed in the territory of that State Party; or

   (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

   (a) The offence is committed against a national of that State Party;

   (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

   (c) The offence is:

       (i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

       (ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.
4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16

Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.
13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person’s position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

   (a) Taking evidence or statements from persons;
   (b) Effecting service of judicial documents;
   (c) Executing searches and seizures, and freezing;
   (d) Examining objects and sites;
   (e) Providing information, evidentiary items and expert evaluations;
   (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
   (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
   (h) Facilitating the voluntary appearance of persons in the requesting State Party;
   (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless
the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are
strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on
the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on
the ground of absence of dual criminality. However, the requested State Party may, when it deems
appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether
the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party
whose presence in another State Party is requested for purposes of identification, testimony or
otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial
proceedings in relation to offences covered by this Convention may be transferred if the
following conditions are met:

   (a) The person freely gives his or her informed consent;

   (b) The competent authorities of both States Parties agree, subject to such conditions
       as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

   (a) The State Party to which the person is transferred shall have the authority and
       obligation to keep the person transferred in custody, unless otherwise requested or
       authorized by the State Party from which the person was transferred;

   (b) The State Party to which the person is transferred shall without delay implement
       its obligation to return the person to the custody of the State Party from which the
       person was transferred as agreed beforehand, or as otherwise agreed, by the
       competent authorities of both States Parties;

   (c) The State Party to which the person is transferred shall not require the State Party
       from which the person was transferred to initiate extradition proceedings for the
       return of the person;

   (d) The person transferred shall receive credit for service of the sentence being served
       in the State from which he or she was transferred for time spent in the custody of
       the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with
paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall
not be prosecuted, detained, punished or subjected to any other restriction of his or her personal
liberty in the territory of the State to which that person is transferred in respect of acts, omissions
or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.
16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

   (a) If the request is not made in conformity with the provisions of this article;

   (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

   (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

   (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.
22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20

Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.
Article 21

*Transfer of criminal proceedings*

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22

*Establishment of criminal record*

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23

*Criminalization of obstruction of justice*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24

*Protection of witnesses*

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate,
non-disclosure or limitations on the disclosure of information concerning the
identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner
that ensures the safety of the witness, such as permitting testimony to be given
through the use of communications technology such as video links or other
adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States
for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25
Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance
and protection to victims of offences covered by this Convention, in particular in cases of threat
of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation
and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims
to be presented and considered at appropriate stages of criminal proceedings against offenders in
a manner not prejudicial to the rights of the defence.

Article 26
Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or
who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and
evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of
organized criminal groups;
(ii) Links, including international links, with other organized criminal groups;
(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to
depriving organized criminal groups of their resources or of the proceeds of crime.
2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27

Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
(ii) The movement of proceeds of crime or property derived from the commission of such offences;
(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigatory purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts,
including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(c) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

Article 28
Collection, exchange and analysis of information on the nature of organized crime

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include
secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.
Article 30

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

   (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

   (b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

   (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

   (d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.
Article 31

Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

   (a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

   (b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

   (c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

   (d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

      (i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

      (ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

      (iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

      (iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.
5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32

Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

   (a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

   (b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

   (c) Cooperating with relevant international and regional organizations and non-governmental organizations;

   (d) Reviewing periodically the implementation of this Convention;

   (e) Making recommendations to improve this Convention and its implementation.
4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33

Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

   (a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

   (b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and

   (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34

Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.
Article 35
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence.
with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37

Relation with protocols

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39

Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40

**Denunciation**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41

**Depositary and languages**

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.
Financial Action Task Force: Forty Recommendations

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING
THE FORTY RECOMMENDATIONS

Introduction

The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering -- the processing of criminal proceeds in order to disguise their illegal origin. These policies aim to prevent such proceeds from being utilised in future criminal activities and from affecting legitimate economic activities.

The FATF currently consists of 29 countries and two international organisations. Its membership includes the major financial centre countries of Europe, North and South America, and Asia. It is a multi-disciplinary body - as is essential in dealing with money laundering - bringing together the policy-making power of legal, financial and law enforcement experts.

This need to cover all relevant aspects of the fight against money laundering is reflected in the scope of the forty FATF Recommendations -- the measures which the Task Force have agreed to implement and which all countries are encouraged to adopt. The Recommendations were originally drawn up in 1990. In 1996 the Forty Recommendations were revised to take into account the experience gained over the last six years and to reflect the changes which have occurred in the money laundering problem.

These Forty Recommendations set out the basic framework for anti-money laundering efforts and they are designed to be of universal application. They cover the criminal justice system and law enforcement; the financial system and its regulation, and international cooperation.

It was recognised from the outset of the FATF that countries have diverse legal and financial systems and so all cannot take identical measures. The Recommendations are therefore the principles for action in this field, for countries to implement according to their particular circumstances and constitutional frameworks allowing countries a measure of flexibility rather than prescribing every detail. The measures are not particularly complex or difficult, provided there is the political will to act. Nor do they compromise the freedom to engage in legitimate transactions or threaten economic development.

1 Reference in this document to "countries" should be taken to apply equally to "territories" or "jurisdictions". The twenty-nine FATF member countries and governments are: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; Turkey; the United Kingdom; and the United States.

2 The two international organisations are: the European Commission and the Gulf Co-operation Council.

3 During the period 1990 to 1995, the FATF also elaborated various Interpretative Notes which are designed to clarify the application of specific Recommendations. Some of these Interpretative Notes have been updated in the Stocktaking Review to reflect changes in the Recommendations. The FATF adopted a new Interpretative Note to Recommendation 15 on 2 July 1999.
FATF countries are clearly committed to accept the discipline of being subjected to multilateral surveillance and peer review. All member countries have their implementation of the Forty Recommendations monitored through a two-pronged approach: an annual self-assessment exercise and the more detailed mutual evaluation process under which each member country is subject to an on-site examination. In addition, the FATF carries out cross-country reviews of measures taken to implement particular Recommendations.

These measures are essential for the creation of an effective anti-money laundering framework.

A. GENERAL FRAMEWORK OF THE RECOMMENDATIONS

Recommendation 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)

Recommendation 2

Financial institution secrecy laws should be conceived so as not to inhibit implementation of these recommendations.

Recommendation 3

An effective money laundering enforcement program should include increased multilateral cooperation 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

Recommendation 4

Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalise 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.
Recommendation 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.

Recommendation 6

Where possible, corporations themselves - not only their employees - should be subject to criminal liability.

Provisional Measures and Confiscation

Recommendation 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

Recommendation 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.

Recommendation 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**

**Recommendation 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.

ii. to verify that any person purporting to act on behalf of the customer is so authorised and identify that person.

**Recommendation 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).

**Recommendation 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 behaviour.
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.

**Recommendation 13**

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

**Increased Diligence of Financial Institutions**

**Recommendation 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.

**Recommendation 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.

**Recommendation 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.

**Recommendation 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.

**Recommendation 18**

Financial institutions reporting their suspicions should comply with instructions from the competent authorities.
Recommendation 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 programme;

iii. an audit function to test the system.

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

Recommendation 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.

Recommendation 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

Recommendation 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.

Recommendation 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 computerised data base, available to
competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.

Recommendation 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.

Recommendation 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

Recommendation 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.

Recommendation 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.

Recommendation 28

The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour 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.

Recommendation 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

Recommendation 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.

Recommendation 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

Recommendation 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

Recommendation 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.
Recommendation 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.

Recommendation 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

Recommendation 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.

Recommendation 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.

Recommendation 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.

Recommendation 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.
Recommendation 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 recognise 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 judgements, 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.\(^1\)
3. Financial leasing.
4. Money transmission services.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller'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.
10. Safekeeping and administration of cash or liquid securities on behalf of clients.
11. Life insurance and other investment related insurance.

\(^1\) Including inter alia
- consumer credit
- mortgage credit
- factoring, with or without recourse
- finance of commercial transactions (including forfaiting)
Financial Action Task Force: Criteria Defining Non-Cooperative Countries and Territories*

A. Loopholes in financial regulations

   (i) No or inadequate regulations and supervision of financial institutions

1. Absence or ineffective regulations and supervision for all financial institutions in a given country or territory, onshore or offshore, on an equivalent basis with respect to international standards applicable to money laundering.

   (ii) Inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of their managers and beneficial owners

2. Possibility for individuals or legal entities to operate a financial institution without authorisation or registration or with very rudimentary requirements for authorisation or registration.

3. Absence of measures to guard against holding of management functions and control or acquisition of a significant investment in financial institutions by criminals or their confederates.

   (iii) Inadequate customer identification requirements for financial institutions

4. Existence of anonymous accounts or accounts in obviously fictitious names.

5. Lack of effective laws, regulations, agreements between supervisory authorities and financial institutions or self-regulatory agreements among financial institutions on identification by the financial institution of the client and beneficial owner of an account:

   - no obligation to verify the identity of the client;
   - no requirement to identify the beneficial owners where there are doubts as to whether the client is acting on his own behalf;
   - no obligation to renew identification of the client or the beneficial owner when doubts appear as to their identity in the course of business relationships;
   - no requirement for financial institutions to develop ongoing anti-money laundering training programmes.

6. Lack of a legal or regulatory obligation for financial institutions or agreements between supervisory authorities and financial institutions or self-agreements among financial institutions to record and keep, for a reasonable and sufficient time (five years), documents connected with the identity of their clients, as well as records on national and international transactions.

7. Legal or practical obstacles to access by administrative and judicial authorities to information with respect to the identity of the holders or beneficial owners and information connected with the transactions recorded.

* This Annex should read in conjunction with the comments and explanations provided in Section I of the FATF Report on Non-Cooperative Countries and Territories dated 14 February 2000.
(iv) Excessive secrecy provisions regarding financial institutions

8. Secrecy provisions which can be invoked against, but not lifted by competent administrative authorities in the context of enquiries concerning money laundering.

9. Secrecy provisions which can be invoked against, but not lifted by judicial authorities in criminal investigations related to money laundering.

(v) Lack of efficient suspicious transactions reporting system

10. Absence of an efficient mandatory system for reporting suspicious or unusual transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering.

11. Lack of monitoring and criminal or administrative sanctions in respect to the obligation to report suspicious or unusual transactions.

B. Obstacles raised by other regulatory requirements

(i) Inadequate commercial law requirements for registration of business and legal entities

12. Inadequate means for identifying, recording and making available relevant information related to legal and business entities (name, legal form, address, identity of directors, provisions regulating the power to bind the entity).

(ii) Lack of identification of the beneficial owner(s) of legal and business entities

13. Obstacles to identification by financial institutions of the beneficial owner(s) and directors/officers of a company or beneficiaries of legal or business entities.

14. Regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transactions is unknown, or is represented by an intermediary who refuses to divulge that information, without informing the competent authorities.

C. Obstacles to international co-operation

(i) Obstacles to international co-operation by administrative authorities

15. Laws or regulations prohibiting international exchange of information between administrative anti-money laundering authorities or not granting clear gateways or subjecting exchange of information to unduly restrictive conditions.

16. Prohibiting relevant administrative authorities to conduct investigations or enquiries on behalf of, or for account of their foreign counterparts.

17. Obvious unwillingness to respond constructively to requests (e.g. failure to take the appropriate measures in due course, long delays in responding).
18. Restrictive practices in international co-operation against money laundering between supervisory authorities or between FIUs for the analysis and investigation of suspicious transactions, especially on the grounds that such transactions may relate to tax matters.

(ii) Obstacles to international co-operation by judicial authorities

19. Failure to criminalise laundering of the proceeds from serious crimes.

20. Laws or regulations prohibiting international exchange of information between judicial authorities (notably specific reservations to the anti-money laundering provisions of international agreements) or placing highly restrictive conditions on the exchange of information.

21. Obvious unwillingness to respond constructively to mutual legal assistance requests (e.g. failure to take the appropriate measures in due course, long delays in responding).

22. Refusal to provide judicial co-operation in cases involving offences recognised as such by the requested jurisdiction especially on the grounds that tax matters are involved.

D. Inadequate resources for preventing and detecting money laundering activities

(i) Lack of resources in public and private sectors

23. Failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to exercise their functions or to conduct their investigations.

24. Inadequate or corrupt professional staff in either governmental, judicial or supervisory authorities or among those responsible for anti-money laundering compliance in the financial services industry.

(ii) Absence of a financial intelligence unit or of an equivalent mechanism

25. Lack of a centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities.
Council of Europe: Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

Strasbourg, 8.XI.1990

Preamble
The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for the use of modern and effective methods on an international scale;

Believing that one of these methods consists in depriving criminals of the proceeds from crime;

Considering that for the attainment of this aim a well-functioning system of international co-operation also must be established,

Have agreed as follows:

Chapter I – Use of terms
Article 1 – Use of terms

For the purposes of this Convention:

a. "proceeds" means any economic advantage from criminal offences. It may consist of any property as defined in sub-paragraph b of this article;
b. "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in such property;
c. "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
d. "confiscation" means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;
e. "predicate offence" means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 6 of this Convention.
Chapter II – Measures to be taken at national level

Article 2 – Confiscation measures

1. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds.

2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies only to offences or categories of offences specified in such declaration.

Article 3 – Investigative and provisional measures

Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify and trace property which is liable to confiscation pursuant to Article 2, paragraph 1, and to prevent any dealing in, transfer or disposal of such property.

Article 4 – Special investigative powers and techniques

1. Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 2 and 3. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy.

2. Each Party shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto. Such techniques may include monitoring orders, observation, interception of telecommunications, access to computer systems and orders to produce specific documents.

Article 5 – Legal remedies

Each Party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under Articles 2 and 3 shall have effective legal remedies in order to preserve their rights.

Article 6 – Laundering offences

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

   a. the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any
person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

b. the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system;

c. the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

d. participation in, association 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 the purposes of implementing or applying paragraph 1 of this article:

a. it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party;

b. it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

c. knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

3. Each Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:

a. ought to have assumed that the property was proceeds;

b. acted for the purpose of making profit;

c. acted for the purpose of promoting the carrying on of further criminal activity.

4. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe declare that paragraph 1 of this article applies only to predicate offences or categories of such offences specified in such declaration.

Chapter III – International co-operation

Section 1 – Principles of international co-operation

Article 7 – General principles and measures for international co-operation

1. The Parties shall co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.

2. Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:
a. for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;

b. for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.

Section 2 – Investigative assistance

Article 8 – Obligation to assist

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

Article 9 – Execution of assistance

The assistance pursuant to Article 8 shall be carried out as permitted by and in accordance with the domestic law of the requested Party and, to the extent not incompatible with such law, in accordance with the procedures specified in the request.

Article 10 – Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

Section 3 – Provisional measures

Article 11 – Obligation to take provisional measures

1. At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.

2. A Party which has received a request for confiscation pursuant to Article 13 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

Article 12 – Execution of provisional measures

1. The provisional measures mentioned in Article 11 shall be carried out as permitted by and in accordance with the domestic law of the requested Party and, to the extent not incompatible with such law, in accordance with the procedures specified in the request.
2. Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

Section 4 – Confiscation
Article 13 – Obligation to confiscate

1. A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:

   a. enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or

   b. submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.

2. For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.

3. The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.

4. If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

Article 14 – Execution of confiscation

1. The procedures for obtaining and enforcing the confiscation under Article 13 shall be governed by the law of the requested Party.

2. The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.

3. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.

4. If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that
Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.

5. In the case of Article 13, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

**Article 15 – Confiscated property**

Any property confiscated by the requested Party shall be disposed of by that Party in accordance with its domestic law, unless otherwise agreed by the Parties concerned.

**Article 16 – Right of enforcement and maximum amount of confiscation**

1. A request for confiscation made under Article 13 does not affect the right of the requesting Party to enforce itself the confiscation order.

2. Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

**Article 17 – Imprisonment in default**

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 13, if the requesting Party has so specified in the request.

**Section 5 – Refusal and postponement of co-operation**

**Article 18 – Grounds for refusal**

1. Co-operation under this chapter may be refused if:

   a. the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or
   
   b. the execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of the requested Party; or
   
   c. in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or
   
   d. the offence to which the request relates is a political or fiscal offence; or
   
   e. the requested Party considers that compliance with the action sought would be contrary to the principle of *ne bis in idem*; or
   
   f. the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action.
2. Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.

3. Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

4. Co-operation under Section 4 of this chapter may also be refused if:
   a. under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or
   b. without prejudice to the obligation pursuant to Article 13, paragraph 3, it would be contrary to the principles of the domestic laws of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:
      i. an economic advantage that might be qualified as its proceeds; or
      ii. property that might be qualified as its instrumentalities; or
   c. under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or
   d. the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or
   e. confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or
   f. the request relates to a confiscation order resulting from a decision rendered in absentia of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings conducted by the requesting Party leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.

5. For the purpose of paragraph 4.f of this article a decision is not considered to have been rendered in absentia if:
   a. it has been confirmed or pronounced after opposition by the person concerned; or
b. it has been rendered on appeal, provided that the appeal was lodged by the person concerned.

6. When considering, for the purposes of paragraph 4.f of this article if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made in absentia, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.

7. A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for cooperation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

8. Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:
   a. the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;
   b. the fact that the natural person against whom an order of confiscation of proceeds has been issued has subsequently died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved shall not be invoked as an obstacle to render assistance in accordance with Article 13, paragraph 1.a.

**Article 19 – Postponement**

The requested Party may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

**Article 20 – Partial or conditional granting of a request**

Before refusing or postponing co-operation under this chapter, the requested Party shall, where appropriate after having consulted the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

**Section 6 – Notification and protection of third parties' rights**

**Article 21 – Notification of documents**

1. The Parties shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.

2. Nothing in this article is intended to interfere with:
a. the possibility of sending judicial documents, by postal channels, directly to persons abroad;
b. the possibility for judicial officers, officials or other competent authorities of the Party of origin to effect service of judicial documents directly through the consular authorities of that Party or through judicial officers, officials or other competent authorities of the Party of destination,

unless the Party of destination makes a declaration to the contrary to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

3. When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Party, this Party shall indicate what legal remedies are available under its law to such persons.

**Article 22 – Recognition of foreign decisions**

1. When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.

2. Recognition may be refused if:
   a. third parties did not have adequate opportunity to assert their rights; or
   b. the decision is incompatible with a decision already taken in the requested Party on the same matter; or
   c. it is incompatible with the *ordre public* of the requested Party; or
   d. the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of the requested Party.

**Section 7 – Procedural and other general rules**

**Article 23 – Central authority**

1. The Parties shall designate a central authority or, if necessary, authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.

2. Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

**Article 24 – Direct communication**

1. The central authorities shall communicate directly with one another.
2. In the event of urgency, requests or communications under this chapter may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

3. Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).

4. Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

5. Requests or communications under Section 2 of this chapter, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

Article 25 – Form of request and languages

1. All requests under this chapter shall be made in writing. Modern means of telecommunications, such as telefax, may be used.

2. Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.

3. At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any Party may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 26 – Legalisation

Documents transmitted in application of this chapter shall be exempt from all legalisation formalities.

Article 27 – Content of request

1. Any request for co-operation under this chapter shall specify:
   a. the authority making the request and the authority carrying out the investigations or proceedings;
   b. the object of and the reason for the request;
c. the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;

d. in so far as the co-operation involves coercive action:
   i. the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and
   ii. an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;

e. where necessary and in so far as possible:
   i. details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and
   ii. the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and

f. any particular procedure the requesting Party wishes to be followed.

2. A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3. In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:

   a. in the case of Article 13, paragraph 1.a:
      i. a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;
      ii. an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;
      iii. information as to the extent to which the enforcement of the order is requested; and
      iv. information as to the necessity of taking any provisional measures;
b. in the case of Article 13, paragraph 1.b, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

c. when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

**Article 28 – Defective requests**

1. If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.

2. The requested Party may set a time-limit for the receipt of such amendments or information.

3. Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

**Article 29 – Plurality of requests**

1. Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.

2. In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

**Article 30 – Obligation to give reasons**

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

**Article 31 – Information**

1. The requested Party shall promptly inform the requesting Party of:
   a. the action initiated on a request under this chapter;
   b. the final result of the action carried out on the basis of the request;
   c. a decision to refuse, postpone or make conditional, in whole or in part, any co-operation under this chapter;
   d. any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and
   e. in the event of provisional measures taken pursuant to a request under Sections 2 or 3 of this chapter, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.
2. The requesting Party shall promptly inform the requested Party of:
   
a. any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and

b. any development, factual or legal, by reason of which any action under this chapter is no longer justified.

3. Where a Party, on the basis of the same confiscation order, requests confiscation in more than one Party, it shall inform all Parties which are affected by an enforcement of the order about the request.

Article 32 – Restriction of use

1. The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.

2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

Article 33 – Confidentiality

1. The requesting Party may require that the requested Party keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

2. The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

3. Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 10 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.
**Article 34 – Costs**

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

**Article 35 – Damages**

1. When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2. A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

**Chapter IV – Final provisions**

**Article 36 – Signature and entry into force**

1. This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
   a. signature without reservation as to ratification, acceptance or approval; or
   b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, of which at least two are member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

4. In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 1.

**Article 37 – Accession to the Convention**

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of
the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2. In respect of any acceding State the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

**Article 38 – Territorial application**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

**Article 39 – Relationship to other conventions and agreements**

1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.

2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3. If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, if it facilitates international cooperation.

**Article 40 – Reservations**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in Article 2, paragraph 2, Article 6, paragraph 4, Article 14,
paragraph 3, Article 21, paragraph 2, Article 25, paragraph 3 and Article 32, paragraph 2. No
other reservation may be made.

2. Any State which has made a reservation under the preceding paragraph may wholly or partly
withdraw it by means of a notification addressed to the Secretary General of the Council of
Europe. The withdrawal shall take effect on the date of receipt of such notification by the
Secretary General.

3. A Party which has made a reservation in respect of a provision of this Convention may not
claim the application of that provision by any other Party; it may, however, if its reservation
is partial or conditional, claim the application of that provision in so far as it has itself
accepted it.

Article 41 – Amendments

1. Amendments to this Convention may be proposed by any Party, and shall be communicated
by the Secretary General of the Council of Europe to the member States of the Council of
Europe and to every non-member State which has acceded to or has been invited to accede to
this Convention in accordance with the provisions of Article 37.

2. Any amendment proposed by a Party shall be communicated to the European Committee on
Crime Problems which shall submit to the Committee of Ministers its opinion on that
proposed amendment.

3. The Committee of Ministers shall consider the proposed amendment and the opinion
submitted by the European Committee on Crime Problems and may adopt the amendment.

4. The text of any amendment adopted by the Committee of Ministers in accordance with
paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5. Any amendment adopted in accordance with paragraph 3 of this article shall come into force
on the thirtieth day after all Parties have informed the Secretary General of their acceptance
thereof.

Article 42 – Settlement of disputes

1. The European Committee on Crime Problems of the Council of Europe shall be kept
informed regarding the interpretation and application of this Convention.

2. In case of a dispute between Parties as to the interpretation or application of this Convention,
they shall seek a settlement of the dispute through negotiation or any other peaceful means of
their choice, including submission of the dispute to the European Committee on Crime
Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the
International Court of Justice, as agreed upon by the Parties concerned.
Article 43 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3. The present Convention shall, however, continue to apply to the enforcement under Article 14 of confiscation for which a request has been made in conformity with the provisions of this Convention before the date on which such a denunciation takes effect.

Article 44 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

a. any signature;
b. the deposit of any instrument of ratification, acceptance, approval or accession;
c. any date of entry into force of this Convention in accordance with Articles 36 and 37;
d. any reservation made under Article 40, paragraph 1;
e. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 8th day of November 1990, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.


Official Journal L 166, 28/06/1991 p. 0077 - 0082
Finnish special edition...: Chapter 10 Volume 1 p. 68
Swedish special edition...: Chapter 10 Volume 1 p. 68

Amendments:
Incorporated by 294A0103(38) (OJ L 001 03.01.1994 p.206)
Incorporated by 294A0103(59) (OJ L 001 03.01.1994 p.403)

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B COUNCIL DIRECTIVE
of 10June 1991
on prevention of the use of the financial system for the purpose of money laundering
(91 /308/EEC)
(OJ L 166, 28.6.1991, p. 77)
Amended by:
Official Journal
No page date

COUNCIL DIRECTIVE
of 10June 1991
on prevention of the use of the financial system for the purpose of money laundering
(91 /308/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2), first and third sentences, and Article 100a thereof,

Having regard to the proposal from the Commission¹,

In cooperation with the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas when credit and financial institutions are used to launder proceeds from criminal activities (hereinafter referred to as ‘money laundering’), the soundness and stability of the institution concerned and confidence in the financial system as a whole could be seriously jeopardized, thereby losing the trust of the public;

Whereas lack of Community action against money laundering could lead Member States, for the purpose of protecting their financial systems, to adopt measures which could be inconsistent with completion of the single market; whereas, in order to facilitate their criminal activities, launderers could try to take advantage of the freedom of capital movement and freedom to supply financial services which the integrated financial area involves, if certain coordinating measures are not adopted at Community level;

Whereas money laundering has an evident influence on the rise of organized crime in general and drug trafficking in particular; whereas there is more and more awareness that combating money laundering is one of the most effective means of opposing this form of criminal activity, which constitutes a particular threat to Member States’ societies;

Whereas money laundering must be combated mainly by penal means and within the framework of international cooperation among judicial and law enforcement authorities, as has been undertaken, in the field of drugs, by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted on 19 December 1988 in Vienna (hereinafter referred to as the ‘Vienna Convention’) and more generally in relation to all criminal activities, by the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime, opened for signature on 8 November 1990 in Strasbourg;

Whereas a penal approach should, however, not be the only way to combat money laundering, since the financial system can play a highly effective role; whereas reference must be made in this context to the recommendation of the Council of Europe of 27 June 1980 and to the declaration of principles adopted in December 1988 in Basle by the banking supervisory authorities of the Group of Ten, both of which constitute major steps towards preventing the use of the financial system for money laundering;

Whereas money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised; whereas measures exclusively adopted at a national level,

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without taking account of international coordination and cooperation, would have very limited effects;

Whereas any measures adopted by the Community in this field should be consistent with other action undertaken in other international fora; whereas in this respect any Community action should take particular account of the recommendations adopted by the financial action task force on money laundering, set up in July 1989 by the Paris summit of the seven most developed countries;

Whereas the European Parliament has requested, in several resolutions, the establishment of a global Community programme to combat drug trafficking, including provisions on prevention of money laundering;

Whereas for the purposes of this Directive the definition of money laundering is taken from that adopted in the Vienna Convention; whereas, however, since money laundering occurs not only in relation to the proceeds of drug-related offences but also in relation to the proceeds of other criminal activities (such as organized crime and terrorism), the Member States should, within the meaning of their legislation, extend the effects of the Directive to include the proceeds of such activities, to the extent that they are likely to result in laundering operations justifying sanctions on that basis;

Whereas prohibition of money laundering in Member States' legislation backed by appropriate measures and penalties is a necessary condition for combating this phenomenon;

Whereas ensuring that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, exceeding certain thresholds, are necessary to avoid launderers' taking advantage of anonymity to carry out their criminal activities; whereas such provisions must also be extended, as far as possible, to any beneficial owners;

Whereas credit and financial institutions must keep for at least five years copies or references of the identification documents required as well as supporting evidence and records consisting of documents relating to transactions or copies thereof similarly admissible in court proceedings under the applicable national legislation for use as evidence in any investigation into money laundering;

Whereas ensuring that credit and financial institutions examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering is necessary in order to preserve the soundness and integrity of the financial system as well as to contribute to combating this phenomenon; whereas to this end they should pay special attention to transactions with third countries which do not apply comparable standards against money laundering to those established by the Community or to other equivalent standards set out by international fora and endorsed by the Community;

Whereas, for those purposes, Member States may ask credit and financial institutions to record in writing the results of the examination they are required to carry out and to ensure that those results are available to the authorities responsible for efforts to eliminate money laundering;

Whereas preventing the financial system from being used for money laundering is a task which cannot be carried out by the authorities responsible for combating this phenomenon without the
cooperation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in such cases; whereas a mandatory system of reporting suspicious transactions which ensures that information is transmitted to the abovementioned authorities without alerting the customers concerned, is the most effective way to accomplish such cooperation; whereas a special protection clause is necessary to exempt credit and financial institutions, their employees and their directors from responsibility for breaching restrictions on disclosure of information;

Whereas the information received by the authorities pursuant to this Directive may be used only in connection with combating money laundering; whereas Member States may nevertheless provide that this information may be used for other purposes;

Whereas establishment by credit and financial institutions of procedures of internal control and training programmes in this field are complementary provisions without which the other measures contained in this Directive could become ineffective;

Whereas, since money laundering can be carried out not only through credit and financial institutions but also through other types of professions and categories of undertakings, Member States must extend the provisions of this Directive in whole or in part, to include those professions and undertakings whose activities are particularly likely to be used for money laundering purposes;

Whereas it is important that the Member States should take particular care to ensure that coordinated action is taken in the Community where there are strong grounds for believing that professions or activities the conditions governing the pursuit of which have been harmonized at Community level are being used for laundering money;

Whereas the effectiveness of efforts to eliminate money laundering is particularly dependent on the close coordination and harmonization of national implementing measures; whereas such coordination and harmonization which is being carried out in various international bodies requires, in the Community context, cooperation between Member States and the Commission in the framework of a contact committee;

Whereas it is for each Member State to adopt appropriate measures and to penalize infringement of such measures in an appropriate manner to ensure full application of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purpose of this Directive:

(A) 'Credit institution' means a credit institution, as defined in Article 1(1) first subparagraph of Directive 2000/12/EC (1) and includes branches within the meaning of Article 1(3) of that Directive and located in the Community, of credit institutions having their head offices inside or outside the Community;

(B) 'Financial institution' means:
1. an undertaking other than a credit institution whose principal activity is to carry out one or more of the operations included in numbers 2 to 12 and number 14 of the list set out in Annex I to Directive 2000/12/EC; these include the activities of currency exchange offices (bureaux de change) and of money transmission/remittance offices;

2. an insurance company duly authorised in accordance with Directive 79/267/EEC (2), insofar as it carries out activities covered by that Directive;

3. an investment firm as defined in Article 1(2) of Directive 93/22/EEC (3);

4. a collective investment undertaking marketing its units or shares.

This definition of financial institution includes branches located in the Community of financial institutions, whose head offices are inside or outside the Community, 1991L0308-EN-28.12.2001-001.001-4


(C) ‘Money laundering’ means the following conduct when committed intentionally:

- the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;\(^1\)

- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;

- the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

- participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing indents.

Knowledge, intent or purpose required as an element of the abovementioned activities may be inferred from objective factual circumstances.¹

Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another Member State or in that of a third country.

(D) 'Property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets.

(E) 'Criminal activity' means any kind of criminal involvement in the commission of a serious crime.

Serious crimes are, at least:

- any of the offences defined in Article 3(1)(a) of the Vienna Convention;
- the activities of criminal organisations as defined in Article 1 of Joint Action 98/733/JHA (1);
- fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the protection of the European Communities' financial interests (2);
- corruption;
- an offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law of the Member State.

Member States shall before 15 December 2004 amend the definition provided for in this indent in order to bring this definition into line with the definition of serious crime of Joint Action 98/699/JHA. The Council invites the Commission to present before 15 December 2004 a proposal for a Directive amending in that respect this Directive. Member States may designate any other offence as a criminal activity for the purposes of this Directive.

(F) 'Competent authorities' means the national authorities empowered by law or regulation to supervise the activity of any of the institutions or persons subject to this Directive.

Article 2

Member States shall ensure that money laundering as defined in this Directive is prohibited.

Article 2a

Member States shall ensure that the obligations laid down in this Directive are imposed on the following institutions:

1. credit institutions as defined in point A of Article 1;

¹ OJ C 316, 27.11.1995, p. 48.
2. financial institutions as defined in point B of Article 1; and on the following legal or natural persons acting in the exercise of their professional activities;
3. auditors, external accountants and tax advisors;
4. real estate agents;
5. notaries and other independent legal professionals, when they participate, whether:
   (a) by assisting in the planning or execution of transactions for their client concerning the
       (i) buying and selling of real property or business entities;
       (ii) managing of client money, securities or other assets;
       (iii) opening or management of bank, savings or securities accounts;
       (iv) organisation of contributions necessary for the creation, operation or management of companies;
       (v) creation, operation or management of trusts, companies or similar structures;
   (b) or by acting on behalf of and for their client in any financial or real estate transaction;
6. dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, whenever payment is made in cash, and in an amount of EUR 15 000 or more;
7. casinos.

Article 3

1. Member States shall ensure that the institutions and persons subject to this Directive require identification of their customers by means of supporting evidence when entering into business relations, particularly, in the case of the institutions, when opening an account or savings accounts, or when offering safe custody facilities.

2. The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1, involving a sum amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution or person concerned shall proceed with identification as soon as it or he is apprised of the sum and establishes that the threshold has been reached.

3. By way of derogation from the preceding paragraphs, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance (third life assurance Directive)\(^1\), where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed EUR 1 000 or where a single premium is paid amounting to EUR 2 500 or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the EUR 1 000 threshold, identification shall be required.

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4. Member States may provide that the identification requirement is not compulsory for insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insured's occupation, provided that such policies contain no surrender clause and may not be used as collateral for a loan.

5. By way of derogation from the preceding paragraphs, all casino customers shall be identified if they purchase or sell gambling chips with a value of EUR 1 000 or more.

6. Casinos subject to State supervision shall be deemed in any event to have complied with the identification requirement laid down in this Directive if they register and identify their customers immediately on entry, regardless of the number of gambling chips purchased.

7. In the event of doubt as to whether the customers referred to in the above paragraphs are acting on their own behalf, or where it is certain that they are not acting on their own behalf, the institutions and persons subject to this Directive shall take reasonable measures to obtain information as to the real identity of the persons on whose behalf those customers are acting.

8. The institutions and persons subject to this Directive shall carry out such identification, even where the amount of the transaction is lower than the threshold laid down, wherever there is suspicion of money laundering.

9. The institutions and persons subject to this Directive shall not be subject to the identification requirements provided for in this Article where the customer is a credit or financial institution covered by this Directive or a credit or financial institution situated in a third country which imposes, in the opinion of the relevant Member States, equivalent requirements to those laid down by this Directive.

10. Member States may provide that the identification requirements regarding transactions referred to in paragraphs 3 and 4 are fulfilled when it is established that the payment for the transaction is to be debited from an account opened in the customer's name with a credit institution subject to this Directive according to the requirements of paragraph 1.

11. Member States shall, in any case, ensure that the institutions and persons subject to this Directive take specific and adequate measures necessary to compensate for the greater risk of money laundering which arises when establishing business relations or entering into a transaction with a customer who has not been physically present for identification purposes (‘non-face to face’ operations). Such measures shall ensure that the customer's identity is established, for example, by requiring additional documentary evidence, or supplementary measures to verify or certify the documents supplied, or confirmatory certification by an institution subject to this Directive, or by requiring that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution subject to this Directive. The internal control procedures laid down in Article 11\(^1\) shall take specific account of these measures.

Article 4

Member States shall ensure that the institutions and persons subject to this Directive keep the following for use as evidence in any investigation into money laundering:

- in the case of identification, a copy or the references of the evidence required, for a period of at least five years after the relationship with their customer has ended,
- in the case of transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of at least five years following execution of the transactions.

Article 5

Member States shall ensure that the institutions and persons subject to this Directive examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering.

Article 6

1. Member States shall ensure that the institutions and persons subject to this Directive and their directors and employees cooperate fully with the authorities responsible for combating money laundering:

   (a) by informing those authorities, on their own initiative, of any fact which might be an indication of money laundering;
   (b) by furnishing those authorities, at their request, with all necessary information, in accordance with the procedures established by the applicable legislation.

2. The information referred to in paragraph 1 shall be forwarded to the authorities responsible for combating money laundering of the Member State in whose territory the institution or person forwarding the information is situated. The person or persons designated by the institutions and persons in accordance with the procedures provided for in Article 11(1)(a) shall normally forward the information.

3. In the case of the notaries and independent legal professionals referred to in Article 2a(5), Member States may designate an appropriate self-regulatory body of the profession concerned as the authority to be informed of the facts referred to in paragraph 1(a) and in such case shall lay down the appropriate forms of cooperation between that body and the authorities responsible for combating money laundering. Member States shall not be obliged to apply the obligations laid down in paragraph 1 to notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.
Article 7

Member States shall ensure that the institutions and persons subject to this Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities referred to in Article 6. Those authorities may, under conditions determined by their national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering operation, the institutions and persons concerned shall apprise the authorities immediately afterwards.

Article 8

1. The institutions and persons subject to this Directive and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out.

2. Member States shall not be obliged under this Directive to apply the obligation laid down in paragraph 1 to the professions mentioned in the second paragraph of Article 6.1

Article 9

The disclosure in good faith to the authorities responsible for combating money laundering by an institution or person subject to this Directive or by an employee or director of such an institution or person of the information referred to in Articles 6 and 7 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institution or person or its directors or employees in liability of any kind.

Article 10

Member States shall ensure that if, in the course of inspections carried out in the institutions and persons subject to this Directive by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for combating money laundering. Member States shall ensure that supervisory bodies empowered by law or regulation to oversee the stock, foreign exchange and financial derivatives markets inform the authorities responsible for combating money laundering if they discover facts that could constitute evidence of money laundering.

Article 11

1. Member States shall ensure that the institutions and persons subject to this Directive:

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(a) establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering;
(b) take appropriate measures so that their employees are aware of the provisions contained in this Directive.

These measures shall include participation of their relevant employees in special training programmes to help them recognise operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases. Where a natural person falling within any of Article 2a(3) to (7) undertakes his professional activities as an employee of a legal person, the obligations in this Article shall apply to that legal person rather than to the natural person.

2. Member States shall ensure that the institutions and persons subject to this Directive have access to up-to-date information on the practices of money launderers and on indications leading to the recognition of suspicious transactions.

Article 12

Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the institutions and persons referred to in Article 2a ., which engage in activities which are particularly likely to be used for money-laundering purposes.

Article 13

1. A contact committee (hereinafter referred to as ‘the Committee’) shall be set up under the aegis of the Commission. Its function shall be:
   (a) without prejudice to Articles 169 and 170 of the Treaty, to facilitate harmonized implementation of this Directive through regular consultation on any practical problems arising from its application and on which exchanges of view are deemed useful;
   (b) to facilitate consultation between the Member States on the more stringent or additional conditions and obligations which they may lay down at national level;
   (c) to advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments deemed necessary, in particular to harmonize the effects of Article 12;
   (d) to examine whether a profession or a category of undertaking should be included in the scope of Article 12 where it has been established that such profession or category of undertaking has been used in a Member State for money laundering.

2. It shall not be the function of the Committee to appraise the merits of decisions taken by the competent authorities in individual cases.

3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The secretariat shall be provided by the Commission. The chairman shall be a representative of the Commission. It shall be convened by its chairman, either on his own initiative or at the request of the delegation of a Member State.
Article 14

Each Member State shall take appropriate measures to ensure full application of all the provisions of this Directive and shall in particular determine the penalties to be applied for infringement of the measures adopted pursuant to this Directive.

Article 15

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering.

Article 16

1. Member States shall bring into force the laws, regulations and administrative decisions necessary to comply with this Directive before 1 January 1993 at the latest.

2. Where Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.

Article 17

One year after 1 January 1993, whenever necessary and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.

Article 18

This Directive is addressed to the Member States.
INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM

Preamble

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

Recalling also all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,
Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

Recalling further General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Noting that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

Noting also that existing multilateral legal instruments do not expressly address such financing,

Being convinced of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. “Funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.

2. “A State or governmental facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

3. “Proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention
that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.
Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;
(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

   (a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;

   (b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;

   (c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;

   (d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;

   (e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

**Article 8**

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for
the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person’s presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

   (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person’s rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

   (b) Be visited by a representative of that State;

   (c) Be informed of that person’s rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person’s detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person’s position for any of these reasons.

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

   (a) The person freely gives his or her informed consent;

   (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

   (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

   (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

   (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

   (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.
Article 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

   (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

   (b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

      (i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

      (ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the 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;

      (iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

      (iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.
2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

   (a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

   (b) 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.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

   (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

   (b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

     (i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

     (ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

**Article 19**

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

**Article 20**

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 23

1. The annex may be amended by the addition of relevant treaties that:
   (a) Are open to the participation of all States;
   (b) Have entered into force;
   (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Article 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 26

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.
IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 10 January 2000.
Annex


At an extraordinary Plenary\(^1\) on the Financing of Terrorism held in Washington, D.C. on 29 and 30 October 2001, the Financial Action Task Force (FATF) expanded its mission beyond money laundering. It will now also focus its energy and expertise on the world-wide effort to combat terrorist financing. “Today the FATF has issued new international standards to combat terrorist financing, which we call on all countries in the world to adopt and implement,” said FATF President Clarie Lo. “Implementation of these Special Recommendations will deny terrorists and their supporters access to the international financial system.”

During the extraordinary Plenary, the FATF agreed to a set of Special Recommendations on Terrorist Financing\(^2\) which commit members to:

- Take immediate steps to ratify and implement the relevant United Nations instruments.
- Criminalise the financing of terrorism, terrorist acts and terrorist organisations.
- Freeze and confiscate terrorist assets.
- Report suspicious transactions linked to terrorism.
- Provide the widest possible range of assistance to other countries’ law enforcement and regulatory authorities for terrorist financing investigations.
- Impose anti-money laundering requirements on alternative remittance systems.
- Strengthen customer identification measures in international and domestic wire transfers.
- Ensure that entities, in particular non-profit organisations, cannot be misused to finance terrorism.

In order to secure the swift and effective implementation of these new standards, FATF agreed to the following comprehensive Plan of Action:

- By 31 December 2001, self-assessment by all FATF members against the Special Recommendations. This will include a commitment to come into compliance with the Special Recommendations by June 2002 and action plans addressing the implementation of Recommendations not already in place. All countries around the world will be invited to participate on the same terms as FATF members.

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\(^1\) Attended by representatives of the 31 FATF members and 18 FATF-style regional bodies and observer organisations. Regional bodies and observer organisations included the Asia/Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Eastern and Southern Africa Anti-Money Laundering Group, the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures of the Council of Europe, the Asian Development Bank, the Commonwealth Secretariat, the European Central Bank, Europol, the Inter-American Development Bank, the International Monetary Fund, the International Organisation of Securities Commissions, Interpol, the Offshore Group of Banking Supervisors, OAS/CICAD, the United Nations Office on Drug Control and Crime Prevention, the World Bank, and the World Customs Organisation.

\(^2\) See the text of the Special Recommendations in Annex.
• By February 2002, the development of additional guidance for financial institutions on the techniques and mechanisms used in the financing of terrorism.

• In June 2002, the initiation of a process to identify jurisdictions that lack appropriate measures to combat terrorist financing and discussion of next steps, including the possibility of countermeasures, for jurisdictions that do not counter terrorist financing.

• Regular publication by its members of the amount of suspected terrorist assets frozen, in accordance with the appropriate United Nations Security Council Resolutions.

• The provision by FATF members of technical assistance to non-members, as necessary, to assist them in complying with the Special Recommendations.

In taking forward its Plan of Action against terrorist financing, the FATF will intensify its cooperation with the FATF-style regional bodies and international organisations and bodies, such as the United Nations, the Egmont Group of Financial Intelligence Units, the G-20, and International Financial Institutions, that support and contribute to the international effort against money laundering and terrorist financing.

FATF also agreed to take into account the Special Recommendations as it revises the FATF 40 Recommendations on Money Laundering and to intensify its work with respect to corporate vehicles, correspondent banking, identification of beneficial owners of accounts, and regulation of non-bank financial institutions.

The FATF is an independent international body whose Secretariat is housed at the OECD. The twenty nine member countries and governments of the FATF are: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; Turkey; United Kingdom and the United States. Two international organisations are also members of the FATF: the European Commission and the Gulf Co-operation Council.

For further information, please contact Helen Fisher, OECD Media Relations Division (tel: 33 1 45 24 80 94 or helen.fischer@oecd.org) or the FATF Secretariat (tel: 331 45 24 79 45 or contact@fatf-gafi.org)
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. Criminalising the financing of terrorism and associated money laundering

Each country should criminalise 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.
Introduction

1. The Eight Special Recommendations on terrorist financing were adopted by the FATF in October 2001. Immediately following their adoption, the FATF undertook to assess the level of implementation of the Special Recommendations through a self-assessment exercise. A self-assessment questionnaire on terrorist financing (SAQTF) was developed with a series of questions for each Special Recommendation. The questions were designed to elicit details that would help determine whether a particular jurisdiction has in fact implemented a particular Special Recommendation.

2. Since the adoption of the Special Recommendations, the FATF has had little time to develop interpretations based on the experience of implementing these measures. Upon completion of the initial phase of this exercise by FATF members, it was therefore decided that additional guidance would be drafted and published to assist non-FATF members in understanding some of the concepts contained in the Special Recommendations on terrorist financing and to clarify certain parts of the SAQTF. This document therefore contains additional clarification of the Eight Special Recommendations and the SAQTF.

3. It should be emphasised at the start that the information presented here is meant primarily to serve as a guide to jurisdictions attempting to fill in and submit the SAQTF. For this reason, the should not be considered exhaustive or definitive. Any questions on particular interpretations or implications of the Special Recommendations should be directed to the FATF Secretariat at Contact@fatf-gafi.org.

SR I: Ratification and implementation of UN instruments

4. This Recommendation contains six elements:
   - Jurisdictions should ratify and fully implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism, and

5. For the purposes of this Special Recommendation, ratification means having carried out any necessary national legislative or executive procedures to approve the UN Convention and having delivered appropriate ratification instruments to the United Nations. Implementation as used here means having put measures in place to bring the requirements indicated in the UN Convention and UNSC Resolutions into effect. The measures may be established by law, regulation, directive, decree, or any other appropriate legislative or executive act according to national law.

6. The UN Convention was open for signature from 10 January 2000 to 31 December 2001, and upon signature is subject to ratification, acceptance or approval. Ratification, acceptance or approval
instruments must be deposited with the Secretary-General of the United Nations in New York. Those countries that have not signed the Convention may accede to it (see Article 25 of the Convention). The full text of the UN Convention may be consulted at http://untreaty.un.org/English/Terrorism.asp. As of 19 March 2002, 132 countries have signed, and 24 have deposited ratification instruments. On 10 March 2002, the UN Convention reached the minimum number of ratifications (22) stipulated as necessary for it to come into effect. The effective date of the Convention is 10 April 2002. The web page containing information on the status of the Convention is located on the UN website at http://untreaty.un.org/ENGLISH/status/Chapter_xviii/treaty11.asp. For general information about UN treaties, see http://untreaty.un.org/english/guide.asp and the Treaty Handbook of the UN Office of Legal Affairs at http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm. The texts of the relevant UN Security Council Resolutions may be consulted on the UN website at http://www.un.org/documents/scres.htm.

SR II: Criminalising the financing of terrorism and associated money laundering

7. This Recommendation contains two elements:
   - Jurisdictions should criminalise “the financing of terrorism, of terrorist acts and of terrorist organisations”; and
   - Jurisdictions should establish terrorist financing offences as predicate offences for money laundering.

8. In implementing SR II, jurisdictions must either establish specific criminal offences for terrorist financing activities, or they must be able to cite existing criminal offences that may be directly applied to such cases. The terms *financing of terrorism* or *financing of terrorist acts* refer to the activities described in the UN Convention (Article 2) and S/RES/1373(2001), paragraph 1b (see the UN website at http://www.un.org/documents/scres.htm for text of this Resolution). It should be noted that each jurisdiction should also ensure that terrorist financing offences apply as predicate offences even when carried out in another State. This corollary interpretation of SR II is then consistent with FATF Recommendation 4.

9. FATF Recommendation 4 already calls for jurisdictions to designate “serious offences” as predicates for the offence of money laundering. SR II builds on Recommendation 4 by requiring that, given the gravity of terrorist financing offences, terrorism financing offences should be specifically included among the predicates for money laundering. For the full text of the FATF Forty Recommendations, along with their Interpretative Notes, see the FATF website at http://www.fatf-gafi.org/40Recs_en.htm.

10. Finally, as in general with other predicates for money laundering, jurisdictions should ensure that terrorist financing offences are predicate offences even if they are committed in a jurisdiction different from the one in which the money laundering offence is being applied.

SR III: Freezing and confiscating terrorist assets

11. This Recommendation contains three major elements:
• Jurisdictions should have the authority to freeze funds or assets of (a) terrorists and terrorist organisations and (b) those who finance terrorist acts or terrorist organisations;
• They should have the authority to seize (a) the proceeds of terrorism or of terrorist acts, (b) the property used in terrorism, in terrorist acts or by terrorist organisations and (c) property intended or allocated for use in terrorism, in terrorist acts or by terrorist organisations; and
• They should have the authority to confiscate (a) the proceeds of terrorism or of terrorist acts, (b) the property used in terrorism, in terrorist acts or by terrorist organisations and (c) property intended or allocated for use in terrorism, in terrorist acts or by terrorist organisations.

12. The term *measures*, as used in SR III, refers to explicit (legislative or regulatory) provisions or “executive powers”¹ that permit the three types of action. As with the preceding Recommendation, it is not necessary that the texts authorising these powers mention terrorist financing in particular. However, jurisdictions with already existing laws must be able to cite specific provisions that permit them to freeze, to seize or to confiscate terrorist related funds and assets within the national legal/judicial context.

13. The definitions of the concepts of freezing, seizure and confiscation vary from one jurisdiction to another. For the purposes of general guidance, the following descriptions of these terms are provided:

14. **Freezing:** In the context of this Recommendation, a competent government or judicial authority must be able to freeze, to block or to restrain specific funds or assets and thus prevent them from being moved or disposed of. The assets/funds remain the property of the original owner and may continue to be administered by the financial institution or other management arrangement designated by the owner.

15. **Seizure:** As with freezing, competent government or judicial authorities must be able to take action or to issue an order that allows them to take control of specified funds or assets. The assets/funds remain the property of the original owner, although the competent authority will often take over possession, administration or management of the assets/funds.

16. **Confiscation (or forfeiture):** Confiscation or forfeiture takes place when competent government or judicial authorities order that the ownership of specified funds or assets be transferred to the State. In this case, the original owner loses all rights to the property. Confiscation or forfeiture orders are usually linked to a criminal conviction and a court decision whereby the property is determined to have been derived from or intended for use in a violation of the law.

17. With regard to freezing in the context of SR III, the terms *terrorists, those who finance terrorism* and *terrorist organisations* refer to individuals and entities identified pursuant to S/RES/1267 (1999) and S/RES/1390 (2002), as well as to any other individuals and entities designated as such by individual national governments.

¹ The term executive powers means those powers emanating from the executive branch of government (as opposed to legislative or judicial powers). An example might be an order or decree made by the head of state or government.
SR IV: Reporting suspicious transactions related to terrorism

18. This Recommendation contains two major elements:

- Jurisdictions should establish a requirement for making a report to competent authorities when there is a suspicion that funds are linked to terrorist financing; or
- Jurisdictions should establish a requirement for making a report to competent authorities when there are reasonable grounds to suspect that funds are linked to terrorist financing.

19. For SR IV, the term financial institutions refers to both banks and non-bank financial institutions (NBFIs). In the context of assessing implementation of FATF Recommendations, NBFIs include, as a minimum, the following types of financial services: bureaux de change, stockbrokers, insurance companies and money remittance/transfer services. This definition of financial institutions is also understood to apply to SR IV in order to be consistent with the interpretation of the FATF Forty Recommendations. With regard specifically to SR IV, if other types of professions, businesses or business activities currently fall under anti-money laundering reporting obligations, jurisdictions should also extend terrorist financing reporting requirements to those entities or activities.

20. The term competent authority, for the purposes of SR IV, is understood to be either the jurisdiction’s financial intelligence unit (FIU) or another central authority that has been designated by the jurisdiction for receiving disclosures related to money laundering.

21. With regard to the terms suspicion and have reasonable grounds to suspect, the distinction is being made between levels of mental certainty that could form the basis for reporting a transaction. The first term – that is, a requirement to report to competent authorities when a financial institution suspects that funds are derived from or intended for use in terrorist activity – is a subjective standard and transposes the reporting obligation called for in FATF Recommendation 15 to SR IV. The requirement to report transactions when there are reasonable grounds to suspect that the funds are derived from or intended for use in terrorist activity is an objective standard, which is consistent with the intent of Recommendation 15 although somewhat broader. In the context of SR IV, jurisdictions should establish a reporting obligation that may be based either on suspicion or on having reasonable grounds to suspect.

SR V: International Co-operation

22. This Recommendation contains five elements:

- Jurisdictions should permit the exchange of information regarding terrorist financing with other jurisdictions through mutual legal assistance mechanisms;
- Jurisdictions should permit the exchange of information regarding terrorist financing with other jurisdictions by means other than through mutual legal assistance mechanisms;
- Jurisdictions should have specific measures to permit the denial of “safe haven” to individuals involved in terrorist financing;
- Jurisdictions should have procedures that permit the extradition of individuals involved in terrorist financing; and
• Jurisdictions should have provisions or procedures to ensure that “claims of political motivation are not recognised as a ground for refusing requests to extradite persons alleged to be involved in terrorist financing”.

23. To obtain a clear picture of the situation in each jurisdiction through the self-assessment process, an artificial distinction has been made for some questions in the SAQTF between international co-operation through mutual legal assistance mechanisms on the one hand and information exchange through means other than through mutual legal assistance.

24. For the purposes of SR V, the term mutual legal assistance means the power to provide a full range of both non-coercive legal assistance, including the taking of evidence, the production of documents for investigation or as evidence, the search and seizure of documents or things relevant to criminal proceedings or to a criminal investigation, the ability to enforce a foreign restraint, seizure, forfeiture or confiscation order in a criminal matter. In this instance, mutual legal assistance would also include information exchange through rogatory commissions (that is, from the judicial authorities in one jurisdiction to those in another).

25. Exchange of information by means other than through mutual legal assistance includes any arrangement other than those described in the preceding paragraph. Under this category should be included exchanges that take place between FIUs or other agencies that communicate bilaterally on the basis of memoranda of understanding (MOUs), exchanges of letters, etc.

26. With regard to the last three elements of SR V, these concepts should be understood as referred to in the relevant UN documents. These are S/RES/1373 (2001), paragraph 2c (for denial of safe haven); the UN Convention, Article 11 (for extradition); and the UN Convention, Article 14 (for rejection of claims of political motivation as related to extradition). The text of the UN Convention may be consulted at http://untreaty.un.org/English/Terrorism.asp; the text of S/RES/1373 (2001) may be accessed at http://www.un.org/documents/scres.htm.

27. The term civil enforcement as used in SR V is intended to refer only to the type of investigations, inquiries or procedures conducted by regulatory or administrative authorities that have been empowered in certain jurisdictions to carry out such activities in relation to terrorist financing. Civil enforcement is not meant to include civil procedures and related actions as understood in civil law jurisdictions.

SR VI: Alternative Remittance

28. This Recommendation consists of three major elements:

• Jurisdictions should require licensing or registration of persons or legal entities providing money/value transmission services, including through informal systems or networks;

• Jurisdictions should ensure that money/value transmission services, including informal systems or networks, are subject to FATF Recommendations 10-12 and 15; and

• Jurisdictions should be able to impose sanctions on money/value transmission services, including informal systems or networks, that fail to obtain a license/register and that fail to comply with relevant FATF Recommendations.
29. Money or value transfer systems have shown themselves vulnerable to misuse for money laundering or terrorist financing purposes. The intention of SR VI is to ensure that jurisdictions impose anti-money laundering and counter-terrorist financing measures on all forms of money/value transfer systems. To obtain a clear picture of the situation in each jurisdiction through the self-assessment process, an artificial distinction has been made between formal and informal transfer systems in some questions.

30. The term money remittance or transfer service refers to a financial service – often provided by a distinct category of non-bank financial institutions – whereby funds are moved for individuals or entities through a dedicated network or through the regulated banking system. For the purposes of assessing compliance with the FATF Recommendations, money remitter/transfer services are included as a distinct category of NBFI and are thus considered part of the regulated financial sector. Nevertheless, such services are used in some laundering or terrorist financing operations, often as part of a larger alternate remittance or underground banking scheme.

31. The term informal money or value transfer system also refers to a financial service whereby funds or value are moved from one geographic location to another. However, in some jurisdictions, these informal systems have traditionally operated outside the regulated financial sector in contrast to the “formal” money remittance/transfer services described in the preceding paragraph. Some examples of informal systems include the parallel banking system found in the Americas (often referred to as the “Black Market Peso Exchange”), the hawala or hundi system of South Asia, and the Chinese or East Asian systems. For more information on this topic, see the FATF-XI Typologies Report (3 February 2000), available through the FATF website at http://www.fatf-gafi.org/FATFDocs_enhtm#Trends, or the Asia Pacific Group Report on Underground Banking and Alternate Remittance Systems (18 October 2001), available through the APG website at http://www.apgml.org/content/typologies_reports.jsp.

32. Where licensing or registration are indicated in the questionnaire, either licensing or registration is considered sufficient to meet the requirements of the Recommendation. Licensing in this Recommendation means a requirement to obtain permission from a designated government authority in order to operate a money/value transmission service. Registration in this Recommendation means a requirement to register or declare the existence of a money/value transmission service in order for the business to operate. It should be noted that the logical consequence of the requirements of SR VI is that jurisdictions should designate a licensing or registration authority and an authority to ensure compliance with FATF Recommendations for money/value transmission services, including informal systems or networks. This corollary interpretation of SR VI (i.e., the need for designation of competent authorities) is consistent with FATF Recommendation 26.

33. The reference to “all FATF Recommendations that apply to banks and non-bank financial institutions” includes as a minimum Recommendations 10, 11, 12, and 15. Other applicable Recommendations include Recommendations 13, 14, 16-21 and 26-29. The full text of these and all other FATF Recommendations may be consulted on the FATF website (http://www.fatf-gafi.org/40Recs_en.htm).
SR VII: Wire transfers

34. This Recommendation consists of three elements:
   
   - Jurisdictions should require financial institutions to include originator information on funds transfers sent within or from the jurisdiction;
   - Jurisdictions should require financial institutions to retain information on the originator of funds transfers, including at each stage of the transfer process; and
   - Jurisdictions should require financial institutions to examine more closely or to monitor funds transfers when complete originator information is not available.

35. For the purposes of SR VII, three categories of financial institution are specifically concerned (banks, bureaux de change and money remittance/transfer services), although other financial services (for example, stockbrokers, insurance companies, etc.) may be subject to such requirements in certain jurisdictions.

36. The list of types of **accurate and meaningful** originator information indicated in the Special Recommendation (that is, name, address and account number) is not intended to be exhaustive. In some instances – in the case of an occasional customer, for example – there may not be an account number. In certain jurisdictions, a national identity number or a date and place of birth could also be designated as required originator information.

37. The term **enhanced scrutiny** for the purposes of SR VII means examining the transaction in more detail in order to determine whether certain aspects related to the transaction could make it suspicious (origin in a country known to provide safe haven to terrorists or terrorist organisations, for example) and thus warrant eventual reporting to the competent authority.

SR VIII: Non-profit organisations

38. The intent of SR VIII is to ensure that legal entities (juridical persons), other relevant legal arrangements, and in particular **non-profit organisations** may not be used by terrorists as a cover for or a means of facilitating the financing of their activities. This Recommendation consists of two elements:

   - Jurisdictions should review the legal regime of entities, in particular non-profit organisations, to prevent their misuse for terrorist financing purposes; and
   - With respect specifically to non-profit organisations, jurisdictions should ensure that such entities may not be used to disguise or facilitate terrorist financing activities, to escape asset freezing measures or to conceal diversions of legitimate funds to terrorist organisations.

39. As stated above, the intent of SR VIII is to ensure that legal entities, other relevant legal arrangements, and **non-profit organisations** may not be misused by terrorists. Legal entities have a variety of forms that differ from one jurisdiction to another. The degree to which a particular type of entity may be vulnerable to misuse in terrorist financing may also vary from one jurisdiction to another. For this reason, a selection of types of legal entities and other legal arrangements has been
presented in the SAQTF in an attempt to obtain a clear picture of the situation in individual jurisdictions. The selection is based on types of entities that have been observed as being involved in money laundering and/or terrorist financing activities in the past. Individual categories may overlap, and in some instances, a jurisdiction may not have all the categories indicated in the SAQTF.

40. Similarly it should be pointed out that non-profit organisations, a particular focus of SR VIII, may exist in legal forms that vary from one jurisdiction to another. Again, the selection of entity types in the SAQTF has been made with the intention of permitting jurisdictions to find entities or arrangements that correspond to their individual situation. The term non-profit organisation can be generally understood to include those types of entities that are organised for charitable, religious, educational, social or fraternal purposes, or for the carrying out of other types of “good works”. In addition, the earnings of such entities or activities should normally not benefit any private shareholder or individual, and they may be restricted from direct or substantial involvement in political activities. In many jurisdictions, non-profit organisations are exempt from fiscal obligations.

41. In the SAQTF, the term offshore companies refers to what are usually established as limited liability juridical persons in certain jurisdictions and which often fall under a separate or privileged regulatory regime. Such entities may be used to own and operate businesses (a shell or holding company), issue shares or bonds, or raise capital in other manners. They are generally exempt from local taxes or subject to a preferential rate and may be prohibited from doing business in the jurisdiction in which they are incorporated. The International Business Corporation (IBC) is an example of such an entity. In the SAQTF, jurisdictions should only respond to relevant offshore questions if they have an offshore sector within their jurisdiction.

42. The SAQTF also includes a category “Trusts and/or foundations” under SR VIII. Trusts are legal arrangements available in certain jurisdictions. Although they are not strictly speaking legal entities, they are used as a means for holding or transmitting assets and may, as with certain legal entities, be misused as a means for hiding or disguising true ownership of an asset. The term foundations refers primarily to “private foundations or establishments” that exist in some civil law jurisdictions and which may engage in commercial and/or non-profit activities. Some examples of these include Stiftung, stichting, Anstalt, etc.

FATF Secretariat
27 March 2002
Adopted by the Security Council at its 4385th meeting, on 28 September 2001

The Security Council,


Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,
1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;
(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. **Calls** upon all States to:

   (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

   (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

   (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

   (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

   (e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

   (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

   (g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. **Notes** with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard **emphasizes** the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;
5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. *Decides* to remain seized of this matter.
III. MODEL ANTI-MONEY LAUNDERING LAWS

Introduction

This section is designed to provide guidance to countries in the drafting of national laws and regulations to combat money laundering and the financing of terrorism. This guidance takes the form of presenting several model laws and regulations prepared by the United Nations, the Commonwealth Secretariat and the Organization of American States. The full texts of the model laws and regulations were taken from the websites of the concerned organizations and are reproduced here with their consent.

It is important to note that these are models and that it would be necessary and appropriate to adapt them to suit local circumstances and other factors in each country. In particular, the laws to be adopted must reflect local legal traditions and practices, culture and business practices, and institutions.
Introduction to the model law

Money-laundering, according to the definition adopted by the International Criminal Police Organization (ICPO/Interpol), denotes any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources.¹

The purpose of laundering is to disguise illegal profits without compromising the criminals who wish to benefit from the proceeds of their activities. This is a three-stage process requiring, in the first place, severing any direct association between the money and the crime generating it; secondly, obscuring the money trail to foil pursuit; and, thirdly, making the money available to the criminal again once the manner of its acquisition and its geographical provenance can no longer be traced.

Criminals exploit economic globalization by swiftly transferring money from one country to another. Advances in information systems, technology and communications as applied to financial transactions have made it possible to transfer money to any point on the globe with speed and ease. So-called "megabyte money" in the form of symbols on a computer screen) circulates 24 hours a day, seven days a week, and can be moved on time and time again to prevent its detection by law enforcement agencies.

Since many financial centres worldwide have now adopted measures to counter money-laundering, criminals are on the lookout for States with either weak or non-existent control mechanisms.

The activities of powerful criminal organizations can have catastrophic social consequences. Laundered money provides drug traffickers, arms dealers and other criminals with the wherewithal for operating and developing their enterprises. Unless remedies are found, money-laundering can strike at the integrity of a country's financial institutions. The very fact of billions of dollars being removed each year from normal economic activities constitutes a real threat at a time when the financial health of every country affects the stability of the global marketplace.

¹ Definition adopted unanimously by the General Assembly of Interpol at its sixty-fourth session held in Beijing, China.
Money-laundering undermines international efforts to establish free and competitive markets and hampers the development of national economies: (i) It distorts the operation of the markets: transactions effected for the purpose of money-laundering may increase the demand for cash, render interest and exchange rates unstable, give rise to unfair competition and considerably exacerbate inflation in the countries where the criminals conduct their business dealings; (ii) It erodes the credibility and, hence, stability of financial markets: if a bank collapses as a result of organized crime, the entire financial system of the country or even the whole region can suffer through the contagion effect.

Small countries are particularly vulnerable to money-laundering. The economic power acquired through illegal activities gives criminal organizations leverage over small economies. The lack of suitable control mechanisms, or the inability to apply them, furnishes criminals with de facto impunity. Laundering the proceeds of illicit activities in such States has one purpose only: to make use of structural weaknesses or to exploit the gaps and weak points in the institutional and law-enforcement machinery established by a particular State to counter money-laundering.

Money-laundering is an inevitable extension of organized crime and an essential aspect of any profit-generating criminal activity. The operations of criminal organizations, directed as they are towards the accumulation of illegal profits, create a need for laundering in direct proportion to the extent that such activities are developed and concentrated in the hands of a small group. Colossal amounts of cash generated by certain types of criminal activity, such as drug trafficking, leave trails which are more difficult to hide than the traces left by the crimes themselves. At the same time, laundering presupposes the existence of a structured criminal system capable of establishing elaborate mechanisms for the international recycling of capital.

Organized crime and laundering are therefore doubly bound together.

International efforts to curb money-laundering are the reflection of a strategy aimed at attacking the economic power of criminal organizations in order to weaken them by preventing their benefiting from the proceeds of their criminal activities and at forestalling the nefarious effects of the criminal economy on the cogs and wheels of the legal economy. The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the first international legal instrument to embody this new strategy, expresses in its preamble the recognition by States that "illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels", and affirms that the international community is henceforth "determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing".

Soon afterwards, the international community sought to extend the scope of efforts to counter laundering to the proceeds of all offences related to organized crime. At the World Ministerial Conference on Organized Transnational Crime, held at Naples from 21 to 23 November 1994, States reaffirmed their resolve to defeat "the social and economic power of criminal organizations and their ability to infiltrate legitimate economies, to launder their criminal

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1 United Nations General Assembly resolution 49/159.
proceeds and to use violence and terror" by strengthening and enhancing "the capability of States, as well as of the United Nations and other relevant global and regional organizations, to achieve more effective international cooperation against the threats posed by organized transnational crime […] in relation to measures and strategies to prevent and combat money-laundering and to control the use of the proceeds of crime".

The fight against money-laundering was at the centre of the deliberations of the special session of the United Nations General Assembly, held in New York in June 1998, which adopted specific measures as part of a global action plan for the coordinated implementation of this strategy by Member States.

Lastly, within other forums such as the Financial Action Task Force on Money Laundering (FATF),¹ the Basel Committee on Banking Regulations and Supervisory Practices,² the Council of Europe³ or the European Union,⁴ a number of measures have been laid down with a view to preventing the use of financial and banking systems for laundering criminal proceeds.

The proposed model law is based to a large extent on this set of international instruments.

It is a legislative tool designed to facilitate the drafting of specially adapted legislative provisions by countries wishing to have on their books a law against money-laundering or to modernize their legislation in that area. The model law incorporates the most relevant provisions developed by national legislation and amends, strengthens or supplements them in the light of actual practice by States in action to combat laundering. It also proposes innovative provisions aimed at improving the effectiveness of money-laundering preventive and punitive measures and offers States appropriate legal mechanisms related to international cooperation of great strategic and practical importance.

It will be up to each individual country to adapt the proposed provisions in order to bring them, where necessary, into line with its constitutional principles and the fundamental premises of its legal system, and to supplement them with whatever measures it considers best designed to contribute towards effectively combating laundering. The model nevertheless constitutes in itself a coherent legal whole. By incorporating these provisions into their national legal apparatus,  

¹ FATF was established by the Summit of Heads of State or Government of the seven major industrialized countries (G-7) in 1989 to recommend measures to improve the effectiveness of the fight against laundering. In April 1990, FATF issued to the G-7 Heads of State a report setting out 40 recommendations for improving national legal systems, enhancing the role of the financial system and intensifying cooperation. FATF, which now has 28 members and a mandate extended to 2004 in order to ensure the implementation of the recommendations by the member countries, is undertaking a systematic evaluation of the measures introduced by member countries and their effectiveness in practice. The 40 recommendations, which have since been updated and extended, now constitute a benchmark in the field of international standards for combating laundering.

² This Committee adopted a Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money-Laundering, known as the Basel Statement of Principles, which urges financial or banking institutions to put in place mechanisms for preventing even the involuntary implication of the banking system in criminal activities.

³ The Council of Europe Convention of 8 November 1990 on laundering, search, seizure and confiscation of the proceeds from crime, European Treaties, ETS No. 141.

States must take care to preserve the coherency of the text in order not to detract from its scope. Some provisions that are dependent on the text in its entirety would not have the desired degree of effectiveness if they were adopted in isolation or out of context. Something of the philosophy of the text would also be lost if certain provisions were removed from it.

In order to facilitate its adaptation to national legislation, the model law presents some of its provisions in the form of variants or options. A variant allows for the adjustment of a provision which cannot conceivably be left out of legislation against money-laundering, whereas an option denotes a provision which is optional and which can therefore be included or not at the discretion of the particular State.

The model law comprises five titles:

- **Title I:** "General"
- **Title II:** "Prevention of laundering"
- **Title III:** "Detection of laundering"
- **Title IV:** "Coercive measures"
- **Title V:** "International cooperation"

The provisions of this model law have been reviewed and finalized by an informal group of international experts which met at Vienna in March 1999. This group was composed of judicial officers specializing in financial crime, representatives of financial intelligence units, bankers and financial investigators.
TEXT OF THE MODEL LAW

Title I: General

Article 1.1.1 Definition of money-laundering

For the purposes of the present law, the following shall be regarded as money-laundering:

(a) The conversion or transfer of property for the purpose of concealing or disguising the illicit origin of such property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

(b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of property;

(c) The acquisition, possession or use of property,

by any person who knows [variant: who suspects] [variant: who should have known] that such property constitutes proceeds of crime as defined herein.

Knowledge, intent or purpose required as an element of the offence may be inferred from objective factual circumstances.

Article 1.1.2 Use of terms

For the purposes of the present law:

(a) The term "proceeds of crime" means any property or economic advantage derived directly or indirectly

variant (i): from a crime [the country may choose whether to determine the seriousness on the basis of the penalty imposed or according to categories of offences].

variant (ii): from one or more of the following offences: ... [list of offences to be specified by the country].

Such advantage may consist of any property as defined in subparagraph (b) of this article.

(b) The term "property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(c) The term "instrumentality" means any property used or intended to be used in any manner, wholly or in part, to commit one or more criminal offences;

(d) The term "criminal organization" means, for the purposes of the present law, any structured association having the aim of committing crimes;
(e) The term "confiscation" means the permanent deprivation of property by order of a court or other competent authority;

(f) The term "predicate offence" means any criminal offence, even if committed abroad, enabling its perpetrator to obtain proceeds as defined herein;

(g) The term "offender" means any person participating in an offence as the main perpetrator, a joint perpetrator or an accomplice.

In order to be used as a basis for proceedings in respect of laundering, a predicate offence committed abroad [variant 1: must have the nature of a criminal offence in the country where it was committed and in the domestic law of [name of the country adopting the model law], unless specifically agreed otherwise] [variant 2: must have the nature of a criminal offence in the country where it was committed].

Title II. Prevention of laundering

Chapter I. General provisions on prevention

Article 2.1.1 Trades and occupations subject to titles II and III of the present law

[variant 1: Titles II and III of the present law shall apply to any natural or legal persons who, in connection with their trade or occupation, carry out, supervise or advise on operations entailing deposits, exchange operations, investments, conversions or any other movements of capital, and in particular to credit and financial institutions and financial intermediaries.

Titles II and III of the present law shall also apply, in respect of their entire operations, to over-the-counter exchange dealers, casinos and gambling establishments, and to persons who carry out, supervise or advise on real estate transactions.]

[variant 2: Titles II and III of the present law shall apply to the following trades and occupations [list of trades and occupations concerned (see commentary)].

Article 2.1.2 Limit on the use of cash and bearer securities

Any payment in cash or by bearer securities of a sum greater in the aggregate than ... [amount to be fixed by the State] shall be prohibited.

However, [a national law, decree, etc.] may specify those cases and circumstances where an exception to the preceding paragraph shall be allowed. In such eventuality, a report specifying the modalities of the transaction and the identity of the parties shall be made to the financial intelligence unit established under article 3.1.1 of the present law.
Article 2.1.3 Requirement to effect [international] transfers of funds via credit or financial institutions

Any transfer to or from foreign countries of monies or securities involving a sum greater than ... [amount to be fixed by the State] shall be effected by or through an authorized credit or financial institution.

Chapter II. Transparency in financial transactions

Article 2.2.1 General provisions

The State shall organize the legal regime in such a way as to guarantee the transparency of economic dealings, in particular by ensuring that company law and the legal mechanisms for the protection of property do not allow the establishment of front or dummy corporations.

Article 2.2.2 Identification of customers by credit and financial institutions

Credit and financial institutions shall be required to verify their customers' identity and addresses before opening ordinary accounts or passbooks, taking stocks, bonds or other securities into safe custody, granting safe-deposit facilities or engaging in any other business dealings.

A natural person's identity shall be verified by the presentation of an original official document that is unexpired and bears a photograph; a copy thereof shall be taken. The person's address shall be verified by the presentation of a document capable of providing proof thereof.

A legal person shall be identified by the production of its articles of association and of any document establishing that it has been lawfully registered and that it is actually in existence at the time of the identification. A copy thereof shall be taken. Directors, employees or agents delegated to enter into dealings on behalf of third parties shall produce the documents referred to in the second paragraph of this article and also documents authenticating the identity and addresses of the beneficial owners.

Article 2.2.3 Identification of casual customers

Casual customers shall be identified, in the manner specified in article 2.2.2, in the case of any transaction involving a sum greater than ... [amount to be fixed by the State].

If the amount of the transaction is unknown at the time of the operation, the customer shall be identified as soon as the amount becomes known or the threshold specified in the first paragraph of this article is reached.

Identification shall be required, even if the amount of the operation is below the threshold laid down, whenever the lawful origin of the money is uncertain.
Identification shall also be carried out in cases where separate operations repeated during a limited period involve an individual amount less than that specified in the first paragraph of this article.

**Article 2.2.4 Identification of beneficial owners**

If it is uncertain whether a customer is acting on his or her own behalf, the credit or financial institution shall seek information by any means as to the true identity of the principal or party on whose behalf the customer is acting.

If, following verification, any doubt remains as to the true identity of the beneficial owner, the banking relationship shall be terminated, without prejudice, where applicable, to the requirement to report suspicions.

If the customer is a lawyer, a public or private accountant, a private individual with public powers of attorney or an authorized agent, acting as a financial intermediary, the customer may not invoke professional secrecy in order to refuse to disclose the true identity of the transacting party.

**Article 2.2.5 Special monitoring of certain transactions**

Where a transaction involves a sum greater than ... [amount to be fixed by the State] and is conducted in conditions of unusual or unjustified complexity or appears to have no economic justification or lawful purpose, the credit or financial institution shall be required to seek information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties.

The credit or financial institution shall draw up a confidential report, in writing, containing all relevant information on the modalities of the transaction and on the identity of the principal and, where applicable, of the transacting parties.

The report shall be maintained as specified in article 2.2.6.

Particular vigilance shall be exercised with regard to operations originating from financial establishments or institutions that are not subject to sufficient obligations with regard to customer identification or the monitoring of transactions.

**Article 2.2.6 Record-keeping by credit and financial institutions**

Credit and financial institutions shall maintain and shall hold at the disposal of the authorities specified in article 2.2.7:

(a) Records of customer identification, for at least ... years after the account has been closed or the relations with the customer have ended;

(b) Records of transactions conducted by customers and the reports provided for in article 2.2.5, for at least ... years following execution of the transaction.
Article 2.2.7 Communication of information

The information and records referred to in articles 2.2.2 to 2.2.6 shall be communicated, at their request, to the judicial authorities, to officials responsible for the detection and suppression of laundering offences acting under the court's authority, and to the financial intelligence unit established under article 3.3.1, within the scope of its powers as defined in articles 3.1.1 to 3.1.7.

In no circumstances shall persons required to transmit the above-mentioned information and reports or any other individual having knowledge thereof communicate such information or reports to any natural or legal persons other than those specified in the first paragraph of this article, except where authorized by the aforesaid authorities.

Article 2.2.8 Internal anti-laundering programmes at credit and financial institutions

Credit and financial institutions shall develop programmes for the prevention of money-laundering. Such programmes shall include the following:

(a) Centralization of information on the identity of customers, principals, beneficiaries, proxies, authorized agents and beneficial owners, and on suspicious transactions;

(b) Designation of compliance officers, at central management level, in each branch and at each agency or local office;

(c) Ongoing training for officials or employees;

(d) Internal audit arrangements to check compliance with and effectiveness of the measures taken to apply the present law.

Article 2.2.9 Over-the-counter exchange dealings

For the purposes of the present law, an over-the-counter exchange dealing shall be constituted by the immediate exchange of banknotes or coin in different currencies or the handing over of cash against settlement by a different means of payment in a different currency.

Natural or legal persons whose regular occupation is that of over-the-counter exchange dealer shall be required:

(a) Before commencing their operations, to submit a declaration of activity to ... [variants: the ministry of finance or the ministry of the interior or the central bank of the country or any other competent authority] for the purpose of obtaining a licence to set up and operate a business, as provided for under the national legislation in force, and, in that declaration, to furnish proof of the lawful origin of the capital required to set up the establishment;

(b) To verify the identity of their customers, by requiring the presentation, prior to any transaction involving a sum greater than ... [amount to be fixed by the State] or in the case of any
transaction conducted in conditions of unusual or unjustified complexity, of an official original document that is unexpired and bears a photograph, a copy of which shall be taken;

(c) To record, in chronological order, all operations, their nature and amount, indicating the customer's surname and forenames, and the number of the document submitted, in a register numbered and initialled by the competent administrative authority, and to retain such register for at least ... years after the last operation recorded.

**Article 2.2.10 Casinos and gambling establishments**

Casinos and gambling establishments shall be required:

(a) Before commencing their operations, to submit a declaration of activity to ... **variants:** the ministry of finance or the ministry of the interior or the central bank of the country or any other competent authority] for the purpose of obtaining a license to set up and operate a business, as provided for under the national legislation in force, and, in that declaration, to furnish proof of the lawful origin of the capital required to set up the establishment;

(b) To keep regular accounts and maintain such accounts for at least ... years. The accounting principles laid down by the national legislation shall be applicable to casinos and gambling clubs;

(c) To verify, by requiring the presentation of an official original document that is unexpired and bears a photograph, a copy of which shall be taken, the identity of gamblers who buy, bring or exchange chips or tokens for a sum greater than ... **[amount to be fixed by the State];**

(d) To record, in chronological order, all operations referred to in subparagraph (c) of this article, their nature and amount, indicating the gamblers' surnames and forenames, and the number of the document submitted, in a register numbered and initialled by the competent administrative authority, and to retain such register for at least ... years [a period of not less than five years] after the last operation recorded;

(e) To record, in chronological order, all transfers of funds effected between such casinos and gambling clubs in a register numbered and initialled by the competent administrative authority, and to retain such register for at least ... years [a period of not less than five years] after the last operation recorded.

If the gambling establishment is owned by a legal person possessing two or more subsidiaries, the chips shall show the identity of the subsidiary by which they are issued. In no circumstances may chips issued by one subsidiary be cashed at any other subsidiary, including subsidiaries abroad.
Title III. Detection of laundering

Chapter I. Collaboration with anti-laundering authorities

Section 1. Financial intelligence unit

Article 3.1.1 General provisions

A financial intelligence unit, organized under the terms laid down by decree, shall be responsible for receiving, analysing and processing reports required of the persons and organizations referred to in article 2.1.1. It shall also receive all relevant information, in particular that communicated by the judicial authorities. Its officials shall be required to keep confidential the information thus obtained, which may not be used for any purposes other than those provided for herein.

The composition and powers of the intelligence unit, the measures to safeguard or strengthen its independence, and the content and methods of transmission of the reports submitted to it shall be fixed by decree.

Article 3.1.2 Access to information

The intelligence unit may also, at its request, obtain from any public authority, or from any natural or legal person referred to in article 2.1.1, information and records, as specified in article 2.2.7, within the scope of investigations conducted following the report of a suspicion. It may further exchange information with the authorities responsible for imposing the disciplinary penalties provided for in article 4.2.4.

Option: It shall, upon request, be granted access to databases of the public authorities. In all cases, the use of information thus obtained shall be strictly limited to the purposes pursued hereunder.

Article 3.1.3 Relationships with financial intelligence units abroad

The financial intelligence unit may, subject to a reciprocal arrangement, exchange information with foreign intelligence units responsible for receiving and processing reports of suspicions, provided that they are subject to similar requirements of confidentiality and irrespective of the nature of those units. It may, for that purpose, conclude cooperation agreements with such units.

Upon receipt of a request for information or transmission from a counterpart foreign unit processing a report of a suspicion, it shall comply with that request within the scope of the powers hereby conferred upon it to deal with such reports.
Section 2. Reporting of suspicions

Article 3.1.4 Requirement to report suspicious transactions

Any natural or legal person [option 1: referred to in articles 2.1.1, 2.2.9 and 2.2.10] [option 2: and [chartered accountants, inspectors, auditors, etc.]] shall be required to report to the financial intelligence unit transactions referred to in article 2.1.1 involving money which appears to be derived from the perpetration of:

3 variants:

variant (a): a crime.

variant (b): an offence linked to organized crime.

variant (c): one or more of the following offences: [list of offences].

The persons referred to above shall be required to report the transactions carried out even if it was not feasible to defer their execution or if it became clear only after completion of a transaction that it involved suspect money.

They shall also be required to report without delay any information that might confirm or invalidate the suspicion.

Article 3.1.5 Reporting to the financial intelligence unit

Reports of suspicions shall be transmitted to the financial intelligence unit by facsimile or, failing which, by any other written means. Reports communicated by telephone shall be confirmed by facsimile or any other written means within the shortest possible time. Such reports shall, as appropriate, indicate:

(1) The reasons why the transaction has already been executed;

(2) The time-limit within which the suspect transaction is to be executed.

The intelligence unit shall acknowledge receipt of the report upon receipt thereof.

Article 3.1.6 Stop notice on transactions

If, by reason of the seriousness or urgency of the case, the intelligence unit considers it necessary, it may have an order issued to stop the execution of a transaction prior to expiry of the time-limit for execution, as stated by the reporting party. This stop notice shall be transmitted to the reporting party immediately, either by facsimile or by any other written means. The stop notice shall defer the execution of the transaction for a period not exceeding 48 hours.
The presiding judge of the court of first instance having territorial jurisdiction to which the case is referred by the financial intelligence unit may order that the funds, accounts or securities be frozen for an additional period not exceeding eight days.

**Article 3.1.7 Further action on reports**

Whenever strong evidence of an offence of laundering [option: the proceeds of an offence under article 3.1.4] comes to light, the intelligence unit shall immediately forward a report on the facts, together with its opinion, to the competent judicial authority [variant: to the investigating services], which shall decide upon further action. That report shall be accompanied by any relevant documents, other than the actual reports of suspicions. The identity of the reporting party shall not appear in the report.

**Chapter II. Exemption from liability**

**Article 3.2.1 Exemption from liability for bona fide reporting of suspicions**

No proceedings for breach of banking or professional secrecy may be instituted against the persons or against directors or employees of the organizations referred to in article 2.1.1 who in good faith transmit information or submit reports in accordance with the provisions of the present law.

No civil or criminal liability action may be brought nor any professional sanction taken against the persons or against directors or employees of the organizations referred to in article 2.1.1 who in good faith transmit information or submit reports in accordance with the provisions of the present law, even if the investigations or judicial decisions do not give rise to a conviction.

No civil or criminal liability action may be brought against the persons or against directors or employees of the organizations referred to in article 2.1.1 by reason of any material and/or non-material loss resulting from the freezing of a transaction as provided for in article 3.1.6.

*Option:* In the event of loss directly resulting from the unfounded bona fide reporting of a suspicion, the State shall be liable for the detriment sustained, subject to the conditions and limits laid down in its national legislation.

**Article 3.2.2 Exemption from liability arising out of the execution of transactions**

In cases where a suspect transaction has been carried out and unless there was fraudulent conspiracy with the perpetrator or perpetrators of the laundering offence, no criminal proceedings in respect of laundering may be brought against any of the persons referred to in article 2.1.1, or against their directors or employees, if the suspicion was reported in the manner specified in articles 3.1.4 to 3.1.6.

The foregoing shall apply if a person subject to the present law carries out a transaction at the request of the investigating services, acting in the manner specified in article 3.3.2.
Chapter III. Investigative techniques

Article 3.3.1 Special investigative techniques

For the purpose of obtaining evidence of the predicate offence and evidence of offences provided for under the present law, the judicial authorities may order for a specific period:

(a) The monitoring of bank accounts and the like;

(b) Access to computer systems, networks and servers;

(c) The placing under surveillance or tapping of telephone lines, facsimile machines or electronic transmission or communication facilities;

(d) The audio or video recording of acts and behaviour or conversations;

(e) The communication of notarial and private deeds, or of bank, financial and commercial records.

The judicial authorities may also order the seizure of the aforementioned documents.

However, these operations shall be possible only when there are strong grounds for suspecting that such accounts, telephone lines, computer systems and networks or documents are or may be used by persons suspected of participating in offences referred to in the first paragraph of this article.

Option:

Article 3.3.2 Undercover operations and controlled delivery

No punishment may be imposed on ... [officials competent to investigate the predicate and laundering offences] who, for the sole purpose of obtaining evidence relating to offences referred to in the present law, perform, in the manner specified in the following paragraph, acts which might be construed as elements constituting any of the offences referred to in articles 1.1.1, 4.2.2 and 4.2.5.

The authorization of the competent judicial authority shall be obtained prior to any operation as described in the preceding paragraph. A detailed report shall be transmitted to that authority upon completion of the operation. The authority may, by substantiated ruling issued at the request of the ... [the officials competent to investigate the predicate and laundering offences] carrying out such operation, delay the freezing or seizure of the money, or any other property or advantage, until the inquiries have been completed and, if necessary, order specific measures for the safe keeping thereof.
Chapter IV. Banking and professional secrecy

Article 3.4.1 Disallowance of bank secrecy

Banking or professional secrecy may not be invoked as a ground for refusal to provide information referred to in article 2.2.7 or required in connection with an investigation which relates to laundering and is ordered by, or carried out under the supervision of, a judicial authority.

Title IV. Coercive measures

Chapter I. Seizure and provisional measures

Article 4.1.1 Seizure

The competent judicial authorities and officials responsible for the detection and suppression of laundering offences shall be empowered to seize property connected with the offence under investigation as well as any evidentiary items that may make it possible to identify such property.

Article 4.1.2 Provisional measures

The judicial authority competent to order provisional measures may, ex officio or at the request of the public prosecutor's office or of a competent administration, order, at the expense of the State, the taking of such measures, including the freezing of capital and of financial transactions relating to property of whatsoever nature that is liable to seizure or confiscation.

The lifting of those measures may be ordered at any time at the request of the public prosecutor's office or, following consultation with the public prosecutor's office, at the request of the competent administration or of the owner.

Chapter II. Punishment of offences

Section I. Penalties applicable

Article 4.2.1 Money-laundering

The penalty of imprisonment of ... to ... and a fine of ... to ... [option: and a fine of up to xxx times the amount of the laundered sums] shall be imposed on anyone who commits a laundering offence.

An attempt to commit a laundering offence or aiding, abetting, facilitating or counselling the commission of any such offence shall be punishable as if the offence had been completed [variant: shall be punishable by a penalty reduced by [fraction] in relation to the main penalty].
Article 4.2.2 Association or conspiracy to commit money-laundering

The same penalties shall apply to participation in an association or conspiracy to commit the offences referred to in article 4.2.1.

Article 4.2.3 Penalties applicable to corporate entities

Corporate entities, other than the State, on whose behalf or for whose benefit a subsequent offence has been committed by one of their agents or representatives shall be liable to a fine of an amount equal to five times the fines specified for natural persons, without prejudice to the conviction of those individuals as perpetrators of the offence or accessories to it.

Corporate entities may additionally be:

(a) Banned permanently or for a maximum period of five years from directly or indirectly carrying on certain business activities;

(b) Ordered to close permanently or for a maximum period of five years their premises which were used for the commission of the offence;

(c) Wound up if they had been established for the purpose of committing the offence in question;

(d) Required to publicize the judgement in the press or by radio or television.

Article 4.2.4 Penalties imposed by disciplinary or supervisory authorities

Where, as a result of a serious failure to exercise vigilance or a deficiency in the organization of internal anti-laundering procedures, a credit or financial institution or any other natural or legal person referred to in article 2.1.1 commits a breach of any of the obligations devolving upon it under the present law, the disciplinary or supervisory authority may act ex officio in conformity with the internal or administrative regulations.

Article 4.2.5 Penalties for other offences

1. The penalty of imprisonment of ... to ... and a fine of ... to ... shall be imposed on:

(a) Persons and directors or employees of the organizations referred to in article 2.1.1 who [variant: intentionally] knowingly disclose, to the owner of the sums or to the principal of the transactions specified in that article, the report which they are required to make or the action taken on it;

(b) Anyone who [variant: intentionally] knowingly destroys or removes registers or records which, in accordance with articles 2.2.5, 2.2.6, 2.2.9 and 2.2.10, have to be maintained;
(c) Anyone who [variant: intentionally] under a false identity performs or attempts to perform any of the operations specified in articles 2.1.1 to 2.1.3, 2.2.2 to 2.2.5, 2.2.9 and 2.2.10;

(d) Anyone who [variant: intentionally], having learned, by reason of his trade or occupation, of an investigation into a case of laundering, knowingly discloses that fact, by any means, to the person or persons to whom the investigation relates;

(e) Anyone who [variant: intentionally] communicates deeds or records specified in article 3.3.1 (d) to the judicial authorities or to the officials competent to investigate the predicate and subsequent offences, knowing such deeds or records to contain errors or omissions, without informing them of that fact;

(f) Anyone who [variant: intentionally] communicates information or records to persons other than those specified in article 2.2.7;

(g) Anyone who [variant: intentionally] fails to report a suspicion, as provided for in article 3.1.4, in cases where the circumstances of the transaction admit the conclusion that the money could be derived from one of the offences referred to in that article.

2. The penalty of a fine of ... to ... shall be imposed on:

(a) Anyone who fails to report a suspicion, as provided for in article 3.1.4;

(b) Anyone who makes or accepts cash payments for a sum greater than the amount authorized by the regulations;

(c) Anyone who contravenes the provisions of article 2.1.3 concerning international transfers of funds;

(d) Directors and employees of over-the-counter exchange dealing establishments, casinos, gambling clubs and credit or financial institutions who contravene the provisions of articles 2.2.2 to 2.2.10.

3. Persons found guilty of any offence or offences set forth in paragraphs 1 and 2 above may also be banned permanently or for a maximum period of five years from pursuing the trade or occupation which provided the opportunity for the offence to be committed.

Article 4.2.6 Aggravating circumstances

Variant (a): The penalty imposed under articles 4.2.1 and 4.2.2 may be increased to imprisonment of ... to ... and a fine of ... to ... :

Variant (b): The penalty imposed under articles 4.2.1 and 4.2.2 may be increased by ... [one third or other proportion determined on the basis of the general punishment system in force]:

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(a) If the predicate offence carries a penalty of deprivation of liberty for a term exceeding that specified in the foregoing articles relating to laundering;

(b) If the offence is perpetrated in the pursuit of a trade or occupation;

(c) If the offence is perpetrated as part of the activities of a criminal organization.

Option:

Article 4.2.7 Mitigating circumstances

The general system of mitigating circumstances contained in the national legislation shall be applicable to the offences provided for under the present law.

Article 4.2.8 Predicate offence

The provisions of title IV shall apply even if the perpetrator of the predicate offence is not prosecuted or convicted or if any prerequisite for the institution of legal proceedings following such offence is not met. The perpetrator of the predicate offence may also be prosecuted in respect of the laundering offence.

Section II. Confiscation

Article 4.2.9 Confiscation

In the event of a conviction for actual or attempted money-laundering, an order shall be issued for the confiscation:

1. Of the property forming the subject of the offence, including income and other benefits obtained therefrom, against any person to whom they may belong, unless their owner can establish that he acquired them by actually paying a fair price or in return for the provision of services corresponding to their value or on any other legitimate grounds and that he was unaware of their illicit origin;

2. Of property belonging directly or indirectly to a person convicted of a laundering offence [option: to his spouse, cohabitee or children], unless the parties concerned can establish the lawful origin thereof.

Moreover, if, in cases where an offence is established by the court, the perpetrator or perpetrators thereof cannot be convicted, the court may nevertheless order the confiscation of the property to which the offence related.

Two options are possible here, which may be combined:

1st option:

An order may additionally be issued for the confiscation of the property of the convicted offender to the amount of the enrichment obtained by him [1st variant: during a period of (x)
years preceding his conviction] [2nd variant: from the date of the earliest of the acts forming the basis of his conviction], unless he can establish the absence of any connection between such enrichment and the offence.

2nd option:
An order may additionally be issued for the confiscation of property, wheresoever located, that has directly or indirectly become part of the assets of the convicted offender [option: of his spouse, cohabitee or children], [1st variant: during a period of (x) years preceding his conviction] [2nd variant: from the date of the earliest of the acts forming the basis of his conviction], unless the parties concerned can establish the lawful origin thereof.

Where property derived directly or indirectly from the offence has been intermingled with property acquired from legitimate sources, the confiscation of the latter property shall be ordered solely up to the value, as assessed by the court, of the proceeds and property referred to above [inapplicable if the first option is adopted].

The confiscation order shall specify the property concerned and contain the necessary details to identify and locate it.

If the property to be confiscated cannot be produced, confiscation may be ordered for its value.

Article 4.2.10 Confiscation orders

In cases where the facts cannot lead to the institution of legal proceedings, the public prosecutor's office may request the judge to have an order issued for the confiscation of the seized property.

The judge to whom the request is referred may issue a confiscation order:

(1) If evidence is adduced that the aforesaid property constitutes proceeds of crime as defined herein;

(2) If the perpetrators of the offence which generated the proceeds cannot be prosecuted, either because they are unknown or because there is a legal impediment to prosecution for that offence, except where the case is time-barred.

Article 4.2.11 Confiscation of property of criminal organizations

Property of which a criminal organization has power of disposal shall be confiscated ...

variant (a): if there is a connection between that property and the offence.

variant (b): unless the lawful origin of the property is established.
Article 4.2.12 Avoidance of certain legal instruments

Any legal instrument, executed free of charge or for a valuable consideration inter vivos or mortis causa, the purpose of which is to safeguard property from confiscation, as provided for in articles 4.2.9 to 4.2.11, shall be void.

In the case of avoidance of a contract involving payment, the buyer shall be reimbursed only for the amount actually paid.

Article 4.2.13 Disposal of confiscated property

Confiscated property and proceeds shall accrue to the State, which shall be empowered to allocate them to a fund for combating organized crime or drug trafficking. They shall remain encumbered, up to their value, by any rights in rem lawfully established in favour of third parties.

In cases where confiscation is ordered under a judgement by default, the confiscated property shall accrue to the State and be realized in accordance with the relevant procedures laid down. However, if the court, ruling on an application to set aside such judgement, acquits the person prosecuted, it shall order restitution to the value of the confiscated property by the State, unless it is established that such property is the proceeds of crime.

Title V. International Cooperation

Article 5.1.1 General provisions

The authorities of the State of ... [name of the country adopting the model law] undertake to afford the widest possible measure of cooperation to the authorities of other States for purposes of information exchange, investigations and court proceedings, in relation to provisional measures and orders for the confiscation of instrumentalities or proceeds connected with laundering, and for purposes of extradition and mutual technical assistance.

Chapter I. Requests for mutual legal assistance

Article 5.2.1 Purpose of requests for mutual assistance

Upon application by a foreign State, requests for mutual assistance in connection with offences provided for in articles 1.1.1, 4.2.1, 4.2.2 and 4.2.5 of the present law shall be executed in accordance with the principles set out in this title. Mutual assistance may include in particular:

- Taking evidence or statements from persons;
- Assisting in making detained persons or others available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
- Effecting service of judicial documents;
- Carrying out searches and seizures;
- Examining objects and sites;
- Providing information and evidentiary items;
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

Article 5.2.2 Refusal to execute requests

A request for mutual assistance may be refused only:

(a) If it was not made by a competent authority according to the legislation of the requesting country or if it was not transmitted in the proper manner;

(b) If its execution is likely to prejudice the law and order, sovereignty, security or fundamental principles of the law of ... [name of the country adopting the model law];

(c) If the offence to which it relates is the subject of criminal proceedings or has already been the subject of a final judgement in the territory of ... [name of the country adopting the model law];

Option:
(d) If the offence referred to in the request is not provided for under the legislation of ... [name of the country adopting the model law] or does not have features in common with an offence provided for under the legislation of ... [name of the country adopting the model law];

(e) If the measures requested, or any other measures having similar effects, are not permitted by the legislation of ... [name of the country adopting the model law] or if, under the legislation of ... [name of the country adopting the model law], they are not applicable to the offence referred to in the request;

(f) If the measures requested cannot be ordered or executed by reason of the time-barring of the laundering offence under the legislation of ... [name of the country adopting the model law] or the law of the requesting State;

(g) If the decision whose execution is being requested is not enforceable under the legislation of ... [name of the country adopting the model law];

(h) If the decision rendered abroad was delivered under conditions that did not afford sufficient guarantees as to the rights of the defence;

(i) If there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status;
(j) If the request relates to an offence of a political nature or is motivated by political considerations;

(k) If the case is not sufficiently important to justify the measures requested or the enforcement of the decision rendered abroad.

Bank secrecy may not be invoked as a ground for refusal to comply with the request.

The public prosecutor's office may appeal against a court's decision to refuse compliance within [...] days following such decision.

The Government of ... [name of the country adopting the model law] shall promptly inform the foreign Government of the grounds for refusal to comply with its request.

**Article 5.2.3 Requests for investigatory measures**

Investigatory measures shall be undertaken in conformity with the legislation of ... [name of the country adopting the model law] unless the competent foreign authorities have requested that a specific procedure compatible with the legislation of ... [name of the country adopting the model law] be followed.

A judicial officer or public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a judicial officer or by a public official.

**Article 5.2.4 Requests for provisional measures**

The court to which a request from a competent foreign authority for the taking of provisional measures is referred shall order such requested measures in accordance with its own legislation. It may also take a measure whose effects correspond most closely to the measures sought. If the request is worded in general terms, the court shall order the most appropriate measures provided for under the legislation.

Should it refuse to comply with measures not provided for under its legislation, the court to which a request for the execution of provisional measures ordered abroad is referred may replace them by measures which are provided for under that legislation and whose effects correspond most closely to the measures whose execution is being sought.

The provisions relating to the lifting of provisional measures as laid down in the second paragraph of article 4.1.2 of the present law shall be applicable.

**Article 5.2.5 Requests for confiscation**

In the case of a request for mutual legal assistance with a view to the making of a confiscation order, the court shall rule after referring the matter to the prosecuting authority. The confiscation order shall apply to property representing the proceeds or instrumentality of an offence and
located in the territory of ... [name of the country adopting the model law] or shall consist in a requirement to pay a sum of money corresponding to the value of that property.

The court to which a request for the enforcement of a confiscation order issued abroad is referred shall be bound by the findings as to the facts on which the order is based, and it may refuse to grant the request solely on one of the grounds stated in article 5.2.2.

**Article 5.2.6 Disposal of confiscated property**

The State ... [name of the country adopting the model law] shall have power of disposal of property confiscated on its territory at the request of foreign authorities, unless otherwise decided under an agreement concluded with the requesting Government.

**Chapter II. Extradition**

**Article 5.3.1 Obligation to extradite**

Requests for the extradition of persons wanted for prosecution in a foreign State shall be executed in the case of the offences provided for in articles 1.1.1, 4.2.1, 4.2.2 and 4.2.5.1 of the present law or for the purpose of the enforcement of a sentence in respect of any such offence.

The procedures and principles laid down in the extradition treaty in force between the requesting State and ... [name of the country adopting the model law] shall be applied. In the absence of any extradition treaty or legislative provisions, the extradition shall be carried out in accordance with the procedure and in observance of the principles set out in the Model Treaty on Extradition adopted by the United Nations General Assembly in its resolution 45/116.

In all cases, the provisions of the present law [option: and those contained in the model law on extradition prepared by the Centre for International Crime Prevention (CICP)] shall form the legal basis for extradition procedures relating to the offences referred to in articles 1.1.1, 4.2.1, 4.2.2 and 4.2.5.1 of the law.

**Article 5.3.2 Double criminality**

Under the present law, extradition shall be carried out only if the offence giving rise to extradition or a similar offence is provided for under the legislation of the requesting State and of ... [name of the country adopting the model law].

**Article 5.3.3 Mandatory grounds for refusal**

Extradition shall not be granted:

(a) If the offence for which extradition is requested is regarded by ... [name of the country adopting the model law] as an offence of a political nature or if the request is motivated by political considerations;
(b) If there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) If a final judgement has been rendered in ... [name of the country adopting the model law] in respect of the offence for which extradition is requested;

(d) If the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

(e) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in article 14 of the International Covenant on Civil and Political Rights;

(f) If the judgement of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and has not had or will not have the opportunity to have the case retried in his or her presence.

Article 5.3.4 Optional grounds for refusal

Extradition may be refused:

(a) If the competent authorities of ... [name of the country adopting the model law] have decided either not to institute or to terminate proceedings against the person concerned in respect of the offence for which extradition is requested;

(b) If a prosecution in respect of the offence for which extradition is requested is pending in ... [name of the country adopting the model law] against the person whose extradition is requested;

(c) If the offence for which extradition is requested has been committed outside the territory of either country and the legislation of ... [name of the country adopting the model law] does not provide for jurisdiction over offences committed outside its territory in comparable circumstances;

(d) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;

(e) If ... [name of the country adopting the model law], while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of that person.
Options:

(f) If the offence for which extradition is requested is regarded under the legislation of ... [name of the country adopting the model law] as having been committed in whole or in part within its territory.

(g) If the person whose extradition is requested is liable to the death penalty in respect of the crime of which that person is accused in the requesting country, unless that country gives sufficient assurances that the penalty will not be carried out.

(h) If the person whose extradition is requested is a national of ... [name of the country adopting the model law].

Article 5.3.5 Aut dedere aut judicare

If ... [name of the country adopting the model law] refuses extradition on either of the grounds stated in paragraph (f) or (g) of article 5.3.4, it shall, at the request of the requesting State, refer the case to its competent authorities in order that proceedings may be instituted against the person concerned in respect of the offence which gave rise to the request.

Article 5.3.6 Surrender of property

Within the limits authorized under the national legislation and subject to the rights of third parties, all property found in the territory of ... [name of the country adopting the model law] that has been acquired as a result of the offence committed or that may be required as evidence shall, if the requesting State so requests, be surrendered to the requesting State if extradition is granted.

The property in question may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

Should that property be liable to seizure or confiscation in the territory of ... [name of the country adopting the model law], the State may temporarily retain it or hand it over.

Where the national legislation or the rights of third parties so require, any property so surrendered shall be returned to ... [name of the country adopting the model law] free of charge, after the completion of the proceedings, if ... [name of the country adopting the model law] so requests.

Chapter III. Provisions common to requests for mutual assistance and requests for extradition

Article 5.4.1 Political nature of offences

For the purposes of the present law, the offences referred to in articles 1.1.1, 4.2.1, 4.2.2 and 4.2.5.1 shall not be regarded as offences of a political nature.
Article 5.4.2 Transmission of requests

Requests sent by competent foreign authorities with a view to establishing laundering offences or to enforcing or ordering provisional measures or confiscations or for purposes of extradition shall be transmitted through diplomatic channels. In urgent cases, such requests may be sent through the International Criminal Police Organization (ICPO/Interpol) or directly by the foreign authorities to the judicial authorities of ... [name of the country adopting the model law], either by post or by any other, more rapid means of transmission leaving a written or materially equivalent record. In such cases, no action shall be taken on the request unless notice is given through diplomatic channels.

Requests and their annexes shall be accompanied by a translation in a language acceptable to ... [name of the country adopting the model law].

Article 5.4.3 Content of requests

Requests shall specify:

1. The authority requesting the measure;
2. The requested authority;
3. The purpose of the request and any relevant contextual remarks;
4. The facts in support of the request;
5. Any known details that may facilitate identification of the persons concerned, in particular marital status, nationality, address and occupation;
6. Any information necessary for identifying and tracing the persons, instrumentalities, proceeds or property in question;
7. The text of the statutory provision establishing the offence or, where applicable, a statement of the law applicable to the offence and an indication of the penalty that can be imposed for the offence.

In addition, requests shall include the following particulars in certain specific cases:

1. In the case of requests for the taking of provisional measures: a description of the measures sought;
2. In the case of requests for the making of a confiscation order: a statement of the relevant facts and arguments to enable the judicial authorities to order the confiscation under domestic law;
3. In the case of requests for the enforcement of orders relating to provisional measures or confiscations:

(a) A certified true copy of the order, and a statement of the grounds on whose basis the order was made if they are not indicated in the order itself;

(b) A document certifying that the order is enforceable and not subject to ordinary means of appeal;

(c) An indication of the extent to which the order is to be enforced and, where applicable, the amount of the sum for which recovery is to be sought in the item or items of property;

(d) Where necessary and if possible, any information concerning third-party rights of claim on the instrumentalities, proceeds, property or other things in question;

4. In the case of requests for extradition, if the person has been convicted of an offence: the original or a certified true copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served.

Article 5.4.4 Handling of requests

The minister of justice of ... [name of the country adopting the model law], after verifying that the request has been made in the proper manner, shall forward it to the public prosecutor's office at the place where the investigations are to be conducted or where the proceeds or property in question are situated or where the person whose extradition is being requested is located.

The public prosecutor's office shall refer the matter to the officials competent to deal with requests for investigation or to the court competent to deal with requests relating to provisional measures, confiscations or extradition.

A judicial officer or a public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a judicial officer or by a public official.

Article 5.4.5 Additional information

The ministry of justice or the public prosecutor's office shall, ex officio or at the request of the court to which the matter is referred, be entitled to request, through diplomatic channels or directly, the competent foreign authority to provide all additional information necessary for complying with the request or facilitating compliance therewith.
Article 5.4.6 Requirement of confidentiality

Where a request requires that its existence and substance be kept confidential, such requirement shall be observed except to the extent necessary to give effect to the request. If that is not possible, the requesting authorities shall be promptly informed thereof.

Article 5.4.7 Postponement

The public prosecutor's office may postpone referring the matter to the police authorities or to the court only if the measure or order sought could interfere with ongoing investigations or proceedings. It shall immediately inform the requesting authority accordingly by diplomatic channels or directly.

Article 5.4.8 Simplified extradition procedure

With regard to the offences provided for under the present law, ... [name of the country adopting the model law] may grant extradition after receipt of a request for provisional arrest, provided that the person whose extradition is requested explicitly consents thereto.

Article 5.4.9 Restriction on the use of evidence

The communication or use, for investigations or proceedings other than those specified in the foreign request, of evidentiary facts contained therein shall be prohibited on pain of invalidation of such investigations or proceedings, except with the prior consent of the foreign Government.

Article 5.4.10 Costs

Costs incurred in complying with requests provided for under the present title shall be borne by the State of ... [name of the country adopting the model law] unless otherwise agreed with the requesting country.
MODEL DECREES ON THE FINANCIAL INTELLIGENCE UNIT, ISSUED FOR PURPOSES OF APPLICATION OF ARTICLE 3.1.1 OF THE LAW

Organization

Article 1

A financial intelligence unit having legal personality shall be established under the authority of [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...]. It shall be subject to external supervision by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...].

[Option: This intelligence unit shall have financial and budgetary autonomy and independent decision-making authority on matters coming within its sphere of responsibility.]

Article 2

The financial intelligence unit shall be headed by ... [a member of the judiciary, a senior official of the ministry of finance, etc.] appointed by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...]. It shall be composed of experts specially empowered by [variant 1: the minister of ...] [variant 2: the minister of justice and the minister of finance] in consideration of their expertise, particularly in the fields of finance, banking, law, informatics, customs or police investigations [variant: and made available by the State administrations]. It shall also comprise liaison officers responsible for cooperation with the other administrations. The intelligence unit shall be supported by a secretariat.

Article 3

The experts, liaison officers and other members of the secretariat shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the intelligence unit. Such information may not be used for any purposes other than those provided for by the law of (date) on money-laundering, confiscation and international cooperation in relation to the proceeds of crime.

Article 4

The experts may not concurrently perform duties in any of the organizations referred to in article 2.1.1 of the law of (date) on money-laundering, confiscation and international cooperation in relation to the proceeds of crime or hold or pursue any elective office, assignment or activity which might affect the independence of their position. Agents of the State appointed to posts in the financial intelligence unit shall cease to exercise any investigatory powers held by them in their former employment.
Operation

Article 5

The intelligence unit shall receive the reports transmitted by the persons referred to in article 3.1.4 of the aforementioned law. It shall analyse them on the basis of the information at its disposal and it shall gather, in particular from organizations and administrations involved in combating organized crime, any additional information that may help to establish the origin of the funds or the nature of the transactions forming the subject of the reports.

Article 6

The reports required of the persons referred to in article 3.1.4 of the law shall be sent to the intelligence unit by any rapid means of communication. They shall, where applicable, be confirmed in writing. They shall contain the identity and address of the reporting party, of the customer or the principal and, where applicable, of the beneficiary of the transaction; the type of account and particulars of the account holder; the nature, amount and type of the operation scheduled; and the period within which the operation is to be carried out or the reason why its execution cannot be deferred.

Article 7

The intelligence unit shall, in conformity with the laws and regulations on the protection of privacy and on computerized databases, operate a database containing all relevant information concerning reports of suspicions as provided for under the present law, the transactions carried out and the persons undertaking the operations, whether directly or through intermediaries. That information shall be updated and organized with a view to maximum effectiveness of the investigations to confirm or invalidate suspicions.

Article 8

An annual report shall be drawn up by the intelligence unit and submitted to the minister of justice, the ministry of finance and the judicial authorities. The report shall provide an overall analysis and evaluation of the reports received and of laundering trends.

Operating budget

Article 9

Each year, the intelligence unit shall establish its budget for the ensuing year, subject to the limits fixed by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...].

[Option: The costs of operating the intelligence unit shall be met out of a fixed contribution from [option: financial and banking] institutions subject to the money-laundering legislation.]
Please note: This model law has been developed by the United Nations International Drug Control Programme (UNDCP) for use in countries whose fundamental legal systems are substantially based on the common law tradition. Like any model, it will need to be adjusted to ensure both domestic legal validity (e.g., in terms of constitutional principles and other basic concepts of its legal system) and domestic operational effectiveness (e.g., in terms of implementation arrangements and infrastructure). UNDCP has an expert team available to help requesting States become party to and give effect to the United Nations' drug control conventions. To obtain UNDCP legal assistance, please send a letter of request from your government to the Executive Director of the UNDCP at the Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria.

UNITED NATIONS INTERNATIONAL DRUG CONTROL PROGRAMME (UNDCP)

MODEL MONEY LAUNDERING AND PROCEEDS OF CRIME BILL

2000

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The object of this bill is to provide for the confiscation of the proceeds of crime and to prevent the use of the financial system to launder the proceeds of serious crime.

(ATTORNEY-GENERAL)

An Act to enable the unlawful proceeds of all serious crime including drug trafficking to be identified, traced, frozen, seized and eventually confiscated, to establish an [Anti-Money Laundering Authority], and to require financial institutions and cash dealers to take prudential measures to help combat money laundering.

ENACTED by the President and Parliament of [name of State]
PART I
PRELIMINARY

1. Short title, Extent and Commencement

(1) This Act may be called the "Proceeds of Crime Act, 2000."
(2) It shall extend throughout [name of State].
(3) It shall come into force at once.

2. Definitions

(1) In this Act, unless the contrary intention appears:
   (a) "account" means any facility or arrangement by which a financial institution or cash dealer does any one or more of the following:
      (i) accepts deposits of currency;
      (ii) allows withdrawals of currency or transfers into or out of the account;
      (iii) pays cheques or payment orders drawn on a financial institution or cash dealer by, or collects cheques or payment orders on behalf of, a person;
      (iv) supplies a facility or arrangement for a safety deposit box;
   (b) "appeal" includes proceedings by way of discharging or setting aside a judgement, and an application for a new trial or for a stay of execution;
   (c) "authorized officer" means a person or class of persons designated by the [Minister of Justice] pursuant to section 110 of the Drug Abuse Act, 2000 as an authorized officer;
   (d) "cash dealer" means:
      (i) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
      (ii) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travellers' cheques money orders or similar instruments, or of collecting holding and delivering cash as part of a business of providing payroll services;
      (iii) an operator of a gambling house, casino or lottery;
      (iv) a trustee, or manager of a unit trust;
   (e) "currency" means the coin and paper money of [name of State] or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
   (f) "data" means representations, in any form, of information or concepts;
(g) "defendant" means a person charged with a serious offence, whether or not he or she has been convicted of the offence, and includes in the case of proceedings for a restraining order under section 56, a person who is about to be charged with a serious offence;

(h) "document" means any record of information, and includes;

(i) anything on which there is writing;

(ii) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;

(iii) anything from which sounds, images or writings can be produced, with or without the aid of anything else;

(iv) a map, plan, drawing, photograph or similar thing;

(i) "financial institution" means any person who carries on a business of:

(i) acceptance of deposits and other repayable funds from the public;

(ii) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;

(iii) financial leasing;

(iv) money transmission services;

(v) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);

(vi) guarantees and commitments;

(vii) trading for own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;

(viii) underwriting share issues and participation in such issues;

(ix) advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;

(x) money-broking;

(xi) portfolio management and advice;

(xii) safekeeping and administration of securities;

(xiii) credit reference services;

(xiv) safe custody services;

(j) "gift" includes any transfer of property by a person to another person directly or indirectly:

(i) after the commission of a serious crime by the first person;
(ii) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; and

(iii) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

(k) "interest", in relation to property, means:

(i) a legal or equitable estate or interest in the property;

(ii) a right, power or privilege in connection with the property;

(l) "person" means any natural or legal person;

(m) “proceedings” means any procedure conducted by or under the supervision of a judge or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;

(n) "proceeds of crime" means any property derived or realized directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence;

(o) "property" means currency and all other real or personal property of every description, whether situated in [name of State] or elsewhere and whether tangible or intangible, and includes an interest in any such property;

(p) "property of or in the possession or control of any person" includes any gift made by that person;

(q) "realizable property" means:

(i) any property held by a defendant;

(ii) any property held by a person to whom a defendant has directly or indirectly made a gift caught by this Act.

(r) "record" means any material on which data are recorded or marked and which is capable of being read or understood by a person, computer system or other device;

(s) "serious offence" means an offence against a provision of:

(i) any law in [name of State], for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than [12 months];

(ii) a law of a foreign State, in relation to acts or omissions, which had they occurred in [name of State], would have constituted an offence for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than [12 months];
(t) "unit trust" means any arrangement made for the purpose or having the effect of providing, for a person having funds available for investment, facilities for the participation by the person as a beneficiary under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property pursuant to the trust.

(2) A reference in this Act to the law of:

(a) [name of State];
(b) any foreign State,

includes a reference to a written or unwritten law of, or in force in, any part of [name of State] or that foreign State, as the case may be.

3. Meaning of charge in relation to a serious offence

Any reference in this Act to a person being charged or about to be charged with a serious offence is a reference to a procedure, however described, in [name of State] or elsewhere, by which criminal proceedings may be commenced.

4. Meaning of conviction in relation to a serious offence

For the purposes of this Act, a person shall be taken to be convicted of a serious offence if:

(a) the person is convicted, whether summarily or on indictment, of the offence;

(b) the person is charged with, and found guilty of, the offence but is discharged without any conviction being recorded;

(c) [name of Court], with the consent of the convicted person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another [serious] offence.

5. Meaning of quashing of convictions

For the purposes of this Act, a person's conviction for a serious offence shall be taken to be quashed in any case:

(a) where section 4 (a) applies, if the conviction is quashed or set aside;

(b) where section 4 (b) applies, if the finding of guilt is quashed or set aside;

(c) where section 4(b) applies, if either:

(i) the person's conviction for the other offence referred to in that section, is quashed or set aside;

(ii) the decision of [name of Court] to take the offence into account in passing sentence for that other offence is quashed or set aside;

(d) where [the President] grants the person a pardon in respect of the person's conviction for the offence.
6. **Meaning of value of property, etc**

(1) Subject to subsection (2), for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is:

(a) its market value; or

(b) where any other person holds an interest in the property:

(i) the market value of the first mentioned person's beneficial interest in the property; less

(ii) the amount required to discharge any charging order on that interest.

(2) References in this Act to the value of a gift or of any payment or reward, are references to the value of the gift, payment or reward to the recipient when he or she received it, adjusted to take account of any subsequent changes in the value of money.

7. **Meaning of dealing with property**

For the purposes of this Act, dealing with property held by any person includes, without prejudice to the generality of the expression:

(a) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt;

(b) making or receiving a gift of the property; or

(c) removing the property from [name of State].

8. **Meaning of gift caught by this Act**

(1) A gift [including a gift made before the commencement] is caught by this Act if:

(a) it was made by the defendant at any time after the commission of the serious offence, or if more than one, the earliest of the offences, to which the proceedings for the time being relate; and

(b) the [name of Court] considers it appropriate in all the circumstances to take the gift into account.

(2) For the purposes of this Act:

(a) the circumstances in which the defendant is to be treated as making a gift include those where he or she transfers property to another person directly or indirectly, for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

(b) in those circumstances, section 6(2) shall apply, taking into account the difference between the value of the gift and the consideration, if any, provided to the defendant by the recipient.

9. **Meaning of deriving a benefit**

A reference to a benefit derived or obtained by or otherwise accruing to a person includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at the request or direction of the first person.
10. **Meaning of benefitting from the proceeds of a serious offence**

For the purposes of this Act:

(a) a person has benefitted from an offence if the person has at any time [whether before or after the commencement of this Act] received any payment or other reward in connection with, or derived any pecuniary advantage from, the commission of a [serious offence], whether committed by that person or another person;

(b) a person's proceeds of a serious offence are:

(i) any payments or other rewards received by the person [at any time] in connection with; and

(ii) any pecuniary advantage derived by the person at any time from,

the commission of the offence [whether received or derived before or after the commencement of this Act]; and

(c) the value of a person's proceeds of a serious offence is the aggregate of the values of the payments, rewards or pecuniary advantages received by him in connection with, or derived by him from, the commission of the offence.

**PART II**

**MONEY LAUNDERING**

11. **[Anti-Money Laundering Authority]**

(1) The [Minister of Finance] shall appoint a person or persons to be known as the [Anti-Money Laundering Authority].

(2) The [Anti-Money Laundering Authority]:

(a) shall receive reports of suspicious transactions issued by financial institutions and cash dealers pursuant to section 14(1);

(b) shall send any such report to the appropriate law enforcement authorities, if having considered the report, the [Anti-Money Laundering Authority] also has reasonable grounds to suspect that the transaction is suspicious;

(c) may enter the premises of any financial institution or cash dealer during ordinary business hours to inspect any record kept pursuant to section 14(1), and ask any question relating to such record, make notes and take copies of the whole or any part of the record;

(d) shall send to the appropriate law enforcement authorities, any information derived from an inspection carried out pursuant to subsection (2)(c),
if it gives the [Anti-Money Laundering Authority] reasonable grounds to suspect that a transaction involves proceeds of crime;

(e) may instruct any financial institution or cash dealer to take such steps as may be appropriate to facilitate any investigation anticipated by the [Anti-Money Laundering Authority];

(f) may compile statistics and records, disseminate information within [name of State] or elsewhere, make recommendations arising out of any information received, issue guidelines to financial institutions and advise the [Minister of Finance];

(g) shall create training requirements and provide such training for any financial institution in respect of transaction record-keeping and reporting obligations provided for in sections 13(1) and 14(1);

(h) may consult with any relevant person, institution or organization for the purpose of exercising its powers or duties under subsections (2) (e), (f) or (g);

(i) shall not conduct any investigation into money laundering, other than for the purpose of ensuring compliance by a financial institution with the provisions of this Part.

12. Financial institutions and cash dealers to verify customers identity

(1) A financial institution or cash dealer shall take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, such as a birth certificate, passport or other official means of identification, and in the case of a body corporate, a certificate of incorporation [together with the latest annual return to the [State Registry] of the body corporate];

(2) Where an applicant requests a financial institution or cash dealer to enter into:

(a) a continuing business relationship;

(b) in the absence of such a relationship, any transaction,

the institution or cash dealer shall take reasonable measures to establish whether the person is acting on behalf of another person.

(3) If it appears to a financial institution or cash dealer that an applicant requesting it to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the institution or cash dealer shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(4) In determining what constitutes reasonable measures for the purposes of subsection (1) or (3), regard shall be had to all the circumstances of the case, and in particular:
(a) to whether the applicant is a person based or incorporated in a country, in which there are in force provisions applicable to it to prevent the use of the financial system for the purpose of money-laundering; and
(b) to custom and practice as may from time to time be current in the relevant field of business.

(5) Nothing in this section shall require the production of any evidence of identity where:
(a) the applicant is itself a financial institution or a cash dealer to which this Act applies; or
(b) there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

13. Financial institutions and cash dealers to establish and maintain customer records

(1) A financial institution or cash dealer shall establish and maintain:
(a) records of all transactions exceeding [amount of currency or its equivalent in foreign currency or] [such amount of currency or its equivalent in foreign currency as may be specified from time to time by the [Minister of Finance]] carried out by it, in accordance with the requirements of subsection (3);
(b) where evidence of a person's identity is obtained in accordance with section 12, a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained;

(2) Customer accounts of a financial institution or cash dealer shall be kept in the true name of the account holder.

(3) Records required under subsection (1)(a) shall contain particulars sufficient to identify the:
(a) the name, address and occupation (or where appropriate business or principal activity) of each person:
   (i) conducting the transaction; or
   (ii) if known, on whose behalf the transaction is being conducted,
       as well as the method used by the financial institution or cash dealer to verify the identity of each such person;
(b) nature and date of the transaction;
(c) type and amount of currency involved;
(d) the type and identifying number of any account with the financial institution or cash dealer involved in the transaction;
(e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was
drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;

(f) the name and address of the financial institution or cash dealer, and of the officer, employee or agent of the financial institution or cash dealer who prepared the record.

(4) Records required under subsection (1) shall be kept by the financial institution for a period of at least [5 years] from the date the relevant business or transaction was completed.

14. Financial institutions and cash dealers to report suspicious transactions

(1) Whenever a financial institution or cash dealer is a party to a transaction and has reasonable grounds to suspect that information that it has concerning the transaction may be relevant to the investigation or prosecution of a person for a serious offence, it shall as soon as possible but no later than [3 working days] after forming that suspicion and wherever possible before the transaction is carried out:

(a) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved, and the identity and address of any ultimate beneficiary;

(b) prepare a report of the transaction in accordance with subsection (2);

(c) communicate the information contained therein to the [Anti-Money Laundering Authority] in writing or in such other form as the [Minister of Finance] may from time to time approve.

(2) A report required by subsection (1) shall:

(a) contain particulars of the matters specified in subsection (1)(a) and in section 12(1);

(b) contain a statement of the grounds on which the financial institution or cash dealer holds the suspicion; and

(c) be signed or otherwise authenticated by the financial institution or cash dealer.

(3) A financial institution or a cash dealer which has reported a suspicious transaction in accordance with this Part shall, if requested to do so by the [Anti-Money Laundering Authority], give such further information as it has in relation to the transaction.

15. Financial institutions and cash dealers to establish and maintain internal reporting procedures

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

(a) identify persons to whom an employee is to report any information which comes to the employee's attention in the course of employment, and which gives rise to knowledge or suspicion by the employee that another person is engaged in money-laundering;
(b) enable any person identified in accordance with subsection (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 14(1); and

(c) require the identified person to report the matter pursuant to section 14(1), in the event that he or she determines that sufficient basis exists.

16. **Further preventive measures by financial institutions and cash dealers**

A financial institution or cash dealer shall establish and maintain internal reporting procedures to:

(a) take appropriate measures for the purpose of making employees aware of domestic laws relating to money-laundering, and the procedures and related policies established and maintained by it pursuant to this Act;

(b) provide its employees with appropriate training in the recognition and handling of money-laundering transactions.

17. **Money-laundering offences**

A person commits the offence of money-laundering if the person:

(a) acquires, possesses or uses property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions:

   (i) in [name of State] which constitute an offence against any law of [name of State] punishable by imprisonment for not less than [12 months];

   (ii) outside [name of State] which, had they occurred in [name of State], would have constituted an offence against the law of [name of State] punishable by imprisonment for not less than [12 months].

(b) renders assistance to another person for:

   (i) the conversion or transfer of property derived directly or indirectly from those acts or omissions, with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof;

   (ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from those acts or omissions.

Penalty: in the case of a natural person, imprisonment for a maximum of [....] years or a maximum fine of [.....], or both, and in the case of a body corporate [five times] such fine.

18. **Related offences**

(1) A person shall not open or operate an account with a financial institution or a cash dealer in a false name.
Penalty: In the case of a natural person, imprisonment not exceeding ....years, or a fine of a maximum of [amount] or both, and in the case of a body corporate, [five times] such fine.

(2) A financial institution or cash dealer who fails to comply with any requirement of this Part for which no penalty is specified commits an offence:

Penalty: In the case of a natural person, imprisonment not exceeding ....years, or a fine of a maximum of [amount] or both, and in the case of a body corporate, [five times] such fine.

(3) In determining whether a person has complied with any requirement of subsection (2), [name of Court] shall have regard to all the circumstances of the case, including such custom and practice as may from time to time be current in the relevant trade, business profession or employment, and may take account of any relevant guidance adopted, approved by a public authority exercising public interest supervisory functions in relation to the financial institution or cash dealer, or any other body that regulates or is representative of any trade, business or profession the trade, business, profession, employment carried on by that person.

(4) Any person who:

(a) knows or suspects that a report under section 14(1) is being prepared or has been sent to the [Anti-Money Laundering Authority]; and

(b) discloses to another person information or other matter which is likely to prejudice any investigation of an offence or possible offence of money-laundering under section 17 commits an offence.

Penalty: Imprisonment not exceeding [... years], or a fine not exceeding [.....], or both.

(5) In proceedings for an offence against subsection (4), it is a defence to prove that the person did not know or have reasonable grounds to suspect that the disclosure was likely to prejudice any investigation of an offence or possible offence of money-laundering under section 17.

19. Seizure and detention of suspicious imports or exports of currency

(1) An authorized officer may seize and, in accordance with this section detain, any currency which is being imported into or exported from [name of State], if:

(a) the amount is not less than the prescribed sum; and

(b) he or she has reasonable grounds for suspecting that it is:

(i) property derived from a [serious offence]; or

(ii) intended by any person for use in the commission of a [serious offence].

(2) Currency detained under subsection (1) shall not be detained for more than [24 hours] after seizure, unless a [magistrate] orders its continued detention for a period not exceeding [3 months] from the date of seizure, upon being satisfied that:

(a) there are reasonable grounds for the suspicion referred to in subsection (1)(b); and
(b) its continued detention is justified while:
   (i) its origin or derivation is further investigated; or
   (ii) consideration is given to the institution in [name of State] or elsewhere of criminal proceedings against any person for an offence with which the currency is connected.

(3) A [magistrate] may subsequently order continued detention of the currency if satisfied of the matters mentioned in subsection (2), but total period of detention shall not exceed [2 years] from the date of the order made under that subsection.

(4) Subject to subsection (5), currency detained under this section may be released in whole or in part to the person on whose behalf it was imported or exported:
   (a) by order of a [magistrate] that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the [Director of Public Prosecutions] to the contrary; or
   (b) by [an authorized officer], if satisfied that its continued detention is no longer justified.

(5) No currency detained under this section shall be released where:
   (a) an application is made under Part III of this Act for the purpose of:
       (i) the confiscation of the whole or any part of the currency; or
       (ii) its restraint pending determination of its liability to confiscation; or
   (b) proceedings are instituted in [name of State] or elsewhere against any person for an offence with which the currency is connected, unless and until the proceedings relating to the relevant application or the proceedings for the offence as the case may be have been concluded.

20. [Anti-Money Laundering Authority's] power to obtain search warrant

(1) The [Anti-Money Laundering Authority] [or a law enforcement agency], may apply to [the Court] for a warrant to enter any premises belonging to or in the possession or control of a financial institution, cash dealer, or any officer or employee thereof, and to search the premises and remove any document, material or other thing therein for the purposes of the [Anti-Money Laundering Authority] [or law enforcement agency], as ordered by [the Court] and specified in the warrant.

(2) [The Court] shall grant the application if it is satisfied that there are reasonable grounds to believe that:
   (a) the financial institution or cash dealer has failed to keep a transaction record, or report a suspicious transaction, as required by this Act;
   (b) an officer or employee of a financial institution or cash dealer is committing, has committed or is about to commit an offence of money laundering.
21. **Property tracking and monitoring orders**

For the purpose of determining whether any property belongs to or is in the possession or under the control of any person, the [Anti-Money Laundering Authority] [or a law enforcement agency may], upon application to [the Court], obtain an order:

(a) that any document relevant to:

(i) identifying, locating or quantifying any such property; or

(ii) identifying or locating any document necessary for the transfer of any such property,

belonging to, or in the possession or control of that person be delivered forthwith to the [Anti-Money Laundering Authority] [or law enforcement agency];

(b) that the financial institution or cash dealer forthwith produce to the [Anti-Money Laundering Authority] [or law enforcement agency] all information obtained about any transaction conducted by or for that person during such period before or after the order as [the Court] directs.

22. **Orders to enforce compliance with obligations under this Part**

(1) The [Anti-Money Laundering Authority] may, upon application to [the Court], after satisfying [the Court] that a financial institution or cash dealer has failed to comply with any obligation provided for under sections 12, 13, 14, 15 or 16, obtain an order against all or any officers or employees of the institution or dealer in such terms as [the Court] deems necessary, in order to enforce compliance with such obligation.

(2) In granting the order pursuant to subsection (1), [the Court] may order that should the financial institution or cash dealer fail without reasonable excuse to comply with all or any provisions of the order, such institution, dealer, officer or employee shall pay a financial penalty in the sum and in the manner directed by [the Court].

23. **Secrecy obligations overridden**

The provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction on disclosure of information imposed by law or otherwise.

24. **Immunity where suspicious transaction reported**

No action, suit or other proceedings shall lie against any financial institution or cash dealer, or any officer, employee or other representative of the institution acting in the ordinary course of the person's employment or representation, in relation to any action taken in good faith by that institution or person pursuant to section 14(1).

25. **Immunity where official powers or functions exercised in good faith**

No suit, prosecution or other legal proceedings shall lie against the Government, or any officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or the performance of any function under this Act [or any Rule or order made thereunder].
26. **Restitution of restrained property**

Where an investigation has begun against a person for a serious offence, property was restrained under this Act in relation to that offence, and any of the following occurs:

- (a) the person is not charged in [name of State] with the serious offence;
- (b) the person is charged with a serious offence in [name of State], but not convicted of that offence;
- (c) a conviction for that serious offence in [name of State] is taken to be quashed and no conviction for such an offence substituted,

the [name of Court] shall order restitution of the restrained property.

27. **Damages**

Nothing in this Act affects the right of a person whose property has been restrained to seek the payment of damages, either actual or punitive, in cases where it is alleged that the action of [name of State] involved any abuse of process.

**PART III CONFISCATION**

**Division 1 - Confiscation and Pecuniary Penalty Orders**

28. **Application for confiscation order or pecuniary penalty order**

(1) Where a person is convicted of a serious offence, the [Attorney-General] [Director of Public Prosecutions] may, not later than [6 months] after the conviction, apply to the [name of Court] for one or both of the following orders:

- (a) a confiscation order against property that is tainted property in respect of the offence;
- (b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence.

(2) An application under subsection (1) may be made in respect of one or more than one offence.

(3) Where an application under this section is finally determined, no further application for a confiscation order or a pecuniary penalty order may be made in respect of the offence for which the person was convicted without the leave of [the Court]. [The Court] shall not give such leave unless it is satisfied that:

- (a) the property or benefit to which the new application relates was identified after the previous application was determined;
- (b) necessary evidence became available after the previous application was determined; or
- (c) it is in the interest of justice that the new application be made.
29. Notice of Application

(1) Where the [Attorney-General] [Director of Public Prosecutions] applies for a confiscation order against property in respect of the person's conviction of a serious offence:

(a) the [Attorney-General] [Director of Public Prosecutions] must give no less than 14 days written notice of the application to the person and to any other person who the [Attorney-General] [Director of Public Prosecutions] has reason to believe may have an interest in the property;

(b) the person and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application; and

(c) [The Court] may, at any time before the final determination of the application, direct the [Attorney-General] [Director of Public Prosecutions] to:

(i) give notice of the application to any person who, in the opinion of [the Court], appears to have an interest in the property;

(ii) publish in [the Gazette or] a newspaper published and circulating in [name of State], a notice of the application.

(2) Where the [Attorney-General] [Director of Public Prosecutions] applies for a pecuniary penalty order against a person:

(a) the [Attorney-General] [Director of Public Prosecutions] shall give the person no less than 14 days notice of the application; and

(b) the person may appear and adduce evidence at the hearing of the application.

30. Amendment of Application

(1) [The Court] hearing the application under section 28(1) may, before the final determination of the application, and on the application of the [Attorney-General] [Director of Public Prosecutions], amend the application to include any other property or benefit, as the case may be, upon being satisfied that:

(a) the property or benefit was not reasonably capable of identification when the application was made;

(b) necessary evidence became available only after the application was originally made.

(2) Where the [Attorney-General] [Director of Public Prosecutions] applies to amend an application for a confiscation order and the amendment would have the effect of including additional property in the application for confiscation, he or she must give no less than 14 days written notice of the application to amend to any person who he or she has a reason to believe may have an interest in the property to be included in the application for a confiscation order.

(3) Any person who claims an interest in the property to be included in the application of a confiscation order may appear and adduce evidence at the hearing of the application to amend.

(4) Where the [Attorney-General] [Director of Public Prosecutions] applies to amend an application for a pecuniary penalty order against a person and the effect of the amendment would
be to include an additional benefit in the application he or she must give the person no less than [14 days] written notice of the application to amend.

31. Procedure on Application

(1) Where an application is made to [the Court] for a confiscation order or a pecuniary penalty order in respect of a person's conviction of a serious offence, [the Court] may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.

(2) Where an application is made for a confiscation order or a pecuniary penalty order to [the Court] before which the person was convicted, and [the Court] has not, when the application is made, passed sentence on the person for the offence, [the Court] may, if it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the order.

32. Procedure for in rem confiscation order where person dies or absconds

(1) Where:

(a) an information has been laid alleging the commission of the offence by a person; and

(b) a warrant for the arrest of the person has been issued in relation to that information,

the [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] for a confiscation order in respect of any tainted property if the defendant has died or absconded.

(2) For the purposes of subsection (1), the person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of [6 months] commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period.

(3) Where the [Attorney-General] [Director of Public Prosecutions] applies under this section for a confiscation order against any tainted property [the Court] shall, before hearing the application:

(a) require notice of the application to be given to any person who, in the opinion of [the Court], appears to have an interest in the property;

(b) direct notice of the application to be published in [the Gazette] and in a newspaper published and circulating in [name of State] containing such particulars and for so long as [the Court] may require.

Division 2 - Confiscation

33. Confiscation Order on Conviction

(1) Where, upon application by the [Attorney-General] [Director of Public Prosecutions], [the Court] is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted, [the Court] may order that specified property be confiscated.

(2) In determining whether property is tainted property [the Court] may infer, in the absence of evidence to the contrary:

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(a) that the property was used in or in connection with the commission of the offence if it was in the person's possession at the time of, or immediately after the commission of the offence for which the person was convicted;

(b) that the property was derived, obtained or realized as a result of the commission of the offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offence of which the person was convicted, and [the Court] is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property;

(3) Where [the Court] orders that property, other than money, be confiscated, [the Court] shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a confiscation order should be made under subsection (1) [the Court] shall have regard to:

(a) the rights and interests, if any, of third parties in the property;

(b) the gravity of the offence concerned;

(c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and

(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where [the Court] makes a confiscation order, [the Court] may give such directions as are necessary or convenient for giving effect to the order.

34. Effect of Confiscation Order

(1) Subject to subsection (2), where a Court makes a confiscation order against any property, the property vests absolutely in [name of State] by virtue of the order.

(2) Where property ordered to be confiscated is registrable property -

(a) the property vests in [name of State] in equity but does not vest in [name of State] at law until the applicable registration requirements have been complied with;

(b) [name of State] is entitled to be registered as owner of the property;

(c) the [Attorney-General] [Director of Public Prosecutions] has power on behalf of [name of State] to do or authorise the doing of anything necessary or convenient to obtain the registration of [name of State] as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where [the Court] makes a confiscation order against property:

(a) the property shall not, except with the leave of [the Court] and in accordance with any directions of [the Court], be disposed of, or otherwise dealt with, by or on behalf of [name of State] before the relevant appeal date; and
(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the [Attorney-General] [Director of Public Prosecutions].

(4) In this section:

"registrable property" means property the title to which is passed by registration in accordance with the provisions of the [Land Registration Act]

"relevant appeal date" used in relation to a confiscation order made in consequence of a person's conviction of a serious offence means:

(a) the date on which the period allowed by rules of court for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a confiscation order expires without an appeal having been lodged, whichever is the later; or

(b) where an appeal against a person's conviction or against the making of a confiscation order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

35. Voidable Transfers

[The Court] may:

(a) before making a confiscation order; and

(b) in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 60,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

36. Protection of Third Parties

(1) Where an application is made for a confiscation order against property, a person who claims an interest in the property may apply to [the Court], before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to [the Court] for an order under this section in respect of property and [the Court] is satisfied on a balance of probabilities:

(a) that the person was not in any way involved in the commission of the offence; and

(b) where the person acquired the interest during or after the commission of the offence, that he or she acquired the interest:

(i) for sufficient consideration; and

(ii) without knowing, and in circumstance such as not to arouse a reasonable suspicion, that the property was, at the time he or she acquired it, property that was tainted property,
[the Court] shall make an order declaring the nature, extent and value (at the time the order is made) of the person's interest.

(3) Subject to subsection (4), where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of [12 months] commencing on the day on which the confiscation order is made, apply under this subsection to [the Court] for an order under subsection (2).

(4) A person who:
   (a) had knowledge of the application for the confiscation order before the order was made; or
   (b) appeared at the hearing of that application,
shall not be permitted to make an application under subsection (3), except with leave of [the Court].

(5) A person who makes an application under subsection (1) or (3) must give no less than [14 days] written notice of the making of the application to the [Attorney-General] [Director of Public Prosecutions], who shall be a party to any proceedings in the application.

(6) An applicant or the [Attorney-General] [Director of Public Prosecutions] may in accordance with the rules of court, appeal to the [Court of Appeal] from an order made under subsection (2).

(7) Any person appointed by [the Court] under section 68 shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from that order has been determined:
   (a) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or
   (b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

37. Discharge of Confiscation Order on appeal and quashing of conviction

(1) Where [the Court] makes a confiscation order against property in reliance on a person's conviction of a serious offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a confiscation order against property is discharged as provided for in subsection (1) or by [the Court] hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the confiscation order may apply to the [public trustee] in writing for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) the [public trustee] shall:
   (a) if the interest is vested in [name of State] give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
   (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.
(4) In the exercise of his or her powers under this section and section 36(7), the [public trustee] shall have the power to do or authorise the doing of any thing necessary or convenient to effect the transfer or return of the property, including the execution of any instrument and the making of any application for the registration of an interest in the property on any appropriate register.

38. Payment instead of a Confiscation Order

Where [the Court] is satisfied that a confiscation order should be made in respect of the property of a person convicted of a serious offence, but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular:

(a) cannot, on the exercise of due diligence be located;
(b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the confiscation of the property;
(c) is located outside [name of State];
(d) has been substantially diminished in value or rendered worthless; or
(e) has been commingled with other property that cannot be divided without difficulty,

[the Court] may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to [name of State] an amount equal to the value of the property, part or interest.

39. Application of procedure for enforcing fines

Where [the Court] orders a person to pay an amount under section 38, that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for a serious offence, and [the Court] shall -

(a) notwithstanding anything contained in any other Act, impose in default of the payment of that amount, a term of imprisonment:
   (i) of [........ years], where the amount does not exceed [x currency name];
   (ii) of [........ years], where the amount exceeds [x currency name] but does not exceed [y currency name];
   (iii) of [........ years], etc. (to whatever limits seem appropriate)

(b) direct that the term of imprisonment imposed pursuant to subsection (a) be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving;

(c) direct that [the .................... Act or regulations] regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to subsection (a).
40. **Confiscation where a person dies or absconds**

(1) Subject to section 32 (3), where an application is made to [the Court] under section 32 (1) for a confiscation order against any tainted property in consequence of a person having died or absconded in connection with a serious offence and [the Court] is satisfied that:

   (a) any property is tainted property in respect of the offence;
   
   (b) proceedings in respect of a serious offence committed in relation to that property were commenced; and
   
   (c) the accused charged with the offence referred to in subsection (b) has died or absconded;

[the Court] may order that the property or such property as is specified by [the Court] in the order be confiscated.

(2) The provisions of sections 33, 34, 35 and 36 shall apply with such modifications as are necessary to give effect to this section.

**Division 2 - Pecuniary Penalty Orders**

41. **Pecuniary Penalty Order on Conviction**

(1) Subject to this section, where the [Attorney-General] [Director of Public Prosecutions] applies to [the Court] for a pecuniary penalty order against a person in respect of that person's conviction for a serious offence [the Court] shall, if it is satisfied that the person has benefitted from that offence, order him or her to pay to [name of State] an amount equal to the value of his or her benefit from the offence or such lesser amount as [the Court] certifies in accordance with section 44(2) to be the amount that might be realized at the time the pecuniary penalty order is made.

(2) [The Court] shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 42, 43, 44, and 45.

(3) [The Court] shall not make a pecuniary penalty order under this section:

   (a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such appeal having been lodged; or
   
   (b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

42. **Rules of determining benefit and assessing value**

(1) Where a person obtains property as the result of, or in connection with the commission of a serious offence, his or her benefit is the value of the property so obtained.

(2) Where a person derived an advantage as a result of or in connection with the commission of a serious offence, his or her advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

(3) [The Court], in determining whether a person has benefitted from the commission of a serious offence or from that offence taken together with other serious offences shall, unless the contrary is proved, deem:

   (a) all property appearing to [the Court] to be:
(i) held by the person on the day on which the application is made; and
(ii) all property appearing to [the Court] to be held by the person at any time:

(A) within the period between the day the serious offence, or the earliest serious offence, was committed and the day on which the application is made; or

(B) within the period of [6 years] immediately before the day on which the application is made, whichever is the longer,

to be property that came into the possession or under the control of the person by reason of the commission of that serious offence or those serious offences for which the person was convicted;

(b) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him or her as a result of, or in connection with, the commission of that serious offence or those serious offences; and

(c) any property received or deemed to have been received by the person at any time as a result of, or in connection with the commission by him or her of that serious offence or those serious offences as property received by him or her free of any interest therein.

(4) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by him or her from the commission of the serious offence, [the Court] shall leave out of account any benefits that are shown to [the Court] to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, then [the Court] shall, subject to subsection (6) treat the value of the benefit as being not less than the amount of that excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies [the Court] that the whole or part of the excess was due to causes unrelated to the commission of the serious offence, subsection (5) does not apply to the excess or, as the case may be, that part.

43. Statements relating to benefits from commission of serious offences

(1) Where:

(a) a person has been convicted of a serious offence and the [Attorney-General] [Director of Public Prosecutions] tenders to [the Court] a statement as to any matters relevant to:

(i) determining whether the person has benefitted from the offence or from any other serious offence of which he or she is convicted in
the same proceedings or which is taken into account in determining his or her sentence; or

(ii) an assessment of the value of the person's benefit from the offence or any other serious offence of which he or she is convicted in the same proceedings or which is taken into account; and

(b) the person accepts to any extent an allegation in the statement,

[the Court] may, for the purposes of so determining or making that assessment, treat his or her acceptance as conclusive of the matters to which it relates.

(2) Where:

(a) a statement is tendered under subsection (1)(a); and

(b) [the Court] is satisfied that a copy of that statement has been served on the person,

[the Court] may require the person to indicate to what extent he or she accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matters he or she proposes to reply on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2), he or she may be treated for the purposes of this section as having accepted every allegation in the statement other than:

(a) an allegation in respect of which he or she complied with the requirement; and

(b) an allegation that he or she has benefitted from the serious offence or that any property or advantage was obtained by him or her as a result of or in connection with the commission of the offence.

(4) Where:

(a) the person tenders to [the Court] a statement as to any matters relevant to determining the amount that might be realized at the time the pecuniary penalty order is made; and

(b) the [Attorney-General] [Director of Public Prosecutions] accepts to any extent any allegation in the statement,

[the Court] may, for the purposes of that determination, treat the acceptance of the [Attorney-General] [Director of Public Prosecutions] as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section, either:

(a) orally before [the Court]; or

(b) in writing, in accordance with rules of court.

(6) An acceptance by a person under this section that he or she received any benefits from the commission of a serious offence is admissible in any proceedings for any offence.
44. **Amount recovered under Pecuniary Penalty Order**

(1) Subject to subsection (2), the amount to be recovered in the person's case under a pecuniary penalty order shall be the amount which [the Court] assesses to be the value of the person's benefit from the serious offence, or if more than one, all the offences in respect of which the order may be made.

(2) Where [the Court] is satisfied as to any matter relevant for determining the amount which might be realized at the time the pecuniary penalty order is made (whether by acceptance under section 43 or otherwise), [the Court] may issue a certificate giving [the Court's] opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realized at the time the pecuniary penalty order is made is less than the amount that [the Court] assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

45. **Variation of Pecuniary Penalty Order**

Where:

(a) [the Court] makes a pecuniary penalty order against a person in relation to a serious offence;

(b) in calculating the amount of the pecuniary penalty order, [the Court] took into account a confiscation order of the property or a proposed confiscation order in respect of property; and

(c) an appeal against confiscation or a confiscation order is allowed, or the proceedings from the proposed confiscation order terminate without the proposed confiscation order being made,

the [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so confiscated and [the Court] may, if it considers it appropriate to do so, vary the order accordingly.

46. **Lifting the corporate veil**

(1) In assessing the value of benefits derived by a person from the commission of a serious offence, [the Court] may treat as property of the person any property that, in the opinion of [the Court], is subject to the effective control of the person, whether or not he or she has:

(a) any legal or equitable interest in the property; or

(b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), [the Court] may have regard to:

(a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose [the Court] may order the investigation and inspection of the books of a named company;

(b) any trust that has any relationship to the property;
(c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in subsection (a) or trust of the kind referred to in subsection (b), and any other persons.

(3) Where [the Court], for the purposes of making a pecuniary penalty order against a person, treats particular property as the person's property pursuant to subsection (1), [the Court] may, on application by the [Attorney-General] [Director of Public Prosecutions] make an order declaring that the property is available to satisfy the order.

(4) Where [the Court] declares that property is available to satisfy a pecuniary penalty order:

(a) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and

(b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the [Attorney-General] [Director of Public Prosecutions] makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person:

(a) the [Attorney-General] [Director of Public Prosecutions] shall give written notice of the application to the person and to any person who the [Attorney-General] [Director of Public Prosecutions] has reason to believe may have an interest in the property; and

(b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

47. Enforcement of Pecuniary Penalty Orders

Where [the Court] orders a person to pay an amount under a pecuniary penalty order, the provisions of section 39 shall apply with such modifications as [the Court] may determine for the purpose of empowering [the Court] to impose a term of imprisonment on a person in default of compliance by him or her with a pecuniary penalty order.

48. Discharge of Pecuniary Penalty Orders

A pecuniary penalty order is discharged:

(a) if the conviction of the serious offence or offences in reliance on which the order was made is or is taken to be quashed and no conviction for the offence or offences is substituted;

(b) if the order is quashed; or

(c) on the satisfaction of the order by payment of the amount due under the order.
Division 3 - Control of Property

49. Powers to search for and seize tainted property

(1) A police officer may:
   (a) search a person for tainted property;
   (b) enter upon land or upon or into premises and search the land or premises for tainted property; and
   (c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds to be tainted property, provided that the search or seizure is made:
   (d) with the consent of the person or the occupier of the land or premises as the case may be;
   (e) under warrant issued under section 50; or
   (f) under section 52.

(2) Where a police officer may search a person under this Division, he or she may also search:
   (a) the clothing that is being worn by the person; and
   (b) any property in, or apparently in, the person's immediate control.

50. Search Warrants in relation to tainted property

(1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next 72 hours, tainted property of a particular kind:
   (a) on a person;
   (b) in the clothing that is being worn by a person;
   (c) otherwise in a person's immediate control;
   (d) upon land or upon or in any premises,

the police officer may lay before a magistrate an information [on oath] setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for tainted property of that kind.

(2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4) issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable:
   (a) to search the person for tainted property of that kind;
   (b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind; and
   (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind.
(3) A warrant may be issued under subsection (2) in relation to tainted property, whether or not an information has been laid in respect of the relevant offence.

(4) A magistrate shall not issue a warrant under subsection (2) unless, where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the magistrate is satisfied that:

(a) an information will be laid in respect of the relevant offence within [48 hours]; and

(b) the property is tainted property.

(5) A warrant issued under this section shall state:

(a) the purpose for which it is issued, including a reference to the nature of the relevant offence;

(b) a description of the kind of property authorised to be seized;

(c) a time at which the warrant ceases to be in force; and

(d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(6) If during the course of searching under a warrant issued under this section, a police officer finds:

(a) property that the police officer believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property in relation to another serious offence; or

(b) any thing the police officer believes on reasonable grounds will afford evidence as to the commission of a serious offence

the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

51. Search Warrants may be granted by telephone, etc

(1) Where by reason of urgency a police officer considers it necessary to do so, he or she may make application for a search warrant under section 50 by telephone or by other means of communication.

(2) A magistrate, to whom an application for the issue of a warrant is made by telephone or other means of communication, may sign a warrant if he or she is satisfied that it is necessary to do so, and shall inform the police officer of the terms of the warrant so signed. The police officer shall complete a form of warrant in the terms furnished by the magistrate.

(3) The police officer to whom a warrant is granted by telephone or other means of communication shall, not later than [the next working day] following the execution of the
warrant, give the magistrate a duly sworn information and the form of warrant completed by him or her.

52. Searches in emergencies

(1) Where a police officer suspects on reasonable grounds that:
   (a) particular property is tainted property;
   (b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and
   (c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

     the police officer may:
     (i) search a person;
     (ii) enter upon land, or upon or into premises and search for the property; and
     (iii) if property is found, seize the property.

(2) If during the course of a search conducted under this section, a police officer finds:
   (a) property that the police officer believes on reasonable grounds to be tainted property; or
   (b) any thing the police officer believes on reasonable grounds will afford evidence as to the commission of a criminal offence,

     the police officer may seize that property or thing.

53. Record of Property Seized

A police officer who seizes property under section 50 or section 52 shall detain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

54. Return of Seized Property

(1) Where property has been seized under section 50 or section 52 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to [the Court] for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and [the Court] is satisfied that:

   (a) the person is entitled to possession of the property;
   (b) the property is not tainted property; and
   (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property, [the Court] shall order the return of the property to the person.
55. Search for and Seizure of tainted property in relation to foreign offences

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of sections 50, 51 and 52 apply mutatis mutandis provided that the [Attorney-General] has, under section 4 of the Mutual Assistance in Criminal Matters Act, 2000, authorised the giving of assistance to the foreign State.

Division 4 - Restraining Orders

56. Application for Restraining Order

(1) The [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] for a restraining order against any realizable property held by the defendant or specified realizable property held by a person other than the defendant.

(2) An application for a restraining order may be made ex parte and shall be in writing and be accompanied by an affidavit stating:

(a) where the defendant has been convicted of a serious offence, the serious offence for which he or she was convicted, the date of the conviction, [the Court] before which the conviction was obtained and whether an appeal has been lodged against the conviction;

(b) where the defendant has not been convicted of a serious offence, the serious offence for which he or she is charged or about to be charged and the grounds for believing that the defendant committed the offence;

(c) a description of the property in respect of which the restraining order is sought;

(d) the name and address of the person who is believed to be in possession of the property;

(e) the grounds for the belief that the property is tainted property in relation to the offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;

(f) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant; and

(g) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made under this Part in respect of the property.

57. Restraining Orders

(1) Subject to this section, where the [Attorney-General] [Director of Public Prosecutions] applies to [the Court] for a restraining order against property and [the Court] is satisfied that:
(a) the defendant has been convicted of a serious offence, or has been charged or is about to be charged with a serious offence;

(b) where the defendant has not been convicted of a serious offence, there are reasonable grounds for believing that the defendant committed the offence;

(c) there is reasonable cause to believe that the property is tainted property in relation to an offence, or that the defendant derived a benefit directly or indirectly from the commission of the offence;

(d) where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant; and

(e) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this Part in respect of the property;

[the Court] may make an order:

(f) prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and

(g) at the request of the [Attorney-General] [Director of Public Prosecutions], where [the Court] is satisfied that the circumstances so require:

(i) directing the [public trustee] or such other person as [the Court] may appoint, to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of [the Court]; and

(ii) requiring any person having possession of the property to give possession thereof to the [public trustee] or to the person appointed under subsection (i) to take custody and control of the property.

(2) An order under subsection (1) may be made subject to such conditions as [the Court] thinks fit and, without limiting the generality of this, may make provision for meeting out of the property or a specified part of the property, any or all of the following:

(a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;

(b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Division; and

(c) any specified debt incurred by the person in good faith.

(3) In determining whether there are reasonable grounds for believing property is subject to the effective control of the defendant, [the Court] may have regard to the matters referred to in section 46.
(4) Where the [public trustee] or other person appointed under subsection (1)(g)(i) is given a direction in relation to any property, he or she may apply to [the Court] for directions on any question respecting the management or preservation of the property under his or her control.

(5) An application under section 56 shall be served on all persons interested in the application or such of them as [the Court] thinks expedient and all such person shall have the right to appear at the hearing and be heard.

(6) When the application is made under section 56 (1) on the basis that a person is about to be charged, any order made by [the Court] shall lapse if the person is not charged:

   (a) where the offence is an offence against the law of [name of State], within [...hrs/days]; and
   (b) where the offence is an offence against the law of a foreign State, within [...10 times that number of days]

[58. Undertaking by [name of State]]

(1) Before making an order under section 57(1), [the Court] may require [name of State] to give such undertakings as [the Court] considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the [Attorney-General] [Director of Public Prosecutions] may give such undertakings with respect to the payment of damages or costs or both as are required by [the Court].

59. Notice of Application for Restraining Order

Before making a restraining order [the Court] may require notice to be given to, and may hear, any person who, in the opinion of [the Court], appears to have an interest in the property, unless [the Court] is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property.

60. Service of Restraining Order

A copy of a restraining order shall be served on a person affected by the order in such manner as [the Court] directs or as may be prescribed by rules of court.

61. Registration of Restraining Order

(1) A copy of a restraining order which affects lands in [name of State] shall be registered with the [Registrar of Lands].

(2) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the [Registration Of Land Act].

(3) Where particulars of a restraining order are registered under the [Registration Of Land Act], a person who subsequently deals with the property shall, for the purposes of section 62 be deemed to have notice of the order at the time of the dealing.

62. Contravention of Restraining Order
(1) A person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence punishable upon conviction by:
   
   (a) a fine of [......] or imprisonment for a period of [.... years] or both, in the case of a natural person; or
   
   (b) a fine of [5 times above figure] in the case of a body corporate.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the [Attorney-General] [Director of Public Prosecutions] makes an application under subsection (2) in relation to a disposition or dealing, [the Court] may:
   
   (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
   
   (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

63. Duration of Restraining Order

A restraining order remains in force until:

(a) it is discharged, revoked or varied;

(b) the period of [6 months] from the date on which it is made or such later time as [the Court] may determine; or

(c) a confiscation order or a pecuniary penalty order, as the case may be, is made in respect of property which is the subject of the order.

64. Review of Restraining Orders

(1) A person who has an interest in property in respect of which a restraining order was made may, at any time, apply to [the Court] for an order under subsection (4).

(2) An application under subsection (1) shall not be heard by [the Court] unless the applicant has given to the [Attorney-General] [Director of Public Prosecutions] at least [3 working days] notice in writing of the application.

(3) [The Court] may require notice of the application to be given to, and may hear, any person who in the opinion of [the Court] appears to have an interest in the property.

(4) On an application under subsection (1) [the Court] may revoke or vary the order or make the order subject to such conditions as [the Court] thinks fit. For the purposes of this subsection [the Court] may:
   
   (a) require the applicant to enter into recognizances;
(b) vary the order to permit the payment of reasonable living expenses of the applicant, including his or her dependents, if any, and reasonable legal or business expenses of the applicant.

(5) An order under subsection (4) may only be made if [the Court] is satisfied that the:
(a) applicant is the lawful owner of the property or is entitled to lawful possession thereof, and appears to be innocent of any complicity in the commission of a serious offence or of any collusion in relation to such offence; and
(b) that the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

65. Extension of Restraining Orders

(1) The [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] that made a restraining order for an extension of the period of the operation of the order.

(2) Where the [Attorney-General] [Director of Public Prosecutions] makes an application under subsection (1), [the Court] may extend the operation of a restraining order for a specified period, if it is satisfied that a confiscation order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

Division 5 - Realization of Property

66. Realization of property

(1) Where:
(a) a pecuniary penalty order is made;
(b) the order is not subject to appeal; and
(c) the order is not discharged,
the [name of Court] may, on an application by the [Attorney General], exercise the powers conferred upon [the Court] by this section.

(2) The [name of Court] may appoint a receiver in respect of realizable property.

(3) The [name of Court] may empower a receiver appointed under subsection (2) to take possession of any realizable property subject to such conditions or exceptions as may be specified by [the Court].

(4) The [name of Court] may order any person having possession of realizable property to give possession of it to any such receiver.

(5) The [name of Court] may empower any such receiver to realize any realizable property in such manner as [the Court] may direct.

(6) The [name of Court] may order any person holding an interest in realizable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as [the Court] may direct, and [the
may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) The [name of Court] shall not, in respect of any property, exercise the powers conferred by subsection (3), (4), (5) or (6), unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to [the Court].

67. Application of proceeds of realization and other sums

(1) Subject to subsection (2), the following property in the hands of a receiver appointed under sections 57 or 66, that is to say:

(a) the proceeds of the realization of any property under section 66; and

(b) any other sums, being property held by the defendant,

shall, after such payments, if any, as the [name of Court] may direct have been made out of those sums, be payable to the [Registrar] of the [name of Court] and be applied on the defendant's behalf towards the satisfaction of the pecuniary penalty order in the manner provided by subsection (3).

(2) If, after the amount payable under the confiscation order [pecuniary penalty order] has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums:

(a) among such of those persons who held property which has been realized under this Part; and

(b) in such proportions,

as the [name of Court] may direct, after giving a reasonable opportunity for those persons to make representations to [the Court].

(3) Property received by the [Registrar] of the [name of Court] on account of an amount payable under a confiscation order shall be applied as follows:

(a) if received by him from a receiver under subsection (1), it shall first be applied in payment of the receiver's remuneration and expenses; and

(b) the balance shall be paid or, as the case may be, transferred, to [the [name of State] Fund For Drug Abuse Prevention And Control], established by section 121 of the [Drug Abuse Act, 2000].

68. Exercise of powers of [public trustee]

(1) The following provisions of this section apply to the powers conferred on the [name of Court] by sections 57, 64, 65 and 66, or on a receiver appointed under section 57(1)(g) or section 66(2).

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the pecuniary penalty order or, as the case may be, any pecuniary penalty order that may be made in the defendant's case, the value for the time being of realizable property held by any person by the realization of such property.
(3)  In the case of realizable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realizing no more than the value for the time being of the gift.

(4)  The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him or her.

(5)  An order may be made or other action taken in respect of a debt owed by [name of State].

(6)  In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

69.  Paramountcy of this Part in bankruptcy or winding up

(1)  Where a person who holds realizable property is [adjudged] bankrupt:

(a)  property for the time being subject to a restraining order made before the order adjudging him bankrupt; and

(b)  any proceeds of property realized by virtue of sections 66(5) or (6) for the time being in the hands of a person appointed under section 57(1)(g) or 66(2),

is excluded from the property of the bankrupt for the purposes of the [Bankruptcy Act].

(2)  Where a person has been [adjudged] bankrupt, the powers conferred on [the Court] by sections 57 and 66 or on a person appointed under section 57(1)(g) or 66(2) shall not be exercised in relation to property for the time being comprised in the property of the bankrupt for the purposes of the [Bankruptcy Act].

(3)  Where, in the case of a debtor, a receiver stands appointed under section [ ] of the [Bankruptcy Act] and any property of the debtor is subject to [a restraint order under or for the purposes of that Act], the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to such restraint order.

(4)  Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Part:

(a)  no order shall be made by virtue of sections [ ] of the [Bankruptcy Act] in respect of the making of the gift at any time when the person has been charged with a serious offence and the proceedings have not been concluded by the acquittal of the defendant or discontinuance of the proceedings, or when property of the person to whom the gift was made is subject to [a restraint order or a charging order made under or for the purposes of that Act]; and

(b)  any order made by virtue of those sections after the conclusion of the proceedings shall take into account any realisation under this Part of property held by the person to whom the gift was made.

70.  Winding up of company holding realizable property

(1)  Where realizable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for its voluntary
winding up, the functions of the liquidator [or any provisional liquidator] shall not be exercisable in relation to:

(a) property for the time being subject to a restraining order made before the relevant time; or

(b) any proceeds of property realized by virtue of sections 66(5) or (6) for the time being in the hands of a person appointed under section 57(1)(g) or 66(2),

but there shall be payable out of such property any expenses (including the remuneration of the liquidator [or provisional liquidator]) properly incurred in the winding up in respect of the property.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the [name of Court] by section 57 or 66 shall not be exercised in relation to any realizable property held by the company in relation to which the functions of the liquidator are exercisable:

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator [or any provisional liquidator]) properly incurred in the winding up in respect of the property.

(3) Subsection (2) does not affect the enforcement of a charging order:

(a) made before the relevant time; or

(b) on property which was subject to a restraint order at the relevant time.

(4) Nothing in the [Companies Act] shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the [name of Court] by section 57 or 66.

(5) In this section -

(a) "company" means any company which may be wound up under the [Companies Act],

(b) "liquidator" includes any person appointed to the office of liquidator (whether provisionally or otherwise) under the [Companies Act]; and

(c) "the relevant time" means:

(i) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

(ii) where such an order has been made and, before the presentation of the petition for the winding up of the company by [the Court], such a resolution had been passed by the company, the time of the passing of the resolution; and

(iii) in any other case where such an order has been made, the time of the making of the order.
Division 6 - Production Orders and other Information Gathering Powers

71. Production Orders

(1) Where a person has been charged with or convicted of a serious offence, and a police officer has reasonable grounds for suspecting that any person has possession or control of:

(a) a document relevant to identifying, locating or quantifying property of the person, or to identifying or locating a document necessary for the transfer of property of such person; or

(b) a document relevant to identifying, locating or quantifying tainted property in relation to the offence, or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence,

the police officer may apply ex parte and in writing to a [judge in chambers] for an order against the person suspected of having possession or control of a document of the kind referred. The application shall be supported by an affidavit.

(2) The judge may, if he or she considers there are reasonable grounds for so doing, make an order that the person produce to a police officer, at a time and place specified in the order, any documents of the kind referred to in subsection (1), provided that an order under this subsection may not require the production of [bankers books].

(3) A police officer to whom documents are produced may:

(a) inspect the documents;

(b) make copies of the documents; or

(c) retain the documents for so long as is reasonably necessary for the purposes of this Act.

(4) Where a police officer retains documents produced to him or her, he or she shall make a copy of the documents available to the person who produced them.

(5) A person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that:

(a) the document might tend to incriminate the person or make the person liable to a penalty; or

(b) the production of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose either the existence or contents, or both, of the document.

72. Evidential value of information

(1) Where a person produces a document pursuant to an order under this Division, the production of the document, or any information document or things obtained as a direct or indirect consequence of the production of the document, is not admissible against the person in any criminal proceedings except proceedings under section 73.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a confiscation order or a pecuniary penalty order are not criminal proceedings.
73. **Failure to comply with a production order**

Where a person is required by a production order to produce a document to a police officer, the person is guilty of an offence against this section if he or she:

(a) contravenes the order without reasonable cause; or

(b) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material particular and does not so indicate to the police officer and provide to the police officer any correct information of which the person is in possession.

**Penalty:** in the case of a natural person, imprisonment for a maximum of [....] years or a maximum fine of [.....], or both, and in the case of a body corporate [five times] such fine.

74. **Production Orders in relation to foreign offences**

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 70 apply mutatis mutandis, provided that the [Attorney-General] [Director of Public Prosecutions] has, under section 4(2) of the Mutual Assistance in Criminal Matters Act, 2000, authorised the giving of assistance to the foreign State.

75. **Power to search for and seize documents relevant to locating property**

A police officer may:

(a) enter upon land or upon or into premises;

(b) search the land or premises for any document of the type described in section 71(1); and

(c) seize any document found in the course of that search that the police officer believes, on reasonable grounds, to be a relevant document in relation to a serious offence,

provided that the entry, search and seizure is made:

(d) with the consent of the occupier of the land or the premises; or

(e) under warrant issued under section 76.

76. **Search Warrant for location of documents relevant to locating property**

(1) Where:

(a) a person has been charged or convicted of a serious offence; or

(b) the police officer has reasonable grounds for suspecting that there is, or may be within the [next 72 hours], upon any land or upon or in any premises, a document of the type described in section 71(1) in relation to the offence,

the police officer may make an application supported by information on oath to a [magistrate/judge] for a search warrant in respect of that land or those premises.

(2) Where an application is made under subsection (1) for a warrant to search land or premises, the [magistrate/judge] may, subject to subsection (4) issue a warrant authorising a
police officer (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:

(a) to enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and

(b) to seize property found in the course of the search that the police officer believes on reasonable grounds to be property of that kind.

(3) A [magistrate/judge] shall not issue a warrant under subsection (2) unless he or she is satisfied that:

(a) a production order has been given in respect of the document and has not been complied with;

(b) a production order in respect of the document would be unlikely to be effective;

(c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without any notice to any person; or

(d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(4) A warrant issued under this section shall state:

(a) the purpose for which it is issued, including a reference to the nature of the relevant offence;

(b) a description of the kind of documents authorised to be seized;

(c) a time at which the warrant ceases to be in force; and

(d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(5) If during the course of searching under a warrant issued under this section, a police officer finds:

(a) a document of the type described in section 71(1) that the police officer believes on reasonable grounds to relate to the relevant offence, or to another serious offence; or

(b) any thing the police officer believes on reasonable grounds will afford evidence as to the commission of a serious offence

the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

77. Search Warrants in relation to foreign offences

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 76 apply mutatis mutandis, provided that the [Attorney-General] has, under section 4(2) of the Mutual Assistance in Criminal Matters Act, 2000, authorised the giving of assistance to the foreign State.
78. Monitoring Orders

(1) **[The Director of Public Prosecutions]** [A police officer] may apply, *ex parte* and in writing to a **[judge in chambers]** for an order (in this section called a monitoring order) directing a financial institution to give information to a police officer. An application under this **subsection** shall be supported by an affidavit.

(2) A monitoring order shall:

   (a) direct a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution;

   (b) not have retrospective effect; and

   (c) only apply for a period of a maximum of **[3 months]** from the date of making.

(3) **[A judge]** shall not issue a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the order is sought:

   (a) has committed or was involved in the commission, or is about to commit or be involved in the commission of, a serious offence; or

   (b) has benefitted directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence.

(4) A monitoring order shall specify:

   (a) the name or names in which the account is believed to be held; and

   (b) the class of information that the institution is required to give.

(5) Where a financial institution, which has been given notice of a monitoring order, knowingly:

   (a) contravenes the order; or

   (b) provides false or misleading information in purported compliance with the order,

the institution commits an offence against this **subsection**.

**Penalty:** in the case of a natural person, imprisonment for a maximum of [....] years or a maximum fine of [.....], or both, and in the case of a body corporate **[five times]** such fine.

79. **Monitoring Orders not to be disclosed**

(1) A financial institution that is, or has been subject to a monitoring order shall not disclose the existence or operation of the order to any person except:

   (a) an officer or agent of the institution for the purpose of ensuring compliance with the order;

   (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or

   (c) a police officer authorised in writing to receive the information.
Penalty: in the case of a natural person, imprisonment for a maximum of [....] years or a maximum fine of [.....], or both, and in the case of a body corporate [five times] such fine.

(2) A person described in subsection (1)(a), (b) or (c) shall not disclose the existence or operation of a monitoring order except to another such person, and may do so only for the purposes of the performance of the person's duties or functions.

Penalty: imprisonment for a maximum of [....] years or a maximum fine of [.....], or both.

(3) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of or in connection with legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal adviser to disclose to any court the existence or operation of a monitoring order.
COMMONWEALTH MODEL LAW FOR THE PROHIBITION OF MONEY LAUNDERING & SUPPORTING DOCUMENTATION

Commonwealth Secretariat
London
(Revised May 1996)

MODEL LAW FOR THE PROHIBITION OF MONEY LAUNDERING

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1. In this Law -

“business transaction” means any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person.

“business transaction record” includes where relevant to a business transaction –

(a) the identification records of all the persons party to that transaction;

(b) a description of that transaction sufficient to identify its purpose and method of execution;

(c) the details of any account used for that transaction, including Bank, Branch and Sort Code; and

(d) the total value of that transaction.

“competent authority” means a person or persons appointed by (the Minister for Justice) to carry out the functions of the competent authority as provided in this Law, and includes any person exercising such functions on behalf of the competent authority:

“document” means any record of information, and includes:

(a) anything on which there is writing;

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or

(d) a map, plan, drawing or photograph.

“financial institution” means any person whose regular occupation or business is the carrying out of -

(a) any activity listed in the Schedule to this Law;
(b) any other activity defined by the (Minister of Finance) as such by an order published in (the Gazette) amending the Schedule to this Law.

“freezing” means restraining any transaction or dealing in property:

“identification record” means -

(a) where the person is a corporate body, the details -

(i) of the certificate of incorporation, (notarised) where the corporate body is incorporated abroad;

(ii) of the most recent annual return to the (State Registry) of the corporate body, (notarised) where the corporate body is incorporated abroad;

(iii) of any officer of the corporation as required in sub-paragraph (b) of this definition;

(b) otherwise, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be:

and for these purposes “person” shall include any person who is a nominee, agent, beneficiary or principal in relation to a business transaction;

“money laundering” means -

(a) (i) engaging, directly or indirectly, in a transaction that involves property that is proceeds of crime: or

(ii) receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into the (territory) any property that is proceeds of crime; and

(b) (i) knowing, or having reasonable grounds for suspecting that the property is derived or realised, directly or indirectly, from some form of unlawful activity; or

[(ii) where the conduct is conduct of a natural person, without reasonable excuse failing to take reasonable steps to ascertain whether or not the property is derived or realised directly or indirectly, from some form of unlawful activity:] or

(iii) where the conduct is conduct of a financial institution, failing to implement or apply procedures and control to combat money laundering.
“proceeds of crime” means the proceeds of unlawful activity (wherever committed) and includes any property which is mingled with property that is proceeds of unlawful activity;

“property” includes money and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate and includes any interest in such property;

“requesting State” means any State which makes a request under the provisions of Part IV;

“unlawful activity” means any activity which under any law anywhere is a crime and is punishable by death or imprisonment for a maximum period of not less than twelve months.

2. A reference in this Law to a document includes a reference to:

   (a) any part of a document;

   (b) any copy, reproduction or duplicate of the document or of my part of the document, or

   (c) any part of such copy, reproduction or duplicate.

3. The Minister (of)(for)(…) may make regulations as may be required for carrying into effect any of the provisions of this Law and may amend or revoke such regulations.
PART I

MONEY LAUNDERING PROHIBITED

Offence of Money Laundering

1. A person who, after the commencement of this Law, engages in money laundering is guilty of an offence.

Offence Committed by a Body of Persons

2. Where an offence under the provisions of section 1 is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, shall be guilty of that offence.

Attempts; Aiding and abetting; Conspiracy

3. Any person who attempts or who aids, abets, counsels, or procures the commission of, or who conspires to commit the offence of money laundering is guilty of an offence.

Penalties

4. (1) A person guilty of an offence under the provisions of section 1 or 2 shall be liable on conviction to (penalty)

(2) A person guilty of an offence under the provisions of section 3 shall on conviction be liable to (penalty)

Jurisdiction

5. Any act -

[(1) done by a citizen of (territory; [anywhere];

(2) done by a person on a ship or aircraft registered in (territory); or

(3) done by a person outside (territory) with intent to do that act within (territory)

shall, if it would be an offence by that person within the jurisdiction of (territory) under the provisions of this Part of this Law, be an offence under those provisions.
PART II

ANTI MONEY LAUNDERING SUPERVISION

(Minister of Finance) to Appoint a Money Laundering Authority

1. The (Minister of Finance) shall appoint a person or persons to be known as the Money laundering Authority to supervise financial institutions in accordance with this Law.

Powers and Duties of the Money Laundering Authority

2. The Money Laundering Authority -

   (1) shall receive the reports issued by financial institutions pursuant to the provisions of sub-section 3(2);

   (2) shall send any such report to the law enforcement authorities if, having considered the report, the Money Laundering Authority also has reasonable grounds to suspect that the business transaction involves proceeds of crime:

   (3) or a person authorised by the Money Laundering Authority for such a purpose, may enter into the premises of any financial institution during (Ministry of Finance) working hours to inspect any business transaction record kept by that financial institution pursuant to the provisions of sub-section 3(3) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record:

   (4) shall send to the law enforcement authorities any information derived from an inspection carried out pursuant to the provisions of sub-section (3) of this section if it gives the Money Laundering Authority reasonable grounds to suspect that a business transaction involves proceeds of crime;

   (5) shall destroy any note or copy thereof made or taken pursuant to the provisions of sub-section (3) of this section within three years of the inspection save where any such note or copy has been sent to a law enforcement authority;

   (6) may instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Money Laundering Authority following a report or investigation made under the provisions of this section;

   (7) may compile statistics and records, disseminate information within or without the State, make recommendations arising out of any information received, issue guidelines to financial institutions and advise the (Minister of Finance);
(8) shall create training requirements and provide such training for any financial institution in respect of the business transaction record keeping and reporting obligations as provided in sub-sections (1) and (2) of section 3 of this Part.

(9) may consult with any relevant person, institution or organisation for the purposes of the exercise of its powers or duties under sub-sections (6), (7) and (8) of this section.

(10) shall not conduct any investigation into money laundering other than for the purpose of ensuring compliance by a financial institution with the provisions of section 3 of this Part of this Law.

**Assistance to be Given by Financial Institutions**

3. A financial institution shall -

(1) keep a business transaction record of any new or unrelated business transaction exceeding ($1000) for a period of five years after the termination of the business transaction so recorded;

(2) as soon as the suspicion hereinafter referred to is formed, report to the Money Laundering Authority, any business transaction where the identity of the persons involved, the transaction or any other circumstances concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to suspect that the transaction involves proceeds of crime;

(3) comply with any instruction issued to it by the Money Laundering Authority pursuant to sub-section 2(6);

(4) permit any member of the Money Laundering Authority upon request to enter into any premises of the financial institution during the working hours of the (Ministry of Finance) and inspect the records kept pursuant to the provisions of sub-section 3(1) and to make any notes or take any copies of the whole or any part of any such record to answer any questions of the Money Laundering Authority in relation to such records;

(5) develop and apply internal policies, procedures and controls to combat money laundering and develop audit functions to evaluate such policies, procedures and controls;

(6) comply with the guidelines and training requirements issued and provided by the Money Laundering Authority respectively in accordance with sub-sections 2(6) and 2(7) thereof;

(7) develop a procedure to audit compliance with this section.
Money Laundering Authority's Power to Obtain Search Warrant

4. The Money Laundering Authority or a law enforcement agency, upon application to a Magistrate and satisfying him that there are reasonable grounds to believe that -

(1) a financial institution has failed to keep a business transaction record as provided by the provisions of sub-section 3(1);

(2) a financial institution has failed to report any business transaction as provided by the provisions of sub-section 3(2): or

(3) an officer or employee of a financial institution is committing, has committed or is about to commit a money laundering offence;

may obtain a warrant to enter any premises belonging to, in the possession or control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the Money Laundering Authority or law enforcement agency as ordered by the Magistrate and specified in the warrant.

Property Tracking and Monitoring Orders

5. The Money Laundering Authority or law enforcement agency upon application to a Magistrate and satisfying him that there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence may obtain an order:-

(1) that any document relevant to:

(a) identifying, locating or quantifying any property; or

(b) identifying or locating any document necessary for the transfer of any property.

belonging to, or in the possession or under the control of that person be delivered forthwith to the Money Laundering Authority or law enforcement agency;

(2) that a financial institution forthwith produce to the Money Laundering Authority or law enforcement agency all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the Order as the Magistrate directs.

Mandatory Injunction to Enforce Compliance

6. (1) The officers and employees of a financial institution shall take all reasonable steps to ensure the compliance by that financial institution with its obligation under this part of this law.
(2) The Money Laundering Authority upon application to a judge of the (Supreme) court and satisfying him that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligation as provided in sub-sections 3(1), 3(2), 3(4) or 3(5) of this Part may obtain a mandatory injunction against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

(3) in granting an injunction pursuant to sub-section 6(2) of this section the Court may order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any 4 the provisions of that injunction such financial institution, officer or employee shall pay a financial penalty in the sum and in the manner directed by the Court.

Secrecy Obligations Overridden

7. The provisions of this Part of this Law shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Disclosure Protected

8. It shall not be unlawful for any person to make any disclosure in compliance with this Part of this Law.

Offences

9. (1) It is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document: -

   (a) to divulge that fact or other information to another whereby the investigation is likely to be prejudiced; or

   (b) to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of material which is or is likely to be relevant to the investigation.

(2) A person guilty of an offence under the provisions of sub-section (1) of this section shall on conviction be liable to (penalty).

Other Measures to Avoid Currency Laundering

10. (1) A person who has been convicted of an indictable offence may not be licensed to carry on the business of a financial institution.
(2) For the purposes of this section the expression “indictable offence” shall be deemed to include any similar offence committed abroad.

**[Currency Reporting at the Border]**

11. (1) A person who leaves or enters (country) with more than (value) in cash or negotiable bearer instruments without first having reported the fact to the Money Laundering Authority shall commit an (indictable) offence.

(2) Where a person:

(a) is about to leave (country) or has arrived in (country): or

(b) is about to board or leave, or has boarded or left, any ship of aircraft:

an authorised officer may, with such assistance as is reasonable and necessary,

(c) examine any article which a person has with him or her:

(d) if the officer has reasonable grounds to suspect that an offence under sub-section (1) may have been or is being committed, search the person

for the purpose of finding out whether the person has with him or her or on him or her or in his or her clothing any cash or negotiable bearer instruments in respect of which a report under sub-section (1) is required.

(e) A person shall not be searched except by a person of the same sex.

(3) An authorised officer, and any person assisting such officer, may board any ship or aircraft for the purposes of exercising the powers conferred by sub-section (2).

(4) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search conducted under subsection (2) may afford evidence as to the commission of an offence against section 11, the officer may seize the cash or negotiable bearer instruments.

**PART III**

**FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING**

**Freezing of Property**

1. (1) A competent authority upon application to a judge of the (Supreme) Court and satisfying him that the authority has charged or is about to charge a person with a money
laundering offence may apply for an order freezing the property of or in the possession or under the control of that person wherever it may be.

(2) The Court in making any order freezing the property of that person may give directions as to -

(a) the period of effect of the freezing order;

(b) the disposal of that property for the purpose of:-

(i) determining any dispute as to the ownership of or other interest in the property or any part thereof;

(ii) its proper administration during the period of freezing;

(iii) the payment of debts incurred in good faith due to creditors prior to the order;

(iv) the payment of moneys to that person for the reasonable subsistence of that person and his family;

[(v) the payment of the costs of that person to defend criminal proceedings against him.]

(3) An order made under the provisions of sub-section 1(1) shall cease to have effect at the end of the period of {forty eight hours/seven days} following the hour the order was made should the person against whom such order was made not have been charged with a money laundering offence within that time.

[(4) The (Supreme) Court may refuse to make an order freezing property if the prosecutor refuses or fails to give the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making of an order. No action for damages or costs shall lie in respect of any property subsequently forfeited.

OR

(4) The (Crown) shall not be liable for any damages or cost arising directly or indirectly from the making of a freezing order unless it can be proved that the application for the freezing of the property was not made in good faith.]

[(5) Where the Court makes an order for the administration of frozen property the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property unless the court in which the claim is made is of]
the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the property.]

**Forfeiture of Property**

2. (1) Upon application by a competent authority to a Judge of the (Supreme) Court any property of or in the possession or under the control of any person who is convicted of a money laundering offence and any property of that person the subject of a freezing order shall, unless proved to the contrary, be deemed to be derived from money laundering and forfeited by order of the Court.

(2) In determining whether or not any property is derived from money laundering the Court will apply the standard of proof required in {criminal/civil} proceedings.

(3) In making a forfeiture order the Court may give directions: -

   (i) for the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof;

   (ii) as to the disposal of the property.

(4) Upon application to a Judge of the (Supreme) Court by a person against whom a forfeiture order has been made under the provisions of this section, the Court may order that a sum deemed by the Court to be the value of the property so ordered to be forfeited be paid by that person to the Court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

**Property Tracking and Monitoring**

3. For the purpose of determining whether any property belongs to, is in the possession or under the control of any person the Court may upon application by a competent authority and if satisfied that there are reasonable grounds for so doing, order:

(1) that any document relevant to:

   (a) identifying, locating or quantifying property of that person;

   (b) identifying or locating any document necessary for the transfer of property of that person;

be delivered forthwith to the competent authority;

(2) a financial institution forthwith to produce to the competent authority all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order as the Court directs;
(3) upon being satisfied by the competent authority that any person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with the provisions of sub-section 3(1) or 3(2) that the competent authority may enter any premises of that person, search the premises and remove any document material or other thing therein for the purposes of executing such order.

(4) where a person produces or delivers a document pursuant to an order under this section, the production or delivery of the document or any information, document or thing obtained as a direct or indirect consequence of the production or delivery of the document, is not admissible against the person in any proceedings except a proceeding for an offence of failing to comply with an order or a court.

Offences

4. (1) It is an offence for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of sub-section 3(1) or 3(2).

(2) A person guilty of an offence under the provisions of sub-section 4(1) shall on conviction be liable to (penalty).

5. (1) It is an offence for a person who is the subject of an order made under sub-section (1) or (2) of this section to disclose the existence or operation of the order to any person except to an officer of a law enforcement authority named in the order, an officer or agent of the institution, for the purposes of ensuring that the order is complied with or a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person guilty of an offence under the provisions of sub-section 5(1) shall on conviction be liable to (penalty).

Secrecy Obligations Overridden

6. The provisions of this Part of this Law shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Disclosure Protected

7. It shall not be unlawful for any person to make any disclosure in compliance with this Part of this Law.
Limitations on Freezing and Forfeiture of Property

8. The provisions of sections 1 and 2 shall only apply to property coming into the possession or under the control of a person after the coming into force of this Law.

Appeals

9. Nothing in this Part of this Law shall prevent the operation of any appeal normally available against orders made by the (Supreme) Court.

PART IV

MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

Co-operation with a Foreign State

1. Subject to the provisions of section 6, where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offence, the competent authority shall:

   (1) execute the request forthwith: or

   (2) inform the foreign State making the request of any reason-

         (a) for not executing the request forthwith;

         (b) for delaying the execution of the request.

Competent Authority's Power to Obtain Search Warrant

2. The competent authority upon application to a Magistrate and upon production to the Magistrate of a request may obtain a warrant -

   (1) to enter any premises belonging to, in the possession or control of any person named in the warrant and search the premises;

   (2) to search the person of any person named in the warrant;

and remove any document, material or other thin, for the purpose of executing the request as directed in the warrant.

Property Tracking and Monitoring Orders

3. The competent authority upon application to a Magistrate and upon production to the Magistrate of a request may obtain an order:-
(1) that any document relevant to:

(a) identifying, locating or quantifying any property; or

(b) identifying or locating any document necessary for the transfer of any property;

belonging to, in the possession or under the control of any person the subject of the request be delivered to the competent authority;

(2) that a financial institution forthwith produce to the competent authority all information obtained by the institution about any business transaction conducted by or for a person, the subject of the request with the institution during such period before or after the date of the order as the Magistrate directs.

**Freezing and Forfeiture of Property**

4. Subject to the provisions of section 6, the competent authority upon application to a judge of the [Supreme] Court and upon production to the judge of a request for the freezing or forfeiture of property of or in the possession or under the control of a person named in the request may obtain an order:-

(1) (a) freezing the property of or in the possession or under the control of the person named in the request for such period as is indicated in the order;

(b) giving directions as to the disposal of that property for the purpose of:

(i) determining any dispute as to ownership of or other interest in the property or any part thereof;

(iii) its proper administration during the period of freezing;

(iii) the payment of debts, incurred in good faith, due to creditors prior to the request;

(iv) the payment of moneys to that person for the reasonable subsistence of that person and his family; and

(v) payment of costs to defend any criminal proceedings referred to in the request.

(2) forfeiting the property of or in the possession or under the control of any person named in the request.
Request Accompanied by an Evidence Order

5. (1) Subject to the provisions of section 6 the competent authority may upon application to a judge of the (Supreme) Court and upon production to the judge of a request accompanied by an order issued by a Court of the requesting State directed to any person within the jurisdiction of the (Supreme) Court to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court of the requesting State for the purpose of giving evidence in specified proceedings in that Court, obtain an order directed to that person in the same terms as in the order accompanying the request.

(2) Upon being served with an order issued in accordance with the provisions of sub-section 5(1) the person served shall for the purposes of the order either:-

(a) deliver himself to the jurisdiction of the (Supreme) Court; or

(b) deliver himself to the jurisdiction of the Court of the requesting State, in accordance with the directions in the order.

(3) If a person served with an order issued in accordance with the provisions of sub-section 5(1) elects to deliver himself to the jurisdiction of the Court of the requesting State and fails to comply with any direction in the order he shall be deemed immediately to have delivered himself to the jurisdiction of the (Supreme) Court as provided in sub-section 5(2)(a).

(4) The (Supreme) Court shall conduct such proceedings as are necessary to take the evidence of any person delivering himself to the jurisdiction of the Court pursuant to the provisions of the sub-section 5(2)(a). Such evidence shall subsequently be transmitted by the competent authority to the foreign State.

Limitations on Compliance with Request

6. (1) The competent authority may refuse to comply with a request if:-

(a) the action sought by the request is contrary to any provisions of the Constitution; or

(b) the execution of the request is likely to prejudice the national interest.

(2) The provisions of section 4 shall apply to property coming into the possession or under the control of a person after the coming into force of this law.

Requests to Other States

7. The competent authority may issue to a foreign State a request accompanied, if required, by an order issued in accordance with section 8.
Issuing Evidence Order Against Foreign Resident

8. The competent authority upon application to a judge of the (Supreme) Court may in respect of any proceedings for a money laundering offence apply for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Court or, subject to the approval of the foreign State, to the jurisdiction of the Court of the Foreign State for the purpose of giving evidence in relation to those proceedings.

Evidence Pursuant to a Request

9. Evidence taken pursuant to a request in an proceedings in a Court of a foreign State shall be received as [prima facie] evidence in any proceedings to which such evidence relates.

Form of Requests

10. A request shall be in writing, including facsimile transmitted writing, dated and signed by or on behalf of the person making the request.

Contents of Requests

11. The request shall:-

(1) confirm either that an investigation or prosecution is being conducted into or for a suspected money laundering offence or that a person has been convicted of a money laundering offence;

(2) state the grounds on which any person is being investigated or prosecuted for the money laundering offence referred to in sub-section 11(1) or give details of the convictions of the person referred to in sub-section 11(1);

(3) give particulars sufficient to identify any person referred to in sub-section 11(2);

(4) give particulars sufficient to identify any financial institution or other person believed to have information, documents or material or assistance to the investigation or prosecution referred to in sub-section 11(1);

(5) request the competent authority to whom the request is addressed to obtain from a financial institution or other person referred to in sub-section 11(4) all and any information, documents of material of assistance to the investigation or prosecution referred to in sub-section 11(1);

(6) specify the manner in which and to whom any information, documents or material obtained pursuant to the request is to be produced;
(7) state whether or not a freezing or forfeiture order is required and identify the property to be the subject of such an order; and

(8) contain such other information as may assist the execution of the request.

**Request for Forfeiture**

12. A request for forfeiture shall have attached to it a copy of the final forfeiture order to the Court and a statement signed by a judge of that Court to the effect that no further appeal against such order can be made.

**Request Not to be Invalidated**

13. A request shall not be invalidated for the purpose of any legal proceedings by virtue of any failure to comply with the provisions of section 11 provided the competent authority is satisfied that there is sufficient compliance to enable it properly to execute the request.

**Offences**

14. (1) It is an offence -

   (a) for any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of this Part of this Law;

   (b) for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.

(2) A person guilty of an offence under the provisions of sub-section 14(1) shall on conviction be liable to (penalty).

**Secrecy Obligations Overridden**

15. The provisions of this Part of this Law shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

**Disclosure Protected**

16. It shall not be unlawful for any person to make any disclosure in compliance with this Part of this Law.
Asset Sharing

17. Where (the Minister of Finance) considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, he may order that the whole or any part of any property forfeited under the provisions of this Part of this Law, or the value thereof, be given or remitted to the requesting State.

PART V

EXTRADITION

Money Laundering an Offence for Extradition Purposes

1. For the purposes of any law relating to extradition or the rendition of fugitive offenders, money laundering is an offence for which extradition or rendition may be granted.
SCHEDULE

ACTIVITIES OF FINANCIAL INSTITUTIONS

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transaction including forfeiting)

2. Finance leasing

3. Venture risk capital

4. Money transmissions services

5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)

6. Guarantees and commitments

7. Trading for own account or account of customers in:—
   (a) money marked instruments (cheques, bills, certificates of deposit etc.);
   (b) foreign exchange;
   (c) financial futures and options;
   (d) exchange and interest rate instruments; and
   (e) transferable instruments.

8. Underwriting share issues and the participation in such issues.

9. Money brokering

10. Investment business

11. Deposit taking

11. Insurance business transactions

13. Real property business transactions

14. Bullion dealing

15. Casinos and other gambling and betting services

16. Financial intermediaries
NOTES ON THE USE OF BRACKETS AND BRACES IN THE MODEL LAW

The model law contains a number of references in brackets and three different types of bracket are used.

Round Brackets “(...)” indicate that a country enacting a law based on this model must consider whether the words in the brackets (if any) are appropriate.

Square Brackets “[...]” indicate that the section or sub-section or word are not essential to the legislation and could be omitted. Compliance with the 40 Recommendations of the Financial Action Task Force could be achieved even if the parts in square brackets was omitted. These provisions have been included because experience has shown, in some countries, that they are useful or because the bracketed provisions give effect to discretionary recommendations.

Braces “{...}” indicate that one of the two alternatives contained therein should be chosen, or possibly that another alternative be inserted.

The following clauses use brackets or braces.

Definitions and Provision for Regulations etc.

Competent Authority refers to the Minister of Justice. Countries should, if necessary, replace these words with words describing the Minister or other member of the Government responsible for the administration of criminal justice and mutual assistance in criminal matters laws.

Financial Institution refers to the Minister of Finance. Countries should, if necessary, replace these words with words describing the Minister or other member of the Government responsible for the administration laws governing financial institutions (both banks and non-bank financial institutions).

Identification Record

(i) uses in sub-clauses (a)(i) and (a)(ii) the word “notarised”. If necessary this word should be replaced with the word applied in the enacting country to foreign document authentication or notarisation. The word may be omitted if the evidence laws of the enacting country provide for the admission of foreign documents without endorsement of any kind.

(ii) sub-clause (a)(ii) refers to “State Registry”. These words should be replaced by the name of the body which is the keeper of records of companies.

Money Laundering

(i) in subclause (a)(ii) the word “territory” should be replaced with the name of the country enacting the law.
(ii) sub-clause (b)(ii) is desirable but some countries have suggested that the standard applied is inappropriate and that something more than a failure to ascertain the source of the funds should be required. It is for countries to determine whether this clause is consistent with normal criminal justice policy as applied in the jurisdiction.

**Proceeds of Crime** contains the words “wherever committed” which are highly desirable in that they have the effect of making it irrelevant that the offence which produced the proceeds was committed in whole or in part outside the jurisdiction. Countries which only wish to criminalise the laundering of funds derived from offences committed within the jurisdiction could omit these words but to do so would deprive the legislation of major effect in combating transnational money laundering.

**Clause 3** contains reference to an unnamed Minister. Enacting countries should insert the name of the minister who has overall responsibility for administering the legislation.

**Part I - Money Laundering Prohibited**

**Clause 4** contains two references to “penalty”. These should be replaced with a suitable penalty determined by the enacting country.

**Clause 5**

(i) contains five references to “territory” which should be replaced with the name of the enacting country

(ii) the word “anywhere” gives the legislation extraterritorial effect over nationals no matter where conduct constituting an offence under the act takes place. It is optional but desirable.

**Part II - Anti Money Laundering Supervision**

**Clause 1** both the heading and the substantive provision contains reference to the “Minister of Finance”. Where necessary this should be replaced with reference to the Minister administering this part of the legislation.

**Sub-Clause 2(3)** refers to the working hours of the “Ministry of Finance”. If necessary, this should be replaced with reference to any appropriate working hours in the enacting country, for example, “normal working hours” or “9.00 a.m. to 5.00 p.m.”

**Sub-Clause 2(7)** refers again to the “Minister of Finance”. Where necessary this should be replaced with reference to the Minister administering this part of the legislation.

**Sub-Clause 3(1)** contains reference to “$1.000”. Enacting countries should consider what might be an appropriate figure to insert. In making this decision reference should be had to the normal markets in the country and financial institutions could be consulted.

**Sub-Clause 3(4)** see comment on sub-clause 2(3) above.
**Sub-Clause 6(2)** refers to the “Supreme” Court. Enacting countries should consider which of their courts they wish to vest with the power to issue injunctive relief under this clause and, if necessary, replace the word with the title of another court.

**Clause 11** is in square brackets because currency reporting at the border is a topic recommended for consideration by countries but strict compliance with it is not necessary under the terms of the 40 Recommendations. Countries should first consider whether they believe that part of the money laundering process in the jurisdiction involves the physical transportation of funds across the border. If so, they may wish to enact clause 11. It should be noted that all that is required to make movement of funds legal is a report to the Money Laundering Authority - the provision does not introduce or re-introduce currency control.

**Sub-clauses 11(1) and (2)** contain the word “country” which should be replaced with the name of the enacting jurisdiction/country.

**Sub-clause 11(1)**

(i) also contains the word “value” which should be replaced by an amount specified in local currency (for example Australian specifies SAUD5,000).

(ii) contains the word “indictable”. Enacting countries should consider whether this is the appropriate word. The intention is that failure to report be a relatively serious offence.

**Part III - Freezing and Forfeiture of Assets in Relation to Money Laundering**

**Sub-clause 1(1)** refers to the “Supreme” Court. Enacting countries should determine which court is to exercise the jurisdiction conferred by the provision and, if necessary, replace the word “Supreme”.

**Sub-paragraph 1(2)(b)(v)** is bracketed as an option for consideration by enacting countries. Practice varies between countries by no country of which we are aware gives unlimited access to frozen funds - most allow the courts to decide what would be a reasonable amount to release for legal costs.

**Sub-clause 2(3)** refers to “forty eight hours/seven days”. Enacting countries should consider, in light of the time it is likely to take to arrest and charge a person whose property is frozen. The time chosen should not be so long as to run the risk of a challenge of unlawful deprivation of property and hence the shortest reasonable time is the appropriate one to insert-

**Sub-clause 1(4)** has two versions. Neither is absolutely necessary but countries should consider whether one or the other is desirable:

- The first alternative requires the prosecution to indemnify the accused for loss incurred and/or costs in the event of an unsuccessful prosecution. If adopted. the word “Supreme” should be replaced, if necessary, with reference to the court mentioned in Sub-clause 1(1) of this part.
The second alternative, which was suggested by small island states, indemnifies the prosecution from any action for loss or damage provided the application to freeze property was made in good faith. If adopted the word “Crown” should, if necessary, be replaced with appropriate reference to the nation.

**Sub-clause 1(S)** is desirable but not essential. It protects the administrator of frozen property from liability for loss except where the property, is negligently administered.

**Sub-clause 2(1)** refers to the “Supreme” court. If necessary this word should be replaced with reference to the court chosen to exercise jurisdiction.

**Sub-clause 2(2)** contains reference to “criminal/civil”. Enacting countries should chose which standard is appropriate. Many countries chose the “civil” option because the person has already been convicted of an offence and what the court is here deciding is what part of a person's property was derived from the offence for which conviction has already been recorded.

**Sub-Clause 2(4)** refers to the “Supreme” court. If necessary this word should be replaced with reference to the court chosen to exercise jurisdiction.

**Sub-clause 5(2)** refers to “penalty” which should be replaced with an appropriate penalty according to the criminal justice practices of the enacting country. The penalty could equate to a penalty for obstructing the course of justice.

**Sub-clause 9** refers to the “Supreme” court. If necessary this word should be replaced with reference to the court chosen to exercise jurisdiction.

**Part IV - Mutual Assistance in Relation to Money Laundering**

**Sub-clause 2(2)** is in brackets because it is not strictly necessary. Enacting countries should consider whether it is required. If included, countries may wish to add normal provisions relating to searches of persons (e.g., search must be by a person of the same sex).

**Sub-clause 5(1)** refers to the “Supreme” court. If necessary this word should be replaced with reference to the court normally exercising functions of taking evidence on behalf of a foreign country. Often, under mutual assistance in criminal matters legislation, this is a magistrate, in which case the words “judge of the (Supreme) Court” should be replaced with the word “magistrate” and in the second reference the words “of the (Supreme) Court” should be deleted.

**Sub-clauses 5(2), 5(3) and 5(4)** refer to the “Supreme” court. These references should be consistent with that chosen as appropriate in the sub-clause (1).

**Clause 8** refers to the “Supreme” court. Enacting countries should consider which country should have power to issue an order that a person in a foreign state to give evidence. In making this decision the content of any mutual assistance in criminal matters legislation should be taken into account.
Clause 9 contains reference to “prima facie” evidence. Enacting countries should consider the question of admitting evidence obtained pursuant to a request made to a foreign country and consider whether such evidence should be subjected to any limits on its admission. This consideration will determine whether the words “prima facie” should be retained or not.

Sub-clause 14(2) refers to “penalty”. This word should be replaced with an appropriate penalty under the law of the enacting country. A penalty of the same magnitude as that applying under Part III. sub-clause 5(3) would be appropriate.

Clause 17 refers to the “Minister of Finance”. Enacting countries should consider whether this is the appropriate Minister. Other choices would include the Minister administering any mutual assistance in criminal matters legislation, a foreign minister (given the international relations aspect of this issue), or the minister administering proceeds of crime legislation.
EXPLANATORY MEMORANDUM

INTRODUCTION

1. The objective of the draft Model Law for the Prohibition of Money Laundering (“the Law”) is to prevent money laundering fairly and without imposing an undue administrative or financial burden on Governments or financial institutions.

2. The format of the Law allows for implementation in whole or in part. Each Part of the Law is drafted as a self standing element of the preventative measures required. However, with deletions of repetitive clauses the sum of the Parts forms an all encompassing preventative measure.

3. The mechanics of the Law are designed to be easy to apply, yet balanced as between the "rights of the State and the individual. In this respect the administration of regulations and mutual assistance is allowed to reflect the actual requirement, thus reducing administrative effort and cost to a minimum. Moreover, much reliance is placed on the Courts to enforce the powers of regulators and the obligations of mutual legal assistance. This addresses both the balance of rights issue and the need to keep down administration costs.

4. The Law thus provides the basic necessities required to prevent money laundering effectively and cost efficiently. The provisions of the Law may be extended as and when necessary as each State so requires.

DEFINITIONS AND PROVISION FOR REGULATIONS COMMON TO ALL PARTS OF THE LAW

1. Clause 1 contains the definitions which relate both to the whole and each part of the Law. It not only defines terms but is used as a means of simplifying the text of the Law by eliminating the need for each Part to have extensive substantive provisions.

2. “business transaction” is defined to include all arrangements which facilitate transactions including the opening of accounts with financial institutions. Related arrangements, such as the preparation of a contract for a business transaction. are caught by the definition.

3. “business transaction record” is defined to include. inter alia, all records (documentary or otherwise) relevant to a business transaction. Of these, the most relevant are the records relating to the identification of account holders and details of transactions conducted with or by financial institutions.

4. “competent authority” is defined to include persons delegated by those appointed by the Minister for Justice. This is to avoid challenge to those properly exercising the powers of the competent authority e.g., law enforcement officials, counsel.
5. “document” is inclusively defined as a record of information and is defined in a way which will include paper and computer and audio records as well as other information.

6. “financial institution” is defined to cover persons (used in its widest sense) who regularly carry on any scheduled activity (either as principals or employees) or any other activity made the subject of the schedule by action of the Minister administering Part 11.

7. “freezing” is defined as restraining any transaction or dealing in property.

8. An “identification record” is an essential element of the minimum regulation/adequate prevention balance referred to earlier. The definition contains the minimum amount of information required to allow proper regulation and requires that identification records be in documentary form regardless of whether they relate to natural persons or bodies corporate. To ensure that identification records reveal the true identity of the beneficial owner of an account or a transaction, the definition operates, in conjunction with the substantive provision, to require identification of third persons who have an interest in the transaction.

9. The definition of “money laundering” has its origins in s.81 of the Australian Proceeds of Crime Act 1957. The offence requires knowledge or reasonable grounds for belief that the property involved is a benefit of unlawful activity. However, willful blindness can also amount to an offence when reasonable steps are not taken to ascertain whether or not the property is a benefit of unlawful activity.

10. The remaining definitions - “proceeds of crime”, “property,”, “requesting State” and “unlawful activity” are self explanatory.

11. Clause 2 amplifies the definition of “document”.

12. Clause 3 provides a power to make regulations for giving proper effect to the law. This power can be exercised by whichever Minister is administering the relevant part of the Act. For example, if the Minister of Finance is administering Part II he/she would be the appropriate person to introduce subordinate legislation on matters relating to regulation of the financial sector while at the same time a Minister of Justice administering other Parts of the Act could introduce regulations relating to mutual assistance and/or confiscation.

PART I. MONEY LAUNDERING PROHIBITED

Clause 1 creates the offence of money laundering.

Clause 2 provides that where a body (corporate or unincorporate) of persons launders money those acting in an official capacity for the body will also commit the offence.

Clause 3 deals with conspiracy, attempt, aiding and abetting and other inchoate offences.

Clause 4 provides for penalties. These are to be determined by each State as it wishes.
Clause 5 provides for extraterritorial effect of the offence. Whether the offence follows a citizen is a matter for each State to determine as it wishes.

PART II. ANTI MONEY LAUNDERING SUPERVISION

Clause 1 empowers the Minister of Finance to appoint a person or persons to supervise financial institutions for the purpose of ensuring effective action is taken by such institutions against money laundering. The person so appointed is described as the Money Laundering Authority (the Authority). This provision allows for the appointment of one person acting part time or many persons or the holder of a named office in an agency or department.

Clause 2 sets out the powers and duties of the Authority. The amount of work of the Authority obviously depends on the size of and level of activity in the financial sector of any State.

Sub-clause (1) obliges the Authority to receive reports of suspicious transactions issued by financial institutions under sub-clause 3(2).

Sub-clause (2) obliges the Authority to consider suspicious transaction reports and send to law enforcement authorities any reports which give rise to a reasonable suspicion that the money involved is the proceeds of crime.

Sub-clause (3) allows the Authority to enter premises of financial institutions and to inspect records required to be kept under sub-clause 3(1) and to ask any relevant questions. Such inspection may be made periodically or for a specific reason.

Sub-clause (4) requires the reports of inspections to be sent to law enforcement authorities. The provision is designed to ensure that the investigative role is carried out by law enforcement authorities and not by the Authority.

Sub-clause (5) requires the Authority to destroy, within three years of an inspection, records, notes or copies of documents obtained during or made in relation to an inspection where the records, notes or copies of documents have not been referred to a law enforcement authority.

Sub-clause (6) permits the Authority to issue instructions to financial institutions to facilitate investigations.

Sub-clause (7) allows for the compilation of statistics and records and the issue of guidelines to financial institutions by the Authority. These can range from warnings about particular persons suspected of money laundering to advice that persons with certain backgrounds should not participate in the business of a financial institution.

Sub-clause (8) provides for training programmes for financial institutions.
Sub-clause (9) permits the Authority to consult for the purposes of the exercise of its powers under sub-clauses (6), (7) and (8).

Sub-clause (10) prohibits the Authority from carrying out any investigation into money laundering except for the purposes of ensuring compliance by a financial institution with the provisions of section 3 of this Part of this Law.

Clause 3 provides for the minimum assistance to be expected from a financial institution in combating money laundering.

Sub-clause (1) obliges a financial institution to keep business transaction records in respect of any new or unrelated business transaction exceeding [USD 1,000] for five years. Such records should in any event be kept, for example for purposes related to civil actions. The burden is not, therefore, undue.

Sub-clause (2) obliges the financial institutions to report suspicious transactions to the [Authority].

Sub-clause (3) obliges financial institutions to comply with instructions issued by the Authority pursuant to the power given to it by sub-clause 2(6) of this Part.

Sub-clause (4) obliges financial institutions to make the Authority to make its inspections of their records which the institution is obliged to keep under clause 3(1). If the Authority wishes to see other records it must obtain a Warrant under clause -1. This limits the powers of the Authority except where an extension of powers is granted by a Magistrate in accordance with the Act.

Sub-clause (5) requires financial institutions to develop and apply relevant policies, procedures and controls and to audit the effectiveness of these measures.

Sub-clause (6) obliges financial institutions to comply with the guidelines and training requirements of the Authority.

Sub-clause (7) provides that financial institutions shall develop procedures to audit compliance with this clause.

Clause 4 permits the Authority or a law enforcement agency to obtain a search and removal warrant. The power is limited so as to be exercised only in the event of a suspected failure to comply with the Act by a financial institution or when an officer or employee of an institution is suspected of money laundering offences.

Clause 5 provides that a Magistrate may issue orders permitting the tracking down of property and also the monitoring of business transactions through financial institutions where it is suspected that they relate to persons involved in money laundering offences. Asset tracking is an essential element in combating money laundering. This provision, borrowed from the Australian Proceeds of Crime Act 1987, is a valuable tool in that respect.
Clause 6 allows for the Authority to enforce its powers through the Court by way of a mandatory injunction. This procedure avoids the Authority having excessive powers. It allows the Court to determining whether there has been an inexcusable compliance failure. It also allows the Court to fix any penalties to ensure compliance and to recover those penalties. The Court is in a better administrative position to do this than the Authority. Duplicated administration and concurrent cost are therefore avoided.

Clause 7 provides that compliance overrides the secrecy and confidentiality provisions of any other laws.

Clause 8 provides that no disclosure made in pursuance of a power or duty imposed by the Law can be unlawful. It is, in effect, a plea in bar to a prosecution for unlawful disclosure.

Clause 9 prohibits “tipping off” by making it an offence to divulge information about any, money laundering investigation or to try and disrupt such an investigation and makes it an offence to falsify, conceal or dispose of material relevant to the investigation.

Clause 10 prohibits a person with a criminal conviction from participating in the business of a financial institution. This clause is optional as the same effect could be achieved by the Authority issuing a guideline to that effect under sub-clause ?(6) and enforcing it under clause 6.

Clause 11 makes it an offence to leave or enter a State with more than a certain amount of cash or negotiable bearer instruments without first having reported the fact to the Authority. The financial limit is at the discretion of each State. The clause also permits authorised officers (probably police and/or customs officers) to conduct searches of persons and articles which enter or leave the country. It gives officers powers to board ships and aircraft and to seize currency which may afford evidence of the commission of an offence of not declaring the intended movement of the currency.

PART III. FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING.

Clause 1 deals with the freezing or restraint of assets of a person who has been or is about to be charged with a money laundering offence.

Sub-clause (1) empowers a competent authority to obtain an order from the [Supreme] Court freezing the property of a person charged or about to be charged with a money laundering offence. The competent authority may be a regulatory body or a law enforcement agency. The condition precedent for the issue of a warrant is an existing charge or a charge about to be made.

Sub-clause (2) empowers the Court to give directions as to duration of a freezing order and the administration, disbursement and disposal of frozen property. The purpose of the clause is to ensure that there is a proper mechanism for dealing with the property pending final decision of the question whether it may be subject to confiscation or forfeiture.
Sub-clause (3) ensures that a freezing order may only have effect for a period of [forty eight hours seven days] unless a charge for the offence on money laundering is made within that period.

Sub-clause (4) is presented in two alternative versions: the first requires the prosecutor (or person seeking the making of a freezing order) to give an undertaking as to the payment of costs or damages in a case where the property frozen is not subsequently forfeited. The second alternative provides that (the Crown) shall not be liable for damages or costs arising from the freezing of property, whether or not it is subsequently forfeited, unless the application for a freezing order was not made in good faith.

(The choice between any or either of these alternatives is a matter for consideration - some countries consider that the existence of a potential liability in damages would render the taking of action to freeze property a very real risk.)

Sub-clause (5) limits the liability of a person appointed to administer frozen property to damages caused by the negligence of that person in carrying out the administration.

Clause 2 deals with post-conviction forfeiture of the proceeds of a money laundering offence.

Sub-clause (1) makes provision for the forfeiture by the Court of any property of a person convicted of money laundering. The onus of proof as to whether property does not belong to the convicted person is upon him.

Sub-clause (2) provides that the standard of proof concerning the relationship of property to money laundering is that applied in criminal or civil proceedings - a choice must be made here by the government introducing the measure.

Clause 3 mirrors clause 5 of Part 11 of the Lava and relates to property tracking and the issue of monitoring orders with the addition of a sub-clause which prohibits the use in evidence in criminal proceedings of compulsorily acquired documents against the person required to produce them. an exception is made in respect of criminal proceedings for breach of an order of the court to produce.

Clause 4 relates to the falsification of documents and is essentially the same as paragraph (b) of clause 9 in Part 11 of the Law.

Clause 5 creates an offence of disclosing, except to named persons, the existence of an order made under clause 3.

Clause 6 operates in the same way as clause 7 of Part 11 to override the operation of any obligations (legal, contractual or other) to maintain secrecy.

Clause 7 mirrors clause 8 of Part II of the Law and provides that no disclosure made in pursuance of a power or duty imposed by the Law can be unlawful. It is, in effect, a plea in bar to a prosecution for unlawful disclosure.
Clause 8 prevents property acquired prior to the Law coming into force from being frozen or forfeited. Retroactivity is thus avoided.

Clause 9 preserves existing rights of appeal from the decision of the court ordering forfeiture.

PART IV. MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

Clause 1 obliges the competent authority of a State to execute forthwith a request from a foreign State or explain why it cannot do so. This obligation reflects the provisions of the Vienna Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances and also international mutual assistance practice.

Clause 2 allows a competent authority to obtain a warrant to search premises for information or evidence required by a foreign State which is investigating or prosecuting a money laundering case. The clause also contains an optional provision permitting the authority to obtain a warrant to search a person where relevant information or evidence may be located on the person.

Clause 3 mirrors clause 5 of Part II and clause 3 of Part III and makes available to a competent authority acting at the request of a foreign State the same powers relating to the issue of property tracking documents and monitoring orders as would exist in support of a domestic action.

Clause 4 operates to make available to a foreign State the powers possessed by authorities of the requested country to freeze property belonging to a person who has been charged (or is to be charged) with a money laundering offence and forfeit the proceeds of money laundering as would be available if the offence of money laundering had been committed in the requested country.

[The precondition for the operation of clauses 2, 3 and 4 (search warrants, tracking and monitoring orders and the freezing and forfeiture of property) is, however, the Request from the foreign State. The form and content of requests are dealt with in the explanation of Clause 10 below.]

Clause 5 deals with the obtaining of evidence to support a foreign prosecution.

Sub-clause (1) permits a court, upon application by the competent authority, to issue an order requiring attendance to give evidence on the same terms as those contained in a Request from a foreign State produced to the Court.

Sub-clause (2) obliges a person to whom a Clause 5(1) order is directed either to present himself to the jurisdiction of the Court or, failing that, to the jurisdiction of the foreign Court.

Sub-clause (3) ensures that a person falls within the jurisdiction of the Court should he elect to present himself to the jurisdiction of the foreign Court and fail to do so or otherwise fail to comply with the provisions of the subpoena.
*Sub-clause (4)* allows evidence to be taken by the Court and for that evidence to be transmitted to the foreign State.

Clause 6 deals with limitations on the power to grant assistance in response to a foreign request.

*Sub-clause (1)* allows the competent authority of a State to refuse to comply with a request if to do so is contrary to the constitution or national interest. The words “national interest” are intended to cover existing laws, policy and procedure.

*Sub-clause (2)* is included to ensure that rules against retroactivity are not broken. It mirrors clause 7 of Part 111.

Clause 7 permits the competent authority of a State to make a request, accompanied by a subpoena obtained under Clause 8 if required, to a foreign State.

Clause 8 provides for the competent authority of a State to obtain an order from the court directing a person resident in a foreign State to deliver himself to the jurisdiction of the Court or to the jurisdiction of that State for the purpose of giving evidence in money laundering proceedings. Those proceedings may be any proceedings in relation to any offence constituted in whole or in part by acts or omissions involving the use or custody of proceeds of crime.

Clause 9 ensures that evidence taken in a foreign Court will be received as [prima facie] evidence in any proceedings to which the evidence relates. The inclusion of the words “prima facie” would permit the Court to impose other tests relating to admissibility.

Clauses 10 and 11 provide for the format and contents of a Request. The contents are sufficient to protect the person being investigated or prosecuted. First, sub-clause 11(1) ensures that an investigation or prosecution is taking place; second, sub-clause 11(2) allows sufficient information to confirm claims made under sub-clause 11(1); third, sub-clause 11(3) avoids misidentification; and fourth, sub-clause 11(4) ensures sufficient information to identify the sources of information or material sought by the Request. The rest of Clause 11 contains the essence of the Request. Sub-clause 11(8) is essential if the Request is rejected as being vague in any respect as the Request may be resubmitted so as to contain the required further information.

Clause 12 ensures that a Request for a forfeiture order may only be made if there is no further appeal outstanding in the Requesting State.

Clause 13 avoids a Request being invalidated merely for the sake of form.

Clauses 14, 15 and 16: dealing with Offences. Overriding of Secrecy Provisions, and Protection of Disclosure are in similar terms to Clauses 9, 7 and 8 of Part II.

Clause 17 provides for asset sharing with the foreign State if the Minister of Finance, or another Minister as required, considers it appropriate either because of an existing international arrangement or in the interests of comity.
PART V. EXTRADITION

Clause 1 provides that money laundering is an offence for the purpose of extradition or rendition of fugitive offenders.

SCHEDULE

The Schedule defines the activities of financial institutions for the purpose of the definition of such institutions contained in the Definitions Part of the Law. The definition of “financial institution” is borrowed largely from Section 2 of the Malta Act to Regulate the Services of Financial Institutions 1994. The activities are self explanatory. States may need to tailor this list to ensure that it meets their specific needs.
MODEL REGULATIONS
CONCERNING LAUNDERING
OFFENSES CONNECTED TO ILLICIT DRUG
TRAFFICKING AND OTHER SERIOUS OFFENSES

INTRODUCTION

CONSIDERING

1. The provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna, Austria on December 20, 1988 and in force since November 11, 1990 and the mandate contained in point 6 of the Declaration and Program of Action of Ixtapa, approved at the Ministerial Meeting of Ixtapa, Mexico on April 20 1990,

2. The Ministerial Communique and Plan of Action of Buenos Aires, approved at Buenos Aires, Argentina on December 2, 1995,

3. The Anti-Drug Strategy in the Hemisphere approved by CICAD on October 16, 1996 the General Assembly of the Organization of American States (OAS) at its XXX regular session held in Guatemala, Guatemala in June 1999,

ADOPTS

the changes made to the said Model Regulations approved by CICAD at its twenty-fourth regular session held in Tegucigalpa in October, 1998 and

RECOMMENDS

to the member states, pursuant to the basic provisions of their respective legal systems, that they adopt the norms contained in the following Model Regulations.

These Model Regulations have been prepared reconciling, whenever pertinent, the legal systems prevailing in the Inter-American region.

Article 1. DEFINITIONS

The following definitions shall be applicable throughout the text of these Regulations except when another is expressly indicated:

1. "Convention" means the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which was signed in Vienna, Austria, on December 20, 1988, and entered into force on November 11, 1990.
2. "Forfeiture" means the permanent deprivation of property by order of a court or other competent authority.

3. "Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.

4. "Illicit traffic" means the offenses set forth in the Convention and in these Regulations.

5. "Instrumentality" means something that is used in or intended for use in any manner in the commission of illicit traffic and other serious offenses.

6. "Person" means any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations.

7. "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of illicit traffic or other serious offenses.

8. "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

9. "Serious offenses" means, those defined by the legislation of each country, including, for example illegal activities that relate to organized crime, terrorism, illicit trafficking of firearms, persons or body organs, corruption, fraud, extortion and kidnapping.

**Article 2. LAUNDERING OFFENSES**

1. A criminal offense is committed by any person who converts, transfers or transports property and knows, should have known, or is intentionally ignorant that such property is proceeds from illicit traffic or other serious offenses.

2. A criminal offense is committed by any person who acquires, possesses, uses or administers property and knows, should have known, or is intentionally ignorant that such property is proceeds from illicit traffic or other serious offenses.

3. A criminal offense is committed by any person who conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property and knows, should have known, or is intentionally ignorant that such property is proceeds from illicit traffic or other serious offenses.

4. A criminal offense is committed by any person who participates in, associates with, conspires to commit, attempts to commit, aids and abets, facilitates and counsels, incites publicly or privately the commission of any of the offenses established in accordance with this Article, or
who assists any person participating in such an offense or offenses to evade the legal consequences of his actions.

5. Knowledge, intent or purpose required as an element of any offense set forth in this Article may be inferred from objective, factual circumstances.

6. An offense defined in this Article shall be investigated, tried, judged and sentenced by a court or other competent authority as an offense distinct from other illicit traffic or other serious offenses.

Article 3. JURISDICTION

The offenses defined in Article 2 shall be investigated, tried, judged and sentenced by a court or other competent authority regardless of whether or not the illicit traffic or other serious offense occurred in another territorial jurisdiction, without prejudice to extradition when applicable in accordance with the law.

Article 4. PREVENTIVE MEASURES RELATING TO PROPERTY, PROCEEDS OR INSTRUMENTALITIES

In accordance with the law, the court or other competent authority shall issue, at any time, without prior notification or hearing, a freezing or seizure order, or any other preventive or provisional measure intended to preserve the availability of property, proceeds or instrumentalities connected to illicit traffic or other serious offenses, for its eventual forfeiture.

Article 5. FORFEITURE OF PROPERTY, PROCEEDS OR INSTRUMENTALITIES

1. When a person is convicted of an illicit traffic or other serious offense, the court shall order that the property, proceeds or instrumentalities connected to such an offense be forfeited and disposed of in accordance with the law.

2. When, as a result of any act or omission of the person convicted, any of the property, proceeds or instrumentalities described in the previous paragraph cannot be forfeited, the court shall order the forfeiture of any other property of the person convicted, for an equivalent value or shall order the person convicted to pay a fine of such value.

Article 6. BONA FIDE THIRD PARTIES

1. The measures and sanctions referred to in Articles 4 and 5 shall apply without prejudice to the rights of bona fide third parties.

2. In accordance with the law, proper notification shall be made so that all those claiming a legitimate legal interest in property, proceeds or instrumentalities may appear in support of their claims.
3. A third party's lack of good faith may be inferred, at the discretion of the court or other competent authority, from the objective circumstances of the case.

4. In accordance with the law, the court or other competent authority shall return the property, proceeds or instrumentalities to the claimant, when it has been demonstrated to its satisfaction that:
   
a. the claimant has a legitimate legal interest in the property, proceeds or instrumentalities;
   
b. no participation, collusion or involvement with respect to illicit traffic or *other serious offenses* which are the object of the proceedings can be imputed to the claimant;
   
c. the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities, or if he had knowledge, did not freely consent to its illegal use;
   
d. the claimant did not acquire any right in the property, proceeds or instrumentalities from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property, proceeds or instrumentalities, and;
   
e. the claimant did all that could reasonably be expected to prevent the illegal use of the property, proceeds or instrumentalities.

**Article 7. DISPOSITION OF FORFEITED PROPERTY, PROCEEDS OR INSTRUMENTALITIES**

Whenever property, proceeds or instrumentalities that are not required to be destroyed and that are not harmful to the public are forfeited under Article 5, the court or other competent authority may, in accordance with the law:

a. retain them for official use, or transfer them to any government agency that participated directly or indirectly in their freezing, seizure, or forfeiture;

b. sell them and transfer the proceeds from such sale to any government agency that participated directly or indirectly in their freezing, seizure, or forfeiture. It may also deposit the proceeds from the sale into the Special Fund provided for in the Inter-American Program of Action of Rio de Janeiro, or into other Funds to be used by the competent authorities in their fight against illicit traffic, prevention of the unlawful use of drugs, treatment, rehabilitation or social reintegration of those affected by its use;

c. transfer the property, proceeds or instrumentalities, or the proceeds from their sale, to any private entity dedicated to the prevention of the unlawful use of drugs, treatment, rehabilitation or social reintegration of those affected by its use;
d. facilitate the sharing of the objects of the forfeiture or the proceeds from their sale, on a basis commensurate with participation, with the country or countries that assisted or participated in the investigation or legal proceedings that resulted in the objects being forfeited;

e. transfer the object of the forfeiture or the proceeds from its sale to intergovernmental bodies specializing in the fight against illicit traffic, prevention of the unlawful use of drugs, treatment, rehabilitation or social reintegration of those affected by its use; or

f. promote and facilitate the creation of a national forfeiture fund to administer the objects of forfeiture and to authorize their use or allocation to support programs for judicial management, training and for the fight against illicit drug trafficking, its prevention and prosecution, as well as for social programs related to education, health and other purposes as determined by each government.

Article 8. PROPERTY, PROCEEDS OR INSTRUMENTALITIES OF FOREIGN OFFENSES

The court or other competent authority may order, in accordance with the law, the freezing, seizure, or forfeiture of any property, proceeds or instrumentalities in its territorial jurisdiction when they are connected to illicit traffic or other serious offenses committed against the laws of another country, and when that offense would have been an offense if committed within its jurisdiction.

Article 9. FINANCIAL (INTELLIGENCE/INVESTIGATION/INFORMATION/ANALYSIS) UNITS

In accordance with the law, each member state shall establish or designate a central agency responsible for receiving, requesting, analyzing and disseminating to the competent authorities, disclosures of information relating to financial transactions that are required to be reported pursuant to these Model Regulations that concern suspected proceeds of crime.

For the purposes of establishing or designating the agency referred to above, the characteristics set out in the Annex to these Regulations shall be taken into account."

Article 10. FINANCIAL INSTITUTIONS AND ACTIVITIES

1. For the purpose of these Regulations, financial institutions are, among others:
   a. a commercial bank, trust company, savings and loan association, building and loan association, savings bank, industrial bank, credit union, or other thrift institution or establishment authorized to do business under the domestic banking laws, whether these be publicly or privately owned, or mixed;
   b. any entity that performs international ("offshore") financial services;
   c. a broker or dealer in securities, or investments in or sales of futures;
d. a currency dealer or exchanger.

2. Likewise, those persons carrying out the following activities shall be considered to be financial institutions:
   a. a systematic or substantial cashing of checks;
   b. a systematic or substantial issuance, sale or redemption of traveler’s checks or money orders, or the issuance of credit and debit cards or other similar instruments;
   c. a systematic or substantial transmitting of funds;
   d. any other activity subject to supervision by the appropriate competent authority.

Article 11. IDENTIFICATION OF CLIENTS AND MAINTENANCE OF RECORDS

1. Financial institutions shall maintain accounts in the name of the account holder. They shall not open or keep anonymous accounts or accounts which are in fictitious or incorrect names.

2. Financial institutions shall record and verify by reliable means, the identity, representative capacity, domicile, legal capacity, occupation or business purpose of persons, as well as other identifying information on those persons, whether they be occasional or usual clients, through the use of documents such as identity documents, passports, birth certificates, driver's license, partnership contracts and incorporation papers, in addition to documents providing convincing evidence of their legal existence and the powers of their legal representatives, or any other official or private documents, when initiating or conducting business relations, especially when opening new accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, or performing cash transactions over an amount specified by the competent authority.

3. Financial institutions shall take reasonable measures to obtain, record and maintain current information about the true identity of the person on whose behalf an account is opened or a transaction is conducted, if there are any doubts that a client is acting on his/her own behalf, particularly in the case of a juridical person who is not conducting any commercial, financial, or industrial operations in the State where it has its headquarters or domicile.

4. Financial institutions shall maintain and keep current during the period in which business relations are in effect, and for at least five years after their conclusion, in readily recoverable form, the records of the information and documentation required in this Article.

5. Financial institutions shall maintain records on customer identification, account files, and business correspondence as determined by the competent authority, for at least five years after the account has been closed.
Financial institutions shall also maintain records to enable the reconstruction of financial transactions in excess of an amount specified by the competent authority, for at least five years after the conclusion of the transaction.

**Article 12. AVAILABILITY OF RECORDS**

1. *In accordance with the law*, financial institutions shall comply promptly, and within the period of time to be established, with information requests from the competent authorities, especially the agency referred to in Article 9, concerning the records of information and documentation referred to in the previous Article, for use in criminal, civil, or administrative investigations, prosecutions, or proceedings, as the case may be, regarding illicit traffic or other serious offenses, or violations of the provisions of these Regulations. Financial institutions shall not notify any person, other than a court, competent authority or other person authorized by law, that information has been requested by or furnished to a court or other competent authority.

2. In accordance with the law, the competent authorities, especially the agency referred to in Article 9, shall share with other national competent authorities said information, and when it concerns illicit traffic or related offenses, or violations of the provisions of these Regulations. The competent authorities shall treat as confidential the information referred to in this Article, except insofar as such information is necessary for use in criminal, civil, or administrative investigations, prosecutions, or proceedings, as the case may be, regarding illicit traffic or other serious offenses, or violations of the provisions of these Regulations.

3. In accordance with the law, the competent authorities, especially the agency referred to in Article 9, may share such information with the competent authorities of other countries, in accordance with the law.

**Article 13. RECORDING AND REPORTING OF CASH TRANSACTIONS**

1. Each financial institution shall record, on a form designed by the competent authority, each cash transaction involving a domestic or foreign currency transaction exceeding an amount specified by the competent authority.

2. The form referred to in the previous paragraph shall include, at a minimum, the following data for each transaction:
   
   a. the identity, signature, and address of the person who conducts physically the transaction;
   
   b. the identity and address of the person in whose name the transaction is conducted;
   
   c. the identity and address of the beneficiary or the person on whose behalf the transaction is conducted, as applicable;
   
   d. the identity of the accounts affected by the transaction, if any;
e. the type of transaction involved, such as deposit, withdrawal, exchange of currency, check cashing, purchase of certified or cashier's checks or money orders, or other payment or transfer by, through, or to such financial institution;

f. the identity and location of the financial institution where the transaction occurred; and

g. the date, time, and amount of the transaction.

3. This record shall be recorded, accurately and completely, by the financial institution on the day the transaction has occurred and shall be maintained for a period of five years from the date of the transaction.

4. Multiple cash transactions in domestic or foreign currency which, altogether, exceed a specified amount, shall be treated as a single transaction if they are undertaken by or on behalf of any one person during any one day or any other period established by the competent authority. In such a case, when a financial institution, its employees, officers or agents have knowledge of these transactions, they shall record these transactions on the form determined by the competent authority.

5. For transactions conducted on their own account between the financial institutions defined in Article 10(1)(a) that are subject to supervision by the domestic banking and financial authorities, recording on the form referred to in this Article shall not be required.

6. In accordance with the law, these records shall be available to the court or other competent authority, especially the agency referred to in Article 9, for use in criminal, civil or administrative investigations, prosecutions or proceedings, as the case may be, connected to illicit traffic or other serious offenses, or violations of the provisions of these Regulations.

7. When it deems advisable, the competent authority may establish that financial institutions file with it, within such time as the competent authorities may establish, the form referred to in paragraphs 1, 2 and 3 of this Article. This form shall serve as evidence or as an official report, and shall be used for the same purposes as referred to in paragraph 6 of this Article.

8. Financial institutions shall not notify any person, other than a court, competent authority or other person authorized by law, that information has been requested by or furnished to a court or other competent authority, especially the agency referred to in Article 9.

**Article 14. REPORTING OF SUSPICIOUS FINANCIAL TRANSACTIONS**

1. Financial institutions shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.

2. Upon suspicion that the transactions described in paragraph 1 of this Article could constitute or be related to illicit activities, financial institutions shall promptly report the
suspicious transactions to the competent authorities, especially the agency referred to in Article 9.

3. Financial institutions shall not notify any person, other than a court, competent authority or other person authorized by law, that information has been requested by or furnished to a court or other competent authority, such as the agency referred to in Article 9.

4. When the report referred to in paragraph 2 of this Article is made in good faith, the financial institutions and their employees, staff, directors, owners or other representatives as authorized by law shall be exempted from criminal, civil and administrative liability for complying with this Article or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.

Article 15. LIABILITY OF A FINANCIAL INSTITUTION

1. Financial institutions, or their employees, staff, directors, owners or other authorized representatives who, acting as such, participate in illicit traffic or other serious offenses, shall be subject to more severe sanctions.

2. Financial institutions shall be liable, in accordance with the law, for the actions of their employees, staff, directors, owners or other authorized representatives who, acting as such, participate in the commission of any offense described in Article 2 of these Regulations. Such liability may include, among other measures, the imposition of a fine, temporary suspension of business or charter, or suspension or revocation of the license to operate as a financial institution.

3. A criminal offense is committed by a financial institution or its employees, staff, director, owners or other authorized representatives who, acting as such, willfully fail to comply with the obligations in Articles 11 through 14 of these Regulations, or who willfully make a false or falsified record or report as referred to in the above mentioned Articles.

4. Without prejudice to criminal and/or civil liabilities for offenses connected to illicit traffic or other serious offenses, financial institutions that fail to comply with the obligations described in Articles 11 through 14 and 16 of these Regulations, shall be subject to other sanctions, such as imposition of a fine, temporary suspension of business or charter, or suspension or revocation of the license to operate as a financial institution.

Article 16. MANDATORY COMPLIANCE PROGRAMS IN FINANCIAL INSTITUTIONS

1. Financial institutions, pursuant to the regulation and supervision referred to in Article 19 of these Regulations shall adopt, develop and implement internal programs, policies, procedures and controls to guard and detect against the offenses described in Article 2 of these Regulations. Such programs shall include, at a minimum:
a. the establishment of procedures to ensure high standards of integrity of their
employees and a system to evaluate the personal, employment and financial history of
these employees;

b. on-going employee training programs, such as "know-your client" programs,
and instructing employees in the responsibilities indicated in Articles 11 through 14
of these Regulations:

c. audit mechanisms conducted in conformity with any applicable audit
standards for the detection and prevention of money laundering, to test transactions,
to ensure financial institutions are following prescribed programs, rules, regulations
and internal controls. The audit function may be conducted by either an external
certified audit firm or the financial institution’s internal auditor.

2. In cases where the auditor is internal, financial institutions shall ensure that he or she is
independent and informs only the board of directors or a committee thereof.

3. Financial institutions shall also designate compliance officers at management level in
charge of the application of the internal programs and procedures, including proper maintenance
of records and reporting of suspicious transactions. These officers shall function as liaison with
the competent authorities.

Article 17. PROVISIONS FOR OTHERS RESPONSIBLE

When it deems advisable, the competent authority shall extend the application of the relevant
provisions of these Regulations relating to financial institutions, to any type of economic
activities which are carried out in cash or by any other method of payment specified by the
appropriate competent authority, such as:

a. the sale or transfer of real estate, weapons, precious metals, art, archaeological
objects, jewelry, automobiles, boats, planes, or other consumer durable, collectibles,
or the providing of travel or entertainment-related services;

b. casino or other gambling operations;

c. the providing of all types of professional services including notaries and
accountants;

d. insurance companies and insurance brokers;

e. investment funds or investment companies;

f. any activity related to the international movement of goods and services,
transfer of technology and movements of cash and other instruments; or

g. any other commercial activity that due the nature of its operations could be
used for money laundering.
Article 18.  NOTIFICATION OF CROSS BORDER MOVEMENTS OF CURRENCY AND NEGOTIABLE BEARER INSTRUMENTS

1. In accordance with the law, member states shall require whoever transports or sends domestic or foreign currency or negotiable bearer instruments across national borders to notify the appropriate competent authority.

2. The notification referred to in the preceding paragraph shall include at a minimum, the following:

   a. the identity, signature and address of the person transporting or sending the currency or monetary instrument;

   b. the identity and address of the person for whom the transportation or sending of the currency or monetary instrument is conducted;

   c. the origin, destination and route of the currency or monetary instrument;

   d. the amount and type of currency or monetary instrument being transported or sent.

3. A person who fails to notify or who files a false notification to the competent authority regarding the cross-border transportation or sending of currency or negotiable bearer instruments which exceed the prescribed value shall be subject to criminal, civil or administrative sanctions in accordance with the law.

Article 19. OBLIGATIONS OF THE COMPETENT AUTHORITIES

1. In accordance with the law, the competent authorities, and especially those with regulatory and supervisory power over financial institutions shall, among other obligations:

   a. grant, deny, suspend or cancel licenses or permits for the operation of financial institutions;

   b. adopt the necessary measures to prevent and/or avoid any person who is unsuitable from controlling, or participating, directly or indirectly, in the directorship, management or operation of a financial institution;

   c. examine and supervise financial institutions, and regulate and oversee effective compliance with the record keeping and reporting obligations specified in these Regulations;

   d. verify, through regular examinations, that the financial institutions have and apply the mandatory compliance programs referred to in Article 16 of these Regulations;
e. provide other competent authorities with the information obtained from financial institutions in conformity with these Regulations, including that information which results from an examination of any financial institution;

f. prescribe instructions or recommendations to assist financial institutions in detecting suspicious patterns of behavior in their clients. These guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for financial institutions' personnel;

g. cooperate with other competent authorities and lend technical assistance in investigations, prosecutions or proceedings relating to the offenses described in Article 2 of these Regulations, and other illicit traffic and other serious offenses; and

h. develop accounting or auditing standards or criteria applicable to the communication of suspicious activities that shall take into account other existing and future pertinent national and international standards.

2. The competent authorities, and especially those with regulatory and supervisory power over financial institutions shall, in accordance with the law, report promptly to other competent authorities regarding any information received from financial institutions concerning suspicious transactions or activities that could be related to the offenses described in Article 2 of these Regulations and other illicit traffic or other serious offenses.

3. The competent authorities, and especially those with regulatory and supervisory power over financial institutions shall, in accordance with the law, cooperate closely with the competent authorities from other States in investigations, proceedings or prosecutions relating to the offenses described in Article 2 of these Regulations, other illicit traffic or other serious offenses, and to violations of the laws and administrative regulations dealing with financial institutions.

Article 20. INTERNATIONAL COOPERATION

1. The court or other competent authority shall cooperate with the court or other competent authority of another State, taking the appropriate measures to provide assistance in matters concerning illicit traffic or other serious offenses, in accordance with these Regulations, and within the limits of their respective legal systems.

2. The court or other competent authority may receive a request from the court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to illicit traffic or other serious offenses, and may take appropriate actions, including those contained in Articles 4 and 5 of these Regulations.

3. A final judicial order or judgment that provides for the forfeiture of property, proceeds or instrumentalities connected to illicit traffic or other serious offenses, issued by a court or other competent authority of another State, may be recognized as evidence that the property, proceeds or instrumentalities referred to by such order or judgement may be subject to forfeiture in accordance with the law.
4. The court or other competent authority may receive and take appropriate measures with respect to a request from a court or other competent authority from another State, for assistance related to a civil, criminal, or administrative investigation, prosecution or proceeding, as the case may be, involving illicit traffic or other serious offense, or violations of any provision established in these Regulations. Such assistance may include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies; obtaining testimony in the requested State; facilitating the voluntary presence or availability in the requesting State of persons, including those in custody, to give testimony; locating or identifying persons; servicing of documents; examining objects and places; executing searches and seizures; providing information and evidentiary items; and provisional measures.

5. Assistance provided pursuant to this Article shall be undertaken in accordance with the law.

Article 21. BANK SECRECY OR CONFIDENTIALITY

The legal provisions referring to bank secrecy or confidentiality shall not be an impediment to compliance with these Regulations, when the information is requested by or shared with the court or other competent authority, in accordance with the law. The term "bank secrecy or confidentiality" shall be applicable to those activities carried on by financial institutions defined by these Model Regulations and any other banking or non-banking financial activities as defined by the legislation or regulations of each country.

RECOMMENDATIONS OF THE GROUP OF EXPERTS TO CICAD

The Group of Experts requests that CICAD consider and adopt the Model Regulations and present them to the next General Assembly of the OAS, for its possible adoption by the member states.

To facilitate the adoption of the Model Regulations, the Group of Experts recommends that CICAD:

1. Encourage Member States to adopt and effectively implement these Model Regulations.

2. Periodically review these Model Regulations and, if necessary, amend them to ensure their continued applicability and effectiveness in the detection and prevention of money laundering.

3. Provide the necessary technical collaboration to the member states which request it, for the adoption and implementation of the Model Regulations and assist in obtaining the financial resources needed for this purpose.

4. Convene periodic seminars, workshops and typologies exercises to provide the competent authorities, the judiciary and law enforcement agencies of the member states with a forum to exchange experiences in the fight against laundering offenses, diffuse information in this regard, and discuss new trends and techniques.
5. Establish and maintain a close working relationship with the United Nations and other international, regional and governmental bodies and private sector organizations.

On the basis of the Model Regulations the Group of Experts recommends that CICAD urge the member states of the OAS to consider:

1. Designating the domestic competent authorities with regulatory and supervisory power over financial institutions and over those entities that carry out the economic activities referred to in Article 17 of the Model Regulations and transmitting their names to the General Secretariat of the OAS and to the member states;

2. Designating an authority or authorities, as may be necessary, competent to receive or process all the requests for international cooperation referred to in the Model Regulations and transmitting their names to the General Secretariat of the OAS and to the member states;

3. Responding promptly to any specific request for cooperation by the competent authorities of other member states made pursuant to the Model Regulations and advising, as soon as possible, on any impediment or obstacle to such requests;

4. Ensuring the establishment of national and/or international communications for the sharing of information on matters related to laundering offenses, financial institutions, other entities performing economic activities referred to in Article 17 of these Model Regulations and the identification, freezing, seizure or forfeiture of property, proceeds or instrumentalities;

5. Paying special attention to money laundering risks inherent in new or developing technologies such as, but not limited to, INTERNET banking and gaming, "smart cards", digital and other technologies that might favor anonymity and take measures, including the adoption of new systems, if needed, to prevent their use in money laundering cases.

Furthermore, the Group of Experts recommends that CICAD suggest to the member states of the OAS that they consider the possibility of:

1. Establishing more severe penal, civil and/or administrative sanctions for the offenses mentioned in Article 2, when the person involved holds a public office and that offense is connected with the office in question;

2. Studying and examining the feasibility and convenience of forwarding to the other member states information that might be useful in the investigation of the offenses referred to in the Model Regulations, without the need for a prior request.
IV. FINANCIAL INSTITUTIONS: PREVENTION GUIDELINES

Introduction

This section provides a selection of guidelines, principles and best practices adopted by various countries or organizations in their efforts to combat money laundering and the financing of terrorism.

The examples cover 3 broad categories:

- recommendations and guidelines issued by the Basel Committee on Banking Supervision and the Wolfsberg Group of major international private banks to prevent criminal use of the banking system for the purpose of money laundering;
- regulatory guidelines issued by the Monetary Authorities of Singapore and Hong Kong to banks and investment professionals with a view to combating money laundering; and
- best practice guidelines issued by the Financial Action Task Force on providing feedback to financial institutions reporting suspicious financial transactions.

All the guidelines, principles, recommendations and best practices presented herein are the original texts, prepared by the international bodies and national regulatory authorities listed above, and are taken from their websites and reproduced here with their consent. In due course, additional examples of similar guidelines or best practices applicable to financial institutions will be included in the Manual.

These guidelines and best practices should provide valuable guidance to countries and financial institutions in formulating guidelines for detecting and preventing money laundering.


Preamble

1. Banks and other financial institutions may be unwittingly used as intermediaries for the transfer or deposit of funds derived from criminal activity. Criminals and their associates use the financial system to make payments and transfers of funds from one account to another; to hide the source and beneficial ownership of money; and to provide storage for bank-notes through a safe-deposit facility. These activities are commonly referred to as money-laundering.

2. Efforts undertaken hitherto with the objective of preventing the banking system from being used in this way have largely been undertaken by judicial and regulatory agencies at national level. However, the increasing international dimension of organised criminal activity, notably in relation to the narcotics trade, has prompted collaborative initiatives at the international level. One of the earliest such initiatives was undertaken by the Committee of Ministers of the Council of Europe in June 1980. In its report (1) the Committee of Ministers concluded that "... the banking system can play a highly effective preventive role while the cooperation of the banks also assists in the repression of such criminal acts by the judicial authorities and the police". In recent years the issue of how to prevent criminals laundering the proceeds of crime through the financial system has attracted increasing attention from legislative authorities, law enforcement agencies and banking supervisors in a number of countries.

3. The various national banking supervisory authorities represented on the Basle Committee on Banking Regulations and Supervisory Practices (2) do not have the same roles and responsibilities in relation to the suppression of money-laundering. In some countries supervisors have a specific responsibility in this field; in others they may have no direct responsibility. This reflects the role of banking supervision, the primary function of which is to maintain the overall financial stability and soundness of banks rather than to ensure that individual transactions conducted by bank customers are legitimate. Nevertheless, despite the limits in some countries on their specific responsibility, all members of the Committee firmly believe that supervisors cannot be indifferent to the use made of banks by criminals.

4. Public confidence in banks, and hence their stability, can be undermined by adverse publicity as a result of inadvertent association by banks with criminals. In addition, banks may lay themselves open to direct losses from fraud, either through negligence in screening undesirable customers or where the integrity of their own officers has been undermined through association with criminals. For these reasons the members of the Basle Committee consider that banking supervisors have a general role to encourage ethical standards of professional conduct among banks and other financial institutions.
5. The Committee believes that one way to promote this objective, consistent with differences in national supervisory practice, is to obtain international agreement to a Statement of Principles to which financial institutions should be expected to adhere.

6. The attached Statement is a general statement of ethical principles which encourages banks’ management to put in place effective procedures to ensure that all persons conducting business with their institutions are properly identified; that transactions that do not appear legitimate are discouraged; and that co-operation with law enforcement agencies is achieved. The Statement is not a legal document and its implementation will depend on national practice and law. In particular, it should be noted that in some countries banks may be subject to additional more stringent legal regulations in this field and the Statement is not intended to replace or diminish those requirements. Whatever the legal position in different countries, the Committee considers that the first and most important safeguard against money-laundering is the integrity of banks' own managements and their vigilant determination to prevent their institutions becoming associated with criminals or being used as a channel for money-laundering. The Statement is intended to reinforce those standards of conduct.

7. The supervisory authorities represented on the Committee support the principles set out in the Statement. To the extent that these matters fall within the competence of supervisory authorities in different member countries, the authorities will recommend and encourage all banks to adopt policies and practices consistent with the Statement. With a view to its acceptance worldwide, the Committee would also commend the Statement to supervisory authorities in other countries.

Basle, December 1988

Statement of Principles

I. Purpose

Banks and other financial institutions may unwittingly be used as intermediaries for the transfer or deposit of money derived from criminal activity. The intention behind such transactions is often to hide the beneficial ownership of funds. The use of the financial system in this way is of direct concern to police and other law enforcement agencies; it is also a matter of concern to banking supervisors and banks’ managements, since public confidence in banks may be undermined through their association with criminals.

This Statement of Principles is intended to outline some basic policies and procedures that banks’ managements should ensure are in place within their institutions with a view to assisting in the suppression of money-laundering through the banking system, national and international. The Statement thus sets out to reinforce existing best practices among banks and, specifically, to encourage vigilance against criminal use of the payments system, implementation by banks of effective preventive safeguards, and co-operation with law enforcement agencies.
II. Customer identification

With a view to ensuring that the financial system is not used as a channel for criminal funds, banks should make reasonable efforts to determine the true identity of all customers requesting the institution's services. Particular care should be taken to identify the ownership of all accounts and those using safe-custody facilities. All banks should institute effective procedures for obtaining identification from new customers. It should be an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identity.

III. Compliance with laws

Banks' management should ensure that business is conducted in conformity with high ethical standards and that laws and regulations pertaining to financial transactions are adhered to. As regards transactions executed on behalf of customers, it is accepted that banks may have no means of knowing whether the transaction stems from or forms part of criminal activity. Similarly, in an international context it may be difficult to ensure that cross-border transactions on behalf of customers are in compliance with the regulations of another country. Nevertheless, banks should not set out to offer services or provide active assistance in transactions which they have good reason to suppose are associated with money-laundering activities.

IV. Co-operation with law enforcement authorities

Banks should co-operate fully with national law enforcement authorities to the extent permitted by specific local regulations relating to customer confidentiality. Care should be taken to avoid providing support or assistance to customers seeking to deceive law enforcement agencies through the provision of altered, incomplete or misleading information. Where banks become aware of facts which lead to the reasonable presumption that money held on deposit derives from criminal activity or that transactions entered into are themselves criminal in purpose, appropriate measures, consistent with the law, should be taken, for example, to deny assistance, sever relations with the customer and close or freeze accounts.

V. Adherence to the Statement

All banks should formally adopt policies consistent with the principles set out in this Statement and should ensure that all members of their staff concerned, wherever located, are informed of the bank's policy in this regard. Attention should be given to staff training in matters covered by the Statement. To promote adherence to these principles, banks should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for internal audit may need to be extended in order to establish an effective means of testing for general compliance with the Statement.

Footnotes:
(1) Measures against the transfer and safeguarding of funds of criminal origin. Recommendation No. R(80)10 adopted by the Committee of Ministers of the Council of Europe on 27th June 1980.
(2) The Committee comprises representatives of the central banks and supervisory authorities of the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom, United States, and Luxembourg).
1. Weaknesses in the banking system of a country, whether developing or developed, can threaten financial stability both within that country and internationally. The need to improve the strength of financial systems has attracted growing international concern. The Communiqué issued at the close of the Lyon G-7 Summit in June 1996 called for action in this domain. Several official bodies, including the Basle Committee on Banking Supervision, the Bank for International Settlements, the International Monetary Fund and the World Bank, have recently been examining ways to strengthen financial stability throughout the world.

2. The Basle Committee on Banking Supervision has been working in this field for many years, both directly and through its many contacts with banking supervisors in every part of the world. In the last year and a half, it has been examining how best to expand its efforts aimed at strengthening prudential supervision in all countries by building on its relationships with countries outside the G-10 as well as on its earlier work to enhance prudential supervision in its member countries. In particular, the Committee has prepared two documents for release:

- a comprehensive set of Core Principles for effective banking supervision (The Basle Core Principles) (attached); and,

- a Compendium (to be updated periodically) of the existing Basle Committee recommendations, guidelines and standards most of which are cross-referenced in the Core Principles document. Both documents have been endorsed by the G-10 central bank Governors. They were submitted to the G-7 and G-10 Finance Ministers in preparation for the June 1997 Denver Summit in the hope that they would provide a useful mechanism for strengthening financial stability in all countries.

3. In developing the Principles, the Basle Committee has worked closely with non-G-10 supervisory authorities. The document has been prepared in a group containing representatives from the Basle Committee and from Chile, China, the Czech Republic, Hong Kong, Mexico, Russia and Thailand. Nine other countries (Argentina, Brazil, Hungary, India, Indonesia, Korea, Malaysia, Poland and Singapore) were also closely associated with the work. The drafting of the Principles benefited moreover from broad consultation with a larger group of individual supervisors, both directly and through the regional supervisory groups.
4. The Basle Core Principles comprise **twenty-five basic Principles** that need to be in place for a supervisory system to be effective. The Principles relate to:

- Preconditions for effective banking supervision - Principle 1
- Licensing and structure - Principles 2 to 5
- Prudential regulations and requirements - Principles 6 to 15
- Methods of ongoing banking supervision - Principles 16 to 20
- Information requirements - Principle 21
- Formal powers of supervisors - Principle 22, and
- Cross-border banking - Principles 23 to 25.

In addition to the Principles themselves, the document contains explanations of the various methods supervisors can use to implement them.

5. National agencies should apply the Principles in the supervision of all banking organisations within their jurisdictions. The Principles are **minimum requirements** and in many cases may need to be supplemented by other measures designed to address particular conditions and risks in the financial systems of individual countries.

6. The Basle Core Principles are intended to serve as a basic reference for **supervisory and other public authorities in all countries and internationally**. It will be for national supervisory authorities, many of which are actively seeking to strengthen their current supervisory regime, to use the attached document to review their existing supervisory arrangements and to initiate a programme designed to address any deficiencies as quickly as is practical within their legal authority. The Principles have been designed to be verifiable by supervisors, regional supervisory groups, and the market at large. The Basle Committee will play a role, together with other interested organisations, in monitoring the progress made by individual countries in implementing the Principles. It is suggested that the IMF, the World Bank and other interested organisations use the Principles in assisting individual countries to strengthen their supervisory arrangements in connection with work aimed at promoting overall macroeconomic and financial stability. Implementation of the Principles will be reviewed at the International Conference of Banking Supervisors in October 1998 and biennially thereafter.

7. Supervisory authorities throughout the world are encouraged to **endorse** the Basle Core Principles. The members of the Basle Committee and the sixteen other supervisory agencies that have participated in their drafting all agree with the content of the document.

8. The chairpersons of the **regional supervisory groups** are supportive of the Basle Committee's efforts and are ready to promote the endorsement of the Core Principles among

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1 In countries where non-bank financial institutions provide financial services similar to those of banks, many of the Principles set out in this document are also capable of application to such non-bank financial institutions.

2 Arab Committee on Banking Supervision, Caribbean Banking Supervisors Group, Association of Banking Supervisory Authorities of Latin America and the Caribbean, Eastern and Southern Africa Banking Supervisors Group, EMEAP Study Group on Banking Supervision, Group of Banking Supervisors from Central and Eastern European Countries, Gulf Cooperation Council Banking Supervisors' Committee, Offshore Group of Banking Supervisors, Regional Supervisory Group of Central Asia and Transcaucasia, SEANZA Forum of Banking Supervisors, Committee of Banking Supervisors in West and Central Africa.
their membership. Discussions are in progress to define the role the regional groups can play in securing the endorsement of the Principles and in monitoring implementation by their members.

9. The Basle Committee believes that achieving consistency with the Core Principles by every country will be a significant step in the process of improving financial stability domestically and internationally. The speed with which this objective will be achieved will vary. In many countries, substantive changes in the legislative framework and in the powers of supervisors will be necessary because many supervisory authorities do not at present have the statutory authority to implement all of the Principles. In such cases, the Basle Committee believes it is essential that national legislators give urgent consideration to the changes necessary to ensure that the Principles can be applied in all material respects.

10. The Basle Committee will continue to pursue its standard-setting activities in key risk areas and in key elements of banking supervision as it has done in documents such as those reproduced in the Compendium. The Basle Core Principles will serve as a reference point for future work to be done by the Committee and, where appropriate, in cooperation with non-G-10 supervisors and their regional groups. The Committee stands ready to encourage work at the national level to implement the Principles in conjunction with other supervisory bodies and interested parties. Finally, the Committee is committed to strengthening its interaction with supervisors from non-G-10 countries and intensifying its considerable investment in technical assistance and training.
LIST OF CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION

Preconditions for Effective Banking Supervision

1. An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banking organisations. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to authorisation of banking organisations and their ongoing supervision; powers to address compliance with laws as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.

Licensing and Structure

2. The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined, and the use of the word "bank" in names should be controlled as far as possible.

3. The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organisation's ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organisation is a foreign bank, the prior consent of its home country supervisor should be obtained.

4. Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.

5. Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.

Prudential Regulations and Requirements

6. Banking supervisors must set prudent and appropriate minimum capital adequacy requirements for all banks. Such requirements should reflect the risks that the banks undertake, and must define the components of capital, bearing in mind their ability to absorb losses. At least for internationally active banks, these requirements must not be less than those established in the Basle Capital Accord and its amendments.

7. An essential part of any supervisory system is the evaluation of a bank's policies, practices and procedures related to the granting of loans and making of investments and the ongoing management of the loan and investment portfolios.
8. Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan loss provisions and loan loss reserves.

9. Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.

10. In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arm's-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.

11. Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.

12. Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor and adequately control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposures, if warranted.

13. Banking supervisors must be satisfied that banks have in place a comprehensive risk management process (including appropriate board and senior management oversight) to identify, measure, monitor and control all other material risks and, where appropriate, to hold capital against these risks.

14. Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.

15. Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict "know-your-customer" rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.

Methods of Ongoing Banking Supervision

16. An effective banking supervisory system should consist of some form of both on-site and off-site supervision.
17. Banking supervisors must have regular contact with bank management and thorough understanding of the institution's operations.

18. Banking supervisors must have a means of collecting, reviewing and analysing prudential reports and statistical returns from banks on a solo and consolidated basis.

19. Banking supervisors must have a means of independent validation of supervisory information either through on-site examinations or use of external auditors.

20. An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.

**Information Requirements**

21. Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.

**Formal Powers of Supervisors**

22. Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking licence or recommend its revocation.

**Cross-border Banking**

23. Banking supervisors must practise global consolidated supervision over their internationally-active banking organisations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organisations worldwide, primarily at their foreign branches, joint ventures and subsidiaries.

24. A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.

25. Banking supervisors must require the local operations of foreign banks to be conducted to the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.
SECTION I: INTRODUCTION

Effective supervision of banking organisations is an essential component of a strong economic environment in that the banking system plays a central role in making payments and mobilising and distributing savings. The task of supervision is to ensure that banks operate in a safe and sound manner and that they hold capital and reserves sufficient to support the risks that arise in their business. Strong and effective banking supervision provides a public good that may not be fully provided in the marketplace and, along with effective macroeconomic policy, is critical to financial stability in any country. While the cost of banking supervision is indeed high, the cost of poor supervision has proved to be even higher.

In drawing up these core principles for effective banking supervision the following precepts are fundamental:

- the key objective of supervision is to maintain stability and confidence in the financial system, thereby reducing the risk of loss to depositors and other creditors;
- supervisors should encourage and pursue market discipline by encouraging good corporate governance (through an appropriate structure and set of responsibilities for a bank's board of directors and senior management)\(^1\) and enhancing market transparency and surveillance;
- in order to carry out its tasks effectively, a supervisor must have operational independence, the means and powers to gather information both on and off site, and the authority to enforce its decisions;
- supervisors must understand the nature of the business undertaken by banks and ensure to the extent possible that the risks incurred by banks are being adequately managed;
- effective banking supervision requires that the risk profile of individual banks be assessed and supervisory resources allocated accordingly;
- supervisors must ensure that banks have resources appropriate to undertake risks, including adequate capital, sound management, and effective control systems and accounting records; and
- close cooperation with other supervisors is essential, particularly where the operations of banking organisations cross national boundaries.

Banking supervision should foster an efficient and competitive banking system that is responsive to the public's need for good quality financial services at a reasonable cost. Generally, it should be recognised that there is a trade-off between the level of protection that supervision

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\(^{1}\) This document refers to a management structure composed of a board of directors and senior management. The Committee is aware that there are significant differences in legislative and regulatory frameworks across countries as regards the functions of the board of directors and senior management. In some countries, the board has the main, if not exclusive, function of supervising the executive body (senior management, general management) so as to ensure that the latter fulfils its tasks. For this reason, in some cases, it is known as a supervisory board. This means that the board has no executive functions. In other countries, by contrast, the board has a broader competence in that it lays down the general framework for the management of the bank. Owing to these differences, the notions of the board of directors and the senior management are used in this document not to identify legal constructs but rather to label two decision-making functions within a bank.
provides and the cost of financial intermediation. The lower the tolerance of risk to banks and the
financial system, the more intrusive and costly supervision is likely to be, eventually having an
adverse effect on innovation and resource allocation.

Supervision cannot, and should not, provide an assurance that banks will not fail. In a
market economy, failures are a part of risk-taking. The way in which failures are handled, and
their costs borne, is in large part a political matter involving decisions on whether, and the extent
to which, public funds should be committed to supporting the banking system. Such matters
cannot therefore always be entirely the responsibility of banking supervisors; however,
supervisors should have in place adequate arrangements for resolving problem bank situations.

There are certain infrastructure elements that are required to support effective
supervision. Where such elements do not exist, supervisors should seek to persuade government
to put them in place (and may have a role in designing and developing them). These elements are
discussed in Section II.

In some countries responsibility for licensing banks is separate from the process of
ongoing supervision. It is clearly essential that, wherever the responsibility lies, the licensing
process establishes the same high standards as the process of ongoing supervision which is the
main focus of this paper. Section III therefore discusses some principles and issues that should be
addressed in the licensing process.

The core principles of banking supervision set out above and expanded in Sections III-VI
of this document will provide the foundation necessary to achieve a sound supervisory system.
Local characteristics will need to be taken into account in the specific way in which these
standards are implemented. These standards are necessary but may not be sufficient, on their
own, in all situations. Supervisory systems should take into account the nature of and risks
involved in the local banking market as well as more generally the local infrastructure. Each
country should therefore consider to what extent it needs to supplement these standards with
additional requirements to address particular risks and general conditions prevailing in its own
market. Furthermore, banking supervision is a dynamic function that needs to respond to changes
in the marketplace. Consequently supervisors must be prepared to reassess periodically their
supervisory policies and practices in the light of new trends or developments. A sufficiently
flexible legislative framework is necessary to enable them to do this.

SECTION II: PRECONDITIONS FOR EFFECTIVE BANKING SUPERVISION

Banking supervision is only part of wider arrangements that are needed to promote
stability in financial markets. These arrangements include:

1. sound and sustainable macro-economic policies;
2. a well developed public infrastructure;
3. effective market discipline;
4. procedures for efficient resolution of problems in banks; and
5. mechanisms for providing an appropriate level of systemic protection (or public
   safety net).
1. Providing sound and sustainable macro-economic policies are not within the competence of banking supervisors. Supervisors, however, will need to react if they perceive that existing policies are undermining the safety and soundness of the banking system. In the absence of sound macro-economic policies, banking supervisors will be faced with a virtually impossible task. Therefore, sound macro-economic policies must be the foundation of a stable financial system.

2. A well developed public infrastructure needs to cover the following facilities, which, if not adequately provided, can significantly contribute to the destabilisation of financial systems:
   - a system of business laws including corporate, bankruptcy, contract, consumer protection and private property laws, that is consistently enforced and provides a mechanism for fair resolution of disputes;
   - comprehensive and well-defined accounting principles and rules that command wide international acceptance;
   - a system of independent audits for companies of significant size so that users of financial statements, including banks, have independent assurance that the accounts provide a true and fair view of the financial position of the company and are prepared according to established accounting principles, with auditors held accountable for their work;
   - effective banking supervision (as outlined in this document);
   - well-defined rules governing, and adequate supervision of, other financial markets and, where appropriate, their participants; and,
   - a secure and efficient payment and clearing system for the settlement of financial transactions where counterparty risks are controlled.

3. Effective market discipline depends on an adequate flow of information to market participants, appropriate financial incentives to reward well managed institutions and arrangements that ensure that investors are not insulated from the consequences of their decisions. Among the issues to be addressed are corporate governance and ensuring that accurate, meaningful, transparent and timely information is provided by borrowers to investors and creditors.

   Market signals can be distorted and discipline undermined if governments seek to influence or override commercial decisions, particularly lending decisions, to achieve public policy objectives. In these circumstances, it is important that if guarantees are provided for such lending, they are disclosed and arrangements are made to compensate financial institutions when policy loans cease to perform.

4. Sufficiently flexible powers are necessary in order to effect an efficient resolution of problems in banks. Where problems are remediable, supervisors will normally seek to identify and implement solutions that fully address their concerns; where they are not, the prompt and orderly exit of institutions that are no longer able to meet supervisory requirements is a necessary part of an efficient financial system. Forebearance, whether or not the result of political pressure, normally leads to worsening problems and higher resolution costs. The supervisory agency
should be responsible for, or assist in, the orderly exit of problem banks in order to ensure that depositories are repaid to the fullest extent possible from the resources of the bank (supplemented by any applicable deposit insurance)\(^1\) and ahead of shareholders, subordinated debt holders and other connected parties.

In some cases, the best interests of depositories may be served by some form of restructuring, possibly takeover by a stronger institution or injection of new capital or shareholders. Supervisors may be able to facilitate such outcomes. It is essential that the end result fully meets all supervisory requirements, that it is realistically achievable in a short and determinate time frame, and that, in the interim, depositories are protected.

5. Deciding on the *appropriate level of systemic protection* is by and large a policy question to be taken by the relevant authorities (including the central bank), particularly where it may result in a commitment of public funds. Supervisors will also normally have a role to play because of their in-depth knowledge of the institutions involved. In order to preserve the operational independence of supervisors, it is important to draw a clear distinction between this systemic protection (or safety net) role and day-to-day supervision of solvent institutions. In handling systemic issues, it will be necessary to address, on the one hand, risks to confidence in the financial system and contagion to otherwise sound institutions, and, on the other hand, the need to minimise the distortion to market signals and discipline. Deposit insurance arrangements, where they exist, may also be triggered.

**Principle 1: An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banking organisations.** Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to authorisation of banking organisations and their ongoing supervision; powers to address compliance with laws as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.

This standard requires the following components to be in place:

- a clear, achievable and consistent framework of responsibilities and objectives set by legislation for (each of) the supervisor(s) involved, but with operational independence to pursue them free from political pressure and with accountability for achieving them;
- adequate resources (including staffing, funding and technology) to meet the objectives set, provided on terms that do not undermine the autonomy, integrity and independence of the supervisory agency;
- a framework of banking law that sets out minimum standards that banks must meet; allows supervisors sufficient flexibility to set prudential rules administratively, where necessary, to achieve the objectives set as well as to utilise qualitative judgement; provides powers to gather and independently verify information; and, gives

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\(^1\) As deposit insurance interacts with banking supervision, some basic principles are discussed in Appendix II.
supervisors' power to enforce a range of penalties that may be applied when prudential requirements are not being met (including powers to remove individuals, invoke sanctions and revoke licences);

- protection (normally in law) from personal and institutional liability for supervisory actions taken in good faith in the course of performing supervisory duties; and,
- a system of interagency cooperation and sharing of relevant information among the various official agencies, both domestic and foreign, responsible for the safety and soundness of the financial system; this cooperation should be supported by arrangements for protecting the confidentiality of supervisory information and ensuring that it is used only for purposes related to the effective supervision of the institutions concerned.

SECTION III: LICENSING PROCESS AND APPROVAL FOR CHANGES IN STRUCTURE

Principle 2. The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined, and the use of the word "bank" in names should be controlled as far as possible.

Principle 3. The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organisation's ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organisation is a foreign bank, the prior consent of its home country supervisor should be obtained.

In order to facilitate a healthy financial system, and to define precisely the population of institutions to be supervised, the arrangements for licensing banking organisations and the scope of activities governed by licences should be clearly defined. In particular, at a minimum, the activity of taking a proper bank deposit from the public would typically be reserved for institutions that are licensed and subject to supervision as banks. The term “bank” should be clearly defined and the use of the word “bank” in names should be controlled to the extent possible in those circumstances where the general public might be misled by unlicensed, unsupervised institutions implying otherwise by the use of “bank” in their titles.

By basing banking supervision on a system of licensing (or chartering) deposit taking institutions (and, where appropriate, other types of financial institutions), the supervisors will have a means of identifying the population to be supervised and entry to the banking system will be controlled. The licensing authority should determine that new banking organisations have suitable shareholders, adequate financial strength, a legal structure in line with its operational structure, and management with sufficient expertise and integrity to operate the bank in a sound and prudent manner. It is important that the criteria for issuing licences are consistent with those applied in ongoing supervision so that they can provide one of the bases for withdrawing

1 This includes any derivations of the word "bank", including "banking".
authorisation when an established institution no longer meets the criteria. Where the licensing and supervisory authorities are different, it is essential that they cooperate closely in the licensing process and that the supervisory authority has a legal right to have its views considered by the licensing authority. Clear and objective criteria also reduce the potential for political interference in the licensing process. Although the licensing process cannot guarantee that a bank will be well run after it opens, it can be an effective method for reducing the number of unstable institutions that enter the banking system. Licensing regulations, as well as supervisory tools, should be designed to limit the number of bank failures and the amount of depositor losses without inhibiting the efficiency and competitiveness of the banking industry by blocking entry to it. Both elements are necessary to maintain public confidence in the banking system.

Having established strict criteria for reviewing a banking licence application, the licensing authority must have the right to reject applications if it cannot be satisfied that the criteria set are met. The licensing process, at a minimum, should consist of an assessment of the banking organisation’s ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital adequacy; when the proposed owner is a foreign bank, prior consent of its home country supervisor should be obtained.

A. Ownership Structure

Supervisors must be able to assess the ownership structure of banking organisations. This assessment should include the bank's direct and indirect controlling and major\(^1\) direct or indirect shareholders. This assessment should review the controlling shareholders' past banking and non-banking business ventures and their integrity and standing in the business community, as well as the financial strength of all major shareholders and their ability to provide further financial support should it be needed. As part of the process of checking integrity and standing, the supervisor should determine the source of the initial capital to be invested.

Where a bank will be part of a larger organisation, licensing and supervisory authorities should determine that the ownership and organisational structure will not be a source of weakness and will minimise the risk to depositors of contagion from the activities conducted by other entities within the larger organisation. The other interests of the bank's major shareholders should be reviewed and the financial condition of these related entities assessed. The bank should not be used as a captive source of finance for its owners. When evaluating the corporate affiliations and structure of the proposed bank within a conglomerate, the licensing and supervisory authorities should determine that there will be sufficient transparency to permit them to identify the individuals responsible for the sound operations of the bank and to ensure that these individuals have the autonomy within the conglomerate structure to respond quickly to supervisory recommendations and requirements. Finally, the licensing and supervisory authorities must have the authority to prevent corporate affiliations or structures that hinder the effective supervision of banks. These can include structures where material parts are in jurisdictions where secrecy laws or inadequate financial supervision are significant obstacles and structures where the same owners control banks with parallel structures which cannot be subjected to consolidated supervision because there is no common corporate link.

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\(^1\) In many countries, a "major" shareholder is defined as holding 10% or more of a bank's equity capital.
B. Operating Plan, Systems of Control and Internal Organisation

Another element to review during the licensing process is the operations and strategies proposed for the bank. The operating plan should describe and analyse the market area from which the bank expects to draw the majority of its business and establish a strategy for the bank's ongoing operations. The application should also describe how the bank will be organised and controlled internally. The licensing agency should determine if these arrangements are consistent with the proposed strategy and should also determine whether adequate internal policies and procedures have been developed and adequate resources deployed. This should include determining that appropriate corporate governance will be in place (a management structure with clear accountability, a board of directors with ability to provide an independent check on management, and independent audit and compliance functions) and that the "four eyes" principle (segregation of various functions, crosschecking, dual control of assets, double signatures, etc.) will be followed. It is essential to determine that the legal and operational structures will not inhibit supervision on either a solo or consolidated basis and that the supervisor will have adequate access to management and information. For this reason, supervisors should not grant a licence to a bank when the head office will be located outside its jurisdiction unless the supervisor is assured that it will have adequate access to management and information. (See Section E below for licensing of banks incorporated abroad.)

C. Fit and Proper Test for Directors and Senior Managers

A key aspect of the licensing process is an evaluation of the competence, integrity and qualifications of proposed management, including the board of directors. The licensing agency should obtain the necessary information about the proposed directors and senior managers to consider individually and collectively their banking experience, other business experience, personal integrity and relevant skill. This evaluation of management should involve background checks on whether previous activities, including regulatory or judicial judgements, raise doubts concerning their competence, sound judgement, or honesty. It is critical that the bank's proposed management team includes a substantial number of individuals with a proven track record in banking. Supervisors should have the authority to require notification of subsequent changes in directors and senior management and to prevent such appointments if they are deemed to be detrimental to the interests of depositors.

D. Financial Projections Including Capital

The licensing agency should review pro forma financial statements and projections for the proposed bank. The review should determine whether the bank will have sufficient capital to support its proposed strategic plan, especially in light of start-up costs and possible operational losses in the early stages. In addition, the licensing authority should assess whether the projections are consistent and realistic, and whether the proposed bank is likely to be viable. In most countries, licensing agencies have established a minimum initial capital amount. The licensing agency should also consider the ability of shareholders to supply additional support, if

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1 With regard to the "fit and proper" evaluation, where appropriate, differentiation can be made between the supervisory board and the executive board.
needed, once the bank has commenced activities. If there will be a corporate shareholder with a significant holding, an assessment of the financial condition of the corporate parent should be made, including its capital strength.

E. Prior Approval from the Home Country Supervisor When the Proposed Owner Is a Foreign Bank (See also Section VI.B.)

When a foreign bank, subsidiary of a foreign banking group, or a foreign nonbanking financial institution (subject to a supervisory authority) proposes to establish a local bank or branch office, the licensing authority should consider whether the Basle Minimum Standards are met and in particular the licence should not normally be approved until the consent of the home country supervisor of the bank or banking group has been obtained. The host authority should also consider whether the home country supervisor capably performs its supervisory task on a consolidated basis. In assessing whether capable consolidated supervision is provided, the host licensing authority should consider not only the nature and scope of the home country supervisory regime but also whether the structure of the applicant or its group is such as to not inhibit effective supervision by the home and host country supervisory authorities.

F. Transfer of a Bank's Shares

Principle 4. Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.

In addition to licensing new banks, banking supervisors should be notified of any future significant direct or indirect investment in the bank or any increases or other changes in ownership over a particular threshold and should have the power to block such investments or prevent the exercise of voting rights in respect of such investments if they do not meet criteria comparable to those used for approving new banks. Notifications are often required for ownership or voting control involving established percentages of a bank's outstanding shares. The threshold for approval of significant ownership changes may be higher than that for notification.

G. Major Acquisitions or Investments by a Bank

Principle 5. Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.

In many countries, once a bank has been licensed, it may conduct any activities normally permissible for banks or any range of activities specified in the banking licence. Consequently,

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1 See "Minimum Standards for the supervision of international banking groups and their cross-border establishments" - Volume III of the Compendium.

2 See "The Supervision of cross-border banking" (Annex B) - Volume III of the Compendium - for guidance on assessing whether a supervisor capably performs such tasks.

3 These established percentages typically range between 5 and 10%.
certain acquisitions or investments may be automatically permissible if they comply with certain limits set by the supervisors or by banking law or regulation. In certain circumstances, supervisors require banks to provide notice or obtain explicit permission before making certain acquisitions or investments. In these instances, supervisors need to determine if the banking organisation has both the financial and managerial resources to make the acquisition and may need to consider also whether the investment is permissible under existing banking laws and regulations. The supervisor should clearly define what types and amounts of investments need prior approval and for what cases notification is sufficient. Notification after the fact is most appropriate in those instances where the activity is closely related to banking and the investment is small relative to the bank's total capital.

SECTION IV: ARRANGEMENTS FOR ONGOING BANKING SUPERVISION

A. Risks in Banking

Banking, by its nature, entails taking a wide array of risks. Banking supervisors need to understand these risks and be satisfied that banks are adequately measuring and managing them. The key risks faced by banks are discussed below.

Credit risk

The extension of loans is the primary activity of most banks. Lending activities require banks to make judgements related to the creditworthiness of borrowers. These judgements do not always prove to be accurate and the creditworthiness of a borrower may decline over time due to various factors. Consequently, a major risk that banks face is credit risk or the failure of a counterparty to perform according to a contractual arrangement. This risk applies not only to loans but to other on- and off-balance sheet exposures such as guarantees, acceptances and securities investments. Serious banking problems have arisen from the failure of banks to recognise impaired assets, to create reserves for writing off these assets, and to suspend recognition of interest income when appropriate.

Large exposures to a single borrower, or to a group of related borrowers are a common cause of banking problems in that they represent a credit risk concentration. Large concentrations can also arise with respect to particular industries, economic sectors, or geographical regions or by having sets of loans with other characteristics that make them vulnerable to the same economic factors (e.g., highly-leveraged transactions). Connected lending - the extension of credit to individuals or firms connected to the bank through ownership or through the ability to exert direct or indirect control - if not properly controlled, can lead to significant problems because determinations regarding the creditworthiness of the borrower are not always made objectively. Connected parties include a bank's parent organisation, major shareholders, subsidiaries, affiliated entities, directors, and executive officers. Firms are also connected when they are controlled by the same family or group. In these, or in similar, circumstances, the connection can lead to preferential treatment in lending and thus greater risk of loan losses.
Country and transfer risk

In addition to the counterparty credit risk inherent in lending, international lending also includes country risk, which refers to risks associated with the economic, social and political environments of the borrower's home country. Country risk may be most apparent when lending to foreign governments or their agencies, since such lending is typically unsecured, but is important to consider when making any foreign loan or investment, whether to public or private borrowers. There is also a component of country risk called "transfer risk" which arises when a borrower's obligation is not denominated in the local currency. The currency of the obligation may become unavailable to the borrower regardless of its particular financial condition.

Market risk

Banks face a risk of losses in on- and off-balance sheet positions arising from movements in market prices. Established accounting principles cause these risks to be typically most visible in a bank's trading activities, whether they involve debt or equity instruments, or foreign exchange or commodity positions. One specific element of market risk is foreign exchange risk. Banks act as "market-makers" in foreign exchange by quoting rates to their customers and by taking open positions in currencies. The risks inherent in foreign exchange business, particularly in running open foreign exchange positions, are increased during periods of instability in exchange rates.

Interest rate risk

Interest rate risk refers to the exposure of a bank's financial condition to adverse movements in interest rates. This risk impacts both the earnings of a bank and the economic value of its assets, liabilities and off-balance sheet instruments. The primary forms of interest rate risk to which banks are typically exposed are: (1) repricing risk, which arises from timing differences in the maturity (for fixed rate) and repricing (for floating rate) of bank assets, liabilities and off-balance sheet positions; (2) yield curve risk, which arises from changes in the slope and shape of the yield curve; (3) basis risk, which arises from imperfect correlation in the adjustment of the rates earned and paid on different instruments with otherwise similar repricing characteristics; and (4) optionality, which arises from the express or implied options imbedded in many bank assets, liabilities and off-balance sheet portfolios.

Although such risk is a normal part of banking, excessive interest rate risk can pose a significant threat to a bank's earnings and capital base. Managing this risk is of growing importance in sophisticated financial markets where customers actively manage their interest rate exposure. Special attention should be paid to this risk in countries where interest rates are being deregulated.

Liquidity risk

Liquidity risk arises from the inability of a bank to accommodate decreases in Liabilities or to fund increases in assets. When a bank has inadequate liquidity, it cannot obtain sufficient funds, either by increasing liabilities or by converting assets promptly, at a reasonable cost,
thereby affecting profitability. In extreme cases, insufficient liquidity can lead to the insolvency of a bank.

Operational risk

The most important types of operational risk involve breakdowns in internal controls and corporate governance. Such breakdowns can lead to financial losses through error, fraud, or failure to perform in a timely manner or cause the interests of the bank to be compromised in some other way, for example, by its dealers, lending officers or other staff exceeding their authority or conducting business in an unethical or risky manner. Other aspects of operational risk include major failure of information technology systems or events such as major fires or other disasters.

Legal risk

Banks are subject to various forms of legal risk. This can include the risk that assets will turn out to be worth less or liabilities will turn out to be greater than expected because of inadequate or incorrect legal advice or documentation. In addition, existing laws may fail to resolve legal issues involving a bank; a court case involving a particular bank may have wider implications for banking business and involve costs to it and many or all other banks; and, laws affecting banks or other commercial enterprises may change. Banks are particularly susceptible to legal risks when entering new types of transactions and when the legal right of a counterparty to enter into a transaction is not established.

Reputational risk

Reputational risk arises from operational failures, failure to comply with relevant laws and regulations, or other sources. Reputational risk is particularly damaging for banks since the nature of their business requires maintaining the confidence of depositors, creditors and the general marketplace.

B. Development and Implementation of Prudential Regulations and Requirements

The risks inherent in banking must be recognised, monitored and controlled. Supervisors play a critical role in ensuring that bank management does this. An important part of the supervisory process is the authority of supervisors to develop and utilise prudential regulations and requirements to control these risks, including those covering capital adequacy, loan loss reserves, asset concentrations, liquidity, risk management and internal controls. These may be qualitative and/or quantitative requirements. Their purpose is to limit imprudent risk-taking by banks. These requirements should not supplant management decisions but rather impose minimum prudential standards to ensure that banks conduct their activities in an appropriate manner. The dynamic nature of banking requires that supervisors periodically assess their prudential requirements and evaluate the continued relevance of existing requirements as well as the need for new requirements.
1. Capital adequacy

Principle 6: Banking supervisors must set prudent and appropriate minimum capital adequacy requirements for all banks. Such requirements should reflect the risks that the banks undertake, and must define the components of capital, bearing in mind their ability to absorb losses. At least for internationally active banks, these requirements must not be less than those established in the Basle Capital Accord and its amendments.

Equity capital serves several purposes: it provides a permanent source of revenue for the shareholders and funding for the bank; it is available to bear risk and absorb losses; it provides a base for further growth; and it gives the shareholders reason to ensure that the bank is managed in a safe and sound manner. Minimum capital adequacy ratios are necessary to reduce the risk of loss to depositors, creditors and other stakeholders of the bank and to help supervisors pursue the overall stability of the banking industry. Supervisors must set prudent and appropriate minimum capital adequacy requirements and encourage banks to operate with capital in excess of the minimum. Supervisors should consider requiring higher than minimum capital ratios when it appears appropriate due to the particular risk profile of the bank or if there are uncertainties regarding the asset quality, risk concentrations or other adverse characteristics of a bank's financial condition. If a bank's ratio falls below the minimum, banking supervisors should ensure that it has realistic plans to restore the minimum in a timely fashion. Supervisors should also consider whether additional restrictions are needed in such cases.

In 1988, the member countries of the Basle Committee on Banking Supervision agreed to a method of ensuring a bank's capital adequacy. Many other countries have adopted the Capital Accord or something very close to it. The Accord addresses two important elements of a bank's activities: (1) different levels of credit risk inherent in its balance sheet and (2) off-balance sheet activities, which can represent a significant risk exposure.

The Accord defines what types of capital are acceptable for supervisory purposes and stresses the need for adequate levels of "core capital" (in the accord this capital is referred to as tier one capital) consisting of permanent shareholders' equity and disclosed reserves that are created or maintained by appropriations of retained earnings or other surplus (e.g. share premiums, retained profit, general reserves and reserves required by law). Disclosed reserves also include general funds that meet the following criteria: (1) allocations to the funds must be made out of post-tax retained earnings or out of pre-tax earnings adjusted for all potential tax liabilities; (2) the funds and movements into or out of them must be disclosed separately in the bank's published accounts; (3) the funds must be available to a bank to meet losses; and (4) losses cannot be charged directly to the funds but must be taken through the profit and loss account. The Accord also acknowledges other forms of supplementary capital (referred to as tier two capital), such as other forms of reserves and hybrid capital instruments that should be included within a system of capital measurement.

The Accord assigns risk weights to on- and off-balance sheet exposures according to broad categories of relative riskiness. The framework of weights has been kept as simple as possible with only five weights being used: 0, 10, 20, 50 and 100%.

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1 See "International convergence of capital measurement and capital standards" - Volume I of the Compendium.
The Accord sets minimum capital ratio requirements for internationally active banks of 4% tier one capital and 8% total (tier one plus tier two) capital in relation to riskweighted assets.\footnote{Although the Accord applies to internationally active banks, many countries also apply the Accord to their domestic banks.} These requirements are applied to banks on a consolidated basis.\footnote{ Supervisors should, of course, also give consideration to monitoring the capital adequacy of banks on a non-consolidated basis.} It must be stressed that these ratios are considered a minimum standard and many supervisors require than set out in the Accord.

2. Credit risk management

(i) Credit-granting standards and credit monitoring process

Principle 7: An essential part of any supervisory system is the evaluation of a bank's policies, practices and procedures related to the granting of loans and making of investments and the ongoing management of the loan and investment portfolios.

Supervisors need to ensure that the credit and investment function at individual banks is objective and grounded in sound principles. The maintenance of prudent written lending policies, loan approval and administration procedures, and appropriate loan documentation are essential to a bank's management of the lending function. Lending and investment activities should be based on prudent underwriting standards that are approved by the bank's board of directors and clearly communicated to the bank's lending officers and staff. It is also critical for supervisors to determine the extent to which the institution makes its credit decisions free of conflicting interests and inappropriate pressure from outside parties.

Banks must also have a well-developed process for ongoing monitoring of credit relationships, including the financial condition of borrowers. A key element of any management information system should be a database that provides essential details on the condition of the loan portfolio, including internal loan grading and classifications.

(ii) Assessment of asset quality and adequacy of loan loss provisions and reserves

Principle 8: Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan loss provisions and loan loss reserves.

Supervisors should assess a bank's policies regarding the periodic review of individual credits, asset classification and provisioning. They should be satisfied that these policies are being reviewed regularly and implemented consistently. Supervisors should also ensure that banks have a process in place for overseeing problem credits and collecting past due loans. When the level of problem credits at a bank is of concern to the supervisors, they should require the bank to strengthen its lending practices, credit-granting standards, and overall financial strength.
When guarantees or collateral are provided, the bank should have a mechanism in place for continually assessing the strength of these guarantees and appraising the worth of the collateral. Supervisors should also ensure that banks properly record and hold adequate capital against off-balance sheet exposures when they retain contingent risks.

(iii) Concentrations of risk and large exposures

Principle 9: Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.

Banking supervisors must set prudential limits to restrict bank exposures to single borrowers, groups of related borrowers and other significant risk concentrations. These limits are usually expressed in terms of a percentage of bank capital and, although they vary, 25% of capital is typically the most that a bank or banking group may extend to a private sector non-bank borrower or a group of closely related borrowers without specific supervisory approval. It is recognised that newly-established or very small banks may face practical limits on their ability to diversify, necessitating higher levels of capital to reflect the resultant risk.

Supervisors should monitor the bank's handling of concentrations of risk and may require that banks report to them any such exposures exceeding a specified limit (e.g., 10% of capital) or exposures to large borrowers as determined by the supervisors. In some countries, the aggregate of such large exposures is also subject to limits.

(iv) Connected lending

Principle 10: In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arm's-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.

Banking supervisors must be able to prevent abuses arising from connected and related party lending. This will require ensuring that such lending is conducted only on an arm's-length basis and that the amount of credit extended is monitored. These controls are most easily implemented by requiring that the terms and conditions of such credits not be more favourable than credit extended to non-related borrowers under similar circumstances and by imposing strict limits on such lending. Supervisors should have the authority, in appropriate circumstances, to go further and establish absolute limits on categories of such loans, to deduct such lending from capital when assessing capital adequacy, or to require collateralisation of such loans.

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1 As a guide to appropriate controls on concentrations of risk, the Basle Committee has adopted a best practices paper covering large credit exposures. This 1991 paper addresses the definitions of credit exposures, single borrowers, and related counterparties, and also discusses appropriate levels of large exposure limits, and risks arising from different forms of asset concentrations. See "Measuring and controlling large credit exposures" - Volume I of the Compendium.
Transactions with related parties that pose special risks to the bank should be subject to the approval of the bank's board of directors, reported to the supervisors, or prohibited altogether. Supervising banking organisations on a consolidated basis can in some circumstances identify and reduce problems arising from connected lending.

Supervisors should also have the authority to make discretionary judgements about the existence of connections between the bank and other parties. This is especially necessary in those instances where the bank and related parties have taken measures to conceal such connections.

(v) Country and transfer risk

Principle 11: Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.1

3. Market risk management

Principle 12: Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor and adequately control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposures, if warranted.

Banking supervisors must determine that banks accurately measure and adequately control market risks. Where material, it is appropriate to provide an explicit capital cushion for the price risks to which banks are exposed, particularly those arising from their trading activities. Introducing the discipline that capital requirements impose can be an important further step in strengthening the soundness and stability of financial markets. There should also be well-structured quantitative and qualitative standards for the risk management process related to market risk.2 Banking supervisors should also ensure that bank management has set appropriate limits and implemented adequate internal controls for their foreign exchange business.3

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1 These issues were addressed in a 1982 Basle Committee paper "Management of banks' international lending" - Volume I of the Compendium.
2 In January 1996 the Basle Committee issued a paper amending the Capital Accord and implementing a new capital charge related to market risk. This capital charge comes into effect by the end of 1997. In calculating the capital charge, banks will have the option of using a standardised method or their own internal models. The G-10 supervisory authorities plan to use "backtesting" (i.e., ex-post comparisons between model results and actual performance) in conjunction with banks' internal risk measurement systems as a basis for applying capital charges. See "Overview of the Amendment to the Capital Accord to incorporate market risks", "Amendment to the Capital Accord to incorporate market risks", and "Supervisory framework for the use of 'backtesting' in conjunction with the internal models approach to market risk capital requirements" - Volume II of the Compendium.
3 See "Supervision of banks' foreign exchange positions" - Volume I of the Compendium.
4. Other risk management

Principle 13: Banking supervisors must be satisfied that banks have in place a comprehensive risk management process (including appropriate board and senior management oversight) to identify, measure, monitor and control all other material risks and, where appropriate, to hold capital against these risks.

Risk management standards\(^1\) are a necessary element of banking supervision, and increasingly important as financial instruments and risk measurement techniques become more complex. Moreover, the effect of new technologies on financial markets both permits and requires many banks to monitor their portfolios daily and adjust risk exposures rapidly in response to market and customer needs. In this environment, management, investors, and supervisors need information about a bank's exposures that is correct, informative, and provided on a timely basis. Supervisors can contribute to this process by promoting and enforcing sound policies in banks, and requiring procedures that ensure the necessary information is available.

(i) Interest rate risk

Supervisors should monitor the way in which banks control interest rate risk including effective board and senior management oversight, adequate risk management policies and procedures, risk measurement and monitoring systems, and comprehensive controls.\(^2\) In addition, supervisors should receive sufficient and timely information from banks in order to evaluate the level of interest rate risk. This information should take appropriate account of the range of maturities and currencies in each bank's portfolio, as well as other relevant factors such as the distinction between trading and non-trading activities.

(ii) Liquidity management

The purpose of liquidity management is to ensure that the bank is able to meet fully its contractual commitments. Crucial elements of strong liquidity management include good management information systems, central liquidity control, analysis of net funding requirements under alternative scenarios, diversification of funding sources, and contingency planning.\(^3\) Supervisors should expect banks to manage their assets, liabilities and off-balance sheet contracts with a view to maintaining adequate liquidity. Banks should have a diversified funding base, both in terms of sources of funds and the maturity breakdown of the liabilities. They should also maintain an adequate level of liquid assets.

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\(^1\) The Basle Committee has recently established a sub-group to study issues related to risk management and internal controls and to provide guidance to the banking industry.

\(^2\) The Basle Committee has recently issued a paper related to the management of interest rate risk that outlines a number of principles for use by supervisory authorities when considering interest rate risk management at individual banks. See "Principles for the management of interest rate risk" - Volume I of the Compendium.

\(^3\) The Basle Committee has issued a paper that sets out the main elements of a model analytical framework for measuring and managing liquidity. Although the paper focuses on the use of the framework by large, internationally-active banks, it provides guidance that should prove useful to all banks. See "A framework for measuring and managing liquidity" - Volume I of the Compendium.
(iii) Operational risk

Supervisors should ensure that senior management puts in place effective internal control and auditing procedures; also, that they have policies for managing or mitigating operational risk (e.g., through insurance or contingency planning). Supervisors should determine that banks have adequate and well-tested business resumption plans for all major systems, with remote site facilities, to protect against such events.

5. Internal controls

Principle 14. Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.

Principle 15. Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict "know-your-customer" rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.

The purpose of internal controls is to ensure that the business of a bank is conducted in a prudent manner in accordance with policies and strategies established by the bank's board of directors; that transactions are only entered into with appropriate authority; that assets are safeguarded and liabilities controlled; that accounting and other records provide complete, accurate and timely information; and that management is able to identify, assess, manage and control the risks of the business.

There are four primary areas of internal controls:

- organisational structures (definitions of duties and responsibilities, discretionary limits for loan approval, and decision-making procedures);
- accounting procedures (reconciliation of accounts, control lists, periodic trial balances, etc.);
- the "four eyes" principle (segregation of various functions, cross-checking, dual control of assets, double signatures, etc.); and
- physical control over assets and investments.

These controls must be supplemented by an effective audit function that independently evaluates the adequacy, operational effectiveness and efficiency of the control systems within an organisation. Consequently, the internal auditor must have an appropriate status within the bank and adequate reporting lines designed to safeguard his or her independence.\(^1\) The external audit

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\(^1\) In some countries, supervisors recommend that banks establish an "audit committee" within the board of directors. The purpose of this committee is to facilitate the effective performance of board oversight.
can provide a cross-check on the effectiveness of this process. Banking supervisors must be satisfied that effective policies and practices are followed and that management takes appropriate corrective action in response to internal control weaknesses identified by internal and external auditors.

Banks are subject to a wide array of banking and non-banking laws and regulations and must have in place adequate policies and procedures to ensure compliance. Otherwise, violations of established requirements can damage the reputation of the bank and expose it to penalties. In extreme cases, this damage could threaten the bank's solvency. Compliance failures also indicate that the bank is not being managed with the integrity and skill expected of a banking organisation. Larger banks in particular should have independent compliance functions and banking supervisors should determine that such functions are operating effectively.

Public confidence in banks can be undermined, and bank reputations damaged, as a result of association (even if inadvertent) with drug traders and other criminals. Consequently, while banking supervisors are not generally responsible for the criminal prosecution of money laundering offences or the ongoing anti-money laundering efforts in their countries, they have a role in ensuring that banks have procedures in place, including strict "know-your-customer" policies, to avoid association or involvement with drug traders and other criminals, as well as in the general promotion of high ethical and professional standards in the financial sector. Specifically, supervisors should encourage the adoption of those recommendations of the Financial Action Task Force on Money Laundering (FATF) that apply to financial institutions. These relate to customer identification and record-keeping, increased diligence by financial institutions in detecting and reporting suspicious transactions, and measures to deal with countries with insufficient or no anti-money laundering measures.1

The occurrence of fraud in banks, or involving them, is also of concern to banking supervisors for three reasons. On a large scale it may threaten the solvency of banks and the integrity and soundness of the financial system. Second, it may be indicative of weak internal controls that will require supervisory attention. And thirdly, there are potential reputational and confidence implications which may also spread from a particular institution to the system. For these reasons, banks should have established lines of communication, both within the management chain and within an internal security or guardian function independent of management, for reporting problems. Employees should be required to report suspicious or troubling behaviour to a superior or to internal security. Moreover, banks should be required to report suspicious activities and significant incidents of fraud to the supervisors. It is not necessarily the role of supervisors to investigate fraud in banks, and the skills required to do so are specialised, but supervisors do need to ensure that appropriate authorities have been alerted. They need to be able to consider and, if necessary, act to prevent effects on other banks and to maintain an awareness of the types of fraudulent activity that are being undertaken or attempted in order to ensure that banks have controls capable of countering them.

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1 See "Prevention of criminal use of the banking system for the purpose of money-laundering" - Volume I of the Compendium.
C. Methods of Ongoing Banking Supervision

Principle 16: An effective banking supervisory system should consist of some form of both on-site and off-site supervision.

Principle 17: Banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations.

Principle 18: Banking supervisors must have a means of collecting, reviewing and analysing prudential reports and statistical returns from banks on a solo and consolidated basis.

Principle 19: Banking supervisors must have a means of independent validation of supervisory information either through on-site examinations or use of external auditors.

Principle 20: An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.

Supervision requires the collection and analysis of information. This can be done on or off-site. An effective supervisory system will use both means. In some countries, onsite work is carried out by examiners and in others by qualified external auditors. In still other countries, a mixed system of on-site examinations and collaboration between the supervisors and the external auditors exists. The extent of on-site work and the method by which it is carried out depend on a variety of factors.

Regardless of their mix of on-site and off-site activities or their use of work done by external accountants, banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations. Review of the reports of internal and external auditors can be an integral part of both on-site and off-site supervision. The various factors considered during the licensing process should be periodically assessed as part of ongoing supervision. Banks should be required to submit information on a periodic basis for review by the supervisors, and supervisors should be able to discuss regularly with banks all significant issues and areas of their business. If problems develop, banks should also feel that they can confide in and consult with the supervisor, and expect that problems will be discussed constructively and treated in a confidential manner. They must also recognise their responsibility to inform supervisors of important matters in a timely manner.

1. Off-site surveillance

Supervisors must have a means of collecting, reviewing and analysing prudential reports and statistical returns from banks on a solo and consolidated basis. These should include basic financial statements as well as supporting schedules that provide greater detail on exposure to different types of risk and various other financial aspects of the bank, including provisions and off-balance sheet activities. The supervisory agency should also have the ability to obtain information on affiliated non-bank entities. Banking supervisors should also make full use of publicly-available information and analysis.
These reports can be used to check adherence to prudential requirements, such as capital adequacy or single debtor limits. Off-site monitoring can often identify potential problems, particularly in the interval between on-site inspections, thereby providing early detection and prompting corrective action before problems become more serious. Such reports can also be used to identify trends not only for particular institutions, but also for the banking system as a whole. These reports can provide the basis for discussions with bank management, either at periodic intervals or when problems appear. They should also be a key component of examination planning so that maximum benefit is achieved from the limited time spent conducting an on-site review.

2. **On-site examination and/or use of external auditors**¹

Supervisors must have a means of validating supervisory information either through on-site examinations or use of external auditors. On-site work, whether done by examination staff of the banking supervisory agency or commissioned by supervisors but undertaken by external auditors, should be structured to provide independent verification that adequate corporate governance exists at individual banks and that information provided by banks is reliable.

On-site examinations provide the supervisor with a means of verifying or assessing a range of matters including:

- the accuracy of reports received from the bank
- the overall operations and condition of the bank
- the adequacy of the bank's risk management systems and internal control procedures
- the quality of the loan portfolio and adequacy of loan loss provisions and reserves
- the competence of management
- the adequacy of accounting and management information systems
- issues identified in off-site or previous on-site supervisory processes
- bank adherence to laws and regulations and the terms stipulated in the banking licence.

The supervisory agency should establish clear internal guidelines related to the frequency and scope of examinations. In addition, examination policies and procedures should be developed in order to ensure that examinations are conducted in a thorough and consistent manner with clear objectives.

Depending on its use of examination staff, a supervisory agency may use external auditors to fulfil the above functions in whole or in part. In some cases, such functions may be part of the normal audit process (e.g. assessing the quality of the loan portfolio and the level of provisions that need to be held against it). In other areas, the supervisor should have adequate powers to require work to be commissioned specifically for supervisory purposes (e.g. on the accuracy of reports filed with supervisors or the adequacy of control systems.) However, the work of external auditors should be utilised for supervisory purposes only when there is a well-

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¹ In some countries, external auditors hired by the supervisory agency to conduct work on its behalf are referred to as reporting accountants.
developed, professionally independent auditing profession with skills to undertake the work required. In these circumstances, the supervisory agency needs to reserve the right to veto the appointment of a particular firm of external auditors where supervisory reliance is to be placed on the firm's work. In addition, supervisors should urge banking groups to use common auditors and common accounting dates throughout the group, to the extent possible.

It is also important that the supervisors and external auditors have a clear understanding of their respective roles. Before problems are detected at a bank, the external auditors should clearly understand their responsibilities for communicating with the supervisory agency and should also be protected from personal liability for disclosures, in good faith, of such information. A mechanism should be in place to facilitate discussions between the supervisors and the external auditors. In many instances, these discussions should also include the bank.

In all cases, the supervisory agency should have the legal authority and means to conduct independent checks of banks based on identified concerns.

3. **Supervision on a consolidated basis**

An essential element of banking supervision is the ability of the supervisors to supervise the consolidated banking organisation. This includes the ability to review both banking and non-banking activities conducted by the banking organisation, either directly or indirectly (through subsidiaries and affiliates), and activities conducted at both domestic and foreign offices. Supervisors need to take into account that non-financial activities of a bank or group may pose risks to the bank. Supervisors should decide which prudential requirements will be applied on a bank-only (solo) basis, which ones will be applied on a consolidated basis, and which ones will be applied on both bases. In all cases, the banking supervisors should be aware of the overall structure of the banking organisation or group when applying their supervisory methods. Banking supervisors should also have the ability to coordinate with other authorities responsible for supervising specific entities within the organisation's structure.

**D. Information Requirements of Banking Organisations**

**Principle 21:** Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.

For banking supervisors to conduct effective off-site supervision of banks and to evaluate the condition of the local banking market, they must receive financial information at regular intervals and this information must be verified periodically through on-site examinations or

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1 The Basle Committee has reviewed the relationship between bank supervisors and external auditors and has developed best practices for supervisors with regard to their interaction with external auditors. See "The Relationship between bank supervisors and external auditors" - Volume III of the Compendium.

2 The Basle Committee recommended supervision on a consolidated basis in its paper "Consolidated supervision of banks' international activities" - Volume I of the Compendium.
external audits. Banking supervisors must ensure that each bank maintains adequate accounting records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business. In order that the accounts portray a true and fair view, it is essential that assets are recorded at values that are realistic and consistent, taking account of current values, where relevant, and that profit reflects what, on a net basis, is likely to be received and takes into account likely transfers to loan loss reserves. It is important that banks submit information in a format that makes comparisons among banks possible although, for certain purposes, data derived from internal management information systems may also be helpful to supervisors. At a minimum, periodic reporting should include a bank's balance sheet, contingent liabilities and income statement, with supporting details and key risk exposures.

Supervisors can be obstructed or misled when banks knowingly or recklessly provide false information of material importance to the supervisory process. If a bank provides information to the supervisor knowing that it is materially false or misleading, or it does so recklessly, supervisory and/or criminal action should be taken against both the individuals involved and the institution.

1. Accounting standards

In order to ensure that the information submitted by banks is of a comparable nature and its meaning is clear, the supervisory agency will need to provide report instructions that clearly establish the accounting standards to be used in preparing the reports. These standards should be based on accounting principles and rules that command wide international acceptance and be aimed specifically at banking institutions.

2. Scope and frequency of reporting

The supervisory agency needs to have powers to determine the scope and frequency of reporting to reflect the volatility of the business and to enable the agency to track what is happening at individual banks on both a solo and consolidated basis, as well as with the banking system as a whole. The supervisors should develop a series of informational reports for banks to prepare and submit at regular intervals. While some reports may be filed as often as monthly, others may be filed quarterly or annually. In addition, some reports may be "event generated", meaning they are filed only if a particular event occurs (e.g. investment in a new affiliate). Supervisors should be sensitive to the burden that reporting imposes. Consequently, they may determine that it is not necessary for every bank to file every report. Filing status can be based on the organisational structure of the bank, its size, and the types of activities it conducts.

3. Confirmation of the accuracy of information submitted

It is the responsibility of bank management to ensure the accuracy, completeness and timeliness of prudential, financial, and other reports submitted to the supervisors. Therefore, bank management must ensure that reports are verified and that external auditors determine that the reporting systems in place are adequate and provide reliable data. External auditors should express an opinion on the annual accounts and management report supplied to shareholders and
the general public. Weaknesses in bank auditing standards in a particular country may require that banking supervisors become involved in establishing clear guidelines concerning the scope and content of the audit programme as well as the standards to be used. In extreme cases where supervisors cannot be satisfied with the quality of the annual accounts or regulatory reports, or with the work done by external auditors, they should have the ability to use supervisory measures to bring about timely corrective action, and they may need to reserve the right to approve the issue of accounts to the public.

In assessing the nature and adequacy of work done by auditors, and the degree of reliance that can be placed on this work, supervisors will need to consider the extent to which the audit programme has examined such areas as the loan portfolio, loan loss reserves, nonperforming assets (including the treatment of interest on such assets), asset valuations, trading and other securities activities, derivatives, asset securitisations, and the adequacy of internal controls over financial reporting. Where it is competent and independent of management, internal audits can be relied upon as a source of information and may contribute usefully to the supervisors' understanding.

4. Confidentiality of supervisory information

Although market participants should have access to correct and timely information, there are certain types of sensitive information that should be held confidential by banking supervisors. In order for a relationship of mutual trust to develop, banks need to know that such sensitive information will be held confidential by the banking supervisory agency and its appropriate counterparts at other domestic and foreign supervisory agencies.

5. Disclosure

In order for market forces to work effectively, thereby fostering a stable and efficient financial system, market participants need access to correct and timely information. Disclosure, therefore, is a complement to supervision. For this reason, banks should be required to disclose to the public information regarding their activities and financial position that is comprehensive and not misleading. This information should be timely and sufficient for market participants to assess the risk inherent in any individual banking organisation.

SECTION V: FORMAL POWERS OF SUPERVISORS

Principle 22: Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking licence or recommend its revocation.

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1 The types of information considered sensitive vary from country to country; however, this typically includes information related to individual customer accounts as well as problems that the supervisor is helping the bank to resolve.

2 The Basle Committee has recently established a sub-group to study issues related to disclosure and to provide guidance to the banking industry.
A. Corrective Measures

Despite the efforts of supervisors, situations can occur where banks fail to meet supervisory requirements or where their solvency comes into question. In order to protect depositors and creditors, and prevent more widespread contagion of such problems, supervisors must be able to conduct appropriate intervention. Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action and which enable a graduated response by supervisors depending on the nature of the problems detected. In those instances where the detected problem is relatively minor, informal action such as a simple oral or written communication to bank management may be all that is warranted. In other instances, more formal action may be necessary. These remedial measures have the greatest chance of success when they are part of a comprehensive programme of corrective action developed by the bank and with an implementation timetable; however, failure to achieve agreement with bank management should not inhibit the supervisory authority from requiring the necessary corrective action.

Supervisors should have the authority not only to restrict the current activities of the bank but also withhold approval for new activities or acquisitions. They should also have the authority to restrict or suspend dividend or other payments to shareholders, as well as to restrict asset transfers and a bank's purchase of its own shares. The supervisor should have effective means to address management problems, including the power to have controlling owners, directors, and managers replaced or their powers restricted, and, where appropriate, barring individuals from the business of banking. In extreme cases, the supervisors should have the ability to impose conservatorship over a bank that is failing to meet prudential or other requirements. It is important that all remedial actions be addressed directly to the bank's board of directors since they have overall responsibility for the institution.

Once action has been taken or remedial measures have been imposed, supervisors must be vigilant in their oversight of the problems giving rise to it by periodically checking to determine that the bank is complying with the measures. There should be a progressive escalation of action or remedial measures if the problems become worse or if bank management ignores more informal requests from supervisors to take corrective action.

B. Liquidation Procedures

In the most extreme cases, and despite ongoing attempts by the supervisors to ensure that a problem situation is resolved, a banking organisation may no longer be financially viable. In such cases, the supervisor can be involved in resolutions that require a take-over by or merger with a healthier institution. When all other measures fail, the supervisor should have the ability to close or assist in the closing of an unhealthy bank in order to protect the overall stability of the banking system.
SECTION VI: CROSS-BORDER BANKING

The Principles set out in this section are consistent with the so-called Basle Concordat and its successors. The Concordat establishes understandings relating to contact and collaboration between home and host country authorities in the supervision of banks' cross-border establishments. The most recent of these documents, "The supervision of crossborder banking", was developed by the Basle Committee in collaboration with the Offshore Group of Banking Supervisors and subsequently endorsed by 130 countries attending the International Conference of Banking Supervisors in June 1996. This document contains twenty-nine recommendations aimed at removing obstacles to the implementation of effective consolidated supervision.

A. Obligations of Home Country Supervisors

Principle 23: Banking supervisors must practise global consolidated supervision over their internationally active banking organisations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organisations worldwide, primarily at their foreign branches, joint ventures and subsidiaries.

Principle 24: A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.

As part of practising consolidated banking supervision, banking supervisors must adequately monitor and apply appropriate prudential norms to all aspects of the business conducted by their banking organisations worldwide including at their foreign branches, joint ventures and subsidiaries. A major responsibility of the parent bank supervisor is to determine that the parent bank is providing adequate oversight not only of its overseas branches but also its joint ventures and subsidiaries. This parent bank oversight should include monitoring compliance with internal controls, receiving an adequate and regular flow of information, and periodically verifying the information received. In many instances, a bank's foreign offices may be conducting business fundamentally different from the bank's domestic operations. Consequently, supervisors should determine that the bank has the expertise needed to conduct these activities in a safe and sound manner.

A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, including host country supervisory authorities. This contact should commence at the authorisation stage when the host supervisor should seek the approval from the home supervisor before issuing a licence. In many cases, bilateral arrangements exist between supervisors. These arrangements can prove helpful in defining the scope of information to be shared and the conditions under which such sharing would normally be expected. Unless satisfactory arrangements for obtaining information can be agreed, banking supervisors should prohibit their banks from establishing operations in countries with secrecy

1 See "Principles for the supervision of banks' foreign establishments", "Minimum standards for the supervision of international banking groups and their cross-border establishments", and "The supervision of cross-border banking", all contained in Volume III of the Compendium.
laws or other regulations prohibiting flows of information deemed necessary for adequate supervision.

The parent supervisor should also determine the nature and extent of supervision conducted by the host country of the local operations of the home country's banks. Where host country supervision is inadequate, the parent supervisor may need to take special additional measures to compensate, such as through on-site examinations, or by requiring additional information from the bank's head office or its external auditors. If these options can not be developed to give sufficient comfort, bearing in mind the risks involved, then the home supervisor may have no option but to request the closure of the relevant overseas establishment.

B. Obligations of Host Country Supervisors

Principle 25: Banking supervisors must require the local operations of foreign banks to be conducted to the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.

Foreign banks often provide depth and increase competition and are therefore important participants in local banking markets. Banking supervisors must require the local operations of foreign banks to be conducted to the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision. Consequently, foreign bank operations should be subject to similar prudential, inspection and reporting requirements as domestic banks (recognising, of course, obvious differences such as branches not being separately capitalised).

As the host country supervisory agency supervises only a limited part of the overall operations of the foreign bank, the supervisory agency should determine that the home country supervisor practices consolidated supervision of both the domestic and overseas operations of the bank. In order for home country supervisors to practice effectively consolidated supervision, the host country supervisor must share information about the local operations of foreign banks with them provided there is reciprocity and protection of the confidentiality of the information. In addition, home country supervisors should be given onsite access to local offices and subsidiaries for appropriate supervisory purposes. Where host country laws pose obstacles to sharing information or cooperating with home country supervisors, host authorities should work to have their laws changed in order to permit effective consolidated supervision by home countries.
Special Issues Related to Government-owned Banks

Many countries have some commercial banks that are owned, wholly or substantially, by the national government or by other public bodies.¹ In other countries, government-owned commercial banks comprise the majority of the banking system, usually for historic reasons. In principle, all banks should be subject to the same operational and supervisory standards regardless of their ownership; however, the unique nature of government-owned commercial banks should be recognised.

Government-owned commercial banks typically are backed by the full resources of the government. This provides additional support and strength for these banks. Although this government support can be advantageous, it should also be noted that the correction of problems at these banks is sometimes deferred and the government is not always in a position to recapitalise the bank when required. At the same time, this support may lead to the taking of excessive risks by bank management. In addition, market discipline may be less effective when market participants know that a particular bank has the full backing of the government and consequently has access to more extensive (and possibly cheaper) funding than would be the case for a comparable privately-owned bank.

Consequently, it is important that supervisors seek to ensure that government owned commercial banks operate to the same high level of professional skill and disciplines as required of privately-owned commercial banks in order to preserve a strong credit and control culture in the banking system as a whole. In addition, supervisors should apply their supervisory methods in the same manner to government-owned commercial banks as they do to all other commercial banks.

¹ This can include savings banks and cooperative banks. These banks are different, however, from "policy" banks that typically specialise in certain types of lending or target certain sectors of the economy.
APPENDIX II

Deposit Protection

Despite the efforts of supervisors, bank failures can occur. At such times, the possible loss of all or part of their funds increases the risk that depositors will lose confidence in other banks. Consequently, many countries have established deposit insurance plans to protect small depositors. These plans are normally organised by the government or central bank, or by the relevant bankers' association and are compulsory rather than voluntary.

Deposit insurance provides a safety net for many bank creditors thereby increasing public confidence in banks and making the financial system more stable. A safety net may also limit the effect that problems at one bank might have on other, healthier, banks in the same market, thereby reducing the possibility of contagion or a chain reaction within the banking system as a whole. A key benefit of deposit insurance is that, in conjunction with logical exit procedures, it gives the banking supervisors greater freedom to let problem banks fail. Deposit insurance can however increase the risk of imprudent behaviour by individual banks. Small depositors will be less inclined to withdraw funds even if the bank pursues high-risk strategies, thus weakening an important check on imprudent management. Government officials and supervisors need to recognise this effect of a safety net and take steps to prevent excessive risk-taking by banks. One method of limiting risk-taking is to utilise a deposit insurance system consisting of "co-insurance." Under such a system, the deposit insurance covers a percentage (e.g. 90%) of individual deposits and/or provides cover only up to a certain absolute amount so that depositors still have some funds at risk. Other methods include charging risk-based premiums or withholding deposit insurance from large, institutional depositors.

The actual form of such a programme should be tailored to the circumstances in, as well as historical and cultural features of, each country.¹

¹ Some form of banking deposit insurance exists in all of the member countries of the Basle Committee. The experiences of these countries should prove useful in designing a deposit insurance programme. See "Deposit protection schemes in the G-10 countries" - See Volume III of the Compendium.
Global Anti-Money-Laundering Guidelines for Private Banking Wolfsberg AML Principles

Global Anti-Money-Laundering Guidelines for Private Banking Wolfsberg AML Principles

Preamble

The following guidelines are understood to be appropriate for private banking relationships. Guidelines for other market segments may differ. It is recognized that the establishment of policies and procedures to adhere to these guidelines is the responsibility of management.

1 Client acceptance: general guidelines

1.1 General

Bank policy will be to prevent the use of its worldwide operations for criminal purposes. The bank will endeavor to accept only those clients whose source of wealth and funds can be reasonably established to be legitimate. The primary responsibility for this lies with the private banker who sponsors the client for acceptance. Mere fulfillment of internal review procedures does not relieve the private banker of this basic responsibility.

1.2 Identification

The bank will take reasonable measures to establish the identity of its clients and beneficial owners and will only accept clients when this process has been completed.

1.2.1 Client

- Natural persons: identity will be established to the bank’s satisfaction by reference to official identity papers or such other evidence as may be appropriate under the circumstances.
- Corporations, partnerships, foundations: the bank will receive documentary evidence of the due organization and existence.
- Trusts: the bank will receive appropriate evidence of formation and existence along with identity of the trustees.
- Identification documents must be current at the time of opening.

1.2.2 Beneficial owner

* These Principles were adopted in October 2000 by the following major international private banks, in cooperation with Transparency International: ABN Amro Bank N.V., Banco Santander Central Hispano, S.A., Barclays Bank, The Chase Manhattan Private Bank, Citibank, N.A., Credit Suisse Group, Deutsche Bank AG, Hong Kong & Shanghai Banking Corporation, JPMorgan, Societe Generale, and UBS AG.
Beneficial ownership must be established for all accounts. Due diligence must be done on all principal beneficial owners identified in accordance with the following principles:

- **Natural persons:** when the account is in the name of an individual, the private banker must establish whether the client is acting on his/her own behalf. If doubt exists, the bank will establish the capacity in which and on whose behalf the account holder is acting.
- **Legal entities:** where the client is a company, such as a private investment company, the private banker will understand the structure of the company sufficiently to determine the provider of funds, principal owner(s) of the shares and those who have control over the funds, e.g. the directors and those with the power to give direction to the directors of the company. With regard to other shareholders the private banker will make a reasonable judgement as to the need for further due diligence. This principle applies regardless of whether the share capital is in registered or bearer form.
- **Trusts:** where the client is a trustee, the private banker will understand the structure of the trust sufficiently to determine the provider of funds (e.g. settlor) those who have control over the funds (e.g. trustees) and any persons or entities who have the power to remove the trustees. The private banker will make a reasonable judgement as to the need for further due diligence.
- **Unincorporated associations:** the above principles apply to unincorporated associations.

### 1.2.3 Accounts held in the name of money managers and similar intermediaries

The private banker will perform due diligence on the intermediary and establish that the intermediary has a due diligence process for its clients, or a regulatory obligation to conduct such due diligence, that is satisfactory to the bank.

### 1.2.4 Powers of attorney/Authorized signers

Where the holder of a power of attorney or another authorized signer is appointed by a client, it is generally sufficient to do due diligence on the client.

### 1.2.5 Practices for walk-in clients and electronic banking relationships

A bank will determine whether walk-in clients or relationships initiated through electronic channels require a higher degree of due diligence prior to account opening.

### 1.3 Due diligence

It is essential to collect and record information covering the following categories:

- Purpose and reasons for opening the account
- Anticipated account activity
- Source of wealth (description of the economic activity which has generated the net worth)
- Estimated net worth
- Source of funds (description of the origin and the means of transfer for monies that are accepted for the account opening)
- References or other sources to corroborate reputation information where available.

Unless other measures reasonably suffice to do the due diligence on a client (e.g. favorable and reliable references), a client will be met prior to account opening.

1.4 Oversight responsibility

There will be a requirement that all new clients and new accounts be approved by at least one person other than the private banker.

2 Client acceptance: situations requiring additional diligence / attention

2.1 Numbered or alternate name accounts

Numbered or alternate name accounts will only be accepted if the bank has established the identity of the client and the beneficial owner.

2.2 High-risk countries

The bank will apply heightened scrutiny to clients and beneficial owners resident in and funds sourced from countries identified by credible sources as having inadequate anti-money-laundering standards or representing high-risk for crime and corruption.

2.3 Offshore jurisdictions

Risks associated with entities organized in offshore jurisdictions are covered by due diligence procedures laid out in these guidelines.

2.4 High-risk activities

Clients and beneficial owners whose source of wealth emanates from activities known to be susceptible to money laundering will be subject to heightened scrutiny.

2.5 Public officials

Individuals who have or have had positions of public trust such as government officials, senior executives of government corporations, politicians, important political party officials, etc. and their families and close associates require heightened scrutiny.

3 Updating client files

The private banker is responsible for updating the client file on a defined basis and/or when there are major changes. The private banker's supervisor or an independent control person will review
relevant portions of client files on a regular basis to ensure consistency and completeness. The frequency of the reviews depends on the size, complexity and risk posed of the relationship.

4 Practices when identifying unusual or suspicious activities

4.1 Definition of unusual or suspicious activities

The bank will have a written policy on the identification of and follow-up on unusual or suspicious activities. This policy will include a definition of what is considered to be suspicious or unusual and give examples thereof.

Unusual or suspicious activities may include:

- Account transactions or other activities which are not consistent with the due diligence file
- Cash transactions over a certain amount
- Pass-through / in-and-out-transactions.

4.2 Identification of unusual or suspicious activities

Unusual or suspicious activities can be identified through:

- Monitoring of transactions
- Client contacts (meetings, discussions, in-country visits etc.)
- Third party information (e.g. newspapers, Reuters, internet)
- Private banker's / internal knowledge of the client's environment (e.g. political situation in his/her country).

4.3 Follow-up on unusual or suspicious activities

The private banker, management and/or the control function will carry out an analysis of the background of any unusual or suspicious activity. If there is no plausible explanation a decision will be made involving the control function:

- To continue the business relationship with increased monitoring
- To cancel the business relationship
- To report the business relationship to the authorities.

The report to the authorities is made by the control function and senior management may need to be notified (e.g. Senior Compliance Officer, CEO, Chief Auditor, General Counsel). As required by local laws and regulations the assets may be blocked and transactions may be subject to approval by the control function.

5 Monitoring

A sufficient monitoring program must be in place. The primary responsibility for monitoring account activities lies with the private banker. The private banker will be familiar with
significant transactions and increased activity in the account and will be especially aware of unusual or suspicious activities (see 4.1). The bank will decide to what extent fulfillment of these responsibilities will need to be supported through the use of automated systems or other means.

6 Control responsibilities

A written control policy will be in place establishing standard control procedures to be undertaken by the various "control layers" (private banker, independent operations unit, Compliance, Internal Audit). The control policy will cover issues of timing, degree of control, areas to be controlled, responsibilities and follow-up, etc.

7 Reporting

There will be regular management reporting established on money laundering issues (e.g. number of reports to authorities, monitoring tools, changes in applicable laws and regulations, the number and scope of training sessions provided to employees).

8 Education, training and information

The bank will establish a training program on the identification and prevention of money laundering for employees who have client contact and for Compliance personnel. Regular training (e.g. annually) will also include how to identify and follow-up on unusual or suspicious activities. In addition, employees will be informed about any major changes in anti-money-laundering laws and regulations. All new employees will be provided with guidelines on the anti-money-laundering procedures.

9 Record retention requirements

The bank will establish record retention requirements for all anti-money-laundering related documents. The documents must be kept for a minimum of five years.

10 Exceptions and deviations

The bank will establish an exception and deviation procedure that requires risk assessment and approval by an independent unit.

11 Anti-money-laundering organization

The bank will establish an adequately staffed and independent department responsible for the prevention of money laundering (e.g. Compliance, independent control unit, Legal).
Wolfsberg Statement: The Suppression of the Financing of Terrorism

1. Preamble

The Wolfsberg Group of financial institutions (the “Wolfsberg Group” (1)) is committed to contributing to the fight against terrorism and is making the following statement to describe the role of financial institutions in preventing the flow of terrorist funds through the world’s financial system.

This fight presents new challenges. Funds used in the financing of terrorism do not necessarily derive from criminal activity, which is a requisite element of most existing money laundering offences. Successful participation in this fight by the financial sector requires global cooperation by governments with the financial institutions to an unprecedented degree.

2. Role of Financial Institutions in the Fight Against Terrorism

Financial institutions can assist governments and their agencies in the fight against terrorism. They can help this effort through prevention, detection and information sharing. They should seek to prevent terrorist organizations from accessing their financial services, assist governments in their efforts to detect suspected terrorist financing and promptly respond to governmental enquiries.

3. Rights of the Individual

The Wolfsberg Group is committed to participating in the fight against terrorism in a manner which is non-discriminatory and is respectful of the rights of individuals.

4. Know Your Customer

The Wolfsberg Group recognises that adherence to existing “Know Your Customer” policies and procedures is important to the fight against terrorism. Specifically the proper identification of customers by financial institutions can improve the efficacy of searches against lists of known or suspected terrorists issued by competent authorities having jurisdiction over the relevant financial institution (“applicable lists”).

In addition to the continued application of existing customer identification, acceptance and due diligence procedures, the Wolfsberg Group is committed to:

- Implementing procedures for consulting applicable lists and taking reasonable and practicable steps to determine whether a person involved in a prospective or existing business relationship appears on such a list.
- Reporting to the relevant authorities matches from lists of known or suspected terrorists or terrorist organizations consistent with applicable laws and regulations regarding the disclosure of customer information.
- Exploring with government agencies ways of improving information exchange within and between jurisdictions.
• Exploring ways of improving the maintenance of customer information to facilitate the timely retrieval of such information.

5. **High Risk Sectors and Activities**

The Wolfsberg Group is committed to applying enhanced and appropriate due diligence in relation to those of their customers engaged in sectors and activities which have been identified by competent authorities as being widely used for the financing of terrorism, such as underground banking businesses or alternative remittance systems. This will include the adoption, to the extent not already in place, of specific policies and procedures on acceptance of business from customers engaged in such sectors or activities, and increased monitoring of activity of customers who meet the relevant acceptance criteria.

In particular the Wolfsberg Group is committed to restricting their business relationships with remittance businesses, exchange houses, casas de cambio, bureaux de change and money transfer agents to those which are subject to appropriate regulation aimed at preventing such activities and businesses from being used as a conduit to launder the proceeds of crime and/or finance terrorism.

The Wolfsberg Group recognises that many jurisdictions are currently in the process of developing and implementing regulations with regard to these businesses and that appropriate time needs to be given for these regulations to take effect.

6. **Monitoring**

Recognising the difficulties inherent in identifying financial transactions linked to the financing of terrorism (many of which appear routine in relation to information known at the time) the Wolfsberg Group is committed to the continued application of existing monitoring procedures for identifying unusual or suspicious transactions. The Wolfsberg Group recognises that while the motive for such transactions may be unclear, monitoring and then identifying and reporting unusual or suspicious transactions may assist government agencies by linking seemingly unrelated activity to the financing of terrorism.

In addition, the Wolfsberg Group is committed to:

• Exercising heightened scrutiny of customers engaged in sectors identified by competent authorities as being widely used for the financing of terrorism.
• Monitoring account and transactional activity (to the extent meaningful information is available to financial institutions) against lists generated by competent authorities of known or suspected terrorists or terrorist organizations.
• Working with governments and agencies in order to recognise patterns and trends identified as related to the financing of terrorism.
• Considering the modification of existing monitoring procedures as necessary to assist in the identification of such patterns and trends.
7. Need for Enhanced Global Co-operation

The Wolfsberg Group is committed to co-operating with and assisting law enforcement and government agencies in their efforts to combat the financing of terrorism. The Wolfsberg Group has identified the following areas for discussion with governmental agencies, with a view to enhancing the contribution financial institutions are able to make:

- The provision of official lists of suspected terrorists and terrorist organisations on a globally coordinated basis by the relevant competent authority in each jurisdiction.
- The inclusion of appropriate details and information in official lists to assist financial institutions in efficient and timely searches of their customer bases. This information should ideally include (where known) in the case of individuals: date of birth; place of birth; passport or identity card number; in the case of corporations: place of incorporation or establishment; details of principals; to the extent possible, reason for inclusion on the list; and geographic information, such as the location, date and time of the transaction.
- Providing prompt feedback to financial institutions on reports made following circulation of such official lists.
- The provision of meaningful information in relation to patterns, techniques and mechanisms used in the financing of terrorism to assist with monitoring procedures.
- The provision of meaningful information about corporate and other types of vehicles used to facilitate terrorist financing.
- The development of guidelines on appropriate levels of heightened scrutiny in relation to sectors or activities identified by competent authorities as being widely used for terrorist financing.
- The development by governments and clearing agencies of uniform global formats for funds transfers that require information which may assist their efforts to prevent and detect the financing of terrorism.
- Ensuring that national legislation:
  - Permits financial institutions to maintain information derived from official lists within their own databases and to share such information within their own groups.
  - Affords financial institutions protection from civil liability for relying on such lists.
  - Permits financial institutions to report unusual or suspicious transactions that may relate to terrorism to the relevant authorities without breaching any duty of customer confidentiality or privacy legislation.
  - Permits the prompt exchange of information between governmental agencies of different nation states.
The Wolfsberg Group supports the FATF Special Recommendations on Terrorist Financing as measures conducive to the suppression of the financing of terrorism.

(1) The Wolfsberg Group consists of the following leading international banks ABN Amro N.V., Banco Santander Central Hispano, S.A., Bank of Tokyo-Mitsubishi, Ltd., Barclays Bank, Citigroup, Credit Suisse Group, Deutsche Bank AG, Goldman Sachs, HSBC, J.P. Morgan Chase, Société Générale, UBS AG and became known when they, together with Transparency International and Mark Pieth, agreed to a set of global anti-money-laundering guidelines for international private banks in October 2000. Wolfsberg is the location in Switzerland where an important working session to formulate the guidelines was held.
NOTICE TO BANKS
BANKING ACT, CAP 19
This notice replaces MAS 626 dated 28 Jan 1999.

Guidelines on Prevention of Money Laundering

1 INTRODUCTION

1.1 For the preservation, nationally and internationally, of the good name of the banking community in Singapore and recognising the need to prevent the banking system from being used in furtherance of money laundering activities (described in Section 2) arising from or in connection with drug trafficking or criminal conduct, and taking into account:

(i) the provisions of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 84A) (the Act);

(ii) the Financial Action Task Force 40 Recommendations, in particular Recommendations 9 to 20; and

(iii) the Statement of Principles proposed by the Basle Committee on Banking Supervision and Supervising Practices in December 1988,

banks in Singapore shall comply with the Guidelines issued in this Notice.

1.2 In this Notice, the following terms shall have the meanings ascribed to them in the Act:

i. Terms defined under Section 2 of the Act
   • authorised officer
   • criminal conduct
   • drug trafficking
   • drug trafficking offence
   • foreign drug trafficking offence
   • foreign serious offence
   • serious offence

ii. Terms defined under Section 35 of the Act
   • financial transaction document
   • minimum retention period

1.3 Where Singapore-incorporated banks have branches or subsidiaries overseas, they shall ensure that their group policy on money laundering is communicated to the management of their overseas offices. The group policy shall ensure that verification of identity and record keeping
are undertaken at least to the standards required under Singapore law, taking into account the laws and regulations of the host country. Where the laws and regulations of the host country and the Guidelines conflict, the overseas branch or subsidiary should comply with the laws and regulations of the host country and inform the head office of any departure from the group policy.

2 DESCRIPTION OF MONEY LAUNDERING

2.1 Money laundering is a process intended to mask the benefits derived from drug trafficking or criminal conduct so that they appear to have originated from a legitimate source.

2.2 Generally, the process of money laundering comprises three stages, during which there may be numerous transactions that could alert a bank to the money laundering activity:

i. **Placement**: the physical disposal of benefits of drug trafficking or criminal conduct;

ii. **Layering**: the separation of benefits of drug trafficking or criminal conduct from their source by creating layers of financial transactions designed to disguise the audit trail;

iii. **Integration**: the provision of apparent legitimacy to benefits of drug trafficking or criminal conduct. If the layering process succeeds, integration schemes place the laundered funds back into the economy so that they re-enter the financial system appearing to be legitimate business funds.

2.3 The chart in Annex 1 illustrates the money laundering stages in greater detail.

3 BASIC PRINCIPLES AND POLICIES TO COMBAT MONEY LAUNDERING

3.1 The Authority seeks to combat money laundering by requiring banks to apply the following principles:

i. **Know your customer**: banks shall obtain satisfactory evidence of the customer's identity, and have effective procedures for verifying the bona fides of new customers.

ii. **Compliance with laws**: management shall ensure that business is conducted in conformity with high ethical standards, that laws and regulations are adhered to, and that service is not provided where there is good reason to suppose that transactions are associated with money laundering activities.

iii. **Co-operation with law enforcement agencies**: within legal constraints relating to customer confidentiality, banks shall co-operate fully with law enforcement agencies. This includes taking appropriate measures allowed by law if there are reasonable grounds for suspecting money laundering. Disclosure of information
by banks for the purposes of the Act (suspicious transaction reports) shall be made to Head, Suspicious Transactions Reporting Office, Commercial Affairs Department (STRO). To facilitate the process, banks shall identify a single reference point within their organisation (usually a relevant officer of the bank) to which staff are instructed to report suspected money-laundering transactions promptly.

iv. **Policies, procedures and training:** each bank shall adopt policies consistent with the principles set out in this Notice, and ensure that its staff, wherever located, are informed of these policies and adequately trained in matters covered by this Notice. To promote adherence to these principles, banks shall implement specific procedures for customer identification, retention of financial transaction documents, and reporting of suspicious transactions.

4 **CUSTOMER IDENTIFICATION**

**General**

4.1 Banks shall obtain satisfactory evidence of the identity and legal existence of persons applying to do business with them (such as opening an account or a safe deposit facility). Such evidence shall be substantiated by reliable documents or other means. Banks should also establish that any applicant claiming to act on behalf of another person is authorised to do so. There should be an explicit policy that significant business transactions will not be conducted with applicants who fail to provide evidence of their identity, but without derogating from the banks' obligations to report suspicious transactions. Where initial checks fail to identify the applicant, or give rise to suspicions that the information provided is false, additional verification measures should be undertaken to determine whether to proceed with the business. Details of the additional checks are to be recorded.

4.2 When a bank acquires the business of another financial sector company or firm, either in whole or as a product portfolio (e.g. the mortgage book), it is not necessary for the identity of all existing customers to be re-identified, provided that:

i. all customer account records are acquired with the business; and
ii. due diligence enquiries do not raise any doubt as to whether the anti-money laundering procedures previously adopted by the acquired business have satisfied Singapore requirements.

4.3 If during the business relationship, the bank has reason to doubt:

i. the accuracy of the information relating to the customer's identity;
ii. that the customer is the beneficial owner; or
iii. the intermediary's declaration of beneficial ownership,

or if there are any signs of unreported changes, it shall take further measures to verify the identity of the customer or the beneficial owner, as applicable.
Personal Customers

4.4 Banks shall obtain from all personal applicants the following information:

- name and/or names used;
- permanent and mailing address;
- date of birth;
- nationality.

4.5 Banks shall request applicants to produce original documents of identity issued by an official authority, preferably bearing a photograph of the applicants. Examples of such documents are identity cards and passports. Where practicable, file copies of documents of identity are to be kept. Alternatively, the identity card or passport number and other relevant details are to be recorded.

4.6 In respect of joint accounts where the surnames and/or addresses of the account holders differ, the names and addresses of all account holders are to be verified in accordance with the procedures set out above.

Verification Without Face-to-Face Contact

4.7 Banks shall take particular care in opening accounts via the internet, post or telephone, especially in relation to cheque and money transmission facilities. Any mechanism that avoids face-to-face contact with applicants inevitably creates difficulty in customer identification and can be abused by money launderers to gain access to the banking system. For non-face-to-face contact, banks should assess the money laundering risk posed by internet, postal and telephone products offered and devise customer identification procedures with due regard to this risk.

4.8 The customer identification procedures for non-face-to-face verification should be at least as stringent as those for face-to-face verification. Reasonable steps should also be taken to avoid fraud and single or multiple fictitious applications. There are a number of checks which, when undertaken successfully, will give banks a reasonable degree of assurance as to the identity of the applicant where there is no face-to-face contact. For example,

- telephone contact with the applicant at an independently verified home or business number;
- subject to the applicant's consent, telephone confirmation of the applicant's employment with the employer's personnel department at a listed business number;
- salary details appearing on recent bank statements;
- confirmation of the address through an exchange of correspondence or by other appropriate methods.

An initial deposit cheque drawn on another financial institution regulated by the Authority will provide additional comfort.
4.9 For non-Singapore residents who wish to open bank accounts without face-to-face contact, any of the bank's branches, subsidiaries, head offices or correspondent banks in the applicant's country of residence may be used to confirm identity or check identity verification details. Where the bank has no group presence or correspondent relationship in the applicant's country of residence, then a copy of the document of identity, certified by lawyers or notary publics, should be requested.

Corporate and Other Business Customers

4.10 Before establishing a business relationship, a company search and/or other commercial enquiries shall be made to ensure that the corporate/other business applicant has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In the event of doubt as to the identity of the company or its directors, or the business or its partners, a search with the Registry of Companies and Businesses shall be made.

4.11 The following relevant documents shall be obtained in respect of corporate/other business applicants which are registered in Singapore:

- copies of the Certificate of Incorporation, Certificate of Partnership, or Certificate of Registration, as appropriate; and
- appropriate directors' resolutions (certified extracts only), signed application forms or account opening authority containing specimen signatures.

4.12 The originals or certified copies of certificates (issued by the Registrar of Companies and Businesses) should be produced for verification.

4.13 For companies, businesses or partnerships registered outside Singapore, comparable documents are to be obtained. However, as different countries have varying standards of control, attention should be paid to the place of origin of the documents and the background against which they are produced. The originals or certified copies of certificates (issued by foreign authorities) should be produced for verification.

4.14 Where the applicant is an unlisted company, or an unincorporated business (e.g. a partnership), and none of the directors/partners is already known to the bank, the bank shall identify one or more of the principal directors, partners or shareholders according to customer identification procedures for personal applicants.

4.15 In addition, if significant changes to the company structure or ownership occur subsequently, or suspicions are aroused by a change in the payment profile through a company account, further checks are to be made.

Clubs, Societies and Charities

4.16 If the applicant is a club, society or charity, banks shall require the constitution (or other similar documents) of the applicant to be produced to ensure that it is properly constituted and registered. Where there is more than one signatory to the account, the identity of at least two
signatories shall be verified according to customer identification procedures for personal applicants. When signatories change, care should be taken to ensure that the identity of at least two current signatories has been verified.

Shell Companies

4.17 Shell companies are legal entities which have no business substance in their own right but through which financial transactions may be conducted. Banks should note that shell companies may be abused by money launderers and therefore be cautious in their dealings with them. In addition to the requirement under paragraph 4.11, banks should also obtain satisfactory evidence of the identity of the beneficial owners, bearing in mind the "Know-Your-Customer" principle.

Trust, Nominee and Fiduciary Accounts

4.18 Trust, nominee and fiduciary accounts can be used to avoid customer identification procedures and mask the origin of benefits of drug trafficking or criminal conduct. Banks are to establish whether the applicant for business relationship is acting on behalf of another person as trustee, nominee or agent (intermediary). Banks should obtain satisfactory evidence of the identity of intermediaries and authorised signatories, and the nature of their trustee or nominee capacity and duties.

4.19 Where the intermediary is a financial institution authorised and supervised by the Authority in respect of its business in Singapore or is a subsidiary of such an institution, it shall be reasonable for the bank to rely on the intermediary to verify or confirm the identity of the beneficial owners.

4.20 Where the intermediary is a financial institution supervised by an overseas regulatory authority and is based or incorporated in a country in which there are in force provisions at least equivalent to those in this Notice, it shall be reasonable for banks to accept a written assurance from the intermediary that evidence of the identity of the beneficial owners has been obtained, recorded and retained, and that the intermediary is satisfied as to the source of funds. For this purpose, banks should obtain a written statement from the intermediary, and affix the statement to the original account opening documentation.

4.21 Where the intermediary does not fall into any of the categories in paragraphs 4.19 and 4.20, banks should obtain satisfactory evidence of the identity of the beneficial owners and the source of funds. The bank should obtain in writing the relevant information from the intermediary, which must at least include the information specified in Appendix I.

4.22 If satisfactory evidence of the beneficial owners cannot be obtained, banks shall consider whether to proceed with the business, bearing in mind the "Know-Your-Customer" principle. If they decide to proceed, they are to record any misgiving and give extra attention to monitoring the account in question. Suspicious transactions are to be reported in accordance with the procedures in section 6 below.
Client Accounts Opened by Solicitors or Accountants

4.23 Where the intermediary is a firm of solicitors or accountants, its professional code of conduct may preclude it from divulging to banks information concerning its clients. It may therefore not be possible for a bank to establish the identity of the person(s) for whom the intermediary is acting. However, the bank should not be precluded from making reasonable enquiries about transactions passing through the intermediary's clients' accounts that give cause for concern or from reporting those transactions if any suspicion is aroused. If a money laundering enquiry arises in respect of such clients' accounts, law enforcement agencies will seek information directly from the intermediary as to the identity of its client and the nature of the relevant transaction.

Transactions Undertaken for Non-account Holders (Occasional Customer)

4.24 Where transactions are undertaken for non-account holders of a bank, in particular where such transactions involve cash of S$20,000 or more, the customer shall be required to produce positive evidence of identity as in paragraphs 4.4 and 4.11. Copies of the documents of identity or a record of the relevant details shall be treated as part of the financial transaction documents and retained by banks.

4.25 Particular care shall be taken in relation to requests for safe deposit facilities. Where such facilities are made available to non-account holders, the customer identification procedures set out above should be followed.

5 Record Keeping

5.1 Banks shall prepare and maintain documentation on their customer relationships and transactions such that:

i. requirements of legislation are fully met;

ii. the relevant authorities in Singapore and the internal and external auditors of the bank will be able to judge reliably the bank's transactions and its compliance with the Guidelines;

iii. any transaction effected via the bank can be reconstructed; and

iv. it can satisfy within a reasonable time any enquiry or order from the relevant authorities in Singapore as to disclosure of information, including without limitation (a) whether a particular person is the customer or beneficial owner of funds/assets deposited with the banks, and (b) whether the banks have effected cash transactions requiring customer identification.

5.2 When setting document retention policy, banks must take into account the requirements of the Act. The following document retention periods shall be followed:
i. financial transaction documents relating to the opening of an account are to be kept for 6 years after the date the account is closed;

ii. financial transaction documents relating to the opening of a safe deposit box are to be kept for 6 years after the date the safe deposit box ceases to be used; and

iii. financial transaction documents other than those described in sub-paragraphs (i) and (ii) are to be kept for 6 years after the date on which the transaction takes place.

5.3 Financial transaction documents may be retained as originals or copies, on microfilm, or in electronic form, provided that such forms are admissible in court. Notwithstanding paragraph 5.2, if the records relate to on-going investigations or transactions that have been the subject of a disclosure, they shall be retained beyond the stipulated retention period until it is confirmed that the case has been closed.

5.4 In the case of wire transfer transactions, the records of electronic payments and messages must be treated in the same way as other records in support of entries in the account.

6 SUSPICIOUS TRANSACTIONS

6.1 Each bank shall clarify the economic background and purpose of any transaction or business relationship if its form or amount appears unusual in relation to the customer, bank or branch office concerned, or if the economic purpose or legality of the transaction is not immediately clear. In this regard, banks should exercise due diligence by implementing adequate systems for identifying and detecting suspicious transactions.

6.2 Examples of suspicious transactions are found in Appendix II. These are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered. Identification of any transaction listed in Appendix II should prompt initial enquiries and, if necessary, further investigations on the source of funds.

6.3 Each bank shall institute a system for reporting suspicious transactions under the Act. This may include appointing one or more senior persons, or an appropriate unit responsible for reporting to STRO. A copy of the suspicious transaction report should also be sent to the Authority. The reporting formats are set out in Appendices III to V. In the event that urgent disclosure is required, particularly when the account concerned is part of an on-going investigation, an initial notification should be made by telephone.

6.4 The obligation to report is on the individual who becomes suspicious of a money laundering transaction. Officers and employees of the bank who deal with customers should be made aware of the statutory obligation to report suspicious transactions under the bank's reporting system.
6.5 Where:

i. a customer deposits, transfers or seeks to invest funds, or obtains credit against the security of such funds, or

ii. the bank holds funds on behalf of a customer,

and an employee of the bank knows that the customer has engaged in drug trafficking or criminal conduct, the matter must be promptly reported to the relevant officer or unit within the organisation who, in turn, must immediately report the details to STRO. If the employee suspects or has reasonable grounds to suspect that the customer has engaged in drug trafficking or criminal conduct, the officer or unit, on receiving the employee's report, must promptly evaluate whether there are reasonable grounds for such belief and must then immediately report the case to STRO unless the officer or unit considers, and records an opinion, that such reasonable grounds do not exist.

6.6 Each bank shall maintain a complete file on all transactions that have been brought to the attention of the relevant officer or unit, including transactions that are not reported to STRO.

6.7 Where it is known that a report has already been disclosed to STRO and it becomes necessary to make further enquiries of the customer, care should be taken to ensure that the customer does not become aware that his name has been brought to the attention of STRO.

6.8 Under Section 38 of the Act, where banks disclose to an authorised officer a knowledge, suspicion or belief that any fund, property or investment is derived from or used in connection with drug trafficking, criminal conduct or any matter on which such a knowledge, suspicion or belief is based, such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or by rules of professional conduct. For example, a disclosure of information under Section 38 of the Act would not be a breach of the provisions of Section 47 of the Banking Act. Furthermore, under Section 38 of the Act, banks would not be liable for any loss arising out of such disclosure, or any act or omission, in relation to the fund, property or investment in consequence of the disclosure.

7 COMPLIANCE AND TRAINING

7.1 Each bank shall appoint one or more senior persons, or an appropriate unit, to advise its management and staff on the issuing and enforcement of in-house instructions to promote adherence to the Guidelines, including personnel training, reporting of suspicious transactions, and generally, all matters relating to the prevention of money laundering.

7.2 Each bank shall appoint a senior officer as the compliance officer or set up a designated compliance unit headed by a senior officer. The object is to ensure a speedy and appropriate reaction to any matter that requires special attention under the Guidelines and the Act.

7.3 The bank's in-house audit department shall monitor regularly the effectiveness of the measures taken by the bank in preventing money laundering.
7.4 The bank shall train local and overseas staff to be fully aware of their responsibilities in combating money laundering and to be familiar with its system for reporting and investigating suspicious matters.

7.5 All relevant staff should be educated in the importance of the "Know-Your-Customer" requirements to prevent money laundering. Training in this respect should cover not only the need to know the true identity of the applicant for business relationship but also, where a business relationship has been established, the need to know enough about the type of transactions expected in relation to that customer at the outset in order to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a customer's transactions or circumstances that might constitute money laundering.

7.6 Although senior management of a bank may not be involved in the day-to-day procedures, it is important that they understand the statutory duties placed on them, their staff, and the bank itself. Some form of training to raise general awareness of senior management of their statutory duties is therefore suggested.

7.7 Timing and content of training for various sectors of staff will need to be adapted by the bank for its own needs. The following is recommended:

i. **New Staff**

A general appreciation of the background to money laundering, the need to be able to identify suspicious transactions and report such transactions to the appropriate designated point within the bank, and the offence of "tipping off" should be provided to all new staff who deal with customers or their transactions, irrespective of the level of seniority.

ii. **"Front-Line" Staff**

Staff who deal directly with the public are the first point of contact with potential money launderers. Their efforts are therefore vital to the bank's reporting system for such transactions. Staff should be trained to identify suspicious transactions and on the procedure to be adopted when a transaction is deemed to be suspicious. "Front-line" staff should be made aware of the bank's policy for dealing with non-regular customers particularly where large cash transactions are involved, and the need for extra vigilance in these cases.

Branch staff should be trained to recognise that benefits of drug trafficking or criminal conduct may not only be paid in or drawn out across branch counters and should be encouraged to take note of credit and debit transactions arising from other sources, e.g. credit transfers, wire transfers and ATM transactions.

iii. **Staff Dealing with New Customers**
Staff who deal with account opening, or accept new customers, must receive the training given to "front-line" staff in sub-paragraph (ii) above. In addition, the need to verify the identity of the customer must be understood, and training should be given in the bank's account opening and customer identification procedures. They should also be aware that the offer of suspicious funds or the request to undertake a suspicious transaction needs to be reported to the relevant authorities whether or not such funds are accepted or transactions proceeded with, and they must know what procedures to follow in these circumstances.

iv. **Supervisors and Managers**

A higher level of instruction covering all aspects of money laundering procedures should be provided to supervisors and managers. This will include the offences and penalties arising from the Act, procedures relating to service of production and restraint orders, internal reporting procedures, and the requirements for verification of identity and the retention of records.

7.8 Refresher training should be provided at regular intervals to ensure that staff are reminded of their responsibilities and are kept informed of new developments.

8 **SUMMARY OF KEY PROVISIONS OF THE ACT**

**Money laundering offences**

8.1 It is an offence for banks to:

i. enter into or otherwise be concerned in an arrangement knowing or having reasonable grounds to believe that by that arrangement:

a) it will facilitate the retention or control of benefits of drug trafficking or criminal conduct by/on behalf of; or

b) the benefits of drug trafficking or criminal conduct are used to secure funds or acquire property (by way of investment or otherwise) for, another person (whom the bank knows or has reasonable grounds to believe has been/is involved in, or has benefited from, drug trafficking or criminal conduct);

ii. conceal or disguise; or convert, transfer, or remove from the jurisdiction, any property which, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct (for the purpose of assisting any person to avoid prosecution for a drug trafficking offence, foreign drug trafficking offence, serious offence or foreign serious offence or the enforcement of a confiscation order issued under the Act); or
iii. acquire any property for no or inadequate consideration, knowing, or having reasonable grounds to believe, that the property, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct. Offences under this paragraph are punishable by a fine not exceeding $200,000, or imprisonment for a term not exceeding 7 years, or both.

Disclosure of Suspicious Transactions

8.2 Banks shall disclose suspicious transactions to an authorised officer when they know or have reasonable grounds to suspect that any property:

i. in whole or in part, directly or indirectly, represents proceeds of drug trafficking or criminal conduct; or

ii. was used/will be used in connection with drug trafficking or criminal conduct.

Failure to disclose such knowledge, suspicion, or other related information amounts to an offence which is punishable by a fine not exceeding $10,000.

Tipping Off

8.3 It is an offence for banks, knowing or having reasonable grounds to suspect that an investigation under the Act is taking/to take place, to make a disclosure which is likely to prejudice such investigation. This is a tipping off offence punishable by a fine not exceeding $30,000, or imprisonment for a term not exceeding 3 years, or both.

Failure to co-operate with law enforcement agencies

8.4 The following acts constitute an offence under the Act:

i. contravening a production order issued by the Court under the Act without reasonable excuse;

ii. providing material known to be false or misleading in purported compliance with a production order, without:

a. indicating that the material is false or misleading, and how it is false or misleading; or

b. providing correct information which is in the banks' possession or can reasonably be acquired by them;

c. hindering or obstructing an authorised officer in the execution of a search warrant issued under the Act; or

d. obstructing or hindering any authorised officer in the discharge of his duty under the Act.

Offences under paragraphs (i) to (iii) are punishable by a fine not exceeding $10,000, or imprisonment for a term not exceeding 2 years, or both. The offence under paragraph (iv) is punishable by a fine not exceeding $2,000, or imprisonment for a term not exceeding 6 months, or both.
Record Retention

8.5 Banks are required to retain each financial transaction document or a copy of it for the relevant minimum retention period. Such documents are to be stored in a manner that is reasonably practicable to retrieve them. In addition, banks shall retain a copy, and maintain a register, of financial transaction documents released by the bank under Section 37 of the Act. Failure to observe any of these requirements amounts to an offence which is punishable by a fine not exceeding $10,000.

8.6 Banks should note that some of the statutory obligations and prohibitions, which give rise to the offences described in paragraphs 8.1 to 8.5, also apply to their employees.

8.7 Section 8 of this Notice (or any reference to the Act in other parts of this Notice) does not constitute a legal interpretation of the Act, and should not be construed as an exhaustive write-up on all relevant provisions in the Act applicable to banks. Banks are advised to seek legal counsel where necessary.
INTERMEDIARY INTRODUCTION CERTIFICATE

Particulars Of Intermediary

NAME: ________________________________
ADDRESS: __________________________________________
________________________________________

NATURE OF BUSINESS: ____________________________

I/We certify that in accordance with the requirements of the Guidelines on Prevention of Money Laundering issued by the Monetary Authority of Singapore under section 54A of the Banking Act, the following information is correct:

Individual(s) on whose behalf the application is made by the intermediary:

I/We wish to establish a banking relationship on behalf of the following named individual(s).

1. True copies of identity cards/passports relating to all such individual(s), i.e. the underlying principal(s) are enclosed.

2. Evidence of authority for the intermediary to act on behalf of the individual(s) e.g. a trust deed is enclosed.

3. I/We confirm the main occupation of the individual(s) is/are: ____________________

4. I am/We are *satisfied/not satisfied as to the source of funds *being used to open the account/passing through the account.
Corporate(s) on whose behalf the application is made by the intermediary:

I/We wish to establish a banking relationship on behalf of the following named corporate(s).

_________________________________________________________________________________

1. The following documentation or its equivalent is enclosed in relation to the above corporate(s):

- Certificate of Incorporation (or true copy);
- True copies of identity cards/passports of all authorised signatories;
- True copies of identity cards/passports of at least 2 directors;
- True copies of identity cards/passports of principal shareholders (include those entitled to exercise, or control the exercise of, 10% or more of the voting rights of the company) if they are neither the authorised signatories nor directors;
- Completed bank mandate including authority to open account;
- Evidence of authority for the intermediary to act on its behalf.

2. I/We confirm the main business activities of the corporate(s) are:

_________________________________________________________________________________

3. I am/We are *satisfied/not satisfied as to the source of funds *being used to open the account/passing through the account.

SIGNED BY INTERMEDIARY                      DATE

________________________________________  ______________________________
EXAMPLES OF SUSPICIOUS TRANSACTIONS

1 General Comments

The list of situations given below is intended mainly as a means of highlighting the basic ways in which money may be laundered. While each individual situation may not be sufficient to suggest that money laundering is taking place, a combination of such situations may be indicative of such a transaction. Further, the list is by no means complete, and will require constant updating and adaptation to changing circumstances and new methods of laundering money. The list is intended solely as an aid, and must not be applied as a routine instrument in place of common sense.

A customer's declarations regarding the background of such transactions should be checked for plausibility. Not every explanation offered by the customer can be accepted without scrutiny.

It is justifiable to suspect any customer who is reluctant to provide normal information and documents required routinely by the bank in the course of the business relationship. Banks should pay attention to customers who provide minimal, false or misleading information or, when applying to open an account, provide information that is difficult or expensive for the bank to verify.

2 Transactions Which Do Not Make Economic Sense

i) A customer-relationship with the bank that does not appear to make economic sense, for example, a customer having a large number of accounts with the same bank, frequent transfers between different accounts or exaggeratedly high liquidity;

ii) Transactions in which assets are withdrawn immediately after being deposited, unless the customer's business activities furnish a plausible reason for immediate withdrawal;

iii) Transactions that cannot be reconciled with the usual activities of the customer, for example, the use of Letters of Credit and other methods of trade finance to move money between countries where such trade is not consistent with the customer's usual business;

iv) Transactions which, without plausible reason, result in the intensive use of what was previously a relatively inactive account, such as a customer's account which shows virtually no normal personal or business related activities but is used to receive or disburse unusually large sums which have no obvious purpose or relationship to the customer and/or his business;
v) Provision of bank guarantees or indemnities as collateral for loans between third parties that are not in conformity with market conditions;

vi) Unexpected repayment of an overdue credit without any plausible explanation;

vii) Back-to-back loans without any identifiable and legally admissible purpose.

3 Transactions Involving Large Amounts of Cash

i) Exchanging an unusually large amount of small-denominated notes for those of higher denomination;

ii) Purchasing or selling of foreign currencies in substantial amounts by cash settlement despite the customer having an account with the bank;

iii) Frequent withdrawal of large amounts by means of cheques, including traveller's cheques;

iv) Frequent withdrawal of large cash amounts that do not appear to be justified by the customer's business activity;

v) Large cash withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit from abroad;

vi) Company transactions, both deposits and withdrawals, that are denominated by unusually large amounts of cash, rather than by way of debits and credits normally associated with the normal commercial operations of the company, e.g. cheques, letters of credit, bills of exchange, etc;

vii) Depositing cash by means of numerous credit slips by a customer such that the amount of each deposit is not substantial, but the total of which is substantial;

viii) The deposit of unusually large amounts of cash by a customer to cover requests for bankers' drafts, money transfers or other negotiable and readily marketable money instruments;

ix) Customers whose deposits contain counterfeit notes or forged instruments;

x) Large cash deposits using night safe facilities, thereby avoiding direct contact with the bank;

xi) Customers making large and frequent cash deposits but cheques drawn on the accounts are mostly to individuals and firms not normally associated with their business;

xii) Customers who together, and simultaneously, use separate tellers to conduct large cash transactions or foreign exchange transactions.
4 Transactions Involving Bank Accounts

i) Matching of payments out with credits paid in by cash on the same or previous day;

ii) Paying in large third party cheques endorsed in favour of the customer;

iii) Substantial increases in deposits of cash or negotiable instruments by a professional firm or company, using client accounts or in-house company or trust accounts, especially if the deposits are promptly transferred between other client company and trust accounts;

iv) High velocity of funds through an account, i.e., low beginning and ending daily balances, which do not reflect the large volume of funds flowing through an account;

v) Multiple depositors using a single bank account;

vi) An account opened in the name of a moneychanger that receives structured deposits;

vii) An account operated in the name of an offshore company with structured movement of funds.

5 Transactions Involving Transfers Abroad

i) Transfer of money abroad by an interim customer\(^1\) in the absence of any legitimate reason;

ii) A customer which appears to have accounts with several banks in the same locality, especially when the bank is aware of a regular consolidated process from such accounts prior to a request for onward transmission of the funds elsewhere;

iii) Repeated transfers of large amounts of money abroad accompanied by the instruction to pay the beneficiary in cash;

iv) Large and regular payments that cannot be clearly identified as bona fide transactions, from and to countries associated with (i) the production, processing or marketing of narcotics or other illegal drugs or (ii) criminal conduct;

v) Substantial increase in cash deposits by a customer without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account and/or to a destination not normally associated with the customer;

\(^1\) An interim customer is one who is not a regular customer of the bank in question, or does not maintain an account, deposit account, safe deposit box, etc. with the bank.
vi) Building up large balances, not consistent with the known turnover of the customer's business, and subsequent transfer to account(s) held overseas;

vii) Cash payments remitted to a single account by a large number of different persons without an adequate explanation.

6 Investment Related Transactions

i) Purchasing of securities to be held by the bank in safe custody, where this does not appear appropriate given the customer's apparent standing;

ii) Requests by a customer for investment management services where the source of funds is unclear or not consistent with the customer's apparent standing;

iii) Larger or unusual settlements of securities transactions in cash form;

iv) Buying and selling of a security with no discernible purpose or in circumstances which appear unusual.

7 Transactions Involving Unidentified Parties

i) Provision of collateral by way of pledge or guarantee without any discernible plausible reason by third parties unknown to the bank and who have no identifiable close relationship with the customer;

ii) Transfer of money to another bank without indication of the beneficiary;

iii) Payment orders with inaccurate information concerning the person placing the orders;

iv) Use of pseudonyms or numbered accounts for effecting commercial transactions by enterprises active in trade and industry;

v) Holding in trust of shares in an unlisted company whose activities cannot be ascertained by the bank;

vi) Customers who wish to maintain a number of trustee or clients' accounts that do not appear consistent with their type of business, including transactions that involve nominee names.

8 Miscellaneous Transactions

i) Purchase or sale of large amounts of precious metals by an interim customer 2;

ii) Purchase of bank cheques on a large scale by an interim customer 2;
iii) Extensive or increased use of safe deposit facilities that do not appear to be justified by the customer's personal or business activities.
Suspicious Transactions Report - Section 38  
Corruption, Drug Trafficking and Other Serious Crimes  
(Confiscation of Benefits) Act

NATURAL PERSONS

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Reason(s) for Suspicion:

Other Relevant Information (Including Any Actions Taken):

A copy of the following documents are attached:

- Account Opening Forms
- Customer Identification Documents
- Relevant Documents Supporting the Suspicious Transactions

(Signature of Reporting Officer)

Date:

* Delete whichever is inappropriate.
Suspicious Transactions Report - Section 38  
Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

**CORPORATIONS**

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**Authorised Signatories’ Particulars**

1. Name:  
Date:  
Nationality:  
NRIC/Passport No.:  
Home Address:

*The reporting officer of the bank shall provide data on other authorised signatories, if any.*

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(Signature of Reporting Officer)

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Suspicious Transactions Report - Section 38
Corruption, Drug Trafficking and Other Serious Crimes
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* PARTNERSHIPS/ SOLE PROPRIETORS/ CLUBS & SOCIETIES

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(Signature of Reporting Officer)

Date:

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PROCESS OF MONEY LAUNDERING

**Illicit Activity**
- Drug Production and Trafficking

**Placement**
- Disposal of Bulk Cash:
  - Smuggling Bulk Currency
  - Mix Illicit Proceeds with Legitimate Deposits
  - Deposit Amounts in Small Denominations
  - Subdivide Bank or Commercial Transactions

**Integration**
- Use Layered Funds to Purchase “Clean, Legitimate” Assets:
  - Money Assets
  - Fixed Assets
  - Business

**Layering**
- Disguise Origin of Initial Deposit Through:
  - Multiple Transfers
  - Multiple Transactions

High Risk Transfer
Low Risk Transfer

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Guidelines On Prevention of Money Laundering

1 INTRODUCTION

1.1 For the preservation, nationally and internationally, of the good name of the merchant banking community in Singapore and recognising the need to prevent the financial system from being used in furtherance of money laundering activities (described in Section 2) arising from or in connection with drug trafficking and criminal conduct, and taking into account:

(i) the provisions of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 84A) (the Act);

(ii) the Financial Action Task Force 40 Recommendations, in particular Recommendations 9 to 20; and

(iii) the Statement of Principles proposed by the Basle Committee on Banking Supervision and Supervising Practices in December 1988,

merchant banks in Singapore shall comply with these Guidelines.

1.2 In these Guidelines, the following terms shall have the meanings ascribed to them in the Act:

(i) Terms defined under Section 2 of the Act
   • authorised officer
   • criminal conduct
   • drug trafficking
   • drug trafficking offence
   • foreign drug trafficking offence
   • foreign serious offence
   • serious offence

(ii) Terms defined under Section 35 of the Act
   • financial transaction document
   • minimum retention period

1.3 Where Singapore-incorporated merchant banks have branches or subsidiaries overseas, they shall ensure that their group policy on money laundering is communicated to the
management of their overseas offices. The group policy shall ensure that verification of identity and record keeping are undertaken at least to the standards required under Singapore law, taking into account the laws and regulations of the host country. Where the laws and regulations of the host country and the Guidelines conflict, the overseas branch or subsidiary should comply with the laws and regulations of the host country and inform the head office of any departure from the group policy.

2 DESCRIPTION OF MONEY LAUNDERING

2.1 Money laundering is a process intended to mask the benefits derived from drug trafficking or criminal conduct so that they appear to have originated from a legitimate source.

2.2 Generally, the process of money laundering comprises three stages, during which there may be numerous transactions that could alert a merchant bank to the money laundering activity:

(i) **Placement**: the physical disposal of benefits of drug trafficking or criminal conduct;

(ii) **Layering**: the separation of benefits of drug trafficking or criminal conduct from their source by creating layers of financial transactions designed to disguise the audit trail;

(iii) **Integration**: the provision of apparent legitimacy to benefits of drug trafficking or criminal conduct. If the layering process succeeds, integration schemes place the laundered funds back into the economy so that they re-enter the financial system appearing to be legitimate business funds.

2.3 The chart in Annex 1 illustrates the money laundering stages in greater detail.

3 BASIC PRINCIPLES AND POLICIES TO COMBAT MONEY LAUNDERING

3.1 The Authority seeks to combat money laundering by requiring merchant banks to apply the following principles:

(i) **Know your customer**: merchant banks shall obtain satisfactory evidence of the customer's identity, and have effective procedures for verifying the bona fides of new customers.

(ii) **Compliance with laws**: management shall ensure that business is conducted in conformity with high ethical standards, that laws and regulations are adhered to, and that service is not provided where there is good reason to suppose that transactions are associated with money laundering activities.

(iii) **Co-operation with law enforcement agencies**: within legal constraints relating to customer confidentiality, merchant banks shall co-operate fully with law enforcement agencies. This includes taking appropriate measures allowed by law.
if there are reasonable grounds for suspecting money laundering. Disclosure of information by merchant banks for the purposes of the Act (suspicious transaction reports) shall be made to Head, Suspicious Transactions Reporting Office, Commercial Affairs Department (STRO). To facilitate the process, merchant banks shall identify a single reference point within their organisation (usually a relevant officer of the merchant bank) to which staff are instructed to report suspected money-laundering transactions promptly.

(iv) **Policies, procedures and training:** each merchant bank shall adopt policies consistent with the principles set out in these Guidelines, and ensure that its staff, wherever located, are informed of these policies and adequately trained in matters covered by these Guidelines. To promote adherence to these principles, merchant banks shall implement specific procedures for customer identification, retention of financial transaction documents, and reporting of suspicious transactions.

4  CUSTOMER IDENTIFICATION

**General**

4.1 Merchant banks shall obtain satisfactory evidence of the identity and legal existence of persons applying to do business with them. Such evidence shall be substantiated by reliable documents or other means. Merchant banks should also establish that any applicant claiming to act on behalf of another person is authorised to do so. There should be an explicit policy that significant business transactions will not be conducted with applicants who fail to provide evidence of their identity, but without derogating from the merchant banks' obligations to report suspicious transactions. Where initial checks fail to identify the applicant, or give rise to suspicions that the information provided is false, additional verification measures should be undertaken to determine whether to proceed with the business. Details of the additional checks are to be recorded.

4.2 When a merchant bank acquires the business of another financial sector company or firm, either in whole or as a product portfolio, it is not necessary for the identity of all existing customers to be re-identified, provided that:

(i) all customer account records are acquired with the business; and
(ii) due diligence enquiries do not raise any doubt as to whether the anti-money laundering procedures previously adopted by the acquired business have satisfied Singapore requirements.

4.3 If during the business relationship, the merchant bank has reason to doubt:

(i) the accuracy of the information relating to the customer's identity;
(ii) that the customer is the beneficial owner; or
(iii) the intermediary's declaration of beneficial ownership,
or if there are any signs of unreported changes, it shall take further measures to verify the identity of the customer or the beneficial owner, as applicable.

**Personal Customers**

4.4 Merchant banks shall obtain from all personal applicants the following information:

- name and/or names used;
- permanent and mailing address;
- date of birth;
- nationality.

4.5 Merchant banks shall request applicants to produce original documents of identity issued by an official authority, preferably bearing a photograph of the applicants. Examples of such documents are identity cards and passports. Where practicable, file copies of documents of identity are to be kept. Alternatively, the identity card or passport number and other relevant details are to be recorded.

4.6 In respect of joint accounts where the surnames and/or addresses of the account holders differ, the names and addresses of all account holders are to be verified in accordance with the procedures set out above.

**Verification Without Face-to-Face Contact**

4.7 Merchant banks shall take particular care in opening accounts via the internet, post or telephone, especially in relation to money transmission facilities. Any mechanism that avoids face-to-face contact with applicants inevitably creates difficulty in customer identification and can be abused by money launderers to gain access to the financial system. For non-face-to-face contact, merchant banks should assess the money laundering risk posed by internet, postal and telephone products offered and devise customer identification procedures with due regard to this risk.

4.8 The customer identification procedures for non-face-to-face verification should be at least as stringent as those for face-to-face verification. Reasonable steps should also be taken to avoid fraud and single or multiple fictitious applications. There are a number of checks which, when undertaken successfully, will give merchant banks a reasonable degree of assurance as to the identity of the applicant where there is no face-to-face contact. For example,

- telephone contact with the applicant at an independently verified home or business number;
- subject to the applicant's consent, telephone confirmation of the applicant's employment with the employer's personnel department at a listed business number;
- salary details appearing on recent bank statements;
- confirmation of the address through an exchange of correspondence or by other appropriate methods.
An initial deposit cheque drawn on another financial institution regulated by the Authority will provide additional comfort.

4.9 For non-Singapore residents who wish to open accounts without face-to-face contact, any of the merchant bank's branches, subsidiaries, head offices or correspondent banks in the applicant's country of residence may be used to confirm identity or check identity verification details. Where the merchant bank has no group presence or correspondent relationship in the applicant's country of residence, then a copy of the document of identity, certified by lawyers or notary publics, should be requested.

**Corporate and Other Business Customers**

4.10 Before establishing a business relationship, a company search and/or other commercial enquiries shall be made to ensure that the corporate/other business applicant has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In the event of doubt as to the identity of the company or its directors, or the business or its partners, a search with the Registry of Companies and Businesses shall be made.

4.11 The following relevant documents shall be obtained in respect of corporate/other business applicants which are registered in Singapore:

- copies of the Certificate of Incorporation, Certificate of Partnership, or Certificate of Registration, as appropriate; and
- appropriate directors' resolutions (certified extracts only), signed application forms or account opening authority containing specimen signatures.

4.12 The originals or certified copies of certificates (issued by the Registrar of Companies and Businesses) should be produced for verification.

4.13 For companies, businesses or partnerships registered outside Singapore, comparable documents are to be obtained. However, as different countries have varying standards of control, attention should be paid to the place of origin of the documents and the background against which they are produced. The originals or certified copies of certificates (issued by foreign authorities) should be produced for verification.

4.14 Where the applicant is an unlisted company, or an unincorporated business (e.g. a partnership), and none of the directors/partners is already known to the merchant bank, the merchant bank shall identify one or more of the principal directors, partners or shareholders according to customer identification procedures for personal applicants.

4.15 In addition, if significant changes to the company structure or ownership occur subsequently, or suspicions are aroused by a change in the payment profile through a company account, further checks are to be made.
Clubs, Societies and Charities

4.16 If the applicant is a club, society or charity, merchant banks shall require the constitution (or other similar documents) of the applicant to be produced to ensure that it is properly constituted and registered. Where there is more than one signatory to the account, the identity of at least two signatories shall be verified according to customer identification procedures for personal applicants. When signatories change, care should be taken to ensure that the identity of at least two current signatories has been verified.

Shell Companies

4.17 Shell companies are legal entities which have no business substance in their own right but through which financial transactions may be conducted. Merchant banks should note that shell companies may be abused by money launderers and therefore be cautious in their dealings with them. In addition to the requirement under paragraph 4.11, merchant banks should also obtain satisfactory evidence of the identity of the beneficial owners, bearing in mind the "Know-Your-Customer" principle.

Trust, Nominee and Fiduciary Accounts

4.18 Trust, nominee and fiduciary accounts can be used to avoid customer identification procedures and mask the origin of benefits of drug trafficking or criminal conduct. Merchant banks are to establish whether the applicant for business relationship is acting on behalf of another person as trustee, nominee or agent (intermediary). Merchant banks should obtain satisfactory evidence of the identity of intermediaries and authorised signatories, and the nature of their trustee or nominee capacity and duties.

4.19 Where the intermediary is a financial institution authorised and supervised by the Authority in respect of its business in Singapore or is a subsidiary of such an institution, it shall be reasonable for the merchant bank to rely on the intermediary to verify or confirm the identity of the beneficial owners.

4.20 Where the intermediary is a financial institution supervised by an overseas regulatory authority and is based or incorporated in a country in which there are in force provisions at least equivalent to those in these Guidelines, it shall be reasonable for merchant banks to accept a written assurance from the intermediary that evidence of the identity of the beneficial owners has been obtained, recorded and retained, and that the intermediary is satisfied as to the source of funds. For this purpose, merchant banks should obtain a written statement from the intermediary, and affix the statement to the original account opening documentation.

4.21 Where the intermediary does not fall into any of the categories in paragraphs 4.19 and 4.20, merchant banks should obtain satisfactory evidence of the identity of the beneficial owners and the source of funds. The merchant bank should obtain in writing the relevant information from the intermediary, which must at least include the information specified in Appendix I.
4.22 If satisfactory evidence of the beneficial owners cannot be obtained, merchant banks shall consider whether to proceed with the business, bearing in mind the "Know-Your-Customer" principle. If they decide to proceed, they are to record any misgiving and give extra attention to monitoring the account in question. Suspicious transactions are to be reported in accordance with the procedures in section 6 below.

Client Accounts Opened by Solicitors or Accountants

4.23 Where the intermediary is a firm of solicitors or accountants, its professional code of conduct may preclude it from divulging to merchant banks information concerning its clients. It may therefore not be possible for a merchant bank to establish the identity of the person(s) for whom the intermediary is acting. However, the merchant bank should not be precluded from making reasonable enquiries about transactions passing through the intermediary's clients' accounts that give cause for concern or from reporting those transactions if any suspicion is aroused. If a money laundering enquiry arises in respect of such clients' accounts, law enforcement agencies will seek information directly from the intermediary as to the identity of its client and the nature of the relevant transaction.

Transactions Undertaken for Non-account Holders (Occasional Customer)

4.24 Where transactions are undertaken for non-account holders of a merchant bank, in particular where such transactions involve cash of S$20,000 or more, the customer shall be required to produce positive evidence of identity as in paragraphs 4.4 and 4.11. Copies of the documents of identity or a record of the relevant details shall be treated as part of the financial transaction documents and retained by merchant banks.

5 RECORD KEEPING

5.1 Merchant banks shall prepare and maintain documentation on their customer relationships and transactions such that:

(i) requirements of legislation are fully met;

(ii) the relevant authorities in Singapore and the internal and external auditors of the merchant bank will be able to judge reliably the merchant bank's transactions and its compliance with the Guidelines;

(iii) any transaction effected via the merchant bank can be reconstructed; and

(iv) it can satisfy within a reasonable time any enquiry or order from the relevant authorities in Singapore as to disclosure of information, including without limitation (a) whether a particular person is the customer or beneficial owner of funds/assets deposited with the merchant banks, and (b) whether the merchant banks have effected cash transactions requiring customer identification.
5.2 When setting document retention policy, merchant banks must take into account the requirements of the Act. The following document retention periods shall be followed:

(i) financial transaction documents relating to the opening of an account are to be kept for 6 years after the date the account is closed; and

(ii) other financial transaction documents are to be kept for 6 years after the date on which the transaction takes place.

5.3 Financial transaction documents may be retained as originals or copies, on microfilm, or in electronic form, provided that such forms are admissible in court. Notwithstanding paragraph 5.2, if the records relate to on-going investigations or transactions that have been the subject of a disclosure, they shall be retained beyond the stipulated retention period until it is confirmed that the case has been closed.

5.4 In the case of wire transfer transactions, the records of electronic payments and messages must be treated in the same way as other records in support of entries in the account.

6 SUSPICIOUS TRANSACTIONS

6.1 Each merchant bank shall clarify the economic background and purpose of any transaction or business relationship if its form or amount appears unusual in relation to the customer, or if the economic purpose or legality of the transaction is not immediately clear. In this regard, merchant banks should exercise due diligence by implementing adequate systems for identifying and detecting suspicious transactions.

6.2 Examples of suspicious transactions are found in Appendix II. These are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered. Identification of any transaction listed in Appendix II should prompt initial enquiries and, if necessary, further investigations on the source of funds.

6.3 Each merchant bank shall institute a system for reporting suspicious transactions under the Act. This may include appointing one or more senior persons, or an appropriate unit responsible for reporting to STRO. A copy of the suspicious transaction report should also be sent to the Authority. The reporting formats are set out in Appendices III to V. In the event that urgent disclosure is required, particularly when the account concerned is part of an on-going investigation, an initial notification should be made by telephone.

6.4 The obligation to report is on the individual who becomes suspicious of a money laundering transaction. Officers and employees of the merchant bank who deal with customers should be made aware of the statutory obligation to report suspicious transactions under the merchant bank's reporting system.
6.5 Where:

(i) a customer deposits, transfers or seeks to invest funds, or obtains credit against the security of such funds, or

(ii) the merchant bank holds funds on behalf of a customer,

and an employee of the merchant bank knows that the customer has engaged in drug trafficking or criminal conduct, the matter must be promptly reported to the relevant officer or unit within the organisation who, in turn, must immediately report the details to STRO. If the employee suspects or has reasonable grounds to suspect that the customer has engaged in drug trafficking or criminal conduct, the officer or unit, on receiving the employee's report, must promptly evaluate whether there are reasonable grounds for such belief and must then immediately report the case to STRO unless the officer or unit considers, and records an opinion, that such reasonable grounds do not exist.

6.6 Each merchant bank shall maintain a complete file on all transactions that have been brought to the attention of the relevant officer or unit, including transactions that are not reported to STRO.

6.7 Where it is known that a report has already been disclosed to STRO and it becomes necessary to make further enquiries of the customer, care should be taken to ensure that the customer does not become aware that his name has been brought to the attention of STRO.

6.8 Under Section 38 of the Act, where merchant banks disclose to an authorised officer a knowledge, suspicion or belief that any fund, property or investment is derived from or used in connection with drug trafficking, criminal conduct or any matter on which such a knowledge, suspicion or belief is based, such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or by rules of professional conduct. Furthermore, under Section 38 of the Act, merchant banks would not be liable for any loss arising out of such disclosure, or any act or omission, in relation to the fund, property or investment in consequence of the disclosure.

7     COMPLIANCE AND TRAINING

7.1 Each merchant bank shall appoint one or more senior persons, or an appropriate unit, to advise management and staff on the issuing and enforcement of in-house instructions to promote adherence to the Guidelines, including personnel training, reporting of suspicious transactions, and generally, all matters relating to the prevention of money laundering.

7.2 Each merchant bank shall appoint a senior officer as the compliance officer or set up a designated compliance unit headed by a senior officer. The object is to ensure a speedy and appropriate reaction to any matter that requires special attention under the Guidelines and the Act.
7.3 The merchant bank's in-house audit department shall monitor regularly the effectiveness of the measures taken by the merchant bank in preventing money laundering.

7.4 The merchant bank shall train local and overseas staff to be fully aware of their responsibilities in combating money laundering and to be familiar with its system for reporting and investigating suspicious matters.

7.5 All relevant staff should be educated in the importance of the "Know-Your-Customer" requirements to prevent money laundering. Training in this respect should cover not only the need to know the true identity of the applicant for business relationship but also, where a business relationship has been established, the need to know enough about the expected type of business activities of that customer at the outset in order to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a customer's transactions or circumstances that might constitute money laundering.

7.6 Although senior management of a merchant bank may not be involved in the day-to-day procedures, it is important that they understand the statutory duties placed on them, their staff, and the merchant bank itself. Some form of training to raise general awareness of senior management of their statutory duties is therefore suggested.

7.7 Timing and content of training for various sectors of staff will need to be adapted by the merchant bank for its own needs. The following is recommended:

(i) **New Staff**

A general appreciation of the background to money laundering, the need to be able to identify suspicious transactions and report such transactions to the appropriate designated point within the merchant bank, and the offence of "tipping off" should be provided to all new staff who deal with customers or their transactions, irrespective of the level of seniority.

(ii) **"Front-Line" Staff**

Staff who deal directly with the public are the first point of contact with potential money launderers. Their efforts are therefore vital to the merchant bank's reporting system for such transactions. Staff should be trained to identify suspicious transactions and on the procedure to be adopted when a transaction is deemed to be suspicious. "Front-line" staff should be made aware of the merchant bank's policy for dealing with non-regular customers particularly where large cash transactions are involved, and the need for extra vigilance in these cases.

(iii) **Staff Dealing with New Customers**

Staff who deal with account opening, or accept new customers, must receive the training given to "front-line" staff in sub-paragraph (ii) above. In addition, the need to verify the identity of the customer must be understood, and training
should be given in the merchant bank's account opening and customer identification procedures. They should also be aware that the offer of suspicious funds or the request to undertake a suspicious transaction needs to be reported to the relevant authorities whether or not such funds are accepted or transactions proceeded with, and they must know what procedures to follow in these circumstances.

(iv) **Supervisors and Managers**

A higher level of instruction covering all aspects of money laundering procedures should be provided to supervisors and managers. This will include the offences and penalties arising from the Act, procedures relating to service of production and restraint orders, internal reporting procedures, and the requirements for verification of identity and the retention of records.

7.8 Refresher training should be provided at regular intervals to ensure that staff are reminded of their responsibilities and are kept informed of new developments.

8 **SUMMARY OF KEY PROVISIONS OF THE ACT**

**Money laundering offences**

8.1 It is an offence for merchant banks to:

(i) enter into or otherwise be concerned in an arrangement knowing or having reasonable grounds to believe that by that arrangement:

(a) it will facilitate the retention or control of benefits of drug trafficking or criminal conduct by/on behalf of; or

(b) the benefits of drug trafficking or criminal conduct are used to secure funds or acquire property (by way of investment or otherwise) for, another person (whom the merchant bank knows or has reasonable grounds to believe has been/is involved in, or has benefited from, drug trafficking or criminal conduct);

(ii) conceal or disguise; or convert, transfer, or remove from the jurisdiction, any property which, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct (for the purpose of assisting any person to avoid prosecution for a drug trafficking offence, foreign drug trafficking offence, serious offence or foreign serious offence or the enforcement of a confiscation order issued under the Act); or

(iii) acquire any property for no or inadequate consideration, knowing, or having reasonable grounds to believe, that the property, in whole or in part, directly or
indirectly, represents another person's benefits of drug trafficking or criminal conduct.

Offences under this paragraph are punishable by a fine not exceeding $200,000, or imprisonment for a term not exceeding 7 years, or both.

**Disclosure of Suspicious Transactions**

8.2 Merchant banks shall disclose suspicious transactions to an authorised officer when they know or have reasonable grounds to suspect that any property:

(i) in whole or in part, directly or indirectly, represents proceeds of drug trafficking or criminal conduct; or

(ii) was used/will be used in connection with drug trafficking or criminal conduct.

Failure to disclose such knowledge, suspicion, or other related information amounts to an offence which is punishable by a fine not exceeding $10,000.

**Tipping Off**

8.3 It is an offence for merchant banks, knowing or having reasonable grounds to suspect that an investigation under the Act is taking/to take place, to make a disclosure which is likely to prejudice such investigation. This is a tipping off offence punishable by a fine not exceeding $30,000, or imprisonment for a term not exceeding 3 years, or both.

**Failure to co-operate with law enforcement agencies**

8.4 The following acts constitute an offence under the Act:

(i) contravening a production order issued by the Court under the Act without reasonable excuse;

(ii) providing material known to be false or misleading in purported compliance with a production order, without:

(a) indicating that the material is false or misleading, and how it is false or misleading; or

(b) providing correct information which is in the merchant banks' possession or can reasonably be acquired by them;

(iii) hindering or obstructing an authorised officer in the execution of a search warrant issued under the Act; or
(iv) obstructing or hindering any authorised officer in the discharge of his duty under
the Act.

Offences under paragraphs (i) to (iii) are punishable by a fine not exceeding $10,000, or
imprisonment for a term not exceeding 2 years, or both. The offence under paragraph (iv) is
punishable by a fine not exceeding $2,000, or imprisonment for a term not exceeding 6 months,
or both.

Record Retention

8.5 Merchant banks are required to retain each financial transaction document or a copy of it
for the relevant minimum retention period. Such documents are to be stored in a manner that is
reasonably practicable to retrieve them. In addition, merchant banks shall retain a copy, and
maintain a register, of financial transaction documents released by the merchant bank under
Section 37 of the Act. Failure to observe any of these requirements amounts to an offence which
is punishable by a fine not exceeding $10,000.

8.6 Merchant banks should note that some of the statutory obligations and prohibitions,
which give rise to the offences described in paragraphs 8.1 to 8.5, also apply to their employees.

8.7 Section 8 of these Guidelines (or any reference to the Act in other parts of these
Guidelines) does not constitute a legal interpretation of the Act, and should not be construed as
an exhaustive write-up on all relevant provisions in the Act applicable to merchant banks.
Merchant banks are advised to seek legal counsel where necessary.

Annex I: Process of Money Laundering

Appendix 1: Intermediary Introduction Certification
Appendix 2: Examples of Suspicious Transactions
Appendix 3: Reporting Format - Natural Persons
Appendix 4: Reporting Format - Corporations
Appendix 5: Reporting Format – Partnerships / Sole Proprietors / Clubs & Societies
Monetary Authority of Singapore: Guidelines on Prevention of Money Laundering – Notice to Finance Companies

MAS 824
22 Feb 2000
NOTICE TO FINANCE COMPANIES
FINANCE COMPANIES ACT, CAP 108
This notice replaces MAS 824 dated 26 May 1999.

Guidelines On Prevention Of Money Laundering

1 INTRODUCTION

1.1 For the preservation, nationally and internationally, of the good name of the financial community in Singapore and recognising the need to prevent the financial system from being used in furtherance of money laundering activities (described in Section 2) arising from or in connection with drug trafficking or criminal conduct, and taking into account:

i. the provisions of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 84A) (the Act); and

ii. the Financial Action Task Force 40 Recommendations, in particular Recommendations 9 to 20,

finance companies in Singapore shall comply with the Guidelines issued in this Notice.

1.2 In this Notice, the following terms shall have the meanings ascribed to them in the Act:

i. Terms defined under Section 2 of the Act

- authorised officer
- criminal conduct
- drug trafficking
- drug trafficking offence
- foreign drug trafficking offence
- foreign serious offence
- serious offence

ii. Terms defined under Section 35 of the Act

- financial transaction document
- minimum retention period
2 DESCRIPTION OF MONEY LAUNDERING

2.1 Money laundering is a process intended to mask the benefits derived from drug trafficking or criminal conduct so that they appear to have originated from a legitimate source.

2.2 Generally, the process of money laundering comprises three stages, during which there may be numerous transactions that could alert a finance company to the money laundering activity:

i. **Placement**: the physical disposal of benefits of drug trafficking or criminal conduct;

ii. **Layering**: the separation of benefits of drug trafficking or criminal conduct from their source by creating layers of financial transactions designed to disguise the audit trail;

iii. **Integration**: the provision of apparent legitimacy to benefits of drug trafficking or criminal conduct. If the layering process succeeds, integration schemes place the laundered funds back into the economy so that they re-enter the financial system appearing to be legitimate business funds.

2.3 The chart in Annex 1 illustrates the money laundering stages in greater detail.

3 BASIC PRINCIPLES AND POLICIES TO COMBAT MONEY LAUNDERING

3.1 The Authority seeks to combat money laundering by requiring finance companies to apply the following principles:

i. **Know your customer**: finance companies shall obtain satisfactory evidence of the customer's identity, and have effective procedures for verifying the bona fides of new customers.

ii. **Compliance with laws**: management shall ensure that business is conducted in conformity with high ethical standards, that laws and regulations are adhered to, and that service is not provided where there is good reason to suppose that transactions are associated with money laundering activities.

iii. **Co-operation with law enforcement agencies**: within legal constraints relating to customer confidentiality, finance companies shall co-operate fully with law enforcement agencies. This includes taking appropriate measures allowed by law if there are reasonable grounds for suspecting money laundering. Disclosure of information by finance companies for the purposes of the Act (suspicious transaction reports) shall be made to Head, Suspicious Transactions Reporting Office, Commercial Affairs Department (**STRO**). To facilitate the process, finance companies shall identify a single reference point within their organisation.
(usually a relevant officer of the finance company) to which staff are instructed to report suspected money-laundering transactions promptly.

iv. **Policies, procedures and training:** each finance company shall adopt policies consistent with the principles set out in this Notice, and ensure that its staff, wherever located, are informed of these policies and adequately trained in matters covered by this Notice. To promote adherence to these principles, finance companies shall implement specific procedures for customer identification, retention of financial transaction documents, and reporting of suspicious transactions.

### 4 CUSTOMER IDENTIFICATION

**General**

4.1 Finance companies shall obtain satisfactory evidence of the identity and legal existence of persons applying to do business with them (such as opening an account or a safe deposit facility). Such evidence shall be substantiated by reliable documents or other means. Finance companies should also establish that any applicant claiming to act on behalf of another person is authorised to do so. There should be an explicit policy that significant business transactions will not be conducted with applicants who fail to provide evidence of their identity, but without derogating from the finance companies' obligations to report suspicious transactions. Where initial checks fail to identify the applicant, or give rise to suspicions that the information provided is false, additional verification measures should be undertaken to determine whether to proceed with the business. Details of the additional checks are to be recorded.

4.2 When a finance company acquires the business of another financial sector company or firm, either in whole or as a product portfolio, it is not necessary for the identity of all existing customers to be re-identified, provided that:

i. all customer account records are acquired with the business; and

ii. due diligence enquiries do not raise any doubt as to whether the anti-money laundering procedures previously adopted by the acquired business have satisfied Singapore requirements.

4.3 If during the business relationship, the finance company has reason to doubt:

i. the accuracy of the information relating to the customer's identity;

ii. that the customer is the beneficial owner; or

iii. the intermediary's declaration of beneficial ownership, or if there are any signs of unreported changes, it shall take further measures to verify the identity of the customer or the beneficial owner, as applicable.
Personal Customers

4.4 Finance companies shall obtain from all personal applicants the following information:

- name and/or names used;
- permanent and mailing address;
- date of birth;
- nationality.

4.5 Finance companies shall request applicants to produce original documents of identity issued by an official authority, preferably bearing a photograph of the applicants. Examples of such documents are identity cards and passports. Where practicable, file copies of documents of identity are to be kept. Alternatively, the identity card or passport number and other relevant details are to be recorded.

4.6 In respect of joint accounts where the surnames and/or addresses of the account holders differ, the names and addresses of all account holders are to be verified in accordance with the procedures set out above.

Verification Without Face-to-Face Contact

4.7 Finance companies shall take particular care in opening accounts via the internet, post or telephone. Any mechanism that avoids face-to-face contact with applicants inevitably creates difficulty in customer identification and can be abused by money launderers to gain access to the financial system. For non-face-to-face contact, finance companies should assess the money laundering risk posed by internet, postal and telephone products offered and devise customer identification procedures with due regard to this risk.

4.8 The customer identification procedures for non-face-to-face verification should be at least as stringent as those for face-to-face verification. Reasonable steps should also be taken to avoid fraud and single or multiple fictitious applications. There are a number of checks which, when undertaken successfully, will give finance companies a reasonable degree of assurance as to the identity of the applicant where there is no face-to-face contact. For example,

- telephone contact with the applicant at an independently verified home or business number;
- subject to the applicant's consent, telephone confirmation of the applicant's employment with the employer's personnel department at a listed business number;
- salary details appearing on recent bank statements;
- confirmation of the address through an exchange of correspondence or by other appropriate methods.

An initial deposit cheque drawn on another financial institution regulated by the Authority will provide additional comfort.
4.9 For non-Singapore residents who wish to open accounts without face-to-face contact, correspondent banks in the applicant's country of residence may be used to confirm identity or check identity verification details. Where the finance company has no correspondent relationship in the applicant's country of residence, then a copy of the document of identity, certified by lawyers or notary publics, should be requested.

**Corporate and Other Business Customers**

4.10 Before establishing a business relationship, a company search and/or other commercial enquiries shall be made to ensure that the corporate/other business applicant has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In the event of doubt as to the identity of the company or its directors, or the business or its partners, a search with the Registry of Companies and Businesses shall be made.

4.11 The following relevant documents shall be obtained in respect of corporate/other business applicants which are registered in Singapore:

- copies of the Certificate of Incorporation, Certificate of Partnership, or Certificate of Registration, as appropriate; and
- appropriate directors' resolutions (certified extracts only), signed application forms or account opening authority containing specimen signatures.

4.12 The originals or certified copies of certificates (issued by the Registrar of Companies and Businesses) should be produced for verification.

4.13 For companies, businesses or partnerships registered outside Singapore, comparable documents are to be obtained. However, as different countries have varying standards of control, attention should be paid to the place of origin of the documents and the background against which they are produced. The originals or certified copies of certificates (issued by foreign authorities) should be produced for verification.

4.14 Where the applicant is an unlisted company, or an unincorporated business (e.g. a partnership), and none of the directors/partners is already known to the finance company, the finance company shall identify one or more of the principal directors, partners or shareholders according to customer identification procedures for personal applicants.

4.15 In addition, if significant changes to the company structure or ownership occur subsequently, or suspicions are aroused by a change in the payment profile through a company account, further checks are to be made.

**Clubs, Societies and Charities**

4.16 If the applicant is a club, society or charity, finance companies shall require the constitution (or other similar documents) of the applicant to be produced to ensure that it is properly constituted and registered. Where there is more than one signatory to the account, the identity of at least two signatories shall be verified according to customer identification
procedures for personal applicants. When signatories change, care should be taken to ensure that the identity of at least two current signatories has been verified.

Shell Companies

4.17 Shell companies are legal entities which have no business substance in their own right but through which financial transactions may be conducted. Finance companies should note that shell companies may be abused by money launderers and therefore be cautious in their dealings with them. In addition to the requirement under paragraph 4.11, finance companies should also obtain satisfactory evidence of the identity of the beneficial owners, bearing in mind the "Know-Your-Customer" principle.

Trust, Nominee and Fiduciary Accounts

4.18 Trust, nominee and fiduciary accounts can be used to avoid customer identification procedures and mask the origin of benefits of drug trafficking or criminal conduct. Finance companies are to establish whether the applicant for business relationship is acting on behalf of another person as trustee, nominee or agent (intermediary). If so, finance companies should obtain satisfactory evidence of the identity of intermediaries and authorised signatories, and the nature of their trustee or nominee capacity and duties.

4.19 Where the intermediary is a financial institution authorised and supervised by the Authority in respect of its business in Singapore or is a subsidiary of such an institution, it shall be reasonable for the finance company to rely on the intermediary to verify or confirm the identity of the beneficial owners.

4.20 Where the intermediary is a financial institution supervised by an overseas regulatory authority and is based or incorporated in a country in which there are in force provisions at least equivalent to those in this Notice, it shall be reasonable for finance companies to accept a written assurance from the intermediary that evidence of the identity of the beneficial owners has been obtained, recorded and retained, and that the intermediary is satisfied as to the source of funds. For this purpose, finance companies should obtain a written statement from the intermediary, and affix the statement to the original account opening documentation.

4.21 Where the intermediary does not fall into any of the categories in paragraphs 4.19 and 4.20, finance companies should obtain satisfactory evidence of the identity of the beneficial owners and the source of funds. The finance company should obtain in writing the relevant information from the intermediary, which must at least include the information specified in Appendix I.

4.22 If satisfactory evidence of the beneficial owners cannot be obtained, finance companies shall consider whether to proceed with the business, bearing mind the "Know-Your-Customer" principle. If they decide to proceed, they are to record any misgiving and give extra attention to monitoring the account in question. Suspicious transactions are to be reported in accordance with the procedures in section 6 below.
Client Accounts Opened by Solicitors or Accountants

4.23 Where the intermediary is a firm of solicitors or accountants, its professional code of conduct may preclude it from divulging to finance companies information concerning its clients. It may therefore not be possible for a finance company to establish the identity of the person(s) for whom the intermediary is acting. However, the finance company should not be precluded from making reasonable enquiries about transactions passing through the intermediary's clients' accounts that give cause for concern or from reporting those transactions if any suspicion is aroused. If a money laundering enquiry arises in respect of such clients' accounts, law enforcement agencies will seek information directly from the intermediary as to the identity of its client and the nature of the relevant transaction.

Transactions Undertaken for Non-account Holders (Occasional Customer)

4.24 Where transactions are undertaken for non-account holders of a finance company, in particular where such transactions involve cash of S$20,000 or more, the customer shall be required to produce positive evidence of identity as in paragraphs 4.4 and 4.11. Copies of the documents of identity or a record of the relevant details shall be treated as part of the financial transaction documents and retained by finance companies.

4.25 Particular care shall be taken in relation to requests for safe deposit facilities. Where such facilities are made available to non-account holders, the customer identification procedures set out above should be followed.

5 RECORD KEEPING

5.1 Finance companies shall prepare and maintain documentation on their customer relationships and transactions such that:

i. requirements of legislation are fully met;

ii. the relevant authorities in Singapore and the internal and external auditors of the finance company will be able to judge reliably the finance company's transactions and its compliance with the Guidelines;

iii. any transaction effected via the finance company can be reconstructed;

iv. it can identify the accounts, savings books and deposit accounts from which any customer is entitled to benefit; and

v. they can satisfy within a reasonable time any enquiry or order from the relevant authorities in Singapore as to disclosure of information, including without limitation (a) whether a particular person is the customer or beneficial owner of funds/assets deposited with the finance companies, and (b) whether the finance companies have effected cash transactions requiring customer identification.
5.2 When setting document retention policy, finance companies must take into account the requirements of the Act. The following document retention periods shall be followed:

i. financial transaction documents relating to the opening of an account are to be kept for 6 years after the date the account is closed;

ii. financial transaction documents relating to the opening of a safe deposit box are to be kept for 6 years after the date the safe deposit box ceases to be used; and

iii. financial transaction documents other than those described in sub-paragraphs (i) and (ii) are to be kept for 6 years after the date on which the transaction takes place.

5.3 Financial transaction documents may be retained as originals or copies, on microfilm, or in electronic form, provided that such forms are admissible in court. Notwithstanding paragraph 5.2, if the records relate to on-going investigations or transactions that have been the subject of a disclosure, they shall be retained beyond the stipulated retention period until it is confirmed that the case has been closed.

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7.2 Each finance company shall appoint a senior officer as the compliance officer or set up a designated compliance unit headed by a senior officer. The object is to ensure a speedy and
appropriate reaction to any matter that requires special attention under the Guidelines and the Act.

7.3 The finance company's in-house audit department shall monitor regularly the effectiveness of the measures taken by the finance company in preventing money laundering.

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Staff who deal directly with the public are the first point of contact with potential money launderers. Their efforts are therefore vital to the finance company's reporting system for such transactions. Staff should be trained to identify suspicious transactions and on the procedure to be adopted when a transaction is deemed to be suspicious. "Front-line" staff should be made aware of the finance company's policy for dealing with non-regular customers particularly where large cash transactions are involved, and the need for extra vigilance in these cases.
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Staff who deal with account opening, or accept new customers, must receive the training given to "front-line" staff in sub-paragraph (ii) above. In addition, the need to verify the identity of the customer must be understood, and training should be given in the finance company's account opening and customer identification procedures. They should also be aware that the offer of suspicious funds or the request to undertake a suspicious transaction needs to be reported to the relevant authorities whether or not such funds are accepted or transactions proceeded with, and they must know what procedures to follow in these circumstances.

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   (a) it will facilitate the retention or control of benefits of drug trafficking or criminal conduct by/on behalf of; or

   (b) the benefits of drug trafficking or criminal conduct are used to secure funds or acquire property (by way of investment or otherwise) for, another person (whom the finance company knows or has reasonable grounds to believe has been/is involved in, or has benefited from, drug trafficking or criminal conduct);

ii. conceal or disguise; or convert, transfer, or remove from the jurisdiction, any property which, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct (for the purpose of assisting any person to avoid prosecution for a drug trafficking offence, foreign
Offences under this paragraph are punishable by a fine not exceeding $200,000, or imprisonment for a term not exceeding 7 years, or both.

**Disclosure of Suspicious Transactions**

8.2 Finance companies shall disclose suspicious transactions to an authorised officer when they know or have reasonable grounds to suspect that any property:

i. in whole or in part, directly or indirectly, represents proceeds of drug trafficking or criminal conduct; or

ii. was used/will be used in connection with drug trafficking or criminal conduct.

Failure to disclose such knowledge, suspicion, or other related information amounts to an offence which is punishable by a fine not exceeding $10,000.

**Tipping Off**

8.3 It is an offence for finance companies, knowing or having reasonable grounds to suspect that an investigation under the Act is taking/to take place, to make a disclosure which is likely to prejudice such investigation. This is a tipping off offence punishable by a fine not exceeding $30,000, or imprisonment for a term not exceeding 3 years, or both.

**Failure to co-operate with law enforcement agencies**

8.4 The following acts constitute an offence under the Act:

i. contravening a production order issued by the Court under the Act without reasonable excuse;

ii. providing material known to be false or misleading in purported compliance with a production order, without:

   (a) indicating that the material is false or misleading, and how it is false or misleading; or

   (b) providing correct information which is in the finance companies' possession or can reasonably be acquired by them;
iii. hindering or obstructing an authorised officer in the execution of a search warrant issued under the Act; or

iv. obstructing or hindering any authorised officer in the discharge of his duty under the Act.

Offences under paragraphs (i) to (iii) are punishable by a fine not exceeding $10,000, or imprisonment for a term not exceeding 2 years, or both. The offence under paragraph (iv) is punishable by a fine not exceeding $2,000, or imprisonment for a term not exceeding 6 months, or both.

Record Retention

8.5 Finance companies are required to retain each financial transaction document or a copy of it for the relevant minimum retention period. Such documents are to be stored in a manner that is reasonably practicable to retrieve them. In addition, finance companies shall retain a copy, and maintain a register, of financial transaction documents released by the finance company under Section 37 of the Act. Failure to observe any of these requirements amounts to an offence which is punishable by a fine not exceeding $10,000.

8.6 Finance companies should note that some of the statutory obligations and prohibitions, which give rise to the offences described in paragraphs 8.1 to 8.5, also apply to their employees.

8.7 Section 8 of this Notice (or any reference to the Act in other parts of this Notice) does not constitute a legal interpretation of the Act, and should not be construed as an exhaustive write-up on all relevant provisions in the Act applicable to finance companies. Finance companies are advised to seek legal counsel where necessary.

Annex 1: Process of Money Laundering

Appendix 1: Intermediary Introduction Certification
Appendix 2: Examples of Suspicious Transactions
Appendix 3: Reporting Format - Natural Persons
Appendix 4: Reporting Format - Corporations
Appendix 5: Reporting Format – Partnerships / Sole Proprietors / Clubs & Societies
Monetary Authority of Singapore: Guidelines on Prevention of Money Laundering – Notice to Life Insurers

MAS 314
22 Feb 2000
NOTICE TO LIFE INSURERS
INSURANCE ACT, CAP 142
This Notice replaces MAS 314 dated 31 May 1999.

GUIDELINES ON PREVENTION OF MONEY LAUNDERING

1 INTRODUCTION

1.1 For the preservation, nationally and internationally, of the good name of life insurance industry in Singapore and recognising the need to prevent the financial system from being used in furtherance of money laundering activities (described in Section 2) arising from or in connection with drug trafficking or criminal conduct, and taking into account:

i. the provisions of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 84A) (the Act); and

ii. the Financial Action Task Force 40 Recommendations, in particular Recommendations 9 to 20,

direct life insurers, including their agents (thereafter referred to as insurers) and direct life insurance brokers (thereafter referred to as brokers) in Singapore shall comply with the Guidelines issued in this Notice.

1.2 In this Notice, the following terms shall have the meanings ascribed to them in the Act:

i. Terms defined under Section 2 of the Act

- authorised officer
- criminal conduct
- drug trafficking
- drug trafficking offence
- foreign drug trafficking offence
- foreign serious offence
- serious offence

ii. Terms defined under Section 35 of the Act

- financial transaction document
- minimum retention period
1.3 Where Singapore-incorporated insurers or brokers have branches or subsidiaries overseas, they shall ensure that their group policy on money laundering is communicated to the management of their overseas offices. The group policy shall ensure that verification of identity and record keeping are undertaken at least to the standards required under Singapore law, taking into account the laws and regulations of the host country. Where the laws and regulations of the host country and the Guidelines conflict, the overseas branch or subsidiary should comply with the laws and regulations of the host country and inform the head office of any departure from the group policy.

2 DESCRIPTION OF MONEY LAUNDERING

2.1 Money laundering is a process intended to mask the benefits derived from drug trafficking or criminal conduct so that they appear to have originated from a legitimate source.

2.2 Generally, the process of money laundering comprises three stages, during which there may be numerous transactions that could alert an insurer or broker to the money laundering activity:

   i. **Placement**: the physical disposal of the benefits of drug trafficking or criminal conduct;

   ii. **Layering**: the separation of benefits of drug trafficking or criminal conduct from their source by creating layers of financial transactions designed to disguise the audit trail;

   iii. **Integration**: the provision of apparent legitimacy to benefits of drug trafficking or criminal conduct. If the layering process succeeds, integration schemes place the laundered funds back into the economy so that they re-enter the financial system appearing to be legitimate business funds.

2.3 The chart in Annex 1 illustrates the money laundering stages in greater detail.

3 BASIC PRINCIPLES AND POLICIES TO COMBAT MONEY LAUNDERING

3.1 The Authority seeks to combat money laundering by requiring insurers and brokers to apply the following principles:

   i. **Know your customer**: insurers and brokers shall obtain satisfactory evidence of the customer's identity, and have effective procedures for verifying the bona fides of new customers.

   ii. **Compliance with laws**: insurers and brokers shall ensure that business is conducted in conformity with high ethical standards, that laws and regulations are adhered to, and that service is not provided where there is good reason to suppose that transactions are associated with money laundering activities.
iii. **Co-operation with law enforcement agencies:** within legal constraints relating to customer confidentiality, insurers and brokers shall co-operate fully with law enforcement agencies. This includes taking appropriate measures allowed by law if there are reasonable grounds for suspecting money laundering. Disclosure of information by insurers or brokers for the purposes of the Act (suspicious transaction reports) shall be made to Head, Suspicious Transactions Reporting Office within the Commercial Affairs Department (**STRO**). To facilitate the process, insurers and brokers shall identify a single reference point within their organisation (usually a relevant officer of the insurer or broker) to which staff are instructed to report suspected money-laundering transactions promptly.

iv. **Policies, procedures and training:** each insurer and broker shall adopt policies consistent with the principles set out in this Notice, and ensure that its staff, wherever located, are informed of these policies and adequately trained in matters covered by this Notice. To promote adherence to these principles, insurers and brokers shall implement specific procedures for customer identification, retention of financial transaction documents, and reporting of suspicious transactions.

### 4 CUSTOMER IDENTIFICATION

**General**

4.1 Insurers and brokers shall obtain satisfactory evidence of the identity and legal existence of persons applying to do business with or through them. Such evidence shall be substantiated by reliable documents or other means. They should also establish that any applicant claiming to act on behalf of another person is authorised to do so. There should be an explicit policy that significant business transactions will not be conducted with applicants who fail to provide evidence of their identity, but without derogating from the insurers' or brokers' obligations to report suspicious transactions. Where initial checks fail to identify the applicant, or give rise to suspicions that the information provided is false, additional verification measures should be undertaken to determine whether to proceed with the business. Details of the additional checks are to be recorded.

4.2 When an insurer or broker acquires the business of another financial sector company or firm, either in whole or as a product portfolio, it is not necessary for the identity of all existing customers to be re-identified, provided that:

i. all customer records are acquired with the business; and

ii. due diligence enquiries do not raise any doubt as to whether the anti-money laundering procedures previously adopted by the acquired business have satisfied Singapore requirements.

4.3 Insurers may start processing the business while taking steps to verify the customer's identity. Pending receipt of the required evidence, insurers should "freeze" the rights attaching to the policy. This means that redemption proceeds, including income, are to be retained by the
insurers and documents of title should not be issued. Where satisfactory evidence of identity is
not forthcoming, the transaction or business relationship in question should not proceed further.
In some circumstances, failure by a policyholder to provide satisfactory evidence of identity
may, in itself, lead to a suspicion that the policyholder is engaging in money laundering. In
preparing their procedures, insurers will need to consider the circumstances under which the
freezing of rights may occur and, where appropriate, the steps to be taken to unwind the
transaction if necessary. Insurers are advised to establish clear and consistent policies to deal
with arrangements arising from a failure to verify identity.

4.4 If during the business relationship, the insurer or broker has reason to doubt the accuracy
of the information relating to the customer's identity, it shall take further measures to verify the
identity of the customer.

Personal Customers

4.5 Insurers and brokers shall obtain from all personal applicants the following information:

- name and/or names used;
- permanent and mailing address;
- date of birth;
- nationality.

4.6 Insurers and brokers shall request applicants to produce original documents of identity
issued by an official authority, preferably bearing a photograph of the applicants. Examples of
such documents are identity cards and passports. Where practicable, file copies of documents of
identity are to be kept. Alternatively, the identity card or passport number and other relevant
details are to be recorded.

4.7 Where a person applies for a policy to insure a life other than himself (e.g. his children),
it is the applicant for the policy whose identity has to be verified rather than the life to be
insured.

Verification Without Face-to-Face Contact

4.8 Insurers and brokers shall take particular care in accepting new business via the internet,
post or telephone. Any mechanism that avoids face-to-face contact with applicants inevitably
creates difficulty in customer identification and can be abused by money launderers to gain
access to the financial system. For non-face-to-face contact, insurers and brokers should assess
the money laundering risk posed by internet, postal and telephone products offered and devise
customer identification procedures with due regard to this risk.

4.9 The customer identification procedures for non-face-to-face verification should be at least
as stringent as those for face-to-face verification. Reasonable steps should also be taken to avoid
fraud and single or multiple fictitious applications. There are a number of checks which, when
undertaken successfully, will give insurers and brokers a reasonable degree of assurance as to the
identity of the applicant where there is no face-to-face contact. For example,
• telephone contact with the applicant at an independently verified home or business number;
• subject to the applicant's consent, telephone confirmation of the applicant's employment with the employer's personnel department at a listed business number;
• confirmation of the address through an exchange of correspondence or by other appropriate methods.

An initial deposit cheque drawn on another financial institution regulated by the Authority will provide additional comfort.

**Group Insurance Policies**

4.10 Insurers and brokers shall exercise due diligence in underwriting group insurance policies. To prevent money launderers from gaining access to the financial system via fictitious applications for group insurance, the identity of the holder of the master policy shall be verified in accordance with the details set out in paragraphs 4.11 to 4.16. However, where such policies do not have any cash proceeds returned to policyholders on maturity, it is not necessary to adopt the following verification procedures.

**Corporate and Other Business Customers**

4.11 Before establishing a business relationship, a company search and/or other commercial enquiries shall be made to ensure that the corporate/other business applicant has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In the event of doubt as to the identity of the company or its directors, or the business or its partners, a search with the Registry of Companies and Businesses shall be made.

4.12 The following relevant documents shall be obtained in respect of corporate/other business applicants which are registered in Singapore:

- copies of the Certificate of Incorporation, Certificate of Partnership, or Certificate of Registration, as appropriate; and
- for established businesses, a copy of the latest report and accounts (audited where applicable).

4.13 The originals or certified copies of certificates (issued by the Registrar of Companies and Businesses) should be produced for verification.

4.14 For companies, businesses or partnerships registered outside Singapore, comparable documents are to be obtained. However, as different countries have varying standards of control, attention should be paid to the place of origin of the documents and the background against which they are produced. The originals or certified copies of certificates (issued by foreign authorities) should be produced for verification.
4.15 Where the applicant is an unlisted company, or an unincorporated business (e.g. a partnership), and none of the directors/partners is already known to the insurer or broker, the insurer or broker shall identify one or more of the principal directors, partners or shareholders according to customer identification procedures for personal applicants.

4.16 In addition, if significant changes to the company structure or ownership occur subsequently, or suspicions are aroused by a change in the payment profile through a company account, further checks are to be made.

Clubs, Societies and Charities

4.17 In the case of group policies taken up by clubs and societies, an insurer or broker shall satisfy itself as to the legitimate purpose of the organisation, for example, by requesting sight of the constitution.

5 RECORD KEEPING

5.1 Insurers and brokers shall prepare and maintain documentation on their customer relationships and transactions such that:

i. requirements of legislation are fully met;

ii. the relevant authorities in Singapore and the internal and external auditors of the insurer or broker will be able to judge reliably the insurer's or broker's transactions and its compliance with the Guidelines;

iii. any transaction effected via the insurer or broker can be reconstructed; and

iv. the insurer or broker can satisfy within a reasonable time any enquiry or order from the relevant authorities in Singapore as to disclosure of information including without limitation whether a particular person is a policyholder and/or beneficiary of life policies underwritten by the insurer or bought through the broker.

5.2 When setting document retention policy, insurers and brokers must take into account the requirements of the Act. The following document retention periods shall be followed:

i. financial transaction documents relating to the issuance of a life insurance policy are to be kept for 6 years after the date the policy has expired; and

ii. other financial transaction documents are to be kept for 6 years after the date on which the transaction takes place.

5.3 Financial transaction documents may be retained as originals or copies, on microfilm, or in electronic form, provided that such forms are admissible in court. Notwithstanding paragraph 5.2, if the records relate to on-going investigations or transactions that have been the subject of a
disclosure, they shall be retained beyond the stipulated retention period until it is confirmed that the case has been closed.

6 SUSPICIOUS TRANSACTIONS

6.1 Each insurer and broker shall clarify the economic background and purpose of any transaction or business relationship if its form or amount appears unusual in relation to the customer, or if the economic purpose or legality of the transaction is not immediately clear. In this regard, insurers and brokers should exercise due diligence by implementing adequate systems for identifying and detecting suspicious transactions.

6.2 Examples of suspicious transactions are found in Appendix I. These are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered. Identification of any transaction listed in Appendix I should prompt initial enquiries and, if necessary, further investigations on the source of funds.

6.3 Each insurer and broker shall institute a system for reporting suspicious transactions under the Act. This may include appointing one or more senior persons, or an appropriate unit responsible for reporting to STRO. A copy of the suspicious transaction report should also be sent to the Authority. The reporting formats are set out in Appendix II. In the event that urgent disclosure is required, particularly when the policyholder concerned is part of an on-going investigation, an initial notification should be made by telephone.

6.4 The obligation to report is on the individual who becomes suspicious of a money laundering transaction. Officers and employees of the insurer or broker who deal with customers should be made aware of the statutory obligation to report suspicious transactions under the insurer's or broker's reporting system.

6.5 Where a customer seeks to conduct insurance transactions with the insurer or through the broker, and an employee of the insurer or broker knows that the customer has engaged in drug trafficking or criminal conduct, the matter must be promptly reported to the relevant officer or unit within the organisation who, in turn, must immediately report the details to STRO. If the employee suspects or has reasonable grounds to suspect that the customer has engaged in drug trafficking or criminal conduct, the officer or unit, on receiving the employee's report, must promptly evaluate whether there are reasonable grounds for such belief and must then immediately report the case to STRO unless the officer or unit considers, and records an opinion, that such reasonable grounds do not exist.

6.6 Each insurer and broker shall maintain a complete file on all transactions that have been brought to the attention of its officer or unit, including transactions that are not reported to STRO.

6.7 Where it is known that a report has already been disclosed to STRO and it becomes necessary to make further enquiries of the customer, care should be taken to ensure that the customer does not become aware that his name has been brought to the attention of STRO.

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6.8 Under Section 38 of the Act, where insurers and brokers disclose to an authorised officer a knowledge, suspicion or belief that any fund, property or investment is derived from or used in connection with drug trafficking, criminal conduct or any matter on which such a knowledge, suspicion or belief is based, such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or by rules of professional conduct. Furthermore, under Section 38 of the Act, insurers and brokers would not be liable for any loss arising out of such disclosure, or any act or omission, in relation to the fund, property or investment in consequence of the disclosure.

7 COMPLIANCE AND TRAINING

7.1 Each insurer and broker shall appoint one or more senior persons, or an appropriate unit, to advise its management and staff on the issuing and enforcement of in-house instructions to promote adherence to the Guidelines, including personnel training, reporting of suspicious transactions, and generally, all matters relating to the prevention of money laundering.

7.2 Each insurer and broker shall appoint a senior officer as the compliance officer or set up a designated compliance unit headed by a senior officer. The object is to ensure a speedy and appropriate reaction to any matter that requires special attention under the Guidelines and the Act.

7.3 The in-house audit department of an insurer or broker shall monitor regularly the effectiveness of the measures taken by the insurer or broker in preventing money laundering.

7.4 Each insurer and broker shall train their respective staff and agents to be fully aware of their responsibilities in combating money laundering and to be familiar with its system for reporting and investigating suspicious matters.

7.5 A broker may, due to the scale and nature of their operations, assign the internal audit or training functions to another person (e.g. professional association, parent company or external auditors). Where a broker delegates its responsibilities for audit and training, due diligence is to be exercised to ensure that the persons appointed are able to perform these functions effectively.

7.6 All relevant staff and agents should be educated in the importance of the "Know-Your-Customer" requirements to prevent money laundering. Training in this respect should cover not only the need to know the true identity of the applicant for business relationship but also, where a business relationship has been established, the need to know enough about the expected type of business activities of that customer at the outset in order to know what might constitute suspicious activity at a future date. Relevant staff and agents should be alert to any change in the pattern of a customer's transactions or circumstances that might constitute money laundering.

7.7 Although senior management of an insurer or broker may not be involved in the day-to-day procedures, it is important that they understand the statutory duties placed on them, their staff, and the entity itself. Some form of training to raise general awareness of senior management of their statutory duties is therefore suggested.
7.8 Timing and content of training for various sectors of staff and agents will need to be adapted by the insurer and broker for their own needs. The following is recommended:

i. **New Staff and Agents**

A general appreciation of the background to money laundering, the need to be able to identify suspicious transactions and report such transactions to the appropriate designated point within the insurer or broker, and the offence of "tipping off" should be provided to all new staff and agents who deal with customers or their transactions, irrespective of the level of seniority.

ii. **"Front-Line" Staff**

"Front-line" staff who deal directly with the public are the first point of contact with potential money launderers. Their efforts are therefore vital to the insurer's or broker's reporting system for such transactions. Staff should be trained to identify suspicious transactions and on the procedure to be adopted when a transaction is deemed to be suspicious. They should also be aware that the offer of suspicious funds or the request to undertake a suspicious transaction needs to be reported to the relevant authorities whether or not such funds are accepted or transactions proceeded with. In addition, the need to verify the identity of the customer must be understood, and training should be given for customer identification procedures.

iii. **Supervisors and Managers**

A higher level of instruction covering all aspects of money laundering procedures should be provided to supervisors and managers. This will include the offences and penalties arising from the Act, procedures relating to service of production and restraint orders, internal reporting procedures, and the requirements for verification of identity and the retention of records.

7.9 Refresher training should be provided at regular intervals to ensure that staff and agents are reminded of their responsibilities and are kept informed of new developments.

8 **SUMMARY OF KEY PROVISIONS OF THE ACT**

**Money laundering offences**

8.1 It is an offence for insurers or brokers to:

i. enter into or otherwise be concerned in an arrangement knowing or having reasonable grounds to believe that by that arrangement:

   a. it will facilitate the retention or control of benefits of drug trafficking or criminal conduct by/on behalf of; or
b. the benefits of drug trafficking or criminal conduct are used to secure funds or acquire property (by way of investment or otherwise) for, another person (whom the insurer or broker knows or has reasonable grounds to believe has been/is involved in, or has benefited from, drug trafficking or criminal conduct);

ii. conceal or disguise; or convert, transfer, or remove from the jurisdiction, any property which, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct (for the purpose of assisting any person to avoid prosecution for a drug trafficking offence, foreign drug trafficking offence, serious offence or foreign serious offence or the enforcement of a confiscation order issued under the Act); or

iii. acquire any property for no or inadequate consideration, knowing, or having reasonable grounds to believe, that the property, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct.

Offences under this paragraph are punishable by a fine not exceeding $200,000, or imprisonment for a term not exceeding 7 years, or both.

Disclosure of Suspicious Transactions

8.2 Insurers and brokers shall disclose suspicious transactions to an authorised officer when they know or have reasonable grounds to suspect that any property:

i. in whole or in part, directly or indirectly, represents proceeds of drug trafficking or criminal conduct; or

ii. was used/will be used in connection with drug trafficking or criminal conduct.

Failure to disclose such knowledge, suspicion, or other related information amounts to an offence which is punishable by a fine not exceeding $10,000.

Tipping Off

8.3 It is an offence for insurers or brokers, knowing or having reasonable grounds to suspect that an investigation under the Act is taking/to take place, to make a disclosure which is likely to prejudice such investigation. This is a tipping off offence punishable by a fine not exceeding $30,000, or imprisonment for a term not exceeding 3 years, or both.

Failure to co-operate with law enforcement agencies

8.4 The following acts constitute an offence under the Act:
i. contravening a production order issued by the Court under the Act without reasonable excuse;

ii. providing material known to be false or misleading in purported compliance with a production order, without:

   (a) indicating that the material is false or misleading, and how it is false or misleading; or

   (b) providing correct information which is in the insurers’ or brokers’ possession or can reasonably be acquired by them;

   (c) hindering or obstructing an authorised officer in the execution of a search warrant issued under the Act; or

   (d) obstructing or hindering any authorised officer in the discharge of his duty under the Act.

Offences under paragraphs (i) to (iii) are punishable by a fine not exceeding $10,000, or imprisonment for a term not exceeding 2 years, or both. The offence under paragraph (iv) is punishable by a fine not exceeding $2,000, or imprisonment for a term not exceeding 6 months, or both.

Record Retention

8.5 Insurers and brokers are required to retain each financial transaction document or a copy of it for the relevant minimum retention period. Such documents are to be stored in a manner that is reasonably practicable to retrieve them. In addition, insurers or brokers shall retain a copy, and maintain a register, of financial transaction documents released by the insurer or broker under Section 37 of the Act. Failure to observe any of these requirements amounts to an offence which is punishable by a fine not exceeding $10,000.

8.6 Insurers and brokers should note that some of the statutory obligations and prohibitions, which give rise to the offences described in paragraphs 8.1 to 8.5, also apply to their employees.

8.7 Section 8 of this Notice (or any reference to the Act in other parts of this Notice) does not constitute a legal interpretation of the Act, and should not be construed as an exhaustive write-up on all relevant provisions in the Act applicable to insurers and brokers. They are advised to seek legal counsel where necessary.

Annex I: Process of Money Laundering

Appendix 1: Examples of Suspicious Transactions
Appendix 2: Reporting Format
Monetary Authority of Singapore: Guidelines for Dealers and Investment Advisers

22 Feb 2000

GUIDELINES FOR DEALERS AND INVESTMENT ADVISERS

These Guidelines replace the Guidelines on Prevention of Money Laundering issued on 5 June 1999 by way of MAS Circular BFIG 21/99 to dealers and investment advisers.

Guidelines On Prevention Of Money Laundering for Dealers and Investment Advisers

1 INTRODUCTION

1.1 Pursuant to Section 28(4) of the Monetary Authority of Singapore Act, the Authority hereby issues this set of Guidelines on Prevention of Money Laundering.

1.2 For the preservation, nationally and internationally, of the good name of the securities industry in Singapore and recognising the need to prevent the financial system from being used in furtherance of money laundering activities (described in Section 2) arising from or in connection with drug trafficking and criminal conduct, and taking into account:

i. the provisions of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 84A) (the Act); and

ii. the Financial Action Task Force 40 Recommendations, in particular Recommendations 9 to 20,

all dealers and investment advisers licensed under the Securities Industry Act (Chapter 289) (licensees) shall comply with these Guidelines.

1.3 In these Guidelines, the following terms shall have the meanings ascribed to them in the Act:

i. Terms defined under Section 2 of the Act

- authorised officer
- criminal conduct
- drug trafficking
- drug trafficking offence
- foreign drug trafficking offence
- foreign serious offence
- serious offence
ii. Terms defined under Section 35 of the Act

- financial transaction document
- minimum retention period

1.4 Where Singapore-incorporated licensees have branches or subsidiaries overseas, they shall ensure that their group policy on money laundering is communicated to the management of their overseas offices. The group policy shall ensure that verification of identity and record keeping are undertaken at least to the standards required under Singapore law, taking into account the laws and regulations of the host country. Where the laws and regulations of the host country and the Guidelines conflict, the overseas branch or subsidiary should comply with the laws and regulations of the host country and inform the head office of any departure from the group policy.

2 DESCRIPTION OF MONEY LAUNDERING

2.1 Money laundering is a process intended to mask the benefits derived from drug trafficking or criminal conduct so that they appear to have originated from a legitimate source.

2.2 Generally, the process of money laundering comprises three stages, during which there may be numerous transactions that could alert a licensee to the money laundering activity:

i. Placement: the physical disposal of benefits of drug trafficking or criminal conduct;

ii. Layering: the separation of benefits of drug trafficking or criminal conduct from their source by creating layers of financial transactions designed to disguise the audit trail;

iii. Integration: the provision of apparent legitimacy to benefits of drug trafficking or criminal conduct. If the layering process succeeds, integration schemes place the laundered funds back into the economy so that they re-enter the financial system appearing to be legitimate business funds.

2.3 The chart in Annex 1 illustrates the money laundering stages in greater detail.

3 BASIC PRINCIPLES AND POLICIES TO COMBAT MONEY LAUNDERING

3.1 The Authority seeks to combat money laundering by requiring licensees to apply the following principles:

i. *Know your customer*: licensees shall obtain satisfactory evidence of the customer's identity, and have effective procedures for verifying the bona fides of new customers.
ii. Compliance with laws: licensees shall ensure that business is conducted in conformity with high ethical standards, that laws and regulations are adhered to, and that service is not provided where there is good reason to suppose that transactions are associated with money laundering activities.

iii. Co-operation with law enforcement agencies: within legal constraints relating to customer confidentiality, licensees shall co-operate fully with law enforcement agencies. This includes taking appropriate measures allowed by law if there are reasonable grounds for suspecting money laundering. Disclosure of information by licensees for the purposes of the Act (suspicious transaction reports) shall be made to Head, Suspicious Transactions Reporting Office, Commercial Affairs Department (STRO). To facilitate the process, licensees shall identify a single reference point within their organisation (usually a relevant officer of the licensee) to which staff are instructed to report suspected money-laundering transactions promptly.

iv. Policies, procedures and training: each licensee shall adopt policies consistent with the principles set out in these Guidelines, and ensure that its staff, wherever located, are informed of these policies and adequately trained in matters covered by these Guidelines. To promote adherence to these principles, licensees shall implement specific procedures for customer identification, retention of financial transaction documents, and reporting of suspicious transactions.

4 CUSTOMER IDENTIFICATION

General

4.1 Licensees shall obtain satisfactory evidence of the identity and legal existence of persons applying to do business with them. Such evidence shall be substantiated by reliable documents or other means. Licensees should also establish that any applicant claiming to act on behalf of another person is authorised to do so. There should be an explicit policy that significant business transactions will not be conducted with applicants who fail to provide evidence of their identity, but without derogating from the licensees’ obligations to report suspicious transactions. Where initial checks fail to identify the applicant, or give rise to suspicions that the information provided is false, additional verification measures should be undertaken to determine whether to proceed with the business. Details of the additional checks are to be recorded.

4.2 When a licensee acquires the business of another financial sector company or firm, either in whole or as a product portfolio, it is not necessary for the identity of all existing customers to be re-identified, provided that:

i. all customer account records are acquired with the business; and

ii. due diligence enquiries do not raise any doubt as to whether the anti-money laundering procedures previously adopted by the acquired business have satisfied Singapore requirements.
4.3 If during the business relationship, the licensee has reason to doubt:

i. the accuracy of the information relating to the customer's identity;

ii. that the customer is the beneficial owner; or

iii. the intermediary's declaration of beneficial ownership, or if there are any signs of unreported changes, it shall take further measures to verify the identity of the customer or the beneficial owner, as applicable.

Personal Customers

4.4 Licensees shall obtain from all personal applicants the following information:

- name and/or names used;
- permanent and mailing address;
- date of birth;
- nationality.

4.5 Licensees shall request applicants to produce original documents of identity issued by an official authority, preferably bearing a photograph of the applicants. Examples of such documents are identity cards and passports. Where practicable, file copies of documents of identity are to be kept. Alternatively, the identity card or passport number and other relevant details are to be recorded.

Verification Without Face-to-Face Contact

4.6 Licensees shall take particular care in opening accounts via the internet, post or telephone. Any mechanism that avoids face-to-face contact with applicants inevitably creates difficulty in customer identification and can be abused by money launderers to gain access to the financial system. For non-face-to-face contact, licensees should assess the money laundering risk posed by internet, postal and telephone products offered and devise customer identification procedures with due regard to this risk.

4.7 The customer identification procedures for non-face-to-face verification should be at least as stringent as those for face-to-face verification. Reasonable steps should also be taken to avoid fraud and single or multiple fictitious applications. There are a number of checks which, when undertaken successfully, will give licensees a reasonable degree of assurance as to the identity of the applicant where there is no face-to-face contact. For example,

- telephone contact with the applicant at an independently verified home or business number;
- subject to the applicant's consent, telephone confirmation of the applicant's employment with the employer's personnel department at a listed business number;
- salary details appearing on recent bank statements;
- statements and/or advice from the Central Provident Fund Board;
- confirmation of the address through an exchange of correspondence or by other appropriate methods.

An initial deposit cheque drawn on another financial institution regulated by the Authority will provide additional comfort.

4.8 For non-Singapore residents who wish to open accounts without face-to-face contact, any branches, subsidiaries, head offices or correspondent banks in the applicant's country of residence may be used to confirm identity or check identity verification details. Where the licensee has no group presence or correspondent relationship in the applicant's country of residence, then a copy of the document of identity, certified by lawyers or notary publics, should be requested.

Corporate and Other Business Customers

4.9 Before establishing a business relationship, a company search and/or other commercial enquiries shall be made to ensure that the corporate/other business applicant has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In the event of doubt as to the identity of the company or its directors, or the business or its partners, a search with the Registry of Companies and Businesses shall be made.

4.10 The following relevant documents shall be obtained in respect of corporate/other business applicants which are registered in Singapore:

- copies of the Certificate of Incorporation, Certificate of Partnership, or Certificate of Registration, as appropriate; and
- appropriate directors' resolutions (certified extracts only), signed application forms or account opening authority containing specimen signatures.

4.11 The originals or certified copies of certificates (issued by the Registrar of Companies and Businesses) should be produced for verification.

4.12 For companies, businesses or partnerships registered outside Singapore, comparable documents are to be obtained. However, as different countries have varying standards of control, attention should be paid to the place of origin of the documents and the background against which they are produced. The originals or certified copies of certificates (issued by foreign authorities) should be produced for verification.

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4.16 Shell companies are legal entities which have no business substance in their own right but through which financial transactions may be conducted. Licensees should note that shell companies may be abused by money launderers and therefore be cautious in their dealings with them. In addition to the requirement under paragraph 4.10, licensees should also obtain satisfactory evidence of the identity of the beneficial owners, bearing in mind the "Know-Your-Customer" principle.

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4.20 Where the intermediary does not fall into any of the categories in paragraphs 4.18 and 4.19, licensees should obtain satisfactory evidence of the identity of the beneficial owners and
the source of funds. The licensee should obtain in writing the relevant information from the intermediary, which must at least include the information specified in Appendix I.

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4.22 The guidelines in paragraphs 4.17 to 4.21 shall also apply to client accounts that are opened by sales and distribution agents or other third party performing some or all of the functions on behalf of the principal.

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ii. the relevant authorities in Singapore and the internal and external auditors of the licensee will be able to judge reliably the licensee's transactions and its compliance with the Guidelines;

iii. any transaction effected via the licensee can be reconstructed; and

iv. the licensee can satisfy within a reasonable time any enquiry or order from the relevant authorities in Singapore as to disclosure of information, including
without limitation whether a particular person is the customer or beneficial owner of transactions conducted through the licensees.

5.2 When setting document retention policy, licensees must take into account the requirements of the Act. The following document retention periods shall be followed:

i. financial transaction documents relating to the opening of an account are to be kept for 6 years after the date the account is closed; and

ii. other financial transaction documents are to be kept for 6 years after the date on which the transaction takes place.

5.3 Financial transaction documents may be retained as originals or copies, on microfilm, or in electronic form, provided that such forms are admissible in court. Notwithstanding paragraph 5.2, if the records relate to on-going investigations or transactions that have been the subject of a disclosure, they shall be retained beyond the stipulated retention period until it is confirmed that the case has been closed.

6 SUSPICIOUS TRANSACTIONS

6.1 Each licensee shall clarify the economic background and purpose of any transaction or business relationship if its form or amount appears unusual in relation to the customer, or if the economic purpose or legality of the transaction is not immediately clear. In this regard, licensees should exercise due diligence by implementing adequate systems for identifying and detecting suspicious transactions.

6.2 Examples of suspicious transactions are found in Appendix II. These are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered. Identification of any transaction listed in Appendix II should prompt initial enquiries and, if necessary, further investigations on the source of funds.

6.3 Each licensee shall institute a system for reporting suspicious transactions under the Act. This may include appointing one or more senior persons, or an appropriate unit responsible for reporting to STRO. A copy of the suspicious transaction report should also be sent to the Authority. The reporting formats are set out in Appendices III to V. In the event that urgent disclosure is required, particularly when the account concerned is part of an on-going investigation, an initial notification should be made by telephone.

6.4 The obligation to report is on the individual who becomes suspicious of a money laundering transaction. Officers and employees of the licensee who deal with customers should be made aware of the statutory obligation to report suspicious transactions under the licensees' reporting system.

6.5 Where:

i. a customer transfers or seeks to invest funds, or
ii. the licensee holds funds on behalf of a customer,

and an employee of the licensee knows that the customer has engaged in drug trafficking or criminal conduct, the matter must be promptly reported to the relevant officer or unit within the organisation who, in turn, must immediately report the details to STRO. If the employee suspects or has reasonable grounds to suspect that the customer has engaged in drug trafficking or criminal conduct, the officer or unit, on receiving the employee's report, must promptly evaluate whether there are reasonable grounds for such belief and must then immediately report the case to STRO unless the officer or unit considers, and records an opinion, that such reasonable grounds do not exist.

6.6 Each licensee shall maintain a complete file on all transactions that have been brought to the attention of the relevant officer or unit, including transactions that are not reported to STRO.

6.7 Where it is known that a report has already been disclosed to STRO and it becomes necessary to make further enquiries of the customer, care should be taken to ensure that the customer does not become aware that his name has been brought to the attention of STRO.

6.8 Under Section 38 of the Act, where licensees disclose to an authorised officer \(^1\) a knowledge, suspicion or belief that any fund, property or investment is derived from or used in connection with drug trafficking, criminal conduct or any matter on which such a knowledge, suspicion or belief is based, such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or by rules of professional conduct. Furthermore, under Section 38 of the Act, licensees would not be liable for any loss arising out of such disclosure, or any act or omission, in relation to the fund, property or investment in consequence of the disclosure.

7 COMPLIANCE AND TRAINING

7.1 Each licensee shall appoint one or more senior persons, or an appropriate unit, to advise its management and staff on the issuing and enforcement of in-house instructions to promote adherence to the Guidelines, including personnel training, reporting of suspicious transactions, and generally, all matters relating to the prevention of money laundering.

7.2 Each licensee shall appoint a senior officer as the compliance officer or set up a designated compliance unit headed by a senior officer. The object is to ensure a speedy and appropriate reaction to any matter that requires special attention under the Guidelines and the Act.

7.3 The licensees' in-house audit department shall monitor regularly the effectiveness of the measures taken by the licensees in preventing money laundering.

7.4 The licensee shall train local and overseas staff to be fully aware of their responsibilities in combating money laundering and to be familiar with its system for reporting and investigating suspicious matters.
7.5 A licensee may, due to the scale and nature of their operations, assign the internal audit or training functions to another person (e.g. professional association, parent company or external auditors). Where a licensee delegates its responsibilities for audit and training, due diligence is to be exercised to ensure that the persons appointed are able to perform these functions effectively.

7.6 All relevant staff should be educated in the importance of the "Know-Your-Customer" requirements to prevent money laundering. Training in this respect should cover not only the need to know the true identity of the applicant for business relationship but also, where a business relationship has been established, the need to know enough about the expected type of business activities of that customer at the outset in order to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a customer's transactions or circumstances that might constitute money laundering.

7.7 Although senior management of a licensee may not be involved in the day-to-day procedures, it is important that they understand the statutory duties placed on them, their staff, and the licensee itself. Some form of training to raise general awareness of senior management of their statutory duties is therefore suggested.

7.8 Timing and content of training for various sectors of staff will need to be adapted by the licensee for its own needs. The following is recommended:

i. **New Staff**

   A general appreciation of the background to money laundering, the need to be able to identify suspicious transactions and report such transactions to the appropriate designated point within the licensee, and the offence of "tipping off" should be provided to all new staff who deal with customers or their transactions, irrespective of the level of seniority.

ii. **Cashiers/Dealers' Representatives or Investment Representatives/Advisory Staff.** Personnel who deal directly with the public are the first point of contact with potential money launderers. Their efforts are therefore vital to the licensees' reporting system for such transactions. They should be trained to identify suspicious transactions and on the procedure to be adopted when a transaction is deemed to be suspicious. "Front-line" staff should be made aware of the licensee's policy for dealing with non-regular customers particularly where large cash transactions are involved, and the need for extra vigilance in these cases.

iii. **Supervisors and Managers**

   A higher level of instruction covering all aspects of money laundering procedures should be provided to supervisors and managers. This will include the offences and penalties arising from the Act, procedures relating to service of production and restraint orders, internal reporting procedures, and the requirements for verification of identity and the retention of records.
7.9 Refresher training should be provided at regular intervals to ensure that staff are reminded of their responsibilities and are kept informed of new developments.

8 SUMMARY OF KEY PROVISIONS OF THE ACT

Money laundering offences

8.1 It is an offence for licensees to:

i. enter into or otherwise be concerned in an arrangement knowing or having reasonable grounds to believe that by that arrangement:

   (a) it will facilitate the retention or control of benefits of drug trafficking or criminal conduct by/on behalf of; or

   (b) the benefits of drug trafficking or criminal conduct are used to secure funds or acquire property (by way of investment or otherwise) for,

another person (whom the licensee knows or has reasonable grounds to believe has been/is involved in, or has benefited from, drug trafficking or criminal conduct);

ii. conceal or disguise; or convert, transfer, or remove from the jurisdiction, any property which, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct (for the purpose of assisting any person to avoid prosecution for a drug trafficking offence, foreign drug trafficking offence, serious offence or foreign serious offence or the enforcement of a confiscation order issued under the Act); or

iii. acquire any property for no or inadequate consideration, knowing, or having reasonable grounds to believe, that the property, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct.

Offences under this paragraph are punishable by a fine not exceeding $200,000, or imprisonment for a term not exceeding 7 years, or both.

Disclosure of Suspicious Transactions

8.2 Licensees shall disclose suspicious transactions to an authorised officer when they know or have reasonable grounds to suspect that any property:

i. in whole or in part, directly or indirectly, represents proceeds of drug trafficking or criminal conduct; or
ii. was used/will be used in connection with drug trafficking or criminal conduct.

Failure to disclose such knowledge, suspicion, or other related information amounts to an offence which is punishable by a fine not exceeding $10,000.

**Tipping Off**

8.3 It is an offence for licensees, knowing or having reasonable grounds to suspect that an investigation under the Act is taking/to take place, to make a disclosure which is likely to prejudice such investigation. This is a tipping off offence punishable by a fine not exceeding $30,000, or imprisonment for a term not exceeding 3 years, or both.

**Failure to co-operate with law enforcement agencies**

8.4 The following acts constitute an offence under the Act:

i. contravening a production order issued by the Court under the Act without reasonable excuse;

ii. providing material known to be false or misleading in purported compliance with a production order, without:
   
   a. indicating that the material is false or misleading, and how it is false or misleading; or
   b. providing correct information which is in the licensees' possession or can reasonably be acquired by them;

iii. hindering or obstructing an authorised officer in the execution of a search warrant issued under the Act; or

iv. obstructing or hindering any authorised officer in the discharge of his duty under the Act.

Offences under paragraphs (i) to (iii) are punishable by a fine not exceeding $10,000, or imprisonment for a term not exceeding 2 years, or both. The offence under paragraph (iv) is punishable by a fine not exceeding $2,000, or imprisonment for a term not exceeding 6 months, or both.

**Record Retention**

8.5 Licensees are required to retain each financial transaction document or a copy of it for the relevant minimum retention period. Such documents are to be stored in a manner that is reasonably practicable to retrieve them. In addition, licensees shall retain a copy, and maintain a register, of financial transaction documents released by the licensee under Section 37 of the Act.
Failure to observe any of these requirements amounts to an offence which is punishable by a fine not exceeding $10,000.

8.6 Licensees should note that some of the statutory obligations and prohibitions, which give rise to the offences described in paragraphs 8.1 to 8.5, also apply to their employees.

8.7 Section 8 of these Guidelines (or any reference to the Act in other parts of these Guidelines) does not constitute a legal interpretation of the Act, and should not be construed as an exhaustive write-up on all relevant provisions in the Act applicable to licensees. Licensees are advised to seek legal counsel where necessary.

Annex 1: Process of Money Laundering

Appendix 1: Intermediary Introduction Certification
Appendix 2: Examples of Suspicious Transactions
Appendix 3: Reporting Format - Natural Persons
Appendix 4: Reporting Format - Corporations
Appendix 5: Reporting Format – Partnerships / Sole Proprietors / Clubs & Societies
1 INTRODUCTION

1.1 Pursuant to Section 28(4) of the Monetary Authority of Singapore Act, the Authority hereby issues this set of Guidelines on Prevention of Money Laundering.

1.2 For the preservation, nationally and internationally, of the good name of the futures industry in Singapore and recognising the need to prevent the financial system from being used in furtherance of money laundering activities (described in Section 2) arising from or in connection with drug trafficking and criminal conduct, and taking into account:

   i. the provisions of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 84A) (the Act); and

   ii. the Financial Action Task Force 40 Recommendations, in particular Recommendations 9 to 20,

all future, brokers, future traders advisers and future pool operators licensed under the Futures Trading Act (Chapter 116) (licensees) shall comply with these Guidelines.

1.3 In these Guidelines, the following terms shall have the meanings ascribed to them in the Act:

i. Terms defined under Section 2 of the Act
   • authorised officer
   • criminal conduct
   • drug trafficking
   • drug trafficking offence
   • foreign drug trafficking offence
   • foreign serious offence
   • serious offence

ii. Terms defined under Section 35 of the Act
   • financial transaction document
• minimum retention period

1.4 Where Singapore-incorporated licensees have branches or subsidiaries overseas, they shall ensure that their group policy on money laundering is communicated to the management of their overseas offices. The group policy shall ensure that verification of identity and record keeping are undertaken at least to the standards required under Singapore law, taking into account the laws and regulations of the host country. Where the laws and regulations of the host country and the Guidelines conflict, the overseas branch or subsidiary should comply with the laws and regulations of the host country and inform the head office of any departure from the group policy.

2 DESCRIPTION OF MONEY LAUNDERING

2.1 Money laundering is a process intended to mask the benefits derived from drug trafficking or criminal conduct so that they appear to have originated from a legitimate source.

2.2 Generally, the process of money laundering comprises three stages, during which there may be numerous transactions that could alert a licensee to the money laundering activity:

i. Placement: the physical disposal of benefits of drug trafficking or criminal conduct;

ii. Layering: the separation of benefits of drug trafficking or criminal conduct from their source by creating layers of financial transactions designed to disguise the audit trail;

iii. Integration: the provision of apparent legitimacy to benefits of drug trafficking or criminal conduct. If the layering process succeeds, integration schemes place the laundered funds back into the economy so that they re-enter the financial system appearing to be legitimate business funds.

2.3 The chart in Annex 1 illustrates the money laundering stages in greater detail.

3 BASIC PRINCIPLES AND POLICIES TO COMBAT MONEY LAUNDERING

3.1 The Authority seeks to combat money laundering by requiring licensees to apply the following principles:

i. Know your customer: licensees shall obtain satisfactory evidence of the customer's identity, and have effective procedures for verifying the bona fides of new customers.

ii. Compliance with laws: licensees shall ensure that business is conducted in conformity with high ethical standards, that laws and regulations are adhered to, and that service is not provided where there is good reason to suppose that transactions are associated with money laundering activities.
iii. *Co-operation with law enforcement agencies*: within legal constraints relating to customer confidentiality, licensees shall co-operate fully with law enforcement agencies. This includes taking appropriate measures allowed by law if there are reasonable grounds for suspecting money laundering. Disclosure of information by licensees for the purposes of the Act (suspicious transaction reports) shall be made to Head, Suspicious Transactions Reporting Office, Commercial Affairs Department (STRO). To facilitate the process, licensees shall identify a single reference point within their organisation (usually a relevant officer of the licensee) to which staff are instructed to report suspected money-laundering transactions promptly.

iv. *Policies, procedures and training*: each licensee shall adopt policies consistent with the principles set out in these Guidelines, and ensure that its staff, wherever located, are informed of these policies and adequately trained in matters covered by these Guidelines. To promote adherence to these principles, licensees shall implement specific procedures for customer identification, retention of financial transaction documents, and reporting of suspicious transactions.

### 4 CUSTOMER IDENTIFICATION

#### General

4.1 Licensees shall obtain satisfactory evidence of the identity and legal existence of persons applying to do business with them. Such evidence shall be substantiated by reliable documents or other means. Licensees should also establish that any applicant claiming to act on behalf of another person is authorised to do so. There should be an explicit policy that significant business transactions will not be conducted with applicants who fail to provide evidence of their identity, but without derogating from the licensees' obligations to report suspicious transactions. Where initial checks fail to identify the applicant, or give rise to suspicions that the information provided is false, additional verification measures should be undertaken to determine whether to proceed with the business. Details of the additional checks are to be recorded.

4.2 When a licensee acquires the business of another financial sector company or firm, either in whole or as a product portfolio, it is not necessary for the identity of all existing customers to be re-identified, provided that:

i. all customer account records are acquired with the business; and

ii. due diligence enquiries do not raise any doubt as to whether the anti-money laundering procedures previously adopted by the acquired business have satisfied Singapore requirements.

4.3 If during the business relationship, the licensee has reason to doubt:

i. the accuracy of the information relating to the customer's identity;

ii. that the customer is the beneficial owner; or
iii. the intermediary's declaration of beneficial ownership,

or if there are any signs of unreported changes, it shall take further measures to verify the identity of the customer or the beneficial owner, as applicable.

**Personal Customers**

4.4 Licensees shall obtain from all personal applicants the following information:

- name and/or names used;
- permanent and mailing address;
- date of birth;
- nationality.

4.5 Licensees shall request applicants to produce original documents of identity issued by an official authority, preferably bearing a photograph of the applicants. Examples of such documents are identity cards and passports. Where practicable, file copies of documents of identity are to be kept. Alternatively, the identity card or passport number and other relevant details are to be recorded.

**Verification Without Face-to-Face Contact**

4.6 Licensees shall take particular care in opening accounts via the internet, post or telephone. Any mechanism that avoids face-to-face contact with applicants inevitably creates difficulty in customer identification and can be abused by money launderers to gain access to the financial system. For non-face-to-face contact, licensees should assess the money laundering risk posed by internet, postal and telephone products offered and devise customer identification procedures with due regard to this risk.

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6.1 Each licensee shall clarify the economic background and purpose of any transaction or business relationship if its form or amount appears unusual in relation to the customer, or if the economic purpose or legality of the transaction is not immediately clear. In this regard,
licensees should exercise due diligence by implementing adequate systems for identifying and detecting suspicious transactions.

6.2 Examples of suspicious transactions are found in Appendix II. These are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered. Identification of any transaction listed in Appendix II should prompt initial enquiries and, if necessary, further investigations on the source of funds.

6.3 Each licensee shall institute a system for reporting suspicious transactions under the Act. This may include appointing one or more senior persons, or an appropriate unit responsible for reporting to STRO. A copy of the suspicious transaction report should also be sent to the Authority. The reporting formats are set out in Appendices III to V. In the event that urgent disclosure is required, particularly when the account concerned is part of an ongoing investigation, an initial notification should be made by telephone.

6.4 The obligation to report is on the individual who becomes suspicious of a money laundering transaction. Officers and employees of the licensee who deal with customers should be made aware of the statutory obligation to report suspicious transactions under the licensee's reporting system.

6.5 Where:

   i. a customer transfers or seeks to invest funds, or
   ii. the licensee holds funds on behalf of a customer,

and an employee of the licensee knows that the customer has engaged in drug trafficking or criminal conduct, the matter must be promptly reported to the relevant officer or unit within the organisation who, in turn, must immediately report the details to STRO. If the employee suspects or has reasonable grounds to suspect that the customer has engaged in drug trafficking or criminal conduct, the officer or unit, on receiving the employee's report, must promptly evaluate whether there are reasonable grounds for such belief and must then immediately report the case to STRO unless the officer or unit considers, and records an opinion, that such reasonable grounds do not exist.

6.6 Each licensee shall maintain a complete file on all transactions that have been brought to the attention of the relevant officer or unit, including transactions that are not reported to STRO.

6.7 Where it is known that a report has already been disclosed to STRO and it becomes necessary to make further enquiries of the customer, care should be taken to ensure that the customer does not become aware that his name has been brought to the attention of STRO.

6.8 Under Section 38 of the Act, where licensees disclose to an authorised officer a knowledge, suspicion or belief that any fund, property or investment is derived from or used in connection with drug trafficking, criminal conduct or any matter on which such a knowledge, suspicion or belief is based, such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by law, contract or by rules of professional conduct. Furthermore, under Section 38 of the Act, licensees would not be liable
for any loss arising out of such disclosure, or any act or omission, in relation to the fund, property or investment in consequence of the disclosure.

7  COMPLIANCE AND TRAINING

7.1 Each licensee shall appoint one or more senior persons, or an appropriate unit, to advise its management and staff on the issuing and enforcement of in-house instructions to promote adherence to the Guidelines, including personnel training, reporting of suspicious transactions, and generally, all matters relating to the prevention of money laundering.

7.2 Each licensee shall appoint a senior officer as the compliance officer or set up a designated compliance unit headed by a senior officer. The object is to ensure a speedy and appropriate reaction to any matter that requires special attention under the Guidelines and the Act.

7.3 The licensees' in-house audit department shall monitor regularly the effectiveness of the measures taken by the licensee in preventing money laundering.

7.4 The licensee shall train local and overseas staff to be fully aware of their responsibilities in combating money laundering and to be familiar with its system for reporting and investigating suspicious matters.

7.5 A licensee may, due to the scale and nature of their operations, assign the internal audit or training functions to another person (e.g. professional association, parent company or external auditors). Where a licensee delegates its responsibilities for audit and training, due diligence is to be exercised to ensure that the persons appointed are able to perform these functions effectively.

7.6 All relevant staff should be educated in the importance of the "Know-Your-Customer" requirements to prevent money laundering. Training in this respect should cover not only the need to know the true identity of the applicant for business relationship but also, where a business relationship has been established, the need to know enough about the expected type of business activities of that customer at the outset in order to know what might constitute suspicious activity at a future date. Relevant staff should be alert to any change in the pattern of a customer's transactions or circumstances that might constitute money laundering.

7.7 Although senior management of a licensee may not be involved in the day-to-day procedures, it is important that they understand the statutory duties placed on them, their staff, and the licensee itself. Some form of training to raise general awareness of senior management of their statutory duties is therefore suggested.

7.8 Timing and content of training for various sectors of staff will need to be adapted by the licensee for its own needs. The following is recommended:

i. **New Staff**

A general appreciation of the background to money laundering, the need to be able to identify suspicious transactions and report such transactions to the
appropriate designated point within the licensee, and the offence of "tipping off" should be provided to all new staff who deal with customers or their transactions, irrespective of the level of seniority.

ii. **Cashiers/Futures Broker's Representatives/Futures Trading Adviser's Investment Representatives/Futures Pool Operator's Representatives/Advisory Staff**

Personnel who deal directly with the public are the first point of contact with potential money launderers. Their efforts are therefore vital to the licensee's reporting system for such transactions. They should be trained to identify suspicious transactions and on the procedure to be adopted when a transaction is deemed to be suspicious. "Front-line" staff should be made aware of the licensee's policy for dealing with non-regular customers particularly where large cash transactions are involved, and the need for extra vigilance in these cases.

iii. **Supervisors and Managers**

A higher level of instruction covering all aspects of money laundering procedures should be provided to supervisors and managers. This will include the offences and penalties arising from the Act, procedures relating to service of production and restraint orders, internal reporting procedures, and the requirements for verification of identity and the retention of records.

7.9 Refresher training should be provided at regular intervals to ensure that staff are reminded of their responsibilities and are kept informed of new developments.

8 **SUMMARY OF KEY PROVISIONS OF THE ACT**

**Money laundering offences**

8.1 It is an offence for licensees to:

i. enter into or otherwise be concerned in an arrangement knowing or having reasonable grounds to believe that by that arrangement:

a. it will facilitate the retention or control of benefits of drug trafficking or criminal conduct by/on behalf of; or

b. the benefits of drug trafficking or criminal conduct are used to secure funds or acquire property (by way of investment or otherwise) for, another person (whom the licensee knows or has reasonable grounds to believe has been/is involved in, or has benefited from, drug trafficking or criminal conduct);

iv. conceal or disguise; or convert, transfer, or remove from the jurisdiction, any property which, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct (for the purpose of
assisting any person to avoid prosecution for a drug trafficking offence, foreign drug trafficking offence, serious offence or foreign serious offence or the enforcement of a confiscation order issued under the Act); or

v. acquire any property for no or inadequate consideration, knowing, or having reasonable grounds to believe, that the property, in whole or in part, directly or indirectly, represents another person's benefits of drug trafficking or criminal conduct.

Offences under this paragraph are punishable by a fine not exceeding $200,000, or imprisonment for a term not exceeding 7 years, or both.

**Disclosure of Suspicious Transactions**

8.2 Licensees shall disclose suspicious transactions to an authorised officer when they know or have reasonable grounds to suspect that any property:

i. in whole or in part, directly or indirectly, represents proceeds of drug trafficking or criminal conduct; or

ii. was used/will be used in connection with drug trafficking or criminal conduct.

Failure to disclose such knowledge, suspicion, or other related information amounts to an offence which is punishable by a fine not exceeding $10,000.

**Tipping Off**

8.3 It is an offence for licensees, knowing or having reasonable grounds to suspect that an investigation under the Act is taking/to take place, to make a disclosure which is likely to prejudice such investigation. This is a tipping off offence punishable by a fine not exceeding $30,000, or imprisonment for a term not exceeding 3 years, or both.

**Failure to co-operate with law enforcement agencies**

8.4 The following acts constitute an offence under the Act:

i. contravening a production order issued by the Court under the Act without reasonable excuse;

ii. providing material known to be false or misleading in purported compliance with a production order, without:

   a. indicating that the material is false or misleading, and how it is false or misleading; or

   b. providing correct information which is in the licensees' possession or can reasonably be acquired by them;

iii. hindering or obstructing an authorised officer in the execution of a search warrant issued under the Act; or
iv. obstructing or hindering any authorised officer in the discharge of his duty under the Act.

Offences under paragraphs (i) to (iii) are punishable by a fine not exceeding $10,000, or imprisonment for a term not exceeding 2 years, or both. The offence under paragraph (iv) is punishable by a fine not exceeding $2,000, or imprisonment for a term not exceeding 6 months, or both.

**Record Retention**

8.5 Licensees are required to retain each financial transaction document or a copy of it for the relevant minimum retention period. Such documents are to be stored in a manner that is reasonably practicable to retrieve them. In addition, licensees shall retain a copy, and maintain a register, of financial transaction documents released by the licensee under Section 37 of the Act. Failure to observe any of these requirements amounts to an offence which is punishable by a fine not exceeding $10,000.

8.6 Licensees should note that some of the statutory obligations and prohibitions, which give rise to the offences described in paragraphs 8.1 to 8.5, also apply to their employees.

8.7 Section 8 of these Guidelines (or any reference to the Act in other parts of these Guidelines) does not constitute a legal interpretation of the Act, and should not be construed as an exhaustive write-up on all relevant provisions in the Act applicable to licensees. Licensees are advised to seek legal counsel where necessary.

**Annex I: Process of Money Laundering**

- **Appendix 1**: Intermediary Introduction Certification
- **Appendix 2**: Examples of Suspicious Transactions
- **Appendix 3**: Reporting Format - Natural Persons
- **Appendix 4**: Reporting Format - Corporations
- **Appendix 5**: Reporting Format – Partnerships / Sole Proprietors / Clubs & Societies
A Guideline issued by the Monetary Authority under section 7(3) of the Banking Ordinance

PART I : OVERVIEW

1. Introduction

1.1 This Guideline incorporates, and hence supersedes, the Guideline issued by the Monetary Authority in July 1993 on the prevention of criminal use of the banking system for the purposes of money laundering. This Guideline has been updated to take account of the enactment of the Organized and Serious Crimes Ordinance, the subsequent amendments to the money laundering provisions in that Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance, the stocktaking review of the anti-money laundering measures undertaken by the Financial Action Task Force and the UK Money Laundering Guidance Notes for banks and building societies. It has also included other refinements and additional examples of suspicious transactions.

1.2 This Guideline applies directly to all banking and deposit taking activities in Hong Kong carried out by authorized institutions. However, institutions are expected to ensure that their subsidiaries in Hong Kong also have effective controls in place to combat money laundering. Where Hong Kong incorporated institutions have branches or subsidiaries overseas, steps should be taken to alert management of such overseas offices to Group policy in relation to money laundering. Where a local jurisdiction has a money laundering law, branches and subsidiaries of Hong Kong incorporated institutions operating within that jurisdiction should, as a minimum, act in accordance with the requirements of the local law. Where the local law and the Guideline are in conflict, the foreign branch or subsidiary should comply with the local law and inform the Head Office immediately of any departure from Group policy.

1.3 It is recognized that the relevance and usefulness of this Guideline will need to be kept under review as the methods of money laundering are constantly evolving. It may be necessary to issue amendments to this Guideline from time to time to incorporate measures to combat new money laundering threats, including those inherent in new or developing technologies that might favour anonymity.

2. What is money laundering?

2.1 The phrase "money laundering" covers all procedures to change the identity of illegally obtained money so that it appears to have originated from a legitimate source.

2.2 Cash lends anonymity to many forms of criminal activity and is the normal medium of exchange in the world of drug trafficking. This gives rise to three common factors –
(a) criminals need to conceal the true ownership and origin of the money;
(b) they need to control the money; and
(c) they need to change the form of the money.

2.3 One of the most common means of money laundering that institutions will encounter on a
day-to-day basis takes the form of accumulated cash transactions which will be deposited in the
banking system or exchanged for value items. These simple transactions may be just one part of
the sophisticated web of complex transactions which are set out and illustrated below. Nevertheless, the basic fact remains that the key stage for the detection of money laundering
operations is where the cash first enters the financial system.

Stages of money laundering

2.4 There are three stages of money laundering during which there may be numerous
transactions made by launderers that could alert an institution to criminal activity –

(a) Placement - the physical disposal of cash proceeds derived from illegal activity.
(b) Layering - separating illicit proceeds from their source by creating complex layers
of financial transactions designed to disguise the audit trail and provide
anonymity.
(c) Integration - the provision of apparent legitimacy to criminally derived wealth. If
the layering process has succeeded, integration schemes place the laundered
proceeds back into the economy in such a way that they re-enter the financial
system appearing to be normal business funds.

2.5 The following chart illustrates the laundering stages in more detail.

PROCESS OF MONEY LAUNDERING

3. The legislation on money laundering in Hong Kong

3.1 Legislation has been developed in Hong Kong to address the problems associated with
the laundering of proceeds from drug trafficking and serious crimes. The Drug Trafficking
(Recovery of Proceeds) Ordinance (DTROP) came into force in September 1989. It provides for
the tracing, freezing and confiscation of the proceeds of drug trafficking and creates a criminal
offence of money laundering in relation to such proceeds.

3.2 The Organized and Serious Crimes Ordinance (OSCO), which was modeled on the
DTROP, was brought into operation in December 1994. It extends the money laundering offence
to cover the proceeds of indictable offences in addition to drug trafficking.

3.3 Amendments to both Ordinances were made and came into effect on 1 September 1995. These amendments have tightened the money laundering provisions in both Ordinances and have
a significant bearing on the duty to report suspicious transactions. In particular, there is now a clear statutory obligation to disclose knowledge or suspicion of money laundering transactions.

3.4 The key money laundering provisions in the two Ordinances are summarized below. This does not constitute a legal interpretation of the provisions of the legislation referred to, for which appropriate legal advice should be sought where necessary.

3.5 Section 25(1) of DTROP and OSCO creates the offence of dealing with any property, knowing or having reasonable grounds to believe it in whole or in part directly or indirectly represents the proceeds of drug trafficking or of an indictable offence respectively. The offence carries a maximum sentence of 14 years' imprisonment and a maximum fine of HK$5 million.

3.6 It is a defence under section 25(2) of both Ordinances for a person to prove that he intended to disclose as soon as is reasonable such knowledge, suspicion or matter to an authorized officer or has a reasonable excuse for his failure to make a disclosure in accordance with section 25A(2) of the Ordinances.

3.7 Section 25A(1) imposes a statutory duty on a person, who knows or suspects that any property in whole or in part directly or indirectly represents the proceeds of drug trafficking or of an indictable offence, or was or is intended to be used in that connection, to make a disclosure to an authorized officer. Section 25A(7) makes it an offence for a person to fail to make such disclosure. The offence carries a maximum penalty of a fine at level 5 (at present $25,001 to $50,000) and imprisonment for 3 months.

3.8 It should be noted that section 25(4) of OSCO provides that references to an indictable offence in section 25 and 25A include a reference to conduct which would constitute an indictable offence if it had occurred in Hong Kong. That is to say it shall be an offence for a person to deal with the proceeds of crime or fail to make the necessary disclosure under section 25A(1) even if the principal crime is not committed in Hong Kong provided that it would constitute an indictable offence if it had occurred in Hong Kong.

3.9 Section 25A(2) provides that if a person who has made the necessary disclosure does any act in contravention of section 25(1) and the disclosure relates to that act he does not commit an offence if -

(a) the disclosure is made before he does that act and the act is done with the consent of an authorized officer; or

(b) the disclosure is made after the person does the act and the disclosure is made on the person's own initiative and as soon as it is reasonable for him to make it.

3.10 Section 25A(3) provides that disclosure made under section 25A(1) shall not be treated as breach of contract or of any enactment restricting disclosure of information and shall not render the person making the disclosure liable in damages for any loss arising out of disclosure. Therefore, institutions need not fear breaching their duty of confidentiality owed to customers when making a disclosure under the Ordinances.
3.11 Section 25A(4) extends the provisions of section 25A to disclosures made by an employee to an appropriate person in accordance with the procedures established by his employer for the making of such disclosure in the same way as it applies to disclosures to an authorized officer. This provides protection to employees of authorized institutions against the risk of prosecution where they have reported knowledge or suspicion of money laundering transactions to the person designated by their employers.

3.12 A "tipping-off" offence is created under section 25A(5) of both Ordinances, under which a person commits an offence if knowing or suspecting that a disclosure has been made, he discloses to any other person any matter which is likely to prejudice an investigation into money laundering activities. The "tipping-off" offence carries a maximum penalty of three years' imprisonment and a fine of HK$500,000.

3.13 The Organized and Serious Crimes (Amendment) Ordinance 2000 ("OSCAO") came into operation on 1 June 2000. Among other things, OSCAO requires remittance agents and money changers to keep records of customers' identity and particulars of remittance and exchange transactions of HK$20,000 or more or of an equivalent amount in any other currency. Although authorized institutions are exempted from the requirements of OSCAO, similar customer identification and record keeping requirements should be adopted to ensure that the anti-money laundering standards of the banking sector are in line with the overall Government policy to combat money laundering activities.

4. Basic policies and principles to combat money laundering

4.1 The Monetary Authority fully subscribes to the basic policies and principles to combat money laundering as embodied in the Statement of Principles issued by the Basle Committee in December 1988. The Statement seeks to deny use of the banking system to those involved in money laundering by application of the following principles -

(a) Know your customer: banks should make reasonable efforts to determine the customer's true identity, and have effective procedures for verifying the bona fides of new customers.

(b) Compliance with laws: bank management should ensure that business is conducted in conformity with high ethical standards, that laws and regulations are adhered to and that a service is not provided where there is good reason to suppose that transactions are associated with laundering activities.

(c) Co-operation with law enforcement agencies: within any constraints imposed by rules relating to customer confidentiality, banks should co-operate fully with national law enforcement agencies including, where there are reasonable grounds for suspecting money laundering, taking appropriate measures which are consistent with the law.

(d) Policies, procedures and training: all banks should formally adopt policies consistent with the principles set out in the Statement, and should ensure that all members of
their staff concerned, wherever located, are informed of the bank's policy. Attention should be given to staff training in matters covered by the statement. To promote adherence to these principles, banks should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for internal audit may need to be extended in order to establish an effective means for general compliance with the Statement.

4.2 The principles laid down by the Basle Committee have subsequently been developed by the Financial Action Task Force (FATF). In February 1990, FATF put forward forty recommendations aimed at improving national legal systems, enhancing the role of financial systems, and strengthening international co-operation against money laundering. Hong Kong, China is a member of the FATF and fully complies with the forty recommendations.

4.3 The Monetary Authority considers that institutions should follow the basic policies and principles as embodied in the Statement of Principles of the Basle Committee and the FATF recommendations. Specifically the Monetary Authority expects that institutions should have in place the following policies, procedures and controls -

(a) Institutions should issue a clear statement of policies in relation to money laundering, adopting current regulatory requirements. This statement should be communicated in writing to all management and relevant staff whether in branches, departments or subsidiaries and be reviewed on a regular basis.

(b) Instruction manuals should set out institutions' procedures for:

- account opening;
- identification of applicants for business;
- record-keeping;
- reporting of suspicious transactions.

(c) Institutions should seek actively to promote close co-operation with law enforcement authorities, and should identify a single reference point within their organization (usually a compliance officer) to which staff are instructed to report suspected money laundering transactions promptly. This reference point should have a means of liaison with the Joint Financial Intelligence Unit which will ensure prompt referral of suspected money-laundering transactions associated with drug trafficking or other indictable offences. The role and responsibilities of this reference point in the reporting procedures should be clearly defined.

(d) Measures should be undertaken to ensure that staff are educated and trained on matters contained in this Guideline both as part of their induction procedures and at regular future intervals. The aim is to generate and maintain a level of awareness and vigilance among staff to enable a report to be made if suspicions are aroused.

(e) Institutions should instruct their internal audit/inspection departments to verify, on a regular basis, compliance with policies, procedures, and controls against money laundering activities.
Whilst appreciating the sensitive nature of extra-territorial regulations, and recognizing that their overseas operations must be conducted in accordance with local laws and regulations, institutions should ensure that their overseas branches and subsidiaries are aware of group policies concerning money laundering and, where appropriate, have been instructed as to the local reporting point for their suspicions. Based on the recommendations in the following sections of this Guideline.

PART II DETAILED GUIDELINES

5. Verification of identity of applicants for business

5.1 Institutions should not keep anonymous accounts or accounts in obviously fictitious names. They should obtain satisfactory evidence of the identity and legal existence of persons applying to do business with the institution (such as opening a deposit account) on the basis of reliable documents or other resources, and record that identity and other relevant information regarding the applicant in their files. They should establish that any applicant claiming to act on behalf of another person is authorized to do so.

5.2 For the purposes of this guideline, evidence of identity can be regarded as satisfactory if –

(a) it is reasonably capable of establishing that the applicant for business is whom he claims to be; and

(b) the institution which obtains the evidence is satisfied, in accordance with the procedures established by the institution, that it does establish that fact.

5.3 New or modified requirements for verification of identity introduced by this Guideline shall apply only to business relationships entered into after 17 October 1997.

Individual applicants

5.4 Institutions should institute effective procedures for obtaining satisfactory evidence of the identity of applicants for business including obtaining information about name, permanent address, date of birth and occupation.

5.5 Positive identification should be obtained from documents issued by official or other reputable sources e.g. passports or identity cards. For Hong Kong residents, the prime source of identification will be the identity cards which they are required by law to carry with them. File copies of identity documents should be kept.

5.6 However, it must be appreciated that no form of identification can be fully guaranteed as genuine or representing correct identity. The Immigration Department operates a Hotline (Tel. 2824 1551) to which enquiries can be made concerning the validity of an identity card. If there is doubt whether an identification document is genuine, contact should be made with this Hotline immediately.
5.7 Institutions are advised to check the address of the applicant by appropriate means, e.g. by requesting sight of a recent utility or rates bill or checking the Voters Roll maintained by the Registration & Electoral Office.

5.8 Where institutions require applicants for personal banking services to provide in the application forms for such services the names and particulars of persons who have agreed to act as referees for the applicants, they should follow the practices and procedures as set out in the section on personal referees of the Code of Banking Practice jointly issued by the Hong Kong Association of Banks and the Deposit-taking Companies Association.

Corporate applicants

5.9 Company accounts are one of the more likely vehicles for money laundering, even where the company is also being used for legitimate trading purposes. It is therefore important to obtain satisfactory evidence of the identity of the principal shareholders, directors and authorized signatories and of the nature of the business. The guiding principle should be to establish that it is safe to enter into a business relationship with the company concerned.

5.10 Before a business relationship is established, measures should be taken by way of a company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In addition, if institutions become aware of subsequent changes to the company structure or ownership, or suspicions are aroused by a change in the profile of payments through a company account, further checks should be made.

5.11 The following documents or information should be obtained in respect of corporate applicants for business which are registered in Hong Kong (comparable documents, preferably certified by qualified persons such as lawyers or accountants in the country of registration, should be obtained for those applicants which are not registered in Hong Kong) –

(a) Certificate of Incorporation and Business Registration Certificate;
(b) Memorandum and articles of association;
(c) resolution of the board of directors to open an account and confer authority on those who will operate it; and
(d) a search of the file at Company Registry.

5.12 Where the company concerned is -

(a) a financial institution authorized and regulated by the Monetary Authority, the Securities and Futures Commission or the Insurance Authority in respect of its business in Hong Kong or is known to be a subsidiary of such an institution;

(b) a financial institution not authorized to carry on business in Hong Kong, but which is incorporated in a country which is a member of FATF and which is regulated by bodies carrying out equivalent functions to those mentioned in the preceding sub-paragraph;
(c) listed on The Stock Exchange of Hong Kong, or is known to be a subsidiary of such a company;

(d) listed on the stock market of a country which is a member of FATF and which is a stock market recognised by the Securities and Futures Commission for the purposes of section 65A(2)(a) of the Securities Ordinance; or

(e) a non-listed company, whose principal shareholders and the directors (including the managing director) are already known to the institution;

it should be sufficient to obtain the documents specified in paragraph 5.11, without the need to make further enquiries about the identity of individual directors and authorized signatories. However, evidence that any individual representing the company has the necessary authority to do so should be sought and retained. In the case of financial institutions, it should be established that the institution concerned is on the relevant regulator’s list of regulated institutions.

5.13 For companies other than those listed in paragraph 5.12, in addition to obtaining the documents specified in paragraph 5.11, institutions should obtain satisfactory evidence of the identity of the principal shareholders, at least two directors (including the managing director) and all authorized signatories in line with the requirements for individual applicants, and of the nature of the business.

**Clubs, societies and charities**

5.14 In the case of accounts to be opened for clubs, societies and charities, an institution should satisfy itself as to the legitimate purpose of the organisation by, e.g. requesting sight of the constitution. Satisfactory evidence should be obtained of the identity of the authorized signatories who are not already known to the institution in line with the requirements for individual applicants.

**Unincorporated businesses**

5.15 In the case of partnerships and other unincorporated businesses whose partners are not known to the bank, satisfactory evidence should be obtained of the identity of at least two partners and all authorized signatories in line with the requirements for individual applicants. In cases where a formal partnership arrangement exists, a mandate from the partnership authorizing the opening of an account and conferring authority on those who will operate it should be obtained.

**Shell companies**

5.16 Shell companies are legal entities through which financial transactions may be conducted but which have no business substance in their own right. While shell companies may be used for legitimate purposes, the FATF has expressed concern about the increasing use of such companies to conduct money laundering (through providing the means to operate what are in effect anonymous accounts). Institutions should take notice of the potential for abuse by money
launderers of shell companies and should therefore be cautious in their dealings with them. In keeping with the "know your customer" principle, institutions should obtain satisfactory evidence of the identity of beneficial owners, directors and authorized signatories of shell companies. Where the shell company is introduced to the institution by a professional intermediary acting on its behalf, institutions should follow the guidelines in paragraphs 5.17 to 5.22 below.

_WHERE THE APPLICANT FOR BUSINESS IS ACTING ON BEHALF OF ANOTHER PERSON_

5.17 Trust, nominee and fiduciary accounts are a popular vehicle for criminals wishing to avoid identification procedures and mask the origin of the criminal money they wish to launder. Accordingly, institutions should always establish, by confirmation from an applicant for business, whether the applicant is acting on behalf of another person as trustee, nominee or agent.

5.18 Any application to open an account or undertake a transaction on behalf of another person without applicants identifying their trust or nominee capacity should be regarded as suspicious and should lead to further enquiries as to the underlying principals and the nature of the business to be transacted.

5.19 Institutions should obtain satisfactory evidence of the identity of trustees, nominees and authorized signatories and of the nature of their trustee or nominee capacity and duties by, for example, obtaining a copy of the trust deed. Enquiries should also be made of the extent to which the applicant for business is subject to official regulation (e.g. by a body equivalent to the Monetary Authority).

5.20 Particular care should be taken in relation to trusts created in jurisdictions without equivalent money laundering legislation to Hong Kong.

5.21 Where the applicant for business who is acting on behalf of another person is one of the following –

(a) a financial institution authorized and regulated by the Monetary Authority, the Securities and Futures Commission or the Insurance Authority in respect of its business in Hong Kong or is known to be a subsidiary of such an institution;

(b) a financial institution not authorized to carry on business in Hong Kong, but which is incorporated in a country which is a member of FATF and which is regulated by bodies carrying out equivalent functions to those mentioned in the preceding sub-paragraph; or

(c) an intermediary which does not fall into the above two categories but is one with which the institution has an established business relationship and where the institution is fully satisfied as to its reputation, conduct and good faith;
it shall be reasonable for the institution to accept a written assurance from the applicant for business that evidence of the underlying principals has been obtained, recorded and retained, and that the applicant is satisfied as to the source of funds. For this purpose, it is recommended that the institution should obtain a written statement from the applicant for business (i.e. the intermediary) along the following lines:

"I/We confirm that evidence of the underlying principals has been obtained, recorded and retained, and I am/we are satisfied as to the source of funds* being used to open the account/passing through the account."

* delete as appropriate

It is recommended that the statement should be affixed to the original account opening documentation.

5.22 Where the applicant for business who is acting on behalf of another person does not fall into any of the categories in paragraph 5.21, the institution should obtain satisfactory evidence of the identity of the underlying principals and the source of funds. The use of a standard format for obtaining the relevant information is recommended. A suggested Intermediary Introduction Certificate is at Annex 3. If satisfactory evidence cannot be obtained, institutions should give very careful consideration as to whether they should proceed with the business, bearing in mind the "know your customer" principle. If they decide to proceed, they should record any misgivings and give extra attention to monitoring the account in question. Suspicious transactions should be reported in accordance with the procedures in section 9 below.

Client accounts

5.23 The guidelines in paragraphs 5.17 to 5.22 apply to client accounts opened by intermediaries. However, where the intermediary is a firm of solicitors or accountants, their professional codes of conduct may preclude the firms from divulging information to institutions concerning their underlying clients. It may therefore not be possible for an institution to establish the identity of the person(s) for whom a solicitor or accountant is acting. In such cases, the institution should obtain the written statement about the underlying principals and source of funds mentioned in paragraph 5.21. In addition, the institution should not be precluded from making reasonable enquiries about transactions passing through client accounts that give cause for concern or from reporting those transactions if any suspicions are aroused.

Avoidance of account opening by post

5.24 Whenever possible, applicants for business should be interviewed personally. Any mechanism which avoids face to face contact between institutions and applicants inevitably poses difficulties for customer identification and produces a useful loophole that money launderers may wish to exploit.

5.25 Care should be taken when dealing with accounts opened by post, or from coupon applications, to ensure that the identities of the applicants are obtained as much as possible. For
local applicants, account opening by post should not be permitted. Institutions should request the applicants to call on one of their branches for account opening. For overseas applicants in a country where the institution does not have a presence, the application should be submitted through a correspondent bank in that country or a bank which can be relied upon to undertake effective identification procedures on behalf of the institution.

Transactions undertaken for non-account holders (occasional customers)

5.26 Where transactions are undertaken by an institution for non-account holders of that institution e.g. requests for telegraphic transfers, or where funds are deposited into an existing account by persons whose names do not appear on the mandate of that account, care and vigilance are required. Where the transaction involves large sums of cash, or is unusual, the applicant should be asked to produce positive evidence of identity from the sources set out above and in the case of a foreign national, the nationality recorded. Copies of the identification documents should be kept on file.

5.27 An institution should not undertake for a non-account holder any remittance or money changing transaction that is HK$20,000 or more or of an equivalent amount in any other currency unless the particulars of the transaction as set out at Annex 8 are recorded. In this context, the non-account holder in respect of an inward remittance transaction refers to the recipient of the funds. As regards an outward remittance transaction, the non-account holder is the remitter of the funds.

Provision of safe custody and safety deposit boxes

5.28 Precautions need to be taken in relation to requests to hold boxes, parcels and sealed envelopes in safe custody. Where such facilities are made available to non-account holders, the identification procedures set out above should be followed.

6. Remittance

6.1 At the request of FATF, the Society for Worldwide Interbank Financial Telecommunication (SWIFT) made a global broadcast on 30 July 1992 to its user organizations requesting them to include the names, addresses and/or account numbers of their customers in MT 100 messages. The objective is to assist the law enforcement authorities in their investigations of suspected money laundering made through electronic message systems. A copy of SWIFT’s message is at Annex 4. This message should be brought to the attention of staff who deal with remittance matters within the institution.

6.2 While it is recognized that there may be technical and practical difficulties for institutions to include full details of their customers in SWIFT MT 100 messages, authorized institutions are encouraged, to the maximum extent possible, to comply with the SWIFT request.

6.3 SWIFT implemented a new optional format (MT103) on 18 November 2000. Therefore, the corresponding field numbers referred to in the SWIFT broadcast of 30 July 1992 in Annex 4 should be 50a and 59a in MT103 replacing 50 and 59 in MT100 format. Although SWIFT
members are allowed to use either the MT100 or MT103 format until November 2003, authorized institutions should in the meantime make every effort to comply with the new format’s requirements regarding the provision of customer information.

7. Record keeping

7.1 The DTROP and the OSCO entitle the Court to examine all relevant past transactions to assess whether the defendant has benefitted from drug trafficking or other indictable offences.

7.2 The investigating authorities need to ensure a satisfactory audit trail for suspected money laundering transactions and to be able to establish a financial profile of the suspect account. For example, to satisfy these requirements the following information may be sought –

(a) the beneficial owner of the account (for accounts opened on behalf of a third party, please see paragraphs 5.17 to 5.23);

(b) the volume of funds flowing through the account;

(c) for selected transactions:
   - the origin of the funds (if known);
   - the form in which the funds were offered or withdrawn i.e. cash, cheques etc.;
   - the identity of the person undertaking the transaction;
   - the destination of the funds;
   - the form of instruction and authority.

7.3 An important objective is for institutions at all stages in a transaction to be able to retrieve relevant information, to the extent that it is available, without undue delay.

7.4 When setting document retention policy, institutions must weigh the statutory requirements and the needs of the investigating authorities against normal commercial considerations. However, wherever practicable the following document retention times should be followed –

(a) account opening records - copies of identification documents should be kept in file for six years following the closing of an account;
(b) account ledger records - six years from entering the transaction into the ledger; and
(c) records in support of entries in the accounts in whatever form they are used e.g. credit/debit slips and cheques and other forms of vouchers - six years from when the records were created.
(d) records in support of remittance and money changing transactions for non-account holders – six years from when the records were created.

7.5 Retention may be by way of original documents, stored on microfilm, or in computerized form, provided that such forms are accepted as evidence under sections 20 to 22 of the Evidence
Ordinance. In situations where the records relate to on-going investigations, or transactions which have been the subject of a disclosure, they should be retained until it is confirmed that the case has been closed.

8. Recognition of suspicious transactions

8.1 As the types of transactions which may be used by a money launderer are almost unlimited, it is difficult to define a suspicious transaction. However, a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. Therefore, the first key to recognition is knowing enough about the customer's business to recognize that a transaction, or series of transactions, is unusual.

8.2 Examples of what might constitute suspicious transactions are given in Annex 5. These are not intended to be exhaustive and only provide examples of the most basic ways in which money may be laundered. However, identification of any of the types of transactions listed in Annex 5 should prompt further investigations and be a catalyst towards making at least initial enquiries about the source of funds.

9. Reporting of suspicious transactions

9.1 The reception point for disclosures under the DTROP and the OSCO is the Joint Financial Intelligence Unit, which is operated by the Police and Customs and Excise Department.

9.2 In addition to acting as the point for receipt of disclosures made by any organization or individual, the unit also acts as domestic and international advisors on money laundering generally and offers practical guidance and assistance to the financial sector on the subject of money laundering.

9.3 The obligation to report is on the individual who becomes suspicious of a money laundering transaction. Each institution should appoint a designated officer or officers (Compliance Officer(s)) who should be responsible for reporting to the Joint Financial Intelligence Unit where necessary in accordance with section 25A of both the DTROP and the OSCO and to whom all internal reports should be made.

9.4 Compliance Officers should keep a register of all reports made to the Joint Financial Intelligence Unit and all reports made to them by employees. Compliance Officers should provide employees with a written acknowledgement of reports made to them, which will form part of the evidence that the reports were made in compliance with the internal procedures.

9.5 All cases where an employee of an institution knows that a customer has engaged in drug-trafficking or other indictable offences and where the customer deposits, transfers or seeks to invest funds or obtains credit against the security of such funds, or where the institution holds funds on behalf of such customer, must promptly be reported to the Compliance Officer who, in turn, must immediately report the details to the Joint Financial Intelligence Unit.
9.6 All cases, where an employee of an institution suspects or has reasonable grounds to believe that a customer might have carried on drug trafficking or might have been engaged in indictable offences and where the customer deposits, transfers or seeks to invest funds or obtains credit against the security of such funds, or where the institution holds funds on behalf of such customer, must promptly be reported to the Compliance Officer. The Compliance Officer must promptly evaluate whether there are reasonable grounds for such belief and must then immediately report the case to the Joint Financial Intelligence Unit unless he considers, and records his opinion, that such reasonable grounds do not exist.

9.7 Institutions must take steps to ensure that all employees concerned with the holding, receipt, transmission or investment of funds (whether in cash or otherwise) or the making of loans against the security of such funds are aware of these procedures and that it is a criminal offence to fail to report either knowledge or circumstances which give rise to a reasonable belief in the existence of an offending act.

9.8 Institutions should make reports of suspicious transactions to the Joint Financial Intelligence Unit as soon as it is reasonable for them to do so. The use of a standard format for reporting is encouraged (see Annex 6 which sets out a reporting format acceptable to the Joint Financial Intelligence Unit). In the event that urgent disclosure is required, particularly when the account concerned is part of an on-going investigation, an initial notification should be made by telephone.

9.9 Institutions should refrain from carrying out transactions which they know or suspect to be related to money laundering until they have informed the Joint Financial Intelligence Unit which consents to the institution carrying out the transactions. Where it is impossible to refrain or if this is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation, institutions may carry out the transactions and notify the Joint Financial Intelligence Unit on their own initiative and as soon as it is reasonable for them to do so.

9.10 Cases do occur when an institution declines to open an account for an applicant for business, or refuses to deal with a request made by a non-account holder because of serious doubts about the good faith of the individual and concern about potential criminal activity. Institutions must base their decisions on normal commercial criteria and internal policy. However, to guard against money laundering, it is important to establish an audit trail for suspicious funds. Thus, where practicable, institutions are requested to seek and retain copies of relevant identification documents which they may obtain and to report the offer of suspicious funds to the Joint Financial Intelligence Unit.

9.11 Where it is known or suspected that a report has already been disclosed to the Joint Financial Intelligence Unit and it becomes necessary to make further enquiries of the customer, great care should be taken to ensure that the customer does not become aware that his name has been brought to the attention of the law enforcement agencies.

9.12 Following receipt of a disclosure and research by the Joint Financial Intelligence Unit, the information disclosed is allocated to trained financial investigation officers in the Police and
Customs and Excise Department for further investigation including seeking supplementary information from the institution making the disclosure, and from other sources. Discreet enquiries are then made to confirm the basis for suspicion.

9.13 Access to the disclosed information is restricted to financial investigating officers within the Police and Customs and Excise Department. In the event of a prosecution, production orders are obtained to produce the material for court. Section 26 of both the DTROP and the OSCO places strict restrictions on revealing the identity of the person making disclosure under section 25A. Maintaining the integrity of the relationship which has been established between law enforcement agencies and institutions is considered to be of paramount importance.

10. Feedback from the investigating authorities

10.1 The Joint Financial Intelligence Unit will acknowledge receipt of a disclosure made by an institution under section 25A of both the DTROP and the OSCO. If there is no imminent need for action e.g. the issue of a restraint order on an account, consent will usually be given for the institution to operate the account under the provisions of section 25A(2) of both the DTROP and the OSCO. An example of such a letter is given at Annex 7 to this Guideline.

10.2 Whilst there are no statutory requirements to provide feedback arising from investigations, the Police and Customs and Excise Department recognize the importance of having effective feedback procedures in place. The Joint Financial Intelligence Unit presently provides a service, on request, to a disclosing institution in relation to the current status of an investigation.

11. Staff education and training

11.1 Staff must be aware of their own personal legal obligations under the DTROP and the OSCO and that they can be personally liable for failure to report information to the authorities. They must be encouraged to co-operate fully with the law enforcement agencies and promptly to report suspicious transactions. They should be advised to report suspicious transactions to their institution's Compliance Officer even if they do not know precisely what the underlying criminal activity is or whether illegal activities have occurred.

11.2 It is, therefore, imperative that institutions introduce comprehensive measures to ensure that staff are fully aware of their responsibilities.

11.3 Institutions should therefore provide proper anti-money laundering training to their local as well as overseas staff. The timing and content of training packages for various sectors of staff will need to be adapted by individual institutions for their own needs. However, it is recommended that the following might be appropriate –

(a) New Employees

A general appreciation of the background to money laundering, the consequent need to be able to identify suspicious transactions and report such transactions to
the appropriate designated point within the institution, and the offence of "tipping off" should be provided to all new employees who will be dealing with customers or their transactions, irrespective of the level of seniority. They should be made aware of the legal requirement to report suspicious transactions relating to drug trafficking or other indictable offences, and that there is also a personal statutory obligation in this respect.

(b) Cashiers/Tellers/Foreign Exchange Operators/Advisory Staff

Members of staff who are dealing directly with the public are the first point of contact with potential money launderers and their efforts are therefore vital to the institution's strategy in the fight against money laundering. They should be made aware of their legal responsibilities and the institution's reporting system for such transactions. Training should be provided on factors that may give rise to suspicions and on the procedures to be adopted when a transaction is deemed to be suspicious. It is vital that "front-line" staff are made aware of the institution's policy for dealing with non-regular customers particularly where large cash transactions are involved, and the need for extra vigilance in these cases.

(c) Account Opening/New Client Personnel

Those members of staff who are in a position to deal with account opening, or to accept applicants for business, must receive the training given to cashiers etc. in (b) above. In addition, the need to verify the identity of the applicant must be understood, and training should be given in the institution's account opening and customer/client verification procedures. Such staff should be aware that the offer of suspicious funds or the request to undertake a suspicious transaction need to be reported to the relevant authorities whether or not the funds are accepted or the transactions proceeded with and they must know what procedures to follow in this respect.

(d) Administration/Operations Supervisors and Managers

A higher level of instruction covering all aspects of money laundering procedures should be provided to those with the responsibility for supervising or managing staff. This will include the offences and penalties arising from the DTROP and the OSCO; procedures relating to service of production and restraint orders; and the requirements for retention of records.

(e) On-going Training

It will also be necessary to make arrangements for refresher training at regular intervals to ensure that staff do not forget their responsibilities.
(f) Training Package

Institutions should acquire sufficient copies of the training video and booklet produced by the Hong Kong Association of Banks for the purpose of training front line staff. All front line staff who deal directly with customers should have a copy of the booklet and all new front line staff should view the video upon joining the institution.
Annex 1: Members of Financial Action Task Force

Argentina
Australia
Austria
Belgium
Brazil
Canada
Denmark
European Commission
Finland
France
Germany
Greece
Gulf Cooperation Council
Hong Kong, China
Iceland
Ireland
Italy
Japan
Luxembourg
Mexico
Netherlands
New Zealand
Norway
Portugal
Singapore
Spain
Sweden
Switzerland
Turkey
United Kingdom

Annex 2: Stock market of a country which is a member of FATF and which is a stock market recognised by the Securities and Futures Commission for the purposes of section 65A(2)(a) of the Securities Ordinance

Auckland Stock Exchange
American Stock Exchange
Amsterdam Stock Exchange
Australian Stock Exchange Limited
Brussels Stock Exchange
Copenhagen Stock Exchange
Frankfurt Stock Exchange
Luxembourg Stock Exchange
Milan Stock Exchange
Montreal Stock Exchange
National Association of Securities Dealers (USA)
New York Stock Exchange
Osaka Stock Exchange
Oslo Stock Exchange
Paris Bourse
Singapore Stock Exchange
Stockholm Stock Exchange
The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited
Toronto Stock Exchange
Tokyo Stock Exchange
Wellington Stock Exchange
Zurich Stock Exchange

Annex 4 : SWIFT BROADCAST OF 30 JULY 1992

As you will know, many countries are involved in initiatives to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, they are also considering additional preventive efforts in this field. SWIFT has now been asked by, and agreed with, the intergovernmental Money Laundering Financial Action Task Force to give the following notice to all SWIFT users and we would request you to follow this advice.

Ensure when you send MT 100 messages that:

1. (a) field 50 is completed with the name and address of the ordering customer or, when this is not possible, the account number, and
2. (b) field 59 is completed with the name, address and where possible the account number of the beneficiary customer.

Eric C Chilton
Chairman of the Board
S.W.I.F.T. sc

Annex 5 : EXAMPLES OF SUSPICIOUS TRANSACTIONS

1. Money Laundering Using Cash Transactions

   (a) Unusually large cash deposits made by an individual or company whose ostensible business activities would normally be generated by cheques and other instruments.

   (b) Substantial increases in cash deposits of any individual or business without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account and/or to a destination not normally associated with the customer.
(c) Customers who deposit cash by means of numerous credit slips so that the total of each deposit is unremarkable, but the total of all the credits is significant.

(d) Company accounts whose transaction, both deposits and withdrawals, are denominated in cash rather than the forms of debit and credit normally associated with commercial operations (e.g. cheques, Letters of Credit, Bills of Exchange, etc.).

(e) Customers who constantly pay-in or deposit cash to cover requests for bankers drafts, money transfers or other negotiable and readily marketable money instruments.

(f) Customers who seek to exchange large quantities of low denomination notes for those of higher denomination.

(g) Frequent exchange of cash into other currencies.

(h) Branches that have a great deal more cash transactions than usual. (Head Office statistics should detect aberrations in cash transactions.)

(i) Customers whose deposits contain counterfeit notes or forged instruments.

(j) Customers transferring large sums of money to or from overseas locations with instructions for payment in cash.

(k) Large cash deposits using night safe facilities, thereby avoiding direct contact with the institution.

(l) Purchasing or selling of foreign currencies in substantial amounts by cash settlement despite the customer having an account with the institution.

(m) Customers making large and frequent cash deposits but cheques drawn on the accounts are mostly to individuals and firms not normally associated with their retail business.

2. Money Laundering Using Bank Accounts

(a) Customers who wish to maintain a number of trustee or clients' accounts which do not appear consistent with their type of business, including transactions which involve nominee names.

(b) Customers who have numerous accounts and pay in amounts of cash to each of them in circumstances in which the total of credits would be a large amount.

(c) Any individual or company whose account shows virtually no normal personal banking or business related activities, but is used to receive or disburse large sums which have no obvious purpose or relationship to the account holder and/or his business (e.g. a substantial increase in turnover on an account).
(d) Reluctance to provide normal information when opening an account, providing minimal or fictitious information or, when applying to open an account, providing information that is difficult or expensive for the institution to verify.

(e) Customers who appear to have accounts with several institutions within the same locality, especially when the institution is aware of a regular consolidation process from such accounts prior to a request for onward transmission of the funds.

(f) Matching of payments out with credits paid in by cash on the same or previous day.

(g) Paying in large third party cheques endorsed in favour of the customer.

(h) Large cash withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit from abroad.

(i) Customers who together, and simultaneously, use separate tellers to conduct large cash transactions or foreign exchange transactions.

(j) Greater use of safe deposit facilities by individuals. The use of sealed packets deposited and withdrawn.

(k) Companies' representatives avoiding contact with the branch.

(l) Substantial increases in deposits of cash or negotiable instruments by a professional firm or company, using client accounts or in-house company or trust accounts, especially if the deposits are promptly transferred between other client company and trust accounts.

(m) Customers who decline to provide information that in normal circumstances would make the customer eligible for credit or for other banking services that would be regarded as valuable.

(n) Large number of individuals making payments into the same account without an adequate explanation.

(o) Customers who maintain an unusually large number of accounts for the type of business they are purportedly conducting and/or use inordinately large number of fund transfers among these accounts.

(p) High velocity of funds through an account, i.e., low beginning and ending daily balances, which do not reflect the large volume of dollars flowing through an account.

(q) Multiple depositors using a single bank account.
(r) An account opened in the name of a money changer that receives structured deposits.

(s) An account operated in the name of an off-shore company with structured movement of funds.

3. Money Laundering Using Investment Related Transactions

(a) Purchasing of securities to be held by the institution in safe custody, where this does not appear appropriate given the customer's apparent standing.

(b) Back to back deposit/loan transactions with subsidiaries of, or affiliates of, overseas financial institutions in known drug trafficking areas.

(c) Requests by customers for investment management services (either foreign currency or securities) where the source of the funds is unclear or not consistent with the customer's apparent standing.

(d) Larger or unusual settlements of securities transactions in cash form.

(e) Buying and selling of a security with no discernible purpose or in circumstances which appear unusual.

4. Money Laundering Involving Off-Shore International Activity

(a) Customers introduced by an overseas branch, affiliate or other bank based in countries where production of drugs or drug trafficking may be prevalent.

(b) Use of Letters of Credit and other methods of trade finance to move money between countries where such trade is not consistent with the customer's usual business.

(c) Customers who make regular and large payments, including wire transactions, that cannot be clearly identified as bona fide transactions to, or receive regular and large payments from, countries which are commonly associated with the production, processing or marketing of drugs.

(d) Building up of large balances, not consistent with the known turnover of the customer's business, and subsequent transfer to account(s) held overseas.

(e) Unexplained electronic fund transfers by customers on an in and out basis or without passing through an account.

(f) Frequent requests for travellers cheques, foreign currency drafts or other negotiable instruments to be issued.

(g) Frequent paying in of travellers cheques, foreign currency drafts particularly if originating from overseas.
(f) Numerous wire transfers received in an account but each transfer is below the reporting requirement in the remitting country.

(g) Customers sending and receiving wire transfer to/from financial haven countries, particularly if there are no apparent business reasons for such transfers or such transfers are not consistent with the customers' business or history.

5. Money Laundering Involving Authorized Institution Employees and Agents

(a) Changes in employee characteristics, e.g. lavish life styles.

(b) Any dealing with an agent where the identity of the ultimate beneficiary or counterparty is undisclosed, contrary to normal procedure for the type of business concerned.

6. Money Laundering by Secured and Unsecured Lending

(a) Customers who repay problem loans unexpectedly.

(b) Request to borrow against assets held by the institution or a third party, where the origin of the assets is not known or the assets are inconsistent with the customer's standing.

(c) Request by a customer for an institution to provide or arrange finance where the source of the customer's financial contribution to a deal is unclear, particularly where property is involved.

(d) A customer who is reluctant or refuses to state a purpose of a loan or the source of repayment, or provides a questionable purpose and/or source.

Annex 8

Particulars to be recorded for any remittance or money changing transaction undertaken for a non-account holder for an amount of HK$20,000 or more or of an equivalent amount in any other currency. Outward remittance to a place outside Hong Kong

1. Transaction reference number
2. Transaction type, currency, amount and value date of the remittance
3. Date of remitter's instructions
4. Instruction details (including name, address and account number of beneficiary, name and address of beneficiary bank, and remitter’s message to beneficiary, if any)
5. Name, identity card number (or any other document of identity or travel document number with place of issue) of remitter or his representative must be verified if he appears in person
6. Telephone number and address of remitter
Inward remittance from a place outside Hong Kong

1. Transaction reference number
2. Transaction type, currency, amount and value date of the remittance
3. Date of remitter’s instructions
4. Instruction details (including name and address of beneficiary, name and address of remitter and remitting bank, and remitter’s message to beneficiary, if any)
5. Name and identity card number (or any other document of identity or travel document number with place of issue) of beneficiary which must be verified where the beneficiary appears in person

Money changing transactions

1. Transaction reference number
2. Date and time of transaction
3. Currencies and amount exchanged
4. Exchange rate
5. Name, identity card number (or any other document of identity or travel document number with place of issue) of customer which must be verified
6. Telephone number and address of customer

# The HKMA recognizes that certain information, in particular, the remitter’s address in an inward remittance and the beneficiary’s address and account number in an outward remittance may not be available to the receiving bank and remitting bank respectively. However, AIs should, on a best effort basis, obtain and record such information as far as possible.

PROVIDING FEEDBACK TO REPORTING FINANCIAL INSTITUTIONS AND OTHER PERSONS
BEST PRACTICE GUIDELINES

I. INTRODUCTION

The importance of providing appropriate and timely feedback to financial and other institutions which report suspicious transactions has been stressed by industry representatives and recognised by the financial intelligence units (FIU) which receive such reports. Indeed, such information is valuable not just to those institutions, but also to their associations, to law enforcement and financial regulators and to other government bodies. However, the provision of general and specific feedback has both practical and legal implications which need to be taken into account.

2. It is recognised that ongoing law enforcement investigations should not be put at risk by disclosing inappropriate feedback information. Another important consideration is that some countries have strict secrecy laws which prevent their financial intelligence unit from disclosing any significant amount of feedback, or that more general privacy laws limit the feedback which can be given. However, those agencies which receive suspicious transaction reports should endeavour to design feedback mechanisms and procedures which are appropriate to their laws and administrative systems, which take into account such practical and legal limitations, and yet seek to provide an appropriate level of feedback. The limitations should not be used as an excuse to avoid providing feedback, though they may provide good reasons for using these guidelines in a flexible way so as to provide adequate levels of feedback for reporting institutions.

3. Based on the types and methods of feedback currently provided in a range of FATF member countries, this set of best practice guidelines will consider why providing feedback is necessary and important. The guidelines illustrate what is best practice in providing general feedback on money laundering and the results of suspicious transaction reports by setting out the different types of feedback and other information which could be provided and the methods for providing such feedback. The guidelines also address the issue of specific or case by case feedback and the conflicting considerations which affect the level of specific feedback which is provided in each country. The suggestions contained herein are not mandatory requirements, but are meant to provide assistance and guidance to financial intelligence units, law enforcement and other government bodies which are involved in the receipt, analysis and investigation of suspicious transaction reports, and in the provision of feedback on those reports.
II. WHY IS FEEDBACK ON SUSPICIOUS TRANSACTION REPORTS NEEDED

4. The reporting of suspicious transactions by banks, non-bank financial institutions, and in some countries, other entities or persons, is now regarded as an essential element of the anti-money laundering program for every country. Recommendation 15 of the FATF forty Recommendations states:

“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.”

5. Almost all FATF members have now implemented a mandatory system of reporting suspicious transactions, though the precise extent and form of the obligation varies from country to country. The requirement under Recommendation 15 is also supplemented by several other recommendations such as financial institutions and their staff should receive protection from criminal or civil liability for reports made in good faith (Recommendation 16), customers must not be tipped off about reports (Recommendation 17), and financial institutions should comply with instructions from the competent authorities in relation to reports (Recommendation 18).

6. It is recognised that measures to counter money laundering will be more effective if government ministries and agencies work in partnership with the financial sector. In relation to the reporting of suspicious transactions an important element of this partnership approach is the need to provide feedback to institutions or persons which report suspicious transactions. Financial regulators will also benefit from receiving certain feedback. There are compelling reasons why feedback should be provided:

- it enables reporting institutions to better educate their staff as to the transactions which are suspicious and which should be reported. This leads staff to make higher quality reports which are more likely to correctly identify transactions connected with criminal activity;

- it provides compliance officers of reporting institutions with important information and results, allowing them to better perform that part of their function which requires them to filter out reports made by staff which are not truly suspicious. The correct identification of transactions connected with money laundering or other types of crime allows a more efficient use of the resources of both the financial intelligence unit and the reporting institution;

- it also allows the institution to take appropriate action, e.g. to close the customer’s account if he is convicted of an offence, or to clear his name if an investigation shows that there is nothing suspicious;

- it can lead to improved reporting and investigative procedures, and is often of benefit to the supervisory authorities which regulate the reporting institutions; and

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1 In some jurisdictions the obligation is to report unusual transactions, and these guidelines should be read so as to include unusual transactions within any references to suspicious transactions, where appropriate.
feedback is one of the ways in which government and law enforcement can contribute to the partnership with the financial sector, and it provides information which demonstrates to the financial sector that the resources and effort committed by them to reporting suspicious transactions are worthwhile, and results are obtained.

7. In many countries the obligation to report suspicious transactions only applies to financial institutions. Moreover, the experience in FATF members in which an obligation to report also applies to non-financial businesses or to all persons is that the vast majority of suspicious transactions reports are made by financial institutions, and in particular by banks. In recent years though, money laundering trends suggest that money launderers have moved away from strongly regulated institutions with higher levels of internal controls such as banks, towards less strongly regulated sectors such as the non-bank financial institution sector and non-financial businesses. In order to promote increased awareness and co-operation in these latter sectors, FIUs need to analyse trends and provide feedback on current trends and techniques to such institutions and businesses if a comprehensive anti-money laundering strategy is to be put in place. The empirical evidence suggests that where there is increased feedback to, and co-operation with, these other sectors, this leads to significantly increased numbers of suspicious transaction reports.

III. GENERAL FEEDBACK

(i) Types of feedback

8. Several forms of general feedback are currently provided, at both national and international levels. The type of feedback and the way in which it is provided in each country may vary because of such matters as obligations of secrecy or the number of reports being received by the FIU, but the following types of feedback are used in several countries:

   (a) statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures;
   (b) information on current techniques, methods and trends (sometimes called “typologies”); and
   (c) sanitised examples of actual money laundering cases.

9. The underlying information on which general feedback can be based is either statistics relating to the number of suspicious transaction reports and the results achieved from those reports, or cases or investigations involving money laundering (whether or not the defendant is prosecuted for a money laundering offence or for the predicate offences). As these cases or investigations could result from a suspicious transaction report or from other sources of information, it is important that those agencies which provide feedback ensure that all relevant examples are included in the feedback they provide. It is also important that all relevant authorities, together with the reporting institutions, agree on the contents and form of sanitised cases, so as to prevent any subsequent difficulties to any institution or agency. It would also be beneficial if certain types of feedback, such as sanitised cases, are widely distributed, so that the benefits of this feedback are not restricted to the reporting institutions in that particular country.
(a) Statistics

What types of statistics should be made available?

10. Statistical information could be broken into at least two categories: (a) that which relates to the reports received and the breakdowns that can be made of this information, and (b) that which relates to reports which lead to or assist in investigations, prosecutions or confiscation action. Examples of the types of statistics which could be retained are:

- Category (a) - detailed information on matters such as the number of suspicious transaction reports, the number of reports by sector or institution, the monetary value of such reports and files, and the geographic areas from which cases have been referred. Information could also be retained to give a breakdown of the types of institutions which reported and the types of transactions involved in the transactions reported.

- Category (b) - information on the investigation case files opened, the number of cases closed, and cases referred to the prosecution authorities. Breakdowns could also be given of the year in which the report was made, the types of crimes involved and the amount of money, as well as the nationality of the parties involved and which of the three stages of a money laundering operation (placement, layering or integration) the case related to. Where appropriate, statistics could also be kept on the reports which have a direct and positive intelligence value, and an indication given of the value of those reports. This is because reports which do not lead directly to a money laundering prosecution can still provide valuable information which may lead to prosecutions or confiscation proceedings at a later date (see paragraph 18).

11. A cross referencing of the different breakdowns of category (a) information with the types of results achieved under category (b) should enable FIUs and reporting institutions to identify those areas where reporting institutions are successfully identifying money laundering and other criminal activity. It would also identify, for example, those areas where institutions are not reporting or are reporting suspicions which lead to below average results. As such it would be a valuable tool for all concerned. However, as with any statistics, care needs to be taken in their interpretation, and in the weight that is accorded to each statistic. In order to extract the desired statistics efficiently it is of course necessary that the suspicious transaction report form, whether it is sent on paper or on-line, is designed to allow the appropriate breakdowns to be made. Given the difficulties that many countries have in gathering and analysing statistics, it is essential that the amount of human resources required for this task are minimised, and that maximum use is made of technology, even if this initially requires capital expenditure or other resource inputs.

How often should statistics be published?

12. Statistics are the most commonly provided form of feedback, and are usually included in annual reports or regular newsletters, such as those published by FIUs. Having regard to the resource implications of collecting and providing statistics, and to the other types of feedback
available, the publication of an annual set of comprehensive statistics should provide adequate feedback in most countries.

13. It is recommended that:

- statistics are kept on the suspicious transaction reports received and on the results obtained from those reports, and that appropriate breakdowns are made of the available information;
- the statistics on the reports received are cross referenced with the results so as to identify areas where money laundering and other criminal activity is being successfully detected;
- technological resources are used to their maximum potential; and
- comprehensive statistics are published at least once a year.

(b) Current techniques, methods and trends

14. The description of current money laundering techniques and methods will be largely based on the cases transmitted to the prosecution authorities, and the division of such cases into the three stages of money laundering can make it easier to differentiate between the different techniques used, though it must of course be recognised that it is often difficult to categorically state that a transaction falls into one stage or another. If new methods or techniques are identified these should be described and identified, and reporting institutions advised of such methods as well as current money laundering trends. Information on current trends will be derived from prosecutions, investigations or the statistics referred to above, and could usefully be linked with those statistics. An accurate description of current trends will allow financial institutions to focus on areas of current risk and also future potential risk.

15. In addition to any reports that are prepared by national FIUs, there are a number of international organisations or groups which also prepare a report of trends and techniques, or hold an exercise to review such trends. The FATF holds an annual typologies exercise where law enforcement and regulatory experts from FATF members, as well as delegates from relevant observer organisations review and discuss current trends and future threats in relation to money laundering. A public report is then published which reviews the conclusions of the experts and the trends and techniques in FATF members and other countries, as well as considering a special topic in more detail. This report is available from the FATF or at the FATF Website (http://www.oecd.org/fatf/). In addition, Interpol publishes regular bulletins which contain sanitised case examples.

16. Other international groups such as the Asia/Pacific Group on Money Laundering, the Caribbean Financial Action Task Force (CFATF), and the Organisation of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD) are holding or will also hold typologies exercises which could provide further information on the trends and techniques that are being used to launder money in the regions concerned. International trends could usefully be extracted and included in feedback supplied by national FIUs where they are particularly relevant, but in relation to more general information, reporting institutions should
simply be made aware of how they can access such reports if they wish to. This will help to avoid information overload.

17. It is recommended that:

- new money laundering methods or techniques, as well as trends in existing techniques are described and identified, and that financial and other institutions are advised of these trends and techniques;
- feedback on trends and techniques published by international bodies be extracted and included in feedback supplied by national FIUs only if it is particularly relevant, but that reporting institutions are made aware of how to access such reports.

(c) Sanitised cases

18. This type of feedback is sometimes regarded by financial sector representatives as even more valuable than information on trends. Sanitised cases\(^1\) are very helpful to compliance officers and front line staff, since they provide detailed examples of actual money laundering and the results of such cases, thus increasing the awareness of front line staff. Two examples of methods used to distribute this type of feedback are a quarterly newsletter and a database of sanitised cases. Both methods provide a set of sanitised cases which summarise the facts of the case, the inquiries made, and a brief summary of the results. A short section drawing out the lessons to be learnt from the case is also provided in the database. The length of the description of each case could vary from a paragraph outlining the case through to a longer and more detailed summary.

19. Care and consideration needs to be taken in choosing appropriate cases and in their sanitisation, in order to avoid any legal ramifications. In the countries which use such feedback, the examples used are generally cases which have been completed, either because the criminal proceedings are concluded or because the report was not found to be justified. Inclusion of cases where the report was unfounded can be just as helpful as those where the subject of the report was convicted of money laundering.

20. It is recommended that sanitised cases be published or made available to reporting institutions, and that each sanitised case could include:

- a description of the facts;
- a brief summary of the result of the case;
- where appropriate, a description of the inquiries made by the FIU; and
- a description of the lessons to be learnt from the reporting and investigative procedures that were adopted in the case. Such lessons can be helpful not only to financial institutions and their staff, but also to law enforcement investigators.

(ii) Other information which could be provided

\(^1\) Sanitised cases are cases which have had all specific identifying features removed.
21. In addition to general feedback of the types referred to above, there are other types of information which can be distributed to financial and other institutions using the same methods. Often this information is provided in guidance notes or annual reports, but it provides essential background information for the staff of reporting institutions, and also keeps them up to date on current issues. Examples of such other information include:

- an explanation of why money laundering takes place, a description of the money laundering process and the three stages of money laundering, including practical examples;
- an explanation of the legal obligation to report, to whom it applies and the sanctions (if any) for failing to report;
- the procedures and processes by which reports are made, analysed, and investigated, and by which feedback is provided. This allows FIUs to provide information on matters such as the length of time it can take for a criminal proceeding to be finalised or to explain that even though not every report results in a prosecution for money laundering, the report could be used as evidence or intelligence which contributes to a prosecution for a criminal offence, or provides other valuable intelligence information;
- a summary of any legislative changes that may have been recently made in relation to the reporting regime or money laundering offences;
- a description of current and/or future challenges for the FIU.

(iii) Feedback Methods

22. *Written Feedback* - As noted above, two of the most popular methods of providing general feedback are through annual reports and regular newsletters or circulars. As noted above, annual reports could usefully contain sets of statistics and a description of money laundering trends. A short (for example, four page) newsletter or circular which is published on a regular basis two or four times a year provides continuity of contact with reporting institutions. It could contain sanitised cases, legislative updates or information on current issues or money laundering methods.

23. *Meetings* - There are a range of other ways in which feedback is provided to the bodies or persons who report. Most FIU provide such feedback through face to face meetings with financial institutions, either for a specific institution and its staff, or for a broader range of institutions. Seminars, conferences and workshops are commonly used to provide training for financial institutions and their staff, and this provides a forum in which feedback is provided as part of the training and education process. Several countries have also established working or liaison groups combining the FIU which receives the reports and representatives of the financial sector. These groups can also include the financial regulator or representatives of law enforcement agencies, and provide a regular channel of communication through which feedback and other topics such as reporting procedures, can be discussed. Finally, staff of FIUs could use meetings with individual compliance officers as an opportunity to provide general feedback.
24.  **Video** - many countries and financial institutions or their associations have published an educational video as part of their overall anti-money laundering training and education process. Such a method of communication provides an opportunity for direct feedback to front line staff and could include material on sanitised cases, money laundering methods and other information.

25.  **Electronic information systems** - obtaining information from Websites, other electronic databases or through electronic message systems has the advantage of speed, increased efficiency, reduced operating costs and better accessibility to relevant information. While the need for appropriate confidentiality and security must be maintained, consideration should be given to providing increasing feedback through a password protected or secure Website or database, or by electronic mail.

26.  When deciding on the methods of general feedback that are to be used, each country will have to take into account the views of the reporting institutions as to degree to which reporting of suspicious or unusual transactions should be made public knowledge. For example, in some countries, the banks have no objection to sanitised cases becoming public information, in part because of the objective and transparent nature of the reporting system. However, in other countries, financial institutions would like to receive this type of feedback, but do not want it made available to the public as a whole. Such differing views mean that slightly different approaches may need to be taken in each country.

### IV. SPECIFIC OR CASE BY CASE FEEDBACK

27.  Reporting institutions and their associations welcome prompt and timely information on the results of reports of suspicious transactions, not only so they can improve the processes of their member institutions for identifying suspicious transactions, but also so they can take appropriate action in relation to the customer. There is concern that by keeping a customer’s account open after a suspicious transaction report has been made the institution may be increasing its vulnerability with respect to monies owed to them by the customer. However specific feedback is much more difficult to provide than general feedback, for both legal and practical reasons.

28.  One of the primary concerns is that ongoing law enforcement investigations should not be put at risk by providing specific feedback information to the reporting institution at a stage prior to the conclusion of the case. Another practical concern is the question of the resource implications and the best and most efficient method for providing such feedback, which will often depend on the amount of reports received by the FIU. Legal issues in some countries relate to strict secrecy laws which prevent the FIU from disclosing specific feedback, or concern general privacy laws which limit the feedback which can be provided. Finally, financial institutions are also concerned about the degree to which such feedback becomes public knowledge, and the need to ensure the safety of their staff and protect them from being called as witnesses who have to give evidence in court concerning the disclosure. This was dealt with in one country by a specific legislative amendment which prohibits suspicious transaction reports being put in evidence or even referred to in court.
29. Given these limitations and concerns, current feedback information provided by receiving agencies to reporting institutions on specific cases is more limited than general feedback. The only information which appears to be provided in most countries is an acknowledgement of receipt of the suspicious transaction report. In some countries this is provided through an automatic, computer generated response, which would be the most efficient method of responding. The other form of specific feedback which is relied on in many countries is informal feedback through unofficial contacts. Often this is based on the police officer or prosecutor who is investigating the case following up the initial report, and serving the reporting institution with a search warrant, or some other form of compulsory court order requiring further information to be produced. Although this gives the institution some further feedback information, it will only be interim information not showing the result of the case, and the institution is left uncertain as to then it will receive this information.

30. Depending on the degree to which the practical and legal considerations referred to in paragraph 28 apply in each country, other types of specific feedback are provided – this includes regular advice on cases that are closed, information on whether a case has been passed on for investigation and the name of the investigating police officer or district, and advice on the result of a case when it is concluded. In most countries, feedback is not normally provided during the pendency of any investigation involving the report.

31. Having regard to current practice and the concerns identified above, and taking into account the requirements imposed by any national secrecy or privacy legislation, and subject to other limitations such as risk to the investigation and resource implications, it is recommended that whenever possible, the following specific feedback is provided (and that time limits could also be determined by appropriate authorities so that it is assured that the feedback is timely), namely that:

   a) receipt of the report should be acknowledged by the FIU;

   b) if the report will be subject to a fuller investigation, the institution could be advised of the agency that will investigate the report, if the agency does not believe this would adversely affect the investigation; and

   c) if a case is closed or completed, whether because of a concluded prosecution, because the report was found to relate to a legitimate transaction or for other reasons, then the institution should receive information on that decision or result;

V. CONCLUSION

32. In relation to both specific and general feedback, it is necessary that an efficient system exists for determining whether the report led or contributed to a positive result, whether by way of prosecution or confiscation, or through it’s intelligence value. Whatever the administrative structure of the government agencies involved in collecting intelligence or investigating and prosecuting criminality it is essential that whichever agency is responsible for providing feedback receives the information and results upon which that feedback is based. If the FIU
which receives the report is the body responsible, this will usually require the investigating officers or the prosecutor to provide the FIU with feedback on the results in a timely and efficient way. One method of efficiently achieving this could be through the use of a standard reporting form, combined with a set distribution list. Failure to provide such information will make the feedback received by reporting institutions far less accurate or valuable.

33. It is clear that there is considerable diversity in the volume, types and methods of general and specific feedback currently being provided. The types and methods of feedback are undoubtedly improving, and many countries are working closely with their financial sectors to try to increase the amount of feedback and reduce any limitations, but it is clear that the provision of feedback is still at an early stage of development in most countries. Further co-operative exchange of information and ideas is thus necessary for the partnership between FIUs, law enforcement and the financial sector to work more effectively, and for countries to provide not only an increased level of feedback, but also where feasible, greater uniformity.

2 June 1998
V. LAW ENFORCEMENT AND MUTUAL ASSISTANCE

Introduction

This Section focuses on law enforcement aspects of money laundering. Owing to the unique features and techniques used in combating money laundering and the financing of terrorism, it is essential that law enforcement activities in this area be strengthened considerably to equip government officials (the police, prosecutors, judges and lawyers) in investigating and prosecuting money laundering.

Thus, this Section includes information and guidance on the establishment and operation of specialized financial intelligence units (FIUs) to strengthen governments’ efforts in combating money laundering and the financing of terrorism. Furthermore, in view of the transnational features of money laundering and the financing of terrorism, mainly the movement of money across national boundaries, international mutual assistance and cooperation in combating these financial crimes is critically important. To this end, this Section includes some examples of mutual assistance arrangements, including model mutual assistance and foreign evidence bills, that could be considered. The texts of the documents were prepared by the Egmont Group and the United Nations and are taken from their websites and reproduced here with their consent.
The Egmont Group of Financial Intelligence Units: Statement of Purpose

STATEMENT OF PURPOSE
of the Egmont Group of Financial Intelligence Units

The Hague, 13 June 2001

Recognising the international nature of money laundering;

Realising that in order to counter money laundering an increasing number of governments around the world have both imposed disclosure obligations on financial institutions and designated financial intelligence units, or "FIUs," to receive; analyse, and disseminate to competent authorities such disclosures of financial information;

Mindful of both the sensitive nature of disclosures of financial information and the value of the FIUs established to protect their confidentiality, analyse them, and refer them, as appropriate, to the competent authorities for investigation, prosecution, or trial;

Convinced that co-operation between and among FIUs across national borders both increases the effectiveness of individual FIUs and contributes to the success of the global fight against money laundering;

Understanding that effective international co-operation between and among FIUs must be based on a foundation of mutual trust;

Acknowledging the important role of international organisations and the various traditional national government agencies - such as Finance and Justice ministries, the police, and financial institution supervisory agencies - as allies in the fight against money laundering;

Having periodically convened plenary gatherings - known as Egmont Group Meetings\(^1\) - to discuss issues common to FIUs and to foster such international co-operation among established FIUs, to assist and advise FIUs under development, and to co-operate with representatives of other government agencies and international organisations interested in the international fight against money laundering;

Having also agreed upon a definition of "Financial Intelligence Unit," completed a survey on the possibilities and modalities of information exchange, prepared a model Memorandum of Understanding for the exchange of information, created a secure Internet Web-site to facilitate information exchanges, and embarked upon several specific initiatives to develop the expertise and skills of the FIUs' staffs and to contribute to the successful investigation of matters within the FIUs' jurisdiction;

\(^1\) Named after the Egmont-Arenberg palace in Brussels where the first such meeting was held on 9 June 1995.
Aware that obstacles continue to limit information exchange and effective co-operation between some FIUs, and that those obstacles may include legal restrictions and/or the very nature of the FIUs themselves (- as administrative, judicial, or police); and

Convinced that there exists both significant potential for broad-based international co-operation among the FIUs and a critical need to enhance such co-operation,

The FIUs participating in the Egmont Group hereby resolve to encourage the development of FIUs and co-operation among and between them in the interest of combating money laundering.

To that end, we reaffirm our accession to the definition of Financial Intelligence Unit adopted at the plenary meeting of the Egmont Group in Rome in November 1996:

"A central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information

   (i) concerning suspected proceeds of crime, or

   (ii) required by national legislation or regulation, in order to counter money laundering."

We also adopt the findings of the legal working group concerning the identification of those agencies that meet the FIU definition at the present time.

Henceforth, we agree that Egmont Group plenary meetings shall be convened by and for FIUs and other invited persons or agencies who are in a position to contribute to the goals of the Egmont Group. Egmont Group Participants shall include FIUs and other agencies representing governments that do not presently have FIUs. All other invited persons, agencies or international organisations shall be considered "Observers."

We believe it is crucial to develop a network of information exchange on the basis of the "Principles of Information Exchange Between Financial Intelligence Units for Money Laundering Cases" as set forth in the Annex and incorporated herein by this reference.

We recognise the right of every FIU to subject co-operation to additional conditions as required by its national legislation.

We further agree to pursue as a priority, through the appropriate working groups and otherwise:

   Determination of appropriate consequences that attend to an Egmont Group Participant's status with respect to the definition of FIU adopted in Rome;

   Development of FIUs in governments around the world;
   Further stimulation of information exchange on the basis of reciprocity or mutual agreement;
Access to the Egmont Secure Web-site for all FIUs;
Continued development of training opportunities, regional/operational workshops, and personnel exchanges;
Consideration of a formal structure to maintain continuity in the administration of the Egmont Group, as well as consideration of a regular frequency and location for plenary meetings;
Articulation of more formal procedures by which decisions as to particular agencies' status vis-a-vis the FIU definition are to be taken;
Designation of additional working groups, as necessary;
Development of appropriate modalities for the exchange of information;
Creation of Egmont Group sanctioned materials for use in presentations and communication to public audiences and the press about Egmont Group matters.


A. Introduction

1. The Egmont Group works to foster the development of Financial Intelligence Units ("FIUs")\(^1\) and information exchange.

2. The Egmont Group agreed in its Statement of Purpose, adopted in Madrid on 24 June 1997, to pursue among its priorities the stimulation of information exchange and to overcome the obstacles preventing cross-border information sharing.

3. Information-sharing arrangements should have the aim of fostering the widest possible co-operation between FIUs.

4. The following principles for information exchange among FIUs are meant to outline generally-shared concepts, while allowing countries necessary flexibility.

B. General Framework

5. International co-operation between FIUs in cases involving money laundering should be encouraged and based upon a foundation of mutual trust.

6. FIUs should take steps to seek information that may be used by other, identified, domestic law enforcement or financial supervisory agencies engaged in enforcement and related regulatory activities related to money laundering.

\(^1\) See definition in the Egmont Group "Statement of Purpose".
7. FIUs should work to encourage that national legal standards and privacy laws are not conceived so as to inhibit the exchange of information, in accordance with these principles, between or among FIUs.

8. Information-sharing arrangements must recognize and allow room for case-by-case solutions to specific problems.

C. Conditions for the Exchange of Information

9. FIUs should be able to exchange information freely with other FIUs on the basis of reciprocity or mutual agreement and consistent with procedures understood by the requested and requesting party. Such exchange, either upon request or spontaneously, should produce any available information that may be relevant to an analysis or investigation of financial transactions and other relevant information related to money laundering and the persons or companies involved.

10. An FIU requesting information should disclose, to the FIU that will process the request, at a minimum the reason for the request, the purpose for which the information will be used and enough information to enable the receiving FIU to determine whether the request complies with its domestic law.

D. Permitted Uses of Information

11. Information exchanged between FIUs may be used only for the specific purpose for which the information was sought or provided.

12. The requesting FIU may not transfer information shared by a disclosing FIU to a third party, nor make use of the information in an administrative, investigative, prosecutorial, or judicial purpose without the prior consent of the FIU that disclosed the information.

E. Confidentiality - Protection of Privacy

13. All information exchanged by FIUs must be subjected to strict controls and safeguards to ensure that the information is used only in an authorized manner, consistent with national provisions on privacy and data protection. At a minimum, exchanged information must be treated as protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the receiving FIU.
The Egmont Group of Financial Intelligence Units: Information Paper

INFORMATION PAPER
On Financial Intelligence Units
And the Egmont Group

Background

For nearly ten years now, the fight against money laundering has been an essential part of the overall struggle to combat illegal narcotics trafficking and the activities of organised crime. During that time, the key issue involved in the anti-money laundering effort has been ensuring that the critical piece or pieces of information make it to the right people - the investigators and prosecutors charged with putting criminals behind bars and taking their illegally obtained wealth away - in a timely and useful manner.

The information needed to support anti-money laundering investigations often involves a wide range of human activity beyond that based purely on criminal motivation. Countering money laundering effectively requires not only knowledge of laws and regulations, investigation, and analysis, but also of banking, finance, accounting and other related economic activities. Money laundering is after all an economic phenomenon; launderers rely to a certain extent on already existing financial and business practices (and the lack of understanding of these by the law enforcement community) as a way of hiding illegally obtained funds.

Anti-money laundering investigations conceivably touch a number of law enforcement agencies within a particular jurisdiction. This along with the fact of ever-present resource limitations means that a completely effective, multi-disciplined approach for combating money laundering is often beyond the reach of any single law enforcement or prosecutorial authority. In many cases, there is also a reluctance on the part of financial institutions to provide to government authorities information that might be related to but is not obviously indicative of a crime. One may add to these restrictions on information exchange in certain instances, the unwillingness or inability to share such information among relevant government agencies and the seemingly insurmountable obstacles to rapid exchanges of information with foreign counterparts.

All of these barriers to information exchange directly affect the outcome of anti-money laundering investigations. The crime of money laundering may not become completely obvious until many or all of the pieces are put together. Since money may transfer hands in a matter of seconds or be relocated to the other side of the world at the speed of an electronic wire transfer, law enforcement and prosecutorial agencies that investigate money laundering must be able to count on a virtually immediate exchange of information. This information exchange must also be at an early point after possible detection of a crime - the so-called "pre-investigative" or intelligence stage. At the same time, the information on innocent individuals and businesses must be protected from potential misuse by government authorities.
The FIU Concept

Over the past years, a number of specialised governmental agencies have been created as countries develop systems to deal with the problem of money laundering. These entities are commonly referred to as "financial intelligence units" or "FIUs". These units have attracted increasing attention with their ever more important role in anti-money laundering programmes, that is, they seem to provide the possibility of rapidly exchanging information (between financial institutions and law enforcement / prosecutorial authorities, as well as between jurisdictions), while protecting the interests of the innocent individuals contained in their data.

The creation of FIUs has been shaped by two major influences:

- **Law Enforcement**: Most countries have implemented anti-money laundering measures alongside already existing law enforcement systems. Certain countries, due to their size and perhaps the inherent difficulty in investigating money laundering, felt the need to provide a "clearinghouse" for financial information. Agencies created under this impetus were designed, first and foremost, to support the efforts of multiple law enforcement or judicial authorities with concurrent or sometimes competing jurisdictional authority to investigate money laundering.

- **Detection**: Through the Financial Action Task Force 40 Recommendations and other regional initiatives (European Union and the Council of Europe in Europe; CFATF and OAS/CICAD in the Western Hemisphere), the concept of suspicious transaction disclosures has become a standard part of money laundering detection efforts. In creating transaction disclosure systems, some countries saw the logic in centralising this effort in a single office for receiving, assessing and processing these reports. FIUs established in this way often also play the role of a "buffer" between the private financial sector and law enforcement and judicial/prosecutorial authorities. With the FIU serving as the honest broker between the
private and government sectors, this arrangement has, in many cases, fostered a greater amount of trust in the anti-money laundering system as a whole.

Over time, FIUs in the first category have tended to add the disclosure receiving function to their list of attributions. Regulatory or oversight authority (with regard to anti-money laundering matters) has also increasingly become a function of a number of FIUs. Since disclosing requirements necessitate that the receiving agency deal with the disclosing institution, it is only logical that some FIUs then become a primary force in working with the private sector to find ways to perfect anti-money laundering systems.

Beginning of the Egmont Group

Despite the fact that FIUs were created in several jurisdictions throughout the world during the first years of the 1990s, their creation was still at first seen as isolated phenomena related to the specific needs of those jurisdictions establishing them. Since 1995, a number of FIUs began working together in an informal organisation known as the Egmont Group (named for the location of the first meeting at the Egmont-Arenberg Palace in Brussels). The goal of the Group is to provide a forum for FIUs to improve support to their respective national anti-money laundering programmes. This support includes expanding and systematising the exchange of financial intelligence information, improving expertise and capabilities of personnel of such organisations, and fostering better communication among FIUs through application of technology.

Egmont Meetings at a Glance

The first meeting of the Egmont Group was the culmination of several years of intensive national and international anti-money laundering effort. A number of documents - the United Nations "Vienna Convention\(^1\)", the Group of Ten "Basle Statement of Principles\(^2\)", and most notably the Financial Action Task Force on money laundering (FATF) "Forty Recommendations" - had spurred more international co-operation in this area. As FIUs were created during the past seven years, they have become more visible in representing their respective nations at international anti-money laundering conferences and seminars. It was through informal contacts made between FIU representatives at various FATF functions that an interest was established for a meeting of such organisations.

Although differing in size, structure, and individual responsibilities, all FIUs share a common purpose in the fight against money laundering. The goal of Egmont, therefore, has been to seek ways to develop among participants a more effective and practical co-operation, especially in the areas of information exchange and sharing of expertise. Examination of these and other issues was carried forward to the second Egmont Group meeting in Paris (30 November 1995) and then to the third meeting in San Francisco (22-23 April 1996) by working groups established at the close of the original conference in Brussels. These working groups are focused on three major areas: legal matters, technology, and training.

\(^1\) United Nations Convention Against Illicit Traffic in Narcotic and Psychotropic Substances.
\(^2\) Statement of Principles of the Basle Committee on Banking Regulations and Supervisory Practices on the prevention of criminal case of the banking system for the purpose of money-laundering.
The fourth meeting of the Egmont Group took place on 21-22 November 1996 in Rome. With over thirty countries in attendance, along with four international organisations, the Egmont Group moved one step closer to becoming the primary framework for co-operation among FIUs. The Egmont Group examined the functions of the various FIUs and like-agencies so as to determine those missions and functions that are carried out in common. The conference came to an agreement on the definition of an FIU, a definition that will likely facilitate the establishment of new units by setting a minimum standard for such a unit.

According to this definition, a financial intelligence unit is "a central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime, or (ii) required by national legislation or regulation, in order to counter money laundering."

One of the purposes for defining the FIU was to distinguish it from other components of an anti-money laundering programme. The definition also helped create a specific identity for the Egmont Group as distinct from FATF or other international bodies concerned with money laundering. The definition was meant to be specific enough to distinguish these agencies from other types of government authorities, yet it had to be generic enough to include the many variations of these units. In creating the definition, the Egmont Group attempted to avoid emphasising any particular type of structure (i.e., police, judicial, administrative, or regulatory). Since the Egmont Group adopted this definition, it has increasingly become the standard against which newly forming units are measured.

The fifth meeting of the Egmont Group took place on 23-24 June 1997 in Madrid, Spain. There were 35 countries and 5 international organisations present at this meeting. The Egmont Group took significant steps forward in several areas. Perhaps the most important of these was the adoption by the Group of its Statement of Purpose, a document that describes the work accomplished so far, as well as its current goals within the framework of national and international anti-money laundering efforts. The FIU definition adopted in Rome was applied to all participating agencies - 28 of them were found to meet it - and this definition was incorporated into the Statement of Purpose. A comprehensive Egmont Group training programme for FIU personnel began to take shape over the course of the conference and through several sidebar meetings. Finally, the Egmont Group decided to study ways to continue enhancing information exchange among FIUs and ultimately create a more formalised structure for the Group itself.

The sixth plenary meeting of the Egmont Group was held 30 June -1 July 1998 in Buenos Aires, Argentina. On the margins of this meeting, the first ever "summit" of FIU heads took place. This group accepted ten candidate FIUs as satisfying the Egmont FIU definition. During the plenary meeting, the Egmont Group agreed to form a fourth working group ("Outreach") which will focus on the early stages of FIU development. The issues of creating an Egmont executive secretariat and establishing standard rules for exchange of financial information among FIUs were also discussed and sent to the appropriate working groups for further study.
The seventh and most recent plenary meeting of the Egmont Group was held 26-28 May 1999 in Bratislava, Slovakia. During the second Heads of FIU meeting ten candidate FIUs were accepted in the Egmont Group. It was recognised that the technical issues relating to the Egmont Secure Web were no longer as time consuming as in previous years, therefore, it was decided that the Technology Working Group be absorbed into the Training Working Group and renamed the "Training/Communications" Working Group. The Heads of FIUs also agreed to create a rotating Permanent Administrative Support (in lieu of a secretariat), this after a period of over four years of voluntary administrative assistance by FinCEN. For a two year period, the Administrator will be housed at the Dutch MOT. In the year 2001, the Permanent Administrative Support will be transferred to TRACFIN in France. Workshops were conducted on various issues concerning money laundering and international cooperation in the fight against money laundering and proved to be very successful.

"Financial Intelligence Units" and Other Anti-Money Laundering Agencies

The FIU concept has developed rapidly during the past two to three years. In spite of the specialised nature such units, there has still often been some confusion between "financial intelligence units" and other official entities with seemingly similar responsibilities. Police units established for the purpose of investigating financial and white-collar crime - to include money laundering - have often been dubbed "financial investigative units" with the acronym "RU". These units certainly play an important and useful role in their countries' overall anti-money laundering effort; however, the simple designation "FIU" does not necessarily mean that the unit provides a function as defined by the Egmont Group.

A number of countries have resolved this confusion by continuing to call the purely police unit an "FIU" ("financial investigative unit"), while terming the intelligence unit an "FAU" ("financial analysis unit"). Making this distinction then allows some countries to avoid the word "intelligence" (which has a somewhat negative connotation in certain areas) by focusing on the function of the unit rather than the material with which it works.

An FIU, quite simply, is a central office that obtains financial disclosure information, processes it in some way and then provides it to an appropriate government authority in support of its national anti-money laundering effort. Although the definition states that the activities performed by an FIU include "receiving, analysing, and disseminating" information, it does not exclude other activities that may be performed on the basis of this material. Therefore, an FIU could conceivably perform the activities mentioned in the definition and investigate and / or prosecute violations indicated by the disclosures.

Procedure for Being Recognised as an FIU by the Egmont Group

The Statement of Purpose adopted at the Madrid plenary meeting of the Egmont Group called for a more formal articulation of the process by which an agency may be recognised as meeting the Egmont definition of a financial intelligence unit. In response to this tasking, the Egmont Legal Working Group developed the following procedure:

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When a member of the Legal Working Group becomes aware of an operational anti-money laundering agency that might meet the Egmont FIU definition, he or she obtains adequate identifying information (i.e., name and address of the agency and a point of contact [usually the head of the unit]). The Chairman of the Legal Working Group then sends a letter to the potential FIU asking whether the unit would be interested in the Egmont Group and pointing out the possible benefits of participation as an FIU. The letter contains copies of the Statement of Purpose, a short background paper on the Group and a questionnaire. The Chairman asks the unit head to state whether or not he or she believes that the unit meets the Egmont FIU definition. In the case of a positive answer, the unit head is asked to submit a filled in questionnaire and any supporting documentation to the Egmont Legal Working Group. The questionnaire used for this procedure is the same as that used for collecting current information on the already recognised FIUs. Copies of these questionnaires are maintained on the Egmont Secure Web.

The Legal Working Group designates a "sponsor" for the candidate FIU from among the members of the working group. This is usually the FIU that originally brought the candidate to the attention of the working group. The responsibility of the "sponsor" is to provide some additional guidance to the candidate in submitting paperwork and to speak on behalf of the candidate during working group meetings. Once all paperwork has been received by the Legal Working Group, the Chairman will include the candidacy in discussions at the next working group meeting.

If the Legal Working Group agrees that the candidate does indeed meet the Egmont FIU definition, based on the paperwork received and the advocacy of the sponsoring working group sponsor, it will then recommend approval of the candidate FIU to the Egmont FIU heads. Information on the candidate is circulated to the FIUs of the Egmont Group (the current 48 units) for their consideration prior to the plenary meeting the next plenary meeting of the Egmont Group will tentatively take place in May 2000. At the plenary meeting, the Egmont FIU heads make the final determination whether the candidates meet the Egmont FIU definition based on the recommendation of the Legal Working Group.

FIUs are officially recognised as meeting the Egmont FIU definition only once a year at the Egmont Group plenary meeting. Potential units may be designated as "candidate FIUs" at other times depending on the ability of the Legal Working Group to meet and make a recommendation.

This procedure was first developed in the year after the Madrid Plenary Meeting. As stated earlier, the procedure was fully endorsed by the heads of the Egmont FIUs when they met during the Buenos Aires Plenary Meeting.

March 2000
MODEL DECREE ON THE FINANCIAL INTELLIGENCE UNIT, ISSUED FOR PURPOSES OF APPLICATION OF ARTICLE 3.1.1 OF THE LAW

Organization

Article 1

A financial intelligence unit having legal personality shall be established under the authority of [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...]. It shall be subject to external supervision by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...].

[Option: This intelligence unit shall have financial and budgetary autonomy and independent decision-making authority on matters coming within its sphere of responsibility.]

Article 2

The financial intelligence unit shall be headed by ... [a member of the judiciary, a senior official of the ministry of finance, etc.] appointed by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...]. It shall be composed of experts specially empowered by [variant 1: the minister of ...] [variant 2: the minister of justice and the minister of finance] in consideration of their expertise, particularly in the fields of finance, banking, law, informatics, customs or police investigations [variant: and made available by the State administrations]. It shall also comprise liaison officers responsible for cooperation with the other administrations. The intelligence unit shall be supported by a secretariat.

Article 3

The experts, liaison officers and other members of the secretariat shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the intelligence unit. Such information may not be used for any purposes other than those provided for by the law of (date) on money-laundering, confiscation and international cooperation in relation to the proceeds of crime.
Article 4

The experts may not concurrently perform duties in any of the organizations referred to in article 2.1.1 of the law of (date) on money-laundering, confiscation and international cooperation in relation to the proceeds of crime or hold or pursue any elective office, assignment or activity which might affect the independence of their position. Agents of the State appointed to posts in the financial intelligence unit shall cease to exercise any investigatory powers held by them in their former employment.

Operation

Article 5

The intelligence unit shall receive the reports transmitted by the persons referred to in article 3.1.4 of the aforementioned law. It shall analyse them on the basis of the information at its disposal and it shall gather, in particular from organizations and administrations involved in combating organized crime, any additional information that may help to establish the origin of the funds or the nature of the transactions forming the subject of the reports.

Article 6

The reports required of the persons referred to in article 3.1.4 of the law shall be sent to the intelligence unit by any rapid means of communication. They shall, where applicable, be confirmed in writing. They shall contain the identity and address of the reporting party, of the customer or the principal and, where applicable, of the beneficiary of the transaction; the type of account and particulars of the account holder; the nature, amount and type of the operation scheduled; and the period within which the operation is to be carried out or the reason why its execution cannot be deferred.

Article 7

The intelligence unit shall, in conformity with the laws and regulations on the protection of privacy and on computerized databases, operate a database containing all relevant information concerning reports of suspicions as provided for under the present law, the transactions carried out and the persons undertaking the operations, whether directly or through intermediaries. That information shall be updated and organized with a view to maximum effectiveness of the investigations to confirm or invalidate suspicions.

Article 8

An annual report shall be drawn up by the intelligence unit and submitted to the minister of justice, the ministry of finance and the judicial authorities. The report shall provide an overall analysis and evaluation of the reports received and of laundering trends.
Operating budget

Article 9

Each year, the intelligence unit shall establish its budget for the ensuing year, subject to the limits fixed by [variant 1: the prime minister] [variant 2: the minister of justice] [variant 3: the minister of justice and the minister of finance] [variant 4: the minister of ...].

[Option: The costs of operating the intelligence unit shall be met out of a fixed contribution from [option: financial and banking] institutions subject to the money-laundering legislation.]
United Nations International Drug Control Programme (UNDCP)
MODEL MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL
1998

Bill No ...... of 1998
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To be presented by the Minister of Justice
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MEMORANDUM OF OBJECTS AND REASONS
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The object of this bill is to enable [name of State] to cooperate with foreign States in criminal investigations and proceedings.

(ATTORNEY-GENERAL)
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An Act to enable the widest range of international cooperation to be given and received by [name of State] in investigations, prosecutions and related proceedings concerning serious offences against the laws of [name of State] or of foreign States.
ENACTED by the President and Parliament of [name of State]

PART I
PRELIMINARY

1. Short title, Extent and Commencement

(1) This Act may be called the "Mutual Assistance in Criminal Matters Act 1998."
(2) It shall extend throughout [name of State].
(3) It shall come into force at once.

2. Applicability of the Act

(1) This Act shall apply in relation to mutual assistance in criminal matters between [name of State] and any foreign State, subject to any condition, variation or modification in any existing or future agreement with that State, whether in relation to a particular case or more generally.

3. Definitions

(1) Unless the subject or context otherwise requires, in this Act:
(a) "appeal" includes proceedings by way of discharging or setting aside a judgement, and an application for a new trial or for a stay of execution;

(b) "data" means representations, in any form, of information or concepts;

(c) "document" means any material on which data are recorded or marked and which is capable of being read or understood by a person, computer system or other device;

(d) "foreign confiscation order" means an order, made by a court in a foreign State, for the purposes of the:

   (i) confiscation or forfeiture of property in connection with; or

   (ii) recovery of the proceeds of, a serious offence;

(e) "foreign restraining order" means an order made in respect of a serious offence by a court in a foreign State for the purpose of restraining a particular person or all persons from dealing with property;

(f) "foreign State" means:

   (i) any country other than [name of State]; and

   (ii) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation;

(g) "interest," in relation to property, means a:

   (i) legal or equitable estate or interest in the property; or

   (ii) right, power or privilege in connection with the property, whether present or future and whether vested or contingent;

(h) "person" means any natural or legal person;

(i) "place" includes any land (whether vacant enclosed or built upon, or not), and any premises;

(j) "premises" includes the whole or any part of a structure, building, aircraft, or vessel;

(k) "proceedings" means any procedure conducted by or under the supervision of a judge, magistrate or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;
"property" means real or personal property of every description, whether situated in [name of State] or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;

"proceeds of crime" means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence;

"serious offence" means an offence against a provision of:

(i) any law of [name of State], for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than [12 months] [except/including an offence against a law relating to taxation], or more severe penalty;

(ii) a law of a foreign State, in relation to acts or omissions, which had they occurred in [name of State], would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than [12 months], or more severe penalty [except/including an offence of a purely fiscal character];

A reference in this Act to the law of:

(a) [name of State];

(b) any foreign State,

includes a reference to a written or unwritten law of, or in force in, any part of [name of State] or that foreign State, as the case may be.

PART - II
MUTUAL ASSISTANCE

4. Authority to make and act on mutual legal assistance requests

(1) The [Attorney-General] may make requests on behalf of [name of State] to the appropriate authority of a foreign State for mutual legal assistance in any investigation commenced or proceeding instituted in [name of State], relating to any serious offence.

(2) The [Attorney-General] may, in respect of any request from a foreign State for mutual assistance in any investigation commenced or proceeding instituted in that State relating to a serious offence:

(a) grant the request, in whole or in part, on such terms and conditions as he or she thinks fit;
(b) refuse the request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of [name of State]; or

(c) after consulting with the competent authority of the foreign State, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in [name of State].

(3) Requests on behalf of [name of State] to the appropriate authorities of foreign States for assistance of the kind referred to in section 6 shall be made only by or with the authority of the [Attorney-General].

5. Saving provision for other requests or assistance in criminal matters

Nothing in this Act shall be taken to limit:

(a) the power of the [Attorney-General], apart from this Act, to make requests to foreign States or act on requests from foreign States for assistance in investigations or proceedings in criminal matters;

(b) the power of any other person or court, apart from this Act, to make requests to foreign States or act on requests from foreign States for forms of international assistance other than those specified in section 6; or

(c) the nature or extent of assistance in investigations or proceedings in criminal matters which [name of State] may lawfully give to or receive from foreign States.

6. Mutual legal assistance requests by [name of State]

The requests which the [Attorney-General] is authorized to make under section 4 are that the foreign State:

(a) have evidence taken, or documents or other articles produced in evidence in the foreign State;

(b) obtain and execute search warrants or other lawful instruments authorizing a search for things believed to be located in that foreign State, which may be relevant to investigations or proceedings in [name of State], and if found, seize them;

(c) locate or restrain any property believed to be the proceeds of crime located in the foreign State;

(d) confiscate any property believed to be located in the foreign State, which is the subject of a confiscation order made under the [Money Laundering and Proceeds of Crime Act, 1998];
(e) transmit to [name of State] any such confiscated property or any proceeds realized therefrom, or any such evidence, documents, articles or things;

(f) transfer in custody to [name of State] a person detained in the foreign State who consents to assist [name of State] in the relevant investigation or proceedings;

(g) provide any other form of assistance in any investigation commenced or proceeding instituted in [name of State], that involves or is likely to involve the exercise of a coercive power over a person or property believed to be in the foreign State; or

(h) permit the presence of nominated persons during the execution of any request made under this Act.

7. Contents of requests for assistance

(1) A request for mutual assistance shall:

(a) give the name of the authority conducting the investigation or proceeding to which the request relates;

(b) give a description of the nature of the criminal matter and a statement setting-out a summary of the relevant facts and laws;

(c) give a description of the purpose of the request and of the nature of the assistance being sought;

(d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the requested State, give details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraint or forfeiture order;

(e) give details of any procedure that the requesting State wishes to be followed by requested State in giving effect to the request, particularly in the case of a request to take evidence;

(f) include a statement setting-out any wishes of the requesting State concerning any confidentiality relating to the request and the reasons for those wishes;

(g) give details of the period within which the requesting State wishes the request to be complied with;

(h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested State; and

(i) give any other information that may assist in giving effect to the request.
(2) A request for mutual assistance from a foreign State may be granted, if necessary after consultation, notwithstanding that the request, as originally made, does not comply with subsection (1).

8. Foreign requests for an evidence-gathering order or a search warrant

(1) Notwithstanding anything contained in any law for the time being in force, where the Attorney-General grants a request by a foreign State to obtain evidence in [name of State], an authorized person may apply to the [name of Court] for:

(a) a search warrant; or
(b) an evidence-gathering order.

(2) The [name of Court] to which an application is made under subsection (1) shall issue an evidence-gathering order or a search warrant under this subsection, where it is satisfied that there are reasonable grounds to believe that:

(a) [a serious offence] has been or may have been committed against the law of the foreign State;

(b) evidence relating to that offence may:

(i) be found in a building, receptacle or place in [name of State]; or

(ii) be able to be given by a person believed to be in [name of State];

(c) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.

(3) For the purposes of subsection (2) (a), a statement contained in the foreign request to the effect that [a serious offence] has been or may have been committed against the law of the foreign State is prima facie evidence of that fact.

(4) An evidence-gathering order:

(a) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, unless such manner is prohibited under the law of [name of State], and in particular, may require any person named therein to:

(i) make a record from data or make a copy of a record;

(ii) attend court to give evidence on oath or otherwise until excused;

(iii) produce to the [name of Court] or to any person designated by the Court, any thing, including any document, or copy thereof; or
(b) may include such terms and conditions as the [name of Court] considers desirable, including those relating to the interests of the person named therein or of third parties.

(5) A person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on:
   (a) a law currently in force in [name of State];
   (b) a privilege recognized by a law in force in the foreign State that made the request; or
   (c) a law currently in force in the foreign State that would render the answering of that question or the production of that document or thing by that person in its own jurisdiction an offence.

(6) Where a person refuses to answer a question or to produce a document or thing pursuant to subsection (5)(b) or(c), the [name of Court] shall report the matter to the [Attorney-General] who shall notify the foreign State and request the foreign State to provide a written statement on whether the person's refusal was well-founded under the law of the foreign State.

(7) Any written statement received by the [Attorney-General] from the foreign State in response to a request under subsection (6) shall be admissible in the evidence-gathering proceedings, and for the purposes of this section be determinative of whether the person's refusal is well-founded under the foreign law.

(8) A person who, without reasonable excuse, refuses to comply with a lawful order of the [name of Court] made under this section, or who having refused pursuant to subsection (5), continues to refuse notwithstanding the admission into evidence of a statement under subsection (7) to the effect that the refusal is not well-founded, commits a contempt of court and is punishable accordingly.

(9) A search warrant shall be in the usual form in which a search warrant is issued in [name of State], varied to the extent necessary to suit the case.

(10) No document or thing seized and ordered to be sent to a foreign State shall be sent until the [Attorney-General] is satisfied that the foreign State has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing.

9. Foreign requests for consensual transfer of detained persons

(1) Where the [Attorney-General] approves a request of a foreign State to have a person, who is detained in custody in [name of State] by virtue of a sentence or order of a court, transferred to a foreign State to give evidence or assist in an investigation or proceeding in that State relating to [a serious offence], an authorized person may apply to the [name of Court] for a transfer order.

(2) The [name of Court] to which an application is made under subsection (1) may make a transfer order under this subsection where it is satisfied, having considered any documents filed
or information given in support of the application, that the detained person consents to the transfer.

(3) A transfer order made under subsection (2):
   (a) shall set out the name of the detained person and his current place of confinement;
   (b) shall order the person who has custody of the detained person to deliver him into the custody of a person who is designated in the order or who is a member of the class of persons so designated;
   (c) shall order the person receiving him into custody to take him to the foreign State and, on return of the detained person to [name of State], to return that person to a place of confinement in [name of State] specified in the order, or to such other place of confinement as the [Attorney-General] may subsequently notify to the foreign State;
   (d) shall state the reasons for the transfer; and
   (e) shall fix the period of time at or before the expiration of which the detained person must be returned, unless varied for the purposes of the request by the [Attorney-General].

(4) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence required to be served by that person, so long as the person remains in such custody and is of good behaviour.

10. Persons in [name of State] in response to a request

(1) The [Attorney-General] [name of Court] may by written notice authorize:
   (a) the temporary detention in [name of State] of a person in detention in a foreign State who is to be transferred from that State to [name of State] pursuant to a request under section 6(f), for such period as may be specified in the notice; and
   (b) the return in custody of the person to the foreign State when his or her presence is no longer required.

(2) A person in respect of whom a notice is issued under subsection (1) shall so long as the notice is in force:
   (a) be permitted to enter [name of State] and remain in [name of State] for the purposes of the request, and be required to leave [name of State] when no longer required for those purposes, notwithstanding any [name of State] law to the contrary; and
   (b) while in custody in [name of State] for the purposes of the request, be deemed to be in lawful custody.
(3) The [Attorney-General] may at any time vary a notice issued under subsection (1), and where the foreign State requests the release of the person from custody, either immediately or on a specified date, the [Attorney-General] shall direct that the person be released from custody accordingly.

(4) Any person who escapes from lawful custody while in [name of State] pursuant to a request under section 6(f) may be arrested without warrant by any authorized person and returned to the custody authorized under subsection (1)(a).

(5) Where a foreign country has requested that a person be detained in [name of State] in the course of transit between the foreign country and a third country and the [Attorney-General] grants the request, the provisions of this section shall apply mutatis mutandis in relation to that person.

(6) No court in [name of State] has jurisdiction to entertain any application by or on behalf of any person in [name of State] pursuant to a request under section 6(f), relating to release from custody or continued presence in [name of State] after his or her presence is no longer required for the purpose of the request.

11. Safe conduct guarantee

(1) Where a person, whether or not a detained person, is in [name of State] in response to a request by the [Attorney-General] under this Act to give evidence in a proceeding or to assist in an investigation, prosecution or related proceeding, the person shall not, while in [name of State], be:

(a) detained, prosecuted or punished; or

(b) subjected to civil process,

in respect of any act or omission that occurred before the person's departure from the foreign State pursuant to the request.

(2) Subsection (1) ceases to apply to the person when the person leaves [name of State], or has had the opportunity to leave, but remains in [name of State] for 10 days after the [Attorney-General] has notified the person that he or she is no longer required for the purposes of the request.

12. Foreign requests for [name of State] restraining orders

(1) Where a foreign State requests the [Attorney-General] to obtain the issue of a restraining order against property some or all of which is believed to be located in [name of State], criminal proceedings have begun in the foreign State in respect of a serious offence, and there are reasonable grounds to believe that the property is located in [name of State], the [Attorney-General] may apply to the [name of Court] for a restraining order under subsection (2).
(2) Where the [Attorney-General] makes application to the [name of Court] under subsection (1), the Court may make a restraining order in respect of the property, and the [Money Laundering and Proceeds of Crime Act, 1998] this Act shall apply in relation to the application and to any restraining order made as a result, as if the serious offence the subject of the order had been committed in [name of State].

13. Requests for enforcement of foreign confiscation or restraining orders

(1) Where a foreign State requests the [Attorney-General] to make arrangements for the enforcement of a:
   (a) foreign restraining order; or
   (b) foreign confiscation order,

   the [Attorney-General] may apply to the [name of Court] for registration of the order.

(2) The [name of Court] shall, on application by the [Attorney-General], register a foreign restraining order if the Court is satisfied that at the time of registration, the order is in force in the foreign State.

(3) The [name of Court] shall, on application by the [Attorney-General], register a foreign confiscation order if the Court is satisfied that:
   (a) at the time of registration, the order is in force in the foreign State and is not subject to appeal; and
   (b) where the person the subject of the order did not appear in the confiscation proceedings in the foreign State, that:
      (i) the person was given notice of the proceedings in sufficient time to enable him or her to defend them; or
      (ii) the person had absconded or died before such notice could be given.

(4) For the purposes of subsections (2) and (3), a statement contained in the foreign request to the effect that:
   (a) the foreign restraining order is in force in the foreign State;
   (b) the foreign forfeiture order is in force in the foreign State and is not subject to appeal; or
   (c) the person the subject of the foreign forfeiture order was given notice of the proceedings in sufficient time to enable him or her to defend them, or that the person had absconded or died before such notice could be given,

   is prima facie evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.
(5) Where a foreign restraining order or foreign confiscation order is registered in accordance with this section, a copy of any amendments made to the order in the foreign State (whether before or after registration), may be registered in the same way as the order, but shall not have effect for the purposes of the [Money Laundering and Proceeds of Crime Act, 1998] until they are so registered.

(6) The [name of Court] shall, on application by the [Attorney-General] cancel the registration of:
   
   (a) a foreign restraining order, if it appears to the Court that the order has ceased to have effect.
   
   (b) a foreign confiscation order, if it appears to the Court that the order has been satisfied or has ceased to have effect.

(7) Where a foreign restraining order against property is registered under this section, the Court may, upon application by a person claiming an interest in the property, make an order as to the giving or carrying out of an undertaking by the [Attorney-General], on behalf of [name of State], with respect of the payment of damages or costs in relation to the registration or operation of the order.

(8) Subject to subsection (9), where the foreign restraining order or foreign confiscation order comprises a facsimile copy of a duly authenticated foreign order, or amendment made to such an order, the facsimile shall be regarded for the purposes of this Act as the same as the duly authenticated foreign order.

(9) Registration effected by means of a facsimile ceases to have effect at the end of the period of [14 days] commencing on the date of registration, unless a duly authenticated original of the order has been registered by that time.

(10) Where a foreign restraining order or a foreign confiscation order has been registered pursuant to this section, the [Money Laundering and Proceeds of Crime Act, 1998] shall be deemed to apply in relation to the order as if the serious offence the subject of the order had been committed in [name of State], and the order had been made pursuant to [that Act].

14. Foreign requests for the location of proceeds of crime
   Where a foreign State requests the [Attorney-General] to assist in locating property believed to be the proceeds of a serious crime committed in that State, the [Attorney-General] may authorise the making of any application under sections 71, 76 or 78 of the [Money Laundering and the Proceeds of Crime Act, 1998], for the purpose of acquiring the information sought by the foreign State.

15. Sharing confiscated property with foreign States
   The [Attorney-General] may enter into an arrangement with the competent authorities of a foreign State for the reciprocal sharing with that State of such part of any property realized:
(a) in the foreign State, as a result of action taken by the [Attorney-General] pursuant to section 6(d); or

(b) in [name of State], as a result of action taken in [name of State] pursuant to section 13(1),
as the [Attorney-General] thinks fit.

PART - III
MISCELLANEOUS

16. Privilege for foreign documents

(1) Subject to subsection (2), a document sent to the [Attorney-General] by a foreign State in accordance with a [name of State] request is privileged and no person shall disclose to anyone the document, or its purport, or the contents of the document or any part thereof, before the document, in compliance with the conditions on which it was so sent, is made public or disclosed in the course of and for the purpose of any proceedings.

(2) No person in possession of a document referred to in subsection (1), or a copy thereof, or who has knowledge of any information contained in the document, shall be required, in connection with any legal proceedings to produce the document or copy or to give evidence relating to any information that is contained therein;

(3) Except to the extent required under this Act to execute a request by a foreign State for mutual assistance in criminal matters, no person shall disclose:

(a) the fact that the request has been received; or
(b) the contents of the request.

Penalty: in the case of a natural person, imprisonment not exceeding [P...] standard imprisonment units, fine not exceeding [F...] standard fine units, or both, and in the case of a corporation, fine not exceeding [five] times that maximum:

17. Restriction on use of evidence and materials obtained by mutual assistance

No information, document, article or other thing obtained from a foreign State pursuant to a request made under this Act shall be used in any investigation or proceeding other than the investigation or proceeding disclosed in the request, unless the [Attorney-General] consents after consulting with the foreign State.

18. Confiscated proceeds of drug crime to be credited to Fund for Drug Abuse Prevention and Control

Any proceeds of drug-related crime which have been:
(a) confiscated in a foreign State pursuant to a request by [name of State] under section 6(d);

(b) confiscated in [name of State] pursuant to a request by a foreign State under section 13 (1),

the extent available under any sharing of confiscated property arrangement referred to in section 15, or otherwise, shall be credited to the [Fund for Drug Abuse Prevention and Control], established under the [Drug Abuse Act, 1998].
Model Foreign Evidence Bill, 1998

United Nations International Drug Control Programme (UNDCP)
MODEL FOREIGN EVIDENCE BILL 1998

Bill No ...... of 1998

To be presented by the Minister of Justice

MEMORANDUM OF OBJECTS AND REASONS

The object of this bill is to provide for the admissibility in [name of State] of evidence obtained from a foreign State.

(ATTORNEY-GENERAL)

An Act to provide for the manner and form in which evidence obtained from outside [name of State] may be admissible in proceedings in [name of State], and for related purposes.

ENACTED by the President and Parliament of [name of State]

1. Short title, Extent and Commencement

(1) This Act may be called the "Foreign Evidence Act, 1998".
(2) It shall extend throughout [name of State].
(3) It shall come into force [at once].

2. Interpretation

In this Act, unless the context otherwise requires:

(a) "authorized officer" means:
   (i) the [Attorney-General]; or
   (ii) a person appointed by the [Attorney-General], by notice published in [the Gazette], as an authorized officer for the purposes of this Act;

(b) "civil proceeding" means a proceeding other than a criminal proceeding;

(c) "criminal proceeding" includes:
   (i) a prosecution for an offence;
(ii) a proceeding for the sentencing of a person convicted of an offence;

(d) "foreign law" means a law (whether written or unwritten) of, or in force in a foreign State;

(e) "foreign material" means:

(i) the testimony of a person that:

(A) was obtained as a result of a request of a kind referred to in section 4 of the [Mutual Assistance in Criminal Matters Act, 1998];

(B) complies with the requirements of section 4 of this Act;

(ii) any exhibit annexed to any such testimony;

(iii) any part of any such testimony or exhibit;

(iv) "foreign State" means:

(A) any country other than [name of State]; and

(B) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to evidence;

(f) "related civil proceedings", in relation to a criminal proceeding, means any civil proceedings arising from the same subject matter from which the criminal proceeding arose;

(g) "[name of State] court" means:

(a) the [Court of Appeal];

(b) the [High Court];

(c) a magistrates court; or

(d) a person or body authorized by a [name of State] law, or by consent of parties, to hear, receive and examine evidence;

(h) "[name of State] law" means a law (whether written or unwritten) of or in force in [name of State].

3. Application of this Act

This Act applies to:

(a) a proceeding before a [name of State] court that is:
(i) a criminal proceeding in relation to [name of State] law of; 
or
(ii) a related civil proceeding;

(b) testimony obtained as a result of a request made by or on behalf of the 
[Attorney-General] to a foreign State for the testimony of a person pursuant to 
the [Mutual Assistance in Criminal Matters Act, 1998]; and

(c) any exhibit annexed to any such testimony.

4. Requirements for testimony

(1) The testimony must be taken before a court:
   (a) on oath or affirmation; or
   (b) under such caution or admonition as would be accepted by courts in the 
foreign State concerned, for the purposes of giving testimony in proceedings 
before those courts.

(2) The testimony may be taken in camera.

5. Form of testimony

(1) The testimony may be recorded:
   (a) in writing;
   (b) on audio tape;
   (c) on video tape; or
   (d) by any other electronic or mechanical means.

(2) The writing need not:
   (a) be in the form of an affidavit; or
   (b) constitute a transcript of a proceeding in a foreign court.

(3) The testimony must be endorsed with, or accompanied by, a certificate to the effect that;
   (a) it is an accurate record of the evidence given; and
   (b) it was taken in a manner specified in section 4.

(4) The certificate must purport to:
   (a) be signed or certified by a judge, magistrate or court officer of the foreign 
State to which the request was made; and
   (b) bear an official or public seal of;
      (i) the foreign State; or
(ii) an authority of the foreign State responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer in or of the Government.

6. Foreign material may be adduced as evidence

(1) Subject to subsection (2), foreign material may be adduced as evidence in a proceeding to which this Act applies.

(2) The foreign material will be excluded from evidence if:

(a) it appears to the court's satisfaction, at the hearing of the proceeding, that the person who gave the testimony concerned is present in [name of State] and is able to testify at the hearing;

(b) the evidence would not have been admissible had it been adduced from the person at the hearing; or

(c) it appears to the court that the interests of justice would not be served by admitting the evidence.

(3) In reaching a decision pursuant to subsection (2) (c), the court shall take into account:

(a) the extent to which the foreign material provides evidence that would not otherwise be available;

(b) the probative value of the foreign material with respect to any issue that is likely to be determined in the proceeding;

(c) the extent to which statements contained in the material could, at the time they were made, be challenged by questioning the persons who made them;

(d) whether exclusion of the material would cause undue expense or delay; and

(e) whether exclusion of the foreign evidence would prejudice:

(i) the defence in criminal proceeding; or

(ii) any party to related civil proceedings.

7. Proof of service of documents abroad

The service of documents in a foreign State may be proved by affidavit of the person who served it.

8. Certificates relating to foreign material

(1) An authorized officer may certify that specified foreign material was obtained as a result of a request made to a foreign State by or on behalf of the Minister.
(2) It is presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

9. **Operation of other laws**

   This Act does not limit the ways in which a matter may be proved, or evidence may be adduced under any other [name of State] law.