# 4

# Development of International Initiatives and Standards

## 4.1 Establishing the International Initiatives

International action to combat money laundering started in the late 1980s and the resulting developments have formed the basis for international standards and national initiatives. It is important that all Commonwealth countries adhere to international standards for money laundering prevention.

### *4.1.1 The Vienna Convention*

A major impetus for co-ordinated international action to address three of the strategic tools came with the convening in Vienna in late 1988 of the UN Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This Convention has now effectively been overtaken by the Palermo Convention of December 2002 (see 1.8.28) but in its time it provided a significant advance in the realms of international anti-money laundering matters.

The Vienna Convention, which came into force in November 1990, contained strict obligations. Countries which became parties to the Vienna Convention committed to:

- Criminalise drug trafficking and associated money laundering;
- Enact measures for the confiscation of the proceeds of drug trafficking;
- Enact measures to permit international assistance;
- Empower the courts to order that bank, financial or commercial records are made available to enforcement agencies, regardless of bank secrecy laws.

Article III of the Vienna Convention provided a comprehensive definition of money laundering, which has been the basis of virtually all subsequent legislation. It was also the basis of the money laundering offences in the draft *Model Law for the Prohibition of Money Laundering for Commonwealth Countries*.

In addition, the Vienna Convention provided for money laundering to be an internationally extraditable offence.

### *4.1.2 The Palermo Convention*

Building on the successful Vienna Convention, the United Nations Convention Against Transnational Organised Crime was adopted by the General Assembly at its millennium meeting in November 2000 and was opened for signature at a high-level

conference in Palermo, Italy, in December 2002. Of significance was the fact that it was the first legally binding UN instrument in the field of organised and serious crime.

Those signing are required to establish four distinct criminal offences in their own jurisdictions. These are:

- Participation in an organised criminal group;
- Money laundering;
- Corruption;
- Obstruction of justice.

Additionally spelled out are indications on how countries can improve co-operation on such matters as extradition, mutual legal assistance, transfer of proceedings and joint investigations. Moreover, those countries signing up commit to providing technical assistance to developing countries, to help them take their own measures to deal with organised crime.

### *4.1.3 The Council of Europe Convention*

In September 1990, the Committee of Ministers of the Council of Europe adopted a new *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*. This Convention deals with all types of criminal offence, and so goes beyond the Vienna Convention. More specifically, the offence of money laundering was extended to include money laundering which is associated with all serious criminal offences. This was an important step in the fight against money laundering, as it recognised that the major criminal organisations do not specialise in one product alone, and added the impetus towards establishing an international 'all crimes' money laundering strategy.

### *4.1.4 The European Money Laundering Directives*

The 1991 European Money Laundering Directive provided the basic standard for legislation and regulation amongst all European member states. A revised directive agreed in 2001 extended the scope beyond credit and financial institutions to corporate service providers, estate agents, casinos, lawyers and accountants. Any new country wishing to join the European Union must comply with the Directive as a condition of entry. The Directive also forms the base for many countries outside of Europe, and particularly the offshore financial centres.

#### The Paris Convention

As an extension to the strategy contained within the second European Directive, a final Declaration Against Money Laundering, was issued following the Conference of European Parliaments on 8 February 2002. After a scene-setting preamble, analyses and proposals were presented under four separate headings:

- The transparency of capital movements;
- Sanctions against unco-operative countries and territories;
- Legal, police and administrative co-operation;
- Prudential rules.

Altogether a total of 30 proposals were recorded, setting out the high-level objectives for development of the anti-money laundering regime through the EU member states and the means whereby there could be greater co-operation and sharing of information than had previously been the norm.

### *4.1.5 The Financial Action Task Force*

The Financial Action Task Force was founded at the 1989 OECD Economic Summit as a response by the heads of state of the G-7 nations to the growing problem of money laundering. Its mandate was 'to assess the results of co-operation already undertaken in order to prevent the utilisation of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive measures in this field, including the adaptation of the legal and regulatory systems, so as to enhance multi-lateral judicial assistance'. In 2001 the FATF extended its mandate to include measures to counter terrorist financing.

The FATF is a multi-disciplinary body, bringing together the policy-making power of legal financial and law enforcement experts and is regarded as the most influential and authoritative body in respect of money laundering policy and standards. The FATF has three main tasks:

- to monitor members' progress in implementing measures to counter money laundering and terrorist financing;
- to review money laundering trends, techniques and counter-measures, and their implications for the 40 Recommendations;
- to promote the adoption and implementation of the FATF Recommendations by non-member countries.

#### The 40+8 Recommendations

In 1990, the FATF published 40 Recommendations aimed at governments and financial institutions. Together, these Recommendations formed a comprehensive regime against money laundering and have been accepted worldwide as one of the most comprehensive bases for tackling money laundering. These Recommendations were commended by the Commonwealth Heads of Government in 1993.

Originally, the FATF Recommendations were restricted to drug trafficking as

addressed by the Vienna Convention, but in 1996 the FATF, having reviewed its Recommendations, extended them to cover all crimes. In October 2001, eight Special Recommendations to combat terrorist financing were published. The revised 40 Recommendations adopted by the FATF in June 2003 introduce a number of substantial changes to strengthen the measures to combat money laundering and terrorist financing. These include:

- The adoption of a stronger standard for money laundering predicate offences;
- The extension of the customer due diligence process for financial institutions, as well as enhanced customer identification measures for higher risk customers and transactions;
- The coverage of designated non-financial businesses and professions (casinos, real estate agents, dealers in precious metals/stones, accountants, lawyers, notaries and independent legal professionals, trust and company service providers);
- The inclusion of key institutional measures in anti-money laundering systems;
- The improvement of transparency of legal persons and arrangements.

The Recommendations and their interpretative notes form the basis for the guidance set out in Part II and Part III of this document. The complete text of the FATF Recommendations and interpretative notes can be accessed through the FATF website (*www.fatf-gafi.org*).

## Membership of the FATF

For many years, membership of the FATF was restricted to the principal 26 industrialised countries, of which five (Australia, Britain, Canada, New Zealand and Singapore) are Commonwealth members. However, in line with its new strategy for increasing the effectiveness of international anti-money laundering efforts, the FATF decided in 1999 to expand its membership to a limited number of strategically important countries who can play a major regional role. Argentina, Brazil and Mexico were admitted as members in 2000, followed by South Africa and Russia in 2003.

The minimum criteria for admission are as follows:

- To be fully committed at the political level
  (a) to implement the 1996 Recommendations within a reasonable timeframe (three years) and
  (b) to undergo annual self-assessment exercises and two rounds of mutual evaluations;
- To be a full and active member of the relevant FATF-style regional body where one exists, or be prepared to work with the FATF or even to take the lead in establishing such a body where none exists);

- To be a strategically important country;
- To have already made the laundering of the proceeds of drug trafficking and other serious crimes a criminal offence; and
- To have already made it mandatory for financial institutions to identify their customers and to report unusual or suspicious transactions.

Primarily, potential new members should belong to areas where FATF is not significantly represented in order to maintain a certain level of geographical balance.

### *4.1.6 United Nations Global Programmes*

In support of concerted international action against illicit production, trafficking and abuse of drugs, a central tenet of the United Nations Drug Control Programme (UNDCP) is the development of global programmes against money laundering and of legal assistance.

The Global Programme against Money Laundering was set up to strengthen the ability of national law enforcement authorities and international bodies to fight money laundering more effectively. The strategy of the Global Programme is designed to achieve the following objectives:

- To increase knowledge and understanding of the money laundering problem and contribute to the development of policies by the international community of member states;
- To increase the legal and institutional capacity of states to fight money laundering;
- To increase the capacity of states to successfully undertake financial investigations into money laundering and matters relating to the proceeds of crime.

Composed of a multi-disciplinary team of legal, financial and law enforcement experts, the Global Programme provides advice and assistance to states in the development of anti-money laundering mechanisms; undertakes research on key issues; supports the establishment of specialised units; and provides training to law enforcement and justice officials for better implementation of money laundering laws.

## 4.2 Enhanced International Financial Regulation

Money laundering prevention is closely linked to sound financial supervision and regulation. Financial regulation around the world is governed by standards set by three main groups of regulators:

- The Basle Committee on Banking Supervision (the Basle Committee);

- The International Organisation of Securities Commissioners (IOSCO) for securities firms and markets;
- The International Association of Insurance Supervisors (IAIS) for insurance companies.

All three organisations have established principles of good regulatory practice to which most countries in the world are, at least nominally, signed up. These principles describe the appropriate structures for regulation, with requirements for independence from political interference and set out the features of a soundly regulated financial system.

In June 2003, the Basle Committee, IAIS and IOSO issued a joint Note providing a record of the initiatives taken by each sector to prevent money laundering and combat the financing of terrorism. The purpose of the note is to set out, in Part 1, an overview of the common AML/CFT standards that apply to all three sectors and, in Part 2, the variations for the three particular sectors. The Note explains that the AML/CML elements common to all three financial sectors are set out in the FATF 40 Recommendations.

### *4.2.1 The Basle Principles*

Recognising the vulnerability of financial institutions, the Basle Committee on Banking Regulation and Supervisory Practices issued a Statement in December 1988 on 'Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering'. This has subsequently formed the basis for much of the supervisory approach in this area.

Covering the basic issues of customer identification, compliance with legislation and law enforcement agencies, record keeping, systems and staff training, the Basle Principles have been generally endorsed by banking and other financial supervisors worldwide. Compliance with the Principles represents a major self-regulatory initiative within the financial sector.

Significantly, the Principles cover all criminal proceeds, not only those derived from drug trafficking, and can be implemented by the financial sector prior to the implementation of (or even in the ongoing absence of) a comprehensive legislative/regulatory programme to combat money laundering.

In October 2001, the Basle Committee issued a further paper covering customer due diligence for banks and addressing verification and 'know your customer' standards with a cross-border aspect. This reflected that earlier reviews of standards at national levels had found much variation and frequent instances where standards could not be judged as adequate. The role of national supervisors was recognised in respect of standard setting, and they are required to set their own standards with regard to what other nations are being expected to do to minimise variations at an international level.

While the Basle customer due-diligence principles were drawn up for the banking sector, the FATF drew heavily on both the principles and detail contained in them when undertaking the 2003 revision of the 40 Recommendations.

## 4.3 The International Monetary Fund

The International Monetary Fund (IMF) is an international organisation of 184 member countries that was established to:

- Promote international monetary co-operation, economic stability and exchange of information;
- Foster economic growth and high levels of employment; and
- Provide temporary financial assistance to countries to help ease balance of payments adjustments.

Since the IMF was established, its purposes have remained unchanged but its operations have developed to meet the changing needs of its member countries in an evolving world economy, which includes assisting countries in combating money laundering. In 2001 the IMF Executive Directors agreed a number of measures to intensify the work on combating money laundering, including more technical assistance for members, and agreed to extend its work to combating the financing of terrorism.

In recent years, there has been growing acceptance that setting international standards alone is insufficient; compliance with those standards must be maintained. Consequently, the World Bank and the IMF have taken on the responsibility for that task with particular emphasis on the core principles of banking supervision.

In November 2002 the FATF and the IMF formally approved a 12-month pilot project to include assessments on the adequacy of a country's measures to prevent money laundering and counter terrorist financing within the listed operational work of the Fund using the FATF Recommendations as the base standard. The detailed methodology for assessing compliance with AML/CFT standards that has been agreed between the FATF and IMF can be found on the IMF website (*www.imf.org*).

Closely linked to the IMF/World Bank assessments is the work of the Financial Stability Forum (FSF) which is looking in particular at the means of raising international standards within offshore centres, both in the area of financial regulation and anti-money laundering measures.

## 4.4 Action Against Non-co-operative Countries and Territories

Recent years have witnessed a sharp increase in the number of jurisdictions that offer financial services without appropriate supervision or regulation and are protected by strict banking secrecy legislation. In parallel, money laundering schemes have been characterised by increased sophistication and complexity where national boundaries are irrelevant. Global adoption of international standards has therefore become a vital requirement in the fight against serious international crime.

In order to ensure the stability of the international financial system and effective pre-

vention of money laundering, it is recognised as essential that all financial centres in the world should have comprehensive control, regulation and supervision systems. Linked to this is the need for financial intermediaries or agents to be subject to strict obligations for the prevention, detection and prosecution of money laundering.

In preparation for international action to be taken against a country or territory whose legal, regulatory and financial systems do not meet international standards, the Financial Action Task Force has identified the detrimental rules and practices that obstruct international co-operation against money laundering.

The FATF's work on these so-called 'Non Co-operative Jurisdictions' covers all significant financial centres both inside and outside of the task force membership. In the event that any country so defined fails to take the necessary action, one of the financial sanctions to be taken could be the issue of an international OECD/FATF warning applying Recommendation 21 against the country concerned. FATF Recommendation 21 states that:

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

In June 2000 the first 15 non co-operative countries and territories (NCCT) were listed by the FATF and, subsequently, quarterly FATF meetings have led to many changes to the original list, both by new additions and by the deletion of those who have responded positively through new legislation and other measures. In 2002 it was announced that no more names would be added to the list, at least for a further 12 months, because the assessments that had been made by FATF would for the future constitute part of wider scope reviews to be undertaken by the IMF as part of the 12-month pilot project. However, countries that were previously on the list must still take the action necessary to earn their removal or face additional counter-measures by FATF members.

The FATF 2003 annual review of non-co-operative countries and territories and the various criteria against which jurisdictions have been judged can be accessed on the FATF website (*www.fatf-gafi.org*).