3

Development of International Initiatives and Standards

3.1 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.

3.1.1 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, and systems and staff training, the Basle Principles have been generally endorsed by banking and other financial supervisors world-wide. 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 or regulatory programme to combat money laundering.

The full text of the Basle Principles is reproduced in Appendix A.

3.1.2 The Vienna Convention

The first governmental breakthrough in the effort to address growing international concern about drug trafficking and its associated money laundering came in 1988 with the conclusion in Vienna of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Countries which sign up to the Vienna Convention commit themselves to:

- criminalise drug trafficking and associated money laundering;
- enact legal statutes for the confiscation of the proceeds of drug trafficking;
- 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 provides a comprehensive definition of money laundering, which has been the basis of virtually all subsequent legislation. It is 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 provides for money laundering to be an internationally extraditable offence.

The scope of the Vienna Convention was restricted to drug-related money laundering because no other crime had an internationally recognised definition.

3.1.3 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 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 gave impetus to the establishment of an international 'all crimes' money laundering strategy.

3.1.4 The EC Money Laundering Directive

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

3.1.5 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 multilateral judicial assistance'.

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;
- 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 Recommendations

In 1990, the FATF published 40 Recommendations aimed at governments and financial institutions. Together, these recommendations form a comprehensive regime against money laundering and have been accepted world-wide 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.

The recommendations fall into several groups:

Topic	Recommendations
General framework	1–3
Role of national legal systems	4–7
Role of the financial system	8–29
Strengthening of international co-operation	30–40

The recommendations and their interpretative notes are reproduced in full in Appendix A and

form the basis for the guidance set out in Section II 'National Issues and Strategies' and Section III 'Financial Sector Procedures'.

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 has now decided to expand its membership to include a limited number of strategically important countries who can play a major regional role. In 1999, invitations were extended to Argentina, Brazil and Mexico to participate as observers. Following assessments of these countries, all three were admitted to full membership of the FATF in June 2000.

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)
  (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;
- 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 geographical balance.

A list of members of the FATF and its affiliated regional groups is given in Appendix B.

3.1.6 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 UN member states;
- to increase the legal and institutional capacity of states to fight money laundering;
- to increase the capacity of states to undertake successful 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 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 for law enforcement and justice officials in better implementation of anti-money laundering laws.

3.2 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 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 recent years, there has been growing acceptance that setting international standards alone is insufficient. It is also necessary to ensure that the standards are complied with.

Consequently, the World Bank and the IMF have taken on the responsibility for this task, with particular emphasis on the core principles of banking supervision.

The outcome of the IMF/World Bank assessments will be available to the authorities in the countries concerned and should help national authorities to design and carry through programmes to strengthen their financial systems.

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.

3.3 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 and national boundaries have become 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 prevention of money laundering, it is recognised as essential that all financial centres in the world should have comprehensive control, regulation and supervisory 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 rules and practices that obstruct international co-operation against money laundering. The criteria under which countries will be assessed, which cover domestic prevention or detection of laundering, government supervision and the successes of money laundering investigations, are set out in Appendix C.

The FATF's work on these so-called 'Non Co-operative Jurisdictions' will cover all significant financial centres both inside and outside its membership. If 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:

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.