



Money Laundering in West Africa: An Analysis

Potential Emerging Market for IFAs

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Contents

ACKNOWLEDGEMENTS	4
ABBREVIATIONS	5
OBJECTIVE.....	6
NAMES AND PROFESSIONAL DESIGNATIONS OF THE REPORT AUTHOR	6
OBJECTIVES AND CIRCUMSTANCES OF THE RESEARCH PAPER.....	6
REPORT APPROACH AND RATIONALE FOR THE SELECTION OF THE APPROACHES.....	7
DOCUMENTS AND SOURCES RELIED UPON TO PREPARE THE REPORT AND SCOPE LIMITATION	7
MONEY LAUNDERING IS A CORROSIVE EPIDEMIC.....	8
MONEY LAUNDERING –DEFINED.....	8
MONEY LAUNDERING METHODS	9
FINANCIAL ACTION TASK FORCE (FATF) DEVELOPS STANDARDS TO COMBAT MONEY LAUNDERING	11
FATF RECOMMENDATIONS AND WEST AFRICAN COUNTRIES	12
IMPACT OF MONEY LAUNDERING ON DEVELOPING COUNTRIES	13
THE LINK BETWEEN MONEY LAUNDERING AND INTERNATIONAL AID	15
WESTERN AFRICA.....	16
PRESENTATION OF THE REGION	16
ECONOMY OF THE WESTERN AFRICA REGION	17
GOVERNANCE IN THE WEST AFRICAN REGION.....	18
CRIMINALITY IN WESTERN AFRICA.....	19
DEVELOPMENT OF ORGANIZED CRIME.....	19
WEAKNESS IN LAW ENFORCEMENT AGENCIES	20
MODE OF OPERATIONS OF ORGANIZED CRIME IN WEST AFRICA.....	21
TYPES OF ORGANIZED CRIME IN WEST AFRICA	21
WEST AFRICA’S REPOSES TO ITS MONEY LAUNDERING THREATS, AND CALL FOR ADHERENCE TO FAFT STANDARDS.....	23
PRESENTATION- GIABA (ANTI-MONEY GROUP IN WEST AFRICA).....	25
MANDATE	25
EVOLUTION OF GIABA	27
OUTSTANDING PROBLEMS AND EMERGING ISSUES	28
GIABA WORKING GROUP ON TYPOLOGIES	29
GIABA TYPOLOGY REPORT ON MONEY LAUNDERING THROUGH THE REAL ESTATE SECTOR	30
CONCLUSION OF TYPOLOGY EXERCISE	31
CASH-BASED TRANSACTIONS AND CASH COURIERS	33

GIABA’S TYPOLOGY REPORT ON CASH TRANSACTIONS AND CASH COURIERS IN WEST AFRICA	33
RESULTS OF THE EXERCISE BASED ON RESPONDENTS FEEDBACK	36
CASE EXAMPLES IN THE USE OF CASH IN TRANSACTIONS IN WEST AFRICA.....	36
REPUBLIC OF BENIN	40
PRESENTATION	40
ECONOMY	41
GOVERNANCE.....	42
MONETARY POLICY AND THE FINANCIAL SECTOR.....	42
BANK’S KNOWLEDGE OF AML LEGISLATION AND FATF RECOMMENDATIONS	43
USE OF BANKING INSTITUTIONS IN THE COUNTRY	44
CRIMINALITY AND CORRUPTION IN BENIN	46
CRIMINALITY	46
CORRUPTION.....	47
CENTIF AND ANTI-MONEY LAUNDERING LEGALISATION OF BENIN (LAW # 2006-14)	49
CENTIF MANDATE AND PERFORMANCE INDICATORS	49
MANDATE	50
PERFORMANCE INDICATORS FOR CENTIF	51
CONTRAST	52
CANADIAN AML LEGISLATION VS. BENINESE’S AML LEGISLATION	52
OBLIGATIONS TO REPORT SUSPICIOUS TRANSACTIONS	52
REPORTING OF SUSPICIOUS TRANSACTIONS	53
INABILITY TO ESTABLISH IDENTITY	54
POLITICAL EXPOSED FOREIGN PERSONS.....	54
CONCLUSION	55
AREAS OF NON-COMPLIANCE WITH FATF 40 PLUS 9 RECOMMENDATIONS	56
LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES	57
FINANCING OF TERRORISM.....	57
FATF RECOMMENDATION ONE	58
PREVENTIVE MEASURES.....	58
FATF RECOMMENDATION FIVE	58
FATF RECOMMENDATION SIX.....	59
FATF RECOMMENDATION SEVEN	60
FATF RECOMMENDATION TWELVE.....	60
FATF RECOMMENDATION EIGHTEEN	61
SPECIAL RECOMMENDATION NINE CROSS-BORDER REPORTING	61
CONCLUSION ON MEETING FATF RECOMMENDATIONS.....	61
MONEY LAUNDERING EXAMPLE IN BENIN.....	62
CAN ANTI-MONEY LAUNDERING CONTROLS BE EFFECTIVE	64
EMERGING MARKET FOR IFAS.....	66
CONCLUSION	68
APPENDIX A FINANCIAL ACTION TASK FORCE (FATF) - THE 40 RECOMMENDATIONS	69
APPENDIX B-ANTI-MONEY LAUNDERING LEGISLATION ECOWAS (UEMOA).....	91

APPENDIX C- BENINESE AML LEGISLATION 107
APPENDIX D- MAP WEST AFRICAN REGION..... 108
APPENDIX E- MONEY LAUNDERING EXAMPLE 109
APPENDIX F- COMMONLY CITED MONEY LAUNDERING TECHNIQUES 110
APPENDIX G- COURSE OUTLINE ADVANCED TOPICS 115
BIBLIOGRAPHY 118

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Abbreviations

AML/CFT-	Anti-Money Laundering and Crime against financing Terrorisms
CDD -	Customer Due Diligence
CENTIF -	Cellule Nationale de Traitement des Informations Financières (National Structure for Financial Information Treatment)
CFT -	Crime against Financing Terrorisms
DNFBP -	Designated Non Financial Business and Professions
ECOWAS -	Economic Community of West African States
FATF -	Financial Action Task Force
FIU -	Financial Intelligence UNIT
FINTRAC -	Financial Transactions Report Analysis Centre of Canada
FRSB -	Financial Action Task Force Regional Body
GIABA-	Inter-governmental Anti-Money Laundering Group in Africa
GNP-	Gross National Product
IFA –	Investigative and Forensic Accountants
IMF -	International Monetary Fund
NCCT -	Non Cooperative Countries and Territories
OECD -	Organization Economic Co-operation and Development
PCMLTFA -	Proceeds of Crime (Money Laundering) and Terrorist Financing Act
PEP -	Politically Exposed Persons
UNOCD -	United Nations Office of Drug and Crime
UEOMA -	French Acronym for Economic Community of West African States

Objective

This research paper examines the struggles of developing West African countries to effectively combat money laundering. It begins with an introduction to the practice of money laundering itself, its harms and international standards developed to combat money laundering. Background on the West African regions follows, including the author's assessment of money laundering threats facing its countries, as well as details about their historical and present efforts towards money laundering controls and the potential for their effectiveness and benefits. Next our analysis considers the significance of the presumed link between the adoption of international standards by developing countries and international aid. We conclude with a case study examining money laundering and money laundering control in Benin, a West African country dependant on international aid for the survival of its citizens, and whose international aid in the future can be is dependent on the adoption of AML standards of wealthier nations.

Names and professional designations of the Report author

This report was authored by Alexandra Kulovics, a holder of a Bachelor of Commerce degree from McGill University and the designation of Chartered Accountant enrolled as a member of the Quebec Institute of Chartered Accountants since 1994.

Objectives and Circumstances of the research paper

This report was prepared to satisfy the requirements of the research project requirement of the Emerging Issues/Advanced Topics Course labelled IFA 2903 of the Diploma in Investigative and Forensic Accounting Program Class 2009 by the University of Toronto. The assignment requirements are attached in Appendix G.

Report Approach and rationale for the selection of the approaches

The report consists primarily of a survey of publically available information related to the chosen topic, and has been complemented by information gained from interviews with various reliable sources.

Documents and sources relied upon to prepare the report and scope limitation

Documents relied on for the composition of this report are sourced by annotation and listed in the Bibliography beginning on page 117. In addition to those documents, several interviews have been conducted and at the request of the interviewees their names have been not been cited and will remain confidential for the purpose of this paper. The following is a list of the interviewees with the name of the institute and the position the interviewee held at the time of the interview:

1. General Secretary, Member of the FIU , CENTIF Benin
2. Economist, World Bank Office, Cotonou, Benin
3. Financial Director, Société Générale du Benin
4. Compliance Officer, Ecobank Benin
5. Director of Internal Control, Ecobank Benin
6. Legal Counsel, Cabinet Keke Aholou
7. Deputy and President for the Commission of Law and Human Rights, National Assembly Benin

Money Laundering is a Corrosive Epidemic

Money Laundering is a global epidemic and can have a corrosive effect on a country's economy, government and social well being. The International Monetary Fund stated in 1996 that the aggregated size of money laundering in the world is approximately between 2-5% of the world's domestic gross national product.¹ Organized crime and terrorists used money laundering techniques to filter monies generated from illegal activities into legal activities to "clean up" the origins of the funds. In general the illegal monies can be generated from such criminal activities as drug, arms, child trafficking, and political corruption and bribes. The filtering of these illegal funds can lead to the distortion of business decisions, increases the risk of business failures, takes control of economic policy away from government, harms a country's reputation and exposes the nation's people to drug trafficking, smuggling and other criminal activity.²

Money Laundering –Defined

Money laundering is the processing of criminal proceeds in order to disguise their illegal origin. This process is critical as it allows the criminal to enjoy the fruit of his ill-gotten gains without identifying their source.³ The primary purpose of using money laundering techniques is to ensure

¹ http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html

² Matthew McGuire class notes from DIFA program Class IFA1903 Investigative Related Matters Into Class 7

³ http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html

the availability of illegal funds in another context that would have been otherwise unavailable and to fund ongoing cycle of the illegal activity of drugs, arms, gambling etc.⁴

Money Laundering Methods

Money laundering can involve anywhere from three to five independent steps. FATF/OECD defines money laundering as involving three unique steps, placement, layering and integration. However, according to Matthew McGuire MAcc, CA-IFA, CAMS, and AMLP, anti-money laundering expert, consideration should be given to two additional steps, the generation of the illicit funds and the repatriation of the funds to the money launderer's home country or elsewhere.

Step 1-Generation

The primary purpose of money laundering is to legitimize illegal funds but, initially illegal funds have to be generated in order to be laundered. Illegal funds are generated from a large number of criminal activities such as illegal arms sales, drug and child trafficking. Embezzlement, insider trading and bribes (from political corruption), computer, mortgage and identity fraud can also generate huge cash amounts that need to be legitimized; this can be considered the first step in the money laundering process.

Step 2-Placement

Step two of the process is known as the placement stage where the launderer introduces the illegal funds into the financial system.⁵ The first stage is where perpetrators attempt to clean up the funds. This might be where the launderer breaks down the huge amounts into smaller more less conspicuous amounts.

Step 3-Layering

⁴ Journal of Forensic Accounting 1524-5586/Vol. IV(2003),pp 171-180

⁵ http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html

After the funds have been placed into the financial system, the third step is known as layering of the illegal monies. In this phase the launderer engages in a series of movements or conversions to distance the funds from its illegal origins.⁶ For example, the launderer may undertake a series of purchase and sale of various financial instruments or the launderer may simply wire the funds through a series of banks accounts across many different regions or countries.

Step 4-Integration

The fourth step is the integration of the illegal funds by providing an apparently legitimate explanation for the illicit proceeds. Generally at the last two stages is where an Investigative and Fraud Accountant would be involved because it is at these two stages that real businesses are affected and involved in the illegal transactions.

Step 5-Repatriation

The final step can be the repatriation of the funds. The Merriam-Webster dictionary defines repatriation as to restoring or returning to the country of origin or citizenship. It makes sense that launderers would like to return the funds to their home country to benefit their families as well as themselves, either to continue their illegal activities or to spend their riches by buying property and other luxury items.

Although the steps are easily and can be clearly identified, the tracking and discovery of money laundering techniques are not. As the many techniques are uncovered and become known to the financial intelligence units⁷, the police and other organisations involved in the battle against

⁶Ibid

⁷ According to the Egmont Group, a FIU is defined as a central, national agency responsible for receiving, analyzing and disseminating to the competent authorities, disclosures of financial information 1) concerning suspected proceeds of crime and potential financing of terrorism and 2) required by national legislation or regulation in order to combat money laundering and terrorism financing. Interpretative Note concerning the Egmont Definition of a Financial Intelligence Unit

money laundering, organized crime develop new and more modern techniques taking into account the rapid development of technology and using this to their advantage.

In brief, money laundering provides the opportunity to organized gangs and terrorists to operate freely and by using their financial gains to expand and to continue fostering their illegal activities.⁸

This is done with the cooperation and assistance of many financially astute but “bent” advisors.

A list of commonly cited money laundering techniques is included at Appendix F.

Financial Action Task Force (FATF) Develops Standards to Combat Money Laundering

Already in 1988 member states of the United Nations recognized the need to combat organized crime with the signing of the Vienna Convention or United Nations Convention against Illicit Traffic of Narcotic and Psychotropic Substances. The member states noted that enormous financial gains were being generated from these activities which can have a significant impact on government and economic stability when illegal funds are channeled through the financial systems and the economies of countries.⁹ Therefore in 1989, 33 member states recognized and acknowledged that necessary action at an international level was needed to be taken in order to take control of this worldwide dilemma and they banded together in order to fight the global spread of illicit funds that can have detrimental effect on a nation’s economy, people and reputation. Due to the mounting concerns about money laundering and the continued globalization of financial markets, the member states of OECD, of which Canada is a member, at the G7 summit in Paris in the year 1989 created an inter-governmental body known as the Financial Action Task Force (FATF) realizing that globalization implies that strategies must be universally applied. The

⁸ Anti Money laundering and combating the financing of Terrorism, World Bank and IMF Global Dialogue Series, Copyright 2003, pg vii

⁹ United Nations Conventions against the illicit traffic of narcotic drugs and psychotropic substances, 1988, http://www.unodc.org/pdf/convention_1988_en.pdf

purpose of FATF is the development and promotion of policies, at both national and international levels to combat money laundering and terrorist financing. The task force is therefore a policy-making body which works to generate the political will to bring about national legislation and regulatory reforms in the area of money laundering.¹⁰ Shortly after its creation in 1990 FATF established a series of recommendations (40 plus 9 special recommendation- see Appendix A) that have been revised over the years with the latest being in 2003, which were designed to set out a basic framework such as legal, institutional and businesses measures to combat money laundering and are intended for universal application. Michel Camdessus, managing director of the IMF in 1998 stated that all countries must participate and participate enthusiastically or money being laundered will flow quickly to the weakest point in the international system. In this respect FATF plays an especially important role.¹¹

FATF Recommendations and West African Countries

Although many developed nations have taken the certain necessary steps by applying the recommendations of FATF to combat money laundering and terrorist financing, developing nations like those located in Western Africa have lagged behind for many years and are subject to abuse by organized crime.

According to a United Nations Report on Crime and Development in Africa, released in May 2005, Africa is a often a target of organized crime and criminals gangs that frequently exploit the weak administrative, legal and financial structures of African countries by creating an environment that is prone to conventional crime and urban violence.¹²

¹⁰ http://www.fatf-gafi.org/document/57/0,3343,en_32250379_32235720_34432121_1_1_1_1,00.html

¹¹ Money laundering: The Importance of International Countermeasures, Address by Michel Camdessus , Plenary Meeting of FATF on Money laundering Paris, February 10,1998 <http://www.imf.org/external/np/speeches/1998/021098.htm>

¹² Ghana Government on the Offensive Against Money Laundering, G.D Zaney, September 9,2006 <http://www.newtimesonline.com/content/view/full/4907/55/>

Impact of Money Laundering on Developing Countries

According to James D. Wolfensohn, president of The World Bank in 2003, money laundering and the financing of terrorism can have devastating economic and social consequences for countries, especially those in the process of development and those with fragile financial systems. He believes that the illicit financial flow can have the following impact especially on nations in Africa and in particular West and Central Africa.¹³ The follow is a brief list of money laundering's impacts on the economy and the financial institutions:

1. Financial institutions that accept illegal funds cannot rely on those deposited funds as stable funds. At any time large amounts of monies can be transferred out of the accounts and create liquidity and solvency problems. Such transactions can affect the financial institution's reputation and integrity if it is uncovered that the institution had involvement in money laundering schemes.
2. Local businesses may find it difficult it to compete with shell or front companies that are organized by the money launderers who would provide goods and services below market costs. In order to legitimise tainted funds the primary objective of these front companies is not to make a profit but to launder illegal funds.
3. Money laundering may also distort economic sectors and create instability in their respective markets. The monies are laundered into sectors or areas where they are unlikely to be discovered or real return are offered. The funds are then removed from these sectors which can negatively impact on their survival.
4. Currencies and interest rates can be distorted based on the illegal funds being funnelled through various investment practices which are based on other factors than market return.

¹³ Anti-Money laundering and combating the financing of terrorism, World Bank and IMF Global Dialogue Series, 2003, pg viii

5. Money laundering can ruin the reputation of any country that does not condone such practices and can create loss of investor confidence which is essentially to developing countries for their stability and economic growth.¹⁴

The IMF had noted several negative impacts of money laundering, similar to those noted by James.D Wolfensohn of The World Bank; however the IMF adamantly supports the openness and liberation of international financial markets through the abolition of exchange controls. The liberation of the financial sector will assist the developing countries to connect to the interdependent global market.¹⁵ This in line with FATF recommendation 22 (See Appendix A) that countries should monitor the physical cross-border transportation of cash and bearer instruments without impeding the freedom of capital movement and persons which is key in developing countries in Western Africa. Some governments have stated that they could not implement the FATF recommendations because they are in fact contrary to IMF advice to liberalize the financial markets.¹⁶ Developing countries require the financial support, how are developing countries suppose to satisfy both requirements? The IMF believes that gathering information is the key and not the control of the transactions or movement. The utilisation of “**The know your customer**” (KYC) approach of FATF. The IMF ultimately emphasizes the economic costs but we must not forget the social and political aspects of crime and money laundering. One should consider the suffering of the victims and the overall weakening of the social and collective ethical standards. In conclusion the IMF managing director Michael Camdessus stated that countries should attack at the most vulnerable point where the proceeds enter into the financial

¹⁴ Anti-Money laundering and combating the financing of terrorism, World Bank and IMF Global Dialogue Series, 2003,pg vii

¹⁵ Money laundering: Muddying the Macro economy; author Peter J Quirk;
<http://www.worldbank.org/fandd/english/0397/articles/0110397.htm>

¹⁶ Ibid

system.¹⁷ One of the largest negative impacts of the process of liberalisation of the financial markets and currency in Western Africa leaves the door open to money launderers to utilize the weakness in the administrative and legislative structures and lack a technical knowhow by law enforcements agencies. The IMF advocates that not just free markets, but modern financial markets in which there are good measures of transparency and prudential regulation to ensure fairness, soundness and legality of the systems. The Fund believes that the adoption of the FATF recommendations and being a member of FATF is an important part of the systems.¹⁸ The challenge for the developing nations is to put in place effective safe guards such as more stringent legislation, more surveillance and increased technical capacity to combat against the organized crime and various money laundering schemes.

The link between money laundering and international aid

As globalization becomes an increasingly necessary trend in the need for economic survival for any nation, African countries are obliged to take immediate action to in order to show their commitment to meet international standards.

In general, developing countries rely greatly on international funding and exports of their natural resources in order to expand their economies and maintain financial stability. With this mind, an important focus of the governments has been on trying to meet the needs of the international standards and their ability to maintain face in the eyes of international partners and organizations. Increasing pressure is mounting on West African countries to meet performance indicators set by international donors such as education levels, poverty reduction and increased improvement of

¹⁷ Money Laundering: The Importance of International Countermeasures Address by Michel Camdessus Managing Director of the IMF, <http://www.worldbank.org/fandd/english/0397/articles/0110397.htm>,

¹⁸ Ibid

corruption perception indices and improvement in governance at both legal and administrative levels in order to maintain current amounts of aid and with continued hope to increase such funding in the future. In my opinion, international organizations may in the near future require that West African governments implement and maintain AML controls that are in line with international standards.

Western Africa

Presentation of the Region

West Africa is comprised of 15 member states that are known as the Economic Community of West African states (ECOWAS). The member states are not only linked together demographically (see Appendix D) but by cultural and historical reasons due to their colonisation by the British, the French and other European countries. The member states are Benin, Burkina Faso, Cap Vert, The Ivory Coast, Ghana, Gambia, Guinea, Guinea Bissau, Liberia, Mali, Nigeria, Niger, Senegal, Sierra Leone and Togo. The total mass area covered by the ECOWAS member is approximately 7.9 million km² about 1.8 times the size of the European Union and has an approximate population of 315 million people reported in 2007 which should expand to approximately 480 million by the year 2030. The average density of the population is 40 people for each km². The gross national product for the region in 2007 was estimated at 225 billion US dollars. The weak diversification of the economies, an average income of \$700 US per inhabitant or \$0.71 per capita and extremely low indicators of education and health explains why 13 out of the 18 countries located in West Africa are considered amongst the poorest and least developed countries in the world. One of the

countries located in the ECOWAS region that is not classified as a country the least advanced is Nigeria; it represents almost half of the GNP of the West African region.¹⁹

Economy of the Western Africa Region

Agriculture is the main foundation of the Western Africa nations. Most of the production is derived from family owned business and in general covers 85% of their food needs for the region. In West Africa the export of agriculture products represent approximately 20% of the commercial revenues of the region. Agriculture, mining and petrol resources dominant the West African economies while the manufacturing industry in very limited in nature. The aforementioned sectors however are rapidly being dematerialized due to the increase of services and information technology.²⁰

The West African economy realises heavily on an informal economy and is considered a very important engine which drives the integration of the regional economies. The economic exchanges between the ECOWAS region represents approximately three fourths of the GNP which makes this region in particular susceptible to conflicts in the neighbouring ECOWAS countries. Investment within the region not only relies on interior investment in the regions (approximately 20% of the GNP (12% excluding Nigeria) but heavily on development assistance from the European Union , the World Bank , the IMF and other international organizations, which according to the OECD report on West African region represents 10% of the regions GNP.²¹ The informal sector contributes to the GNP of the region between 40 to 75 % and employs approximately 50-80% of the local labour available.²² The belief is that the informal sector assists in distributing wealth among the people, provides economic security for the people and it makes it easier to do business among the various nations in the region. However, the negative aspects are that the informal sector

¹⁹ West African Studies, West African Perspectives Resources for Development, OECD 2009,p 19

²⁰ West African Studies, West African Perspectives Resources for Development, OECD 2009, p.19

²¹ Ibid p.16

²² Ibid, p.70

does not contribute to public finances that contribute to the urbanization in the regions, its determines the government's ability in maintaining a stable monetary currency, increases contrabands, impacts the formal financial sectors and local businesses that work within the formal economy. The informal sector continues to remain an important way of life in the West African region due to the lack of technical capacity, the necessary financing to provide appropriate training and the unstable or sometimes non-existent educational structures and at times political will. Accordingly to the IMF all nations in the sub-Saharan which includes the ECOWAS member states should pursue policies conducive to macroeconomic stability and greater efficiency in production of agricultural products and the management of public finances. In many of the countries budget deficits need to be reduced by weaning out the informal sector, the financial sectors need to be continued to be liberalized and monitored and the process of privatisation has to be intensified.²³

Governance in the West African region

The formal rules of governance of countries in the West African region have most commonly been inspired by institutional models that have been imported to the countries by colonisations. The universality of the regulations has rarely been questioned. The ambitions of the governance system in West Africa is to try to balance the regular day traditional practices of the population with those of the need to modernize and increase regulations that are necessary to meet their commitments to achieve international standards.²⁴ The majority of the countries in the region have put in place formal democratic mechanisms that allow for a political system to have regular elections and various political parties. Although the region has put in place free and regular elections, international observers believe that the elections are subject to vast forms of fraud and

²³ a quarterly magazine of the IMF, March 1999, Volume 36 Number 1)
<http://www.imf.org/external/pubs/ft/fandd/1999/03/hernande.htm>

²⁴ West African Studies, West African Perspectives Resources for Development, OECD 2009, p.28-29

corruption.²⁵ The fact that the elections can be rot with fraud and corruption provides the ability of organized crime to have elected political parties that can potentially be bribed and corrupted. This allows criminal organizations to easily benefit for their illegal funds without repercussion.

Western Africa is a developing region particularly exposed to organized crime and corruption. The region is noted for its cash-based economy and the lack of political transparency as is clearly indicated from the Transparency International (TI) 2008 Corruption Perceptions Index. In fact, of the 18 nations located in the region, no country obtained a corruption perception index rating higher than 3.9 out of 10, with 10 being an indication of the least politically corrupt and 1 being the most politically corrupt.²⁶ In addition to the extremely informal economies and high corruption, the weak administrative structures, high unemployment, poverty rates and most notably the unstable political systems occasioned by civil conflicts and military coups increases its vulnerability to organized crime and provides an easy avenue to funnel their ill-gotten gains.

Criminality in Western Africa

Development of Organized Crime

In recent years transnational organized crime in West Africa has become a matter of major concern. This is perhaps most noticeable in regard to drug trafficking and fraud. These activities are increasingly perceived by police forces in the European Union and North America as a serious threat.²⁷ The history of this region indicated that after the various countries claim for independence from colonisation obliged many of the nations to look to the IMF and the World Bank for loans to get them out of their difficulties. With the introduction of international aid the nations were required to undergo significant structural reform. With the increased structural reform, began the

²⁵ Ibid, pg 28-29

²⁶ Transparency International CPI table 2008:

http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table

²⁷ Transnational Organized Crime in the West African Regions, United Nations Office on Drugs and Crime, pg 1

decline in state and state spending, huge currency devaluation and increased political instability. With the political instability came civil war and military coup and an uncertain economy which encouraged organized crime to flourish under the pretext of political struggle.²⁸ The spread of the violence and increased criminality occurred with the growth of democracy in the region. In addition, the move towards democracy, which is now predominant in the majority of member states, the high unemployment and poverty combined with other social and economic problems and restrictive migration policies of wealthy nations contributes to the increased presences of organized crime and higher crime levels. The UNOCD²⁹ stated that the decline in state services have a notable impact on the police and other law enforcement agencies and on the judicial system, therefore making it possible for organized crime to flourish. In addition the UNOCD noted that because African states face more crime than the better policed European and American societies, this means that there is more crime per police available in Africa and less judges per capita in the world. This results in slower processing of the cases.³⁰

Weakness in law enforcement Agencies

Research statistics concerning the overall level of organized of crime in the West African region is unreliable and scarce due to the fact that many of the crimes go undetected and can only be based on estimated arrest and interceptions which can then be extrapolated on this basis. In UNODC report on transnational crime in West Africa noted that law enforcement agencies were hesitant to provide the necessary data and noted the lack of collaboration between various law enforcement agencies, in short, it is difficult to understand and determine the level of criminality which makes countries' fight against organized crime and money laundering activities much more challenging. The weakness in the law enforcement agencies also permits the organized crime gangs to use the

²⁸ Transnational Organized Crime in the West African Regions, United Nations Office on Drugs and Crime, pg 3

²⁹ United Nations Office on Drugs and Crime, UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism.

³⁰ UNODC, Why fighting Crime in Africa can assist development, the rule of law and the protection of the vulnerable, pg 20

West African regions as a transit area for drug, human and arms trafficking. The weak structure permits that various movements to go undetected. The high level of corruption within these agencies also allows criminals the opportunity to bribe certain officials for their freedom or to look the other way, for example as was the case in Benin when the country's top anti-drug officials were dismissed for alleged corruption.³¹ The Transparency International Global Corruption Barometer surveys were to rate various sectors for corruption. The survey of 5 African countries (Cameroun, Nigeria, Kenya, Ghana, and South Africa), note two of the five countries surveyed are located in Western Africa, that the police received the highest corruption rating. This was true for only 9 nine of the 57 non-African countries surveyed indicating that police forces or law enforcement in generally are looked upon with a very poor image in Africa.³²

Mode of Operations of Organized Crime in West Africa

Studies suggest that crime gangs in West Africa are more project-based and not hierarchical or corporate like model as seen in developed countries such as the USA or Canada. In this sense West African enterprises use similar techniques to legitimate traders and business people of typical lineage-based societies. One of the consequences of this type of mode of operations is that it creates a strong linkage and associations between the specific people involved whether it is family, and/or same ethnic group.³³

Types of Organized Crime in West Africa

The Western African region has had significant growth as a transit point for a number of major international crime traders, such as in drug, arms, human trafficking and money laundering.

Drug Trafficking

³¹ Benin: screening out morally unfit crime fighters, <http://www.irinnews.org>

³² Fighting Crime in Africa can Assist in Development, The rule of law and the protection of the most vulnerable, pg 23

³³ Transnational Organized Crime in the West African Regions, United Nations Office on Drugs and Crime, pg 15

According to the UNODC report on transnational crime in West Africa drug trafficking has been around since the 1930's, however the emerging role as a transit for global narcotics has become a serious problem. In all accounts the increase as a transit region appears to have been pioneered by some criminals based in Nigeria. The surrounding regions believe that criminals from Nigeria are increasingly seeking new operating locations thereby spreading the organized crime through the region. The UNODC seizure report indicated that 1.4 tons of cocaine has been seized en route or from West Africa to Europe, not including two large additional seizures of 2.29 and 7.5 tons.³⁴

Advance Fee and Internet Fraud

Once again criminals based in Nigeria appear to be the pioneers and remain very prominent in this area. These criminals are noted for the most notorious type of advanced fraud the 419 named after the section in the Nigerian Criminal Penal code.³⁵ The 419's are by definition attempts to obtain pre-payments for goods and services that do not actually exist or which the fraudsters does not actually deliver. One of the key features of the 419 fraud is that the fraudsters propose a service that is clearly illegal such as laundering illicit funds via the victim's bank account.

Human Trafficking

The most prominent forms of human trafficking are 1) agricultural slaves where the victims are usually women and children who work in cocoa fields of the Ivory Coast or diamond mines of Nigeria, 2) for people trying to avoid international controls on migrants and 3) sex slavery and prostitution. West Africa is used as a transit point to Europe, Lebanon and other African nations.

Money Laundering

³⁴ Transnational Organized Crime in the West African Regions, United Nations Office on Drugs and Crime, pg 21

³⁵ Ibid, pg 25

This type of crime was greatly facilitated at the time of the drug expansion in the regions. It is also facilitated by the involvement of major international companies and private banking institutions as was the case of the Bank of Credit and Commerce International who were implicated in the movement of monies gained by the massive corruption schemes of Sani Abacha.³⁶ Other business regarded as particularly suitable to money laundering are the second-hand car dealing which is still very prominent in the region and mostly controlled by the Lebanese community for example in the Republic of Benin, and the fashionable clothes boutiques which involves the purchases of large quantities of second-hand or slightly damaged clothing from Europe or North America. In general these types of businesses have no or few documents attached.³⁷

Arms Manufacturing and Trafficking

Several countries in the West African regions flourish in the manufacturing of arms as many countries have the artisanal talent to manufacture arms. Particularly in Ghana where arms are smuggled into other regions where conflicts is prominent and violent crimes are on the upswing. Although strict regulation exists in the ECOWAS regions manufacturing still goes undetected. The lack of capacity and resources of local law enforcement agents the fight against this type of organized crime is increasingly difficult.³⁸

As the presence of organized and transnational crime increases in the West African region so due the difficulties of the nation's government and FIU to combat against money laundering and the terrorist financing.

West Africa's Responses to Its Money Laundering Threats, and Call for Adherence to FAFT standards

³⁶ Ibid, pg 29

³⁷ Ibid, pg 29

³⁸ Ibid pg, 29 -30

West African countries recognized and acknowledged the threat and vulnerabilities to money laundering and decided as a united region to curb them. On December 10th 1999, the countries in Western Africa by decision of the authority of Heads of state and the government of ECOWAS established the Inter-governmental Anti-Money Laundering Group in Africa (GIABA). The GIABA members' states acknowledged that money laundering and financing terrorism are critical issues and have a negative impact on their economies and financial system.³⁹ The members acknowledged that organized gangs threaten interregional and international peace and security in the region. The transfer and movement of the illicit funds through their economies could undermine the stability and development of the countries within the region. In addition, the member states realized that with the increased technology advancements, the globalization of communication , together with the world economic interdependence have changed the social and political landscape of the world and in the region.⁴⁰ The member states further acknowledged that a risk assessment must be undertaken in an organized and systematic effort to identify and evaluate the methods of money laundering and terrorist financing, and to identify the weakness in anti-money laundering legislation and other vulnerabilities that have an impact direct or indirect on the region.

Although GIABA was formerly established in 2000 it has taken several years for some of the West African nations to integrate specific anti-money laundering legislation into the law. For example, the Republic of Benin, one of the smallest countries in Western African, notably recognized as one of the most democratic nations in the ECOWAS states, only adopted into law an anti-money laundering legislation in June 2006 (Law # 2006-14 du 31 October 2006)⁴¹. In addition, their Financial Intelligence Unit or more commonly known in Benin as CENTIF (Cellule Nationale de

³⁹ http://www.fatf-gafi.org/document/60/0,3343,en_32250379_32236869_34393596_1_1_1_1,00.html

⁴⁰ GIABA Money Laundering in West Africa, Annual Report 2008 p.10

⁴¹ http://www.giaba.org/media/static/AML-CFT_Benin.pdf

Traitement des Informations Financieres) was just recently launched in March 2009 with its members being officially nominated by Ministerial Council on May 7, 2009.

Presentation- GIABA (Anti-money Group in West Africa)

The primary objectives of GIABA are to 1) protect the national economies and the financial and banking systems of signatory states against the proceeds of crime and combat the financing, 2) Improve measures and intensify efforts to combat the proceeds of crime and 3) to strengthen cooperation amongst its members.⁴²

The formation of GIABA not only acknowledges the member states of ECOWAS willingness to fight money laundering and the financing of terrorism but GIABA is also a Financial Action Task Force Regional Body (FRSB) that fully adheres to the FATF 40 plus 9 special recommendations (see Appendix A) that were developed by FATF during 2001 when the 9 special recommendation was added in October 2004.⁴³ As a FRSB member some of GIABA's core functions include the mutual evaluation to determine its member's compliance with the FATF standards, typology exercises to determine money laundering trends and methods and GIABA is also the only FRSB with a technical assistant mandate. In this way, GIABA is a historic response to a changing world and to the specific and unique circumstances of the ECOWAS member States.⁴⁴

Mandate

With the creation of GIABA the head of states and Government of the ECOWAS established a specific mandate for the Inter-Governmental organisation as follows:⁴⁵

⁴² http://www.fatf-gafi.org/document/60/0,3343,en_32250379_32236869_34393596_1_1_1_1,00.html

⁴³ GIABA Website, description of mandate, <http://www.giaba.org/index.php?type=a&id=195&mod=41>

⁴⁴ GIABA Money Laundering in West Africa, Annual Report 2008 p.12

⁴⁵ GIABA Money Laundering in West Africa, Annual Report 2006 p.1

To ensure the adoption of standards against money laundering and financing of terrorism in accordance with international standards and practices, including the FATF 40 plus 9 recommendations (see Appendix A) by all the member states.

1. To assist in facilitating the adoption and implementation of the standards for each member states and ensuring to take into account the specific regional peculiarities and conditions.
2. To function as a forum where all the members can discuss matters of regional interest and share their experiences.
3. Organize self-evaluations and mutual evaluations to determine the efficiency of the measures which have been adopted and to ensure conformity with international standards.
4. Coordinate and provide support to member states to establish and implement AML/CFT regimes, including the implementation of laws against the proceeds of crime through mutual legal assistance and to assist in the establishment of FIU.

Although GIABA has a well defined mandate the organization has developed a strategic niche in order to combat money laundering. ⁴⁶GIABA realized that its problems are enormous and the challenges formidable therefore it seeks to achieve its results through programmes that maximizes comparative advantages and practices this niche through:

- Training and manpower development
- Diffusion and promotion of acceptable international practices and standards

⁴⁶ GIABA Money Laundering in West Africa, Annual Report 2006 p.5

- Support for the development of comprehensive AML/CFT framework, including the support of the establishment of FIU throughout the member states that are functional, adequately financed and technical competent.
- Research and evaluation

Evolution of GIABA

The member states of the GIABA organization recognized already in 1999 the need to form a regional organization that assists in their fight against money laundering and organized crime in the region however the development and ultimate commitment of its member states have been a very slow process. The first report by GIABA organization was only issued in 2006. The review and appraisal of the action for 2004-2006 revealed that the secretariat was only established and became functional in 2005, some 5 years after the agreement to create the inter governmental organization against money laundering. In March 2006 GIABA had an approved operational budget. In addition, only 2 of the total 8 member states has adopted a harmonized anti-money laundering legislation in line with international standards and only four the countries had enacted a law establishing the FIU and of the four only 2 were effectively operational one in Nigeria and the other Senegal, which happens to be the location and head office of GIABA.⁴⁷ The main reasons for the slow installation of the laws and establishment of operational infrastructures are low income countries competing priorities for scare government resources, the severe lack of resources and skilled workforce to implement the AML/CFT programs and the overall weakness of the legal infrastructures within the member state countries.

The establishment of the necessary infrastructures has been slow but it should be stated that some achievements or accomplishments have been made since the creation of the GIABA organization

⁴⁷ GIABA Money Laundering in West Africa, Annual Report 2006 p.11

notably the recognition of GIABA as FSRB (FATF regional style body) and the removal of Nigeria from the FATF list of Non cooperative countries and territories (NCCT).

The recognition of GIABA as a FSRB provides them with the opportunity to network and expand cooperation with FATF and other international bodies in the fight against money laundering and terrorist financing. In addition it will expand the network which enables GIABA to have partners to assist them in their technical capacity development and provide financial support if necessary.⁴⁸

The delisting of Nigeria from the NCCT list was very welcomed because the increased suspicion that was given to transactions emanating from or into a country on the NCCT list will no longer apply to the other member countries who work hard to improve their international image and increase private investment within their countries. In addition reducing the suspicion of transactions emanating from the member states, the removal from the list shows the international bodies slowly acknowledge progress that is being made in the region in supporting the global alliance against money laundering and terrorist financing.⁴⁹

Outstanding problems and emerging issues

The GIABA annual report of 2006 noted significant constraints and challenges in the pursuit of mandate and it was clear to GIABA that these constraints needed to be clearly identified in order for the organization to develop an appropriate action or strategic plan for the years to come.

According to the 2006 GIABA annual report the following are the sources of their constraints:⁵⁰

- Inadequate AML/CFT infrastructures in the member states
- Limited awareness of GIABA activities and AML issues

⁴⁸ GIABA Money Laundering in West Africa, Annual Report 2006 p.9

⁴⁹ Ibid, pg 9

⁵⁰ Ibid, pg 12

- Significant money laundering vulnerabilities in West Africa such as: pervasive cash orientation of the economies in West Africa, large and growing informal sector (i.e. black markets), high corruption, weak criminal justice systems, political and economic fragility, poor governance systems in both public and private sectors, high criminality
- Free movement of persons and services guaranteed under ECOWAS region
- Shortage of AML/CFT skills in the regions
- Differential levels of AML/CFT infrastructures within the regions

These vulnerabilities are real and need to be addressed and taken into account if any success or progress is to be made in the region against their fight against money laundering and organized crime. The sources of constraints noted in their annual report will be used as performance indicators or a benchmark for GIABA and the regions progress and achievement to meet its mandate as set out and revised in 2006.

GIABA Working Group on Typologies

Since GIABA's inception two formal typology reports have been completed and released concerning money laundering techniques in Western Africa. The first report raises issues about cash transactions and cash couriers in West Africa and the second on Money Laundering through the real estate sector.

Typology exercises are thematic studies of various methods of money laundering techniques. These typologies assist in providing useful trends and patterns of money laundering and provide guidance on how to deal with specific money laundering issues. One of GIABA's objectives during the 2007-2009 action plan period, which was also and consistent with its mandate, was to

complete and perform the aforementioned typologies exercises. The following is a brief discussion of these reports and its findings.

GIABA Typology Report on Money laundering through the Real Estate Sector

The finding of this report suggests that because no average market price for real estate property (contrary to developed nations for example Canada, where average market prices exist for commercial as well as residential property), and the extensive use of large bulk cash transactions pose particular difficulty in determining who is actually is laundering the monies and how the launderers are proceeding in the sector. GIABA's findings identified that prices tend to fluctuate widely between towns and even within the region which also makes the sector more challenging to control. To complicated matters even further is the eventual involvement of legal experts in order to complete the real estate transactions, which makes this category of professionals the potential weakest link in the AML/CFT process especially if legislation does not cover this profession in AML/CFT obligations⁵¹. Most countries in the Western African region have included in the AML legalisation that the legal professional have a legal obligation to report suspicious transactions, however the obligations does not apply if they represent the individual or persons in matters where solicitor-client confidentiality can be invoked (this obligation in similar to Canadian requirements). The typology exercise had difficulty in distinguishing a genuine commercial transaction among the large number of transactions that took place in the sector. The risk and vulnerabilities showed the need for increased awareness of the AML/CFT legalisation and its requirements together with the social and economic effects of money laundering. It was also clearly identified during the exercise that the extreme lack or inadequacy of internal control mechanisms, policies, training and audit systems in the real estate business and great majority of cash transactions within the sector make it a haven for money launderers. The basic techniques that

⁵¹ GIABA annual report 2008, pg 58

have been identified in the region were the use of unregistered real estate agents and other front men (who could even be legal professionals), mortgage schemes⁵² (i.e. mortgage fraud techniques) and alternative money transfer systems⁵³. The aforementioned techniques make the real estate sector very attractive for misuse and abuse by criminals because real estate agents or front men are not controlled in meeting the requirements of anti-money legalisations (mainly due to lack of resources, human capacity and no formal and/or rare existence associations or boards in the real estate sector) and identity fraud and false documents are common problems in the West African region.

Conclusion of Typology Exercise

The typology exercised concluded that due to the pre-dominantly cash-based nature of the economies in West Africa coupled with the ease that individuals can acquire properties in many of the regions countries without the abiding by the FATF recommendations of customer due diligence (CDD) investigations, record keeping and monitoring of the transactions makes the real estate sector extremely vulnerable to money laundering risks.⁵⁴ It should be noted that the current uniform anti-money laundering legislation within the region all have the same requirement that legal professionals are subject to the anti-money laundering regulations both at the ECOWAS level (see Appendix B) and country level (see Appendix C). Many of the regions do not have formal real estate agents, developer or builders and/or a body or association to whom they are

⁵² Mortgage fraud can be defined as a technique to describe a broad variety of criminal actions to where the intent is to mislead, misrepresent or omit information on a mortgage loan application in order to obtain the loan or obtain larger loans that the individual who have received if the lender knew the truth about the applicant.

⁵³ Alternative expedite money is the transfer of money from one location to the other. This remittance operates outside or parallel to the conventional banking and financial channels, Informal Money Transfer systems , Opportunities and challenges for Development Finances, Leonides Buencamino and Sergei Gorbunov November 2002, pg, 5

⁵⁴ GIABA Typologies of Money Laundering Through the Real Estate Sector in West Africa , pg 8

required to report to and who could ultimately ensure that the FATF requirements are followed. Most of real estate transactions involve many of the legal professionals, notably notaries who lack awareness of the AML legislation and may not be aware to whom they are responsible to report these large cash-based transactions to. In contrast, based on discussions with a member of the FIU in Benin it is interesting to note that there is a great belief that the various legal professions are aware of the AML legislation but are extremely reluctant to abide by the FATF recommendations and AML law.

In addition, the report cited five areas that are of particularly vulnerable to misuse involving real estate: the misuse of monetary instruments, front men and businesses, corrupt legal practitioners, service providers and financial institutions including the alternative transfer systems. GIABA believes these areas require further in-depth research and more concerted actions by the member states to find particular and cost efficient controls to ensure implementation of FATF recommendations.⁵⁵

Although GIABA was able to perform a typology exercise within the real estate sector, in their opinion the information obtained may be perceived as unreliable. The information was received first hand from Member states but was not based on hard facts or real proof.⁵⁶ It was believed that results sent could have been based on the best case scenario. The absence of hard facts means that the report conclusions and results will only be useful to a certain point. The hope is that with the creation and effective commencement of FIU's throughout the region that the FIU's will provide various case studies and statistics to assist in developing effective controls against money laundering and undertake awareness campaigns to increase the understanding of the social and economic dangers of money laundering.

⁵⁵ GIABA Annual Report 2008, pg 58

⁵⁶ GIABA Annual Report 2008, pg 59

Cash-based Transactions and Cash Couriers

The FATF best practices report on Detecting and Preventing the Cross-border transportation of cash by terrorist and other criminal stated that reporting by law enforcement agencies indicated that cash smuggling is one of the major methods used by terrorist financiers, money launderers and organized crime figures to move illegal money in support of their activities. The FATF typology exercise also highlighted the increase importance of cash couriers and their role in cash smuggling activities. FATF identified a variety of methods that cash couriers use to smuggle cash; such as the use of commercial airlines because they are fast method of transport, the courier can stay close to the cash and airlines go to many foreign destinations. Land border crossings also have been effective because of the ability to conceal the currency in the cash courier's vehicle.⁵⁷

As commonly known, cash-based transactions and cash couriers are a serious problem in the Western African region. GIABA therefore established as one of its objectives for the 2007-2009 action plan to undertake a typology exercise in the region concerning the aforementioned problem. A discussion of this report is provided as follows:

GIABA's Typology Report on Cash Transactions and Cash Couriers in West Africa

The second typology exercised performed was based on the extremely large cash-based transactions and the use of cash couriers in the West African regions. As previously noted the Western African population relies heavily on the cash-based transactions and the informal markets and is considered a normal everyday way for doing business, quite different to a developed nations like Canada which relies greatly on credit and relations with financial institutions in order to effectively operate its business on a daily basis and to facilitate individuals daily lives. The GIABA annual 2008 report noted in the Republic of Benin (country located in Western Africa) for

⁵⁷ FATF report , Detecting and Preventing the Cross Border Transportation of Cash by Terrorist and Other Criminals, pg 2

example, that although the use of financial institutions can be considered widespread not just for large account holders but for ordinary citizens as well, however more than 60% of the transactions are still conducted through the informal or cash-based transactions sector.⁵⁸ Discussions with the FIU in Benin indicated that there is strong belief that this figure is greatly understated however no hard proof or backup is available to support this statement. This is one of Benin FIU's objectives.

The typology report indicated that the types and patterns of cash transactions that are at risk of money laundering and terrorist financing could include the following:⁵⁹

- Exchange transactions, either involving the conversion of currency or the changing of larger denominations for smaller ones. In Benin, for example, it is commonly known that black markets exist for currency exchanges and exchanges for large banknotes to smaller ones. These types of transactions are also commonly seen at the borders between the different countries in the region. In fact, I have been witness to these exchanges myself between the border of Togo and Ghana (countries located in Western Africa). Manual exchange individuals sit at the side of the road handling large wads of currency on a regular basis. Travellers stop and negotiate the rates and then easily make the exchange without any documentation. Money remittances transactions, within or outside the country are often for mutual exchanges. One of the greatest risks is the presentation of false documents and identities, thus making the implementation and enforcement of regulation very difficult.
- Cash deposits on bank accounts. Discussions with banking institutions and local businesses in Benin revealed that large cash deposits are generally the norm and not the exception.
- Cash withdrawals from the accounts. Discussion with a local businessman from Benin stated that he can withdraw at times anywhere from 20.000.000 to 30.000.000 Francs CFA

⁵⁸ GIABA annual report 2008, pg 21

⁵⁹ GIABA typologies report on cash transactions and cash couriers in West Africa pg,7

(local currency in various Western Africa regions) equivalent to about 30.000 to 45.000 Euros which is used to pay approximately 200 part time shift workers.

- Cross-border transport of physical cash concealed in items such as vehicle spare parts, pockets, commercial airline parcels and suitcases and handbags. For example during a airline crash in Benin on December 25th 2003 which was air bound for Lebanon it was common knowledge that several suitcases were discovered with thousands and even millions of US dollars in cash.

All these types of cash movements are of great risk of carrying proceeds of crime. The risk is greater in Western African countries because these types of transactions are so common and extremely difficult to control as a great majority of these transactions go undetected. How can one control something that one does not know about or see? As cash transactions remain dominant in this region either in local or foreign currency such as the US dollar or Euro this means that economic operators engaged in the free exchange of currencies in a thriving parallel markets for the purposes of making intra-regional payments.⁶⁰ This way of doing business is a great indicator in the region of the low use of banking institutions, the significant use of informal markets and the vast possibilities of anonymity in economic operations. Briefly put this method of business is a great vulnerability for use by money launderers.

The typology exercise report did note that although the transactions are carried out in an informal manner, a great majority of the transactions are carried out for legitimate business. The belief is that the dominance of these type of transactions exist because of the ever-present nature, their convenience, their speed and certainty in settling financial obligations, the inadequacy of some financial institutes in the region, the inadequacy of available banking institutions in the region, the prevailing high illiteracy rates and the large sized and continued growth of the cash oriented and

⁶⁰ GIABA typologies report on cash transactions and cash couriers in West Africa pg,8

unregulated growth within the region economy.⁶¹ Unfortunately, these types of trends and patterns will definitely lead to abuse by criminals and money launderers. The question remains how anti-money laundering controls can be effective if these trends and patterns are not changed and many cash-based transactions go undetected?

Results of the Exercise based on Respondents⁶² Feedback

The 75 % of the respondents to the questionnaires used by GIABA to undertake the typology exercise confirmed the predominance of cash-based transactions and cash couriers in their respective jurisdictions.⁶³ The study revealed that outside the law enforcement authority, the money buys respect in the communities located in Western Africa.

Only 62% of the respondents affirmed that money laundering and terrorist financing is a serious problem in the region and the criminal offence encouraged the flight of capital and had social and economic impacts on the region. The rest of the respondents indicated their ignorance of the problem.⁶⁴

The study further revealed that predicate crimes generate large bulk cash. Crimes such a drug and arms trafficking, corruption, tax evasion and advance fee fraud constituted the majority money laundering offences in the regions. Theses offences are to generate the highest cash income that needs to be cleaned up.⁶⁵

Case Examples in the use of cash in transactions in West Africa

Bulk cash movements and use of cross-borders cash couriers

⁶¹ Ibid

⁶² Respondents being law enforcement agencies, financial institutions, legal practitioners, trade/ money changers/automobile dealers, FIUs, NGO's, regulators

⁶³ GIABA typologies report on cash transactions and cash couriers in West Africa pg,11

⁶⁴ Ibid, pg 12

⁶⁵ Ibid, pg 13

GIABA noted that there is hardly any enforcement of regulations in the ECOWAS community on the ceiling of how much cash one can physically carry or use by oneself or use. This is in line with the liberalisation of trade in the region. In general, people can walk around and do with large suitcases or vehicle compartments full of cash which can be used to purchase luxury cars and high value real estate property as indicated the GIABA typology exercise on the real estate sector.

A case study in the typology exercise explained that, in country Z, exchange control regulations stipulated that the amount of foreign currency in cash carried by outbound travellers from the jurisdiction is not to exceed the equivalent of \$4,000 US. Any amount exceeding that limit has to be converted to traveller's cheques or other negotiable instruments. Following a plane crash of a plane bound for Country L in Asia, large amounts of banknotes in foreign currencies were found at and around the site of the crash. Official documents revealed that at the point of departure no declaration of currency was made. According to GIABA this scenario demonstrates that exports and imports of commodities in the informal sectors, traders tend to avoid the bureaucracy of exchange transactions through financial institutions. Traders use parallel markets to exchange local currency into foreign currency which is then transported in suitcases for use once arrived at their destination countries.⁶⁶ The possible controls should be to equip customs officials with appropriate equipment and to train officers or law enforcement agents in the detection of smuggled cash. Declaration forms should be given to all travellers crossing the borders requiring them to declare the presence of any foreign currency exceeding a certain amount, as is the case when entering Canada where the customs form asks the traveller if they are entering the country with more than \$10,000 or more Canadian dollars or equivalent in a foreign currency in cash. Based on personal experience when travelling in and out of the Republic of Benin, the declaration forms leaving and entering the country do not require such declaration and nowhere is it indicated at the airport or the

⁶⁶ GIABA typologies report on cash transactions and cash couriers in West Africa pg,20-21

borders even though certain regulations require said declaration. It appears that the countries rely on the voluntary declaration by the travellers and the diligence of their customs employees, if any.

Money laundering through bureau de change and other informal changers

As previously noted economic operators in the Western African region particularly those in the informal sector have long engaged in the freely exchanged of regional and foreign currencies in parallel markets for the purpose of undertaking business within the region. Although the region has tried to step up regulations the parallel market still has not diminished and remains robust.

Suitcases and boxes full of local currencies are free exchange into foreign currency, in particular at border points without going through any formal channels.⁶⁷ A case study by GIABA explained that law enforcement agents confronted a bureau de change operator along the borders of countries U and D, who was making several exports of cash, averaging about 1.6 million US dollars which was exported to country U in cash. It was discovered the bureau was making weekly cash transactions across the borders. The individuals crossing the borders claimed that the funds were legitimate business process from the bureau de change business. The bureau de change operator certified the same thing that funds were from his exchanges legitimate business exchanges. This case study is believed to show the co-mingling of illegal and legal gained proceeds making themselves vulnerable to criminal organization and money launderers. In this particular case study the exchange owner was actively involved in the laundering of criminal proceeds.

Vulnerabilities of West Africa to money laundering and terrorist financing from cash-based transaction and cash couriers

The vulnerabilities of cash-based transactions and cash couriers can be summarized as follows:⁶⁸

⁶⁷ GIABA typologies report on cash transactions and cash couriers in West Africa pg,22

⁶⁸ Ibid, pg 29

- The preference of cash over financial instruments to undertake business. This allows for anonymity in the transactions.
- The predisposition to use informal sector to launder the criminal proceeds as it is acceptable in the region to make real estate transaction and purchase luxury cars in cash.
- The business and cultural environment of doing business outside the banking system. This is generally characterized by no paper trail and lack of transparency.
- Cash provides a convenient medium for financing activities with little or no audit trail. It should be noted that most predicate crimes are cash-based.
- The cash and carry culture involves the risk that goods and services are purchased with illegal proceeds.
- The ease of conversion of local to foreign currency through the use of poorly regulated cash-based bureau de change offices and the weak controls on cross-border movements. The lack of declarations at the border allows for free and undetected movement within the region.

Conclusion of Typology Exercise

The GIABA report made several recommendations in order to combat the presence of cash-based transactions and cash couriers. They recommended increased technical assistance and better equipment to detect undeclared cash to law enforcement agencies that are required to monitor cash movement between the borders. In addition, effective links should be established between customs, immigration, police and FIU to gather intelligence and respond to currency detection. At governmental level the educational system should discuss the impacts of money laundering and terrorist financing on economies in developing nations. In conclusion, member states and financial

institutions should rigorously enforce AML and TF regulations and strongly adhere with the 40 plus 9 recommendations of FATF. Once again we must ask ourselves can such an engrained manner of doing business be changed and effectively controlled.

In order to obtain a deeper understanding of West Africa's struggles against money laundering and terrorist financing, The Republic of Benin will be used to further identify and highlight practical struggles and obstacles that countries in the West African face. Benin's money laundering legalisation will briefly be compared against those of other countries (namely Canada) and an identification of some of the countries non-compliance of the countries with the FATF 40 plus 9 recommendations. A practical example will be provided of a money laundering technique that have been obtained through the various interviews in the country and why although the banking institutions have sound asset base the institutions are only used for less than 40% of the business transactions. To conclude, a discussion will be made about whether or not money laundering controls can be put in place and if they can be effective or not.

Republic of Benin



Presentation

Benin is located on the West Coast of Africa bordering the countries of Togo to the west, Nigeria to the east and Burkina Faso to the north. The total population of Benin is approximately 8.5

million inhabitants with a vast majority living below the poverty line and extremely low literacy rates (39.7% literacy rate for ages 15 and above as per UNDP statistics in 2006). The GNP per capita is \$ 570 USD in 2007.⁶⁹ Benin was colonized by the French towards the end of the 1800's. Benin obtained independence from France in the early 1960's when Marxism-Leninism was the official ideology. However, during the 1980's the former military head of state resigned and liberalised the economy. Since 1990's Benin's social and political situation has been peaceful for over a decade. Benin is recognized in the ECOWAS region as one of the most democratic countries, and has been known for its free and liberal elections.

Economy

Benin's economy is essentially based on agriculture. Cotton accounts for 40% of the GNP and 80% of official exports receipts. Since 2001 Benin has experienced a slowdown in growth from 6.2% in 2001 to 5 % in 2005. This has been caused by the low cotton prices, high oil prices and the appreciation of the Francs CFA (local currency) in real terms and required need for structural reform in public held industries such as electricity, water, telecommunications and cotton.⁷⁰ Most small businesses are privately owned by local citizens with a few foreign based operating as well. The private and agricultural sectors remain the principle contributors to growth. Benin's economy began to pick up after the 4-year slowdown in late 2006 and began to recover in 2007 as a result of the improvement in cotton production, the re-establishment of trade relations with Nigeria and the upturn in the port activities. Although Benin is one Africa's largest cotton producers, it still ranks

⁶⁹ Country Brief, World Bank Group, March 2009

⁷⁰ African Economic Outlook, BENIN AfDB/OECD 2007 pg 123

among the poorest countries of the world due ⁷¹ because of its heavy reliance on cotton production, volatile trade with its largest trading partner, Nigeria and high levels of corruption. The economy relies heavily on trade with its eastern neighbour Nigeria and its future growth relies on the Beninese ability to diversify its productions and to continue structural reforms in the above-noted sectors. Benin's economy also relies significantly on international aid as it represents 30% of its national budget.

Governance

Transparency of the recent election in 2007 was applauded by the international community where the legislative elections gave the new incoming president a majority government in parliament. The government spearheaded by Dr Yayi Boni believes that the fight against corruption is an important component of poverty reduction strategy in Benin.⁷² The government had decided that by giving priority to stepping up the pace with administrative reform and strengthening the rule of law and individual reforms will help with this battle. Several initiatives have been implemented such as the establishment of a monitoring body to fight against corruption and the CENTIF, the financial intelligence unit to combat money laundering and terrorist financing activities. Although the presidential elections in 2007 resulted in a majority parliament recent developments in 2008 have complicated the political environment because parties initially allied to the current government are siding with the opposition making it more and more difficult to implement President's Yayi Boni reform agenda.⁷³

Monetary Policy and the Financial Sector

Benin's monetary policy is governed by the Central Bank of Western African states. Monetary policy has been quite strict for several years until August 2006 when the bank decided to raise

⁷¹ African Economic Outlook, AfDB/OECD 2008 pg 140

⁷² Ibid, pg 148

⁷³ Country Brief, World Bank Group, March 2009

refinancing rates to combat rising inflationary pressures. Benin has several privately owned banks; although the financial system lacks depth, the majority of the banks respect prudential standards and bad debts represent only 10% of the banking assets in 2006.⁷⁴ At the time of the OECD study in 2007 Benin had 12 commercial banks and 2 leasing companies operating in the market with 100 formal micro-finance institutions. Benin possesses that largest number of micro-finance institutions in the Western African regions which provide financing as low as 2%. The GIABA annual 2008 report believes that the banking sector is quite active in Benin. It appears to be well regulated and the uniform ECOWAS laws are applicable and the FATF practices and recommendations applied. Even the non-designated sectors such as micro-finance organizations and currency exchange offices are somewhat regulated.⁷⁵ The Government Treasury is entrusted with the supervision and overview of the financial institutions and other formal bodies through the Banking Commission. The Banking Commission is responsible to ensure that the FATF 40 plus 9 recommendations are adhered to.

Bank's Knowledge of AML legislation and FATF recommendations

Based on discussions with two local banks, one bank being a regional-created bank with presence in most of the West African countries and the other being a branch of a European-based financial institutes, their departments responsible for the compliance with anti-money laundering legalisation and the FATF recommendations are aware of the law and acknowledge the institutions responsibility towards enforcement of these laws. Both compliance officers in the two banks appeared to have an in-depth knowledge of the FATF 40 plus 9 recommendations (see Appendix A), the AML legalisation in Benin (see Appendix C) and confirmed that they received regular training on these issues. The compliance officers are also responsible to provide training to other employees within their institutions.

⁷⁴ African Economic Outlook, Afdb/OECD 2008 pg 128

⁷⁵ GIABA annual report 2008, pg 20-21

Use of Banking Institutions in the Country

A brief discussion was undertaken with the banking institutions, the member of the FIU and a local businessman as to why they believe that banking institutions although sound financially only encompass approximately 40% of the financial transactions within the country. The discussion revealed the following constraints:

- Access to banking institutions outside the urban areas are very limited as most banking institutions have offices only in populated urban areas thereby limiting access to a large number of the population that resides in the countryside and small rural villages. The banks stated that due to the cost of establishing branches, the availability of qualified personnel in the rural areas and greater security risks limits the possibility of branches in these areas. Based on my personnel experience while travelling through the countryside of Benin, I have noted that only a few banks are available in other urban areas and next to none in the rural areas as compared to the number of financial institutes available in most populous urban city of the country, Cotonou.
- The low literacy rate of the population in the urban and rural areas makes access to the banking institution very limited as many formalities are required when opening up a bank account. This can be very difficult if one cannot read and write.
- The high interest rates and huge security/guarantees requirements when using the financial institutions for credit. The interest rates in the country are regulated by the Central Bank. The maximum rate of interest of the Central Bank is fixed at 18% for the bank and 27% for micro finance institutes. Currently however, the credit lines available to companies can range anywhere from 8 to 13% (inflation rate in 2008 1.3%)⁷⁶ which is an extremely expensive way for companies to the business when the use of informal and parallel markets

⁷⁶ [http://www.indexmundi.com/benin/inflation_rate_\(consumer_prices\).html](http://www.indexmundi.com/benin/inflation_rate_(consumer_prices).html)

are so widely and commonly accepted practices.⁷⁷ For example through discussions with local businessman he stated that in order for him to acquire a security deposit for a tender offer in the country, not only was he charged interest at a rate of 12% of the outstanding security deposit he was required to freeze approximately 220.000 EURO in a bank account located in their institute and provide real estate property as collateral as well. Once again a significant cost for doing business through financial institutions in the country.

- For the purchase of real estate property such as land, building etc the mortgage rates can fluctuate around 10% and this rate is highly dependent on the guarantees provided by the client.
- One final limitation would be the long and administrative procedures required to transfer funds outside the country either to Europe, North America and other countries within the region. Based on discussions with the FIU member and former employee of the Central Bank, the Central Bank controls all transfers in excess of approximately 5.000.000 FCFA (approximately 7.500 Euro) to foreign destinations. One of the central bank's main responsibilities is to control the monetary policies and the foreign exchange reserve which gives them the right to reject transfer requests sent to them by the banks and foreign exchanges offices in the countries justified by their need to control monetary and exchange payments as to not have a negative impact on the country economy and net foreign asset balance.

With the existence of all the above constraints combined the liberalisation of trade and convenience of cash-based transactions it is not surprising to believe that the populations in the country and the rest of the West Africa region continue to use the parallel markets to undertake their personal and business transactions. One of the great concerns of the FIU in Benin is in fact

⁷⁷ Figures obtained from the financial director with the Société Générale du Benin, branch of Société Générale in France

this cash-based economy and how effective can anti-money laundering controls be if transactions are largely undetectable.

Criminality and Corruption in Benin

Criminality

Specific information on the level of criminality in Benin was very difficult to obtain. Based on discussions with international law enforcement organizations present in Benin, who requested to remain anonymous due to legal requirements of their agencies, they stated the availability of reliable statistics is very limited. They cited the country's lack of resources and capacity in maintaining appropriate statistics within the country. This comment can be confirmed by UNODC report on "Why Fighting Crime in Africa can assist in development" where it stated that the statistics received from the law enforcement agencies are seriously deficient and unreliable. Police-recorded figures were found not to be available for at least half of the African countries and there were significant problems with the reliability of the information provided. The UNODC noted that many people do not report if they have been victimized and that reported crimes are not always recorded by the authorities.⁷⁸ Discussions with the international police agency however did confirm the findings of the UNODC report on transnational crime in West Africa of the presence of different types of crimes present in Benin. Benin is becoming used increasingly as a transit route not only for drug trafficking but continues to remain an important route for human trafficking as well. As Benin shares a lengthy common land border with Nigeria which has a land size approximately 15 times the land size of Benin and 18 times more populous, poses one of its greatest threats. As Nigeria tightens its controls against corruption and money laundering and criminality in general, it is the belief as stated in the GIABA 2008 report that the criminal element originally operating out of Nigeria finds it easier to relocate their operation temporally or

⁷⁸ Why fighting crime in Africa can assist development Rule of law and the Protection of the most vulnerable, UNODC pg 15

permanently to Benin.⁷⁹ The UNOCD report on transnational crime in West Africa stated that Nigeria is one of the largest hubs for drug trafficking in the region.⁸⁰ UNODC has indicated that West Africa is increasingly in becoming the preferred route of the Columbian cartels in order to obtain access to a very large European market. Benin is highly susceptible to this misuse due to its weak infrastructures and high levels of corruption. In addition to the high level of drug trafficking, human trafficking is a similar problem in Benin. Beninese children are either trafficked to Nigeria or Togo and to other further destinations, such as Gabon. In a study of child labour in Benin, the World Bank and the Beninese Ngo CEO (Ouensavi and Kielland, 2001) found that in April 2000, almost 49,000 rural Beninese children were working abroad, an unknown percentage of these victims are of trafficking.⁸¹ The true magnitude of this problem is difficult to gauge, which is an indication that the figures quoted are largely underestimated and is a there huge undetected market and large bulk generator for organized gangs. The presence of these undetected crimes and huge bulk generating activities such as drug and child trafficking leads to the ever increasing need for organized crime gangs to clean up their illegal monies through money laundering techniques.

Corruption

On December 10, 2003 Benin signed the United Nations Convention against Corruption. Although the current President has a very strong corruption agenda by making it a priority to by laws outlawing bribery, corruption is still very widespread.⁸² Discussions with FIU member and a local legal practitioner have indicated that anti-corruption laws are still in progress. The only control currently in place to determine the potential amount of corruption at a highly political level is that according to the Beninese constitution article 52, currently only the President of the Republic and

⁷⁹ GIABA annual report 2008, pg 19

⁸⁰ Why fighting crime in Africa can assist development Rule of law and the Protection of the most vulnerable, UNOCD pg 33

⁸¹ Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo, UNODC, pg 34

⁸² Estandardsforum Financial Standards Foundations Country Profile Benin April 4,2008, pg 4,

members of its government (primarily ministers) are required to make public disclosure of their financial holdings based on an honour system when they enter the government and when their terms comes to an end. Transparency International ranks Benin 118 out of 179 in its corruption perception Index. Benin also scores low in many World Bank indicators. For example, it is 151 of 178 in ease of doing business, and is ranked at just the 21.8 percentile for control of corruption. With regard to both regulatory and rule of law it is ranked slightly below the 40th percentile.⁸³ Corruption is not only predominant at the high political levels but based on discussion with an the FIU member, international law enforcement agencies and a local businessmen it appears at all levels of the administrative infrastructure of the government such as local police agencies, customs and duty excise offices and even banking institutions. The Global Corruption Report 2003 regional report on West Africa noted the customs officers in Benin are one of the most corrupt government officials in the country. It is believed that the customs officers have working for him at least one klebe (banknote ripper) which help customs officers control fraud. They help extort illegal levy on anyone wanting to move goods through customs, a toll from which customs officers take their cut.⁸⁴ The bankripper has developed an expertise for understanding the system of corruption and the short cuts that are required. For example, clearing a second-hand vehicle through customs in Benin requires approximately 17 separate bribes and/or facilitation payments, 10 in the customs house alone. All of these payments are made in cash, once again highlighting the informal sector of cash-based activities. It is believed that in Benin customs officers are one of the richest individuals in the country. The difficulty lies in how can one combat against an activity that is so difficult to prove combined with the fact that this type of bribery is so predominant and a common way of life.

⁸³ Ibid, pg 4

⁸⁴ Global Corruption Regional Reports West Africa pg 221

High Crime levels and vast corruption combined with extreme poverty, low literacy rates, lack of good governance, costly financial institutional costs, geographic position and terribly weak infrastructures leaves Benin extremely vulnerable to money laundering and terrorist financing activities. Due to the increased pressure from its member states, reliance on international aid and the president's own political agenda in 2006 a law against money laundering was passed and the FIU/ CENTIF was officially created.

CENTIF and Anti-Money Laundering Legalisation of Benin (Law # 2006-14)

Money laundering is a crime in Benin as established by the uniform law of UEOMA (see Appendix B). This law was formally ratified in Benin on October 31, 2006 as Law No. 2006-14 (see Appendix C) pertaining to the fight against money laundering in Benin. The primary authority for dealing with AML/CFT issues in Benin is the Directorate of Monetary and Financial Affairs in the National Directorate for Treasury and Public accounts located in the Minister of Finance. The director is the national correspondent with the GIABA. At the end of 2006, a government decree no. 2006-752 dated December 31, 2006 created Benin's FIU known as CENTIF under its French acronym.⁸⁵ This body was created to be the principle centre and source of financial intelligence in Benin. Although the unit was official created in Benin in 2006, they officially launched operations in March 2009 and in the month of May 2009 moved into their new locations. According to discussions with the FIU member the national budget for 2009 has been approved however the offices are still not fully operational, for example they still lack internet connections and no official telephone lines have yet to be established. The CENTIF hopes that they will be fully operational by the end of December 2009.

CENTIF Mandate and Performance Indicators

⁸⁵ GIABA annual report 2008, pg 20

Mandate

CENTIF mandate is clearly identified in the AML legislation created in 2006. Essentially articles 16 to 25 of the law highlight their role and responsibilities (see Appendix C). A brief discussion is provided below of the most relevant articles.

- The primary mandate of the FIU (CENTIF) in Benin is the collection, analysis/treatment of financial information to establish the origins of these transactions, or the nature of the transactions that are objects of suspicious transactions and finally to transmit to legal enforcement agents for examinations and perhaps eventually prosecutions.
- CENTIF is responsible to perform periodic studies on the various money laundering techniques in the country and try to identify the new trends and patterns (Similar to every other unit in the region, who are member with GIABA).
- CENTIF is required to promote and provide awareness of the new AML legalisations and the impacts of money laundering on the country' social and economic structure.

The CENTIF has been granted a certain number of powers that aids in its mission such as:

- The right to extensive or unlimited communication (article 17 of the AML legislation)
- The use of professional secrecy or confidentiality by banking institutions or non designated financial institutions, legal practitioners; notaries cannot be imposed by these parties against the requests of the CENTIF unit. Legal practitioners can imposed this client-solicitor if there are representing their client in legal matters. (article 34 of the AML law)
- The CENTIF has the right to have a financial transactions suspended for a period of at least 48 hours (article 28 of the AML law)

The CENTIF has a number of obligations as part of its mission such as:

- They must inform the individuals and related parties the conclusions of their investigations and return the information if no longer required
- They must respect professional secrecy
- They must provide a quarterly and annual report to the Ministry of Finance and the Central Bank

Performance Indicators for CENTIF

Although CENTIF is not 100% operational, according the FIU member various performance indicators have already been established by the unit. The performance indicators elaborated by CENTIF are as follows:

- The number of declarations that are received
- The number of declarations treated
- The number of exchange of information received from other FIU in the regions or from various law enforcement agents either local or international
- The number of replies received
- The number of files sent for prosecution
- The number of training session received and awareness seminars provided

Based on the performance indicators established the CENTIF is trying to determine the success rate of the unit. The more declarations and exchange of information the more awareness that is being created and hopefully it will help the unit establish the severity of the problem in Benin and meet the government's political agenda. The indicators appear realistic and manageable based on the resources and capacity available to the unit but it is interesting to note that once the file has

been sent for prosecution, why one of the performance indicators should not be the successful conviction of the parties under the new anti-money laundering in Benin. The CENTIF should also have information on the application of the law and the success for which is applied. This will assist to determine the success of the awareness they have created and the understanding of the AML system.

As the legislation is in its infancy stage and CENTIF has yet to undergo a mutual evaluation⁸⁶ by GIABA on meeting the requirements of the FATF 40 plus 9 recommendations (see Appendix A) a brief discussion will be provided to contrast against a more mature approach to the compliance with AML legislation and FATF recommendations, namely Canada.

CONTRAST

Canadian AML legislation vs. Beninese's AML legislation

Canadian proceeds of crime (money laundering) and terrorist financing act (PCMLTFA) received royal assent in June 29th, 2000 almost a full six years prior to that of Beninese's law in October 2006. The PCMLTFA was further amended to strengthen and expand the scope its preventive measures in December 2006. As can clearly be seen Canada's struggle to combat and fight terrorist financing has been in progress for many years and is significantly more mature than the one in Benin.

Obligations to report suspicious transactions

Part 1 article 5 identifies individuals or parties to whom the PCMLFTA applies in Canada and article 5 of the Beninese law identifies as well the individuals or parties that are required to put into application the current legislation. Although the list of parties required to apply the law are

⁸⁶ Mutual Evaluation: is a tool that is used to assist a country in its compliance with the FATF recommendations and assists in the identification of the systems and mechanisms developed by countries with diverse legal , regulatory and financial frameworks in order to implement a efficient and robust AML/CFT systems., Methodology for Assessing Compliance with FATF 40 recommendation and the FATF 9 special recommendations, updated version February 2009, pg3 2009 OECD/FATF

somewhat similar to that of Canada, the list is limited in its interpretations of the certain terms. Canadian PCMLTFA in the annexe of PCMLFTA regulations provides detailed interpretation, for example the definition of a casino and accountant. The law in Benin makes reference to these two categories but provides no further explanation and leaves the door open to potential misinterpretation and loopholes to opt out of application of the law.

Reporting of Suspicious transactions

In Canada, effective June 30, 2008 the reporting of suspicious transactions applies whether the transaction in question was carried out or simply attempted. Under current legalisation in Benin no such distinction is made. The only two obligations under article 8 and article 10 of the AML law in Benin are where article 8 describes a situation where particular attention should be given to occasional customers of financial institutions who undertake transactions over 5.000.000 FCFA or 7.600 EURO and article 10 requires to pay particular attention to normal cash transaction greater than 50.000.000 FCFA or 76.000 Euro (meaning transactions considered in the normal course of the business for the party) and transactions greater than 10.000.000 FCFA or 15.000 EURO under conditions that are unusual complex or may have no economic justification. No particular mention is made to whether or not the transactions has been attempted or completed. From discussion with the financial institutions in general these types of transactions are allowed and then will be reported. The investigation will be taken after the fact. The relevant individuals or parties responsible for the accounts of the parties in question are required on a daily basis to monitor among other tasks the movements of their clients. If they believe the transactions are outside of their daily business routine or person's routine it will be reported to the compliance officer in the institution. If it is believed that the transactions are suspicious in nature, the customer will be contacted to justify the transaction. If the customers cannot justify the deposit or transactions, then a formal report will be made to the FIU/CENTIF. Based on my discussions with the two local

banks no report has yet been made with CENTIF. Discussions with one of the local banks revealed an interesting point that the law does not provide a level at which they must report a transactions to the CENTIF. According to the CENTIF member they do not want to impose a limit on the financial institutions as they want all levels of suspicious transactions reported. This is contrary to Canadian legalisation where financial institutions most report **all transactions** equivalent or in excess of \$10.000 CDN. The \$10.000 be separated in several deposits (for example deposit first \$4.000 and then \$3.000 and final \$3.000) within a day or one just one unique transactions.

Inability to establish identity

Under Canadian legislation, specifically article 9.2 of the PCMLTFA, no person or entities that this act applies to are permitted to open an account for a client if the identity cannot be established with the prescribed measures.⁸⁷ The current legislation in Benin in article 7 of the law describes the procedures required to proceed with the verification of the identity of the client but does not specifically state that the account cannot be opened if the identity cannot be established. However, it should be noted based on discussions with foreign based bank in Benin, Société Générale du Benin they apply the FATF recommendations on this point and will avoid opening an account where the identification of the customers is in doubt. As the Société Générale du Benin is not only regulated by Beninese law they are obliged to follow the same regulations of their head office so controls in place are much more stringent than some of the other regional banks. This was highlighted by the financial director of Société Générale that the amount of individual account that the bank maintains are significantly less than some of their competitor in the country.

Political exposed foreign persons

Canadian PCMLFTA makes particular reference to dealing with politically exposed foreign persons, the definition of a political exposed person and the measures that must be taken when

⁸⁷ Proceeds of Crime (Money laundering) and Terrorist financing Act 2000, c17 pg 5

dealing with these individuals. Current Beninese's legislation does not make particular reference to these politically exposed persons however the financial institutes in Benin are required to follow the ECOWAS decision # 09/2008/CM/UEMOA of March 28, 2008 and from discussion with the FIU member information of individuals or countries listed or considered as high risk are transmitted to all financial institutions including foreign exchange offices by the Central Bank of the country.

Conclusion

Although the current legislation is a uniform one throughout the West Africa regions, laws are not stagnant but are considered dynamic and should evolve when new information comes to light. CENTIF should try to find inspiration to improve their AML and CFT laws based on more mature approaches like that of Canada. Some points of improvement could be the following:

- The current legislation does not provide any links or cross reference to other legalisation in place in Benin such as the banking, insurance or bureau de change regulations, or other criminal codes that also include money laundering offences, such as the penal code under drug trafficking offences. This would make the current legalisation more comprehensive and reduce the loopholes for individuals or parties who would like to contravene the law.
- The current legislation should consider providing annexes to help in the interpretation of what is defined as a suspicious transactions, or definition of accountants or casinos etc. The inclusion of this annexe is similar to Canadian legalisation and will assist in reducing the room for diverse interpretations and to who exactly the law is applicable to.
- In addition current legalisation allows significant leeway on what amounts should be reported as no limit has been imposed by the law, consideration should be given by imposing reasonable limits for which suspicious transactions should be reported or all

transactions over a specific dollar amount. Current legalisation allows significant judgement on behalf of the parties applicable to the law. This can either have a twofold effect, 1) individuals or entities do not report the transactions because they may feel it is immaterial or 2) all transactions that are deemed suspicious will be forwarded to CENTIF thereby overburdening the FIU, which has limited amount of financial resources.

Areas of Non-compliance with FATF 40 plus 9 recommendations

Based on discussions with the FIU member in Benin, the country is to undergo a mutual evaluation in June 2009. According to the CENTIF the questionnaires have already been received and returned to the GIABA in preparation for this evaluation.

Benin is in infancy stage with complying with the FATF recommendations and it is highly unlikely that it can meet all recommendations, when a developed nation like Canada who has been tackling this issue since the year 2000 with far more resources and technical capacity is still unable to meet all the FATF recommendations. Canada itself is not yet in full compliance with all the FATF recommendations. Based on the FATF report issued in February 29, 2008 on Third Mutual Evaluation on Anti -money laundering and combating the financing of terrorism, Canada still had 9 non-compliances with the FATF recommendations. An example of non-compliance relates to the CDD requirements (FATF recommendation #5) such that it does not extend to all financial institutions as defined by FATF (notably financing leasing, factoring and finance companies).⁸⁸

Based on the recommendation of the FIU member the first mutual evaluation of Senegal was reviewed in order to highlight some of the FATF recommendations that Benin is not in compliance with. Senegal is country located in West Africa which has almost identical laws and also obliged to follow uniform laws imposed by the ECOWAS members. Therefore the non-compliance of FATF

⁸⁸ FATF report of the Third Mutual Evaluation on anti-money laundering and terrorist financing in Canada, 28 February 2008, pg 13

recommendations of Senegal are representative per the CENTIF member, of the non-compliances that will appear in Benin's mutual evaluation report. The CENTIF representative is not an expert on mutual evaluation but had received invaluable training as an assessor and is of the opinion that the mutual evaluation of Senegal will be very similar to that of Benin. Some brief examples of Benin's non-compliance are provided as follows:

Legal System and Related Institutional Measures

Financing of Terrorism

Benin has ratified several international conventions in order to be in line with FATF recommendation # 35. The country has ratified among others the UN convention against illicit in Narcotic Drugs and Psychotropic Substances of 1988 on May 23, 1997 and the UN convention for the Suppression of the Financing of Terrorism, 1999 on August 8th 2008.⁸⁹ Although Benin has ratified the aforementioned conventions the financing of terrorism in Benin is not a criminal offence in accordance with Article 2 of the 1999 International Convention for the Suppression of Terrorism Financing. The Law 2006-14 does not directly link the offence to relevant international standards. The law is not specially or clearly directed towards terrorist or terrorist organizations connotations as indicated in the aforementioned convention.⁹⁰ This was confirmed by discussions with the CENTIF member that the current legislation does not take into account financing of terrorism.

The provision of the ECOWAS regulation # 14/2002/CM/UEMOA allows for the freezing, seizure and confiscation of the proceeds of offences and crimes. However, in regards to proceeds used to fund terrorism, the law is not all encompassing. According to the CENTIF member the list of persons and entities covered by the sanctions list (or black list) is communicated and delivered

⁸⁹ GIABA annual report 2008, pg 45

⁹⁰ Mutual Evaluation Report Senegal May 7, 2008 GIABA pg 8

only to the Central Bank who then dispatches to other financial institutions which according to discussions with CENTIF should include designated non-financial business and professions (DNFBP) such as accountants, legal practitioners and bureau de change. The CENTIF member was unable to confirm whether or not this list is effectively received by DNFBP. The local banks however did confirm acknowledgement of receiving said information from the Central Bank. The Société Générale du Benin indicated in addition to the information received from the Central Bank, their system in place is linked to their European office who has available this list. These entities or person should be automatically red flagged. This method of distribution is not in line with UN resolution 1267(1999) of the UN Security Council.

FATF Recommendation One

FATF recommendation one states that predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country and which would have constituted a predicate offence had it occurred domestically. Countries may provide that only prerequisite is that the conduct would have constituted an offence had it occurred domestically⁹¹. The current law in Benin does not make it an offence when the proceeds or product of crime originates from illegal activities in another country in which it does not constitute an offence, and then there is no money laundering offences.

Preventive Measures

FATF Recommendation Five

FATF recommendation five relates to CDD and reporting requirements by financial institutions and DNFBP. The following are some examples of the non-compliances with this recommendation:

⁹¹ FATF recommendation number 1, The Forty Recommendation 20 June 2003 incorporating amendments of 22 October 2004, pg 1

- The current Beninese law does not contain any provisions related to CDD in the field of terrorist financing.
- The law or texts do not explicitly prohibit the keeping of anonymous accounts or under fictitious names, nor do they regulate secret coded account.⁹² Information obtained with local banks in the country namely Ecobank and Société Générale du Benin, state they do not keep anonymous accounts or under fictitious names even though legislation does not explicitly prohibit or bar financial institutions from keeping these accounts.
- No provisions on combating terrorist financing.
- Article 8 of the Beninese AML law provides for the identification of occasional customers for any operation on amounts equal to or above CFA 5.000.000 (7.620 Euro) which implies that the law does not require the identification of occasional customers that do not conduct cash operations. The FATF requires the identification of occasional customers for any customers for any operation above 15.000 Euro whether or not it is made in cash.⁹³

FATF Recommendation Six

In reference to political exposed person (PEP), FATF recommendation number six financial institutions should in addition to performing normal due diligence measures:⁹⁴

1. Have appropriate risk management systems to determine whether the customer is a PEP
2. Obtain senior management approval for establishing business relationship with such customers

⁹² Mutual evaluation Report, Senegal May 7 2008, pg 173

⁹³ Mutual evaluation Report, Senegal May 7 2008, pg 78

⁹⁴ FATF recommendation number 6 , The Forty Recommendation 20 June 2003 incorporating amendments of 22 October 2004, pg 3

3. Take reasonable measures to establish the source of wealth and source of funds
4. Conduct enhanced ongoing monitoring of the business relationship.

Under current legislation no law binds a financial professional to give particular attention to PEP, to seek permission from senior management to enter in contact with the PEP, to identify the origin of the inheritance and the PEP customer's funds or to exert greater diligence on their business relationships.⁹⁵ It should be noted based on discussion with two local financial institutions that this recommendation is abided by.

FATF Recommendation Seven

FATF recommendation seven discusses financial institutional responsibilities in relation to cross-border correspondents banking and other similar relationships (see Appendix A). The current law in Benin allows for the exemption from identifying the real beneficial owner when the organization is based within the ECOWAS region. This none identification of the beneficial owner is not in compliance with the FATF requirements. For example, there appears to be no identification diligence and obligation to check monitoring schemes in relation to AML/CFT legislation.⁹⁶

FATF Recommendation Twelve

FATF recommendation twelve discusses due diligence and record keeping requirements for designated non-financial business and professions (see Appendix A). Beninese law in Article 5 makes no reference to chartered accountants and authorized accountants therefore this assumes that this profession is not bound by AML obligations. In addition to no mention of professional accountants there is room for interpretation of legal advisors and bailiffs obligations to AML legislation. This is not in full compliance with FATF recommendations. According to Canadian

⁹⁵ Mutual evaluation Report, Senegal May 7 2008, pg 174

⁹⁶ Ibid, pg 174

legislation chartered accountants and other accounting professional are obligated to report suspicious transactions with entities or individuals with whom they are dealing with.

FATF Recommendation Eighteen

This FATF recommendation eighteen indicates that countries should not approve the establishment or accept the continued operation of a shell companies.⁹⁷ The current legalisation in Benin does not specifically discuss relations with shell companies and banning any banking correspondence relationship with shell banks. When discussing this recommendation with CENTIF and the use of shell companies his understanding what this type of company was very limited and could not confirm the use of shell companies. He just confirmed that the creation of a company is very simple.

Special Recommendation Nine Cross-border reporting

Special recommendation nine discusses the requirement to have measures in place to detect the physical cross-border transportation of currency including a declaration system or other disclosure. As the ECOWAS spirit is to promote free and liberal trade within the region no reporting is required for cross-border physical transportation of cash in the region. In addition and based on experience no controls are in place at the airport or land borders that stipulate that a declaration needs to be made. A local businessman in the country confirmed that declarations have to be made on a voluntary basis and the customs officials make spot checks on very few occasions.

Conclusion on Meeting FATF recommendations

The mutual evaluation report of Senegal highlighted more than 12 non-compliances of the FATF recommendations and the majority of the other recommendations where other in partial or lacking

⁹⁷ FATF recommendation number 6 , The Forty Recommendation 20 June 2003 incorporating amendments of 22 October 2004, pg 6

of convincing elements for compliance. Senegal's AML legalisation was in place already in early 2004 and its FIU has been operational according to CENTIF Benin for the last four years so one can imagine that struggles of Benin to meet or comply with the FATF recommendations.

Money Laundering Example in Benin

Benin faces on a daily basis the similar problems of money laundering techniques noted in the GIABA reports due its large informal sector. Of the main industries in Benin that is widely known for the use of illegal monies is the second-hand car industry combined with the bonded warehouse parks for these used vehicles in transit to other neighbouring countries like Nigeria. The industry is predominantly controlled by the large Lebanese community living and working in the country. According to the GIABA annual report 2008, the presentation of this significant Lebanese community who generally function on a cash basis poses one of the largest threats to the country for money laundering.⁹⁸ As explained by a local businessman the industry functions as follows (see Appendix E). In Benin there are several bonded warehouse parks that are owned and operated by Lebanese community used for parking second-hand vehicles that arrive in the harbour in Cotonou on a daily basis. The Port of Cotonou estimates that 200.000 to 250.000 used vehicles⁹⁹ arrive in Benin each year. The owner of these parks arrives from Lebanon with a large amount of undeclared capital in order to start these operations. The park operations are usually closely affiliated with shipping or freight companies and foreign exchange offices in order to assist in the movement of their monies. For the park operations to be successful they work together with only other Lebanese citizens who will import the second-hand cars into the country which are then in transit for neighbouring countries like Nigeria or other West African countries with no harbour such as Niger or Burkina Faso. The park operators finance the operations of this importation by loaning the funds interest free to the importer. The park operators impose the use of their affiliated

⁹⁸ GIABA Annual Report 2008, pg 19

⁹⁹ Presentation by Mr. Dominique Aguessy ,Director of the Harbor in 2006 URL: www.africamcl.org

shipping company and foreign exchange offices, and the imported vehicles have to be placed on their bonded warehouse parks for transit purposes. This scheme permits the park operator to generate revenue through his affiliated shipping line, on the bonded warehousing fees and finally on foreign exchange commission. The park operator charges approximately 77.800 FCFA(approximately 120 Euro) per vehicle to the purchaser of second-hand vehicle of which 36.800 FCFA(56 Euro) is paid to the state corporation SOBEMAP responsible for providing stevedoring services and the Cotonou harbour for docking fees, the balance of 41.000 FCFA (63 Euro) is revenue earned by the bonded warehouse operator. Globally the bonded warehouse operators have an average of 20.000 to 25.000 cars per month passing on their parks. Each vehicle is permitted to remain on their bonded warehouse parks to a maximum of three months and after this time the vehicle is seized and sold by Beninese customs. The importer pays the affiliated shipping company and the supplier of second-hand vehicles through the designated foreign exchange offices. The foreign exchange commission varies between 3-5 % on each transactions requested. Based on an anonymous source, the origins of the original capital are rarely questioned and once the parks generate funds, the illegal funds are now generating legal revenues which can be legitimately transferred back to their home country or can be carried out in suitcases with a legal customs declaration. This industry generates a significant amount of revenue for the Beninese government through harbour charges such as docking charges for the ship, transit fees from the bonded warehouse parks and escort fees paid by the purchaser to the final destination border(this fee is 25.000 FCFA approximately 25 Euro) per vehicle. This industry functions entirely through parallel and informal markets to move its funds and as they have been in place in Benin for some time. In addition as it generates large amount of revenue for the government, and creates employment in the country through transit, customs and escort services, all the more reasons the industry

continues to operate without legal repercussions. As previous noted the customs and harbour activities are deemed as one of the most corrupt infrastructures within the country.

Can Anti-Money Laundering controls be effective

Laws and regulations have been established to protect the vulnerable and create order in our societies. These rules and regulations are dynamic and have evolved over the course of history. As these regulations and rules change to our changing societies so do the organized criminal techniques and methods to overcome the controls that are put in place in our society. This definitely applies to money laundering techniques that are used by organized gangs as technology changes and as AML regulations strengthen in many countries around the world, these gangs have to funnel their monies in countries where controls are weaker and their illegal activities go undetected.

The Western African region is the ideal place for these activities. The Western African region is fraught with significant problems and although political will may exist in the region to strengthen controls and the laws too many factors hinder the ability for anti-money laundering controls to be effective. Daniel Kaufman, Director in 2002 of Global Governance and Latin America Capacity Building, World Bank Institute correctly stated that although substantial amount of work has been done in attempts to control money laundering on a global basis even in developing countries the challenge of money laundering is still viewed within a very narrow context. Anti-money laundering controls especially in Western Africa and other developing nations focus primarily on the banking systems and have overlooked the weakness in the ability of these controls to function effectively due to the poor governance and corruption¹⁰⁰, and the large informal and parallel markets with significant cash-based transactions. In developing nations it is essential to consider

¹⁰⁰ Anti-Money laundering and combating the financing of terrorism, World Bank and IMF global dialogue series, regional videoconference Central and Western Region, 2003 pg 10

the substitutes to the informal markets however this is extremely difficult as these substitutes are a common way of doing business. The informal and cash-based transactions are so integrated into the economy, culture and mindset of the West African population how can anti-money laundering controls be effective within these parallel markets. Developing nation's primary focus is the reduction of poverty, the availability of primary and secondary education, and the elimination of corruption. Most governments in the region especially in Benin have focused on these issues as their main goals in the years to come. Without the government setting the tone at the top the effectiveness of many legal controls in place including anti-money laundering controls will be futile.

In my personal opinion, informal markets are very ingrained in the population's way of life and assist in providing access to financial markets that most of the population in the outlying areas would normally not have. How can a nation effectively eliminate such a significant parallel market without having a negative impact on its population? The economic and political consequences can be enormous. Secondly, how can a state create awareness and understanding of the dangers of money laundering when a great majority of the populations are illiterate and are more concerned with basic needs of their family and accept corruption as natural? Thirdly, without the implementation of tighter controls on corruption, the improvement of the judicial system and greater resources to law enforcement agencies to implement these controls, the process will be extremely slow and take a significant amount of years prior to any progress on the effectiveness of AML legislation within the country.

Benin struggles to improve its weak infrastructure and reduce the amount of corruption in its country. International donors have in place many requirements in order for the country to meet their conditions to receive aid and financial support. Although conditions become more stringent by the international donors it is seems contrary to their political agenda for reduction or

elimination of poverty by 2015. Benin continues to receive support regardless of its high level of corruption and its inability to provide audited national accounts since at least 2004. Even with this significant weakness donors through the Paris Declaration more towards harmonization of the aid and towards total budget support to get the government to assume national ownership of the aid and to increase the government need to be self efficient and reliant on its national procedures. This trend by the donors and political agenda appears to be indicating that they are stepping back and as long as Benin sustains indicators at levels required by donors, aid will continue to funnel into the country. In conclusion, the effectiveness of anti-money laundering controls is not a top priority issue for donors and its current ineffectiveness of AML controls will at least for now not have a negative impact on international aid.

Emerging Market for IFAs

The designation of an IFA and the profession does exist in Benin or for that matter in the Western African region. Generally, the public and private sector relies on the use of chartered accountants to perform audits and other investigative work. According to the World Bank, Report on the Observance of Standards and Code issued in March 2009, the Chartered Accountants Order in Benin was only created in 2006 by law # 2004-03¹⁰¹, therefore it is very much still in its infancy stages. In January 2008, the list of member with the Order in Benin was at 71 members with 45 of those members being chartered accountants. Of the 45 chartered accountants on the official list all of them are holders of the Chartered Accountants degree obtained in France. This fact highlights the point in the World Bank report the availability of educational training¹⁰² in the country is very limited. Benin like many other countries in the West African region does not have a university program or a specific diploma for the profession of chartered accountant. Although a significant number of private teaching institutions exist in the country that provide training in accounting,

¹⁰¹ Report on the Observance of Standards and Codes, World Bank Group Mars 2009 pg14

¹⁰² Ibid, pg 17

finance and management up until a Doctorate level, no similar program like those in Canada have formally been established. This is why for those who can afford training go outside of the country to obtain their degrees.

The current standards in the country are not in line with International audit and financial reporting standards and are considered an area of concern for both private investors and international donors.¹⁰³ Based on discussions with a World Bank representative currently most of their audits or procurements audits are performed by international consultants with the assistance of local audit offices. The discussions did reveal that only a hand full of audit offices have met World Bank standards. The representative from the Bank highlighted that this is mainly due to the fact of the lack of technical and educational support that is available in the country. The Bank themselves are in the process of establishing a technical support program with local offices in order to improve the quality of work and local offices to meet international standards.

The World Bank Report highlights the professional accountants sector in Benin lacks the technical training in order to meet international standards. Even in my personal experience international donors tend to rely on outside international assistance to control the use of the development aid provided in the country. As international donors place more stringent requirements on the transparency of aid and the procurements processes used, the market available for international technical assistance increases. As corruption, fraud and fiduciary risk continue to be high in Benin international donors will continue to look for professions such as IFAs who can provide the appropriate technical assistance required to ensure the effective and appropriate use of development aid. IFA can not only assist in providing great insight into various investigative techniques, the reduction of fiduciary risk but provide fraud prevention programs and procurement controls to help assist in reducing the potential risks.

¹⁰³ Report on the Observance of Standards and Codes, World Bank Group Mars 2009 pg 22-26

Conclusion

Money laundering is a global problem and requires an international effort to combat organized gangs schemes to launder their ill-gotten gains into the legal financial systems of the world. As a global problem most nations have or are in the process of establishing anti-money laundering legalisation in order to combat money laundering. The West African region has become a part of that fight against money laundering and has acknowledged and recognised that as other nations put in place stronger and stronger controls, organized gangs increase the use of West Africa as a transit area to launder their monies due to their weak infrastructures, informal markets and the high levels of corruption in the area. The West African region struggles are vast and would require a change in overall mind set and the way of doing business in the region. The elimination of the use of informal markets and the establishment of certain institutions such as anti-corruption and FIU should be in place not just to appease international donors. A strong political will has to exist by the Member States to set the appropriate tone at the top as most of the populations follow by example. The Member states must increase endeavours to anti-corruption crackdowns and make the punishments harsh for public officials and private investors who use bribes and skim funds from public finances as a common everyday practices. For now, anti-money laundering legalisation exists in the majority of West African regions but the effectiveness of these controls is limited due to the limitations that the region faces. The region, in my opinion, still has a long road ahead of itself to combat against money laundering and the development of regional specific anti-money laundering controls. The countries need to take into consideration the economic and social realities of the region in order to have effective anti-money laundering controls in the future.

APPENDIX A Financial Action Task Force (FAFT) - The 40 Recommendations

Legal Systems

Scope of the criminal offence of money laundering

Recommendation 1

Countries should criminalise money laundering on the basis of United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).

Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference

to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches.

Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year's imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months imprisonment.

Whichever approach is adopted, each country should at a minimum include a range of offences within each of the designated categories of offences [3].

Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically. Countries may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically.

Countries may provide that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.

Footnotes:[3] See the definition of “designated categories of offences” in the Glossary.

Recommendation 2

Countries should ensure that:

- a) The intent and knowledge required to prove the offence of money laundering is consistent with the standards set forth in the Vienna and Palermo Conventions, including the concept that such mental state may be inferred from objective factual circumstances.
- b) Criminal liability, and, where that is not possible, civil or administrative liability, should apply to legal persons. This should not preclude parallel criminal, civil or administrative proceedings with respect to legal persons in countries in which such forms of liability are available. Legal persons should be subject to effective, proportionate and dissuasive sanctions. Such measures should be without prejudice to the criminal liability of individuals.

Provisional measures and confiscation

Recommendation 3

Countries should adopt measures similar to those set forth in the Vienna and Palermo Conventions, including legislative measures, to enable their competent authorities to confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, without prejudicing the rights of bona fide third parties.

Such measures should include the authority to: (a) identify, trace and evaluate property which is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the State's ability to recover property that is subject to confiscation; and (d) take any appropriate investigative measures.

Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing

Customer due diligence and record-keeping

Recommendation 4

Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.

Recommendation 5

Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.

Financial institutions should undertake customer due diligence measures, including identifying and verifying the identity of their customers, when: establishing business relations; carrying out occasional transactions: (i) above the applicable designated threshold; or (ii) that are wire transfers in the circumstances covered by the Interpretative Note to Special Recommendation VII; there is a suspicion of money laundering or terrorist financing; or the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

The customer due diligence (CDD) measures to be taken are as follows:

- a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information [4].
- b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer.
- c) Obtaining information on the purpose and intended nature of the business relationship.
- d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Financial institutions should apply each of the CDD measures under (a) to (d) above, but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction. The measures that are taken should be consistent with any guidelines issued by competent authorities. For higher risk categories, financial institutions should perform enhanced due diligence. In certain circumstances, where there are low risks, countries may decide that financial institutions can apply reduced or simplified measures.

Financial institutions should verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering

risks are effectively managed and where this is essential not to interrupt the normal conduct of business.

Where the financial institution is unable to comply with paragraphs (a) to (c) above, it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.

These requirements should apply to all new customers, though financial institutions should also apply this Recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times.

Footnotes: [4] Reliable, independent source documents, data or information will hereafter be referred to as "identification data".

(See also Interpretative Notes Recommendation 5 and Interpretative Note to Recommendations 5, 12 and 16)

Recommendation 6

Financial institutions should, in relation to politically exposed persons, in addition to performing normal due diligence measures:

- a) Have appropriate risk management systems to determine whether the customer is a politically exposed person.
- b) Obtain senior management approval for establishing business relationships with such customers.
- c) Take reasonable measures to establish the source of wealth and source of funds.
- d) Conduct enhanced ongoing monitoring of the business relationship.

(See also Interpretative Note to Recommendation 6)

Recommendation 7

Financial institutions should, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal due diligence measures:

- a) Gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.
- b) Assess the respondent institution's anti-money laundering and terrorist financing controls.
- c) Obtain approval from senior management before establishing new correspondent relationships.
- d) Document the respective responsibilities of each institution.
- e) With respect to "payable-through accounts", be satisfied that the respondent bank has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank.

Recommendation 8

Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes. In particular, financial institutions should have

policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.

Recommendation 9

Countries may permit financial institutions to rely on intermediaries or other third parties to perform elements (a) –(c) of the CDD process or to introduce business, provided that the criteria set out below are met. Where such reliance is permitted, the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.

The criteria that should be met are as follows:

- a) A financial institution relying upon a third party should immediately obtain the necessary information concerning elements (a) – (c) of the CDD process. Financial institutions should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.
- b) The financial institution should satisfy itself that the third party is regulated and supervised for, and has measures in place to comply with CDD requirements in line with Recommendations 5 and 10.

It is left to each country to determine in which countries the third party that meets the conditions can be based, having regard to information available on countries that do not or do not adequately apply the FATF Recommendations.

(See also Interpretative Note to Recommendation 9)

Recommendation 10

Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal activity.

Financial institutions should keep records on the identification data obtained through the customer due diligence process (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the business relationship is ended.

The identification data and transaction records should be available to domestic competent authorities upon appropriate authority.

(See also Interpretative Note to Recommendation 10)

Recommendation 11

Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities and auditors.

(See also Interpretative Note to Recommendation 11)

Recommendation 12

The customer due diligence and record-keeping requirements set out in Recommendations 5, 6, and 8 to 11 apply to designated non-financial businesses and professions in the following situations:

- a) Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold.
- b) Real estate agents - when they are involved in transactions for their client concerning the buying and selling of real estate.
- c) Dealers in precious metals and dealers in precious stones - when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.
- d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities: buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
- e) Trust and company service providers when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.

(See also Interpretative Note to Recommendation 12 and Interpretative Note to Recommendations 5, 12 and 16)

Reporting of suspicious transactions and compliance

Recommendation 13

If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU).

(See also Interpretative Note to Recommendation 13)

Recommendation 14

Financial institutions, their directors, officers and employees should be:

- a) Protected by legal provisions from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
- b) Prohibited by law from disclosing the fact that a suspicious transaction report (STR) or related information is being reported to the FIU.

(See also Interpretative Note to Recommendation 14)

Recommendation 15

Financial institutions should develop programmes against money laundering and terrorist financing. These programmes should include:

a) The development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees.

b) An ongoing employee training programme.

c) An audit function to test the system.

(See also Interpretative Note to Recommendation 15)

Recommendation 16

The requirements set out in Recommendations 13 to 15, and 21 apply to all designated non-financial businesses and professions, subject to the following qualifications:

a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.

b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.

c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e).

Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

(See also Interpretative Notes to Recommendation 16 and Interpretative Note to Recommendations 5, 12, and 16)

Other measures to deter money laundering and terrorist financing

Recommendation 17

Countries should ensure that effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, are available to deal with natural or legal persons covered by these Recommendations that fail to comply with anti-money laundering or terrorist financing requirements.

Recommendation 18

Countries should not approve the establishment or accept the continued operation of shell banks. Financial institutions should refuse to enter into, or continue, a correspondent banking relationship with shell banks. Financial institutions should also guard against establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks.

Recommendation 19 (*This Recommendation was revised and the following text was issued on 22 October 2004*)

Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information.

Recommendation 20

Countries should consider applying the FATF Recommendations to businesses and professions, other than designated non-financial businesses and professions that pose a money laundering or terrorist financing risk.

Countries should further encourage the development of modern and secure techniques of money management that are less vulnerable to money laundering.

Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations

Recommendation 21

Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF 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 established in writing, and be available to help competent authorities. Where such a country continues not to apply or insufficiently applies the FATF Recommendations, countries should be able to apply appropriate countermeasures.

Recommendation 22

Financial institutions should ensure that the principles applicable to financial institutions, which are mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the parent institution should be informed by the financial institutions that they cannot apply the FATF Recommendations.

Regulation and supervision

Recommendation 23

Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.

For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes.

Other financial institutions should be licensed or registered and appropriately regulated, and subject to supervision or oversight for anti-money laundering purposes, having regard to the risk of money laundering or terrorist financing in that sector. At a minimum, businesses providing a service of money or value transfer, or of money or currency changing should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.

(See also Interpretative Note to Recommendation 23)

Recommendation 24

Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below.

a) Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary anti-money laundering and terrorist-financing measures. At a minimum: casinos should be licensed; competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino; competent authorities should ensure that casinos are effectively supervised for compliance with requirements to combat money laundering and terrorist financing.

b) Countries should ensure that the other categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This should be performed on a risk-sensitive basis. This may be performed by a government authority or by an appropriate self-regulatory organisation, provided that such an organisation can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

Recommendation 25

The competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.

(See also Interpretative Note to Recommendation 25)

Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing

Competent authorities, their powers and resources

Recommendation 26

Countries should establish a FIU that serves as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential money laundering or terrorist financing. The FIU should have access, directly or

indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR.

(See also Interpretative Note to Recommendation 26)

Recommendation 27

Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations. Countries are encouraged to support and develop, as far as possible, special investigative techniques suitable for the investigation of money laundering, such as controlled delivery, undercover operations and other relevant techniques. Countries are also encouraged to use other effective mechanisms such as the use of permanent or temporary groups specialised in asset investigation, and co-operative investigations with appropriate competent authorities in other countries.

(See also Interpretative Note to Recommendation 27)

Recommendation 28

When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.

Recommendation 29

Supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and terrorist financing, including the authority to conduct inspections. They should be authorised to compel production of any information from financial institutions that is relevant to monitoring such compliance, and to impose adequate administrative sanctions for failure to comply with such requirements.

Recommendation 30

Countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of those authorities are of high integrity.

Recommendation 31

Countries should ensure that policy makers, the FIU, law enforcement and supervisors have effective mechanisms in place which enable them to co-operate, and where appropriate co-ordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

Recommendation 32

Countries should ensure that their competent authorities can review the effectiveness of their systems to combat money laundering and terrorist financing systems by maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of such systems. This should include statistics on the STR received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for co-operation.

Transparency of legal persons and arrangements

Recommendation 33

Countries should take measures to prevent the unlawful use of legal persons by money launderers. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares should take appropriate measures to ensure that they are not misused for money laundering and be able to demonstrate the adequacy of those measures. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5.

Recommendation 34

Countries should take measures to prevent the unlawful use of legal arrangements by money launderers. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settler, trustee and beneficiaries that can be obtained or accessed in a timely fashion by competent authorities. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5.

International co-operation

Recommendation 35

Countries should take immediate steps to become party to and implement fully the Vienna Convention, the Palermo Convention, and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Countries are also encouraged to ratify and implement other relevant international conventions, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism.

Mutual legal assistance and extradition

Recommendation 36

Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings. In particular, countries should:

- a) Not prohibit or place unreasonable or unduly restrictive conditions on the provision of mutual legal assistance.
- b) Ensure that they have clear and efficient processes for the execution of mutual legal assistance requests.
- c) Not refuse to execute a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

d) Not refuse to execute a request for mutual legal assistance on the grounds that laws require financial institutions to maintain secrecy or confidentiality.

Countries should ensure that the powers of their competent authorities required under Recommendation 28 are also available for use in response to requests for mutual legal assistance, and if consistent with their domestic framework, in response to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.

To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.

Recommendation 37

Countries should, to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality.

Where dual criminality is required for mutual legal assistance or extradition, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.

Recommendation 38

There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value. There should also be arrangements for co-ordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets.

(See also Interpretative Note to Recommendation 38)

Recommendation 39

Countries should recognise money laundering as an extraditable offence. Each country should either extradite its own nationals, or where a country does not do so solely on the grounds of nationality, that country should, at the request of the country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. Those authorities should take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of that country. The countries concerned should cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions.

Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgements, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

Other forms of co-operation

Recommendation 40

Countries should ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts. There should be clear and effective

gateways to facilitate the prompt and constructive exchange directly between counterparts, either spontaneously or upon request, of information relating to both money laundering and the underlying predicate offences. Exchanges should be permitted without unduly restrictive conditions. In particular:

- a) Competent authorities should not refuse a request for assistance on the sole ground that the request is also considered to involve fiscal matters.
- b) Countries should not invoke laws that require financial institutions to maintain secrecy or confidentiality as a ground for refusing to provide co-operation.
- c) Competent authorities should be able to conduct inquiries; and where possible, investigations; on behalf of foreign counterparts.

Where the ability to obtain information sought by a foreign competent authority is not within the mandate of its counterpart, countries are also encouraged to permit a prompt and constructive exchange of information with non-counterparts. Co-operation with foreign authorities other than counterparts could occur directly or indirectly. When uncertain about the appropriate avenue to follow, competent authorities should first contact their foreign counterparts for assistance.

Countries should establish controls and safeguards to ensure that information exchanged by competent authorities is used only in an authorised manner, consistent with their obligations concerning privacy and data protection.

The Interpretative Notes

General information

Reference in this document to “countries” should be taken to apply equally to “territories” or jurisdictions”.

Recommendations 5-16 and 21-22 state that financial institutions or designated non-financial businesses and professions should take certain actions. These references require countries to take measures that will oblige financial institutions or designated non-financial businesses and professions to comply with each Recommendation. The basic obligations under Recommendations 5, 10 and 13 should be set out in law or regulation, while more detailed elements in those Recommendations, as well as obligations under other Recommendations, could be required either by law or regulation or by other enforceable means issued by a competent authority.

Where reference is made to a financial institution being satisfied as to a matter, that institution must be able to justify its assessment to competent authorities.

To comply with Recommendations 12 and 16, countries do not need to issue laws or regulations that relate exclusively to lawyers, notaries, accountants and the other designated non-financial businesses and professions so long as these businesses or professions are included in laws or regulations covering the underlying activities.

The Interpretative Notes that apply to financial institutions are also relevant to designated non-financial businesses and professions, where applicable.

Interpretative Note to Recommendations 5, 12 and 16

The designated thresholds for transactions (under Recommendations 5 and 12) are as follows:

Financial institutions (for occasional customers under Recommendation 5) - USD/EUR 15,000.

Casinos, including internet casinos (under Recommendation 12) - USD/EUR 3000.

For dealers in precious metals and dealers in precious stones when engaged in any cash transaction (under Recommendations 12 and 16) - USD/EUR 15,000.

Financial transactions above a designated threshold include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

(See Recommendation 5, Recommendation 12 and Recommendation 16)

Interpretative Note to Recommendation 5 (*Thresholds Interpretative Note*)

Customer due diligence and tipping off

1. If, during the establishment or course of the customer relationship, or when conducting occasional transactions, a financial institution suspects that transactions relate to money laundering or terrorist financing, then the institution should:

a) Normally seek to identify and verify the identity of the customer and the beneficial owner, whether permanent or occasional, and irrespective of any exemption or any designated threshold that might otherwise apply.

b) Make a STR to the FIU in accordance with Recommendation 13.

2. Recommendation 14 prohibits financial institutions, their directors, officers and employees from disclosing the fact that an STR or related information is being reported to the FIU. A risk exists that customers could be unintentionally tipped off when the financial institution is seeking to perform its customer due diligence (CDD) obligations in these circumstances. The customer's awareness of a possible STR or investigation could compromise future efforts to investigate the suspected money laundering or terrorist financing operation.

3. Therefore, if financial institutions form a suspicion that transactions relate to money laundering or terrorist financing, they should take into account the risk of tipping off when performing the customer due diligence process. If the institution reasonably believes that performing the CDD process will tip-off the customer or potential customer, it may choose not to pursue that process, and should file an STR. Institutions should ensure that their employees are aware of and sensitive to these issues when conducting CDD.

CDD for legal persons and arrangements

4. When performing elements (a) and (b) of the CDD process in relation to legal persons or arrangements, financial institutions should:

a) Verify that any person purporting to act on behalf of the customer is so authorised, and identify that person.

b) Identify the customer and verify its identity - the types of measures that would be normally needed to satisfactorily perform this function would require obtaining proof of incorporation or similar evidence of the legal status of the legal person or arrangement, as well as information concerning the customer's name, the names of trustees, legal form, address, directors, and provisions regulating the power to bind the legal person or arrangement.

c) Identify the beneficial owners, including forming an understanding of the ownership and control structure, and take reasonable measures to verify the identity of such persons. The types of measures that would be normally needed to satisfactorily perform this function would require identifying the natural persons with a controlling interest and identifying the natural persons who comprise the mind and management of the legal person or arrangement. Where the customer or the owner of the controlling interest is a public company that is subject to regulatory disclosure requirements, it is not necessary to seek to identify and verify the identity of any shareholder of that company.

The relevant information or data may be obtained from a public register, from the customer or from other reliable sources.

Reliance on identification and verification already performed

5. The CDD measures set out in Recommendation 5 do not imply that financial institutions have to repeatedly identify and verify the identity of each customer every time that a customer conducts a transaction. An institution is entitled to rely on the identification and verification steps that it has already undertaken unless it has doubts about the veracity of that information. Examples of situations that might lead an institution to have such doubts could be where there is a suspicion of money laundering in relation to that customer, or where there is a material change in the way that the customer's account is operated which is not consistent with the customer's business profile.

Timing of verification

6. Examples of the types of circumstances where it would be permissible for verification to be completed after the establishment of the business relationship, because it would be essential not to interrupt the normal conduct of business include:

Non face-to-face business.

Securities transactions. In the securities industry, companies and intermediaries may be required to perform transactions very rapidly, according to the market conditions at the time the customer is contacting them, and the performance of the transaction may be required before verification of identity is completed.

Life insurance business. In relation to life insurance business, countries may permit the identification and verification of the beneficiary under the policy to take place after having established the business relationship with the policyholder. However, in all such cases, identification and verification should occur at or before the time of payout or the time where the beneficiary intends to exercise vested rights under the policy.

7. Financial institutions will also need to adopt risk management procedures with respect to the conditions under which a customer may utilise the business relationship prior to verification. These procedures should include a set of measures such as a limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions being carried out outside of expected norms for that type of relationship. Financial institutions should refer to the Basel CDD paper (section 2.2.6.) (Guidance Paper on Customer Due Diligence for Banks issued by the Basel Committee on Banking Supervision in October 2001) for specific guidance on examples of risk management measures for non-face to face business.

Requirement to identify existing customers

8. The principles set out in the Basel CDD paper concerning the identification of existing customers should serve as guidance when applying customer due diligence processes to institutions engaged in banking activity, and could apply to other financial institutions where relevant.

Simplified or reduced CDD measures

9. The general rule is that customers must be subject to the full range of CDD measures, including the requirement to identify the beneficial owner. Nevertheless there are circumstances where the risk of money laundering or terrorist financing is lower, where information on the identity of the customer and the beneficial owner of a customer is publicly available, or where adequate checks and controls exist elsewhere in national systems. In such circumstances it could be reasonable for a country to allow its financial institutions to apply simplified or reduced CDD measures when identifying and verifying the identity of the customer and the beneficial owner.

10. Examples of customers where simplified or reduced CDD measures could apply are:

Financial institutions – where they are subject to requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations and are supervised for compliance with those controls.

Public companies that are subject to regulatory disclosure requirements.

Government administrations or enterprises.

11. Simplified or reduced CDD measures could also apply to the beneficial owners of pooled accounts held by designated non financial businesses or professions provided that those businesses or professions are subject to requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations and are subject to effective systems for monitoring and ensuring their compliance with those requirements. Banks should also refer to the Basel CDD paper (section 2.2.4.), which provides specific guidance concerning situations where an account holding institution may rely on a customer that is a professional financial intermediary to perform the customer due diligence on his or its own customers (i.e. the beneficial owners of the bank account). Where relevant, the CDD Paper could also provide guidance in relation to similar accounts held by other types of financial institutions.

12. Simplified CDD or reduced measures could also be acceptable for various types of products or transactions such as (examples only):

Life insurance policies where the annual premium is no more than USD/EUR 1000 or a single premium of no more than USD/EUR 2500.

Insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral.

A pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.

13. Countries could also decide whether financial institutions could apply these simplified measures only to customers in its own jurisdiction or allow them to do for customers from any other jurisdiction that the original country is satisfied is in compliance with and has effectively implemented the FATF Recommendations.

Simplified CDD measures are not acceptable whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios apply.

(See Recommendation 5)

Interpretative Note to Recommendation 6

Countries are encouraged to extend the requirements of Recommendation 6 to individuals who hold prominent public functions in their own country.

(See Recommendation 6)

Interpretative Note to Recommendation 9

This Recommendation does not apply to outsourcing or agency relationships.

This Recommendation also does not apply to relationships, accounts or transactions between financial institutions for their clients. Those relationships are addressed by Recommendations 5 and 7.

(See Recommendation 9)

Interpretative Note to Recommendation 10 and 11

In relation to insurance business, the word “transactions” should be understood to refer to the insurance product itself, the premium payment and the benefits.

(See Recommendation 10 and Recommendation 11)

Interpretative Note to Recommendation 12

The designated thresholds for transactions (under Recommendations 5 and 12) are as follows:

Financial institutions (for occasional customers under Recommendation 5) - USD/EUR 15,000.

Casinos, including internet casinos (under Recommendation 12) - USD/EUR 3000.

For dealers in precious metals and dealers in precious stones when engaged in any cash transaction (under Recommendations 12 and 16) - USD/EUR 15,000.

Financial transactions above a designated threshold include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

(See Recommendation 12)

Interpretative Note to Recommendation 13

The reference to criminal activity in Recommendation 13 refers to:

- a) all criminal acts that would constitute a predicate offence for money laundering in the jurisdiction; or
- b) at a minimum to those offences that would constitute a predicate offence as required by Recommendation 1.

Countries are strongly encouraged to adopt alternative (a). All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction.

In implementing Recommendation 13, suspicious transactions should be reported by financial institutions regardless of whether they are also thought to involve tax matters. Countries should take into account that, in order to deter financial institutions from reporting a suspicious transaction, money launderers may seek to state *inter alia* that their transactions relate to tax matters.

(See Recommendation 13)

Interpretative Note to Recommendation 14 (*tipping off*)

Where lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals seek to dissuade a client from engaging in illegal activity, this does not amount to tipping off.

(See Recommendation 14)

Interpretative Note to Recommendation 15

The type and extent of measures to be taken for each of the requirements set out in the Recommendation should be appropriate having regard to the risk of money laundering and terrorist financing and the size of the business.

For financial institutions, compliance management arrangements should include the appointment of a compliance officer at the management level.

(See Recommendation 15)

Interpretative Note to Recommendation 16 (*Thresholds Interpretative Note*)

1. It is for each jurisdiction to determine the matters that would fall under legal professional privilege or professional secrecy. This would normally cover information lawyers, notaries or other independent legal professionals receive from or obtain through one of their clients: (a) in the course of ascertaining the legal position of their client, or (b) in performing their task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings. Where accountants are subject to the same obligations of secrecy or privilege, then they are also not required to report suspicious transactions.

2. Countries may allow lawyers, notaries, other independent legal professionals and accountants to send their STR to their appropriate self-regulatory organisations, provided that there are appropriate forms of co-operation between these organisations and the FIU.

(See Recommendation 16)

Interpretative Note to Recommendation 23

Recommendation 23 should not be read as to require the introduction of a system of regular review of licensing of controlling interests in financial institutions merely for anti-money laundering purposes, but as to stress the desirability of suitability review for controlling shareholders in financial institutions (banks and non-banks in particular) from a FATF point of view. Hence, where shareholder suitability (or “fit and proper”) tests exist, the attention of supervisors should be drawn to their relevance for anti-money laundering purposes.

(See Recommendation 23)

Interpretative Note to Recommendation 25

When considering the feedback that should be provided, countries should have regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

(See Recommendation 25)

Interpretative Note to Recommendation 26

Where a country has created an FIU, it should consider applying for membership in the Egmont Group. Countries should have regard to the Egmont Group Statement of Purpose, and its Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases. These documents set out important guidance concerning the role and functions of FIUs, and the mechanisms for exchanging information between FIU.

(See Recommendation 26)

Interpretative Note to Recommendation 27

Countries should consider taking measures, including legislative ones, at the national level, to allow their competent authorities investigating money laundering cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering. Without such measures the use of procedures such as controlled deliveries and undercover operations are precluded.

(See Recommendation 27)

Interpretative Note to Recommendation 38

Countries should consider:

- a) Establishing an asset forfeiture fund in its respective country into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes.
- b) Taking such measures as may be necessary to enable it to share among or between other countries confiscated property, in particular, when confiscation is directly or indirectly a result of co-ordinated law enforcement actions.

(See Recommendation 38)

Interpretative Note to Recommendation 40

1. For the purposes of this Recommendation:

“Counterparts” refers to authorities that exercise similar responsibilities and functions.

“Competent authority” refers to all administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including the FIU and supervisors.

2. Depending on the type of competent authority involved and the nature and purpose of the co-operation, different channels can be appropriate for the exchange of information. Examples of mechanisms or channels that are used to exchange information include: bilateral or multilateral agreements or arrangements, memoranda of understanding, exchanges on the basis of reciprocity, or through appropriate international or regional organisations. However, this Recommendation is not intended to cover co-operation in relation to mutual legal assistance or extradition.

3. The reference to indirect exchange of information with foreign authorities other than counterparts covers the situation where the requested information passes from the foreign authority through one or more domestic or foreign authorities before being received by the requesting authority. The competent authority that requests the information should always make it clear for what purpose and on whose behalf the request is made.

4. FIUs should be able to make inquiries on behalf of foreign counterparts where this could be relevant to an analysis of financial transactions. At a minimum, inquiries should include:

Searching its own databases, which would include information related to suspicious transaction reports.

Searching other databases to which it may have direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases.

Where permitted to do so, FIUs should also contact other competent authorities and financial institutions in order to obtain relevant information.

(See Recommendation 40)

FATF 9 Special Recommendations

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts. For further information on the Special Recommendations as related to the self-assessment process, see the [Guidance Notes](#).

I. Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

II. Criminalising the financing of terrorism and associated money laundering

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

(See also Interpretative Note to SRII and Best Practices Paper)

III. Freezing and confiscating terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

(See also Interpretative Note to SRIII and Best Practices Paper)

IV. Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

V. International co-operation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

VI. Alternative remittance

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

(See also Interpretative Note to SRVI and Best Practices Paper)

VII. Wire transfers

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

(See also Interpretative Note to VII and Best Practices Paper)

VIII. Non-profit organisations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused: by terrorist organisations posing as legitimate entities; to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

(See also Interpretative Note to SRVIII and Best Practices Paper)

IX. Cash couriers

Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation.

Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or instruments.

(See also Interpretative Note to SRIX and Best Practices Paper)

Note:

With the adoption of Special Recommendation IX, the FATF now deletes paragraph 19(a) of Recommendation 19 and the Interpretative Note to Recommendation 19 in order to ensure internal consistency amongst the FATF Recommendations. The modified text of recommendation 19 reads as follows:

Recommendation 19

Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information.

APPENDIX B-Anti-money Laundering Legislation ECOWAS (UEMOA)

Directive N° 07/2002/CM/UEMOA

UNION ÉCONOMIQUE ET MONÉTAIRE OUEST AFRICAINE

LE CONSEIL DES MINISTRES

**DIRECTIVE N° 07/2002/CM/UEMOA RELATIVE A LA LUTTE CONTRE LE
BLANCHIMENT DE CAPITAUX DANS LES ÉTATS MEMBRES DE L'UNION
ÉCONOMIQUE ET MONÉTAIRE OUEST AFRICAINE (UEMOA)**

**LE CONSEIL DES MINISTRES DE L'UNION ÉCONOMIQUE ET MONÉTAIRE OUEST
AFRICAINE (UEMOA)**

- Vu** le Traité du 10 janvier 1994 instituant l'Union Économique et Monétaire Ouest Africaine (UEMOA), notamment en ses articles 6, 7, 16, 21, 42, 43, 97, 98 et 113 ;
- Vu** le Traité du 14 novembre 1973 constituant l'Union Monétaire Ouest Africaine (UMOA), notamment en son article 22 ;
- Sur** proposition conjointe de la Commission de l'UEMOA et de la BCEAO ;

Après avis du Comité des Experts Statutaire en date du 13 septembre

ADOpte LA DIRECTIVE DONT LA TENEUR SUIT :

TITRE PRÉLIMINAIRE : DÉFINITIONS

Article premier : Terminologie

Au sens de la présente Directive, on entend par :

Acteurs du Marché Financier Régional : la Bourse Régionale des Valeurs Mobilières (BRVM), le Dépositaire Central/Banque de Règlement, les Sociétés de Gestion et d'Intermédiation, les Sociétés de Gestion de Patrimoine, les Conseils en investissements boursiers, les Apporteurs d'affaires et les Démarcheurs.

Auteur : Toute personne qui participe à la commission d'un crime ou d'un délit, en quelque qualité que ce soit.

Autorités de contrôle : Les autorités nationales ou communautaires de l'UEMOA habilitées, en vertu d'une loi ou d'une réglementation, à contrôler les personnes physiques et morales.

Autorités publiques : Les administrations des Etats membres et des collectivités locales de l'Union, ainsi que leurs établissements publics.

Ayant droit économique : Le mandant, c'est-à-dire la personne pour le compte de laquelle le mandataire agit ou pour le compte de laquelle l'opération est réalisée.

BCEAO ou Banque Centrale : La Banque Centrale des Etats de l'Afrique de l'Ouest.

Biens : Tous les types d'avoirs, corporels ou incorporels, meubles ou immeubles, tangibles ou intangibles, fongibles ou non fongibles ainsi que les actes juridiques ou documents attestant la propriété de ces avoirs ou des droits y relatifs.

CENTIF : La Cellule Nationale de Traitement des Informations Financières instituée dans chaque Etat membre.

Confiscation : Dépossession définitive de biens sur décision d'une juridiction, d'une autorité de contrôle ou de toute autorité compétente.

Etat membre : L'Etat-partie au Traité de l'Union Economique et Monétaire Ouest Africaine.

Etat tiers : Tout Etat autre qu'un Etat membre.

Infraction d'origine : Tout crime ou délit au sens de la législation nationale de chaque Etat membre, même commis sur le territoire d'un autre Etat membre ou sur celui d'un Etat tiers, ayant permis à son auteur de se procurer des biens ou des revenus.

OPCVM : Organismes de Placement Collectif en Valeurs Mobilières.

Organismes financiers : Sont désignés sous le nom d'organismes financiers :

- les banques et établissements financiers ;

- les Services financiers des Postes, ainsi que les Caisses de Dépôts et Consignations ou les organismes qui en tiennent lieu, des Etats membres ;
- les Sociétés d'assurance et de réassurance, les courtiers d'assurance et de réassurance ;
- les institutions mutualistes ou coopératives d'épargne et de crédit, ainsi que les structures ou organisations non constituées sous forme mutualiste ou coopérative et ayant pour objet la collecte de l'épargne et/ ou l'octroi de crédit ;
- la Bourse Régionale des Valeurs Mobilières, le Dépositaire Central/Banque de Règlement, les Sociétés de Gestion et d'Intermédiation, les Sociétés de Gestion de Patrimoine ;
- les OPCVM (Organismes de Placement Collectif en Valeurs Mobilières) ;
- les Entreprises d'Investissement à Capital Fixe ;
- les Agréés de change manuel.

UEMOA : L'Union Economique et Monétaire Ouest Africaine.

UMO : L'Union Monétaire Ouest Africaine.

Union : L'Union Economique et Monétaire Ouest Africaine.

Article 2 : Définition du blanchiment de capitaux

Au sens de la présente Directive, le blanchiment de capitaux est défini comme l'infraction constituée par un ou plusieurs des agissements énumérés ci-après, commis intentionnellement, à savoir :

- la conversion, le transfert ou la manipulation de biens, dont l'auteur sait qu'ils proviennent d'un crime ou d'un délit, tels que définis par les législations nationales des Etats membres ou d'une participation à ce crime ou délit, dans le but de dissimuler ou de déguiser l'origine illicite desdits biens ou d'aider toute personne impliquée dans la commission de ce crime ou délit à échapper aux conséquences judiciaires de ses actes ;
- la dissimulation, le déguisement de la nature, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété réels de biens ou de droits y relatifs dont l'auteur sait qu'ils proviennent d'un crime ou d'un délit, tels que définis par les législations nationales des Etats membres ou d'une participation à ce crime ou délit;
- l'acquisition, la détention ou l'utilisation de biens dont l'auteur sait, au moment de la réception desdits biens, qu'ils proviennent d'un crime ou d'un délit, tels que définis par les législations nationales des Etats membres ou d'une participation à ce crime ou délit.

Il y a blanchiment de capitaux, même si les faits qui sont à l'origine de l'acquisition, de la détention et du transfert des biens à blanchir, sont commis sur le territoire d'un autre Etat membre ou sur celui d'un Etat tiers.

Article 3 : Entente, association, tentative de complicité en vue du blanchiment de capitaux

Constitue également une infraction de blanchiment de capitaux, l'entente ou la participation à une association en vue de la commission d'un fait constitutif de blanchiment de capitaux, l'association pour commettre ledit fait, les tentatives de le perpétrer, l'aide, l'incitation ou le conseil à une personne physique ou morale en vue de l'exécuter ou d'en faciliter l'exécution.

Sauf si l'infraction d'origine a fait l'objet d'une loi d'amnistie, il y a blanchiment de capitaux même :

- si l'auteur des crimes ou délits n'a été ni poursuivi ni condamné ;
- s'il manque une condition pour agir en justice à la suite desdits crimes ou délits.

TITRE PREMIER : DISPOSITIONS GÉNÉRALES

Article 4 : Objet de la Directive

La présente Directive a pour objet de définir le cadre juridique relatif à la lutte contre le blanchiment de capitaux dans les Etats membres, afin de prévenir l'utilisation des circuits économiques, financiers et bancaires de l'Union à des fins de recyclage de capitaux ou de tous autres biens d'origine illicite.

Article 5 : Champ d'application de la Directive

Les dispositions des titres II et III de la présente Directive sont applicables à toute personne physique ou morale qui, dans le cadre de sa profession, réalise, contrôle ou conseille des opérations entraînant des dépôts, des échanges, des placements, des conversions ou tous autres mouvements de capitaux ou de tous autres biens, à savoir :

- a) les Trésors Publics des Etats membres ;
- b) la BCEAO ;
- c) les organismes financiers ;
- d) les membres des professions juridiques indépendantes lorsqu'ils représentent ou assistent des clients en dehors de toute procédure judiciaire, notamment dans le cadre des activités suivantes :
 - . achat et vente de biens, d'entreprises commerciales ou de fonds de commerce,
 - . manipulation d'argent, de titres ou d'autres actifs appartenant au client,
 - . ouverture ou gestion de comptes bancaires, d'épargne ou de titres,
 - . constitution, gestion ou direction de sociétés, de fiducies ou de structures similaires, exécution d'autres opérations financières ;
- e) les autres assujettis, notamment :
 - . les Apporteurs d'affaires aux organismes financiers ;
 - . les Commissaires aux comptes ;
 - . les Agents immobiliers ;
 - . les marchands d'articles de grande valeur, tels que les objets d'art (tableaux, masques notamment), pierres et métaux précieux ;
 - . les transporteurs de fonds ;
 - . les gérants, propriétaires et directeurs de casinos et d'établissements de jeux, y compris les loteries nationales ;
 - . les agences de voyage.

TITRE II : DE LA PREVENTION DU BLANCHIMENT DE CAPITAUX

Article 6 : Respect de la réglementation des changes

Les opérations de change, mouvements de capitaux et règlements de toute nature dans l'UEMOA ou entre un Etat membre et un Etat tiers, doivent s'effectuer conformément aux dispositions de la réglementation des changes en vigueur dans l'Union.

Article 7 : Identification des clients par les organismes financiers

Les organismes financiers doivent s'assurer de l'identité et de l'adresse de leurs clients avant de leur ouvrir un compte, prendre en garde notamment des titres, valeurs ou bons, attribuer un coffre ou établir avec eux toutes autres relations d'affaires.

La vérification de l'identité d'une personne physique est opérée par la présentation d'une carte d'identité nationale ou de tout document officiel original en tenant lieu, en cours de validité, et comportant une photographie, dont il est pris une copie. La vérification de son adresse professionnelle et domiciliaire est effectuée par la présentation de tout document de nature à en rapporter la preuve. S'il s'agit d'une personne physique commerçante, cette dernière est tenue de fournir, en outre, toute pièce attestant de son immatriculation au Registre du Commerce et du Crédit Mobilier.

L'identification d'une personne morale ou d'une succursale est effectuée par la production d'une part de l'original, l'expédition ou la copie certifiée conforme, de tout acte ou extrait du Registre du Commerce et du Crédit Mobilier, attestant notamment de sa forme juridique, de son siège social et, d'autre part, des pouvoirs des personnes agissant en son nom.

Les organismes financiers s'assurent, dans les mêmes conditions que celles fixées à l'alinéa 2 du présent article, de l'identité et de l'adresse véritables des responsables, employés et mandataires agissant pour le compte d'autrui. Ces derniers doivent, à leur tour, produire les pièces attestant d'une part, de la délégation de pouvoir ou du mandat qui leur a été accordé et, d'autre part, de l'identité et de l'adresse de l'ayant droit économique.

Dans le cas des opérations financières à distance, les organismes financiers procèdent à l'identification des personnes physiques, conformément aux principes énoncés à l'annexe de la présente Directive.

Article 8 : Identification des clients occasionnels par les organismes financiers

L'identification des clients occasionnels s'effectue dans les conditions prévues aux alinéas 2 et 3 de l'article 7, pour toute opération portant sur une somme en espèces égale ou supérieure à cinq millions (5.000.000) de francs CFA ou dont la contre-valeur en franc CFA équivaut ou excède ce montant.

Il en est de même en cas de répétition d'opérations distinctes pour un montant individuel inférieur à celui prévu à l'alinéa précédent ou lorsque la provenance licite des capitaux n'est pas certaine.

Article 9 : Identification de l'ayant droit économique par les organismes financiers

Au cas où le client n'agirait pas pour son propre compte, l'organisme financier se renseigne par tous moyens sur l'identité de la personne pour le compte de laquelle il agit.

Après vérification, si le doute persiste sur l'identité de l'ayant droit économique, l'organisme financier procède à la déclaration de soupçon visée à l'article 26 auprès de la Cellule Nationale de Traitement des Informations Financières instituée à l'article 16, dans les conditions fixées à l'article 27.

Aucun client ne peut invoquer le secret professionnel pour refuser de communiquer l'identité de l'ayant droit économique.

Les organismes financiers ne sont pas soumis aux obligations d'identification prévues aux trois alinéas précédents lorsque le client est un organisme financier, soumis à la présente Directive.

Article 10 : Surveillance particulière de certaines opérations

Doivent faire l'objet d'un examen particulier de la part des personnes visées à l'article 5 :

- tout paiement en espèces ou par titre au porteur d'une somme d'argent, effectué dans des conditions normales, dont le montant unitaire ou total est égal ou supérieur à cinquante millions (50.000.000) de francs CFA ;
- toute opération portant sur une somme égale ou supérieure à dix millions (10.000.000) de francs CFA effectuée dans des conditions inhabituelles de complexité et/ou ne paraissant pas avoir de justification économique ou d'objet licite.

Dans les cas susvisés, ces personnes sont tenues de se renseigner auprès du client, et/ou par tous autres moyens, sur l'origine et la destination des sommes d'argent en cause, ainsi que sur l'objet de la transaction et l'identité des personnes impliquées, conformément aux dispositions des alinéas 2, 3 et 5 de l'article 7. Les caractéristiques principales de l'opération, l'identité du donneur d'ordre et du bénéficiaire, le cas échéant, celle des acteurs de l'opération sont consignées dans un registre confidentiel, en vue de procéder à des rapprochements, en cas de besoin.

Article 11 : Conservation des pièces et documents par les organismes financiers

Sans préjudice des dispositions édictant des obligations plus contraignantes, les organismes financiers conservent pendant une durée de dix (10) ans à compter de la clôture de leurs comptes ou de la cessation de leurs relations avec leurs clients habituels ou occasionnels, les pièces et documents relatifs à leur identité. Ils doivent également conserver les pièces et documents relatifs aux opérations qu'ils ont effectuées pendant dix (10) ans à compter de la fin de l'exercice au cours duquel les opérations ont été réalisées.

Article 12 : Communication des pièces et documents

Les pièces et documents relatifs aux obligations d'identification prévues aux articles 7, 8, 9, 10 et 15 et dont la conservation est mentionnée à l'article 11, sont communiqués, sur leur demande, par les personnes visées à l'article 5, aux autorités judiciaires, aux agents de l'Etat chargés de la détection et de la répression des infractions liées au blanchiment de capitaux, agissant dans le cadre d'un mandat judiciaire, aux autorités de contrôle, ainsi qu'à la CENTIF.

Cette obligation a pour but de permettre la reconstitution de l'ensemble des transactions réalisées par une personne physique ou morale et qui sont liées à une opération ayant fait l'objet d'une déclaration de soupçon visée à l'article 26 ou dont les caractéristiques ont été consignées sur le registre confidentiel prévu à l'article 10 alinéa 2.

Article 13 : Programmes internes de lutte contre le blanchiment de capitaux au sein des organismes financiers

Les organismes financiers sont tenus d'élaborer des programmes harmonisés de prévention du blanchiment de capitaux. Ces programmes comprennent, notamment :

- la centralisation des informations sur l'identité des clients, donneurs d'ordre, mandataires, ayants droit économiques ;
- le traitement des transactions suspectes ; la désignation de responsables internes chargés de l'application des programmes de lutte contre le blanchiment de capitaux ;
- la formation continue du personnel ;
- la mise en place d'un dispositif de contrôle interne de l'application et de l'efficacité des mesures adoptées dans le cadre de la présente Directive.

Les Autorités de contrôle pourront, dans leurs domaines de compétences respectifs, en cas de besoin, préciser le contenu et les modalités d'application des programmes de prévention du blanchiment de capitaux. Elles effectueront, le cas échéant, des investigations sur place afin de vérifier la bonne application de ces programmes.

Article 14 : Change manuel

Les agréés de change manuel doivent, à l'instar des banques, accorder une attention particulière aux opérations pour lesquelles aucune limite réglementaire n'est imposée et qui pourraient être effectuées aux fins de blanchiment de capitaux, dès lors que leur montant atteint cinq millions (5.000.000) de francs CFA.

Article 15 : Casinos et établissements de jeux

Les gérants, propriétaires et directeurs de casinos et établissements de jeux sont tenus aux obligations ci-après :

- justifier auprès de l'autorité publique, dès la date de demande d'autorisation d'ouverture, de l'origine licite des fonds nécessaires à la création de l'établissement ;
- s'assurer de l'identité, par la présentation d'une carte d'identité nationale ou de tout document officiel original en tenant lieu, en cours de validité, et comportant une photographie dont il est pris une copie, des joueurs qui achètent, apportent ou échangent des jetons ou des plaques de jeux pour une somme supérieure ou égale à un million (1.000.000) de francs CFA ou dont la contre-valeur est supérieure ou égale à cette somme ;
- consigner sur un registre spécial, dans l'ordre chronologique, toutes les opérations visées à l'alinéa précédent, leur nature et leur montant avec indication des noms et prénoms des joueurs, ainsi que du numéro du document d'identité présenté, et conserver ledit registre pendant dix (10) ans après la dernière opération enregistrée ;
- consigner dans l'ordre chronologique, tous transferts de fonds effectués entre casinos et établissements de jeux sur un registre spécial et conserver ledit registre pendant dix (10) ans après la dernière opération enregistrée.

Dans le cas où le casino ou l'établissement de jeux serait contrôlé par une personne morale possédant plusieurs filiales, les jetons de jeux doivent identifier la filiale par laquelle ils sont émis. En aucun cas, des jetons de jeux émis par une filiale ne peuvent être remboursés par une autre filiale, que celle-ci soit située dans le même Etat, dans un autre Etat membre de l'Union ou dans un Etat tiers.

TITRE III : DE LA DETECTION DU BLANCHIMENT DE CAPITAUX

Article 16 : Création de la CENTIF

Chaque Etat membre institue par décret ou un acte de portée équivalente, une Cellule Nationale de Traitement des Informations Financières (CENTIF), placée sous la tutelle du Ministre chargé des Finances.

Article 17 : Attributions de la CENTIF

La CENTIF est un Service Administratif doté de l'autonomie financière et d'un pouvoir de décision autonome sur les matières relevant de sa compétence. Sa mission est de recueillir et de traiter le renseignement financier sur les circuits de blanchiment de l'argent.

A ce titre, elle :

- est chargée notamment de recevoir, d'analyser et de traiter les renseignements propres à établir l'origine des transactions ou la nature des opérations faisant l'objet de déclarations de soupçons auxquelles sont astreintes les personnes assujetties ;
- reçoit également toutes autres informations utiles, nécessaires à l'accomplissement de sa mission, notamment celles communiquées par les Autorités de contrôle, ainsi que les officiers de police judiciaire ;
- peut demander la communication, par les assujettis ainsi que par toute personne physique ou morale, d'informations détenues par eux et susceptibles de permettre d'enrichir les déclarations de soupçons ;
- effectue ou fait réaliser des études périodiques sur l'évolution des techniques utilisées aux fins du blanchiment de capitaux au niveau du territoire national.

Elle émet des avis sur la mise en œuvre de la politique de l'Etat en matière de lutte contre le blanchiment de capitaux. A ce titre, elle propose toutes réformes nécessaires au renforcement de l'efficacité de la lutte contre le blanchiment de capitaux.

La CENTIF élabore des rapports périodiques (au moins une fois par trimestre) et un rapport annuel qui analysent l'évolution des activités de lutte contre le blanchiment de capitaux au plan national et international, et procède à l'évaluation des déclarations recueillies. Ces rapports sont soumis au Ministre chargé des Finances.

Article 18 : Composition de la CENTIF

La CENTIF est composée de six (6) personnes, à savoir :

- un haut fonctionnaire issu, soit de la Direction des Douanes, soit de la Direction du Trésor, soit de la Direction des Impôts, ayant rang de Directeur d'Administration centrale, détaché par le Ministère chargé des Finances. Il assure la présidence de la CENTIF ;
- un magistrat spécialisé dans les questions financières, détaché par le Ministère chargé de la Justice ;
- un haut fonctionnaire de la Police Judiciaire, détaché par le Ministère chargé de la Sécurité ou par le Ministère de tutelle ;
- un représentant de la BCEAO assurant le secrétariat de la CENTIF ;
- un chargé d'enquêtes, Inspecteur des Services des Douanes, détaché par le Ministère chargé des Finances ;

- un chargé d'enquêtes, Officier de Police Judiciaire, détaché par le Ministère chargé de la Sécurité ou par le Ministère de tutelle .

Les membres de la CENTIF exercent leurs fonctions, à titre permanent, pour une durée de trois ans, renouvelable une fois.

Article 19 : Des correspondants de la CENTIF

Dans l'exercice de ses attributions, la CENTIF peut recourir à des correspondants au sein des Services de la Police, de la Gendarmerie, des Douanes ainsi que des Services Judiciaires de l'Etat et de tout autre Service dont le concours est jugé nécessaire dans le cadre de la lutte contre le blanchiment de capitaux.

Les correspondants identifiés sont désignés *ès qualité* par arrêté de leur Ministre de tutelle. Ils collaborent avec la CENTIF dans le cadre de l'exercice de ses attributions.

Article 20 : Confidentialité

Les membres et les correspondants de la CENTIF prêtent serment avant d'entrer en fonction. Ils sont tenus au respect du secret des informations recueillies qui ne pourront être utilisées à d'autres fins que celles prévues par la présente Directive.

Article 21 : Organisation et fonctionnement de la CENTIF

Le décret instituant la CENTIF précisera le statut, l'organisation et les modalités de financement de la CENTIF.

Un Règlement Intérieur, approuvé par le Ministre chargé des Finances, fixera les règles de fonctionnement interne de la CENTIF.

Article 22 : Financement de la CENTIF

Les ressources de la CENTIF proviennent notamment des apports consentis par chaque Etat membre, les Institutions de l'UEMOA et des partenaires au développement.

Article 23 : Relations entre les cellules de renseignements financiers des Etats membres

La CENTIF est tenue de :

- communiquer, à la demande dûment motivée d'une CENTIF d'un Etat membre dans le cadre d'une enquête, toutes informations et données relatives aux investigations entreprises à la suite d'une déclaration de soupçons au niveau national ;
- transmettre les rapports périodiques (trimestriels et annuels) détaillés sur ses activités au Siège de la BCEAO, chargé de réaliser la synthèse des rapports des CENTIF aux fins de l'information du Conseil des Ministres de l'UEMOA.

Article 24 : Relations entre les CENTIF et les services de renseignements financiers des Etats tiers

Les CENTIF peuvent, sous réserve de réciprocité, échanger des informations avec les services de renseignements financiers des Etats tiers chargés de recevoir et de traiter les déclarations de soupçons, lorsque ces derniers sont soumis à des obligations analogues de secret.

La conclusion d'accords entre une CENTIF et un Service de renseignement d'un Etat tiers nécessite l'autorisation préalable du Ministre chargé des Finances de l'Etat membre concerné.

Article 25 : Rôle assigné à la BCEAO

La BCEAO a pour rôle de favoriser la coopération entre les CENTIF. A ce titre, elle est chargée d'harmoniser les actions des CENTIF dans le cadre de la lutte contre le blanchiment de capitaux et d'établir une synthèse des informations provenant des rapports élaborés par ces dernières. La BCEAO participe, avec les CENTIF, aux réunions des instances internationales traitant des questions relatives à la lutte contre le blanchiment de capitaux.

La synthèse établie par le Siège de la BCEAO est communiquée aux CENTIF des Etats membres de l'Union, en vue d'alimenter leurs bases de données. Elle servira de support à un rapport périodique destiné à l'information du Conseil des Ministres de l'Union sur l'évolution de la lutte contre le blanchiment de capitaux.

Une version de ces rapports périodiques sera élaborée pour l'information du public et des assujettis aux déclarations de soupçons.

Article 26 : Obligation de déclaration des opérations suspectes

Les personnes visées à l'article 5 sont tenues de déclarer à la CENTIF, dans les conditions fixées par la présente Directive et selon un modèle de déclaration fixé par arrêté du Ministre chargé des Finances :

- les sommes d'argent et tous autres biens qui sont en leur possession, lorsque ceux-ci pourraient provenir du blanchiment de capitaux ;
- les opérations qui portent sur des biens lorsque celles-ci pourraient s'inscrire dans un processus de blanchiment de capitaux ;
- les sommes d'argent et tous autres biens qui sont en leur possession, lorsque ceux-ci, suspectés d'être destinés au financement du terrorisme, paraissent provenir de la réalisation d'opérations se rapportant au blanchiment.

Les préposés des personnes susvisées sont tenus d'informer immédiatement leurs dirigeants de ces mêmes opérations, dès qu'ils en ont connaissance.

Les personnes physiques et morales précitées ont l'obligation de déclarer à la CENTIF les opérations ainsi réalisées, même s'il a été impossible de surseoir à leur exécution ou s'il est apparu, postérieurement à la réalisation de l'opération, que celle-ci portait sur des sommes d'argent et tous autres biens, d'origine suspecte.

Ces déclarations sont confidentielles et ne peuvent être communiquées au propriétaire des sommes ou à l'auteur des opérations.

Toute information de nature à modifier l'appréciation portée par la personne physique ou morale lors de la déclaration et tendant à renforcer le soupçon ou à l'infirmer, doit être, sans délai, portée à la connaissance de la CENTIF.

Article 27 : Transmission de la déclaration à la CENTIF

Les déclarations de soupçons sont transmises par les personnes physiques et morales visées à l'article 5 à la CENTIF par tout moyen laissant trace écrite. Les déclarations faites téléphoniquement ou par tout moyen électronique doivent être confirmées par écrit dans un délai de quarante-huit heures. Ces déclarations indiquent, notamment suivant le cas :

- les raisons pour lesquelles l'opération a déjà été exécutée ;
- le délai dans lequel l'opération suspecte doit être exécutée.

Article 28 : Traitement des déclarations et opposition à l'exécution des opérations

La CENTIF accuse réception de toute déclaration de soupçon écrite. Elle traite et analyse immédiatement les informations recueillies et procède, le cas échéant, à des demandes de renseignements complémentaires auprès du déclarant ainsi que de toute autorité publique et/ou de contrôle.

A titre exceptionnel, la CENTIF peut, sur la base d'informations graves, concordantes et fiables en sa possession, faire opposition à l'exécution de ladite opération avant l'expiration du délai d'exécution mentionné par le déclarant. Cette opposition est notifiée à ce dernier par écrit et fait obstacle à l'exécution de l'opération pendant une durée qui ne peut excéder quarante-huit heures.

A défaut d'opposition ou si, au terme du délai de quarante-huit heures, aucune décision du juge d'instruction, n'est parvenue au déclarant, celui-ci peut exécuter l'opération.

Article 29 : Suites données aux déclarations

Lorsque les opérations mettent en évidence des faits susceptibles de constituer l'infraction de blanchiment de capitaux, la CENTIF transmet un rapport sur ces faits au Procureur de la République qui saisit immédiatement le juge d'instruction. Ce rapport est accompagné de toutes pièces utiles, à l'exception de la déclaration de soupçon. L'identité du préposé à la déclaration ne doit pas figurer dans ledit rapport.

La CENTIF avisera en temps opportun les assujettis aux déclarations de soupçons des conclusions de ses investigations.

Article 30 : Exemption de responsabilité du fait des déclarations de soupçons faites de bonne foi

Les personnes ou les dirigeants et préposés des personnes visées à l'article 5 qui, de bonne foi, ont transmis des informations ou effectué toute déclaration, conformément aux dispositions de la présente Directive, sont exempts de toutes sanctions pour violation du secret professionnel.

Aucune action en responsabilité civile ou pénale ne peut être intentée, ni aucune sanction professionnelle prononcée ne contre les personnes ou les dirigeants et préposés des personnes visées à l'article 5 ayant agi dans les mêmes conditions que celles prévues à l'alinéa précédent, même si des décisions de justice rendues sur la base des déclarations visées dans ce même alinéa n'ont donné lieu à aucune condamnation.

En outre, aucune action en responsabilité civile ou pénale ne peut être intentée contre les personnes visées à l’alinéa précédent du fait des dommages matériels et/ou moraux qui pourraient résulter du blocage d’une opération en vertu des dispositions de l’article 28.

Les dispositions du présent article s’appliquent de plein droit, même si la preuve du caractère délictueux des faits à l’origine de la déclaration n’est pas rapportée ou si ces faits ont été amnistiés ou ont entraîné une décision de non-lieu, de relaxe ou d’acquiescement.

Article 31 : Responsabilité de l’Etat du fait des déclarations de soupçons faites de bonne foi

La responsabilité de tout dommage causé aux personnes et découlant directement d’une déclaration de soupçon faite de bonne foi, mais qui néanmoins, s’est avérée inexacte, incombe à l’Etat.

Article 32 : Exemption de responsabilité du fait de l’exécution de certaines opérations

Lorsqu’une opération suspecte a été exécutée, et sauf collusion frauduleuse avec le ou les auteurs du blanchiment, aucune poursuite pénale du chef de blanchiment ne peut être engagée à l’encontre de l’une des personnes visées à l’article 5, leurs dirigeants ou préposés, si la déclaration de soupçon a été faite conformément aux dispositions de la présente Directive.

Il en est de même lorsqu’une personne visée à l’article 5 a effectué une opération à la demande des autorités judiciaires, des agents de l’Etat chargés de la détection et de la répression des infractions liées au blanchiment de capitaux, agissant dans le cadre d’un mandat judiciaire ou de la CENTIF.

Article 33 : Mesures d’investigation

Afin d’établir la preuve de l’infraction d’origine et la preuve des infractions prévues à la présente Directive, le juge d’instruction peut ordonner, conformément à la loi, pour une durée déterminée, sans que le secret professionnel puisse lui être opposé, diverses actions, notamment :

- la mise sous surveillance des comptes bancaires et des comptes assimilés aux comptes bancaires, lorsque des indices sérieux permettent de suspecter qu’ils sont utilisés ou susceptibles d’être utilisés pour des opérations en rapport avec l’infraction d’origine ou des infractions prévues à la présente Directive ;
- l’accès à des systèmes, réseaux et serveurs informatiques utilisés ou susceptibles d’être utilisés par des personnes contre lesquelles existent des indices sérieux de participation à l’infraction d’origine ou aux infractions prévues par la présente Directive;
- la communication d’actes authentiques ou sous seing privé, de documents bancaires, financiers et commerciaux.

Il peut également ordonner la saisie des actes et documents susmentionnés.

Article 34 : Levée du secret professionnel

Nonobstant toutes dispositions législatives ou réglementaires contraires, le secret professionnel ne peut être invoqué par les personnes visées à l'article 5 pour refuser de fournir les informations aux autorités de contrôle, ainsi qu'à la CENTIF ou de procéder aux déclarations prévues par la présente Directive. Il en est de même en ce qui concerne les informations requises dans le cadre d'une enquête portant sur des faits de blanchiment, ordonnée par le juge d'instruction ou effectuée sous son contrôle, par les agents de l'Etat chargés de la détection et de la répression des infractions liées au blanchiment de capitaux.

TITRE IV : DES MESURES COERCITIVES

Article 35 : Mesures conservatoires

Le juge d'instruction peut prescrire des mesures conservatoires, conformément à la loi en ordonnant, aux frais de l'Etat, notamment la saisie ou la confiscation des biens en relation avec l'infraction objet de l'enquête et tous éléments de nature à permettre de les identifier, ainsi que le gel des sommes d'argent et opérations financières portant sur lesdits biens.

La mainlevée de ces mesures peut être ordonnée par le juge d'instruction dans les conditions prévues par la loi.

Article 36 : Obligation pour les Etats de prendre les dispositions législatives relative la répression des infractions liées au blanchiment de capitaux

Les Etats membres sont tenus de prendre, dans le délai prévu à l'article 42, les dispositions législatives relatives d'une part, aux sanctions pénales applicables à toute personne physique ou morale ayant commis une infraction de blanchiment de capitaux et d'autre part, aux mesures de confiscation des sommes d'argent et tous autres biens, objet de ladite infraction.

Article 37 : Incrimination de certains actes imputables aux personnes physiques et morales

Dans les mêmes conditions que celles visées à l'article 36, chaque Etat membre de l'UEMOA est tenu de prendre les dispositions législatives afférentes aux sanctions pénales applicables d'une part, aux personnes morales autres que l'Etat, pour le compte ou au bénéfice desquelles une infraction subséquente a été commise par l'un de ses organes ou représentants et d'autre part, aux personnes et dirigeants ou préposés des personnes physiques ou morales visées à l'article 5, lorsque ces derniers auront

* d'une part, intentionnellement :

- a) fait au propriétaire des sommes ou à l'auteur des opérations visées à l'article 5, des révélations sur la déclaration qu'ils sont tenus de faire ou sur les suites qui lui ont été réservées ;
- b) détruit ou soustrait des pièces ou documents relatifs aux obligations d'identification visées aux articles 7, 8, 9, 10 et 15, dont la conservation est prévue par l'article 11 de la présente Directive ;

- c) réalisé ou tenté de réaliser sous une fausse identité l'une des opérations visées aux articles 5 à 10, 14 et 15 ;
 - d) informé par tous moyens la ou les personnes visées par l'enquête menée pour des faits de blanchiment de capitaux dont ils auront eu connaissance en raison de leur profession ou de leurs fonctions ;
 - e) communiqué aux autorités judiciaires ou aux fonctionnaires compétents pour constater les infractions d'origine et subséquentes des actes et documents visés à l'article 33, qu'ils savaient falsifiés ou erronés ;
 - f) communiqué des renseignements ou documents à des personnes autres que celles visées à l'article 12 ;
 - g) omis de procéder à la déclaration de soupçon prévue à l'article 26, alors que les circonstances amenaient à déduire que les sommes d'argent pouvaient provenir d'une infraction de blanchiment de capitaux telle que définie à l'article 2 et 3 ;
- * d'autre part, non intentionnellement :
- h) omis de faire la déclaration de soupçons prévue à l'article 26 ;
 - i) contrevenu aux dispositions des articles 6, 7, 8, 9, 10, 11, 12, 14, 15 et 26.

Article 38 : Obligations spécifiques des Autorités de contrôle

Lorsque l'Autorité de contrôle constate que, par suite d'un grave défaut de vigilance ou d'une carence dans l'organisation de ses procédures internes, la personne physique ou morale visée à l'article 5 a omis de faire la déclaration de soupçon prévue à l'article 29 ou, d'une manière générale, méconnu l'une des obligations qui lui sont assignées par la présente Directive, l'autorité de contrôle engage à son encontre, une procédure sur le fondement des textes qui les régissent.

Elle en avise en outre la CENTIF, ainsi que le Procureur de la République.

TITRE V : DE LA COOPERATION INTERNATIONALE

Article 39 : Entraide judiciaire

Les Etats membres doivent promouvoir, mettre en œuvre et renforcer une dynamique de coopération internationale et d'entraide judiciaire entre les Etats, afin de garantir l'efficacité de leur lutte contre le blanchiment de capitaux.

Cette entraide consiste notamment en la recherche de preuves et en l'exécution de mesures de contraintes, en particulier lorsque les infractions résultant d'opérations susceptibles d'être qualifiées de blanchiment de capitaux présentent un caractère international.

Article 40 : Mesures en vue du renforcement de la coopération internationale

Les Etats membres sont tenus de prendre les dispositions nécessaires, en vue de coopérer dans la mesure la plus large possible au niveau communautaire, et avec les autres Etats, à l'échelle internationale, aux fins d'échange d'informations, d'investigations et de procédures visant les

mesures conservatoires, ainsi que la confiscation des instruments et produits liés au blanchiment de capitaux, aux fins d'extradition et d'assistance technique mutuelle.

Article 41 : Conditions et modalités de la coopération internationale

Les modalités pratiques et les conditions concrètes de mise en œuvre de la coopération internationale destinée à développer l'entraide judiciaire entre les Etats, tant au niveau régional qu'au plan international, seront précisées dans la loi uniforme dérivée de la Directive, ainsi que par toute norme adéquate de droit interne.

TITRE VI : DISPOSITIONS FINALES

Article 42 : Obligation de transposition

Les Etats membres doivent adopter au plus tard six mois à compter de la date de signature de la présente Directive, les textes uniformes relatifs à la lutte contre le blanchiment des capitaux.

Article 43 : Suivi de l'exécution

La BCEAO et la Commission de l'UEMOA sont chargées du suivi de l'application de la présente Directive.

Article 44 : Modification

La présente Directive peut être modifiée par le Conseil des Ministres de l'UEMOA, à l'initiative de la BCEAO, sur proposition conjointe de la Commission de l'UEMOA et de la BCEAO.

Article 45 : Entrée en vigueur

La présente Directive qui entre en vigueur à compter de sa date de signature, sera publiée au Bulletin Officiel de l'Union.

Fait à Cotonou, le 19 Septembre 2002

Pour le Conseil des Ministres,

Le Président **Kossi ASSIMAIDOU**

http://www.uemoa.int/actes/2002/directive_07_2002_cm.htm

ANNEXE

MODALITES D'IDENTIFICATION DES CLIENTS (PERSONNES PHYSIQUES) PAR LES ORGANISMES FINANCIERS DANS LE CAS D'OPERATIONS FINANCIERES A DISTANCE

Dans le cadre de la lutte contre le blanchiment de capitaux, les procédures d'identification mises en oeuvre par les organismes financiers, pour les opérations financières à distance, doivent être conformes aux principes suivants :

1. Les procédures doivent assurer une identification appropriée du client
2. Les procédures peuvent être appliquées à condition qu'aucun motif raisonnable ne laisse penser que le contact direct ("face à face") est évité afin de dissimuler l'identité véritable du client et qu'aucun blanchiment de capitaux ne soit suspecté ;
3. Les procédures ne doivent pas être appliquées aux opérations impliquant l'emploi d'espèces;
4. Les procédures de contrôle internes visées à l'article 12, paragraphe 1 de la Directive relative à la lutte contre le blanchiment de capitaux dans les Etats membres de l'UEMOA doivent tenir spécialement compte des opérations à distance ;
5. Dans le cas où la contrepartie de l'organisme financier réalisant l'opération ("organisme financier contractant") serait un client, l'identification peut être effectuée en recourant aux procédures suivantes :
 - a) L'identification directe est effectuée par la succursale ou le bureau de représentation de l'organisme financier contractant qui est le plus proche du client.
 - b) Dans les cas où l'identification est effectuée sans contact direct avec le client

- la fourniture d'une copie du document d'identité officiel du client ou du numéro du document d'identité officiel, est exigée. Une attention spéciale est accordée à la vérification de l'adresse du client lorsque celle-ci est indiquée sur le document d'identité (par exemple en envoyant les pièces afférentes à l'opération à l'adresse du client sous pli commandé, avec avis de réception)

;- le premier paiement afférent à l'opération doit être effectué par l'intermédiaire d'un compte ouvert au nom du client auprès d'un établissement de crédit situé dans l'espace UEMOA. Les Etats membres peuvent autoriser les paiements réalisés par l'intermédiaire d'établissements de crédit de bonne réputation établis dans des pays tiers qui appliquent des normes anti-blanchiment équivalentes ;

- l'organisme financier contractant doit soigneusement vérifier que l'identité du titulaire du compte par l'intermédiaire duquel le paiement est réalisé correspond effectivement à celle du client, telle qu'indiquée dans le document d'identité (ou établie à partir du numéro d'identification). En cas de doute sur ce point, l'organisme financier contractant doit contacter l'établissement de crédit auprès duquel le compte est ouvert afin de confirmer l'identité du titulaire du compte. S'il subsiste encore un doute, il conviendra d'exiger de cet établissement de crédit un certificat attestant de l'identité du titulaire du compte et confirmant qu'il a été dûment procédé à l'identification et que les informations qui y sont relatives ont été enregistrées, conformément à la Directive relative à la lutte contre le blanchiment de capitaux dans les Etats membres de l'UEMOA.

6. Dans le cas où la contrepartie de l'organisme financier contractant serait un autre établissement agissant pour le compte d'un client :

a) lorsque la contrepartie est située dans l'Union, l'identification du client par l'organisme financier contractant n'est pas requise, conformément à l'article 9 alinéa 4 de la Directive relative à la lutte contre le blanchiment de capitaux dans les Etats membres de l'UEMOA ;

b) lorsque la contrepartie est située hors de l'Union, l'organisme financier doit vérifier son identité en consultant un annuaire financier fiable. En cas de doute à cet égard, l'organisme financier doit demander confirmation de l'identité de sa contrepartie auprès des autorités de contrôle du pays tiers concerné. L'organisme financier est également tenu de prendre "des mesures raisonnables" en vue d'obtenir des informations sur le client de sa contrepartie, à savoir le bénéficiaire effectif de l'opération, conformément à l'article 9 alinéa 1" de la Directive relative à la lutte contre le blanchiment de capitaux dans les Etats membres de l'UEMOA. Ces "mesures raisonnables" peuvent se limiter - lorsque le pays de la contrepartie applique des obligations d'identification équivalentes - à demander le nom et l'adresse du client, mais il peut y avoir lieu, lorsque ces obligations ne sont pas équivalentes, d'exiger de la contrepartie un

certificat confirmant que l'identité du client a été dûment vérifiée et enregistrée.

7. Les procédures susmentionnées sont sans préjudice de l'emploi d'autres méthodes qui, de l'avis des autorités compétentes, pourraient offrir des garanties équivalentes en matière d'identification dans le cadre d'opérations financières à distance.

http://www.uemoa.int/actes/2002/Annexe_dir07_2002.pdf

APPENDIX C- Beninese AML legislation

Beninese Anti-money laundering legislation 2006-14 (law not attached due to length of document)

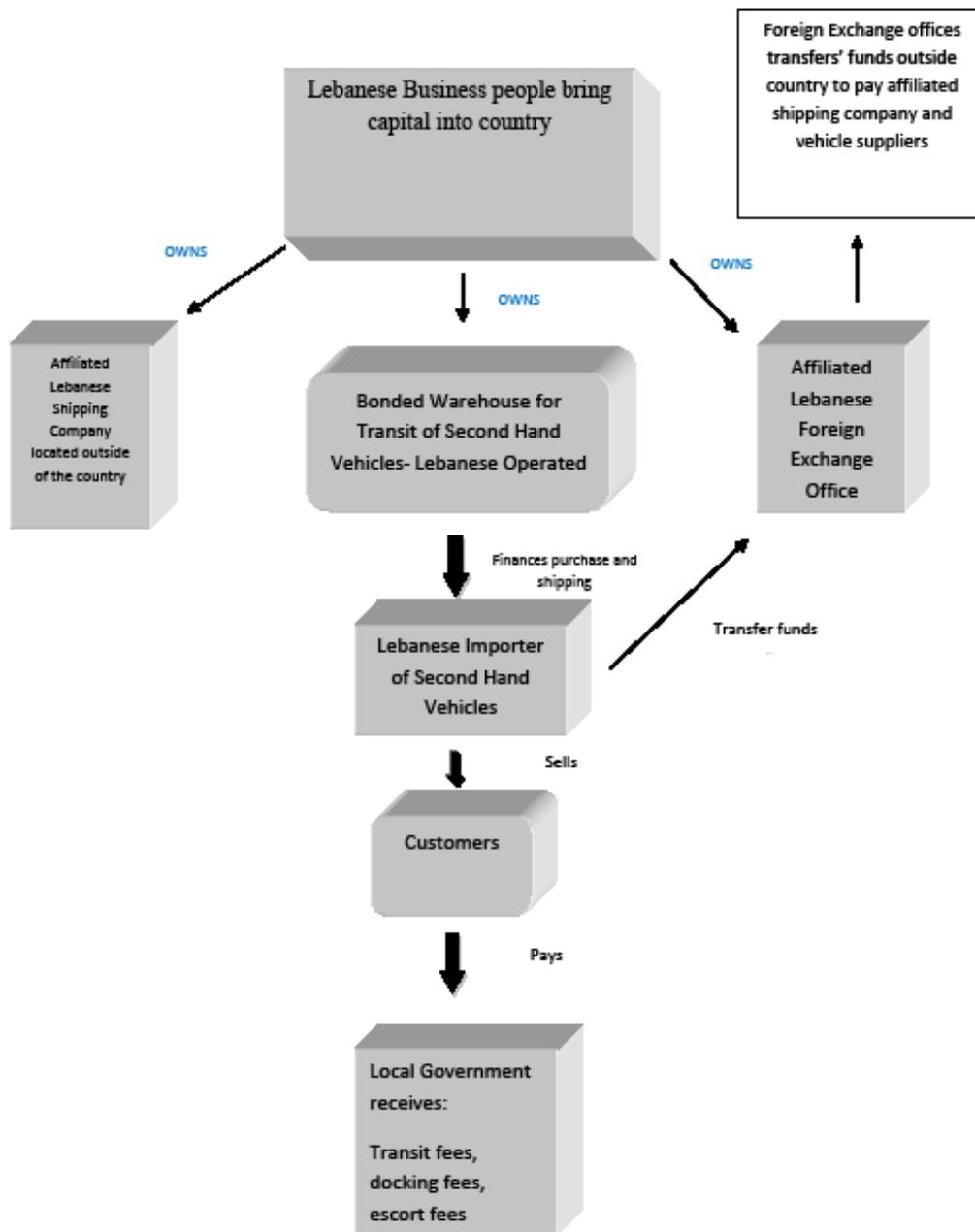
For review of Beninese anti-money legalisation, please refer to URL:

http://www.giaba.org/media/static/AML-CFT_Benin.pdf

APPENDIX D- MAP WEST AFRICAN REGION



APPENDIX E- MONEY LAUNDERING EXAMPLE



APPENDIX F- COMMONLY CITED MONEY LAUNDERING TECHNIQUES

Commonly cited money laundering techniques

The following are just a few examples of money laundering techniques that maybe used by organized crime in order to laundered money:

- 1) **Hawalas**: This is known as the informal and unregistered transfer of monies. In general people who run Hawalas systems have contacts with various foreign countries. One can bring the cash to a Hawala in country # 1 and within 24-48 hours the corresponding Hawala in the Country # 2 will deliver the cash less of course a service fee, to the designated recipient in the other country. No money actually leaves the country the Hawalas simply keeps a set of books to track how the money has gone in each direction.¹⁰⁴ For example, the Egmont Group¹⁰⁵ cited a case (case reference 06060)¹⁰⁶ where an African national residing in a European Country (Country Z) declared that he performed Hawala banking activities. His account was exclusively credited by cash deposits and numerous transfers for small amounts. Over the course of several months the funds were transferred to company A in Africa. In a brief period afterwards the funds were transferred to Company B in Country Z. Both companies A and B performed international remittances services. According to the Hawala operator he performed hawala activities for his countrymen wishing to send money to Africa. However, he did not hold any position within the companies in Country Z where he executed the transactions and he was not registered as a representative of an authorized exchange office.
- 2) **Current Exchanges offices**: The criminal will take large quantities of cash to a foreign exchange broker and have the currency wired to an offshore account, and then it will be

¹⁰⁴ Matthew McGuire class notes from DIFA program 2009 Class IFA1903 Investigative Related Matters Into Class 7

¹⁰⁵ Egmont group is an informal body of governmental disclosure receiving agencies that share a common goal to provide a forum to enhance mutual cooperation and to share information that has is useful in detecting and combating money laundering.

¹⁰⁶ Egmont Group Website, sanitized cases , http://www.egmontgroup.org/files/library_sanitized_cases/ref06060.pdf

transferred to an account that the criminal controls in the offshore location. The currency exchange offices will use the banking system to deposit the cash and to perform the wire transfer. However, as currency exchanges offices is cash-based business the transactions may not appear to be suspicious. For example the Egmont grouped sited a case (case reference # 08005)¹⁰⁷ that X, a non native , repeated went to several agencies of two exchange offices in European country to exchange various currencies into Euros. This amounted to almost 2 million Euros over a period of a couple of months. There was no economic justification for these transactions by X and he had no relation with the country in which he was performing these exchanges; he resided aboard and did not have any known professional activity. The FIU's analysis revealed that there were similarities between X and other persons whose transactions also originated from the same country as X and that they resided in the same neighbouring country. The two individuals did not have any professional activities and were in fact students. A great majority of these transactions were performed the same day within thirty minute intervals. The investigation revealed that individuals were involved and known for being drug traffickers.

- 3) ***Concealment within business structures***: This scheme seeks to conceal criminal funds within the movement of normal activity of existing business or companies controlled by criminal activities. The launderers attempt to move monies through the financial system by intermingling them with transactions of the controlled existing business.¹⁰⁸ The Egmont group report of 100 cases of attempted money laundering schemes received a disclosure from a European FIU. Marvin a European national, attempted to deposit five cheques (totalling 1.6 million US) to his newly opened company bank. He informed the bank that the funds related to land sales in an African country that had been undertaken by his real

¹⁰⁷ Egmont Group Website, sanitized cases , http://www.egmontgroup.org/files/library_sanitized_cases/ref08005.pdf

¹⁰⁸ 100 Cases for the Egmont Group , page 10

estate company. The bank disclosed to its national FIU in the view of the scale of the transactions. It was later uncovered that Marvin's father was serving a prison term in another country for fraud, espionage, corruption and other criminal activities. His father was sentenced after a large scale fraud at a foreign bank which subsequently collapsed after the fraud.¹⁰⁹

- 4) ***Misuse of legitimate business:*** The launderer attempts to use existing business or companies for the laundering process without the organization being aware of the criminal source of the funds. The main benefit of using another business is the ill-gotten funds will probably be viewed as coming from the legitimate business and not from the criminal owner.¹¹⁰ A northern European FIU received a suspicious transaction report from a bank concerning a transfer of almost 400,000 US in the national currency. This money was paid into an account of a lawyer in a neighbouring country. The investigation revealed that the transfer was the proceeds of fraud. The proceeds related to a construction project in the neighbouring country. The lawyer involved fraudulently used the money for his private investments and had sought to use the accounts of the legal firm within which he worked to facilitate the process. He assumed that the financial institution would not question the transactions of a well established firm.¹¹¹
- 5) ***The exploitation of international jurisdiction:*** The existence of differing jurisdiction offers possibilities to launderers for exploitation due to differing banking secrecy laws, identification and disclosure requirements, company formation requirements and currency restrictions. This makes the tasks for the investigators much more difficult due to

¹⁰⁹ 100 Cases for the Egmont Group , page 12

¹¹⁰ 100 Cases for the Egmont Group , page 51

¹¹¹ 100 Cases for the Egmont Group , page 55

unfamiliarity with the jurisdiction, difficulties in language, the sheer cost of the investigations and restrictions on the availability of information.¹¹²

6) ***Real Estate transactions:*** There are three methods available under real estate transactions:

a) to buy property at below market and pay cash on the side to make up the difference.

Once purchased the criminal can sell the property at market value and then in turn pockets the legitimate profits, b) Purchase the property at market value and then use the ill-gotten

gains and pay cash for improvements. The improvements will increase the market value of the purchased real estate and then this property can be sold and profits are now legitimate,

c) Purchase the property at market value and hold onto the property for a couple of years.

Pay down the mortgage very quickly to build up equity which can be received on sale.¹¹³

¹¹² 100 Cases for the Egmont Group , page 102

¹¹³ Matthew McGuire class notes from DIFA program Class IFA1903 Investigative Related Matters Into Class 7

APPENDIX G- Course Outline Advanced Topics

DIFA Class 2009 - IFA 2903 - Emerging Issues/Advanced Topics

Preliminary Course Outline - March 2009

Course Objectives

This course provides an opportunity for students to research and learn about an emerging issue or area of IFA speciality that is of particular interest to them. It also covers specific topics at advanced levels, such as Identity Fraud and Corporate Due Diligence that have yet to be incorporated into other DIFA courses.

Course Instructors and Coordinator

The course instructors are:

- Prof. Len Brooks, Rotman School of Management,
brooks@rotman.utoronto.ca
Prof. Wally Smieliauskas, Rotman School of Management,
smieliauskas@rotman.utoronto.ca
- Prof. Real Labelle, HEC, real.labelle@hec.ca
- Jennifer Fiddian-Green, CA•IFA, CFI, CAMS, CMA, CFE,
jfiddian-green@grantthornton.ca

Course Overview

This course will be given over a nine (9) week period, starting April 1, 2009 and ending on May 30. Grades will be based entirely on the 50+ page, research project prescribed below.

The course is structured principally as a research and readings course involving supervised self-study, with specific weekly sessions covering an introduction to the research project and research methods, as well as sessions on the advanced topics identified above. Weekly sessions will use Blackboard's On Line Classes. The remaining weeks will be devoted to self-study on research project matters.

Teaching Method

For the self-study, research component of the course, each student will choose a topic, a local mentor, and prepare a research plan for approval by Professors Brooks, Smieliauskas or Labelle. Once the mentor and plan are approved, the students will execute their research plan; submit a progress report, and a final research report. Students will ask for counsel from identified experts when needed. Further details are set out below in the Research Report section of this outline.

Grading

The breakdown of marks for the Advanced Topics/Emerging Issues Course will be as follows:

Research Project (Part 1)	Due June 1*
□ Content	90%

□ Quality of Presentation of Research Project	<u>10%</u>
Total	<u>100%</u>

Extendable until June 20 without penalty

Research Project (100% in Total) – Due June 1, 2009

Research projects should be submitted before 5 p.m. on June 1, 2009 to Len Brooks with a copy to Debby Keown debby.keown@utoronto.ca. This due date may be extended with the permission of the professor until June 20, without penalty. Late projects will lose 5 marks per day after June 1 unless specific alternative arrangements are agreed in advance.

Each student will:

- Select a research topic from the list below, or a topic which has the approval of their professor,
- Select a local mentor who is an IFA or expert on the topic selected, provide her/him with the DIFA document on Mentoring an Emerging Issues Project from the DIFA website, and obtain his/her permission to serve and CV,
- Prepare a research plan under the following headings:
 - Research Topic – 3 paragraphs maximum
 - Motivation for Selection – 2 paragraphs maximum
 - Research Plan, including:
 - Probable sub-topics to be researched,
 - Probable research sources to be examined
 - Timetable, including consultations with the mentor
 - Details of interviews to enable clearance under University human subjects ethics protocols. Details to follow.
 - CV and agreement of mentor to serve.

The mentor CV and documents, and research plan will be submitted to your professor for approval and comment by April 18.

Upon approval, the research plan is to be executed. The student is to consult his/her mentor when required, as well as your professor and/or the expert identified for your topic by the DIFA program.

Two hard copies (one Cerlock or wire bound, and the other **not** bound) of the final research report are to be submitted to the DIFA Office on June 1, 2009. The report will be prepared in accordance with library-ready specifications for such research reports. These specifications will be posted on Blackboard in the DIFA Document Style Guide. One copy will be marked and returned to the student, and the other copy will be retained in the DIFA Program Office. Marks for this project will be based on the content, quality of the research and critical evaluation performed, extent of original thought, grasp of the subject matter, the findings identified, and the excellence of presentation.

Possible research topics could include any of the following (the topic must be finally agreed with your professor by April 18, at the latest):

- a) Improvements needed in investigative and forensic accounting.
- b) The emerging implications of the Sarbanes-Oxley Act of 2002 for IFAs.
- c) Recent developments in white collar crime and their current and probable impact on IFA practice.
- d) Analysis of cases of IT enabled crimes, and IFA knowledge and actions in their resolution.
- e) Effectiveness of the OECD-sponsored anti-corruption regime, impact on the IFA, and probable future developments.
- f) Patterns in the mindset and motivation of the white collar criminal.
- g) Challenges in Managing An Anti-fraud Program in a Global Corporation
- h) Any other topic as agreed with your professor.

Topics chosen by students in the DIFA classes of 2003 - 2008 are listed below for your perusal (please note listed has not been included). If you choose a topic already studied, your work will have to extend what has already been published. Projects completed by earlier DIFA students are on file at the DIFA Office. Except where declared to be confidential, they may be reviewed at the Program Office or emailed to you by Debby Keown. Projects receiving an outstanding grade are noted on and may be downloaded from the DIFA website.

Research sources used should include relevant professional pronouncements, statutes and regulations as well as relevant professional publications, journals and books. In particular, students should review the following three journals (see Blackboard for index postings and websites) to ascertain whether any articles published therein are relevant to their research project, and ensure that they are integrated and referenced where appropriate:

- ❑ *Journal of Forensic Accounting*
- ❑ *Journal of Forensic Economics*
- ❑ *Litigation Economics Review*

10% of the marks for this course will be awarded for the quality of presentation of the research paper/report and document brief. The expectations for the presentation of the research paper/report are as follows:

- It should be at least 50 pages of double-spaced 12 pitch type, plus appendices.
- The research paper/report should include separate sections on objectives, documents reviewed/relied upon, summary of findings/conclusions, detailed findings, conclusions, bibliography and footnote references.
- The research paper/report should be written as an 'expert report' and should be well-reasoned, with adequate support for the findings presented therein.
- The research paper/report should be free of all grammatical and editing errors.
- The research paper/report should be well organized.
- All detailed findings should be cross-referenced as to their source.
- The use of tables is encouraged.

- Diagrams would be helpful, but are not necessary if the text is sufficiently clear; if diagrams are used, they should be adequately described in the text.
- All materials relied upon should be referenced, and, where not publicly available, should be copied/included in a suitably indexed document brief.

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