

## Chapter III

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In response to the growing concern about money laundering and terrorist activities, the international community has acted on many fronts. The international response is, in large part, recognition of the fact that money laundering and terrorist financing take advantage of high speed international transfer mechanisms, such as wire transfers, to accomplish their goals. Therefore, concerted cross-border cooperation and coordination are needed to thwart the efforts of criminals and terrorists.

The international effort began with the recognition that drug trafficking was an international problem and could only be addressed effectively on a multilateral basis. Thus, the first international convention concerning money laundering had drug trafficking offenses as the only predicate offenses. (A predicate offense is the underlying crime that produces the proceeds that are the subject of money laundering.) Because many more types of crimes are now international concerns, most countries now include a wide range of serious offenses as money laundering predicate offenses.

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This chapter discusses the various international organizations that are viewed as the international standard setters. It further describes the documents and instrumentalities that have been developed for anti-money laundering (AML) and combating the financing of terrorism (CFT) purposes.

### A. The United Nations

The United Nations (UN) was the first international organization to undertake significant action to fight money laundering on a truly world-wide basis.<sup>1</sup> The UN is important in this regard for several reasons. First, it is the international organization with the broadest range of membership. Founded in October of 1945, there are currently 191 member states of the UN from throughout the world.<sup>2</sup> Second, the UN actively operates a program to fight money laundering; the Global Programme Against Money Laundering<sup>3</sup> which is headquartered in Vienna, Austria, and is part of the UN Office of Drugs and Crime.<sup>4</sup> Third, and perhaps most importantly, the UN has the ability to adopt international treaties or conventions that have the effect of law in a country once that country has signed, ratified and implemented the convention, depending upon the country's constitution and legal structure. In certain cases, the UN Security Council has the authority to bind a country through a Security Council Resolution regardless of other action.

#### 1. The Vienna Convention

As a result of growing concern with increased international drug trafficking and the tremendous amounts of related money entering the banking system, the UN, through the United Nations Drug Control Program (UNDCP) initiated an international agreement to combat drug trafficking and the money

1. There were other international efforts, e.g., "Measures Against the Transfer and Safekeeping of Funds of Criminal Origin," adopted by the Committee of the Council of Europe on June 27, 1980. It is beyond the purpose of this Reference Guide, however, to discuss in detail the history of the international effort to fight money laundering.
2. "List of Member States," [www.un.org/Overview/unmember.html](http://www.un.org/Overview/unmember.html).
3. See <http://www.imolin.org/gpml.htm>.
4. The UNDCP was renamed the Office of Drug Control and Crime Prevention (ODCCP) in 1997, and renamed the Office of Drugs and Crime (ODC) in October of 2002.

laundering resulting from it. In 1988, this effort resulted in the adoption of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (*Vienna Convention*).<sup>5</sup> The *Vienna Convention*, named for the city in which it was signed, and 166 countries are party to the convention,<sup>6</sup> and deals primarily with provisions to fight the illicit drug trade and related law enforcement issues. Although it does not use the term *money laundering*, the convention defines the concept and calls upon countries to criminalize the activity.<sup>7</sup> The *Vienna Convention* is limited, however, to drug trafficking as predicate offenses and does not address the preventive aspects of money laundering. The convention came into force on November 11, 1990.

## 2. The Palermo Convention

In order to expand the effort to fight international organized crime, the UN adopted *The International Convention Against Transnational Organized Crime* (2000) (*Palermo Convention*).<sup>8</sup> This convention, also named for the city in which it was signed, contains a broad range of provisions to fight organized crime and commits countries that ratify this convention to implement its provisions through passage of domestic laws. With respect to money laundering, the *Palermo Convention* specifically obligates each ratifying country to:

- criminalize money laundering and include all serious crimes as predicate offenses of money laundering, whether committed in or outside of the country, and permit the required criminal knowledge or intent to be inferred from objective facts;<sup>9</sup>
- establish regulatory regimes to deter and detect all forms of money laundering, including customer identification, record-keeping and reporting of suspicious transactions;<sup>10</sup>

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5. <http://www.incb.org/e/conv/1988/>.

6. As of February 1, 2003. See, [http://www.odccp.org/odccp/treaty\\_adherence.html#1988](http://www.odccp.org/odccp/treaty_adherence.html#1988).

7. The *Vienna Convention*, Article 3 (b) and (c) (i).

8. <http://www.undcp.org/adhoc/palermo/convmain.html>.

9. The *Palermo Convention*, Article 6.

10. *Id.*, Article 7 (1) (a).

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- authorize the cooperation and exchange of information among administrative, regulatory, law enforcement and other authorities, both domestically and internationally, and consider the establishment of a financial intelligence unit to collect, analyze and disseminate information;<sup>11</sup> and
- promote international cooperation.<sup>12</sup>

According to the UN, this convention is not yet in force; it has been signed by 147 countries and ratified by 32 countries.<sup>13</sup> Forty countries need to ratify this convention before it can enter into force.<sup>14</sup> The *Palermo Convention* is important because its AML provisions adopt the same approach previously adopted by the Financial Action Task Force on Money Laundering in its *Forty Recommendations*.

### 3. International Convention for the Suppression of the Financing of Terrorism

The financing of terrorism was an international concern prior to the attacks on the United States of September 11, 2001. In response to this concern, the UN adopted the *International Convention for the Suppression of the Financing of Terrorism* (1999).<sup>15</sup> This convention came into force on April 10, 2002, and 132 countries have signed the convention and 76 countries have ratified it.<sup>16</sup>

This convention requires ratifying states to criminalize terrorism, terrorist organizations and terrorist acts. Under the convention, it is unlawful for any person to provide or collect funds with the (1) intent that the funds be used for, or (2) knowledge that the funds be used to, carry out any of the acts of terrorism defined in the other specified conventions that are annexed to this convention.

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11. *Id.*, Article 7 (1) (b).

12. *Id.*, Article 7 (3) and (4).

13. As of March 20, 2003. See, [http://www.undcp.org/odccp/crime\\_cicp\\_signatures.html](http://www.undcp.org/odccp/crime_cicp_signatures.html).

14. *Id.*

15. <http://www.un.org/law/cod/finterr.htm>.

16. As of March 20, 2003. See, [http://www.untreaty.un.org/ENGLISH/Status/Chapter\\_xviii/treaty11.asp](http://www.untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty11.asp).

#### 4. Security Council Resolution 1373

Unlike an international convention, which requires ratification and implementation by the UN member country to have the effect of law within that country, a Security Council Resolution passed in response to a threat to international peace and security under Chapter VII of the UN Charter, is binding upon all UN member countries.<sup>17</sup> On September 28, 2001, the UN Security Council adopted Resolution 1373,<sup>18</sup> which obligates countries to criminalize actions to finance terrorism. It further obligates countries to:

- deny all forms of support for terrorist groups;
- suppress the provision of safe haven or support for terrorist, including freeing funds or assets of persons, organizations or entities involved in terrorist acts;
- prohibit active or passive assistance to terrorists; and
- cooperate with other countries in criminal investigations and sharing information about planned terrorist acts.

#### 5. Global Programme against Money Laundering

The UN Global Programme against Money Laundering (GPML) is within the UN Office of Drugs and Crime (ODC).<sup>19</sup> The GPML is a research and assistance project with the goal of increasing the effectiveness of international action against money laundering by offering technical expertise, training and advice to member countries upon request. It focuses its efforts in the following areas:

- raise the awareness level among key persons in UN member states;
- help create legal frameworks with the support of model legislation for both common and civil law countries;
- develop institutional capacity, in particular with the creation of financial intelligence units;

17. <http://www.un.org/aboutun/charter/index.html>.

18. <http://www.un.org/Docs/sc/committees/1373/res1373e.pdf>.

19. "Global Programme against Money Laundering," <http://www.imolin.org/gpml.htm>.

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- provide training for legal, judicial, law enforcement regulators and the private financial sectors;
- promote a regional approach to addressing problems; develop and maintain strategic relationships with other organizations; and
- maintain a database of information and undertake analysis of relevant information.

Thus, the GPML is a resource for information, expertise and technical assistance in establishing or improving a country's AML infrastructure.

### 6. The Counter-Terrorism Committee

As noted above, on September 28, 2001, the UN Security Council adopted a resolution (Resolution 1373) in direct response to the events of September 11, 2001.<sup>20</sup> That resolution obligated all member countries to take specific actions to combat terrorism. The resolution, which is binding upon all member countries, also established the Counter Terrorism Committee (CTC) to monitor the performance of the member countries in building a global capacity against terrorism. The CTC, which is comprised of the 15 members of the Security Council, is not a law enforcement agency, nor is it a sanctions committee, nor does it prosecute or condemn individual countries. Rather, the Committee seeks to establish a dialogue between the Security Council and member countries on how to achieve the objectives of Resolution 1373.

Resolution 1373 calls upon all countries to submit a report to the CTC on the steps taken to implement the resolution's measures and report regularly on progress. In this regard, the CTC has asked each country to perform a self-assessment of its existing legislation and mechanism to combat terrorism in relation to the requirements of Resolution 1373. The CTC identifies the areas where a country needs to strengthen its statutory base and infrastructure, and facilitate assistance for countries, although the CTC does not, itself, provide direct assistance.

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20. UN Security Council Resolution 1373.

The CTC maintains a website with a directory for countries seeking help in improving their counter-terrorism infrastructures.<sup>21</sup> It contains copies of model legislation and other helpful information.

## B. The Financial Action Task Force on Money Laundering

Formed in 1989 by the G-7 countries,<sup>22</sup> the Financial Action Task Force on Money Laundering (FATF) is an intergovernmental body whose purpose is to develop and promote an international response to combat money laundering.<sup>23</sup> In October of 2001, FATF expanded its mission to include combating the financing of terrorism.<sup>24</sup>

FATF is a policy-making body, which brings together legal, financial and law enforcement experts to achieve national legislation and regulatory AML and CFT reforms. Currently, its membership consists of 29 countries and territories and two regional organizations.<sup>25</sup> In addition, FATF works in collaboration with a number of international bodies<sup>26</sup> and organizations.<sup>27</sup> These entities have observer status with FATE, which does not entitle them

21. See <http://www.un.org/sc/ctc>.

22. *Id.* The G-7 countries are Canada, France, Germany, Italy, Japan, United Kingdom, and United States.

23. About FATE, and Terrorist Financing at <http://www1.oecd.org/fatf/>.

24. *Id.* at Terrorist Financing.

25. The 29 member countries and territories are: Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong-China, Iceland, Ireland, Italy, Japan, Luxemburg, Mexico, Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States. The two regional organizations are the European Commission and the Gulf Co-operation Council. South Africa and Russia are observers.

26. The international bodies are regional FATF-style regional bodies (FSRBs) that have similar form and functions to those of FATE. Some FATF members also participate in the FSRBs. These bodies are: Asia/Pacific Group on Money Laundering (APG), Caribbean Financial Action Task Force (CFATF), Council of Europe MONEYVAL (previously PC-R-EV) Committee, Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and Financial Action Task Force on Money Laundering in South America (GAFISUD). For a discussion of these organizations, See Chapter IV, Regional Bodies and Relevant Groups, FATF-Style Regional Bodies. FATF also works with the Egmont Group.

27. Each of the international organizations, which have, among other functions, a specific anti-money laundering mission or function, are: African Development Bank, Asia Development Bank, The Commonwealth Secretariat, European Bank for Reconstruction and Development, European Central Bank (ECB), Europol, Inter-American Development Bank (IDB), International Monetary Fund (IMF), Interpol, International Organisation of Securities Commissions (IOSCO), Organization of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD), Offshore Group of Banking Supervisors (OGBS), United Nations Drug Control Program (UNDCP), World Bank and World Customs Organisation (WCO).

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to vote, but otherwise permits full participation in plenary sessions and working groups.

FATF's three primary functions with regard to money laundering are:

1. monitoring members progress in implementing anti-money laundering measures;
2. reviewing and reporting on laundering trends, techniques and counter-measures; and
3. promoting the adoption and implementation of FATF anti-money laundering standards globally.

### 1. The Forty Recommendations

FATF has adopted a set of 40 recommendations, *The Forty Recommendations*, which constitute a comprehensive framework for AML and are designed for universal application by countries throughout the world. *The Forty Recommendations* set out principles for action; they permit a country flexibility in implementing the principles according to the country's own particular circumstances and constitutional requirements. Although not binding as law upon a country, *The Forty Recommendations* have been widely endorsed by the international community and relevant organizations as the international standard for AML.

*The Forty Recommendations* are actually mandates for action by a country if that country wants to be viewed by the international community as meeting international standards. The individual recommendations are discussed in detail in Chapter V, VI, VII, VIII of the Reference Guide.

### 2. Monitoring Members Progress

Monitoring the progress of members to comply with the requirements of *The Forty Recommendations* is facilitated by a two-stage process: self assessments and mutual evaluations. In the self-assessment stage, each member responds to a standard questionnaire, on an annual basis, regarding its implementation of *The Forty Recommendations*. In the mutual evaluation stage, each mem-

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ber is examined and assessed by experts from other member countries.

In the event that a country is unwilling to take appropriate steps to achieve compliance with *The Forty Recommendations*, FATF recommends that all financial institutions give special attention to business relations and transactions with persons, including companies and financial institutions, from such non-compliant countries and, where appropriate, report questionable transactions, i.e., those that have no apparent economic or visible lawful purpose, to competent authorities.<sup>28</sup> Ultimately, if a member country does not take steps to achieve compliance, membership in the organization can be suspended. There is, however, the process of peer pressure before these sanctions are enforced.

### 3. Reporting on Money Laundering Trends and Techniques

One of FATF's functions is to review and report on money laundering trends, techniques and methods (also referred to as typologies). To accomplish this aspect of its mission, FATF issues annual reports on developments in money laundering through its Typologies Report.<sup>29</sup> These reports are very useful for countries to keep current with new techniques or trends to launder money and for other developments in this area.

### 4. The NCCT List

One of FATF's objectives is to promote the adoption of international AML/CFT standards for all countries. Thus, its mission extends beyond its own membership, although FATF can only sanction its member countries and territories. Thus, in order to encourage all countries to adopt measures to prevent, detect and prosecute money launderers, i.e., to implement *The Forty Recommendations*, FATF has adopted a process of identifying those jurisdictions that serve as obstacles to international cooperation in this

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28. *The Forty Recommendations*, Rec. 21., [http://www1.oecd.org/fatf/40Recs\\_en.htm](http://www1.oecd.org/fatf/40Recs_en.htm).

29. See FATF Documents, Money Laundering Trends and Techniques at [http://www1.oecd.org/fatf/FATDocs\\_en.htm#Trends](http://www1.oecd.org/fatf/FATDocs_en.htm#Trends).

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area. The process uses 25 criteria, which are consistent with *The Forty Recommendations*, to identify such non-cooperative countries and territories (NCCT's) and place them on a publicly available list.<sup>30</sup>

An NCCT country is encouraged to make rapid progress in remedying its deficiencies. In the event an NCCT country does not make sufficient progress, counter-measures may be imposed. Counter measures consist of specific actions by FATF member countries taken against an NCCT-listed country.

In addition to the application of applying special attention to business relationships and transactions from such countries,<sup>31</sup> the FATF can also impose further counter-measures, which are to be applied in a gradual, proportionate and flexible manner; these include:

- stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;
- enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;
- in considering requests for approving the establishment in FATF member countries of subsidiaries or branches or representative offices of banks, taking into account the fact that the relevant bank is from an NCCT;
- warning non-financial sector businesses that transactions with entities within the NCCTs might run the risk of money laundering.<sup>32</sup>

Finally, these counter measures may include FATF-member countries terminating transactions with financial institutions from such a country. Most countries make a concerted effort to be taken off the NCCT list because it causes significant problems to their financial institutions and

30. NCCT Initiative, [http://www1.oecd.org/fatf/NCCT\\_en.htm](http://www1.oecd.org/fatf/NCCT_en.htm).

31. *The Forty Recommendations*, Rec. 21.

32. FATF, FATF statements and documents on NCCT. See, for example, Press Release, December 20, 2002, [http://www1.oecd.org/fatf/pdf/PR-20021220\\_en.pdf](http://www1.oecd.org/fatf/pdf/PR-20021220_en.pdf).

businesses with respect to international transactions, as well as their reputation internationally.

## 5. Terrorist Financing

FATF also focuses its expertise on the world-wide effort to combat terrorist financing. To accomplish this expanded mission FATF has adopted eight *Special Recommendations on Terrorist Financing (Special Recommendations)*.<sup>33</sup> As part of this effort, FATF members use a self-assessment questionnaire<sup>34</sup> of their country's actions to come into compliance with the *Special Recommendations*. FATF is continuing to develop guidance on techniques and mechanisms used in the financing of terrorism. Chapter IX of this Reference Guide contains a more detailed discussion of the *Special Recommendations* and the Questionnaire.

## 6. Methodology for AML/CFT Assessments

Throughout 2002, FATF, the International Monetary Fund (IMF), the World Bank, and other standard setters, in consultation with the FSRBs, worked on a methodology to assess *The Forty Recommendations* and the *Special Recommendations*, and completed a comprehensive assessment methodology. At its plenary session in October of 2002, FATF adopted this single, comprehensive methodology to be used in making its mutual assessments.<sup>35</sup>

The development of the comprehensive methodology is intended to fill a gap in assessment procedures. First, it is intended to facilitate a more uniform approach worldwide in conducting assessments based on *The Forty Recommendations* and *Special Recommendations*. Second, it provides a framework to integrate the work of the different standard setters, as it pertains to AML/CFT, and there has been extraordinary international cooperation and agreement in this regard among the standard setters. Third, the

33. See *Special Recommendations*. These Special Recommendations are set out in Annex V, [http://www1.oecd.org/fatf/SRecsTF\\_en.htm](http://www1.oecd.org/fatf/SRecsTF_en.htm).

34. [http://www1.oecd.org/fatf/SAQTF\\_en.htm](http://www1.oecd.org/fatf/SAQTF_en.htm).

35. See Methodology on AML/CFT. <http://www.imf.org/external/np/mae/aml/2002/eng/092502.htm>.

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development of the methodology provides a framework for acceptance of *The Forty Recommendations* and *Special Recommendations* as the twelfth standard recognized by the IMF and Bank as useful to their operational work, and where Reports on Standards and Codes (ROSCs) would be prepared.

The methodology has now been approved by all of the relevant parties that will be making assessments. The methodology consists of 120 criteria covering each of *The Forty Recommendations* and *Special Recommendations*. It covers the legal and institutional AML/CFT framework for a country, including financial intelligence units. The methodology also includes relevant elements from United Nations Security Council Resolutions and international conventions, as well as supervisory and regulatory standards for the banking, insurance and securities sectors. It also addresses implementation of the AML/CFT regime in the non-prudentially regulated financial sector.<sup>36</sup>

### C. The Basel Committee on Banking Supervision

The Basel Committee on Banking Supervision (Basel Committee)<sup>37</sup> was formed in 1974 by the central bank governors of the Group of 10 countries.<sup>38</sup> Individual countries are represented by their central bank and also by the relevant authority with formal responsibility for prudential supervision of banking where that authority is not the central bank. The committee has no formal international supervisory authority or force of law. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practices on a wide range of bank supervisory issues. These standards and guidelines are adopted with the expectation that the appropriate authorities within each country will take all necessary steps to implement them through detailed measures, statutory, regulatory or otherwise, that best suit that country's national system.

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36. See Chapter X, Development of a Universal AML/CFT Assessment Methodology, for a more detailed discussion of the methodology and its use by the World Bank and the IMF.

37. <http://www.bis.org>.

38. The Group of 10 countries is a misnomer, since there are actually 13 member countries. The Basel Committee members, (as well as the Group of 10) are: Belgium, Canada, France, Germany, Italy, Japan, Luxemburg, the Netherlands, Spain, Sweden, Switzerland, United Kingdom and United States.

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Three of the Basel Committee's supervisory standards and guidelines concern money laundering issues.

### 1. Statement of Principles on Money Laundering

In 1988, the Basel Committee issued its *Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering (Statement on Prevention)*.<sup>39</sup> The *Statement on Prevention* outlines basic policies and procedures that bank managements should ensure are in place within their institutions to assist in suppressing money laundering through the banking system, both domestically and internationally. The statement notes that banks can be used "unwittingly" as intermediaries by criminals. Thus, the committee considers the first and most important safeguard against money laundering to be "the integrity of banks own managements and their vigilant determination to prevent their institutions becoming associated with criminals or being used as a channel for money laundering."<sup>40</sup>

There are essentially four principles contained in the *Statement on Prevention*:

- proper customer identification;
- high ethical standards and compliance with laws;
- cooperation with law enforcement authorities; and
- policies and procedures to adhere to the statement.

First, banks should make reasonable efforts to determine the true identity of all customers requesting the institution's services.<sup>41</sup> It should be a bank's explicit policy that significant business transactions are not conducted with customers who fail to provide evidence of their identity. Second, banks should ensure that business is conducted in conformity with high ethical standards and that banks should adhere to laws and regulations pertaining to financial transactions.<sup>42</sup> Here, banks should not offer services or provide

39. <http://www.bis.org/publ/bcbs137.pdf>.

40. *Id.*, at Preamble paragraph 6.

41. *Id.*, at Customers identification.

42. *Id.*, at Compliance with laws.

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active assistance in transactions where the bank has good reason to believe they are associated with money laundering.

Third, banks should cooperate fully with national law enforcement authorities to the extent permitted by local laws or regulations relating to customer confidentiality.<sup>43</sup> No support or assistance should be provided to customers seeking to deceive law enforcement authorities through altered, incomplete or misleading information. Where a bank has a reasonable presumption that funds on deposit are from criminal activity or that transactions entered into are for a criminal purpose, the bank should take appropriate measures, including denial of assistance, severing of the customer relationship, and closing or freezing the account.

Fourth, banks should adopt formal policies consistent with the *Statement on Prevention*.<sup>44</sup> Furthermore, banks should ensure that all staff members are aware of the bank's policies and given proper training in matters covered by the bank's policies. As part of a bank's policies, specific procedures for customer identification should be adopted. Finally, the internal audit function within the institution should establish an effective means of testing for compliance.

### 2. Core Principles for Banking

In 1997, the Basel Committee issued its *Core Principles for Effective Banking Supervision (Core Principles)*,<sup>45</sup> which provides a comprehensive blueprint for an effective bank supervisory system and covers a wide range of topics. Of the total 25 *Core Principles*, one of them, Core Principle 15, deals with money laundering; it provides:

Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict “know your customer” rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used; intentionally or unintentionally, by criminal elements.<sup>46</sup>

43. *Id.*, at Cooperation with law enforcement authorities.

44. *Id.*, at Adherence to the Statement.

45. <http://www.bis.org/publ/bcbs30.pdf>.

46. *Id.* Core Principle 15.

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These “know your customer” or “KYC” policies and procedures are a crucial part of an effective AML/CFT institutional framework for every country.

In addition to the *Core Principles*, the Basel Committee issued a “Core Principles Methodology” in 1999, which contains 11 specific criteria and five additional criteria to help use assess the adequacy of KYC policies and procedures.<sup>47</sup> These, additional criteria include specific reference to compliance with *The Forty Recommendations*.<sup>48</sup>

### 3. Customer Due Diligence

In October of 2001, the Basel Committee issued an extensive paper on KYC principles entitled, *Customer due diligence for banks (Customer Due Diligence)*.<sup>49</sup> This paper was issued in response to noted deficiencies in KYC procedures on a world-wide basis. These KYC standards build upon and provide more specific information on the *Statement on Prevention* and Core Principle 15. The essential elements of KYC standard are set out in detail in this document.

It is worth nothing that these KYC standards set out in *Customer Due Diligence* are intended to benefit banks beyond the fight against money laundering by protecting the safety and soundness of banks and the integrity of banking systems. In addition, the Basel Committee, in this document, strongly supports the “adoption and implementation of the FATF recommendations, particularly those relating to banks,” and intends that the standards of *Customer Due Diligence* “be consistent with the FATF recommendations.”<sup>50</sup>

### D. International Association of Insurance Supervisors

The International Association of Insurance Supervisors (IAIS), established in 1994, is an organization of insurance supervisors from more than 100 different countries and jurisdictions.<sup>51</sup>

47. Core Principles Methodology at <http://www.bis.org/publ/bcbs61.pdf>.

48. *Id.*, Annex 2, Excerpts from FATF recommendations.

49. *Id.*

50. *Id.*, at paragraph 3.

51. For a list of member countries and jurisdictions, see Members at <http://www.iaisweb.org/frames/about.html>. The listing of members contains hyperlinks to individual member websites.

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Its primary objectives are to:

- promote cooperation among insurance regulators,
- set international standard for insurance supervision,
- provide training to members, and
- coordinate work with regulators in the other financial sectors and international financial institutions.<sup>52</sup>

In addition to member regulators, the IAIS has more than 60 observer members, representing industry associations, professional associations, insurance and reinsurance companies, consultants and international financial institutions.<sup>53</sup>

While the IAIS covers a wide range of topics including virtually all areas of insurance supervision, it specifically deals with money laundering in one of its papers. In January 2002,<sup>54</sup> the association issued Guidance Paper No. 5, *Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities (AML Guidance Notes)*. It is a comprehensive discussion on money laundering in the context of the insurance industry. Like other international documents of its type, the *AML Guidance Notes* are intended to be implemented by individual countries taking into account the particular insurance companies involved, the products offered within the country, and the country's own financial system, economy, constitution and legal system.

The *AML Guidance Notes* contain four principles for insurance entities:

- comply with anti-money laundering laws,
- have "know your customer" procedures,
- cooperate with all law enforcement authorities, and
- have internal AML policies, procedures and training programs for employees.

The four principles parallel the four principles in the Basel Committee's *Statement on Prevention*. The *AML Guidance Notes* are entirely consistent

52. *Id.*, at Home page.

53. *Id.*, at Observers, for a listing of observer organizations.

54. *Id.*, at Guidance Paper No.5, *Anti-Money Laundering Guidance Notes for Insurance Supervisors & Insurance Entities*, January 2002.

with *The Forty Recommendations*, including suspicious activity reporting and other requirements. In fact, *The Forty Recommendations* are included in an appendix to the IAIS's *AML Guidance Notes*.

### E. International Organization of Securities Commissioners

The International Organization of Securities Commissioners (IOSCO)<sup>55</sup> is an organization of securities commissioners and administrators that have day-to-day responsibilities for securities regulation and the administration of securities laws in their respective countries. The current membership of IOSCO is comprised of regulatory bodies from 91 countries.<sup>56</sup> In the event that there is no governmental authority charged with administration of securities laws in a given country, a self-regulatory body, such as a stock exchange, from that country is eligible for voting membership. There are also associate members, which are international organizations, and affiliate members, which are self-regulatory organizations; neither type of membership has voting privileges.

IOSCO has three core objectives for securities regulation:

- the protection of investors;
- ensuring that markets are fair, efficient and transparent; and
- the reduction of systematic risk.<sup>57</sup>

With regard to money laundering, IOSCO passed a “Resolution on Money Laundering” in 1992. Like other international organizations of this type, IOSCO does not have law-making authority. Similar to the Basel Committee and IAIS, it relies on its members to implement its recommendations within their respective countries. The resolution provides as follows:

Each IOSCO member should consider:

1. The extent to which customer identifying information is gathered and recorded by financial institutions under its supervision, with a view to

55. <http://www.iosco.org/iosco.html>.

56. See Membership Lists, <http://www.iosco.org/iosco.html>

57. [http://www.iosco.org/download/pdf/2002-iosco\\_objectives\\_and\\_principles\\_of\\_securities\\_regulation.pdf](http://www.iosco.org/download/pdf/2002-iosco_objectives_and_principles_of_securities_regulation.pdf).

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- enhancing the ability of relevant authorities to identify and prosecute money launderers;
2. The extent and adequacy of record-keeping requirements, from the perspective of providing tools to reconstruct financial transactions in the securities and future markets;
  3. Together with their national regulators charged with prosecuting money laundering offenses, the appropriate manner in which to address the identification and reporting of suspicious transactions;
  4. The procedures in place to prevent criminals from obtaining control of securities and futures businesses, with a view to working together with foreign counterparts to share such information as needed;
  5. The appropriate means to ensure that securities and futures firms maintain monitoring and compliance procedures designed to deter and detect money laundering;
  6. The use of cash and cash equivalents in securities and futures transactions, including the adequacy of documentation and the ability to reconstruct any such transactions;
  7. The most appropriate means, given their particular national authorities and powers, to share information in order to combat money laundering.<sup>58</sup>

### G. The Egmont Group

As part of the effort to fight money laundering, governments have created agencies to analyze information submitted by financial institutions pursuant to money laundering reporting requirements. Such agencies are commonly referred to as financial intelligent units (FIUs). These units serve as the focal point for national AML programs, because they provide for the exchange of information between financial institutions and law enforcement. Because money laundering is practiced on a worldwide scale, there has also been the need to share information on a cross-border basis.<sup>59</sup>

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58. <http://www.iosco.org/resolutions/index.html>.

59. See discussion in Chapter VII of this Reference Guide.

## International Standard Setters

In 1995, a number of governmental units known today as FIUs began working together and formed the Egmont Group (named for the location of its first meeting at the Egmont-Arenberg Palace in Brussels).<sup>60</sup> The purpose of the group is to provide a forum for FIUs to improve support for each of their national AML programs and to coordinate AML initiatives. This support includes expanding and systematizing the exchange of financial intelligence information, improving expertise and capabilities of personnel, and fostering better communication among FIUs through technology, and helping to develop FIUs worldwide.<sup>61</sup>

To be a member of the Egmont Group, a country's FIU must first meet the Egmont FIU definition, which is "a central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime, or (ii) required by national regulation, in order to counter money laundering."<sup>62</sup> A member must also commit to act in accordance with the Egmont Group's Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases.<sup>63</sup> These principles include conditions for the exchange of information, limitation on permitted uses of information, and confidentiality.

Membership is currently comprised of 69 jurisdictions. Members of the Egmont Group have access to a secure website, which is not available to the public, to exchange information.

Finally, the Egmont Group has produced a compilation of one hundred sanitized cases about the fight against money laundering from its member financial intelligence units.<sup>64</sup>

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60. [http://www1.oecd.org/fatf/Ctry-orpages/org-egmont\\_en.htm](http://www1.oecd.org/fatf/Ctry-orpages/org-egmont_en.htm).

61. See Statement of Purpose, Egmont Group. [http://www1.oecd.org/fatf/pdf/Egstat-200106\\_em.pdf](http://www1.oecd.org/fatf/pdf/Egstat-200106_em.pdf).

62. [http://www1.oecd.org/fatf/pdf/Eginfo-web\\_en.pdf](http://www1.oecd.org/fatf/pdf/Eginfo-web_en.pdf)

63. See Statement of Purpose, Egmont Group. [http://www1.oecd.org/fatf/pdf/Egstat-200106\\_em.pdf](http://www1.oecd.org/fatf/pdf/Egstat-200106_em.pdf).

64. <http://www1.fincen.gov/fiuiinaction.pdf>.

