

International Efforts To Contain Money Laundering

We are happy to share this information with you and encourage you to use this document for your research purposes. Please ensure that all credits are acknowledged when using all or any information within this document.

Commercial reproduction is strictly prohibited.

presented at the Seminar

“Money Laundering: Joining Forces To Prevent It”

APRIL 8, 1997

BANKERS CLUB, MEXICO CITY



**The International Centre for Criminal Law Reform
and Criminal Justice Policy
1822 East Mall
Vancouver, B.C., Canada, V6T 1Z1
tel: (604) 822-9875 fax: (604) 822-9317 e-mail: evans@law.ubc.ca
<http://www.law.ubc.ca/centres/icclr/>**

INTERNATIONAL EFFORTS TO CONTAIN MONEY LAUNDERING

John L. Evans¹

ABSTRACT

This paper gives an overview of key international efforts to address money laundering. It is not exhaustive; there are by now many international organizations and special multilateral and bilateral groups seeking to develop and implement measures to prevent, detect, investigate and prosecute money laundering offences. The paper is, for the most part, restricted to the brief given: to review the history and current status of the Financial Action Task Force. The paper also reviews United Nations efforts in combating money laundering and references some related international work.

INTRODUCTION

Those who find themselves holding valuables obtained illegally have no doubt always sought to disguise the illicit origins of their wealth. Save in purely criminal organizations there is risk associated with divulging that criminal activities fund one's activities. Criminals have, as a consequence, engaged in an amazing variety of schemes to remove the stigma of dirty money, to launder it and give it a plausible aura of legitimacy. If it has always been so, why then has the international community become so exercised about money laundering in recent years?

There are many answers to this question, but drugs, the internationalization of trade and commerce, and the communications revolution explain a good deal about the priority attached to money laundering.

Estimates of the profits to be made from illicit drugs are beyond most peoples' comprehension. Many estimates hold that illegal drugs generate billions of dollars per year.²

¹ John L. Evans is President of Management and Policy International, Inc. Suite P2 1345 West 15th Avenue, Vancouver, British Columbia, Canada V6H 3R3. Mr Evans consults frequently for the International Centre for Criminal Law Reform and Criminal Justice Policy.

² "Conservative estimates of the annual turnover of the global illicit drug industry range from \$US400 to \$US500 billion. This is equivalent to approximately ten per cent of total international trade. The global illicit drug industry is larger than all international trade in each of the following sectors: oil and gas; food, beverages and alcohol; chemicals and pharmaceuticals; and the textiles and clothing industry. The turnover of the world's illicit drug industry is about twice that of the global pharmaceutical industry, and several times bigger than either the global motor vehicle or iron and steel industries. Turnover in illicit drugs

Whatever the true value of the illicit drug trade, it is clear that the sums are so great as to compromise the integrity of political and financial systems world wide. Drug profits are laundered using international financial systems that have grown to serve the vastly expanded volume of international trade and commerce. What is efficient for legitimate commerce is equally useful to the illicit. Indeed, the technology of the communications revolution that has made international financial transactions so efficient and so fast, delivers precisely what money launderers need. The international financial system that we all depend upon for legitimate commercial transactions is even more valuable to those with illegitimate wealth. Assets can be safely lodged in a jurisdiction with tight bank secrecy legislation in a matter of minutes. Prudent money launderers will make use of the international financial system and add complexity to hide the money trail.

On occasion criminals have been even more brazen; they have not just used the international financial system but joined it. The Bank of Credit and Commerce International is a well known case in point. Many banks in the former Soviet Union are also suspect and scandals involving banks, big and small, occur in all regions of the world.

Drug money, of course, is not the only illicit wealth nor is it the only set of crimes that is international in scope. Press coverage gives pride of place to drugs but the range of international crimes is very broad, ranging from international frauds, through the selling of fake pharmaceutical products in developing countries, to arms smuggling and the entrapment of children and women in the sex trade. There is no shortage of opportunity for international crime, nor is there a shortage of criminal entrepreneurs or criminal organizations. Many of these entrepreneurs and organizations are necessarily international since their crimes require conspiracy across borders. Very few can be carried out by an individual offender. Supplies of illicit goods must be found and transport arranged, customers secured, police evaded, profits handled, and so on. In a word, organization is required. And with organization comes the potential for profit and power, for victimization on a scale that can threaten whole societies and render governments corrupt and ineffective. Fundamental values are threatened and States and, increasingly, the international community, react with both rhetoric and action to combat real and perceived dangers to the rule of law.

THE UN 1988 CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

is seven to eight times worldwide foreign aid. Over 90 percent of the profits made from cocaine and heroin are generated during the distribution of these drugs, with only ten per cent during cultivation and production. A gram of cocaine from Colombia sells in the United States for between \$US60 and \$US300, of which 95 per cent represents profit. Heroin costing about \$US3000 a kilogram in Pakistan sells for \$US90,000 on the streets of Europe, with 95 per cent of the retail price being profit." Via Internet. The Lindesmith Center: <http://www.soros.org/lindesmith/wodak/wodak3.html#eco>

International concern about the growth in illicit drugs and the corresponding concentrations of wealth and power among criminal organizations led in the mid-eighties to a movement toward a new international convention. The result was the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the 1988 Convention). The Convention came into force On November 11, 1990 after it had been ratified by the minimum twenty governments.³ The focus of this new international instrument is clearly on drugs and it seeks to enhance law enforcement effectiveness in the suppression of drug trafficking. It recognizes that drug offenses must include those who direct, finance, manage and profit from the criminal networks but who never actually handle the drugs. Often drug arrests and convictions net small players and petty, although vicious, street criminals, the foot soldiers of the criminal network. The “generals” of the drug rings are far away from the drugs. They tend to be closer to the money. The Convention embraces the idea of taking the profit out of crime. Many States had already passed proceeds of crime legislation designed to yield forfeitures of criminal profits. The Convention gave this idea a powerful boost and set a new standard for anti-money laundering efforts by governments.

The Convention requires that signatories make money laundering a criminal offense. States are also required to eliminate legislative bars to effective investigation and especially international co-operation in investigation. Thus the Convention stipulates that States who are party to the agreement must facilitate the identification, tracing, seizure, and forfeiture of the proceeds of drug trafficking and money laundering. Such facilitation would include mutual legal assistance in all aspects of investigation, prosecution and judicial proceedings. This would include: the taking of evidence; the service of judicial documents; searches and seizures; the examination of objects and sites; the provision of bank, financial and business records; and the identification and tracing of proceeds. With respect to extradition, the Convention requires that the offenses listed therein be extraditable and it envisages enhanced co-operation in the extradition process.⁴

As of March 1997, 136 countries have ratified and signed the Convention.⁵ It is likely too early to judge the consequences in terms of drug trafficking but there are now many more states with proceeds of crime provisions and, at the very least, the potential for international co-operation has been enhanced. There are still problems of implementation, training and follow through but a good deal of progress is being made.

³ Mexico signed the Convention on February 16, 1989 and ratified it on April 11, 1990. Canada signed the Convention on December 20, 1988 and ratified it on July 5, 1990.

⁴ Article 6, paragraph 2 states that “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.”

⁵ Via Internet:

http://www.state.gov/www/global/narcotics_law/1996_narc_report/96narc_un_convention_data.html

Much of the success of the Convention depends on enhanced mutual legal assistance and extradition processes. Given the variety of legal systems, languages and political interests in the world such matters are not simply resolved. To assist Nation States in seeking solutions in these areas, the United Nations has developed two model treaties for countries to use as they negotiate arrangements. The United Nations Model Treaty on Mutual Assistance in Criminal Matters⁶ and the United Nations Model Treaty on Extradition⁷ are designed to recognize differences in legal systems and suggest bridges between them.

THE BASLE COMMITTEE

The increased international concern about organized crime and the concentration of power and finance around drug and other criminals was shared by the banking community. The Basle Committee on Banking Regulations and Supervisory Practices (the Basle Committee) stated in December of 1988:

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.

The Basle Committee's response to these concerns was to issue the December 1988 statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering. The statement's basic purpose is to ensure that banks are not used to hide or launder the profits of crime. Its basic principles are in summary:

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 (whether on the asset or liability side of the balance sheet).

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.

⁶ G.A. Res. 45/116, U.N. GAOR, 45th Sess., Supp No 49A and Compendium (note 13) at page 48.

⁷ G.A. Res. 45/117, U.N. GAOR, 45th Sess, Supp. No 49A at p215; Compendium (note 13) at page 61.

Co-operation with law enforcement agencies: Without 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.

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 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.⁸

The Statement has since been adopted by a number of banking groups⁹ and the work of the Basle Committee is reflected in the work of the Financial Action Task Force.

THE FINANCIAL ACTION TASK FORCE

Another influential international mechanism has been the Financial Action Task Force or FATF, as it is known in English. FATF was created following the 1989 Paris Summit of the Heads of State or Government of the seven major industrialized nations (Group of Seven or G-7).¹⁰ The Summit concluded that there was "an urgent need for decisive action, both on a national and international basis to counter drug production, consumption and trafficking as well as the laundering of its proceeds."¹¹ As a result the Summit created the FATF whose mandate was "to assess the results of co-operation already undertaken in order to prevent the utilization of the banking system and financial institutions for purpose of money laundering, and to consider additional preventative efforts in this field, including

⁸ Gilmore, William C., "*International Initiatives*". Chapter 2 in Parlour, Richard (ed.) International Guide to Money Laundering Law and Practice Butterworths: London, 1995.

⁹ Including the Offshore Group of Banking Supervisors, which consists of 19 members including major financial centres such as Hong Kong and Singapore. Other offshore financial centres such as Jersey, the Cayman Islands and Cyprus have endorsed the Statement.

¹⁰ For this occasion the G-7 was joined by the President of the Commission of the European Communities.

¹¹ See W. Gilmore (ed.) *International Efforts to Combat Money Laundering*, Cambridge, 1992, at p.3.

the adaption of the legal and regulatory systems so as to enhance multilateral judicial assistance.”¹²

Given this mandate the experts¹³ duly met and produced a report in 1990. The report¹⁴ has become a landmark in anti-money laundering efforts and the 40 recommendations for action have been hailed by most observers as the single most important prescription for effective controls on money laundering produced. The 40 recommendations encompass and enhance the provisions of the 1988 UN Convention and are designed to cover all aspects of money laundering. They cover the criminal justice system and law enforcement, the financial system and its regulation and international co-operation. Moreover, the recommendations are meant to be universal; they are guiding principles that give States the flexibility required by different legal traditions and constitutional arrangements.

As noted, the recommendations were first drawn up in 1990. Following six years of experience they were revised in 1996. The revised recommendations are reproduced at Appendix One.¹⁵ The changes over the six years are not dramatic but they do reflect the real experience of the 26 countries and two international organizations¹⁶ included in FATF membership. Membership carries with it the requirement that implementation of the 40 recommendations is monitored by an annual self assessment and a more detailed mutual-evaluation process which includes an on-site examination by experts from other member States.

THE FINANCIAL ACTION TASK FORCE RECOMMENDATIONS

The recommendations are, as noted above, intended to be comprehensive. They do not rely on the criminal law alone although the first set of recommendations call for strengthening of legislative and enforcement techniques and particularly those designed to take the profit out of crime. In this respect, they reinforce one of the central messages of the 1988 UN Convention.

¹² See Note 10.

¹³ To expand the expertise available eight States in addition to the G-7 countries were invited to participate. These additions were: Australia, Austria, Belgium, Luxembourg, the Netherlands, Spain, Sweden and Switzerland. The experts were drawn from various government ministries, law enforcement and bank supervisory and regulatory organizations.

¹⁴ FATF Report 1990. Available through OECD, Paris.

¹⁵ FATF Report 1996. Available through OECD, Paris.

¹⁶ The European Commission and the Gulf Cooperation Council.

A. General Framework Of The Recommendations

The first recommendation is the countries should ratify and implement the 1988 UN Convention.

The second recommendation calls on States to frame secrecy laws applying to financial institutions so as not to inhibit the implementation of the FATF program (or the UN Convention).

Third, FATF calls for increased multi-lateral co-operation as noted above.

B. Role Of National Legal Systems In Combating Money Laundering

Scope of the Criminal Offence of Money Laundering

Recommendations 4,5 and 6 call on States to criminalize money laundering and determine which crimes should be designated as predicate offences. The term “predicate offences” refers to the fact that in most countries with money laundering statutes there must be evidence of a previous serious crime before the provisions of money laundering statutes can be applied. That is, if there is, for example, evidence of illicit drug sales, then prosecutors can move to seize and forfeit the proceeds of the predicate crime. Beyond this, recommendation 5 urges that legislation be framed in such a way that knowledge of money laundering can be inferred from objective factual evidence. Thus, those facilitating money laundering schemes, lawyers and accountants, for example could be charged with money laundering if the facts can support the view that they knew or ought to have known that the money was the fruit of crime. They need not, therefore, have been party to the predicate offence. The final recommendation in this section calls on States to invoke the concept of corporate criminal liability so that the corporation and not just employees can be held liable. This is easily accomplished in common law jurisdictions but is more difficult for countries with civil law traditions that have normally not incorporated the idea of corporate criminal liability.¹⁷

Provisional Measures and Confiscation

Recommendation 7 urges that appropriate legislative measures and procedures be put in place to allow for the ultimate confiscation of proceeds of crime together with “instrumentalities”(that is such things as cars, boats, planes, property) used to commit crimes. The measures, to be effective, must allow authorities to identify, trace and, in the case of valuables which can be moved or otherwise disipated, to freeze¹⁸, pending determinations by a court.

¹⁷ This is changing. Germany and many other civil law countries are adopting variations of corporate criminal liability. Much of the impetus for the change comes from enviornmental disasters where the use of criminal sanctions in addition to civil penalties seems to be necessary to deter and to punish.

¹⁸ That is, to place under court protection.

C. Role Of The Financial System In Combating Money Laundering

Recommendations 8 and 9 address themselves to the variety of financial institutions. Banks, as this group well knows, have competitors. Thus, FATF urges that recommendations 10 to 29 should apply to banks, but also to non-bank financial institutions.¹⁹

Customer Identification and Record-keeping Rules

There are, of course, a series of recommendations (10 through 13) dealing with identifying customers and keeping adequate records. Anonymous accounts or accounts in obviously fictitious names are frowned upon. Financial institutions are urged to rely on reliable²⁰ identifying documents. With respect to legal entities, financial institutions are urged to verify the existence and the structure of companies and to verify that persons purporting to act on the company's behalf are so authorized.

Records of customer identity and of transactions should, FATF urges, be kept for five years. These records should be available to domestic competent authorities in carrying out investigations and prosecutions.

Increased Diligence of Financial Institutions

Recommendations 14 through 18 deal with suspicious and unusual transactions. They recommend that such transactions be investigated and that the information be brought to the attention of competent authorities -- supervisors, auditors and law enforcement agencies. If there is suspicion that the funds stem from crime, then there ought to be a requirement to report to supervisors and to law enforcement. Requirements such as these should be balanced by legislation which saves harmless from criminal or civil liability the institution and its directors, officers and employees when, in good faith, they disclose information ordinarily protected by other legislation or regulation.

Financial institutions are further urged to co-operate with competent authorities by not warning customers and to comply with instructions from the competent authority.

Finally, in this section, financial institutions are urged to develop programs against money laundering that, minimally would see the development of policies and procedures and the involvement of management in the process. On-going employee training programs and audit checks of the system are also recommended.

¹⁹ The Annex to recommendation 9 lists twelve types of financial activities carried out by professionals or businesses which are not usually considered to be financial institutions. See Appendix One.

²⁰ With advances in technology it is recognized that this determination is not always easy to make. In most parts of the world identity documents, indistinguishable from the real thing, are easily and cheaply obtained.

Measures To Cope With The Problem Of Countries With No Or Insufficient Anti-Money Laundering Measures

The weakest link in the international chain of anti-money laundering measures is the complete non-compliance of several countries whose economies depend on their ability to provide tax havens and bank secrecy. Many such countries make it legal and easy to set up shell companies whose beneficial owners are unknowable. The legal use of nominees as directors of companies and the issuance of bearer shares makes identification of the beneficial owner more than difficult. Given this, recommendations 20 and 21 effectively say, "try your best." They do urge that, in the case of branches or subsidiaries, the same principles applying to the parent institution should apply as well to the subsidiary, where law permits.²¹

Other Measures to Avoid Money Laundering

It was noted above that criminals like banks for the many of the same reasons as law-abiding persons. This does not mean that cash is entirely out of fashion. Many small time criminals use nothing but cash and there are still cash economies and places where banks are not trusted, even by ordinary citizens. There is also much smuggling of cash across borders, frequently so that it can be deposited in banks with less stringent regulations and practices. FATF therefore recommends that countries consider the feasibility of measures to detect cross border transportation of cash and consider as well reporting currency transactions over a threshold amount.

Implementation, And Role Of Regulatory And Other Administrative Authorities

Recommendations 26 through 29 urge regulatory authorities to develop and share information and guidelines on money laundering and to ensure that supervised institutions have adequate policies and programs in effect. Countries are urged to ensure that regulations cover the full range of non-bank financial institutions. Finally, regulators are urged to be vigilante about criminals acquiring significant interests in financial institutions.

D. STRENGTHENING OF INTERNATIONAL CO-OPERATION

Administrative Co-Operation

There are inadequate data on cash flows across borders and FATF recommends that countries make data on aggregate flows available to the International Monetary Fund and the Bank of International Settlements to facilitate international studies. FATF, perhaps foreseeing its own demise²², recommends that competent international authorities, such as

²¹ This, as the Bank of Nova Scotia can attest, is not a trivial problem. Several years ago the Bank of Nova Scotia ran afoul of American authorities seeking records from a branch in another country where release of such records was against the law.

²² Its mandate has been extended to 1999 but it was never expected that it would become a permanent organization.

Interpol and the World Customs Organization, be given responsibility for gathering and disseminating information on the latest developments in money laundering

Exchange Of Information Relating To Suspicious Transactions

Many, perhaps most, significant criminals operate internationally. Many of their criminal activities require that they operate across borders and, if they have any reasonable skills as money launderers or have good advisers, their money laundering activities will be international. FATF recommends that countries offer intelligence internationally, or at least respond to requests for information, relating to suspicious transactions, persons or corporations.

Other Forms Of Co-Operation

The remaining recommendations under the subheadings Basis and means for co-operation, mutual assistance and extradition; and Focus of improved mutual assistance on money laundering issues provide specific ideas on improvements to international co-operation, including mutual legal assistance and extradition covered above.

The Financial Action Task Force has done impressive and comprehensive work on money laundering. It's 40 recommendations are a distillation of the work done by a large number of experts from many different countries and from many professions. Anyone seriously interested in anti-money laundering efforts will find the FATF reports and the 40 recommendations, as revised in 1996, indispensable.

FATF was created by the Group of Seven as a task force. It is not an international organization in any formal sense and it was, like most task forces, expected to have a short life. Partly because of this and partly to keep it's size manageable a decision was taken in 1994 to restrict the size of the group. This was a controversial decision since a number of States had expressed an interest in joining. Although FATF does not see itself as growing and becoming permanent it has devoted a significant proportion of it's energies to getting other nations and organizations to get involved in the fight against money laundering.

Reflecting the success of FATF, the Caribbean Financial Action Task Force (CFATF) has been formed. The idea of CFATF grew out of a meeting in 1990 to review money laundering problems in the region. In 1996 there was a Ministerial CFATF meeting which put the organization on a sounder footing. CFATF has adopted the 40 recommendations of FATF and has adopted 19 recommendations specifically for the region. It has also introduced measures to review implementation. It uses both the self assessment procedures and the mutual evaluation report developed by FATF.

SUMMIT OF THE AMERICAS

In December 1994 President Clinton hosted the Summit of the Americas in Miami. It was attended by the Heads of State of 34 nations in the Western Hemisphere. These leaders

directed their governments to work on a co-operative plan to combat money laundering. In December 1995 Ministers from the participating nations held a further meeting to promote more effective prevention, detection, and investigation of money laundering. The conference agreement with respect to money laundering calls for all nations to:

- criminalize the laundering of the proceeds from drug trafficking and other serious crimes;
- promote other laws that allow for the seizure and forfeiture of such proceeds;
- take action to promote an effective working relationship between financial regulatory authorities and the institutions they over-see;
- enhance the tools available to law enforcement authorities as they investigate money laundering.

These actions will complement the initiatives taken by the Organization of American States and the other measures undertaken by the UN, FATF, CFATF and other international organizations reviewed in this paper. Other organizations not reviewed here have also been active in anti-money laundering activities including the Council of Europe, the Asia Pacific Economic Council and Interpol.

CONCLUSION

There has always been free trade in crime. Criminals do not respect sovereignty; instead they use borders to their advantage. They know all too well that following the money trail is harder the more countries are involved. Add differences in language, legal systems and traditions, throw in a tax haven or two, create some shell corporations with nominees as directors and the basis of a sound money laundering system is in place. Now add an international financial system that allows virtually instantaneous transfers of funds around the globe and the money launderers world seems complete.

Nation States and international organization are, however, beginning to catch up. This paper has reviewed some of the significant international measures designed to thwart the ability of organized and economic crime to amass wealth and power. The threat is serious and robust measures are needed to safeguard the values we cherish. The stability of several countries is threatened by organized crime and the so is the integrity of the financial system upon which we all depend.

We are, in fact, all dependent on a successful outcome and we can no longer assume that crime is a matter for criminal justice. The social and economic costs of crime are visited upon us all and all sectors, including the financial sector, must respond appropriately. We have everything to gain.

Appendix One*

**FINANCIAL ACTION TASK FORCE ON
MONEY LAUNDERING**



**THE FORTY RECOMMENDATIONS
OF THE FINANCIAL ACTION TASK FORCE
ON MONEY LAUNDERING**

* The forty recommendations and the interpretive notes were kindly provided by Michèle Cheridan-Buzon, FATF Secretariat.

Introduction

1. 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.

2. The FATF currently consists of 26 countries²³ and two international organisations²⁴. Its membership includes the major financial centre countries of Europe, North 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.

3. 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.²⁵

²³ Reference in this document to "countries" should be taken to apply equally to "territories" or "jurisdictions". The twenty six FATF member countries and governments are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States

²⁴ The two international organisations are: the European Commission and the Gulf Cooperation Council.

²⁵ 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. See below.

4. 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.

5. 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.

6. FATF countries are clearly committed to accept the discipline of being subjected to multi-lateral 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.

7. These measures are essential for the creation of an effective anti-money laundering framework.

THE FORTY RECOMMENDATIONS OF THE FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

A. GENERAL FRAMEWORK OF THE RECOMMENDATIONS

1. Each country should take immediate steps to ratify and to implement fully, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention).

2. Financial institution secrecy laws should be conceived so as not to inhibit implementation of these recommendations.
3. An effective money laundering enforcement program should include increased multi-lateral co-operation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

B. ROLE OF NATIONAL LEGAL SYSTEMS IN COMBATING MONEY LAUNDERING

Scope of the Criminal Offence of Money Laundering

4. Each country should take such measures as may be necessary, including legislative ones, to enable it to 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.
5. As provided in the Vienna Convention, the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances.
6. Where possible, corporations themselves - not only their employees - should be subject to criminal liability.

Provisional Measures and Confiscation

7. Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities

to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offence, or property of corresponding value, without prejudicing the rights of bona fide third parties.

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

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

C. ROLE OF THE FINANCIAL SYSTEM IN COMBATING MONEY

LAUNDERING

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

not necessary, for example, when a financial activity is carried out on an occasional or limited basis.

Customer Identification and Record-keeping Rules

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

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

(i) to verify the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity.

(ii) to verify that any person purporting to act on behalf of the customer is so authorised and identify that person.

- 11.** Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc. that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

12. Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal 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.

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

14. Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.
15. If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.
16. Financial institutions, their directors, officers and employees should be protected by legal provisions from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or adminis-

trative provision, if they report their suspicions in good faith to the competent authorities, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

17. Financial institutions, their directors, officers and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.
18. Financial institutions reporting their suspicions should comply with instructions from the competent authorities.
19. Financial institutions should develop programs against money laundering. These programs should include, as a minimum :
 - (i) the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;
 - (ii) an ongoing employee training 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

20. Financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply these Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these Recommendations.

21. Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

Other Measures to Avoid Money Laundering

22. Countries should consider implementing feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.
23. Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.
24. Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.
25. Countries should take notice of the potential for abuse of shell corporations by money launderers and should consider whether additional measures are required to prevent unlawful use of such entities.

Implementation, and Role of Regulatory and other Administrative Authorities

26. The competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should co-operate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.
27. Competent authorities should be designated to ensure an effective implementation of all these Recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.
28. The competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of 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.
29. The competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.

D. STRENGTHENING OF INTERNATIONAL CO-OPERATION

Administrative Co-operation

Exchange of general information

30. National administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows

and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the International Monetary Fund and the Bank for International Settlements to facilitate international studies.

31. International competent authorities, perhaps Interpol and the World Customs Organisation, should be given responsibility for gathering and disseminating information to competent authorities about the latest developments in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

Exchange of information relating to suspicious transactions

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

Other forms of Co-operation

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

33. Countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions - i.e. different standards concerning the intentional element of the infraction - do not affect the ability or willingness of countries to provide each other with mutual legal assistance.
34. International co-operation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.

35. Countries should be encouraged to ratify and implement relevant international conventions on money laundering such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Focus of improved mutual assistance on money laundering issues

36. Co-operative investigations among countries' appropriate competent authorities should be encouraged. One valid and effective investigative technique in this respect is controlled delivery related to assets known or suspected to be the proceeds of crime. Countries are encouraged to support this technique, where possible.
37. There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.
38. There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity. There should also be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.
39. To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.
40. Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offence or related offences. With respect to its national legal system, each country should 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 appropri-

ate 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 businesses 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.
-

¹ Including inter alia- consumer credit, mortgage credit, factoring, with or without recourse-finance of commercial transactions (including forfaiting).

9. Individual and collective portfolio management.
10. Safekeeping and administration of cash or liquid securities on behalf of clients.
11. Life insurance and other investment related insurance.
12. Money changing.

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING



INTERPRETATIVE NOTES TO THE FORTY RECOMMENDATIONS OF THE FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING**

** During the period 1990 to 1995, the FATF 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.

INTERPRETATIVE NOTES

Recommendation 4

Countries should consider introducing an offence of money laundering based on all serious offences and/or on all offences that generate a significant amount of proceeds.

Recommendation 8

The FATF Recommendations should be applied in particular to life insurance and other investment products offered by insurance companies, whereas Recommendation 29 applies to the whole of the insurance sector.

Recommendations 8 and 9 (Bureaux de Change)

Introduction

1. Bureaux de change are an important link in the money laundering chain since it is difficult to trace the origin of the money once it has been exchanged. Typologies exercises conducted by the FATF have indicated increasing use of bureaux de change in laundering operations. Hence it is important that there should be effective counter-measures in this area. This Interpretative Note clarifies the application of FATF Recommendations concerning the financial sector in relation to bureaux de change and, where appropriate, sets out options for their implementation.

Definition of Bureaux de Change

2. For the purpose of this Note, bureaux de change are defined as institutions which carry out retail foreign exchange operations (in cash, by cheque or credit card). Money changing operations which are conducted only as an ancillary to the main activity of a business have already been covered in Recommendation 9. Such operations are therefore excluded from the scope of this Note.

Necessary Counter-Measures Applicable to Bureaux de Change

3. To counter the use of bureaux de change for money laundering purposes, the relevant authorities should take measures to know the existence of all natural and legal persons who, in a professional capacity, perform foreign exchange transactions.

4. As a minimum requirement, FATF members should have an effective system whereby the bureaux de change are known or declared to the relevant authorities (whether regulatory or law enforcement). One method by which this could be achieved would be a requirement on bureaux de change to submit to a designated authority, a simple

declaration containing adequate information on the institution itself and its management. The authority could either issue a receipt or give a tacit authorisation: failure to voice an objection being considered as approval.

5. FATF members could also consider the introduction of a formal authorisation procedure. Those wishing to establish bureaux de change would have to submit an application to a designated authority empowered to grant authorisation on a case-by-case basis. The request for authorisation would need to contain such information as laid down by the authorities but should at least provide details of the applicant institution and its management. Authorisation would be granted, subject to the bureau de change meeting the specified conditions relating to its management and the shareholders, including the application of a "fit and proper test".

6. Another option which could be considered would be a combination of declaration and authorisation procedures. Bureaux de change would have to notify their existence to a designated authority but would not need to be authorised before they could start business. It would be open to the authority to apply a 'fit and proper' test to the management of bureaux de change after the bureau had commenced its activity, and to prohibit the bureau de change from continuing its business, if appropriate.

7. Where bureaux are required to submit a declaration of activity or an application for registration, the designated authority (which could be either a public body or a self-regulatory organisation) could be empowered to publish the list of registered bureaux de change. As a minimum, it should maintain a (computerised) file of bureaux de change. There should also be powers to take action against bureaux de change conducting business without having made a declaration of activity or having been registered.

8. As envisaged under FATF Recommendations 8 and 9, bureaux de change should be subject to the same anti-money laundering regulations as any other financial institution. The FATF Recommendations on financial matters should therefore be applied to bureaux de change. Of particular importance are those on identification requirements, suspicious transactions reporting, due diligence and record-keeping.

9. To ensure effective implementation of anti-money laundering requirements by bureaux de change, compliance monitoring mechanisms should be established and maintained. Where there is a registration authority for bureaux de change or a body which receives declarations of activity by bureaux de change, it could carry out this function. But the

monitoring could also be done by other designated authorities (whether directly or through the agency of third parties such as private audit firms). Appropriate steps would need to be taken against bureaux de change which failed to comply with the anti-laundering requirements.

10. The bureaux de change sector tends to be an unstructured one without (unlike banks) national representative bodies which can act as a channel of communication with the authorities. Hence it is important that FATF members should establish effective means to ensure that bureaux de change are aware of their anti-money laundering responsibilities and to relay information, such as guidelines on suspicious transactions, to the profession. In this respect it would be useful to encourage the development of professional associations.

Recommendations 11, 15 through 18

Whenever it is necessary in order to know the true identity of the customer and to ensure that legal entities cannot be used by natural persons as a method of operating in reality anonymous accounts, financial institutions should, if the information is not otherwise available through public registers or other reliable sources, request information - and update that information - from the customer concerning principal owners and beneficiaries. If the customer does not have such information, the financial institution should request information from the customer on whoever has actual control.

If adequate information is not obtainable, financial institutions should give special attention to business relations and transactions with the customer.

If, based on information supplied from the customer or from other sources, the financial institution has reason to believe that the customer's account is being utilised in money laundering transactions, the financial institution must comply with the relevant legislation, regulations, directives or agreements concerning reporting of suspicious transactions or termination of business with such customers.

Recommendation 11

A bank or other financial institution should know the identity of its own customers, even if these are represented by lawyers, in order to detect and prevent suspicious transactions as well as to enable it to comply swiftly to information or seizure requests by the competent authorities. Accordingly Recommendation 11 also applies to the situation where an attorney is acting as an intermediary for financial services.

Recommendation 14

(a) In the interpretation of this requirement, special attention is required not only to transactions between financial institutions and their clients, but also to transactions and/or shipments especially of currency and equivalent instruments between financial institutions themselves or even to transactions within financial groups. As the wording of Recommendation 14 suggests that indeed "all" transactions are covered, it must be read to incorporate these interbank transactions.

(b) The word "transactions" should be understood to refer to the insurance product itself, the premium payment and the benefits.

Recommendation 22

(a) To facilitate detection and monitoring of cash transactions, without impeding in any way the freedom of capital movements, members could consider the feasibility of subjecting all cross-border transfers, above a given threshold, to verification, administrative monitoring, declaration or record keeping requirements.

(b) If a country discovers an unusual international shipment of currency, monetary instruments, precious metals, or gems, etc., it should consider notifying, as appropriate, the Customs Service or other competent authorities of the countries from which the shipment originated and/or to which it is destined, and should co-operate with a view toward establishing the source, destination, and purpose of such shipment and toward the taking of appropriate action.

Recommendation 26

In respect of this requirement, it should be noted that it would be useful to actively detect money laundering if the competent authorities make relevant statistical information available to the investigative authorities, especially if this information contains specific indicators of money laundering activity. For instance, if the competent authorities' statistics show an imbalance between the development of the financial services industry in a certain geographical area within a country and the development of the local economy, this imbalance might be indicative of money laundering activity in the region. Another example would be manifest changes in domestic currency flows without an apparent legitimate economic cause. However, prudent analysis of these statistical data is warranted, especially as there is not necessarily a direct relationship between financial flows and economic activity (e.g. the financial flows in an international financial centre with a high proportion of investment management services provided for foreign customers or a large interbank market not linked with local economic activity).

Recommendation 29

Recommendation 29 should not be read as to require the introduction of a system of regular review of licensing of controlling interests in financial institutions merely for anti-money laundering purposes, but as to stress the desirability of suitability review for controlling shareholders in financial institutions (banks and non-banks in particular) from a FATF point of view. Hence, where shareholder suitability (or "fit and proper") tests exist, the attention of supervisors should be drawn to their relevance for anti-money laundering purposes.

Recommendation 33

Subject to principles of domestic law, countries should endeavour to ensure that differences in the national definitions of the money laundering offences -- e.g., different standards concerning the intentional element of the infraction, differences in the predicate offences, differences with regard to charging the perpetrator of the underlying offence with money laundering -- do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

Recommendation 36 (Controlled delivery)

The controlled delivery of funds known or suspected to be the proceeds of crime is a valid and effective law enforcement technique for obtaining information and evidence in particular on international money laundering operations. In certain countries, controlled delivery techniques may also include the monitoring of funds. It can be of great value in pursuing particular criminal investigations and can also help in obtaining more general intelligence on money laundering activities. The use of these techniques should be strongly encouraged. The appropriate steps should therefore be taken so that no obstacles exist in legal systems preventing the use of controlled delivery techniques, subject to any legal requisites, including judicial authorisation for the conduct of such operations. The FATF welcomes and supports the undertakings by the World Customs Organisation and Interpol to encourage their members to take all appropriate steps to further the use of these techniques.

Recommendation 38

(a) Each country shall consider, when possible, establishing an asset forfeiture fund in its respective country into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes.

(b) Each country should consider, when possible, taking such measures as may be necessary to enable it to share among or between other countries confiscated property, in particular, when confiscation is directly or indirectly a result of co-ordinated law enforcement actions.

Deferred Arrest and Seizure

Countries should consider taking measures, including legislative ones, at the national level, to allow their competent authorities investigating money laundering cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering. Without such measures the use of procedures such as controlled deliveries and undercover operations are precluded.