

Introduction

The problem of money laundering

Background

Money laundering is a global phenomenon that affects all countries in varying degrees. It is the process whereby the proceeds of criminal activity are disguised as legitimate money, so that they can be used by criminals for further activities.

Commonwealth Heads of Government, when they met in Limassol, Cyprus, in 1993:

“... identified money laundering as a serious threat to financial systems worldwide and agreed that the Commonwealth should support enhanced international co-operation in combating this financial crime. They commended the 40 Recommendations drawn up by the Financial Action Task Force (the international body founded for this purpose in 1989), urged steps to be taken for their early implementation and asked Commonwealth Law Ministers, Finance Ministers and the Secretary-General to see how best to carry this forward. They welcomed the formation of the Caribbean Financial Action Task Force. They also agreed to invite Law Ministers and Finance Ministers to examine how Commonwealth countries could best work collectively to combat the laundering of proceeds of all types of serious crime, through appropriate legislation and maintaining regulatory standards.”

Commonwealth Law Ministers at their 1993 meeting:

“expressed their desire that the issue of money laundering be addressed as a matter

of urgency and their resolve, individually and collectively, to put in place comprehensive provisions criminalising money laundering in respect of the proceeds of all serious crimes, facilitating the disclosure by financial institutions of information giving rise to suspicion of money laundering activities, enabling confiscation of the proceeds of crime, making money laundering extraditable, and promoting international co-operation in the investigation and prosecution of money laundering and in confiscation proceedings.”

At the Commonwealth Finance Ministers Meeting in Valetta in September 1994, in the course of their discussions on Commonwealth functional co-operation, several Finance Ministers expressed views on money laundering. In particular:

The representative of the Minister of Finance of **Australia** noted that it had implemented the 40 Financial Action Task Force (FATF) Recommendations, and suggested that all other Commonwealth members should do likewise.

The representative of the Minister of Finance of **The Bahamas** was concerned that his country should not be used by money launderers; The Bahamas had endorsed work of FATF and had introduced appropriate legislation. The Bahamas also complied with the International Banks and Trusts Code of Conduct on money laundering, and had entered into bilateral agreements with the United States, Britain and Canada in this field.

The representative of the Minister of Finance of **Botswana** endorsed the proposal that the Commonwealth should take action on money

laundering. New Botswana legislation – the Banking Act and an Act on Economic Crime and Corruption – should help to prevent this from taking place in Botswana.

The Chancellor of the Exchequer, from **Britain**, pressed for action to be taken. He said that not only should the laundering of drug trafficking proceeds be tackled, but also the proceeds of other serious offences. It was particularly important for international financial centres to maintain standards; in particular banking confidentiality should not be used to protect criminals. A practical approach would involve financial institutions knowing their customers, and reporting suspicious transactions to the authorities. These institutions must have adequate internal controls and staff training procedures. Financial supervisors should ensure that this was done by those that they regulated. A programme of work within the Commonwealth should have four aims:

- ❖ assisting each government to implement the 40 Recommendations;
- ❖ establishing a mechanism for reporting progress;
- ❖ ensuring adequate communication between law and finance ministries; and
- ❖ keeping in contact with the FATF.

The representative of the Minister of Finance of **Cyprus** strongly supported international efforts to eradicate the problem of money laundering. Cyprus had taken concrete measures to combat it, including ratification of the Vienna and Strasbourg Conventions. The Central Bank had issued detailed instructions to all financial institutions based on the FATF Recommendations.

The Prime Minister of **Dominica** suggested that it would be helpful if the Commonwealth could draw up a blacklist of persons convicted of or involved in money laundering. It would also be helpful if legislation from countries already taking action could be made available to other Commonwealth governments.

The Minister of Finance and Economic Affairs of **The Gambia** welcomed a Commonwealth initiative on money laundering, and noted that it would need to take account of the need to balance effective steps to combat money laundering with the need to maintain banking confidentiality.

The Minister for Finance and Economic Planning of **Ghana** also endorsed the idea of a Commonwealth initiative on money laundering, and offered to co-operate fully in dealing with this on a multilateral basis, and without undermining faith in the banking system.

The Minister of Finance of **Namibia** called for concerted action by Commonwealth countries in imposing heavy penalties on persons convicted of carrying out illegal transactions.

The Minister of Finance of **Nigeria** noted that his country was working closely with the United States on a bilateral basis to combat laundering.

The Adviser on Finance and Economic Affairs to the Prime Minister of **Pakistan** supported the idea of work on money laundering, which should cover corruption and illicit payments, as well as tax evasion.

The Prime Minister of **St Vincent and the Grenadines** noted that money laundering was a universal problem requiring a collective response. He urged ratification of the Vienna Convention, and recommended a number of broad guidelines for Commonwealth action:

- ❖ a commonly acceptable definition of money laundering;
- ❖ asset sharing arrangements;
- ❖ a balance between bank secrecy and reporting suspicions;
- ❖ a framework for judges and magistrates to share information; and
- ❖ the provision of legal protection for money launderers as a fundamental human right.

The Minister of State in the Ministry of Finance of **Singapore** said that he supported the need for action on drug trafficking and money

laundering; it was Singapore's experience that a well regulated and strictly enforced regime encouraged rather than inhibited the growth of the financial services sector. Singapore had endorsed the FATF Recommendations and brought into force laws to combat money laundering.

The Minister of Finance and Economic Planning of **Uganda** said that one way of dealing with money laundering would be to assist producer countries to restructure their economies away from such problems.

The Acting Senior Minister of Finance of **Zimbabwe** said that his country was developing legislation requiring reporting of suspicious transactions, while maintaining secrecy. The legislation would also empower relevant authorities to confiscate the proceeds of criminal activity.

Following this discussion, Finance Ministers decided to include the following in their Communiqué:

"In response to the call by Commonwealth Heads of Government, [Finance] Ministers requested the Secretary-General to convene a meeting of relevant senior finance officials to identify appropriate strategies for, and review progress in, taking this matter forward in order to enable a report to be made to the 1995 Commonwealth Heads of Government Meeting."

Why it is important to take action against Money Laundering

By its very nature, money laundering is a hidden activity, and it is impossible to measure its scale directly. However estimates may be made indirectly, on the basis of assessments of the level of criminal activity such as narcotics and arms trafficking, financial fraud and organised crime, combined with evidence from successful money laundering investigations. From these calculations it has been suggested that criminals may be laundering up to US\$ 500 billion globally each year.

There are four principal arguments for tackling money laundering:

- ❖ failure to prevent money laundering permits criminals to benefit from their actions, thus making crime a more attractive proposition. It also allows criminal organisations to finance further criminal activity. Both of these factors will tend to increase the level of crime;
- ❖ the unchecked use of the financial system for this purpose has the potential to undermine individual financial institutions, and ultimately the entire financial system; it could also have adverse macro-economic effects and affect the exchange rate through large transfers of capital flows;
- ❖ at the same time, unchecked laundering may engender contempt for the law, thereby undermining public confidence in the legal system and in financial systems, in turn promoting economic crimes such as tax evasion;
- ❖ ultimately the accumulation of economic and financial power by criminal organisations can undermine national economies and democratic systems.

At the same time it is clear that effective mechanisms to combat money laundering can bring economic and developmental benefits to those countries that adopt them.

International Initiatives

Concerted international action to combat money laundering began in the 1980s, and three particular initiatives stand out.

The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). Article 3 of this Convention provides a comprehensive legal 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 Commonwealth countries. As at 28 February 1995, 26 Commonwealth countries were states party to the Vienna Convention.

Basle Committee on Banking Regulations and Supervisory Practices: December 1988 Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering (The Basle Statement of Principles). This document outlines some basic policies and procedures that banks' managements should ensure are in place in order to assist in the suppression of money laundering on both the national and international level. These procedures covered customer identification, compliance with laws and co-operation with law enforcement authorities.

The Financial Action Task Force on Money Laundering (FATF). The FATF was established initially by the 1989 Economic Summit. Its membership has now widened to cover 26 governments, of which five are Commonwealth members (Australia, Britain, Canada, New Zealand and Singapore) and a sixth, Hong Kong, is a British dependency. In early 1990 the FATF published 40 Recommendations aimed at governments and financial institutions, which together comprise a comprehensive regime against money laundering. The Recommendations fall into separate groupings, covering their General Framework (Recommendations 1-3), improvement of national legal systems to combat money laundering (Recommendations 4-8), enhancement of the role of the financial system (Recommendations 9-29) and strengthening of international co-operation (30-40). They have been accepted worldwide as one of the most comprehensive bases for tackling money laundering, and were commended by Commonwealth Heads of Government in 1993. A full list of the 40

FATF Recommendations, which were revised in June 1996, is in Annex C.

The Commonwealth Secretariat has worked closely with the FATF in recent years, organising and participating in a number of seminars and workshops addressing the legal, financial and law enforcement issues raised by money laundering.

Key elements of a Strategy against Money Laundering

Experience among FATF members and other countries that have sought to introduce comprehensive anti-money laundering regimes has suggested that there are five essential elements in any viable strategy. These are, with the relevant FATF Recommendations:

- ❖ the **criminalisation** of the strategy of money laundering. In some cases existing charges of handling or receiving stolen property may be a means of tackling laundering, but this does not usually apply to trafficking proceeds. It is also often difficult to prove the **knowledge** element required in these cases – that the accused **knew** that the money in question derived from crime. Most specific money laundering legislation now only requires that a person knows or ought reasonably to know that money represents the proceeds of crime. These issues are addressed in FATF Recommendations 1, 4, 5 and 6;
- ❖ a requirement on financial institutions to **know their customers** and to **keep records of transactions**. This is so that investigators will have an audit trail that will lead them to the money. The more comprehensive the audit trail, the less effective will be the launderer's attempts to conceal their assets. These issues are addressed in FATF Recommendations 2, 9-15, 21-22 and 25-29;
- ❖ powers to **trace, freeze and confiscate** criminal proceeds, keeping in mind the

need to maintain an appropriate level of confidentiality to protect legitimate customer interest and to ensure confidence in the financial system. In particular it is vital that investigators can have rapid access to account information and other such data where it is needed to progress their investigations. Banks and financial institutions, who do not usually wish to have criminal customers, will normally be happy to co-operate with investigators, providing that the latter have the necessary legal authority (which in turn protects the financial institutions from civil suit for breach of confidentiality). These issues are addressed in FATF Recommendations 1, 7 and 8;

- ❖ effective mechanisms for **international co-operation**. This will include the ability to assist in investigations by appropriate overseas authorities and the ability to provide evidence for judicial proceedings in

other jurisdictions. This is a topic that is best addressed through multilateral conventions and bilateral treaty arrangements. These issues are addressed in FATF Recommendations 3 and 30-40; and finally

- ❖ a mechanism for **alerting the authorities** to potential cases of money laundering. This is addressed by FATF Recommendations 16-20, 23 and 24.

Of these five elements, two – the **criminalisation** of money laundering and the introduction of powers to **trace, freeze and confiscate** criminal proceeds – are primarily matters for Law Ministers. A further two – **customer identification** and **alerting the authorities** – are primarily for Finance Ministers. International co-operation is of concern to both as promoted through carefully crafted bilateral and multilateral treaties.