5

Establishing International and Regional Co-operation

Money laundering is an international problem, often carried out by international crime syndicates, and effective measures to tackle it require international co-operation – no one country or agency can succeed alone. This co-operation is necessary at a number of levels, and between a number of different agencies.

The objective is to beat the criminals by applying the same basic standards internationally. Countries that delay in taking effective action risk opening the door to organised crime.

5.1 Co-operation between Governments

Co-operation between governments is vital to ensure that a legal and administrative framework exists for cross-border investigations into money laundering. At the most basic level, it is important that the legal and constitutional definitions of money laundering adopted by different governments are compatible, so that a crime committed in one jurisdiction will be recognised as such by others. The widespread adoption of the 40 FATF Recommendations, together with the 1988 United Nations Convention and the 1990 Council of Europe Convention, have greatly assisted in this process.

At the intergovernmental level, the processing of requests for international co-operation in money laundering cases is greatly eased by the negotiation of bilateral or multilateral treaties or agreements. In particular, Mutual Legal Assistance Treaties (MLATs), covering asset tracing, freezing and confiscation, the production of evidence and the questioning of witnesses, are extremely valuable tools in pursuing investigations across national boundaries.

However, international co-operation, or the deficiencies that exist, is an area that is frequently mentioned by countries as being a major obstacle to more effective anti-money laundering systems. Consequently, issues relating to international co-operation feature heavily in the FATF Recommendations.

5.1.1 Co-operation in Mutual Legal Assistance and Extradition

Because money laundering is international by nature, investigation into cases of money laundering are rarely confined to one country. To ensure that the investigation and money trail can be conducted cross-border, mutual legal assistance is required. During the review of the 40 Recommendations, the FATF identified two potential difficulties, or factors inhibiting more efficient and effective co-operation, namely:

(a) The requirement for a bilateral or multilateral treaty or agreement before assistance can be provided (as opposed to providing assistance on the basis or reciprocity); and

(b) The imposition of strict dual criminality requirements, both in relation to the criminal offence, but also with respect to the enforcement of foreign court orders to confiscate or seize the proceeds of crime. This effectively results in a court in the requesting country reviewing the decision of the court in the requesting country.

Consequently, the relevant FATF recommendations have been strengthened to overcome these difficulties.

Recommendations 36–39 now set out the additional basis for mutual legal assistance, stating in essence that:

- Different standards, definitions and predicate offences should not affect the ability or willingness of countries to provide each other with mutual legal assistance regardless of the absence of dual criminality.
- Countries should ratify the relevant conventions on money laundering.
- The powers to compel the production of records, search, seizure and obtaining of evidence should be available in response to requests for mutual legal assistance.
- Requests by foreign countries to identify, freeze, seize and confiscate the proceeds of crime should be dealt with expeditiously including arrangements for sharing confiscated assets.
- Mechanisms for determining the best venue for prosecution of defendants should be applied in cross border cases.
- Each country should enact measures to recognise money laundering as an extraditable offence.

5.1.2 Exchange of Information Relating to Suspicious Transactions

In recognition that obstacles were preventing information exchange and effective co-operation between national financial intelligence units, and that such obstacles can be removed through a foundation of mutual trust, the Egmont Group of Financial Intelligence Units was formed in 1997.

The objectives of the Egmont Group are:

- Development of Financial Intelligence Units in governments around the world;
- Stimulation of information exchange on the basis of reciprocity or mutual agreement;
- Access to the Egmont Secure Website for all FIUs;
- Continued development of training opportunities, regional/operational workshops and personal exchanges;

- Consideration of a formal structure to maintain continuity in the administration of the Egmont Group, as well as consideration of a regular frequency and location for plenary meetings;
- Articulation of more formal procedures by which decisions as to particular agencies' status vis a vis the FIU definition are to be taken;
- Designation of appropriate modalities for the exchange of information;
- Creation of Egmont Group sanctioned materials for use in presentations and communication to public audiences and the press about Egmont Group matters.

The development of FIUs is considered in Chapter 9.

There are now more than 80 national FIUs that are members of the Egmont Group and which are receiving suspicion reports and exchanging that information with their counterparts. Co-operation between administrative AML authorities was addressed in the 25 NCCT criteria, in particular:

- Not granting clear gateways;
- Making the exchange of information subject to unduly restrictive conditions;
- Prohibiting domestic authorities from assisting foreign counterparts;
- Obvious unwillingness to assist evidenced by undue delay.

Consequently, Recommendation 40 now includes enhanced requirements to assist the prompt and constructive exchange of information, in particular:

> *(a) Competent authorities should not refuse a request for assistance on the sole ground that the request is also considered to involve fiscal matters.*
>
> *(b) Countries should not invoke laws that require financial institutions to maintain secrecy or confidentiality as a ground for refusing to provide co-operation.*
>
> *(c) Competent authorities should be able to conduct inquiries; and where possible, investigations; on behalf of foreign counterparts.*

The need for confidentiality in respect of exchanged information is recognised through the following statement in Recommendation 40:

> *Countries should establish controls and safeguards to ensure that information exchanged by competent authorities is used only in an authorised manner, consistent with their obligations concerning privacy and data protection.*

5.2 Co-operation through Regional Bodies

Without doubt, the future of international money laundering prevention lies in the development and strengthening of regional groupings. A major development in February 1998 was FATF endorsement of a policy to strengthen the work of regional or other international bodies that already exist, i.e. the Caribbean Financial Action Task Force (CFATF), the Asia/Pacific Group on Money Laundering, the Council of Europe and the Offshore Group of Banking Supervisors (OGBS). The FATF report notes that the establishment of FATF-style regional bodies should rely, as far as possible, on existing structures, for example the Council of Europe or the Organisation of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD), which are also able to assume responsibility for the fight against money laundering in their regions. Where a regional structure that can be adapted does not already exist, a new FATF-style body will need to be created. The development of FATF-style regional bodies will also be encouraged by the active involvement and support of one or more FATF members. Consequently, South Africa became the lead country within the Eastern and Southern African Anti Money Laundering Group (ESAAMLG) (see section 5.2.3) on gaining full membership of the FATF in 2003.

To encourage consistency in mutual evaluations, the FATF members recognise the value of inviting experts from FATF-style regional bodies to participate in FATF mutual evaluations and vice versa.

5.2.1 The Advantages of Developing Regional Approaches

The political, economic and social interests of countries are often affected by, and related to, the region in which the country is located. Actions by a neighbouring country perhaps have the greatest effect on its close neighbours, and in the areas of law enforcement and economic management this may be particularly true. There are few, if any, areas of the world where regional bodies which bring together the political and economic interests of members do not exist. These regional bodies provide the opportunity for essential interests to be pursued and for co-operative mechanisms to be developed. The common interest of members of the CFATF in the welfare of the region and the close relationship between that organisation and both the Caribbean Community (CARICOM) and OAS has undoubtedly led to its success within the region. Similar successes are beginning to emerge from the co-operation within ESAAMLG.

4.2.2 Developing Regional Standards

Perhaps the most compelling reason for countries to join with their neighbours to combat money laundering is that countries in regions or sub-regions often share particular problems and can benefit from the development of co-operative solutions. For example, it can be argued that the FATF Recommendations are most effective in countries which have structured and regulated financial systems and, most importantly, where cash is not

the normal medium of exchange. The Recommendations work well, when implemented, in dealing with money laundering in the formal and non-cash sectors. They do not, however, address the issue of how to deal with, or detect, money laundering in economies which are cash economies and/or economies where reliance on a parallel banking system is the norm. Consequently, the Asia/Pacific Group has undertaken to develop specific recommendations in respect of this problem.

Specialist regional bodies are also in a far better position to judge the nature of their financial systems, the problems faced by them, the potential for laundering money through them and the best way to address the issue. This may mean that, while implementing the FATF 40 Recommendations, regional bodies will need to develop other specific regional recommendations to deal with the particular problems of their financial systems. Any specific measures should seek to ensure that money cannot be diverted from the formal sector and laundered through the informal sector.

Commonwealth countries may consider that there would be benefit in seeking to establish, either in conjunction with an existing regional body of which they are a member, or separately, a regional or sub-regional body committed to the implementation of anti-money laundering measures.

5.2.3 Current Regional Groupings

Caribbean Financial Action Task Force

Since its inception in 1990, membership of the Caribbean Financial Action Task Force has grown to 25 states of the Caribbean basin. The CFATF's additional 19 Aruba Recommendations are designed to supplement the FATF 40 Recommendations while specifically covering the particular regional issues relating to the Caribbean.

The CFATF monitors members' implementation of the anti-money laundering strategies set out in the Kingston Ministerial Declaration through the following activities:

- Self-assessment of the implementation of the Recommendations;
- An ongoing programme of mutual evaluation of members;
- Plenary meetings twice a year for technical representatives; and
- Annual ministerial meetings.

CFATF member governments have also made a firm commitment to submit to mutual evaluations of their compliance both with the Vienna Convention and with the CFATF and FATF Recommendations. The CFATF's first round of mutual evaluations will be completed by the end of the year 2000.

Asia/Pacific Group on Money Laundering

The Asia/Pacific Group on Money Laundering (APG) currently consists of 26 members

in the Asia/Pacific region, comprising members from South Asia, South-east and East Asia and the South Pacific. Additionally, there are 11 jurisdictions with observer status (including the UK) and 15 observer organisations. The first annual meeting of the APG was held in Tokyo in 1998 and the 2002 meeting was in Brisbane, Australia. The 2002 meeting adopted eight Special Recommendations on Terrorist Financing and all APG members have undertaken to implement them. The APG continues its work to expand its typologies, in close consultation with the FATF and other regional bodies.

Eastern and Southern African Anti Money Laundering Group

The ESAAMLG was launched in Tanzania in August 1999 and has grown since then to its present size of 14 member countries plus the UK and USA as observer jurisdictions, and the FATF, the World Bank and the Commonwealth Secretariat as observer organisations. The Group is committed to implementing the FATF Recommendations and Special Recommendations. A memorandum of understanding that was agreed at the inaugural meeting has been signed by 11 of the 14 member countries; Lesotho, Zambia and Zimbabwe have not yet signed up to their specific commitments to support the FATF Recommendations.

South American Financial Action Task Force (GAFISUD)

The new FATF-style regional body, GAFISUD, was created in Cartagena, Colombia in December 2000. There are nine member countries. It has adopted both the FATF Recommendations and the Special Recommendations and has implemented a mutual evaluation programme.

Inter-Governmental Action Group against Money Laundering (GIABA)

GIABA (Groupe Inter-gouvernemental d'Action contre le Blanchiment en Afrique) followed the December 1999 Summit of the Heads of State and Government of the Economic Community of West African States (ECOWAS) in Togo; the Group's statutes were approved at the ECOWAS meeting in Mali in December 2001. Provisional headquarters for GIABA are in Senegal but no agreement has been reached on funding for the Group.

Council of Europe (Moneyval)

The Select Committee of Experts on the evaluation of anti-money laundering measures was established in September 1997 by the Committee of Ministers of the Council of Europe to conduct self and mutual assessment exercises of the anti-money laundering measures in place in the 25 Council of Europe countries which are not members of the FATF. The Select Committee is a sub-committee of the European Committee on Crime Problems of the Council of Europe (CDPC).

The membership of the Select Committee is comprised of the Council of Europe member states that are not members of the FATF.

The first round of mutual evaluations has been completed and a second round commenced.

Offshore Group of Banking Supervisors

The conditions for membership of the Offshore Group of Banking Supervisors include a requirement that a clear political commitment be made to implement the FATF's 40 Recommendations. Members of the OGBS which are not members of the FATF or the CFATF are formally committed to the 40 Recommendations through individual Ministerial letters sent to the FATF President during 1997–98. Mutual evaluations of members who are not members of FATF or CFATF commenced in 1999. These have subsequently been replaced by the IMF assessments.

OGBS plays an active role both in FATF and the Basle Cross-Border Banking Sub-Committee and was active in developing the Basle Customer Due Diligence Principles.

5.2.4 The Activities of Regional Anti-Money Laundering Groups

The FATF, the CFATF and the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (which have the widest coverage of the subject) have all developed core programmes of activity which include self-assessment of progress in implementing the 40 FATF Recommendations (and any other regionally agreed recommendations), mutual evaluation of national programmes and the monitoring of developments in the field of money laundering.

Self-Evaluation Procedures

Commonwealth countries are familiar with self-evaluation of progress in combating money laundering. Finance ministers have mandated two rounds of self-evaluation and law ministers one round. These evaluations use exactly the same methods as those which are employed by the FATF and CFATF because they have proved successful and to save work for those Commonwealth countries which are members of one of the other bodies. The tabulated results of self-assessment surveys when distributed to members assist other countries to understand the laws of fellow member countries and, accordingly, provide a basic tool which can be used when seeking international co-operation.

Mutual Evaluation Procedures

The 1991 Report of the FATF records a 'decision that underscores the great importance attached to the (evaluation) process' to initiate a process of mutual evaluation under which each member would be subject to being evaluated on progress measures three years after endorsing the FATF 40 Recommendations. Mutual evaluations are conducted by multi-disciplinary teams drawn from other member countries which look at the financial, legal and law enforcement aspects of a country's anti-money laundering efforts. In their early years, most evaluations concentrated on the state of a country's laws. More

recent evaluations look closely at the effectiveness and implementation of those laws and at the operational aspects of combating money laundering.

The FATF was the first to adopt this process of peer evaluation followed by the CFATF. Most recently, the Council of Europe has put in place its own mutual evaluation process and the OGBS has agreed to a similar procedure among its members. Where a country is a member of more than one group which conducts mutual evaluations, the arrangements for evaluation are made between that country and the organisations of which it is a member, so that only one evaluation is conducted. For example, Cyprus, which is a member of both the Council of Europe and the OGBS, underwent an evaluation organised jointly by those bodies.

The mere knowledge that one's peers are to examine, at your invitation, your statute books, your banking and financial regulations and your law enforcement methods has the very real effect of ensuring that governments raise the priority of anti-money laundering efforts and make real efforts to meet standards. The prospect not only of having examiners visit your country but having their report discussed in a plenary meeting of all members of the group has an equally focusing effect.

One of the most important benefits of mutual evaluation is that it gives the examined country the opportunity to examine the effectiveness and implementation of national laws, regulations and operating procedures and provides a wider perspective on the national and international effects of anti-money laundering efforts.

Monitoring Money Laundering Developments

One of the major activities of the FATF, the CFATF and the Asia/Pacific Group on Money Laundering has become known as 'typologies exercises'. Each of these bodies work actively to identify trends in money laundering methods and, perhaps more importantly, to consider emerging threats and effective counter-measures. The issues arising out of these typologies exercises are covered in Appendix A.