Preface

These model legislative provisions relating to money laundering, terrorism financing, proceeds of crime, civil forfeiture and sanctions are the outcome of a collaboration between the Commonwealth Secretariat, the International Monetary Fund (IMF) and the United Nations Office on Drugs and Crime (UNODC).

The model provisions form a starting point for states to evaluate the measures that should be incorporated into their domestic law to prevent, detect and effectively sanction money laundering and terrorism financing and to recover the proceeds of crime, with the overall objective of maintaining compliance with the revised Financial Action Task Force (FATF) Recommendations.

Using the model legislative provisions

The model legislative provisions aim to assist states in reviewing or updating their legislative framework so that it conforms with international standards. The model provisions revise and update the Common Law Model Provisions Joint Project of the IMF, UNODC and the Commonwealth Secretariat of April 2009 and are based upon the relevant international instruments concerning money laundering and terrorism financing, including confiscation and forfeiture, as set out in the FATF 40 Recommendations of 2012 and FATF Best Practices.

The model legislative provisions now include at Part XI legislative provisions for implementing United Nations (UN) financial sanctions under the Al-Qaida and 1988 sanctions regimes. It should be borne in mind that there are also United Nations Security Council Resolutions (UNSCRs) related to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing which, under FATF Recommendation 7, require implementation in the same manner.

Jurisdictions considering these legislative provisions should take care to adapt the underlying concepts and specific language to accord with constitutional and fundamental legal principles in their systems and to ensure that the provisions are compatible with other legal concepts and existing legislation. These provisions can be supplemented with additional measures that jurisdictions consider are suited to recovering the proceeds of crime, money laundering and terrorism financing in the national context.

The various parts of the model legislative provisions are intended to be free-standing modular units, although there is a degree of interdependence. Taken together they present a comprehensive legal framework. Definitions appear at the beginning of each part. If only selected parts are used, adjustments to definitions may be necessary.

The model legislative provisions provide for the criminalisation of money laundering and terrorism financing and related offences, for the recovery of proceeds and instrumentalities of crime, for preventive and investigative measures, for the establishment of a financial intelligence unit (FIU), for the detection of cross-border transportation of cash and bearer negotiable instruments, for the implementation of international obligations in relation to financial sanctions, and for ancillary purposes. The model legislative provisions also set out two separate mechanisms for depriving criminals of the proceeds and instrumentalities of crime: first, through confiscation following a criminal conviction; and, second, through non-conviction-based measures pursuant to civil process, also referred to as civil forfeiture.

However, the scope of these model legislative provisions does not extend to the following FATF 40 Recommendations:

(i) FATF Recommendation 6 pertaining to the requirements under UNSCR 1373 and successor resolutions to apply targeted financial sanctions related to terrorism and terrorism financing;

(ii) FATF Recommendation 7 pertaining to targeted financial sanctions related to proliferation of weapons of mass destruction;

(iii) FATF Recommendations 24 and 25 on transparency of legal persons and legal arrangements;

(iv) FATF Recommendation 8 relating to non-profit organisations;

(v) FATF Recommendation 14 pertaining to money and value transfer services; and

(vi) a comprehensive framework for mutual legal assistance and extradition as required under FATF Recommendations 36–40.

Included, as an annex, is a suggested constitution for an FIU.

These model legislative provisions also include several features to assist drafters to understand the concepts and to assist in their consideration of the various alternatives:

- 'Drafting notes' provide explanations of selected provisions and suggest background, context, good practice and variations.
- Some provisions present 'variants' and 'optional language'. A 'variant' provides two approaches for authorities to consider. Authorities should adopt one or the other, or their own separate approach. 'Optional language' is italicised and sets forth an addition that may be included or not.
- Time periods for orders and other matters, whether days, months or years, appear in brackets. The bracketed number is a suggestion. Each jurisdiction will have its own time period norms, which should be incorporated into these model provisions.
- A number of measures require the setting of thresholds above which supervisory and enforcement measures preventing currency and/or cash misuse ought to apply. These are referred to in the provisions as 'the designated amount'. Setting the

correct threshold level is critical and individual to each jurisdiction; it necessarily depends on cultural behaviour, commercial practices and an assessment of risk. Where values are given, they are for the purposes of practical example only, leaving a margin of discretion for the drafter. It is strongly recommended that states take note of the current relevant FATF Recommendation when setting the right threshold.

Experts, including participants from the Commonwealth Secretariat, the IMF and the UNODC, met in London between 2013 and 2015 and updated the model legislative provisions. While considerable effort was made to avoid inconsistencies and drafting errors, a review of the model legislative provisions by drafting authorities as well as the comparisons that are likely to take place with existing legislation and experience gained through actual use of these or similar provisions are all likely to lead to suggestions for further adjustments and change. Comments and suggestions and an active participation by users of the model legislative provisions are welcome in this endeavour, and should be directed to:

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