

# Caribbean Financial Action Task Force

## REVISED CFATF 19 RECOMMENDATIONS <sup>(1)</sup><sup>(2)</sup>

### Anti-Money Laundering Authority

1. Adequate resources need to be dedicated to fighting money laundering. In countries where experience in combating money laundering is limited, there need to be competent authorities that specialize in money laundering investigations and prosecutions and related forfeiture actions, advise financial institutions and regulatory authorities on anti-money laundering measures, and receive and evaluate suspicious transaction information from financial institutions and regulators and currency reports which are filed by individuals or institutions.

### Crime of Money Laundering

2. Consistent with recommendation 5 of the **Financial Action Task Force** and recognizing that the objectives of combating money laundering are shared by CFATF members, each country in determining for itself what crimes ought to constitute predicate offences, should be fully aware of the practical evidentiary complications that may arise if money laundering is made an offence only with respect to certain very specific predicate offences.
3. In accordance with the **Vienna Convention**, each country should, subject to its constitutional principles and the basic concepts of its legal system, criminalize conspiracy or association to engage in, and aiding and abetting drug trafficking, money laundering and other serious offences and subject such activities to stringent criminal sanctions.
4. When criminalizing money laundering, the national legislature should consider:
  - a. extend money laundering predicate offences beyond narcotics trafficking to include all serious crimes;
  - b. whether money laundering should only qualify as an offence in cases where the offender actually knew that he was dealing with funds derived from crime or whether it should also qualify as an offence in cases where the offender ought to have known that this was the case;
  - c. whether it should be relevant that the predicate offence may have been committed outside the territorial jurisdiction of the country where the laundering occurred;

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<sup>1</sup>The Aruba Conference on Money Laundering in June 1990 produced 21 recommendations. These are the 19 which were adopted at the Kingston Ministerial Meeting on Money Laundering in November 1992.

<sup>2</sup>During Council IV (held in Cayman Islands) it was decided to endorse the Revised 40 Recommendations. A working group examined the impact of these revised Recommendations on the CFATF 19 Recommendations and Council V (held in British Virgin Islands, October 20<sup>th</sup>, 1999) decided to modify some of the CFATF 19 Recommendations.

- d. whether it is sufficient to criminalize the laundering of illegally obtained funds, or whether other property that may serve as a means of payment should also be covered.
5. Where it is not otherwise a crime, countries should consider enacting statutes that criminalize the knowing payment, receipt or transfer, or attempted payment, receipt or transfer of property known to represent the proceeds of drug trafficking, serious crimes or money laundering where the recipient of the property is a public official, political candidate, or political party. In countries where it is already a crime, countries should consider the imposition of enhanced punishment or other sanctions, such as forfeiture of office.

### **Privilege**

6. The fact that a person acting as a financial advisor or nominee is an attorney, accountant, stockbroker or other professional, should not in and of itself be sufficient reason for such person to invoke an attorney-client privilege, or any other confidentiality clauses.

### **Confiscation**

7. Confiscation measures should provide for the authority to seize, freeze, and confiscate, at the request of a foreign state, property in the jurisdiction in which such property is located regardless of whether the owner of the property or any persons who committed the offence making the property subject to confiscation are present or have ever been present within the jurisdiction.
8. Countries should provide for the possibility of confiscating any property that represents assets that have been directly or indirectly derived from drug offences or related money laundering offences (property confiscation), and may also provide for a system of pecuniary sanctions based on an assessment of the value of assets that have been directly or indirectly derived from such offences. In the latter case, the pecuniary sanctions concerned might be recoverable from any asset of the convicted person that may be available (value confiscation).
9. Confiscation measures may provide that all or part of any property confiscated be transferred directly for use by competent authorities, or be sold and the proceeds of such sales deposited into a fund dedicated to the use by competent authorities in anti-narcotics and anti-money laundering efforts.
10. Confiscation measures should also apply to narcotic drugs and psychotropic substances, precursor and essential chemicals, equipment and materials used or destined for the illicit manufacture, preparation, distribution and use of narcotic drugs and psychotropic substances.

### **Administrative Authorities**

11. In order to implement effectively the recommendations of the **Financial Action Task Force**, each country should have a system that provides for bank and other financial institution supervision, including:

1) licensing of all banks, including offices, branches, and agencies of foreign banks whether or not they take deposits or otherwise do business in the country (so-called offshore shell banks), and

2) the periodic examination of institutions by authorities to ensure that the institutions have adequate anti-money laundering programs in place and are following the implementation of other recommendations of the **Financial Action Task Force**.

Similarly, in order to implement the recommendation of the **Financial Action Task Force**, there needs to be effective regulation, including licensing and examination, of institutions and businesses such as services that make them vulnerable to money laundering.

12. Countries need to ensure that there are adequate border procedures for inspecting merchandise and carriers, including private aircraft, to detect illegal drug and currency shipments.

### **Record-keeping**

13. In order to ensure implementation of the recommendations of the **Financial Action Task Force**, countries should apply appropriate administrative, civil, or criminal sanctions to financial institutions and also businesses or professions which are not financial institutions that fail to maintain records for the required retention period. Financial institution supervisory authorities as well as supervisory authorities for businesses and professions which are not financial institutions must take special care to ensure that adequate records are maintained.

### **Currency Reporting**

14. Countries should consider the feasibility and utility of a system that requires the reporting of large amounts of currency over a certain specified amount received by businesses other than financial institutions either in one transaction or in a series of related financial transactions. These reports would be analyzed routinely by competent authorities in the same manner as any currency report filed by financial institutions. Large cash purchases of property and services such as real estate and aircraft are frequently made by drug traffickers and money launderers and, consequently, are of similar interest to law enforcement. Civil and criminal sanctions would apply to businesses and persons who fail to file or falsely file reports or structure transactions with the intent to evade the reporting requirements.

### **Administrative Co-operation**

15. In furtherance of recommendation **30** of the **Financial Action Task Force**, information acquired about international currency flows should be shared internationally and disseminated, if possible through the services of appropriate international or regional organizations, or on existing international networks. Special agreements may also be concluded for this purpose.
16. Member States of the **OAS** should consider signing the **OAS Convention on Extradition**, concluded at Caracas on February 25, 1981.

17. Each country should endeavour to ensure that its laws and other measures regarding drug trafficking and money laundering, and bank regulation as it pertains to money laundering, are to the greatest extent possible as effective as the laws and other measures of all other countries in the region.

### **Training and Assistance**

18. As a follow-up, there should be regular meetings among competent judicial, law enforcement, and supervisory authorities of the countries of the **Caribbean** and **Central American** region in order to discuss experience in the fight against money laundering and emerging trends and techniques.
19. In order to enable countries with small economies and limited resources to develop appropriate money laundering prevention programs, other countries should consider widening the scope of their international technical assistance programs, and to pay particular attention to the need of training and otherwise strengthening the quality and preserving the integrity of judicial, legal and law enforcement systems.

Revised October 20<sup>th</sup>, 1999

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