

Key Issues, Action Steps and Conclusions

Action steps

Introduction

Many of the topics identified in this paper are technical matters, on which Senior Officials may wish to comment and reach a good measure of agreement in the course of their deliberations in Sri Lanka. Decisions in respect of other issues could be taken at the political level. For Senior Officials the main purpose of discussing these subjects will be to distil the key underlying issues, so that Finance Ministers can be presented with the clearest possible basis for reaching their conclusions.

The practical points include:

- ❖ the introduction of legislation where it is not already in place;
- ❖ the establishment of central unit for handling suspicion disclosures, with support for its role at the highest political level;
- ❖ a commitment by financial supervisors to cooperate closely with these central units;
- ❖ agreement that financial supervisors to produce guidance notes, in consultation with all interested parties;
- ❖ agreement to the establishing of a network of agreements between financial supervisors and others in Commonwealth countries to facilitate international co-operation;
- ❖ the introduction of a self-evaluation procedure;
- ❖ agreement on a role for the Secretariat,

including research on new issues, co-ordination of the self evaluation process, liaison with FATF, acting as clearing house for technical assistance, and assistance with implementation of the model law.

The types of proposal that might be put to Finance Ministers are discussed below.

Legislation

Some Commonwealth members have already introduced comprehensive legislation to combat money laundering. Other members have legislation addressing some of the elements that have been discussed in this paper. Some have no money laundering legislation at all.

The Commonwealth Secretariat has produced a draft *Model Law for the Prohibition of Money Laundering*. This is intended for common law countries, and covers all the issues addressed by the 40 FATF Recommendations and discussed in this paper. Adoption of legislation based on the Model will allow all Commonwealth countries who do not yet have their own comprehensive legislation to meet the target endorsed by Heads of Government.

Senior Officials of Law Ministries are to discuss the Model at their meeting in Malta at the end of May. After taking account of any modifications proposed there, or by Senior Finance Officials in Sri Lanka, the law will be available for implementation, with the Secretariat able to offer assistance in adapting it to any particular local requirements within individual Commonwealth countries.*

* The Model Money Laundering Bill prepared by the Secretariat was presented to Law Ministers when they met in April 1996.

Senior officials might therefore be able to recommend to Finance Ministers that legislation, using the Model Law if desired, might be introduced by all Commonwealth countries at the earliest opportunity.

Central units for handling suspicion disclosures

It is clear from the discussion in this paper that a national central unit for handling suspicious disclosures is a crucial element in any anti-money laundering regime. The location of such a unit within the structure of government, supervision and law enforcement will, however, depend upon the situation prevailing in each individual Commonwealth member. Finance Ministers might be invited to give a commitment to the establishing of such a unit in each Commonwealth country where one is not already established.

For a central unit to be effective, it must be adequately resourced, and must be able to rely upon strong support at the highest political level. It is therefore important that Finance Ministers, Central Bank Governors and Heads of Government be requested to give the necessary public commitment to each central unit, if it is established, and to the role for which it is established.

The role of financial supervisors

Wherever the central unit is established it will need to work closely with the existing financial supervisory agencies, so that the respective tasks of the different organisations can be carried out efficiently without unnecessary additional administrative burdens being placed on financial institutions. Senior officials might recommend to Finance Ministers that their commitment to action against money laundering include a willingness to promote co-operation among all the agencies concerned, also at the highest level.

Guidance notes

In order to assist financial institutions to operate new money laundering legislation efficiently, it is important that they are given guidance by the

supervisory authorities. Senior officials might recommend to Finance Ministers that the supervisory authorities, in conjunction with all other agencies with a role in the combatting of money laundering, and with the financial sector itself, might draw up guidance notes setting out best practice in all the areas covered by the legislation, and offering examples of money laundering cases and potentially suspicious transactions.

International co-operation

Senior officials of Commonwealth Law Ministries are already examining the scope for a network of agreements between Commonwealth business and financial regulatory agencies, to complement the agreements and treaties being established to assist co-operation in criminal matters. Clearly this work will be of assistance in developing international co-operation in cases of money laundering.

The situation may be complicated by the treatment of information relating to fiscal offences, which may fall outside existing tax treaties and mutual legal assistance treaties. Senior officials might therefore like to consider how they can take forward work in this area in consultation with their Law Ministry colleagues, and with the Secretariat. Finance Ministers might be invited to support this proposal.

Self-evaluation

One of the key elements of the strategy to tackle money laundering is a process of self-evaluation. Commonwealth countries who are members of the Financial Action Task Force or the Caribbean Financial Action Task Force are already familiar with this process. Self-evaluation serves two main purposes. Firstly it allows all Commonwealth countries to see how they are progressing in taking forward the mandate of Heads of Government to implement the FATF Recommendations. Secondly, and equally importantly, it allows those countries that are in need of technical assistance in carrying the project forward to analyse their needs clearly, so that an appropriate assistance programme can be devised.

Those countries that are members of FATF or CFATF might agree to the respective secretariats of those two task forces passing on the responses to their self-evaluation questionnaires to the Commonwealth Secretariat. Those countries who are not members of either task force might agree to complete a self-evaluation questionnaire modelled closely on the FATF version. The Commonwealth Secretariat could then produce an analysis of the responses to these questionnaires for the possible consideration of Finance Ministers.

If Senior Finance Officials endorse this approach, the proposal could be discussed at the Finance Ministers Meeting in Jamaica and if Ministers were to approve, the first questionnaires could be issued before the end of 1995.

The role of the Secretariat

In light of the above points, Senior Finance Officials might consider recommending that the Commonwealth Secretariat be given a number of responsibilities, subject to resource availability:

- ❖ assistance to Commonwealth countries in adapting and implementing the draft Model Law for the Prohibition of Money Laundering;
- ❖ liaison with both the FATF and CFATF Secretariats to ensure that Commonwealth countries remain up to date in their understanding of money laundering and strategies to combat it;
- ❖ co-ordination of the self-evaluation process; and
- ❖ acting as a clearing house for requests for and offers of technical assistance.

Key issues for possible further discussion by finance ministers

Introduction

In addition to the technical issues discussed above, there remain a number of more complex political issues which Finance Ministers might wish to discuss in more depth.

Compatibility with economic and financial reform

Finance Ministers will need to satisfy themselves that measures to tackle money laundering are compatible with the steps they are taking to reform their countries' economic and financial systems. The evidence suggests not only that action against money laundering is compatible with economic and financial reform, but that such action complements and reinforces those reforms if appropriately implemented.

Application of money laundering legislation to economic crime

Action against money laundering in developing countries can make a valuable contribution to combatting economic crime, and in particular tax evasion. This is an issue that has in general not been addressed by the Financial Action Task Force. International co-operation may well be complicated by an unwillingness on the part of many countries to provide information. Finance Ministers might be invited in particular to consider whether it is possible to agree upon a framework for the exchange of information relating to economic and fiscal crime between Commonwealth countries.

The parallel economy

A related issue which again has received relatively little consideration in the past is the implications for action against money laundering of the existence in many countries of a parallel economy. The fact that these parallel economies are largely cash-based implies that action to reduce the use of cash will, in the long term, address this problem. In the short to medium term, however, Ministers might wish to consider interim steps, such as prohibiting the use of cash for transactions above a certain size, or transactions within particular sectors of the economy (such as the property market).

Implementation of FATF Recommendations in international financial centres

Many Commonwealth countries are looking to the establishment of an international financial

sector as a key element in their economic growth and development. For these countries action to combat money laundering is an important part of the process of demonstrating an appropriate level of probity and soundness. However it is necessary that such action should be handled with care. Finance Ministers might wish to discuss this, and to consider how effective action against money laundering can be presented publicly without giving rise to unjustified fears over the erosion of client confidentiality, credibility of financial institutions and efforts of countries to develop financial centres.

Technical assistance

Officials might wish to discuss in Sri Lanka what technical assistance will be needed by countries moving to establish money laundering counter-measures, and what might be available from Commonwealth countries and elsewhere. Particular areas that will be important include:

- ❖ assistance with drafting and implementing legislation that is sufficiently wide-ranging and effective to meet the remit endorsed by Heads of Government;
- ❖ assistance with training staff within government departments and regulatory authorities to oversee the operation of systems and controls against money laundering;

- ❖ assistance with training within financial institutions so that they can play their part in combatting money laundering.

While officials could identify what assistance will be needed and might be available, it would be for Finance Ministers to consider how such assistance could be mobilised and deployed.

Timetable

Finally it would be for Finance Ministers to consider whether a timetable could be set for action on the various issues discussed above.

Conclusion

This paper has set out the background to the decision by Finance Ministers to convene a meeting of senior officials to discuss the economic and financial problems of money laundering and the way to tackle them. It has identified a number of issues for discussion, and has set out a possible way forward. Senior officials are invited to discuss all these points in the course of the Sri Lanka meeting. Following their discussions they are invited to report their conclusions to Finance Ministers at their meeting in Kingston, Jamaica, later in the year.