

GOPAC ANTI-MONEY LAUNDERING ACTION GUIDE FOR PARLIAMENTARIANS

GOPAC

GLOBAL ORGANIZATION OF PARLIAMENTARIANS AGAINST CORRUPTION
ORGANISATION MONDIALE DES PARLEMENTAIRES CONTRE LA CORRUPTION
ORGANIZACION MUNDIAL DE PARLAMENTARIOS CONTRA LA CORRUPTION

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GOPAC
ANTI-MONEY
LAUNDERING ACTION GUIDE
FOR PARLIAMENTARIANS

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Introduction

Limiting the ability of corrupt leaders and other public officials to launder their illicit proceeds can act as a disincentive for them to engage in corrupt activities. The incidence of corruption can be reduced with the introduction of a strong and effective domestic anti-money laundering regime. This principle is a key component of the Global Organization of Parliamentarians Against Corruption's (GOPAC) dual strategy to fight both corruption and money laundering in parallel tracks. Addressing money laundering complements other GOPAC initiatives - including overseeing the implementation of the United Nations Convention Against Corruption, promoting strong ethical conduct by parliamentarians, and engaging civil society.

Money laundering is the conversion of criminal proceeds, including those derived from corruption, to disguise their illegal origin. By implementing effective anti-money laundering regimes and other preventative measures in their respective jurisdictions, parliamentarians can take an important step in the fight against corruption. The cost of corruption, as all GOPAC members know, is enormous, both in economic and social terms. Imagine how many schools, hospitals, vaccinations, roads and water systems could be built and delivered to citizens around the world if the US\$20 billion to US\$40 billion¹ that developing countries lose each year through bribery, misappropriation of funds, and other corrupt practices could be deployed in these more productive ways.

A 2004 World Bank study of the ramifications of corruption for service delivery concludes that an improvement of one standard deviation in the International Country Risk Guide Corruption Index leads to a 29 percent decrease in infant mortality rates and a 52 percent increase in satisfaction among recipients of public health care². Research has also shown that corrupt countries are less likely to benefit from foreign investment as potential investors shy away from jurisdictions seen to be corrupt and unstable. In addition, the flight of capital as a result of corruption scandals can have a detrimental impact on a country's economy and its citizens.

The purpose of this **Action Guide** is to provide parliamentarians with information and tools that will help them become actively engaged in their respective legislatures in the fight against money laundering - and specifically the laundering of corrupt money. The **Action Guide** will help parliamentarians introduce legislation if they deem it to be appropriate given their country's legislative framework, political context and local socioeconomic conditions.

The **Action Guide** can be used to garner support from other parliamentarians, or shed light on a government's failure to act - and promote the necessary measures to remedy this.

Having an effective anti-money laundering (AML) regime is the preventative side of the equation. Once corrupt money has escaped the AML net, the priority should become the recovery of stolen assets, which have often been transferred offshore.

¹ Stolen Asset Recovery (StAR) Initiative Handbook: See: www.worldbank.org/star

² Combating Corruption: Look before you Leap See: www.imf.org/external/pubs/ft/fandd/2004/12/pdf/shah.pdf

Over the past 15 years only \$5 billion of corrupt proceeds has been recovered and returned,³ but progress is being made as more capacity and expertise is developed internationally to combat this problem. This latter topic is also dealt with in the **Action Guide**.

At a meeting in September 2010, the GOPAC Anti-Money Laundering Global Task Force (AML GTF), which comprises GOPAC members from all regions of the world, concluded that it would be beneficial to produce this **Action Guide**, or handbook, so that GOPAC members would have a readily-available source of information and tools to assist them in the fight against the laundering of corrupt money. In those countries where anti-money laundering legislation does not exist, this document can be used by Parliamentarians to assist in the development of such legislation, in the design and implementation of a Financial Intelligence Unit (FIU), and establishing effective law enforcement and judicial regimes to combat this increasingly challenging criminal activity.

In those jurisdictions where anti-money laundering legislation is in place, but not working effectively and/or not accompanied by a mandated and adequately resourced FIU or other key stakeholders in the anti-money laundering (AML) regime, this **Action Guide** can be a source of information that Parliamentarians can use to question Ministers, and to hold their respective governments accountable. In some cases, anti-money laundering legislation may be in place, and an FIU established, but for a variety of reasons, including a lack of capacity or political will, there is an absence of a history of successful prosecutions.

GOPAC and the Oslo office of the United Nations Development Program (UNDP) developed a Toolkit⁴ that brings together GOPAC policy positions and the United Nations Convention against Corruption (UNCAC).

The Toolkit, that can be adapted to regional and national circumstances, provides a reporting framework for parliamentarians to assess their own roles in preventing corruption through legislation, oversight and representation. The toolkit is primarily intended to assist parliamentarians in country chapters identify strengths and weaknesses as well as areas for technical assistance and parliamentary strengthening in corruption prevention.

If the government in question is a signatory to the United Nations Convention against Corruption (UNCAC), Parliamentarians are able to ascertain to what extent their government has complied with the anti-money laundering provisions of the UNCAC, and this **Action Guide** can assist in these efforts.

The **Action Guide** was developed by members of the GOPAC Anti-Money Laundering Global Task Force (AML GTF) with the capable assistance of the GOPAC Secretariat, representatives from our non-governmental partners, and expert consultants.

In Chapters 2 & 3, anti-money laundering tools and techniques are briefly described, and the scale and scope of global money laundering are highlighted; Chapter 4 outlines the key components of anti-money laundering legislation; Chapter 5 outlines the critical elements needed for an effective Financial Intelligence Unit (FIU); Chapter 6 describes the critical role that Parliamentarians can play in the fight against the laundering of corrupt money; and Chapter 7 concludes by identifying the various players around the world who are similarly engaged in the fight against money laundering.

The Appendices, which can act as guides for Parliamentarians wishing to cause legislation to be enacted in their home country, amongst other things, provide access to benchmark anti-money laundering legislation and examples of typical Financial Intelligence Unit (FIU) organizational structures.

3 *Stolen Asset Recovery (StAR) Initiative Handbook*: See: www.worldbank.org/star

4 *A short version of the Toolkit is found at: www.gopacnetwork.org/Docs/UNCAC/UNCACToolkit3May2010Short_en.pdf*

It is understood that the approach that Parliamentarians will take in their respective jurisdictions will depend to some extent on the socioeconomic conditions of a particular jurisdiction. Countries with developing economies may be particularly interested in the flight of corrupt money beyond their borders; whereas jurisdictions with developed economies might demand a closer examination of inbound capital in their efforts to ensure that their financial system is not corrupted with 'dirty money'. Emerging economies may require a good combination of both areas of emphasis.

This **Action Guide** is designed so that Parliamentarians can selectively pick and choose those anti-money laundering initiatives that suit their particular environment, including political forces at play, and the degree of maturation of their economy. There is one common denominator to all of these efforts. The GOPAC membership has endorsed the 40 +9 Recommendations of the Financial Action Task Force (FATF), and we recognize the FATF as the anti-money laundering global standard-setter.

We would like to thank all of those individuals and organizations listed in Chapter 8 for all of their advice and assistance in the development of this **Action Guide**. Without their guidance and contributions, this document could not have been produced.

An anti-money laundering **Action Guide** for Parliamentarians is of value only if the material can be disseminated and used broadly by GOPAC members and other interested parties. GOPAC is developing an implementation strategy, with input from the GOPAC membership, which will be used to ensure that the material is understood and productively employed by engaged users.



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What do Parliamentarians Need to Understand About Money Laundering?

2

The biggest fear that criminals have is being detected by law enforcement authorities leading to a disruption of their illegal activities and/or the imposition of state sanctions as well as the confiscation of their proceeds. Disruption could include arrest, detention, dismantling their criminal organizations and the seizure and confiscation of assets that they have acquired from their criminal enterprises. Most criminals, including corrupt officials, are driven by greed and the attractive profits generated from these crimes. For Parliamentarians, having a better grasp of money laundering principles and techniques will assist them in understanding the importance of supporting and encouraging anti-money laundering measures, including the legislative authorities needed to combat corrupt officials.

Most Parliamentarians are aware that the motive behind corruption is “all about the money”. Corrupt officials’ life styles, providing the financial security, power, influence and authority to facilitate their criminal endeavours, rely on profits derived from their illegal activities. What many Parliamentarians may not know is that money laundering is an important component for corrupt officials to achieve their objectives covertly and be successful. The ability to “clean” the proceeds of their crimes by integrating these illicit funds into financial systems and making these transactions appear legitimate, allows corrupt officials to operate and commit crime undetected whilst having access to these proceeds to support their lifestyle.

Why do corrupt officials need to launder their money?

Most criminal activities, including corruption, are conducted on a “cash” basis, meaning that criminals have to find ways to “launder” the proceeds of their crimes, mostly cash, into the financial systems whilst avoiding creating suspicion or being detected by banking or law enforcement officials. In recent years, many more sophisticated methods for payments to corrupt officials are continually surfacing. However, corrupt officials and criminals traditionally prefer cash to avoid being defrauded by the other criminals they are dealing with and also to reduce the risk of law enforcement officials discovering a “paper trail” of the illicit activity.

Legitimate commerce, business and personal finances in the majority of countries require utilizing financial institutions to conduct these transactions. In the majority of countries, as a practical issue, and in efforts to protect against fraud, money laundering and other crimes, society is encouraged to use instruments other than cash for financial activities especially for acquiring expensive items like real estate, vehicles or luxury items. These same practices and principles apply to the business community, stock exchanges and other financial sectors. In order to conduct financial transactions, most individuals or companies, including corrupt officials, are required to establish business relationships with financial institutions.

These principles may not entirely apply in some countries that are “cash based” such as those of many South East Asian countries where “cash” is more commonly used for “day to day” living and for acquiring assets including real estate, vehicles or luxury items. However, even in these economies, it is now widely seen when dealing with professionals, security exchanges and other high valued financial transactions, that policies have been adopted to eliminate or discourage the use of “cash” for completing high value transactions.

In recent years, many countries have committed themselves to the adoption and implementation of the Financial Action Task Force (FATF) 40+9 Recommendations⁵ - the global standards for Anti-Money Laundering (AML) and Counter Terrorism Financing (CTF) - which has made it increasingly difficult for criminals to avoid detection and hide their proceeds of crime. Under the FATF standards, financial institutions globally are adopting stringent preventative measures and regulations to combat money laundering which include principals such as “know your customer” (KYC). Know Your Customer includes client identification requirements and verification of the source of funds for accounts, and thus assists in detecting and deterring money launderers. As a result, corrupt officials have had to resort to complex money laundering schemes and methods to avoid detection by financial institutions.

Chapter 5 of this **Action Guide** provides an overview of the important role Financial Intelligence Units (FIU's) play by sharing suspicious transaction reports related to money laundering with law enforcement authorities for investigation. These reports, mandated by anti money laundering legislation, are supplied to FIUs by financial institutions who detect a suspicion of money laundering. FIU's have become more prominent globally since 2001 and have become effective means to identify money launderers - including corrupt officials.

What is Money Laundering?

Money laundering is the practice of engaging in financial transactions to conceal the identity, source, and/or destination of illegally gained money by which the proceeds of crime are converted into assets which appear to have a legitimate origin. (In the United Kingdom the statutory definition is wider.)

It is common to refer to money legally obtained as “clean”, and money illegally obtained as “dirty”.

As illustrated in the Money Laundering Cycle graphic at the top of page 7, money laundering occurs in three steps. The first involves introducing the funds into the financial system (“**Placement**”). The second step involves carrying out complex financial transactions in order to disguise the asset trail and provide anonymity (“**Layering**”), and the final step is where the money is integrated into the legitimate economic and financial system and is assimilated with all other assets in the system (“**Integration**”).⁶

Money laundering cycle

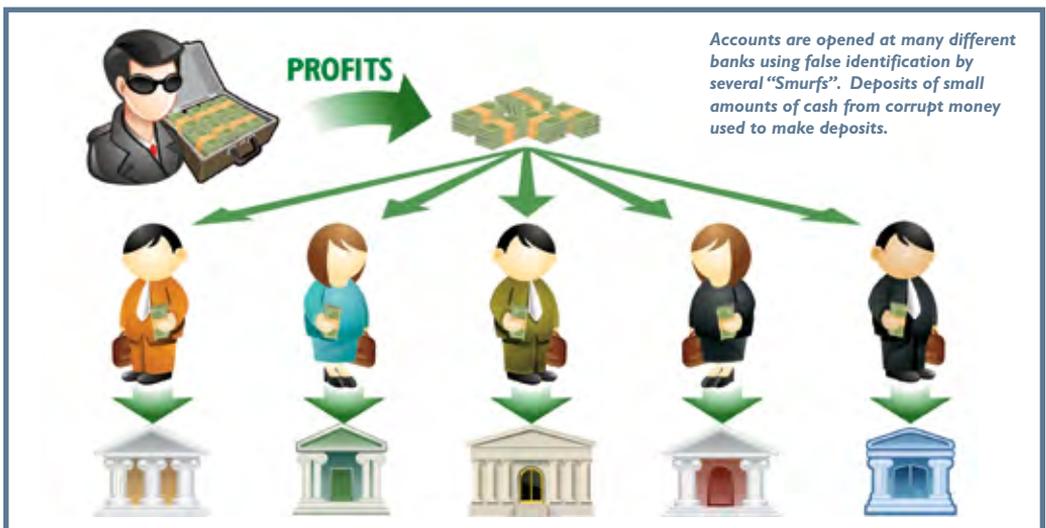
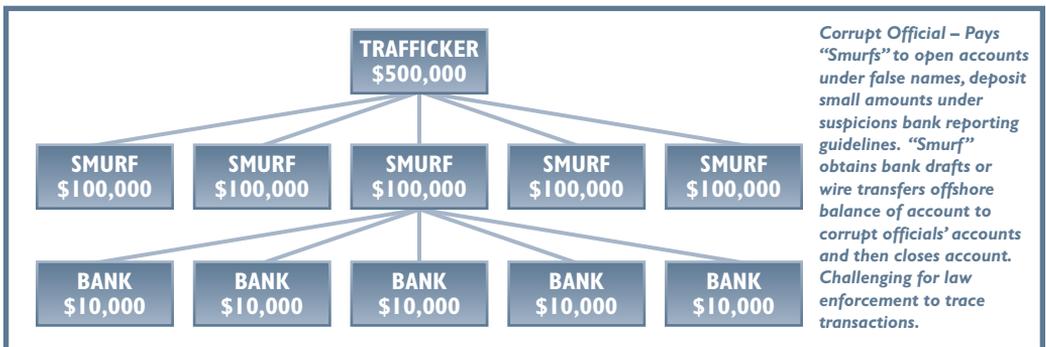
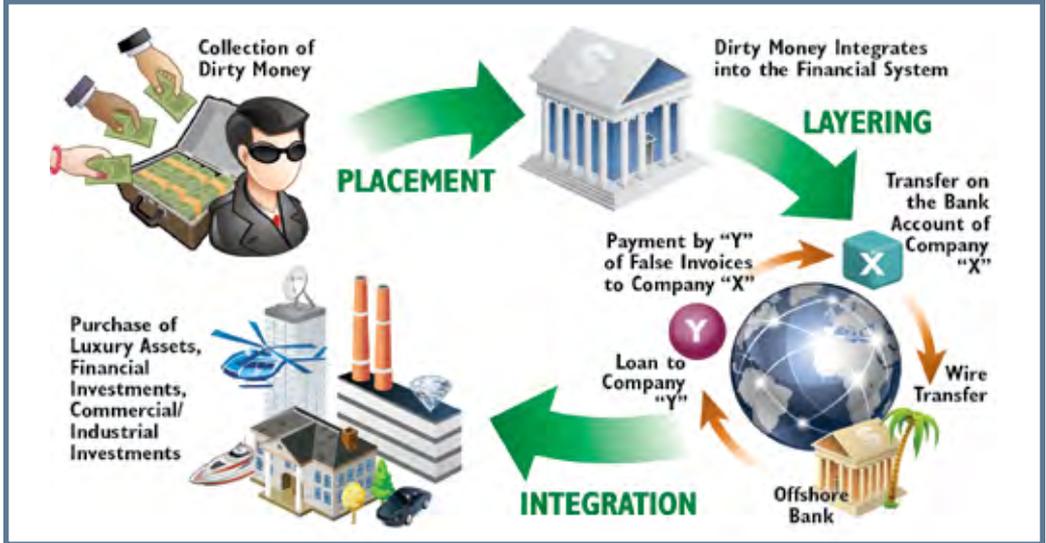
The amount of profits derived from corruption is so great that it provides money launderers the financial resources to be innovative and resourceful, including seeking the assistance of professionals to launder their illicit funds. As such, money laundering techniques are always evolving depending on changing legal and enforcement environments. Twenty years ago, in many countries, it was unlikely that a money launderer would be questioned or challenged when making a large cash deposit in a bank. For instance, the use of numbered accounts (where there is no name on the account) made it very easy to ensure anonymity in the past. Today, in most countries, banks are supposed to have measures in place, such as ‘Know Your Customer’ (KYC) to question those transactions so that they know the beneficial owner of an account. As a result, money launderers have had to develop more complex and sophisticated schemes to integrate their funds into the financial system.

⁵ FATF Anti Money Laundering and Counter Financing of Terrorism 40 + 9 Recommendations (2004 updated in February 2009 updated) www.fatf-gafi.org

⁶ en.wikipedia.org/wiki/Money_laundering Part 7, The Proceeds of Crime Act 2002 (c.29) (POCA) is an Act of the Parliament of the United Kingdom which provides for the confiscation or civil recovery of the proceeds from crime and contains the principal money laundering legislation in the UK /

The Money Laundering Cycle

A Typical Money Laundering Scheme



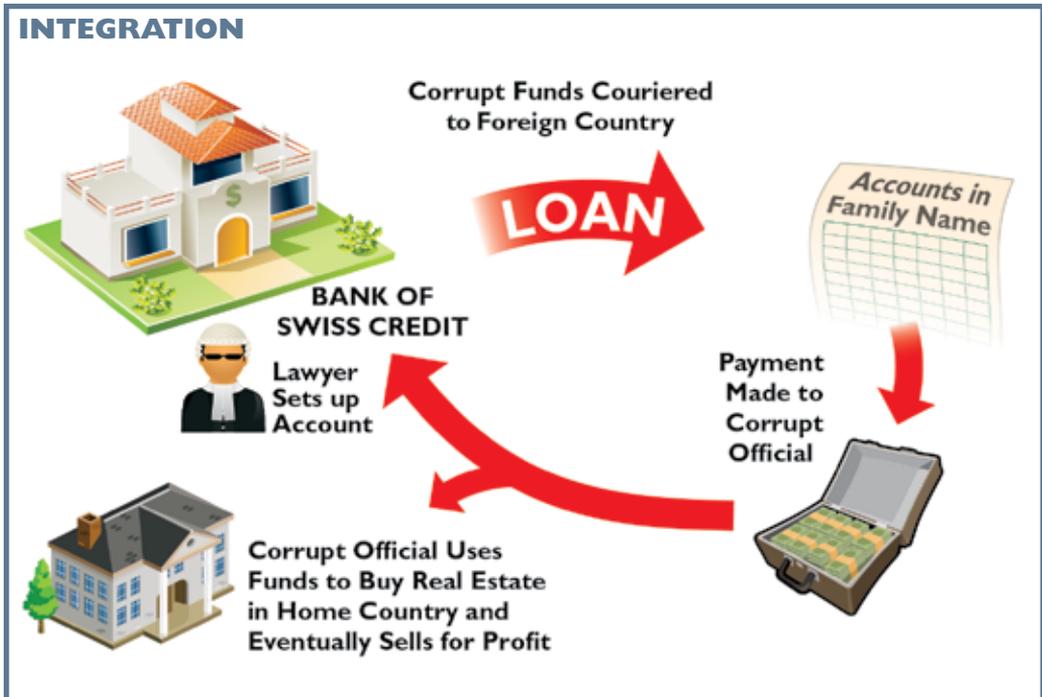
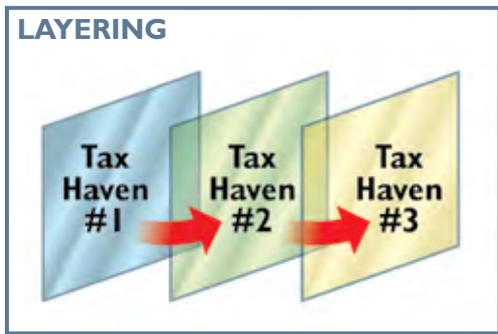
Other ways money launderers covert 'cash' is through cash purchases of real estate, jewellery, investments or other commodities that are easily converted back to 'cash' if they should so require.

Typical Money Laundering Schemes that corrupt officials may use:

Corrupt officials will use common money laundering methods such as "smurfing", "cash couriers" and "nominees" to launder their proceeds.

Smurfing: is used for "placement of cash" into financial institutions:

- ▶ The criminal breaks cash from illegal sources into smaller quantities;
- ▶ Multiple accounts are opened at various locations by individuals hired by the corrupt official or his organization;
- ▶ Deposits are made in quantities that are just under a threshold triggering specific customer due diligence requirements, or, in some countries, a report to the FIU (i.e. \$10,000 USD in the USA). Deposits may be made on multiple occasions;



- ▶ Funds are eventually withdrawn or transferred from these accounts by the “Smurf” at the direction of the corrupt official or his money launderer who directs these transactions. This can be done by cheques issued to that account or through wire transfers.
- ▶ This process is repeated on numerous occasions but eventually the bank accounts are closed and new accounts opened - making it increasingly challenging for law enforcement to trace these transactions.
- ▶ No questions are asked by financial institutions as to the source of funds, or nominees in that country are used to set up these accounts;
- ▶ Corrupt official has set up bank accounts in those countries and can draw funds from those accounts by cheque, ATM or by wire transfers at the direction of the corrupt official;

Cash Couriers – this method is becoming more challenging as more countries are tightening AML/CFT controls and establishing FIU's in those jurisdictions.

- ▶ Similar to a “Smurf” hired by a corrupt official to take “cash” offshore or to foreign jurisdictions to deposit in accounts set up in those countries;

Nominee's – The corrupt official uses nominees (lawyers, accountants, family or friends) to distance themselves from transactions and launder their funds and facilitate complex money laundering schemes to hide the source of the funds. Nominees can be used during each stage of the money laundering cycle.



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The Size, Scale and Scope of Global Money Laundering

Size:

While we don't know the exact amount of money that is laundered every year, credible estimates make it absolutely clear that the amounts are staggering.

The following are examples at the global level:⁷

- ▶ A 2007 Global Anti Money Laundering Survey conducted by KPMG concluded that a staggering US\$ 1 trillion per year is being laundered by financial criminals, drugs dealers and arms traffickers worldwide.
- ▶ The 1999 United Nations Human Development Report estimated that at least US\$1.5 trillion is laundered each year (US\$1,500,000,000,000).
- ▶ The FBI in the USA estimated US\$1.5 trillion is being laundered per year.
- ▶ A US Congress investigation estimated that US & European banks launder US\$500 Million to US\$1 trillion per year.
- ▶ The Asian Development Bank estimated that the cost of corruption was up to 17% of a country's Gross Domestic Product (GDP).

The following are examples at the country level:⁸

- ▶ United Kingdom authorities estimated that £25 billion was a realistic figure for the amount laundered each year in the U.K. from annual proceeds from crime estimated anywhere between £19 billion and £48 billion;

- ▶ A 1996 report published by Chulalongkom University in Bangkok Thailand estimated that a figure equal to 15% of the country's GDP (\$28.5 billion) was laundered criminal money;
- ▶ Illicit funds generated and laundered in Canada each year were estimated to be between \$5 and \$17 billion in 1998.

Scale:

Corruption/money laundering is both a developing country problem and a developed country problem and amongst its many impacts, three stand out:

- ▶ in developing countries, the inordinate negative impact on poverty reduction efforts through the loss of some US\$20 billion⁹ to US\$500 billion¹⁰ each year. Indeed the cost of corruption, as all GOPAC members know, is enormous, both in economic and social terms. Imagine how many schools, hospitals, immunization vaccinations, roads and water systems could be built and delivered if the funds from these corrupt practices had been deployed in these more productive ways. Then imagine the reduction of poverty and the concomitant increase in the number of jobs and standard of living; and the resultant political stability that will accrue when corruption is brought under control.

7 From: www.Dirtydealing.net Copyright Peter Lilley 2006

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9 *Handbook of the Stolen Asset Recovery (StAR) Initiative of the World Bank estimates that developing countries lose some US\$20 billion to US\$40 billion each year through bribery, misappropriation of funds, and other corrupt practices* www.worldbank.org/star

10 Raymond Baker in 'Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System', Page 355, estimates that US\$500 billion of illicit proceeds flows out of developing and transitional economies every year.

- ▶ in developed countries, the continued erosion of their economic, social and political foundations as a result of ever increasing illegal and unethical activities of criminals and corporations, including the offering of bribes and the accepting by financial institutions of the huge amounts of corrupt funds stolen by corrupt developing country leaders. Indeed, corporate corruption in developed countries arising from frauds, scandals and recklessness has increased in quantity and size year after year (i.e. Enron, sub-prime mortgages, asset-backed securities) until it reached a scale in the Fall of 2008 that hundreds of thousands of people were put out of work and many economies were nearly bankrupted (and still may be); and
- ▶ in both developing and developed countries, corruption and money laundering distort the social fabric and stability by undermining the rule of law and eroding democratic institutions.

Moving Illegal Money:

As mentioned above, there are typically three stages in the money laundering process: 1) Placement; 2) Layering (through multiple financial transactions); and 3) Integration (into legal funds or seemingly legal assets such as real estate, investments, etc.).

Illegal money can be moved by all manner of means:

- ▶ Individuals have been convicted of laundering for transporting goods bought with the proceeds of crime and destined for criminal groups;
- ▶ Cash deposited in a checking account can be withdrawn worldwide with debit cards. Other simple instruments offered by financial institutions are products such as “value cards” where cash is loaded onto the card which can be used globally. These cards are becoming popular and are vulnerable to money laundering. Similar “cash loading” products are developing into an emerging market for services offered by mobile phone companies;
- ▶ Even simple methods such as wire transfers can facilitate money laundering.

Economic and financial globalization has also made the life of a launderer easier. The high volume of legal funds circulating around the globe makes the movement of dirty money less conspicuous. And the globalization of financial-services companies means that money placed in a bank branch in a less regulated jurisdiction is easily transferred internally within the organization to a branch in a more regulated jurisdiction.

Other methods include: Alternative remittance (Standard FATF Recommendation 6 or R6); Bulk cash smuggling (R9); Smurfing and electronic transfer (R7); Value cards; High value commodities and real estate; Investments in capital markets; Hedge funds; Through not-for-profit organizations (R8); and a Parallel economy.

Main beneficiaries of Money Laundering

In developing countries, the members of the executive branch of government are the main beneficiaries of the vast majority of ‘big ticket’ corruption (including that derived from natural resource development) because these are the people who control the levers of power.

In developed countries, banks, professionals (i.e. accountants and lawyers) and other corporations are the main beneficiaries because of the fees and services that are paid to launder corrupt funds, and the profits generated for businesses and services needed by corrupt officials acquiring assets from their proceeds of crime. The capacity of the financial sector in specific countries to support money laundering is an integral part of their “attractiveness” to money launderers. These countries include most of the Caribbean offshore banking centres and some of the larger centers in Europe and Asia including Luxembourg, Switzerland and Singapore. International financial centres in locations like Paris, London, New York and Toronto are targets for money launderers as well. Indeed, there is a certain irony that developed countries identified in global rankings as the least corrupt are still major recipients of corrupt funds.

Importance of Country and International Standards

While establishing a rigorous anti-corruption regime in individual countries is essential to prevent money laundering, as the examples above illustrate, it is just as important to have global standards and mechanisms to effectively reduce and prevent money laundering. Indeed, in the absence of effective international cooperation, there will be no realistic chance of defeating or even significantly curbing money laundering. Currently, the regulatory regimes operating from country to country are at best piecemeal and often are widely ignored. Lax controls in some countries permit easier access to financial-services systems than in more regulated jurisdictions, making a global minimum standard necessary for an effective reduction in money laundering. Only a combination of rigorous country regulations, and related infrastructure, and global regulations can stop money laundering.

This is precisely why countries strengthened a number of existing international organizations and started new ones.

In 1989, the then G-7 established the Financial Action Task Force (FATF) that has continued to expand to the point where it now comprises 34 member countries and two regional and eight associate member organizations¹¹. The FATF is an inter-governmental body whose purpose is to generate the necessary political will to bring about national legislative and regulatory reforms through the development and promotion of policies and measures, both at national and international levels, to combat money laundering and terrorist financing. The FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals

through a series of Recommendations¹² (40+9) that provide a comprehensive plan of action needed to fight money laundering. (See Appendix D) The Recommendations are regularly revised to ensure that they remain up to date and relevant¹³. The FATF monitors members' compliance and progress in implementing the necessary measures, produces reports that are made public, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.

The FATF standards have been endorsed by international bodies such as the UN¹⁴, IMF and the World Bank.

Indeed, the now G-20, as recently as November 2010, made a commitment "to further strengthen its effort to prevent and combat money laundering, and invite the Financial Action Task Force (FATF) to continue to emphasize the anti-corruption agenda as we urged in Pittsburgh and report back to us in France on its work to: continue to identify and engage those jurisdictions with strategic Anti-Money Laundering/Counter-Financing of Terrorism (AML/CFT) deficiencies; and update and implement the FATF standards calling for transparency of cross-border wires, beneficial ownership, customer due diligence, and due diligence for 'politically exposed persons' ".¹⁵

11 FATF Regional and Associate Member Organizations: the Asia-Pacific Group on Money Laundering/APG with 40 member jurisdictions; the Caribbean Financial Action Task Force/CFATF with 28 member jurisdictions; the Eurasian Group/EAG with 8 member jurisdictions; the Eastern and Southern Africa Money Laundering Group/ESAAMLG with 15 member jurisdictions; the Financial Action Task Force on Money Laundering in South America/GAFISUD with 12 member jurisdictions; the Intergovernmental Action Group against Money Laundering in West Africa/GIABA with 15 member jurisdictions; the Middle East and North Africa Financial Action Task Force/MENAFATF with 18 member jurisdictions; and the Committee of Experts on the Evaluation of Anti Money Laundering Measures/MONEYVAL with 28 member jurisdictions.

12 FATF 40+9 Recommendations: www.fatf-gafi.org/document/28/0,3746,en_32250379_32236920_33658140_1_1_1,00.html

13 The FATF is currently revising the 40+9 recommendations to *inter alia* also cover the United Nations Convention against Corruption.

14 UN General Assembly Resolution 60/288 of 2006, also known as the Global Counter Terrorism Strategy. In its Action Plan, States are encouraged to implement the comprehensive international standards embodied in the Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force, recognizing that States may require assistance in implementing them. In addition, the International Monetary Fund, the World Bank, the United Nations Office on Drugs and Crime and the International Criminal Police Organization are encouraged to enhance cooperation with States to help them to comply fully with international norms and obligations to combat money-laundering and the financing of terrorism.

15 Annex III: G20 Anti-Corruption Action Plan - G20 Agenda for Action on Combating Corruption, Promoting Market Integrity, and Supporting a Clean Business Environment; Seoul, November 12, 2010.

An overview of the role that global organizations such as the Financial Action Task Force (FATF), the Egmont Group, the International Monetary Fund (IMF), Interpol, Transparency International, the United Nations Office on Drugs & Crime (UNODC), and the World Bank, play in the global fight against money laundering can be found in Chapter 7 of this **Action Guide**.

Role of Parliamentarians:

The laundering of corrupt money is everyone's business, including parliamentarians in developing countries, in developed countries and in countries in transition alike, because of the unique roles parliamentarians have of:

- ▶ oversight, including of the activities of the executive branch;
- ▶ proposing and enacting legislation where it is lacking;
- ▶ assuring that the effective bodies called for by legislation are promptly and properly established by way of transparent appointments and independence and are properly resourced;
- ▶ working with the international community to monitor activities in their country; and,
- ▶ alerting their country's citizens of the status of corruption in their country and working with them to improve that status.

Costs & benefits:

Relative to the staggering losses arising from money laundering, on a macroeconomic level, clearly the relatively minor costs of putting the necessary structures in place to prevent it by:

- ▶ strengthening the legal framework including criminal provisions;
- ▶ putting in place the requisite institutions;
- ▶ introducing measures to freeze/forfeit and recover assets acquired through corrupt conduct; and,

- ▶ improving the practices of financial institutions to deter, detect, disclose and document corrupt transactions; and increase public awareness

will be repaid many times over as they do their part to prevent corruption and allow those funds to be put to the positive uses previously described. For individual countries, however, the costs of installing an effective anti-money laundering (AML) regime, and recovering stolen corrupt assets, may be prohibitive and may require a reordering of priorities and/or assistance from other countries and international agencies. Organizations like the World Bank, the International Monetary Fund, the United Nations Office on Drugs and Crime and others have programs designed to assist developing countries build their AML capacity.

It should also be noted that proper implementation of the requirements to criminalise money laundering and to be able to seize and confiscate property that is the proceeds of crime or that is used as an instrumentality in crime will have positive social benefits for a jurisdiction, but also positive financial benefits. Even though stand-alone financial investigations and cross border asset recovery procedures can be expensive and time consuming, a number of jurisdictions have started to use the money laundering provisions in their legislation to be able to, immediately and automatically, seize the property of those suspected to be involved in any profit generating crime, such as corruption and drug trafficking (the illicit proceeds being an instrumentality of the money laundering crime, and/or evidence in the criminal case). It appears that the additional cost of automatically seizing the suspected proceeds of crime in an already ongoing criminal investigation is low, while the value of the illicit proceeds that can be confiscated at a later stage thanks to the automatic seizure can exceed the costs of the initial criminal investigation.

Key Components of AML Legislation, Regulations and Guidelines

Money laundering takes place within countries and transnationally. Therefore, eradication not only requires that countries establish effective national regimes, but also that they work together internationally through regional and multilateral forums.

This chapter identifies key components of Anti-Money Laundering Legislation, Regulations and Guidelines. Templates for these components have been developed by a number of international organizations established by countries acting together specifically for this purpose, including the Financial Action Task Force (FATF) and the 8 FATF Style Regional Bodies (FSRBs); and a number of organizations with broader mandates, including the United Nations Office on Drugs and Crime (UNODC), the International Monetary Fund and the World Bank. The UNODC has a specific role in providing the Secretariat for the United Nations Convention against Corruption (UNCAC). The UNCAC¹⁶, to which there are 152 parties as of March 31, 2011, includes provisions on the prevention of money laundering (Art 14), on the criminalization of the laundering of the proceeds from crime (Art 23), on the return (Art 51, 57) and the recovery (Art 53) of assets, and on international cooperation in extradition and mutual legal assistance in relation to corruption and money laundering offences.

The UNCAC also provides for a mechanism to ensure the effective implementation of its provisions by the States Parties¹⁷.

Designing and implementing an anti-money laundering regime will involve a number of considerations, which will vary by jurisdiction, but may include:

- ▶ **Defining Reporting Entities** - This involves defining who is required to report 'suspicious transactions' to the Financial Intelligence Unit (FIU) and whether or not certain transactions and reporting entities will be exempt from the reporting requirement (e.g. large department stores, casinos, etc.). All of these financial entities must introduce preventative measures to combat money laundering and terrorism financing in accordance with the international standards. Many groups will push to be excluded from the anti-money laundering reporting requirements.
- ▶ **Defining 'suspicious transactions'** Guidelines will be needed to provide a framework for reporting entities on the matter of identifying suspicious transactions. Specific indicators of suspicious activity (e.g. deposit of cheques of large amount incompatible with the relevant business) should be provided to reporting entities by supervisors to assist them in screening for suspicious transactions.

¹⁶ UNCAC Article 14 obliges Member States to institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions, and other bodies particularly susceptible to money laundering to deter and detect all forms of money laundering and to establish as criminal offences the laundering of the proceeds of corruption, as well as to consider the establishment of the offence of concealment or continued retention of property, which is the result of any of the offences established in accordance with UNCAC.

¹⁷ A Member of Parliament from a country that has not yet become a Party to UNCAC should endeavour to take all necessary steps to ensure that his/her country becomes a Party to this important Convention as soon as possible. For the list of countries having signed and ratified UNCAC, see: www.unodc.org/unodc/en/treaties/CAC/signatories.html

- ▶ **Solicitor/client privilege** - Lawyers may argue that the disclosure of suspicious transactions to the Financial Intelligence Unit will compromise solicitor-client privilege. However, over 65% of countries evaluated by the FATF or the FATF Style Regional Bodies (FSRBs) have introduced legislation or regulations requiring lawyers and accountants to either report or implement self-regulated anti-money laundering or financing terrorism measures. It has been shown that lawyers often play a key role in large, complex money laundering schemes. Excluding them from a jurisdiction's anti-money laundering regime on the basis of solicitor/client privilege is a risk not worth taking.
- ▶ **Privacy issues** - Citizens will generally not be comfortable with sharing information with national governments, especially financial information. This will typically need to be handled sensitively and policies will need to be clearly articulated and understood.
- ▶ **Monetary instruments** - Monetary instruments might include cash, electronic transfers, travelers' cheques, etc., based on the assumption that money laundered will ultimately flow through a financial intermediary. Less obvious forms of monetary instruments, like precious metals, will require special attention.
- ▶ **Onus – reversal of the burden of proof re: seizures** - In those instances when individuals or organizations fail to adequately disclose deposits or transfers as required by law, it may be reasonable to assume that the funds were derived from illegal sources. In such cases, set the burden of proof on the defendant to prove otherwise. However, while such an approach may be expedient from an enforcement perspective, it may open the door to constitutional and human rights challenges.
- ▶ **Electronic transfers and internet banking** - Policy and regulatory policy positions will be required to monitor these types of transactions.

Many other challenges will be presented as legislation is developed and an FIU is established. For example, money service businesses and foreign exchange dealers may be subject to the anti-money laundering provisions, but compliance may be difficult to monitor, for the following reasons:

- ▶ the sector is typically unregulated;
- ▶ the multitude of small businesses;
- ▶ some of these businesses form part of the underground or informal economy; and
- ▶ often there are no applicable industry associations.

Likewise, a registration system for reporting entities will need to be established to strengthen compliance monitoring.

A number of working level organizations have also been established, like the Egmont Group that provides a venue for Financial Intelligence Units (FIUs) to address many of these challenges by exchanging information and training and sharing expertise.

The FATF's 40+9 FATF Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Recommendations¹⁸ constitute a comprehensive framework to set up an effective AML/CFT system. Because of their importance, the 40 Recommendations that address money laundering are laid out in detail in Appendix D.

The FATF 40 + 9 Recommendations provide a complete set of counter-measures against money laundering (ML) and terrorist financing (TF) that cover:

- ▶ the criminal justice system and law enforcement;
- ▶ the financial system and its regulation, and
- ▶ international cooperation.

¹⁸ See: www.fatf-gafi.org/pages/0,3417,en_32250379_32235720_1_1_1_1_1,00.html

Generally speaking, a comprehensive AML system comprises the following elements (covering such issues as preventative and institutional measures, repressive measures, and international cooperation mechanisms):

- ▶ legal system (e.g. criminalization of ML and FT, provisional measures, confiscation);
- ▶ measures to be taken by financial institutions and designated non-financial business and professions (DNFBPs) (e.g. casinos, dealers in precious metals and stones, real estate agents, lawyers, notaries, and other legal professionals and accountants, trust and company service providers) to prevent ML and FT, such as effective customer due diligence measures and record keeping measures;
- ▶ reporting of suspicious transactions and compliance;
- ▶ other measures to deter ML and FT, such as effective, proportionate and dissuasive sanctions, the prohibition of shell banks, reports on currency transactions, special attention to transactions from countries that do not or insufficiently apply the FATF Recommendations, application of AML/CFT measures to branches and subsidiaries; supervision and prevention of criminals from holding positions in a financial institution, supervision and regulation of DNFBPs (see above);
- ▶ establishing a Financial Intelligence Unit (FIU), designating law enforcement authorities for AML/CFT investigations, search and seizure of documents, effective domestic cooperation amongst all those with AML/CFT responsibilities;
- ▶ international cooperation, both at the judicial (e.g. mutual legal assistance and extradition) and administrative (e.g. between law enforcement, between supervisors, between FIUs, etc...) levels.

Anti-Money Laundering (AML) activities have two main functions: Prevention and Recovery. Typically, the priority is on prevention because it is much more difficult to recover stolen corrupt money, especially after it has left a country. Also, the more money laundering is prevented, the less need there is for recovery. That said, because corrupt individuals still hide and launder their proceeds of corruption, bribes and embezzled funds in bank accounts and investments in foreign jurisdictions, it is essential to have a robust recovery regime, which by definition, must involve the support of other countries and their institutions to be successful. While immense strides have been made in the fight against corruption, the fact that it is still very difficult to recover corrupt funds is a clear indication that much more needs to be done, including by Parliamentarians in the countries in which these funds are being deposited.

Prevention – ‘an ounce of prevention is worth 10 pounds of recovery’.

As noted above, the focus of AML activities is to establish and/or amend legislation, regulations, guidelines and to strengthen the related public institutions that are necessary to prevent money laundering. A strong prevention regime will deter those considering engaging in money laundering from embarking on such a path. Furthermore, to paraphrase an old expression, ‘an ounce of prevention is worth a pound of recovery’. In other words, the effort a country¹⁹ needs to expend to recover laundered money is reduced in direct proportion to the strength of its money laundering prevention regime.

In addition to having effective legislation, regulations and institutions/agencies like Financial Intelligence Units (FIUs), a thorough prevention regime will embrace the banking, securities, insurance, and microfinance sectors. Accordingly, the political will of a parliament and a national government are the most important prerequisites for the establishment of a successful Anti-Money Laundering (AML) regime.

¹⁹ The term ‘country’ also refers to ‘territories’ or ‘areas’ in this Guide.

A national government and Parliament demonstrates a clear political commitment to establish a robust AML regime by:

- ▶ passing appropriate laws and regulations;
- ▶ granting suitable powers;
- ▶ dedicating necessary resources to relevant ministries and agencies; and
- ▶ prosecuting cases and obtaining convictions.

It is important to note that it is recognized internationally that one AML system is not right for all countries²⁰, whether that be because some jurisdictions use common law and others civil law; or because of their differing levels of development. In recognition of this:

- ▶ the UNODC's Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism (GPML) and the International Monetary Fund (IMF) together have developed model laws for both common law and civil law legal systems that are in full compliance with the FATF 40 + 9 Recommendations²¹; (See Appendix A of this **Action Guide**), and;
- ▶ the FATF Recommendations allow countries a measure of flexibility according to their particular circumstances and constitutional frameworks.

An effective AML regime requires significant collaboration and cooperation from the country's public sector stakeholders (Legislature, Executive Branch or Ministries, Judiciary, Law Enforcement, including the police and customs authorities, Financial Intelligence Unit (FIU), supervisors of banks, including the central bank and other financial institutions and of 'designated nonfinancial businesses and professions' (DNFBPs) that are subject to compliance obligations, and private sector stakeholders (financial institutions and DNFBPs) that are subject to compliance obligations.

You are not alone

Although the task of combating money laundering can seem monumental, parliamentarians and other stakeholders have been working vigorously together for more than 20 years to identify what needs to be done at the national, regional and international levels. Indeed, recognizing that no one country acting alone could defeat money laundering, countries together established international organizations, such as the aforementioned Financial Action Task Force (FATF) and the eight FATF Style Regional Bodies (FSRBs) and the Offshore Group of Banking Supervisors to lead a cooperative effort to establish standards that provide a comprehensive and consistent framework of measures for combating money laundering that in turn are used as the basis for regular assessments of each country's progress in establishing and administering an anti- money laundering regime.

The FATF Recommendations set out the principles for action and allow countries a measure of flexibility in implementing these principles according to their particular circumstances and constitutional frameworks. Though not a binding international convention, many countries in the world have made a real political commitment to combat money laundering by implementing the FATF Recommendations, either because they are committed to combating money laundering because of the damage it does to their and other societies, or because they recognize that there will be real costs to their country's financial viability if they don't. Of course, truly corrupt despots are not at all interested in making a real commitment to combat money laundering because it would make it impossible for them to continue to steal and keep the billions they are stealing from their country. (And the corrupt recipients of these funds are not interested either.) The business community too may lobby their governments to discourage implementing anti-money laundering legislation, such as the Dodd-Frank Act in the United States, insisting that such measures will put them at a competitive disadvantage to companies in countries without such legislation.

²⁰ *Preventing Money Laundering and Terrorist Financing; A Practical Guide for Bank Supervisors*; World Bank; p. XXIV siteresources.worldbank.org/EXT/FINANCIALSECTOR/Resources/Preventing_Money_Laundering_Terrorist_Financing.pdf

²¹ See: www.unodc.org/unodc/en/money-laundering/Model-Legislation.html?ref=menuaside

However, just as international cooperation is imposing real sanctions against those committing crimes against humanity, international cooperation to confiscate corrupt funds is slowly shrinking the opportunities to place these funds so that they can later be accessible.

Initially developed in 1990, the FATF 40 Recommendations addressing money laundering were revised in 1996 and again in 2003. (The 9 Special Recommendations address terrorist financing.)

In addition to the FATF itself (currently with 34 member countries), there are eight FATF-style regional bodies (FSRBs) that together comprise over 145 member jurisdictions. Together, the FATF and the 8 FSRBs comprise over 180 members. In addition to the experts in these nine organizations, the parliamentarians involved in anti money laundering, and those working with them in these 180+ jurisdictions, provide GOPAC members a wealth of experience to draw upon.

The complete list of the members and observers of the FATF and the 8 FATF Style Regional Bodies (FSRBs) is set out in Appendix E.

Monitoring and Evaluation – All Countries Are Evaluated:

The FATF's 40+9 recommendations are the international AML/CFT standard. In cooperation with the eight FSRBs and international organizations such as the IMF and the World Bank, the FATF assesses countries' compliance with this standard by way of Mutual Evaluation Reports (MERs). The purpose of these evaluations is chiefly to assess whether the necessary laws and regulations are in force and in effect, whether the necessary institutions are in place and operational, and whether there has been a full and proper implementation of all necessary measures and that the system in place is effective. These mutual evaluations are a key mechanism for ensuring that the FATF Recommendations are effectively implemented.

The 8 FATF Style Regional Bodies (FSRBs) are:

- i) the Asia-Pacific Group on Money Laundering (APG) with 40 member jurisdictions: www.apgml.org
- ii) the Caribbean Financial Action Task Force (CFATF) with 28 member jurisdictions: www.cfatf-gafic.org/
- iii) the Eurasian Group (EAG) with 8 member jurisdictions: www.eurasiangroup.org
- iv) the Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG) with 15 member jurisdictions: www.esaamlg.org
- v) the Financial Action Task Force on Money Laundering in South America (GAFISUD) with 12 member jurisdictions: www.gafisud.info/home.htm
- vi) the Intergovernmental Action Group against Money Laundering in West Africa (GIABA) with 15 member jurisdictions: www.giaba.org
- vii) the Middle East and North Africa Financial Action Task Force (MENAFATF) with 18 member jurisdictions: www.menafatf.org
- viii) the Committee of Experts on the Evaluation of Anti Money Laundering Measures (MONEYVAL) with 28 member jurisdictions: www.coe.int/t/dghl/monitoring/moneyval

The FATF has developed comprehensive and detailed procedures to conduct the mutual evaluations²², and these help to ensure fair, proper and consistent evaluations, whether carried out by the FATF, by one of the eight FSRBs or through an IMF or World Bank assessment. The FATF evaluations are conducted by a team of experts drawn from the financial, legal and law enforcement areas. A key feature of the process is an on-site visit to the jurisdiction and comprehensive meetings with government officials and the private sector over a two week period.

Public Reports Mean Business

The results of the 'Mutual Evaluation' are made known to officials in the evaluated country and officials in all the other 180 FATF and FSRB countries, and they are available to the public so that all can evaluate the status of AML activities in that country. Indeed, the FATF prepared a report ahead of the September 2009 G-20 Ministers meeting that provided a global snapshot of all the jurisdictions' level of compliance with the 40 + 9 Recommendations and in February 2010, the FATF published two lists of jurisdictions with strategic weaknesses in their AML/CFT systems.

The FATF, the 8 FSRBs and the international financial institutions (IFIs) have assessed the vast majority of jurisdictions worldwide.

It would therefore be important for parliamentarians to:

- i) look at the latest Mutual Evaluation Report (MER) concerning their country;
- ii) consider those areas where improvements are needed in their country; and
- iii) take action accordingly (through legislative and/or other measures as appropriate).

Furthermore, the FATF has established an International Cooperation Review Group (ICRG) to enhance international cooperation and improve compliance by highlighting selected countries' key deficiencies and the risks they pose to the international and regional financial systems, and help to ensure that countries follow through with their international commitments. The ICRG process deals with jurisdictions both inside and outside the FATF membership.

The FATF ICRG process also includes publicly identifying, where necessary, non-cooperative and high risk jurisdictions. Public identification allows other jurisdictions and financial sectors to take appropriate action to protect themselves from those countries. Publicly pointing out problems, followed by a close FATF engagement with the affected jurisdiction, accelerates national compliance with the standards.

These reports, or the lack thereof, provide interested GOPAC Parliamentarians with an excellent starting point to identify priority AML actions. For example, in October 2010, the FATF identified 31 jurisdictions with strategic AML/CFT deficiencies.²³ Because of the potential impact of these evaluations, 30 of these countries have provided a high-level political commitment to address the deficiencies through implementation of an action plan they developed with the FATF.

On the other hand, for one jurisdiction – Iran - the FATF took the additional step of calling upon its members and urging all jurisdictions to apply counter-measures to protect their financial sectors from money laundering and terrorist financing risks emanating from it.

²² See 'Handbook for Countries and Assessors': www.fatf-gafi.org/dataoecd/7/42/38896285.pdf

²³ *Angola, Antigua and Barbuda, Bangladesh, Bolivia, Ecuador, Ethiopia, Ghana, Greece, Honduras, Indonesia, Kenya, Morocco, Myanmar, Nepal, Nigeria, Pakistan, Paraguay, Philippines, São Tomé and Príncipe, Sri Lanka, Sudan, Syria, Tanzania, Thailand, Trinidad & Tobago, Turkey, Turkmenistan, Venezuela, Vietnam, Ukraine, and Yemen.*

What Are the FATF 40 (anti money laundering) Recommendations²⁴:

The FATF 40 anti money laundering Recommendations²⁵ are organized under four sections and eleven subsections, namely:

Section 1 – Legal Systems: (Recommendations 1 – 3)

- ▶ Scope of the criminal offence of money laundering
- ▶ Provisional measures and confiscation

Section 2 – Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing: (Recommendations 4 – 25)

- ▶ Customer due diligence and record-keeping
- ▶ Reporting of suspicious transactions and compliance
- ▶ Other measures to deter money laundering and terrorist financing
- ▶ Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations
- ▶ Regulation and supervision

Section 3 – Institutional and other measures necessary to combat Money Laundering and Terrorist Financing: (Recommendations 26 – 34)

- ▶ Competent authorities, their powers and resources
- ▶ Transparency of legal persons and arrangements

Section 4 – International Co-operation: (Recommendations 35 – 40)

- ▶ Mutual legal assistance and extradition
- ▶ Other forms of co-operation

The 7 page table presented in Appendix D shows how the 40 Recommendations are divided amongst the four sections and eleven sub-sections.

Of course money launderers will continually try to find new ways to get around the prevention measures described above, and accordingly the FATF continues to revise and update the 40 + 9 Recommendations and to strengthen and add additional compliance mechanisms.

Politically Exposed Persons (PEPs)

One of the key groups of potential money launderers are known as Politically Exposed Persons (PEPs). In short, they are prominent public office holders who have the potential to abuse their responsibilities and launder corrupt money²⁶. Such activities would involve a betrayal of public trust given the typical level of authority and responsibility granted to PEP's.

In the beginning, corrupt heads of state and prominent public officials banked in their own names in foreign jurisdictions or used relatives to open bank accounts. Current techniques continue to include abuse of banking facilities, use of close associates and corporate vehicles, but also the buying of real estate; the purchase and movement abroad of precious metals, jewels, art work; and the physical cross border movement of currency and negotiable instruments²⁷.

24 The FATF 9 Special Recommendations combating terrorist financing are: I. Ratification and Implementation of UN instruments; II. Criminalising the financing of terrorism and associated money laundering; III. Freezing and confiscating terrorist assets; IV. Reporting suspicious transactions related to terrorism; V. International co-operation; VI. Alternative remittance; VII. Wire transfers; VIII. Non-profit organizations; and IX. Cash couriers. The text for each of the 9 Special Recommendations can be found at: www.fatf-gafi.org/document/9/0,3746,en_32250379_32236920_34032073_1_1_1_1,00.html

25 The text for each of the 40 (AML) Recommendations can be found at: www.fatf-gafi.org/document/28/0,3746,en_32250379_32236920_33658140_1_1_1_1,00.html

26 The FATF Glossary defines Politically Exposed Persons (PEPs) as follows: PEPs are individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.

27 Ibid

Understandably, this is a very sensitive area for politicians, because it turns the spotlight on them, and as such, we find that the definition of PEPs that various bodies use is different; including on measures to control both ‘Foreign PEPS’ and ‘Domestic PEPS’.

Most of this section on PEPs is drawn directly from the Stolen Asset Recovery (StAR) Initiative²⁸ paper entitled ‘Politically Exposed Persons: A Policy Paper on Strengthening Preventive Measures’ (The International Bank for Reconstruction and Development / The World Bank).²⁹

The box below shows differing UNCAC, FATF and the Third European Union Directive³⁰ ‘basic definitions’ of PEPS.

UNCAC: Individuals who are, or have been entrusted with prominent public functions and their family members and associates.

FATF: Individuals who are or have been entrusted with prominent public functions in a foreign country..., ...Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves.

Third European Union Directive: Natural persons who are or have been entrusted with prominent public functions and immediate family members or persons known to be close associates of such persons.

Similarly, the differing Enhanced Due Diligence (EDD) requirements of the three bodies, are shown in the box below.

UNCAC: Foreign and domestic (not specified)

FATF: Foreign only

Third European Union Directive: Foreign only

“The picture today is of an overall failure of effective implementation of international PEP standards. There is surprisingly low compliance with Financial Action Task Force (FATF) requirements on PEPs among FATF members. Sixty-one percent of the 124 countries assessed by FATF or FATF-Style Regional Bodies (FSRBs) were non-compliant and 23 percent were partially compliant. More than 80 percent of these jurisdictions are far behind.”³¹”

The StAR Paper identifies three key actions and five recommendations necessary to make a genuine difference³²:

Key Actions:

1. Strong and sustained political will and mobilization.
2. Clarification and harmonization of the international requirements on PEPs.
3. Stock-taking of the emerging typologies, focused on lifting what impedes the identification of beneficial owners who are PEPs.

Recommendations:

1. *Apply Enhanced Due Diligence to All PEPs, Foreign and Domestic*
Laws and regulations should make no distinction between domestic and foreign PEPs. The standards adopted by the FATF and regional and national standard setters should require similar enhanced due diligence for both foreign and domestic PEPs.
2. *Require a Declaration of Beneficial Ownership*
At account opening and as needed thereafter, banks should require customers to complete a written declaration of the identity and details of natural person(s) who are the ultimate beneficial owner(s) of the business relationship or transaction as a first step in meeting their beneficial ownership customer due diligence requirements.

28 The StAR Initiative is a partnership of the World Bank and the United Nations Office on Drugs and Crime (UNODC).

29 ([siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/PEPs-ful.pdf?resourceurlname=PEPs-ful.pdf](https://www.siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/PEPs-ful.pdf?resourceurlname=PEPs-ful.pdf))

30 Table A1.1 Comparison of the PEPs Definitions among the Standard Setters, page 79 of ‘Politically Exposed Persons: A Policy Paper on Strengthening Preventive Measures’ (The International Bank for Reconstruction and Development / The World Bank):

31 Politically Exposed Persons: A Policy Paper on Strengthening Preventive Measures, Page XV

32 Politically Exposed Persons: A Policy Paper on Strengthening Preventive Measures, Pages XV - VIII

3. *Request Asset and Income Disclosure Forms*
A public official should be asked to provide a copy of any asset and income declaration form filed with their authorities, as well as subsequent updates. If a customer refuses, the bank should assess the reasons and determine, using a risk-based approach, whether to proceed with the business relationship.
4. *Periodic Review of PEP Customers*
PEP customers should be reviewed by senior management or a committee including at least one senior manager using a risk-based approach, at least yearly, and the results of the review should be documented.
5. *Avoid Setting Limits on the Time a PEP Remains a PEP*
Where a person has ceased to be entrusted with a prominent public function, countries should not introduce time limits on the length of time the person, family member, or close associate needs to be treated as a PEP.

The disclosure of assets and income by public officials deserves some elaboration. Although this aspect is reviewed and discussed more fully in the *Handbook on Parliamentary Ethics and Conduct* produced by GOPAC's *Global Task Force on Parliamentary Ethics*, there is an important link to the concept of Politically Exposed Persons. Currently there are about 137 countries globally (out of a sample of 176) that implement disclosure regulations for high level public officials such as Heads of State, Heads of government, Cabinet members, and members of Parliament. It should be noted that around 89 percent of countries that are members of FATF or of FATF-Style Regional Bodies (FSRBS) implement disclosure requirements. Two types of disclosures are commonly required: financial and business interests. Financial disclosure requires that public officials provide information on assets such as real estate, vehicles, art, jewellery and financial investments as well as liabilities. Business interest disclosures focus on interests, commitments and business connections that may compromise public officials' impartiality in their policy decisions. These may include information such as stock holdings and income sources, as well as positions held outside public office and gifts received.

Many disclosure systems require officials to file disclosures at the beginning and end of the mandate, annually and in some cases even after the end of the mandate, providing a wealth of useful information across time.

Asset disclosure systems (AD) can help improve the implementation of PEPs standards and better equip public and private sector entities to overcome some of the challenges associated with the implementation of PEPs regimes. For example, AD information can assist with PEPs identification, establishing source of wealth and source of funds, conducting enhanced on-going monitoring (Recommendation 6 of FATF) and can even help FIUs in their analysis.

The legal framework of disclosure systems establishes, among other components, the categories of officials who are required to file disclosures. The categories of officials required to disclose could provide guidance on the types of positions covered by the PEPs definition and, the names of officials required to disclose could provide guidance on who occupies those PEPs positions.

The Information contained in disclosures (such as Bank accounts, sources of income, etc) can help establish the source of wealth and funds, and can also help conduct the enhanced on-going monitoring requested in FATF Recommendation 6. Also, the information disclosed in asset declarations can enrich the analysis of suspicious transaction reports conducted by FIUs.

Parliamentarians can take action on many fronts: pushing for disclosure legislation to be approved if non-existent; promoting disclosure legislation implementation; facilitating amendments to the legislation to improve the overall working of the disclosure system; raising awareness and promoting inter-agency coordination; etc.

Clearly Parliamentarians in developing countries, all countries in transition and in developed countries have a strong role to play - in their legislatures, with civil society and the media in promoting the use of a PEP system, and in implementing asset and income disclosure for public officials.

Stolen Asset Recovery

As previously noted, fully functioning prevention regimes reduce the need to recover stolen assets. However, given that it is common for corrupt individuals to hide or launder bribes and embezzled funds in foreign jurisdictions and/or to keep secret slush funds in bank accounts abroad and/or to launder the proceeds of corruption internationally, and given that many decry the current ineffectiveness of the available legal and institutional tools and the lack of legal assistance across countries' borders and that procedures of international cooperation among law enforcement agencies and prosecutorial authorities remain cumbersome, slow, and often fruitless - there clearly is much room to improve the recovery regime.

There is also need to put in place a legal framework for the recovery of stolen assets at the domestic level. Very often, some or all of these proceeds are invested through proxies within the country.

Accordingly this section looks at the current status and next steps for effective asset recovery. Topics range from legal and practical challenges in extradition and Mutual Legal Assistance (MLA), to measures for freezing, confiscating, and repatriating the proceeds of corruption.

The *raison d'être* of secrecy and confidentiality for off-shore banks and certain other international financial institutions, compromises anti money laundering regimes. The jurisdictions they operate in may not view cooperation with those who are attempting to recover corrupt assets as in their national interest. Without their offshore banking business, some countries would be severely challenged economically. These countries may view cooperating with countries seeking the recovery of stolen assets as contrary to their own national interests by jeopardizing their offshore banking operations.

Issues associated with dual criminality and double jeopardy create obstacles for the effective deterrence of corrupt money laundering and for the recovery of corrupt assets. Most jurisdictions require dual criminality; that is the transaction(s) must be illegal in both countries, as a precondition to mutual legal assistance.

Money launderers conceal their malfeasance through the use of shell companies/nominees, etc. Fortunately, capacity and expertise to better follow this trail is being built around the world. At the same time however, countries have been slow to implement FATF recommendations 33 and 34 which require countries to take measures to prevent both the unlawful use of legal persons, and the unlawful use of legal arrangements by money launderers.

The StAR Initiative was launched in September 2007 by the World Bank and the United Nations Office on Drugs and Crime (UNODC) to promote the ratification and implementation of the United Nations Convention against Corruption (UNCAC), and specifically its chapter 5, which provides the first comprehensive and innovative framework for asset recovery. StAR is intended to deter both corrupt leaders in developing countries and the financial centers in developed countries and elsewhere where they try to place their corrupt funds.

It is not always possible to prosecute offenders. Yet, in some cases it is possible to identify assets that are the proceeds of crime. Consequently a response strategy that relies upon alternative measures has been developed.

Some jurisdictions, including Antigua and Barbuda, Australia, some Canadian Provinces, Ireland, Italy, Slovenia, South Africa, and the United Kingdom have introduced legislation to enable stand-alone civil proceedings to recover the proceeds of crime.

Non conviction based forfeiture enables States to recover illegally obtained assets from an offender via a direct action against his or her property without the requirement of a criminal conviction. The State will still have to prove within the balance of probabilities that the offender's assets are either the proceeds of crime or represent property used to commit a crime i.e. instrumentalities.

It is important to note also that the FATF Recommendations require the criminalisation of possession of illicit gains. This, in addition to the requirement to criminalise money laundering, enables jurisdictions to directly target perpetrators of corruption for both money laundering offences and corruption offences. Also, the FATF requires that jurisdictions should be able to prosecute money launderers for money laundering without having to prove the predicate offence (in this case corruption). While in practice it appears to be difficult in some jurisdictions to prosecute for corruption, the combination of all of these FATF requirements provide jurisdictions with a powerful tool to prosecute perpetrators of corruption for money laundering in the event that a prosecution for corruption is not possible to obtain.

Parliamentarians have a key role to play in introducing non conviction based forfeiture legislation in their own parliaments. To do this, parliamentarians will find some useful reference material in the *'Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture'*³³, published in 2009 by the World Bank's Stolen Asset Recovery Initiative (StAR).

In December 2010, StAR published the *'Asset Recovery Handbook: A Guide for Practitioners'*³⁴ designed as a quick-reference, how-to manual for practitioners — law enforcement officials, investigating magistrates, and prosecutors — as well as for asset managers and those involved in making policy decisions in both civil and common law jurisdictions. It includes examples of tools such as sample intelligence reports, applications for court orders, and mutual legal assistance requests.

The handbook is organized into nine chapters, a glossary, and 10 appendices of additional resources. Chapter 1 provides a general overview of the asset recovery process and legal avenues for recovery, along with practical case examples. Chapter 2 presents a host of strategic considerations for developing and managing an asset recovery case, including gathering initial sources of facts and information, assembling a team, and establishing a relationship with foreign counterparts for international cooperation. Chapter 3 introduces the techniques that practitioners may use to trace assets and analyze financial data, as well as to secure reliable and admissible evidence for asset confiscation cases. The provisional measures and planning necessary to secure the assets prior to confiscation are discussed in Chapter 4; and Chapter 5 introduces some of the management issues that practitioners will need to consider during this phase. Confiscation systems are the focus of Chapter 6, including a review of the different systems and how they operate and the procedural enhancements that are available in some jurisdictions. On the issue of international cooperation, Chapter 7 reviews the various methods available, including informal assistance and mutual legal assistance requests; and guides practitioners through the entire process. Finally, Chapters 8 and 9 discuss two additional avenues for asset recovery—respectively, civil proceedings and domestic confiscation proceedings undertaken in foreign jurisdictions.

The glossary defines many of the specialized terms used within the handbook. Because jurisdictions often use different terminology to describe the same legal concept or procedure, the glossary provides examples of alternative terms that may be used.

³³ siteresources.worldbank.org/EXTSARI/Resources/NCBGuideFinalEBook.pdf

³⁴ www1.worldbank.org/publicsector/star_site/documents/arhandbook/ar_handbook_final.pdf

The Handbook's appendices contain additional reference tools and practical resources to assist practitioners. Appendix A provides an outline of offences where criminal prosecution is concerned. Appendix B presents a detailed list and descriptions of commonly used corporate vehicle terms. Appendix C provides a sample financial intelligence unit report. Appendix D offers a checklist of some additional considerations for planning the execution of a search and seizure warrant. Appendixes E and G, respectively, provide a sample production order for financial institutions and a sample financial profile form. Appendix F outlines the serial and cover payment methods used by correspondent banks in relation to electronic fund transfers, and it discusses the new cover payment standards that became effective in November 2009. Appendix H offers discussion points that practitioners may use to begin communications with their foreign counterparts. With respect to mutual legal assistance requests, Appendix I provides an outline for a letter of request, with key drafting and execution tips. Finally, Appendix J provides a broad range of international and country-specific Web site resources.

Note of Caution

As some Parliamentarians know all too well, corrupt politicians may try and use anti-corruption laws and enforcement mechanisms to embark on partisan 'witch hunts' against those who are not corrupt but who are pointing the spotlight on them, under the guise of recovering corrupt assets. To this end, it is essential that there are protections for parliamentarians and others leading the fight against corruption. Equally importantly, partisan motivated attempts at stolen asset recovery diminish the credibility of those legitimate unbiased efforts by jurisdictions seeking to repatriate assets that have been stolen by corrupt officials – so that all citizens may benefit from these lost resources. Thus, initiatives designed to recover stolen corrupt assets should be fact-based, objective and impartial, and comprehensive before they are launched. Parliamentarians can play an important role in ensuring that this approach is employed.

Establishing a Financial Intelligence Unit (FIU)

This Chapter is organized under the following five headings:

- Part 1: Introduction
- Part 2: Importance of FIU's – How can Parliamentarians support them?
- Part 3: Establishing an FIU, including a description of the types of FIUs.
- Part 4: Core functions of an FIU, including receiving suspicious transaction reports and other reports, analyzing them, and disseminating financial intelligence to the appropriate authorities.
- Part 5: FIUs and some conclusions how parliamentarians can support these efforts.

Part I - Introduction

The purpose of this chapter is to provide parliamentarians with an overview of the functions that financial intelligence units (FIUs) play in combating money laundering (ML) related to corruption and other serious offences. The information provided in this chapter includes references to the relevant Financial Action Task Force (FATF) standards wherever appropriate. It should be emphasized that this chapter should not be used as an assessment tool; but rather as an overview to increase the awareness of parliamentarians of the importance of FIU's, and how they can support efforts in their jurisdictions in establishing an effective FIU.

“Countries efforts to develop effective strategies for anti-money laundering and combating the financing of terrorism (AML/CFT) bring together several distinct key aspects of financial systems and criminal law. Financial intelligence Units (FIUs) constitute an important component of these strategies. An FIU is a central national agency responsible for receiving, analyzing, and transmitting disclosures on suspicious transactions to the competent authorities. Combating the crimes of money laundering and financing terrorism is essential to the integrity of financial systems but, if these efforts are to be successful, traditional law-enforcement methods need to be supported by the contribution of the financial system itself, in particular by implementing ‘know-your-customer’ principles and reporting suspicious transactions to an FIU.

Financial institutions hold critical information on transactions that may hide criminal schemes. Although this information is covered by necessary confidentiality regimes, it has to be made accessible to law-enforcement agencies to enable them to trace criminal money channels.”³⁵

FIU's play a critical role in supporting financial investigations conducted by law enforcement agencies. This includes money laundering corruption related offences.

³⁵ World Bank, Financial Market Integrity Divisions and International Monetary Fund, Legal Department, Monetary and Financial Systems Department “Financial Intelligence Units: An Overview” July 23rd, 2004.

Financial intelligence provided by the FIU can be utilized by enforcement authorities to track and identify financial evidence domestically and internationally that can be instrumental for successfully prosecuting money laundering offences and the locating, seizing and eventual forfeiture of assets derived from the proceeds of these crimes (POC). These same principles are applied when investigating corruption and related money laundering offences. Financial intelligence provided by the FIU can also be utilized by authorities for identifying corrupt officials, their co-conspirators and their criminal syndicates “modus of operations” established to facilitate their illegal activities.

Globally, the Egmont Group³⁶ is the informal international association of FIUs comprising more than 130 countries, many of whom have signed memorandums of understanding for the sharing of financial intelligence relating to money laundering and corruption cases. The first FIU was established over twenty years ago and the Egmont inaugural meeting was held in 1995. The number of FIU’s globally has grown substantially over the past decade, partially due to the terrorist acts of 9/11. Through efforts of the FATF, supported by Regional Supervisory Bodies (RSB)³⁷ and technical assistance providers such as the United Nations Global Programme Against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML), the International Monetary Fund and the World Bank, many countries have been helped to establish an FIU that meets the global AML/CFT standards established by the FATF 40 + 9 Recommendations methodology.³⁸

Part 2 - Importance of FIU’s - How can Parliamentarians support them?

As countries developed their anti-money-laundering strategies they found that law-enforcement agencies had limited access to relevant financial information and it became clear that a key element of their strategy would be to “engage the financial system in the effort to combat money laundering while, at the same time, seek to ensure the retention of the conditions necessary for its efficient operation. Countries also found that implementation of a system requiring disclosures of suspicious transactions on the part of financial institutions created the need for a central office or agency for assessing and processing these disclosures.”³⁹

All FIU’s, according to the FATF 40 + 9 recommendations, should perform the same core functions of receiving, analyzing, and disseminating financial information to combat money laundering and financing terrorism.⁴⁰ However, they can undertake these responsibilities with differing approaches depending on the country. There are several models of FIU’s that countries have adopted to undertake these responsibilities, that vary depending on a variety of factors, including the size of the country, its legal framework, and issues such as existing privacy legislation. Irrespective of which model a country chooses to be the most effective, a good understanding and support for the development of these structures will benefit the efforts of law enforcement and prosecutors to combat ML/FT.

36 Egmont Group home page, www.egmontgroup.org “The goal of the Egmont Group is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in this field”.

37 FATF Annual Report 2005-2006 Appendix 1 - page #1: “Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); Financial Action Task Force of South America (GAFISUD); Intergovernmental Action Group Against Money Laundering of West Africa (GIABA); Middle Eastern and Northern African Financial Action Task Force (MENAFATF); Offshore Group of Supervisors (OGBS); Asia Pacific Group (APG); Caribbean Financial Action Task Force (CFATF), MoneyVal, European Union and the Eurasian Group (EAG)”

38 FATF web site 40 + 9 recommendations: www.fatf-gafi.org

39 William C. Gilmore, 1999, *Dirty Money: The Evolution Of Money-Laundering Counter- Measures*, 2nd ed. (Strasbourg: Council of Europe Press), page 103.

40 Egmont Group, June 2004, *Statement of Purpose of the Egmont Group of Financial Intelligence Units* (Guernsey).

This chapter also provides a brief overview of some examples of these FIU models; however, parliamentarians wishing to ensure that the arrangements in their country in place to combat money laundering (including corruption) and the financing of terrorism, including their FIU, meet international standards should refer to the FATF 40 + 9 Recommendations (found in Appendix D) and the methodology adopted by the FATF and the other bodies that perform AML/CFT assessments.⁴¹ Technical assistance to establish and strengthen FIUs is available from GOPAC, the International Monetary Fund, the World Bank, and other technical assistance providers.

Part 3 - Establishing an FIU

The primary function of an FIU is to receive suspicious transaction reports from reporting entities; analyze these reports and when suspicion is reached that transactions are associated with criminal activity; disseminate financial intelligence to law enforcement to combat money laundering (including corruption) and terrorist financing offences. According to international standards, countries are required to establish an FIU whose mandate and legal authorities allow supporting money laundering investigations including those relating to corruption.⁴²

Because corrupt officials often resort to other types of crimes such as terrorism, fraud, drug trafficking and human smuggling, these are also predicate offences that are included under the FATF standards as predicate offences of money laundering.

Parliamentarians play a significant role supporting the development of a country's effective AML/CFT regime.

In most countries the focal point is the FIU which is often responsible for the coordination of their country's efforts for building national AML/CFT regimes. According to the global standards, governments are required to provide a legal basis to establish the FIU, sufficient budget, resources, and a robust governance framework to allow the FIU to undertake their core mandate effectively and independently without government interference.⁴³ Understandably, in corruption money laundering cases, the integrity and independence of the FIU is critical to avoid jeopardizing or compromising ongoing investigations. This same principle applies to governments or officials abusing or using the financial information that is collected by the FIU. Parliamentarians are relied upon to support establishing legal measures and controls so that financial intelligence received by the FIU is maintained in a secure environment and cannot be used for any purpose other than that stipulated by a country's AML/CFT laws and the FIU's mandate in accordance with international standards. This includes the need for secure facilities for FIU operations and storage arrangements for data collected.

These same demands for resourcing and funding also apply to the need for investment in the technology infrastructure needed by the FIU. The FIU should have the capacity to receive reports from reporting entities⁴⁴, the ability to mine data from these reports in order to conduct analysis whilst ensuring the records are maintained in a secure environment. In many countries, reporting entities submit reports electronically to the FIU. This requires the FIU to provide technical support and assist the financial entities develop procedures for reporting.

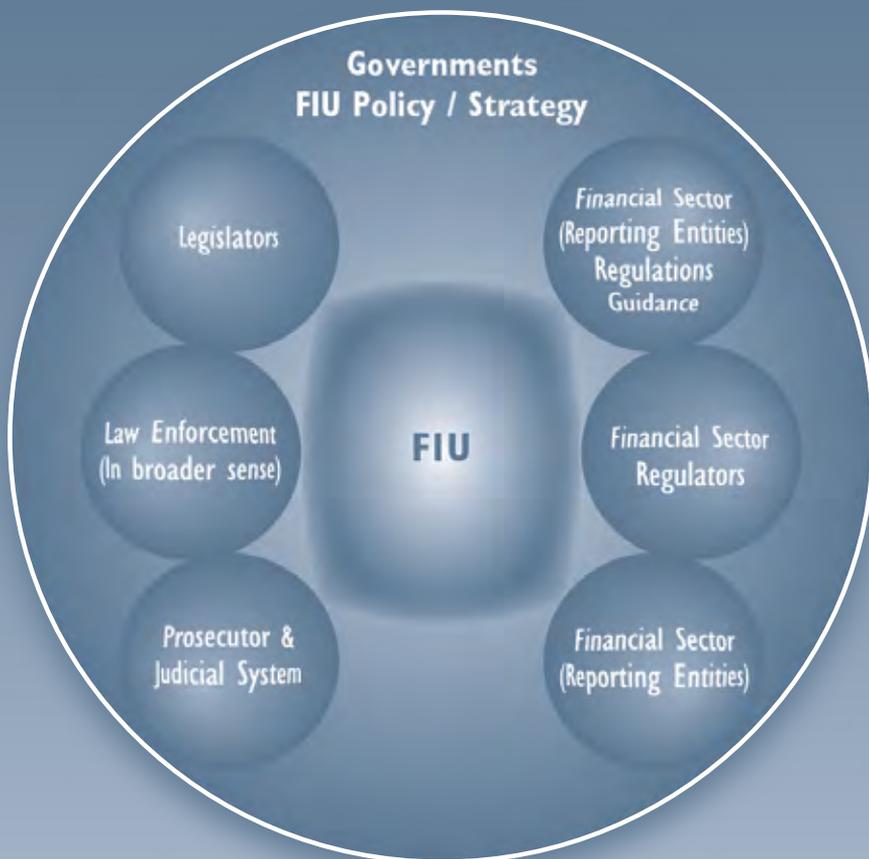
41 AML/CFT Methodology FATF 40 + 9 Interpreted Notes (2009); www.fatf-gafi.org

42 Recommendation 1, page 15, AML/CFT Methodology FATF 40 + 9 Interpreted Notes (2009); www.fatf-gafi.org

43 Recommendation 26, pages 79-80, AML/CFT Methodology FATF 40 + 9 Interpreted Notes (2009); www.fatf-gafi.org

44 Financial institutions (banks, money exchanges, money services business, trust companies) and Designated Non-Financial (Casinos, lawyers, accountants, real estate, life insurance, jewellery, gems and precious metal dealers) Professionals; definitions - Annex 1, AML/CFT Methodology FATF 40 + 9 Interpreted Notes (2009); www.fatf-gafi.org

ONE STRATEGY FOR ALL AML/CTF STAKEHOLDERS



Some countries have been able to purchase existing software to address these needs; however, many FIU's have been required to build and develop their own systems at greater cost to government. In recognition of these difficulties faced by FIUs, UNODC's IT Section in partnership with GPML have developed a fully integrated software system for FIUs to counter money laundering and terrorist financing, called goAML⁴⁵.

Types of FIU's

It is critical to emphasize that the FIU's role is to provide intelligence - whereas the responsibility of law enforcement is to conduct the financial investigations. Some country's FIU's models are hybrids that combine both FIU and the police functions in one agency.

The FATF view is that, provided the FIU meets global standards of the 40+9 Recommendations methodology, a country can apply any model, so long as it is effective in executing the core functions.

⁴⁵ goAML addresses all these challenges for an FIU by providing a "one-stop" solution; a system that integrates 14 separate functions into one package that meets the IT and business needs of every FIU, no matter how large or small, with no third party licensing and maintenance obligations. The FIU pays a one-off fee for installation and initial training of goAML and a recurring annual maintenance fee. UNODC supplies the initial software package itself free of charge. Adopting goAML can save an FIU a lot of money and development time. goaml.unodc.org

Examples of types of FIU's include:

- ▶ **Administrative** – usually located outside of law enforcement environments to provide separation or a “buffer” to enforcement authorities. This model is usually adopted as a result of a country’s legal environment or privacy issues. In these models, the FIU is an independent agency that can be located in the Central Bank or separate location; and it reports to the Minister of Finance or other ministries separate from law enforcement and judicial officials;
- ▶ **Law Enforcement type FIU** – usually located in law enforcement environments with the FIU personnel having similar authorities. These FIU’s traditionally work closer with law enforcement and legal measures provide for easy sharing of information. In these countries, privacy issues are not as restrictive for the sharing of intelligence;
- ▶ **Judicial or Prosecution FIU** – in this model the jurisdiction of the FIU falls under the prosecution authorities in that country. Usually the country has already adopted an approach for criminal investigations where the prosecutors oversee the police bodies and investigations. The FIU falls under these same legal provisions whereby the prosecutor has the authority to direct the FIU operations;
- ▶ **Hybrid FIU** is a combination of an Administrative FIU with some law enforcement authorities.

Part 4 - Core functions of an FIU: receiving suspicious transaction reports and other reports, analysis and disseminating financial intelligence to the appropriate authorities.

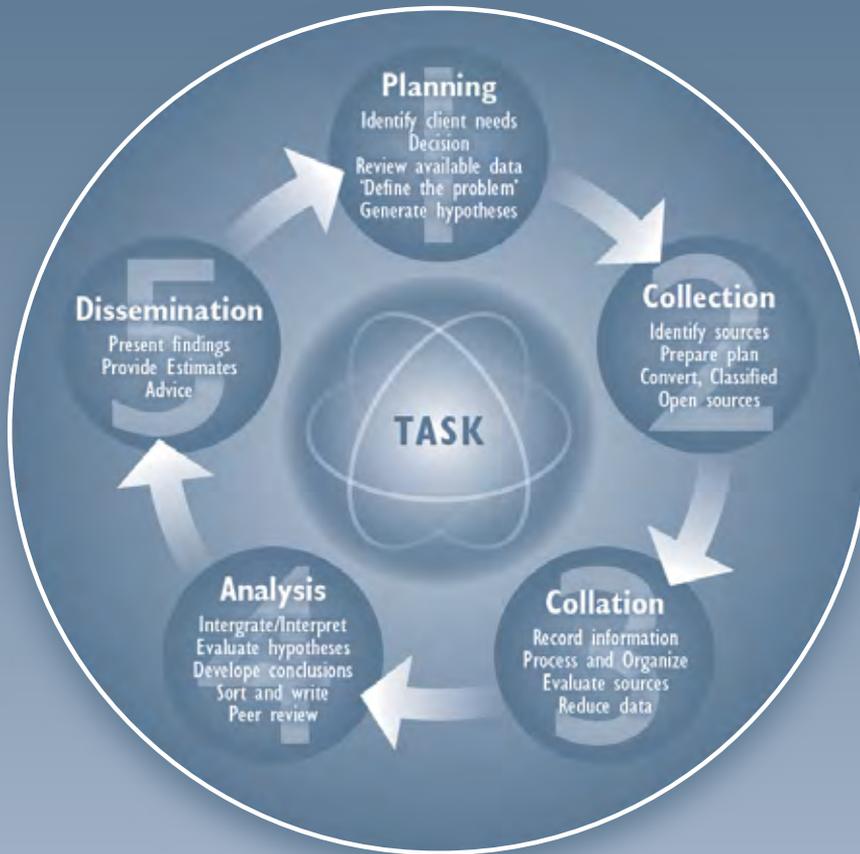
Receiving information on financial transactions:

While the number of reports that an FIU receives usually varies by the size of the country and its financial sectors, in some jurisdictions they have been in the millions annually. The FATF standards require that suspicious transactions reports (STR's) be submitted to the FIU as soon as practical when certain conditions exist i.e. where a reporting entity is suspicious that the financial transactions being conducted (or attempted) relate to proceeds of criminal activity⁴⁶ (which includes corruption). The FATF 40+9 Recommendations also stipulate that cross border currency movements – cash couriers, terrorist property reports, subjects listed on the UN sanction pursuant to Sections 1267 & 1373 and Political Exposed Persons (PEP's) transactions, be reported to the FIU.⁴⁷ These requirements by the FATF compel countries to insure that the mechanisms are in place for its FIU to receive the information in a timely manner to pass onto law enforcement in order to increase the likelihood of successfully investigating and seizing assets relating to money laundering offences. Without the FIU support and an effective reporting regime for suspicious transactions, law enforcement is faced with collecting this financial intelligence through traditional methods such as financial institutions voluntarily providing information or through conducting search warrants, which often results in delays and impedes the progress of their financial investigations.

⁴⁶ Recommendations 13 & 16 ,AML/CFT Methodology FATF 40 + 9 Interpreted Notes (2009); www.fatf-gafi.org

⁴⁷ Recommendation R6, SRI, SRIL, SRIV, SRIX AML/CFT Methodology FATF 40 + 9 Interpreted Notes (2009); www.fatf-gafi.org

INTELLIGENCE CYCLE



Many countries have also broadened the scope of AML/CFT reporting requirements to include large cash transactions (LCT). Threshold amounts required for reporting vary by country (US is \$10,000 USD).

Analysis:

An important core function of the FIU is to conduct analyses of reported transactions with a focus to provide law enforcement leads for investigations. FIU analysts will have access to suspicious transaction reports and cross border currency reports and optionally, depending on the jurisdiction, large cash transactions and wire transfers.

Analysts will examine these transactions and use other data bases including police data bases, land titles registries, company registries, cross border currency reports and open source documents to support the identification of suspicious transactions. Once determined, an analysis is completed and a report provided sharing this intelligence with enforcement authorities for investigative purposes.

Reports received by the FIU from financial sectors are not usually available to law enforcement in most jurisdictions without court order, so the FIU acts as “buffer” by analyzing the information to determine suspicion about these activities before allowing access to the information by police. This process also allows police access to financial intelligence in a timely manner which facilitates effective enforcement action.

Suspicious transaction reports are generated by financial institutions when they suspect or have reasonable grounds to believe that funds are related to criminal activities. Financial institutions are required to have policy and procedures for reporting STR's, internal risk assessment and a robust training program for employees on identifying suspicious transactions. For example, in a corruption case an STR could be generated by a bank employee because a government official's bank account of multiple cash deposits is inconsistent with his/her known earnings.

Sharing of Intelligence with law enforcement and international partners:

FIU's disseminate three types of cases to the appropriate law enforcement agency for follow up:

- ▶ **Pro-active disclosure** - FIU provides intelligence on a suspected money launderer or corrupt official who is unknown to law enforcement. These cases are usually generated by STR's;
- ▶ **Reactive disclosure** - FIU responds to a request from law enforcement to conduct an analysis on a known target. This could be a case where law enforcement has made arrests and is now conducting the financial investigation in an attempt to locate proceeds of crime of these individuals;
- ▶ **International requests** - FIUs in many countries have signed memorandum of understanding (MOU's) that form the basis for sharing of intelligence between countries relating to ML and FT cases (this would include a corruption offence). Countries that are members of Egmont Group provide this intelligence through a web site established to allow sharing of intelligence between countries. This type of international cooperation between FIU's is in line with FATF 40+9 standards.⁴⁸

Part 5 – Parliamentarians role with FIU's

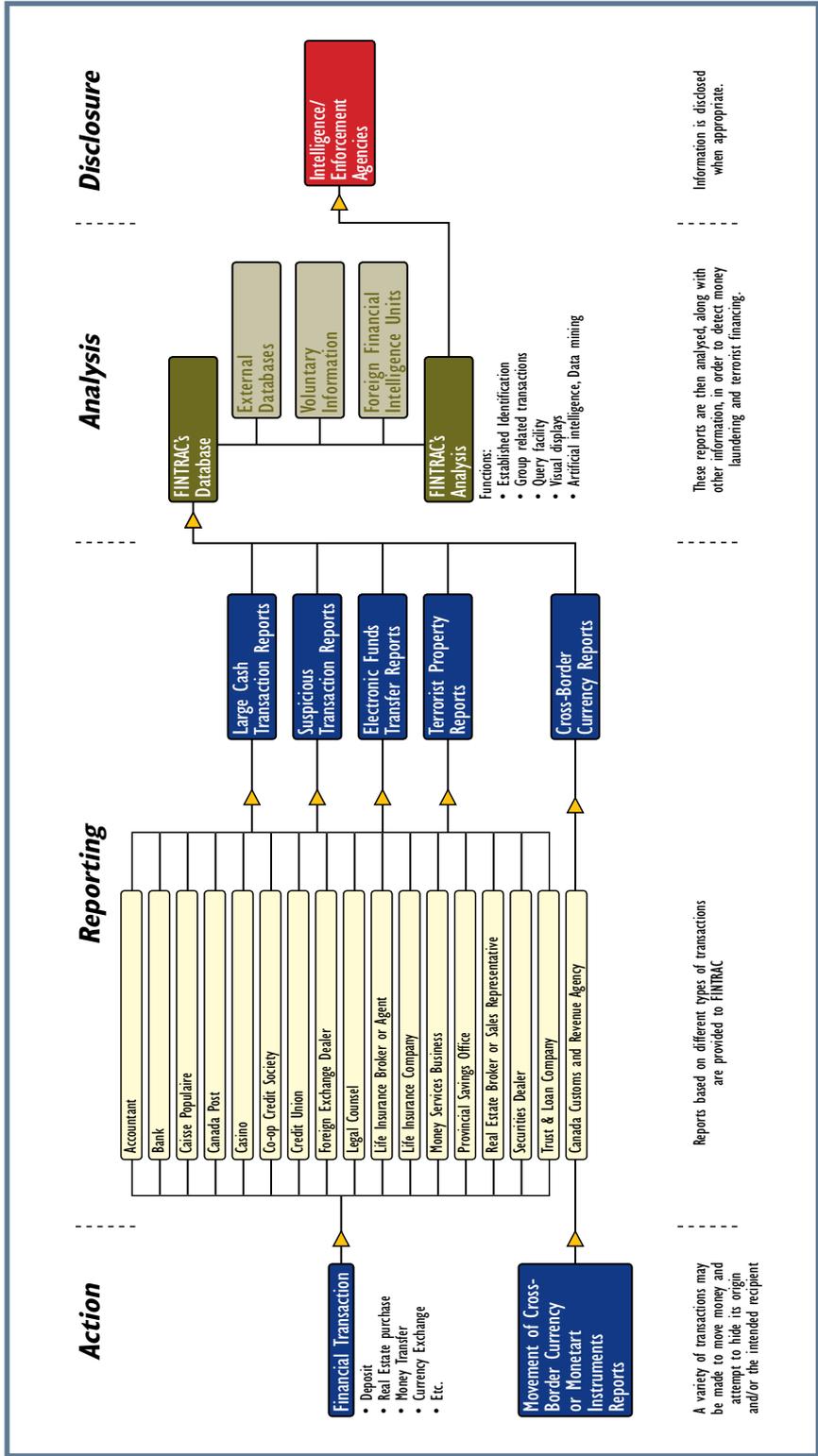
FIU's are critical to the success of a country's efforts to combat money laundering relating to corruption. Countries that ensure that an effective anti-money laundering regime exists and is in compliance with global standards will be successful in deterring money laundering relating to corruption, disrupting corrupt officials activities by seizing assets, and pursuing criminal proceedings against these individuals.

Parliamentarians support the establishment of an effective financial intelligence unit by:

- ▶ Adopting a legal framework for establishing an FIU;
- ▶ Ensuring the FIU has appropriate financial and other resources to undertake core functions of receiving suspicious transaction reports, analyzing and disseminating financial intelligence to law enforcement;
- ▶ Supporting the FIU establish international sharing agreements with other countries;
- ▶ Supporting the adoption of laws to establish preventative measures so that financial institutions report suspicious transactions and deter money laundering.

⁴⁸ Recommendation 26 & AML/CFT Methodology FATF 40 + 9 Interpreted Notes (2009); www.fatf-gafi.org

Canadian Model - Financial Transactions Analysis Center of Canada (Fintrac) 2007 Annual Report



The Role of Parliamentarians in Combating Money Laundering

The institution of Parliament has a key role to play in the fight against the laundering of corrupt money. Parliamentarians can hold the executive branch of government to account for their spending and administrative actions through debates and questions in the legislature itself. Parliamentarians are able to demand greater transparency and accountability from their governments and in so doing make their citizens more aware of the incidence of corruption and money laundering. This can result in the mobilization of the political will necessary to make positive change, and reduce the incidence of corruption, and the laundering of corrupt money.

Likewise, in the absence of anti-money laundering laws in a jurisdiction, individual Parliamentarians typically have the capacity to initiate legislation that will enable the establishment of an effective anti-money laundering regime. Parliamentarians are able to encourage their own government to:

- ▶ enact anti-money laundering legislation and ensure that existing legislation is harmonized with any new legislation;
- ▶ establish an independent and adequately mandated and resourced Financial Intelligence Unit (FIU);
- ▶ monitor the financial transactions of Politically Exposed Persons (PEPs);
- ▶ put in place transparent systems of asset and income disclosure for public officials;
- ▶ cooperate with other countries and agencies that are tracking money laundering activities, including the timely and appropriate freezing of corrupt assets and the promotion of informal assistance channels, if possible;

- ▶ implement the Financial Action Task Force (FATF) 40 + 9 recommendations; and,
- ▶ enact non-conviction based forfeiture of corrupt assets.⁴⁹

It is very important to note that the criminalisation of money laundering must be both directed to the jurisdiction where the corrupt money originates - and, equally importantly, to the jurisdiction in receipt of the corrupt funds. The criminalization of money laundering should cover predicate offences committed in other countries as if the predicate offence occurred domestically. AML tools should be used to seize and confiscate stolen assets even if the predicate offence has been committed abroad. Often, countries do not succeed in effectively pursuing the proceeds of foreign predicate offences; however, that is usually because jurisdictions require proof of the predicate offence. Parliamentarians need to be aware that such a threshold is not in line with FATF requirements.

Money laundering is often described as cash being placed in the financial system, or cash being converted into assets. This can leave the impression that law enforcement authorities only have a short window of opportunity to detect money laundering - i.e. during the conversion, placement or concealment stages.

However, the required criminalisation of money laundering should cover cash and any other property that is directly or indirectly connected to the crime. The FATF also requires that jurisdictions need to be able to seize, freeze and confiscate all property that is the proceeds of crime and all property that is used as an instrumentality in a crime.

⁴⁹ siteresources.worldbank.org/EXTSARI/Resources/NCBGuideFinalEBook.pdf

Parliamentarians should rest assured that the requirements of the FATF in relation to the criminalisation of money laundering are fully in line with UN Conventions (e.g. Vienna and Palermo). Parliamentarians in jurisdictions that have signed and are committed to the United Nations Convention against Corruption (UNCAC)⁵⁰ are able to monitor how their respective governments are living up to the provisions of the UNCAC, and specifically those articles in the Convention that relate to the fight against money laundering and the recovery of stolen assets. As of March 31, 2011 there were one hundred and forty Signatories and one hundred and fifty one Parties to the UNCAC⁵¹, that includes the following provisions relating to the prevention of money laundering and the recovery of stolen assets:

- ▶ Article 14 : Measures to prevent money-laundering
- ▶ Article 23 : Laundering of proceeds of crime
- ▶ Article 53 : Measures for direct recovery of property
- ▶ Article 54: Mechanisms for recovery of property through international cooperation in confiscation
- ▶ Article 57 : Return and disposal of assets
- ▶ Article 58 : Financial Intelligence Unit

UNCAC Review Mechanism

A Conference of the States Parties (CoSP) to the UNCAC was established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in the Convention, and to promote and review its implementation. The Third session of the Conference of the States Parties to the UNCAC, held 9 to 13 November 2009 in Doha, Qatar,⁵² agreed to establish a Review Mechanism for the Convention. Under the new mechanism, all States Parties will be reviewed every five years on the fulfilment of their obligations under the Convention. On the basis of self-assessments and peer review, the mechanism will help identify gaps in national anti-corruption laws and practices.

50 www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

51 www.unodc.org/unodc/en/treaties/CAC/signatories.html

52 www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3.html

In addition, Parliamentarians can perform their own research and reach their own conclusions about their country's compliance with its anti-money laundering commitments using the relevant parts of the UNDP-GOPAC Self Assessment Toolkit for Parliamentarians.⁵³

Parliamentarians are also able to access reports prepared by the global anti-money laundering standard setter – the Financial Action Task Force. Members of the Financial Action Task Force (FATF), and of the FATF-style regional bodies (FSRBs), are committed to the discipline of multilateral peer review. The FATF currently comprises thirty-four member jurisdictions and two regional organizations, representing most major financial centres in all parts of the globe.⁵⁴ There are eight FATF Style Regional Bodies (FSRBs) comprising 164 member jurisdictions.

The mutual evaluation programme is the primary instrument by which the FATF and the eight FSRBs monitor progress made by member governments in implementing the FATF Recommendations.⁵⁵ These reports are readily available to Parliamentarians (and the public) and provide an assessment of those countries that are members of the FATF and the eight FSRBs.

For Parliamentarians in countries that are not members of the Financial Action Task Force or the eight FSRBs, evaluation by the FATF of *non-co-operative countries and territories* (NCCTs) for the period from 2000 to 2006 can be accessed. Since 2007, the FATF's International Co-operation Review Group (ICRG) has analysed high-risk jurisdictions and recommended specific action to address the ML/FT risks emanating from them. Throughout 2008 and 2009, the FATF issued a series of public statements expressing concerns about the significant deficiencies in the AML/CFT regimes of a number of jurisdictions.

53 A short version of the Toolkit is found at: www.gopacnetwork.org/Docs/UNCAC/UNCACToolkit3May2010Short_en.pdf
A detailed version of the Toolkit is found at: www.gopacnetwork.org/Docs/UNCAC/UNCACToolkit3May2010Long_en.pdf

54 www.fatf-gafi.org/document/52/0,3746,en_32250379_32236869_34027188_1_1_1_1,00.html

55 www.fatf-gafi.org/pages/0,3417,en_32250379_32236963_1_1_1_1,00.html

In addition to the FATF's and FATF Style Regional Bodies' mutual evaluation programmes and follow-up processes, the FATF uses additional mechanisms to identify and to respond to jurisdictions with strategic deficiencies in their AML/CFT regimes that pose a risk to the international financial system and impede efforts to combat money laundering and terrorist financing.⁵⁶

For those jurisdictions that do not have anti-money laundering legislation, and/or have not established a Financial Intelligence Unit, model legislation, for both common law and civil law systems, is included in Appendix A. Examples of differing FIU organizational structures are found in Appendix B.

Parliamentarians may have to challenge the Executive Branch of their governments if progress is slow or non-existent in the introduction of an effective anti-money laundering regime. The Executive Branch of governments may not be motivated to enact anti-money laundering legislation and establish a financial intelligence unit (FIU) if the President, Prime Minister and Ministers themselves are involved in the laundering of corrupt funds.

Parliamentarians around the world need to be more actively engaged in the fight against money laundering. The reality is that the vast majority of the 'big ticket' corruption, and the laundering of this money, is perpetrated by the executive branch of governments because these are the people who control the levers of power. They are the ones who make the major decisions and award the contracts - and therefore Presidents, Prime Ministers, Ministers and other senior officials are the prime targets for those who bribe and launder the corrupt money.

Parliamentarians may need to address situations where Financial Intelligence Units (FIU's) may not be adequately financed and mandated, notwithstanding enabling legislation; and, in those limited circumstances where FIU's are corrupt themselves, greater transparency and accountability will be required.

The 'bottom line' to all of this, and questions parliamentarians need to know the answers to, are the following:

- ▶ have any money laundering cases been prosecuted in your country?
- ▶ have any stolen corrupt assets been recovered?

The answers to these two questions may hold the key to whether or not your jurisdiction is taking the fight against money laundering seriously, and whether or not anti-money laundering measures are being effectively implemented.

Parliamentarians have a critical role to play in the fight against money laundering. The time for action is now.

Getting Started:

Parliamentarians, either on their own, or preferably through their GOPAC Country Chapter, may wish to contact their FATF Style Regional Body (FSRB) or the FATF itself, depending on which your country belongs to (Appendix E of this Guide provides the list of the FATF and the 8 FATF Style Regional Bodies (FSRB), the website address of each that, amongst other things provides contact information, and a list of the member countries of each body), asking that it:

1. Provide you a report on your country's compliance with the FATF 40 AML Recommendations;
2. Help you complete the adapted version of the AML section of the UNDP/GOPAC UNCAC Monitoring and Assessment Toolkit found below.

These two reports will provide a snapshot of your country's AML strengths and weaknesses and thus a focused starting point for your AML efforts..

⁵⁶ www.fatf-gafi.org/pages/0,3417,en_32250379_32236992_1_1_1_1_1,00.html

AML Part of the UNDP/GOPAC UNCAC Monitoring and Assessment Toolkit for Parliamentarians⁵⁷

GOPAC Policy Checklist Elements	UNCAC articles	Questions/Indicators of parliamentary engagement in UNCAC implementation and review	Responses
<p>13. Money laundering and recovery of assets</p> <p>To what extent are parliamentarians working in harmony with government and expert international organizations to legislate, oversee and build public support to prevent money laundering and improve the potential for recovery of stolen assets?</p>	14, 58	13.1 On legislative provisions and practices	
		13.1.1 Is there legislation in place in your country for the prevention and detection of money laundering, including requirements of effective customer identification (Know Your Customer), record-keeping and reporting of suspicious transactions by financial institutions?	
		Is the legislation comprehensive?	
		13.1.2 Has a financial intelligence unit (FIU) been established to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering?	
		13.1.3 Does the FIU report to Parliament and respond to recommendations?	
		13.1.4 Is Parliament engaged in the budgetary allocation for the FIU?	
		13.1.5 Have any money laundering cases been prosecuted?	
13.1.6 Have any corrupt assets been recovered?			

⁵⁷ Toolkit Short Version: www.gopacnetwork.org/Docs/UNCAC/UNCACToolkit3May2010Short_en.pdf

Toolkit Long Version: www.gopacnetwork.org/Docs/UNCAC/UNCACToolkit3May2010Long_en.pdf

International Organizations Involved in the Fight Against Money Laundering

Egmont Group

www.egmontgroup.org

Recognising the benefits inherent in the development of a FIU network, in 1995, a group of FIUs met at the Egmont Arenberg Palace in Brussels and decided to establish an informal group for the stimulation of international co-operation. Now known as the Egmont Group of Financial Intelligence Units, these FIUs meet regularly to find ways to cooperate, especially in the areas of information exchange, training and the sharing of expertise.

The goal of the Egmont Group is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in this field. This support includes:

- ▶ expanding and systematizing international cooperation in the reciprocal exchange of information;
- ▶ increasing the effectiveness of FIUs by offering training and promoting personnel exchanges to improve the expertise and capabilities of personnel employed by FIUs;
- ▶ fostering better and secure communication among FIUs through the application of technology, such as the Egmont Secure Web (ESW);
- ▶ fostering increased coordination and support among the operational divisions of member FIUs;
- ▶ promoting the operational autonomy of FIUs; and

- ▶ promoting the establishment of FIUs in conjunction with jurisdictions with an AML/CFT program in place, or in areas with a program in the early stages of development.

FATF

www.fatf-gafi.org

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is, first and foremost, a 'policy-making body' that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published the 40 + 9 Recommendations in order to meet this objective. The FATF also monitors members' progress in implementing the 40 + 9 Recommendations, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In performing these activities, the FATF collaborates with other international bodies involved in combating money laundering and the financing of terrorism.

The FATF does not have a tightly defined constitution or an unlimited life span. The Task Force reviews its mission every five years. The FATF has been in existence since 1989. In 2004, Ministry representatives from the then 35 FATF member jurisdictions agreed to extend the mandate of the Task Force until 2012. This 8-year mandate demonstrates that members of the FATF remain united in their commitment to combat terrorism and international crime, and is a sign of their confidence in the FATF as an important instrument in that fight.

The 8 FATF Style Regional Bodies (FSRBs)

1. **Asia-Pacific Group on Money Laundering (APG)** (www.apgml.org/)
2. **Caribbean Financial Action Task Force (CFATF)** (www.cfatf-gafic.org/)
3. **Eurasian Group (EAG)** (www.eurasiangroup.org/)
4. **Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG)** (www.esaamlg.org/)
5. **Financial Action Task Force on Money Laundering in South America (GAFISUD)** (www.gafisud.info/home.htm)
6. **Intergovernmental Action Group against Money Laundering in West Africa (GIABA)** (www.giaba.org/)
7. **Middle East and North Africa Financial Action Task Force (MENAFATF)** (www.menafatf.org/)
8. **Committee of Experts on the Evaluation of Anti Money Laundering Measures (MONEYVAL)** (www.coe.int/t/dghl/monitoring/moneyval/)

International Monetary Fund (IMF)

www.imf.org/external/index.htm

The IMF has 187 member countries and is a specialized agency of the United Nations with its own charter, governing structure, and finances. Its members are represented through a quota system broadly based on their relative size in the global economy. The IMF promotes international monetary cooperation and exchange rate stability, facilitates the balanced growth of international trade, and provides resources to help members in balance of payments difficulties or to assist with poverty reduction.

The Fund emphasises good governance when providing policy advice, financial support, and technical assistance to its member countries.

It promotes good governance by helping countries ensure the rule of law, improve the efficiency and accountability of their public sectors and tackle corruption.

The Fund's approach to combating corruption emphasizes prevention, concentrating on measures to strengthen governance and limiting the scope for corruption. The Fund is active in a wide range of activities that contribute to good governance and the prevention/combating of corruption, including, the Financial Sector Assessment program, the Extractive Industries Transparency Initiative, the International Country Risk Guide (ICRG) and promotion of the codes on fiscal policy transparency, data dissemination and transparency in the conduct of monetary and financial policies, as well as, legal advice on anti-corruption and AML/CFT regimes.

INTERPOL

www.interpol.int

Created in 1923, INTERPOL is the world's largest international police organization, with 188 member countries. It facilitates cross-border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat international crime. Each INTERPOL member country maintains a National Central Bureau staffed by national law enforcement officers.

Actively involved in supporting initiatives to curb corruption since 1998, INTERPOL is particularly concerned about the role corruption plays in terrorism and other international crimes. INTERPOL established the INTERPOL Group of Experts on Corruption (IGEC) in 1998, and is currently in the process of developing the INTERPOL Anti-Corruption Office (IACO) to establish policies and standards, as well as conducting or assisting with education, research, training, investigations and asset-recovery operations.

Some INTERPOL anti-corruption initiatives are:

- ▶ Library of Best Practice designed to aid corruption investigators. Subjects include corruption strategies and structures, undercover investigations, operatives and techniques, witness protection, anti-corruption legislation, prevention, training and education;
- ▶ Global Standards to Combat Corruption in Police Forces/Services, commensurate with the spirit and content of the UN Convention against Corruption (UNCAC), which promote high standards of honesty, integrity and ethics in the world's law enforcement agencies; provide a framework to improve their resistance to corruption; and promote the development in each member country of measures designed to prevent, detect and eradicate corruption. They contain principles and numerous measures designed to boost the efficiency of law enforcement in preventing corruption, as well as in the investigation of cases of corruption.
- ▶ Police Integrity Survey to benchmark the capacities of INTERPOL's member countries to combat corruption; and
- ▶ International system of 'national contact points' through which law enforcement agencies in different countries can quickly initiate co-operation in corruption cases.

Transparency International

www.transparency.org

Transparency International, the global civil society organisation leading the fight against corruption, brings people together in a worldwide coalition to end the devastating impact of corruption on men, women and children around the world. TI's mission is to create change towards a world free of corruption.

Since its founding in 1993, TI has played a lead role in improving the lives of millions around the world by building momentum for the anti-corruption movement.

TI raises awareness and diminishes apathy and tolerance of corruption, and devises and implements practical actions to address it.

Transparency International is a global network including more than 90 locally established national chapters and chapters-in-information that fight corruption in the national arena in a number of ways. They bring together relevant players from government, civil society, business and the media to promote transparency in elections, in public administration, in procurement and in business. TI's global network of chapters and contacts also use advocacy campaigns to lobby governments to implement anti-corruption reforms.

Politically non-partisan, TI does not undertake investigations of alleged corruption or expose individual cases, but at times will work in coalition with organisations that do. TI has the skills, tools, experience, expertise and broad participation to fight corruption on the ground, as well as through global and regional initiatives. Now in its second decade, Transparency International is maturing, intensifying and diversifying its fight against corruption.

UNODC

www.unodc.org

Established in 1997, UNODC is a global leader in the struggle against illicit drugs and international crime, and the lead United Nations entity for delivering legal and technical assistance to prevent terrorism. Headquartered in Vienna, UNODC operates 54 field offices around the world, covering more than 150 countries. Crime, drugs and terrorism are high-priority issues for the United Nations. At a time when these problems without borders are becoming widely recognized as threats to individuals and nations alike, requests for coordinated UNODC initiatives at the national, regional and transnational levels continue to grow.

Its work falls into five interrelated thematic areas:

- ▶ Organized crime and trafficking;
- ▶ Corruption;
- ▶ Criminal justice reform;
- ▶ Health and livelihoods;
- ▶ Terrorism prevention.

Amongst other things, UNODC provides the Secretariat for the United Nations Convention against Corruption (UNCAC). At its 2009 Conference of State Parties to the Convention held in Doha, the parties agreed to establish a review mechanism for the Convention. Under the new mechanism, all States Parties will be reviewed every five years on the fulfilment of their obligations under the Convention. On the basis of self-assessments and peer review, the mechanism will help identify gaps in national anti-corruption laws and practices. The Convention's new monitoring mechanism represents a major breakthrough in the global campaign against corruption. From now on, knowledge on efforts against corruption will be based on facts and not perceptions. To support the monitoring mechanism, UNODC has developed a state-of-the-art software programme for self-assessment that will identify States' strengths and weaknesses in countering corruption and pinpoint where technical assistance is needed. Identical software are being developed to assess States' implementation of the United Nations Convention against Transnational Organized Crime and its three Protocols.

The UNODC Global Programme against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML) was established in 1997 to help Member States implement anti-money-laundering / countering the financing of terrorism (AML/CFT) international standards.

The GPML fulfils its mandate principally through technical assistance, training and information sharing. It commits itself to providing a repository of best practices and information on AML/CFT and promotes dissemination of such information.

It focuses on assisting legal, financial, law enforcement and judicial authorities, as well as the private sector, to develop the necessary AML/CFT infrastructure and skills to adequately address the risks posed by money-laundering and the financing of terrorism. Specific initiatives are built around awareness-raising, institution building and technical assistance delivery and training at the national and regional level.

The UNODC also hosts the International Money Laundering Information Network (IMoLIN) (www.imolin.org), developed with the world's leading anti-money laundering organizations. Included is: i) a database on related legislation and regulations throughout the world (AMLID), ii) an electronic library, and iii) a calendar of events in the anti-money laundering / countering the financing of terrorism fields.

World Bank

www.worldbank.org

The World Bank provides financial and technical assistance to developing countries around the world. Its mission is to fight poverty and to help people help themselves and their environment by providing resources, sharing knowledge, building capacity and forging partnerships in the public and private sectors. It has more than 10,000 employees in more than 100 offices worldwide. It is made up of two development institutions owned by 187 member countries: the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). The IBRD aims to reduce poverty in middle-income and creditworthy poorer countries, while IDA focuses on the world's poorest countries.

Their work is complemented by that of the International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), and the International Centre for the Settlement of Investment Disputes (ICSID).

Together, these institutions provide low-interest loans, interest-free credits and grants to developing countries for a wide array of purposes that include investments in education, health, public administration, infrastructure, financial and private sector development, agriculture and environmental and natural resource management.

Parliamentarians and the World Bank Group: Recognizing that Parliamentarians can be powerful advocates for development because they set laws, debate and approve foreign aid budgets, review development policies, and hold governments accountable for World Bank financed programs, the World Bank Group provides an important focus of parliamentary interest as it channels around one-fifth of all aid to the poorest countries.

It is also an important source of knowledge and information on poverty reduction. According to the mandate given by its Board of Governors, the World Bank cannot get directly involved in the domestic political affairs of a country. This means that except in very exceptional cases, World Bank staff cannot testify before a legislative body. However, there are a lot of things it does with parliamentarians, a vital constituency with a major role to play in contributing to sustainable development.



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- ▶ Najib Boulif (Member, House of Representatives, Morocco)
- ▶ Roy Cullen (Chair, AML GTF; former parliamentarian, Canada)
- ▶ Ricardo García Cervantes (Senator, Vice President Senate, Mexico)
- ▶ Mary King (Senator, Minister of Planning, Economic and Social Restructuring and Gender Affairs, Trinidad and Tobago)
- ▶ Given Lubinda (Member, Legislative Assembly, Zambia)
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- ▶ Jean Pesme, Manager, Financial Market Integrity, The World Bank

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- ▶ Irina Koulatchenko, former AML GTF secretary; and,
- ▶ Ted Cooke, current AML GTF secretary

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Canadian International
Development Agency

Agence canadienne de
développement international



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APPENDIX A

Benchmark Anti-Money Laundering Legislation



The UNODC and IMF have developed benchmark or generic Anti-Money Laundering Legislation for both Civil Law and Common Law countries that can be found at the web sites below.

The model law is a legislative tool designed to facilitate the drafting of specially adapted legislative provisions by countries intending to enact a law against money laundering and the financing of terrorism or to upgrade their legislation in those areas. The model law incorporates the requirements contained in international instruments and the FATF 40+9 Recommendations in particular, and strengthens or supplements them in light of the actual practice of a number of countries. It also proposes innovative optional provisions aimed at strengthening the effectiveness of their AML/CFT regimes and offers States appropriate legal mechanisms to engage in international cooperation.

It will be up to each individual country to adapt the proposed provisions in order to bring them, where necessary, in line with the constitutional and fundamental principles of its legal system, and to supplement them with whatever measures it considers best suited to contribute towards effectively combating money laundering and the financing of terrorism.

1. **UNODC/IMF Civil Law Model** (dated 2005, updated in 2007) www.imolin.org/pdf/imolin/ModelLaw-February2007.pdf
2. **UNODC/Commonwealth Secretariat/IMF Common Law Model Provisions** (2009) www.imolin.org/pdf/imolin/Model_Provisions_Final.pdf



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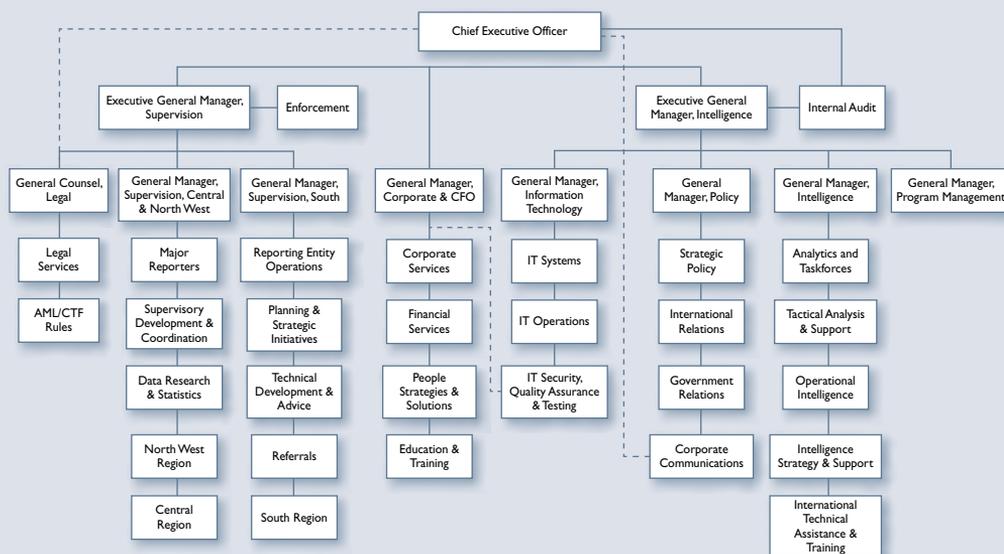


APPENDIX B

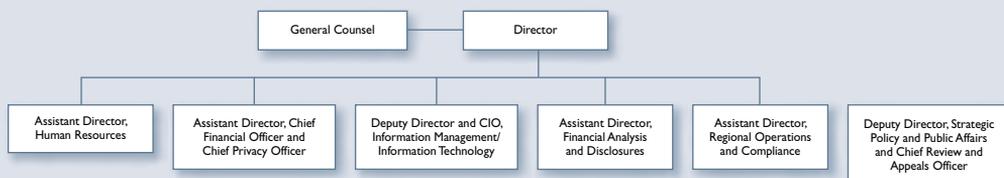
Examples of Financial Intelligence Units Organizational Charts

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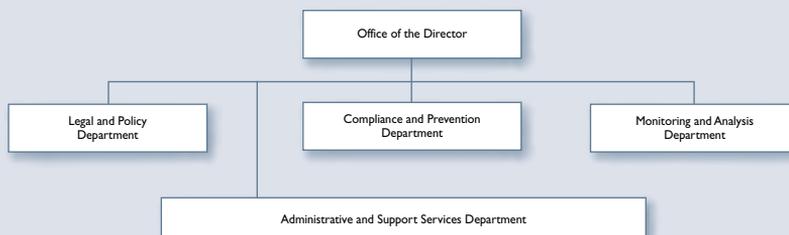
Example 1



Example 2



Example 3





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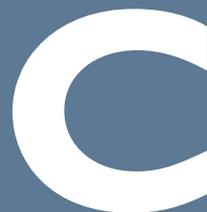
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APPENDIX C

GOPAC's Anti-Money Laundering Initiative



GOPAC has established Global Task Forces, including an Anti-Money Laundering Task Force, that are comprised of Parliamentarians representing various regions of the world, and whose purpose is to collaborate with representatives of expert agencies to develop materials that will assist Parliamentarians deliver on GOPAC's Policy Positions.

GOPAC AML GTF Position Statement:

Parliamentarians play a vital role in combating money laundering and the financing of terrorism through their influence on legislation, by vigorous oversight of government activity and support of parliamentary auditors, and perhaps most effectively through personal leadership.

They engage the public and help to build the political will to act.

By engaging parliamentarians in the fight against money laundering we strengthen the international regime globally, thus impeding the flow of illegal funds across international borders.

Further, parliamentarians on both sides of the Recovery of Associated Assets (RAA) equation - those that have been stolen from and those countries profiting - need to be engaged in order to ensure global cooperation and the reduction of barriers.

What is the purpose of the GOPAC Anti-Money Laundering (AML) Global Task Force (GTF)?

The Global Organization of Parliamentarians against Corruption (GOPAC) is an international network of parliamentarians dedicated to good governance and combating corruption and money laundering throughout the world. GOPAC's approach to building integrity in governance is to bring together the political will and expertise to empower parliamentarians in all countries. Such an approach, especially on a matter where there are regional differences and sensitivities, takes time to develop the necessary understanding, build consensus and guide implementation.

GOPAC established a globally balanced task force of parliamentarians that works with anti-money laundering experts and organizations [such as the Financial Action Task Force (FATF), the World Bank, the International Monetary Fund (IMF), the United Nations Office on Drugs and Crime (UNODC) and others] to develop a complementary approach to combating money laundering, and in particular the laundering of corrupt money, and promote the development and use of practical tools and techniques to limit or arrest such activity.

The GOPAC AML GTF converts this policy into corrective action by:

- ▶ **Building capacity** - promoting among parliamentarians a good understanding of the evolving practices of money laundering as well as international initiatives to combat them, and, in particular, the ways parliamentarians can effectively contribute to this fight.
- ▶ **Partnerships** - establishing links with international expert agencies to help ensure they have a clear understanding as to how parliamentarians can provide political leadership and support of the anti-money laundering initiatives carried out by those agencies; help tailor international organizations' information materials intended for parliamentarians; and provide parliamentarians seeking to reform country practices improved access to expertise.
- ▶ **Action Plans** - developing global and regional plans required to help parliamentarians that are actively seeking to implement improved anti-money laundering practices in their countries and regions.
- ▶ **Lessons Learned** - tracking experiences, sharing and synthesizing lessons of parliamentarians engaged in AML initiatives to help improve their performance in combating money laundering.

APPENDIX D

FATF 40 Anti-Money Laundering (AML) Recommendations



Sections	Sub Sections	Recommendations
A. Legal Systems	Scope of the criminal offence of money laundering	<p>1: Countries should criminalise money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).</p> <ul style="list-style-type: none"> - Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches. - Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year's imprisonment for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months imprisonment. - Whichever approach is adopted, each country should at a minimum include a range of offences within each of the designated categories of offences 1. - Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically. Countries may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically. - Countries may provide that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law. <p>2: Countries should ensure that:</p> <ol style="list-style-type: none"> a) The intent and knowledge required to prove the offence of money laundering is consistent with the standards set forth in the Vienna and Palermo Conventions, including the concept that such mental state may be inferred from objective factual circumstances. b) Criminal liability, and, where that is not possible, civil or administrative liability, should apply to legal persons. This should not preclude parallel criminal, civil or administrative proceedings with respect to legal persons in countries in which such forms of liability are available. Legal persons should be subject to effective, proportionate and dissuasive sanctions. Such measures should be without prejudice to the criminal liability of individuals.
	Provisional measures and confiscation	<p>3: - Countries should adopt measures similar to those set forth in the Vienna and Palermo Conventions, including legislative measures, to enable their competent authorities to confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, without prejudicing the rights of bona fide third parties.</p> <ul style="list-style-type: none"> - Such measures should include the authority to: (a) identify, trace and evaluate property which is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or avoid actions that prejudice the State's ability to recover property that is subject to confiscation; and (d) take any appropriate investigative measures. - Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

Sections	Sub Sections	Recommendations
<p>B.</p> <p>Measures to be taken by <u>Financial Institutions and Non-Financial Businesses and Professions</u> to prevent Money Laundering and Terrorist Financing</p>	<p>Customer due diligence and record-keeping</p>	<p>4: Countries should <u>ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.</u></p> <p>5: Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names. Financial institutions should undertake customer due diligence measures, including identifying and verifying the identity of their customers, when:</p> <ul style="list-style-type: none"> • establishing business relations; • carrying out occasional transactions: (i) above the applicable designated threshold; or (ii) that are wire transfers in the circumstances covered by the Interpretative Note to Special Recommendation VII; • there is a suspicion of money laundering or terrorist financing; or • the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. <p>The customer due diligence (CDD) measures to be taken are as follows:</p> <ol style="list-style-type: none"> a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information. (<i>Reliable, independent source documents, data or information will hereafter be referred to as "identification data"</i>) b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer. c) Obtaining information on the purpose and intended nature of the business relationship. d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds. <ul style="list-style-type: none"> - Financial institutions should apply each of the CDD measures under (a) to (d) above, but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction. The measures that are taken should be consistent with any guidelines issued by competent authorities. For higher risk categories, financial institutions should perform enhanced due diligence. In certain circumstances, where there are low risks, countries may decide that financial institutions can apply reduced or simplified measures. - Financial institutions should verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering risks are effectively managed and where this is essential not to interrupt the normal conduct of business. - <u>Where the financial institution is unable to comply with paragraphs (a) to (c) above, it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.</u> - These requirements should apply to all new customers, though financial institutions should also apply this Recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times. <p>6: Financial institutions should, in relation to politically exposed persons, in addition to performing normal due diligence measures:</p> <ol style="list-style-type: none"> a) Have appropriate risk management systems to determine whether the customer is a politically exposed person. b) Obtain senior management approval for establishing business relationships with such customers. c) <u>Take reasonable measures to establish the source of wealth and source of funds.</u> d) Conduct enhanced ongoing monitoring of the business relationship.

Sections	Sub Sections	Recommendations
		<p>7: Financial institutions should, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal due diligence measures:</p> <ol style="list-style-type: none"> a) Gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. b) Assess the respondent institution's anti-money laundering and terrorist financing controls. c) Obtain approval from senior management before establishing new correspondent relationships. d) Document the respective responsibilities of each institution. e) With respect to "payable-through accounts", be satisfied that the respondent bank has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank. <p>8: Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes. In particular, financial institutions should have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.</p> <p>9: Countries may permit financial institutions to rely on intermediaries or other third parties to perform elements (a) – (c) of the CDD process or to introduce business, provided that the criteria set out below are met. Where such reliance is permitted, the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party. The criteria that should be met are as follows:</p> <ol style="list-style-type: none"> a) A financial institution relying upon a third party should immediately obtain the necessary information concerning elements (a) – (c) of the CDD process. Financial institutions should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay. b) The financial institution should satisfy itself that the third party is regulated and supervised for, and has measures in place to comply with CDD requirements in line with Recommendations 5 and 10. It is left to each country to determine in which countries the third party that meets the conditions can be based, having regard to information available on countries that do not or do not adequately apply the FATF Recommendations. <p>10: 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 activity. Financial institutions should keep records on the identification data obtained through the customer due diligence process (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 business relationship is ended. The identification data and transaction records should be available to domestic competent authorities upon appropriate authority.</p> <p>11: 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 competent authorities and auditors.</p>

Sections	Sub Sections	Recommendations
		<p>12: The customer due diligence and record-keeping requirements set out in Recommendations 5, 6, and 8 to 11 apply to designated non-financial businesses and professions in the following situations:</p> <ol style="list-style-type: none"> Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold. Real estate agents - when they are involved in transactions for their client concerning the buying and selling of real estate. Dealers in precious metals and dealers in precious stones - when they engage in any cash transaction with a customer equal to or above the applicable designated threshold. Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities: <ul style="list-style-type: none"> buying and selling of real estate; management of client money, securities or other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling of business entities. Trust and company service providers when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.
	<p>Reporting of suspicious transactions and compliance</p>	<p>13: If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU).</p> <p>14: Financial institutions, their directors, officers and employees should be:</p> <ol style="list-style-type: none"> Protected by legal provisions from criminal and 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 FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. Prohibited by law from disclosing the fact that a suspicious transaction report (STR) or related information is being reported to the FIU. <p>15: Financial institutions should develop programmes against money laundering and terrorist financing. These programmes should include:</p> <ol style="list-style-type: none"> The development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees. An ongoing employee training programme. An audit function to test the system. <p>16: The requirements set out in Recommendations 13 to 15, and 21 apply to all designated nonfinancial businesses and professions, subject to the following qualifications:</p> <ol style="list-style-type: none"> Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing. Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold. Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e). <p>Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.</p>

Sections	Sub Sections	Recommendations
	<p>Other measures to deter money laundering and terrorist financing</p>	<p>17: Countries should <u>ensure that effective, proportionate and dissuasive sanctions</u>, whether criminal, civil or administrative, are available to deal with natural or legal persons covered by these Recommendations that fail to comply with anti-money laundering or terrorist financing requirements.</p> <p>18: Countries should <u>not approve the establishment</u> or accept the continued operation of <u>shell banks</u>. Financial institutions should refuse to enter into, or continue, a correspondent banking relationship with shell banks. Financial institutions should also guard against establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks.</p> <p>19: Countries should consider the feasibility and utility of a system where <u>banks and other financial institutions</u> and intermediaries would <u>report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base</u>, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information.</p> <p>20: Countries should consider applying the FATF Recommendations to businesses and professions, other than designated non-financial businesses and professions, that pose a money laundering or terrorist financing risk.</p> <p>Countries should further encourage the development of modern and secure techniques of money management that are less vulnerable to money laundering.</p>
	<p>Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations</p>	<p>21: <u>Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations.</u> 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 competent authorities. Where such a country continues not to apply or insufficiently applies the FATF Recommendations, countries should be able to apply appropriate countermeasures.</p> <p>22: <u>Financial institutions should ensure that the principles</u> applicable to financial institutions, which are mentioned above <u>are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF Recommendations,</u> 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 parent institution should be informed by the financial institutions that they cannot apply the FATF Recommendations.</p>
	<p>Regulation and supervision</p>	<p>23: Countries should <u>ensure that financial institutions are subject to adequate regulation and supervision</u> and are effectively implementing the FATF Recommendations. Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.</p> <p>For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes.</p> <p>Other financial institutions should be licensed or registered and appropriately regulated, and subject to supervision or oversight for anti-money laundering purposes, having regard to the risk of money laundering or terrorist financing in that sector. At a minimum, businesses providing a service of money or value transfer, or of money or currency changing should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.</p>

Sections	Sub Sections	Recommendations
		<p>24: Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below.</p> <p>a) Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary anti-money laundering and terrorist-financing measures. At a minimum:</p> <ul style="list-style-type: none"> - casinos should be licensed; - competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino - competent authorities should ensure that casinos are effectively supervised for compliance with requirements to combat money laundering and terrorist financing. <p>b) Countries should ensure that the other categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This should be performed on a risk-sensitive basis. This may be performed by a government authority or by an appropriate self-regulatory organisation, provided that such an organisation can ensure that its members comply with their obligations to combat money laundering and terrorist financing.</p> <p>25: The competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.</p>
<p>C.</p> <p>Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing</p>	<p>Competent authorities, their powers and resources</p>	<p>26: Countries should establish a Financial Intelligence Unit (FIU) that serves as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential money laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR.</p> <p>27: Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations. Countries are encouraged to support and develop, as far as possible, special investigative techniques suitable for the investigation of money laundering, such as controlled delivery, undercover operations and other relevant techniques. Countries are also encouraged to use other effective mechanisms such as the use of permanent or temporary groups specialised in asset investigation, and co-operative investigations with appropriate competent authorities in other countries.</p> <p>28: When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.</p> <p>29: Supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and terrorist financing, including the authority to conduct inspections. They should be authorised to compel production of any information from financial institutions that is relevant to monitoring such compliance, and to impose adequate administrative sanctions for failure to comply with such requirements.</p> <p>30: Countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of those authorities are of high integrity.</p> <p>31: Countries should ensure that policy makers, the FIU, law enforcement and supervisors have effective mechanisms in place which enable them to co-operate, and where appropriate coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.</p>
		<p>32: Countries should ensure that their competent authorities can review the effectiveness of their systems to combat money laundering and terrorist financing systems by maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of such systems. This should include statistics on the STR received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for co-operation.</p>

Sections	Sub Sections	Recommendations
	<p>Transparency of legal persons and arrangements</p>	<p>33: Countries should take measures to prevent the unlawful use of legal persons by money launderers. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares should take appropriate measures to ensure that they are not misused for money laundering and be able to demonstrate the adequacy of those measures. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation.</p> <p>34: Countries should take measures to prevent the unlawful use of legal arrangements by money launderers. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5.</p>
<p>D. International Cooperation</p>	<p>Mutual legal assistance and extradition</p>	<p>35: Countries should take immediate steps to become party to and implement fully the Vienna Convention, the Palermo Convention, and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Countries are also encouraged to ratify and implement other relevant international conventions, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism.</p> <p>36: Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings. In particular, countries should:</p> <ol style="list-style-type: none"> Not prohibit or place unreasonable or unduly restrictive conditions on the provision of mutual legal assistance. Ensure that they have clear and efficient processes for the execution of mutual legal assistance requests. Not refuse to execute a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters. Not refuse to execute a request for mutual legal assistance on the grounds that laws require financial institutions to maintain secrecy or confidentiality. <p>Countries should ensure that the powers of their competent authorities required under Recommendation 28 are also available for use in response to requests for mutual legal assistance, and if consistent with their domestic framework, in response to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.</p> <p>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.</p> <p>37: Countries should, to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality.</p> <p>Where dual criminality is required for mutual legal assistance or extradition, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.</p>

Sections	Sub Sections	Recommendations
		<p>38: There should be <u>authority to take expeditious action in response to requests by foreign countries</u> to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value. There should also be arrangements for co-ordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets.</p> <p>39: Countries should <u>recognise money laundering as an extraditable offence</u>. Each country should either extradite its own nationals, or where a country does not do so solely on the grounds of nationality, that country should, at the request of the country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. Those authorities should take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of that country. The countries concerned should cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions.</p> <p>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, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.</p>
	<p>Other forms of cooperation</p>	<p>40: Countries should ensure that their competent authorities <u>provide the widest possible range of international co-operation to their foreign counterparts</u>. There should be clear and effective gateways to facilitate the prompt and constructive exchange directly between counterparts, either spontaneously or upon request, of information relating to both money laundering and the underlying predicate offences. Exchanges should be permitted without unduly restrictive conditions. In particular:</p> <ol style="list-style-type: none"> a) Competent authorities should not refuse a request for assistance on the sole ground that the request is also considered to involve fiscal matters. b) Countries should not invoke laws that require financial institutions to maintain secrecy or confidentiality as a ground for refusing to provide co-operation. c) Competent authorities should be able to conduct inquiries; and where possible, investigations; on behalf of foreign counterparts. <p>Where the ability to obtain information sought by a foreign competent authority is not within the mandate of its counterpart, countries are also encouraged to permit a prompt and constructive exchange of information with non-counterparts. Co-operation with foreign authorities other than counterparts could occur directly or indirectly. When uncertain about the appropriate avenue to follow, competent authorities should first contact their foreign counterparts for assistance. Countries should establish controls and safeguards to ensure that information exchanged by competent authorities is used only in an authorised manner, consistent with their obligations concerning privacy and data protection.</p>

APPENDIX E

Members and Observers of the Financial Action Task Force (FATF) and the 8 FATF Style Regional Bodies (FSRBs)



Organization	Members	Observers
<p>I.</p> <p>Financial Action Task Force (FATF) 36 member jurisdictions</p> <p>www.fatf-gafi.org</p>	<p>Argentina</p> <p>Australia</p> <p>Austria</p> <p>Belgium</p> <p>Brazil</p> <p>Canada</p> <p>China</p> <p>Denmark</p> <p>European Commission</p> <p>Finland</p> <p>France</p> <p>Germany</p> <p>Greece</p> <p>Gulf Cooperation Council</p> <p>Hong Kong, China</p> <p>Iceland</p> <p>India</p> <p>Ireland</p> <p>Italy</p> <p>Japan</p> <p>Kingdom of the Netherlands*</p> <p>Luxembourg</p> <p>Mexico</p> <p>New Zealand</p> <p>Norway</p> <p>Portugal</p> <p>Republic of Korea</p> <p>Russian Federation</p> <p>Singapore</p> <p>South Africa</p> <p>Spain</p> <p>Sweden</p> <p>Switzerland</p> <p>Turkey</p> <p>United Kingdom</p> <p>United States</p>	<p>African Development Bank</p> <p>Asian Development Bank</p> <p>Basel Committee on Banking Supervision (BCBS)</p> <p>Commonwealth Secretariat</p> <p>Egmont Group of Financial Intelligence Units</p> <p>European Bank for Reconstruction and Development (EBRD)</p> <p>European Central Bank (ECB)</p> <p>Eurojust</p> <p>Europol</p> <p>Inter-American Development Bank (IDB)</p> <p>International Association of Insurance Supervisors (IAIS)</p> <p>International Monetary Fund (IMF)</p> <p>International Organisation of Securities Commissions (IOSCO)</p> <p>Interpol</p> <p>Organization of American States / Inter-American Committee Against Terrorism (OAS/CICTE)</p> <p>Organization of American States / Inter-American Drug Abuse Control Commission (OAS/CICAD)</p> <p>Organisation for Economic Co-operation and Development (OECD)</p> <p>Offshore Group of Banking Supervisors (OGBS)</p> <p>United Nations - Office on Drugs and Crime (UNODC)</p> <p>Additional information</p> <p>Counter-Terrorism Committee of the Security Council (UNCTC)</p> <p>The Al-Qaida and Taliban Sanctions Committee (1267 Committee)</p> <p>World Bank</p> <p>World Customs Organization (WCO)</p>

Organization	Members	Observers
<p>2.</p> <p>Asia-Pacific Group on Money Laundering (APG) 40 member jurisdictions</p> <p>www.apgml.org</p>	<p>Afghanistan Australia Bangladesh Brunei Darussalam Cambodia Canada China Cook Islands Fiji Hong Kong, China India Indonesia South Korea Japan Laos Macao, China Malaysia Maldives Marshall Islands Mongolia Myanmar Nauru Nepal New Zealand Niue Pakistan Palau Papua New Guinea Philippines Samoa Singapore Solomon Islands Sri Lanka Chinese Taipei Thailand Timor Leste Tonga United States of America Vanuatu Vietnam</p>	<p>Bhutan France Micronesia Russian Federation United Kingdom Asia Pacific Economic Cooperation (APEC) Secretariat Asian Development Bank (ADB) ADB/OECD Anti-Corruption Initiative for Asia Pacific Association of South East Asian Nations (ASEAN) Secretariat Caribbean Financial Action Task Force (CFATF) Commonwealth Secretariat Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) Egmont Group Eastern and South African Anti-Money Laundering Group (ESAAMLG) Financial action Task Force (FATF) Financial Action Task Force on Money Laundering in South America (GAFISUD) Intergovernmental Action Group against Money Laundering in West Africa (GIABA) International Monetary Fund (IMF) Interpol Middle East and North African Financial Action Task Force (MENAFATF) Council of Europe, Anti-Money Laundering Group (MONEYVAL) Oceania Customs Organization (OCO) Offshore Group of Banking Supervisors (OGBS) Pacific Islands Forum Secretariat (PFTAC) United Nations Office on Drugs and Crime (UNODC) World Bank World Customs Organization</p>

Organization	Members	Observers
<p>3. Caribbean Financial Action Task Force (CFATF) with 29 member jurisdictions** www.cfatf-gafic.org</p>	<p>Antigua & Barbuda Anguilla Aruba The Bahamas Barbados Belize Bermuda The British Virgin Islands The Cayman Islands Curacao Dominica Dominican Republic El Salvador Grenada Guatemala Guyana Republic of Haiti Honduras Jamaica Montserrat Nicaragua St. Kitts & Nevis St. Lucia St. Maarten St. Vincent & The Grenadines Suriname The Turks & Caicos Islands Trinidad & Tobago Venezuela</p>	<p>Canada France Kingdom of the Netherlands Mexico Spain United Kingdom United States of America</p>

Organization	Members	Observers
<p>4.</p> <p>Eurasian Group (EAG) with 8 member jurisdictions</p> <p>www.eurasiangroup.org</p>	<p>Belarus India Kazakhstan China Kyrgyzstan Russia Tajikistan Turkmenistan and Uzbekistan</p>	<p>United Kingdom Georgia Italy United States Ukraine France Germany Moldova Japan Turkey Armenia Afghanistan Lithuania Poland Serbia Montenegro Observer organizations Asia/Pacific Group on Money Laundering (APG) Asian Development Bank Collective Security Treaty Organization (CSTO) Commonwealth of Independent States (Executive Committee) (CIS) Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) Counter-Terrorism Committee (UN CTC) Eurasian Economic Community (EEC) Eurasian Development Bank European Bank for Reconstruction and Development (EBRD) Financial Action Task Force on Money Laundering (FATF) International Monetary Fund (IMF) Interpol Shanghai Cooperation Organization (SCO) The Organization for Security and Co-operation in Europe (OSCE) United Nations Office for Drugs and Crime (UN ODC) World Bank</p>

Organization	Members	Observers
<p>5.</p> <p>Financial Action Task Force on Money Laundering in South America (GAFISUD) with 12 member jurisdictions</p> <p>www.gafisud.info/home.htm</p>	<p>Argentina Bolivia Brazil Chile Colombia Costa Rica Ecuador Mexico Panama Paraguay Peru Uruguay</p>	<p>Egmont France Germany Inter-American Development Bank International Monetary Fund (IMF) INTERPOL INTOSAI Portugal Spain United Nations United States of America World Bank</p> <p>Fellow organizations that also attend the sessions: FATF Financial Action Task Force of the Caribbean (CFATF) Organization of American States, through the Inter-American Commission against Drug Abuse (CICAD)</p>
Organization	Members	Cooperating Partners
<p>6.</p> <p>Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG) with 15 member jurisdictions</p> <p>www.esaamlg.org</p>	<p>Botswana Comoros Kenya Lesotho Malawi Mauritius Mozambique Namibia South Africa Swaziland Seychelles Tanzania Uganda Zambia Zimbabwe</p>	<p>APG Egmont World Bank Commonwealth Secretariat UN GLOBAL ANTI MONEY LAUNDERING PROGRAM FATF CFATF United States of America Interpol</p>

Organization	Members	Observers
<p>7.</p> <p>Intergovernmental Action Group against Money Laundering in West Africa (GIABA) with 15 member jurisdictions</p> <p>www.giaba.org</p>	<p>Benin Burkina Faso Cape Verde Côte d'Ivoire Gambia Ghana Guinea Guinea Bissau Liberia Mali Niger Nigeria Senegal Sierra Leone Togo</p>	<p>Egmont Group</p> <p>Republic of Sao Tome and Principe</p> <p>Observer status within GIABA is to be granted to African and non-African States, as well as Inter-Governmental Organizations that support the objectives and actions of GIABA and which have applied for observer status.</p> <p>The following organizations are also eligible for observer status within GIABA: the Central Banks of Signatory States, regional Securities and Exchange Commissions, UEMOA, Banque Ouest Africaine pour le Développement, (BOAD) the French Zone Anti-Money Laundering Liaison Committee (Conseil Régional de l'Épargne Public et des Marchés Financiers), the African Development Bank (ADB), the United Nations Office on Drugs and Crime (UNODC), the World Bank, the International Monetary Fund (IMF), the FATF, Interpol, WCO, the Commonwealth Secretariat, and the European Union.</p>
Organization	Members	Observers
<p>8.</p> <p>Middle East and North Africa Financial Action Task Force (MENAFATF) with 18 member jurisdictions</p> <p>www.menafatf.org</p>	<p>Algeria Bahrain Egypt Iraq Jordan Kuwait Lebanon Libya Mauritania Morocco Oman Qatar Saudi Arabia Sudan Syria Tunisia United Arab Emirates Yemen</p>	<p>Arab Monetary Fund</p> <p>Asia/Pacific Group on Money Laundering (APG)</p> <p>Co-operation Council for the Arab States of the Gulf (GCC)</p> <p>Egmont Group (of Financial Intelligence Units)</p> <p>France</p> <p>Financial Action Task Force (FATF)</p> <p>International Monetary Fund</p> <p>Palestine</p> <p>Spain</p> <p>Great Britain and Northern Ireland</p> <p>United Nations Office on Drugs and Crime (UNODC)</p> <p>United States of America</p> <p>World Bank</p> <p>World Customs Organization (WCO)</p>

Organization	Members	Observers
<p>9.</p> <p>Committee of Experts on the Evaluation of Anti Money Laundering Measures (MONEYVAL) with 28 member jurisdictions</p> <p>www.coe.int/t/dghl/monitoring/moneyval</p>	<p>Albania Andorra Armenia Azerbaijan Bosnia and Herzegovina Bulgaria Croatia Cyprus Czech Republic Estonia Georgia Hungary Israel (active observer status) Latvia Liechtenstein Lithuania Malta Moldova Monaco Montenegro Poland Romania Russian Federation San Marino Serbia Slovak Republic Slovenia “The former Yugoslav Republic of Macedonia” Ukraine</p>	<p>Canada Holy See Japan Mexico United States of America Members of the FATF other than those referred to as members FATF Money Laundering Secretariat Commission of the European Communities and the Secretariat General of the Council of the European Union ICPO-Interpol Commonwealth Secretariat International Monetary Fund (IMF) United Nations Office on Drugs and Crime (UNODC) United Nations Counter-Terrorism Committee (CTC) World Bank European Bank of Reconstruction and Development (EBRD) Offshore Group of Banking Supervisors (OGBS) Egmont Group Eurasian Group on Combating Money Laundering and Terrorist Financing (EAG)</p>



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