



BEST PRACTICES PAPER

# THE USE OF THE FATF RECOMMENDATIONS TO COMBAT CORRUPTION

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FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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## ACRONYMS

<b>AC</b>	Anti-Corruption
<b>AML/CFT</b>	Anti-money laundering and countering the financing of terrorism
<b>ACWG</b>	Anti-Corruption Working Group
<b>DNFBP</b>	Designated Non-Financial Business or Profession
<b>FIUs</b>	Financial Intelligence Unit
<b>ML/TF</b>	Money laundering and terrorist financing
<b>PEP</b>	Politically Exposed Person
<b>STR</b>	Suspicious Transaction Report
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNODC</b>	United Nations Office on Drugs and Crime

## BEST PRACTICES PAPER ON THE USE OF THE FATF RECOMMENDATIONS TO COMBAT CORRUPTION

### I. INTRODUCTION

1. The measures taken by countries to combat money laundering and terrorist financing (ML/TF) are powerful tools that are useful in the fight against corruption. A substantial amount of criminal proceeds are generated from corruption offences. Criminal proceeds are generated from corruption offences as well as from bribery, embezzlement, trading in influence, abuse of functions and other offences, in both the public and the private sector, and by a variety of illicit means. Corruption offences are generally committed for the purpose of obtaining private gain.<sup>1</sup> The proceeds of corruption are often laundered so that they can be enjoyed without fear of detection or confiscation. Accordingly, corrupt officials and individuals take great pains to disguise their identity and the original source of the funds in order to place funds derived from corruption in the financial system without detection and to purchase assets. Likewise, often in corruption cases, bribe payers tend to disguise the financial link between them and the corrupt officials, including the destination of the funds, using money laundering schemes. The *United Nations Convention against Corruption* (UNCAC)<sup>2</sup>, which is the only legally binding universal anti-corruption instrument, recognises the importance of fighting money laundering in the anti-corruption context by requiring States parties to criminalize money laundering, to adopt measures to effectively prevent it, and by urging the recovery of the proceeds of corruption and the establishment of financial intelligence units.

3. The G20 Leaders' Declaration from the September 2013 St. Petersburg Summit highlights that leveraging anti-money laundering and countering the financing of terrorism (AML/CFT) measures to fight corruption will remain a significant area of growing cooperation between anti-corruption experts of the G20 and the Financial Action Task Force (FATF). The G20 supports the FATF work to combat corruption, and welcomes continued engagement on these issues. Additionally, the G20 Anti-Corruption Working Group (ACWG) has been engaging directly with the FATF on this issue. The FATF has been appreciative of the support and input to this paper from members of the G20 ACWG. The collaborative discussions between members of the FATF and G20 ACWG have been particularly valuable opportunities to enhance synergies in the respective AML/CFT and AC work.

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<sup>1</sup> In this paper, references to corruption and other related offences cover the range of offences defined in United Nations Convention against Corruption (UNCAC). This includes bribery of public officials and embezzlement, misappropriation, trading in influence, abuse of functions and illicit enrichment by public officials (Articles 15-20), as well as bribery and embezzlement in the private sector (Articles 21-22). This includes the supply-side of bribery, that is, offences committed by individuals and entities paying bribes. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) requires that States Parties make the supply-side of the bribery of foreign public officials a criminal offence.

<sup>2</sup> The UNCAC is also referred to as the *Mérida Convention* after the Mexican city where the high level signing conference was held. The UNCAC was adopted by the United Nations General Assembly in October 2003 and subsequently entered into force in December 2005. As of 30 July 2013, UNCAC has 167 parties.

4. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering and terrorist financing and other related threats to the integrity of the international financial system. The FATF has developed a series of Recommendations (the *FATF Recommendations*) that are recognised as the international standard for combating money laundering and the financing of terrorism and the proliferation of weapons of mass destruction. The *FATF Recommendations* were most recently revised in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application.<sup>3</sup>

5. The AML/CFT standards set by the *FATF Recommendations* are important tools in the fight against corruption because they support the detection, tracing, confiscation and return, where appropriate, of corruption proceeds, and they promote international cooperation in the efforts to do so. While the focus of the *FATF Recommendations* is on combating money laundering and terrorist financing, they include specific measures which recognise corruption risks, for example, requiring countries to make corruption and bribery predicate offences for money laundering, requiring financial institutions to take action to mitigate the risks posed by politically exposed persons (PEPs), requiring countries to have mechanisms in place to recover through confiscation the proceeds of crime, and requiring countries to implement the UNCAC.

6. While some of the measures in the *FATF Recommendations* are already used on a regular basis to combat corruption and AC instruments are used to tackle ML/TF, some anti-corruption (AC) experts<sup>4</sup> and AML/CFT experts may not always be fully aware of the broad range of respective AML/CFT and AC measures available, as well as the information collected and the respective work that they undertake. These tools, information and expertise can support both AC and AML/CFT experts in corruption and ML/TF prevention and detection, as well as with investigations, prosecutions, domestic and international cooperation, and recovery of the proceeds of corruption.

7. In hosting joint meetings of experts from both the AML/CFT and AC communities, the FATF has heard that even though AML/CFT and anti-corruption efforts are mutually reinforcing, there is a growing recognition that they have not always been brought together effectively.<sup>5</sup> Based on the experience of countries, AML/CFT and AC experts agreed that further tools to enhance the understanding of AML/CFT measures and their applicability in anti-corruption efforts would be beneficial in the fight against money laundering and corruption.

8. The purpose of this paper is to provide guidance and best practices to policy makers and practitioners on how AML/CFT measures can be used to combat corruption, by building on the body of work that already exists.

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<sup>3</sup> FATF (2012a)

<sup>4</sup> The term *anti-corruption experts* in this paper refers to all relevant AC practitioners and their institutions, similar to the use of the term AML/CFT experts as used by FATF. Another term used by AC experts is “AC communities”.

<sup>5</sup> The FATF has held three Corruption Experts Meetings in February 2011, October 2012 and October 2013 (held jointly in collaboration with the G20 ACWG) to provide an international platform for the exchange of views between AML and AC experts. The President’s summary outcomes of these meetings are available at [www.fatf-gafi.org](http://www.fatf-gafi.org).

9. While typology studies and guidance on a range of *FATF Recommendations* may be relevant for anti-corruption efforts, the following documents are particularly focused on the fight against corruption<sup>6</sup>:

- *A Reference Guide and Information Note on the use of the FATF Recommendations to support the fight against Corruption* (the Corruption Information Note): Originally published in 2010 and updated in 2012, the Corruption Information Note was published for the general public on how to leverage AML/CFT measures in the fight against corruption.
- *Guidance on Politically Exposed Persons (Recommendations 12 and 22)* (2013): This guidance paper was developed to assist countries and the private sector in the development and implementation of measures to implement Recommendations 12 and 22 on PEPs.
- *Specific Risk Factors in Laundering the Proceeds of Corruption: Assistance to Reporting Entities* (2012): This report provides assistance to financial institutions and designated non-financial businesses and profession (DNFBPs) to better analyse and understand the specific risk factors associated with laundering the proceeds of corruption.
- *Laundering the Proceeds of Corruption* (2011): This report analyses typologies used to launder the proceeds of corruption through an analysis of cases from a practitioner's perspective to assist in the understanding of money laundering techniques used.

10. For the purposes of this paper, the proceeds of corruption refers to the funds involved (that is, the instruments of crime), and the proceeds derived or generated from corruption offences. The proceeds of corruption are generated from corruption and other related offences in the public and private sector including bribery, embezzlement, trading in influence, and abuse of functions in both the public and private sectors. In relation to bribery cases, it is important to recognise that there are two sides of the transaction which involve corruption proceeds. Funds flow from the individual or entity paying the bribe, which are then received by the corrupt official. The corruption proceeds include the bribe payment and the improper business advantage received in return for the bribe, the sums of which are often substantial.<sup>7</sup>

11. Section II of this paper highlights those *FATF Recommendations* which are particularly useful for AC experts, and provides guidance on what value they add to efforts to combat corruption. Section III provides guidance on risk areas where AC and AML/CFT practitioners could encounter indicators of corruption. Identifying and targeting corruption, and where possible referring corruption cases to relevant authorities, is an important form of assistance of the AML/CFT community to the AC community. Section IV provides guidance for AML/CFT and AC communities to join forces to fight money laundering and corruption. This includes an overview of key agencies

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<sup>6</sup> These reports are available at [www.fatf-gafi.org](http://www.fatf-gafi.org).

<sup>7</sup> For further details on the proceeds of corruption and how they are laundered, see FATF (2011).

involved in AML/CFT and AC that could share and exchange information. Finally, Section V includes examples of successful co-ordination and co-operation between AML/CFT and AC authorities.

## II. AML/CFT MEASURES MOST RELEVANT FOR AC EXPERTS

12. The AML/CFT requirements in the *FATF Recommendations* provide useful tools for AC experts – whether in supporting corruption prevention and deterrence efforts, corruption detection, investigations and prosecutions, domestic and international cooperation, and recovery of the proceeds of corruption. However, AC experts are not always aware of the range of work that AML/CFT experts undertake, nor of the powers AML/CFT tools provide and the information under which is collected. In those countries where the *FATF Recommendations* have yet to be fully incorporated into laws or regulations and effectively implemented, the benefits that these measures provide to AC efforts could further support the call for full implementation of the *FATF Recommendations* in that country.

13. The information in this section is primarily aimed at AC experts, but it may also be useful for AML/CFT experts to be aware of what AML/CFT measures are useful to their AC colleagues. The aim is not to summarise or repeat the *FATF Recommendations*, but to highlight those Recommendations that are particularly useful to prevent and combat corruption. Some of the *FATF Recommendations* highlighted below are the subject of additional guidance papers. The intention is not to duplicate the content of these papers, rather, this section will provide an overview and identify where further information can be obtained.

14. While anti-corruption efforts could be assisted by all of the AML/CFT measures set forth in the *FATF Recommendations*, or a combination of those measures, of particular usefulness are the Recommendations related to: (i) understanding national risks and coordination; (ii) preventive measures and record keeping, including customer due diligence; (iii) detection, investigation, prosecution, and confiscation; and (iv) international coordination.

### UNDERSTANDING NATIONAL RISKS AND CO-ORDINATION

15. The *FATF Recommendations* require countries to identify, assess, and understand the money laundering risks for the country and take action which is proportionate to those risks (Recommendation 1). A comprehensive risk assessment should include consideration of the risks posed by the laundering of the proceeds of corruption offences and AC experts should be consulted to provide input into the risk assessment. In addition, a comprehensive money laundering and terrorist financing risk assessment provides useful information to AC experts to further their understanding of how corrupt officials and individuals may launder the proceeds.

16. The *FATF Recommendations* require countries to have in place national co-ordination and co-operation mechanisms for AML/CFT purposes (Recommendation 2). Many countries have standing committees or multi-agency bodies that have been established for this purpose. These mechanisms should engage AC authorities, and form part of multi-agency bodies, to provide input on issues of AML/CFT policy, particularly those authorities responsible for the investigation and prosecution of corruption and other related offences which are predicate offences to money laundering.



## PREVENTIVE MEASURES AND RECORD KEEPING – PROTECTING PRIVATE SECTOR INSTITUTIONS AND INCREASING TRANSPARENCY

17. Corrupt officials and individuals require access to the financial system to be able to access and use their proceeds derived from corruption to purchase assets and fund their lifestyles. There are several mechanisms through which corrupt officials and individuals can launder illicit proceeds, including the use of financial products and services and gatekeepers, as well as the purchase of high value assets. Corruption is more likely to go unpunished in opaque circumstances where the proceeds of such crimes are laundered and cannot be traced back to the underlying corrupt activity, as is the case when the ownership of assets is obscured, and transactions and transfers leave an incomplete (or no) audit trail.

18. The FATF recognises the vulnerability of financial institutions (such as banks, securities firms, insurance companies, foreign exchange dealers, and money remitters) and DNFBPs (such as casinos, lawyers, accountants, real estate agents, dealers in precious metals and stones, and trust and company service providers) and the *FATF Recommendations* contain measures to combat the misuse of these entities and the products and services they provide. To increase the transparency of the financial system, the *FATF Recommendations* require a reliable paper trail of business relationships, transactions, and discloses the true ownership and movement of assets. Those preventive measures that are most relevant in the fight against corruption are outlined below.

### *Corruption Prevention and protecting financial institutions and DNFBPs from abuse*

19. Past corruption cases have shown that when a financial institution is owned or infiltrated by a corrupt official, it becomes a venue for laundering the proceeds of corruption. Effective implementation of the *FATF Recommendations* helps to protect designated financial institutions and DNFBPs by requiring that their owners, controllers and employees are properly vetted, and that they have adequate systems in place to comply with AML/CFT requirements. These measures assist in ensuring that financial institutions and DNFBPs remain free from criminal influence, particularly regarding management and ownership. Such vetting by financial institutions should use “fit and proper” criteria which helps to prevent corrupt individuals and other criminals from gaining control over institutions, such as banks or casinos, that can be used to facilitate illicit activities (Recommendations 26 and 28). Effective implementation of the correspondent banking requirements in the *FATF Recommendations* may also mitigate the risk that a country’s financial institutions are dealing with entities controlled by corrupt officials. Financial institutions, in relation to cross-border correspondent banking, are required to undertake due diligence and assess the money laundering and terrorist financing risk before entering into a correspondent banking relationship, and prohibit financial institutions from entering into a correspondent banking relationship with shell banks (Recommendation 13).

20. Financial institutions and DNFBPs must also screen employees to ensure high standards. Countries should require financial institutions and DNFBPs to include such measures as part of an institution’s AML/CFT program. This helps to prevent corrupt individuals from infiltrating or otherwise criminally abusing a financial service provider (Recommendations 18 and 23, and Interpretive Note to Recommendation 18).

### *Customer due diligence*

21. Customer due diligence (CDD) is the process of developing a clear understanding of a customer relationship, including all relevant parties, in order to effectively understand and manage the risks stemming from that relationship. CDD is an effective measure to mitigate money laundering risk associated with corruption offences and to support investigations and prosecutions into corruption. When establishing business relationships or conducting transactions on behalf of customers, financial institutions and DNFBPs must verify the identity of the customer, any person on whose behalf a customer is acting, and any individuals who ultimately own or control customers that are legal persons (such as companies) or legal arrangements (such as trusts) (Recommendation 10).

22. The extent to which financial institutions and DNFBPs must take measures to identify and verify their customer's identity, and the customer and transaction information required, will vary depending on the level of money laundering or terrorist financing risk posed, in line with the *FATF Recommendations* and the applicable national laws. Additional precautions must be taken when customers or transactions are identified as having a higher risk of money laundering, based on an assessment of risk factors including customer risk, country or geographic risk, which can include the prevalence of corruption, and product service, transaction or delivery risks. These precautions aid prevention and increase transparency and make it difficult for corrupt individuals to conduct business anonymously, or hide their business relationships and transactions behind other people, corporate structures, or complex legal arrangements.

23. The collection of information required by CDD measures can assist financial institutions and DNFBPs in deterring corrupt officials from misusing the services provided by financial institutions and DNFBPs to launder the proceeds of corruption. Undertaking CDD also allows financial institutions and DNFBPs to identify suspicious behaviour which could warrant a suspicious transaction report. This is particularly valuable in relation to corrupt officials where additional payments may be suspicious if they are significantly greater than the usual income of the official for no apparent legitimate purpose. In addition, the CDD information collected by financial institutions and DNFBPs provides a valuable paper trail useful to investigations and prosecutions of corruption. When combined with an effective transaction monitoring program, CDD can also assist in the detection of private sector corruption through the identification of unusual or suspicious behaviour. Effective implementation and supervision of CDD requirements supports AC efforts by ensuring that the required information is available. Cases have demonstrated that this information is a valuable resource in corruption investigations and prosecutions.<sup>8</sup>

### *Politically exposed persons*

24. A politically exposed person (PEP) is an individual who is (or has been) entrusted with a prominent public function. Due to their position it is recognised that many PEPs are in positions which can be abused for the purpose of committing money laundering and related predicate offences, including corruption. To address these risks, the *FATF Recommendations* require countries to ensure that financial institutions and DNFBPs implement measures to prevent the misuse of the

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<sup>8</sup> For further information, see FATF (2011).

financial system by PEPs, and to detect such abuse when it occurs (Recommendations 12 and 22). CDD and other preventive measures can be effective measures mitigating money laundering risk associated with corrupt political figures, and their family members and close associates, and to support related investigations and prosecutions.

25. Countries should require financial institutions and DNFBPs to have appropriate risk management systems in place to determine whether customers or beneficial owners are foreign PEPs, or a family member or close associate of a foreign PEP. Financial institutions must, in addition to performing normal CDD measures, be required to obtain senior management approval for establishing or continuing such business relationships, take reasonable measures to determine the foreign PEP's source of wealth and source of funds, and conduct enhanced due diligence of the business relationship, including enhanced monitoring.

26. According to the *FATF Recommendations*, countries should require financial institutions to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who has been entrusted with a prominent function by an international organisation, and then assess the risk of the business relationship. The level of risk associated with domestic PEPs should be identified by financial institutions and the country through the risk assessment exercise. For higher risk business relationships with domestic/international organisation PEPs, financial institutions should be required to obtain senior management approval for establishing or continuing such business relationships, take reasonable measures to determine the PEPs source of wealth and source of funds, and conduct enhanced on-going monitoring of the business relationship.

27. Taking appropriate measures in relation to PEPs increases the possibility of detecting instances where public officials and other persons who are (or have been) entrusted with prominent public functions<sup>9</sup> are abusing their positions or their influence for private gain.

28. Effective implementation of the PEPs requirements has proven to be challenging for competent authorities, financial institutions and DNFBPs. To assist in the implementation, the FATF has produced a *Guidance paper on politically exposed persons*.<sup>10</sup> This guidance is based on the experiences of countries, international organisations, the private sector and non-government organisations, and was developed to assist competent authorities and financial institutions to effectively implement those requirements. Those seeking further guidance on the PEPs requirements are encouraged to review this guidance paper.

### Record keeping

29. Transaction and CDD records support law enforcement investigations and prosecutions into corruption offences including asset recovery efforts. The *FATF Recommendations* require countries to ensure that financial institutions and DNFBPs keep and maintain all customer identification, transaction and account records, and business correspondence, so that they can be made available to the authorities on a timely basis (Recommendations 11 and 22). Such record keeping measures

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<sup>9</sup> Such as Heads of State, senior politicians, senior government judicial or military officials, senior executives of state-owned corporations and important political party officials, or members of senior management of international organisations, as outlined in the Glossary to the *FATF Recommendations*.

<sup>10</sup> FATF (2013a)

ensure that there is a reliable paper trail that the authorities can use to trace the proceeds of corruption, and use as evidence to prosecute corruption and other crimes and recover criminal assets derived from such conduct. The records retained should be sufficient to allow the tracing of funds through the reconstruction of transactions.

### *Transparent movement of funds – wire transfers and cash couriers*

30. Corrupt officials typically seek to move their proceeds to another jurisdiction as soon as possible to avoid detection in their home country. Wire transfers can be used to quickly move the proceeds of corruption and obscure their source. To mitigate this risk, wire transfers must be accompanied by all required information that identifies the originator and beneficiary of the transfer. Financial institutions must also ensure that such information relating to their customers has been verified for accuracy. In addition, financial institutions should be required to monitor wire transfers and take appropriate measures in cases where wire transfers are not accompanied by the required information (Recommendation 16). These measures ensure that there is sufficient information available to trace a wire transfer, and identify from whom the money originated and to whom it was intended to go.

31. According to the *FATF Recommendations*, countries must also have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system which mitigates the risk of the proceeds of corruption moving undetected (Recommendation 32). Such measures ensure that cash or bearer negotiable instruments which are being moved across national borders either on one's person, through the mail, or in containerised cargo leave a paper trail which can be traced. When implementing such measures, countries should ensure that there is adequate coordination between relevant authorities at the domestic level, and also that the system allows for the greatest possible measure of international cooperation.

### *Sharing of information within financial groups*

32. Under the *FATF Recommendations*, financial groups should be required to implement group-wide programmes against money laundering and terrorist financing, including policies and procedures for sharing information within the group for AML/CFT purposes (Recommendation 18). AC experts should be aware of the requirements to share information across financial groups as CDD and transaction information may provide a valuable source for investigators tracing the movement of corrupt proceeds internationally.

### *Transparency of legal persons and arrangements*

33. Legal entities offer an attractive tool for corrupt officials and individuals to launder their proceeds. Cases have demonstrated that corrupt officials commonly launder proceeds by establishing companies or other legal persons or arrangements to avoid detection and disguise the origin of the funds. Countries should take measures to prevent the misuse of legal persons for money laundering by ensuring that their authorities have timely access to adequate and accurate information which identifies the individual(s) who own or control legal persons (such as companies) and legal arrangements (such as trusts) (Recommendations 24 and 25).

34. Under the *FATF Recommendations*, all companies created in a country should be registered, and at a minimum, a basic set of information should be retained in a registry. All companies should be required to obtain and record basic information about the company and its directors. Countries are also required to have mechanisms in place to ensure that their authorities have access to beneficial owner information in a timely manner through either holding beneficial ownership information on company registries, requiring companies to proactively obtain and record beneficial ownership information, or by using existing information (*e.g.* held by financial institutions or government agencies) to determine who the beneficial owner is when needed.<sup>11</sup>

35. Countries should require trustees of any express trusts governed under their law to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. All countries should ensure that trustees disclose their status to financial institutions and designated non-financial professions when they act as trustees, and law enforcement authorities should have all powers necessary to obtain timely information on the trust and its beneficial ownership held by trustees, as well as financial institutions and DNFBPs.<sup>12</sup>

36. In addition, financial secrecy laws must not inhibit the implementation of the AML/CFT measures, including those aimed at increasing the transparency of the financial system thereby facilitating the prevention, detection and prosecution of corruption (Recommendation 9).

37. While effective implementation of these requirements has proven to be challenging for competent authorities, financial institutions and DNFBPs, these measures increase the transparency of ownership, and make it more difficult to hide the proceeds of corruption within a company or trust. AC experts should be aware of the mechanisms used to obtain information on legal persons and arrangements, including information available on beneficial ownership, in the country in which they operate.

## DETECTION, INVESTIGATION, PROSECUTION, AND CONFISCATION

38. The *FATF Recommendations* require countries to implement domestic AML/CFT measures that provide valuable tools for tracing assets, conducting financial investigations, and facilitating the confiscation of the proceeds of corruption and related offences. These tools can add value to a corruption case, even where it may not be possible to pursue related money laundering charges.

39. The *FATF Recommendations* provide for the establishment of a legal framework and mechanisms to alert the authorities to suspicious activities in the financial system, and to provide them with sufficient powers to investigate and prosecute such activities, and the seizure or freezing and confiscation of criminally derived assets. This includes the criminalisation of money laundering, with corruption and bribery as predicate offences, a legal framework for the confiscation of criminal proceeds, and the institutional and legal framework to obtain information and to collect and analyse reports on suspicious financial activity.

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<sup>11</sup> Further information can be found in the Interpretive Note to Recommendation 24.

<sup>12</sup> Further information can be found in the Interpretive Note to Recommendation 25.

### *Freezing, seizing and confiscation of proceeds of corruption*

40. AML/CFT measures provide valuable tools that enable the freezing or seizure and confiscation of assets related to corruption. Countries must have effective laws and procedures to freeze or seize and confiscate stolen assets, the proceeds of corruption and laundered property, including in response to requests by foreign countries, while protecting the rights of bona fide third parties (Recommendation 4). Confiscation of proceeds of corruption is an essential mechanism for AC experts to deprive corrupt officials and individuals of their ill-gotten gains. Countries can remove the incentive for engaging in corrupt activities by depriving the perpetrators and others from the benefit of such crimes.

41. Many countries already have in place sufficient legal frameworks to enable confiscation, including non-conviction based confiscation. However, in practice, action is not always taken swiftly enough and assets are commonly hidden or moved abroad. As a result, strong domestic and international co-operation is essential to ensure that the financial intelligence gathered through AML/CFT measures can be effectively used by the authorities in corruption and related money laundering cases, and to facilitate the enforcement of foreign freezing/seizing orders obtained for the purposes of eventual confiscation as well as final confiscation judgments.

42. Countries should have effective mechanisms for transferring confiscated assets to a foreign government, as appropriate, as a result of co-ordinated law enforcement actions or providing for alternative mechanisms of return to an individual/entity that may, subject to domestic law, qualify as a victim of the corruption offense. Countries should also consider establishing mechanisms into which seized and confiscated assets may be deposited to ensure preservation of such assets where appropriate until a final confiscation judgment is obtained and to provide for the use of confiscated funds for legitimate purposes, which could include compensation to victims of corruption, appropriate law enforcement uses, and other appropriate purposes. These requirements facilitate the protection and compensation of the victims of corruption offences and the recovery of related assets, even if such assets have been concealed abroad (Recommendations 4 and 38).

43. The FATF has developed guidance on the confiscation measures required by the *FATF Recommendations* which may further assist AC experts in understanding the scope and nature of mechanisms to freeze, seize and confiscate the proceeds of crime.<sup>13</sup>

### *Legal framework*

44. Under the *FATF Recommendations*, countries must criminalise money laundering which applies to all serious offences, and the predicate offences to money laundering must include corruption and bribery offences (Recommendation 3). The money laundering offence provides AC experts with an important tool with which to target those who deal with assets derived from corruption, and allows authorities to pursue those involved in the corruption scheme for the money laundering offence in addition to corruption offences.

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<sup>13</sup> For further information see FATF (2012d).



### *Financial intelligence units (FIUs) and suspicious transaction reports (STRs)*

45. A fundamental element of an effective AML/CFT regime is the requirement that financial institutions and DNFBPs report suspicious transactions to the financial intelligence unit (FIU) (Recommendation 20), which plays a central role in a country's AML/CFT operational network. While models of FIUs can vary, it must serve as the central agency for the receipt and analysis of suspicious transaction reports (STRs), as well as other information it receives as required under national laws (such as cash transaction reports or wire transfer reports), and the dissemination of the results of that analysis. Importantly, the FIU should be free from any undue political, government or industry influence or interference, which might compromise its operational independence (Recommendation 29).

46. In practice, STRs and FIU analysis have uncovered corruption activity, triggered corruption investigations, and been used to support ongoing financial investigations of corrupt activity. STRs and FIU analysis can provide a valuable source of financial intelligence for investigators in both the identification and tracing of the proceeds of corruption.<sup>14</sup> AC experts should also be aware of the other types of reports collected in their jurisdiction which may provide additional value in tracing the proceeds of corruption, such as thresholds transaction reports, cross-border movements or wire transfer reports. In addition, many FIUs have established international networks which may provide AC experts with an opportunity for international information exchange in AC matters.

47. Effective implementation of the *FATF Recommendations* is necessary to ensure that they support AC efforts as much as possible. To ensure implementation, countries must provide supervisory authorities with sufficient resources and powers to ensure compliance by financial institutions and DNFBPs with their AML/CFT obligations (Recommendations 26, 27 and 28).

### **INTERNATIONAL CO-OPERATION**

48. To fight corruption, countries need to implement effective laws and mechanisms which enable them to provide a wide range of mutual legal assistance (MLA), execute extradition requests and otherwise facilitate international co-operation. This is the case for both cross-border corruption and in grand corruption cases which commonly involve an international aspect, as corrupt officials move their proceeds abroad to avoid detection. Effective and timely international co-operation is essential for the recovery of assets related to corruption. The necessary legal frameworks for international co-operation should be in place, based on existing bilateral agreements, international instruments such as the UNCAC, and the *FATF Recommendations*.

49. The *FATF Recommendations* require countries to have mechanisms that facilitate international co-operation and co-ordination for all authorities (policy makers, the FIU, law enforcement, supervisors and other competent authorities) at the policy and operational levels. The *FATF Recommendations* require countries to implement a strong framework for information sharing. Under Recommendation 37, countries should provide the widest possible range of MLA in relation to the investigation and prosecution of money laundering and its associated predicate offences. Under Recommendation 38, countries should have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate the proceeds of

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<sup>14</sup> For further information, see the Egmont Group (2011).

crime. Where dual criminality is required for MLA, it is important for countries to have criminalised an adequate range of corruption and related offences, and related money laundering. In addition, countries should have an appropriate legal framework to enable competent authorities to rapidly, constructively and effectively provide the widest range of international co-operation, including through information exchanges between FIUs (Recommendation 40). Such international co-operation through informal channels can be particularly valuable in corruption investigations in advance of formal MLA requests given the potential speed for the sharing of information between competent authorities.

### III. RISK FACTORS RELEVANT TO CORRUPTION

50. An effective AML/CFT regime requires an assessment of ML/TF risks such that measures are developed and implemented by financial institutions and competent authorities to protect against the laundering of criminal proceeds. There are a number of factors that influence the level of money laundering risk associated with a business relationship or transaction, including customer risk, country or geographic risk, and product and financial instrument risk. This section of the paper will consider those risk factors which are most relevant to AML/CFT and AC experts for the detection and tracing of funds and assets related to corruption.

#### *Politically Exposed Persons and disguising the ownership and source of corrupt funds*

51. It is essential for corrupt officials and bribe givers to disguise the ownership and source of funds to be able to place the illicit proceeds into the financial system and enjoy their benefits. In some jurisdictions, PEPs are subject to asset disclosure requirements, rules regarding engaging in outside transactions to prevent self-dealing and conflict of interest, and a range of other codes of conduct and ethical prohibitions. These measures increase the need for corrupt officials to disguise their ownership of funds derived from corruption, assets purchased using such funds, or the ownership of companies that are used in corruption schemes. Further information can be found in the FATF guidance on PEPs, which includes red flags and indicators that can be used to detect misuse of the financial system by PEPs.<sup>15</sup>

#### *Legal persons and arrangements*

52. A common element of the corruption cases examined by the FATF in its study of corruption-relation money laundering typologies was the use of legal persons, trusts or non-profit organisations.<sup>16</sup> The ease with which legal persons or arrangements can be created and dissolved in some jurisdictions increases accessibility to these structures and the risk of misuse of such entities to launder the proceeds derived from corruption is enhanced when legal persons or arrangements are unnecessarily and unjustifiably complex multi-tiered entities. This risk is further enhanced when multi-layered, multi-jurisdictional structures are used – where a corporation established in one jurisdiction is owned by one or more other companies located in other jurisdictions – and there is no underlying legal or economic rationale.

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<sup>15</sup> FATF (2013a).

<sup>16</sup> For further information, see the FATF (2011).



53. In both public and private sector corruption cases, individuals and people controlling legal entities also seek to disguise the source, destination or the purpose of funds being paid as bribes. Funds are paid in a variety of ways and complex legal structures can be used to disguise the origin or purpose of the funds. In instances of foreign bribery, this can be difficult to detect. Cases have shown that a company with a strong reputation in the jurisdiction of the headquarters does not necessarily mean that its subsidiaries or affiliates operating in other, often high-risk, jurisdictions operate with the same level of integrity. It is therefore essential that practitioners look beyond a company's reputation in their home jurisdiction by considering sources such as public debarment lists maintained by international financial institutions or media reporting.

### **DNFBPs**

54. Another risk factor is the involvement of DNFBPs that have failed to implement effective AML/CFT practices, or come from unregulated or high-risk jurisdictions. Gatekeepers are knowingly or unknowingly used in schemes to launder proceeds derived from corruption for their ability to establish complex legal structures and to perform transactions efficiently and to avoid detection. The FATF's review of cases illustrates the variety of ways in which gatekeepers, particularly lawyers, are used to launder the proceeds derived from corruption.<sup>17</sup> DNFBPs have been used to create legal persons or arrangements, open bank accounts, transfer proceeds, purchase property, courier cash and take other means to bypass AML/CFT controls.<sup>18</sup>

### **The use of cash**

55. While the use of cash is more commonly generated in smaller-scale, endemic corruption cases, the FATF's case review also demonstrated the involvement of large amounts of unexplained cash in grand corruption cases.<sup>19</sup> As corrupt officials and individuals seek to transfer illicit funds out of the victim country, one method for doing so is the physical movement of cash. This can be undertaken through the use of family members and close associates, such as lawyers, who act as cash couriers to deposit significant amounts of cash in financial institutions in another jurisdiction. Although cash based transactions allow the corrupt PEP to break the chain of bank records, they also require the PEP to run the gauntlet of AML/CFT requirements designed to combat the placement of illegally-derived cash into the financial system. This includes the requirements of financial institutions to consider PEPs, and their family members and close associates, as higher risk customers and therefore subject them to enhanced due diligence. The FATF has published a best practices paper on the implementation of measures to detect and prevent the physical cross-border transportation of currency and bearer negotiable instruments, including through use of cash couriers.<sup>20</sup>

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<sup>17</sup> For further information, see FATF (2013b).

<sup>18</sup> For further information, see FATF (2011).

<sup>19</sup> For further information, see FATF (2011).

<sup>20</sup> For further information see FATF (2005).

### *Control over financial institutions and public entities*

56. A corrupt PEP may have the means and resources, due to their connections and status, to capture and control a financial institution, either within their home country or abroad. This is of particular concern as control over a bank provides the corrupt official with the ability to move and disguise funds without the fear of detection. Competent authorities should be alert to the risk of financial institution capture, particularly when examining financial institutions from jurisdictions that pose a high level of corruption risk or has weak AML/CFT controls. Effective supervision of financial institutions to ensure implementation of requirements in corresponding banking relationships is also essential to mitigate these risks.

57. Key government agencies must have sufficient operational independence and autonomy to ensure freedom from undue influence or interference. This reduces the likelihood of them falling under the influence or control of corrupt persons. Similarly, key government agencies must be provided with adequate budgetary resources to fully and effectively perform their functions. A lack of adequate compensation for staff can increase the incentive to engage in corrupt activities.

### *Economic sectors*

58. The economic sector in which a customer is or transactions are involved affects the level of risk. While corruption can occur in any industry, it appears, on the basis of cases reviewed by the FATF<sup>21</sup>, that several sectors are more vulnerable to corruption.<sup>22</sup>

59. While the links between corruption and economic sectors are not analysed in this paper, the FATF recognises some correlation which exists between the extraction of natural resources, high corruption risks and the incidence of grand corruption, particularly where significant revenues from extractive industries are combined with weak governance systems. Government procurement activities, including those financed by International Financial Institutions, are also vulnerable to corruption due to the large scope of government projects and the often specialised nature of the contracts involved. Further, in many countries, government procurement activities are not transparent and are highly competitive, which can lead to collusive activity. An analysis of money laundering cases involving proceeds derived from corruption has shown that a number of factors may lead to increased risks of corruption in the field of defence contracting. This includes the lack of transparency due to reasons of national security, the highly specialised nature of the goods and services, meaning they are not susceptible to ordinary procurement processes, and the presence of intermediaries in the defence industry.

60. The size and specialised nature of the health sector makes it an attractive target for corruption. Corruption in the pharmaceutical and medical device sector can occur throughout all stages of the business chain, from research and development to dispensing and promotion. The large number of steps involved in producing and dispensing medical products allows for numerous opportunities for corruption.

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<sup>21</sup> For further information, see the FATF (2011).

<sup>22</sup> For further information on industry risks, see the FATF (2012c).

61. As with some aspects of defence procurement, infrastructure contracting has several features that may make it more vulnerable to corruption. Among those are the specialised nature of the work, the necessity for continuing maintenance, complex supply chains the presence of state-controlled enterprises and the potentially large size of the projects involved.

62. Other industries in which government institutions are heavily involved may also lead to higher corruption risks due to the need to obtain government approvals and the awarding of government contracts.

63. In cases of foreign bribery, a particular issue in these economic sectors where the risk of corruption is higher is that the officials of most concern are often mid-level procurement officials and mid-level officials. Such officials are commonly employed by state-owned enterprises and are responsible for decisions regarding the provision of licences or permits to conduct business in their jurisdiction which increases the corruption risk. In this context, instances of bribery, such as payments for a public procurement contract in a foreign country, can be difficult to detect as related cross-border transactions appear legal on the surface.

64. It is equally important that both AML/CFT and AC experts are aware of the risks posed by these economic sectors and open dialogue between AC and AML/CFT communities is essential. This is particularly important where AML/CFT experts may support AC investigations through analysis of financial intelligence.

#### *Lack of information sharing between countries*

65. As money laundering is a global problem, communication among states is a key element to enhance the effectiveness of AML/CFT measures. Lack of effective information sharing between countries can hinder investigations, including with respect to corruption. Corrupt officials seek to move their illicit proceeds out of the country where the corruption offence occurred as soon as possible to avoid detection. Corrupt officials are also attracted by the notion of keeping their illicit proceeds and assets purchased with them in stable jurisdictions possessing strong economic structures and institutions.

66. For example, corrupt officials and individuals may make significant purchases (such as property) abroad to avoid receiving attention that such a purchase may attract in their home country. Improved communication between the jurisdictions involved may improve the odds of recovering illicitly derived assets.

67. Cases have demonstrated that this is done through a variety of methods, such as wire transfers or bulk cash smuggling, and commonly involves the use of accounts in multiple jurisdictions held by corporate entities registered in another jurisdiction. Each layer of a scheme involving another jurisdiction increases the difficulty for regulators and law enforcement being able to understand and detect the money laundering scheme, and enhances the necessity for sharing information between countries.

#### *Jurisdictional risks*

68. One factor in assessing the risk of corruption-related money laundering involves a consideration of geographic risks, such as the involvement of jurisdictions with higher levels of

corruption.<sup>23</sup> Financial institutions and DNFBPs should consider whether jurisdictions involved in a customer's dealings have been identified by credible sources as having significant levels of corruption. One of many factors when considering the level of risk posed by a jurisdiction is the level of implementation of relevant internationally recognised AML/CFT standards, including the *FATF Recommendations*, and AC instruments and initiatives, such as UNCAC, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Council of Europe's Group of States against Corruption (GRECO). Many of these instruments and initiatives, including those listed above contain their own peer assessment mechanism of a country's progress implementing the provisions of the applicable instrument.<sup>24</sup> Many of these reports are publicly available, and they can be a useful resource in considering the corruption risks posed by a jurisdiction. Various corruption measures from credible sources can also provide a resource to consider jurisdiction-related risks associated with the laundering of corruption proceeds. While assessment reports and indexes can be one of many helpful indicators, they must be applied carefully and critically in each instance, and should not form the exclusive basis of a country's corruption-related risk assessment.

69. AML/CFT and AC authorities should pay close attention when conducting investigations to the enhanced risk involved in transactions and customers of financial institutions when jurisdictions are involved that pose a higher risk of corruption. Combined with the enhanced measures that financial institutions are required to undertake in relation to PEPs, this can provide a strong mechanism to detect corrupt proceeds.

#### IV. BEST PRACTICES FOR CO-OPERATION BETWEEN AML/CFT AND AC EXPERTS

70. The AML/CFT measures outlined in this paper that support AC efforts, and the risk factors associated with corruption-related money laundering, illustrate the importance of co-operation between AML/CFT and AC experts. This section of the paper identifies the key agencies involved in the fight against money laundering and corruption, and outlines best practices for co-operation between them. To highlight the key messages, best practices are summarised in text boxes throughout this section of the paper.

##### CO-ORDINATION AMONG AUTHORITIES AND UNDERSTANDING OF ROLES

71. As noted in this paper, efforts to combat money laundering and corruption are intrinsically linked and have the potential to be mutually reinforcing. However, the commitment and ongoing collaboration of all stakeholders involved is required to achieve this objective, including legislatures, supervisory bodies, law enforcement, financial intelligence units, and the private sector.

72. Countries have taken various approaches when establishing authorities responsible for AML/CFT and AC efforts. Authorities responsible for AML/CFT or AC efforts can include multiple

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<sup>23</sup> Under Recommendation 10, countries are required to consider country or geographic risk factors when assessing the level of ML/TF risk.

<sup>24</sup> Outcomes of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption by countries are available at: [www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html](http://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html)

regulatory authorities, the financial intelligence unit, and specialised teams within law enforcement agencies. In relation to AC authorities, some countries have established dedicated AC agencies while others have adopted a multi-agency approach. This can include separate agencies for policy making and legislation, and for the investigation and prosecution of corruption cases. For further guidance, in June 2012 the FATF published guidance on operational issues and financial investigations which highlights the importance of multi-disciplinary teams in large, complex financial investigations.<sup>25</sup>

73. While AML/CFT and AC authorities vary from country to country, it is clear that inter-agency co-operation is essential whatever approach is used. Agencies with responsibility for AML/CFT and AC need to clearly communicate their roles, functions and responsibilities to each other so as to enhance co-ordination of their activities both domestically, and with their international counterparts. AML/CFT and AC authorities need to develop strong relationships and clear lines of communication to ensure that information flows both ways. These authorities should be able to share relevant information with appropriate safeguards in place to protect that information. Trust, confidence and reciprocity are required among agencies, particularly among law enforcement agencies and FIUs where specialist teams have been established to investigate money laundering and corruption.

74. Agencies responsible for anti-corruption efforts, including those in a multi-agency jurisdiction, should liaise or be institutionally connected with AML/CFT agencies to ensure corruption risks are considered in developing a risk-based approach to AML/CFT and to ensure information sharing occurs. To facilitate communication and co-ordination between AML/CFT agencies, some countries have established multi-agency standing committees, technical-level teams, or other mechanisms to ensure that agencies work towards the same national strategy. Agencies responsible for AC efforts should be involved with these bodies, either as a standing member or through other mechanisms for periodic engagement. This can be an important mechanism to ensure that corruption risks are taken into consideration when a country develops its risk-based approach to AML/CFT, and also to ensure that AML/CFT agencies receive input from AC agencies which are users of the financial intelligence and information produced by an effective AML/CFT regime.

75. Similar co-ordination bodies or mechanisms exist in countries that have adopted a multi-agency approach to combating corruption. AML/CFT agencies, including regulatory authorities and FIUs, should be involved in such mechanisms to maximise the effectiveness of AML/CFT measures in the fight against corruption. It is also an opportunity to ensure that AC experts are aware of the record keeping requirements under the domestic legal system in which they operate, including the types of records maintained by financial institutions and DNFBPs and the powers, and processes, to obtain such records. These records can provide valuable information in AC investigations to allow authorities to trace and identify the proceeds of corruption offences. Engagement with AML/CFT authorities is valuable in this area, especially where the ability to exercise powers to obtain information from financial institutions and DNFBPs rests solely with AML/CFT authorities.

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<sup>25</sup> For further information see FATF (2012e).

AC authorities should be involved in multi-agency committees or other mechanisms or procedures that have been established to co-ordinate the national AML/CFT strategy. Similarly, AML/CFT authorities should be adequately involved in AC co-ordination mechanisms. This will ensure that corruption risks are considered in developing a risk-based approach to AML/CFT and to ensure information sharing occurs.

AC authorities should understand the roles of AML/CFT authorities in their jurisdiction, including the powers and processes available to obtain information from financial institutions and DNFBPs. This will enhance the ability of AC authorities to most effectively utilise AML/CFT measures in the fight against corruption.

## LAW ENFORCEMENT AGENCIES

76. Many countries have established specialised, dedicated units, either as separate agencies or within existing law enforcement agencies, to investigate either money laundering or corruption offences. Such units should be free from undue political influence, and where they exist, can be very useful in anti-corruption efforts.

77. Countries could consider using joint financial investigations into corruption, for example by establishing multi-agency taskforces as necessary. In addition to AC experts, joint investigations should include investigators from law enforcement agencies or the FIU.<sup>26</sup>

78. Joint investigations and multi-agency taskforces also provide an opportunity for agencies to consider any 'lessons learned' which may require policy or legislative change. For example, they provide an opportunity to determine whether there are any obstacles to information sharing between AML/CFT and AC agencies due to institutional or legislative restrictions. The appropriate involvement of regulatory agencies and policy and law makers is critical so that consideration can be given to address obstacles that are identified.

Joint investigations provide the opportunity to bring together AML/CFT and AC experts in corruption investigations to investigate the corruption offence and to trace and target the proceeds.

Law enforcement agencies should engage with policy and law makers to ensure that there are no unnecessary legal or institutional obstacles in using AML/CFT measures in corruption investigations.

## REGULATORY AUTHORITIES

79. AML/CFT supervisory authorities play an essential role to ensure compliance, and the effective implementation by the private sector of their legal and regulatory AML/CFT requirements, including PEPs requirements. Regulatory authorities should ensure that their staff understands the

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<sup>26</sup> For further information, see FATF (2012e).



corruption risks posed in their jurisdictions and that they fully understand the PEPs requirements. In those jurisdictions where there is a higher risk of money laundering of proceeds derived from corruption, regulatory authorities should provide adequate training to their staff and ensure that sufficient focus is given to assessing the adequacy of high money laundering risk situations (including PEPs requirements) when conducting on-site, and desk-based, inspections of banks or other financial institutions and DNFBPs that have a greater level of exposure to corruption-related risks.

80. Thematic reviews by regulatory agencies which focus on PEPs and other corruption risks can further the understanding of the environment with regards to PEPs in that jurisdiction.<sup>27</sup> Thematic reviews can also help to ensure that regulators identify weaknesses in financial institutions or common challenges which may increase the risk with regards to the laundering of the proceeds of corruption and develop guidance where appropriate.

AML/CFT regulatory authorities should ensure that their staff understand the risks of money laundering of proceeds derived from corruption faced in their jurisdiction.

These authorities should also ensure that sufficient attention is given to assessing compliance with PEPs requirements during supervisory activity, particularly in jurisdictions that face a higher level of corruption-related risk and for financial institutions that have a greater level of exposure to that risk.

## FINANCIAL INTELLIGENCE UNITS

81. Reports of suspicious transactions by financial institutions and DNFBPs play a critical role in the fight against corruption and money laundering. An STR can be the first sign of suspicious activity by a customer and is an important source of information available to investigators. STRs have uncovered corruption activity, triggered corruption investigations and been used to support ongoing financial investigations of corrupt activity.

82. The role of the FIU in receiving and analysing the STR therefore remains critical in the fight against corruption.<sup>28</sup> FIUs have in place procedures for the dissemination of information to regulatory, law enforcement, investigative and/or prosecutorial authorities. In relation to AC efforts, this should include clear procedures for the dissemination to AC authorities where applicable. In addition, FIU staff involved in the analysis of STRs must be sufficiently trained to understand the indicators of corruption to determine when an STR may be relevant to corruption investigations. AC authorities and the FIU could consider work together to develop a series of parameters or 'red flags' for FIU staff for the referral of FIU analysis to AC authorities, which are specific to the context of that jurisdiction. As a starting point, authorities could consider the risk factors identified in this paper and an enhanced understanding of corruption-related typologies. In addition, AC authorities, where applicable, should work with the FIU to ensure that they maximise the use of other reports

<sup>27</sup> For further information on thematic reviews on PEPs, see World Bank (2010).

<sup>28</sup> For further information, see the Egmont Group (2011).

collected, such as cash transaction reports, wire transfers or cross-border movements of currency or bearer negotiable instruments, in corruption investigations.

83. Most countries have some form of income or asset disclosure system in place for those that hold prominent public functions. Where available, FIUs could consider using the information obtained through such a system as a tool in their analysis of STRs that relate to PEPs or potential corruption activity. Further, FIUs should also consider proactive approaches using open source information as it arises, for example through an analysis of transaction databases.

FIU staff should be adequately trained to identify corruption-related STRs based on the risks particular to that jurisdiction.

FIUs could consider working with AC authorities to develop parameters for the dissemination of corruption-related STRs, or any other information relevant to the laundering of the proceeds of corruption, and the results of any related analysis.

FIUs could also consider using asset disclosure information, where available, in their analysis of STRs related to corruption.

## ENGAGEMENT WITH THE PRIVATE SECTOR

84. Regulatory authorities and FIUs should work in partnership with the private sector to enhance the implementation of AML/CFT measures that combat corruption, including PEPs requirements. Open and constructive lines of communication between regulatory authorities and financial institutions are important to ensure that PEPs requirements are well understood and implemented effectively. In this respect, regulatory authorities should provide support to financial institutions and DNFBPs regarding the applicable measures on PEPs through the issuance of guidance or detailed instructions which clearly outlines their legal and regulatory requirements.

85. FIUs also play an important role in engaging with the private sector. FIUs should disseminate typologies and/or indicators of corrupt activity, as well as other information or analysis on corruption-related risks in that jurisdiction to the extent possible, such as the results of any national risk assessment on money laundering risks. Corruption-specific typologies are an important source of information for financial institutions and DNFBPs to allow them to detect the proceeds of corruption, which often appear legitimate on the surface. This information is important for financial institutions and DNFBPs as they undertake a risk-based approach to AML/CFT obligations. While STRs provide a valuable source of intelligence in the identification and tracing of proceeds of corruption, adequate feedback on the value of STRs is not always provided back to reporting entities. In working with the private sector, regulatory authorities and FIUs should consider ways to provide such feedback, within the applicable national laws, to enhance the value provided by STRs for corruption investigations. Combined with guidance and typology information, feedback to reporting entities can ensure that valuable information is provided to FIUs through STRs.



Regulatory authorities and FIUs should work in partnership with financial institutions and DNFBPs to prevent and combat corruption, in line with Recommendation 34, including by providing:

- guidance or detailed instructions on PEPs requirements
- typologies and indicators of corruption-related money laundering, and
- feedback on STRs relating to corruption where possible.

## INTERNATIONAL CO-OPERATION

86. Effective and timely international co-operation is essential for the detection, freezing and seizing, and confiscation of assets related to corruption. Given the complexities in corruption cases that involve a cross-border aspect AC and AML/CFT authorities should work together to explore all opportunities for international co-operation, including those that may be had with the investigative offices of the International Financial Institutions, where relevant. This includes AC authorities giving consideration to using international networks established by their respective FIU to obtain financial information from their international counterparts. Proactive approaches are particularly useful including spontaneous information exchanges among competent authorities and making effective use of FIU information transmission channels and exchange mechanisms, in accordance with national legal frameworks.

87. AC experts should also work with AML/CFT authorities to ensure that the legal framework and related processes are in place to facilitate the enforcement of foreign freezing/seizing orders, as well as the confiscation of proceeds and assets derived from corruption, based on international instruments such as the UNCAC and other standards such as the *FATF Recommendations*.

AC and AML/CFT authorities should work together to ensure that legal frameworks and processes are in place, as required by international instruments such as the UNCAC, and the *FATF Recommendations*.

AC authorities should engage with FIUs regarding the appropriate use of FIU international networks and mechanisms which facilitate information sharing.

## ASSET RECOVERY

88. For the purposes of this paper, asset recovery means the return, repatriation or sharing of illicit proceeds, where those proceeds are located in foreign countries. The UNCAC provides a legal basis for asset recovery in corruption cases. This is particularly relevant in corruption cases as the proceeds of corruption offences are commonly transferred from the country where the offence occurred and held in financial institutions, or used to purchase assets, abroad.

89. UNCAC provides a legal basis for asset recovery and dedicates an entire chapter to this matter (Chapter V). When undertaking such cases, it is best practice to consider a variety of legal avenues

to secure (i.e., freeze, restrain, seize) and then recover stolen assets. The following different types of legal avenues for asset confiscation may be considered:

- Criminal confiscation and/or restitution, fines or reparations: This requires a criminal case against a person for a proven criminal offence. Such cases can be conducted in the victim country and in the countries where the proceeds have been laundered.
- Non-conviction based confiscation<sup>29</sup>: Such actions are against property rather than the criminal defendant, and do not require a conviction. This method of confiscation is particularly useful in cases in which a criminal conviction is not possible, such as when the property is held by a fugitive or a criminal who has died or is unavailable for prosecution.
- Private civil action: A country can bring a private civil action in the country where the corrupt proceeds are located, allowing the victim country to recover the proceeds as plaintiff.
- Administrative confiscation: Competent authorities may confiscate stolen assets as a result of, or follow-up to administrative procedures. Such proceedings would normally be subject to judicial review as provided by domestic law.
- Targeted financial sanctions: In some specific cases, the freezing of assets suspected of having been misappropriated may be required by international legal instruments, such as the targeted financial sanctions set out in the relevant United Nations Security Council Resolutions<sup>30</sup>.
- Action by national governments: Where applicable, national governments may take freezing actions to avoid dissipation of assets<sup>31</sup>.
- Spontaneous disclosure: Countries that become aware of stolen assets in their country may disclose this information to another country without prior request.

90. It is best practice for the country where the proceeds are located to assist the country which is seeking the return of confiscated assets, consistent with obligations set forth in UNCAC and other relevant treaty instruments. This could be done as part of regular mutual legal assistance or other forms of international co-operation. This should also include ensuring that there are appropriate mechanisms in place to enforce foreign freezing and confiscation orders (derived from both conviction and non-conviction based proceedings), unless this is inconsistent with the fundamental principles of their domestic law. Management of frozen, seized and confiscated property is also an

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<sup>29</sup> Also known as civil proceedings against property, property based confiscation, or in-rem confiscation.

<sup>30</sup> See for example United Nations Security Council Resolutions (UNSCRs) in relation to Libya. In UNSCR 1970(2011), OP17 requires the freeze of assets, while OP18 requires the return of these assets at a later stage. Similarly provisions can be found in successor resolution UNSCR 1973(2011) (OP19 and OP20).

<sup>31</sup> Article 54 of the *United Nations Convention Against Corruption*.

important condition to enhance the effectiveness of the return of the confiscated property. Countries may also consider initiating an action against the proceeds of corruption located in their jurisdiction even when requests for legal assistance have not yet been presented by the country where the corruption has occurred.

90. Many of the regulations or legal obligations specifically related to asset recovery extend beyond the scope of the FATF Recommendations. However, it is important to note that an effectively implemented framework for international co-operation and confiscation which is in line with the requirements set forth in the UNCAC and the *FATF Recommendations*, as described in the previous section, can be instrumental for the successful implementation of an asset recovery regime, especially in relation to: *i)* the tracing of assets, *ii)* the securing (*i.e.*, freezing, restraining, seizing) of assets, *iii)* court processes and obtaining court orders. Asset recovery is the next stage of this process. It is also important to recognise existing initiatives that can support countries in asset recovery cases and assist them with international co-operation issues, such as the Stolen Asset Recovery Initiative (StAR) which is a partnership between the World Bank and the United Nations Office on Drugs and Crime (UNODC).

Countries should consider the full range of legal avenues to ensure that their asset confiscation framework is effective in asset recovery, in line with UNCAC and other international AC instruments.

## V. EXAMPLES OF SUCCESSFUL CO-ORDINATION AND CO-OPERATION BETWEEN AML/CFT AND AC AUTHORITIES

### Example 1

The FIU of country A entered into agreements with the institutions responsible for anti-corruption efforts at both the national and provincial level. These agreements established links between the relevant institutions for the coordination of AML/CFT and AC policies and activities.

### Example 2

The FIU in country B has established formal relationships with law enforcement agencies responsible for corruption investigations at the state and national level. This framework for co-ordination and co-operation provides specific benefits to AC authorities and has led to many and continuing successful outcomes. The benefits to AC agencies include:

- direct online access to transactions reported to the FIU;
- direct collaboration between AC officers and FIU officers including the provision by the FIU to AC authorities of detailed analysis of complex data;
- the establishment of automated rules and profiling across incoming STRs which may identify matters of interest for AC authority investigation;
- a framework to facilitate the exchange of information through the international network of FIUs.

### Example 3

In country C, the FIU is a law enforcement FIU placed under the auspices of a national police unit for organised and international crime. Both AC expert and asset recovery functions are placed in the same (intelligence) work branch as the FIU. The work branch also hosts the liaison officers working for tax and execution authorities. The arrangement has made cooperation an integral part of everyday work, speeded up processes and decreased administrative burden.

### Example 4

An FIU reported to its national law enforcement agency, a withdrawal of EUR 100 000 in cash, with an indication to the bank that the funds were to 'facilitate the conclusion of contracts'. The funds were, in fact, handed over to a foreign public official and shortly afterwards the contract in question was concluded. The client was subsequently convicted of bribery of foreign public officials for the purpose of obtaining an undue advantage in international business. This is an example of how banks

and FIUs can pick up possible corrupt payments by monitoring transaction descriptions.

*Source: Egmont Group's white paper on corruption (2011).*

### Example 5

The organised crime investigate group (OCG) receives information from an informant that a casino operating in the jurisdiction is doing so illegally. Also, media reports have indicated that the same casino has not adhered to all the requirements to operate legally in the jurisdiction. One media report claims that the casino has not posted the required USD 3 million bond with the government allowing it to receive a license to operate. However, the Minister in charge of the ministry with regulatory authority over casinos has publicly announced that the casino is operating legally and has posted the USD3 million bond.

The OCG develops enough information to secure a search warrant to be executed on the casino. During the course of the search, OCG discovers that the casino is operating using “two” sets of books. One set is given to regulators (book #1) while the other (book #2) is the actual money flow of the casino. Concurrently, the OCG had requested assistance from the local FIU to help determine if the bond of USD 3 million had been paid as claimed by the minister. The local FIU is a “Hybrid” style FIU having more powers than the traditional administrative FIUs and had adopted a multi-disciplinary task force concept – meaning it had personnel assigned to it from other agencies and regulatory bodies (Tax, Customs, Police, Central Bank, and AC Agency). The FIU determined that the USD 3 million bond should have been paid to the competent ministry and recorded and maintained at the Central Bank. By having a task force concept, the FIU was able to determine, quickly, that the USD 3 million bond had not been paid meaning the public statement of the Minister was inaccurate. This information was conveyed to the Director of the AC Agency and a joint investigation by the AC Agency and OCG was initiated with support provided by the FIU.

The results of the search of the casino resulted in discovering a journal entry of a suspicious payment (USD 200,000) from the casino (book #2) to the highest-ranking member of one of the most prominent political parties in the jurisdiction. This amount was wire transferred from the casino account to an account linked to the aforementioned politician, but controlled by other persons. The OCG and AC Agency obtained subpoenas to retrieve bank records of all accounts identified during the course of the investigation. The OCG and AC Agency requested the assistance of the FIU in examining the financial records because of the FIUs mandate to combat money laundering and terrorism financing and keen expertise in financial analysis.

The analysis of the financial records identified hundreds of suspicious cash transactions in one local bank that had not been reported to the FIU by the financial institution. The cash deposits were allegedly made by individuals linked to the aforementioned politician's political party. However, evidence indicated that one man – “the bag man” actually effected the cash deposits in the bank and he was also a member of the same political party and a close relative of a local wealthy businessman. Intelligence reports held by the FIU and OCG had linked this wealthy businessman to suspected criminal activity.

The OCG and AC Agency continued their investigation into the casino, the Minister and the political party and some of its members. The FIU and Central Bank conducted joint compliance inspections of the local bank that had failed to report the suspicious activity. All agencies involved worked closely together and coordinated efforts and shared information.

The OCG was able to close the casino, the AC Agency was able to develop enough support to force the Minister to resign, the bank was fined and some bank managers and employees and the “bag man” were charged with criminal offences. The AC Agency was able to develop closer ties to the FIU and OCG. The FIU and Central Bank further enhanced their close working relationship and the FIU exhibited its importance and effectiveness by providing support to the AC Agency and OCG.

*Source: Egmont Group’s white paper on corruption (2011).*

### Example 6

In country A, two bank drafts of EUR 373 000 and EUR 2 220 000 respectively, were drawn from a private bank account. The drafts were issued by a property official in the local government, to the official’s wife. The bank was concerned that the transaction may involve tax evasion and filed a STR. The FIU made an initial analysis and rapidly sent the information to the local police district. The material was further analysed and the income of the property official was not proportionate to his considerable assets. It was also discovered that an apparently fictitious firm was used as a means to channel money for personal gain. The information provided by financial institutions and tax authorities was crucial for the investigation. The successful investigation was largely due to the cooperative efforts between agencies and included a number of searches and seizures. The official was found guilty of corruption, among other offences, and five other defendants were also found guilty of related offences.

### Example 7

In country A, the law enforcement authorities have noted the contribution financial intelligence has made to their investigations of predicate offences, including corruption. The FIU makes case disclosures to law enforcement authorities that help to identify financial institutions and bank accounts used by subjects under investigation to then obtain judicial authorisations. Case disclosures are developed using all reports received by the FIU, including suspicious transaction reports, large cash transaction reports and electronic funds transfer reports. Analysis of these reports in the context of corruption investigations have yielded relevant insights regarding accounts held in offshore banking centres and/or transactions indicative of the purchase of property in foreign jurisdictions. Tactical disclosures by the FIU have thus provided investigators with information about officials who had business interests outside of the country. The intelligence provided by the FIU not only supports ongoing investigations, but a financial perspective also assists in guiding investigations and strategies before an investigative course of action is taken.

The following case illustrates how the FIU is able to contribute to an investigation by law enforcement authorities into the potential corruption of foreign public officials by a person or entity.

Media reports from Country A indicated that *Oil and Gas Limited* was believed to have purchased goods and services for Mr. Smith, a local public official, in order to influence his decisions regarding an incident involving that company. Located in Country A, *Oil and Gas Limited* is a subsidiary of *Oil and Gas Group* in Country B.

A police service from Country B provided its FIU with information concerning both *Oil and Gas Limited* and *Oil and Gas Group* as part of an investigation into money laundering involving the corruption of foreign public officials.

With this information, the FIU conducted a search of its database which revealed that *Oil and Gas Limited* was being financed by its parent company with funds flowing from Country B, to a bank account in a Caribbean country, then through an intermediary bank in Country B and ultimately on to a bank account in Country A. It was determined that on 21 occasions the same amounts were transferred from *Oil and Gas Limited's* Caribbean account to its bank account in Country A within one day of the funds arrival from *Oil and Gas Group* accounts. The FIU was also able to identify an account held by *Oil and Gas Limited Joint Venture* at a bank in Country B which *Oil and Gas Limited* had transferred funds to, from its accounts in Country A. As the Caribbean bank account is held in an area known to be used for obscuring the origin of funds for money laundering purposes and as funds transferred in and out of an account in foreign jurisdictions within a short period of time is atypical and uneconomical, the FIU suspected that the overall pattern was indicative of money laundering.

The FIU made a disclosure to the police service that had submitted the information. Without the financial intelligence information provided by the FIU linking the finances of the subjects back to Country B, it would have been difficult for the investigation to proceed.

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