Compliance Standards for Anti-Money Laundering and Combating the Financing of Terrorism

Financial Action Task Force

The pace of international activity in the anti-money laundering (AML) field accelerated in 1989 when the Group of Seven nations, gathered for their annual economic summit in Paris, launched the Financial Action Task Force (FATF). With France serving as its first chairman, this multinational group started working toward a coordinated effort against international money laundering. Originally called the G-7 Financial Action Task Force, FATF today ranks as one of the most important catalysts in the world for governmental action against money laundering, although the International Monetary Fund and World Bank have both recently brought important new efforts to the field. The FATF has brought significant changes in the customary ways that banks and businesses around the world conduct their affairs. It also has provoked changes in laws and in governmental operations.

The intergovernmental body is based at the Organization for Economic Cooperation and Development in Paris, where it has its own small secretariat.

Members and Observers

During 1991 and 1992, the FATF expanded its membership from the original 16 to 28 members. In 2000 the FATF expanded to 31 members and in 2003 it expanded to its current 33 members. Members include: Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, the European Commission, Finland, France, Germany, Greece, the Gulf Co-operation Council, Hong Kong - China, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.

Countries with Observer Status

- China
- Republic of Korea

To qualify for membership, a country must:

- Be strategically important;
- Be a full and active member of a relevant FATF-style regional body;
- Provide a letter from an appropriate minister or person of equivalent political rank making a political commitment to implement FATF Recommendations
within a reasonable time frame and to undergo the mutual evaluation process (see below); and

- Criminalize money laundering and terrorist financing; require financial institutions to identify their customers, to keep customer records and to report suspicious transactions; and establish an effective Financial Investigations Unit (FIU), so that the country will be found fully or largely compliant with FATF Recommendations 1, 5, 10 and 13, and special Recommendations II and IV.

The following organizations are FATF associate members:
- The Asia/Pacific Group on Money Laundering (APG)
- The Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) - formerly PC-R-EV
- The Financial Action Task Force on Money Laundering in South America (GAFISUD)

The following international bodies and organizations have observer status with the FATF. They are regional FATF-style bodies and have similar form and functions to those of the FATF. Some FATF members are also members of these bodies:
- Caribbean Financial Action Task Force (CFATF)
- Eurasian Group (EAG)
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- Intergovernmental Action Group against Money-Laundering in Africa (GIABA)
- Middle East and North Africa Financial Action Task Force (MENAFATF)

**Objectives**
The FATF focuses on several important tasks including:

1. Spreading the anti-money laundering message worldwide:

   The group promotes establishment of a global AML and anti-terrorist financing network based on expansion of its membership, the development of regional anti-money laundering bodies in various parts of the world, and cooperation with other international organizations. 124 2.

2. Monitoring implementation of the FATF Recommendations among FATF members.

   Implementation is monitored through a two-pronged approach:
   - an annual self-assessment exercise where member countries are required to fill out detailed standard questionnaires on the status of their compliance with the Recommendations. This information is then compiled and analyzed, and provides the basis for assessing the extent to which the Recommendations
have been implemented by both individual countries and the group as a whole.

- the more detailed mutual evaluation procedure. Each member country is examined by the FATF on the basis of an on-site visit conducted by a team of three or four experts in the legal, financial and law enforcement fields from other member governments. The experts write a report assessing the extent to which the evaluated country has moved forward in implementing an effective system to counter money laundering and to highlight areas in which further progress is still required.

The FATF Anti-Money Laundering/Combating Terrorist Financing (AML/CFT) Methodology 2004, updated in June 2006, is used to help assessors determine whether countries are in compliance with the FATF Recommendations. The Methodology reflects the principles of the FATF 40 and Special Recommendations. It is also based on the experience of the FATF and the FATF-style regional bodies in their mutual evaluations, of the IMF and the World Bank in the Financial Sector Assessment Program and of the IMF’s Offshore Financial Center Assessment Program. The FATF does not have the power to impose fines or penalties against recalcitrant member-nations, leaving little incentive for prompt implementation of its Recommendations. In 1996, the FATF launched a policy for dealing with nations that fail to comply with the FATF Recommendations that it describes as “a graduated approach aimed at enhancing peer pressure.” The first step is requiring the country to deliver a progress report at plenary meetings. The country may then receive a letter from the FATF president or a visit from a high-level mission. The FATF may also apply Recommendation 21, which yields a statement calling on financial institutions to give special attention to business relations and transactions with persons, companies and financial institutions domiciled in the non-complying country. Then, as a final measure, the FATF may suspend the membership of the country in question.

In September 1996, Turkey became the first FATF member exposed to the “peer pressure” policy. Though a member since 1990, Turkey had yet to criminalize money laundering. The FATF issued a warning to financial institutions worldwide to be vigilant of business relations and transactions with persons and entities in Turkey due to its lack of laundering controls. One month later, Turkey enacted a money laundering law. Even though the FATF, since 1989, has made significant strides in fostering money laundering controls around the world, it is spinning its wheels when it comes to convincing the governments of some of its member-nations that the AML controls it recommends should be taken seriously. Several FATF members, which include the world’s leading financial systems — such as the United States — continue to hedge on implementing many of the Recommendations.

Faced with a financial system that has no geographic horizons, operates around the clock in every time zone, and maintains the pace of the global electronic highway, criminals can constantly search for new points of vulnerability and adjust their laundering techniques to respond to counter-measures introduced by FATF members and other countries. FATF members gather information on money laundering trends in an effort to ensure that its Recommendations remain up to date.

Since its creation in 1989, the FATF has been working under five-year mandates. In May 2004, its members extended the organization’s charter by a record eight years, signaling the possibility that it may become a permanent institution in global money laundering and terrorist financing control efforts.

FATF members agreed that the organization would continue to operate until December 2012, subject to renewal. However, they allowed for a possible review of the organization’s activities and mission midway through the eight-year extension.

The members also agreed to continue the review of the 40 Recommendations and Eight Special Recommendations on Terrorist Financing and to issue implementation guidelines. They said they would “consider the advisability of integrating the two sets” of recommendations into a “single, unified standard.”

**Financial Action Task Force 40 Recommendations**

A key element of the FATF’s efforts is its detailed list of appropriate countermeasures for countries to implement. These measures are set out in the “40 Recommendations,” which were first issued in 1990 and revised in 1996 and 2003, and updated in October 2004.

The Recommendations have become the world’s blueprint for effective national and international money laundering controls. The IMF and World Bank have recognized the 40 Recommendations as the international standard for combating money laundering and terrorist financing. In 2002 the IMF, World Bank and FATF agreed to a common methodology to assess compliance with the FATF Recommendations.

The 40 Recommendations provide a complete set of countermeasures against money laundering, covering:

- The criminal justice system and law enforcement
- The financial system and its regulation
- International cooperation

The FATF recognizes that because countries have different legal and financial systems they cannot use identical measures to fight money laundering and terrorist financing. The Recommendations set minimum standards of action for countries to
implement according to their particular circumstances and constitutional frameworks.

With its 2003 revisions of the 40 Recommendations, the FATF expanded the reach of its global blueprint for cracking down on illicit movements of funds. It introduced substantial changes intended to strengthen measures to combat money laundering and terrorist financing, which unleashed new pressures on governments, international organizations and the private sector at a time when much of the world was still trying to adjust to the first generation of anti-money laundering laws.

Roughly, the revised 40 Recommendations of 2003 can be divided into four main sections:

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<tr>
<th>Group</th>
<th>Topic</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td>I</td>
<td>Legal Systems</td>
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<td>- The scope of criminal offenses and such measures as confiscation.</td>
<td>1 – 3</td>
</tr>
<tr>
<td>II</td>
<td>Measures taken by financial and non-financial institutions</td>
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<td></td>
<td>- Customer due diligence, recordkeeping, etc. measures for non-compliant countries, and regulation and supervision.</td>
<td>4 – 25</td>
</tr>
<tr>
<td>III</td>
<td>Institutional Measures</td>
<td></td>
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<tr>
<td></td>
<td>- Powers and resources of authorities and transparency of legal persons</td>
<td>26 – 34</td>
</tr>
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<td>IV</td>
<td>International Cooperation</td>
<td></td>
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<td>- Mutual legal assistance, extradition and other forms of cooperation.</td>
<td>35 – 40</td>
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The most important changes made in 2003 were:
- Expanded coverage to include terrorist financing.
• Widened the categories of business that should be covered by national laws, including real estate agents, precious metals dealers, accountants, lawyers and trust services providers.
• Specified compliance procedures on issues such as customer identification and due diligence, including enhanced identification measures for higher-risk customers and transactions.
• Adopted a clearer definition of money laundering predicate offenses.
• Encouraged prohibition of so-called “shell banks,” typically set up in offshore secrecy havens and consisting of little more than nameplates and mailboxes, and urged improved transparency of legal persons and arrangements.
• Included stronger safeguards, notably regarding international cooperation in, for example, terrorist financing investigations.

In October 2004, with the adoption of Special Recommendation IX, the FATF deleted paragraph 19(a) of Recommendation 19 and the Interpretative Note to Recommendation 19 in order to ensure internal consistency amongst the FATF Recommendations.

Some highlights of the substance of the 40 Recommendations are:

**Designated Categories of Offenses:** For the first time the Recommendations specify crimes, called “designated categories of offenses,” that should serve as money laundering predicates — meaning that trying to conceal them through financial subterfuge would constitute criminal money laundering. (See Recommendation 1 and the definition of “designated categories of offenses” in the Glossary of the 40 Recommendations.)

**Knowledge and Criminal Liability:** The Recommendations include the concept that knowledge required for the offense of money laundering may be inferred from objective factual circumstances. This is similar to what is known, in some countries, as “willful blindness,” or deliberate avoidance of knowledge of the facts. In addition, the Recommendations urge that criminal liability and, where that is not possible, civil or administrative liability, should apply to legal persons as well. 130

**Expanded Coverage of Industries:** The revised Recommendations expand the attack on money laundering by adding new businesses to the roster of financial institutions that are the usual focus of AML efforts. Expanding the scope of antilaundering scrutiny is a key area where many governments have been aiming their AML arsenal in response to an increased flow of dirty money. Among these institutions and professions the FATF now includes:

• Casinos, when customers engage in financial transactions equal to or above the applicable threshold. (At a minimum, casinos should be licensed, authorities should prevent criminals from participating in casino operations and should supervise casinos to ensure compliance with requirements to combat money laundering and terrorist financing).
• Real estate agents, when they are involved in transactions for clients concerning buying and selling properties.
• Dealers in precious metals and stones, when they engage in any cash transaction with a customer at or above the designated threshold.
• Lawyers, notaries and independent legal professionals and accountants when they prepare or carry out transactions for clients concerning: buying and selling real estate; managing client money, securities or other assets; managing bank, savings or securities accounts; organizing contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling businesses.
• Trust and company service providers when they prepare or carry out transactions for a client concerning certain activities.

The FATF also designated specific thresholds that trigger AML scrutiny: For example, the threshold that financial institutions should monitor for occasional customers is €15,000; for casinos, including Internet casinos, it is €3,000; and for dealers in precious metals, when engaged in any cash transaction, it is €15,000.

(See the definition of “designated non-financial businesses and professions” and “financial institutions” in the Glossary of the 40 Recommendations).

**Beneficial ownership:** The Recommendations stress the need for improved “transparency” concerning the beneficial ownership of companies and trusts. Financial institutions should identify beneficial owners, and take reasonable measures to verify the identity of beneficial owners so that the institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements financial institutions should take reasonable steps to understand the ownership and control structure of the customer. Financial institutions should verify the identity of the customer and beneficial owner before or while establishing a business relationship or conducting transactions for occasional customers. The Recommendations say that if a financial institution cannot determine the beneficial owner of an account, it should not open the account or commence business relations with the prospective client.

According to the Recommendations, a “beneficial owner” is the natural person(s) who ultimately owns or controls a customer and/ or the person on whose behalf a transaction is being conducted. It includes those persons who exercise ultimate effective control over a legal person or arrangement. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the customer due diligence requirements set out in Recommendation 5. (See Recommendation 5, the Interpretative Note of Recommendation 5, Recommendation 23, 24, 33, and 34, and the definition of “beneficial owner” in the Glossary of the 40 Recommendations.)
Customer Due Diligence (CDD) measures: Covered institutions must:

- Identify the customer and verify that customer’s identity using reliable, independent source documents, data or information.
- Identify the beneficial owner, and take 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 taking reasonable steps to understand the ownership and control structure of the customer.
- Obtain information on the purpose and intended nature of the business relationship.
- Conduct ongoing due diligence on the business relationship and scrutinize transactions undertaken in the course of that relationship to ensure that the transactions are consistent with the institution’s knowledge of the customer, its business and risk profile, including, where necessary, the source of funds.

(See Recommendation 5, and its Interpretative Note)

**Customer Due Diligence on PEPs and Correspondent Accounts:** The Recommendations also seek tougher customer due diligence checks on high-risk business areas such as correspondent banking or dealings with people who have questionable political histories. The FATF insists that enhanced due diligence measures be applied to high-risk customers and transactions, including correspondent banking and politically exposed persons (PEPs). In addition to performing standard due diligence exams, financial institutions should have appropriate risk management systems to determine whether a prospective customer is a PEP. (See Recommendation 6, and its Interpretative Note and Recommendation 7).

**Accounts in Anonymous or Fictitious Names:** The Recommendations stress that financial institutions should not keep accounts that are either anonymous or held in obviously fictitious names. They should undertake customer due diligence measures, including identifying and verifying the identity of their customers. (See Recommendation 5). 133 Shell Banks: Countries should not approve the establishment or accept the continued operation of shell banks. Financial institutions should refuse to enter into, or continue, a correspondent banking relationship with shell banks. (See: Recommendation 18).

**Currency Transaction Reporting:** The recommendations say that countries should consider setting up a currency transaction reporting system. (See Recommendation 19).

**International Cooperation:** Several Recommendations deal with strengthening international cooperation. Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in money laundering and terrorist financing investigations. (See Recommendation 35-40.)
For detailed information on these and other important issues see the 40 Recommendations and its Interpretative Notes themselves.

FATF Guidance on Dismantling Terrorist Financing and “Special Recommendations”

Since the dawn of money laundering as an international concern in 1986, nothing has galvanized the nations of the world and some of its most powerful organizations to strengthen money laundering laws more than the September 11, 2001, terrorist attacks on the United States and the subsequent global dragnet to capture those responsible.

That is why, soon after the attacks, the FATF expanded its focus to include terrorist financing and issued a list of Special Recommendations for fighting terrorist financing. The Special Recommendations were adopted by the FATF in a meeting in Washington, D.C., in October 2001.

The Special Recommendations, which initially numbered eight, committed members to:

1. Take immediate steps to ratify and implement the relevant United Nations instruments regarding terrorist financing, such as the 1999 UN International Convention for the Suppression of the Financing of Terrorism. Countries should also immediately implement UN resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly Security Council Resolution 1373.

2. Criminalize the financing of terrorism, terrorist acts and terrorist organizations and ensure that these offenses are designated as money laundering predicate offenses.

The first half of the interpretative note to this Recommendation defines relevant terms like “funds,” “terrorist act,” and “terrorist financing.” It explains that terrorist financing encompasses “the financing of terrorist acts, terrorists and terrorist organizations.”

The note emphasizes that terrorist financing offenses should extend to any person who “willfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used to carry out (a) terrorist act(s); (b) by a terrorist organization or (c) by an individual terrorist.”

In a section called “Characteristics of the Terrorist Financing Offense,” the note explains that terrorist financing offenses “should extend to any funds whether from a legitimate or illegitimate source.” These offenses, the note says, “should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s).”
“It should also be an offense to attempt to commit the offense of terrorist financing,” the note says. Yet it asserts that “criminalizing terrorist financing solely on the basis of aiding and abetting, attempt, or conspiracy does not comply with this Recommendation.”

This section also mentions money laundering because of “the close connection” between international terrorism and money laundering – “terrorist financing offenses should be predicate offenses for money laundering,” the note says.

3. Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations. Each country should also implement measures that enable authorities to seize and confiscate property that either derives from or is to be used in the financing of terrorism.

The Interpretative Note to this Recommendation explains how these obligations should be fulfilled. The FATF also identified a set of best practices on this topic, which are based on countries’ experience and may serve as a benchmark for developing institutional, legal, and procedural frameworks for an effective program to freeze terrorist financing.

4. Report suspicious transactions linked to terrorism. If businesses or entities subject to anti-money laundering obligations suspect that funds are linked to terrorism, they should be required to report promptly their suspicions to the authorities.

5. Provide the widest possible range of assistance to other countries’ law enforcement and regulatory authorities for terrorist financing investigations.

6. Impose anti-money laundering requirements on alternative remittance systems. An alternative remittance system, or informal value transfer system (IVTS) refers to any network or mechanism that can be used to transfer funds or value from place to place either without leaving a formal paper-trail of the entire transaction or without going through regulated financial institutions. IVTS include various ethnic practices, such as hawala, hundi, fei chien, phoe kuan, black market peso exchange.

7. Strengthen customer identification measures in international and domestic electronic funds. In the Interpretative Note to this Recommendation the FATF says that cross-border funds transfers should be accompanied by accurate and meaningful originator information. It added that information that accompanies a cross-border electronic funds transfer should always contain the name and address of the originator.

8. Ensure that entities, in particular non-profit organizations, cannot be used to finance terrorism.
Wittingly or unwittingly, charitable organizations have proved to be vehicles for raising and laundering funds destined for terrorist activities. As a result, some charities, particularly those with Muslim connections, have seen a large drop in donations or become targets of what they claim are unfair investigations or accusations.

In October 2002, the FATF released a set of “international best practices” for “Combating the Abuse of Non-Profit Organizations,” the last of the eight Recommendations. The practices cover all levels of a charity’s operation, from administration and accounting to bank accounts and foreign offices. The FATF recommends that non-profit organizations:

- Maintain and be able to present full program budgets that account for all expenses
- Conduct independent internal audits and external field audits, the latter to ensure funds are being used for intended purposes
- Identify every member of the board of directors and formalize the process by which they are elected, appointed and terminated.

The FATF recommends charities use formal bank accounts to store and transfer funds so they are subject to the bank’s regulations and controls. The 137 banks where the accounts are established, in turn, can treat the non-profit organizations like other customers and apply their Know Your Customer rules and report suspicious activities, says the FATF.

In October 2004, the FATF added a key element to the Special Recommendations. The new measure, Special Recommendation IX, calls on countries to stop cross-border movements of currency and monetary instruments related to terrorist financing and money laundering and confiscate such funds. It also calls for enhanced information sharing between countries on the movement of illicit cash related to money laundering and terrorist financing.

Since October 2001, many non-FATF members and international organizations have endorsed the Special Recommendations on terrorist financing.

Given how new the Special Recommendations are, the FATF has developed further interpretation (interpretative notes) and guidance (best practices papers) on how to achieve effective implementation with respect to individual Special Recommendations.

**Non-Cooperative Countries**

The FATF’s practice of “naming and shaming” countries that it decides maintain inadequate anti-money laundering controls or do not cooperate in the global money
Laundering effort has relinquished its role as a centerpiece of multilateral AML pressure.

For years, the FATF has been engaged in a major, now-controversial initiative to identify “Non-Cooperative Countries and Territories” (NCCTs) in the global fight against money laundering. It developed a process to seek out critical weaknesses in specific jurisdiction’s anti-money laundering systems, which obstruct international cooperation in this area.

According to a June 2000 paper, “Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures”, the FATF’s assessment of a jurisdiction under 25 distinct criteria covered the following four broad areas:

1. Loopholes in financial regulations
   - No or inadequate regulations and supervision of financial institutions;
   - Inadequate rules for licensing and creation of financial institutions, including assessing the backgrounds of managers and beneficial owners;
   - Inadequate customer identification requirements for financial institutions;
   - Excessive secrecy provisions regarding financial institutions;
   - Lack of efficient suspicious transactions reporting.

2. Obstacles raised by other regulatory requirements
   - Inadequate commercial law requirements for registration of business and legal entities;
   - Lack of identification of the beneficial owner(s) of legal and business entities.

3. Obstacles to international cooperation
   - Obstacles to co-operation from administrative authorities;
   - Obstacles to co-operation from judicial authorities.

4. Inadequate resources for preventing and detecting money laundering activities
   - Lack of resources in public and private sectors;
   - Absence of a financial intelligence unit or equivalent mechanism.

For more details, see this paper.

The goal of the NCCT process is to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centers adopt and implement measures for prevention, detection and punishment of money laundering according to internationally recognized standards.

On February 14, 2000, the FATF published an initial report on NCCTs. The report set out 25 criteria that help identify relevant detrimental rules and practices and are
consistent with the 40 Recommendations. It describes a process whereby jurisdictions having such rules and practices can be identified and encourages these jurisdictions to implement international standards in this area.

The next step in the NCCT initiative was the publication in June 2000 of the first Review identifying specific NCCTs. Since then, the FATF has continued to issue an annual "black list." The FATF recommends that financial institutions give special attention to business relations and transactions with persons, including companies and financial institutions, from the NCCT.

The NCCT initiative, which has drawn international criticism since its inception, is not expanding. The lists have given rise to questions over the process and criteria that are applied and the countries that are selected for inclusion. There are very corrupt countries where money laundering flourishes that have never been named for shame by the FATF. Plus, the FATF does little to measure the effectiveness of the enforcement of a nation’s laws and regulations. Often a nation might pass a satisfactory law and do little to enforce it but escape being blacklisted by the FATF merely because it enacted the law.

It is unlikely the multi-national group will add more countries. Instead, the FATF has started closer cooperation with the International Monetary Fund, World Bank and other multinational organizations that control financial assistance programs and expand the role those institutions play in evaluating compliance with international AML standards. Because of the purse strings they control, they may be more effective in commanding the attention of non-compliant nations than the largely powerless FATF has been.

Currently, the only changes to the list will consist of either removing presently listed nations or modifying countermeasures — requests to FATF members to take extra caution with the given country — applied to countries already listed. No countries have been added to the infamous blacklist since September 2001. Since then, the list has decreased, and, as of October 13, 2006, there are no non-cooperative countries or territories.

On the next page is a historic overview of countries that are or
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The table above provides the number of countries for each month from June 2000 to October 2006, along with the countries listed for each category.
have been on the NCCT list. Note that on June 23, and October 13, 2006 Nigeria and Myanmar were taken off the list, respectively.

**The Basel Committee on Banking Supervision**

The Basel Committee on Banking Supervision, established in 1974 by the central bank governors of the G-10 countries, promotes sound supervisory standards worldwide. The Committee’s secretariat is provided by the Bank for International Settlements (BIS) in Basel, Switzerland. The BIS is an international organization that fosters cooperation among central banks and other agencies in pursuit of monetary and financial stability. Its services are provided exclusively to central banks and international organizations.

Banking supervisors are not generally responsible for criminal prosecution of money laundering or AML efforts in their countries. But they have a role in ensuring that banks have procedures in place, including strict Know Your Customer policies, to avoid involvement with drug traders and other criminals, as well as in the general promotion of high ethical and professional standards in the financial sector. The BCCI scandal of the early 1990s, the indictments and guilty pleas of former officials of the Atlanta branch of the Italian Banca Nazionale del Lavoro in 1992 and other international banking scandals have prompted banking regulators in the richest nations to agree on basic rules for supervision and operation of multinational banks.

The Committee’s members come from countries that include Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States. Countries are represented by their central banks and by the authorities responsible for banking supervision, where this is not the central bank. The Committee has no formal supranational authority. Rather, it formulates broad supervisory guidelines and recommends best practices. Its documents do not have legal force.

In 1988, the Basel Committee issued a Statement of Principles called “Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering” in recognition of the vulnerability of the financial sector to misuse by criminals. This was a step toward preventing the use of the banking sector for money laundering, and it set out principles with respect to:

- Customer identification
- Compliance with laws
- Conformity with high ethical standards and local laws and regulations
- Full cooperation with national law enforcement to the extent permitted without breaching customer confidentiality
- Staff training
- Record keeping and audits.
These principles preceded laundering legislation that provided for disclosure of client information to enforcement agencies and protection from civil suits brought by clients for breach of client confidentiality. Therefore, these principles stressed cooperation within the confines of confidentiality.

In 1997, the Basel Committee issued its “Core Principles for Effective Banking Supervision”, a basic reference for authorities worldwide. “Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict ‘know-your-customer’ rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements”, said the guide. It also urged nations to adopt the 40 Recommendations of the Financial Action Task Force (See previous section in this chapter.) The Core Principles were prepared with assistance from 15 non-G-10 nations, including Brazil, Chile, Hong Kong, Mexico, Russia, Singapore and Thailand.

To facilitate implementation and assessment, the Committee in October 1999 developed the “Core Principles Methodology”.

Since 1997, however, significant changes have occurred in banking regulation, much experience has been gained with implementing the Core Principles in individual countries, and new regulatory insights in regulation have become apparent. These developments have made it necessary to update the Core Principles and the associated assessment Methodology in 2006.

The Basel Committee has announced that a review of the Core Principles and the Methodology will shortly commence.

The Committee has identified deficiencies in a large number of countries’ Know Your Customer (KYC) policies, based on the findings of an internal survey of cross-border banking conducted in 1999. “KYC policies in some countries have significant gaps and in others they are non-existent. Even among countries with well developed financial markets, the extent of KYC robustness varies,” observed the committee in a paper of October 2001, called “Customer Due Diligence for Banks.” The paper follows a consultation document issued in January 2001.

The committee’s interest in KYC centers around the use of due diligence requirements to mitigate the dangers of bad customers. Without due diligence, banks can be subject to reputational, operational, legal and concentration risks, which can result in significant financial cost. Sound KYC policies and procedures are critical in protecting the safety and soundness of banks and the integrity of banking systems. An example is the BCCI scandal that began when in 1988 nine BCCI officials were arrested in Florida, United States, for allegedly laundering drug money.
It escalated, and in 1991 BCCI was shut down by regulators, resulting in a £9 billion loss for depositors.

This 21-page paper reinforces the principles established in earlier Committee papers by providing more precise guidance on the essential elements of KYC standards and their implementation. In developing the guidance, the Working Group drew on practices in member countries and took into account evolving supervisory developments. The essential elements presented in this paper are guidance as to minimum standards for worldwide implementation for all banks. These standards may need to be supplemented or strengthened with further measures tailored to the risks in particular institutions and in the banking system of individual countries. For example, enhanced due diligence is required for higher-risk accounts or for banks that seek high net-worth customers. A number of specific sections in this paper offer recommendations for tougher standards of due diligence for higher risk areas within a bank.

The paper has five sections:
1. Introduction
2. Importance of KYC standards for supervisors and banks
3. Essential elements of KYC standards
4. The role of supervisors
5. Implementation of KYC standards in a cross-border context

The Committee discusses the following issues in the paper:
• Banks should not only establish the identity of their customers but also monitor account activity to identify transactions that do not conform to the normal or expected transactions for that customer or type of account. “To ensure that records remain relevant, there is a need for banks to undertake regular reviews of existing records. An appropriate time to do so is when a transaction of significance takes place, when customer documentation standards change substantially, or when there is a material change in the way that the account is operated."
• The paper does not prohibit numbered accounts. Instead it says numbered accounts should be subject to exactly the same KYC procedures as other customer accounts. KYC tests may be carried out by selected staff, but the identity of customers must be known to a sufficient number of staff if the bank is to be duly diligent. “Such accounts should in no circumstances be used to hide the customer identity from a bank’s compliance function or from the supervisors”, urged the Committee.
• The paper has identified seven specific customer identification issues:
  o Trust, nominee and fiduciary accounts;
  o Corporate vehicles, particularly companies with nominee shareholders or entities with shares in bearer form;
  o Introduced business;
Client accounts opened by professional intermediaries, such as ‘pooled’ accounts managed by professional intermediaries on behalf of entities such as mutual funds, pension funds and money funds;

Politically exposed persons;

Non-face-to-face customers, i.e. Customers who do not present themselves for a personal interview; and

Correspondent Banking.

- Banks should develop customer acceptance policies and procedures describing the customer’s background, country of origin, business activities and other risk indicators, and develop clear and concise descriptions of who is an acceptable customer
- Private banking accounts should “under no circumstances” be allowed to escape KYC policies
- Banks should make every effort to know the identity of corporations that operate accounts and, when professional intermediaries are involved, verify the exact relationship between the owners and intermediary, wherever the law permits
- Banks should use standard identification procedures when dealing with “non-face-to-face” customers and never agree to open an account for persons who are adamant about anonymity
- Bank-wide employee training should be provided that explains the importance of the KYC policies, refresher courses on basic and new requirements
- Internal auditors or compliance officials should regularly monitor staff performance and adherence to KYC procedures
- Continued monitoring of high-risk accounts by compliance personnel should lead to a greater understanding of the customers’ “normal activities” and enable the updating of identification papers and detection of suspicious transaction patterns
- Bank regulators should ensure that bank staff follows KYC procedures, review customer files and a sampling of accounts, and emphasize that they will take the “appropriate action” against officers who fail to follow KYC procedures

The four key elements of KYC, according to this paper are:

- Customer identification
- Risk management
- Customer acceptance
- Monitoring

In its paper, the Basel Committee referred to the intention of the Working Group on Cross-border Banking to develop guidance on customer identification. Customer identification is an essential element of an effective customer due diligence program, which banks need to guard against reputational, operational, legal and concentration risks. It is also necessary in order to comply with anti-money laundering legal requirements and a prerequisite for identifying bank accounts related to terrorism.
In February 2003, the Committee issued account opening and customer identification guidelines and a general guide to good practice based on the principles of the Committee’s Customer Due Diligence for Banks paper. This document, which has been developed by the Working Group on Cross-border Banking, does not cover every eventuality, but instead focuses on some of the mechanisms that banks can use in developing an effective customer identification program.

The need for rigorous customer due diligence standards is not restricted to banks. The Basel Committee believes similar guidance needs to be developed for all non-bank financial institutions and professional intermediaries of financial services such as lawyers and accountants.

In October 2004, the Committee released another important publication on KYC: Consolidated KYC Risk Management. The publication on Consolidated KYC Risk Management is a complement to the Basel Committee’s Customer Due Diligence for Banks issued in October 2001. It examines the critical elements for effective management of KYC risk throughout a banking group. The paper addresses the need for banks to adopt a global approach and apply the elements necessary for a sound KYC program to both the parent bank or head office and all its branches and subsidiaries. These elements consist of risk management, customer acceptance and identification policies, and ongoing monitoring of higher-risk accounts.

**European Union Directives on Money Laundering**


Like all Directives adopted by the Council, it required European Union member states to achieve (by amending national law, if necessary) specified results. The Directive required the members to enact legislation to prevent their domestic financial systems being used for money laundering. The unique nature of the EU as a “Community of States” makes it fundamentally different from other international organizations. The EU can adopt measures that have force of law even without approval by national Parliaments of the various member states. Plus, European law prevails over national law in the case of directives.

In this respect, EU Directives have far more weight than the voluntary standards issued by groups such as the Basel Committee or the Financial Action Task Force. Of course, the Directive applies only to EU member states and not to other countries.
The first directive of 1991 was confined to drug trafficking as defined in the 1988 Vienna Convention. However, member states were encouraged to extend the predicate offenses to other crimes.


Member states agreed to implement it as national law by June 15, 2003, but only Denmark, Germany, the Netherlands and Finland met the deadline, with Ireland and Spain complying shortly afterwards. Other member states followed. By February 2004, six EU member states had not yet implemented the Second Directive, even though the deadline for compliance had lapsed eight months earlier. Italy, Portugal, Greece, Sweden, Luxembourg and France had until then neglected to implement the Second Directive as national law, which has prompted the European Commission to send formal requests warning the rogue jurisdictions to do so or face court proceedings. In the absence of a satisfactory response, the European Commission may decide to refer the member states in question to the EU’s Court of Justice.

Key features of the Second Directive are:

- It extended the scope of the First Directive beyond drug-related crimes. The definition of ‘criminal activity’ was expanded to cover not just drug trafficking, but all serious crimes including corruption and fraud against the financial interests of the European Community.
- It explicitly brought bureaux de change and money remittance offices under AML coverage.
- The Directive says that knowledge of criminal conduct can be inferred from objective factual circumstances.
- It provides a more precise definition of money laundering to include:
  - The conversion or transfer of property with knowledge that it is derived from criminal activity or from participation in that activity, for the purpose of concealing or disguising the illicit origin of the property, or assisting anyone who is involved in the commission of the activity to evade the legal consequences of his action.
  - Concealing or disguising the nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that the property is derived from criminal activity or from an act of participation in that activity.
  - The acquisition, possession or use of property, knowing, when it is received, that it was derived from criminal activity or from an act of participation in the activity.
  - Participation in, association to commit, the attempt to commit, and the aiding, abetting, facilitating and counseling the commission of any of the mentioned actions.
• It widens the businesses and professions that are subject to the obligations of the Directive. Certain persons, including lawyers when they participate in the movement of money for clients, are now required to report to authorities any fact that might indicate money laundering. Covered groups include: Auditors, external accountants, tax advisers, real estate agents, notaries, and legal professionals.

The Second Directive was a tremendous step forward because it applies in many of the important financial centers of the world. It goes well beyond similar standards emitted by other organizations such as the UN and even the FATF. In many respects, it exceeds the norms contained in U.S. law and regulations.


In line with the latest FATF money laundering recommendations, the Third EU Directive extended the scope of the directives by:

• Defining “money laundering” and “terrorist financing” as separate crimes. The directive’s measures were expanded to cover not only the manipulation of money derived from crime, but also the collection of money or property for terrorist purposes.
• Extending customer identification and suspicious activity reporting obligations to trusts and company service providers, life insurance intermediaries and dealers selling goods for cash payments of more than 15,000 Euros.
• Detailing a risk-based approach to customer due diligence. The extent of due diligence that is performed on customers, whether simplified or enhanced, should be dependent on the risk of money laundering or terrorist financing they pose.
• Protecting employees who report suspicions of laundering or terrorist financing. This provision instructs member states to “do whatever is in their power to prevent employees from being threatened.”
• Obliging member states to keep comprehensive statistics regarding the use of and results obtained from suspicious transaction reports such as: quantities of suspicious transaction reports filed; the follow-up given to those reports; and annual numbers of cases investigated, persons prosecuted, and persons convicted.
• Requiring all financial institutions to identify and verify the “beneficial owner” of all accounts held by legal entities or persons. “Beneficial owner” refers to the natural person who directly or indirectly controls more than 25 percent of a legal entity or person.
The Third Money Laundering Directive applies to:

- Credit institutions
- Financial institutions
- Auditors, external accountants and tax advisors
- Legal professionals
- Trust and company service providers
- Estate agents
- High value goods dealers who trade in cash over 15,000 Euro or more
- Casinos

The scope of the Third Money Laundering Directive differs from the Second Money Laundering Directive in that:

- It specifically includes the category of trust and company service providers;
- It covers all dealers trading in goods who trade in cash over 15000 Euros; and
- The definition of financial institution includes certain insurance intermediaries.

The three main points of contention involve the definition of politically exposed persons (PEPs), the inclusion of lawyers among those that are required to report suspicious activity, and the precise role of a “comitology committee.” The European Commission coined the term, “comitology,” which means the EU system that oversees implementation of acts proposed by the European Commission.

The Third Money Laundering Directive includes the following definition of a politically exposed person:

“politically exposed persons” means 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.

In early May 2006, the European Commission clarified the definition of politically exposed persons under the Third EU Directive. Who fits the definition may vary by member state given their social, political and economic differences, the commission said in a draft document. In general, public functions exercised at levels lower than national should not be considered prominent under the PEP definition. Close associates must be identified only when their relationship with a PEP is publicly known or when the institution suspects there is a relationship. Finally, the commission said persons should not be considered PEPs after at least one year of not being in a prominent position.
Regional and Other International Initiatives
Regional FATF-Style Bodies and FATF associated members
There are regional FATF-style bodies or FATF associated members which have similar form and functions to those of the FATF. Many FATF member countries are also members of these bodies.
- Asia/Pacific Group on Money Laundering (APG)
- Caribbean Financial Action Task Force (CFATF)
- Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) (formerly PC-R-EV)
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- Eurasian Group (EAG)
- Financial Action Task Force on Money Laundering in South America (GAFISUD)
- Intergovernmental Action Group against Money-Laundering in Africa (GIABA)
- Middle East and Africa Financial Action Task Force (MENAFATF)
Some of them are discussed below.

Asia/Pacific Group on Money Laundering

The APG, an autonomous regional anti-money laundering body, was established in February 1997 at the Fourth Asia/Pacific Money Laundering Symposium in Bangkok, where it adopted its “Terms of Reference.”

The Terms of Reference recognized that the FATF’s 40 Recommendations constituted the international money laundering control benchmark. The Terms included a commitment that APG members would implement these recommendations according to their particular cultural values and constitutional frameworks. The Terms also said that to ensure a global approach, members of the APG would work closely with the FATF. The Terms of Reference were revised at the 2006 Annual Meeting.

The APG:
- Provides a focus for cooperative AML and anti-terrorist financing efforts in the Asia/Pacific region;
- Provides a forum in which:
  - Regional issues can be discussed and experiences shared
  - Operational co-operation among member jurisdictions is encouraged;
- Facilitates the adoption and implementation by member jurisdictions of internationally accepted AML and anti-terrorist financing measures;
- Enables regional and jurisdictional factors to be taken into account in the implementation of international AML and anti-terrorist financing measures;
- Encourages jurisdictions to implement AML and antiterrorist financing initiatives including more effective mutual legal assistance; and
• Co-ordinates and provides practical support, where possible, to member and observer jurisdictions in the region which request it.

The APG is voluntary and co-operative in nature. The APG is established by agreement among its members and is autonomous. It does not derive from an international treaty. It is not part of any international organization. However, it will need to keep itself informed of action taken or formal agreements made by relevant international and regional organizations or bodies in order to promote a consistent global response to money laundering and terrorist financing.

The work to be done by the APG and its procedures is decided by consensus agreement among its members.

The APG uses the FATF’s 40 Recommendations and Special Recommendations as its primary guidelines for the implementation of effective anti-money laundering and counter terrorism financing measures. The APG also uses similar mechanisms to those used by the FATF to monitor and facilitate progress. Since its inception, the APG has worked closely with the FATF. The APG and FATF have reciprocal rights of attendance at each other’s meetings as well as reciprocal sharing of documents. However the APG, like other autonomous anti-money laundering bodies, determines its own polices and practices.

Membership of the APG is open to any jurisdiction within the Asia/ Pacific region that:
• Recognizes the need for action to combat money laundering and terrorist financing;
• Recognizes the benefits to be obtained by sharing knowledge and experience;
• Has taken or is actively taking steps to develop, pass and implement anti money laundering and anti-terrorist financing legislation and other measures based on accepted international standards;
• Subject to its domestic laws, commits itself to implementing the decisions made by the APG;
• Commits itself to participation in the mutual evaluation program;
• Contributes to the APG budget in accordance with arrangements agreed by the APG.

It is not a precondition for participation in the APG that anti-money laundering or anti- terrorist financing laws be already enacted.

The APG Secretariat is located in Sydney, Australia. The APG’s homepage is: www.apgml.org.
Caribbean Financial Action Task Force
No global solution to the world’s money laundering problem is possible without the active participation of Caribbean nations, since many are or have been premier laundering centers.

Their proximity to the world’s largest cocaine producers and exporters, in South America’s Andean region, and the largest generator of drug dollars, the U.S., makes the region a convenient bank for many international criminals, including drug dealers.

The Caribbean Financial Action Task Force (CFATF) fosters money laundering controls in the Caribbean region. The main objective of the Task Force is to secure effective compliance with its recommendations to prevent and control money laundering and to combat the financing of terrorism. The CFATF home page can be found at: www.cfatf.org.

The group consists of dozens of states of the Caribbean Basin that have agreed to implement common countermeasures to address the problem of criminal money laundering and the financing of terrorism. It was established as the result of meetings convened in Aruba in May 1990 and Jamaica in November 1992. Countries such as Canada, France, Mexico, the Netherlands, Spain, the United Kingdom and the U.S. serve as “Cooperating and Supporting Nations.”

At the Aruba meeting, representatives from the Caribbean and Central America, got together to develop a common approach to the laundering of the proceeds of crime. Nineteen recommendations were formulated. These recommendations, which have specific relevance to the region, are complementary to the FATF 40 Recommendations. The 19 Aruba Recommendations were designed specifically to cover the particular issues relating to the Caribbean basin. They were revised in 1999.

The Jamaica Ministerial Meeting was held in Kingston, in November 1992. Ministers issued the Kingston Declaration in which they endorsed and affirmed their governments’ commitment to implement the FATF and Aruba Recommendations, the OAS Model Regulations, and the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. They also mandated the establishment of a secretariat.

The declaration recommended laws:
- Defining money laundering based on the model laws issued by the Organization of American States
Concerning the seizure and forfeiture of drug proceeds and linked assets. They should enable identification, tracing and evaluation of property subject to seizure, and permit freezing orders.

Allowing judicial challenges to seizure orders by an administrative body

Permitting forfeiture in all cases following conviction

Permitting courts to decide that “all property obtained during a prescribed period of time by a person convicted of drug trafficking has been derived from such criminal activity.”

The Caribbean nations agreed to enter into mutual assistance agreements with each other to assist in money laundering investigations. They also agreed that money laundering should be an extraditable offense subject to simplified procedures and that forfeited assets should be shared among cooperating nations. 159 The declaration’s terms:

• Permit continuation of numbered accounts at financial institutions with the understanding that account information would be made available to “competent authorities” upon request, and insist on strong legal requirements on customer identification

• Insist that in large currency transactions, customer identification procedures and record keeping are “mandatory”

• Amend bank secrecy laws to allow reporting of suspicious transactions by financial institutions, but leave it optional whether a statute is required

The CFATF monitors members’ implementation of the anti-money laundering recommendations through the following activities:

• Self-assessment of the implementation of the recommendations

• An ongoing program of mutual evaluation of members

• Coordination of, and participation in, training and technical assistance programs

• Biennial plenary meetings for technical representatives

• Annual ministerial meetings

South American Financial Action Task Force (GAFISUD)

The South American Financial Action Task Force was created in December 2000 in Cartagena, Colombia. It includes countries such as Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay, and its main objective is to implement antimoney laundering measures in South America.

GAFISUD, with a secretariat in Argentina, was created by an intergovernmental agreement that left the door open for more countries to join. GAFI-SUD’s website can be found at: http://www.gafisud.org.
Middle East and North Africa Financial Action Task Force
At an inaugural Ministerial Meeting held in Manama, Bahrain, in November 2004, the governments of 14 countries decided to establish a Financial Action Task Force-style regional body for the Middle East and North Africa.

The body, is known as the Middle East and North Africa Financial Action Task Force (MENAFATF) is headquartered in the Kingdom of Bahrain. Its website is www.menafatf.org.

The MENAFATF is voluntary in nature and is established by agreement between its members. It does not derive from an international treaty. It is independent of any other international organization and sets its own work, rules and procedures, which will be determined by consensus of its members. It plans to cooperate with other international bodies, notably the FATF, to achieve its objectives.

Eurasian Group on Combating Money Laundering and Terrorist Financing
Another Financial Action Task Force-style regional body, the Eurasian Group (EAG) was formed in October 2004 in Moscow, with China, Russia, Kazakhstan, Tajikistan, Kyrgyzstan and Belarus as the initial member countries. The EAG is open to other states of the Eurasian region which can become members of the Group after approval of the EAG Plenary meeting.

Former FATF president Jean-Louis Fort said that the organization, initiated by the Russian Federation, “spans a huge area of the globe and provides a new and necessary mechanism for fighting terrorists and money launderers in this region.” Countries such as Georgia, Uzbekistan, Ukraine, Italy, the United Kingdom and the United States, as well as international organizations such as the FATF, World Bank and IMF, will sit as observers on the organization. The website of the group is www.euroasiangroup.org.

Eastern and South African Anti-Money Laundering Group
Fourteen countries from East Africa to the southern tip of Africa make up this FATF-style regional body, which consists of a ministerial council, a task force of senior officials, and a secretariat. In 1999, the group developed a memorandum of understanding among member states. Its objectives were to:

• Adopt and implement the 40 Recommendations of the Financial Action Task Force;
• Apply AML provisions to all serious crimes; and
• Implement any other measures contained in multilateral agreements and initiatives to which member states subscribe pertaining to the prevention and control of the laundering of proceeds from all serious crimes.
So far, 11 member states have signed the memorandum. The website of the group is www.esaamlg.org/index.php.

**Other Anti-Money Laundering Initiatives**

**Organization of American States – Inter-American Drug Abuse Control Commission (CICAD)**

In May 1992, the Organization of American States became the first permanent international body to reach agreement on the details of model legislation aimed specifically at dealing with money laundering. At its annual general assembly, held in Nassau, the Bahamas, the OAS unanimously approved a set of 19 articles, written in statutory language, which it recommended its member nations enact.

The OAS action was not an overnight affair. The vote was the culmination of a two-year effort by the Inter-American Drug Abuse Control Commission, an OAS entity that goes by the acronym CICAD (Commission Interamericana para el Control del Abuso de Drogas). CICAD in 1990 gathered a “group of experts” from 14 nations. They began a laborious process of reaching consensus on laws and regulations that would be proposed to the OAS general assembly for adoption and recommendation to member states.

**CICAD:**

- Serves as the Western Hemisphere’s policy forum on all aspects of the drug problem;
- Fosters multilateral cooperation on drug issues in the Americas;
- Executes action programs to strengthen the capacity of member states to prevent and treat drug abuse, combat production and trafficking of illicit drugs; and deny traffickers their ill-gotten gains;
- Promotes drug-related research, information exchange, specialized training, and technical assistance; and
- Develops and recommends minimum standards for drug-related legislation, treatment, the measurement of both drug consumption and the cost of drugs to society, and drug-control measures, among others.

CICAD’s core mission is to strengthen the human and institutional capabilities and harness the collective energy of member states to reduce the production, trafficking and use of illegal drugs in the Americas.

Within CICAD is an Anti-Money Laundering Unit, established in 1999. The Unit focuses its efforts on providing technical assistance and training to all member states in judicial and financial measures and law enforcement. It also acts as secretariat of CICAD’s Experts Group to Control Money Laundering.
The CICAD Group of Experts to Control Money Laundering is the hemispheric forum at which to debate, analyze and reach conclusions on the fight against money laundering and terrorism financing. Through the Group of Experts, Model Regulations are developed on money laundering offenses related to drug trafficking and other crimes. These regulations serve as permanent legal documents providing a legal framework to member states. They were influenced by and are compatible with the FATF Recommendations.

Their preamble makes it clear that they were also crafted with an eye to consistency with the money laundering and asset forfeiture provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs. All nations that ratify that convention are required to implement its provisions by legislation and administrative reforms.

The OAS proposals are far more detailed and specific than the UN Convention on the subject of money laundering. If implemented throughout the hemisphere, their impact on the financial services industry, law enforcement agencies, the courts and money launderers could be considerable.


CICAD’s work on the model regulations is not without its obstacles. One is the variety of legal systems among the nations of the hemisphere. Most have legal systems that were inherited from, and are strongly influenced by, their colonial rulers, including Spain, England, France, Portugal and even the Netherlands.

In the past few years, a relationship was established between CICAD-AMLU and the Inter-American Development Bank (IADB) to develop programs and projects that could be undertaken jointly in the region. In 1999 IADB-CICAD started a program in eight South American countries to train employees from financial institutions and from the institutions of financial supervision responsible for money laundering control. In 2001, another program was developed and conducted to judges and prosecutors among the eight countries, and in 2002 a long term project was begun to establish Financial Intelligence Units in Argentina, Chile, Ecuador, Bolivia, Brazil, Peru, Uruguay and Venezuela.

In addition, CICAD’s Anti-Money Laundering Unit has the capacity to develop, supervise and offer technical assistance and training courses related to the legal framework on money laundering, be it through analysis or development of laws, or their application (law enforcement). CICAD launched a joint training program called ‘Mock Trial on Money Laundering’ in various Latin American countries.

Other CICAD efforts include:
• Bankers and Regulators: Created with the IADB in 1999, it was developed to provide training and technical assistance to financial entities in formulating typologies of money laundering offenses found in financial institutions.
• Judges and Prosecutors: Developed in 1999–2002 in conjunction with Spanish authorities and coordinated with the IADB, it seeks to train national judicial bodies on money laundering techniques and their criminalization.
• Financial Intelligence Units: This program, coordinated by CICAD and IADB, seeks to develop and create, through technical assistance and training, institutions that can analyze and control organized crime efforts to launder assets. Training and assistance will be provided in the legal, Institutional, training and technological areas.
• Law Enforcement Training on Money Laundering: Law enforcement agencies will be trained in 1) strategic techniques to facilitate financial investigations that reduce the proceeds from serious crimes and improve prosecutions of money laundering/terrorism financing offenses, and 2) seizure of property related to these criminal activities.

In 2004, Miguel Angel Rodriguez, who was secretary general of the OAS, was accused of taking kickbacks from the French company Alcatel, the Spanish company Inabensa and the Taiwanese government. Rodriguez resigned his OAS post in October 2004; upon returning to Costa Rica he was sentenced to six months in preventive custody.

Egmont Group of Financial Intelligence Units
In 1995, a number of national financial intelligence units (FIUs) began working together in an informal organization known as the Egmont Group (named for the location of the first meeting, the Egmont-Arenberg Palace in Brussels). The goal of the group is to foster development of FIUs and stimulate exchanges to overcome obstacles that discourage cross-border information sharing.

Based on the work of its Legal Working Group, Egmont approved in 1996 the following definition of an FIU. It was amended in 2004 to reflect the FIU’s role in combating terrorism financing:

A central, national agency responsible for receiving, (and as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information:
  • Concerning suspected proceeds of crime and potential financing of terrorism, or
  • Required by national legislation or regulation, in order to combat money laundering and terrorism financing.
In 1999, the Egmont Training Working Group undertook an initiative to draw together cases from the fight against money laundering waged by Egmont Group member FIUs. In 2001, the group issued a document, “Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases”, which sets out guidelines for sharing information among FIUs. In 2004, the group issued “Best Practices for the Exchange of Information Between Financial Intelligence Units”.

There are more than 100 Egmont member FIUs.

**Wolfsberg Group**

The Wolfsberg Group is an association of 12 global banks that aims to develop financial services industry standards and related products, for Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies.

The Group came together in 2000 at the Wolfsberg castle in Switzerland, accompanied by representatives of Transparency International, to draft anti-money laundering guidelines for private banking that, if implemented by banks worldwide, would mark an unprecedented private-sector assault on the laundering of corruption proceeds.

Their principles hold no force of law and carry no penalties for those who do not abide by them.

The Wolfsberg Anti-Money Laundering Principles for Private Banking were published in October 2000 and revised in May 2002. These Principles recommend controls for private banking that range from the basic, such as customer identification, to the groundbreaking, such as heightened scrutiny of individuals who “have or have had positions of public trust.” The banks that released the principles with Transparency International said they would “make it harder for corrupt people to deposit their ill-gotten gains in the world’s banking system.”

The banks involved in preparing the principles include Credit Suisse Group, one of the institutions at the center of an ongoing money laundering probe involving former Nigerian dictator Sani Abacha, and Citibank, N.A., which the U.S. Congress investigated in 1999 for its handling of private banking accounts for Abacha and other public officials. Other banks include: ABN AMRO Bank N.V.; Barclays Bank; Banco Santander Central Hispano S.A.; Chase Manhattan Corporation; Deutsche Bank AG; HSBC; J.P. Morgan Inc.; Société Générale; and UBS AG.

The principles say banks will “endeavor to accept only those clients whose source of wealth and funds can be reasonably established to be legitimate.” They highlight the
need to identify the beneficial owner of funds “for all accounts” when that person is other than the client, and urge private bankers to perform due diligence on “money managers and similar intermediaries” to determine that the middlemen have a “satisfactory” due diligence process for their clients or a regulatory obligation to conduct such due diligence. The principles recommend that “at least one person other than the private banker” should approve all new clients and accounts.

The principles list several situations that require further due diligence, including activities that involve:

- Public officials, including individuals who “have or have had positions of public trust… and their families and close associates”
- High-risk countries, including countries “identified by credible sources as having inadequate anti-money laundering standards or representing high-risk for crime and corruption”
- High-risk activities, involving clients and beneficial owners whose source of wealth “emanates from activities known to be susceptible to money laundering”
- Offshore jurisdictions, which the principles do not define

The Wolfsberg principles say banks should have written policies on the “identification of and follow-up on unusual or suspicious activities”, and include a definition of what is suspicious and examples of such activity. They recommend a “sufficient” monitoring system that uses the private banker’s knowledge of the types of activity that would be suspicious for particular clients. They also outline mechanisms that can be used to identify suspicious activity, including meetings, discussions and in-country visits with clients and steps that should be taken when suspicious activity is detected.

The principles also address:

- Reporting to management of laundering control issues
- AML training
- Retention of relevant documents
- Deviation from policy
- Creation of a laundering control department and a control policy

Transparency International and the banks anticipate the principles will be “widely accepted by a growing number of financial institutions.”

In May 2002, the Wolfsberg Principles were revised. A section was added prohibiting the use of internal non-client accounts (sometimes referred to as “concentration” accounts) to keep clients from being linked to the movement of funds on their behalf, i.e., banks should forbid use of such internal accounts in a manner that would prevent officials from appropriately monitoring movements of client funds.
The Wolfsberg Group also issued guidelines in early 2002 on “The Suppression of the Financing of Terrorism,” outlining the roles of financial institutions in the fight against money laundering and terrorism financing.

The Wolfsberg recommendations include:

- Providing official lists of suspected terrorists on a globally coordinated basis by relevant authorities
- Including adequate information in the lists to help institutions search customer databases efficiently
- Prompt feedback to institutions following circulation of the official lists
- Information on manner, means and methods used by terrorists
- Development of government guidelines for business sectors and activities identified as high-risk for terrorism financing
- Development of uniform global formats for funds transfers that assist in detection of terrorism financing

The group also recommends that financial institutions be protected by safe harbor immunity to encourage them to share information and report to authorities.

The Wolfsberg Group also committed itself to restricting “business relationships with remittance businesses, exchange houses, casas de cambio, bureaux de change and money transfer agents...” and committed its members to enhanced due diligence steps for high-risk customers or those in high-risk sectors, and activities “such as underground banking businesses or alternative remittance systems.”

In 2002, Wolfsberg issued guidelines on “Anti-Money Laundering Principles for Correspondent Banking” that outline steps financial institutions should take to combat money laundering and terrorism financing through correspondent banking.

Correspondent accounts are accounts established by one financial institution in another financial institution to hold deposits, make payments in its own behalf, or process other transactions. The 14 Wolfsberg guidelines extend to all correspondent banking relationships an institution maintains, including those with banks, broker-dealers, mutual funds, money services businesses, hedge funds and credit card issuers.

Among the more notable recommendations:

- Due diligence should be risk-based, depending on the location, type of business, ownership, customer base, regulatory status and AML controls of the correspondent banking client or business
- An institution should not offer its products or services to a shell bank
- Generally, the new principles should not apply to central banks and monetary authorities of member countries of the FATF or multinational institutions such as the International Monetary Fund and World Bank
All correspondent banking client information should be reviewed and updated periodically based on risk factors.

The principles should be part of a financial institution’s larger AML program.

Further, Wolfsberg recommended creation of an international registry of financial institutions with information “useful for conducting due diligence.” The basic premise of the registry is simple: Rather than requesting information from each individual institution, and rather than providing this information to each correspondent, necessary due diligence information would be centralized in a global registry. Financial institutions would be responsible for providing and maintaining accurate, complete and up-to-date information in the registry. They would be able to retrieve information about correspondent banking clients, and would be notified of any relevant updates regarding those clients.

The Wolfsberg Group has moved forward with the development of such a registry, having identified the information that its members would wish to see included in the registry. That includes copies of company by-laws, relevant licenses, extracts from commercial registers or certificates of incorporation, the most recent annual reports, information about shareholders with stakes of more than 5%, biographies of board members and senior management, information about each financial institution’s KYC and AML policies and procedures, etc. The initiative is a move towards standardizing due diligence information, which in itself provides a potential cost-saving in time spent seeking information from a variety of sources.

The Wolfsberg Group, which has no enforcement powers, issued the guidelines to manage its members’ own risks, help make sound decisions about clients and protect their operations from criminal abuse.

The group released a Statement on Monitoring, Screening and Searching in September 2003. This document discusses the need for appropriate monitoring of transactions and customers to identify potentially unusual or suspicious activity and transactions, and for reporting such to competent authorities. In particular, it covers issues related to the development of risk-based processes for monitoring, screening and searching of transactions and customers.

All of the Group’s publications can be found on its website at www.wolfsberg-principles.com/standards.html.

**World Bank and International Monetary Fund**

The powerful International Monetary Fund and World Bank have decided to take a small step toward overcoming the resistance of certain nations to joining the international battle against money laundering. Since 2001, the two institutions have
required countries that benefit from their financial and structural assistance programs have effective money laundering controls. That insistence has produced world progress on the issue that far exceeds the accomplishments of the relatively powerless Financial Action Task Force.

In an April 2001 joint policy paper called “Enhancing Contributions to Combating Money Laundering,” the two organizations detailed the steps that they can take to strengthen the global assault on money laundering.

Pressure on the IMF and World Bank to get involved in AML efforts had been mounting for several years. The finance ministers from the Group of Seven industrial nations asked the two to withhold assistance from nations that refused to bring their laundering controls in line with international standards.

In September 2001 the IMF and World Bank, responding to the urging to “fully integrate” the battle against money laundering and other financial crimes into its “surveillance exercises and programs,” began to act. That month, the International Monetary and Financial Committee (IMFC), the advisers to the IMF’s board of governors, issued a communiqué that said it would “explore incorporating work on financial abuse, particularly with respect to international efforts to fight against money laundering, into its various activities, as relevant and appropriate”.

The IMFC asked the IMF and World Bank to prepare a joint paper outlining their appropriate roles in the effort and suggesting how to integrate the subject into their work. In response, an IMF background paper, “Financial System Abuse, Financial Crime and Money Laundering,” explored how the institutions could “play … role[s] in protecting the integrity of the international financial system from abuse” through use of their influence to promote national anticorruption programs.

Since then, the IMF and World Bank have become more active in combating money laundering by:

- Concentrating on money laundering over other forms of financial abuse;
- Helping to strengthen “financial supervision and regulation” in countries;
- More closely interacting with the OECD and the Basel Committee on Banking Supervision; and
- Insisting on application of international AML standards in countries that ask for assistance.

In a joint meeting in April 2004 of their boards of directors, the two bodies agreed to adopt on a permanent basis its pilot program that assesses a nation’s compliance with international AML and anti-terrorist financing standards. The program will put an end to the Financial Action Task Force’s practice of publicizing Non-Cooperative Countries and Territories (NCCT).
The World Bank and IMF have established a collaborative framework with the FATF for conducting comprehensive assessments, using a single global methodology, of countries’ compliance with the FATF 40+8 Recommendations on efforts to fight money laundering and to combat the financing of terrorism (CFT). The assessments are carried out as part of the Financial Sector Assessment Program and lead to a Report on Observance of Standard and Codes.

In 2002, the World Bank and IMF developed a unique Reference Guide to Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) in an effort to provide practical steps for countries implementing AML/CFT regimes in accordance with international standards. The Guide describes the global problem of money laundering and terrorist financing on the development agenda of individual countries and across regions. It explains the basic elements required to build an effective AML/CFT legal and institutional framework and summarizes the role of the World Bank and IMF in those efforts.

For more information, see: http://www1.worldbank.org/finance/html/amlcft/

**Other International Organizations**

Other international organizations with money laundering and terrorist financing initiatives:
- African Development Bank
- Asia Development Bank
- The Commonwealth Secretariat
- European Bank for Reconstruction and Development (EBRD)
- European Central Bank (ECB)
- Europol
- Inter-American Development Bank (IDB)
- Interpol
- International Organization of Securities Commissions (IOSCO)
- Offshore Group of Banking Supervisors (OGBS)
- World Customs Organization (WCO)

**Key U.S. Legislative and Regulatory Initiatives Applied to Transactions Internationally**

This guide contains an overview of the principal elements of United States laws related to money laundering and terrorism financing that bear on international transactions and jurisdictions.
USA Patriot Act
Motivated by the attacks of September 11, 2001, and the urgent need to decipher and disable mechanisms that finance terrorism, the U.S. Congress enacted legislation to strengthen money laundering laws and the Bank Secrecy Act to levels unseen since passage of the BSA in 1970 and the world's first anti-laundering law in 1986.

The USA Patriot Act of October 2001 (U.S. Public Law 107-56) was the most far-reaching U.S. law in 70 years. Title III of the act, the so-called International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, contains most, though not all, of the money laundering-related provisions in that diverse law.

The USA Patriot Act gives the U.S. government the ability to reach the assets of every financial institution and business in the world and to cripple their ability to function in the United States.

175 The USA Patriot Act has implications for U.S. and international institutions that do business in the United States. It is important to note that the regulations issued under the Patriot Act by the U.S. Treasury Department provide the detail of the requirements that financial institutions must follow to comply with their provisions. Those regulations are found in the Bank Secrecy Act regulations, which are compiled in 31 Code of Federal Regulation Part 103.

Key provisions of the USA Patriot Act stem from the premise that international access points to the U.S. financial system must be controlled by those financial institutions that open them. The law covers a wide range of laundering and terrorism financing issues affecting foreign businesses. These include:

Section 311: Special Measures for Primary Money Laundering Concerns (31 U.S.C. 5318A). Provides the U.S. Treasury Department to apply graduated, proportionate measures against a foreign jurisdiction, a foreign financial institution, a type of international transaction or a type of account that the Treasury secretary determines to be a “primary money laundering concern.” By designating a country or a financial institution of “primary money laundering concern,” the government can force U.S. banks to halt many of their financial dealings with the designee. Once identified, the Treasury Department can then apply any of five special measures that require domestic financial institutions to:

1. Keep records and file reports on particular transactions, including the identities of the participants in the transaction and the beneficial owners of the funds involved;
2. Obtain information on the beneficial ownership of any account opened or maintained in the U.S. by a foreign person or a foreign person’s representative;
3. Identify and obtain information about customers who are permitted to use or whose transactions are routed through a foreign bank’s “payable-through” account;
4. Identify and obtain information about customers permitted to use, or whose transactions are routed through, a foreign bank’s “correspondent” account; or
5. Close certain payable-through or correspondent accounts.

To ensure that all relevant factors are considered, the Secretary must consult with the Secretary of State and the Attorney General before designating a jurisdiction, institution or a particular type of transaction or account as a primary money laundering concern. The U.S. government has used Section 311 to cut financial ties to countries such as the Ukraine and Nauru, and has also singled out specific institutions, including banks in Latvia, Macau and Myanmar.

Section 312: Correspondent and Private Banking Accounts (31 U.S.C. 5318(i)). Requires “enhanced due diligence” for foreign correspondent (which includes virtually all account relationships that institutions can have with a foreign financial institution) and private banking accounts.

The U.S. Treasury’s Financial Crimes Enforcement Network (FinCEN) issued the Section 312 regulation in December 2005. It was published in early January 2006 and took effect the same year. Accounts that were opened before the 90-day period will be subjected to the provisions of the rule 270 days after the rule’s publication. FinCEN also proposed a new regulation that would establish due diligence procedures for the correspondent accounts of certain offshore banks that are affiliated with foreign banks.

The correspondent banking portions of the rule apply to banks, broker-dealers, futures commission merchants and introducing brokers in commodities, and mutual funds. Mutual funds are covered even though they do not presently maintain those types of accounts. However, they maintain accounts for foreign financial institutions in which they hold investments in mutual funds for their customers and which the foreign financial institution may use to make payments or to handle other financial transactions. These accounts are similar enough to correspondent accounts to be subjected to the rule.

FinCEN limited the definition of foreign financial institutions covered by the rule to those that may pose significant risk for money laundering. They include foreign banks, foreign branches of U.S. banks, foreign businesses that would be considered brokerdealers, futures commission merchants, introducing brokers in commodities, or mutual funds if they operate in the United States, and money transmitters or currency exchangers organized in a foreign country.
Despite comments from the financial industry that the definition of correspondent account was too broad, FinCEN retained the definition it used in the proposed rule. However, FinCEN changed the due diligence requirements to make them more risk-based in nature, thus giving financial institutions more flexibility.

The due diligence program must include “appropriate, specific and risk-based” enhanced policies, procedures and controls designed to report suspected money laundering in a correspondent account maintained in the United States. It must also be included in the institution’s anti-money laundering program.

The private banking portions of the rule apply to the same institutions covered by the correspondent banking provisions of the rule. Such institutions must maintain a due diligence program for private banking accounts that includes enhanced scrutiny of private banking accounts of senior foreign political figures, their immediate family and their close associates.

To fall under the rule, a private banking account must maintain a minimum aggregate deposit of $1 million or more for one or more non-U.S. persons and be assigned for liaison with the non-U.S. person to a bank employee. If the account does not have a minimum of $1 million, it is not covered by the rule but must still be subject to internal money laundering controls.

The private banking due diligence program must include policies and procedures designed to detect suspected laundering or suspicious activity in the U.S. account.

For covered private banking accounts, U.S. institutions must attempt to identify the nominal and beneficial owners of the accounts and establish whether any owner is a “senior foreign political figure.” If so, the institution must proceed with “enhanced scrutiny” procedures to determine the source of the funds in the account and their purpose and expected use. It must also monitor the account to assure it is consistent with the information provided on the source of funds, the purpose and expected use.

Perhaps one of the most anticipated elements of the rule was the definition of “senior foreign political figures”, or PEPs (politically exposed persons). But there were no surprises in the final rule as the definition is almost exactly the same as the proposed one. FinCEN defined these customers as elected or unelected “current or former senior officials in the executive, legislative, administrative, military or judicial branches of a foreign government.” The definition also covers officials of foreign political parties and government-owned commercial enterprises. The definition includes immediate family members and persons who are “widely and publicly known” to be close associates.

An institution that maintains accounts for these individuals must conduct “enhanced scrutiny” to attempt to detect if the funds “may involve the proceeds of foreign
corruption”, which include any property obtained “through misappropriation, theft or embezzlement of public funds,... conversion of property of a foreign government, or... bribery or extortion and... property into which any such assets have been transformed or converted.”

The rule’s focus on “senior foreign political figures” is a regulatory affirmation of a USA Patriot Act mandate and a continuation of the “guidance” issued to U.S. financial institutions by the Clinton administration in January 2001. The Clinton administration’s guidance addressed the handling of the individuals’ financial accounts with the goal of detecting, rejecting and reporting foreign corruption proceeds.

**Section 313:** Prohibits U.S. banks and securities brokers and dealers from maintaining correspondent accounts for foreign unregulated “shell” banks that have no physical presence anywhere (31 U.S.C. 5318(j)). Also requires financial institutions to take reasonable steps to ensure that foreign banks with correspondent accounts do not themselves permit access to such accounts by foreign shell banks. The prohibition took effect on December 26, 2001. Treasury released a final rule on September 18, 2002. Banks and securities brokers are permitted to use a certification form to comply with the rule. That form, which is sent by the U.S. bank or broker to all foreign banks for which it maintains correspondent accounts, requires the foreign banks to certify that they are not themselves shell banks and that they will not permit shell banks access to the U.S. correspondent account through a nested correspondent relationship.

Records relating to Correspondent Accounts for Foreign Banks: Allows the Secretary of the Treasury or the Attorney General to issue a summons to, or to subpoena records of, a foreign bank that maintains a correspondent account in the U.S. (31 U.S.C. 5318(k)). The subpoena can request any records relating to the account, including records located outside the United States. Additionally, foreign banks must designate a registered agent in the U.S. to accept service of such subpoenas. Furthermore, U.S. banks and securities brokers and dealers that maintain such accounts for foreign banks must keep records of both the identity of the registered agent as well as the names of the owners of the foreign bank. If the foreign bank fails to comply with or to contest the summons or subpoena, the Secretary or the Attorney General can order the U.S. financial institution to close the correspondent account. Treasury released a final rule on September 18, 2002, providing a certification form that covered financial institutions can use to comply with the recordkeeping requirements. The form requires the foreign bank to identify their owners and a U.S. agent for services of process. Some exceptions apply. The recordkeeping requirement took effect on December 26, 2001, for depository institutions.
The Reach of the U.S. Criminal Money Laundering and Civil Forfeiture Laws

First enacted in 1986, the criminal money laundering law of the United States has a specific “extraterritorial” provision. The law is unique among their world counterparts for its far-reaching applicability and coercive provisions beyond national borders.

The money laundering law of the United States is a powerful legal weapon, but it may be used only if the proceeds of at least one designated underlying crime — a “specified unlawful activity” (SUA) — are present in the laundering transaction. Without the proceeds of at least one of the more than 200 SUAs, no prosecution can take place. The list of SUAs has expanded since the law was enacted, most recently through the USA Patriot Act. Not all SUAs are U.S. crimes. The dozen or so foreign crimes that are listed may serve as the basis of a prosecution if their proceeds are part of a transaction in the U.S. or are conducted with a U.S. entity. Non-U.S. nationals have a greater risk of prosecution for those foreign crimes if a portion of the wrongdoing takes place in the United States. U.S. citizens may be indicted regardless of where they reside. The law asserts “extraterritorial jurisdiction” if the “conduct ... is by a U.S. citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States” and more than $10,000 is involved (Title 18, USC Sec. 1956(c)(7)(D)).

The SUAs, which are also part of the secondary U.S. law, include virtually every U.S. crime that produces economic advantage, including aircraft piracy, wire fraud, bank fraud, copyright infringement, embezzlement, export violations, illegal gambling, narcotics offenses, racketeering and even some environmental crimes. (Title 18, USC Sec. 1956(c)(7) & 1957).

Contributing to the law’s broad extraterritorial reach, the SUAs include some purely foreign crimes, such as bribery of a foreign official, embezzlement from a government, “misappropriation, theft, or embezzlement of public funds” by a foreign official, fraud against a foreign bank, extortion, narcotics offenses, kidnapping and robbery. They also cover violations of the Foreign Corrupt Practices Act and the Trading with the Enemy Act. Over the years, Congress has steadily expanded the list of SUAs, most recently through the USA Patriot Act, which added foreign crimes that focus primarily on official corruption as well as terrorist-related offenses.

These foreign SUAs have served to launch noteworthy cases. In San Francisco, Pavel Lazarenko, the former prime minister of the Ukraine, was accused of laundering more than $100 million he allegedly extorted from people who did business with the Ukraine government. The new laws added by the USA Patriot Act greatly increase the risk that corrupt foreign officials could face U.S. money laundering charges.
Although the prosecution must prove the existence of an SUA’s proceeds, it need not prove that the accused “knew” the exact source of the funds. It must prove only that the defendant knew that the funds came “from some form ...of activity that constitutes a felony under state, federal, or foreign law, regardless of whether or not such activity” is an SUA (Title 18, USC Sec. 1956(c)(1)). Courts have often ruled that “willful blindness”, which has been defined as “the deliberate avoidance of knowledge of the facts”, is the equivalent of actual knowledge. Willful blindness may be proved by the circumstances surrounding the transaction and the defendant’s conduct.

The U.S. money laundering law’s unique civil penalty provision now provides also for expanded jurisdiction over a “foreign... financial institution that maintains a bank account at a financial institution in the U.S.” (Title 18, USC Sec. 1956(b)(2)(C)). It permits a federal judge to appoint a “federal receiver” to take possession of the assets of a foreign person against whom a forfeiture judgment or a criminal money laundering sentence has been rendered.

Finally, Section 319 (a) of the USA Patriot Act (Title 18, USC Sec. 981(k)) greatly strengthened forfeiture powers over the funds of foreign persons and institutions. If the funds the U.S. pursues are deposited in a foreign bank, which keeps an “interbank account” at a U.S. bank, the U.S. may attempt to forfeit the crime-tainted funds in the U.S. account.

**Office of Foreign Assets Control**

In addition to these laws and regulations, financial institutions and businesses in other countries must recognize the extraterritorial risks that are posed by regulations enforced by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC).

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

OFAC rules prohibit transactions and require blocking the assets of persons and organizations that appear on one of a series of lists that it issues periodically. The agency has the power to impose significant penalties on those who are found to be in violation of the blocking orders it issues.
All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. In the cases of certain programs, such as those regarding Cuba and North Korea, all foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply.

See: www.treasury.gov/offices/enforcement/ofac/

**Summary**
International cooperation is key to success in the anti-money laundering and anti-terrorist financing battle due to the nature of criminal proceeds and laundering offenses, and the speed with which international financial transactions can take place.

The Financial Action Task Force on Money Laundering (FATF), which is part of the Organization for Economic Cooperation and Development and based in Paris, was formed by the Group of Seven industrial nations in 1989. FATF is the group that leads the worldwide effort against money laundering and terrorism financing.

Its 40 Recommendations, published in 1990 and revised in 1996 and 2003, form a comprehensive regime against money laundering and have been accepted worldwide as a basis for tackling money laundering and terrorism financing.

The FATF issued its Special Recommendations on Terrorist Financing in 2001, shortly after the September 11 terrorist attacks in the U.S. The FATF also issues a list of Non-Cooperative Countries and Territories (NCCTs), and money laundering typologies or trends.

Under its umbrella, several regional groups have formed FATFstyle regional bodies (FSRBs) to address their particular needs in the Caribbean, Asia/Pacific, Middle East/Africa, Eurasian, and South American regions.

The Basel Committee, established by the central bank governors of the G-10 countries in 1974, promotes sound supervisory standards worldwide. It has recognized that sound Know Your Customer (KYC) policies and procedures are critical in protecting the safety and soundness of banks and the integrity of banking systems, and it issued in October 2001 a paper called “Customer due diligence for banks.”
In December 2001, the European Union issued a Second Directive that widened money laundering offenses beyond drugs to all serious crimes and extended the scope of financial sector compliance beyond credit and financial institutions to corporate service providers, casinos, lawyers and accountants. European law prevails over national law in the case of directives. A Third Directive was adopted in 2005.

In May 1992, the Organization of American States (OAS) became the first permanent international body to reach agreement on the details of model legislation aimed specifically at dealing with money laundering.

The Caribbean Financial Action Task Force (CFATF) is a multinational body that fosters controls in the Caribbean region. In the Asian/Pacific region, the Asia/Pacific Group on Money Laundering (APG) commits itself to introducing anti-money laundering measures.

In 1995, a number of national financial intelligence units began working together in an informal organization known as the Egmont Group.

In 2000, a consortium of some of the world’s largest banks, called the Wolfsberg Group started issuing voluntary money laundering control guidelines that, if implemented by banks around the world, would mark an unprecedented private-sector assault on the laundering of corruption proceeds, laundering through correspondent accounts, and terrorist financing.

The International Monetary Fund and World Bank, the two mighty multinational bodies whose entry into the global money laundering control field created new risks for recalcitrant nations, have issued joint procedures that have advanced and standardized the evaluation of national anti-money laundering efforts.

Finally, principal elements of United States laws related to money laundering and terrorism financing bear on international transactions and jurisdictions, including provisions regarding correspondent and private banking accounts.
### Overview chart of international AML and CFT initiatives:

<table>
<thead>
<tr>
<th>Group</th>
<th>What is It?</th>
<th>Important Documents</th>
</tr>
</thead>
</table>
| **Financial Action Task Force on Money Laundering** | - Intergovernmental body with 51 member countries and two international organizations  
  - Sets money laundering standards             | - 40 Recommendations on Money Laundering                                          |
|                                             |                                                                             | - Special Recommendations on Terrorist Financing (Last updated 2004)                |
|                                             |                                                                             | - Non-Cooperative Countries and Territories List (ongoing)                         |
| **Basel Committee on Banking Supervision**  | - Established by the central bank governors of the G-10                      | - Customer Due Diligence for Banks Paper (2001)                                    |
|                                             | - Promotes sound supervisory standards worldwide                            | - Sharing of financial records between jurisdictions in connection with the fight against terrorist financing (2002) |
| **European Union**                          | - The EU Directives on money laundering require the EU member states to issue legislation to prevent their domestic financial systems being used for money laundering | - 1st EU Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering (1991) |
|                                             |                                                                             | - 2nd Directive (2001)                                                             |
| **Wolfsberg Group**                         | - Association of 12 global banks                                            | - Wolfsberg Anti-Money Laundering Principles for Private Banking (last updated 2002) |
| **APG, GAFISUD, CFATF, MENAFATF, Eurasian Group, Eastern and South African AML Group** | - FAFT-style regional bodies                                                  | - Typologies, etc.                                                                  |
| **Egmont Group**                            | - Informal networking group of Financial Intelligence Units                 | - Statement of Purpose (last updated 2004)                                         |
| **CICAD**                                   | - Commission within the Organization of American States that deals with drug-related issues, including money laundering | - Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases (2001) |
| **World Bank and International Monetary Fund** | - The requirement of effective money laundering controls have become a staple of their financial and structural assistance programs | - Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism: A Manual for Countries to Establish and Improve Their Institutional Framework (2002) |
Historic overview of important developments in the international AML arena:

<table>
<thead>
<tr>
<th>Year</th>
<th>Important Developments in the International AML Arena</th>
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<tbody>
<tr>
<td>1986</td>
<td>U.S. enacts its Money Laundering Control Act, codified at 18, U.S. Code Section 1956, the first law in the world to make money laundering a crime.</td>
</tr>
<tr>
<td>1988</td>
<td>Vienna Convention (UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances) is agreed to. Statement of principles is issued by Basel Committee on Banking Regulations and Supervisory Practices.</td>
</tr>
<tr>
<td>1992</td>
<td>Organization of American States (OAS) model money laundering regulations and legislation are adopted. Kingston, Jamaica, Declaration on Money Laundering of the CFATF is issued.</td>
</tr>
<tr>
<td>1993</td>
<td>UN model law on Money Laundering, Confiscation and International Cooperation in Relation to Drugs is proposed.</td>
</tr>
<tr>
<td>1995</td>
<td>Egmont group of Financial Intelligence Units is formed.</td>
</tr>
<tr>
<td>1996</td>
<td>The FATF 40 Recommendations are revised to extend predicate offenses beyond drugs to other serious crimes. The first FATF Typologies Report is released.</td>
</tr>
<tr>
<td>1997</td>
<td>Asia-Pacific Group on Money Laundering (APG) is established. PC-R-EV (now MONEYVAL) is established, which conducts self assessment of AML measures in European countries that are not FATF members.</td>
</tr>
<tr>
<td>1998</td>
<td>OAS Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Other Serious Offenses are amended.</td>
</tr>
<tr>
<td>1999</td>
<td>FATF issues guidance on the interpretation of the FATF 40 Recommendations requiring tax evasion to be recognized as predicate offense.</td>
</tr>
<tr>
<td>2000</td>
<td>Non-Cooperative Countries and Territories (NCCT) criteria are issued by FATF, which also publishes first NCCT list. GAFISUD (South American Financial Action Task Force) is established. Wolfsberg AML Principles on Private Banking are issued.</td>
</tr>
<tr>
<td><strong>Year</strong></td>
<td><strong>Important Developments in the International AML Arena</strong></td>
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</tbody>
</table>
| **2001** | U.N Security Council Resolution 1373 (S/RES/1373(2001)) requiring the freezing of terrorist assets is passed.  
- Customer Due Diligence for Banks paper is issued by the Basel Committee.  
- Special FATF Recommendations on Terrorist Financing are issued.  
- USA PATRIOT Act is enacted, which brought about momentous changes in U.S. money laundering controls.  
- The International Monetary Fund Executive Board concludes that money laundering threatens financial system integrity. |
| **2002** | Wolfsberg Statement on Terrorist Financing is issued.  
- Wolfsberg AML Principles on Corporate Banking are issued.  
- Basel Report on Sharing Information on Terrorist Financing is issued.  
- Guidance for Financial Institutions on Detecting Terrorist Financing is issued by FATF.  
- Wolfsberg Group issues revised AML Principles for Private Banking.  
- FATF Consultative Paper announcing a revision of its 40 Recommendations on Money Laundering is issued.  
| **2003** | The Basel Committee issues account opening and customer identification guidelines and a general guide to good practice based on the principles of its Customer Due Diligence for Banks paper.  
- FATF revises its 40 Recommendations.  
- Deadline for EU member states to implement 2nd EU Directive.  
- Wolfsberg’s Statement, on Monitoring Screening and Searching. |
| **2004** | Member nations of the FATF extend its charter by a record eight years, signaling the possibility that it may become a permanent institution.  
- FATF issues Special Recommendation IX, calling on countries to stop cross-border movements of currency and monetary instruments related to terrorism financing and money laundering and to confiscate such funds.  
- The Basel Committee releases publication ”Consolidated KYC Risk Management.”  
- Financial Action Task Force-style regional body MENAFATF is established.  
- FATF-style regional body, the Eurasian Group (EAG) is formed.  
**Review Questions**

- Describe the FATF Special Recommendations on Terrorist Financing.
- Explain the Customer Due Diligence for Banks Paper of the Basel Committee.
- Are the European Union Directives on Money Laundering binding? If so, for whom?
- How can the FATF, with no enforcement authority, be the leading international organization in establishing global policies and measures in the AML field?
- In which areas of money laundering controls has the Wolfsberg Group issued guidelines? Are they binding?
- How can members of the Egmont Group help improve a nation’s efforts against money laundering?
- What is the role of the Basel Committee in the fight against money laundering and terrorism financing?
- What is OFAC?
- What are the due diligence requirements for foreign correspondent accounts with U.S. financial institutions?
- What implications may the extraterritorial reach of the U.S. laws have in the global commercial relationships of non-U.S. financial institutions and individuals?
- How can the operations and customers of a non-U.S institution be affected by U.S. laws and regulations?